IN THE HIGH COURT AT CALCUTTA

(CONSTITUTIONAL WRIT JURISDICTION)

APPELLATE SIDE

Present:

The Hon'ble Justice Partha Sarathi Chatterjee

WPA 5528 of 2011
With
CAN 1 of 2023
Satchidananda Mukhopadhyay
-Vs.-
Durgapur Steel People's Co-operative Bank Ltd & Ors.

For the Petitioner	: Mr. Ujjal Ray, Mr. Atreya Chakraborty.
For the Respondent No. 5	: Mr. Dilip Kumar Chatterjee, Mr. Abir Chatterjee, Mr. Durgabhusan Mukherjee (Appeared on 24.03.2025).
Heard on	: 20.02.2025
Judgment on	**: 24.03.2025**

Partha Sarathi Chatterjee, J.:-

Prelude :

1. In invoking the extraordinary jurisdiction of this Court, the petitioner, through the present writ petition, challenges the propriety and justifiability of the disciplinary proceedings initiated against him, including the charge-sheet dated 23rd January 2010, the Enquiry Report communicated to him via a memo dated 28th December 2010, and the final order of dismissal from service. The petitioner also seeks the quashing of these documents and prays

for the issuance of a writ of mandamus, commanding his reinstatement to the position from which he was dismissed.

Facts:

2. Before addressing the contentious issue involved in the writ petition, the key facts emerging from the pleadings of the parties and the documents relied on by them that need to be adumbrated.

Contents of writ petition:

i) While serving as Assistant Grade-II (Deposit) in the Durgapur Steel People's Co-operative Bank Limited (hereinafter referred to as 'the Bank'), the petitioner was served with a charge-sheet dated 23rd January, 2010 by the Chief Executive of the Bank. The charge-sheet contained two articles of charge, which are as follows:

a) On June 24, 2009, the specimen signature card of Sri Sunil Kumar Dhibar, the holder of Savings Bank Account No. 17, was altered. The alteration involved crossing out the specimen signature of the account holder and replacing it with the Left Thumb Impression (LTI) of Sri Dhibar, which has been denied by him. Sri Satchidananda Mukhopadhyay, without proper authorization or certification from the Bank Manager, made this alteration. Moreover, he did not sign the specimen signature card to disclose who made the change, although he himself registered the alteration in the bank's computer system.

Subsequently, on June 27, 2009, a sum of Rs. 3,90,000/- was withdrawn using a withdrawal slip based on the LTI, which is again denied by the account holder, Sri Sunil Kumar Dhibar.

Therefore, Sri Satchidananda Mukhopadhyay was charged with major misconduct under Clause 27(J) of the Bank's Service Rules. His actions exposed the bank to a significant potential loss of Rs. 3,90,000/-.

b) On August 5, 1992, Sri Sunil Kumar Dhibar of Village - Sreerampur, P.O. - Andal, District - Burdwan, with Membership No. 21193, opened a Savings Bank Account with the Bank. This account was assigned the number SB Account No. 17, and the Ledger Folio No. was 1/17. On the same day, Sri Dhibar signed the Specimen Signature Card, and his signature was verified by the authorized person of the bank.

However, on June 24, 2009, Sri Satchidananda Mukhopadhyay, while serving as Assistant (Deposit), took hold of the specimen card and made an unauthorized modification. He changed the account holder's signature to a LTI without obtaining the certification or approval of an authorized bank officer. In doing so, Sri Mukhopadhyay crossed out Sri Dhibar's original signature and failed to sign the specimen signature card to acknowledge the change he made. Instead, he only recorded the change from signature to LTI in the bank's computer system.

It is important to note that the depositor, Sri Sunil Kumar Dhibar, never intended to change his signature to an LTI. Furthermore, on June 27, 2009, an amount of Rs. 3,90,000/- (Three Lakhs Ninety Thousand only) was fraudulently withdrawn from the account using the LTI, which had not been certified by any authorized officer of the bank. The depositor has denied receiving the amount of Rs. 3,90,000/-.

Sri Satchidananda Mukhopadhyay's actions were marked by gross negligence and failure to follow proper procedures, which have exposed the bank to a significant risk of loss.

ii) The charge-sheet, inter alia, notified the petitioner of an inquiry to be conducted against him in relation to charges, which he did not admit. The petitioner was asked to submit his written statement of defence on the Articles of charges.

iii) In his written defense, Sri Satchidananda Mukhopadhyay, Assistant-Grade-III (Deposit), asserts that his duties did not involve withdrawing funds from bank accounts. He explains that due to heavy work pressure, he left his desk without logging off, and someone might have taken advantage of his absence to scan the LTI from the depositor's specimen signature card. He denies altering the signature or making any changes to it without proper certification from an authorized bank official, and also denies crossing out the account holder's signature. Furthermore, he contends that no handwriting expert's opinion or CCTV footage was used to substantiate the allegations against him.

iv) Sri Mukhopadhyay asserts that the account holder's signature or LTI is typically provided in the presence of the Manager or an authorized official, and he was not involved in making payments or processing withdrawals. He further notes that the specimen card should have been under the Manager's custody. Regarding the Report from Ascent Technologies, he contends that it fails to specify the exact time the disputed LTI was scanned, providing instead five different times on June 24, 2009, which, in his view, is meaningless.

v) Sri Satchidananda Mukhopadhyay claimed that the difference between the LTIs on the specimen card and withdrawal slip would have been easily noticeable. He highlighted that the vigilance report confirmed the LTIs on withdrawal slips dated September 4, 2009, and October 27, 2009, as genuine, but did not mention the LTI on the slip dated June 27, 2009. Additionally, the account holder did not provide prior notice for the withdrawal of Rs. 3.90 lakh. He suspects the cashier and Senior Manager (Deposit-in-charge) may have been involved in authorizing the payment.

vi) During the inquiry, the Bank presented oral evidence from five witnesses (PW-1 to PW-5) and submitted documents, while the petitioner also testified. The Enquiry Officer, after assessing the evidence, concluded that the petitioner failed to provide concrete evidence to support his claim that someone took advantage of his absence to make the changes. As a result, the petitioner was found guilty of negligence.

vii) The Enquiry Officer acknowledged that the charged employee (scanner) was not directly involved in the payment of Rs. 3,90,000/-. However, the petitioner's statement that the scanner was not involved in the withdrawal process was interpreted as an indirect admission of scanning the LTI. This involvement in altering the account operation led to the fraudulent withdrawal, substantiating the charge of gross negligence, which constitutes misconduct under Clause 27(J) of the Bank's Service Rules.

viii) Upon receiving the Enquiry Officer's report, the petitioner submitted a reply in which he, *inter alia,* pointed out that the Chief Executive of the Bank had informed the jurisdictional police that Mr. Dhibar had withdrawn the amount. Based on this information, one FIR was lodged. He reiterated that had the specimen card been sent to a handwriting expert, it would have revealed who was involved in the misconduct. The petitioner also noted that on June 27, 2009, the Manager, who ultimately authorized the withdrawal, verified the withdrawal slip in the computer but did not raise any concerns about the change. Furthermore, the petitioner argued that Clause 27(J) did not apply to him, as he was not assigned duties related to the recovery of dues. Citing the definition of 'Gross or habitual negligence of duty' under Sub-Rule VI of Rule 14 of the West Bengal Co-operative Societies Rules, 1987, he claimed that the misconduct alleged in the charge-sheet does not qualify as 'Gross or habitual negligence of duty' as defined in the aforementioned Rule.

ix) The petitioner claimed that several documents crucial to his defense were withheld and that the examination and cross-examination of witnesses were conducted in haste, suggesting a preconceived mindset in the inquiry. He requested the re-call of PW-1, but permission was denied. Additionally, the Enquiry Officer introduced five new issues not included in the charge-sheet. Ultimately, the petitioner condemned the report as perverse, alleging that it was the result of a biased and preconceived mindset.

x) However, by passing an order dated 8.12.2010, the Chief Executive of the Bank declined to accept the petitioner’s contention raised in his reply to the report of the Enquiry Officer and by an order communicated to the petitioner under a Memo. dated 28.12.2010, the petitioner was dismissed from service in terms of Clause 28(a) of the Service Rules of the Bank. Hence, the writ petition.

Contents of affidavit-in-opposition:

3. The specific defense raised in the affidavit-in-opposition is that the writ petition is not maintainable, as the bank is a primary-level cooperative society without any financial assistance from any authority. The Bank was governed by the Banking Regulation Act, 1949 and the West Bengal Cooperative Societies Act, 2006 and its Board of Directors takes its policy decision and State has no say in the matters regarding the management of the Bank. Furthermore, the writ petition is not maintainable since the petitioner has directly filed the writ petition without exhausting alternative remedy by

preferring a statutory appeal. There was no violation of either the principles of natural justice or any provision of the West Bengal Cooperative Societies Act, 2006, or the rules framed thereunder. The conditions of service are governed by a bi-partite settlement between the management and the employees' union.

4. The Board of Directors of the Bank is empowered under Rule 52 of the West Bengal Cooperative Societies Rules, 2011, to initiate disciplinary proceedings against its employees. The petitioner had filed writ petition, AST 155 of 2010, in which a coordinate bench permitted the petitioner to take the assistance of a lawyer to defend himself during the enquiry proceedings.

5. The Enquiry Officer submitted his reasoned findings, which concluded that the charges levelled against the petitioner had been substantiated. The Board of Directors reviewed the petitioner's response to the report; however, it was found to lack substance and, therefore, was rejected. The Board also considered the vigilance report, which confirmed that on 24.06.2009, it was the petitioner who accessed the computer using his password. The petitioner was provided with all reasonable opportunities to defend himself. There is no scope for this Court to re-appreciate the evidence.

Contents of the petitioner’s supplementary affidavit:

6. With leave granted by the Court, the petitioner filed a supplementary affidavit to bring certain subsequent facts and documents on record. In this affidavit, the petitioner highlighted that, based on the FIR lodged by the Bank, Durgapur P.S. Case No. 301 of 2009, dated 22.10.2009, under Sections 467/471/420/477A/403/120B IPC was initiated against the petitioner and three other employees of the Bank. However, the charges under Sections 468/471/403/120B IPC were ultimately framed by the Court of the Learned

J.M., 2nd Court, Durgapur. After the trial, the petitioner and the three other employees were honourably acquitted. The petitioner further contended that, following the acquittal, he made an application to the competent authorities of the Bank making a request to exonerate him from all charges, and to release his consequential benefits, including retiral dues, as he had attained the age of superannuation in the meantime. However, the said application was left unaddressed, the petitioner then filed an appeal against the non-consideration of his application before the Assistant Registrar of Co-operative Societies, Burdwan Range-III, but to no avail.

Arguments:

7. Mr. Roy, assisted by Mr. Chakraborty, learned advocate representing the petitioner, argued that the charge-sheet was issued by the Chief Executive Officer of the Bank, whereas Rule 2(iii) of the Service Rules mandates that disciplinary proceedings would be initiated by the Board of Directors. He contended that, without an express resolution from the Board authorizing the CEO to issue the charge-sheet, the charge-sheet is invalid and the disciplinary proceedings conducted and concluded based on such charge-sheet is also illegal. In support of this contention, he cited the decision reported in *1994 CWN 1057 (Arjed Ali Gazi vs. State of West Bengal & Ors.)*.

8. The findings of the Enquiry Report ultimately concluded that the petitioner was negligent in failing to log out of his computer and leaving it unattended. The Management, however, did not present any evidence of handwriting to prove that the petitioner had scratched out the signature of the account holder, nor did they provide any CCTV footage from the bank to

substantiate this claim. Therefore, the findings of the Enquiry Officer are perverse, as they are based on no evidence.

9. He asserted that negligence cannot be classified as 'misconduct.' Referring to various authorities that defined the terms 'negligence' and 'misconduct,' he argued that although it was concluded the petitioner was guilty of negligence, the petitioner was nonetheless awarded the highest degree of punishment. To support this argument, he cited the decision reported at *(1992) 4 SCC 54 (State of Punjab vs. Ex-Constable Ram Singh)*. He further argued that the Enquiry Officer's report did not explain why the petitioner's evidence was rejected. In his view, this omission rendered the findings of the Enquiry Officer unacceptable. To substantiate this contention, he referred to the decision reported at *(1985) 3 SCC 378 (Anil Kumar vs. Presiding Officer)*.

10. He contended that the order of dismissal does not specify the factors that influenced the disciplinary authority in awarding the punishment. He argued that the order of dismissal is flawed since it merely reflects merely reflects the *ipse dixit* of the enquiry report. To support this argument, he relied on the decision reported at *(2011) 5 SCC 142 (Chairman-cum-Managing Director, Coal India Ltd. vs. Ananta Saha)*. He further contended that the punishment was shockingly disproportionate to the allegedly proven negligence. In support of this, he referred to the decision reported at *(2015) 2 SCC 610 (Union of India vs. P. Gunasekaran)*, which held that disproportionate punishment is a valid ground for a writ court to review the punishment when it is so extreme that it shocks the conscience of the Court.

11. He submitted that a criminal case was initiated on the same issue, and after a trial, the learned Court honourably acquitted the petitioner and the

other accused persons. Relying on an unreported decision by a Hon'ble Division Bench (of which I was one of the members) in *WPCT 225 of 2023 (Subal Makhal vs. Indian Red Cross Society)*, the decision reported *at (2024) 1 SCC 175 (Ram Lal vs. State of Rajasthan & Ors.)*, and an unreported decision by a coordinate Bench of the High Court of Karnataka at Bengaluru in *Writ Petition No. 9642 of 2020 (S-KSAT)*, he contended that, in view of the petitioner's honourable acquittal, the order of the disciplinary authority and the findings of the enquiry officer cannot stand.

12. Despite service of notice indicating that the matter would be taken up on 20.02. 2025, the respondent/bank remained unrepresented. Therefore, considering the conduct and attitude of the respondent/bank, the Court concluded the hearing and decided to dispose of the writ petition based on the written notes of argument submitted on behalf of the concerned Bank.

13. In the written notes of argument submitted by the respondent/bank, it was contended, inter alia, that the entire proceedings were conducted under the decisions, knowledge, guidance, and directives of the then Board of Directors of the Bank. The petitioner filed the writ petition, initially registered as AST 155 of 2010, which was subsequently re-numbered as WPA 5528 of 2011. Respondent No. 1 raised the issue of the maintainability of the writ petition. A coordinate Bench, by order dated 17.11.2011, held that the question of the maintainability of the writ petition would be kept open. The writ petition is not maintainable as the petitioner has directly invoked the writ jurisdiction of this Court without exhausting the alternative remedy of preferring a statutory appeal.

14. The allegations against the petitioner were serious, as the disciplinary authority found that the signature of one depositor had been converted into an LTI, and a sum of Rs. 3,90,000/- was shown to have been paid to the depositor based on the LTI. The depositor, however, denied having received any money through the use of his LTI.

15. Certain points of law were raised in the written notes of argument, including the assertion that although the Bank is registered under the Cooperative Societies Act, 2006, it cannot be considered a 'State.' The service conditions of its staff and officers are governed by rules framed under the Cooperative Societies Act, based on a bipartite agreement between the Management and the employees' Union. To support this contention, reliance was placed on the decision reported at *(2006) 11 SCC 634 (S.S. Rana vs. The Registrar of Cooperative Societies & Anr.)*.

16. To counter the petitioner's contention that the Chief Executive Officer lacked the competence to issue the charge-sheet, the respondent/Bank argued that, from the outset, the Board of Directors was at the helm of the affairs. The order of suspension was issued by the Chief Executive Officer with the prior concurrence of the Board, and the charge-sheet was signed by the Chief Executive Officer. Citing two decisions, reported at *(1993) 1 SCC 419 (PV Srinivasan Sastri & Ors. vs. Conptroller and Authitor General & Anr.)* and *(1996) 2 SCC 145 (Inspector-General of Police & Ors. vs. Thava Siapan)*, it was contended that a disciplinary proceeding initiated by any authority lower than the appointing authority but superior to the delinquent is not violative of the provisions of Article 311(1) of the Constitution of India. It was further contended that the Article 311(1) of the Constitution is applicable to the

employees of State Government. The Bank is not 'State' and thus, no writ lies against the Bank.

17. The petitioner did not make any specific allegation that the enquiry authority or the disciplinary authority acted with bias, nor did the petitioner claim that the enquiry authority found the petitioner guilty without considering the relevant documents. Additionally, there was no allegation that any of the petitioner's documents were rejected. The enquiry was conducted after providing the petitioner with a full opportunity to present his case, and a detailed enquiry report was submitted, considering the evidence of all witnesses presented by both parties. The petitioner was also given the opportunity to contest the findings of the enquiry officer. The presenting officer was not under any obligation to produce all the witnesses.

18. A writ court cannot re-evaluate the documents or evidence. There is no scope to examine the order of punishment since the petitioner has not challenged the punishment as disproportionate. In the written notes of argument, references were made to the decisions, reported at *(2019) 10 SCC 367 (Karnataka Power Transmission Corporation Limited vs. C. Nagaranjan & Ors.)*, *(2009) 9 SCC 24 (Sourthern Railway Officers' Assn. vs. Union of India & Ors.)* & reported at *(2006) 2 SCC 255 (TNCS Corporation Limited & Anr. S. K. Meerabai)* to contend that acquittal in criminal case is not a ground for interfering the punishment imposed by the Disciplinary Authority. Reliance also placed on the decisions, reported at *(2018) 18 SCC 299 (Rajasthan State Road Transport Corporation, Jaipur vs. Phoolchand)* and *(2019) 7 SCC 564 (Chief Regional Manager, United India Insurance Co.*

Ltd. s. Sirajuddin Khan) to contend that setting aside of the order of termination will not automatically entitle the delinquent to claim back wages.

Analysis:

19. Therefore, based on the pleadings and documents exchanged by both parties, and the argument advanced by the petitioner, the preliminary issue concerning the maintainability of the writ petition hinges on two questions: (i) whether respondent no. 1, Durgapur Steel People's Cooperative Bank Limited, is amenable to the writ jurisdiction of this Court, and (ii) whether the writ petition is maintainable, considering that the petitioner has invoked this Court's writ jurisdiction without exhausting the alternative remedy of filing a statutory appeal against the order of dismissal.

20. Undeniably, Article 226 of the Constitution of India is worded in comprehensive terms and *ex facie* confers wide powers on the High Court to issue writs, orders, or directions. By using expressions like 'any person or authority' and 'for any other purpose' in Article 226, its scope has been significantly broadened. It is a well-established principle that the remedy under Article 226 is a public law remedy. The expression 'any person' implies that the jurisdiction of the High Court extends to private individuals, provided that the nature of the duties performed by such individuals is public in nature. For a public law remedy to be enforceable under Article 226, the action of the authority must fall within the domain of public law—whether it pertains to a legislative act of the State, an executive act of the State, or an act by an instrumentality or authority involved in public law matters. There is catena of judgments which ruled that the expression 'authority' must receive liberal interpretation. I may refer to the decision reported in *(2011) 6 SCC 617 (A.C.*

Muthiah vs. Board of Control for Cricket in India), where it was held that when a private body exercises public functions, even if it is not a State, the aggrieved person has a remedy not only under ordinary law but also under the Constitution, by way of a writ petition under Article 226. (See the judgment delivered in case of *K. K. Saxsena vs. International Commission on Irrigation and Drainage*, reported at *(2015) 4 SCC 670)*.

21. In the present case, while the formation of the Bank may have been a private initiative, it is undisputed that the Bank was registered under the Societies Registration Act and has formed a Cooperative Society. It is governed by the West Bengal Co-operative Societies Act, 2006, and the rules framed thereunder. The Bank possesses law-making powers. Therefore, it is clear that the Bank is vested with certain statutory powers. The form of the body is not relevant. What is important is the nature of the duties imposed upon the body or society.

22. Although the origin of the petitioner's service can be traced to a contract involving an offer and acceptance, the conditions of his service are not governed by the terms of that contract. Instead, Rule 29(B)(1) of the Service Rules of the Bank indicate that Departmental Enquiry shall be conducted as per established/specified procedure or as per Discipline and Appeal Rule as provided in West Bengal Cooperative Societies Rules and Acts. The Chairman of the Bank during his cross-examination before the Criminal Court himself admitted that the Bank was under the direct supervision of the Registrar of Co-operative Societies under W.B. Cooperative Societies Act. The petitioner was protected as public servant within the meaning of S. 4(46) of the W.B. Cooperative Societies Act.

23. Therefore, the Bank has an obligation to adhere to statutory duties and comply with the statutory rules when taking disciplinary action against its employees. When a duty arises from statutory rules concerning the terms of employment of its staff and officers, a breach of such duty becomes amenable to writ jurisdiction. In this case, even though the Bank may not qualify as a "State" under Article 12 of the Constitution, and despite the petitioner's employment initially arising from a private contract, the regulation of service conditions gives rise to a public law duty. Consequently, for any breach of such obligations under the statutory rules, a writ petition seeking appropriate writs and/or directions is maintainable. Consequently, for any breach of such obligations under the statutory rules, a writ petition seeking appropriate writs and/or directions is maintainable. It goes without saying that even a contractual dispute having a public law element is amenable to judicial review under Article 226 of the Constitution.

24. It is important to note that the High Court's refusal to entertain a writ petition due to the existence of an efficacious alternative remedy is a self-imposed limitation, based on policy, convenience, and discretion, rather than a rule of law or jurisdiction. There is no blanket ban on the exercise of writ jurisdiction. Whether or not it will be invoked depends on the specific facts and circumstances of the case. It is a well-established legal principle that, despite the availability of an alternative remedy, a writ petition may be entertained if it seeks to enforce Fundamental Rights, addresses violations of natural justice, involves an order or proceeding that is wholly without jurisdiction, or challenges the vires of an Act.

25. It is apposite to refer an authoritative pronouncement made in case of *Union of India –vs- R. Reddappa* reported in *(1993) 4 SCC 269* wherein it was ruled that once the Court is satisfied of injustice and/or arbitrariness, then the restriction, whether self-imposed or statutory goes removed and no rule or technicality on exercise of power can come in the way of rendering justice.

26. In the present case, the petitioner alleges that the initiation of disciplinary proceedings was improper, and that the proceedings was without jurisdiction. Furthermore, the disciplinary proceeding was conducted and concluded in blatant violation of the principles of natural justice, with a pre-conceived mindset. The writ petition further claims that, in clear disregard of settled legal principles, despite the petitioner's honourable acquittal by a competent court after a full-fledged trial, the authority unlawfully refused to revoke the dismissal order.

27. The principle of fair play applies to administrative, judicial, and quasi-judicial functions. When an authority exercises quasi-judicial powers, it must act fairly, impartially, and without bias or preconceptions. If the court finds that the authority has acted arbitrarily, with a closed mind, and in violation of natural justice or statutory rules, it can exercise judicial review to ensure justice is served.

28. Judicial review encompasses illegality, irrationality (including Wednesbury unreasonableness), and procedural impropriety. The doctrine of reasonableness gives way to the doctrine of proportionality. Judicial review aims to prevent arbitrariness, irrationality, unreasonableness, bias, and mala fides. Article 14 requires fairness in state action. While judicial review is generally limited to the decision-making process, a decision that is perverse,

irrational, or grossly disproportionate falls within its scope. Although a writ court cannot sit in appeal over the decision of the disciplinary authority or re-evaluate the evidence recorded during the inquiry, it may examine the evidence to assess whether the allegation that the decision is based on no evidence is justified. Therefore, based on discussions made in the preceding paragraphs, I am of the view that the present writ petition is maintainable.

29. As per Rule 2(iii) of the Service Rules, the term 'Disciplinary Authority/Appointing Authority' refers to the Board of Directors. Rule 33 specifies that the Chairman or Board of Directors shall determine which officer(s) shall be empowered to conduct an inquiry and take disciplinary action in each case. Therefore, the Chief Executive Officer required authorization from the Chairman or Board of Directors to take disciplinary action, including issuing a charge-sheet. In this case, no document has been presented to show that the Chief Executive Officer was empowered by an order from the Chairman or a resolution from the Board of Directors. Therefore, the petitioner's argument that, in the absence of express authorization from the Board of Directors (or the Chairman), the issuance of the charge-sheet by the Chief Executive Officer is illegal, and that the disciplinary proceedings conducted and concluded based on such a charge-sheet are also illegal, cannot be dismissed entirely.

30. In the present case, PW-1, the account holder, denied changing his signature to an LTI on the specimen card, acknowledging his signature but not the LTI. PW-3 deposed that to change the signature to an LTI, his signature was required afterward. Other witnesses confirmed that the LTI had to be scanned after the change. PW-2 stated that scanning could only be done by

the person handling the computer with his password and confirmed the change was made using the petitioner's computer. PW-3 also testified that specimen cards were stored in a location accessible to all Bank employees. Therefore, based on this evidence, it can be claimed that it has been established that the scanning of LTI was done from the petitioner's computer. However, it has not been proven that the petitioner changed Mr. Dhibar's signature on the specimen card or withdrew Rs. 3.9 lakhs from Mr. Dhibar's account. For these reasons, the Enquiry Officer concluded that the petitioner was guilty of gross negligence.

31. It is a well-established principle that suspicion, no matter how strong, cannot replace proof. In this case, the Management failed to present any evidence linking the petitioner to the act of changing the signature to LTI or the withdrawal of the amount. In the absence of concrete evidence that the petitioner changed Mr. Dhibar's signature on the specimen card or withdrew Rs. 3.9 lakhs from his account, it cannot be claimed that charges levelled against the petitioner that he changed the signature to LTI and he withdrew the amount, had been established.

32. The term 'negligence' refers to failing to do something that should have been done or doing something that should not have been done. Rule 27(j) of the service rules classifies gross negligence or negligence that could cause serious loss to the Bank as Major Misconduct. In this case, even if it's assumed that the LTI was scanned from the petitioner's computer and used for withdrawal, there is no proof that the petitioner changed the signature, scanned the LTI, or participated in the withdrawal. In the absence of concrete

evidence linking the petitioner to these actions, the charges, though not specifically for negligence, cannot be considered substantiated.

33. In this case, following a complaint by the Bank, an FIR was filed, and a criminal case was initiated. Charges under Sections 468/471/403/120B IPC were framed against four accused, including the petitioner. During the trial, 11 prosecution witnesses testified. However, after reviewing the evidence, the Court acquitted all accused, including the petitioner, finding them not guilty. The judgment of acquittal was submitted through a supplementary affidavit. Mr. Roy, citing the judgment in the Ram Lal's case (*supra*), prayed for setting aside of order of the punishment.

34. Undeniably, both the disciplinary proceeding and criminal proceeding are based on similar set of facts. Charges before the disciplinary proceeding and the charges before the Criminal Court are also same. In disciplinary proceeding 5 witnesses were examined whereas during criminal trial, 11 (eleven) witnesses out of two were common in both the proceedings, were examined. In criminal case, the learned Court observed that except the PW-1, de-facto complainant, who happened to be Chairman of the Bank, no other witnesses supported the prosecution case. PW-1 himself during his cross-examination deposed that Mr. Dhibar used to withdraw money on the basis of LTI which itself destroyed both the proceedings. Though some different witnesses were examined in criminal proceeding but material witnesses in both the proceedings were same. Therefore, considering these aspects, I am of the view that proposition laid down in Ram Lal's Case *(supra)*, which reiterated the proposition set in G.M. Tank's case, reported in *(2006) 5 SCC 446* is squarely applicable in the case at hand. There is no scintilla of doubt

regarding binding precedents set in the judgments relied on by the Bank but those are distinguishable on facts.

Conclusion:

35. The charge-sheet was issued by the Chief Executive Officer without explicit authorization from the Board of Directors, which is the disciplinary authority. As per Rule 33 of the service rules, the Board is responsible for deciding who should take disciplinary action against employees. Therefore, the charge-sheet and subsequent proceedings are flawed. The Management only proved that the LTI was scanned from the petitioner's computer but failed to provide evidence linking the petitioner to changing the signature or withdrawing the amount from Mr. Dhibar's account. The Enquiry Officer, based on suspicion, wrongly concluded negligence contributed to the withdrawal. The Management did not present CCTV footage or any proof of the petitioner's involvement in scanning the LTI. During the criminal trial, the Chairman admitted that Mr. Dhibar withdrew money based on LTI. Given these facts and the petitioner's acquittal by the competent court of law, the charge-sheet, Enquiry Officer's findings, and the disciplinary punishment cannot be upheld.

36. The next issue that arises is the payment of back wages. The Bank, citing the decisions of Phool Chand (*supra*) and Siraj Uddin Khan(*supra*), argued that there is no automatic entitlement to back wages. In the absence of evidence or pleading that the petitioner was not gainfully employed after dismissal, the petitioner cannot claim back wages. It is understood that when a dismissal, removal, or termination is found to be illegal, it automatically leads to an order for reinstatement of the employee, which, in turn, raises the issue of back wages.

37. However, no uniform formula can be applied to the payment of back wages, as each case must be decided based on its unique facts. Reinstatement of an employee restores them to their position before dismissal or removal. In the decision, reported at *(2019) 17 SCC 184 (Jayantibhai Raojibhai Patel vs. Municipal Council, Narkhed & Ors)*, quoting the proposition set in the judgment of Deepali Gundu Surwase, reported in *(2013) 10 SCC 320* with approval, the Hon'ble Court emphasized that the injury suffered by an employee due to an illegal dismissal or termination cannot be compensated solely with money. If the employer has grossly violated statutory provisions, natural justice, or victimized the employee, the court or tribunal may order full back wages. The Court further stated that the nature of the misconduct, the employer's financial condition, and other relevant factors should be considered. The Court also noted that proving a positive fact is easier than proving a negative fact. The writ petition was filed in 2011, before the judgments in Deepali Gundu Surwase (*supra*) and Phool Chand (*supra*) were pronounced.

38. In the present case, though it was held that charge-sheet and the subsequent actions taken based on it is not flawless, it was proved that the LTI was scanned from the petitioner's computer and the Bank suffered loss of Rs. 3.9 lakhs in 2009. Taking note of these facts, I am of the view that ends of justice would be met, if direction is given for payment of 50% of back wages. I have been informed that the petitioner has attained the age of superannuation in the meantime.

Order:

39. Consequently, the charge-sheet, the report of the Enquiry Officer, and the order of dismissal from service issued against the petitioner are set aside. Respondents Nos. 2 to 5 are directed to disburse the petitioner's retiral benefits, treating him as being in service with continuity of service from the date of his suspension. However, it is clarified that the petitioner shall be entitled to 50% of his back wages from the date of his dismissal until the date of his retirement.

40. With these observation and order, the writ petition and its connected application are, thus, disposed of. There shall be no order as to the costs.

(Partha Sarathi Chatterjee, J.)