Syndicate Bank vs General Secretary Syndicate Bank Staff ... on 25 April, 2000

Equivalent citations: AIR 2000 SUPREME COURT 2198, 2000 (5) SCC 65, 2000 AIR SCW 2288, 2000 LAB. I. C. 2326, 2000 (2) UPLBEC 1618, 2000 (5) SRJ 386, 2001 (2) SERVLJ 89 SC, 2000 (2) LRI 378, 2000 (4) SCALE 59, 2000 LAB LR 689, (2000) 5 JT 243 (SC), (2000) 2 CURLR 472, (2000) 96 FJR 661, 2000 SCC (L&S) 601, (2000) 85 FACLR 807, (2000) 1 LABLJ 1630, (2000) 2 LAB LN 942, (2000) 2 SCT 765, (2000) 3 SERVLR 129, (2000) 2 UPLBEC 1618, (2000) 3 SUPREME 541, (2000) 4 SCALE 59, (2000) BANKJ 652

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Bench: S. Saghir Ahmad, D.P. Wadhwa

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           CASE NO.:
Appeal (civil)  4263 of 1999

PETITIONER:
SYNDICATE BANK

RESPONDENT:
GENERAL SECRETARY SYNDICATE BANK STAFF ASSOCIATION & ANR.

DATE OF JUDGMENT: 25/04/2000

BENCH:
S. SAGHIR AHMAD & D.P. WADHWA

JUDGMENT:
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JUDGMENT 2000 (3) SCR 285 The Judgment of the Court was delivered by D.P. WADHWA, J. Appellant Bank was granted leave to appeal under Article 136 of the Constitution against judgment dated September 11, 1998 of the Division Bench of the Karnataka High Court in writ appeal upholding the order of the learned single Judge dismissing the writ petition. In the writ petition the Bank had challenged the Award of the Central Government Industrial Tribunal 'Tribunal' for short) dated September 26, 1994. By the Award the Tribunal had directed the Bank to reinstate D.K. Dayananda, a clerk working in the Cottonpet Branch of the Bank. This is what the Tribunal directed by the Aiward :

> "The order of II party (Bank) as per Ex. M. 16 is set aside. The II party (Bank) is directed to reinstate the I party (Dayananda) forthwith with continuity of service. No back wages. Calculated upto the date of reinstatement, the I party (Dayananda) is not entitled to earn increments for the period during which he had not worked. Reference

> accepted in part accordingly."

Cause of Dayananda, the workman was taken by the first respondent. The Award arose out of following question, which was referred to the Tribunal for adjudication :

> "Whether the action of the management of Syndicate Bank in terminating the services of Sri D.K. Dayananda, Clerk Cottonpet Branch of Syndicate is justified? If not, to what relief the workman is entitled to?"

We may now narrate the circumstances which led the Central Govern-ment to make the reference of the industrial dispute aforesaid.

In 1975 Dayananda was appointed as Clerk-cum-Typist on probation in the Bank. Subsequently he was confirmed. In November, 1983 he was transferred to Cottonpet Branch of the Bank where he was to joint his duty on or before April 3, 1984. He was relieved from the Branch where he was working, on March 31, 1984 on his transfer to Cottonpet Branch. From April 1, 1984 to December, 1985 out of 628 working days Dayananda worked only for 46 days. Dayananda did not report for duty on April 3, 1984. On June 4, 1984 Bank sent him a registered notice advising him to report for duty within three days and also requiring him to submit his explanation for his unauthor-ised absence. Dayananda sent a leave letter requesting to treat his absence as leave on health grounds and he assured he would report for duty on July 11, 1984. He did not do so. On July 9, 1984 Dayananda sent his resignation from the Bank. His resignation was accepted on August 27, 1984. Subsequently Dayananda withdrew his resignation and requested the Bank to allow him to continue in the service on humanitarian grounds. This was accepted by the Bank by letter dated December 3, 1984 subject to certain conditions with which presently we are not concerned. Dayananda then joined the Cottonpet Branch of the Bank. He attended duty up to December 22, 1984 and thereafter he absented. Afterwards he applied for leave from December 23, 1984 to January 5, 1985. Bank sent Dayananda a notice to attend his duty. In reply he requested for grant of further leave. Dayananda attended duty from April 1, 1985 to April 6, 1985 and then again absented himself. He applied for leave up to May 27, 1985. The leave was not sanctioned by the Bank and he was communicated of the decision. Still Dayananda did not report for duty. On May 16, 1985 Bank sent a notice to Dayananda about his unauthorised absence. On November 19, 1985 the Bank invoked Clause 16 of the IV Bipartite Settlement between the Management of the Bank and the employees. Now the Bank called upon Dayananda to show cause for his continued absence and to report back for work by December 19, 1985 failing which he would be deemed to have been voluntarily retired from the services of the Bank for his continued absence from April 8, 1985. This notice was sent by registered post to Dayananda but it was returned with the report of the postal authority that he refused to receive the same. This Clause 16 of the Bipartite Settlement we reproduce:

> "Where an employee has not submitted any application for leave and absents himself from work for a period of 90 or more consecutive days without or beyond any leave to his credit or absents himself for 90 or more consecutive days beyond the period of leave originally sanctioned or subsequently extended or where there is satisfactory evidence that he has taken up employment in India or the management is satisfied

> that he has no present intention of joining duties, the management may at any time thereafter give a notice to the employ-ee' s last known address calling upon the employee to report for duty within 30 days of the notice, stating inter alia, the grounds for the management coming to the conclusion that the employee has no intention of joining duties and furnishing necessary evidence, where available. Unless the employee reports for duty within 30 days or unless he gives an explanation for his absence satisfying the manage-ment that he has not taken up another employment or avocation and that he has no intention of not joining duties, the employee will be deemed to have voluntarily retired from the Bank's service on the expiry of the said notice. In the event of the employee submitting a satisfactory reply, he shall be permitted to report for duty thereafter within 30 days from the date of the expiry of the aforesaid notice without prejudice to the Bank's right to take any action under the law or rules of service".

By order dated December 19, 1985 by virtue of Clause 16 of the Bipartite Settlement as aforesaid the Bank treated Dayananda as having voluntarily abandoned his services. This order of the Bank was similarly sent to Dayananda under registered cover but was returned with the endorsement of the postal authority "not found during delivery time". Matter rested at that for three years. In September, 1988 Dayananda gave representation to the Bank for joining duty. He was told that he had abandoned his services with effect from April 8, 1985 and there was no question of his now joining the duty. Industrial dispute was raised by the first respondent which led the Central Government to make the reference to the Tribunal for adjudication.

Both the parties filed their respective statements of claims before the Tribunal. While Bank examined its Manager as its witness, Dayananda appeared for himself. During the course of evidence of the Manager of the Bank relevant registered covers and the notices sent to Dayananda were brought on record. In his statement Dayananda, however, said that he did not receive the first notice which was returned with the endorsement "refused". It is not disputed that on both the registered covers correct address of Dayananda was given. However, Tribunal was of the view that since the Bank did not examine the postman that Dayananda in fact refused to receive the notice, it could not be said that there was service of notice to Dayananda. From this Tribunal was of the view that the Bank could not under these circumstances invoke the provisions of Clause 16 of the Bipartite Settlement and on that score along reinstatement of Dayananda had to be ordered. Then relying on a decision of this Court in D.K. Yadav v. J.M.A. Industries Ltd., [1993] 3 SCC 259 the Tribunal took the view that since no inquiry was held by the Bank before terminating the services of Dayananda the action of the Bank was illegal. By this Award Tribunal though directed reinstatement of Dayananda with continuity in service, it declined to grant him further relief like back wages. Why the Tribunal did so can gather from paras 13 and 14 of the Award, which we reproduce :

> "13. The Ld. Counsel for the I party (Dayananda) stressed that 1 party (Dayananda) is entitled to back wages. Once the I party submitted his resignation which was accepted by the II party (Bank). Resignation letter Ex. M.4 shows that he wanted to take up self employment and start departmental stores. In view of the representation made by the I party, the II party recalled him to duty on humanitarian grounds. It is

clear from the material on record that the I party has worked only for 46 days from 1.4.84 to 19.12.85. He was continuously absent from 8.4.85 without obtaining leave, though his leave was refused. This notice Ex. M.10 intimating the I party that his leave was rejected has been served on the I party. The I party stated that he met with an accident and he was continuously ill. He has not placed any convinc-ing material to prove this.

14. The Nationalised Banks have been working under loss. The unsatisfactory conduct of I party cannot lose sight off. Against the background of Ex. M.4 it is highly probable that I party workman was not without any employment all these days. If the first party is granted back wages, in my opinion, it will amount to repairing penurious Peter to pay prosperous Paul."

Now the Bank was aggrieved. It filed a writ petition under Article 226 of the Constitution in the High Court of Karnataka which, as noted above, was dismissed by the learned single Judge by order dated June 25, 1998. Learned single Judge observed it was not in dispute that the worker had absented and within a span of 620 days he had worked only for 46 days and further the worker had not been able to establish that he had any justifiable cause for his unauthorised absence. Dayananda had not even pleaded that he had sought any leave for his absence. Also relying on the decision of this Court in D.K. Yadav's case learned single Judge held that since no inquiry was held before terminating the services of the workman Award of the Tribunal could not be interfered. Learned single Judge deprived the workman of continuity of service, which had been granted by the Tribunal. What weight learned single Judge can be seen from paras 5 and 6 of his judgment, which we quote :

"5. The question looms large in this case is that the worker did not attend the office. But it was incumbent on the Management in such cases to have issued a notice to the worker and conducted an enquiry. Merely on the assumption that the notice was refused by the worker, they cannot forgo the requirement of the enquiry, as held in the decision referred to supra. Likewise, at the same time, one cannot forget that there are certain circumstances which indicate that the worker has indicated that he was not interested in the job. The application he submitted for availing of loan is one such circumstance. If, as a matter of fact, he had applied for loan and that was granted, it means that the worker had impliedly expressed his intention not to continue his job. One does not know what exactly happened to his application and whether his loan was granted to start a Departmental Store. But we find that thereafter he tendered his resignation which was allowed to be withdrawn conditionally. That means, the employer has tacitly condoned the absence of the worker. This is also circumstance to be kept in while examining the scope of the plea of unauthorised absence. All these facts should have been brought out in evidence by conforming the witness by the employer either before the Tribunal or at the domestic enquiry. In the absence of such materials one cannot infer that there was an intention express or implied expressed by the employee to abandon the employment. In these circumstances, the Tribunal was justified in holding that the termination of services

is not justified.

6. This takes us to the question as to what should be the relief to be granted. The worker was awarded the relief of reinstatement besides continuous service. Certainly this part of the award call for modifi- cation. If the worker is to be reinstated with continuous service, practicality he loses nothing. Back-wages cannot be awarded, as there is some evidence that he would have been otherwise employed. It is a case where the reinstatement should be ordered without back-wages. There is no gain saying that the absence was unauthorised. Taking into account all the circumstances, I feel the proper order would be to direct the Management to reinstate the worker. The worker will not be entitled to any wages for the period from the last date of absence i.e., from 3.4.1984 till the date of the award. Besides he will not be entitled to continuity of service for the period from 1.4.1984 till the date of award of the Industrial Tribunal. While fixing the wages on reinstatement he will not be entitled to count any increments or wages earned for the period from 1.4. 1984 till the date of the award, i.e., 26.9.1994. He will earn the increment only from 26.9.1994 the previous increment being awarded to him on or before 1.4.1984." Learned single Judge noticed that Dayananda was being paid wages from September 26, 1994 under Section 17-B of the Industrial Dispute Act, 1947 and that that amount may be set off against the wages payable to him as if he was reinstated on September 26, 1994. To this extent the Award of the Tribunal was modified.

Still dissatisfied the Bank went in appeal before the Division Bench of the High Court. The Division Bench did not go into the merits of the case and just by referring to the judgment of the learned single Judge dismissed the appeal. That is how the matter is now before us.

Mr. V.R. Reddy, learned senior advocate for the Bank, submitted that it could not be said that action of the Bank under clause 16 of the Bipartite Settlement was in any way wrong. He said rules of natural justice were inbuilt in clause 15 of Bipartite Settlement and law laid by this Court in D.K. Yadav's case was not applicable. In D.K. Yadav v. J.M.A. Industries Ltd., [1993] 3 SCC 259 the workman was intimated that he had willfully absented from duty continuously for more than eight days without leave or prior information or intimation or previous permission from the management and, therefore, "deemed to have left the service of the company on your own account and lost your lien and the appointment with effect from December 3, 1980". This was based on Clause 13(2)(iv)2 of the Certified Standing Order of the company. It was contended by the workman that despite his reporting to duty on December 3, 1980 and everyday continuously thereafter he was prevented entry at the gate and he was not allowed to sign the attendance register. His plea was that he was not permitted to joint duty without assigning any reason. Labour Court found that the workman had failed to prove his case and that the action of the management was in accordance with the Standing Orders and it was not a termination nor retrenchment under the Act and that in terms of

2. Clause 13(2)(iv) Standing Order read thus :

"if a workman remains absent without sanctioned leave or beyond the period of leave originally granted or subsequently extended, he shall lose his lien on his appointment unless :

(a) he returns within 8 calendar days of the commencement of the absence of the expiry of leave originally granted or subsequently extended as the cases may be; and

(b) explains to the satisfaction of the manager/management the reason of his absence or his inability to return on the expiry of the leave, as the case may be. The workman not reporting for duty within 8 calendar days as mentioned above, shall be deemed to have automatically abandoned the services and lost his lien on his appointment. His name shall be struck off from the muster-rolls in such an eventuality. the Standing Orders workman lost his lien on his appointment and he was not entitled to reinstatement.

From the Award of the Labour Court matter came to this Court under Article 136 of the Constitution. There could not be automatic termination under the Certified Standing Orders on absence without or beyond the period of sanctioned leave for more than eight days. This Court said that the principle of natural justice and duty to act in just, fair and reasonable manner must be read into the Standing Orders. So the termination under the Standing Orders without holding any domestic enquiry or offering any opportunity to the workman was held to be violative of the principles of natural justice. This Court observed :

" 12. Therefore, fair play in action requires that the procedure adopted must be just, fair and reasonable. The manner of exercise of the power and its impact on the rights of the person affected would be in conformity with the principles of natural justice. Article 21 clubs life with liberty, dignity of person with means of livelihood without which the glorious content of dignity of person would be reduced to animal existence. When it is interpreted that the colour and content of procedure established by law must be in conformity with the minimum fairness and processual justice, it would relieve legislative callousness despising opportunity of being heard and fair opportunities of defence. Article 14 has a pervasive processual potency and versatile quality, equalitarian in its soul and allergic to discriminatory dictates. Equality is the antithesis of arbitrariness. It is thereby, conclusively held by this Court that the principles of natural justice are part of Article 14 and the procedure prescribed by law must be just, fair and reasonable."

This Court held :

"Therefore, we hold that the principles of natural justice must be read into the Standing Order No. I3(2)(iv). Otherwise it would become arbitrary, unjust and unfair violating Article 14. When so read the impugned action is violative of the principles of

natural justice."

At this we may as well refer to other judgments cited at the Bar.

In Hindustan Paper Corporation v. Pumendu Chakrobarty and Others, [1996] 11 SCC 404, respondent workman was an employee of Hindustan Paper Corporation on January 5, 1989 passed an order invoking the Rule 23(vi)(E)4 of its relevant Rules, which was to the effect that the workman deemed to have lost his lien on his appointment with the Corporation. Workman on May 27, 1988 applied for causal leave. Next day an FIR was lodged against him and others under Section 302/201 read with Section 34 IPC. On June 3, 1988 workman after expiry of the casual leave sent an application for earned leave for 11 days giving reason "personal affair" and mentioning his leave address other than what was with the Corporation. On June 6, 1988 Senior Manager of the Corporation received a message from the police to direct the workman to report to the police station. Police was informed about the application of the workman for grant of earned leave. Thereafter the workman sent series of leave applications up to November, 1988 without caring to find out whether his previous applications for leave had been sanctioned or not. Initially the workman did not disclose any reason for his absence and subsequently he mentioned "on medical grounds". He did not send any medical certificate and did not disclose his leave address. All this time Corporation was being approached by the police to inform them the whereabouts of the workman as he was an accused in a murder case. On November 30, 1988 Corporation informed the workman that his leave on medical ground was not sanctioned as his applications were not supported by medical certificates and that he was liable to be treated as an unauthorised absentee. The workman was, therefore, called upon to submit his explanation, if any, within 15 days of receipt of the letter. In reply thereto workman stated "baldly" that he was suffering from chest plain for quite some time and that he had consulted a specialist outside HPC for personal reasons and that medical certificate would be produced at the time of this joining. Under these circumstances Corporation passed order date January 5, 1989. Workman approached the Gauhati High Court, which set aside the order of the Corpo-ration and directed reinstatement of the workman with 50 per cent back wages. This led the Corporation to come to this Court. This Court said that from the record that the inference had to be drawn that either the medical certificates

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(vi) Termination of Service (E) loss of lien on his appointment by an employee, (1) Proceeding on leave without prior sanction and remaining unauthorisedly absent for more than 8 consecutive days and/or (2) Overstaying his sanctioned leave beyond originally granted or subsequently extended for more than 8 consecutive days. . were not genuine in the sense that they were not obtained then and there or the workman deliberately did not disclose them along with the leave applica-tions and that even before this Court no proper explanation was forthcoming from the workman on that aspect. It was, however, conceded by the Corpo-ration that Rule 23(vi)(E) had to be construed by reading into it the principles of natural justice. This Court then did not hold the Rule to be ultra vires Article 14 of the Constitution and said :

> "12. We consider that in view of this concession made by the learned counsel on behalf of the appellant-Corporation that the said Rule must be read and given effect to, subject to the compliance of the principles on natural justice, it cannot be said that the Rule is arbitrary or unreasonable or ultra vires Article 14 of the Constitution. In other words, before taking action under the said clause, an opportunity should be given to the employee to show cause against the action proposed and if the cause shown by the employees is good and acceptable, it follows that no action in terms of the said clause will be taken. Understood in this sense, it cannot be said that the said clause is either unreasonable or violative of "Article 16 of the Constitution."

Then this Court held :

> "15. We have extracted Rule 23 in full. The explanation to the Rule specifically states that certain items enumerated thereunder shall not be treated as a penalty at all within the meaning of Rule 23. For our case the relevant sub-clause is (vi)(E) which says that proceeding on leave without prior sanction and remaining unauthorisedly absent for more than 8 consecutive days; and/or overstaying his sanctioned leave beyond the period originally granted or subsequently extended for more than 8 consecutive day would result in loss of lien of the appointment of the employees. In this case we have seen that the first respondent had proceeded on leave without prior sanction and remained unauthorisedly absent for more than 6 months consecutively which obliged the appellant-Corporation to issue communication to the first respondent calling upon him to explain. Unfortunately, the first respondent, for reasons best known to him, has not availed himself of the opportunity as seen earlier but replied in a half- hearted way which resulted in the impugned order. Therefore, under the circumstances, it cannot be said that the principles of natural justice have not been complied with or the circumstances require any enquiry as contemplated under Rule 25."

This Court was thus of the view that there "was no good reason for the High Court to interfere with the impugned order of the appellant-Corporation dated January 5, 1989".

In Uptron India Ltd. v. Shammi Bhan and Another, [1998] 6 SCC 538, workman was permanent employee of the appellant. On November, 7, 1984 she proceeded and remained till January 29, 1985 on maternity leave. Thereafter she allegedly remained absent with effect from January 30, 1985 till April 12, 1985 without any application for leave and consequently by order dated April 12, 1985 appellant informed the workman that her services stood automatically terminated in terms of Clause 17(g)6of the Certified Standing Orders. This Court, where one of us (Saghir Ahmad, J.) was a party, said :

> "Clause 17(g), which has been extracted above, Significantly does not say that the services of a workman who overstays the leave for more than seven days shall stand automatically terminated. What it says is that "the services are liable to automatic termination". This provision, therefore, confers a discretion upon the management to

> terminate or not to terminate the services of an employee who overstays the leave. It is obvious that this discretion cannot be exercised, or permitted to be exercised capriciously. The discretion has to be based on an objective consideration of all the circumstances and material which may be available on record. What are the circumstances which compelled the employee to proceed on leave; why he overstayed the leave; was there any just and reasonable cause for overstaying the leave; whether he gave any further application for extension for leave; whether any medical certificate was sent if he had, in the meantime, fallen ill? These arc questions which would naturally arise while deciding to terminate the services of the employee for overstaying the leave. Who would answer these questions and who would furnish the material to enable the management to decide whether to terminate or not to terminate the services are against questions which have an answer inherent in the provision itself, namely, that the employee
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> 6. 17(g) The services of a workman are liable to automatic termination if he overstays on leave without permission for more than seven days. In case of sickness, the medical certificate must be submitted within a week against whom action on the basis of this provision is proposed to be taken must be given an opportunity of hearing. The principles of natural justice, which have to be read into the offending clause, must be complied with and the employee must be informed of the grounds for which action was proposed to be taken against him for overstaying the leave."

In Bharat Forge Co. Ltd. v. A.B. Zodge and Another, [1996] 4 SCC 374, the management was denied to by the Industrial Tribunal to lead evidence in support of the impugned order of dismissal. It was not disputed that the request was made before the closure of the proceedings before the Tribunal. This Court held :

> "A domestic inquiry may be vitiated either for non-compliance of rules of natural justice or for perversity. Disciplinary action taken on the basis of a vitiated enquiry does not stand on a better footing than a disciplinary action with no enquiry. The right of the employer to adduce evidence in both the situations is well recognised. So the employer is entitled to adduce evidences, for the first time, before the Tribunal even if the employer had held no inquiry or the inquiry held by the employer is found to be perverse."

Two principles emerge from the decision (1) principles of natural justice and duty to act in just, fair and reasonable manner have to be read in Certified Standing Orders which have statutory force. These can be applied by Labour Court and Industrial Tribunal even to relations between management and workman though based on contractual obligation; and (2) where domestic inquiry was not held or it was vitiated or some reason the Tribunal or Court adjudicating an industrial dispute can itself go into the question raised before it on the basis of the evidence and other material on record.

In the present case action was taken by the Bank under Clause 16 of the Bipartite Settlement. It is not disputed that Dayananda absented himself from the work for a period of 90 or more consecutive days. It was thereafter that the Bank served a notice on him calling upon to report for duty within 30 days of the notice stating therein the grounds for the Bank to come to be conclusion that Dayananda had no intention of joining duties. Dayananda did not respond to the notice at all. On the expiry of the notice period Bank passed orders that Dayananda had voluntarily retired from the service of the Bank. Now what are the requirements of principles of natural justice, which are required to be observed? These are : (1) workman should know the nature of the complaint or accusation; (2) an opportunity to state his case; and (3) the management should act in good faith which means that the action of the management should be fair, reasonable and just. All these three criteria have been fully met in the present case. Principles of natural justice are inbuilt in Clause 16 of the Bipartite Settlement. When evidence was led before the Tribunal, Bank produced the registered covers, which had been received back with the endorsement "refused" and the addressee "not found during delivery time". Dayananda said he never refused to receive the notice. In these circumstances Tribunal thought in necessary to hold that notice was not served on Dayananda as the Bank did not examine the postman. The notice was sent on the correct address of Dayananda and it was received back with the postal endorsement "refused". A clear presumption arose in favour of the Bank and against Dayananda. Yet the Tribunal held that no notice was given to Dayananda as postman was not produced by the Bank. This appears to us to be rather an incongruous finding by the Tribunal. Unfortunately, High Court did not go into this question at all. Considering the conduct of Dayananda all this period and after three years of his having voluntarily retired from the Bank in terms of Clause 16 of the Bipartite Settlement his statement that he did not receive the notice was a sheer lie. His whole edifice was built on falsehood and yet the Tribunal was there to give him relief on the platter though at the same time criticised his conduct during his employment with the Bank.

It is no point laying stress on the principles of natural justice without understanding their scope or real meaning. There are two essential elements of natural' justice which are : (a) no man shall be judge in his own cause; and (b) no man shall be condemned, either civilly or criminally, without being afforded an opportunity of being heard in answer to the charge made against him. In course of time by various judicial pronouncements these two principles of natural justice have been expanded, e.g., a party must have due notice when the Tribunal will proceed; Tribunal should not act on irrelevant evidence or shut out relevant evidence; if the Tribunal consists of several members they all must sit together at all times; Tribunal should act independently and should not be biased against any party; its action should be based on good faith and order and should act in just, fair and reasonable manner. These in fact are the extensions or refinements of the main principles of natural justice stated above. Bank has followed the requirements of Clause 16 of the Bipartite Settlement. It rightly held that Dayananda had voluntarily retired from the service of the Bank. Under these circumstances it was not necessary for the Bank to hold any inquiry before passing the order. An inquiry would have been necessary if Dayananda had submitted his explanation which was not acceptable to the Bank or contended that he did report for duty but was not allowed to joint by the Bank. Nothing of the like has happened here. Assuming for a moment that inquiry was necessitated, evidence led before the Tribunal clearly showed that notice was given to Dayananda and it is he who defaulted and offered no explanation of his absence from duty and did not report for duty within 30 days the notice as required in Clause 16 of the Bipartite Settlement.

This undue reliance on the principles of natural justice by the Tribunal and even by the High Court has certainly led to miscarriage of justice as far as Bank is concerned. Conduct of Dayananda as an employee of the Bank has been astounding. It was not a case where the Tribunal should have given any relief to Dayananda and yet the Bank was directed to reinstate him with continuity of service and mercifully the latter part of the relief High Court struck down. There was no occasion for the Tribunal to direct that Dayananda be reinstated in service or for the High Court not to have exercised its jurisdiction under Article 226 of the Constitution to set aside the Award.

We, therefore, allow the appeal, set aside the impugned judgment of the High Court and also the Award dated September 26, 1994 of the Central Government Industrial Tribunal.

High Court had noticed that since September 26, 1994 Dayananda had been paid wages in terms of Section 17-B of the Industrial Disputes Act, 1947. When the matter came to this Court on special leave petition, while issuing notice on February 8, 1999 it was ordered "Statute quo regarding implemen- tation of the order of the High Court as existing today to continue till further orders". It is not clear how long Dayananda has been paid his wages. Even though we have set aside the order of the Tribunal we direct that the wages so far paid to Dayananda be neither recorded nor adjusted by the Bank. However, there shall be no order as to costs.