in two suits for recovery of rent for different period between the same parties. It was held that subsequent suit filed for recovery of rent for the different period was not liable to be stayed under section 10 of the Code of Civil Procedure, as the matter in issue would not be the same.

(5) For the reasons recorded above, this revision petition is accepted. The impugned order is set aside. However there will be no order as to costs. Parties through their counsel are directed to appear in the trial Court on March 25, 1991. No order in C.M. is necessary stand disposed of.

*J.S.T.*

*Before : M. R. Agnihotri, J.*

BANK OF INDIA,—*Petitioner.*

***versus***

PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHANDIGARH AND OTHERS,—*Respondents.*

*Civil Writ Petition No.* 3148 *of* 1987.

11th March, 1991.

*Bank of India Officer Employees' (Discipline and Appeal) Regulations,* 1976—*Bank of India (Officers') Service Regulation,* 1979—*Banking Companies (Acquisition and transfer of undertaking) Act,* 1970—*S.* 19—*Termination—Reinstatement—General Manager designated as appointing authority of Staff Officer under* 1976 *Regulations—Order of termination passed by subordinate authority i.e. Zonal Manager is invalid—Workman entitled to reinstatement with full back wages—Bank cannot be permitted to have fresh order of termination passed by the competent authority at this stage—Defect is incurable.*

*Held,* that for safeguarding the interests of the workmen and other employees of various corporate bodies and public undertakings against the arbitrary and illegal actions of the employer, the applicability of the provisions of Article 311 of the Constitution is not necessary. It is not Article 311 of the Constitution alone, which prohibits dismissal or removal of an employee by an authority subordinate to the appointing authority. On the other hand, with the

efflux of time and by age old recognised relationship of master and servant, it has become an integral part of Service Jurisprudence, that an authority subordinate to the appointing authority cannot dismiss an employee from its service. Whether an employee is a civil servant or not, is not material for this purpose. Provisions of the General Clauses Act, coupled with the principles of natural justice and Rules and Regulations statutory or otherwise, are equally effective to protect the employees against indiscriminate exercise of jurisdiction by officers subordinate to the appointing authority.

(Para 8)

*Held further*, that assuming the respondent to be a workman and further that the order of termination of services of the workman had been passed by an authority subordinate to the appointing authority, still the management should be permitted to continue with the proceedings against the workman in order to pass a fresh order by getting the same signed from a really competent authority, it would be enough to mention that such a course is neither permissible in law nor is reasonable or proper, since it involves the question of application of mind by the disciplinary and competent authority at the various stages of the disciplinary proceedings, right from serving of charge-sheet till culminating into passing of the final order.

(Para 12)

*Petition under Articles 226/227 of the Constitution of India, praying that:—*

(i) *That the records of the case may kindly be called for;*

(ii) *that after the perusal of the record and hearing upon the counsel for the parties, this Hon'ble Court may kindly be pleased to grant the following reliefs;*

(a) *issue a writ in the nature of certiorari quashing the award dated 9th April, 1987 (Annexure P-16) as published in the Government of India Gazette dated 9th May, 1987, whereby respondent No. 2 has been reinstated with back wages;*

(b) *Restrain respondent Nos. 2 and 3 from enforcing the award (Annexure P-16) by issuance of an appropriate writ or order;*

(iii) *that any other writ, order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case may kindly be issued;*

(iv) *that any other relief to which the petitioner may be found entitled in the facts and circumstances of the case may kindly be granted by this Hon'ble Court;*

(*v*) *that the requirement of filing the certified copies of Annexures, true copies whereof have been annexed, may kindly be dispensed with in view of the urgency of the matter;*

(*vi*) *that the requirement of serving the advance notices of this petition on the respondents herein may kindly be dispensed with in view of the urgency at the matter as any initiative to serve them at this stage would unnecessarily delay the filing of the petition in this Hon'ble Court;*

(*vii*) *that the costs of this petition may kindly be awarded in favour of the petitioner and against the respondents herein;*

(*viii*) *that during the pendency of the petition in this Hon'ble Court, the operation of the impugned order/award (Annexure P-16) passed by the respondent No. 1 may kindly be stayed.*

*C.M.* 8025 *of* 1990

*Application under Section* 151 *of the Code of civil Procedure praying that the application be accepted, the petitioner bank be directed to pay full salary to the applicant respondent which other officers of his seniority and status are drawing together with the arrears of difference in the wages paid in the past and to which the applicant respondent was entitled.*

Jagat Arora, Advocate and L. M. Suri, Senior Advocate with Arun Kumar, Advocate, *for the Petitioner.*

N. K. Sodhi, Senior Advocate with V. P. Sharma and Miss Deepali Puri, Advocate, *for Respondent No.* 2.

JUDGMENT

*M. R. Agnihotri, J.*

(1) By this petition filed under Articles 226 and 227 of the Constitution, the management of Bank of India has approached this Court for the quashing of the award dated 9th April, 1987 (Annexure P. 16), given by the Central Government Industrial Tribunal-cum-Labour Court, Chandigarh, holding that termination of services of respondent B. K. Sareen, workman, was void as the order to that effect had not been passed by the competent authority and, as such, the workman was entitled to reinstatement to his post with full backwages.

(2) Briefly stated, respondent B. K. Sareen was appointed as Clerk-cum-Typist with the petitioner-Bank of India, on 17th October,

1970. He was promoted as Staff Officer on 1st December, 1976. He worked in that capacity for about three years when he was transferred to Patna. According to the workman, this transfer to Patna from Chandigarh had been effected in order to take revenge from the workman for his Union activities. However, a disciplinary inquiry was initiated against the workman and on the basis of the inquiry report, services of the respondent workman were terminated on 26th November, 1983. The workman raised the following industrial dispute which was referred to the Central Government Industrial Tribunal on 11th February, 1986:—

> "Whether the action of Bank of India in terminating of services of Shri Bal Kishan Sareen, Staff Officer, in their Sector 17-B, Chandigarh Branch, with effect from 26th November, 1983 is legal and justified? If not, to what relief is he entitled ?"

(3) Though the workman challenged termination of his services on a variety of grounds, including denial of reasonable opportunity during inquiry refusal to cross-examine the witnesses, non-supply to the petitioner of the material documents produced and relied upon during inquiry, etc., yet the principal attack against the impugned order was that it was wholly *null and void* and without jurisdiction, in as much as the petitioner having been appointed by the General Manager, his services could not be terminated by the Zonal Manager, who was subordinate to the General Manager.

(4) The Bank, in their reply, hotly contested the reference and questioned jurisdiction of the Tribunal to entertain and try the reference and also alleged that the respondent was not a workman within the meaning of Section 2(s) of the Industrial Disputes Act 1947. It was further pleaded that the order of termination of services of the petitioner was passed by the competent authority. The learned Tribunal found that the reference was maintainable and the Labour Court did have the jurisdiction to go into the validity of the order of termination of the respondent, even though the workman had earlier approached the Civil Court when no order of dismissal or termination of his services had been passed. After full appraisal of evidence on the record, the learned Tribunal held that the order of termination was invalid and it had not been passed by the appointing authority, inasmuch as the workman was promoted as Staff Officer on 1st December, 1976, by the General Manager, and his services could not be terminated by the Zonal Manager, who was an authority junior to the General Manager.

(5) Faced with the basic infirmity going to the root of jurisdiction of the order of termination, the management sought to argue before the Tribunal that though there had been an amendment in the Service Regulations of the Bank whereby the power of appointment had been delegated, yet the Tribunal could hold an independent inquiry against the workman at its own level. Considering the same as unnecessary and prejudicial to the case of the respondent workman, the learned Tribunal held the termination order as void, having not been passed by the competent authority and directed his reinstatement into service with full back wages.

(6) The learned counsel for the petitioner-management has raised two-fold arguments. Firstly, an attempt has been made to justify the action of termination of service of the petitioner by the Zonal Manager on the ground that by amendment of Bank of India (Officers') Service Regulations, 1979, the power of dismissal stood delegated to the Zonal Manager; and secondly, assuming that there was a mistake committed by the Bank at the stage of passing the final order of termination of services of the workman, the matter could be decided afresh from that stage onwards, meaning thereby that by upholding and salvaging the inquiry against the workman and by permitting the Bank to pass the order of dismissal or termination of services of the workman which could be got signed from the competent authority.

(7) With respect, I do not find merit in either of the two submissions of the learned counsel nor any legal infirmity in the well-considered award of the learned Tribunal. It is an admitted fact that according to the provisions of Bank of India Officer Employees' (Discipline and Appeal) Regulations, 1976, which are statutory in nature, having been framed under Section 19 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, the competent authority to impose the punishment on an officer employee of the status and category of the respondent-workman was the General Manager and not the Zonal Manager, who is an officer subordinate to the General Manager. No amendment whatsoever has been made in the said Regulations and any order passed in contravention of the same shall obviously be *null and void* on the face of it. The mere fact, that in 1979, that is, about three years after the promotion of the petitioner, a set of service regulations, namely, Bank of India (Officers') Service Regulations, 1979, had been framed by the

Bank for a different purpose, that is, for grant of salary and other emoluments, promotion, determination of seniority, fixing the age of retirement, etc. and that too without amending or supplementing the Discipline and Appeal Regulations, referred to above, governing the conditions of service of the respondent-workman, could not rob the workman of the statutory protection available to him under the Discipline and Appeal Regulations.

(8) It has been settled by now by Hon'ble the Supreme Court and a number of judicial pronouncements of the various High Courts, that for safeguarding the interests of the workmen and other employees of various corporate bodies and public undertakings against the arbitrary and illegal actions of the employer, the applicability of the provisions of Article 311 of the Constitution is not necessary. It is not Article 311 of the Constitution alone, which prohibits dismissal or removal of an employee by an authority subordinate to the appointing authority. On the other hand, with the efflux of time and by age old recognised relationship of master and servant, it has become an integral part of Service Jurisprudence, that an authority subordinate to the appointing authority cannot dismiss an employee from its service. Whether an employee is a civil servant or not is not material for this purpose. Provisions of the General Clauses Act, coupled with the principles of natural justice and Rules and Regulations, statutory or otherwise, are equally effective to protect the employees against indiscriminate exercise of jurisdiction by officers subordinate to the appointing authority. In this regard, reference to the following judgments would be useful,—*Gadde Venkateswara Rao* v. *Government of Andhra Pradesh and others* (1), *Municipal Corporation of Delhi* v. *Shri Ram Pratap Singh* (2), *Gwalior District Co-operative Bank Ltd.* v. *Ramesh Chandra Mangal and others* (3), *The Workmen of M/s Hindustan Lever Ltd. and others* v. *The Management of M/s Hindustan Lever Ltd.* (4), *The Punjab State Cooperative Supply and Marketing Federation Limited* v. *The Additional Registrar (Industrial) Cooperative Societies, Punjab* (5), *Chairman and Managing Director, National Insurance Co. Ltd. and others* v. *S. Narayanankutty*

(1) A.I.R. 1966 S.C. 828.
(2) A.I.R. 1976 S.C. 2301.
(3) 1979 (2) S.L.R. 464.
(4) 1984-I L.L.J. 388.
(5) 1984 (2) S.L.R. 217.

*and others* (6), *Union of India and another* v. *Sri Babu Ram Lalla* (7) and *M/s Varanasi Electric Supply Undertaking, U.P. State Electricity Board* v. *Industrial Tribunal, I U.P. at Allahabad and others* (8).

(9) Learned counsel for the management petitioner has invoked to its aid the judgment of the Hon'ble Supreme Court in *Pyare Lal Sharma* v. *M. D. Jammu & Kashmir Ind. Ltd. and others* (9), to contend that since Article 311 of the Constitution of India was not applicable to the employees of the Bank, they could not claim protection of Article 311 (1) of the Constitution, meaning thereby, that even if the impugned order of termination of services of the respondent-workman had been passed by an authority subordinate to the appointing authority, the termination of the workman was still to be treated as valid in law.

(10) With respect, there has been a complete misreading of the judgment in *Pyare Lal Sharma's case* (supra) at the end of the petitioner-Bank, as it was specifically mentioned in para 19 of the judgment in the above case that "there is no provision in the Articles of Association or the regulations of the company giving same protection to the employees of the company as is given to the civil servants under Article 311 (1) of the Constitution of India. An employee of the company cannot, therefore, claim that he cannot, be dismissed or removed by an authority subordinate to that by which he was appointed." This is not the position in the present case as, according to the statutory Regulations regulating the disciplinary and procedural powers of the Bank, the order of removal or termination of services in the case of the respondent-workman and other employees similarly situated, could only be passed by the General Manager and not by the Zonal Manager—an officer subordinate to the General Manager. Consequently, the finding of the learned Labour Court that the order of termination of services of the petitioner was *null and void* having been passed by an authority subordinate to the appointing authority, is upheld and the challenge against the same is repelled.

(11) So far as the question as to whether respondent B. K. Sareen was a workman or not, is concerned, the same has rightly not been

(6) 1985 (3) S.L.R. 91.
(7) A.I.R. 1988 S.C. 344.
(8) 1990 Lab. I.C. 1331.
(9) 1990-I L.L.J. 32.

gone into by the Tribunal. Firstly, there was no necessity to do so; and secondly, in view of the earlier award L.C.A. No. 82 of 1984, dated 5th January, 1985 (Annexure P. 8), between the same parties, it could not be seriously challenged that the respondent was not a workman. Issue No. 1 decided by the Central Government Labour Court, Chandigarh, in the aforesaid award, reads as under:—

"*ISSUE No.* 1.

This issue was framed to meet the respondent's objection to the jurisdiction of the Court on the plea that being a member of the managerial staff the petitioner was not a workman. In all fairness to him, the learned representative of the management did not press his objection in view of the Supreme Court observations in the cases of *S. K. Verma* v. *Mahesh Chandera*, A.I.R. 1984 S.C. 1462, and *Ved Pal* v. *M/s Delton Cable*, A.I.R. 1984 S.C. 914.

Accordingly, the issue is answered against the management."

(12) Coming to the last submission of the learned counsel for the petitioner, that assuming the respondent to be a workman and further that the order of termination of services of the workman had been passed by an authority subordinate to the appointing authority, still the management should be permitted to continue with the proceedings against the workman in order to pass a fresh order by getting the same signed from a really competent authority, it would be enough to mention that such a course is neither permissible in law nor is reasonable or proper. The authority relied upon by the learned counsel in support of his contention, *Municipal Corporation of Delhi's case* (supra) (: AIR 1976 S.C. 2301), does not lend any support to the contention, as the present case is not of a mistake which has crept in at a final stage, but since it involves the question of application of mind by the disciplinary and competent authority at the various stages of the disciplinary proceedings right from serving of charge-sheet till culminating into passing of the final order.

(13) In view of the above legal position, I uphold the award of the Central Government Industrial Tribunal-cum-Labour Court, Chandigarh, dated 9th April, 1987 (Annexure P. 16), and dismiss the petition. Though the respondent-workman has since been reinstated in implementation of the impugned award, yet during the course of

proceedings of the present petition, it has been brought to my notice that full back wages have not been paid to him so far. If that is so, the petitioner-management of Bank of India is directed to clear the arrears of his salary, that is, full back wages admissible to him under the rules, right from the date of termination of his services, that is, 26th November, 1983, till the date of reinstatement, within a period of two months, failing which the petitioner-management shall have to pay interest at the rate of 12 per cent per annum on the amount due, from the date it became due till the date of actual disbursement. The respondent shall also be entitled to the costs of this petition which are quantified at Rs. 1,000.

*R.N.R.*

*Before* : *Jawahar Lal Gupta, J.*

DEVINDRA KUMAR,—*Petitioner.*

*versus*

PANJAB UNIVERSITY, CHANDIGARH,—*Respondent.*

*Civil Writ Petition No.* 1322 of 1987.

29th April, 1991.

*Constitution of India, 1950—Art. 226—Panjab University Calender, Vol. III—P.* 413, *rl.* 9—*Panjab University Regulations—Regl.* 27.1, 27.2 & 27.3—*Award of grace marks—Candidate re-appearing in some papers of M.A. II to improve upon his previous performance—In reappear result, candidate securing* 16 *additional marks in M. A. II—Not satisfied, candidate applying for re-evaluation of both reappear papers—As a result of re-evaluation in one paper, marks reduced by* 8—*University declaring result of candidate with an aggregate of* 384 *marks on the basis of result of re-evaluation—Candidate thereafter applying for award of* 8 *grace marks—University rejecting the claim—Claim for award of* 8 *grace marks is legally unsustainable in view of rule* 9—*Since the score had decreased by more than* 5 *per cent, the University was justified in declaring the result as reduced by re-evaluation—Candidate's claim for award of grace marks upto* 1 *per cent of total marks of M.A. examination is unjustified since he had appeared in two papers of M.A. II only—Candidate is entitled to* 1 *per cent of the marks of the examination in which he reappears—Since the grant of* 1 *per cent grace marks in the two reappear papers would not lead to any change of result, the candidate is not entitled award of grace marks—Award of grace marks should suffer strict construction—Courts to lean in favour of merit rather than agree to award grace marks freely.*