NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 6092 OF 2021
(Arising out of SLP(Civil) No(s). 5931 of 2015)

STANDARD CHARTERED BANK ...APPELLANT(S)

VERSUS

R.C. SRIVASTAVA ...RESPONDENT(S)

J U D G M E N T

Rastogi, J.

1. Leave granted.

2. The instant appeal is directed against the judgment and order dated 21st November, 2014 passed by the High Court of Judicature at Allahabad upholding the reinstatement with full back wages awarded by the Tribunal dated 14th September, 2006.

3. The facts in brief which are relevant for the purpose are that the respondent-workman was an employee of the appellant-Bank

and for the alleged delinquency which he had committed on 12th January, 1988 in discharge of his duties, a charge-sheet dated 27th January, 1988 was served upon the respondent-workman with the allegation of drunkenness within the premises of the appellant-Bank and for manhandling and assaulting the senior officers and also hurling abuses at the management. The relevant portion of the charge-sheet dated 27th January, 1988 reads as under:-

> "You are aware that the hearing in the court case No.5887/83 was fixed for 13.1.88 in which you are also a party. On 12.1.88 during office hours Mr. Bachchoo Lal Mishra and Mr. P.K. Seth, officer of the bank tomorrow there is a court case so do not mark me late as I will go the court direct from my house. Mr. Seth told you and Mr. Mishra that you should first come to the Bank, sign the attendance register and only thereafter you should go to court. In the evening again at about 5.30 PM you alongwith Mr. B.L. Mishra approached Mr. Seth and told him not to mark Mr. B.L. Mishra late on 13.1.88 and that he would go to the court straight from his house without first reporting to the bank. Mr. Seth asked you and Mr. Mishra to first come to the bank, sign the attendance register and then go to the court. You and Mr. Mishra then asked Mr. Seth to talk to Mr. Sikka, Assistant Manager (Operation) who in turn advised Mr. Seth to write court case in the attendance register which fact was advised to you as also to Mr. Mishra.
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> On the same day i.e. 12.1.88, Mr. Seth alongwith Mr. Arun Sharma were in the office at about 9.00 PM and were going to close the branch when you alongwith Mr. B.L. Mishra, Mr. Than Singh and an outsider entered the bank hall in a drunken state and started discussing the issue regarding marking late in the attendance register. Mr. A. Sharma tried to pacify you and the others by pointing out that such requirements are normal norms of the office and that the officers were carrying out the instructions on the senior officers and that such requirements are only as per office rules. It is reported that both Mr. Mishra and Mr. Than Singh abused the Management/Officers as you were looking on Mr. Than Singh said: "Ek Ek ko dekh lenge, Maa chod dunga, Ek ek ki tang tod denge."

> Mr. Misra abused thus: 'Maa chod dunga. Ek Ek ki maa chod dunga.' With persuasion of Mr. Arun Sharma and Mr. Seth, officers of the bank, you alongwith the others went out of the bank hall and stood in the bank's compound as Mr. Sharma, locked up the premises. Again both Mr. Misra and Mr. Than Singh started abusing Mr. Seth and the Management in logon ke maa chod denge. Salon ke tange tod denge. In the meantime Mr. Sharma went to the residence of Mr. Sikka in the bank compound to deposit the bank's keys. The moment Mr. Sharma went out you alongwith the outsider pulled Mr. Seth's tie from his neck and manhandled and slapped him resulting in his spectacles being broken and he also got a bruise on his left eye.
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> The above said acts on your part if proved will constitute the following gross misconduct under paragraph 19.5 of the Bipartite Settlement dated 19.10.66, which reads as under:
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> 19.5 (c): Drunkenness or riotous or disorderly or indecent behaviour on the premises of the bank and
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> (d) Doing any act prejudicial to the interest of the bank, and you are hereby charged with the above gross acts of misconduct."

4. For the alleged gross misconduct which he had committed in discharge of his duties, a departmental enquiry was held and in the course of enquiry, the evidence of three witnesses namely, Mr. P.K. Seth (MW-1), Mr. B.M. Sikka (MW-2) and Mr. Arun Sharma (MW-3), who are the officers and with whom the alleged incident had occurred were produced by the management and in defence, the respondent-workman had not appeared in the witness box but two employees namely, Mr. Shyam Bahadur (DW-1)-Watchman and Mr. Panna Lal (DW-2)- an ex-employee of the Bank, were produced.

5. The enquiry officer after holding enquiry in terms of the Bipartite Settlement and after due compliance of the principles of natural justice held the charges proved against the delinquent respondent and the disciplinary authority after due compliance, confirmed the finding recorded by the enquiry officer and punished him with the penalty of dismissal from service by an order dated 22nd August, 1991.

6. The reference made by the appropriate Government by its notification dated 30th June, 1992 for adjudication to the Tribunal reads as under:-

> "Whether the action of the management of ANZ Grindlays Bank Plc, Kanpur in dismissing Sri R.C. Srivastava from service with effect from 22 August 1991 is justified? If not, to what relief the workman is entitled to?"

7. The Tribunal in the first instance after examining the record of enquiry held the domestic enquiry to be fair and proper and thereafter, revisited the record of enquiry and apprised the statement of the management witnesses namely, Mr. P.K. Seth (MW-1), Mr. B.M. Sikka (MW-2) and Mr. Arun Sharma (MW-3) and defence witnesses namely, the Watchman (DW-1) and the ex-employee of the Bank (DW-2) and recorded a finding that the management of the appellant-Bank has miserably failed to

establish the charges levelled against the respondent-workman and held the charges not being proved and in consequence, set aside the order of dismissal from service and directed the appellant to reinstate the respondent-workman in service with full back wages, seniority and all the consequential benefits attached to the post by its Award dated 14th September, 2006.

8. The award dated 14th September, 2006 came to be challenged by the appellant in a writ petition under Articles 226 and 227 of the Constitution and the High Court by its impugned judgment and order dated 21st November, 2014 dismissed the writ petition.

9. The learned counsel for the appellant submits that after the domestic enquiry was held to be fair and proper, the Tribunal has a limited scope to interfere with the findings recorded in the domestic enquiry and unless the finding is perverse and not supported by a piece of evidence, it was not open for the tribunal to interfere within the scope of Section 11-A of the Industrial Disputes Act, 1947(hereinafter being referred to as the "Act 1947").

10. However, in the instant case, the Tribunal converted itself into a Court of Appeal and has not only revisited the evidence in toto but has proceeded on the assumption that the management has to prove the charges beyond reasonable doubt and despite the material evidence of three officers, who were abused by respondent-workman in drunkenness condition, have been completely disowned on the premise that one Watchman (DW-1) and an ex-employee of the Bank(DW-2) have stated in their deposition that such incident has not occurred and to justify it, a document was placed on record i.e. the attendance register of the time in question and to confront it further with the fact that the delinquent had not appeared in the domestic enquiry and still a finding has been recorded by the Tribunal that such incidence has not occurred is something which has appeared from blue and without there being any iota of the factual foundation, the interference made by the tribunal in the finding of guilt recorded in the course of enquiry is not only perverse but is unsustainable in law.

11. The scope of judicial review in the matter of domestic enquiry is to examine whether the procedure in holding domestic enquiry has been violated or the principles of natural justice has

been complied with, or any perversity in the finding of guilt recorded during the course of domestic enquiry has been committed. The basic error which was committed by the Tribunal in its impugned Award has not been appreciated even by the High Court and dismissed the writ petition without appreciating the finding recorded in the domestic enquiry keeping into consideration the principles laid down by this Court of preponderance of probabilities while holding guilt in the domestic enquiry and exceeded in its jurisdiction defined under Section 11-A of the Act 1947. To the contrary, the officers with whom the alleged occurrence of gross misconduct has been committed have been put to notice that their allegation on the face of it is unfounded, baseless and has not at all occurred which is something beyond imagination. More so, when it was established during the course of enquiry after affording an opportunity of hearing to the delinquent respondent, enquiry officer held the charges proved and confirmed by the disciplinary authority followed with the penalty of dismissal upon the respondent.

12. It is informed to this Court that the respondent-workman had attained the age of superannuation on 31st January, 2012

and during the period of litigation, he has throughout been paid his last wages drawn in terms of Section 17-B of the Act 1947.

13. Per contra, the learned counsel for the respondent while supporting the findings recorded by the Tribunal and confirmed by the High Court in the impugned judgment submits that there was no evidence on record as appreciated by the Tribunal in the first place, in arriving to the conclusion that such alleged incident in reference to which domestic enquiry was held had never occurred and the action was taken against him because he was an active member of a union and this was the circuitous route adopted by the appellant to eliminate the respondent to curb his trade union activities in the bank and the only recourse available was to make such uncalled for baseless allegations which certainly on being tested on the floor of judicial review by the Tribunal do not hold good and rightly interfered by the Tribunal and has been confirmed by the High Court.

14. We have considered the submissions of the parties and with their assistance examined the material available on record.

15. This Court while issuing notice on 27th February, 2015 stayed the payment of back wages obviously for the reason by

that time the respondent-workman had attained the age of superannuation on 31st January, 2012.

16. It is not the case of the respondent that the domestic enquiry has not been conducted as per the Bipartite Settlement dated 19th October, 1966, which was applicable for holding domestic enquiry in reference to misconduct committed by a workman and the alleged misconduct for which the respondent-workman was chargesheeted has been defined as one of the misconduct under Clause 19.5 (c) and (d) of the Bipartite Settlement. The acts which constitute the gross misconduct under paragraph 19.5 of the Bipartite Settlement dated 19th October, 1966 reads as under:-

> "19.5 (c): Drunkeness or riotous or disorderly or indecent behaviour on the premises of the bank and
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> (d) Doing any act prejudicial to the interest of the bank, and you are hereby charged with the above gross acts of misconduct."

17. After the charge sheet dated 27th January, 1988 was served, of which a detail reference has been made in the course of enquiry, the officers of the Bank namely, Mr. P.K. Seth (MW-1), Mr. B.M. Sikka (MW-2) and Mr. Arun Sharma (MW-3) with whom the alleged misconduct was committed by the respondent-workman had appeared as a witness on behalf of the

management in support of allegation levelled against the respondent-workman in the charge sheet and for the reason best known, the respondent had not recorded his own statement in defence in the course of enquiry but produced (DW-1)-Watchman and (DW-2) – an ex-employee of the Bank who confronted the statement of the witnesses of the management with whom the alleged incident occurred, based on the ocular evidence and obviously, there cannot be any documentary evidence to support with the kind of allegation of misconduct levelled against the respondent-workman, the enquiry officer after affording opportunity of hearing and due compliance of principles of natural justice recorded the finding of charge being proved and confirmed by the disciplinary authority and in consequence thereof, he was punished with the penalty of dismissal from service with effect from 22nd August, 1991. The Tribunal after re-appraisal of the record of domestic enquiry held it to be fair and proper, has a very limited scope to interfere in the domestic enquiry to the extent as to whether there is any apparent perversity in the finding of fact which has been recorded by the enquiry officer in his report of enquiry obviously, based on the evidence recorded during the course of enquiry and as to whether

the compliance of the Bipartite Settlement which provides the procedure of holding enquiry is violated or the punishment levelled against the workman commensurate with the nature of allegation proved against him and if it is grossly disproportionate, the tribunal will always be justified to interfere by invoking its statutory power under Section 11-A of the Act 1947.

18. In the instant case, after we have gone through the record, we find that the Tribunal has converted itself into a Court of Appeal as an appellate authority and has exceeded its jurisdiction while appreciating the finding recorded in the course of domestic enquiry and tested on the broad principles of charge to be proved beyond reasonable doubt which is a test in the criminal justice system and has completely forgotten the fact that the domestic enquiry is to be tested on the principles of preponderance of probabilities and if a piece of evidence is on record which could support the charge which has been levelled against the delinquent unless it is per se unsustainable or perverse, ordinarily is not to be interfered by the Tribunal, more so when the domestic enquiry has been held to be fair and proper and, in our view, the Tribunal has completely overlooked and exceeded its jurisdiction while interfering with the finding

recorded during the course of enquiry in furtherance of which, the respondent was dismissed from service and the High Court has also committed a manifest error while passing the judgment impugned.

19. The decision of the Labour Court should not be based on mere hypothesis. It cannot overturn the decision of the management on *ipse dixit*. Its jurisdiction under Section 11-A of the Act 1947 although is a wide one but it must be judiciously exercised. Judicial discretion, it is trite, cannot be exercised either whimsically or capriciously. It may scrutinize or analyse the evidence but what is important is how it does so.

20. We are of the considered view that the Award passed by the Tribunal and confirmed by the High Court under impugned judgment is not sustainable in law.

21. On the last date of hearing before this Court, we have called upon the appellant to place for our perusal the payment which has been made to the respondent-workman.

22. In compliance thereof, the statement has been placed before us for perusal, indicates that a sum of Rs.46,89,421.16 plus amount towards Section 17-B of the Act 1947, i.e.

Rs.10,27,096.56, in total Rs.57,16,517.72 has been paid to the respondent-workman in the interregnum period.

23. Learned counsel for the respondent in his submission has tried to persuade this Court that a poor workman has been targeted by the appellant and throughout his life, he had been in the litigation and what has been paid to him is his legitimate dues and interference, if made, may cause prejudice to him.

24. In the given facts and circumstances, looking to the peculiar facts of this case where the respondent-workman had been paid Rs.57,16,517.72 and had attained the age of superannuation on 31st January, 2012, stay was granted by this Court in reference to back wages by order 27th February, 2015, while upholding the order of penalty of dismissal from service dated 22nd August, 1991 passed by the authority in the domestic enquiry, we consider it appropriate to observe that no recovery shall be made in reference to the payment which has been made over to the workman in the interregnum period, of which a reference has been made by us afore-stated.

25. The appeal succeeds and is accordingly allowed and the judgment of the High Court dated 21st November, 2014 affirming

the Award dated 14th September, 2006 passed by the Tribunal is set aside with the clarification that there shall be no recovery in reference to the payment which has been made over to the respondent-workman in the interregnum period.

26. Pending application(s), if any, shall also stand disposed of.

.....J.
(AJAY RASTOGI)

.....J.
(ABHAY S. OKA)

NEW DELHI
SEPTEMBER 29, 2021