

PETITIONER:
NIRMAL SINGH

Vs.

RESPONDENT:
STATE OF PUNJAB AND ORS.

DATE OF JUDGMENT 09/08/1984

BENCH:
CHANDRACHUD, Y.V. ((CJ)
BENCH:
CHANDRACHUD, Y.V. ((CJ)
SEN, A.P. (J)

CITATION:
1984 AIR 1619 1985 SCR (1) 316
1984 SCALE (2) 115
CITATOR INFO :
F 1987 SC 695 (9)
F 1989 SC 1565 (16)

ACT:
Industrial Disputes Act, 1947, sec. 12 (5)-Order of Labour Commissioner refusing to refer dispute for adjudication to Labour Court on the ground that the employee is not a "workman" but without giving reasons for his finding-Validity of.

HEADNOTE:

The appellant was dismissed from the post of "Branch Manager" by respondent No. 3, Bank, after an inquiry relating to fraudulent encasement of a draft by one Labh Singh. His demand in regard to his dismissal, was referred by the Govt. 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, exercising the powers of the State Government, declined to refer the dispute to the Labour Court for adjudication but without giving any reasons for his conclusion that the appellant was not a "workman". The appellant challenged before the High Court the decision of the Labour Commissioner in writ petition which was dismissed summarily. Hence this appeal.

The grievance of the appellant is that the Labour Commissioner ought to have given reasons in support of his decision.

Allowing the appeal,

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HELD: 1. 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" but no reasons are given to justify that conclusion. He 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. [319 D-E]

2. In the instant case, the Court keeping in view that remanding the matter to the Labour Commissioner for giving his reasons will entail delay, directed the Labour Commissioner, Chandigarh to make a reference either to the Labour Court or to the Industrial Tribunal u/s. 12(5) of the

Industrial

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Disputes Act 1947 for adjudication of the question as to whether the dismissal of the appellant from the service of the Bank is legal and justified. [319 E-E]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1746 of 1980.

Appeal by Special leave from the Judgment and Order dated the 4th September, 1979 of the Punjab and Haryana High Court in Civil Writ Petition No. 2780 of 1979.

N.D. Garg, S.K. Bisaria and T.L. Garg for the appellant.

Girish Chandra for Respondent No. 3.

The Judgment of the Court was delivered by

CHANDRACHUD, C. J. 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 Bahram Singh. Two days later, Labh Singh deposited in that account a draft in the sum of Rs. 5,000 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. 2,500 from his account. Three days later, he withdrew the remaining amount of Rs. 2,500. 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.

The demand raised by the appellant in regard to his dismissal was referred by the Government of Punjab to the Conciliation

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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.

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.

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 deference 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 2nd 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.

At one stage, we wanted to decide for ourselves the question as to whether the appellant is 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 some-
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what 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 mis-called the Branch Manager.

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.

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 paper-book 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.

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 No. 4 in that case. Two out of the three accused were discharged by the learned Magistrate while accused No. 1, Sham Lal, was convicted under sections 419 and 420 of the

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Penal Code and was sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs. 500.

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. 5,000 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 not 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 not from the appellant.

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.

For these reasons, we allow the appeal and direct respondent No. 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 its receipt.

There will be no order as to costs.

M.L.A. Appeal allowed.

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