# Mavji C Lakum vs Central Bank Of India on 2 April, 2008

## Author: V.S. Sirpurkar

## Bench: S.B. Sinha, V.S. Sirpurkar

```
           CASE NO.:
Appeal (civil)  2385 of 2008

PETITIONER:
Mavji C Lakum

RESPONDENT:
Central Bank of India

DATE OF JUDGMENT: 02/04/2008

BENCH:
S.B. Sinha & V.S. Sirpurkar

JUDGMENT:
```

J U D G M E N T REPORTABLE CIVIL APPEAL NO 2385 OF 2008 (Arising out of SLP (Civil) No.6495 of 2005) V.S. SIRPURKAR, J.

1. Leave granted.

2. The appellant herein challenges Division Bench judgment of the High Court of Gujarat dismissing his Writ Appeal. The said Writ Appeal was filed against the orders of the learned Single Judge of that court whereby the Writ Petition filed by the Respondent-bank was allowed setting aside the order passed by the Industrial Tribunal. The Industrial Tribunal had answered the Reference in favour of the appellant and had set aside the punishment of discharge as also the other punishments and restricted the said punishment to stoppage of one year's increment.

3. Following facts will highlight the controversy involved.

4. Appellant Mavji C. Lakum had joined the services of the Respondent-bank as a Peon on 1.9.1951. He was promoted as a Head Peon in the year 1963. While in service, two charge-sheets came to be served upon the appellant and an inquiry was held against him and he came to be discharged from the service by an order dated 22.5.1984. This order was challenged by the appellant by filing a Regular Suit No.99 of 1984 in the Court of Civil Judge (Junior Division), Anjar, Kutch-Bhuj. The said suit was dismissed. In the appeal, though the District Court directed reinstatement but denied the back-wages. The appellate court also permitted the Respondent-bank to hold fresh enquiry. The appellate judgment was challenged before the High Court by way of Second Appeal by the appellant where he was awarded 75% back-wages from the date of filing the suit.

5. As the order of reinstatement became final, the appellant was reinstated. However, since the permission was granted by the District Court to the respondent-bank to start inquiry afresh, that inquiry was initiated in accordance with law and in that inquiry the appellant was found guilty of few charges whereby he was given the punishment of discharge on two charges. He was given the punishment of stopping his increments in respect of other charges for which he was found guilty. A show cause notice dated 7.2.1991 was issued to the appellant calling upon him to show cause why the punishment of dismissal should not be imposed upon him. A reply was submitted by the appellant dated 18.3.1991 wherein he contended that looking into the nature of the charges, the punishment of dismissal was very harsh. He also offered explanation regarding the charges and the findings. However, the Disciplinary Authority, after considering the reply inflicted a composite punishment of discharge. The appellant thereafter filed a Departmental Appeal which was dismissed. He, therefore, raised a dispute with regard to punishment of his discharge and on that basis a Reference came to be made to Industrial Tribunal (Central), Rajkot which was registered as ITC No.1 of 1993.

6. The Industrial Tribunal firstly came to the conclusion that the Departmental Inquiry was just and proper. However, in so far as the merits of the allegations were concerned, the Tribunal came to the conclusion that there was no evidence supporting major charges, though there was some misconduct on the part of the appellant. Again the Tribunal specifically held that the proved misconduct was not so serious as to invite the extreme punishment of discharge. Reference was thus partly allowed and the order of discharge was set aside. The Tribunal imposed the punishment of withholding one increment with future effect. In the meanwhile the appellant retired from the services of the respondent with effect from 3rd September, 1994.

7. The respondent challenged the Award passed by the Industrial Tribunal by way of a Writ Petition which came to be allowed by the learned Single Judge who concluded his judgment as follows:

> "Considering the fact that respondent has been working with the petitioner bank right from the year 1951 and he had put in 30 years of service before he was discharged from the service and that now he has retired and reached at the age of 70 years, it is recommended that the petitioner may consider his case for payment of back wages for the period in question at the rate of 50%. This is merely a recommendation and not direction and it is for the bank to take the decision in this behalf. With this observation, this petition stands allowed. Rule made absolute with no order as to costs."

8. The judgment of the learned Single Judge was appealed against by way of a Writ Appeal and as has been stated earlier, the Writ Appeal was also dismissed, necessitating the present appeal before us.

9. Learned counsel appearing on behalf of the appellant contended that the order of learned Single Judge as also the confirming order in the Letters Patent Appeal by the Division Bench are patently erroneous. As regards the order of the learned Single Judge, the learned counsel contended that the learned Judge had totally traveled beyond his jurisdiction and went on to interfere with the findings

of fact on re- appreciation of the evidence which was not permissible. According to the learned counsel, it was impermissible for the learned Judge to disturb the findings recorded by Tribunal. According to the learned counsel the Tribunal had a complete jurisdiction under Section 11-A of the Industrial Disputes Act, 1947 not only to consider the factor of quantum of punishment but also to re-appreciate the findings reached during the disciplinary inquiry. Learned counsel has taken us through the order of the Tribunal and has pointed out that the Tribunal had very carefully appreciated the evidence and had come to the conclusion that the misconduct proved against the appellant was insignificant and not so serious so as to invite the extreme punishment of discharge. According to the learned counsel, once the Tribunal had exercised its jurisdiction under Section 11-A of the Industrial Disputes Act, there was no question of interference much less after re-appreciating the findings given by the Tribunal.

10. As regards the appellate order, the learned counsel criticized that the Division Bench did not apply its mind and erroneously dismissed the appeal treating it to be not maintainable.

11. As against this, however, the learned counsel appearing on behalf of the Respondent-bank supported the order of the learned Single Judge and contended that since that order was passed under Article 227 of the Constitution of India, the appeal itself was not maintainable. Learned counsel also urged that on merits also the order of the learned Single Judge was absolutely correct.

12. At the outset we shall consider the contention as to whether the Letters Patent Appeal was maintainable against the order of the learned Single Judge. It was contended by the counsel for the respondent-bank that the appeal was not maintainable since the learned Single Judge had exercised his jurisdiction under Article 227 of the Constitution of India and, therefore, there was no question of Letters Patent Appeal being maintainable against the same. We, therefore, went through the Special Civil Application, a copy of which is the part of the paperbook. The said writ petition clearly mentions on the very first page that the writ petition was being filed under Article 226 of the Constitution of India. Again para 10 of the writ petition mentions as under:

> "Being aggrieved by the order passed by the Industrial Tribunal, the petitioner begs to approach this Hon'ble court under Article 226 of the Constitution of India challenging the award on the following amongst other grounds ."

Ground (iv) on the same page says:

> "That the order passed by the Tribunal is arbitrary, unreasonable, unjust and perverse."

Even prayer clause in para 15 is as under:

> "That by appropriate writ, direction and order, the impugned order of Industrial Tribunal (Central) Rajkot at Annexure B be quashed and/or set aside."

All this suggests that the writ petition was not only under Article 227 of the Constitution of India but there is a specific mention of Article 226. In a reported decision of this Court in Sushilabai Laxminarayan Mudliyar & Ors. V. Nihalchand Waghajibhai Shaha and others [(1993) Supp. 1 SCC 11] a similar question fell for consideration. In para 4 of the said judgment this Court observed:

> "The Full Bench of the Bombay High Court wrongly understood the above Umaji Kesho Meshram case. In Umaji case it was clearly held that where the facts justify a party in filing an application either under Article 226 or 227 of the Constitution of India and the party chooses to file his application under both these articles in fairness of justice to party and in order not to deprive him of valuable right of appeal the court ought to treat the application as being made under Article 226, and if in deciding the matter, in the final order the court gives ancillary directions which may pertain to Article 227, this ought not to be held to deprive a party of the right of appeal under Clause 15 of the Letters Patent where the substantial part of the order sought to be appealed against is under Article 226. Rule 18 of the Bombay High Court Appellate Side Rules read with clause 15 of the Letters Patent provides for appeal to the Division Bench of the High Court from a judgment of the learned Single Judge passed on a writ petition under Article 226 of the Constitution. In the present case the Division Bench was clearly wrong in holding that the appeal was not maintainable against the order of the learned Single Judge. In these circumstances we set aside the impugned order of the Division Bench and direct that the Letters Patent Appeal filed against the judgment of the learned Single Judge would not be heard and decided on merits ."

These observations were made by this Court after taking into consideration the observations made in Umaji Keshao Meshram & Ors. V. Radhikabai, Widow of Anandrao Banapurkar & Anr. [1986 (Supp) SCC 401]. In the present matter apart from the fact that the petition is labeled under Article 226 of the Constitution of India, it is clear that the grounds raised in the petition suggest that the petition is not only under Article 227 but also under Article 226 of the Constitution. It is to be seen that in the grounds raised against the order of the Tribunal, it is specifically suggested that the order passed by the Tribunal was arbitrary, unreasonable, unjust and perverse. The further complaint made against the Tribunal's order pertain to failure on the part of the Tribunal to appreciate certain facts and eventualities thereby complaining non application of mind on the part of the Tribunal. Complaint has also been made against the approach of the Tribunal and it is suggested that the said approach was perverse. After reading the writ petition we are convinced that the contentions raised and the facts stated in the petition justify the respondent herein to file an application both under Articles 226 and 227 of the Constitution of India.

13. Learned counsel, however, pointed out that the learned Judge at the end of his judgment had given certain directions which were in the nature of the directions given under Article 227 of the Constitution of India. We do not agree with this contention. In the first place the learned Judge himself has clearly stated that his suggestion to the bank to award 50% of the back-wages, in view of the long service of the appellant, was merely a recommendation and not a direction and that it was for the bank to take the decision in this behalf. Therefore, this is not a case where any direction as

such is issued under Article 227 of the Constitution. The recommendation made by the learned Judge, as has been stated in the judgment itself, cannot amount to a direction made under Article 227 of the Constitution of India. It is to be remembered that such directions are not made to the parties, the directions contemplated under Article 227 are to the concerned authorities against whose order the writ petition is filed. In this behalf we must further point out that in Lokmat Newspapers Pvt. Ltd. V. Shankar Prasad [(1999) 6 SCC 275] this Court explained the situation as to whether the writ petition should be treated to be under Article 226 or under Article 227 of the Constitution of India. That was the case where the Labour Court passed an order in Revision under the provisions of Section 28 of the Maharashtra (Recognition of Trade Unions and Prevention of Unfair Labour Practices) Act, 1971. This order was confirmed by the Industrial Tribunal under Section 44 of the said Act where both the courts held that the retrenchment of the workman did not amount to any unfair labour practice on the part of the appellant. These orders were challenged by the workman by filing the writ petition under Article 226 and 227 of the Constitution before the High Court. The learned Single Judge dismissed the said writ petition but the order of the learned Single Judges itself showed that he was considering the writ petition of the workman which was moved before him invoking the High Court's jurisdiction under Articles 226 and 227 of the Constitution of India. In that writ petition the workman had requested the High Court to call for the records and proceedings of the Revision Petition and after perusal thereof to be further pleased to quash and set aside the said order of the Labour Court. It was averred in the writ petition that the authorities below, while interpreting various provisions of the Maharashtra Act as also the Industrial Disputes Act and the rules framed thereunder had totally lost sight of the object and purpose of these provisions and had put an interpretation alien to the industrial jurisprudence and has thus committed serious error of law apparent on the face of the record which resulted in a serious miscarriage of justice and also in failure to exercise the jurisdiction vested in the courts below under the provisions of the Maharashtra Act. It was further averred that the orders of the courts below had resulted in infraction of the fundamental rights of the workman.

14. When we see the present petition, the situation is no different. What was averred by the respondent in its writ petition was in the same tone and it was clearly averred that the Tribunal had ignored the principles of industrial jurisprudence and that had resulted in miscarriage of justice. In para 16 of the reported judgment, the court observed:

> "It is, therefore, obvious that the writ petition invoking jurisdiction of the High Court both under Articles 226 and 227 of the Constitution had tried to make out a case for the High Court's interference seeking issuance of an appropriate writ of certiorari under Article 226 of the Constitution of India. Basic averments for invoking such a jurisdiction were already pleaded in the writ petition for the High Court's consideration. It is true, as submitted by learned counsel for the appellant, that the order of the learned Single Judge nowhere stated that the Court was considering the writ petition under Article 226 of the Constitution of India. It is equally true that the learned Single Judge dismissed the writ petition by observing that the courts below had appreciated the contentions and rejected the complaint. But the said observation of the learned Single Judge did not necessarily mean that the learned Judge was not inclined to interfere under Article 227 of the Constitution of India only. The said

> observation equally supports the conclusion that the learned Judge as not inclined to interfere under Articles 226 and 227. As seen earlier, he was considering the aforesaid writ petition moved under Article 226, as well as Article 227 of the Constitution of India. Under these circumstances, it is not possible to agree with the contention of learned counsel for the appellant that the learned Single Judge had refused to interfere only under Article 227 of the Constitution of India when he dismissed the writ petition of the respondent.."

This Court has further relied upon the decision in the case of Umaji Keshao Meshram's case (supra). The situation is no different in the present case. The respondent had raised the contentions regarding the order of the Tribunal in the very same manner. Though the learned Judge observed that he was acting only under Article 227 of the Constitution of India, it cannot be said that the writ petition was disposed of only under Article 227 of the Constitution. The writ petition was such as would fall also under Article 226 of the Constitution which label was already attached to the writ petition. Similar relief was also sought for by praying for an appropriate writ, order or direction for quashing the Industrial Tribunal's order. We are, therefore, convinced that the law laid down in Lokmat's case applies on all fours. In the same para 16 this Court proceeds to observe:

> "It was open to the respondent to invoke the jurisdiction of the High Court both under Articles 226 and 227 of the Constitution of India. Once such a jurisdiction was invoked and when his writ petition was dismissed on merits, it cannot be said that the learned Single Judge had exercised his jurisdiction only under Article 227 of the Constitution of India. This conclusion directly flows from the relevant averments made in the writ petition and the nature of jurisdiction invoked by the respondent as noted by the learned Single Judge in his judgment, as seen earlier. Consequently, it could not be said that clause 15 of the Letters Patent was not attracted for preferring appeal against the judgment of the learned Single Judge."

Similar observations regarding Articles 226 and 227 of the Constitution are to be found in the subsequent decision in Surya Dev Rai v. Ram Chander Rai & Ors. [(2003) 6 SCC 675] where the court has followed the law laid down in Umaji Keshao Meshram's case (supra) as also in Lokmat's case (supra).

15. We are, therefore, convinced that the Division Bench erred in treating the matter falling only under Article 227 of the Constitution of India.

16. We would have ordinarily remanded the matter to the Division Bench for consideration on merits. However, we would desist from doing that in view of the fact that this whole controversy has started right from 1984 and 24 years have so far been lost. The appellant, in this case, was discharged in the year 1984 and since then he is fighting for his rights. True it is that he has been paid his back-wages in part, however, we are convinced that the Tribunal's order setting aside his order of punishment of discharge was a correct order and the learned Single Judge erred in setting aside that order.

17. When we see the Tribunal's Award, it is clear that firstly the Tribunal came to the conclusion that the inquiry was fair and proper. Thereafter in para 7, the Tribunal has considered the arguments on behalf of the bank to the effect that once the inquiry has been held to be legal and proper, no interference can be made as regards the punishment. It is to be noted that the first charge against the appellant was rough and rude behaviour with client Gulabchand and company's partner Harenderbhai Shah, while the second charge was also regarding the rude behaviour with the higher officers of the bank and disobedience with the work entrusted; the third charge was that he was instructed to remain present on the bank's account closing day, he had gone away; the fourth charge was regarding the breach of bank's rules pertaining to leave; the fifth charge was with regard to frequently leaving the place during office hours without permission while the sixth charge was regarding the illegally making trunk calls on the bank's phone without permission and the seventh charge was incurring excessive debts from outside. It is already seen that charges 4 and 6 were held not to be proved. It was pointed out before the Tribunal on behalf of the appellant that for Charge Nos.1 and 3, the punishment was for stopping the increments while it was for Charge No. 2 and 5 that the punishment of discharge was awarded. For other charges minor punishments of censure, etc., and stopping of two increments were imposed. Thus it was only for the two charges, namely, Charge Nos.2 and 5 that the punishment of discharge was given to him. In respect of rest of the charges it was merely a punishment of stopping of increments. It was pointed out by the workman and rightly accepted by the Tribunal that for long 40 years of his service there was not a single allegation against the appellant. It was also considered by the Tribunal that he had not only properly worked for 30-31 years but has also got promotion of Head Peon during this period.

18. The Tribunal then took stock of the evidence of Harendra Shah with whom the appellant allegedly misbehaved. The Tribunal ultimately chose to record that the appellant could not have been found guilty of misbehaviour. The Tribunal also took stock of the evidence of one Shri Desai and came to the conclusion that he did not even know the duties of the appellant as a Head Peon and that there was no record available and further according to this witness there was no record available of the outgoing trunk calls. The Tribunal also noted the fact that there was no past record of habitual misconduct on the part of the appellant and, therefore, the Tribunal came to the conclusion that there was no sufficient evidence regarding habitual misuse of the telephones. The Tribunal also noted the evidence of Peon H.K. Pandya who had said that the delinquent conduct was good with him and he was properly discharging his duties. The Tribunal has also referred to the fact that Shri H.K. Pandya has given his signature on the complaint against the appellant not even knowing about the document on which he was putting his signature and that he given the signature just because it was asked from him. The Tribunal also noted the evidence of H.N. Shethia, Clerk and recorded a finding that his evidence was not believable. The Tribunal has further noted that Shri Sethia used to visit Shri Jadeja with whom the appellant had strained relations. The Tribunal further took stock of evidence of one K.B. Mehta who was unable to tell as to whether any action was taken against the appellant from 1962 to 1980 and that the conduct of delinquent was good in the bank premises. The evidence of other witnesses, namely, Shri Vadhera and Shri J.A. Shah was considered by the Tribunal and the Tribunal ultimately recorded that there was no record available with the bank regarding the past history of the delinquent or about his misbehaviour or any complaint made by any of the staff members. The Tribunal then records:

> "On overall examination of the examination-in-chief and the cross-examination made during the whole departmental inquiry, it appears that the bank's staff did not like the delinquent's conduct, whereas the delinquent was under an impression that he is discharging his main duties and he has not to do any other work. This is during the period from 1982 only ."
>
> " .it appears that there is no sufficient record or evidence against the delinquent so as to impose punishment of discharge on the workman. Therefore, the punishment of discharge is liable to be set aside. Now, on overall appreciation, it appears that due to some sort of bitterness between the workman and the staff members, the workman has committed some misconduct. In my opinion it would be just, proper and in the interest of justice of punishment of withholding the increment with future effect is imposed upon the delinquent and I, therefore, pass the following order ."

All this suggests that the Tribunal had considered everything in great details.

19. In our opinion under Section 11-A of the Industrial Disputes Act the Tribunal was quite justified in using its discretion. The scope of Section 11-A has been explained by this Court from time to time in Life Insurance Corporation of India v. R. Dhandapani [(2006) 13 SCC 613; Mahindra Ltd. V. N.B. Narawade [(2005) 3 SCC 331] and M.P. Electricity Board v. Jagdish Chandra Sharma [(2005) 3 SCC 401]. Lastly, this Court has held that in L and T Komatsu Ltd. V. N. Uadayakumar [(2008) 1 SCC 224] that assaulting or giving abuses to the superior would justify the dismissal. We have carefully examined the facts in all the above cases and find that the appellant's case nowhere comes near the one described in all the above four cases. After all the Tribunal has to judge on the basis of the proved misbehaviour. In this case we have already recorded that the Tribunal was firstly correct in holding that the misbehaviour was not wholly proved and whatever misconduct was proved, did not deserve the extreme punishment of discharge.

20. on this backdrop when we see unusually long judgment of the learned Single Judge, it comes out that the learned Single Judge held firstly that the Tribunal had exceeded its powers vested in it under the provisions of Section 11-A of the Industrial Disputes Act. The learned Judge, as regards, Section 11-A, after quoting the same, observed:

> "Though the Tribunal was equipped with the power to come to its own conclusion whether in a given case the imposition of punishment of discharge or dismissal from the service is justified. It is for that purpose that the Tribunal is authorized to go into the evidence that has been adduced before the Inquiry Officer in details and find out whether the punishment of discharge or dismissal is commensurate with the nature of charges proved against the delinquent."

So far the finding of the learned Single Judge appears to be correct. However, the whole thrust of the judgment has changed merely because the Industrial Tribunal had found the inquiry to be fair and proper. The learned Judge seems to be of the opinion that if the inquiry is held to be fair and proper, then the Industrial Tribunal cannot go into the question of evidence or the quantum of punishment.

We are afraid that is not the correct law. Even if the inquiry is found to be fair, that would be only a finding certifying that all possible opportunities were given to the delinquent and the principles of natural justice and fair play were observed. That does not mean that the findings arrived at were essentially the correct findings. If the Industrial Tribunal comes to the conclusion that the findings could not be supported on the basis of the evidence given or further comes to the conclusion that the punishment given is shockingly disproportionate, the Industrial Tribunal would still be justified in re-appreciating the evidence and/or interfering with the quantum of punishment. There can be no dispute that power under Section 11-A has to be exercised judiciously and the interference is possible only when the Tribunal is not satisfied with the findings and further concludes that punishment imposed by the Management is highly disproportionate to the degree of guilt of the workman concerned. Besides, the Tribunal has to give reasons as to why it is not satisfied either with the findings or with the quantum of punishment and that such reason should not be fanciful or whimsical but there should be good reasons. In our opinion the reasons given by the Tribunal were correct and the treatment given by the Tribunal to the evidence was perfectly justified. The Tribunal committed no error in observing that for good long 30 years there was no complaint against the work of the appellant and that such a complaint suddenly surfaced only in the year 1982. The Tribunal was justified in appreciating the fact that the charges were not only trivial and were not so serious as to entail the extreme punishment of discharge. Here was the typical example where the evidence was of a most general nature and the charges were also not such as would have invited the extreme punishment. It was not as if the appellant had abused or had done any physical altercation with his superiors or colleagues. What was complained was of his absence on some days and his argumentative nature. Though the learned Judge had discussed all the principles regarding the exercise of powers under Section 11-A of the Industrial Disputes Act as also the doctrine of proportionality and the Wednesbury's principles, we are afraid the learned Judge has not applied all these principles properly to the present case. The learned Judge has quoted extensively from the celebrated decision of M/s.Firestone Tyre & Rubber Co. of India P. Ltd. V. The Management [AIR 1973 SC 1227], however, the learned Judges seems to have ignored the observations made in para 32 of that decision where it is observed that:

> "The words "in the course of adjudication proceeds, the Tribunal is satisfied that the order of discharge or dismissal was not justified" clearly indicate that the Tribunal is now clothed with the power of re-appraise the evidence in the domestic enquiry and satisfy itself whether the said evidence relied on by an employer establishes the misconduct alleged against a workman. What was originally a plausible conclusion that could be drawn by an employer from the evidence, has now given place to a satisfaction being arrived at by the Tribunal that the finding of misconduct is correct .. The Tribunal is at liberty to consider not only whether the finding of misconduct recorded by an employer is correct but also to differ from the said finding if a proper case is made out"

We are surprised at the following observations of the learned Judge in para 7.1:

> "Nowhere during the course of the judgment the Tribunal appears to have followed the aforesaid guidelines or the Wednesbury test. When it was re-appreciating

> evidence and on the strength of it, was reaching to different conclusions and ultimately it has substituted the punishment, it was incumbent upon it to follow aforesaid guidelines. It was only upon finding that the decision of the authority was illegal or that it was based on material not relevant or relevant material was not taken into consideration or that it was so unreasonable, that no prudent man could have reached to such decision or that it was disproportionate to the nature of the guilt held established so as to shock the judicial conscience, the Tribunal could have substituted the penalty. The entire text of award of the Tribunal does not indicate this."

We are unable to agree with these observations.

21. On the other hand the Tribunal, in our opinion has correctly appreciated the evidence and has also correctly substituted the punishment. In whole of the judgment, the learned Single Judge has not referred to any of the factual findings recorded by the Tribunal. In our opinion the judgment of the learned Single Judge was wholly incorrect in so far as it dubbed the Tribunal's judgment as wrong. We approve of the judgment of the Tribunal and set aside the judgment of the learned Single Judge.

22. For the above reasons we are of the opinion that the Writ Petition filed by the respondent and ultimately confirmed by the appellate judgment was incorrectly allowed. We dismiss the writ petition and restore the Award of the Tribunal.

23. In view of the above the appeal is allowed. Under the circumstances we deem it fit to inflict the cost of Rs.30,000/- against the Respondent- bank.