

01.05.2024

BP
Sl. 1
Court No. 23

In the High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side

WPA 9359 of 2024

CSB Bank Ltd. (Formerly The Catholic
Syrian Bank Ltd
Vs.
Union of India & Anr.

Mr. Ranjay De
Mr. Basabjit Banerjee
Mr. Adityajit Abel Bose
..for the petitioner

Mr. Subhas Chandra Sarkar
..for the respondents

The writ petition has been filed by the employer challenging the order of the Central Government Industrial Tribunal at Kolkata dated 23rd November, 2023. The main thrust of the challenge is that the Tribunal erred in considering the reference arising out of a challenge thrown by the employee (respondent no.2) by which the employee was lowered by one stage in the existing scale of pay for a period of two years. The petitioner relies upon the judgement reported in (2018) 18 SCC 21 (M.L. Singla Vs. Punjab National Bank & Anr.). By referring the ratio laid down in paragraphs 15

to 26 of the judgement in the context of the order impugned it is submitted that the Tribunal while deciding the preliminary issue as to the legality or illegality of the domestic enquiry has held that the vigilance report brought against the workman (respondent no.2) to be without any basis and is doubtful. The domestic enquiry held on the basis of such charge has also been held illegal.

It is further submitted by the petitioner that assuming without admitting that the Tribunal has correctly followed the ratio laid down in M.L. Singla (supra) then also it fell into error by setting aside the punishment and thereafter allowing the writ petitioner to adduce evidence. It is further submitted that if the charges are held to be illegal nothing further remains for the writ petitioner (employer) to adduce evidence for upholding the punishment in the domestic enquiry being the subject matter of challenge before the Tribunal in the reference. The writ petitioner also says that the Tribunal upon holding that the vigilance report on the basis whereof the charges were proved before the Enquiry Officer to be doubtful nothing also remains for the petitioner (employer) to prove by laying further evidence on an opportunity being granted to it to contend that the punishment imposed in the domestic

enquiry is not disproportionate. The Tribunal having fallen in error on all three counts has held by the Hon'ble Supreme Court in M.L. Singla (supra) the order impugned is required to be set aside.

Responding to the argument advanced by the writ petitioner it is submitted on behalf of the respondent no.2 that the Tribunal has not committed any procedural illegality while dealing with the reference. The Tribunal had at the first instance gone into the legality and validity or illegality aspects of the domestic enquiry. After a detailed discussion referring to the evidence laid before the Enquiry Officer and its quality, the Tribunal has rightly come to a conclusion that the domestic enquiry was illegal.

It is, therefor, submitted on behalf of the respondent no.2 that this part of the order impugned cannot be interfered with since the Tribunal has granted the writ petitioner a further opportunity to adduce evidence although it had not formerly asked for the same and has also committed no error in terms of the ratio laid down in M.L. Singla (supra). The order impugned is, therefor, not required to be interfered with even if the same is considered in the touchstone of the ratio laid down in M.L. Singla (supra).

After hearing the parties and considering the materials on record, I find that unlike the other case i.e. WPA 9360 of 2024 (CSB Bank Ltd., formerly The Catholic Syrian Bank Ltd. Vs. Union of India & Ors.) wherein by an order dated 19th April, 2024, I had set aside the order of the Tribunal as it at the threshold without deciding the legality or illegality of the domestic enquiry allowed the parties to lay evidence before it. By doing so the Tribunal in the said matter (WPA 9360 of 2024) had not only committed procedural error but went on to decide as an Appellate Court the question of legality and/or illegality of the domestic Tribunal by comparing and weighing the evidence adduced before the Enquiry Officer in support of the charges and that before the Tribunal which is impermissible in view of the findings in M.L. Singla (*supra*.) In the instant case the Tribunal has not committed such gross procedural illegality. It has considered the evidence laid before the Enquiry Officer and has come to the finding that the domestic enquiry is illegal. However, in the process of deciding the legality or illegality of the domestic enquiry, the Tribunal has held the charges to be illegal and the domestic enquiry held on the basis of such charges is also illegal.

The learned advocate for the writ petitioner is

correct when he contends by holding that the charges are illegal and the domestic enquiry conducted on the basis of such illegal charges is also illegal nothing is left for the employer to support the domestic enquiry at the second stage on being afforded an opportunity to adduce evidence after the domestic enquiry is held to be illegal. The petitioner's contention to the extent while deciding the issue as to legality or illegality of the domestic enquiry the Tribunal has proceeded to hold that the punishment is also tainted with illegality and, therefore, had set aside the same, is also of substance.

At the same time the learned advocate for the respondent no.2 in so far as his contention is that no gross procedural illegality was committed by the Tribunal cannot also be brushed aside.

Taking into account the findings of the Tribunal and comparing the same in the light of the arguments advanced I hold as follows :

1. The Tribunal has not committed any gross procedural illegality or irregularity while conducting the hearing of the reference for which the entire order dated 23rd November, 2023 is required to be set aside. The finding of the Tribunal that the domestic enquiry is illegal after considering the order impugned in the perspective

of the ratio laid down in M.L. Singla (supra) and other judgements of the Hon'ble Supreme Court is upheld. However, the portion of the order impugned wherein the Tribunal has held that the charges appears to be illegal and without any basis and the domestic enquiry held on the basis of such charges is illegal is modified to the extent by holding that the charges are not proved and as such the domestic enquiry is illegal.

2. The employer, therefor, will have ample opportunity to adduce evidence at the second stage where the punishment is to be considered as to whether is proportionate or disproportionate. This is more so because in the judgement of M.L. Singla (supra), the Hon'ble Supreme Court has clarified that the findings of the Enquiry Officer on the charges along with the nature of the charges and its gravity has to be considered by the Tribunal while deciding the question as to the punishment i.e. whether disproportionate or not.
3. It is also clarified by holding the vigilance report to be only doubtful. The Tribunal has only doubted evidentiary value of the vigilance report and did not come to the conclusion that the vigilance report is either illegal or is set aside for being doubtful. The

portion of the impugned order dated 23rd November, 2023 wherein the punishment imposed on the workman (respondent no.2) has been set aside is hereby quashed and/or set aside. The punishment imposed will be considered to have been kept in abeyance after the domestic enquiry has been held to be illegal for being looked into at the second stage after the parties adduce evidence. The parties i.e. the writ petitioner (employer) and the respondent no.2 (employee) will be free to adduce further evidence subject to the approval of the Tribunal to prove the charges and contest the punishment for being held either disproportionate or proportionate.

It is also made clear that I have not gone into the merits of the matter so far as the punishment to be proportionate and/or disproportionate and the Tribunal will be free to decide on such issue pursuant to the evidence that may be laid before it without being influenced by any observation made herein or by the findings by which the domestic enquiry was held to be illegal by the Tribunal. The Tribunal shall give independent findings and reasons to support its findings while considering the gravity of charges and the conduct of the employer. Since the issue is

pending for a considerable period of time, the Tribunal is directed to decide the matter full and finally within a period of six months from the date of communication a server copy of this order without insisting upon production of a certified copy thereof.

The writ petition is accordingly disposed of.

Since I have not called for affidavits, the allegations contained in the writ petition are deemed to have not been admitted by the respondents.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

(Arindam Mukherjee, J.)