

ITEM NO.1 (PH)

COURT NO.7

SECTION XV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

PETITION(S) FOR SPECIAL LEAVE TO APPEAL (C) NO(S). 5480/2009
(ARISING OUT OF IMPUGNED FINAL JUDGMENT AND ORDER DATED 14/08/2008
IN WA NO. 943/2007 PASSED BY THE HIGH COURT OF MADRAS)

MANAGEMENT OF KARUR VYSYA BANK LTD.

PETITIONER(S)

VERSUS

S.BALAKRISHNAN

RESPONDENT(S)

(WITH INTERIM RELIEF AND OFFICE REPORT)
(FOR FINAL DISPOSAL)

Date : 10/02/2016 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE RANJAN GOGOI
HON'BLE MR. JUSTICE PRAFULLA C. PANT

Mr. Mukul Rohatgi, AG

Mr. Ranjit Kumar, SG

For Petitioner(s)

Mr. P.P. Rao, Sr. Adv.
Mr. Biju Thangappan, Adv.
Mr. Navneet Dugar, Ad.
Mr. Srivignesh, Adv.
Mr. T. Harish Kumar, Adv.

For Respondent(s)

Mr. S. Thananjayan, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

[VINOD LAKHINA]
COURT MASTER

[ASHA SONI]
COURT MASTER

[SIGNED ORDER IS PLACED ON THE FILE]

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.1090 OF 2016
[Arising out of Special Leave Petition
(Civil) No.5480/2009]

MANAGEMENT OF KARUR VYSYA
BANK LTD. . . . APPELLANT

VERSUS

S. BALAKRISHNAN . . . RESPONDENT

ORDER

1. Leave granted.
2. The challenge in the present appeal by the Management of Karur Vysya Bank Limited (hereinafter referred to as "the appellant - Bank") is against an order dated 14th August, 2008 passed by the Division Bench of the High Court of Madras affirming the order of the learned single judge dated 29th January, 2007 dismissing Writ Petition No.17623 of 1997. The writ petition in question was filed by the

appellant - Bank challenging the award dated 26th March, 1997 passed by the Industrial Tribunal, Madras in a complaint filed by the respondent - workman under Section 33A of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act") directing reinstatement of the workman by holding the punishment of dismissal dated 6th January, 1990 to be unjustified.

3. On certain specific charges, details of which need not detain the Court, a domestic enquiry was held against the respondent - workman where he was found guilty of the charges levelled. The punishment of dismissal from service was imposed. As there was a pending industrial reference involving the workman, though on some other issue, the dismissal of the workman required approval of the Industrial Adjudicator under Section 33(2)(b) of the Act. The employer did not file any such

application which led to the filing of the complaint by the respondent - workman under Section 33A of the Act.

4. As under the provisions of Section 33A the said complaint had to be dealt with by the Industrial Adjudicator as a reference made under Section 10 of the Act, the learned Industrial Tribunal went into the issues raised and after holding the domestic enquiry to be fair and proper considered the evidence on record and held that the said evidence did not warrant the conclusions reached in the domestic enquiry holding the workman liable for the charges levelled. Accordingly, the award of the Industrial Adjudicator was in favour of the workman holding the dismissal to be unjustified.

5. The appellant - Bank questioned the said award primarily on the ground that the

learned Industrial Adjudicator while exercising jurisdiction under Section 10 of the Act had virtually converted itself into a Court of Appeal against the findings of the domestic enquiry. This, according to the appellant - Bank, was plainly not permissible in view of the long line of decisions of this Court making it clear that the Industrial Adjudicator exercising the reference jurisdiction under the Act was not competent to act as a forum of appeal against the findings of the domestic enquiry.

6. Notwithstanding the specific grievances raised by the appellant - Bank before the learned single judge in the writ petition filed, the learned judge does not appear to have gone into the said issue and merely on the ground that the appellant - Bank, as the employer, had not filed an application seeking approval under Section

33(2) (b) of the Act, thought it proper to dismiss the writ petition affirming the award. The Division Bench before whom the appellant - Bank moved by way of a Writ Appeal agreed with the views of the learned single judge resulting in the present appeal.

7. As the two Benches of the High Court did not really decide the question of the validity of the dismissal, ordinarily and in the normal course, the matter ought to have been remitted to the High Court for a reconsideration. However, we are told at the Bar that the respondent - workman has retired in the meantime. In the aforesaid changed circumstances, we are of the view that the interest of justice would require a finality to the proceedings at this stage and before this Court.

8. The power and jurisdiction of the

Industrial Adjudicator while considering a reference made under the provisions of the Act has been settled by a long line of pronouncements, one of the earliest of which is Pure Drinks (Private) Ltd. vs. Kirat Singh Maungatt and another [1961 (2) LLJ 99 (SC)]. It will be worthwhile to reproduce hereunder the following views expressed by this Court on the aforesaid question which would make the position crystal clear.

"It is plain that the tribunal has exceeded its jurisdiction in making the order of reinstatement under appeal. The jurisdiction of an industrial tribunal in dealing with industrial disputes of this character is of a limited character. The limits of the said jurisdiction have been expressly laid down by this Court on several occasions in the past. In dealing with an industrial dispute arising out of dismissal or termination of service the industrial court is entitled to enquire whether the impugned order has been passed *mala fide* and with improper

motive or is the result of a desire to victimize the workman. If the answer to this question is in favour of the workman the tribunal can and should set aside the said order. If a proper charge has been framed and a proper enquiry has been held by the employer the industrial tribunal can interfere with the findings or conclusions reached by the enquiry officer at the domestic enquiry if, for instance, the conclusion is perverse and is not supported by any evidence. Similarly, if the trial has been conducted unfairly in violation of the principles of natural justice interference by the industrial tribunal would be justified; but it is not open to an industrial tribunal to sit in appeal over the conclusions of fact recorded by the domestic enquiry, and that is precisely what the tribunal has purported to do in the present case. It has elaborately examined the evidence adduced in the case considered the probabilities, examined the reliability of the two rival versions and has come to the conclusion that the version of the workman should be preferred to that of the employer; and that clearly would be open only to a court of appeal on facts. Therefore, there is an obvious infirmity in the approach adopted by the

tribunal in dealing with the present dispute and that infirmity has vitiated its final order."

9. It will not be necessary for us to traverse the subsequent case law on the issue as there is no difficulty in accepting the position that exposition of law made over half a century back remains undisturbed and holds the field as on date.

10. If jurisdiction of the Labour Court/Industrial Tribunal under the provisions of the Act while considering a reference is what has been described above and a complaint under Section 33A of the employee is in effect a reference, we do not see how the award passed by the Industrial Tribunal in the present case can be sustained in the face of the findings recorded therein as noticed above.

11. Section 33A of the Act enjoins upon

the Industrial Adjudicator a twin duty. The first is to find out as to whether the employer has contravened the provisions of the Section 33 [in the present case by not filing an application seeking approval under Section 33(2)(b) of the Act]. However, a finding on the above question would not be conclusive of the matter and the Industrial Adjudicator is required to answer the further question as to whether the dismissal or such other punishment as may have been imposed on the workman is justified in law. The issue of sustainability of the punishment imposed naturally has to be decided within the contours of the reference jurisdiction as indicated above. That Section 33A of the Act enjoins upon the Industrial Adjudicator the aforesaid twin duties is once again clear from a recent pronouncement of this Court in Rajasthan State Road Transport

Corporation and another versus Satya Prakash [(2013) 9 SCC 232 (PARA 23)] wherein this Court had the occasion to consider the long line of decisions taking the said view eventually culminating in what had been recorded in the paragraph 23 of the decision in Rajasthan State Road Transport Corporation and another (supra) which is to the following effect:

"23. In the present case, the Tribunal accepted that during this very short span of service as a daily wager the respondent had committed the misconduct which had been duly proved. Having held so, the Tribunal was expected to dismiss the Complaint filed by the respondent. It could not have passed the order of reinstatement with continuity in service in favour of the respondent on the basis that initially the appellant had committed a breach of Section 33 (2) (b) of the Act. It is true that the appellant had not applied for the necessary approval as required under that section. That is why the Complaint was filed by the respondent under Section 33A

of the Act. That Complaint having been filed, it was adjudicated like a reference as required by the statute. The same having been done, and the misconduct having been held to have been proved, now there is no question to hold that the termination shall still continue to be void and inoperative. The de jure relationship of employer and employee would come to an end with effect from the date of the order of dismissal passed by the appellant. In the facts of the present case, when the respondent had indulged in a misconduct within a very short span of service which had been duly proved, there was no occasion to pass the award of reinstatement with continuity in service. The learned Single Judge of the High Court as well as the Division Bench have fallen in the same error in upholding the order of the Tribunal."

12. Admittedly, in the present case, the High Court did not consider the second issue that was incumbent upon it in the exercise of jurisdiction under Section 33A of the Act. Having taken upon ourselves the burden of deciding the said issue we

have already indicated our view that the award in the present case cannot merit our acceptance being in exercise of jurisdiction not vested in the Tribunal by the provisions of the Act. Once the Tribunal had reached the conclusion that the domestic enquiry held against the workman was fair and proper no further scrutiny or investigation of the correctness of the findings recorded could have been made unless the said findings disclosed perversity. The exercise undertaken by the learned Tribunal was, therefore, akin to an exercise performed in the appellate jurisdiction which the learned Tribunal was not conferred by the provisions of the Act. We, therefore, allow the appeal; set aside the award in question as well as the orders of the High Court which would amount to affirming the order of punishment imposed by the

appellant - Bank on the respondent workman. However, as the respondent - workman has, in the meantime, retired whatever emoluments he has received under the provisions of Section 17B of the Act or under any other provision of law will not be recovered from him by the appellant - Bank and all amounts, if any, deposited either in the Labour Court/Industrial Tribunal or the High Court shall be paid to the respondent workman, on proper identification, within four weeks from today.

13. Before parting, there are two other issues that need to be addressed. The first is with regard to the views expressed by the Constitution Bench of this Court in paragraph 14 of the decision in Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. versus Ram Gopal Sharma and others [(2002) 4 SCC 244]. The views expressed by the Constitution

bench in paragraph 14 of the aforesaid decision came up for consideration before this Court coincidentally and the issues dealt with in the said paragraph, we clarify, has nothing to do with what arose for decision in the present case. However, in this regard, our attention was drawn to certain published works in which a view seems to have been taken that the opinion of the Constitution bench expressed in paragraph 14 in the aforesaid decision needs reconsideration. Beyond recording what has been brought to our notice as stated above, we do not consider it necessary to deal with the matter any further.

14. The second issue that we had occasion to deal with in the course of the debates that had taken place on the issues/questions arising in the present case is with regard to what we perceive is a

dichotomy between the provisions contained in Section 33(2) (b) and Section 33A of the Act. In this regard, we take notice of the fact that the employer who does not carry out his/its statutory obligation under Section 33(2) (b) and yet prevents the workman from working and earning his wages virtually gets the benefit of an adjudication that the workman has been compelled to undertake in default of the statutory obligation on the part of the employer. The jurisdiction under Section 33(2) (b) is bound to be and in fact is narrower than the reference jurisdiction under Section 33A. It is common experience that litigations including industrial references in this country have the tendency to remain pending beyond necessary and acceptable limits. In such a situation, can the workman be made to suffer by being made to stay away from work

despite the lapse on the part of the Management in moving the Industrial Adjudicator for approval under Section 33(2)(b) of the Act. In other words, does he have to await the outcome of his complaint under Section 33A which itself is to be treated as a reference under Section 10. The power of the Industrial Court to pass interim orders is hardly an answer. Our anxiety in this regard is aggravated by the fact that the present position in law is proposed to be extended in the proposed Labour Code on Industrial Relations Bill, 2015 which contemplates "revision of the existing labour law". We, therefore, had thought it proper to request either the learned Attorney General for India or the learned Solicitor General of India to appear before the Court and to assist us on the issue. The Court acknowledges the assistance rendered by both the learned

Attorney General for India and the Solicitor General of India who have appeared in Court. The learned Attorney General for India has assured the Court that the matter will receive the attention of the highest authorities of the State. We, therefore, leave the matter to the wise decision of the Executive and Legislative arm of the State and end the issue on the above note.

15. Consequently and in the light of the foregoing discussions, we allow this appeal and set aside the order of the Madras High Court with the observations as indicated above.

.....,J.
(RANJAN GOGOI)

.....,J.
(PRAFULLA C. PANT)

NEW DELHI
FEBRUARY 10, 2016