

**HIGH COURT OF MADHYA PRADESH, PRINCIPAL SEAT  
AT JABALPUR**

<b>Case Number &amp; Parties Name</b>	<b>M.P. No.2560/2020</b>  <i>Union Bank of India &amp; another</i> vs. <i>Vinod Kumar Dwivedi</i>
<b>Date of Order</b>	<b>07/11/2020</b>
<b>Bench Constituted</b>	Single Bench
<b>Order delivered by</b>	Justice Sujoy Paul
<b>Whether approved for reporting</b>	Yes
<b>Name of counsels for parties</b>	For Petitioners: Shri S.K. Rao, Senior Advocate with Shri S.K. Chaturvedi, Advocate. For Respondent: Shri Pranay Choubey, Advocate.
<b>Law laid down</b>	* <b>Labour/Service Law-</b> The respondent/workman was dismissed from service on the ground that he was party to illegal release of pension of a widow to an incompetent person. The Industrial Tribunal opined that workman was a private driver of a Bank Manager till 2009. Thereafter, he became Peon in the Bank and not responsible for sanction or release of pension. The Clerical Staff and officers who were responsible for sanction and release of pension were inflicted with minor punishments. The Tribunal found that punishment imposed on workman is discriminatory and smacks of conspiracy. In absence of challenge to these findings, the relief of grant of backwages was examined by the Court.  * <b>Backwages-</b> When dismissal

	<p>order was found to be illegal and invalid, it can follow with direction of continuance of service and backwages etc. However, if the punishment was interfered only because it was disproportionate in nature and substituted by a smaller punishment, there is no automatic reinstatement nor benefit of continuity of service and backwages can be granted. Two exceptions to this principle are that (i) where termination is set aside on the ground that employee was not found guilty of misconduct; (ii) where Court records a finding that enquiry held in respect of a frivolous issue or petty misconduct as a camouflage to get rid of employee or victimize him and the disproportionate excessive punishment imposed is result of such intention. In these cases, principle relating to grant of backwages will be the same as those applied in the cases of illegal termination.</p> <p>* <b>Second Exception-</b> In the instant case, the Tribunal has given a finding which shows that the respondent was victimized, subjected to discriminatory treatment and conspiracy and hence second exception is attracted.</p> <p>* <b>Precedent-</b> The judgment of Supreme Court can not be read as Euclid's Theorem or like a statute. Blind reliance on a judgment without considering the fact situation is bad in law.</p> <p>* The decision of a Court should be understood in the fact situation of a case and by taking factual contexts</p>
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	<p>in mind. A single different fact may change the precedential value of a judgment.</p> <p><b>* Article 227 of the Constitution-</b> The award does not suffer from any jurisdictional error, patent illegality, palpable procedural impropriety or perversity, interference is declined.</p> <p><b>*Industrial Disputes Act, 1947- 5<sup>th</sup> Schedule-Unfair Labour Practice-</b> If the workman is dismissed by way of victimization, not in good faith or as a colourable exercise of power, for patently false reasons or subjected to disproportionate punishment, it amounts an 'unfair labour practice'</p>
<b>Significant paragraph numbers</b>	<b>13,14,15,17,18,19,21,22,24,25,26</b>

**ORDER**  
**07.11.2020**

This petition filed under Article 227 of the Constitution partly assails the award passed by the Central Government Industrial Tribunal (Tribunal) dated 07.01.2020 to the extent Tribunal directed reinstatement of workman with 30% backwages and other benefits.

2. Shri S.K. Rao, learned senior counsel for the petitioners at the threshold made it clear that he is not challenging the award on merits, indeed the employer has confined its attack to the extent 30% backwages have been granted.

3. The relevant facts which have given rise to the industrial dispute referred by the appropriate government to the Tribunal on 03.12.2012 were that the respondent-workman was an employee of Sidhi Branch of the Bank between 1993 to 2009.

The widow of a pensioner -Smt. Urmila Devi preferred a complaint before the Bank stating she did not withdraw her pension from her pension account for last two years. She came to know in November, 2009 during her visit to the Branch that pension has been withdrawn by the workman in connivance with the other persons. The employer placed the workman under suspension and instituted a departmental inquiry. It was alleged that the workman acted prejudicial to the interest of the Bank which amounts to gross negligence involving serious loss to the Bank, willful damage to the property of customers of the Bank, breach of rule of business of the Bank and instructions for running the department. The additional charge was also added. The Inquiry Officer found the charges as proved. The Disciplinary Authority inflicted the punishment of “dismissal without notice”. Aggrieved, the respondent-workman filed an appeal which was also dismissed. This punishment became subject matter of industrial dispute. Reference made to the Tribunal reads as under:

“Whether the action of the management of the Union Bank of India in awarding the punishment of Dismissal without notice to Shri Vinod Kumar Dwivedi, Ex-Peon/Hammal vide order dated 30.11.2010, is legal and justified ? What relief the concerned workman is entitled to.”

4. After completion of pleadings, the Tribunal framed issues and after recording evidence and hearing the parties, decided the matter by impugned award dated 07.01.2020.
5. Shri S.K. Rao, learned senior counsel urged that the only reason for interference with the punishment order is that punishment was found to be disproportionate in nature by the Tribunal. In that event, the Tribunal was not justified in granting

30% backwages. Shri Rao submits that the workman has already been reinstated by the employer. The employer is only aggrieved by the award to the extent 30% backwages were directed to be granted by the Tribunal. He placed reliance on **2007 (2) SCC 443 (J.K. Synthetics Ltd. Vs. K.P. Agrawal and another)**, which is recently followed by Supreme Court in **Om Pal Singh Vs. Disciplinary Authority and others, 2020 (3) SCC 103**. Learned senior counsel has taken pains to contend that in view of the binding judgment of J.K. Synthetics Ltd. (supra) followed in Om Pal Singh (supra), it is clear that the Tribunal has clearly erred in directing payment of 30% backwages. When one punishment is interfered with merely because it is found to be excessive and a lesser punishment is directed to be imposed in lieu thereof, the Tribunal cannot direct payment of backwages.

6. *Per contra*, Shri Pranay Choubey, learned counsel for the respondent supported the impugned award. Interestingly, he also placed reliance on the judgment of **J.K. Synthetics Ltd.**(supra). By placing reliance on different paragraphs of this judgment, Shri Choubey urged that the Tribunal has not committed any jurisdictional or legal error which warrants interference by this Court. He placed heavy reliance on certain paragraphs of the award. He contended that the respondent was unnecessarily subjected to disciplinary proceedings. The punishment imposed on him was not only shockingly disproportionate, the whole episode of the disciplinary proceedings smack of conspiracy. It is further urged that against other five officials, who were mainly responsible and concerned with payment to the widow of the pensioner, the matter was leniently dealt with and punishment of reduction by one stage in scale of pay without cumulative effect

was awarded against those five officials. The respondent was subjected to discriminatory and step-motherly treatment.

7. No other point is pressed by learned counsel for the parties.

8. I have bestowed my anxious consideration to the rival contentions of learned counsel for the parties and perused the record.

9. As noticed above, both the parties have placed heavy reliance on the judgment of Supreme Court in *J.K. Synthetics Ltd.*(supra). On the basis of same judgment, they have taken diametrically opposite stand. Thus, the said judgment needs to be examined with utmost care and caution.

10. The judgment of *J.K. Synthetics Ltd.*(supra) has been recently followed by the Apex Court in the case of *Om Pal Singh* (supra). By placing reliance on Para 17 of the judgment of *J.K. Synthetics Ltd.*(supra), the Apex Court came to hold that where the misconduct was held to be proved, the reinstatement is itself a consequential benefit arising out of imposition of lesser punishment. The award of backwages for the period when employee has not worked may amount to rewarding the delinquent employee and punishing the employer for taking action for misconduct committed by the employee, which should be avoided.

11. The argument of Shri Rao, learned senior counsel in the first blush appears to be attractive but on a closure scrutiny, it is found that in the case of *Om Pal Singh* (supra), the petitioner therein was served with a punishment of dismissal from service. He preferred a departmental appeal. The Appellate Authority modified the punishment by imposing punishment of reduction of

pay by 15 stages in the time scale of pay for a period of 8 years. This modified punishment was challenged by employee before the High Court by filing a writ petition. The High Court directed reconsideration of punishment and remitted the matter back before the Disciplinary Authority. In turn, the Disciplinary Authority reconsidered the matter and reiterated the same penalty of reduction of 15 stages lower in time scale in pay for a period of 8 years. However, the Disciplinary Authority modified the punishment to 10 stages in place of 15 stages for a period of 6 years in place of 8 years. The High Court did not interfere with this modified punishment in the second round of litigation. In this factual backdrop, in the case of ***Om Pal Singh*** (supra), the Apex Court placed heavy reliance on Para 17 of the judgment of ***J.K. Synthetics Ltd.*** (supra) and dismissed the appeal of the employee.

12. A plain reading of the aforesaid factual matrix of the case of ***Om Pal Singh*** (supra) makes it crystal clear that the singular reason on which the Disciplinary Authority modified the punishment was that it was disproportionate/excessive. No other finding was given on any other aspect. In other words, interference was not made on the ground of victimization, colourable exercise of power or for the reason of discrimination etc.

13. In the case in hand, it is apposite to take note of certain findings given by the learned Tribunal. The Tribunal opined that the illegal withdrawal of pension took place between July 21, 2007 to November 25, 2009. The respondent joined the Bank in regular capacity only in 2009. The Tribunal totally disapproved the manner in which Bank imposed the punishment on the workman. It was noted that previously the respondent was posted as personal servant (Driver) of Lead District Manager. Later on,

he became Peon. The Tribunal recorded that *“it is surprising as to how the Bank staff was so vulnerable to be pressurized by the personal Driver of the Lead District Manager”*.

14. The Tribunal further recorded that *“accordingly it is held that charges of using his position in getting the fraudulent withdrawal passed is held proved though it is surprising as to how such a peon of the bank can be so influential to impress every staff of the bank to act according to his wishes. Certainly the whole episode smacks of conspiracy. In Para 15 of the award, the Tribunal in clear terms recorded that “the workman was not the approving authority. He was not the person to deliver the cash to the holder. The other staff is equally or more guilty than the present workman in the whole episode. The details of the punishment given to other staff show that minor penalty of reduction by one stage in scale of pay without cumulative effect was awarded to the other five officials which were mainly obligated and connected with the job whereas who were mainly obligated and connected with the job whereas the workman has been awarded with the punishment of dismissal without notice which certainly smacks of discrimination by the Bank.”* The Tribunal further opined that punishment is shockingly inappropriate and discriminatory in nature.

15. A careful reading of the award shows that the Tribunal interfered with the punishment by holding that (i) it was unwarranted, (ii) amounts to discrimination and (iii) such punishment smacks of “conspiracy”. Thus, in this factual background, the judgment of *J.K. Synthetics Ltd.* (supra) needs to be seen.



16. In para-19 of judgment of *J.K.Synthetics Ltd. (supra)*, the Apex Court noted that where finding of misconduct is affirmed and only punishment is interfered with (as contrasted from cases where termination is held to be illegal or void) is that there is no automatic reinstatement. If reinstatement is directed, it is not automatic with retrospective effect from the date of termination. Where reinstatement is a consequence of imposition of lesser punishment, neither backwages nor continuity of service nor consequential benefits follow as a natural or necessary consequence of such reinstatement. Thereafter the Apex Court laid down two exceptions.

17. Para 20 of the judgment of *J.K. Synthetics Ltd. (supra)* reads as under:

“20. But there are **two exceptions**. The first is where the court sets aside the termination as a consequence of employee being exonerated or being found not guilty of the misconduct. **Second** is where the court reaches a conclusion that the inquiry was held in respect of a frivolous issue or petty misconduct, as a camouflage to get rid of the employee or victimize him, and the disproportionately excessive punishment is a result of such scheme or intention. In such cases, the principles relating to back-wages etc. will be the same as those applied in the cases of an illegal termination.”

[Emphasis Supplied]

18. In the instant case, the Tribunal has given a finding that the appellant was initially a private driver of the Bank Manager and, therefore, he was not in a position to influence the staff of the bank for the purpose of illegal release of pension. Thereafter, since 2009, he worked as a Peon. Being a Peon, he had no control over the process of sanction and release of pension. The ministerial employees and officers who were in the helm of affairs and were responsible for issuance of pension were given minor punishments whereas the petitioner was picked up and chosen for

a punishment of dismissal from service. Thus, present respondent was unnecessarily victimized and subjected to discriminatory and disproportionate punishment. Thus, in my view, the second exception laid down in Para-20 of judgment of *J.K. Synthetics Ltd. (supra)* is clearly attracted in this matter.

19. It is trite that judgment of Supreme Court cannot be read as *Euclid's Theorem*. [See: 2004 (8) SCC 579 (*Bharat Petroleum Corporation Ltd. Vs. N.R. Vairamani*), 2011 (12) SCC 428 (*C. Ronald Vs. UT Andaman & Nicobar Islands*) and 2008 (16) SCC 14 (*Deepak Bajaj Vs. State of Maharashtra*)]. Blind reliance on a judgment without considering the fact situation is bad in law. [See: 2003 (11) SCC 584 (*Ashwani Kumar Singh Vs. U.P. Public Service Commission*), 2003 (2) SCC 111 (*Bhavnagar University Vs. Palitana Sugar Mill (P) Ltd.*), 2011 (5) SCC 708 (*Sushil Suri Vs. CBI*), 2015 (10) SCC 161 (*Indian Performing Rights Society Ltd. Vs. Sanjay Dalia*), 2016 (3) SCC 762 (*Vishal N. Kalsaria Vs. Bank of India*)].

20. This is equally settled that decision of a Court should be understood in the facts situation of a case and by taking factual context in mind. [See: 2006 (1) SCC 368 (*Union of India Vs. Major Bahadur Singh*), 2002 (3) SCC 533 (*Padma Sundara Rao Vs. State of Tamil Nadu*), 496, 2003 (1) SCC 289 (*Ram Prasad Sharma Vs. Mani Kumar Subba*)].

21. This is also settled principle that a single different fact may change the precedential value of a judgment. [See : *Bhavnagar University Vs. Palitana Sugar Mill (P) Ltd., 2003 (2) SCC 111*].

22. As pointed out above, in the case of *Om Pal Singh* (supra), the interference on punishment was solely based upon the doctrine of proportionality. Thus, in the case of *Om Pal Singh*

(supra), the Apex Court had no occasion to apply the test and exception laid down by Supreme Court in the case of **J.K. Synthetics Ltd.** (supra). In the instant case, the necessary ingredients for applying the second exception (as per Para 20 of the judgment) are available. Thus, I find force in the argument of Shri Choubey that exception 2 of Para 20 of **J.K. Synthetics Ltd.** (supra) is clearly attracted. In this view of the matter, it cannot be said that the Tribunal has passed the award which runs contrary to the law laid down in the case of **J.K. Synthetics Ltd.** (supra).

23. In view of the foregoing analysis, the judgment of **Om Pal Singh** (Supra) is of no assistance to the Bank.

24. The matter may be viewed from another angle. The 5<sup>th</sup> Schedule of Industrial Dispute Act, 1947 prescribes “Unfair Labour Practice”. The relevant entries of item 5 reads as under:

“5. To discharge or dismiss workmen—

(a) by way of **victimisation**;

(b) not in good faith, but in the **colourable exercise** of the employer’s rights;

(c) ....

(d) for patently false reasons;

(e) ....

(f) .....

(g) for misconduct of a minor or technical character, without having any regard to the nature of the particular misconduct or the past record or service of the workman, thereby leading to a **disproportionate punishment.**”

[Emphasis Supplied]

25. In view of findings given by the Tribunal and discussions made hereinabove, it is clear that clause (a), (b), (d) & (g) of Clause V “unfair labour practice” are clearly attracted in the present case. The punishment imposed on the present respondent

was discriminatory, arbitrary and amounts to victimization of a Class-IV employee without there being any justification. Moreso, when the clerical staff and officers of the bank who were actually responsible for the misconduct were inflicted with minor punishments. In this backdrop, the Tribunal has rightly exercised its judicial discretion and granted 30% back wages. No fault can be found in the said direction.

26. As discussed above, the award passed by the Tribunal is in consonance with the law laid down in the case of *J.K. Synthetics Ltd.* (supra). In absence of any jurisdictional error, patent illegality, palpable procedural impropriety or perversity, interference is declined.

27. Petition is dismissed with Rs.25,000/- (Rupees Twenty five Thousand) cost. The petitioners shall pay the cost to the respondent within 30 days from today.

**(Sujoy Paul)**  
**Judge**

*Biswal*