claim revenue expenditure would have been more beneficial to the assessee but in case he wants to take lesser benefit on the basis that it was in the nature of capital expense, the deduction cannot be disallowed and the argument raised on behalf of the revenue is rejected.

(26) For the reasons recorded above, we answer this question in favour of the assessee, in the negative.

QUESTION 2.

(27) This matter is covered by our decision in *C.I.T.* v. *Nuchem Plastics Ltd.* (7), rendered on 2nd February, 1989, in favour of the assessee. We had followed the decision of the Calcutta, High Court in *C.I.T.* v. *Britannia Industries Co. Ltd.* (8), in coming to the conclusion that in computing the disallowance under section 40A(5) of the Act, the provisions of rule 3(c) (ii) of the Income Tax Rules should be invoked. Today a new judgment of Gujarat High Court in *C.I.T.* v. *Rajesh Textle Mills Ltd.* (9), taking a contrary view has been cited by the counsel for the revenue. On a consideration of the matter, we prefer to follow our view recorded earlier and answer this question in favour of the assessee, in the affirmative.

The references stand disposed of with no order as to costs.

P.C.G.

Before A. P. Chowdhri, J.

SHAM KUMAR MOUDGIL,—*Appellant.*

versus

STATE BANK OF INDIA AND OTHERS,—*Respondents.*

Regular Second Appeal No. 330 *of* 1986

April 20, 1989.

Banking Regulation Act, 1949—S. 10—Disciplinary action—Employee convicted by Trial Court for offences involving moral turpitude, however, released on probation—Bank dismissing employee in terms of S. 10 read with para 521 providing for dismissal on conviction for specified offences—Order of dismissal should be based on conduct which led to conviction and not for

(7) I.T.B. of 1983 decided on 2nd February, 1989
(8) 135 I.T.R. 35
(9) 173 I.T.R. 179

conviction itself—Quantum of punishment—Where several punishments impossible—Punishing authority should hold what punishment should be imposed—Absence of such a finding—Dismissal order is bad—Court changing order of dismissal for one of compulsory retirement.

Held, that it is the conduct which led to conviction as distinguished from the conviction itself which furnishes a basis for disciplinary action against the delinquent. The omission of the words conduct from the order becomes immaterial when offence committed by the employee is described by reference to the section of the statute in which it is defined in asmuch as the very definition of the offence has to be description of the conduct which led to his conviction. This requirement is fully met in the present case and, therefore, no grievance can be made that the order of dismissal was based on mere conviction and not on conduct which led to conviction. (Para 13)

Held, in view of provisions of S. 10 of the Banking Regulation Act, 1949 the appellants could not be continued in service because of their conviction for an offence involving moral turpitude, but dismissal was not the only penalty which could be imposed on them. There is nothing available on the record to show that the punishing authority took notice of the relevant facts and circumstances of the case or that dismissal from service was the only punishment which, could be imposed. Hence the order of dismissal was arbitrary, capricious and whimsical. The order of dismissal of appellants was set aside and the appellant compulsorily retired with all retiral benefits. The appellants were not entitiled to back wages. (Para 28).

Regular Second Appeal from the decree of the Court of the Addl. District Judge, Ludhiana dated the 10th day of October, 1985 reversing that of the Sub Judge 1st Class, Ludhiana dated the 6th August, 1983 and dismissing the suit leaving the parties to bear their own costs throughout.

CLAIM—Suit for declaration to the effect that the order No. DAC 82/870, dated 6th September, 1982 of dismissal from service passed by defendant No. 2 against the plaintiff is illegal, null and void and inoperative and that the plaintiff is deemed to be in service of the defendant as officer incharge State Bank of India of Fatehabad District Hissar and entitled to all the benefits of the said service.

CLAIM IN APPEAL.—For the reversal of the order of the both the Courts below.

CROSS OBJECTION NO. 23-C, of 1986.

Cross objection an behalf of the respondent State Bank of India as provided by order 41, Rule 22, C.P.C. praying that the Cross Objections of the Bank be allowed with costs. The judgment and

decree of the lower Appellate Court be modified and wrong finding of the learned lower Appellate Court reproduced above be set aside and it be held that Section 10 of the Act is applicable to the State Bank of India.

This Hon'ble court may also grant any other relief, additional or in the alternative, to which the respondent Bank may be entitled to.

K. P. Bhandari, Sr. Adv. with Anil Malhotra, Inder Partap Singh, Advocates, *for the Appellants.*

R. K. Chhibbar, Advocate, *for the Respondents.*

JUDGMENT

A. P. Chowdhri, J.

(1) Regular Second Appeal No. 330 of 1986 alongwith cross objection No. 23-C of 1986 and Regular Second Appeal No. 331 of 1986 alongwith cross objection No. 22-C of 1986 arise out of common facts and questions of law and are being disposed of by this judgment.

(2) Brief facts giving rise to these Regular Second Appeals are these. Shayam Kumar Moudgil, appellant, in Regular Second Appeal No. 330 of 1986 and Roshan Lal in Regular Second Appeal No. 331 of 1986 joined State Bank of India (for short 'the Bank') as Godown Keeper in the year 1958 and 1956 respectively. On 14th March, 1963 the Chief Development Officer of the Bank lodged an FIR with the special police establishment against one Dharam Pal Puri under sections 120-B, 420, 467 and 471 of the Indian Penal Code. The case was investigated and a charge-sheet for the aforesaid offences was put in Court of the Special Magistrate, Punjab, Patiala, against the two appellants in addition to Dharm Pal Puri. The case was tried and the appellants were convicted by the Special Judicial Magistrate, Patiala on 5th June, 1978. They were sentenced to imprisonment till rising of Court and a fine of Rs. 1000 each under sections 120-B and 420 read with section 114 of the Indian Penal Code. The appellants appeal against the conviction and sentence was dismissed by the learned Additional Sessions Judge, Patiala on 15th October, 1979. The appellants filed a revision. The conviction of the appellants was maintained by order dated 19th December, 1979. The order of sentence was, however, set aside and the appellants were directed to be released on probation under section 4 of the probation

of offenders Act for a period of one year. During the period that F.I.R. was registered till decision of the revision petition, the appellants continued working in the Bank initially at Ludhiana and later on at other station. From the post of Godown Keeper they were entrusted higher responsibilities and their last posting was official Incharge. In December, 1981 the Regional Manager of the Bank, defendant No. 2, served a notice on the appellants to show cause why they should not be disimissed from service in accordance with the provisions of section 10 of the Banking Regulation Act, 1949 and the relevant provisions of the Sastry Award as modified by the Desai Award. The appellants submitted a detailed reply. By order dated 6th September, 1982 the appellants were dismissed by defendant No. 2. The dismissal was challenged by the appellants by filing two separate suits in the Court of Sub Judge 1st Class, Ludhiana. Various grounds were taken to assail the dismissal order. Reference to the same will be made wherever necessary. The appellants case in the main was that the order of dismissal was null and void and they prayed for a declaration that the order of dismissal being a nullity, they continued to be in service of the Bank and were entitled to all the benefits of being in service.

(3) The suits were contested. It was pleaded on behalf of the defendants that suit for declaration seeking to enforce personal service was not maintainable in view of the provisions of the Specific Relief Act, 1963. The jurisdiction of the Civil Court was disputed as the rights sought to be enforced arose out of the Sastry Award. The jurisdiction of the Court at Ludhiana was denied. The other material averments were also traversed. The learned trial court framed the following issues :—

1. Whether the plaintiff is entitled to declaration prayed for ? OPP.

2. Whether Civil court has no jurisdiction to decide present suit ? OPD.

3. Relief.

An additional issue was framed by the trial Court which reads as under :—

Whether the suit is not maintainable in the present form ? OPD.

(4) All the issues were decided in favour of the plaintiffs with the result that the plaintiffs suit was decreed with costs by the learned trial Court. The Bank preferred an appeal which was allowed by the learned Additional District Judge, Ludhiana, by order dated 10th October, 1985. The learned Additional District Judge held that the Civil Court had jurisdiction and that section 10 of the Banking Regulation Act did not apply to the State Bank of India as the said Bank had not been incorporated under the Companies Act. It was further held that section 12 of the probation of Offenders Act did not remove the disqualification attaching to a conviction and that suit for declaration on the facts of the case was not mintainable. The learned Additional District Judge reversed the finding of the learned trial court on Issue No. 1 and allowed the appeal with the result that the plaintiffs' suits were dismissed. The present appeals have been preferred by the plaintiffs against the said order. Cross objections have been filed by the Bank.

(5) I may straightway come to the question of jurisdiction of the Civil Court i.e. Issue No. 2.

(6) Basing himself on reference to paragraph 521 of the 'Sastry Award' in paragraph 8(e) and 8(f) of the plaint learned counsel for the respondent Bank contended that where relief was claimed on the ground of award under the provisions of the Industrial Disputes, Act, 1947, jurisdiction of the civil Court was barred. He placed reliance on the leading authority in *the Premier Automobles Ltd.* v. *Kamlakar Shantaram Wadke and others,* (1). After reviewing the case law, their Lordships summed up the legal position in the following principles :—

> (1) If the dispute is not an industrial dispute, nor does it relate to enforcement of any other right under the Industrial Disputes Act the remedy lies only in the civil Court.
>
> (2) If the dispute is an industrial dispute arising out of a right or liability under the general or common law and not under the Industrial Disputes Act, the jurisdiction of the civil Court is alternative, leaving it to the election of the suitor concerned to choose his remedy for the relief which is competent to be granted in a particular remedy.

(1) A.I.R. 1975 S.C. 2238

(3) If the industrial dispute relates in the enforcement of a right or an obligation created under the Industrial Disputes Act, then the only remedy available to the suitor is to get an adjudication under the Act.

(4) If the right which is sought to be enforced is a right created under the Industrial Disputes Act such as Chapter VA then the remedy for its enforcement is either Section 33C or the raising of an industrial dispute as the case may be.

This was followed by a Full Bench decision of this Court in *Suki Ram* v. *State of Haryana* (2), and an unreported judgment in *Jhangi Ram* v. *Shri G. S. Aggarwal and others* (3).

(7) What is popularly known as 'Sastri Award' is the award of the All India Industrial Tribunal (Bank Disputes), Bombay, on industrial disputes between certain banking companies and their workmen. It was rendered in March, 1953 and there is no dispute that it was subsequently adopted under proper settlement by the management and the staff concerned of the State Bank of India. Reference was made to paragraph 521(2) (b) of the Sastry Award in the plant. This was so because there was reference to the said portion of the award in the impugned order of dismissal, Exhibit PC and Exhibit PC/1. Paragraph 521(2) (b) of the Sastry Award lays down that if a person is convicted of an offence involving moral turpitude, he may be dismissed or given any lesser form of punishment with effect from the date of his conviction in accordance with sub-paragraph (5). Sub-paragraph (5) mentions the punishment of warning or censure adverse remarks, fine, stoppage of increment and discharge besides that of dismissal. The case of the appellants as laid in the plaint was that the provisions of section 10 of the Banking Regulation Act and section 521(2) (b) of Sastry Award in so far as they provide for dismissal, were inconsistent with the provisions of section 12 of the Probation of Offenders Act, 1958, and to the extent of inconsistency, they are void. In other words, this was not a case in which the plaintiffs sought any relief under provisions of the Industrial Disputes Act. It was no where stated in the plaint that the Punishing Authority had contravened any provision of the Industrial Disputes Act or the standing orders thereunder. On the other hand, relief was claimed on the ground that the plaintiffs

(2) 1982 P.L.R. 717

(3) R.S.A. 1410 of 1974 decided on 31st March, 1983

having been released under section 4 of the Probation of Offenders Act, section 12 of the Act gave them the necessary protection in so far as any disqualification attaching to the conviction for an offence is concerned.

(8) During arguments in these appeals, learned counsel for the appellants, laid great stress on the alleged violation of Article 14 of the Constitution. The case under consideration, therefore, did not seek to enforce any right under the provisions of the Industrial Disputes Act and, therefore, principle No. 2 enunciated by the Supreme Court is attracted and the plaintiffs had the right to choose their remedy either in the Civil Court or before the Labour Court. The appellants filed civil suits and, therefore, it cannot be said that jurisdiction of the Civil Court was barred. The finding of both the courts on the issue is, therefore, affirmed.

(9) The next important question is whether the plaintiff-appellants were entitled to a declaration. This was covered under additional issue framed by the learned trial Court.

(10) Learned counsel for the respondent-Bank contended that the general rule was that a contract of personal service cannot ordinarily be specifically enforced and a Court normally would not give a declaration that the contract subsists and the employee even after having been removed from service can be deemed to be in service against the will and consent of the employer. In *Executive Committee of Vaish Degree College, Shamli and others* v. *Lakshmi Narain and others* (14), the above rule was laid down on a review of the authorities and it was stated by the Apex Court that the rule was subject to three well recongnized exceptions :—

(i) where a public servant is sought to be removed from service in contravention of the provisions of Article 311 of the Constitution of India ;

(ii) where a worker is sought to be reinstated on being dismissed under the Industrial law ; and

(iii) where a statutory body acts in breach or violation of the mandatory provisions of the state.

(4) 1976 (1) S.L.R. 213

The argument is that the case of the plaintiffs is not covered under any of these exceptions and, therefore, a suit for declaration was not maintainable. I am unable to accept this contention. In the above authority, P. N. Bhagwati, J. (as his lordship then was) wrote a separate note of concurrence in which while agreeing with the conclusion proposed by Fazal Ali, J., his lordship observed that the three exceptions formulated in the statement of law was not intended to be and could not be exhaustive. It was observed at page 231 of the report that it was quite possible within the limits of the doctrine that a contract of personal service cannot be enforced to take the view that in case employment under a statutory body or public authority where there is ordinarily no element of personal relationship, the employee may refuse to accept the repudiation of the contract of the employment by the statutory body of public authority and seek reinstatement on the basis that the repudiation is ineffective and the contract is continuing. His lordship did not finally pronounce on this point. This question came up for consideration before a Division Bench of Calcutta High Court within less than one decade since the above decision in *Hindustan Steel Ltd.* v. *Rabindra Nath Banerjee* (5), B. C. Ray, J. (who now adorns the Bench of Supreme Court) speaking for the Bench reviewed the case law and in the context ofa Government owned company, namely Hindustan Steel Limited observed that a contract of service between such employee and the Public Corporation cannot be termed to be one of contract of employment between ordinary master and servant. It was noted that the State was no longer a Police State, but was a Welfare State vested with duties and responsibilities of carrying on trade and commerce of national importance as provided in Article 298 of the Constitution. In the circumstances, it was pointed out that the Public Corporations employed a large number of persons to carry out their functions efficiently. If the employees of such public Corporations were treated as ordinary servants, it would create a serious situation and a large number of such employees will be at the mercy, whim and caprice of the management. It was held in paragraph 28 of the report at page 161 that employees of Public Corporation which is an agency or instrumentality of the State and, therefore, a State within the meaning of Article 12 of the Constitution of India cannot be regarded as ordinary servants under their master and their contract of service should not be treated as one between master and servant for which no action can be brought for enforcement after being terminated arbitrarily and wrongfully. It

(5) 1985 (1) S.L.R. 147, (D.B.)

was concluded in paragraph 32 of the report at page 163 that suit for declaration as framed in that case was maintainable. I am in respectful agreement with the above conclusion. It cannot be disputed and was not disputed that the State Bank of India is covered under the expression "other authorities" in Article 12 of the Constitution. Reference in this connection may be made to *Sukhdev Singh and others* v. *Bhagatram Sardar Singh Raghuvanshi and another* (6), and *Central Inland Water Transport Corporation Ltd. and another* v. *Brojo Nath Ganguly and another* (7). It will, therefore, make no difference that Article 311 of the Constitution does not apply to an employee of the State Bank of India and he does not hold a civil post within the meaning of that Article. The finding of the trial Court on the additional issue is, therefore, affirmed and finding of the lower appellate Court to the contrary is set aside. It is held that suit for declaration was maintainable.

(11) The second part of the question is whether in the facts of the present case, the plaintiff was entitled to the declaration prayed for. Declaration in such circumstances is a discretionary relief, which may or may not be granted in the facts of a particular case. This was so laid down in *Lakshmi Narian's case (supra)*. It was held that though in law, the plaintiff was competent to maintain a claim for declaration he was not entitled to the grant of the same in the facts of the case. It is therefore, necessary to deal with the other legal submissions before deciding this part of the issue.

(12) The learned counsel for the appellant's raised a number of legal issues. This was objected to by the learned counsel for the respondent on the ground that the appellant having failed to have the necessary issues framed was estopped from arguing these questions. Once the second appeal is admitted, questions of law as distinguished from questions of fact or mixed questions of law and fact can be argued. It will further the ends of justice if the appellants are allowed to raise pure questions of law which did not require the recording of any evidence. I will, therefore, deal with these questions.

(13) The learned counsel for the appellants contended that the impugned order was based on conviction and not on conduct which led to the conviction of the appellants. In *Om Parkash* v. *The*

(6) A.I.R. 1975 S.C. 1331
(7) A.I.R. 1986 S.C. 1571

Director Postal Services (Post and Telegraphs Department) Punjab Circle, Ambala and Ors (8). Full Bench of this Court summed up the legal position in para No. 22 of the report at page 663. *Inter alia,* it was held that the punishment of removal or dismissal from government service is not an essential and automatic consequence of conviction and the competent authority had to take into consideration whether the conduct of the delinquent official which led to his conviction is such as to render his further retention in public service undesirable. It is, therefore, the conduct which led to conviction as distinguished from the conviction itself which furnishes a basis for disciplinary action against the delinquent.

(14) In the facts of the present case, the punishing authority i.e. the Regional Manager of the Bank served a show cause notice Exhibit PA on the plaintiffs. The plaintiffs made a detailed reply upon which the order of dismissal Exhibit PC/1 was issued along with forwarding letter Exhibit PC. The order of dismissal referred to show cause notice, the reply submitted by the plaintiffs as well as to the personal hearing afforded to the plaintiffs. The order proceeded to note that the Special Judicial Magistrate 1st Class, Punjab, Patiala, convicted the Plaintiffs and the said conviction was ultimately affirmed by the High Court of Punjab and Haryana in its order passed on a revision petition filed by the plaintiffs. With the affirmation of the conviction in respect of Sections 120-B, 420 and 114 of the Indian Penal Code involving moral turpitude became final and the punishing authority therefore, in terms of the relevant provisions of the Sastry Award read with Desai Award and the agreement entered into between the State Bank of India Staff Federation with the respondent Bank as also in terms of section 10(1) (b) (i) of the Banking Regulation Act, 1949, passed the order of dismissal against the plaintiffs. A perusal of the above order shows that the punishing authority was aware of (a) that the appellants had been convicted for certain offences by a criminal Court, and (b) that the offences involved moral turpitude. A Full Bench of Delhi High Court in *Director of Postal Services and another* v. *Daya Nand* (9), held that the punishing authority is not required to recite the words "on the ground of conduct which has led to conviction" in the order of dismissal. It was further held that conduct and conviction were inseparable. It was also held that the omission of the words conduct from the order becomes immaterial when the offence committed by the employee is described by reference to the section of the statute in which it is

(8) 1971 (1) S.L.R. 643

(9) 1972 S.L.R. 325

defined inasmuch as the very definition of the offence has to be the description of the conduct which led to his conviction. As pointed out above, this requirement is fully met in the present case and, therefore, no grievance can be made that the order of dismissal was based on mere conviction and not on conduct which led to conviction.

(15) Further assailing the order of dismissal, the learned counsel for the appellants also raised the contention that the impugned orders could not be considered to be speaking orders and, therefore, the same were bad and deserved to be set aside. Reliance was placed on *The State of Punjab* v. *Bakhtawar Singh and others*, and *The State of Punjab* v. *Rajinder Pal Abrol and another* (10). The case related to removal of two members of the Punjab State Electricity Board by cryptic orders passed by the Minister. The orders were preceded by a show cause notice which were duly replied to by the two members concerned. Their Lordships of the Supreme Court held that the orders were arbitrary to the core and the same were not speaking orders. It was observed that the order of removal failed to show that the Minister found the member concerned guilty of any of the charges levelled against him. On the other hand, the reasons given for the removal of Bakhtawar Singh from the office were that he was taking part in politics and he did not discharge his duties impartially. It was pointed out that Bakhtawar Singh was not charged with having failed to discharge his duties impartially. With regard to taking part in politics, it was observed that the findings were as vague as it could be. Politics, it was pointed out, was a word of wide import. By merely saying that he was taking part in politics nothing concrete was conveyed or established. The authority is of no assistance to the appellants in the present case. As already pointed out, there was reference to the offences for which the appellants had been convicted and the conviction maintained upto the High Court. In *Daya Nand's case* (supra), a Full Bench of the Delhi High Court held that the reasons for imposing the punishment are the reasons on which the conduct of the employee led to his conviction by the criminal Court. It was not necessary, therefore, for the punishing authority to repeat those reasons when the punishing authority expressly said that the punishment was being imposed because of the conviction which meant because of the conduct leading to the conviction. It was also observed that the punishing authority is invariably an administrative authority and it was not expected to

(10) 1972 S.L.R. 85

write judgments like the Courts. The orders of such authority have, therefore, to be viewed as orders recorded by a layman. When a layman says that punishment is inflicted because of the conviction of the employee for a certain specified offence he necessarily means that the conduct of the employee was bad enough as the offence is a serious one. The question under consideration was approached in substantially the same manner by the Supreme Court in *Union of India and another* v. *Tulsiram Patel* (11). In para 152 at page 1486 of the report, it was stated that, "the mention of section 332 of the Indian Penal Code in the said order itself shows that respondent was himself a public servant and had voluntarily caused hurt to another public servant in the discharge of his duty as such public servant or in consequence of an act done by that person in the lawful discharge of his duty." For the above reasons, I find no merit in the contention of the learned counsel for the appellants.

(16) The next contention of the learned counsel for the appellants is that the appellants having been released on probation under section 4 of the Probation of Offenders Act. 1958, section 12 gave them the necessary protection and they could not be dismissed on account of conviction by the Court. Reliance was placed on *Trikha Ram* v. *V. K. Seth and another* (12). This is a short judgment. It was contended that having regard to section 12 of the Probation of Offenders Act, the punishment of dismissal from service which would disqualify the appellant from future government service should not have been imposed. The order of dismissal was converted into one of removal from service so that the order of punishment did not operate as a bar and disqualification for future employment with the government. The learned counsel for the respondent has argued that the question of disqualification from future employment on the basis of dismissal would be relevant only in a case where the delinquent applied for employment and his application was turned down on the ground of his impugned disimissal following his conviction. That queston does not arise in the present appeals. The scope of section 12 of the Probation of Offenders Act came up for consideration in *Shankar Dass* v. *Union of India and another* (13). The main contention raised was that the appellant could not be dismissed from service on the ground of conviction since he was released under the Probation of Offenders Act. It was held in paragraph 4 of the

(11) A.I.R. 1985 S.C. 1416
(12) A.I.R. 1988 S.C. 285
(13) A.I.R. 1985 S.C. 772

report at page 773 that the order of dismissal from service consequent upon a conviction is not a "disqualification" within the meaning of section 12. The disqualification referred to were like the disqualification in Chapters III and IV of the Representation of the People Act, 1951, disqualifying from membership of Parliament and State Legislature and for voting. It was held that it is in that sense in which the expression "disqualification" has been used in section 12 of the Probation of Offenders Act. To the same effect is the law laid down in both the Full Bench decisions of this Court as well as the Delhi High Court in *Om Parkash's case* (supra) and *Daya Nand's case* (supra). I have, therefore, no difficulty in rejecting this contention.

(17) The lower appellate Court held that section 10 of the Banking Regulation Act did not apply to the State Bank of India as it was not incorporated as a Banking Company under the Companies Act. It is against this finding that the respondent has filed cross objections. The finding of the learned Additional District Judge on this point is evidently *per incuriam*. The provisions of section 51 of the said Act were not brought to his notice. Section 51 expressly make the provisions of section 10 of the Banking Regulation Act applicable to State Bank of India. The finding of the learned lower appellate Court on this point is, therefore, set aside and the cross-objections allowed to that extent.

(18) It was next contended by the learned counsel for the appellants that the appellants were convicted by the Special Judicial Magistrate 1st Class as far back as 5th June, 1978. Under paragraph 521(2) (b) of the Sastry Award, the appellants could be dismissed with effect from the date of their conviction. The appellants revision against the conviction was dismissed by the High Court by order dated 19th December, 1979 and yet the order of dismissal was passed on September 6, 1982. In this connection, it was submitted that the appellants kept the Bank informed of the developments in connection with their prosecution in the criminal Court and in spite of this information the respondent-Bank failed to take any action including suspension of the appellants. Not only that the Bank failed to take any penal action until the order of dismissal, the appellants were given promotion as Teller, Head Clerk and Official Incharge. In the circumstances, the employer must be deemed to have condoned the misconduct on the part of the appellants and it was estopped from imposing the impugned punishment on the appellants. Reliance

was placed on *Lal Audhrij Singh* v. *State of Madhya Pradesh* (14). The authority is clearly distinguishable on facts. In the authority the government servant was charged with negligence. No action was taken on the basis of that charge for nine long years. During that period, he had been granted promotion, annual increments and was also allowed to cross the efficiency bar. It was also found that the punishing authority was aware of the alleged misconduct at the time of granting promotion. It was held that if the authority concerned knowing of the misconduct promoted the civil servant without any reservation, it must be taken that the lapse or misconduct had been condoned. It was in these peculiar facts held that negligence on the part of the government servant stood condoned.

(19) In the facts of the present case, it was specifically denied by the defendant-respondent that the plaintiff-appellants kept the Bank informed of the various stages in their prosecution and no evidence was led to show that the appellants really kept the Bank informed with the latest development in their prosecution. On coming to know about the dismissal of the revision petition, the Bank secured necessary certified copies of orders and took some time to process the cases further. An effort was made by the learned counsel for the respondent to show that, in fact, the appellants had not been granted any promotion as Teller or Head Clerk. What they got was some allowance in addition to their basic pay as Godown Keeper. It could not however be denied that the work of Teller, Head Clerk or Official Incharge was work of higher responsibility and carried higher emoluments compared to that of Godown Keeper. It is, therefore, not possible to argue that the appelants were not given promotions. What is, however, material is that the punishment could be imposed on conviction by the trial Court but that punishment was subject to result of appeal or revision, if any. If the delinquent was dismissed or removed from service on the basis of conduct leading to conviction, he had to be reinstated in service if appeal or revision against conviction was allowed. Reference in this connection may be made to *Jarnail Singh* v. *State of Punjab and another* (15). Under the general law as well as under paragraph 521(2) (b) of the Sastry Award, it was thus *open to* the Bank to have taken disciplinary action on the basis of conduct leading to conviction when conviction was recorded by the trial Court but it was *not obligatory* to do so especially because the Bank would have to pass

(14) 1968 S.L.R. 88

(15) 1981 P.L.R. 21

appropriate orders in the event of appeal or revision against the conviction being allowed. The appellants were charged with and convicted of the offences involving moral turpitude. Section 10 of the Banking Regulation Act laid down a mandate that a person convicted of an offence involving moral turpitude could not be employed or *continued in* service of the Bank. In the facts of the case, therefore, there was no question of any condonation on the part of the Bank.

(20) It was next contended by the learned counsel for the appellants that the order of dismissal was altogether arbitrary, capricious and stood vitiated in view of the provisions of Article 14 of the Constitution. In this connection, the learned counsel referred to the observations of Gurnam Singh, J., while disposing of the revision petition (criminal Revision No. 1384 of 1979 decided on December 19, 1979). *Inter alia,* the learned Judge observed that the petitioners were petty officials of the Bank, they had to maintain their families and by giving them the benefit of Probation their services would be saved. In so far as the effect of provisions of section 12 of the Probation of Offenders Act regarding disqualification attaching to conviction is concerned, the same has been duly considered and dealt within the earlier part of this judgment. The learned Judge while making the above observations was evidently not seized of the question as to the appropriate punishment to be imposed on conduct which led to appellants' conviction for offences involving moral turpitude. I am afraid the appellants cannot derive any substantial benefit from the above observations.

(21) Section 10 of the Banking Regulation Act which has been held to be applicable to the employees of the State Bank of India lays down that no Banking Company shall employ or continue the employment of any person who has been convicted by a criminal Court of an offence involving moral turpitude. The Bank had really no choice except to discontinue the services of the appellants in view of the above categorical provisions in section 10 of the Banking Regulation Act, 1949. Faced with this difficulty, the learned counsel for the appellants vehemently argued that the end result of discontinuance in service could be achieved in one of the several ways. The appellants could be retired with all retiral benefits. The appellants could be removed from service so as not to disqualify them from future employment under the State. In selecting the appropriate punishment, the punishing authority should have kept in

mind that the appellants joined the service of the Bank way back in 1956 in case of appellant in R.S.A. No. 331 of 1986 and in 1958 in the case of appellant in R.S.A. No. 330 of 1986. They had put in 24 to 26 years of service. There was no other charge of any misconduct on the part of the appellants. The punishment of dismissal was thus chosen by the punishing authority from out of the three punishments referred to above in a most arbitrary manner which was sufficient to vitiate the order being in contravention of Article 14 of the Constitution. The appellants had still a number of years to serve before attaining the age of suerannuation. Reliance was placed on a number of authorities in support of the above contention which may now be dealt with.

(22) In *M. A. Khalsa* v. *Union of India and others* (16), the appellant was a Head Clerk in the office of Senior Divisional Railway Manager, Baroda, and he appeared to have drawn a false honorarium bill of Rs. 156.80. When enquiry was started against him, he remitted the amount to the Station Master in an effort to cover up the charge. It was observed by their Lordships of the Supreme Court that in view of the seriousness of the charge, the appellant rightly deserved the order of dismissal. However, looking into the long years of service that he had put in, it was directed *on compassionate grounds that he be reinstated in service without any back wages or allowance but with the lesser punishment of withholding of two increments with cumulative effect and with consequential loss of seniority.*

(23) In *Vijay Bahadur Singh* v. *Union of India* (17), by a very short order instead of order of dismissal their Lordships of the Supreme Court substituted a lesser punishment of compulsory retirement from service with effect from the date of the order of the Court and the authorities were directed to pay all the retirement benefits.

(24) In *Hussaini* v. *The Chief Justice of High Court of Judicature at Allahabad and others* (18), a safai Jamadar working in the High Court at Allahabad had been dismissed from service after he had rendered over 20 years service. Their Lordships of the Supreme Court felt that there was scope for taking a little lenient

(16) 1988 (Supp.) S.C. cases 436

(17) 1988 (2) S.L.R. 147

(18) 1985 (3) S.L.R. 56

view in the matter of punishment. The order of dismissal was directed to be converted into one of compulsory retirement.

(25) In *Shankar Dass's case* (supra), the appellant was employed as a Cash Clerk by the Delhi Milk Supply Scheme. He was found guilty of criminal breach of trust of Rs. 500. He met with a series of tragedies and misfortunes set out in the order of learned Magistrate who released him on probation. It was in this context observed that power to impose punishment like every other power had to be exercised fairly, justly and reasonably. The right to impose a penalty, it was observed, carries with it a duty to act justly. In the facts of that case, it was held that the punishment of dismissal of the appellant was whimsical. The appellant was directed to be reinstated with full back wages.

(26) A perusal of the judgments considered above reveal two noticeable features: (i) none of these cases related to employment in a Banking Company to which section 10 of the Banking Regulation Act applies, and (ii) in all these cases their Lordships of the Supreme Court in view of the hardship involved took a compassionate view and showed mercy to the persons concerned. It is necessary to bear in mind that the Supreme Court exercises an extraordinary equitable jurisdiction which is vested in it under Article 142 of the Constitution. This power is not vested in any other Court including the High Court. It is also necessary to remember that while dealing with the second appeal, this Court does not sit as an appellate forum from the punishing authority. It is not open to the Court to interfere in the punishment awarded by the competent authority unless the order is utterly whimsical. In *Union of India* v. *Parma Nand* (19), their Lordships of the Supreme Court considered the question whether the Central Administrative Tribunal had power to modify the penalty awarded to the respondent when the findings recorded as to his misdemeanour is supported by legal evidence. In other words, the question that arose before the Supreme Court was whether the Tribunal could interfere with the penalty awarded by the competent authority on the ground that it is excessive or disproportionate to the misconduct proved. It was held that the Tribunal can interfere with the finding of the Inquiry Officer or competent authority where they are arbitrary or utterly perverse. It was further held that if there has been an enquiry consistent

(19) 1989 I.S.V.L.R. (L) 93

with the rules and in accordance with principles of justice, the Tribunal has no power to substitute its own discretion for that of the authority. It was a case relating to a Time Keeper in Beas Sutlej Link Project, Sundernagar, who was alleged to have prepared bogus documents for withdrawal of salary in the name of one Ashok Kumar who was not working in his division. Regular departmental enquiry was held under the Punjab Government Servants Conduct Rules, 1966. The delinquent Parma Nand was dismissed after observing the necessary procedure. Ultimately, his writ petition was heard by a Bench of the Central Administrative Tribunal. The Tribunal modified the punishment and reduced it to stoppage of five increments. The Union of India took the matter by Special Leave Petition to the Supreme Court and the question which directly arose was the one stated earlier. In para 19 of the report, it was held that the Tribunal had the jurisdiction to exercise all the powers which the civil Court could in a suit or the High Court in a writ proceeding. Their Lordships considered the case law on the subject and remarked, "the Tribunals seems to take it within their discretion to interfere with the penalty on the ground that it is not commensurate with the delinquency of the official" It was observed, "the law already declared by this Court, which we reiterate, makes it clear that the Tribunals have no such discretion of power" (*vide* paragraph 27). It was also observed that the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with the appellate jurisdiction and the Tribunal cannot interfere with the findings of the Inquiry Officer or the competent authority where they are not arbitrary or utterly perverse. In para 28 of the report, it was held, "if there has been an enquiry consistent with the rules and in accordance with the principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority." Their Lordships observed that the Supreme Court exercises *equitable jurisdiction* under Article 136 of the Constitution and *the High Court or Tribunal had no such power or jurisdiction* (*vide* para 29).

(27) In paragraph 30 of the above report, their Lordships made an exception in a case where punishment is awarded without enquiry on the basis of conviction by a criminal Court. It was stated that if the penalty imposed is apparently unreasonable or

uncalled for, having regard to the criminal charge, the Tribunal may step in to render substantial justice. The Tribunal may remit the matter to the competent authority for reconsideraion or by itself substitute one of the penalties provided under the relevant rules. The aforesaid power, it was pointed out, had been conceded to the Court in *Union of India* v. *Tulsi Ram Patel* (20), in which speaking for the Court Madon. J., observed, "where the Court finds that the penalty imposed by the impugned order is arbitrary or grossly excessive or out of all proportion to the offence committed or not warranted by the facts or circumstances of the case or the requirements of that particular government service the Court will also strike down the impugned order."

(28) The present cases clearly fall in the aforesaid exception. Admittedly, the appellants had put in 24 to 26 years of service. In view of the provision of section 10 of the Banking Regulation Act, the appellants could not be continued in service because of their conviction for an offence involving moral turpitude, but dismissal was not only the penalty which could be imposed on them. Nothing is available on record to show that the punishing authority took notice of the relevant facts and circumstances of the case or that dismissal from service was the only punishment which could be imposed. Order of dismissal had the effect of depriving the appellants of all benefts of their life-long service in the Bank. F.I.R. was lodged against another officer of the Bank in March, 1963 and order of dismissal was passed in September, 1982. The order of dismissal is thus arbitrary, capricious and whimsical. Both the appeals are, therefore, allowed to the extent that order of dismissal of the two appellants is set aside and it is directed that the appellants shall stand compulsorily retired from service from the date of this order with all retiral benefits according to rules/regulations applicable to them. The appellants will not be entitled to any back wages. The appellants shall be entitled to costs of these appeals against respondent No. 1. Decree sheet be prepared accordingly.

R.N.R.

(20) 1985(3) S.C.C. 399