2023 STPL(Web) 32 HP
HIGH COURT OF HIMACHAL PRADESH

(HON'BLE MR. JUSTICE TARLOK SINGH CHAUHAN, JUDGE AND HON'BLE MR. JUSTICE SATYEN VAIDYA, JJ.)

STATE BANK OF INDIA AND ANOTHER

Petitioners

VERSUS

PRESIDING OFFICER AND ANOTHER

Respondents

AJAY SOOD

Petitioner

VERSUS

STATE BANK OF INDIA & OTHERS

Respondents

CWP No. 3597 of 2020 a/w CWP No. 4844 of 2020-Decided on 14-7-2023

Labour Law, Industrial Dispute

(A) Industrial Dispute – Compulsory retirement – Labour Court converted dismissal of Service to Compulsory retirement - Approach to High Court by both parties – Held: Thus, the material on record does not suggest that the findings of fact recorded by the Tribunal are unwarranted or are perverse. We have also not found any material illegality or perversity in the impugned Award. Even learned Counsel for the Bank has not been able to point out any perversity in the impugned Award so as to vitiate the same.

While modifying the punishment from dismissal of service to compulsory retirement again the Tribunal has taken relevant factors in consideration. The past unblemished service record and extension in service granted to the workman by the Bank could not be said to be extraneous to the issue especially when there was no charge of financial mismanagement or misappropriation etc. against him.

(Para 20, 21)

(B) Industrial Dispute – Jurisdiction of Labour Court - The Tribunal has been vested with jurisdiction to set aside the order of discharge or dismissal and direct reinstatement of the workman or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require.

(Para 13)

Advocate(s): For the petitioner(s) : Mr. Arvind Sharma, Advocate, in CWP No. 3597 of 2020 and Mr. Rajnish Maniktala, Senior Advocate, with Mr. Naresh Verma, Advocate, in CWP No. 4844 of 2020. For the respondents:
Mr. Rajnish Maniktala, Senior Advocate, with Mr. Naresh Verma, Advocate, for respondent No.2 in CWP No. 3597 of 2020 and Mr. Arvind Sharma, Advocate, for respondents No. 1 and 2 in CWP No. 4844 of 2020.

JUDGMENT

Satyen Vaidya, Judge-Since, common questions of law and facts arise in these petitions, therefore, both are being decided by a common judgment.

2. Petitioner in CWP No. 4844 of 2020 (hereinafter referred to as 'workman') after having served State Bank of India (for short, 'the Bank') for about 33 years was scheduled to retire on 31.1.2012. He was granted extension in service till 31.1.2014.

3. The Bank, on 5.1.2013, served a charge memo on the workman with following charges:

> (i) Charge No.1 You created nuisance in the branch premises during business hours and disrupted smooth and normal functioning of the branch on 28.5.2012 when a letter bearing No. Br/AWS/1 regarding your unauthorised absence was served on you. You misbehaved with the Branch Manager and tore letter No. Br/AWS/1 dated 28.5.2012 into pieces.
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> (ii) Charge No.2 You threatened the Branch Manager on 28.5.2012 and used abusive language.

(iii) Charge No.3 You demonstrated before the ADB branch on 28.5.2012 without giving any prior notice to the bank with regard to demonstration. Subsequently you organized lunchtime demonstration from 8.6.2012 to 18.6.2012 again without giving any prior notice.

(iv) Charge No.4 On 29.5.2012, you disrupted the smooth functioning of the Branch by insisting that the box containing remittance be taken out by the Branch Manager. When an officer of the Branch namely Sh. Surjeet Singh volunteered to lift the remittance box up to the banking hall and was trying to engage the services of canteen boy to carry the box up to the vehicle, you came alongwith Sh. Madan Bhandari, Senior Special Assistant and Sh. Raj Mal Guard up to the entrance of the Branch and prevented the canteen boy from carrying the box further up to the vehicle.

(v) Charge No.5 You deliberately flouted system and procedures on several occasions in the past with an intention to undermine the authority of the Branch Manager and in the process seriously increased the operational risk of the Branch. One instance is given as under: When the Branch Manager asked you for special leave application already availed of from 5.4.2012 to 11.4.2012, you instead of giving leave application, superimposed with remarks 'Special Central Committee Meeting' in the attendance register in gross violation of service rules.

(vi) Charge No.6 You unauthorisedly absented yourself from duty on 23.5.2012, 22.5.2012 and 26.5.2012 without any intimation or application.

(vii) Charge No.7 You disobeyed office order dated 17.7.2012 and 18.7.2012 and did not work as Cash Manager from 17.7.2012 to 19.7.2012.

(viii) Charge No.8 You proceeded on medical leave from 26.7.2012 again without producing relevant medical certificate.

(ix) Charge No.9 You issued a cheque bearing No. 043887 dated 20.8.2012 amounting to Rs. 3,75,000/- in favour of Sh. Sarvesh Arora from account No. 11358897046 without having sufficient balance in the account which was returned on 1.9.2012.

4. Enquiry was conducted and the Enquiry Officer, vide report dated 19.10.2013, held all the charges proved against the workman. The Disciplinary Authority, vide order dated 6.11.2013, imposed the penalty of "dismissal from service" against the workman. The Appellate Authority dismissed the appeal filed by the workman.

5. Thereafter, the workman raised an industrial dispute. The conciliation proceedings could not be completed within 45 days, therefore, the workman approached the Central Government Industrial Tribunal-cum-Labour Court, Chandigarh (for short, 'the Tribunal') under section 2A(2) of Industrial Disputes Act (for short, 'the Act') by way of ID No. 93 of 2014.

6. The Tribunal in the first instance adjudicated on the fairness of enquiry proceedings held against the workman and vide order dated 11.2.2016 ruled against the Bank. The Enquiry proceedings were held not to have been conducted in fair and reasonable manner and further violation of the principles of natural justice was also held. Indisputably, the Bank did not challenge order dated 11.2.2016 passed by the Tribunal.

7. Thereafter, the Tribunal, proceeded to record the evidence adduced by the parties and on the basis of material before it vide Award dated 9.7.2019 held only Charge No.1 proved against the workman. The punishment was reduced to 'compulsory retirement' from service instead of 'dismissal from service'.

8. Whereas, the Bank has assailed the impugned Award dated 9.7.2019 by way of CWP 3597 of 2020, the workman has challenged the same by way of CWP No. 4844 of 2020. The Bank is feeling dissatisfied with the impugned Award and has prayed for setting aside the findings returned by the Tribunal whereby the charges Nos. 2 to 9 have been held to have not proved and has further prayed for restoration of punishment of dismissal from service against the workman. On the other hand, the workman has assailed the impugned Award in so far as it pertained to findings on Charge No.1 and consequent punishment inflicted on him.

9. We have heard learned counsel for both the sides and have also gone through the record.

10. Learned Counsel for the Bank contended that it is always in the domain of disciplinary authority to prescribe the punishment commensurate to charge proved and hence, the Tribunal has exceeded in jurisdiction in modifying the punishment. It, at the most, should have sent the matter back to disciplinary authority to complete the exercise. In support of above, he has placed reliance on judgments passed by Hon'ble Supreme Court in LIC v. S. Vasanthi, (2014) 9 SCC 315 and Kurukshetra University v. Prithvi

Singh, (2018) 4 SCC 483. The above cited judgments, however, will not apply to the facts of instant cases for the reason that in both these cases the scope and power of judicial review of the courts while dealing with the validity of quantum of punishment imposed by the disciplinary authority was in question, whereas in the case before us the question relates to the jurisdiction of the Labour Court-cum- Industrial Tribunal under the Act.

11. At this juncture we deem it necessary to notice that the Tribunal on 11.2.2016 had clearly ruled that the enquiry proceedings were not held in fair and reasonable manner and also did not confirm to the principles of natural justice. Bank did not choose to assail order dated 11.2.2016 passed by the Tribunal, rather had accepted the same by acquiescing to lead fresh evidence before the Tribunal in support of the charges.

12. Returning to the jurisdiction of the Tribunal under the Act reference can be made to section 11-A which reads as under:

> "11A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen.- Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require: Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter."

13. Thus, the Tribunal has been vested with jurisdiction to set aside the order of discharge or dismissal and direct reinstatement of the workman or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require.

14. In the case in hand the Tribunal has not only allowed the parties to lead fresh evidence before it but has also placed reliance on such evidence by ignoring the evidence recorded during enquiry proceedings. The Tribunal has justifiably adopted such procedure by placing reliance on the exposition of law made by Hon'ble Supreme Court in Kurukshetra University v. Prithvi Singh, (2018) 4 SCC 483 as under:

"12. The question as to what are the powers of the Labour Court and how it should proceed to decide the legality and correctness of the termination order of a workman under the Labour Laws in reference proceedings and what are the rights of the employer while defending the termination order in the Labour Court remains no more res integra and is settled by series of decisions of this Court beginning from Indian Iron & Steel Co. Ltd. v. Workmen [Indian Iron & Steel Co. Ltd. v. Workmen, AIR 1958 SC 130] till Shankar Chakravarti v. Britannia Biscuit Co. Ltd. , (1979) 3 SCC 371 and also thereafter in several decisions as mentioned below.

13. In between this period, this Court in several leading cases examined the aforesaid questions. However, in Shankar case [Shankar Chakravarti v. Britannia Biscuit Co. Ltd., (1979) 3 SCC 371 : 1979 SCC (L&S) 279 : AIR 1979 SC 1652] , this Court took note of entire case law laid down by this Court in all previous cases and reiterated the legal position in detail.

14. The legal position, in our view, is succinctly explained by this Court (two-Judge Bench) in Delhi Cloth & General Mills Co. v. Ludh Budh Singh [Delhi Cloth & General Mills Co. v. Ludh Budh Singh, (1972) 1 SCC 595 : (1972) 3 SCR 29 : 1972 Lab IC 573] , in Propositions 4, 5 and 6 in the following words:

> (SCC pp. 616-17, para 61) "(4) When a domestic enquiry has been held by the management and the management relies on the same, it is open to the latter to request the Tribunal to try the validity of the domestic enquiry as a preliminary issue and also ask for an opportunity to adduce evidence before the Tribunal, if the finding on the preliminary issue is against the management. However, elaborate and cumbersome the procedure may be, under such circumstances, it is open to the Tribunal to deal, in the first instance, as a preliminary issue the validity of the domestic enquiry. If its finding on the preliminary issue is in favour of the management, then no additional evidence need be cited by the management. But, if the finding on the preliminary issue is against the management, the Tribunal will have to give the employer an opportunity to cite additional evidence and also give a similar opportunity to the employee to lead evidence contra, as the request to adduce evidence had been made by the management to the Tribunal during the course of the proceedings and before the trial has come to an end. When the preliminary issue is decided against the management and the latter leads evidence before the Tribunal, the position, under such circumstances, will be, that the management is deprived of the benefit of having the finding of the

domestic Tribunal being accepted as prima facie proof of the alleged misconduct. On the other hand, the management will have to prove, by adducing proper evidence, that the workman is guilty of misconduct and that the action taken by it is proper. It will not be just and fair either to the management or to the workman that the Tribunal should refuse to take evidence and thereby ask the management to make a further application, after holding a proper enquiry, and deprive the workman of the benefit of the Tribunal itself being satisfied, on evidence adduced before it, that he was or was not guilty of the alleged misconduct.

(5) The management has got a right to attempt to sustain its order by adducing independent evidence before the Tribunal. But the management should avail itself of the said opportunity by making a suitable request to the Tribunal before the proceedings are closed. If no such opportunity has been availed of, or asked for by the management, before the proceedings are closed, the employer can make no grievance that the Tribunal did not provide such an opportunity. The Tribunal will have before it only the enquiry proceedings and it has to decide whether the proceedings have been held properly and the findings recorded therein are also proper.

(6) If the employer relies only on the domestic enquiry and does not simultaneously lead additional evidence or ask for an opportunity during the pendency of the proceedings to adduce such evidence, the duty of the Tribunal is only to consider the validity of the domestic enquiry as well as the finding recorded therein and decide the matter. If the Tribunal decides that the domestic enquiry has not been held properly, it is not its function to invite suo motu the employer to adduce evidence before it to justify the action taken by it."

15. In light of the explicit power vested in the Tribunal under Section 11A of the Act and the enunciation as noticed above, we do not find any illegality in the impugned Award in so far as its procedural aspect is concerned.

16. As regards the jurisdiction of this Court to examine the legality and propriety of findings recorded and punishment imposed on the workman by the Tribunal, we deem it proper to remind us about the well settled legal position as under: In P.G.I. of Medical Education & Research v. Raj Kumar, (2001) 2 SCC 54 it was observed:

"9. The Labour Court being the final court of facts came to a conclusion that payment of 60% wages would comply with the requirement of law. The finding of perversity or being erroneous or not in accordance with law shall have to be recorded with reasons in order to assail the finding of the Tribunal or the Labour Court. It is not for the High Court to go into the factual aspects of the matter and there is an existing limitation on the High Court to that effect. In the event, however the finding of fact is based on any misappreciation of evidence, that would be deemed to be an error of law which can be corrected by a writ of certiorari. The law is well settled to the effect that finding of the Labour Court cannot be challenged in a proceeding in a writ of certiorari on the ground that the relevant and material evidence adduced before the Labour Court was insufficient or inadequate though, however, perversity of the order would warrant intervention of the High Court. The observation, as above, stands well settled since the decision of this Court in Syed Yaqoob v. K.S. Radhakrishnan AIR 1964 SC 477."

In Iswarlal Mohanlal Thakkar v. Paschim Gujarat Vij Co. Ltd., (2014) 6 SCC 434 it was held as under:

15. We find the judgment and award of the Labour Court well-reasoned and based on facts and evidence on record. The High Court has erred in its exercise of power under Article 227 of the Constitution of India to annul the findings of the Labour Court in its award as it is well settled law that the High Court cannot exercise its power under Article 227 of the Constitution as an appellate court or re-appreciate evidence and record its findings on the contentious points. Only if there is a serious error of law or the findings recorded suffer from error apparent on record, can the High Court quash the order of a lower court. The Labour Court in the present case has satisfactorily exercised its original jurisdiction and properly appreciated the facts and legal evidence on record and given a well-reasoned order and answered the points of dispute in favour of the appellant. The High Court had no reason to interfere with the same as the award of the Labour Court was based on sound and cogent reasoning, which has served the ends of justice.

16. It is relevant to mention that in Shalini Shyam Shetty v. Rajendra Shankar Patil [(2010) 8 SCC 329: (2010) 3 SCC (Civ) 338], with regard to the limitations of the High Court to exercise its jurisdiction under Article 227, it was held in para 49 that: (SCC p. 348)

"49. (m) … The power of interference under [Article 227] is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of

the tribunals and courts subordinate to the High Court." It was also held that: (SCC p. 347, para 49)

> "49.(c) High Courts cannot, at the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or courts inferior to it. Nor can it, in exercise of this power, act as a court of appeal over the orders of the court or tribunal subordinate to it." Thus it is clear, that the High Court has to exercise its power under Article 227 of the Constitution judiciously and to further the ends of justice.

17. In Harjinder Singh v. Punjab State Warehousing Corpn. [(2010) 3 SCC 192: (2010) 1 SCC (L&S) 1146] this Court held that: (SCC p. 205, para 20)

> "20. … In view of the above discussion, we hold that the learned Single Judge of the High Court committed serious jurisdictional error and unjustifiably interfered with the award of reinstatement passed by the Labour Court with compensation of Rs 87,582 by entertaining a wholly unfounded plea that the appellant was appointed in violation of Articles 14 and 16 of the Constitution and the Regulations."

18. The power of judicial review of the High Court has to be alluded to here to decide whether or not the High Court has erred in setting aside the judgment and order of the Labour Court. In Heinz India (P) Ltd. v. State of U.P. [Heinz India (P) Ltd. v. State of U.P., (2012) 5 SCC 443 : (2012) 3 SCC (Civ) 184 : (2012) 3 SCC (Cri) 198] this Court referred to the position held on the power of judicial review in Reid v. Secy. of State for Scotland [(1999) 2 AC 512 : (1999) 2 WLR 28 : (1999) 1 All ER 481 (HL)] wherein it is stated that: (Heinz India (P) Ltd. case [Heinz India (P) Ltd. v. State of U.P., (2012) 5 SCC 443 : (2012) 3 SCC (Civ) 184 : (2012) 3 SCC (Cri) 198] , SCC pp. 470-71, para 68)

> "68. … 'Judicial review involves a challenge to the legal validity of the decision. It does not allow the court of review to examine the evidence with a view to forming its own view about the substantial merits of the case. It may be that the tribunal whose decision is being challenged has done something which it had no lawful authority to do. It may have abused or misused the authority which it had. It may have departed from the procedures which either by statute or at common law as a matter of fairness it ought to have observed. As regards the decision itself it may be found to be perverse, or irrational or grossly disproportionate to what was required. Or the decision may be found to be erroneous in respect of a legal deficiency, as for example, through the absence of evidence, or of sufficient evidence, to support it, or through account being taken of irrelevant matter, or through a failure for any reason to take account of a relevant matter, or through some misconstruction of the terms of the statutory provision which the decision-maker is required to apply. But while the evidence may have to be explored in order to see if the decision is vitiated by such legal deficiencies it is perfectly clear that in case of review, as distinct from an ordinary appeal, the court may not set about forming its own preferred view of the evidence.'(Reid case [(1999) 2 AC 512 : (1999) 2 WLR 28 : (1999) 1 All ER 481 (HL)] , AC pp. 541 F-542 A)"

17. Reverting to the facts of the case, it is noticeable that the Tribunal has elaborately dealt with the oral as well as documentary evidence produced by the parties before it. The Bank had examined three witnesses i.e. Sh. D.C. Jagotra the then Branch Manager, Sh. Arjun Singh Assistant Manager and Ms. Amita Saini also a Branch Manager of the Bank. On the other hand, the workman had examined one Sh. Dharmendra as his witness besides himself. The Tribunal did not find much substance in the depositions of Sh. Arjun Singh and Ms. Amita Saini in support of the case of the Bank. Similarly, the statement of Sh. Dharmendra as workman's witness could not generate sufficient confidence in the Tribunal so that the reliance could be placed on his statement.

18. The finding returned by the Tribunal that Charges Nos. 2,3 and 5 were not proved for lack of sufficient evidence cannot be faulted with. Sh. D.C. Jagotra MW-1 had stated the time of incident as 4 PM on 28.5.2012. On the contrary according to MW-3 Ms. Amita Saini the time was between 11 to 12 AM. MW-2 Sh. Arjun Singh Dogra while being crossexamined feigned ignorance in respect of material facts of the case. He even failed to remember whether he was present in the chamber of the Manager at the time of alleged incident. As regards Charge No.4, the Tribunal has accepted the evidence on record that clearly suggested that the objection of certain officials of bank including that of the workman in respect of carrying of cash box by Sh. Surjeet Singh was not unjustified. Similarly, Charges Nos.6 to 8 regarding alleged unauthorised absence of the workman from the Bank have been held by the Tribunal to be not proved on score of insufficient evidence. The Tribunal has taken note of relevant portions of the statements made by Sh. D.C. Jagotra, wherein he feigned ignorance about absence of workman in the attendance register for the dates 25.5.2012 and 26.5.2012 having been noted and subsequently changed with remarks "absent without information" by the witness MW-1 himself. It has also been found from the

statement of MW-1 that though the workman had applied for leave on medical grounds but he did not submit proper medical certificate. On such material the Tribunal had arrived at conclusion that without getting the certificate submitted by workman verified or without referring his matter to medical board he could not have been guilty of misconduct charged. Charge No. 9 has been held to be not related with discharge of official duties of the workman.

19. Only charge No.1 has been held to be proved against the workman and for such purpose reliance has been placed on the statement of MW-1, who had categorically stated that the workman after entering his cabin had shouted by saying "no branch manager had dared to issue me letter prior to this". Learned Senior Counsel representing the workman has tried to point out certain discrepancies in the evidence so as to make the version of MW-1 appear doubtful, but we have found that in his cross-examination WW-1, the workman, had admitted having said to the Manager "No Branch Manager had dared to issue letter prior to me".

20. Thus, the material on record does not suggest that the findings of fact recorded by the Tribunal are unwarranted or are perverse. We have also not found any material illegality or perversity in the impugned Award. Even learned Counsel for the Bank has not been able to point out any perversity in the impugned Award so as to vitiate the same.

21. While modifying the punishment from dismissal of service to compulsory retirement again the Tribunal has taken relevant factors in consideration. The past unblemished service record and extension in service granted to the workman by the Bank could not be said to be extraneous to the issue especially when there was no charge of financial mismanagement or misappropriation etc. against him.

22. Keeping in view our restrictive jurisdiction to reassess the Award passed by a statutory authority and in light of the discussion made above, we do not find any reason to interfere with the impugned Award. In result, both the petitions are dismissed and accordingly disposed of, so also all pending miscellaneous application(s), if any.
