

# SUPREME COURT OF INDIA

A.K.Saxena

Vs.

State Bank of Patiala & Ors.

C.A.No.3668 of 2012

(Kurian Joseph and R.F.Nariman,JJ.)

18.02.2016

## JUDGMENT

### **Kurian Joseph.J.**

1. The Appellant entered the service of the respondent No.1 on 21.10.1978 as Cashier-cum-Clerk. On 16.04.1991 a complaint was made by a customer- Hari Shankar Yadav regarding fraudulent withdrawal of an amount of Rs.80,000/- (rupees eighty thousand only) from his account. A preliminary enquiry followed, pursuant to which the appellant was issued charge sheet and thereafter a domestic enquiry was conducted. On the basis of the report of the enquiry the appellant was dismissed from service on 02.07.1993. Appellant preferred a departmental appeal which was rejected. Since the Labour Court was of the view that enquiry conducted by the Management was not fair and proper, by final Award dated 17.12.1997 it was held that the termination of the appellant was illegal and there was direction for his reinstatement with the back wages. The Award was challenged by the respondent-Bank before the High Court. The High Court allowed the petition and thus the appellant is before this Court. When the matter was pending before the High Court pursuant to interim order passed by the Court, we are informed that it is not disputed that the appellant has been paid an amount of Rs.14,05,417/- towards back wages and an amount of Rs.9,34,573/- towards Section 17B of the Industrial Disputes Act, 1947.

2. The learned counsel for the appellant points out that even according to the bank there were four people involved in the alleged fraud and the bank proceeded only against the appellant. The complainant Mr. Yadav initiated criminal proceedings against the other three persons but not against the appellant. He further submitted that the Labour Court having regard to the evidence available before it, has taken a plausible view that it is not possible to establish the charges leveled against the appellant and, therefore, the High Court was not justified in reversing the plausible view taken by the Labour Court.

3. The learned counsel appearing for the Bank however, submitted that the appellant was Head Cashier and at his instance only the other three employees were roped in as a part of the fraud, without knowing that it was a fraud. He further submits that the Bank had also

initiated Disciplinary Proceedings against those three employees. However, the High Court in the impugned judgment has ordered that those three employees must not be given any further increment or promotion.

4. The learned counsel for the Bank submits that those three employees have suffered the punishment.

5. In the above factual matrix, we put query to the learned counsel for the Bank as to how the appellant alone is discriminated and dismissed from service. The learned counsel has invited our attention extensively to the evidence that appellant was the kingpin of the whole transaction, being a Head Cashier other three have only obeyed his request for consequential steps. We find it difficult to appreciate the submission in view of the factual position as noted above.

6 In the above circumstances, we are of the view that the interest of justice would be advanced in case the punishment imposed on the appellant is suitably altered.

7. The appellant has attained the age of superannuation and that he has received hefty amounts from the Bank while remaining out of service after 1993. Hence, it is ordered that the appellant shall be treated to have been retired from service on completion of 15 years of service and accordingly, his retiral benefits shall be settled for the purpose of future pension from the month of February, 2016. Since he has already received wages in between, there shall be no arrears of pension.

8. The appeal is disposed of.