

Nirmal Singh

Vs

State of Punjab and Others

Civil Appeal No. 1746 (NI) of 1980

(CJI Y. V. Chandrachud, A. P. Sen JJ)

09.08.1984

JUDGMENT

CHANDRACHUD, C.J. –

1. In April 1962, the appellant was appointed as a clerk in the Hoshiarpur Central Co-operative Bank Ltd., which is respondent 3 to this appeal. On August 10, 1976 he was transferred as 'Branch Manager' of the Dholbaha branch of the Bank. On October 22, 1977 one Labh Singh s/o Harnam Singh opened an account in the Dholbaha Branch under an introduction given by one Balram Singh. Two days later, Labh Singh deposited in that account a draft in the sum of Rs 5000 issued by the Royal Bank of Canada on the Chartered Bank, New Delhi. The amount due on the draft was credited by the Bank in Labh Singh's account, on November 14. On that very day, Labh Singh withdrew a sum of Rs 2500 from his account. Three days later, he withdrew the remaining amount of Rs 2500. Soon thereafter, a person claiming to be the real Labh Singh in whose favour the draft was issued by the Royal Bank of Canada, complained to the Chartered Bank, New Delhi, that the draft was stolen and that the money due thereon was fraudulently collected by the person in whose name an account was opened in the Dholbaha branch. On November 10, 1978, the Executive Committee of respondent 3-Bank resolved that an enquiry be held for fixing responsibility in the matter of the fraudulent encashment of the draft. The enquiry was held by the Chief Executive Officer, Satish Chander Dutt, who was of the rank of the Assistant Registrar in the Co-operative department. As a result of the report submitted by him, the appellant was dismissed from service on December 30, 1978.

2. The demand raised by the appellant in regard to his dismissal was referred by the Government of Punjab to the Conciliation Officer, who recommended that the appellant's case should be forwarded for adjudication on the question whether his dismissal from service was justified. The Labour Commissioner of Punjab, exercising the powers of the State Government, declined to refer the dispute for adjudication on the ground that the appellant was not a workman. The appellant filed a writ petition in the High Court of Punjab and Haryana, challenging the decision of the Labour Commissioner, but that writ petition was dismissed summarily. The appellant has filed this appeal by special leave, challenging the decision of the High Court and of the Labour Commissioner. The State of Punjab and the Labour Commissioner are respondents 1 and 2 to this appeal.

3. The grievance made by Shri N. D. Garg, who appears on behalf of the appellant, that the Labour Commissioner ought to have given reasons in support of his decision, is justified. All that the Labour Commissioner has stated in the order is that the post held by the appellant did not fall "within the category of workman". This, really, is the conclusion to which the Labour Commissioner came but no reasons are given to justify that conclusion. We are of the opinion that

the Labour Commissioner ought to have given reasons why he came to the conclusion that the appellant is not a "workman" within the meaning of Section 2(s) of the Industrial Disputes Act, 1947.

4. We could have remanded the matter to the Labour Commissioner asking him to State his reasons why the appellant is not a workman but, that will entail delay. Instead, it is advisable from the point of view of not only the appellant but the Bank also that a reference is made either to the Labour Court or to the Industrial Tribunal under Section 12(5) of the Industrial Disputes Act, 1947, for adjudication of the question as to whether the dismissal of the appellant from the services of the Bank is legal and justified. Accordingly, we direct that the second respondent, the Labour Commissioner, Chandigarh, to whom the State Government has delegated its powers under Section 12 of the Act shall make a reference to either of the two authorities as he considers proper.

5. At one stage, we wanted to decide for ourselves the question as to whether the appellant is a workman within the meaning of Section 2(s) of the Industrial Disputes Act. Considering the time that has gone by, we wish that we could have decided that question but, on the material before us, we find it difficult to do so. The case of the appellant is that he is a mere matriculate who now possesses a somewhat exalted and misleading designation of a "Branch Manager". According to him, there are 58 branches of the Bank in the District of Hoshiarpur, in 29 out of which there are only two officers, one of whom is called the Branch Manager and the other the Cashier. He contends that the Branch Manager has no administrative or discretionary powers to exercise and is not employed in a supervisory capacity. His case is that he is a clerk miscalled the Branch Manager.

6. The contention of Respondent 3-Bank, on the other hand, is that not only was the appellant's remuneration in excess of Rs 500 per mensem but, being employed in a supervisory capacity, he exercised functions mainly of a managerial nature. It is alleged that he was vested with the power of superintending the working of the office, maintaining registers sanctioning loans, receiving deposits, borrowing within the limits sanctioned by the Registrar, incurring contingent expenditure, attending meetings of the Board of Directors, the Executive Committee and other Committees constituted under the bye-laws and certifying copies of entries in the Banker's books.

7. The grievance of the appellant is that the Bank did not raise any contention before the Labour Commissioner that he was not a workman within the meaning of the Act with the result that, he had no opportunity to meet that case. The parties have included in the paperbook before us some material bearing on that question but it will be unsatisfactory to decide that question without proper evidence. After all, the question as to whether the appellant is a "workman" is basically a question of fact. That is why, on the basis of the stray material before us, we do not consider it advisable to decide that question.

8. When this appeal was argued before us, a prosecution was pending in the Court of the learned Judicial Magistrate, Hoshiarpur, in which three persons were charged for impersonation and cheating in connection with the fraudulent encashment of the draft which led to the dismissal of the appellant. The appellant was not only not included in the array of the accused in that prosecution but the judgment of the learned Magistrate dated August 19, 1981 shows that during the course of investigation, it was found that the appellant was not responsible for the fraud. In fact, the appellant was examined as prosecution witness 4 in that case. Two out of the three accused were discharged by the learned Magistrate while accused 1, Sham Lal, was convicted under Section 419 and 420 of the Penal Code and was sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs 500.

9. At the instance of the Bank, a reference was made to an Arbitrator under Section 55 of the Punjab Co-operative Societies Act, 1961, for deciding the question whether the appellant is liable to repay the amount of Rs 5000 to the Bank, which was fraudulently withdrawn by Labh Singh. By an Award dated November 23, 1982, the Arbitrator dismissed the reference, holding that the appellant was nor responsible for the fraudulent encashment of the draft. The Arbitrator observed that the Bank could recover the amount from Sham Lal, who was convicted in the criminal proceedings, but nor from the appellant.

10. We have referred to these two matters, the prosecution and the arbitration proceedings, in order that the Bank may examine whether it is not possible to drop the proceedings against the appellant and take him back in employment. If the Bank finds that the appellant was merely negligent in the discharge of his duties as a Branch Manager, it may consider whether the appellant could be taken back in employment without the payment of full back wages.

11. For these reasons, we allow the appeal and direct respondent 2, the Labour Commissioner, Chandigarh, to make a reference under Section 12 of the Industrial Disputes Act, 1947, as directed by us. The reference shall be made forthwith and it shall be disposed of within two months after is receipt.

12. There will be no order as to costs.

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