



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of order: 22nd August, 2023**

+ **W.P.(C) 8539/2019**

BK KHATANIAR Petitioner

Through: Appearance not given

versus

PUNJAB NATIONAL BANK AND ORS. Respondents

Through: Mr. Rajesh Kumar Gautam, Mr. Anant Gautam, Mr. Sumit Sharma, Ms Anani Achumi, Mr. Dinesh Sharma and Ms. Shivani Sagar, Advocates

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition under Article 226 of the Constitution of India has been filed on behalf of the petitioner seeking the following reliefs:

“i) Issue a Writ of Certiorari or any other appropriate writ, order or direction, thereby quashing the impugned orders dated 08/12/2010, 22/03/2011 and dated 30/11/2011, passed by the respondents, with all consequential benefits.

ii) PASS any other order or direction which may be deemed to be just, fit & proper in favor of the Petitioner in the light of the facts and circumstances of the case.”

2. The brief Factual Matrix of the instant petition is as follows:



- a) The petitioner joined the respondent Bank as a Management Trainee at the position of Junior Management Grade-1 on 21st December 1981 and was lastly posted as Manager (Scale-II) at Branch Office, Shillong.
- b) The respondent suspended the petitioner vide dated 10th March 2007 for alleged lapses pertaining to certain loan cases sanctioned by the petitioner which was, after more than a year, revoked with effect from 20th May 2008.
- c) The Disciplinary Authority (hereinafter referred to as “DA”) issued to the petitioner a charge sheet on 30th April 2008 under Punjab National Bank Officer Employees (Disciplinary & Appeal) Regulation (hereinafter referred to as “D&A”), for procedural irregularities/lapses pertaining to some loan cases sanctioned by the petitioner, which constituted as gross misconduct under Punjab National Bank Officer Employees (Conduct) Regulations (hereinafter referred to as Conduct Regulations). The petitioner submitted his defense statement to the said chargesheet.
- d) The respondent instituted the departmental enquiry vide order dated 12th September 2008 and it concluded the inquiry on 04th March 2010. It submitted the departmental enquiry report to the DA on 13th May 2010. The DA sent the said report to petitioner on 13th September 2010 and petitioner then submitted his defense representation on said report to the DA on 22nd September 2010.
- e) The respondent imposed a penalty upon the petitioner of ‘renewal from service which shall not be a disqualification for further



employment' vide order dated 08th December 2010 under 'D & A' Regulation No. 4(i) upon the petitioner.

f) The petitioner preferred a departmental appeal to the Appellate Authority on 17th January 2011 against the orders of the Disciplinary Authority. The Appellate Authority rejected the appeal filed by the petitioner.

g) Consequently, the petitioner filed a review petition with the Reviewing Authority on 29th May 2011 against the said order of the Appellate Authority. The Reviewing Authority rejected the petition on 30th November 2011.

h) The petitioner filed a claim application with Controlling Authority under Payment of Gratuity Act, 1972 for payment of his gratuity and the respondent, conceding to the claim paid the amount of gratuity to the petitioner on 20-26th November 2018 and the difference amount on 29th January 2019 without contesting the case further which was hitherto denied for the reason of alleged loss caused to them. Hence, he is before this Court seeking the reliefs mentioned above.

3. Learned counsel for the petitioner submitted that the procedure in which the DA, appellate authority, and reviewing authority have adjudicated upon the inquiry report i.e., by either imposing a penalty or upholding the said penalty is illegal, arbitrary and inconsistent with the rules. It is contrary to Bank's own guidelines and there is no material on record to buttress the decision taken by the various authorities.

4. It is further submitted that the chargesheet provided to the petitioner



was incomplete since, the copies of documents and list of witnesses along with copies of their statements, purported to be enclosed therewith, were not provided along with the charge sheet, which is a violation of Regulation 6(3) of D&A.

5. It is submitted that the disciplinary authorities have not given any personal hearing to the Petitioner, before imposing punishment of 'removal from service', hence, there is a gross violation of principles of natural justice.

6. It is contended that the petitioner was performing his duties under the concept of contributory and shared responsibility for which the petitioner alone cannot be singled and such penalty which is grossly disproportionate to the wrong committed by the petitioner cannot be imposed by the respondent.

7. It is further contended that there is no such stipulated loss against the petitioner as per the charge sheet or findings of the Enquiry Authority. Therefore, the penalty of removal of the petitioner is highly disproportionate and has no basis.

8. It is submitted that the departmental inquiry was conducted after a lapse of over 1-1/2 years which is in violation of the D&A guidelines.

9. It is contended that this Court has the jurisdiction to entertain the instant petition since, the charge sheet, appellate order and the review orders passed by the respondent which have been challenged vide this petition have been passed at Delhi and the registered office of the respondent is at Delhi with branches all over India.

10. In view of the foregoing reasons, it is prayed that the petition may be



allowed and the reliefs as prayed by the petitioner may be granted.

11. *Per Contra*, learned counsel for the respondent vehemently opposed the averments made on behalf of the petitioner and submitted that the present petition is nothing but an abuse of the process of law.

12. It is submitted that this Court does not have the jurisdiction to entertain the instant petition since, the chargesheet was served upon the petitioner while he was working as Manager at Gauhati and all the allegations in the Charge Sheet pertain to the time period when the petitioner was posted at Branch Office Dibrugarh. Moreover, the enquiry was held at Gauhati and the Enquiry report was also submitted by the Enquiry Officer at Gauhati to the Circle Head, NE Zone, Gauhati.

13. It is contended that no substantial part of the cause of action arose in Delhi, hence, the instant petition may be dismissed for the want of jurisdiction.

14. It is submitted that the impugned orders dated 8th December 2010, 22nd March 2011 and 30th November 2011 passed by the various statutory authorities have been challenged after a lapse of 8 years. It thus contended that the petition is filed at a very belated stage.

15. It is submitted that the petitioner has neither alleged violation of any specific Rule or Regulation nor has proved the prejudice, if any, caused to him due to such alleged non-compliance in the petition.

16. It is further contended that the petitioner in the present case, has taken up new facts/objections before this Court which were not a part of the Departmental Enquiry before the authority. It is contended that it is also well



settled law, that the grievance/objection not raised during the course of Departmental Enquiry cannot be permitted to be raised for the first time before this Court in the present petition and challenge to orders passed by the Disciplinary Authority, Appellate Authority and Reviewing Authority respectively cannot be on the basis of said new objections /grievances.

17. It is submitted that in the present petition, the petitioner is seeking re-appreciation of oral and documentary evidence led during the course of departmental enquiry, initiated and conducted against him by the respondent Bank, in terms of D&A, 1977, which in most respectful submissions of the Respondent Bank, having regard to the law laid down by the Hon'ble Supreme Court in a catena of decisions, is impermissible in law.

18. Hence, in view of the foregoing submissions, the respondent seeks that this Court may dismiss this writ petition thereby, upholding the impugned order.

19. Heard both the parties at length.

20. This Court has perused the material on record.

21. Keeping in view the arguments advanced by the parties, the issue that falls for consideration is-

I. Whether this Court has the jurisdiction to entertain the instant petition?

II. If yes, whether this Court may quash the impugned orders dated 08th December 2010, 22nd March 2011 and dated 30th November 2011, passed by the respondents by way of writ of certiorari and allow all consequential benefits to the respondent?



22. This Court will adjudicate upon issue no. 1 as to whether this Court has the jurisdiction to entertain the instant petition.

23. The respondent has taken up a preliminary objection on the jurisdiction of the writ petition that no essential part of cause of event which of the instant petition occurred in the territorial jurisdiction of this Court. The chargesheet was served upon the petitioner while he was working as Manager at Gauhati and all the allegations in the Charge Sheet happened when the petitioner was posted at Branch Office Dibrugarh. Moreover, the enquiry was held at Gauhati and the enquiry officer was also submitted at Gauhati. The petitioner submitted to this effect that the charge sheet, appellate order and the review orders which have been challenged vide this petition have been passed at Delhi and the registered office of the respondent is at Delhi.

24. Before delving into merits, this Court will examine the principle governing territorial jurisdiction under Article 226 of the Constitution of India.

25. Sub-Clause 2 of the Article 226 has been reproduced as follows:

“(2) The power conferred by clause (1) to issue directions, orders, or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories”.

26. The Hon’ble Supreme Court has enunciated the principle



governing Article 226 of the Constitution in the judgment of *The State of Goa Vs. Summit Online Trade Solutions (P) Ltd & Ors.* Civil Appeal No. 1700/2023 dated 14th March 2023 as follows:

“14. While dealing with an objection as to lack of territorial jurisdiction to entertain a writ petition on the ground that the cause of action has not arisen within its jurisdiction, a high court essentially has to arrive at a conclusion on the basis of the averments made in the petition memo treating the contents as true and correct. That is the fundamental principle....

*15. This is a case where clause (2) of Article 226 has been invoked by the High Court to clothe it with the jurisdiction to entertain and try the writ petitions. The Constitutional mandate of clause (2) is that the ‘cause of action’, referred to therein, must at least arise in part within the territories in relation to which the high court exercises jurisdiction when writ powers conferred by clause (1) are proposed to be exercised, notwithstanding that the seat of the Government or authority or the residence of the person is not within those territories. The expression ‘cause of action’ has not been defined in the Constitution. However, the classic definition of ‘cause of action’ given by Lord Brett in *Cooke vs. Gill* that “cause of action means every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court”, has been accepted by this Court in a couple of decisions. It is axiomatic that without a cause, there cannot be any action. However, in the context of a writ petition, what would constitute such ‘cause of action’ is the material facts which are imperative for the writ petitioner to plead and prove to obtain relief as claimed. Determination of the question as to whether the facts pleaded constitute a part of the cause of action, sufficient to attract clause (2) of Article 226 of the Constitution, would necessarily involve an exercise by the high court to ascertain that the facts, as pleaded, constitute a material, essential or integral part of the cause of action. In so determining, it is the substance of the matter that is relevant. It, therefore, follows that the party invoking the writ jurisdiction has to disclose that the integral facts pleaded in support*



of the cause of action do constitute a cause empowering the high court to decide the dispute and that, at least, a part of the cause of action to move the high court arose within its jurisdiction. Such pleaded facts must have a nexus with the subject matter of challenge based on which the prayer can be granted. Those facts which are not relevant or germane for grant of the prayer would not give rise to a cause of action conferring jurisdiction on the court. These are the guiding tests”

27. This Court is of the view that in light of the sub-section 2 of Article 226 of the Constitution of India even if a part of the cause of action arises in the territorial jurisdiction of the Court, it has the jurisdiction to entertain the matter. In the present case, since the registered office of the respondent is at Delhi and the impugned orders have been passed in Delhi, there is a cause of action that has arise in Delhi. Hence, this Court has the jurisdiction to decide the instant petition.

28. Now this Court will adjudicate upon the aspect-*Whether this Court may quash the impugned orders dated 08th December 2010, 22nd March 2011, and dated 30th November 2011, passed by the respondents by way of writ of certiorari and allow all consequential benefits to the respondent?*

29. It is the case of the petitioner that the departmental enquiry report along with the appeal against the said report and the review against the said appeal was rejected by the respondent without complying with the principles of natural justice. The petitioner has been wrongly charged with the penalty of removal from the service.

30. The respondent contended to that effect that this Court under its extraordinary powers under Article 226 of the Constitution of India does not



have the power to intervene in the said judicial order and re-appreciate the evidence on the ground that there was no such ground raised by the petitioner during the process of enquiry when petitioner filed an appeal against the order of said enquiry or at the time of filing review of the appeal of the enquiry report. The allegations are merely an afterthought.

31. The relevant portion of the penalty order dated 8th December 2010 has been reproduced below:

“He sanctioned and disbursed various loans without proper pre-sanction appraisal. He did not comply KYC norms in identification of borrowers/ guarantors- and did not visit place of residence/business'of borrowers/ guarantors. Oyer financing and impersonation have also been observed. He exceeded his vested loaning power, but did not move for confirmation to the Competent Authority nor he reported in Limit Sanctioned Statement. Shri Khataniar sanctioned several loans without the recommendation of the 2nd man of the branch.

Many serious post-sanction irregularities &lapses were also committed by Shri Khataniar. He did not execute proper loan documents and most of the documents were left blank. Shri Khataniar did not verify the end use of fund. Periodical verification of securities were also not done. He did not ensure identification of IPs offered as security and did not create valid Equitable Mortgage. EMs of IP are created on the basis of certified copies of title deed without first obtaining the permission from Competent Authority. Liquid collateral Sjecurities were not taken as per the terms of sanction. Departmental enquiry had been conducted and the Enquiry Officer Shri Kamal Deka has submitted his report. I have gone through the Enquiry Report



submitted by the Enquiry officer, written briefs of the presenting officer, written brief of the Charged Officer and also submission of Shri Khataniar dated 20.09.2010. The Enquiry Officer has found most of the Charges proved and found all Articles as PROVED. XXX

I completely agree with the findings of the Enquiry Officer that all the Articles have been proved.

Due to serious irregularities/ lapses committed by Shri Bipui Kumar Khataniar during his incumbency at Branch Office Dibrugarh, the Bank has been put to financial loss to the tune of Rs. 4.16 crores. i, therefore, find this case a fit case for imposition of Major penalty and impose upon him the penalty of "Removal from service which shall not be a disqualification for future employment," in terms of Regulation 4(i) of Punjab National Bank Officer Employees' (Discipline & Appeal) Regulation, 1977. Further the officer will not be eligible for salary/ allowances for the period of his suspension from 10.3.2007 to 19.5.2008 except subsistence allowance only paid/payable to him."

32. The relevant portion of the order of the appeal dated 23rd March 2011 has been reproduced below:

"I have examined the points raised by Shri-Khataniar in his appeal along with entire, records of the case. It has been observed that:-

5.1 The -enquiry has been conducted as per the provisions of PNB Officer Employees (Discipline & Appeal) Regulations, 1977. Records of enquiry reveals that all the relevant documents were provided to the appellant for his defence and he was provided adequate opportunities to present his case. . The conclusions of the enquiry officer are based on proper analysis of evidences on record.



5.2. *Observations of the Disciplinary Authority are based on proper analysis of evidences on the records of enquiry. The charges established against Shri Khataniar are of very serious nature. He sanctioned and disbursed various loans without proper presanction appraisal. He did not comply with the KYC norms in identification of borrowers/ guarantors and did not visit place of residence/ business of borrowers/ guarantors. Over financing and impersonation have also been observed. He exceeded his vested loaning power, but did not move for confirmation to the competent authority nor did he report in Limit Sanctioned Statement. Shri Khataniar sanctioned several loans without the recommendations of the 2nd man of the branch. He did not execute proper loan documents and most of the documents were left blank. i.e. Shri Khataniar did not verify the end use of funds. Periodical verification of securities was also not done. He did not ensure identification of IPs offered as security and did not create valid equitable mortgage. Equitable mortgage of IPs were created on the basis of certified copies of title deeds without first obtaining the permission from competent authority. Liquid collateral securities were not taken as per the terms of sanction."*

33. The relevant portion of the order of reviewing authority dated 30th November 2011 has been reproduced as below:

" 6. I have examined the points raised by Shri Khataniar in his review petition along with entire records of the case and observe as under

6.1 Provisions of PNB Officer Employees (Discipline & Appeal) Regulations, 1977 have been complied with while proceeding with and taking a decision in the case of the appellant. All the, relevant



documents were provided to him for his defence and evidences on record were properly analysed.

6.2 Records reveal that he sanctioned and disbursed various loans without proper pre-sanction appraisal and did not comply with the KYC norms. He did not ascertain identity of borrowers/ guarantors and did not visit their places of residence business to verify addresses. Over financing and impersonation have also been observed. He exceeded his vested loaning power, but neither moved for confirmation to the competent authority nor reported in the Limit Sanctioned Statement.

6.3 he also sanctioned several loans without recommendations of the 2nd man of the branch.

6.4 He did not verify the end use of funds and did not ensure periodical verification of securities, identification of IPS offered as security and creation of valid equitable mortgage. He did not obtain liquid collateral securities as per the terms of sanction. No new facts or documents have been brought on record by the petitioner to warrant a modification of the penalty.

6.5 As regards penalties imposed upon the other officers viz., Shri JK Kachari and Shri BC Dutta, mentioned by the petitioner, they have been awarded penalties in different cases, where lapses were also different, based on the gravity of lapses on their part. 6. in view of the foregoing, i do not find any reason to interfere in the decision of the Disciplinary Authority, as confirmed by the Appellate Authority and reject the review petition."

34. Under Article 226 of the Constitution of India, High Court shall



intervene with the order of the statutory authority only in cases where there is a gross violation of rights of the petitioner. A mere irregularity which does not substantially affect the case of the petitioner shall not be ground for the Court to interfere with order of the authority.

35. Furthermore, writ of certiorari may be issued only in those cases where there is an order of the lower Court which is to be quashed on the ground that there has been a wrongful exercise of powers by the lower Court. The Court does not sit as an appellate authority perusing the entire record, re-appreciating the evidence, etc. The writ of certiorari can be issued if an error of law is apparent on the face of the record and in such cases, the Court has to take into account the circumstances and pass an order in equity and not as an appellate authority.

36. The Hon'ble Supreme Court has enunciated the said principle recently in the judgment of ***Central Council for Research in Ayurvedic Sciences and Another v. Bikartan Das and Others*** 2023 SCC OnLine SC 996. The relevant portion of the judgment is reproduced hereunder:

50. Before we close this matter, we would like to observe something important in the aforesaid context:

Two cardinal principles of law governing exercise of extraordinary jurisdiction under Article 226 of the Constitution more particularly when it comes to issue of writ of certiorari.

51. The first cardinal principle of law that governs the exercise of extraordinary jurisdiction under Article 226 of the Constitution, more



particularly when it comes to the issue of a writ of certiorari is that in granting such a writ, the High Court does not exercise the powers of Appellate Tribunal. It does not review or reweigh the evidence upon which the determination of the inferior tribunal purports to be based. It demolishes the order which it considers to be without jurisdiction or palpably erroneous but does not substitute its own views for those of the inferior tribunal. The writ of certiorari can be issued if an error of law is apparent on the face of the record. A writ of certiorari, being a high prerogative writ, should not be issued on mere asking.

52. The second cardinal principle of exercise of extraordinary jurisdiction under Article 226 of the Constitution is that in a given case, even if some action or order challenged in the writ petition is found to be illegal and invalid, the High Court while exercising its extraordinary jurisdiction thereunder can refuse to upset it with a view to doing substantial justice between the parties. Article 226 of the Constitution grants an extraordinary remedy, which is essentially discretionary, although founded on legal injury. It is perfectly open for the writ court, exercising this flexible power to pass such orders as public interest dictates & equity projects. The legal formulations cannot be enforced divorced from the realities of the fact situation of the case. While administering law, it is to be tempered with equity and if the equitable situation demands after setting right the legal formulations, not to take it to the logical end, the High Court would be failing in its duty if it does not notice equitable consideration and mould the final order in exercise of its extraordinary jurisdiction. Any other approach would render the High Court a normal court of appeal which it is not.

53. The essential features of a writ of certiorari, including a brief history, have been very exhaustively explained by B.K. Mukherjea, J. in T.C. Basappa v. T. Nagappa, AIR 1954 SC 440. The Court held that a writ in the nature of certiorari could be issued in 'all appropriate cases and in appropriate manner' so long as the broad and fundamental principles were kept in mind. Those principles were delineated as



follows:

“7. ... In granting a writ of ‘certiorari’, the superior court does not exercise the powers of an appellate tribunal. It does not review or reweigh the evidence upon which the determination of the inferior tribunal purports to be based. It demolishes the order which it considers to be without jurisdiction or palpably erroneous, but does not substitute its own views for those of the inferior tribunal

8. The supervision of the superior court exercised through writs of certiorari goes on two points, as has been expressed by Lord Sumner in King v. Nat Bell Liquors Limited [[1922] 2 A.C. 128, 156]. One is the area of inferior jurisdiction and the qualifications and conditions of its exercise; the other is the observance of law in the course of its exercise.

9. Certiorari may lie and is generally granted when a court has acted without or in excess of its jurisdiction.”

54. Relying on T.C. Basappa (supra), the Constitution Bench of this Court in the case of Hari Vishnu Kamath (supra), laid down the following propositions as well established:

“(1) Certiorari will be issued for correcting errors of jurisdiction, as when an inferior court or tribunal acts without jurisdiction or in excess of it, or fails to exercise it.

(2) Certiorari will also be issued when the court or tribunal acts illegally in the exercise of its undoubted jurisdiction, as when it decides without giving an opportunity to the parties to be heard, or violates the principles of natural justice.

(3) The court issuing a writ of certiorari acts in exercise of a supervisory and not appellate jurisdiction. One consequence of this is that the court will not review findings of fact reached by the inferior



court or tribunal, even if they be erroneous.”

55. This Court explained that a court which has jurisdiction over a subject matter has jurisdiction to decide wrong as well as right, and when the Legislature does not choose to confer a right of appeal against that decision, it would be defeating its purpose and policy if a superior court were to rehear the case on the evidence and substitute its own finding in certiorari.

56. In Syed Yakoob v. K.S. Radhakrishnan, AIR 1964 SC 477, P.B. Gajendragadkar, CJ., speaking for the Constitution Bench, placed the matter beyond any position of doubt by holding that a writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals. The observations of this Court in para 7 are worth taking note of:

“7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Art. 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals : these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of



fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Art. 226 to issue a writ of certiorari can be legitimately exercised.....”

57. In Surya Dev Rai v. Ram Chandra Rai, (2003) 6 SCC 675, a Bench of two Judges held that the certiorari jurisdiction though available, should not be exercised as a matter of course. The High Court would be justified in refusing the writ of certiorari if no failure of justice had been occasioned. In exercising the certiorari jurisdiction, the procedure ordinarily followed by the High Court is to command the inferior court or tribunal to certify its record or proceedings to the High Court for its inspection so as to enable the High Court to determine, whether on the face of the record the inferior court has committed any of the errors as explained by this Court in Hari Vishnu Kamath v. Ahmad Ishaque, AIR 1955 SC 233 occasioning failure of justice.

58. From the aforesaid, it could be said in terms of a jurisdictional error that want of jurisdiction may arise from the nature of the subject matter so that the inferior court or tribunal might not have the



authority to enter on the inquiry. It may also arise from the absence of some essential preliminary or jurisdictional fact. Where the jurisdiction of a body depends upon a preliminary finding of fact in a proceeding for a writ of certiorari, the court may determine, whether or not that finding of fact is correct. The reason is that by wrongly deciding such a fact, the court or tribunal cannot give itself jurisdiction.

59. In Anisminic Ltd. v. Foreign Compensation Commission, [1969] 2 A.C. 147, the House of Lords has given a very broad connotation to the concept of 'jurisdictional error'. It has been laid down that a tribunal exceeds jurisdiction not only at the threshold when it enters into an inquiry which it is not entitled to undertake, but it may enter into an enquiry within its jurisdiction in the first instance and then do something which would deprive it of its jurisdiction and render its decision a nullity. In the words of Lord Reid:

"But there are many cases where, although the tribunal had jurisdiction to enter on the enquiry, it has done or failed to do something in the course of the enquiry which is of such a nature that its decision is a nullity. It may have given its decision in bad faith. It may have made a decision which it had no power to make. It may have failed in the course of the enquiry to comply with the requirements of natural justice. It may in perfect good faith have misconstrued the provisions giving it power to act so that it failed to deal with the question remitted to it and decided some question which was not remitted to it. It may have refused to take into account something which it was required to take into account. Or it may have based its decision on some matter which, under the provisions setting it up, it had no right to take into account. I do not intend this list to be exhaustive."

60. So far as the errors of law are concerned, a writ of certiorari could be issued if an error of law is apparent on the face of the record. To attract the writ of certiorari, a mere error of law is not sufficient. It must be one which is manifest or patent on the face of the record. Mere formal or technical errors, even of law, are not sufficient, so as to



attract a writ of certiorari. As reminded by this Court time and again, this concept is indefinite and cannot be defined precisely or exhaustively and so it has to be determined judiciously on the facts of each case. The concept, according to this Court in K.M. Shanmugam v. The S.R.V.S. (P) Ltd., AIR 1963 SC 1626, 'is comprised of many imponderables... it is not capable of precise definition, as no objective criterion could be laid down, the apparent nature of the error, to a large extent, being dependent upon the subjective element.' A general test to apply, however, is that no error could be said to be apparent on the face of the record if it is not 'self-evident' or 'manifest'. If it requires an examination or argument to establish it, if it has to be established by a long drawn out process of reasoning, or lengthy or complicated arguments, on points where there may considerably be two opinions, then such an error would cease to be an error of law. (See : Satyanarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa Tirumale, AIR 1960 SC 137.)

61. However, in our opinion, such a test should not be applied in a straitjacket formula and may fail because what might be considered by one Judge as an error self-evident, might not be considered so by another Judge.

62. At this stage, it may not be out of place to remind ourselves of the observations of this Court in Syed Yakoob (supra) on this point, which are as follows:

“Where it is manifest or clear that the conclusion of law recorded by an inferior court or tribunal is based on an obvious misinterpretation of the relevant statutory provision, or something in ignorance of it, or may be even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. Certiorari would also not lie to correct mere errors of fact even though such errors may be apparent on the face of the record. The writ jurisdiction is supervisory and the court exercising it is not to act as an appellate court. It is well settled that the writ court would not



re-appreciate the evidence and substitute its own conclusion of fact for that recorded by the adjudicating body, be it a court or a tribunal. A finding of fact, howsoever erroneous, recorded by a court or a tribunal cannot be challenged in proceedings for certiorari on the ground that the relevant and material evidence adduced before the court or the tribunal was insufficient or inadequate to sustain the impugned finding.

It is also well settled that adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the tribunal and these points cannot be agitated before the writ court.”

63. In the aforesaid context, it will be profitable for us to refer to the decision of this Court in the case of Indian Overseas Bank v. I.O.B. Staff Canteen Workers' Union, (2000) 4 SCC 245 : AIR 2000 SC 1508. This Court observed as under:

“... The findings of fact recorded by a fact-finding authority duly constituted for the purpose and which ordinarily should be considered to have become final, cannot be disturbed for the mere reason of having been based on materials or evidence not sufficient or credible in the opinion of the writ Court to warrant those findings at any rate, as long as they are based upon such materials which are relevant for the purpose or even on the ground that there is yet another view which can be reasonably and possibly undertaken. ...”

64. However, we may clarify that findings of fact based on ‘no evidence’ or purely on surmises and conjectures or which are perverse points could be challenged by way of a certiorari as such findings could be regarded as an error of law.

65. Thus, from the various decisions referred to above, we have no hesitation in reaching to the conclusion that a writ of certiorari is a high prerogative writ and should not be issued on mere asking. For the issue of a writ of certiorari, the party concerned has to make out a



definite case for the same and is not a matter of course. To put it pithily, certiorari shall issue to correct errors of jurisdiction, that is to say, absence, excess or failure to exercise and also when in the exercise of undoubted jurisdiction, there has been illegality. It shall also issue to correct an error in the decision or determination itself, if it is an error manifest on the face of the proceedings. By its exercise, only a patent error can be corrected but not also a wrong decision. It should be well remembered at the cost of repetition that certiorari is not appellate but only supervisory.

37. It is evident that the Court shall exercise its power under Article 226 for granting writ of certiorari very cautiously and sparingly in exceptional circumstances only where it is demonstrated that there is something palpably erroneous in the process of adjudication of the matter before by the authority concerned.

38. In the present case, the petitioner has raised grounds/ objections before this Court such as the non-adherence to the statutory regulations and disregard of principles of natural justice by the respondent. Moreover, the petitioner contended that the impugned orders were passed without any appreciation of the evidence and in violation of the statutory regulations.

39. The impugned penalty order has held that there is a serious irregularity/ lapses due to which the petitioner was removed from the service as per Regulation 4(i) of D&A on the basis on the enquiry report of Enquiry Officer along with the written brief by Presenting Officer and Submission of the petitioner. The impugned appeal order has enunciated reasons for rejection of appeal that the enquiry was conducted as per statutory rules and the disciplinary authorities is on basis of proper analysis of evidences on



records of enquiry. The appellate authority further held that the petitioner did not comply with the KYC norms in identification of borrowers/guarantors and did not visit- place, of residence/business of guarantors/borrowers. Hence, the appellate authority found petitioner guilty of the charges. Furthermore, the impugned review order enunciated the reasons that the petitioner did not comply with various pre- sanction appraisal and hence, upheld the order of the appellate authority. A perusal of the impugned orders shows that the said orders have elucidated the reasons for removal of the service of the petitioner.

40. This Court is of the view that the grounds raised by the petitioner for setting aside the impugned order do not merit interference of this Court since, there is no error apparent on the face of the order. The respondent Authority has considered the plea of the petitioner along with the evidence and accordingly, it adjudicated upon it. There is no illegality on the part of the petitioner in passing the said impugned orders.

41. The instant petition is an appeal in the garb of a writ petition. The petitioner is seeking a review of the orders despite the fact that there are no such special circumstances that require the interference of this Court. The petitioner is not aggrieved by any such violation of the rights of the petitioner, which merits intervention of this Court in the orders passed by the respondent.

42. The writ of certiorari cannot be issued in the present matter since for the issue of such writ, there should be an error apparent on the face of it or goes to the root of the matter. However, no such circumstances are present in



the instant petition.

43. The writ jurisdiction is supervisory and the court exercising it is not to act as an appellate court. It is well settled that the writ court would not re-appreciate the evidence and substitute its own conclusion of fact for that recorded by the adjudicating body, be it a court or a tribunal. A finding of fact, howsoever erroneous, recorded by a court or a tribunal cannot be challenged in proceedings for certiorari on the ground that the relevant and material evidence adduced before the court or the tribunal was insufficient or inadequate to sustain the impugned finding.

44. In view of the discussion in the foregoing paragraphs, I do not find any merit in the instant petition and is liable to be dismissed.

45. Accordingly, the instant petition stands dismissed.

46. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

AUGUST 22, 2023
gs/db

Click here to check corrigendum, if any