REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No.1841 OF 2010

M.L. Singla ....Appellant(s)

VERSUS

Punjab National Bank and Anr. ...Respondent(s)

J U D G M E N T

Abhay Manohar Sapre, J.

1) This appeal is directed against the final judgment and order dated 23.08.2007 passed by the High Court of Punjab and Haryana at Chandigarh in C.W.P. No.16286 of 2006 whereby the Division Bench of the High Court allowed the writ petition filed by respondent No.1-Bank and quashed the award dated 30.05.2006 passed by the Presiding Officer, Central

Government Industrial Tribunal-cum-Labour Court, New Delhi in I.D. No.103/98.

2) In order to appreciate the controversy involved in the appeal, it is necessary to set out the relevant facts in detail *infra*.

3) The appellant herein was the employee of respondent No.1-Punjab National Bank (PNB).

4) The appellant, at the relevant time, was working as Cashier in the PNB, Branch Office at Jind (Punjab).

5) On 21.03.1984, the appellant while on duty was found consuming liquor in the Branch. On the same day, respondent No.1-Bank also found shortage of Rs.35,000/- in daily cash balance on verification of the daily accounts.

6) Respondent No.1-Bank, therefore, decided to hold a departmental inquiry to probe the aforementioned two charges against the appellant as per the service rules.

7) A charge-sheet was accordingly served on the appellant on 11.10.1985. The charges read as under:

> **"1. That on 21.03.84 while you were working as Cashier Incharge at BO, Jind City, at about 01.30 p.m. you had asked Shri Hakikat Rai, Peon-cum-Guard to bring a glass of water and one Mathi which were provided to you by him and you took out a bottle of liquor from your drawer and consumed the same.**
>
> **2. That on 21.03.84 while you were working as Cashier Incharge, you withdrew a sum of Rs.4,28,124.74 on different occasions leaving Rs.1,40,900/- in the cash safe of the Bank after the said withdrawals. Besides this during normal business hours, you had also received Rs.16,473.98 as direct receipt from customers and Rs.1,08,690/- from the Asst. Cashier to meet the payment. In all, you made total payment of Rs.3,31,417.68 during the day and at the close of the day, there should have been a cash balance of Rs.2,21,871.04 with you. Besides this at closing of the day, you received Rs.95,448.35 on account of the balance of receipt made by the Assistant Cashier. Thus, including the cash in the cash safe total receipt made by Asstt. Cashier during the day of the closing balance should have been Rs.4,58,219.39 with you whereas the actual balance was only Rs.423,219.39 with you showing a shortage of Rs.35,000/- and thus you acted in a manner which is prejudicial to the interest of the Bank or gross negligence involving the Bank in serious loss. Further, on your request you were advance Rs.35,000/- from the suspense account to meet the shortage of**

Rs.35,000/- occurred on that day due to your gross negligence."

8) Respondent No.1-Bank on 06.12.1985 appointed an Enquiry Officer and the Presenting Officer. The appellant on being served with the charge-sheet submitted his reply on 29.10.1985. Respondent No.1-Bank and the appellant then participated in the enquiry and adduced evidence in support of their respective stands.

9) On 12.02.1987, the Enquiry Officer submitted his Enquiry Report. He held that both the charges are proved against the delinquent employee (appellant herein). The eventual conclusion on the two charges reads as under:

"CHARGE-I The charge that on 21.03.84, while working as Cashier Incharge, BO Jind City at about 01.30 p.m., Shri Singla asked Shri Hakikat Rai, Peon-cum,-Guard to bring a glass of water and one 'Mathi', which were provided to him and he took out a bottle of liquor from the drawer consumed the same, stands fully substantiated and hence, proved.

CHARGE-II The charge that on 21.03.84 at BO Jind, a shortage of Rs.35,000/- occurred in the cash handled by Shri M.L. Singla while working as Cashier Incharge due to gross negligence on his part, thus, causing bank a serious loss, also stands fully substantiated, hence, proved."

10) Respondent No.1 then sent a show cause notice along with the Enquiry Report on 25.07.1987 to the appellant proposing therein to inflict the punishment of dismissal from service. The appellant filed his reply. On 29.08.1987, the Competent Authority, on perusal of the Enquiry Report and the reply, concurred with the findings of the Enquiry Officer and accordingly passed a dismissal order dated 29.08.1987.

11) The appellant, felt aggrieved by his dismissal order, filed appeal before the Appellate Authority as provided in service rules. The Appellate Authority, by order dated 26.02.1988, dismissed the appeal finding no merit therein.

12) The appellant then approached the State Government praying for making an Industrial Reference to the Labour Court to decide the legality and correctness of his dismissal order under the Industrial Dispute Act, 1947 (hereinafter referred to as "the ID Act". The State Government acceded to the request of the appellant and accordingly made the following Reference on 16.08.1989 to the Labour Court under Section 10 of the ID Act:

> **"Whether the action of the management of Punjab National Bank in dismissing from service Shri M.L. Singla is justified? If not, to what relief is the workman entitled?"**

13) The Labour Court, on receipt of the Reference, issued notices to the parties. The parties filed their statements. The Labour Court then asked both the parties to adduce their evidence. Both the parties accordingly adduced their evidence.

14) By award dated 30.05.2006, the Labour Court answered the Reference in appellant's favour. It was

held that the finding of the Enquiry Officer on Charge-I and II is perverse and, therefore, it was set aside. It was further held that since no evidence was adduced by respondent No.1-Bank to prove that the appellant (employee) was gainfully employed elsewhere after his dismissal, he was entitled to claim 50% back wages along with the relief of reinstatement. With these findings, the Labour Court set aside the dismissal order dated 29.08.1987 and answered the Reference in appellant's favour. The Labour Court, however, did not decide the question as to whether the domestic enquiry is legal and proper.

15) Respondent No.1-Bank felt aggrieved and filed writ petition in the High Court. The High Court, by impugned order, allowed the writ petition and set aside the award of the Labour Court. As a consequence thereof, the dismissal order dated

29.08.1987 was held legal and proper and was accordingly upheld.

16) It is against this order, the employee has felt aggrieved and filed the present appeal by way of special leave in this Court.

17) Heard Mr. Daya Krishna Sharma, learned counsel for the appellant and Mr. Rajesh Kumar, leaned counsel for respondent No.1-Bank.

18) Having heard the learned counsel for the parties and on perusal of the record of the case, we find no good ground to interfere in the "conclusion" arrived at by the High Court, but on our reasoning mentioned *infra*.

18) It is necessary to examine the legality and correctness of the award of the Labour Court in the first instance and then the impugned order.

19) When we examine the award in the light of detailed facts set out above, we find that the Labour

Court committed more than one jurisdictional error in answering the Reference.

20) The first error was that it failed to decide the validity and legality of the domestic enquiry. Since the dismissal order was based on the domestic enquiry, it was obligatory upon the Labour Court to first decide the question as a preliminary issue as to whether the domestic enquiry was legal and proper.

21) Depending upon the answer to this question, the Labour Court should have proceeded further to decide the next question.

22) If the answer to the question on the preliminary issue was that the domestic enquiry is legal and proper, the next question to be considered by the Labour Court was whether the punishment of dismissal from the service is commensurate with the gravity of the charges or is disproportionate requiring interference in its quantum by the Labour Court.

23) If the answer to this question was that it is disproportionate, the Labour Court was entitled to interfere in the quantum of punishment by assigning reasons and substitute the punishment in place of the one imposed by respondent No.1-Bank. This the Labour Court could do by taking recourse to the powers under Section 11-A of the ID Act.

24) While deciding this question, it was not necessary for the Labour Court to examine as to whether the charges are made out or not. In other words, the enquiry for deciding the question should have been confined to the factors such as-what is the nature of the charge(s), its gravity, whether it is major or minor as per rules, the findings of the Enquiry Officer on the charges, the employee's overall service record and the punishment imposed etc.

25) If the Labour Court had come to a conclusion that the domestic enquiry is illegal because it was conducted in violation of the principles of natural

justice thereby causing prejudice to the rights of the employee, respondent No.1-Bank was under legal obligation to prove the misconduct (charges) alleged against the appellant (employee) before the Labour Court provided he had sought such opportunity to prove the charges on merits.

26) The Labour Court was then under legal obligation to give such opportunity and then decide the question as to whether respondent No.1-Bank was able to prove the charges against the appellant on merits or not.

27) If the charges against the appellant were held proved, the next question to be examined was in relation to the proportionality of the punishment given to the appellant.

28) If the charges against the appellant were held not proved, the appellant was entitled to claim reinstatement with back wages either full or partial

depending upon the case made out by the parties on the issue of back wages.

29) The second error was that the Labour Court called upon the parties to lead evidence on all the issues including the charge of misconduct in the first instance itself.

30) The third error committed by the Labour Court was that it proceeded to examine the findings of the Enquiry Officer on the charges like an Appellate Court, appreciated the evidence adduced before the Enquiry Officer and the one adduced before it and then came to a conclusion that the findings of the Enquiry Officer are perverse. This the Labour Court could not do.

31) Assuming that the Labour Court had the jurisdiction to direct the parties in the first instance itself to adduce evidence on merits in support of the charges yet, in our opinion, it was obligatory upon the Labour Court to first frame the preliminary issue

on the question of legality and validity of the domestic enquiry and confined its discussion only for examining the legality and propriety of the enquiry proceedings.

32) Depending upon the finding on the preliminary issue on the legality of the enquiry proceedings, the Labour Court should have proceeded to decide the next questions. The Labour Court while deciding the preliminary issue could only rely upon the evidence, which was relevant for deciding the issue of legality of enquiry proceedings but not beyond it.

33) In other words, the Labour Court failed to see that it would have assumed the jurisdiction to examine the charges on the merits only after the domestic enquiry had been held illegal and secondly, the employer had sought permission to adduce evidence on merits to prove the charges and on permission being granted he had led the evidence.

34) The fourth error was award of 50% back wages to the appellant. While awarding 50% back wages, the Labour Court did not examine the question as to whether the appellant had pleaded and proved with the aid of evidence that he was not gainfully employed after his dismissal from service.

35) In order to claim back wages, it was necessary for the appellant to plead and prove that he was not gainfully employed after his dismissal with the aid of evidence. Respondent No.1-Bank too was entitled to adduce evidence to prove otherwise. (**See- M.P. State Electricity Board vs. Jarina Bee(Smt.)**, (2003) 6 SCC 141, **G.M. Haryana Roadways vs. Rudhan Singh**, (2005) 5 SCC 591, **U.P. State Brassware Corporation vs. Uday Narain Pandey**, (2006) 1 SCC 479, **J.K. Synthetics Ltd. vs. K.P. Agrawal & Anr.**, (2007) 2 SCC 433, **Metropolitan Transport Corporation vs. V. Venkatesan**, (2009) 9 SCC 601, **Jagbir Singh vs. Haryana State Agriculture Marketing Board & Anr.**, (2009) 15 SCC 327) and **Deepali Gundu Surwase vs.**

Kranti Junior Adhyapak Mahavidyalaya(D.Ed.) & Ors., (2013) 10 SCC 324.

36) The aforementioned four errors, in our opinion, go to the root of the matter and being jurisdictional in nature and against the law laid down by this Court in a number of decisions, as detailed *infra*, render the award in question unsustainable.

37) Now coming to the reasoning of the High Court, we find that the High Court having referred to few decisions of this Court on the subject, which were mostly on the powers of the Court under Section 11A of the ID Act, failed to notice the aforementioned jurisdictional errors committed by the Labour Court. Indeed, in our view, these errors were apparent in the award of the Labour Court and, therefore, should have been noticed for being corrected by clarifying the legal position keeping in view the law laid down by this Court in several decisions and the matter

should have been remanded to the Labour Court for deciding it afresh.

38) The High Court instead proceeded to examine the findings of the Labour Court and the Enquiry Officer on two charges on merits in its writ jurisdiction by entering into the factual arena which, in our opinion, was not permissible and on its appreciation came to a conclusion that the reasoning of the Labour Court on Charge-I is perverse whereas the finding of the Enquiry Officer on the said charge is proper.

39) The High Court accordingly reversed the finding of the Labour Court on Charge-I and restored that of the Enquiry Officer. The High Court then held that since the Charge-I is proved, it is enough to sustain the dismissal order and, therefore, it is not necessary to examine the merits and demerits of Charge-II.

40) We cannot concur with the approach and the reasoning of the Labour Court or/and the High Court

detailed above which, in our view, does not appear to be in conformity with the law laid down by this Court in a number of decisions.

41) The law on this subject was examined by this Court in several decisions beginning from ***Bharat Sugar Mills Ltd***. vs. ***Jai Singh*** (1962) 3 SCR 684, ***Management of Ritz Theater (P) Ltd.*** vs. ***Its Workmen*** (1963) 3 SCR 461, ***Workmen of Motipur Sugar Factory Pvt. Ltd.*** vs. ***Motipur Sugar Factory*** (1965) 3 SCR 588, ***State Bank of India*** vs. ***R.K. Jain*** (1972) 4 SCC 304, ***Delhi Cloth & General Mills Co.*** vs. ***Ludh Budh Singh*** (1972) 1 SCC 595, ***Workmen*** vs. ***Firestone Tyre & Rubber Company of India*** (1973) 1 SCC 813 and ***Cooper Engineering Ltd.*** vs. ***P.P. Mundhe*** (1975) 2 SCC 671.

42) All the aforementioned decisions were examined in detail by a Bench of Three Judges of this Court in

Shankar Chakravarti vs. ***Britannia Biscuit Co. Ltd.*** (1979) 3 SCC 371.

43) Though in ***Shankar Chakravarti's*** case (supra), the question was when the domestic enquiry is held illegal and improper by the Labour Court, whether the Labour Court is duty bound to afford an opportunity to the employer to lead evidence to prove the charge against the workman on merits before the Labour Court.

44) This Court while answering the aforesaid question held that it is for the employer to ask for such opportunity to lead evidence to prove the charge of misconduct and once such prayer is made in any form, i.e., orally or by application or in the pleading, the same cannot be denied to the employer. It has to be granted to enable him to prove the misconduct. This Court further held that no duty is cast upon the Court to offer such opportunity to the employer *suo motu*, if he does not ask for it. In other words, he has

to ask for from the Court by any of the three modes mentioned above.

45) While examining the aforementioned question, this Court also took note of several decision of this Court wherein this Court examined the questions *in extenso*, namely, where dismissal is based on enquiry, or no enquiry or illegal enquiry, how the Court should decide the legality of dismissal. We have mentioned these cases in Para 41.

46) In our view, the reasoning, which we have given while dealing with the first three errors committed by the Labour Court in Paras 2o to 33, are based on the law laid down in aforementioned cases, which are approved in ***Shankar Chakravarti's*** case (supra).

46) Having examined the approach, reasoning and the conclusion arrived at by the Labour Court and the High Court which is not legally sustainable, the next question which arises for consideration is what course should be adopted to decide the case.

47) We are, however, not inclined to remand the case to the Labour Court after lapse of a long period of more than a decade. It is more so when we have examined the entire case on merits also.

48) As mentioned above, there was no categorical finding recorded by the Labour Court and the High Court as to whether the domestic enquiry was legal or proper. We, therefore, proceed to examine this issue in the first instance.

49) Having perused the enquiry proceedings along with the Enquiry Report, we are of the view that no fault of any nature can be noticed in the domestic enquiry proceedings for more than one reason.

50) First, the appellant was given full opportunity at every stage of the proceedings which he availed; Second, he never raised any objection complaining causing of any prejudice of any nature to him before the Enquiry Officer; Third, he received all the papers/documents filed and relied upon by

respondent No.1-Bank in support of the charge-sheet; Fourth, he filed reply, cross examined the employer's witnesses, examined his witnesses in defense, attended the proceedings and lastly, the Enquiry Officer appreciated the evidence and submitted his reasoned report running in several pages holding the appellant guilty of both the charges.

51) In short, in our opinion, no case is made out to hold that the domestic enquiry suffers from any procedural lapse or was conducted in violation of the principle of natural justice thereby causing any prejudice to the rights of the appellant.

52) Once it is held that the domestic enquiry is legal and proper, the next question arises for consideration is as to whether the punishment imposed on the appellant is just and legal or it is disproportionate to the gravity of the charges.

53) It is not in dispute that both the charges were held proved in domestic enquiry. One cannot possibly argue that the charges were simple in nature. In other words, both the charges were of a serious nature.

54) So far as Charge-I is concerned, it was proved in the enquiry that the appellant had consumed liquor while on duty. No employer would ever allow or tolerate such behavior of his employee while on duty. The employer had, therefore, every right to initiate domestic enquiry against such employee for such reprehensible conduct and behavior.

55) So far as Charge-II is concerned, that a shortage of Rs.35,000/- cash was found in cash balance on the particular day was also held proved. It is not in dispute that the appellant was working as Cashier. He was on duty on that day. He was, therefore, directly responsible for the shortage found in the cash.

56) In our opinion, both the charges being serious in nature, therefore, the order of dismissal passed against the appellant cannot be faulted with and nor it can be said to be, in any way, disproportionate to the gravity of charges. In other words, punishment of dismissal was proportionate with the gravity of the charges and hence deserves to be upheld.

57) In view of the foregoing discussion, though we agree with the conclusion arrived at by the High Court, which also resulted in upholding of the dismissal order, but this we do so on our reasoning detailed above.

58) The appeal thus found to be devoid of any merit. It fails and is accordingly dismissed.

.....J.
[ABHAY MANOHAR SAPRE]

.....J.
[S. ABDUL NAZEER]

New Delhi;
September 20, 2018