

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH**

**LPA No.2379 of 2017 (O&M)**

**Reserved on: 11.04.2023**

**Date of Decision: 25 .04.2023**

***PUNJAB NATIONAL BANK, THROUGH ITS CHAIRMAN AND  
OTHERS***

..... APPELLANTS

**Vs.**

***KARMA DEVI AND OTHERS***

.... RESPONDENTS

**CORAM:**    **HON'BLE MR JUSTICE M.S. RAMACHANDRA RAO**  
**HON'BLE MRS.JUSTICE SUKHVINDER KAUR**

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Present: -    Mr. Saurav Verma, Advocate  
for the petitioners.

Mr.Satbir K. Katnoria, Advocate,  
Mr.K.S. Dadwal, Advocate, and  
Mr.Sahil Koundal, Advocate,  
for respondent Nos. 1, 3 & 4.

Ms. Navneet Kaur, Advocate for  
Mr. Brajesh Mittal, Advocate  
for the Accountant General.

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**M.S. RAMACHANDRA RAO, J.**

This LPA is preferred by the employer-Punjab National Bank challenging the judgment dt.27.09.2017 of the learned Single Judge in CWP-6863-2010.

The Writ Petition was filed by the respondent No.1 seeking a Writ of Certiorari for quashing of an order dt.02.08.2008 (P-13) whereby punishment of compulsory retirement had been imposed on herby appellant No.4 vide order dt.11.10.2008 (P-15) of the appellate authority (appellant No.3) upholding the said punishment and also order dt. 30.11.2009 (P-16) of the reviewing authority (appellant No.2) dismissing her review petition.

The respondent belongs to the Scheduled Caste category and had joined the Punjab National Bank (Appellant No.1) as a Clerk.

A charge sheet 21.11.2006 (P-6) was issued to the respondent leveling allegations with regard to discharge of her duties. The gist of the charges are as under:

**Article 1:**

She failed to maintain good conduct and provide good customer service to the customers and misbehaved with them. She also failed to maintain good conduct with her superiors, misbehaved and disobeyed their lawful orders.

**Article 2:**

She held the press conference in the branch without prior sanction of the higher authorities for vindication of her actions, which was defamatory in character and caused adverse criticism.

The respondent No.1 gave her reply to the same on 23.12.2006 denying the charges.

The respondent No.4 after considering the same, decided to hold a departmental inquiry and appointed an Inquiry Officer.

After holding inquiry, the Inquiry Officer submitted his report dt.19.05.2008 (P-11) holding that charges no. 1(a), (c), (d), (e), (f), (h) and (i), and article of charge No.2 were proved and charge 1 (b) and (g) were partly proved. The inquiry report ran into 73 pages.

The Inquiry report was forwarded to the respondent No.1 for her objections/representation thereon. On 25.07.2008, the respondent No.1 submitted the detailed objections/representation (P-12) of 82 pages.

The respondent No.4, who is the disciplinary authority, then passed order of punishment (P-13) on 02.08.2008 of a mere 4 pages imposing

major penalty of compulsory retirement in terms of Regulation 4(h) of the PNB Officers and Employees (Discipline and Appeal Regulations), 1977. *In the said order, he condensed the 82 page objections/representation submitted by the respondent to the inquiry report into 7 bullet points each of about 2-5 lines of length about a page, dealt with all of them in a single paragraph which states as under:*

*“The Enquiry Officer has given his findings after proper assessment of the evidence adduced during the enquiry proceedings by the presenting officer as well as the defence. Therefore, the contention of the charged officer that the Enquiry officer was biased against her and that the charges in the charge sheet have been planted along with respective witnesses is not tenable. Further, her contentions that no investigation was ever got conducted for the allegations, no complaint was entered in the complaint register and that charge sheet was served upon her after lapse of seven months from issuance of tabular proforma has no relevance and do not in any way mitigate the lapse committed by her and therefore, devoid of merit. So far as her request for personal hearing is concerned, there is no provision in this regard in PNB Officer Employees (D & A) Regulations 1977. However, full opportunity and time was given to submit written submission as requested by her.*

The respondent No.1 then preferred an Appeal against the same on 01.09.2008 (P-14) to the appellant No.3. The grounds of Appeal run into 60 pages.

The appellate authority rejected the Appeal vide (P-15) dt.11.10.2008. The appellate order runs into a mere 6 pages of which the only last 3 pages deal with the grounds of Appeal raised by respondent No.1.

The respondent No.1 then preferred a review which was rejected by the respondent No.2 vide P-16 dt. 30.11.2009.

**Order of the learned Single Judge**

By order dt.27.09.2017 the learned single Judge allowed the Writ Petition and directed that the respondent No.1 should be treated as having retired from service w.e.f. the date of her superannuation i.e. 28.02.2014 in the normal course. He also directed that respondent No.1 shall be paid arrears of her salary from the date of retiring her compulsorily w.e.f. 02.08.2008 till the date she attained the age her superannuation. He also directed that increments which were due to her during the period from 2008 till her superannuation be granted and arrears shall be paid to her. Retiral benefits if any, like provident fund gratuity, etc. if she is entitled in accordance with law, shall be calculated and disbursed to her in accordance with the regulations/Rules as if no order of compulsory retirement was passed against her and the said exercise should be completed in 4 months.

*Inter alia*, the learned single Judge held:

- (a) The respondent No.1 had impleaded in the Writ Petition respondents No.2 to 6 in the LPA as respondents No.5 to 9 in their personal capacity attributing malafides to them, but the said respondents had not chosen to file any reply denying the allegations of malafides attributed to them and so the said allegations have to be accepted.
- (b) Inquiry was initiated against the respondent No.1 by the Bank at the instance of respondents 6 to 9 in the Writ Petition; they and 22 other employees had got lodged a

complaint against her to take revenge on her for having given an adverse report as an Audit Officer which resulted in a filing of a Civil Suit also against respondent No.6 in the Writ Petition and 6 others on 10.04.2006 in which summons were served on 21.04.2006; so respondent No.6 and others created two complaints from Banks customers and made allegations against respondent No.1 that she was not obeying the orders of her superiors like respondents like 6 to 9 in the Writ Petition; there is therefore a real likelihood of bias; that she had refused to withdraw the Civil Suit though they had approached her seeking such withdrawal and so they proceeded to take revenge on her by getting initiated a disciplinary action against her;

- (c) Therefore the very initiation of disciplinary inquiry against her is bad in law on the ground of likelihood of bias against her;
- (d) Charges I and II framed are indefinite and not specific;
- (e) The complaints 01.12.2005 and 02.02.2006 of alleged customers of the Bank against respondent No.1 had to be handled as per circulars dt18.11.1988 and 26.04.2000 of the Bank but the appellants admitted that this was not done;
- (f) The depositions of the management witnesses show that some fishy thing had happened in entertaining the above complaints;

- (g) The respondent No.1 herself was not examined contrary sub Regulation (17) of Regulation 6 of the 1977 Regulations and this vitiates the inquiry;
- (h) None have been examined who are newspaper reporters or TV channel employees as regards the charge of holding a press conference leveled against respondent No.1 and the witnesses examined are employees of the Bank who are interested witnesses having animosity against respondent No.1 as she had filed a civil suit against them;
- (i) No material evidence is placed on record by the Bank to show that the respondent was assigned certain duties which she did not perform and the charge of disobeying the orders of superiors is not substantiated. As regards some of the duties, the computers servers were admittedly not working and the delay was on account of circumstances beyond respondent's control.
- (j) The respondent No.1 had a good service record from 1985 to 2006 and had been promoted also;
- (k) There is no consideration by the disciplinary authority of each of the contentions raised by respondent No.1 in her objections to the inquiry report;
- (l) Appellate and reviewing authorities cannot cure the errors committed by the disciplinary authority and lack of reasons by the disciplinary authority shows that it has not applied its mind; if

the foundation of a structure is removed, then the superstructure cannot stand and must also collapse.

- (m) Order dt.02.08.2008 of the disciplinary authority order dt.11.10.2008 of the appellate authority and order dt.30.11.2009 of the reviewing authority are set aside.

Challenging the same this LPA is filed by the appellants.

**Events after filing of the LPA**

The respondent No.1 had filed a contempt case also seeking implementation of the order of the learned Single Judge.

On 17.04.2018, a statement was made by counsel for the appellants that they are willing to settle the issue of payment *qua* service benefits. So the Division Bench on 17.04.2018 requested the Bench hearing the contempt case to adjourn the matter beyond 06.08.2018.

When the matter was next listed on 29.11.2018, the Court noted that no steps for settlement had been taken and so withdrew the request made to the Bench hearing the Contempt case on 17.04.2018 for adjournment of the case.

The appellant-Bank questioned it in the Supreme Court in SLP Nos.2273-74 of 2019.

On 01.02.2019, the Supreme Court granted stay of the Contempt Case subject to the appellants/Bank remitting to respondent No.1 the amount due in terms of the order of the learned Single Judge excluding back wages within 15 days.

Thereafter, on 02.03.2020, it was informed to the Supreme Court that ₹16,92,205/- had been deposited with respondent No.1 with some delay.

Counsel for respondent No.1 contended that his client should get ₹15,38,409/- more from the appellants apart from back wages of ₹36,00,000/-

The Supreme Court disposed the SLP on 02.03.2020 closing the contempt proceedings on account of the fact that ₹16,92,205/- had been received by respondent No.1 and other aspects including correctness of the amount paid and amount of back wages would be considered when the Letters Patent Appeal is heard.

**Consideration of the submissions of the parties in the LPA**

We have examined the record and the reasons assigned by the learned Single Judge in the impugned order.

Counsel for the appellants has not been able to point out any error in the reasoning given by the learned Single Judge in his order.

We find it shocking that the inquiry report was of 73 pages to which the respondent No.1 gave P-12 representation/objections of 82 pages. But the disciplinary authority, as stated above, *condensed the 82 page objections/representation submitted by the respondent to the inquiry report into 7 bullet points each of about 2-5 lines of length (about a page), and dealt with all of them in a single paragraph*. This is not expected of a disciplinary authority who is imposing a major penalty on an officer of the appellant No.1-Bank.

There are very important reasons why the Courts have held that furnishing of the inquiry copy report to a delinquent employee is necessary. In ***ECIL v. B. Karunakar***<sup>1</sup>, the Supreme Court declared:

*“26. The reason why the right to receive the report of the enquiry officer is considered an essential part of the reasonable*

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<sup>1</sup>(1993) 4 SCC 727

*opportunity at the first stage and also a principle of natural justice is that the findings recorded by the enquiry officer form an important material before the disciplinary authority which along with the evidence is taken into consideration by it to come to its conclusions. It is difficult to say in advance, to what extent the said findings including the punishment, if any, recommended in the report would influence the disciplinary authority while drawing its conclusions. The findings further might have been recorded without considering the relevant evidence on record, or by misconstruing it or unsupported by it. If such a finding is to be one of the documents to be considered by the disciplinary authority, the principles of natural justice require that the employee should have a fair opportunity to meet, explain and controvert it before he is condemned. It is negation of the tenets of justice and a denial of fair opportunity to the employee to consider the findings recorded by a third party like the enquiry officer without giving the employee an opportunity to reply to it. Although it is true that the disciplinary authority is supposed to arrive at its own findings on the basis of the evidence recorded in the inquiry, it is also equally true that the disciplinary authority takes into consideration the findings recorded by the enquiry officer along with the evidence on record. In the circumstances, the findings of the enquiry officer do constitute an important material before the disciplinary authority which is likely to influence its conclusions. If the enquiry officer were only to record the evidence and forward the same to the disciplinary authority, that would not constitute any additional material before the disciplinary authority of which the delinquent employee has no knowledge. However, when the enquiry officer goes further and records his findings, as stated above, which may or may not be based on the evidence on record or are contrary to the same or in ignorance of it, such findings are an additional material unknown to the employee but are taken into consideration by the disciplinary authority while arriving at its conclusions. Both the dictates of the reasonable opportunity as well as the principles of natural justice, therefore, require that before the disciplinary authority comes to its own conclusions, the delinquent employee should have an opportunity to reply to the enquiry officer's findings. The disciplinary authority is then*

*required to consider the evidence, the report of the enquiry officer and the representation of the employee against it.”*

Since it is the responsibility of the disciplinary authority to impose punishment and he would be doing so after considering the inquiry report and the evidence collected during the inquiry, if the employee were to point out errors in the inquiry report, the disciplinary authority is obligated to deal with them.

In the instant case, by just dealing with the 82 pages objections of respondent No.1 to the inquiry report in one paragraph only, the disciplinary authority has committed a grave error which vitiates his order. The said error cannot be cured by the appellate or the revisional authorities.

At this point of time, 15 years after the order of the disciplinary authority and 9 years after the superannuation of the respondent No.1, it is not desirable in our opinion to remit the matter back to the appellants for fresh consideration particularly in the light of the finding of the learned Single Judge that the inquiry was initiated with malafide intention, with which conclusion we are in complete agreement.

Now we come to the question as to “whether the appellants are liable to pay full back wages to the respondent No.1 from 02.08.2008 till 28.02.2014, her date of superannuation.”

The Supreme Court in the case of ***Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Others***<sup>2</sup> laid down the following principles for grant of back wages to the delinquent employee where she is reinstated in the following terms:

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<sup>2</sup>2003 (10) SCC 324

**38.1.** *In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.*

**38.2.** *The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.*

**38.3.** *Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averment about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.*

**38.4.** *The cases in which the Labour Court/Industrial Tribunal exercises power under Section 11-A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and/or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages.*

**38.5.** *The cases in which the competent court or tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of*

*victimising the employee or workman, then the court or tribunal concerned will be fully justified in directing payment of full back wages. In such cases, the superior courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc. merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The courts must always keep in view that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and the sufferer is the employee/workman and there is no justification to give a premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages.*

**38.6.** *In a number of cases, the superior courts have interfered with the award of the primary adjudicatory authority on the premise that finalisation of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer i.e. the employee or workman, who can ill-afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases it would be prudent to adopt the course suggested in **Hindustan Tin Works (P) Ltd. v. Employees**<sup>3</sup>.*

**38.7.** *The observation made in **J.K. Synthetics Ltd. v. K.P. Agrawal**<sup>4</sup> that on reinstatement the employee/workman cannot claim continuity of service as of right is contrary to the ratio of the judgments of three-Judge Benches<sup>7,8</sup> referred to hereinabove and cannot be treated as good law. This part of the judgment is*

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<sup>3</sup>1979 (2) SCC 80

<sup>4</sup>2007 (2) SCC 433

*also against the very concept of reinstatement of an employee/workman.”*

Thus, from the above decisions, it is clear that in case of wrongful termination of service, reinstatement with continuity of service and back-wages is a normal Rule, and while deciding the issue of back-wages, the Court may take into consideration length of service of the employee, nature of misconduct and the financial condition of the employer and other similar factors. The workmen ordinarily should plead before the Court that he was not gainfully employed or employed on lesser wages. If the employer wants to avoid payments of full back-wages, then it has to plead and also lead cogent evidence to prove that the employee was gainfully employed, and was getting wages equal to the wages he or she was drawing prior to the termination of service. But in the case of victimization of an employee, the Court would be justified in directing payment of full back-wages.

In *Hindustan Tin Works (P) Ltd.(3 Supra)*, the Labour Court had come to the conclusion that real reason for retrenchment of the workman was not non-availability of raw material or power curbs or the cost of production, but because the management felt annoyed on the refusal of the workman to agree on the terms of settlement, and so the retrenchment was illegal.

The Supreme Court held that if the employer terminates the service illegally and the termination is motivated as in that case to resist the workman's demand for revision of wages, then the termination may even amount to unfair labour practice, and in such circumstances, reinstatement is the normal Rule, which should be followed with full back-wages. This decision had been proved in *Deepali Gundu Surwase (2 Supra)*.

Not only has the learned Single Judge held that the initiation of the disciplinary authority is vitiated by malafides, respondent No.1 had also stated that in her reply filed to **CM-96-LPA-2023** before this Court that she had not worked anywhere during the period 02.08.2008 to 28.02.2014 (Para xix) and this is not refuted by the appellants by any pleading or evidence. Therefore, we hold that respondent No.1 is entitled to **full back-wages** on the basis of the above decisions w.e.f. 03.02.2008 till 28.02.2014 with interest @6% per annum till the date of payment.

The **increments**, if any, which she would have got, had she been in service during that period, shall also be awarded to her and the back-wages/arrears be paid to her on the said basis within 8 weeks from today.

As regards the **pension** due to her, since respondent No.1 had not made any application to the appellants-Bank seeking commutation of pension which fact is also admitted by counsel for the appellants, it was not open to the appellants to take note of an averment made by her in the affidavit filed by her in a contempt case i.e. *COCp-378-2018* and proceed to grant commutation of pension to her, which appears to have been done in the instant case. This has caused the delay in disposal of this LPA. So, we direct the appellants to ignore the said averment made in the affidavit filed in the contempt case by the respondent No.1, and proceed on the basis that respondent No.1 has not sought for any commutation of pension and then arrive at the quantum of pension payable to her, and communicate and pay the said quantum till date to respondent No.1 within 8 weeks after deducting the payments already made to her regarding pension, and continue to pay the same in future.

As regards the Leave Encashment dues, admittedly for each year of service, 30 leaves were owed to respondent No.1, but for only 9 privilege leaves, payment had been made to her. Therefore, for the period w.e.f.03.08.2008 till 28.02.2014, being 6½ years, since the respondent No.1 is entitled to 165 privilege leaves, value thereof in terms of money for the said duration of 165 days shall be calculated and paid to respondent No.1 within 8 weeks from today.

The LPA is thus disposed of in aforesaid terms along with cost of ₹20,000/- to be paid to respondent No.1 by the appellants which shall be paid within 8 weeks from the date of receipt of certified copy of this order.

Pending application(s), if any, stands disposed of accordingly.

**(M.S. RAMACHANDRA RAO)**  
**JUDGE**

**(SUKHVINDER KAUR)**  
**JUDGE**

**April 25, 2023**  
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|-------------------------------------|---------------|
| <i>Whether speaking/reasoned? :</i> | <i>Yes/No</i> |
| <i>Whether reportable? :</i>        | <i>Yes/No</i> |