PAWAN KUMAR AGARWALA

v.

GENERAL MANAGER-II & APPOINTING AUTH. STATE BANK OF INDIA & ORS.

(Civil Appeal No. 13448 of 2015)

NOVEMBER 17, 2015

[V. GOPALA GOWDA AND AMITAVA ROY, JJ.]

Service Law – Misconduct – Penalty – Allegation against the appellant that he filled the loan application of a borrower and influenced the manager of another branch of the bank to sanction loan despite knowing that the borrower had earlier taken loan from his branch and thereby appellant failed to protect the interests of the bank – Meanwhile, in the disciplinary proceedings against the manager of the other branch, authority awarded minor penalty of one stage lower in time scale for a period of one year – However in case of appellant, order of dismissal passed – Appellant filed writ petition – Single judge of High Court found that there was unfairness in the enquiry as the list of witnesses and the copies of the documents were not given to the appellant and granted reinstatement with all service benefits and back wages to the extent of 25% – On challenge by respondents, Division Bench modified the punishment by imposing penalty of reduction of one increment for one year and reinstatement without back wages since he was already drawing pension – On appeal, held: It was a case of denial of fair opportunity to the appellant in gross violation of the procedural requirements of the Service Rules – The finding of the enquiry officer on the charges was vitiated on account of non-compliance of the statutory Rules and principles of natural justice – In the absence of evidence, the order of reinstatement without full back wages was unjustified in law – High Court should have made deduction of the amount of

A *pension received by the appellant after awarding full back wages for the period in question – Order of Division Bench set aside and order of single judge restored and modified with regard to award of reinstatement with full back wages.*

B *State Bank of India and Ors. vs. K.P. Narayanan Kutty* **2003 (1) SCR 391 : (2003) 2 SCC 449**; *S. A. Venkataraman vs. U.O.I. and Anr.* **AIR 1954 SC 375 : 1954 SCR 1150**; *Union of India vs. T.R. Varma* **AIR 1957 SC 882 : 1958 SCR 499**; *Punjab National Bank vs. Kunj* **1998 (1) Suppl.**

C **SCR 22 : (1998) 7 SCC 84**; *William Vincent Vitarelli v. Fred A. Seaton, Secretary of the Interior,* **et al 359 U.S. 535 (1959)**; *R.D. Shetty vs. International Airport Authority* **1979 (3) SCR 1014 :1979 (3) SCC 489**; *Deepali Gundu*

D *Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D. ED.) & Ors.* **2013 (9) SCR1 : (2013) 10 SCC 324 – referred to.**

Case Law Reference

E **2003 (1) SCR 391**	**referred to**	**Para 11**
AIR 1954 SC 375	**referred to**	**Para 11**
1958 SCR 499	**referred to**	**Para 12**
1998 (1) Suppl. SCR 22	**referred to**	**Para 16**
F **(359 U.S. 535 (1959)**	**referred to**	**Para 17**
979 (3) SCR 1014	**referred to**	**Para 18**
2013 (9) SCR 1	**referred to**	**Para 19**

G CIVIL APPELLATE JURISDICTION: Civil Appeal No. 13448 of 2015.

From the Judgment and Order dated 26.11.2014 of the High Court at Guahati Principal Seat at Guahati in W. A. No. 192 of 2014.

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Vijay Hansaria, Sr. Adv., Shailesh Madiyal, Gautam Prabhakar, Ms. Sneha K., Avnish Pandey, Advs. for the Appellant.

Gaurav Agrawal, Adv., for the Respondents.

The following Order of the Court was passed:

ORDER

1. Leave granted.

2. This appeal by special leave is filed by the appellant as he is aggrieved of the judgment and order dated 26.11.2014 passed by the Division Bench of the Gauhati High Court at Guwahati in Writ Appeal No. 192 of 2014 holding that there was no negligence on the part of the respondent (appellant herein) in disbursing the loan and he had taken appropriate steps, however, the other Manager of that Branch, who has been found guilty and levied with lesser penalty, therefore, the minor penalty would visit the respondent (appellant herein). Accordingly, the Division Bench of the High Court modified the penalty of dismissal to one of reduction of one increment for one year and further directed the appellant to be reinstated in service with no back wages for the reason that he had already been taking pension for the period and further clarified that the period of dismissal and the reinstatement shall be reckoned as a continuity of service for the purpose of pension and, accordingly, partly allowed the Writ Appeal preferred by the Bank.

3. Aggrieved of the aforesaid portion of the finding and the order of penalty imposed by the Division Bench of the High Court by setting aside the order of reinstatement with 25% back wages awarded by the learned Single Judge of the High Court in the Writ Petition filed by the appellant questioning the correctness of the impugned judgment and order, the present appeal is filed by the appellant, urging various legal contentions.

A 4. Brief facts necessary to appreciate the rival legal contentions urged on behalf of the parties to the lis are that the disciplinary proceedings were initiated against the appellant by issuing chargesheet dated 28.10.2004 alleging that he had influenced the Branch Manager of Hallydayganj Branch, against B whom the disciplinary proceedings were initiated and upon finding him guilty, minor penalty of lesser punishment was imposed on him for being negligent in giving the loans. In the said proceedings, the appellant herein was Defence Representative of the said Manager Mr. Pradeep Kumar Das. C The brief allegation contained in the chargesheet was that he had influenced the Branch Manager of Hallydayganj Branch to sanction cash credit facility sans disclosing earlier loan of Abdul Kuddus Mondal and, therefore, he had failed to protect the interests of the Bank. The second charge was about illegal D grant of cash facility. The said charges were divided into six allegations, which were extracted in the chargesheet. The said charges were denied by the appellant herein, therefore, the enquiry officer was appointed by the disciplinary authority to enquire into the allegations made against him.

E 5. The enquiry officer found that allegation Nos. 1, 2, 4 and 6 are proved, however, allegation No. 3 is partly proved and allegation No. 5 is not proved. He found that the loan application of the loanee was written by the appellant herein despite the fact that it was within his knowledge that the F borrower had earlier taken loan from his Branch and even then the appellant has helped the borrower to borrow more money from the neighbouring branch without disclosing the earlier transaction with the appellant's Branch.

G 6. The disciplinary authority has taken the view that charge Nos. 3 and 5 also held to be proved from the material on record without giving an opportunity to the appellant herein to show cause as to why the finding on those charges should not be reversed. The disciplinary authority forwarded to the appellant herein the enquiry report after taking the view that charge Nos.

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3 and 5 were proved for which the appellant submitted a reply on 22.11.2005.

7. In the meantime, in the disciplinary proceedings against Mr. Pradeep Kumar Das, Branch Manager of Hallydayganj Branch, where the borrower got filled up the application through the appellant and taken the loan without disclosing the borrowing/loan from the appellant's Branch of the Bank, the disciplinary authority, after concluding the enquiry against Mr. Pradeep Kumar Das, awarded penalty of one stage lower in the time-scale for a period of one year without cumulative effect. The penalty was imposed holding that the same will not adversely affect the pension of the said delinquent Manager Mr. Pradeep Kumar Das.

8. On 05.01.2006, the disciplinary authority, not accepting the reply submitted by the appellant herein, imposed the penalty of reduction of basic pay for 3 years. The Chief Vigilance Officer ("C.V.O.") was of the view that there was extreme mala fides on the part of the appellant as he had acted against the interests of the Bank, therefore, the stiff major penalty was directed to be imposed upon him vide Order dated 01.02.2006. Accordingly, the Appointing Authority passed the Order dated 24.04.2006 for removal of the appellant from service. Against the said order of removal, the appellant filed an appeal before the Appellate Authority, which came to be rejected vide Order dated 18.11.2006 sans examining the merits of the case and considering the legal contentions urged in the memorandum of appeal. On 07.02.2007, the respondent- Bank sanctioned pension and the appellant is drawing pension since then.

9.Aggrieved of the order of the dismissal which is affirmed by the Appellate Authority, the appellant herein filed a writ petition before the Gauhati High Court in the month of March, 2009. The Bank filed its affidavit by way of reply in the said writ petition. After hearing both the parties, the learned Single Judge of the High Court by Order dated 04.03.2014

A allowed the writ petition and granted reinstatement with all service benefits and payment of back wages to the extent of 25%. The learned Single Judge while granting such relief adverted to the rival legal contentions has recorded a finding of fact holding that there was unfairness in the enquiry as the B list of witnesses and the copies of documents were not given to the appellant and the finding of the enquiry officer was held to be perverse.

10. The correctness of the said judgment and order of the learned Single Judge of the High Court was challenged in C the Writ Appeal filed by the respondents herein before the Gauhati High Court. The Division Bench of the High Court after considering the rival legal contentions substituted the order of the learned Single Judge by imposing penalty of reduction of one increment for one year and reinstatement without back D wages since he was already drawing pension. The said order passed by the Division Bench of the High Court modifying the order of the learned Single Judge is impugned in this civil appeal by the appellant, urging various legal contentions.

E 11. It is contended by Mr. Vijay Hansaria, learned senior counsel for the appellant, that the finding is recorded by the learned Single Judge in the order passed in writ petition after considering the rival legal contentions that the statutory requirements to conduct fair and reasonable enquiry, list of F witnesses and copies of documents were not furnished to the appellant-officer, thereby conducting the enquiry proceedings are vitiated and the findings recorded against the appellant and the charges are perverse. The said finding is placed on undisputed fact of non furnishing of list of witnesses and copies of documents which are the statutory requirements for conduct G of disciplinary proceedings. The Division Bench of the High Court has erroneously set aside the same without there being any evidence on record that the appellant is negligent and other acts of misconduct in discharging his duties and reversed the

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finding of the learned Single Judge in holding that the conduct of the enquiry is not fair and reasonable and there is non-compliance of the principles of natural justice in conducting enquiry thereby grave prejudice has been caused to the appellant herein. The learned Single Judge has also referred to the judgment of this Court in the case of State Bank of India and Ors. vs. K.P. Narayanan Kutty, (2003) 2 SCC 449, while recording such a finding holding that the finding of fact recorded by the enquiry officer that the charges are proved is perverse in law. Learned senior counsel further contended that the disciplinary authority has to follow the procedural safeguards provided under the disciplinary Regulations. Not considering the reply to the chargesheet given to the appellant herein by the disciplinary authority, the action that would be taken upon such disciplinary proceedings by recording the finding by the enquiry officer holding that the charges are proved, on the basis of evidence of the witnesses whose names were not notified to the appellant and copies of documents were not furnished to him which were relied upon by the enquiry officer, thereby the case of the appellant was prejudiced, therefore, the same will have serious civil consequences upon the Service Conditions of the appellant, if the minor or major penalties are imposed, including the order of removal that is passed by the disciplinary authority. Therefore, the learned senior counsel submitted that the Division Bench without application of mind and assigning valid and cogent reasons, not noticing the undisputed facts that list of witnesses and copies of documents were not provided to the appellant in the enquiry proceeding, it has erroneously set aside the order passed by the learned Single Judge, who has assigned valid and cogent reasons in rendering the finding of fact holding that the enquiry was not fair and the same is not in accordance with the statutory requirements of the Conduct and Disciplinary Regulations and in compliance with the principles of natural justice. The said conclusion arrived at by the learned Single Judge is supported

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A by the judgments of this Court rendered in a catena of cases, particularly in the case of S. A. Venkataraman vs. U.O.I. and Anr., AIR 1954 SC 375, this Court observed as follows:

> "14. As the law stands at present, the only purpose, for which an enquiry under Act 37 of 1850 could be
B made, is to help the Government to come to a definite conclusion regarding the misbehavior of a public servant and thus enable it to determine provisionally the punishment which should be imposed upon him prior to giving him a reasonable
C opportunity of showing cause, as is required under article 311(2) of the Constitution. An enquiry under this Act is not at all compulsory and it is quite open to the Government to adopt any other method if it so chooses. It is a matter of convenience merely
D and nothing else. It is against this background that we will have to examine the material provisions of the Public Servants (Inquiries), Act of 1850 and see whether from the nature and result of the enquiry which the Act contemplates it is at all possible to
E say that the proceedings taken or concluded under the Act amount to prosecution and punishment for a criminal offence."

12. In Union of India vs. T.R. Varma, AIR 1957 SC 882,
F this Court observed that if a person whose services have been wrongfully terminated is entitled to institute an action to vindicate his rights.

> "6. At the very outset, we have to observe that a writ petition under Art. 226 is not the appropriate
G proceeding for adjudication of disputes like the present. Under the law, a person whose services have been wrongfully terminated, is entitled to institute an action to vindicate his rights, and in such an action, the Court will be competent to award all

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the relief's to which he may be entitled, including some which would not be admissible in a writ petition. A

It is well-settled that when an alternative and equally efficacious remedy is open to a litigant, he should be required to pursue that remedy and not invoke the special jurisdiction of the High Court to issue a prerogative writ. It is true that the existence of another remedy does not affect the jurisdiction of the Court to issue a writ; but, as observed by this Court in Rashid Ahmed vs. Municipal Board, Kairana, [1950] S.C.R. 566 (AIR 1950 SC 163(A) "the existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writs ". Vide also K. S. Rashid and Son vs. The Income-tax Investigation Commission, 1954 SCR 738 at p.747: (AIR 1954 SC 207 at p. 210)(B). And where such remedy exists, it will be a sound exercise of discretion to refuse to interfere in a petition under Art. 226, unless there are good grounds therefor. None such appears in the present case. On the other hand, the point for determination in this petition whether the respondent was denied a reasonable opportunity to present his case, turns mainly on the question whether he was prevented from cross- examining the witnesses, who gave evidence in support of the charge. B C D E F

That is a question on which there is a serious dispute, which cannot be satisfactorily decided without taking evidence. It is not the practice of Courts to decide questions of that character in a writ petition, and it would have been a proper exercise of discretion in the present case if the learned Judges had referred the respondent to a suit. G H

A In this appeal, we should have ourselves adopted that course, and passed the order which the learned Judges should have passed. But we feel pressed by the fact that the order dismissing the respondent having been made on September 16, 1954, an B action to set it aside would now be time-barred. As the High Court has gone into the matter on the merits, we propose to dispose of this appeal on a consideration of the merits.

10. Now, it is no doubt true that the evidence of the C respondent and his witnesses was not taken in the mode prescribed in the Evidence Act; but that Act has no application to enquiries conducted by tribunals, even though they may be judicial in character. The law requires that such tribunals D should observe rules of natural justice in the conduct of the enquiry, and if they do so, their decision is not liable to be impeached on the ground that the procedure followed was not in accordance with that, which obtains in a Court of law.

E Stating it broadly and without intending it to be exhaustive, it may be observed that rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on F which he relies, that the evidence of the opponent should be taken in his presence, and that he should be given the opportunity of cross-examining the witnesses examined by that party, and that no materials should be relied on against him without G his being given an opportunity of explaining them.

If these rules are satisfied, the enquiry is not open to attack on the ground that the procedure laid down in the Evidence Act for taking evidence was not strictly followed."

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13. Learned senior counsel for the appellant vehemently challenged that the appellant is also aggrieved of the non-grant of back wages by the Division Bench and setting aside the grant of 25% back wages awarded by the learned Single Judge and imposing penalty of reduction of one increment for one year. The said finding is recorded without there being any evidence on record. He contended that because pension amount does not substitute the grant of back wages, particularly in the absence of any material with the respondent-Bank, whatsoever, to deny the back wages, as he was gainfully employed from the date of dismissal and till passing of the impugned judgment and order by the learned Single Judge and the Division Bench. Further the learned Single Judge and the Division bench have not given any reason, whatsoever, in depriving the back wages and imposing the penalty of withholding increment without there being any evidence, therefore, the same is contrary to the law laid down by this Court in a catena of cases.

14. Per contra, Mr. Gaurav Agrawal, learned counsel appearing for the respondents, sought to justify the order passed by the Division Bench of the High Court and submitted that the correctness of the impugned judgment and order of the Division Bench is challenged on various grounds by filing a Special Leave Petition and further, alternatively, contended that, even assuming the Special Leave Petition cannot be entertained by this Court, even then the Division Bench of the High Court in exercise of its extraordinary and supervisory jurisdiction has done justice to the parties in imposing minor penalty and not granting back wages while awarding reinstatement keeping in view that the appellant has been paid the pension since 07.02.2007, therefore, he prayed for dismissal of the Civil Appeal filed by the appellant seeking for the reliefs, as stated above.

15. We have given our thoughtful considerations to the rival contentions urged by the learned counsel for the parties

A to the lis and have carefully perused the materials on the record and examined the impugned Orders passed by both the learned Single Judge and the Division Bench of the High Court.

16. The chargesheet was issued on 28.10.2004 against the appellant making 6 allegations against him and it is B undisputed fact that list of witnesses and the copies of documents were not furnished to the appellant. Further, the disciplinary authority has reversed the findings on charge Nos. 3 and 5 without giving an opportunity to the appellant to show cause in the matter and, thereafter, the order of removal was C passed by the Appointing Authority on the advice of the C.V.O. vide his opinion dated 01.02.2006 and further it is brought on record that similarly placed person, namely, Mr. Pradeep Kumar Das, the Manager of Hallydayganj Branch, who has loaned the loan to one Mr. Tapan Kumar Sangma, in his case they have D imposed lesser punishment of withholding one increment thereby making discrimination in differently treating with the appellant herein, which is violation of Article 14 of the Constitution of India. Further, it is brought to our notice by Mr. Vijay Hansaria, learned senior counsel for the appellant that E the loan amount lent by Mr. Pradeep Kumas Das, the Manager of Hallydayganj Branch, the same has been cleared by Mr. Tapan Kumar Sangma with interest by paying Rs. 1,61,000/-. The overdraft is beyond the permissible limit is held to be not proved. The finding of the learned Single Judge while F examining the entire enquiry report, on which strong reliance is placed by the respondent-Bank, the learned Single Judge in exercise of his extraordinary and Original Jurisdiction examined the case on merits and referred to Rule 68(1)(IX)(a) of the State Bank of India Service Rules, wherein it mandates G the disciplinary authority to furnish the delinquent the list of documents through which the charges are proposed to be proved. It is the case of the appellant that such a list of witnesses and copies of documents were not furnished either by the disciplinary authority or the enquiry officer which are vital

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aspects of the case, based on which the finding is recorded on the charges by the enquiry officer, referred to supra, holding that the same are proved against the appellant. Further, with regard to lending of loan in favour of Mr. Tapan Kumar Sangma, the learned Single Judge examined and recorded the finding of fact stating that a sum of Rs. 2,13,595 was recovered from the said loanee and it is stated that the Power of Attorney furnished by Abdul Kuddus Mondal was never utilized to recover the balance loan due of Rs. 15,450/-, which will not be the negligence on the part of the appellant, however, it will be negligence of those responsible for loan recovery, a small unpaid amount had to be written off by the Bank. Further, with reference to the opinion/report Exhibit D-4 furnished in support of the disbursement of the loan clearly disclosed the previous loans of the borrowers from the Phulbari Branch but surprisingly neither the enquiry officer nor the disciplinary authority or the C.V.O. had taken note of the said opinion/report, which establishes the bona fide of the appellant's action in rendering assistance to his neighbouring Branch Manager to meet the target for disbursal of contract finance by the Hallydayganj Branch Manager. Upon the contention urged on behalf of the appellant that taking multiple loans is not prohibited in the S.B.I. and contract finance were sanctioned for the 2 borrowers by the Hallydayganj Branch Manager with full knowledge of the previous loans taken by them from the Phulbari Branch, the learned Single Judge has referred to non-furnishing of the control return file of the Branch as well as the Bank's Ledger sheets of the J.N. High School account and Mr. Tapan Kumar Sangma accounts to the appellant at the time of conducting enquiry on the charges to defend the case by the appellant effectively, the same was projected as cause for serious prejudice to the case of the appellant as the said documents established that the borrowers had availed similar overdraft facility earlier and, in any case, this was within the permissible discretionary capacity of the Manager of the Phulbari Branch. The learned Single Judge on the basis of reliance placed by

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A the appellants's counsel upon the decision of this Court in the case of State Bank of India & Ors. vs. K.P. Narayanan Kutty, (supra), wherein it has been held the the non compliance of the statutory requirements as per the aforesaid rules, the action of the disciplinary authority is inconsistent with the principles
B of natural justice and the settled principles of service jurisprudence. In the said case, while concurring with the decision of this Court in the case of Punjab National Bank vs. Kunj, (1998) 7 SCC 84, para 19 was quoted, which reads as follows:

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> "19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then
> D before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing
> E its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already
> F observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against
> G the officer."

17. While dealing with the similar fact situation in William Vincent Vitarelli v. Fred A. Seaton, Secretary of the Interior, et al (359 U.S. 535 (1959), the learned Judge observed as follows:

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"An executive agency must be rigorously held to the standards by which it professes its action to be judged. See Securities & Exchange Commission v. Chenery Corp., 318 U.S. 80, 87—88, 63 S.Ct. 454, 459, 87 L.Ed.

626. Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed. See Service v. Dulles, 354 U.S. 363, 77 S.Ct. 1152, 1 L.Ed.2nd 1403.

This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with that sword."

18. The said judgment in Vitarelli's case was referred to by this Court in R.D. Shetty vs. International Airport Authority, 1979 (3) SCC 489, the relevant extract of which is quoted hereinunder:

"10.....It is a well-settled rule of administrative law that an executive authority must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe those standards on pain of invalidation of an act in violation of them. This rule was enunciated by Mr. Justice Frankfurter in Viteralli v. Saton where the learned Judge said:

'An executive agency must be rigorously held to the standards by which it professes its action to be judged. Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed. This judicially evolved rule of

A administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with the sword.'

This Court accepted the rule as valid and applicable in India in A.S. Ahluwalia v. Punjab and in subsequent decision given in Sukhdev v. Bhagatram, Mathew, J., quoted the above-referred observations of Mr Justice Frankfurter with approval. It may be noted that this rule, though supportable also as an emanation from Article 14, does not rest merely on that article. It has an independent existence apart from Article 14. It is a rule of administrative law which has been judicially evolved as a check against exercise of arbitrary power by the executive authority. If we turn to the judgment of Mr Justice Frankfurter and examine it, we find that he has not sought to draw support for the rule from the equality clause of the United States Constitution, but evolved it purely as a rule of administrative law. Even in England, the recent trend in administrative law is in that direction as is evident from what is stated at pp. 540-41 in Prof Wade's "Administrative Law", 4th Edn. There is no reason why we should hesitate to adopt this rule as a part of our continually expanding administrative law. Today with tremendous expansion of welfare and social service functions, increasing control of material and economic resources and large scale assumption of industrial and commercial activities by the State, the power of the executive Government to affect the lives of the people is steadily growing. The attainment of socio-economic justice being a conscious end of State policy, there is a vast and inevitable increase in the frequency with which ordinary citizens come into relationship of direct

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encounter with State power-holders. This renders it necessary to structure and restrict the power of the executive Government so as to prevent its arbitrary application or exercise....."

19. Further, the learned Single Judge has examined the opinion sought for from the C.V.O. by the disciplinary authority on the penalty to be imposed upon the appellant, the C.V.O. has suggested the major penalty of removal, the same is inconsistent with the norms applicable in the Bank's disciplinary proceedings. The learned Single Judge examined the action of the disciplinary authority in relation to the Branch Manager Hallydayganj Branch that facilitating the second loan to the loanee, Mr. Tapan Kumar Sangma, closely known to the said Manager, the same allegation has been treated as a minor lapse, but in the context of the appellant they have imposed major penalty, which is a clear case of discrimination. The appellant's admission with regard to writing the loan applications of Abdul Kuddus Mondal and Hasanuzzaman to enable them to avail contract finance from the Hallydayganj Branch, the contention urged on behalf of the appellant is examined and held that the said applicants had availed loans to the extent of Rs. 10,000/- and Rs. 15,000/- respectively from the Phulbari Branch of the S.B.I., projecting that minimal loss and both the loans were cleared of, assuming that the disciplinary proceedings were just and fair, learned senior counsel for the appellant argued that the minor punishment proposed by the disciplinary authority of pay reduction should have been considered reasonable in the context of the charges. The learned Single Judge, after considering the opinion/report DEX-4, held that the enquiry officer did not base his conclusion on any incriminatory materials and in fact the report DEX-4 was totally ignored which would have established the innocence of the delinquent and further held that the enquiry officer conducted the enquiry sans furnishing the copies of crucial documents and furnishing the list of witnesses. It appears to

A be a case of denial of fair opportunity to the delinquent in gross violation of the procedural requirements of the Service Rules. That finding is based on factual, undisputed facts and in conformity with the law, therefore, in our opinion, the learned Single Judge has rightly held that the enquiry conducted against
B the appellant was unfair and the findings recorded on the charges are perverse in law. While recording such a finding the learned Single Judge has also proceeded to hold that the enquiry was found to be vitiated for the reason that the then Branch Manager Mr. Pradeep Kumar Das of Hallydayganj
C Branch was never examined in the enquiry and without his evidence, conclusion on culpability of the delinquent on the loans disbursed by the Branch Manager of Hallydayganj to the loanee could not have been reasonably reached by anyone, including the enquiry officer and imposing major penalty on the
D basis of the C.V.O. without there being any legal evidence on record, the enquiry was not properly conducted due to non-furnishing the list of witnesses and copies of the documents, therefore, the exercise of power on the basis of the C.V.O.'s opinion for removal of the appellant from service entail serious
E consequences. Therefore, placing reliance on K.P. Narayanan Kutty (supra), the learned Single Judge held that the action taken in accepting the C.V.O.'s view and passing order of removal is arbitrary, unreasonable and gross violation of Article 14 of the Constitution of India. Having said so, the learned
F Single Judge has set aside the order of removal and granted reinstatement of the appellant with 25% back wages in the absence of any proof to show that he was gainfully emplcyed from the date of order of removal till the date of the decision rendered by the learned Single Judge and the Division Bench
G of the High Court, therefore, the same is contrary to the law laid down by this Court in the case of Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D. ED.) & Ors., (2013) 10 SCC 324, para 38 is quoted hereinunder:

"38. The propositions which can be culled out from
H the aforementioned judgments are:

i) In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

ii) The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the Court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.

iii) Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.

iv) The cases in which the Labour Court/Industrial Tribunal exercises power under Section 11-A of the

A Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/ workman is consistent with the rules of natural justice and/or certified standing orders, if any, but holds that the punishment was disproportionate to
B the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false
C charge, then there will be ample justification for award of full back wages.

v) The cases in which the competent Court or Tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the
D principles of natural justice or is guilty of victimizing the employee or workman, then the Court or Tribunal concerned will be fully justified in directing payment of full back wages. In such cases, the superior Courts should not exercise power under Article 226
E or 136 of the Constitution and interfere with the award passed by the Labour Court, etc., merely because there is a possibility of forming a different opinion on the entitlement of the employee/ workman to get full back wages or the employer's
F obligation to pay the same. The Courts must keep in view that in the cases of wrongful/illegal termination of service, the wrongdoer is the employer and the sufferer is the employee/workman and there is no justification to give a premium to
G the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages.

vi) In a number of cases, the superior Courts have interfered with the award of the primary
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adjudicatory authority on the premise that finalization of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The Courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer, i.e., the employee or workman, who can ill afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases it would be prudent to adopt the course suggested in Hindustan Tin Works Private Limited vs. Employees of Hindustan Tin Works Private Limited, (1979) 2 SCC 80.

vii) The observation made in J.K. Synthetics Ltd. v. K.P. Agrawal, (2007) 2 SCC 433 that on reinstatement the employee/workman cannot claim continuity of service as of right is contrary to the ratio of the judgments of three Judge Benches referred to hereinabove and cannot be treated as good law. This part of the judgment is also against the very concept of reinstatement of an employee/ workman."

20. For the reasons stated supra, we have examined the case threadbare on the basis of the material placed on record and rival legal contentions urged on behalf of the parties, we

A hold that the finding of the enquiry officer on the charges is vitiated on account of non-compliance of the statutory Rules and the principles of natural justice. In the absence of evidence, the order of reinstatement sans full back wages is unjustified in law. At best, the High Court should have made deduction of
B the amount of pension received by the appellant after awarding full back wages for the period in question. In not doing so, the orders of the learned Single Judge and the Division Bench of the High Court are liable to be set aside with regard to non-grant of full back wages. Accordingly, we set aside the Orders
C of the Division Bench imposing the penalty of reduction of one increment to the appellant for one year and restore and modify the order of the learned Single Judge with regard to award of reinstatement with full back wages for the period from the date of removal till the date of the appellant attaining the age of
D superannuation, on the basis of periodical revisions of salary to the appellant herein and deduct the pension amount from the back wages payable to the appellant. The same shall be paid to the appellant within eight weeks from the date of receipt of the copy of this order.

E 21. The appeal is allowed in the aforesaid terms, directions and observations.

Devika Gujral Appeal allowed.

END OF 2015

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