State Bank Of Patiala & Anr vs Ram Niwas Bansal (Dead) Through Lrs on 3 March, 2014

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Bench: Dipak Misra, H.L. Gokhale

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 239 OF 2003

State Bank of Patiala and another … Appellants

Versus

Ram Niwas Bansal (Dead) through LRs. …Respondents

WITH

TRANSFER CASE (C) NO. 79 OF 2013

J U D G M E N T

Dipak Misra, J.

Ram Niwas Bansal, the predecessor-in-interest of the respondents 1 to 4, the legal heirs who have been brought on record after his death during the pendency of this appeal, while posted as Accountant at the Narnaul Branch of the appellant-Bank in the Officer Cadre, was served with a charge-sheet dated 20.10.1980 for certain financial irregularities. Two supplementary charge-sheets dated 15.1.1981 and 8.1.1982 were also issued to the said officer. After explanation was offered by late Ram Niwas Bansal, the disciplinary authority appointed an Enquiry Officer who, after conducting the enquiry, submitted his report to the General Manager (Operations) of the Bank holding that certain charges had been proved, some charges had been partly proved and some charges had not been proved. The disciplinary authority concurred with the findings recorded by the Enquiry Officer and recommended for removal of the delinquent officer from the Bank's service to the appointing authority in accord with the terms of Regulation 68(1)(ii) of the State Bank of Patiala (Officers') Service Regulations, 1979 (for short "the 1979 Regulations") and the appointing authority, i.e., Managing Director, agreeing with the findings recorded by the Enquiry Officer and the recommendations of the disciplinary authority, imposed the penalty of removal vide order dated 23.4.1985. The order imposing punishment of removal from service along with a copy of the enquiry report was sent to late Bansal who preferred an appeal under Regulation 70 of the 1979 Regulations before the Executive Committee which, vide order dated 18.7.1986, rejected the appeal.

2. Being grieved by the aforesaid orders, he preferred CWP No. 4929 of 1986 before the High Court for issuance of a writ of certiorari for quashment of all the orders and for issue of appropriate direction to reinstate him in service with full service benefits. On 1.10.1993 the learned single Judge referred the matter to the larger Bench and ultimately the matter was placed before the Full Bench.

3. The Full Bench, vide order dated 22.5.1998, ruled that non-supply of comments of the General Manager had caused serious prejudice to the delinquent officer and there was denial of fair and reasonable opportunity and on that basis set aside the order of punishment. However, it directed the disciplinary authority to grant an opportunity to the petitioner therein to reply to the enquiry report and pass appropriate orders after granting personal hearing to the petitioner therein in accordance with law.

4. Dissatisfied with the aforesaid judgment and order, the appellant-Bank preferred Special Leave Petition (C) No. 2442 of 1998 and after grant of leave the same was registered as Civil Appeal No. 773 of 1998. On 12.4.1999 this Court directed stay of reinstatement of the respondent therein with the direction that the Bank would comply with the provisions of Section 17-B of the Industrial Disputes Act, 1947 (for brevity, "the Act"'). It was further observed that the Bank and its functionaries would be at liberty to proceed with the enquiry in terms of the permission granted by the High Court and any decision taken would be without prejudice to the outcome of the appeal. It may be noted that this order was passed when a prayer for stay of the contempt proceeding that was initiated by said Bansal before the High Court was made before this Court. Be it stated, this Court directed stay of further proceedings of the contempt petition.

5. On 20.8.1999 the Bank filed Interlocutory Application No. 4 of 1999 for modification of the order dated 12.4.1999 on the ground that Section 17-B of the Act was not applicable. On 7.9.1999 the employee filed another Contempt Petition No. 396 of 1999 for non-implementation of the order passed by this Court. On 6.12.1999 this Court, leaving the question of law open, dismissed the civil appeal as well as the contempt petition.

6. As the factual score would further unfold, on 10.7.2000 the Bank in compliance with the order dated 22.5.1998 passed by the Full Bench of the High Court, sent a copy of the enquiry report to the employee wherein it was mentioned that he should appear before the disciplinary authority on the date fixed for personal hearing. In the meantime, on 24.7.2000 the application for contempt was dismissed by the High Court on the foundation that there was no direction for payment of any salary to the employee or grant of any consequential benefits in the writ petition. Against the aforesaid order, the employee preferred Special Leave Petition (C) No. 15098 of 2000 and the same stood dismissed as withdrawn vide order dated 27.9.2000 granting liberty to the employee to approach the High Court for consequential reliefs.

7. On 14.10.2000 CM No. 1965 of 2001 was filed by the writ petitioner therein seeking clarification of the order dated 22.5.1998 with a further direction to the Bank to reinstate him in service with full back wages. During the pendency of the said application in the writ petition the appointing authority passed the order of removal on 22.11.2001 with effect from 23.4.1985.

8. On 23.11.2001 the CM No. 1965 of 2001 was disposed of by the Full Bench by the impugned order. A contention was raised by the Bank that the respondent-employee stood superannuated in the year 1992 after completion of thirty years of service. The Full Bench, after adverting to the facts in chronology and referring to the observations made by this Court in Special Leave Petition No. 15098 of 2000 and placing reliance on various decisions, took note of certain aspects which we think is necessary to be reproduced: -

> "Reverting back to the facts and circumstances of the present case, it is again not disputed before us that the delinquent officer was never placed under suspension. After the order of dismissal of his service dated 25.4.1985 was set aside by the Court on 22.5.1998, the disciplinary authority has neither concluded the disciplinary proceedings nor has it passed any other appropriate order till today, for the reasons best known to the concerned authority. The question before this Court is not whether the petitioner would or would not stand superannuated in February, 1992 after serving the Bank for a period of 30 years. This question, in any case, was beyond the purview and scope of the writ petition itself. Thus, the parties cannot call upon the Full Bench to decide this question in an application in this Writ Petition. The parties are free to agitate the question in this regard before the appropriate proceedings."

9. Thereafter, the Full Bench referred to the decision in Managing Director, ECIL, Hyderabad v. B. Karunakar and others[1] and came to hold that:

> "The Full Bench having decided in no uncertain terms that serious prejudice was caused to the petitioner in the departmental proceedings, the Bench set aside the order of dismissal and remanded the matter to the authorities concerned granting permission to proceed further in the departmental enquiry in accordance with law and to pass appropriate orders. The disciplinary authority has miserably failed, over a period of more than three years, to pass any appropriate orders. We are unable to understand this conduct on the part of the respondent-authorities. Though it has been contended that the petitioner has superannuated in the year 1992, but eventually, no copy of such order has been placed on record of this Court. The Hon'ble Apex Court had granted the interim stay during the pendency of the Special Leave Petition subject to compliance of provisions of Section 17-B of the Industrial Disputes Act, which itself indicates that the respondent Bank was obliged to pay salary in terms thereof to the petitioner. Admittedly at no point of time, right from the commencement of the disciplinary proceedings till today, the petitioner was ever placed under suspension. Upon dismissal of the Special Leave Petition, the judgment of the Full Bench has attained finality at least interese the parties."

10. After so stating the Full Bench observed that on the date of non- furnishing of enquiry report to the delinquent officer he was admittedly not under suspension but was in service and, therefore, the inevitable conclusion was that he would continue in service till he was dismissed from service in accordance with law or superannuated in accordance with Rules. However, without adverting to the issue whether he stood superannuated in the year 1992 or not, was left to be agitated independently. Eventually, the application was allowed and the respondents therein were directed to pay back wages to the deceased-respondent from the date of dismissal till passing of the appropriate orders in the disciplinary proceedings or superannuation of the petitioner therein whichever was earlier. The said order is under assail in Civil Appeal No. 239 of 2003.

11. At this juncture, it is essential to state the facts in Transfer Case (C) No. 79 of 2013. Be it noted, when the Civil Appeal was listed for hearing on 16.1.2013, this Court, while hearing the appeal, was apprised about the subsequent development that had taken place in pursuance of which the original respondent No. 1 had preferred Civil Writ Petition No. 11412 of 2003 in the High Court of Punjab and Haryana, Chandigarh. Learned counsel for the respondents agreed for transfer of the writ petition to this Court and on that day learned counsel for the Bank took time to obtain instructions and, eventually, on 24.1.2013 agreed to the transfer of the writ petition to this Court to be heard along with the civil appeal. Thereafter, by virtue of order dated 30.4.2013 it has been registered as Transfer Case (C) No. 79 of 2013.

12. On a perusal of the writ petition it transpires that the petitioner therein referred to the order passed by the Full Bench on 23.11.2001 and thereafter stated about the disciplinary action taken against him after the initial judgment and order passed by the Full Bench on 22.5.1998 and receipt of the order dated 22.11.2001 along with a cover letter dated 26.11.2001 whereby the Bank had removed him from service with retrospective effect from 23.4.1985, i.e., the date of earlier removal. It was contended in the writ petition that the said order was unsustainable, because the order of termination could have not been given retrospective effect; that the conduct of the Bank was far

from being laudable and replete with legal mala fide and colourable exercise of power; that the order of dismissal was violative of principles of natural justice and further the grounds mentioned in the order were totally unjustified; and that an attempt had been made by the Bank to overreach the judgment of the Full Bench. On the aforesaid basis, a prayer was made for quashing the order dated 22.11.2001 and directing the Bank to reinstate him in service with entire benefits with effect from 23.4.1985 along with interest and to pass such other orders as it may deem fit and proper in the facts and circumstances of the case.

13. We have heard Mr. Vikas Singh, learned senior counsel for the appellant bank and Mr. P.S. Patwalia, learned senior counsel for the legal heirs of the deceased-employee in the appeal as well as the in the transfer petition.

14. The three issues that eminently emerge for consideration are, (i) whether the employer Bank could have, in law, passed an order of dismissal with retrospective effect; (ii) whether the delinquent officer stood superannuated after completion of thirty years as provided under the Regulations on 25.2.1992; and (iii) whether the legal heirs of the deceased-employee are entitled to get the entire salary computed till the actual passing of the order of dismissal, that is, 22.11.2001 or for that matter till the date of superannuation, that is, 25.2.1992.

15. Regard being had to nature of controversy, we shall proceed to deal with first point first, that is, whether the order of removal could have been made with retrospective effect. Mr. Patwalia, learned senior counsel appearing for the employee, has submitted that the disciplinary authority could not have passed an order of removal by making it operational from a retrospective date. He has commended us to a three-Judge Bench decision in R. Jeevaratnam v. State of Madras[2]. In the said case, the appellant-therein instituted a suit for a declaration that the order of dismissal from service was illegal and void. The trial Court dismissed the suit and the said decree was affirmed in appeal by the High Court. One of the contentions raised before this Court that the order of dismissal dated October 17, 1950 having been passed with retrospective effect, i.e., May 29, 1949, was illegal and inoperative. This Court opined that an order of dismissal with retrospective effect is, in substance, an order of dismissal as from the date of the order with the superadded direction that the order should operate retrospectively as from an anterior date. The two parts of the order are clearly severable. Assuming that the second part of the order is invalid, there is no reason why the first part of the order should ot be given the fullest effect. The said principle has been followed in The Gujarat Mineral Development Corporation v. Shri P.H. Brahmbhatt[3].

16. Mr. Vikas Singh, learned senior counsel has heavily relied on the Constitution Bench decision in P.H. Kalyani v. M/s. Air France, Calcutta[4], wherein the employee had challenged the order of the Labour Court relating to his dismissal by the employer, the respondent company therein. He was served a charge-sheet containing two charges of gross dereliction of duty inasmuch as he had made mistakes in the preparation of load-sheets on one day and a balance chart on another day, which mistakes might have led to a serious accident to the aircraft. An enquiry was fixed by the Station Manager. His authority was questioned by the appellant but his objection was overruled and the enquiry was held and completed. The enquiry officer forwarded the findings and his recommendations to the competent authority of the company, on the basis of which he was

dismissed from service. The order of dismissal provided for payment of one month's wages for the appellant and also stated that an application was made before the industrial tribunal for the approval of the action taken, apparently as some industrial dispute was pending before the tribunal. In accordance with the order of dismissal, the respondent company filed an application before the Labour Court seeking approval of the action. The appellant thereafter filed an application under Section 33-A of the Act challenging the legality of the actions taken on many a ground. The grounds were considered by the Labour Court and all of them were substantially decided against the appellant. The Labour Court held that the dismissal of the appellant was justified and accordingly accorded approval to the order of dismissal passed by the Management. While dealing with various points raised by the appellant, the Labour Court held that the application under Section 33(2)(b) of the Act was validly made even though it had been made after the order of dismissal had been passed. It also opined that the case was not covered by Section 33(1) of the Act and it was not necessary to obtain the previous permission of the tribunal before dismissing the appellant, for he was not a protected workman. After dealing with the other legal facets, the Labour Court dismissed the application of the appellant-employee under Section 33-A of the Act. Before the Constitution Bench, it was urged that the domestic enquiry held by the employer was defective as no approval of the action taken in connection with enquiry and further the Labour Court, even if held that the dismissal was justified, it should have held that the order of dismissal would become operative from the date of the award. In support of the said submission, reliance was placed on M/s. Sasa Musa Sugar Works (P) Ltd. v. Shobrati Khan[5] wherein it was observed as follows:-

> "...as the management held no inquiry after suspending the workmen and proceedings under Section 33 were practically converted into the inquiry which normally the management should have held before applying to the Industrial Tribunal, the management is bound to pay the wages of the workmen till a case for dismissal was made out in the proceedings under Section
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> 33."

17. Referring to the said case, the Constitution Bench observed that in Shobrati Khan (supra), an application was made under Section 33(1) of the Act for permission to dismiss the employees and such permission was asked for though no enquiry whatsoever had been held by the employer and no decision was taken that the employees be dismissed and it was in those circumstances that a case for dismissal was made out only in the proceedings under Section 33(1) and, therefore, the employees were held entitled to their wages till the decision on the application under Section 33 of the Act. The Constitution Bench observed that the matter would have been different if in that case an enquiry had been held and the employer had come to the conclusion that dismissal was proper punishment and then they had applied under Section 33(1) for permission to dismiss and, in those circumstances, the permission would have related back to the date when the employer came to the conclusion after an enquiry that the dismissal was the proper punishment and had applied for removal of the ban by an application under Section 33(1).

18. The larger Bench, in that context, made a reference to the to the decision in Management of Ranipur Colliery v. Bhuban Singh[6] and thereafter held thus:-

> "The present is a case where the employer has held an inquiry though it was defective and has passed an order of dismissal and seeks approval of that order. If the inquiry is not defective, the Labour Court has only to see whether there was a prima facie case for dismissal, and whether the employer had come to the bona fide conclusion that the employee was guilty of misconduct. Thereafter on coming to the conclusion that the employer had bona fide come to the conclusion that the employee was guilty i.e. there was no unfair labour practice and no victimisation, the Labour Court would grant the approval which would relate back to the date from which the employer had ordered the dismissal. If the inquiry is defective for any reason, the Labour Court would also have to consider for itself on the evidence adduced before it whether the dismissal was justified. However, on coming to the conclusion on its own appraisal of evidence adduced before it that the dismissal was justified its approval of the order of dismissal made by the employer in a defective inquiry would still relate back to the date when the order was made. The observations therefore in Messrs. Sasa Musa Sugar Company on which the appellant relies apply only to a case where the employer had neither dismissed the employee nor had come to the conclusion that a case for dismissal had been made out. In that case the dismissal of the employee takes effect from the date of the award and so until then the relation of employer and employee continues in law and in fact. In the present case an inquiry has been held which is said to be defective in one respect and dismissal has been ordered. The respondent had however to justify the order of dismissal before the Labour Court in view of the defect in the inquiry. It has succeeded in doing so and therefore the approval of the Labour Court will relate back to the date on which the respondent passed the order of dismissal. The contention of the appellant therefore that dismissal in this case should take effect from the date from which the Labour Court's award came into operation must fail."

19. In this regard, we may refer to a two-Judge Bench decision in R. Thiruvirkolam v. Presiding Officer and another[7]. In the said case, the appellant was dismissed from service and a domestic enquiry was instituted on 18.11.1981 on proof of misconduct and he had challenged his dismissal before the Labour Court which found that the domestic enquiry to be defective and permitted the Management to prove the misconduct before it. On the basis of the evidence adduced before the Labour Court, it came to the conclusion that the misconduct was duly proved. When the matter travelled to this Court, leave granted in the appeal was confined only to the question: Whether the dismissal would take effect from the date of the order of the Labour Court, namely, 11.12.1985 or it would relate to the date of order of dismissal passed by the employer, namely, 18.11.1981. The Court distinguished the decision in Gujarat Steel Tubes Limited and others v. Gujarat Steel Tubes Mazdoor Sabha and others[8] on the basis of the principles stated in P.H. Kalyani's (supra).

20. At this stage, we may refer with profit to the authority in Punjab Dairy Development Corporation Ltd. and another v. Kala Singh and others[9] wherein a three-Judge Bench was dealing with a reference made by a Bench of three Judges to consider the correctness of the decision in Desh Raj Gupta v. Industrial Tribunal IV, U.P.[10]. The three-Judge Bench referred to the necessitous facts that the respondent therein, Kala Singh, was working as a Dairy Helper-cum- Cleaner for

collecting the milk from various centres. He was charged with misconduct and after conducting due domestic enquiry, the disciplinary authority dismissed him from service. On reference, the labour court found that the domestic enquiry conducted by the employer- appellant was defective. Consequently, opportunity was granted to the management to adduce evidence afresh to justify the order of dismissal and, accordingly, the evidence was adduced by the appellant and the delinquent-respondent. On consideration of the evidence the labour court found that the charge had been proved against the respondent and opined that the punishment was not disproportionate to the magnitude of misconduct of the respondent. In a writ petition the High Court set aside the award of the labour court to the extent of confirmation of the dismissal from service with effect from the date of the judgment of the labour court and not from any date earlier thereto. The three-Judge Bench noted that subsequent to the reference pertaining to correctness of the decision in Desh Raj Gupta (supra) the decision has been rendered by a two-Judge Bench in R. Thiruvirkolam (supra) and thereafter proceeded to state as follows: -

> "In the decision of the Constitution Bench in P.H. Kalyani v. Air France, this Court had held that once the labour court found the domestic enquiry to be defective and gave opportunity to the parties to adduce the evidence and also that the order of termination of the service or dismissal from service is valid, it would relate back to the original order of the dismissal. But a discordant note was expressed by the three-Judge Bench in Gujarat Steel Tubes Ltd. v. Mazdoor Sabha which was considered by this Court in Thiruvirkolam case and it was held that in view of the judgment of the Constitution Bench, the three-Judge Bench judgment was not correct. Desh Raj Gupta case was also considered and it was held that it has not been correctly decided. Thus, we are relieved of reviewing the entire case-law in that behalf.
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> In view of the aforesaid decisions and in view of the findings recorded by the Labour Court, we are of the considered opinion that the view expressed in Desh Raj Gupta case is not correct. It is accordingly overruled. Following the judgment of the Constitution Bench, we hold that on the Labour Court's recording a finding that the domestic enquiry was defective and giving opportunity to adduce the evidence by the management and the workman and recording of the finding that the dismissal by the management was valid, it would relate back to the date of the original dismissal and not from the date of the judgment of the Labour Court."

21. At this juncture, we may notice what was the perception at the subsequent stage. In Vishweshwaraiah Iron and Steel Ltd. v. Abdul Gani and others[11], a two-Judge Bench observed as follows: -

> "3. The moot question would arise whether the ratio of the Constitution Bench judgment in Kalyani case would almost automatically apply to such cases apart from the cases arising under Section 33 of the I.D. Act. We may, in this connection, mention that the decision of the three-Judge Bench of this Court in Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor Sabha wherein Krishna Iyer, J., spoke for

> the majority, was an authority on the question of leading evidence before the Industrial Court in proceedings under Section 10-A of the Act and on the question of relation back of ultimate penalty order passed by the arbitrator on the basis of evidence led by the management for justification of its action before such Tribunal. Therefore, the question would arise whether the ratio of this decision would still apply to a case where the proceedings relate to Section 10 or 10-A of the Act apart from Section 33 of the Act. The later decisions of this Court have applied the ratio of the decision in Kalyani case to matters arising under Sections 10 and 10-A of the Act. In our view, therefore, the dispute in the present proceedings could be better resolved by a Constitution Bench of this Court which can consider the scope and ambit of the decision of the earlier Constitution Bench judgment in Kalyani case which has been the sheet-anchor of the subsequent cases referred to earlier on which a strong reliance has been placed by learned counsel for the petitioner and which had nothing to do with proceedings under Section 33 of the Act. The later decisions of this Court will also, therefore, require a re-look."

22. Thereafter, it granted leave and directed the appeals to be placed for final disposal before a Constitution Bench. When the matter came before the Constitution Bench in Vishweshwaraiah Iron and Steel Ltd. v. Abdul Gani and others[12], the larger Bench, on 31.1.2002, passed the following order: -

> "The order of reference was made to a Constitution Bench by a Bench of two learned Judges for the reason that they found some difficulty in coming to a conclusion as to whether an earlier Constitution Bench judgment and judgments of Benches of three learned Judges resolved this question. In our view, a Bench of two learned Judges cannot make a reference directly to a Constitution Bench; this has been laid down in the judgment in Pradip Chandra Parija v. Pramod Chandra Patnaik[13]. It is, therefore, that this Constitution bench will not decide the reference."

23. In this context, a reference to a three-Judge Bench decision in Engineering Laghu Udyog Employees' Union v. Judge, Labour Court and Industrial Tribunal and another[14] would be apt. In the said case a contention was canvassed on behalf of the workmen that the view taken by the High Court to the extent it held that the order of termination would relate back to the date of the original order of termination, was erroneous and to bolster the said submission reliance was placed on Gujarat Steel Tubes Ltd. (supra). The Court, after referring to earlier decisions, opined that Section 11-A of the Act confers a wide power upon the Labour Court, Industrial Tribunal or the National Tribunal to give appropriate relief in case of discharge or dismissal of workman. While adjudicating on a reference made to it, the Labour Court, Tribunal or the National Tribunal, as the case may be, if satisfied that the order of discharge or dismissal was not justified, may, while setting aside the same, 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. Only in a case where the satisfaction is reached by the Labour Court or the Tribunal, as the case may be, that an order of dismissal was not justified, the same can be set aside. So long as the same is not set aside, it remains valid. But once

whether on the basis of the evidence brought on record in the domestic inquiry or by reason of additional evidence, the employer makes out a case justifying the order of dismissal the stand that such order of dismissal can be given effect to only from the date of the award and not from the date of passing of the order of punishment was not legally acceptable. The Court further ruled that the distinction sought to be made by this Court in some of the matters including Gujarat Steel Tubes was not based on a sound premise, particularly when the binding decisions of the Court in Workmen v. Motipur Sugar Factory[15] and Workmen v. Firestone Tyre & Rubber Co. of India (P) Ltd.[16] had not been taken note of.

24. Thereafter, the three-Judge Bench referred to the decision in Motipur Sugar Factory (P) Ltd. (supra) and it was ruled that the employer has got a right to adduce evidence before the tribunal justifying its action, even where no domestic inquiry whatsoever has been held. Reference was also made to the decision in Firestone Tyre & Rubber Co. of India (P) Ltd. (supra) wherein the Court formulated the proposition of law emerging from earlier decisions. The relevant propositions are as follows: -

> "32. From those decisions, the following principles broadly emerge:
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> (1)-(3) * * * (4) Even if no enquiry has been held by an employer or if the enquiry held by him is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order, has to give an opportunity to the employer and employee to adduce evidence before it. It is open to the employer to adduce evidence for the first time justifying his action, and it is open to the employee to adduce evidence contra.
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> (5) * * * (6) The Tribunal gets jurisdiction to consider the evidence placed before it for the first time in justification of the action taken only if no enquiry has been held or after the enquiry conducted by an employer is found to be defective.
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> (7) It has never been recognised that the Tribunal should straight away, without anything more, direct reinstatement of a dismissed or discharged employee, once it is found that no domestic enquiry has been held or the said enquiry is found to be defective.
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> (8) * * *"
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> 25. In Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. v. Ram Gopal Sharma and others[17] the Constitution Bench reiterated the principles stated in P.H. Kalyani (supra) and overruled a three-Judge Bench decision rendered in Punjab Beverages (P) Ltd. v. Suresh Chand[18].
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> 26. We have referred to the aforesaid line of judgments to highlight that these authorities pertain to the lis under the Act. The doctrine of "relation back" of an imposition of punishment in case of a labour court finding the domestic enquiry as defective and granting opportunity to the employer to substantiate the same either

under Section 10A or proceedings under Section 33 of the Act, in our considered opinion, in the present case, need not be gone into as the nature of controversy is quite different. Suffice it to say, the aforesaid authorities have to be restricted to the disputes under the Act.

27. At this juncture, we think it appropriate to state in detail what the Full Bench had ruled on the first occasion on 22.5.1998. We have already stated as to what directions it had passed and how the civil appeal stood dismissed keeping the law open as far as applicability of Section 17B of the Act is concerned. The fact remains, the said judgment had attained finality inter se parties. The Full Bench took note of the fact that the report of the enquiry officer which ran into 68 pages was not furnished to the delinquent officer as a result of which he was deprived of the benefit of knowing the contents of the report and submitting his version with regard to the correctness of the findings of the enquiry report. The High Court opined that the delinquent officer had suffered serious prejudice. Thereafter, the Court referred to the order of punishment passed by the Managing Director which apparently shows that the recommendations of the General Manager (Operation) were taken into consideration. Proceeding further it expressed as follows: -

"It is not disputed before us that the copy of the comments of General Manager as afore referred were never furnished to the delinquent officer, as such, he never had the occasion to see this document which apparently has been taken into consideration by the authorities concerned. The impugned order is the cumulative result of all the 3 charge sheets and the comments of the General Manager obviously related to the matter in issue. Non furnishing of such material document to the petitioner is also a flagrant violation of the principles of natural justice. By no stretch of imagination it could be accepted that a document prepared at the back of the petitioner, copy of which was admittedly not furnished to him, can be permitted to be a foundation of the order of punishment. Such an action would certainly be contrary to fair play." And thereafter: -

"Non supply of this document certainly caused definite prejudice to the case of the petitioner. The petitioner had every right to comment or meet the points raised in the recommendation of the General Manager. Thus, there is denial of fair and reasonable opportunity to the delinquent officer in the present case. The delinquent officer was not even aware as to what case he was to meet as projected in the report of recommendations of the General Manager which were considered by the authorities while imposing punishment on him.

The cumulative effect of our above discussion is that the impugned orders of punishment dated 25.4.1985 and dated 18.7.1986 are liable to be quashed, which we do hereby quash without any hesitation. However, we would further direct the Disciplinary Authority to grant opportunity to the petitioner to reply to the enquiry report and pass appropriate orders after granting personal hearing to the petitioner

in accordance with law."

> 28. In this context, it is instructive to reproduce the observations made by the Constitution Bench in B. Karunakar (supra) which adverted to the question that relates to the effect on the order of punishment when the report of the enquiry officer is not furnished to the employee and what relief should be granted to him in such cases.

Answering the question, the Court observed that the answer to the said question has to be relative to the punishment awarded. When the employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non-furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him and hence, to direct reinstatement of the employee with back-wages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are neither incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. In case where even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits as it would amount to rewarding the dishonest and the guilty and stretching the concept of justice to illogical and exasperating limits.

29. After so stating the larger Bench proceeded to rule that in all cases where the enquiry officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the Court/Tribunal and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished. This Court further observed that since it is the Courts/Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Court/Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment. Thereafter, the Constitution Bench opined thus:-

> "Where after following the above procedure, the Court/Tribunal sets aside the order of punishment, the proper relief that should be granted is to direct reinstatement of the employee with liberty to the authority/management to proceed with the inquiry, by placing the employee under suspension and continuing the inquiry from the stage of furnishing him with the report. The question whether the employee would be

> entitled to the back- wages and other benefits from the date of his dismissal to the date of his reinstatement if ultimately ordered, should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome. If the employee succeeds in the fresh inquiry and is directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any and the extent of the benefits, he will be entitled. The reinstatement made as a result of the setting aside of the inquiry for failure to furnish the report, should be treated as a reinstatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held. That will also be the correct position in law."

30. In the case at hand, the said stage is over. The Full Bench on the earlier occasion had already rendered a verdict that the serious prejudice had been caused and, accordingly, had directed for reinstatement. The said direction, if understood and appreciated on the principles stated in B. Karunakar (supra), is a direction for reinstatement for the purpose of holding a fresh enquiry from the stage of furnishing the report and no more. In the case at hand, the direction for reinstatement was stayed by this Court. The Bank proceeded to comply with the order of the High Court from the stage of reply of enquiry. The High Court by the impugned order had directed payment of back wages to the delinquent officer from the date of dismissal till passing of the appropriate order in the disciplinary proceeding/superannuation of the petitioner therein whichever is earlier. The Bank has passed an order of dismissal on 22.11.2001 with effect from 23.4.1985. The said order, as we perceive, is not in accord with the principle laid down by the Constitution Bench decision in B. Karunakar (supra), for it has been stated there that in case of non-furnishing of an enquiry report the court can deal with it and pass as appropriate order or set aside the punishment and direct reinstatement for continuance of the departmental proceedings from that stage. In the case at hand, on the earlier round the punishment was set aside and direction for reinstatement was passed. Thus, on the face of the said order it is absolutely inexplicable and unacceptable that the Bank in 2001 can pass an order with effect from 23.4.1985 which would amount to annulment of the judgment of the earlier Full Bench. As has been held by the High Court in the impugned judgment that when on the date of non-furnishing of the enquiry report the delinquent officer was admittedly not under suspension, but was in service and, therefore, he would continue in service till he is dismissed from service in accordance with law or superannuated in conformity with the Regulations. How far the said direction is justified or not or how that should be construed, we shall deal with while addressing the other points but as far as the order of removal being made retrospectively operational, there can be no trace of doubt that it cannot be made retrospective.

31. Presently, we shall proceed to deal with the issue of superannuation as envisaged under the Regulations. Regulation 19(1) deals with superannuation of an employee. The relevant part of Regulation 19(1) is as follows: -

> "19. Age of retirement. – (1) An officer shall retire from the service of the Bank on attaining the age of fifty eight years or upon the completion of thirty years' service whichever occurs first.

> Provided that the Competent Authority may, at its discretion, extend the period of service of an officer who has attained the age of fifty eight years or has completed thirty years' service as the case may be, should such extension be deemed desirable in the interest of the Bank.
>
> Provided further that an officer who had joined the service of the Bank either as an officer or otherwise on or after the 19th July, 1969 and attained the age of 58 years shall not be granted any further extension in service.
>
> Provided further that an officer may, at the discretion of the Executive Committee, be retired from the Bank's service after he has attained 50 years of age or has completed 25 years service as the case may be, by giving him three months notice in writing or pay in lieu thereof."

32. On a careful reading of the first proviso to Regulation 19(1) it is quite clear that the period of service can be extended by the discretion of the competent authority and such extension has to be desirable in the interest of the Bank. The second proviso provides that an officer who has joined the service of the bank either as an officer or otherwise on or after 19.7.1969 and attained the age of 58 years shall not be granted any further extension in service. By this proviso the power of the competent authority in respect of officers who had joined as officers or otherwise after the cut-off date, i.e. 19.7.1969 and have attained the age of 58 years of service, is curtailed. The delinquent officer joined the service as a clerk in the Bank on 26.2.1962 and was promoted as Grade-II Officer in 1971 and as Grade-I Officer in 1977. Even if this provision is extended to him, he could not have been granted extension of service after completion of 58 years of age. The said officer attained the age of 58 years on 24.2.2002. Be that as it may, the grant of extension is dependent on satisfaction the conditions as laid down in the first proviso. As is seen from the earlier round of litigation, the Full Bench had quashed the punishment and directed for reinstatement. In the second round in CM No. 1965 of 2000 the High Court has directed that the employee shall continue till passing of the appropriate orders in the disciplinary proceedings or superannuated as per rules. It has not commented on the validity of superannuation in the year 1992 as pleaded by the Bank and left it to be agitated in appropriate proceeding. Mr. Vikas Singh, learned senior counsel appearing for the employer-Bank, has submitted that the delinquent employee completed thirty years of service in 1992 and regard being had to the stipulation in the Regulation 19(1), he stood superannuated. Learned senior counsel would further submit that for extension of the period an affirmative act by the competent authority of the Bank is imperative. Mr. Patwalia, learned senior counsel appearing for the employee submitted that the delinquent officer could not have been superannuated on completion of thirty years of service as it was obligatory on the part of the Bank to intimate the officer that he had reached the stage of superannuation and, in any case, as the Bank continued the proceedings in pursuance of the liberty granted by the High Court, the relationship between the employer and employee had not come to an end.

33. At this juncture, it is noteworthy to refer to Regulation 19(2) of the Regulations. It reads as follows: -

> "19 (2) In case disciplinary proceedings under the relevant regulations of service have been initiated against an officer before he ceases to be in the Bank's service by the operation of, or by virtue of any of the said regulations or the provisions of these regulations the disciplinary proceedings may, at the discretion of the Managing Director, be continued and concluded by the authority by which the proceedings were initiated in the manner provided for in the said regulations as if the officer continues to be in service, so however, that he shall be deemed to be in service only for the purpose of the continuance and conclusion of such proceedings.
>
> Explanation: An officer will retire on the last day of the month in which he completes the stipulated service or age of retirement."

34. The aforesaid Regulation, as it seems to us, deals with a different situation altogether. It clearly lays down that if the disciplinary proceedings have been initiated against an officer during the period when he is in service, the said proceedings can continue even after his retirement at the discretion of the Managing Director and for the said limited purpose the officer shall be deemed to be in service. In this regard it is worthwhile to refer to the decision in UCO Bank and another v. Rajinder Lal Capoor[19] , wherein the appellant-Bank was grieved by the decision of the High Court whereby the order of punishment of removal imposed on an officer was modified to one of compulsory retirement with effect from the date of superannuation. In the said case, the employee attained the age of superannuation on 1.11.1996 and charge-sheet was issued on 13.11.1998. The disciplinary proceeding was initiated against the employee in terms of Regulation 20(3)(iii) of the UCO Bank Officer Employees' Service Regulations, 1979 which reads as follows: -

> "20. (3)(iii) The officer against whom disciplinary proceedings have been initiated will cease to be in service on the date of superannuation but the disciplinary proceedings will continue as if he was in service until the proceedings are concluded and final order is passed in respect thereof. The officer concerned will not receive any pay and/or allowance after the date of superannuation. He will also not be entitled for the payment of retirement benefits till the proceedings are completed and final order is passed thereon except his own contributions to CPF." Interpreting the said Regulation, the Court opined that a bare reading of the said Regulation would clearly show that by reason thereof a legal fiction has been created, but the said legal fiction could be invoked only when the disciplinary proceedings had clearly been initiated prior to the respondent's ceasing to be in service. Further proceeding, the two-Judge Bench observed thus: -
>
> "An order of dismissal or removal from service can be passed only when an employee is in service. If a person is not in employment, the question of terminating his services ordinarily would not arise unless there exists a specific rule in that behalf. As Regulation 20 is not applicable in the case of the respondent, we have no other option but to hold that the entire proceeding initiated against the respondent became vitiated in law."

35. In this context, reference to the authority in Ramesh Chandra Sharma v. Punjab National Bank and another[20] would be fruitful. In the said case the High Court had ruled that the appellant therein could not have been dismissed from service after his retirement. This Court referred to Regulation 20(3)(iii) of the Punjab National Bank Officer Employees' (Discipline & Appeal) Regulations, 1977 which reads as follows: -

"20. (3)(iii) The officer against whom disciplinary proceedings have been initiated will cease to be in service on the date of superannuation but the disciplinary proceedings will continue as if he was in service until the proceedings are concluded and final order is passed in respect thereof. The officer concerned will not receive any pay and/or allowance after the date of superannuation. He will also not be entitled for the payment of retirement benefits till the proceedings are completed and final order is passed thereon except his own contribution to CPF."

36. Interpreting the said Regulation the two-Judge Bench held thus: -

"The said Regulation clearly envisages continuation of a disciplinary proceeding despite the officer ceasing to be in service on the date of superannuation. For the said purpose a legal fiction has been created providing that the delinquent officer would be deemed to be in service until the proceedings are concluded and final order is passed thereon. The said Regulation being statutory in nature should be given full effect."

37. Slightly more recently in State Bank of India v. Ram Lal Bhaskar and another[21], a three-Judge Bench, placing reliance on Rule 19(3) of the State Bank of India Officers Service Rules, 1992, opined that in view of the language employed in Rule 19 which stipulated that in case the disciplinary proceedings under the relevant rules of service have been initiated against an officer before he ceases to be in the bank's service by the operation of, or by virtue of, any of the rules or the provisions of the Rules, the disciplinary proceedings may, at the discretion of the Managing Director, be continued and concluded by the authority by whom the proceedings were initiated in the manner provided for in the Rules as if the officer continues to be in service. He shall be deemed to be in service only for the purpose of the continuance and conclusion of such proceedings and the punishment could be imposed.

38. In the case at hand, the disciplinary proceeding was initiated against the delinquent officer while he was in service. The first order of dismissal was passed on 23.4.1985. The said order of punishment was set aside by the High Court and the officer concerned was directed to be reinstated for the limited purpose, i.e., supply of enquiry report and to proceed in the disciplinary proceeding from that stage. The said order was not interfered with by this Court.

The Bank continued the proceeding. Needless to emphasise, the said continuance was in pursuance of the order of the Court. Under these circumstances, it has to be accepted that the concept of

deemed continuance in service of the officer would have full play and, therefore, an order of removal could have been passed after finalization of the departmental proceeding on 22.11.2001. We have already held that the said order would not have been made retrospectively operative, but that will not invalidate the order of dismissal but it would only have prospective effect as has been held in R. Jeevaratnam (supra).

39. Having said that, it becomes necessary to determine the date of retirement and thereafter delve into how the period from the date of first removal and date of retirement would be treated. We may hasten to add that for the purpose of deemed continuance the delinquent officer would not be entitled to get any benefit for the simple reason, i.e., the continuance is only for finalisation of the disciplinary proceedings, as directed by the Full Bench of the High Court. Hence, the effect and impact of Regulation 19(1) of the Regulations comes into full play. On a seemly construction of the first proviso we are of the considered view that it requires an affirmative act by the competent authority, for it is an exercise of power of discretion and further the said discretion has to be exercised where the grant of extension is deemed desirable in the interest of the Bank. The submission of Mr. Patwalia to the effect that there should have been an intimation by the employer-Bank is founded on the finding recorded by the High Court in the impugned order that no order had been brought on record to show that the delinquent officer had retired. As the facts would reveal, in the year 1992 the concerned officer stood removed from service and at that juncture to expect the Bank in law to intimate him about his date of superannuation or to pass an order would be an incorrect assumption. The conclusion which appears logical and acceptable is that unless an extension is granted by a positive or an affirmative act by the competent authority, an officer of the Bank retires on attaining age of 58 years or upon the completion of 30 years of service, whichever occurs first. In this regard the pronouncement in C.L. Verma v. State of Madhya Pradesh and another[22] is apt to refer. In the said case the effect of Rule 29 of Madhya Pradesh State Municipal Service (Executive) Rules, 1973 fell for interpretation. In the said Rule it was provided that a member of the service shall attain the age of superannuation on the date he completes his 58 years of age. The proviso to the said Rule stipulated that the State Government may allow a member of the service to continue in employment in the interest of Municipal Council or in public interest and, however, no member of service shall continue in service after he attains the age of 60 years. The appellant therein had attained the age of 58 years two days prior to the order of dismissal. The Court opined that the tenor of the proviso clearly indicates that it is intended to cover specific cases and individual employees. Be it noted, on behalf of the Government a notification was issued by the concerned Department. The Court opined that the said circular was not issued under the proviso to Rule 29 but was administrative in character and that on the face of mandate in Rule 29 the administrative order could not operate. The Court further ruled that as the appellant therein had attained the age of superannuation prior to the date of passing the order of dismissal, the Government had no right to deal with him in its disciplinary jurisdiction available in regard to employees. We have referred to this decision to highlight that the Regulation herein also is couched in similar language and, therefore, the first proviso would have full play and it should be apposite to conclude that the delinquent officer stood superannuated on completion of 30 years of service on 25.2.1992. It is because the conditions stipulated under the first proviso to the said Regulation deal with a conditional situation to cover certain categories of cases and require an affirmative act and in the absence of that it is difficult to hold that the delinquent officer did not retire on completion of

thirty years of service.

40. The next issue pertains to how the period from the date of order of first removal, i.e., 23.4.1985 till 25.2.1992 would be treated and to what benefits the officer concerned would be entitled to. The order of removal from service, as we have already opined, would come into effect from the date of passing of the order, i.e., 22.11.2001 as it has to be prospectively operative and, therefore, as a natural corollary he remained in service from 23.4.1985 till he attained the age of superannuation, i.e., 25.2.1992 or till the end of February, 1992, being the last day of the month. In the transfer case relief has been sought for grant of full salary for the whole period. Mr. Patwalia, learned senior counsel appearing for the legal representatives of the original petitioner, would contend that they should be entitled to get the full salary till the order of removal. We are unable to accept the said submission because we have already ruled that the officer stood superannuated on completion of thirty years and his continuance by virtue of the order passed by the High Court has to be treated as a deemed continuance for the purposes of finalization of the disciplinary proceeding. The submission put forth by Mr. Vikas Singh that the order of removal would relate back to the date of the earlier order, i.e., 23.4.1985 has already been repelled by us. Thus, we are to restrict the period for grant of benefit till the date of retirement. Mr. Singh in course of hearing has alternatively submitted that under no circumstances back wages in entirety should be paid as the concerned officer had not worked. To bolster his submission he has commended us to the decisions in A.P. State Road Transport Corporation and others v. Abdul Kareem[23], A.P. SRTC and another v. B.S. David Paul[24] and J.K. Synthetics Ltd. v. K.P. Agrawal and another[25] wherein grant of back wages has been restricted on certain parameters. He has also urged that in pursuance of the order dated 15.12.2003 the Bank has deposited Rs.5.00 lacs in the High Court which was permitted to be withdrawn by the delinquent officer furnishing adequate security to the satisfaction of the Registrar General of the High Court and under the circumstances the said amount may be treated as back wages and be paid to the legal heirs, if not withdrawn by the original petitioner.

41. It is worthy to note here that during the continuance of the disciplinary proceeding the delinquent officer was not put under suspension. After the order of punishment passed by the disciplinary authority and affirmed by the appellate authority was quashed by the High Court on 22.5.1998, the concerned officer has to be treated to be in service from his date of first removal till his date of retirement. Had the Bank brought to the notice of the Full Bench about the legal position under the Regulations, in all probability, the matter would have been dealt with differently. Be that as it may, grant of salary in entirety for the period as determined by us to be the period of continuance in service would not be apposite and similarly, the submission advanced on behalf of the Bank that payment of rupees five lacs would meet the ends of justice does not deserve acceptance. Ordinarily, we would have directed the Bank to pay fifty per cent of the back wages for the period commencing 23.4.1985 till the end of February, 1992, with some interest but we do not want that the legal heirs of the delinquent officer should further go through any kind of tribulation in computation and face further legal hassle as regards the quantum. We are of the considered opinion that the controversy should be given a quietus and, therefore, instead of fixing fifty per cent of the back wages we direct that the Bank shall deposit a further sum of rupees five lacs with the Registrar General of the High Court within two months hence and the respondents shall be entitled to withdraw the same. We may hasten to clarify that if the amount earlier deposited has not been

withdrawn by the original respondent, Ram Niwas Bansal, the same shall also be withdrawn by the legal heirs.

42. In view of the aforesaid directions, the judgment and order passed by the High Court is modified and the civil appeal and the transfer case are disposed of leaving the parties to bear their respective costs.

.....J. [H.L. Gokhale] .....J. [Dipak Misra] New Delhi;

March 3, 2014.

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[1] (1993) 4 SCC 727 [2] AIR 1966 SC 951 [3] (1974) 3 SCC 601 [4] AIR 1963 SC 1756 [5] AIR 1959 SC 923 [6] AIR 1959 SC 833 [7] (1997) 1 SCC 9 [8] (1980) 2 SCC 593 [9] (1997) 6 SCC 159 [10] (1991) 1 SCC 249 [11] AIR 1998 SC 185 : (1997) 8 SCC 713 [12] (2002) 10 SCC 437 [13] (2002) 1 SCC 1 [14] (2003) 12 SCC 1 [15] AIR 1965 SC 1803 [16] (1973) 1 SCC 813 [17] (2002) 2 SCC 244 [18] (1978) 2 SCC 144 [19] (2007) 6 SCC 694 [20] (2007) 9 SCC 15 [21] (2011) 10 SCC 249 [22] 1989 Supp (2) SCC 437 [23] (2005) 6 SCC 36 [24] (2006) 2 SCC 282 [25] (2007) 2 SCC 433