IN THE HIGH COURT AT CALCUTTA

(CONSTITUTIONAL WRIT JURISDICTION)

APPELLATE SIDE

Present:

The Hon'ble Justice Partha Sarathi Chatterjee

WPA 5529 of 2011
With
CAN 1 of 2023
Tapan Kumar Das
-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 November, 2009, the Enquiry Report communicated to him via a memo dated 6th October, 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 Executive Grade-IIA (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 November, 2009 by the Chief Executive of the Bank. The charge-sheet contained two articles of charge, which are as follows:

a) On 27.06.2009, while working as Executive Grade IIA (Deposit) at the Head Office of the bank, Sri Tapan Kumar Das received a withdrawal slip for the withdrawal of Rs. 3,90,000/- from SB Account No. 17. He put his initials on the left-hand corner of the slip but failed to verify its authenticity or ascertain the identity of the person who presented it. In gross violation of standard procedures, Sri Das did not verify the Left Thumb Impression (LTI) as required. Without making any comments or providing the necessary accompanying intimation notice, he passed the instrument for payment. As a result, Rs. 3,90,000/- was paid from Counter No. 24 on the same day, 27.06.2009. The holder of the account has denied having issued the withdrawal slip for Rs. 3,90,000/- and also denied receiving the said amount from the payment counter.

Consequently, the petitioner was charged with gross negligence and putting the bank to likely loss which is a major misconduct in terms of Clause 27(J) of the Service Rules of the Bank.

b) On 27.06.2009, while working as Executive Grade IIA (Deposit) at the Head Office of the Bank, Sri Tapan Kumar Das received a withdrawal slip for the withdrawal of Rs. 3,90,000/- from SB Account No. 17, held by Sri Sunil Kumar Dhibar. However, Sri Tapan Kumar Das failed to verify whether the withdrawal slip was presented in person by the account holder, Sri Sunil Kumar Dhibar, and did not ensure that the withdrawal slip was accompanied by the necessary intimation notice.

Instead of following proper procedures, he simply put his initial signature on the left-hand corner of the slip without verifying the physical presence of the account holder or checking for any accompanying intimation notice. He then passed the instrument for payment without providing any instructions or direction to pay.

Sri Sunil Kumar Dhibar, the holder of SB Account No. 17, has categorically denied presenting any withdrawal slip or intimation for the withdrawal of Rs. 3,90,000/- on 27.06.2009, and has lodged a complaint with the local police station regarding the matter.

As a result, Sri Tapan Kumar Das is charged with gross misconduct due to his negligence in failing to adhere to established verification procedures.

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 a letter addressed to the Chief Executive Officer of the Bank, the petitioner stated that, according to Rule 2 (iii) of the Service Rules of the Bank, the term "Disciplinary Authority/Appointing Authority/Competent Authority" refers to the Board of Directors. However, the charge-sheet issued against him did not indicate that the Chief Executive Officer had been empowered or directed by the Disciplinary Authority to issue the charge-sheet. Furthermore, the petitioner noted that the copies of the documents upon which the charge-sheet was based were not provided to him. The petitioner also mentioned that in the order of suspension indicated that a preliminary inquiry had been conducted, but no report from such an inquiry was supplied to him. Given these circumstances, he requested that, in the event the charge-sheet was not withdrawn or rescinded, the relevant documents, as detailed in his written defense, be provided to him.

iv) In his reply to the charge-sheet, the petitioner argued that neither Rule 48(f) nor any sub-rule of Rule 18 of the West Bengal Cooperative Societies Rules, 1987 grants the Board the power to empower or authorize any officer to issue a charge-sheet against an employee of the Bank. Consequently, he contended that the issuance of the charge-sheet by the Chief Executive Officer of the Bank against him was illegal.

v) Regarding the allegation leveled against him, the petitioner stated that it was well within the knowledge of the Bank authorities that when an account holder desired to withdraw a sum exceeding Rs. 20,000/-, they were required to provide prior intimation to the Bank in a prescribed form, commonly referred to as an "intimation notice." On 27.06.2009, upon receiving the withdrawal slip, he verified that the account holder had given prior intimation before putting his signature on the left-hand corner of the withdrawal slip. This verification process, he noted, was also routinely performed by the Manager in accordance with standard practice.

vi) The petitioner further asserted that he was not assigned the responsibility of verifying the authenticity of the instrument, so the question of him verifying it did not arise. He also refuted the allegation that he failed to ascertain the identity of the person who presented the withdrawal slip, stating that it was practically difficult to identify someone who had come to withdraw money after a long interval. Additionally, the account holder was never sent to him along with the withdrawal slip, and therefore, the issue of verifying the Left Thumb Impression (LTI) did not arise.

vii) The petitioner denied passing the instrument for payment. Instead, he explained that he had only certified that prior intimation had been given, as it had been registered in the computer system by the concerned Manager on 25.06.2009.

viii) However, during the inquiry, the Bank presented oral evidence from four witnesses (PW-1 to PW-4) and submitted documents, while the petitioner also testified. After assessing the evidence, the Enquiry Officer concluded that charges levelled against the petitioner had been substantiated and petitioner's negligence constituted misconduct in terms of Clause 27(J) of the Service Rules of the Bank.

ix) In his report, the Enquiry Officer stated that he was not convinced by the petitioner's claim that he had no responsibility to verify the authenticity of the instrument. The Enquiry Officer opined that verifying the LTI was a routine task that did not require a specific assignment of duty. While the Enquiry Officer acknowledged the petitioner's statement that it was not always possible to identify all depositors, especially those who occasionally visited the Bank, the Enquiry Officer noted that the Bank had an in-built system to ascertain the genuineness of its customers. The Enquiry Officer further observed that, according to the petitioner's own deposition, the withdrawal slip was brought to him either by the then cashier or another employee, rather than directly by the depositor. This, the Enquiry Officer concluded, was a violation of the Bank's existing practice, which required the withdrawal slip to be received directly from the depositor. The Enquiry Officer also clarified that while the petitioner's signature on the left-hand corner of the withdrawal slip was meant to certify that prior intimation had been given, it also effectively signified that payment could be made based on the document. This was particularly relevant since the Bank did not have a "pay order system" or a "passing system". The Enquiry Officer acknowledged that, although it was the cashier's responsibility to finally check whether the document was eligible for payment, the cashier's negligence did not absolve the petitioner of his responsibility. In conclusion, the Enquiry Officer found sufficient evidence to confirm that the petitioner had passed the document for payment and, as a result, held the petitioner guilty of negligence.

x) Upon receiving the Enquiry Officer's report, the petitioner submitted a reply but the Chief Executive Officer refused to accept the petitioner's contention raised in that reply and consequently, the Chief Executive of the Bank by an order communicated to the petitioner under a Memo. dated 28.12.2010, dismissed the petitioner from service in terms of Clause 28(a) of the Service Rules of the Bank. Hence, the writ petition.

xi) In the writ petition, it was claimed that the entire disciplinary proceeding was conducted, concluded, and punishment was imposed with a preconceived mindset.

3. Record speaks that a direction for exchange of affidavits was given to the parties. However, record does not contain any affidavit.

Contents of the petitioner's supplementary affidavit:

4. However, with leave granted by the Court, the petitioner filed a supplementary affidavit and also an application for appropriate order 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 467/468/471/420/477A/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:

5. 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.)*.

6. Mr. Roy argued that the findings of the Enquiry Report ultimately concluded that the petitioner was negligent in not verifying the LTI and in failing to ascertain the identity of the account holder but that the duties assigned to him did not include such responsibilities. He pointed out that although the Enquiry Officer acknowledged that it was difficult to identify the person who presented the withdrawal slip, especially when customers visited the bank frequently, the Officer still held him guilty. He emphasized that the Enquiry Officer had admitted that the cashier had responsibility to check finally to verify whether the instrument was eligible for payment, yet the petitioner was still found guilty. He further argued that the Enquiry Officer introduced a new idea by contending that the act of certifying whether prior intimation had been given was also considered a payment order to the Cashier. He asserted that the findings of the Enquiry Officer were self-contradictory and mutually destructive, reflecting a preconceived mindset. The petitioner claimed that the findings were perverse, as they were based on no evidence.

7. 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).*

8. 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 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.

9. 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.

10. 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.

11. 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 156 of 2010, which was subsequently re-numbered as WPA 5529 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.

12. 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 and. The depositor, however, denied having received any money through the use of his LTI.

13. 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.)*.

14. 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.

15. 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.

16. 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:

17. 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.

18. 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)*.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. In the present case, the petitioner alleges that the initiation of disciplinary proceeding was improper, and that the proceeding 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.

25. 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.

26. 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.

27. 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 rejected.

28. In the present case, PW-2 testified that the depositor, with the Left Thumb Impression (LTI) signature, was required to be present in person in all cases, and the withdrawal slip had to be mandatorily presented to the Manager. The witness, namely, Dipak Saha deposed that in the case of large payments, the LTI had to be verified, and the eligibility for payment was contingent upon this verification. The Enquiry Officer noted that Ext. III indicated that the LTI was verified by the concerned officers, including the

petitioner. After evaluating this evidence, the Enquiry Officer concluded that the petitioner was guilty of negligence.

29. Admittedly, no Rule or Regulation of the bank relating to the verification of LTI, in-built system of identification of person who presented the withdrawal slip and examination of prior intimation and duties of Manager and Cashier have been presented, referred and/or relied on. It was claimed by the Enquiry Officers that LTI was verified by other concerned officers including the petitioner and it was also claimed by him that certification of prior intimation was a payment order. Therefore, it is vivid and luminescent that the Management failed to bring any convincing evidence linking the petitioner to verification of LTI and the withdrawal of the amount. In the absence of concrete evidence, it cannot be claimed that charges levelled against the petitioner had been established.

30. 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.

31. 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:

32. 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. 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.

33. 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.

34. 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.

35. In the present case, though it was held that charge-sheet and the subsequent actions taken based on it is not flawless. 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:

36. 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.

37. 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.)