

HIGH COURT OF GUJARAT (D.B.)**BHAVMAN PUSHKARRAI PANDYA(B P OPANDYA)***Versus***BANK OF INDIA & 2 OTHER(S)****Date of Decision:** 29 January 2021**Citation:** 2021 LawSuit(Guj) 5318**Hon'ble Judges:** [Sonia Gokani](#), [Sangeeta K Vishen](#)**Case Type:** Letters Patent Appeal; Special Civil Application; Civil Application (For Stay)**Case No:** 810 of 2019, 947 of 2019; 392 of 2019, 19908 of 2018; 1 of 2019**Subject:** Labour and Industrial**Acts Referred:**[Industrial Disputes Act, 1947 Sec 2A\(3\)](#), [Sec 2A\(1\)](#), [Sec 2A](#)**Final Decision:** Appeal dismissed**Advocates:** [G M Joshi](#), [U T Mishra](#), [Devang Vyas](#), [Keyur Gandhi](#), [Nanavati Associates](#)**Cases Referred in (+): 1****Sonia Gokani, J.**

[1] These are the appeals arising from the judgment and order passed by the learned Single Judge in Special Civil Application No.19908 of 2018 dated 12.02.2019, whereby the learned Single Judge has dismissed the petition by confirming the award passed by the learned Central Government Industrial Tribunal ("CGIT" for short)-cum-Labour Court, Ahmedabad in Reference (CGITA) No.12 of 2015 dated 11.07.2018. It directed employee to be reinstated and further the amount of lump-sum compensation of Rs.3 lakhs in lieu of the backwages have been also directed, with additional direction of paying permissible retiral benefits as on the date of superannuation of employee with continuity of service.

[2] The employee petitioner shall be referred to as the respondent whereas the bank shall be referred to as the appellant.

[3] The brief factual matrix leading to the present appeals are as follows:

3.1 The respondent No.1 was appointed as Cash-cum-Accounts Clerk by the appellant on 01.05.1972 and he was lastly working as cash clerk at Ahmedabad Branch of Bank of India. He was chargesheeted on 28.03.1992, where he was alleged of:

i. Collusion with one Shri C.B. Thakore and Shri H.V. Shah, Ex-Manager in availing the truck loans to certain borrowers through Krishibazar Branch, Rajkot by giving the false addresses and bogus guarantors;

ii. Of obtaining dealer's receipt to cover margin money against truck loans;

iii. Arranging to obtain inflated quotations from Bharat Motor Body Repairing Works in collusion with Shri C.B. Thakore;

iv. Arranging truck loans from various banks in collusion with the very person Mr.Thakore; and

v. Engaging in the business outside the scope of employment by running a transport agency at Ahmedabad in the name of Gaytri Carriers, opening current accounts with the branches of other banks and standing as guarantors in number of truck loan accounts in other nationalized banks.

3.2 According to the Disciplinary Authorities, if proved it will amount to gross misconduct within the meaning of para 19.5(a) and para 19.5(j) of the Bipartite Settlement dated 14.02.1995.

3.3 After the departmental inquiry, which was initiated against the respondent, the two charges have been concluded to be proved and the recommendation was for the punishment of dismissal from the service from the appellant bank. This was led by giving the testimonies of 22 witnesses and basing on the documentary evidence.

3.4 The Assistant Chief Manager of the bank was advised to give the recommendations on the findings of the Inquiry Officer and place it before the Chief Vigilance Officer. Once it was done by communication dated 19.10.1994, the provisional recommendations had been confirmed.

3.5 The Disciplinary Authority also issued the second Show Cause Notice dated 26.11.1994 and proposed the punishment of dismissal.

3.6 Special Civil Application No.13570 of 1994 was preferred by the respondent employee. The Court directed the bank to supply the copy of the report of the Vigilance Department of the bank. On receipt of the copy of the report of the Vigilance Department, the reply was given to the Show Cause Notice by the

respondent employee and after considering such reply and also on going through the documentary as well as oral evidence which had been led before the Inquiry Officer, the Disciplinary Authority found the charge Nos.1 and 3 to have been proved and accordingly, has passed the punishment order dated 11.07.1995, of dismissal.

3.7 An appeal came to be preferred by the respondent employee on 17.08.1995 before the Appellate Authority, which was dismissed on 12.12.1996.

3.8 The respondent employee attained the age of superannuation on 30.04.2011. He raised the industrial dispute after a long time in relation to his dismissal from the service. The dispute was then referred to the CGIT, Ahmedabd by Ministry of Labour, Government of India and the Reference was numbered as Reference (CGITA) No.12 of 2015. The terms of the Reference were as follows:

"Whether the action of Management of Assistant General Manager, Bank of India, Ahmedabad, in dismissing the services of Shri B. P. Pandya, Staff Clerk is justified? If so, what relief he is entitled to?"

3.9 The Statement of Claim dated 23.02.2015 had been filed before the Tribunal where it prayed to quash and set aside Punishment Order dated 11.07.1995 and also the Order of the Appellate Authority dated 12.12.1996. He also sought full backwages from the date of his dismissal to the date of superannuation and all consequential reliefs.

3.10 The written statement came to be filed by the appellant bank where it preliminarily objected on the individual dispute of termination needed to be raised under Section 2A(1) of the Industrial Disputes Act, 1947 ("ID Act" for short), stating that the same needed to be preferred within 3 years from the date of dismissal and hence, the matter was barred by Section 2A(3) of the ID Act as the dispute had been raised after 20 years.

3.11 The appellant bank also filed an application raising the preliminary objection of maintainability of Reference and this had not been entertained by the Tribunal holding that besides normal procedure for settlement of Industrial Dispute by way of a Reference through the Ministry of Labour, Government of India, the Legislature also permits the employee to approach the Labour Court or Industrial Tribunal directly under Section 2A of the ID Act.

3.12 Yet another application of the very kind had been preferred by the appellant bank, that too, was not entertained by the Tribunal on 23.08.2016 on the ground of res judicata.

3.13 Both the orders had been challenged being orders dated 22.12.2015 and 23.08.2016 in a Special Civil Application No.17521 of 2016 which had been dismissed by the Court on 18.10.2016 and the Court permitted this issue of delay and latches to be raised at the time of final hearing of the Reference proceedings and further directed the Tribunal to examine that.

3.14 The appellant bank had also later had replied under the RTI Act that the documentary evidence was pertaining to inquiry and daily ordersheets were not traceable with the bank.

3.15 The respondent employee had chosen to disclose before the Tribunal not to challenge the legality and validity of the inquiry proceedings and urged to decide only the aspect of quantum of punishment. Accordingly, both the sides were heard; wherein, it had been emphasised on the part of the appellant bank that the scope of interference is quite limited in wake of the legality and validity of the inquiry; also emphasizing on the integrity of the employee and of the serious misconduct which had been proved, it is requested not to interfere with the punishment of dismissal. It had allowed the Reference and since it passed the age of superannuation and directed that the reinstatement should be without backwages with a lump-sum amount of Rs.3 lakhs in lieu of the backwages with all permissible retiral benefits with continuity of service.

3.16 The appellant bank challenged the impugned award by way of Special Civil Application No.19908 of 2018 whereas the respondent employee had challenged it by way of Special Civil Application No.392 of 2019 on the ground of non-grant of backwages. They both were decided by a common judgment and order dated 12.02.2019 by the learned Single Judge (Coram: C.L. Soni, J.). The issue of raising of dispute at the end of 20 years also had been much emphasized on the part of the appellant bank. The Court held that in absence of limitation prescribed or raising the dispute as per the settled law, it is for the Tribunal or Labour Court to decide the relief to be granted to the workman on account of delay. The Court also noted that the Tribunal while examining the challenge to the punishment of dismissal had noticed the flaws of violation of Bank Rules which culminated into the Order of Punishment and further noticed that there was lack of evidence to conclude that there was a fraud committed on the part of the employee while sanctioning the loans. It also emphasized on reasonings given by the Tribunal, particularly with regard to delay in approaching the Court. The Court also further found that employer failed to make out a case; however, reasonings adopted by the Tribunal was perverse. It further noted that respondent employee had approached on the ground that it had not been granted full backwages and naturally, the

employee could not have been entitled to the grant of full backwages in wake of the glaring facts.

[4] We have heard extensively the learned senior advocate, Mr.G.M. Joshi appearing with learned advocate, Mr.U.T. Mishra for the respondent employee and learned advocate, Mr.Keyur Gandhi for Nanavati Associates for the appellant bank. They both have emphasized on their respective stands taken before the Tribunal as well as before the learned Single Judge.

[5] Before this Court considers the judgment and order of the learned Single Judge, apt would be to refer to the decision of the Apex Court rendered in the case of [Management of Narendra & Company Private Limited v. Workmen of Narendra & Company](#), 2016 LawSuit(SC) 94, which clearly unequivocally emphasizes on the power of the Appellate Court while deciding the matter on appeals. Relevant paragraph 5 of the said decision is reproduced hereinafter:

"Once the learned Single Judge having seen the records and come to the conclusion that the industry was not functioning after January, 1995, there is no jurisdiction in entering a different finding without any further material before the Division Bench. The appellate bench ought to have noticed that the statement of MW-3 is itself part of the evidence before the Labour Court. Be that as it may, in an intra-court appeal, on a finding of fact, unless the appellate Bench reaches a conclusion that the finding of the Single Bench is perverse, it shall not disturb the same. Merely because another view or a better view is possible, there should be no interference with or disturbance of the order passed by the Single Judge, unless both sides agree for a fairer approach on relief."

[6] Reverting to the issues which have been raised before this Court, we notice that even before the CGIT, in a Reference which had been made after 20 years, the appellant bank had emphasized on the delay and laches after once the Tribunal had decided that aspect. Once again, both of them have been raised before this Court, which also had not entertained and had permitted to once again raise it at the time of final hearing.

[7] We notice that in the final hearing, the Tribunal had already dealt with it extensively. It also had taken note of the fact that the legality and validity of the inquiry had not been challenged and the only aspect of punishment was in question. The Tribunal has also extensively dilated the facts to hold that the questions essentially were of the loans sanctioned by the Branch Manager of Krishibazar Branch, Bank of India, Rajkot, while the respondent employee was posted at Ahmedabad Branch as Cash Clerk, would have no authority or power to play any role in the loan sanctioning

process for he being at Ahmedabad and secondly, what weighed with the Tribunal was that the Disciplinary Authority instead of appreciating the inquiry report itself chose to send it to the Chief Vigilance Officer for making its comments and for taking the decision as to whether the charges have been duly proved or not. Tribunal rightly appreciated that the Charge No.1 was though held to be partly proved by Inquiry Officer, the Chief Vigilance Officer took decision of holding it to be fully proved without assigning any reasons. Moreover, the Charge No.5 had been though admitted by the respondent employee, the Disciplinary Authority held that it was out of the purview of the misconduct, in absence of any provisions in Bi-partite Settlement for obtaining the permission before standing as guarantor. Again, the decision in awarding the penalty of dismissal was on the recommendation of the Chief Vigilance Officer. It was not noticed that that was discretion exercised by the concerned Authority itself on going through the inquiry report, as otherwise he would have recorded that he is agreeing with the Chief Vigilance Officer, which were found absent. Thus, on the basic flaws of the process since the Chief Vigilance Officer was not a disciplinary authority & its having taken decision of penalty of dismissal as also the fact that the appeal which was needed to be decided within 45 days & where the opportunity of personal hearing was necessary, since was decided at the end of 16 months without availing the opportunity, it unmistakably held that the vital rules of the bank and Bi-partite agreement have been violated while conducting the process of awarding the punishment. It in no uncertain terms also held this to have suffered from biases and prejudices in absence of any material to indicate as to what evidence was taken into account for reaching to the conclusion.

7.1 All these had been keenly & dispassionately appreciated by the learned Single Judge while considering the submissions of both the sides on examining material on record while holding that the Tribunal was at no error and there was nothing perverse noted in its judgment & award.

7.2 We also had occasion to independently examine entire material along with elaborate submissions & find no reason at all to interfere as not only the reasons given by the Tribunal are satisfactory and on having taken into account the entire evidence as well as documentary material on record learned Single Judge also has appreciated it as has been required under the law and it also has reached to the right conclusion. It also balanced consequences of this belated filing of reference and the said just balanced by the Tribunal in not granting the full backwages to the respondent employee and instead allowing the lump-sum amount of compensation to the tune of Rs.3 lakhs also needs the stamp of approval.

[8] These appeals therefore merit no acceptance as the judgment and order of the learned Single Judge being sound and reasonable deserves no interference.

8.1 We have also noticed that the Court has directed the appellant bank to consider the aspect of grant of pensionary benefits to the respondent employee. On account of pendency of this appeals the appellant bank has not so far considered; however, within a reasonable time period it shall be considered in accordance with law since the directions issued by the authority which has been confirmed by the learned Single Judge and by this Court is of grant of consequential retiral benefits.

[9] Noticing the fact that respondent workman since has been given the permissible retiral benefits as directed in the order of the learned Single Judge that the consideration for the pension be made within 10 weeks from the date of receipt of copy of the order. The said consideration may not preclude the authorities from availing their remaining benefits to the respondent workman which shall be within 4 weeks from the date of receipt of copy of the order.

[10] Both the appeals, accordingly, are dismissed.

ORDER IN CIVIL APPLICATION (FOR STAY) NO. 1 of 2019

in R/LETTERS PATENT APPEAL NO. 947 of 2019:

In view of the dismissal of Letters Patent Appeal No.947 of 2019, the present civil application No.1 of 2019 for stay does not survive and the same is disposed of.