IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

207 CWP-18118-2006
Date of Decision : 18.10.2024

PUNJAB AND SIND BANK …. PETITIONER

V/S

JAI SINGH AND ORS …. RESPONDENTS

CORAM : HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr.Ranjan Lohan, Advocate and
Mr. Sahil Lohan, Advocate
for the petitioner.

Mr. Uday Agnihotri, Advocate
for respondent No.1.

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JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of order dated 28.08.2006 (Annexure P-1) whereby Central Government in terms of Section 10 read with 2A of Industrial Disputes Act, 1947 (for short 'ID Act') has referred the matter to Central Government Industrial Tribunal-cum-Labour Court, Chandigarh.

2. The petitioner is a nationalized bank. The respondent No.1 (for short 'respondent') was its employee. The respondent joined petitioner as Clerk in 1983. In 1990, he was posted as Clerk-cum-Cashier in Raipur Rani Branch of the petitioner. The petitioner initiated disciplinary proceedings against him alleging misappropriation of Rs.51,500/-. An enquiry officer was appointed who concluded against

the respondent. The disciplinary authority vide order dated 24.12.1991 awarded punishment of dismissal from service. The respondent preferred an appeal before appellate authority which came to be dismissed vide order dated 26.10.1994.

3. The petitioner-bank on one hand initiated disciplinary proceedings and on the other lodged FIR against the respondent. The police investigated the matter and filed its report under Section 173 Cr.P.C. The trial Court vide judgment dated 29.04.2005 acquitted him. After acquittal, the respondent approached labour authorities. The Under Secretary, Ministry of Labour, Government of India vide order dated 28.08.2006 referred the dispute for adjudication to Industrial Tribunal.

4. Mr. Lohan submits that the respondent was dismissed from service in December' 1991 and his appeal was dismissed on 26.10.1994. He opted to remain silent from 1994 to 2005. As soon as he came to be acquitted by trial Court, he approached labour authorities seeking reference to Industrial Tribunal. The departmental proceedings are independent from criminal proceedings. The labour authority has made reference after 11 years from the date of dismissal of appeal. No period of limitation has been prescribed under Section 10 of ID Act, however, no reference can be made beyond reasonable period of limitation.

5. Per contra, Mr. Uday Agnihotri submits that no limitation period has been prescribed under Section 10 of ID Act. The limitation of 03 years has been prescribed under Section 2A of ID Act and that period was introduced w.e.f. 15.09.2010 whereas in the instant case reference was made in 2006.

6. I have heard the arguments of counsel for the parties and perused the record.

7. The petitioner terminated respondent in December' 1991. The appeal of the respondent was dismissed on 26.10.1994. The labour authority has passed impugned order on 28.08.2006 upon the demand notice of respondent. The said demand notice was filed under Section 2A of ID Act. The demand notice was served in 2005 and reference order was passed on 28.08.2006. No limitation period under Section 10 of ID Act even as on day has been prescribed, however, by amendment carried out in 2010, limitation of 03 years was prescribed under Section 2A of ID Act. For the ready reference, Sections 2A and 10 of ID Act are reproduced as below:

> ***Unamended***
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> *Section 2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute.- Where any employer discharges, dismisses, retrenches, or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.*
>
> ***Amended***
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> *"**2-A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute**.—*
>
> *(1) Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between*

that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

(2) Notwithstanding anything contained in Section 10, any such workman as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

(3) The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1).

***10. Reference of disputes to Boards, Courts or Tribunals**. —*

(1) Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time, by order in writing,—

(a) refer the dispute to a Board for promoting a settlement thereof; or

(b) refer any matter appearing to be connected with or

relevant to the dispute to a Court for inquiry; or

(c) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication; or

(d) refer the dispute or any matter appearing to be connected with, or relevant to the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule, to a Tribunal for adjudication:

Provided that where the dispute relates to any matter specified in the Third Schedule and is not likely to affect more than one hundred workmen, the appropriate Government may, if it so thinks fit, make the reference to a Labour Court under clause (c) :

Provided further that] where the dispute relates to a public utility service and a notice under Section 22 has been given, the appropriate Government shall, unless it considers that the notice has been frivolously or vexatiously given or that it would be inexpedient so to do, make a reference under this sub-section notwithstanding that any other proceedings under this Act in respect of the dispute may have commenced:

Provided also that where the dispute in relation to which the Central Government is the appropriate Government, it shall be competent for that Government to refer the dispute to a Labour Court or an Industrial Tribunal, as the case may be, constituted by the State Government."

8. Section 2A of ID Act was amended w.e.f. 15.09.2010. By way of amendment, workman has been permitted to file application before Labour Court in case of discharge or dismissal or retrenchment or termination from service. Limitation period of 03 years from the date of discharge, dismissal or retrenchment has been prescribed.

9. The respondent filed application in 2005, thus, the matter could be placed before Labour Court only by way of reference by competent authority. The respondent could not directly approach Labour Court against order of dismissal from service. No limitation period has been prescribed under Section 10 of ID Act. It only provides that there must exist or there should be apprehension of dispute and reference may be made at any point of time. The respondent is claiming that expression 'at any time' means Government can make reference without considering limitation. There is no limitation and reference can be made at any point of time.

10. It is a settled proposition of law that if no limitation period is prescribed, every authority is bound to act within reasonable period of limitation. The respondent filed application in 2005 and Labour authority acted promptly and made reference in 2006, thus, there is no delay on the part of labour authority, however, respondent approached labour authority after 11 years from the date of dismissal of his appeal. By inserting sub section (3) in section 2A, the legislature has prescribed 03 years limitation period from the date of dismissal from service. It is true that 03 years period prescribed under Section 2A of ID Act cannot be imported in the present case because matter relates to pre-amendment, era, however, cue can be taken from said prescribed period. In the absence of said period, reasonable period should be applied. It is trite law that reasonable period depends upon facts and circumstances of each case. There is no straight jacket formula. The Courts are supposed to determine reasonable period in the peculiar facts and circumstances of each case.

11. The respondent is claiming that he was acquitted in 2005, thus, on the basis of acquittal, he became entitled to reinstatement. The respondent was dismissed from service in 1991 and his appeal was dismissed on 26.10.1994. The yardstick of proof in departmental and criminal proceedings are different. In ***Kendriya Vidyalaya Sangathan and others vs. T. Srinivas, 2004(7) SCC 442***, the Apex Court set aside the order of the Tribunal which had been upheld by the High Court wherein disciplinary proceedings had been ordered to be stayed till the criminal trial is over. It was accordingly held that both the said proceedings were altogether distinct and different while placing reliance upon the judgment in ***State of Rajasthan vs. B.K. Meena, 1996 (6) SCC 417***. The relevant extracts of judgment in ***Kendriya Vidyalaya's case (supra)*** reads as:-

> *"In the instant case, from the order of the tribunal as also from the impugned order of the High Court, we do not find that the two forums below have considered the special facts of this case which persuaded them to stay the departmental proceedings. On the contrary, reading of the two impugned orders indicates that both the tribunal and the High Court proceeded as if a departmental enquiry had to be stayed in every case where a criminal trial in regard to the same misconduct is pending. Neither the tribunal nor the High Court did take into consideration the seriousness of the charge which pertains to acceptance of illegal gratification and the desirability of continuing the appellant in service inspite of such serious charges levelled against him. This Court in the said case of State of Rajasthan (supra) has further observed that the approach and the objective in the criminal*

> *proceedings and the disciplinary proceedings is altogether distinct and different. It held that in the disciplinary proceedings the question is whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment, as the case may be, whereas in the criminal proceedings the question is whether the offences registered against him are established and, if established, what sentence should be imposed upon him. The court in the above case further noted that the standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the cases are distinct and different. On that basis, in the case of State of Rajasthan the facts which seems to be almost similar to the facts of this case held that the tribunal fell in error in staying the disciplinary proceedings."*

12. A two-judge Bench of Supreme Court in ***Union of India and others vs. Subrata Nath, 2022 LiveLaw (SC) 998*** while adverting with scope of interference under Article 226 of the Constitution of India in disciplinary proceedings has held that departmental authorities are fact finding authorities. On finding the evidence to be adequate and reliable during the departmental enquiry, the Disciplinary Authority has the discretion to impose appropriate punishment on the delinquent employee keeping in mind the gravity of the misconduct. The Hon'ble Supreme Court has considered its judicial precedents including a two-judge Bench judgment in ***Union of India and Others v. P. Gunasekaran.*** The relevant extracts of the judgment read as:

> *"19. Laying down the broad parameters within which the High Court ought to exercise its powers under*

Article 226/227 of the Constitution of India and matters relating to disciplinary proceedings, a two Judge Bench of this Court in Union of India and Others v. P. Gunasekaran held thus:

> *"12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:*
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> *(a) the enquiry is held by a competent authority;*
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> *(b) the enquiry is held according to the procedure prescribed in that behalf;*
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> *(c) there is violation of the principles of natural justice in conducting the proceedings;*
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> *(d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;*
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> *(e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;*
>
> *(f) the conclusion, on the very face of it, is so*

wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;

(g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;

(h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

(i) the finding of fact is based on no evidence.

13. Under Articles 226/227 of the Constitution of India, the High Court shall not:

(i) reappreciate the evidence;

(ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law; (iii) go into the adequacy of the evidence;

(iv) go into the reliability of the evidence;

(v) interfere, if there be some legal evidence on which findings can be based.

(vi) correct the error of fact however grave it may appear to be;

(vii) go into the proportionality of punishment unless it shocks its conscience."

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22. To sum up the legal position, being fact finding authorities, both the Disciplinary Authority and the Appellate Authority are vested with the exclusive power to examine the evidence forming part of the inquiry report. On finding the evidence to be adequate

> *and reliable during the departmental inquiry, the Disciplinary Authority has the discretion to impose appropriate punishment on the delinquent employee keeping in mind the gravity of the misconduct. However, in exercise of powers of judicial review, the High Court or for that matter, the Tribunal cannot ordinarily reappreciate the evidence to arrive at its own conclusion in respect of the penalty imposed unless and until the punishment imposed is so disproportionate to the offence that it would shock the conscience of the High Court/Tribunal or is found to be flawed for other reasons, as enumerated in P. Gunasekaran (supra). If the punishment imposed on the delinquent employee is such that shocks the conscience of the High Court or the Tribunal, then the Disciplinary/Appellate Authority may be called upon to re-consider the penalty imposed. Only in exceptional circumstances, which need to be mentioned, should the High Court/Tribunal decide to impose appropriate punishment by itself, on offering cogent reasons therefor."*

13. In view of afore-cited judgements, it is quite evident that departmental proceedings are independent from criminal proceedings. An employee cannot rekindle a dead claim on the ground of acquittal in criminal proceedings. The respondent opted to remain silent after dismissal of his appeal. He was duty bound to avail available remedies within reasonable period of limitation. He could not approach labour authorities as per his convenience and sweet will. The demand notice was served beyond a reasonable period of limitation, thus, the impugned order is bad in the eye of law.

14. In the wake of above discussion and findings, this Court is of the considered opinion that the instant petition deserves to be allowed and accordingly allowed. The impugned order dated 28.08.2006 is hereby set aside.

(JAGMOHAN BANSAL)
JUDGE

18.10.2024
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Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No