CONSTITUTIONAL WRIT

Present: Hon'ble Justice Girish Chandra Gupta
Judgment delivered on: 16TH June 2010

W.P. No.13571W of 2009

BANK OF INDIA
VS.
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL & ORS.

POINTS

BACK WAGES– Confessional statement was made by the workman– Whether 'confession' in order to become operative needs some amount of corroboration – Whether workman entitled to the relief of full back wages when the order of dismissal from the service has been found to be illegal – Service Law.

FACTS

The workman, a clerical staff, was employed by the petitioner-bank. The petitioner Indian bank introduced a credit card scheme. The workman applied for a credit card which was duly sanctioned with a spending limit of Rs.20,000/-. After the credit card was made functional in September 1996, the workman, it appears, used the card quite lavishly, considering his station in life, in meeting bills of the bars and restaurants. The workman lodged a complaint with the Jadavpur Police Station stating, inter alia, that he had been trapped by anti-social elements who had been threatening him of dire consequences including kidnapping of his minor daughter on the way to her school unless they were entertained by him in hotels and restaurants of their choice. A copy of the complaint was also endorsed to the Chief Manager, Bank of India. The workman wrote a letter to the Zonal Manager, Bank of India, requesting him to cancel the credit card issued to him considering that he had fallen prey to the anti-social elements. Neither the police nor the bank appear to have taken the complaint of the workman seriously. On 13th November 1997 a charge sheet was issued to the workman alleging that he had misused the India Card issued on 24th August 1996 and had incurred liability to the extent of Rs.2,11,760.15 paisa as at 30th September 1997 and failed to repay the same inspite of reminders. An enquiry was conducted wherein he was found guilty of the aforesaid charge and an order of dismissal was passed on 31st March 1998. An appeal preferred by the workman was dismissed by an order dated 7th August 1998. The petitioner challenged the order of dismissal by way a writ petition which culminated in an order dated 20th November 2003 by which the matter was relegated to the Industrial Tribunal. On 14th June 2004 a reference was made by the Central Government.

HELD

The so-called confessional statement was obviously made by the workman in order to avoid the capital punishment of dismissal. A confession in order to be of any assistance to the writ petitioner should have been made a) voluntarily and b) the confession should have been with "reference to the charge against the accused". He never confessed to have committed the misconduct charged against him. His prayer for lesser punishment treating his lapse a "minor misconduct" under para 19.7(I) was aimed at securing an advantage and is therefore irrelevant under Section 24 of the Evidence Act. In any event a confession in order to become operative needs some amount of corroboration.

Para 22

The learned Tribunal in the concluding part of its judgment and award held that the workman was entitled to reinstatement in the service from the date of dismissal and he is also entitled to get half of the back wages. There is not one word as to why was the Tribunal of the view that the workman was entitled to only half of the back wages and not the full back wages which is the normal rule. When the Tribunal was of the view that the order of dismissal was bad and illegal then it was the duty of the Tribunal to make restitution as far as possible in the light of the law discussed above.

Para 34

Injury inflicted by the illegal order of dismissal cannot fully be compensated in any event. There is evidence on the record to show that at the time when the petitioner was dismissed from service he had a minor daughter to support besides his wife. The workman as soon as the card was issued to him was entrapped by antisocial elements who forced him to entertain them in luxurious hotels and restaurants. The helpless workman requested the employer to cancel the card but his request remained unheeded. The spending limit granted to the workman, as would appear from the documents disclosed by the writ petitioner itself, was Rs.20000/-. The workman was allowed to incur expenditure far in excess of the sanctioned limit without any repayment knowing that he had been entrapped by antisocial elements. His request to cancel the card was ignored. These factors go to show unmistakably that the workman did not incur the expenses voluntarily or at any rate he

was actively aided and abetted in spending the money exceeding the limit of his expenditure by no other than the employer himself. Thus the conduct of the employer was equally if not more blameworthy. Para 35

CASES CITED

1.Bharat vs. State of U.P. reported in 1971(3) SCC 950

2.M.S. Grewal vs. Deepchand Sood reported in 2001(8) SCC 151

3.Hari Bux vs. Zoharmal reported in 33 CWN 711

4.Hindustan Tin Works vs. Employees reported in 1979(2) SCC 80

5.Surendra Kumar vs. Industrial Tribunal reported in 1980(4) SCC 443

6.V.K. Distillery Ltd. vs. Mahendra reported in 2009(5) SCC 705

Advocate for the petitioner: Mr. R.N. Mazumder
Ms. Reshmi Mukherjee

Advocate for the respondent No.2:Mr. Swarup Paul

GIRISH CHANDRA GUPTA J. -

THE COURT.1.The subject-matter of challenge, in this writ petition, by the employer, is an award dated 23rd February 2009 passed by the Central Industrial Tribunal at Calcutta holding the workman not guilty of the charge under Clause 19.5(j) of the bipartite settlement. The Tribunal has consequently set aside the order of dismissal passed by the disciplinary authority and has directed reinstatement with 50% of the back wages. The workman has made a counter-claim seeking payment of 100% back wages.

2.The facts and circumstances of the case briefly are stated as follows:-

3.The workman Shri Anajn Kumar Lahiri, a clerical staff, was employed by the petitioner-bank in the year 1971. The petitioner Indian bank introduced a credit card scheme on 15th April 1988. On 24th August 1996 the workman applied for a credit card which was duly sanctioned with a spending limit of Rs.20,000/-. After the credit card was made functional in September 1996, the workman, it appears, used the card quite lavishly, considering his station in life, in meeting bills of the bars and restaurants. On 4th October 1996 the workman lodged a complaint with the Jadavpur Police Station stating, inter alia, that he had been trapped by anti-social elements who had been threatening him of dire consequences including kidnapping of his minor daughter on the way to her school unless they were entertained by him in hotels and restaurants of their choice. A copy of the complaint dated 4th October 1996 was also endorsed to the Chief Manager, Bank of India. On5th October 1996 the workman wrote a letter to the Zonal Manager, Bank of India, requesting him to cancel the credit card issued to him considering that he had fallen prey to the anti-social elements. Neither the police nor the bank appear to have taken the complaint of the workman seriously. The resultant effect was that during the period between 12th September 1996 and 20th February 1997 the credit card was used on as many as 126 occasions in meeting bills of the restaurants and hotels including five star hotels, for the major part of it. After 20th February 1997 the credit card appears to have been used only on 27th March 1998 in meeting two bills of a hotel. The bank has disclosed letters dated 10th January 1997, 27th January 1997, 5th February 1997 and 7th February 1997 calling upon the workman to pay up the dues. The letter dated 7th February 1997 contained the following significant ultimatum:-

> "Hence, you are advised to pay the entire amount of TOD with interest immediately otherwise it will be viewed by us seriously and you may be liable for discipilnary action as per rule."

4.On 13th November 1997 a charge sheet was issued to the workman alleging that he had misused the India Card issued on 24th August 1996 and had incurred liability to the extent of Rs.2,11,760.15 paisa as at 30th September 1997 and failed to repay the same inspite of reminders. The aforesaid act of the workman was considered to be a gross misconduct under para 19.5(j) which reads as follows:-

> "doing any act prejudicial to the interest of the Bank or gross negligence involving or likely to involve the Bank in serious loss."

5.An enquiry was conducted wherein he was found guilty of the aforesaid charge and an order of dismissal was passed on 31st March 1998. An appeal preferred by the workman was dismissed by an order dated 7th August 1998. The petitioner challenged the order of dismissal by way a writ petition which culminated in an order dated 20th November 2003 by which the matter was relegated to the Industrial Tribunal. On 14th June 2004 a reference was made by the Central Government. The issue formulated was as follows:-

> "Whether the action of the management of Bank of India (Eastern Zone) 5 B.T.M. Sarani, Kolkata-700001 in dismissing Shri Anjan Kumar Lahiri, Accounts Clerk from the service is legal and justified? If not, what relief the concerned workman is entitled to?"

6.In paragraph 13 of the statement of claim filed by the workman before the Tribunal the following amongst other allegations were made:-

> "That Sir, the workman states that under such adverse circumstances there was no other alternative by the workman to lodge a complaint before the local Police Station on October 4th, 1996 being General Diary Entry No.253 for his family protection and a copy of the same complaint was forwarded to the Chief Manager, Bank of India, Kolkata Branch, the issuing branch of the Card along with a letter stating inter alia to stop the India Card facility issued in favour of the workman by the Employer Bank and the copies have been forwarded to India Card Department, Head Office in time for taking necessary steps but the Employer Bank has not taken any action to stop the facilities or to reply to his letter and allow to use the card facility."

7.The aforesaid allegations were dealt with by the bank in its written statement filed before the Tribunal as follows:-

> "With reference to paragraphs 12 and 13 of the written statement of the workman concerned, it is stated that the contentions as made by the workman concerned are without any basis and afterthought. In any event, the said contentions even assuming for argument sake but not admitted are correct that does not absolve the workman concerned of the charges of misconduct committed by him. Save as aforesaid and save as what are

matters of record, the allegations to the contrary made in the said paragraph are denied and disputed."

8.Before the Tribunal evidence was laid by both the parties. The bank examined Shri Dipak Kumar Bhattacharyay, the enquiry officer, as the manangement witness no.1 who in his cross-examination deposed, inter alia, as follows:-

"I do not remember whether the management has produced the terms and conditions of issuance of Bank's India Card. I know the terms and conditions of use of India Card. I do not know whether in the terms and conditions except charging of interest any other punishment is mentioned. Ext. W-5 was shown to the witness to which it is stated that the paper shown is not the terms and condition, it is merely an application form."

9.He also deposed in his cross-examination as follows:-

"It is true that all the terms and conditions was not printed on the application form itself. However, at the time of issue of cards all the applicants were appraised about the terms and conditions before getting their applications processed and sanctioned. It is likely that due to this operational problem at a later date the Bank got the terms and conditions printed on the application form itself.

Q. Out of Rs.2,21,000/- the Bank has realised an amount of Rs.1,41,000/- as interest. Is it a major misconduct on the part of the workman?

A. Yes. I consider it to be so.
Clause 19.5j of the Bipartite Settlement is applicable to the workman. The workman is guided by the bipartite settlement.

I have no idea if the workman was given any charge sheet or show cause during his service life apart from this charge sheet.

Q. If sanction limit is Rs.20,000/-, how the Bank has passed the first bill of Rs.30,000/- and subsequent bill of Rs.66,000/-, Rs.41,000/-, Rs.46,000/- and Rs.16,000/-.

A. For staff members this is the benefit and this is the danger also wherein many liberty was taken by the staff at the same time at every point of time they

> have to see that Bank's interest is protected. Had it been a case of a customer, Bank would have taken appropriate steps but using the card in a span of one month to the extent of Rs.1,30,000 or so by a staff member could not be anticipated by the Bank because Bank expects each and every staff member to act in a bonafide manner and added to the rules.
>
> I have no comment about the salary paid to the workman."

10.The workman relied on certain terms and conditions of the card issued to him a copy whereof is at page 177 of the writ petition. The Bank did not however accept that the same constituted the terms and conditions of the card issued to the workman. The bank on the contrary relied on a Branch Circular No.91/20 dated 3rd May 1997 by which the Branch Manager was informed that creation of overdraft on account usage of India Card would amount to an act of misconduct. In paragraph 6 thereof there is a mandate that the aforesaid circular should be brought to the notice of all defaulting staff members. My attention was not drawn to any document by which the aforesaid circular may have been brought to the notice of the workman. In any event this was not very important because 99% of the claim of the bank for use of the card is for the period between September 1996 and February 1997.

11.Mr. Majumdar, learned Advocate appearing for the petitioner bank relied on the credit card scheme appearing at page 151 of the writ petition for the terms and conditions thereof which includes Clause 17.3 which reads as follows:-

> "The Cardholders who fail to pay their overdrafts for more than three months will be put in a HOT CARD BULLETIN which cancels their cards and those of the add-on members."

12.The learned Tribunal after considering the evidence in great detail came to the following conclusion:-

> "Considering all these above facts and circumstances, it is evident that the act done by the workman, i.e., by use of India Card saying it to be a misuse and also charging him for that as a gross violation of the terms and conditions of the same, it does not appear to be a case of fraud, theft or forgery or any such financial loss to the Bank as the Bank admittedly got realized both the principal sum together with the penal interest @k2.5% p.m.

> and there remains nothing to be recovered from the workman in this connection."

13.Mr. Majumdar assailing the award submitted that the workman has admitted that he was guilty of misconduct. Therefore the finding of the learned Tribunal is not tenable and should be set aside.

14.Mr. Pal, learned Advocate appearing for the workman on the other hand contended that the workman did never admit that he was guilty of any misconduct. All that the workman, according to him, did was to pray for lesser punishment when he found that the management was bent upon dismissing him from the service. Mr. Pal added that the charge levelled against the workman was not proved. He was held not guilty. Therefore the consequences of the wrongful dismissal suffered by the workman should have been restored to him fully as far as the same was possible in terms of money based on the principle of restitution.

15.Mr. Majumdar in reply made two fold submissions. He drew my attention to paragraph 6 of the affidavit-in-reply affirmed on behalf of the bank by one Shri Balasubrhamanium on 28th January 2010 wherein the following statements have been made:-

> "In any event, if the respondent was dissatisfied with the award in so far as the same relates to denial of purported full back wages, it was open to him to challenge that portion of the award by way of a separate writ petition. The carriage of proceedings in the instant writ petition is with the petitioner and the respondent no.2 cannot derive any extra benefits in the instant writ petition that what had been awarded by the Respondent Tribunal if ultimately the instant writ petition is dismissed by this Hon'ble Court. It is submitted that the main controversy centers around in the instant writ petition whether the impugned award is justified or not. It is therefore submitted that the claim for full back wages by way of affidavit in opposition is not sustainable in law."

16.The second submission was that there is no allegation before this Court that the petitioner was not gainfully employed after his dismissal from the service of the bank. This point raised by Mr. Majumdar was met by Mr. Pal by drawing my attention to the application under Section 17B of the Industrial Dispute Act. He in particular drew my attention to paragraph 5

thereof wherein it is alleged that ever since the workman was dismissed he was surviving on charity.

17.The following questions therefore arise for determination:-

a) Did the workman confess that he was guilty of the misconduct? If so is the award bad on that account?
b) Is the workman entitled to the relief of full back wages when the order of dismissal from the service has been found to be illegal?

18.I propose to deal with the issues in the order they have been framed above.

a):

19.The alleged confession relied upon by Mr. Majumdar is to be found in the letter dated 30th March 1998 addressed by the workman to the disciplinary authority in reply to the second show-cause notice dated 25th March 1998. The second show-cause notice dated 25th March 1998 contained the following material allegations:-

> "The action of Shri Lahiri in raising the liabilities to such an extent knowing fully well that he would not be in a position to make repayment within 15 days definitely indicates that his intentions were not above board. The bank being a financial institution can ill-afford to retain in its roll persons whose integrity is doubtful. I also do not find any extenuating or mitigating circumstances to view the matter leniently. I am, therefore, of the view that ends of Justice would be met if Shri Lahiri is imposed the punishment of Dismissal without notice under Clause 21(iv)(a) of the Bipartite settlement dated 14.2.95 for his aforesaid acts of gross misconduct as per para 19.5(j) of the Bipartite Settlement dated 19.10.1966."

20.The workman in his reply dated 30th March 1998 suggested various modes for repayment of the dues of the bank and concluded by contending as follows:-

> "In the light of the above premises, I hope you will be kind enough to accept one of the above proposals so that I can clear debts. I also request you to treat my lapse as a minor misconduct under para 19.7(I) instead of para 19.5(J) of the Bipartite

> Settlement. Your kind consideration of my case will help me to remain in service and erase the stigma from my unblemish service records of 27 years."

21.It would at once become clear that there is no confession made by the workman in respect of any misconduct under paragraph 19.5(J) of the bipartite settlement for which he was charged. Reference in this regard may be made to Section 24 of the Evidence Act which provides as follows:-

> "***Confession caused by inducement, threat or promise, when irrelevant in criminal proceeding***.- *A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat or promise, having reference to the charge against the accused person, proceeding from a person in authority and sufficient in the opinion of the Court, to give the accused person grounds, which would appear to him reasonable, for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him."*

22.The statement made by the workman in his letter dated 30th March 1998 indicated above was in answer to the second show-cause notice by which the disciplinary authority had proposed to impose capital punishment on him. The so-called confessional statement was obviously made by the workman in order to avoid the capital punishment of dismissal. A confession in order to be of any assistance to the writ petitioner should have been made a) voluntarily and b) the confession should have been with "reference to the charge against the accused". He never confessed to have committed the misconduct charged against him. His prayer for lesser punishment treating his lapse a "minor misconduct" under para 19.7(I) was aimed at securing an advantage and is therefore irrelevant under Section 24 of the Evidence Act. In any event a confession in order to become operative needs some amount of corroboration. Reference in this regard may be made to the judgment in the case of Bharat vs. State of U.P. reported in 1971(3) SCC 950 wherein Their Lordships held "*that a true confession made voluntarily may be acted upon with slight evidence to corroborate it*". In this case, far from any corroboration, there is even no evidence to show that the bank suffered or was likely to suffer any loss by the alleged misconduct of the workman. The finding of the learned Tribunal on the contrary is that no amount is due to the bank. Mr. Mazumdar contended that no amount is due to the bank because by dismissing the workman the bank has realised its dues which would not have been possible otherwise. The dues of the bank were realised

admittedly from out of the money payable to the workman. Therefore the bank's dues were fully secured. There was no scope or likelihood of the bank suffering any loss. Moreover if the bank had not allowed the credit limit of Rs.20,000/- to be grossly overdrawn or had the bank cancelled the credit card pursuant to the request of the workman made by the letter dated 5th October 1996 the unpleasant situation would not have arisen at all. The first issue is therefore answered in the negative.

b):

23.The contention of Mr. Majumdar with respect to the second issue has been two fold : a) propriety of such a relief being granted in this petition and b) with respect to quantum of back wages.

24.As regards the question of propriety I see no reason why a counter claim cannot be entertained.

25.A counter-claim in a suit is expressly permitted under Order VIII Rule 6(A) to 6(G) of the Code of Civil Procedure.

26.Rule 53 of the Calcutta High Court Writ Rules provides as follows:-

> "*Save and except as provided by these rules and subject thereto, the procedure provided in the Code of Civil Procedure (Act V of 1908) in regard to suits shall be followed, as far as it can be made applicable, in all proceeding for issue of a writ."*

27.A "*justice-oriented approach"* by the Courts has repeatedly been stressed by the Apex Court. In the case of M.S. Grewal vs. Deepchand Sood reported in 2001(8) SCC 151 Their Lordship held that where the liability arose out of negligence the writ court was entitled to award damages. In paragraphs 27 and 28 of the aforesaid judgment Their Lordship held as follows:-

> "*The decision of this Court in D.K. Basu v. State of W.B. comes next. This decision has opened up a new vista in the jurisprudence of the country. The old doctrine of only relegating the aggrieved to the remedies available in*

civil law limits stands extended since Anand J. (as His Lordship then was) in no uncertain terms observed:

> *"The courts have the obligation to satisfy the social aspirations of the citizens because the courts and the law are for the people and expected to respond to their aspirations. A court of law cannot close its consciousness and aliveness to stark realities. Mere punishment of the offender cannot give much solace to the family of the victim- civil action for damages is a long-drawn and a cumbersome judicial process. Monetary compensation for redressal by the court finding the infringement of the indefeasible right to life of the citizen is, therefore, useful and at times perhaps the only effective remedy to apply balm to the wounds of the family members of the deceased victim, who may have been the breadwinner of the family."*
>
> *Currently judicial attitude has taken a shift from the old draconian concept and the traditional jurisprudential system- affectation of the people has been taken note of rather seriously and the judicial concern thus stands on a footing to provide expeditious relief to an individual when needed rather than taking recourse to the old conservative doctrine of the civil court's obligation to award damages. As a matter of fact the decision in D.K. Basu has not only dealt with the issue in a manner apposite to the social need of the country but the learned Judge with his usual felicity of expression firmly established the current trend of "justice-oriented approach". Law courts will lose their efficacy if they cannot possibly respond to the need of the society- technicalities there might be many but the justice-oriented approach ought not to be thwarted on the basis of such technicality since technicality cannot and ought not to outweigh the course of justice."*

28.There is also no reason why the workman should not be allowed to raise his grievance with respect to the relief which was refused by the Tribunal. Reference may be made to the case of Hari Bux vs. Zoharmal reported in 33 CWN 711 wherein a Division Bench of this Court took the following view:-

> "*So far as the final decree in a suit is concerned, there is no reason for saying that the Plaintiff cannot approbate the decree in respect of the sum it awards and reprobate it in respect of the sum it refuses."*

29.The grievance of the workman with respect to the relief refused to him is well founded in law. Reference in this regard may be made to the judgment in the case of Hindustan Tin Works vs. Employees reported in 1979(2) SCC 80 wherein a three-judge bench of the Apex Court held in paragraph 9 that "*Ordinarily, therefore, a workman whose service has been illegally terminated would be entitled to full back wages except to the extent he was gainfully employed during the enforced idleness".*

30.In paragraph 11 Their Lordships opined as follows:-

> "*In the very nature of things there cannot be a strait-jacket formula for awarding relief of back wages. All relevant considerations will enter the verdict. More or less, it would be a motion addressed to the discretion of the Tribunal. Full back wages would be the normal rule and the party objecting to it must establish the circumstances necessitating departure. At that stage the Tribunal will exercise its discretion keeping in view all the relevant circumstances. But the discretion must be exercised in a judicial and judicious manner. The reason for exercising discretion must be cogent and convincing and must appear on the face of the record. When it is said that something is to be done within the discretion of the authority, that something is to be done according to the rules of reason and justice, according to law and not humour. It is not to be arbitrary, vague and fanciful but legal and regular (See Susannah Sharp v. Wakefield, 1891 AC 173 at p.179).*

31.With respect to the burden of proof in order to make a departure from the normal rule of full back wages Their Lordship held in paragraph 12 of the judgment as follows:-

> "*If the normal rule in a case like this is to award full back wages, the burden will be on the appellant employer to establish circumstances which would permit a departure from the normal rule."*

32.In the case of Surendra Kumar vs. Industrial Tribunal reported in 1980(4) SCC 443 a three-judge bench of the Supreme Court discussed the reasons which may weigh with the Court in making a departure from the normal rule of full back wages. Thus opined Their Lordships "*Plain common sense dictates that the removal of an order terminating the services of workmen must ordinarily lead to the reinstatement of the services of the workmen. It is as if the order has never been, and so it must ordinarily lead to back wages too. But there may be exceptional*

circumstances which make it impossible or wholly inequitable vis-à-vis the employer and workmen to direct reinstatement with full back wages. For instance, the industry might have closed down or might be in severe financial doldrums; the workmen concerned might have secured better or other employment elsewhere and so on. In such situations, there is a vestige of discretion left in the court to make appropriate consequential orders. The court may deny the relief of reinstatement where reinstatement is impossible because the industry has closed down. The court may deny the relief of award of full back wages where that would place an impossible burden on the employer. In such and other exceptional cases the court may mould the relief, but, ordinarily the relief to be awarded must be reinstatement with full back wages. That relief must be awarded where no special impediment in the way of awarding the relief is clearly shown. True, occasional hardship may be caused to an employer but we must remember that, more often than not, comparatively far greater hardship is certain to be caused to the workmen if the relief is denied than to the employer if the relief is granted."

33.In the case of P.V.K. Distillery Ltd. vs. Mahendra reported in 2009(5) SCC 705 Their Lordships granted only 50% of the backwages "*because the appellant's factory had been declared sick and remained closed for many years and has been assigned to a new management led by its Chief Executive Director, Sri M.K. Polania in order to rehabilitate/reconstruct it"*.

34.The learned Tribunal in the concluding part of its judgment and award held that the workman was entitled to reinstatement in the service from the date of dismissal and he is also entitled to get half of the back wages. There is not one word as to why was the Tribunal of the view that the workman was entitled to only half of the back wages and not the full back wages which is the normal rule. When the Tribunal was of the view that the order of dismissal was bad and illegal then it was the duty of the Tribunal to make restitution as far as possible in the light of the law discussed above.

35.I am of the view that the injury inflicted by the illegal order of dismissal cannot fully be compensated in any event. There is evidence on the record to show that at the time when the petitioner was dismissed from service he had a minor daughter to support besides his wife. The workman as soon as the card was issued to him was entrapped by antisocial elements who forced

him to entertain them in luxurious hotels and restaurants. The helpless workman requested the employer to cancel the card but his request remained unheeded. The spending limit granted to the workman, as would appear from the documents disclosed by the writ petitioner itself, was Rs.20000/-. The workman was allowed to incur expenditure far in excess of the sanctioned limit without any repayment knowing that he had been entrapped by antisocial elements.. His request to cancel the card was ignored. These factors go to show unmistakably that the workman did not incur the expenses voluntarily or at any rate he was actively aided and abetted in spending the money exceeding the limit of his expenditure by no other than the employer himself. Thus the conduct of the employer was equally if not more blameworthy.

36.There is no evidence before me to show that the workman was gainfully employed during the period of his dismissal. The evidence on the record suggests that he has been surviving on charity ever since he was dismissed from service. Neither before the Tribunal nor before this Court did the employer discharge its burden of proof in order to establish that the workman should not be given the normal benefit of full back wages. There is as such no reason why the learned Tribunal should have contented itself by granting only 50% of the back wages. Both the points urged by Mr. Mazumdar with respect to the second issue are accordingly answered. The second issue is therefore answered in the affirmative.

37.This writ petition, in the result, is dismissed and the counter claim is allowed. The writ petitioner is directed to pay full back wages from the date of dismissal until the date of reinstatement together with interest at the rate of 12% per annum. Grant of interest is now a matter of procedure and ought to be granted in all cases where there is a decree for money unless there are strong reasons to decline the same (See Jagdish vs. Union of India reported in 1999(3) SCC 257). The petitioner shall also pay costs assessed at Rs.20,000/-.

38.Urgent xerox certified copy of this judgment be delivered to the learned advocates for the parties, if applied for, upon compliance of all formalities.

(GIRISH CHANDRA GUPTA J.)

Later

39.Prayer for stay of operation of this judgment and order made by Mr. R.N. Mazumdar, learned Advocate for the petitioner, is considered and rejected.

(GIRISH CHANDRA GUPTA J.)