STATE BANK OF INDIA

v.

WORKMEN OF STATE BANK OF INDIA AND ANR.

AUGUST 24, 1990

[P.B. SAWANT AND K. RAMASWAMY, JJ.]

Industrial Disputes Act, 1947: Sections 2(oo) and 25F—Bank clerk—Charged with misconduct—Issued notice and enquiry held—Para 521(10)(a) Shastri Award—Discharged on payment of one month's pay in lieu of notice—Held discharge—Punitive in character—Not amounting to 'retrenchment'.

All India Tribunal (Bank Disputes) Award—Shastri Award—Paragraphs 521(5)(c) and 521 (10)(c)—Punitive discharge and discharge simpliciter—Distinction between—Predominant object of the Award—To protect employees.

The appellant Bank instituted a departmental inquiry against one of its employees, a clerk in one of its branches. The departmental inquiry was held for four acts of misconduct and the inquiry officer came to the conclusion that two of the charges were fully proved, while one charge was proved to a limited extent, and the fourth charge was not established. On the basis of the report of the inquiry officer, the competent authority decided to dismiss the employee from service, and issued a notice to him under paragraph 521(10)(a) of the Award of the All India Industrial Tribunal popularly known as the Shastri Award, requiring him to show-cause as to why the said punishment should not be imposed on him. He was also given a hearing as required by the said provision, and thereafter an order was passed to the effect: that the established charges viz. uttering indecent words, threatening the agent, and failure to do the work allotted are quite serious and would warrant dismissal, though he may not be dismissed, in view of the extenuating circumstances, but that at the same time it would not be desirable to retain him in the Bank's service, and that as such, "he be discharged on payment of one month's pay and allowances in lieu of notice. In terms of para 521(10)(c) of the Shastri Award this would not amount to disciplinary action."

An industrial dispute was raised by the first respondent-Union, and it was referred to the Central Government Labour Court, for adjudication and by its award the Labour Court upheld the order of dismissal.

A The first respondent-Union preferred a writ petition to the High Court and raised several contentions, but the High Court confined its decision only to one point, viz. whether the termination of the service was retrenchment, and whether it was made in accordance with the provisions of Section 25F of the Industrial Disputes Act, 1947; held that B the termination of the service of the second respondent was retrenchment within the meaning of section 2(oo), and was made in breach of the statutory provision contained in Section 25F in as much as no retrenchment compensation was paid to the employee, and set aside, the order of termination of service.

In the appeal by the Bank to this Court, the question for consid- C eration was: whether the order of termination of service served on the employee, amounts to punishment or not.

Allowing the appeal, this Court,

D HELD: 1. It is not possible to sustain the view taken by the High Court since it proceeds on too literal an interpretation of the provisions of paragraphs 521(5)(e) and 521(10)(c) of the Award and ignoring their context. [17B]

2. The termination of service of the employee in the instant case E under paragraph 521(10)(c) of the Award is as a result of the disciplinary proceedings, and is punitive. It is, therefore, not "retrenchment" within the meaning of Section 2(oo) of the Industrial Disputes Act, 1947. Hence, there was no question of complying with the provisions of Section 25F of the Act. The decision of the High Court has, therefore, to be set aside. [25G-H; 26A]

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3. It is clear from the context in which sub-clause (e) of sub-para (5) occurs that the entire expression, namely, "have his misconduct condoned and be merely discharged" has nothing but penal implications, and the measure mentioned therein is a sequal to the disciplinary action taken for one of the gross misconducts mentioned in sub-para G (4). It is not possible to arrive at any other conclusion on a reading of the sub-paragraph as a whole. The discharge spoken of there is nothing but a punishment for a gross misconduct. This is so not only because it is enumerated as one of the punishments along with others but also because firstly there is a provision of simple discharge elsewhere in paragraph 522 of the Award, and when the Award intended to provide H for it, it has done so in sub-paras (2)(c), (2)(d) and (3). [20G-H; 21A-B]

4. Sub-paras (9) and (10) of paragraph 521 lay down the procedure for taking disciplinary action as well as for awarding punishment following such action. Sub-paras (9), 10(a), 10(b) would indicate that discharge under sub-paras (2)(c), (3), (5) and (10)(c) is also a punishment, for when the employee is discharged under the said provisions after the inquiry, under the provisions of sub-paras (9) and (10), there is no provision made for treating either the whole or part of the period of suspension during the inquiry, as on duty. [21D & G-H]

5. In view of the fact that sub-clause (a) requires that a hearing should be given to the employee against the proposed punishment, the authority is enjoined under sub-clause (c) to take into account the gravity of the mis-conduct, the previous record of the employee and any other aggravating or extenuating circumstances that may exist and may be brought on record "while awarding punishment by way of disciplinary action". The sub-clause then provides for discharge with or without notice or on payment of a month's pay and allowances, in lieu of notice. The punishment of discharge is to be awarded in two circumstances. The first circumstance is when there are sufficiently extenuating circumstances but the mis-conduct is of a "gross" type. The second circumstance is when the charge is such that the Bank does not for some reason or other think it expedient to retain the employee any longer in service but the evidence is insufficient to prove the charge. [22D-E]

6. Read with sub-para (5)(e), the provisions of sub-clause (c) of sub-para (10) become more clear that if a mis-conduct is not of a "gross" type, it may be merely condoned without any further action. But when it is of "gross" type, the authority has no option but to condone and to proceed to discharge the employee. The expressions used both in sub-para (5)(e) and sub-para 10(c) in that respect are identical. Similar is the action contemplated for the second circumstance referred to in sub-para 10(c), namely when the charge though unsustainable for want of evidence is such that it is considered inexpedient to retain the employee in service. [23D-E]

7. Since in the context, such a discharge is by way of punishment, the relevant provisions give a discretionary power to the authority to convert, what would otherwise be a dismissal into a mere discharge. This is for the benefit of the employee. It protects him from the baneful consequences of dismissal. At the same time, it relieves the management of the burden of retaining him in service when it has become inexpedient to do so. Thus the provision of such discharge works to the advantage of both. At the same time, it cannot be gainsaid that the said

A discharge is as a result of the disciplinary proceeding. Although in form it may not, and in the peculiar circumstances, it is intended that it should not look like a disciplinary action, it cannot be denied that it flows from and is a result of the disciplinary proceedings. To make clear, however, that the action, though spawned by the disciplinary proceedings should not prejudice the employee, the last sentence viz: B "Discharge in such cases shall not be deemed to amount to disciplinary action", has been added by way of abundant precaution. [23F-H; 24A]

8. That this is not a discharge simpliciter or a simple termination of service becomes clear when it is compared both with the provisions of para 522(1), and with those of sub-paras (2)(c), (2)(d) and (3) of paragraph 521 itself. The distinction between discharge contemplated C under paragraph 521(10)(c) and discharge simpliciter or simple termination of employment under the other provisions is clear enough. This will also show that the two belong to different categories and are not the same. While the former is intended to be punitive, the latter is not. As is further clear from the provisions of paragraphs 521(2)(c), D (2)(d) and (3), the discharge contemplated there, as against simple termination, is in proceedings under "sub-paragraphs (9) and (10) infra relating to discharge". In other words, it is as a result of a disciplinary proceeding. [24B; 25C-D]

9. To construe the discharge under paragraphs 521(5)(e) and E 521(10)(c) as a simple discharge not flowing from disciplinary proceedings will deprive an employee of a valuable advantage, viz. that of challenging the legality and propriety of the disciplinary action taken against him, whatever the form of the order, by showing that he was either not guilty of any misconduct or that the misconduct was not of a "gross" type or that the punishment meted out to him by way of dis- F charge was not warranted in the circumstances etc. It is not, therefore, in the interests of the employees to construe the provisions as the High Court has done. The predominant object of the Award is to protect the interests of the employees. [25E-F]

10. Remanding the matter to the High Court for deciding the G other contentions raised in the writ petition, is not advisable for various reasons. The misconducts complained of against the employee are of 1966. He was charge-sheeted in January 1968 and removed from service on April 9, 1970. The Court proceedings have been pending for more than about 23 years. In the meanwhile, the respondent No. 2 who was a clerk on the date he was charge-sheeted, has become a lawyer and has H been practising as such. Further, the mis-conducts, which are held

proved by the Labour Court are of "gross" type within the meaning of paragraph 521(4) of the Award. The Labour Court is the final fact-finding forum. The High Court while setting aside the order of the Labour Court has granted reinstatement in service and back wages and pursuant to the said order, the employee has already received an amount of Rs.93,000. The effect of decision would be to set aside not only the order of reinstatement but also of the back-wages which would require the employee to refund the said amount. Even though the employee was prepared to refund the amount and to contest the petition on other grounds, at present, the employee is in his fifties. Taking into consideration all these facts the interests of justice would be served if the order of the High Court is set aside and the order of the Labour Court is restored without requiring the employee to refund the amount he has already received. [26E-G; 27C-E]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4381 of 1990.

From the Judgment and Order dated 23.8.1989 of the Bombay High Court in W.P. No. 494 of 1982.

Ashok H. Desai, Solicitor General, Shishir Sharma and P.H. Parekh for the Appellant.

Vinod Bobde, S.V. Deshpande and P.S. Sadavartey for the Respondents.

The Judgment of the Court was delivered by

SAWANT, J. Special leave granted. The appeal is set down for hearing by consent of both the parties.

2. This appeal involves a question of interpretation of paragraphs 521(5)(e) and 521(10)(c) of the Award of the All India Industrial Tribunal (Bank Disputes) which is popularly known as the Shastri Award, (hereinafter referred to as the Award) and is important for the entire banking industry in the country covered by the Award.

3. In order to appreciate the significance of the question, it is necessary to narrate the facts leading to this appeal. The employee concerned was working as a clerk in the Gadchiroli branch of the appellant State Bank of India at the relevant time. A departmental inquiry was held against him for four acts of misconduct and the

A inquiry officer came to the conclusion that two of the charges were fully proved while one charge was proved to a limited extent and the fourth charge was not established. On the basis of the report of the inquiry officer, the competent authority tentatively decided to dismiss the employee from service, and issued a notice to him under paragraph 521(10)(a) of the Award, to show cause as to why the said punishment B should not be imposed on him. The competent authority also gave him a hearing as required by the said provision, and thereafter passed an order, the operative and relevant part of which is as follows:

> "Looking at the entire case I find that the established charges, viz., uttering indecent word, threatening the Agent and failure to do the work allotted are quite serious charges C and would warrant dismissal. However, the employee has had the benefit of a very tenacious defence from the date of the issue of the show cause notice for dismissal and various arguments have been raised with a view to evade the punishment which would normally follow out of the seri- D ousness of the offences. Taking note of them, even though I do not quite find them tenable, as indicated in my detailed observations thereon, and of the extenuating circumstances (most important of which is the comparatively young age of the employee) I have decided not to impose the punishment of dismissal. At the same time I am E of the opinion that it would not be desirable to retain Shri Sadavarte in the Bank's service and accordingly I order that he be discharged on payment of one month's pay and allowances in lieu of notice. In terms of para 521(10)(c) of the Sastry Award, this would not amount to disciplinary action."

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4. An industrial dispute was raised by the first respondent-Union, and in due course it was referred to the Central Govt. Labour Court, Bombay for adjudication. By its award of March 2, 1981, the Labour Court held that the order of dismissal of the petitioner was proper. Against the said decision, the respondent-Union preferred a G writ petition before the High Court raising several contentions. The High Court confined its decision only to one point, viz., whether the termination of the service was retrenchment, and if so, whether it was made in accordance with the provisions of Section 25F of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). The Court held that the termination of the services was retrenchment and was H made in breach of the said provisions in as much as no retrenchment

compensation was paid to the employee. The termination of the services was, therefore, set aside. A

5. It is not possible to sustain the view taken by the High Court since it proceeds on too literal an interpretation of the provisions of paragraphs 521(5)(e) and 521(10)(c) of the Award and ignoring their context. We may first refer to the provisions with regard to retrenchment under the Act. Section 2(oo) of the Act defines retrenchment as follows: B

> "Retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include— C
>
> (a) voluntary retirement of the workman; or
>
> "Compensation in cases of retrenchment".

D

6. As pointed out above, paragraph 521 is in Section III which contains the only other paragraph, namely, paragraph 520. That paragraph is a prologue to Section III and to paragraph 521, which both deal with procedure for taking disciplinary action. Para 520 reads as follows:

E

> "Under the subject of disciplinary action we deal with dismissal, suspension, warning or censure, fine, the making of adverse remarks and the stoppage of an increment."

It is, therefore, clear both from the heading of Section III as well as from the contents of para 520 that the provisions of para 521 deal with F nothing but disciplinary action and the procedure for taking such action.

7. Paragraph 521 which is a self-contained code of disciplinary action and of the procedure for taking it, begins with the following statement: G

> "A person against whom disciplinary action is proposed or likely to be taken should, in the first instance, be informed of the particulars of the charge against him; he should have a proper opportunity to give his explanation as to such particulars. Final orders should be passed after due H

A consideration of all the relevant facts and circumstances. With this object in view we give the following directions: ....."

It classifies delinquencies into three categories, namely, (i) offences (ii) gross-misconduct and (iii) minor-misconduct and prescribes procedure to deal with each of them.

B

Sub-paragraph (1) to (3) deal with the cases of offences. Sub-para (1) defines offence to mean any act involving moral turpitude and for which an employee is liable to conviction and sentence under the provisions of law. Sub-para 2(a) states that when in the opinion of the management, the employee has committed an offence and he is not C prosecuted by the prosecuting agency, the bank may take steps to prosecute him or get him prosecuted. The bank is also empowered to suspend the employee in such circumstances. Sub-paragraph 2(b) states that if the employee is convicted in such prosecution, he may either be dismissed or "be given any lesser form of punishment as D mentioned in sub-para 5 below". However, if he is acquitted with or without the benefit of doubt, sub-para 2(c) lays down two different procedures to meet the two situations. It states that even if an employee is given a clean acquittal, it is open to the management to proceed against him under the provisions set out in sub-paras (9) and (10) "relating to discharges". It may be mentioned here that the provi- E sions with regard to the discharges in sub-paras (9) and (10) referred to here, are contained only in sub-para 10(c) and they come into play only when the management decides under sub-para (9) to take a disciplinary action and the action is taken after the procedure for the same as laid down in sub-para (10) is followed. But with that, we may deal with a little later.

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In cases of clean acquittal and a departmental inquiry held thereafter, the management is given yet another option. Instead of the discharge as provided under sub-para 10(c), the management may only terminate the services of the employee with three months' pay and allowances in lieu of notice, if it comes to the decision not to continue G the employee in service. In such cases, he shall be deemed to have been on duty during the entire period of suspension, if any, and therefore shall be entitled to the full pay and allowances minus the subsistance allowances he had drawn and also to all other privileges for the period of suspension. Such simple termination of service is not provided for either in sub-para (5) or in sub-para (10). Thus it is obvious H from sub-paragraph 2(c) that when a departmental inquiry is held or

when disciplinary action is taken in case of a clean acquittal, two options are given to the management, namely, (i) to discharge the employee under sub-paragraph 10(c) with or without notice or on payment of only a month's pay and allowances, in lieu of notice but without the benefit of the suspension being converted into a period of duty or (ii) to terminate the services with three months' pay and allowances, in lieu of notice and also with the further benefit of converting the period of suspension into a period of duty. However, when the acquittal is with the benefit of doubt and the management does not proceed to discharge the employee under sub-para 10(c) but wants to resort to the second option of the termination of service with three months' pay and allowances in lieu of notice, it is left to the discretion of the management to pay the employee such portion of the pay and allowances for the period of suspension as the management may deem proper, and unless the management so directs, the period of suspension is not to be treated as the period spent on duty. It should, however, be remembered that the course of action open to the management under sub-paragraph 2(c) is in the alternative to and not in negation of the other modes of punishment, namely, to dismiss etc. the employee. What is, however, necessary to note is the distinction between an action of discharge following the disciplinary proceedings under sub-paras (9) and (10) and that of simple termination of service under sub-para 2(c). The same distinction is also maintained in sub-para 2(d).

Sub-para (3) throws yet more light on the subject. It states that where an employee is guilty of an offence but he is not put on trial within a year of the commission of the offence, the management may deal with him as if he had committed an act of "gross misconduct", or "minor misconduct" as the case may be. The employee may not be put on trial within an year, either because the prosecuting authority refuses to do so, or because it comes to the conclusion that there is no case for prosecution. Hence although the management is empowered to proceed against the employee under the provisions set out in sub-paras (9) and (10) relating to discharge, he has to be given the benefit of being treated on duty for the period he was under suspension, if any, and he is entitled to all the further benefits accruing on that account. In the departmental inquiry following such non-prosecution, the management may also come to the decision not to continue the employee in service. In that case instead of proceeding against him, under the provisions relating to discharge in sub-paras (9) and (10), the management is empowered to terminate his services with three months' pay and allowances in lieu of notice as provided in sub-para

(2). Thus sub-paragraph (3) like sub-para (2) also makes a distinction between discharge under sub-paragraph (10)(c) and a mere termination of service with three months' pay and allowances, in lieu of notice. It is the latter action which amounts to the simple discharge and for it, a separate provision is made in paragraph 522 in Section IV. We will refer to that provision at a later stage. What is necessary, to bear in mind at this stage is the distinction made between the discharge under sub-paragraph (10) and simple termination of service in sub-paras 2(c), 2(d) and (3).

8. Sub-para (4) of paragraph 521 defines "gross misconduct" and sub-para (5) prescribes punishment for "gross misconduct". Sub-para (6) defines "Minor misconduct" and sub-para (7) prescribes punishment for such misconduct. Sub-para (8) then states the manner in which the record is to be kept when action is taken under sub-paras (3), (5) or (7) which deal with the punishment for "gross misconduct" or "minor misconduct" as the case may be.

Sub-para (5) as stated above, follows on the heels of the enumeration of gross misconducts in sub-para (4), and reads as follows:

> "(5) An employee found guilty of gross misconduct may:
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> (a) be dismissed without notice, or
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> (b) be warned or censured, or have an adverse remark entered against him, or
>
> (c) be fined, or
>
> (d) have his increment stopped, or
>
> (e) have his misconduct condoned and be merely discharged".

It should be clear from the context in which sub-clause (e) of sub-paragraph (5) occurs that the entire expression, namely, "have his misconduct condoned and be merely discharged" has nothing but penal implications, and the measure mentioned therein is a sequel to the disciplinary action taken for one of the gross misconducts mentioned in sub-para (4). It is not possible to arrive at any other conclusion on a reading of the sub-paragraph as a whole. The discharge spoken of there is nothing but a punishment for a gross miscon-

duct. This is so not only because it is enumerated as one of the punishments along with others but also because firstly there is a provision of simple discharge elsewhere in paragraph 522 of the Award, as pointed earlier, and when the Award intended to provide for it, it has done so in sub-paras (2)(c), (2)(d) and (3). If it was intended to provide for a discharge simpliciter there, which was not meant to be penal, there was no need to enumerate it in sub-para (5) which specifically enumerates punishments for acts of gross-misconduct. Secondly, nothing prevented the authors of the Award in stating in the said sub-clause (e) that the discharge simpliciter was in terms of paragraph 522. We have pointed out earlier the distinction made by the Award in sub-paragraphs (2)(c), (2)(d) and (3) between the discharge following proceedings under paras (9) and (10) and the simple termination of service or discharge simpliciter as contemplated by paragraph 522.

9. Sub-paragraphs (9) and (10) of paragraphs 521 lay down the procedure for taking disciplinary action as well as for awarding punishment following such action. Sub-para (9) says that when it is decided to take a disciplinary action against an employee, such decision shall be communicated to him within three days thereof. Sub-Para (10)(a) then lays down the procedure to be followed while conducting the disciplinary proceedings. It also enjoins upon the management to give the employee a hearing with regard to the nature of the proposed punishment. The latter provision has also bearing on the construction of sub-clause (c) thereof. We will advert to it instantly.

Sub-clause (b) of sub-para (10) gives power to the management to suspend the employee pending inquiry. Its other provisions also throw light on the construction of sub-clause (c) thereof. These provisions state that although the employee is suspended during the inquiry, if on the conclusion of the inquiry it is decided to take no action whatsoever against him, he shall be deemed to have been on duty throughout the period of suspension and would accordingly, be entitled to the full wages and allowances and all other privileges for the said period. On the other hand "if *some punishment other than dismissal*" is inflicted, it is left to the discretion of the management to treat either the whole or a part of the period of suspension as on duty with the right to corresponding portion of the wages, allowances, etc. These provisions would indicate that discharge under sub-paras (2)(c), (3), (5) and (10)(c) is also a punishment, for when the employee is discharged under the said provisions after inquiry, under the provisions of sub-paras (9) and (10), there is no provision made for treating either the whole or part of the period of suspension during the inquiry, as on duty.

Then follows the provision of sub-clause (c) which is crucial for our purpose. The said sub-clause reads as follows:

> "In awarding punishment by way of disciplinary action the authority concerned shall take into account the gravity of the misconduct, the previous record, if any, of the employee and any other aggravating or extenuating circumstances that may exist. Where sufficiently extenuating circumstances exist the misconduct may be condoned and in case such misconduct is of the "gross" type he may be merely discharged, with or without notice or on payment of a month's pay and allowances, in lieu of notice. Such discharge may also be given where the evidence is found to be insufficient to sustain the charge and where the bank does not, for some reason or other, think it expedient to retain the employee in question any longer in service. Discharge in such cases shall not be deemed to amount to disciplinary action."

In view of the fact that sub clause (a) requires that a hearing should be given to the employee against the proposed punishment, the authority is enjoined under sub-clause (c) to take into account the gravity of the mis-conduct, the previous record of the employee and any other aggravating or extenuating circumstances that may exist and may be brought on record "while awarding punishment by way of disciplinary action". The sub-clause then provides for discharge with or without notice or on payment of a month's pay and allowances, in lieu of notice. The punishment of discharge is to be awarded in two circumstances. The first circumstance is when there are sufficiently extenuating circumstances but the misconduct is of a "gross" type. In other words, where the misconduct is not of a "gross" type and there are extenuating circumstances, the misconduct may merely be condoned without the authority proceeding to inflict the punishment of discharge. That is made clear by stating thus—"and in case such misconduct is of the gross type he may be merely discharged" etc. The second circumstance in which the authority is given power to inflict such discharge is when the charge is such that the Bank does not for some reason or other think it expedient to retain the employee any longer in service but the evidence is insufficient to prove the charge. Read in the context, therefore, the discharge given under sub-clause (c) can hardly be doubted as being a punishment. However, as was sought to be contended on behalf of the respondent-Union and certainly with some force, the last sentence of the said clause is couched in

a language which is calculated to create considerable doubt and confusion with regard to the true nature of the action of discharge spoken of there. The said sentence states in so many words that the discharge effected under both the circumstances shall not be "deemed" to amount to "disciplinary action". Read in isolation, the said sentence does purport to convey that the discharge is not by way of a punishment and on that score we may not find any fault with the reasoning of the High Court. But as stated at the very outset, we have to read this sentence also in its proper context and in the light of the other provisions of the Award.

As pointed out earlier, one of the two circumstances in which such discharge is to be effected is when the misconduct is of a "gross" type and even if there are extenuating circumstances. It is to provide a punishment precisely for misconducts of gross type that a provision for such discharge is made in sub-clause (e) of sub-para (5) to which we have already made a reference. Read with the said sub-para (5)(e), the provision of the present sub-clause (c) of sub-para (10) becomes more clear. If a misconduct is not of a "gross" type, it may be merely condoned without any further action. But when it is of "gross" type, the authority has no option but to condone and to proceed to discharge the employee. The expressions used both in sub-para 5(e) and sub-para 10(c) in that respect are identical. Similar is the action contemplated for the second circumstances referred to in sub-para 10(c), namely, when the charge though unsustainable for want of evidence is such that it is considered inexpedient to retain the employee in service.

10. If our reading of the provisions is correct, then it needs no elaborate explanation as to why the punishment of discharge both in sub-para 5(e) and 10(c) has been worded as it is and why further it became necessary to add the last sentence to sub-para 10(c). Since in the context, such a discharge is by way of punishment, the relevant provisions give a discretionary power to the authority to convert, what would otherwise be a dismissal into a mere discharge. This is for the benefit of the employee. It protects him from the baneful consequences of dismissal. At the same time, it relieves the management of the burden of retaining him in service when it has become inexpedient to do so. Thus the provision of such discharge works to the advantage of both. At the same time, it cannot be gainsaid that the said discharge is as a result of the disciplinary proceeding. Although in form it may not, and for the reasons stated above in the peculiar circumstances, it is intended that it should not look like a disciplinary action, it cannot be denied that it flows from and is a result of the disciplinary proceed-

A ings. To make clear, however, that the action, though spawned by the disciplinary proceedings should not prejudice the employee, the last sentence in question has been added by way of an abundant precaution.

11. That this is not a discharge simpliciter or a simple termina-
B tion of service becomes clear when it is compared both with the provisions of paragraph 522(1), and with those of sub-paras (2)(c), (2)(d) and (3) of paragraph 521 itself. Paragraph 522 as stated earlier is in section IV and is entitled "procedure for termination of employment" as distinct from the title of section III, namely, "procedure for taking disciplinary action" in which paragraph 521 occurs. Paragraph 522
C begins by saying "We now proceed to the subject of termination of employment. We give the following directions: ....." Thereafter in sub-paragraph (1) thereof, it speaks of a simple termination of service of a permanent employee and in sub-paragraph (4), talks of similar discharge simpliciter of employees other than permanent employees. But what is important to note is that the discharge simplici-
D ter or simple termination of service which is provided for here, has two distinguishing features. Firstly, it is effected in cases not involving disciplinary action for mis-conduct and secondly, it is to be effected by giving three months' notice or of payment of three months' pay and allowances in lieu of notice, in the case of permanent employees and by giving one month's notice or on payment of one month's pay and
E allowances, in lieu of notice in case of probationers. There is some apparent conflict in the provisions of sub-clause (1) and sub-clause (4) with regard to the period of notice in case of an employee other than a permanent employee. It is, however, immaterial for our purpose. There are yet other conditions imposed by sub-para (6) of paragraph 522 when the termination of the service of the employees is on account
F of the closing down of the establishment or when retrenchment of more than 5 employees is to be effected. But those conditions again do not obliterate the distinction between discharge simpliciter or simple termination of service other than as a result of a disciplinary proceeding, and discharge effected under sub-paras 5(e) and 10(c) as a result of such proceedings. As stated earlier, the termination of employment
G other than discharge provided for in sub-paras 2(c), 2(d) and 3 of paragraph 521 also requires three months' pay and allowances, in lieu of notice as do the provisions of paragraph 522(1). But unlike the provisions of paragraph 522(1) which require three months' notice or payment of three months' pay and allowances only in case of permanent employees and one month's notice or one month's pay and
H allowances, in lieu of notice in case of employees other than per-

manent employees, the relevant provisions of paragraphs 521(2)(c) and 521(3) require, a notice of three months' or pay and allowances for three months' in lieu of notice, in respect of all employees. Further, what is equally important to note is that whereas para 522(1) and 521(2)(c) and (3) relating to simple termination of service, require the requisite notice to be given or the payment of salary allowances in lieu thereof, the provisions of discharge contained in the sub-paras (2)(c) and (3) and (10)(c) of para 521 do not in all cases require notice or pay and allowances, in lieu of notice. The discharge may also be affected under the said provisions without any notice or pay and allowances in lieu of it. Thus the distinction between the discharge contemplated under paragraph 521(10)(c) and discharge simpliciter or simple termination of employment under the other provisions is clear enough. This will also show that the two belong to different categories and are not the same. While the former is intended to be punitive, the latter is not. As is further clear from the provisions of paragraphs 521(2)(c), (2)(d) and (3), the discharge contemplated there, as against simple termination, is in proceedings under "sub-paragraphs (9) and (10) infra relating to discharge". In other words, it is as a result of a disciplinary proceeding.

12. Apart from it, we find that to construe the discharge under 521(5)(e) and 521(10)(c) as a simple discharge not flowing from disciplinary proceedings will deprive an employee of a valuable advantage, viz., that of challenging the legality and propriety of the disciplinary action taken against him, whatever the form of the order, by showing that he was either not guilty of any misconduct or that the misconduct was not of a "gross" type or that the punishment meted out to him by way of discharge was not warranted in the circumstances etc. It is not, therefore, in the interests of the employees to construe the provisions as the High Court has done. The predominant object of the Award is to protect the interests of the employees.

It is for all these reasons that we are unable to accept the very able arguments advanced by Mr. Bobde on behalf of the respondent-Union to support the reasoning of the High Court.

13. The result to our aforesaid discussion is that the termination of service of the employee in the present case under paragraph 521(10)(c) of the Award is as a result of the disciplinary proceedings and is punitive. It is, therefore, not "retrenchment" within the meaning of Section 2(oo) of the Act. Hence, there was no question of complying with the provisions of Section 25F of the Act. The decision

A of the High Court has, therefore, to be set aside.

14. In view of the interpretation placed by us on the provisions of paragraph 521(5)(e) and 521(10)(c), there is a queer situation in which both the appellant—Bank and the respondent—Union would find themselves. The Bank has been supporting the interpretation which B we have placed and the respondent-Union has been opposing it, but both not looking beyond their immediate interest involved in the present case, which is qua an individual employee. We are happy that the Bank has canvassed the view that it has done in this case. For that view is calculated to benefit the employees at large and in the long run though, it may be to its advantage and to the disadvantage of the individual employee in this case. The respondent-Union, however, by C pressing the proposition to the contrary, was supporting a view which was not in the interests of the employee at all. Though, therefore, it may be a loser in the present case, it should thank itself that the interpretation is not in accordance with the submissions made on its behalf.

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15. This leaves us with the question of the relief to be granted in the present case. Shri Bobde, submitted that if we are not to accept the interpretation placed by the High Court on the provisions in question, we should remand the matter to the High Court for deciding the other contentions raised in the writ petition, since the court had not gone E into the same and had allowed the petition only on the basis of its interpretation of the said provisions. We find that this course is not advisable in the present case for various reasons. The mis-conducts complained of against the employee are of 1966. He was charge-sheeted in January 1968 and removed from service on April 9, 1970. The Court-proceedings have been pending since then till today, i.e., F for more than about 23 years now. In the meanwhile, we are informed that the appellant who was a clerk on the date he was charge-sheeted, has become a lawyer and has been practising as such. We, further, find that the mis-conducts which are held proved by the Labour Court are of "gross" type within the meaning of paragraph 521(4) of the Award. The Labour Court is the final fact-finding forum. Further, while set-G ting aside the order of the Labour Court, the High Court has granted re-instatement in service and back wages as follows:

> (i) 50 per cent of the back wages from 9.4.70 to 24.11.75, (which is the date of the reference for adjudication to the Labour Court) on the ground that the damages for the delay in making should H be shared by both the parties equally, and (ii) full back wages

from 25.11.75 till 31.5.79 on the ground that though the employee started his practice as a lawyer in June 1978, he was not well-settled in practice for the first year, and (iii) no back wages for the period from 1.6.79 till the date of his re-instatement which is the date of the High Court's judgment, i.e., August 23, 1989. A B

Shri Desai, the learned Solicitor General appearing for the Bank wanted to produce before us a letter from the Maharashtra State Electricity Board to show that in fact the employee was in gainful employment with the said Board for about six years. Although we have not taken the said letter on record, there is no denial of such employment from the side of the employee. We are further informed C that pursuant to the order of the High Court, the employee has already received an amount of Rs.93,000. The effect of our decision would be to set aside not only the order of re-instatement but also of the back wages which would require the employee to refund the said amount of Rs.93,000. Of course, Shri Bobde stated that the employee was prepared to refund the said amount and to contest the petition on other D grounds. At present, the employee is in his fifties. Taking into consideration all the facts, we are of the view that it would serve the interests of justice if we set aside the order of the High Court and restore that of the Labour Court without requiring the employee to refund the amount which he has already received. E

16. The appeal is allowed, accordingly. There will be no order as to costs.

N.V.K. Appeal allowed.