

CASE NO.:
Appeal (civil) 2001 of 2006

PETITIONER:
United Bank of India

RESPONDENT:
Sidhartha Chakraborty

DATE OF JUDGMENT: 27/08/2007

BENCH:
Dr. ARIJIT PASAYAT & D.K. JAIN

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO. 2001 OF 2006

Dr. ARIJIT PASAYAT, J.

1. Challenge in this appeal is to the judgment of a Division Bench of the Guwahati High Court dismissing the Writ Appeal filed by the appellant. By the said Writ Appeal the appellant-Bank had questioned correctness of the judgment rendered by a learned Single Judge who held that the order of dismissal was void for omission on the part of the appellant to file application under Section 33(2)(b) of the Industrial Disputes Act, 1947 (in short the 'Act').

2. Background facts sans unnecessary details are as follows:

The respondent-Sidhartha Chakraborty was working as a Cash Clerk in the commercial wing of the appellant-bank at Ulubari branch at Guwahati. A disciplinary proceeding was initiated against him for commission of irregularities and accordingly, charge sheet was served on him on different counts relating to fictitious debit entries in some saving-bank accounts resulting in misappropriation. On conclusion of the departmental proceedings, accepting the findings of the enquiry, the respondent was dismissed from service by an order dated 20.12.1985. It was indicated in the dismissal order that in view of the pendency of an industrial dispute before the Assistant Labour Commissioner, Central Kolkatta, an application under Section 33(2)(b) of the Act was being filed for approval of the action taken by the appellant Bank. The respondent raised an industrial dispute before the Regional Labour Commissioner (Central), Guwahati for his reinstatement with full back wages challenging the legality and validity of the order of dismissal. Eventually, on failure of the re-conciliation proceedings, the Government of India in the Ministry of Labour, in exercise of the powers conferred under Section 10 of the Act referred the matter to the Industrial Tribunal at Guwahati. The reference was on the question of legality and validity of the order of dismissal pending the proceedings in the Labour Court for non compliance of the provisions of Section 33(2)(b) of the Act. The Learned Tribunal on conclusion of the proceedings held that the enquiry was in full compliance of the prescribed procedures and the principles of natural justice and, therefore, the imposition of the punishment of dismissal in view of the series of misappropriate and irregularities is justified. Aggrieved, the respondent filed Writ Petition No.635 of 2001 controverting the

award passed by the Presiding Officer, Industrial Tribunal, Guwahati in Reference case No.12 (C) of 1997 passed on 20.1.2000.

3. Before the learned Single Judge the only question raised was that the appellant-Bank had in fact filed application under Section 33(2)(b) of the Act for approval of the action taken by it in dismissing the respondent. The appellant-Bank took the stand that it was not necessary because the provisions of Section 33(2)(b) of the Act were not mandatory and it relied on a decision of this Court in M/s Punjab Beverages Pvt. Ltd. Chandigarh v. Suresh Chand and Anr. (1978 (2) SCC 144). Learned Single Judge relying on a subsequent decision of this Court in Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. v. Ram Gopal Sharma (2002 (2) SCC 244) held that the decision in Punjab Beverages's case (supra) cannot have any application having been over-ruled in Jaipur Zila's case (supra).

4. Stand of the appellant was that the principles of doctrine of prospective over-ruling would be applicable as the decision in Punjab Beverages's case (supra) was holding the field "at the time the action was taken". This plea was negatived by learned Single Judge who allowed the writ application filed by the respondent. The Division Bench held that the learned Single Judge was justified in allowing the Writ Petition. There was no indication in Jaipur Zila's case (supra) that the doctrine of prospective over-ruling was applied. The learned Single Judge's order that the respondent would be entitled to re-instatement with full back wages was upheld.

5. Learned counsel for the appellant-bank re-iterated the stand taken before the learned Single Judge and the Division Bench. There is no appearance of the respondent in spite of service of notice.

6. In Jaipur Zila's case (supra) it was inter-alia observed as follows:

"13 The proviso to Section 33 (2) (b), as can be seen from its very unambiguous and clear language is mandatory. This apart, from the object of Section 33 and in the context of the proviso to Section 33 (2) (b), it is obvious that the conditions contained in the said proviso are to be essentially complied with. Further, any employer who contravenes the provisions of Section 33 invites a punishment under Section 31(1) with imprisonment for a term which may extend to six months or with fine which may extend to Rs.1000 or with both. This penal provision is again a pointer of the mandatory nature of the proviso to comply with the conditions stated therein. To put it in another way, the said conditions being mandatory, are to be satisfied if an order of discharge or dismissal passed under Section 33 (2) (b) is to be operative. If an employer desires to take benefit of the said provision for passing an order of discharge or dismissal of an employee, he has also to take the burden of discharging the statutory obligation placed on him in the said proviso. Taking a contrary view that an order of discharge or dismissal passed by an employer in contravention of the mandatory conditions contained in the proviso

does not render such an order inoperative or void, defeats the very purpose of the proviso and it becomes meaningless. It is well settled rule of interpretation that no part of statute shall be construed as unnecessary or superfluous. The proviso cannot be diluted or disobeyed by an employer. He cannot disobey the mandatory provision and then say that the order of discharge or dismissal in contravention of Section 33 (2) (b) is not void or inoperative. He cannot be permitted to take advantage of his own wrong. The interpretation of statute must be such that it should advance the legislative intent and serve the purpose for which it is made rather than to frustrate it. The proviso to Section 33 (2) (b) affords protection to a workman to safeguard his interest and it is a shield against victimization and unfair labour practice by the employer during the pendency of industrial dispute when the relationship between them is already strained. An employer cannot be permitted to use the provision of Section 33 (2) (b) to ease out a workman without complying with the conditions contained in the said proviso for any alleged misconduct said to be unconnected with the already pending industrial dispute. The protection afforded to a workman under the said provision cannot be taken away. If it is to be held that an order of discharge or dismissal passed by the employer without complying with the requirements of the said proviso is not void or inoperative, the employer may with impunity discharge or dismiss a workman."

7. As has been noted in the said judgment, the proviso to Section 33(2)(b) of the Act affords protection to a workman to safeguard his interest and it is in the nature of a shield against victimization and unfair labour practice by the employer during pendency of an industrial dispute. That being so, the judgment of the learned Single Judge as affirmed by the Division Bench does not suffer from any infirmity.

8. An alternative plea was raised by learned counsel for the appellant who stated that the learned Single Judge and the Division Bench were not justified in directing payment of full back wages. This plea needs consideration.

9. In P.G.I. of Medical Education and Research, Chandigarh v. Raj Kumar (JT 2001 (1) SC 336), this Court found fault with the High Court in setting aside the award of the Labour Court which restricted the back wages to 60% and directed payment of full back wages. It was observed thus:

"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."

10. Again at paragraph 12, this Court observed:
"Payment of back wages having a discretionary element involved in it has to be dealt with, in the facts and circumstances of each case and no straitjacket formula can be evolved, though, however, there is statutory sanction to direct payment of back wages in its entirety."

11. The position was reiterated in *Hindustan Motors Ltd. v. Tapan Kumar Bhattacharya and another* (2002 (6) SCC 41), *Indian Railway Construction Co. Ltd. v. Ajay Kumar* (2003 (4) SCC 579), *M.P. State Electricity Board v. Jarina Bee (Smt.)* (2003 (6) SCC 141) and *Kendriya Vidyalaya Sangathan and Anr. v. S.C. Sharma* (2005 (2) SCC 363).

12. Considering the peculiar facts of the case and the background in which the disciplinary action was taken against the respondent, and the position in law as stood at the relevant time the order of dismissal was passed, the quantum of back wages is restricted to Rupees two lakhs to be paid within a period of four weeks from today. If any amount has already been paid, the same shall be deducted from the amount directed to be paid.

13. Learned counsel for the appellant also submitted that liberty may be granted to the bank to take action in terms of Section 33(2)(b) of the Act. Neither the learned Single Judge nor the Division Bench has dealt with desirability to give such liberty. Considering the background facts as noted above, we feel this is a fit case where such liberty can be granted. In other words, the appellant, if so advised, may take action in terms of Section 33(2)(b) of the Act.

14. The appeal is allowed to the aforesaid extent with no order as to costs.