

HIGH COURT OF GUJARAT**Bench: Honourable Chief Justice Mrs. Justice Sunita Agarwal and
Honourable Mr. Justice Aniruddha P. Mayee****Date of Decision: 17th May 2024**

Case No.:

R/LETTERS PATENT APPEAL NO. 850 of 2023

In

R/SPECIAL CIVIL APPLICATION NO. 14601 of 2011

R/LETTERS PATENT APPEAL NO. 851 of 2023

In

R/SPECIAL CIVIL APPLICATION NO. 14601 of 2011

CIVIL APPLICATION (FOR STAY) NO. 1 of 2023

In

R/LETTERS PATENT APPEAL NO. 851 of 2023

In

R/SPECIAL CIVIL APPLICATION NO. 14601 of 2011

R/LETTERS PATENT APPEAL NO. 1424 of 2023

In

R/SPECIAL CIVIL APPLICATION NO. 6960 of 2012

CIVIL APPLICATION (FOR STAY) NO. 1 of 2023

In

R/LETTERS PATENT APPEAL NO. 1424 of 2023

In

R/SPECIAL CIVIL APPLICATION NO. 6960 of 2012

R/LETTERS PATENT APPEAL NO. 855 of 2023

In

R/SPECIAL CIVIL APPLICATION NO. 6960 of 2012

CIVIL APPLICATION (FOR STAY) NO. 2 of 2023

In

R/LETTERS PATENT APPEAL NO. 855 of 2023

In

R/SPECIAL CIVIL APPLICATION NO. 6960 of 2012

APPELLANT(S): RASHMIKANT GIRDHARLAL DAVEAppellant**VERSUS**

RESPONDENT(S): CHAIRMAN STATE BANK OF INDIA & ORS.
.....Respondents

Legislation:

Section 11A of the Industrial Disputes Act, 1947

Subject: Appeals arising from disciplinary proceedings involving misappropriation of funds by a bank employee, addressing the modification of penalties by the Industrial Tribunal and Single Judge, and reviewing the quantum of punishment.

Headnotes:

Service Law – Disciplinary Proceedings – Bank employee accused of temporary misappropriation of Rs. 35,000 – Initial punishment of discharge from service by disciplinary authority – Central Government Industrial Tribunal modified penalty to reinstatement with 50% back-wages and stoppage of two increments – Single Judge partially upheld Tribunal’s decision, modifying penalty to reinstatement with 20% back-wages and stoppage of five increments – Appeals filed by both delinquent employee and Bank Management [Paras 1-3, 10-14].

Section 11A of the Industrial Disputes Act – Tribunal’s power to modify punishment – Tribunal’s discretion in modifying penalties must be exercised judiciously, considering the gravity of the misconduct and the employer’s loss of confidence in the employee – High Court held that Tribunal’s interference with the disciplinary authority’s penalty of discharge was unjustified given the proven misconduct and breach of trust by the employee [Paras 6-13].

Decision – Appeals by Bank Management allowed – Appeals by delinquent employee dismissed – Original penalty of discharge from service upheld – Tribunal’s and Single Judge’s orders modifying the punishment set aside [Paras 14].

Referred Cases:

- Firestone Tyre and Rubber Co. of India (Pt.) Ltd. v. Workmen, 1973 (1) SCC 813

- State Bank of India v. T.J. Paul, (1999) 4 SCC 759
- M.S. Narayana Menon @ Mani v. State of Kerala & Anr., (2006) 6 SCC 39

Representing Advocates:

Mr. Ishan Joshi for Singhi & Co. for the Appellant

Mr. Shalin Mehta, Senior Advocate with Mr. Rituraj M. Meena for the Respondent No. 1, 2, 3

JUDGMENT

(PER : HONOURABLE MR. JUSTICE ANIRUDDHA P. MAYEE)

1. The present Letters Patent Appeals impugn common judgment and order dated 06.10.2021 and 18.01.2023 passed by the learned Single Judge in Special Civil Application No.14601 of 2011 and Special Civil Application No.6960 of 2012, whereby the learned Single Judge has dismissed Special Civil Application No.6960 of 2012 and partly allowed Special Civil Application No.14601 of 2011 by increasing the penalty imposed.

1.1 Letters Patent Appeals Nos.850 of 2023 and 855 of 2023 have been preferred by the delinquent employee and Letters Patent Appeals No.851 of 2023 and Letters Patent Appeal No.1424 of 2023 have been preferred by the Bank Management. For the sake of brevity, the parties to the present litigation are being referred to as 'delinquent employee' and 'Bank Management' as per the causetitle of Letters Patent Appeal No.850 of 2023, which is the lead matter.

2. The brief facts leading to filing of the present Letters Patent Appeals as under:-

2.1 That the delinquent employee was working as Head Cashier in the State Bank of Saurashtra, Agricultural Development Branch (A.D.B.), Amreli at the time of incident in the year 1986. That, it is alleged that during the period between 30.10.1986 to 04.11.1986, there was misappropriation of cash amounting to Rs.35,000/- detected during verification on 04.11.1986. Accordingly, the Verifying Officer Mr. K. B. Mehta made a report and the delinquent employee came to be suspended vide order dated 11.11.1986. By further order from the Head Office of the Bank Management, the suspension order against the

delinquent employee came to be revoked on 02.04.1987. That thereafter, the Bank Management issued charge-sheet dated 08.06.1988 to the delinquent employee for his alleged misconduct and the departmental inquiry came to be conducted. The inquiry report held the delinquent employee to be guilty and the disciplinary authority imposed the punishment of discharge from service vide order dated 16.08.1991.

2.2

That, aggrieved, the delinquent employee preferred an Appeal against the order dated 16.08.1991 passed by the Regional Manager before the Appellate Authority, i. e. Zonal Manager, State Bank of Saurashtra. The said Appeal came to be rejected vide order dated 31.08.1991. Accordingly, the delinquent employee preferred the Reference under Section 10 of the Industrial Disputes Act, 1947. By order dated 19.07.1995, the Ministry of Labour and Employment, Government of India, referred the dispute to the Central Government Industrial Tribunal, Ahmedabad (CGITA). Accordingly, the Reference CGITA No.636 of 2004 [Old Reference (ITC) No. 50 of 1995] came to be registered before the learned Industrial Tribunal, Ahmedabad. Pursuant thereto, the delinquent employee submitted his statement of claim challenging the order of discharge. The Bank Management filed its written statement to the Reference and contended that the delinquent employee has committed an irregularity amounting to gross misconduct while serving as Head Cashier in Amreli Branch of the respondent Bank. It was further stated that as soon as the shortage was detected on 04.11.1986, the delinquent employee managed to make good the shortfall of Rs.35,000/- immediately by encashing the cheque of the Firm owned by his wife. It was stated that therefore, it was proved that the delinquent employee temporarily misappropriated the fund of the Bank to the tune of Rs.35,000/-. Further, it was stated that there was no infirmity in the departmental inquiry and due opportunity of hearing was also provided to the delinquent employee before passing the final order of discharge. That, the learned Central Government Industrial Tribunal, after considering the documentary and oral evidence on record, held that the charges against the delinquent employee stood proved and further concluded that the punishment of discharge from service imposed upon the delinquent employee was disproportionate to the charge proved and the delinquent employee was entitled to reinstatement with 50% backwages and stoppage of two increments. Aggrieved, the Bank Management preferred Special Civil Application No.14601 of 2011. The learned Single Judge, vide order dated 29.03.2012, was pleased to pass the interim order directing stay of the impugned order of the Central Government Industrial Tribunal,

Ahmedabad qua the relief of grant of 50% back-wages and modification of the punishment of discharge from service to stoppage of two increments on the condition that the delinquent employee shall be reinstated in service within 30 days. That by order dated 16/17.07.2019, the learned Single Judge quashed and set aside the order passed by the CGIT and restored the case on the file of the Tribunal for reappraisal of evidence including cross-examination of the witnesses and to decide the matter afresh. Aggrieved by this order, both the delinquent employee as well as the Bank Management challenged the said order by way of Letters Patent Appeal No.409 of 2020 and Letters Patent Appeal No.412 of 2020. The learned Division Bench of this Court, vide order dated 17.08.2020, allowed the Letters Patent Appeals and set aside the order dated 16/17.07.2019, quashing and setting aside the said order and remitted the matter back to the learned Single Judge for being heard afresh on its own merits. Accordingly, by impugned judgment and order, the learned Single Judge, after hearing both the parties, was pleased to dismiss the Writ Petition of the delinquent employee and partly allowed the Writ Petition of the Bank Management to modify the quantum of punishment.

3. Mr. Ishan Joshi, the learned counsel appearing for the delinquent employee has submitted that under the provisions of Section 11A of the Industrial Disputes Act, 1947, the learned Tribunal is statutorily competent to look into the evidence on record so as to modify the order under challenge before it. It is submitted that the learned Tribunal has, for cogent reasons, modified the order of discharge from service imposed upon the delinquent employee and the same has been erroneously interfered with by the learned Single Judge by assuming the statutory power under Section 11A of the Industrial Disputes Act. It is submitted that the learned Single Judge could not have substituted the findings of the learned Tribunal, unless any statutory/regulatory lapse has been pointed out in the inquiry process, which was not made out in the present case and therefore, the learned Single Judge ought not to have modified the punishment, which was imposed by the learned Tribunal. It is submitted that in the present case, it has come on record that the charge-sheet has been supplied to the delinquent employee after considerable delay and no criminal proceedings have been initiated against the delinquent employee by the Bank Management. The learned counsel has further submitted that the learned Single Judge has re-appreciated the evidentiary value of departmental inquiry conducted against the delinquent employee in the present case, wherein no incriminating evidence has been

brought on record by the Bank Management except the statements of its two witnesses, viz. J. M. Lakhani and K. B. Mehta. It is further submitted that a perusal of cross-examination of Mr. K. B. Mehta, who was the Verifying Officer, does not prove anything beyond the statements made by the witnesses before the Inquiry Officer, when on the contrary, the Register for Cash Shortage tallied for balance, supports the case of the delinquent employee in the departmental proceedings. The learned counsel for the delinquent employee has further submitted that the record does not show any shortfall of cash and that nothing has been brought on record to show that there is alleged shortfall of cash, which was made good by the delinquent employee except the statements of two witnesses on behalf of the Bank Management. Further, there was no entry brought on record regarding alleged deposit of cash. It was submitted that the remark of “Rs.35,000/- shortfall in cash” was afterthought and was inserted later in point of time. It is further pointed out that the Bank Management has not followed any prescribed procedure, which is required to be done in the event of shortfall of cash being detected in the Branch of the respondent Bank and in absence of such a procedure, the Bank Management cannot be said to have prosecuted the delinquent employee bona fide. It is submitted that the delinquent employee had submitted written submissions before the learned Single Judge, which were not taken into consideration while passing the impugned order. The learned counsel has finally submitted that in the present case, there is no legally acceptable evidence against the delinquent employee and that the learned Single Judge ought to have dismissed the Special Civil Application preferred by the Bank Management and ought to have allowed the Writ Petition of the delinquent employee. He, therefore, has submitted that the Letters Patent Appeals preferred by the delinquent employee be allowed and the Letters Patent Appeals preferred by the Bank Management be dismissed.

4. Per contra, Mr. Shalin Mehta, the learned senior counsel appearing with Mr. Rituraj Meena, the learned counsel for the Bank Management has submitted that the learned Single Judge has erred by substituting the punishment despite confirming the finding in respect of misconduct committed by the delinquent employee. He submitted that there is no cogent reasons given in respect of reinstatement of the delinquent employee in light of misappropriation, which has been proved beyond reasonable doubt. It is submitted that the learned Single Judge has modified the punishment despite

the fact that the delinquent employee had misappropriated the amount in his custody and thereafter on being caught, he had immediately managed the necessary money from the Bank Account of his wife's Proprietary Firm, which has proved the charge of misappropriation against the delinquent employee. It is submitted that the Bank Officer is required to maintain higher standards of honesty and integrity and in the present case, the delinquent employee has indulged in misappropriation for self benefit. It was necessary that once such misappropriation having been proved, the punishment of discharge from service was the appropriate punishment and therefore, the learned Single Judge ought to have allowed the Writ Petition preferred by the Bank Management. It is submitted that two witnesses examined on behalf of the Bank Management have cogently proved the misappropriation of Rs.35,000/- committed by the delinquent employee. He has submitted that there is no discrepancy between the evidence led before the authority during the departmental inquiry and the evidence led before the learned Tribunal. It is submitted that the learned Single Judge has exceeded jurisdiction by reappraisal of evidence while entertaining the Petition under Article 227 of the Constitution of India. It is further submitted that once the Tribunal and the learned Single Judge have come to the conclusion that there was misconduct on behalf of the delinquent employee, then the order of punishment imposed upon the delinquent employee ought not to have been interfered with. It is also submitted that no infirmity could be pointed out in the departmental inquiry and the procedure adopted. Further, the finding of misconduct is proved from the evidence adduced at the time of departmental inquiry as well as before the Tribunal. Therefore, once there is no infirmity in the departmental inquiry, there ought not to have any substitution with respect to the penalty imposed upon the delinquent employee as the findings arrived at in the departmental inquiry were not unfair and perverse. That the Bank Management has duly proved the charges against the delinquent employee and no sympathy could be shown by modifying the punishment imposed since the Bank Management had lost the trust in the delinquent employee, who was working as Head Cashier. It is submitted that the learned Tribunal as well as the learned Single Judge have committed an error in altering the quantum of punishment while taking into consideration irrelevant considerations, which had no bearing in the facts and circumstances of the present case. It is, therefore, submitted that both the learned Tribunal as well as the learned Single Judge have erred in interfering with the penalty imposed upon the delinquent employee and have erroneously modified the punishment. In the

circumstances. It is prayed that the Letters Patent Appeals filed by the Bank Management be allowed quashing and setting aside and the orders passed by the learned Tribunal as well as the learned Single Judge and the Letters Patent Appeals preferred by the delinquent employee be dismissed.

5. Heard the learned counsels for the parties. This Court has carefully perused the documents on record and the order passed by the learned Tribunal as well as the judgment impugned herein.

6. Section 11A of the Industrial Disputes Act, 1947 reads thus:-

“11A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen. *[Inserted by Act 45 of 1971, Section 3 (w.e.f. 15.12.1971).]*

- Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require:

Provided that in any proceeding under this section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.]

7. That the International Labour Association had issued some recommendations and in accordance with the same, it was considered that the Tribunal should have power in the cases wherever it is necessary to set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require and for the said purpose, Section 11A came to be inserted in the Industrial

Disputes Act, 1947. The objects and reasons for the same was not to limit the jurisdiction of the Tribunal and conferred the power to re-appreciate the evidence adduced in the domestic inquiry and grant proper relief to the workman. In the present case, the learned Tribunal, in the reference proceedings before it vide order dated 11.03.2010, held that the domestic inquiry was vitiated and the Bank Management was directed to justify its action by adducing oral and documentary evidence before the Tribunal for imposing the punishment of discharge on the delinquent employee. After fresh documentary material adduced on record, the learned Tribunal held that the Bank Management has justified its action and the charges against the delinquent employee had been proved before the Tribunal. Considering the overall facts and circumstances, the learned Tribunal was of the opinion that the punishment of discharge from service was shockingly disproportionate to the gravity of charge dated 08.06.1988 and accordingly, exercising the power under Section 11A of the Industrial Disputes Act, 1947, the learned Tribunal set aside the punishment of discharge from service and modified the punishment directing that the delinquent employee be reinstated with 50% back-wages and stoppage of two increments of the delinquent employee as per clause 19.6(d) of the bipartite statement.

Accordingly, the Reference came to be allowed in part by the learned Tribunal.

8. The learned Single Judge, by the impugned order, held that the charges were proved and then considered the question with regard to the quantum of punishment. The learned Single Judge was of the opinion that the Tribunal was very liberal in substituting the punishment. Relying on various judgments as mentioned in the impugned order, the learned Single Judge has held that substitution of quantum of punishment as done by the learned Tribunal was required to be interfered with considering the facts emerging from the record and accordingly, has modified and substituted the quantum of punishment by reinstatement with 20% back-wages and stoppage of five increments with future effect.

9. It is trite law that imposing punishment for a proved act of misconduct is a matter for the punishing authority to decide and normally, it should not be interfered with by the Industrial Tribunals. The Tribunal is not required to consider the propriety or adequacy of punishment. The Tribunal can only interfere if such a punishment is showing victimization or unfair labour practice. The punishment imposed must commensurate with gravity of the

misconduct proved against the delinquent employee. The power under Section 11A of the Act has to be exercised judiciously only when the Tribunal is satisfied that the punishment imposed is highly disproportionate to the degree of guilt of the delinquent employee. The Tribunal has to consider whether the decision taken by the employer is just or not. The Apex Court in the case of **Firestone Tyre and Rubber Company of India (Pt.) Ltd. [1973 (1) S.C.C. 813]** has held that once misconduct is proved, the Tribunal has to sustain the order of punishment unless it is harsh indicating victimization.

10. In the present case, the temporary misappropriation of Rs.35,000/- has been proved against the delinquent employee on the basis of the oral and documentary evidence. The punishment imposed by the disciplinary authority is based on loss of confidence, which is a primary factor to be taken into account. Once an employee is held guilty of the charge of misappropriating the money entrusted to him, which, in the present case, is the public money, there is a natural consequence that the employer will lose its confidence or faith in such a person. In the present case, the learned Tribunal has held that the Bank Management had been able to justify its action in imposing punishment against the delinquent employee since the charge of misconduct as to the misappropriation of Bank money has been proved for a period from 30.10.1986 to 04.11.1986 till 12.30 hours, after which, the said Bank cash was also made good by the delinquent employee. In the instant case, the delinquent employee was employed as a Head Cashier, who was the custodian of the Bank cash and who had responsibility to ensure that the public money being Bank cash has to be kept safe and secure. As such a position in a Banking business demands high level of honesty and integrity, which is also a requirement for every bank employee. Further, the nature of job of a Bank employee also requires that they maintain good conduct and discipline since they are dealing with the money and deposits of the customers. Failure to observe good conduct, discipline, absolute honesty and integrity would shake the confidence of public/depositors. Any employee, who is found to be indulging in financial irregularity while performing his duty as a Bank employee, should not be shown any leniency. No indulgence should be granted to a Bank employee where the charges of misconduct like cheating, fraud, and misappropriation of public money has been proved against him. Fresh inquiry conducted before the learned Tribunal and oral as well as documentary evidence brought on record before the learned Tribunal has proved the misconduct committed by

the delinquent employee. No procedural irregularity has been established by the delinquent employee before the learned Single Judge or before this Court in respect of the inquiry and thus, this Court deems it fit not to interfere with the findings of fact recorded by the learned Tribunal as well as the learned Single Judge holding that the delinquent employee is guilty of misconduct in respect of temporary misappropriation of Bank money for the period from 30.10.1986 to 04.11.1986.

11. The delinquent employee, who is the custodian of the public money, has committed misappropriation, which is a serious offence in the banking sector. The Bank employee is required to take all possible steps to protect the interest of the Bank and should not act beyond one's authority and do nothing which is unbecoming of a Bank officer. The charges against the delinquent employee are not casual in nature and are serious since temporary misappropriation of money has been proved.

12. In the present case, the delinquent employee as a Head Cashier in the Bank, was handling the Bank money daily. He was expected to conduct himself with utmost integrity and honesty. Coming to the question of quantum of punishment, it is to be noted that the primary factors for awarding the punishment in case of misappropriation and loss of confidence have to be taken into consideration. When a person is found guilty for misappropriating the public money, especially a Bank employee, then, in the considered opinion of this Court, it is natural that the Bank Management would lose confidence or faith in such a person and award him the punishment of discharge. The act on the part of the delinquent employee was dishonesty. In such cases, the Tribunal or the learned Single Judge ought not to have interfered with the quantum of punishment, which was awarded by the disciplinary authority. We are of the considered opinion that the punishment of discharge was not so outrageous so as to warrant interference in the quantum of punishment once the charge of misappropriation has been found to be proved against the delinquent employee. In the present case, the delinquent employee was proved to be lacking integrity and the proved act was against the standard moral values.

13. The learned Tribunal ought to have considered the punishment in light of the nature of duty being handled by the delinquent employee and the loss of confidence in such an employee by the employer. The learned Tribunal has taken into consideration the factors which were extraneous not very much

relevant in the case of misappropriation of public money. The learned Tribunal as well as the learned Single Judge also did not examine the effect of modification of sentence of an act of misappropriation on the establishment and in public interest. The non-examination of the action of the delinquent employee would render the discretion of the learned Tribunal under Section 11A as arbitrary and capricious. The action of misappropriation whether temporary or permanent is a serious misconduct and cannot be viewed lightly. More so, when the employee is holding sensitive post of trust, such an act of misappropriation would expose the employer and customers to the same risk and would also shake the public faith in the banking system. The action of the delinquent employee was in the nature of breach of trust. The exercise of discretion in the present circumstances of the case on the ground that the punishment being disproportionate to the misconduct proved and substituting it by lesser punishment cannot be sustained even in the limited scrutiny as permissible under law. The circumstances as taken into consideration by the learned Tribunal that this was the first misconduct on the part of the delinquent employee and there was no history of repeatedly committing such a misconduct and the disciplinary authority not exploring any other punishment as provided under the Rules coupled with the fact that the misappropriation was also made good on the date when it was detected and such a misappropriation was made during the period when the Bank was closed for Diwali, are extraneous not relevant considerations in exercise of power under Section 11A of the Industrial Disputes Act and more so, in view of the observations made herein above. The said aspects, which have been considered by the learned Tribunal in order to hold that the punishment of discharge was shockingly disproportionate to the gravity of charge, must be held to be perverse and would be against the public interest, which has to be safeguarded by the Bank Management. The delinquent employee, who was the custodian of the public money, has committed an act which cannot be interfered with in respect of quantum of punishment once there is a breach of trust and loss of faith in the employee. The Bank Management had specifically contended that due to the proved misappropriation, there was loss of faith in the delinquent employee and his honesty and integrity had been rendered doubtful and sympathy shown by the learned Tribunal was uncalled for. Further, the learned Single Judge, while disagreeing with the substitution of liberal punishment by the learned Tribunal under Section 11A, has, in the overall view of the matter, modified the punishment on higher side without

coming to the conclusion that the punishment imposed by the competent authority was shockingly and grossly disproportionate or unreasonable.

14. In view of the aforesaid observations and reasons, we set aside the impugned common judgment and order dated

06.10.2021 passed by the learned Single Judge in Special Civil Application No.14601 of 2011 and Special Civil Application No.6960 of 2012 and the award passed in Reference CGITA No.636 of 2004 [Old Reference (ITC) No. 50 of 1995] to the extent of award of punishment and modification thereof by exercise of power under Section 11A of the Industrial Disputes Act, 1947. The punishment of discharge from service imposed vide order dated 16.08.1991 by the disciplinary authority is upheld in light of the proved misappropriation done by the delinquent employee. In the facts and circumstances of the present case, Letters Patent Appeals No.851 of 2023 and Letters Patent Appeal No.1424 of 2023 preferred by the Bank Management are allowed and Letters Patent Appeals Nos.850 of 2023 and 855 of 2023 preferred by the delinquent employee are dismissed. All Letters Patent Appeals stand disposed of accordingly.

Civil Applications also stand disposed of. No order as to costs.

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