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Court : Kolkata

Decided On : Aug-27-1996

Reported in : (1998)3CALLT253(HC)

Judge : Dipak Prokash Kundu, J.

Acts : [Constitution of India](#) - Articles 12, 14, 16, 226 and 309;; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Section 164;; Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 - Sections 12(2) and 19(1, 2 and 3);; Bank of Baroda (Employees) Pension Regulations, 1995 - Regulation 48(1);; [Industrial Disputes Act, 1947](#) - Sections 18 and 29

Appeal No. : Constitutional Writ Jurisdiction, C.O. No. 18286(W) of 1995

Appellant : Ram Kr. Tewari

Respondent : The Asstt. General Manager (Ccr), Bank of Baroda and ors.

Advocate for Def. : Mr. Ajit Kumar Panja, ;Mr. Jotin Ghosh, ;Mr. Malay Mohan Guha and ;Mr. Subir Banerjee, Adv.

Advocate for Pet/Ap. : Mr. R.K. Gaurisaria, Adv.

Judgement :

D.P. Kundu, J.

1. This writ petition is directed against the order of suspension dated 20.04.95 [Annexure 'E' of the writ petition), the charge-sheet dated 12.06.95 (Annexure-'F' of the writ petition) and the corrigendum of the charge-sheet dated 10.07.95 (Annexure-'G' of the writ petition).

2. The petitioner, inter alia, prayed for a writ of mandamus directing the respondents and/or their Managers, officers, subordinates to (a) forthwith rescind, recall forbear and withdraw and/or not to give any effect or further effect to the charge-sheet dated 12.06.1995 (Annexure-'F') read together with corrigendum dated 10.07.1995 (Annexure-'G') and the order of suspension dated 20.04.1995 (Annexure-'E') and (b) treat the petitioner on duty during the period of suspension and accordingly pay him his full wages and allowances and other privileges for which he would have been entitled as if he came on daily duties and also to pay salaries for 65 days to the petitioner while he was in judicial custody and/or not to take any step or further steps which are prejudicial to the interest of petitioner on the basis of the charge-sheet dated 12.06.1995. corrigendum dated 10.07.1995 and order of suspension dated 20.04.1995 (Annexures 'F', 'G'. 'E' and/or not to proceed further with the departmental enquiry instituted on the basis of the aforesaid charge-sheet and corrigendum.

3. The petitioner further prayed for a writ of certiorari commanding the respondents and/or their Managers, officers, subordinates to certify and to send to this court the records of the disciplinary proceedings relating to the charge-sheet dated 12.06.1995, corrigendum dated 10.07.1995 and order of suspension dated 20.04.1995 (Annexures 'F'. 'G'. 'E') for examination and for quashing if found illegal invalid and/or inoperative and thus, to render complete justice.

4. The petitioner stated that he was born on 01.08.1935 and joined the service in the respondent Bank on 10.01.1953 and thereafter on 01.02.78 he was promoted to the post of Spl. Assistant. He stated that in or about April 1988 he was transferred to Burrabazar Branch from India Exchange Place Branch. Calcutta and during the period from 18.2.91 to 21.4.92 he was in the Clearing Department of the Respondent Bank and during the period from 22.4.92 to 21.4.92 he was allotted to

write case scroll book and to check two Current Account Ledgers. He stated that on 19.5.92 and 21.5.92 though he was attached to cash department, yet he was asked to work in the Savings Bank Department because the regular incumbent was absent on those dates. He stated that in or about July, 1993 he was again asked to work in Savings Bank Department due to exigency of work and thereafter, often, he had to work in the said department as the regular incumbent almost remained absent or on leave preparatory to retirement. He stated that on 20.7.94 he had been awarded 'Silver Salver' by Asstt. General Manager (Personnel) of the respondent Bank. He stated that on 20.10.94 he had to go to his native place as his wife was sick thereat but on 25.10.94 the Senior Branch Manager, Bank of Baroda, Burrabazar Branch sent a letter to him asking him to come back as his presence was needed at local Police Station. He stated that on 7.11.94 he returned for duty as directed by the Senior Branch Manager, Bank of Baroda, Burrabazar Branch and on 7.11.94 itself he visited the Burrabazar Police Station and met the Police authorities and came to know about the information lodged vide letter dated 8.10.94 by the Senior Branch Manager, Bank of Baroda, Burrabazar Branch for irregularities in Savings Bank Account. He alleged that on 7th, 8th & 9th November, 1994 the Senior Branch Manager of Bank of Baroda, Burrabazar Branch was continually creating unnecessary pressure on him by way of misbehaving and threatening and on 9.11.94 he was asked by the said Senior Branch Manager to stay in the office even after 5 P.M. on the said date and on 9.11.94, after the office hours about 6-7 persons entered the Bank premises and surrounding him started inhuman treatment and threatened him with dire consequences by abusing him in filthy languages as a result he became fully nervous and he was trembling and at that time the said Senior Branch Manager dictated something and force him to write down whatever the Senior Branch Manager dictated,

5. The petitioner stated that on 9.11.94 at about 8 P.M. he was handed over to Burrabazar Police authority by the said Senior Branch Manager and on 10.11.94 he was produced before the learned Addl. Chief Metropolitan Magistrate, Calcutta by the Police authority and as no bail was granted to him, he had to remain in the jail/judicial custody uptill 12/13.01.95. He stated that on 14.11.94. while in jail custody, he was produced before the learned Metropolitan Magistrate.

5th Court. Calcutta for the purpose of section 164 of Cr PC where he made a statement that he is innocent. It was contended on his behalf that it is apparent from the Annexure-'D' of affidavit-in-opposition affirmed on 19.1.96 that by 30.11.94 he opted for pension scheme which was under formulation at that time. On 13.1.95 he came out of judicial custody on court bail.

6. The petitioner stated that on 17.01.95 the petitioner reported for duty at Burrabazar Branch of the respondent Bank but was not allowed to join thereat and was asked to report under respondent No. 1. He stated that on 18.1.95 he joined the office of the respondent No. 1 and on 28.1.95 he prayed for 65 days salary for the period he was in police/judicial custody but the same was rejected by the respondents on 31.1.95. He stated that for the period from 27.2.95 to 21.4.95 he went on leave on medical ground and during this period the respondent No. 1 sent Medical Officer to his house to verify the genuineness of his illness.

7. The petitioner stated that on 20.4.95 the order of suspension (Annexure 'E' of the writ petition) was issued and on 21.4.95 he received the order of suspension. He stated that on 22.4.95 he reported for duties with medical fitness certificate to the respondent No. 1 but was not allowed to join on the ground of suspension order dated 20.4.95. He stated that on 02.5.95 he again represented to the respondent No. 1 for payment of salary for the period he was in jail (i.e. 10.11.94 to 13.1.95) and if no salary is paid to him then at least to pay him subsistence allowance. He stated that on 06.5.95 by a letter the respondent No. 1 turned down his prayer for 65 days salary.

8. The petitioner stated that on 12.6.95 the charge-sheet (Annexure 'F' of the writ petition) was issued. He stated that on 30.6.95 the charge-sheet dated 12.6.1995 (Annexure 'F' of the writ petition) was served upon him. He stated that on 4.7.95 by a letter to respondent No. 1 he wanted to know whether the charge-sheet was issued after complying with the provisions of Clause 19.4. of the bipartite settlement between certain Banking Companies represented by the Indian Banks Association and their workmen (hereinafter referred to as bipartite settlement). He alleged that no reply was given to him.

9. The petitioner stated that on 10.7.95 a corrigendum of the charge-sheet (Annexure 'G' of the writ petition) was issued. He stated that on 17.7.95 he received the first notice dated 28.6.85 of the Enquiry Officer, appointed by the respondent No. 1, whereby the Enquiry Officer (for short E.O.) proposed 7.7.95 as the date of preliminary hearing. He stated that on 17.7.95 he actually received the corrigendum dated 10.7.95 (Annexure 'G' of the writ petition). He stated that on 19.7.95 he again sent a written representation reminding the respondent No. 1 about earlier representation dated 4.7.95. He stated that on 4.8.95 he appeared before the Ld. Addl. Chief Metropolitan Magistrate, Calcutta and came to know that the criminal proceeding was still pending at the investigation stage. He stated that on 5.8.95 he once again sent a written representation to the respondent No. 1 for clarification and decision but, no reply was sent to him. He stated that on 9.9.95 he learned. Advocate serving letter/notice demanded justice from the respondent Bank authorities.

10. It was contended that on 12.9.95 the petitioner affirmed the writ application under Article 226 of the [Constitution of India](#) and on 12.9.95 he served the copies of the writ petition on the respondents intimating them that he would move the said application on 28.9.95 (during the Puja Vacation). The petitioner stated that on 29.9.95 the pension scheme of the respondent Bank had been published in the Gazette of India and came into effect and the option submitted by him had been treated valid by the respondents.

11. On 31.10.95 the writ petition appeared as 'Listed Motion' and the same was moved in presence of the Ld. Lawyers of the respondents. Samaresh Banerjee. J. after hearing both the sides on 31.10.95 passed the following order:

'Let this matter appear as a contested application eight weeks hence. Affidavit-in-opposition be filed within four weeks and reply thereto be filed within two weeks thereafter.

Pending hearing of the application there will be an interim order to the effect that the petitioner will participate in the disciplinary proceedings without prejudice to the rights and contentions in the writ petition and the respondents will proceed with the departmental proceedings but no final order will be passed without the leave of the

court.'

12. The petitioner stated that on 01.11.95 he received a letter/order sheet from the E.G. intimating, inter alia, that the regular hearing of the enquiry would be held on and from 14.11.95 on regular basis. He stated that on 02.11.95 the E.O. served upon him xerox copies of some documents, list of witnesses and order sheet dated 01.11.95 of the enquiry proceeding. He stated that on 3.11.95 he approached the Secretary of the Bank of Baroda Employees' Union to represent him as defence representative and on 4.11.95 he wrote a letter to the E.O. in connection with the aforesaid order sheet dated 01.11.95 and sought for permission to engage a lawyer of his choice for defending him in the departmental enquiry. He stated that on 06.11.95 the Union Secretary by letter dated 6.11.95 expressed inability to represent him in the enquiry as his defence representative and by an order dated 06.11.95 the respondent No. 1 rejected his prayer to engage a lawyer in the enquiry. He stated that on 13.11.95 he by his written representation further approached the respondent No. 1 to allow him to engage a lawyer of his choice in the enquiry as defence representative but on 14.11.95 he received a reply/ order dated 13.11.95 from the respondent No. 1 rejecting his prayer to engage a lawyer in the enquiry as defence representative. He stated that 14.11.95, 15.11.95, 16.11.95, 17.11.95, 18.11.95 & 20.11.95 were the dates fixed for the purpose of the domestic enquiry and 24.11.95 was the date fixed for submitting written arguments by Presenting Officer of the respondent Bank in the enquiry and on 25.11.95 a copy of the written argument of the Presenting Officer of the Bank was furnished to him by the E.O. He stated that 30.11.95 was the date fixed for submitting written arguments by him which he could finally submit on 2.12.95.

13. The petitioner stated that on 5.12.95 the E.O. submitted Enquiry Report to the respondent No. 1 and on 6.12.95 a copy of the enquiry report was furnished to him by the respondent No. 1 inviting his submissions, in connection with the Enquiry Report, within five days. He stated that on 8.12.95 the respondents served an advance copy of the affidavit-in-opposition, in connection with the writ proceedings, on him and on 11.12.95 he communicated certain observations to the respondent No. 1 in connection with the findings of the E.O. and prayed for

one fortnight time from respondent No. 1 to make detail submissions but the said prayer was turned down by the respondent No. 1 vide letter/order dated 13.12.95 which was served upon him on 21.12.95.

14. The petitioner stated that on 26/27.12.95 the copy of the affidavit-in-reply affirmed by him on 26.12.95 was served on the respondents.

15. The petitioner stated that on 27.12.95 a notice was issued by the respondent No. 1 communicating him that in view of his superannuation on 31.12.95. he would not be paid subsistence allowance after 31.12.95 at the same time the respondent No. 1 had asked him to show-cause fixing hearing on 29.12.95, as to why the punishment of dismissal without notice should not be imposed on him. He stated that this notice had been received by him on 10.1.96 through postal delivery. He stated that on 29.12.95 the respondent No. 1 issued another notice fixing 31.12.95 for personal hearing in the matter of punishment and this notice too was received by him on 10.1.96 through postal service. He stated that 31.12.95 was the date of his superannuation and on and from 01.01.96 the respondent Bank stopped payment of subsistence allowance to him.

16. The petitioner filed an application for payment of retirement benefit. The respondents also filed an application for leave to pass final order. On 16.1.96 the applications filed by both the parties came up for hearing and this court passed the following order:

'As prayed for by the learned Advocate for the petitioner, he is given liberty to file affidavit-in-opposition, if any, within ten days from date in respect of the application for leave to pass final order preferred by the Bank. Let affidavit-in-reply, thereto, be filed within 48 hours thereafter.

17. Let status quo as of today as regards the petitioner be maintained.

18. As prayed for by the learned Advocate for the Bank Authorities three days time is granted to file affidavit-in-opposition in respect of the application preferred by the petitioner for passing of an order to pay out the retirement benefits including the benefits of pension to the petitioner. Affidavit-in-reply if any, be filed within two

days thereafter.

19. Let it be recorded that according to both the parties, the retirement date of the petitioner is 31.12.95.

20. Let these two applications along with the main matter come up for hearing on 31.1.1996 as first item irrespective of any part-heard matter.

21. The learned advocates appearing for the parties are permitted to take the gist of the order for communication to the parties.'

22. On behalf of the petitioner reliance was placed on the following cases:

1. Delhi Cloth and General Mills Ltd. v. Kushal Van reported in : (1960)ILLJ520SC .

2 Workmen of Indian Overseas Bank v. Indian Overseas Bank and Anr. reported in 1973 (1) LLJ 316.

3. Kusheshwar Dube v. M/S. Bharat Cooking Coal Ltd. reported in : (1988)ILLJ470SC .

4. The Managing Director, V.P. Wire Housing Corporation v. Vijoy Narayan Bajpayee reported in : (1980)ILLJ222SC .

5. Tota Oil Mills Co. Ltd. v. Workmen reported in : (1964)ILLJ113SC .

6. State of U.P. v. Md. Nooh reported in AIR 1958 SC 86.

7. Sauwarmal Md. v. Collector, C.E. & L, Custom reported in AIR 1964 Assam & Nagaland 121.

8. Management of 'Hindu', Madras v. Secretary, Hindu Office and National Press Employees' Union & Anr. reported in : (1960)ILLJ187Mad .

9. M/s. Hyderabad Commercials v. Indian Bank & Ors. reported in : AIR 1991 SC247 .

10. Bank of Maharashtra v. Om Prakash Malwalia reported in 1985(1) LLJ 185.
11. N. Raghaban Pillai v. Union of India & Ors. reported in 1996(1) CLJ 497.
12. Rabindranath Ghosal v. University of Calcutta reported in Cal LT 1991(1) HC 465.

The respondents referred to and relied upon the following cases:

1. Chhanan Singh v. Registrar Co-operative Society, Punjab & Ors. reported in : (1976)IILLJ98SC .
2. Sukchindar Singh & Ors. v. Hardayal Brar reported in : (1976)IILLJ204SC .
3. Vijay Singh v. Central Bank of India & Anr. reported in 1994(2) SLR 181.
4. Union of India v. Ajoy Pattayanayak reported in (1995)-6 SE 442.
5. The respondents also referred to the meaning of 'moral turpitude' in Words and Phrases, permanent edition, Vol.27A.

23. On behalf of the petitioner it was argued that Bank of Baroda (Respondent No.3) is a Nationalised Bank and it is a 'State' within the meaning of Article 12 of the [Constitution of India](#). In support of this contention the learned counsel for the petitioner referred to M/s. Hyderabad Commercial v. Union Bank & Ors. (supra). Reliance was placed on paragraphs 4 & 5 of the Reported decision. It appears from the said paragraphs 4 & 5 of the Reported decision that the Hon'ble Supreme Court held that a Nationalised Bank is an instrumentality of the State and the relevant lines read as follows:-

'The respondent Bank is an instrumentality of the State and it must function honestly to serve its customers.'

24. From paragraph 4 of the reported decision it appears that the respondent Bank in that case was a Nationalised Bank.

25. The learned advocate for the petitioner also relied upon Bank of Maharashtra v. Om Prakash Malwalia (supra). From paragraph 14 of the Reported decision it

appears that the learned Judge, held, after referring to number of decisions, that a Nationalised Bank is a State within the meaning of Article 12 of the Constitution. The relevant lines of the said paragraph 14 read as follows:--

'There is a long catena of decisions in which various Nationalised Banks have been held to be an authority within the scope of Art. 12. It is for the reason that these Nationalised Banks have been created by statute, namely, the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970. They are wholly owned by the Central Government and the provisions contained in the said Act make it abundantly clear that the Central Government exercises profound control over their policies and functioning. Moreover, it is abundantly clear from the provisions of the Act that the Government instead of itself carrying on the business of banking, has chosen to carry on the business through the instrumentality of the Nationalised Banks called 'Corresponding new banks' created by the said Act and wholly owned by the Government. It is now well settled that if the corporate body is but an instrumentality or agency of Government and answers the test of Article 12 then it will fall within the ambit of the expression 'other authorities' and is a 'State' within the meaning of Article 12 (see *Ramana Dayaram Shetty v. International Airport Authority of India* (1979) 11 LLJ 217). Reference in this context may also be made to *Lachman Doss Aggrawal v. Punjab National Bank* (1978) 52 FJR 306; *United Commercial Bank v. V.J. Vyas*, (1977) Lab IC 1013 and *N.B. Sukla v. Bank of Baroda* (1979) 1 LLJ 291 in which it has been held by the High Courts of Punjab & Haryana, Calcutta and Bombay that Nationalised Banks are statutory bodies and authorities within the meaning of Article 12 of the Constitution.'

26. Admittedly Bank of Baroda is a Nationalised Bank. In view of the above referred decision of Hon'ble Supreme Court there remains no doubt that the said Bank is an instrumentality of the State. This court respectfully agrees with the above quoted view expressed in Bank of Maharashtra's case and holds that Bank of Baroda is a 'State' within 'the meaning of Article 12 of the Constitution.'

27. On behalf of the petitioner it was argued that clauses 19.1, 19.2, 19.3. (including sub-clauses) and 19.4 of Chapter-XIX of the bipartite settlement are statutory provisions themselves or have statutory force and therefore, a writ

petition can lie for their enforcement just as in the case of violation of rules framed under the statute or rules made under the proviso to Article 309 of the Constitution.

28. It appears that the aforesaid bipartite settlement was arrived at on 19th October, 1966 before the Chief Labour Commissioner (C), New Delhi, in an industrial dispute between the managements of the Banks as represented by the Indian Banks Association, Bombay and the Bombay Exchange-Bank Association, Bombay and their workmen represented by All India Bank Employees' Association and All India Bank Employees' Federation over the various issues such as terms and conditions of service of the bank employees. It appears from the list of parties (appendix 'A' of the said bipartite settlement) that Bank of Baroda was a party of that settlement, in the said bipartite settlement it was recorded as follows:--

'In consideration of the above, the parties (a list whereof is in Appendix 'A' hereto) hereby record the following settlement reached in respect of the workmen's demands and the Banks' points to the intent that the settlement shall be binding on the Banks and the workmen in the manner contemplated in section 18 of the Industrial Disputes Act, 1947'.

'It was argued on behalf of the petitioner that in view of section 12(2) of the Banking Companies (Acquisition of Transfer of Undertakings) Act, 1970 (hereinafter referred to as the said Act) every officer or other employee of an 'existing bank' became, on the commencement of the said Act, an officer or other employee, as the case may be, of the corresponding 'new bank' and holds his office or services in that bank on the same terms and conditions and with the same rights to pension, gratuity and other matters as would have been admissible to him if the undertaking of the 'existing bank' had not been transferred to and vested in the corresponding new bank' and continue to do so until and unless his employment in the corresponding 'new bank' is terminated or until his remuneration, terms and conditions are duly altered by the corresponding 'new bank'. It was argued that the provisions contained in Chapter-XIX of the bipartite settlement deal with the terms and conditions of service of the petitioner which are still continuing as those provisions have not been altered by the corresponding

'new bank'. It was further argued that in view of the provisions contained in section 19(3) of the said Act, the provisions contained in Chapter-XIX of the bipartite settlement have acquired statutory force and those provisions have become statutory provisions themselves.

29. Sub-section (3) of section 19 of the said Act reads follows:--

'Until any regulation is made under sub-section (1), the articles of association of the existing bank and every regulation, rule, bye-law or order made by the existing bank shall, if in force at the commencement of this Act, be deemed to be the regulations made under sub-section (1) and shall have effect accordingly of any reference therein to any authority of the existing bank shall be deemed to be a reference to the corresponding authority of the corresponding new bank and until any such corresponding authority is constituted under this Act, shall be deemed to refer to the Custodian.'

30. Therefore, it is apparent that until any regulation is made under subsection (1) of section 19 of the said Act, the articles of association of the 'existing bank' and every regulation, rule bye-law or order made by the 'existing bank' shall, if in force at the commencement of this Act should be deemed to be regulations made under sub-section (1) of section 19 of the said Act and should have effect accordingly. But the bipartite settlement is neither articles of association of the 'existing bank' nor regulations, nor rules, nor bye-law, nor orders. The bipartite settlement is a memorandum of settlement arrived at by and between the parties to the said settlement in an industrial dispute, therefore, this court is of the view that the provisions of the said bipartite settlement, cannot be deemed to be the regulations made under sub-section (1) of section 19 of the said Act. At the time of legislation of the said Act, the bipartite settlement was very much in existence but the legislature referred to articles of association, regulation, rule, bye-law and orders and did not refer to the bipartite settlement. Thus it is evident that the legislature did not want the bipartite settlement to be treated as regulation made under sub-section (1) of section 19 of the said Act. The maxim expression *facit cessare taciturn* (when there is express mention of certain things, then anything not mentioned is excluded) applies to the case. It was pointed out by the Hon'ble

Supreme Court in B. Shankara Rao Badami v. State of Mysore : [1969]3SCR1 that this well known maxim is a principle of logic and common sense and not merely a technical rule of construction. This view was also reiterated in Union of India v. Tulsiram Patel : (1985)11LLJ206SC .

31. On behalf of the petitioner, in support of the contention that the provisions of Chapter -XIX of the bipartite settlement are statutory provisions themselves and have statutory force, reliance was placed upon paragraphs 16 & 17 of Bank of Maharashtra v. Om Prakash Malwalia's case (supra). Paragraphs 16 & 17 of Bank of Maharashtra's case (supra) are quoted hereinbelow:--

'16. With great respect to the learned Judge, I have grave doubts about the correctness of this view inasmuch as the context in which the words 'regulation, rule, bye-law or order' have been used in sub-section (3) of section 19 would indicate that the same are not to be interpreted literally. In Lachman Dass Aggarwal's case (supra) a circular letter containing terms and conditions of the service of the bank officers and employees which had been issued prior to the nationalisation of the Punjab National Bank was held to have statutory force by virtue of section 19(3) as if it were a regulation made under section 19(1) & (2) of the aforesaid Act. If a unilateral order made by an existing bank prior to its nationalisation could be transformed into a statutory rule/order by virtue of the said subsection, there is no valid reason why an Industrial Award or a bipartite settlement which is binding on both the bank and its employees should not be deemed to have acquired statutory force. Needless to say, that no regulation, rule, bye-law or order made by any existing Bank prior to its nationalisation had any statutory force. They were just in the nature of internal arrangements or terms of contract governing condition of the service of the employees. Certainly. Sastry Award and Desai Award, which had been made by Industrial Tribunals, as modified by the bipartite settlement, stood on a higher pedestal.'

'17. I am, therefore, of the considered view that the terms and conditions of service of the bank employees incorporated in the Sastry Award as modified acquired statutory force on the nationalisation of the petitioner bank and the effect of sub-section (2) of section 12 of the Act would be that until the service of an employee

is terminated or until the terms and conditions are altered by appropriate regulations by a nationalised bank, an employee of the existing bank would continue to enjoy his rights and privileges of employment on the same terms which shall be binding on the Nationalised Bank in all respects. In other words, it would be obligatory on a nationalised bank to scrupulously observe the same while terminating the services of their employees.'

32. This court has already expressed its view as to why provisions of the bipartite settlement cannot be considered as regulations framed under subsection (1) of section 19 of the said Act, The parties to the bipartite settlement agreed that the settlement shall be binding on the banks and workmen in the manner contemplated in section 18 of the Industrial Disputes Act 1947. Therefore, this court is of the view that the provisions contained in the bipartite settlement can not be elevated to the status of statutory provisions or having statutory force. Rights and obligations created by the provisions of the bipartite settlement are governed by the provisions of the Industrial Disputes Act. This court is of the view that since the provisions contained in the bipartite settlement cannot be elevated to the status of statutory provisions or having statutory force no writ petition would lie for their enforcement. For these reasons, this court, with due respect, cannot agree with the views expressed in above quoted paragraphs 16 & 17 of Banff of Maharashtra's case (supra).

33. It is true that section 29 of the Industrial Disputes Act 1947 lays down that any person who commits a breach of any term of any settlement or award, which is binding on him under the Industrial Disputes Act, shall be punishable with imprisonment for a term which may extend to six months, or with fine or with both and where a breach is continuing one, with a further fine which may extend to two hundred rupees for every day during which the breach continues after the conviction for the first, and the court trying the offence if it fines the offender, may direct that the whole or any part of the fine realised from him shall be paid, by way of compensation to any person who, in its opinion, has been injured by such breach. This only proves that the terms contained in the bipartite settlement are statutory imposed conditions of service which is altogether different from the terms being statutory provisions themselves. The terms contained in the bipartite

settlement do not constitute 'Statutory provision' within the meaning of the dicta in Sukhdau Singh's case : (1975)ILLJ399SC where it was held that the employees of the statutory bodies have a status and they are entitled to declaration of being in employment when their dismissal or removal is in contravention of statutory provision. The terms contained in the bipartite settlement remain as terms of contract by and between the employer and employee which are statutorily imposed conditions of service but not being the statutory provisions themselves or having statutory force no writ petition would lie for their enforcement. Reference may be made to Rajasthan State Road Transport Corporation & Anr. v. Krishkanta : (1995)ILLJ728SC ; in that case status of Certified Standing Orders was considered, in paragraph 17 of the reported decision it was observed as follows:--

'The consensus of these decisions is: the certified standing orders constitute statutory terms and conditions of service. Though we have some reservations as to the basis of the above dicta as pointed, out supra, we respectfully accept it both on the ground of stare decisis as well as judicial discipline. Even so we are unable to say that they constitute 'statutory provisions' within the meaning of the dicta in Sukdev Singh : (1975)ILLJ399SC where it was held : '(T) the employees of these statutory bodies have a statutory status and they are entitled to declaration of being in employment with their dismissal or removal is in contravention of statutory provisions'. Indeed, if it is held that Certified Standing Orders constitute statutory provisions or have statutory force, writ petition would also lie for their enforcement just as in the case of violation of Rules made under the proviso to Article 309 of the Constitution. Neither a suit would be necessary nor reference under the industrial Disputes Act. We do not think the Certified Standing Orders can be elevated to that status, it is one thing to say that they are statutorily imposed conditions of service and altogether different thing to say that they constitute statutory provisions themselves.'

34. The learned advocate appearing for the respondents argued that since the terms contained in the bipartite settlement are nothing but terms of contract between employers and the workmen, the same cannot be enforced in a writ proceeding. The learned Advocate for the respondents referred to and relied upon Kulchhindar Singh and Others v. Hardayal Singh Brar and Others :

(1976)IILLJ204SC . In paragraph 11 of the reported decision in Kulchhinder Singh's case, the Hon'ble Supreme Court observed, inter alia, as follows :--

The writ petition, stripped of embroidery and legalistic, stands naked as a simple contract between the staff and the society, agreeing upon a certain percentage of promotion to various posts or an omnibus, all embracing promise to give a quota to the existing employees. At its best, the writ petition seeks enforcement of a binding contract but the neat and necessary repellant is, that the remedy of Article 226 is unavailable to enforce a contract que-contract.'

35. As stated earlier in this Judgment that the terms contained in the bipartite settlement are not statutory provisions themselves not have statutory force, therefore, those terms cannot be enforced in the writ jurisdiction.

36. Regarding interpretation of clauses 19.1. 19.2. 19.3. (including sub-clauses) & 19.4 of bipartite settlement the learned advocate for the petitioner referred to Workmen of Indian Overseas Bank v. Indian Overseas Bank & Anr. (supra). The case of Indian Overseas Bank (supra) related to paragraph 521 of Sastri Award read with paragraphs 18-28 of the Desai Award. According to the learned advocate for the petitioner the provisions of paragraph 521 of Sastri Award are similar to the provisions contained in clauses 19.1, 19.2, 19.3 (including sub-clauses) 19.4 of the bipartite settlement. Sastri Award or Desai Award had not been placed before this court at the time of argument therefore, it is not possible for this court to compare the provisions of clauses 19.1, 19.2. 19.3 (including sub-clauses) 19.4 of the bipartite settlement with those of paragraph 521 of Sastri Award. However, the relevant lines which were relied upon by the learned Advocate for the petitioner from Indian Overseas Bank's case (supra) are quoted hereinbelow:--

'In my view, however, there is no force in this contention of Mr. Chari. as the wording of paragraph 521(2) is clear that where in the opinion of the management an employee has committed an offence the bank may take steps to prosecute him or to get him prosecuted and in such a case he may also be suspended.

Clause (2) on a plain reading gives an option to the management to prosecute a workmen and has provided that if they do so it will also have the right to suspend the workman. In my view, clause (2) was not meant to be laying down a compulsion on the management that in case any offence has been committed, it necessarily must start prosecution against an employee. The further provisions that are provided in the award clearly show that at the initial stage the management is being given an option either to proceed against the employee in a criminal court or departmentally. Once, of course, the management has decided to proceed against an employee in a criminal court the award has laid down that it will not be possible for the management to withdraw from the same and start the disciplinary proceedings against the employee at its discretion as it could have done originally. Purpose of clause (2) obviously is that the management should not be allowed to delay making up its mind in the first instance as to how it wishes to proceed against a certain employee. It is for this reason that it is provided that once the prosecution proceedings have been set against an employee, but they do not result in his conviction, the employee has to be reinstated or that even if he is not put on trial the management can proceed against him, but in that case the action to be taken against the employee is limited to discharge or termination. The purpose of clause (2) really is only to give the right to the management to suspend an employee in case it chooses to proceed against him in a criminal court. Mr. Chari contended that the word 'may' in clause (2) must be read as 'shall' and thereby a mandate must be held to have been given to the management to prosecute an employee in case an offence is said to have been committed. In my view there is no reason to read the word 'may' as 'shall'. This interpretation seems to me to be against the interest of the employee who in many cases would welcome a departmental enquiry rather than face a criminal trial. It is not uncommon to find that many employees prefer facing a departmental enquiry rather than the odium and harassment of facing a criminal trial. In my view, therefore, the tribunal was correct in holding that clause 2(a) of para 521 of the award did not compel management to prosecute the concerned workmen and. therefore, no infirmity can be found with the dismissal order on the ground that the management was bound in the first instance to proceed against the workmen in the criminal court'.

37. Before proceeding further it may be useful to look at the order of suspension (Annexure- 'E' of the writ petition). The relevant lines of the said order or suspension reads as follows :--

'As Disciplinary Proceeding are contemplated against Mr. Ram Kumar Tiwari (B.C. No. 09141). Spl. Asstt. for acts of misconduct including irregular transactions in Savings Bank Portfolio reportedly committed by him during his tenure at Bank's Burrabazar Branch, I am of the opinion that circumstances exist making it necessary to place Mr. Tewari under suspension.

Accordingly. I hereby place Mr. Tewari under suspension with effect from the date of service of the order upon him.'

38. In the said order of suspension it was also stated that the petitioner would be entitled to subsistence allowance in terms of para 17.14. of Desai Award. It is apparent from the aforesaid order of suspension that the contract of service of the writ petitioner was not suspended, on the other hand the writ petitioner was suspended from performing the duties of his office on the basis that the contract is subsisting. This order of suspension is nothing butan interim suspension. In B.R.Patel v. State of Maharashtra : (1968)IILLJ700SC the Hon'ble Supreme Court observed as follows:--

'It is equally well settled that an order of interim suspension can be passed against the employee while an enquiry is pending into his conduct even though there is no such term in the contract of appointment or in the rules, but in such a case the employee would be entitled to his remuneration for the period of suspension if there is no statute or rule under which it could be withheld. In this connection it is important to notice the distinction between suspending the contract of service of an officer and suspending an officer from performing the duties of his office on the basis that the contract is subsisting. The suspension in the latter sense is always an implied term in every contract of service.'

39. In the instant case the suspension of the petitioner is in the latter sense as stated in the above quoted observation of the Hon'ble Supreme Court and it was/is always an implied term in the contract of service of the petitioner, irrespective of

clause 19.3(a) of Chapter-XIX of the bipartite settlement. Under these circumstances, this court is of the view that the order of suspension is legal and valid.

40. It was argued on behalf of the petitioner that since a criminal case is pending against him on the same subject-matter as that of the disciplinary proceeding, the disciplinary proceeding ought not to have been proceeded with and since departmental proceeding has been proceeded with pending criminal case, the departmental proceeding is illegal. To support this contention reliance was placed on (a) Delhi Cloth and General Mills Ltd. v. Kushal Van (supra), (b) Tata Oil Mills Co. Ltd. v. Workmen (supra) and (c) Kusheshwar Dube v. M/s. Bharat Cooking Coal Ltd. (supra).

41. In Delhi Cloth and General Mills' case (supra) in paragraph 3 of the Reported decision Hon'ble Supreme Court observed as follows:--

'It is true that very often employers stay enquiries pending the decision of the criminal trial courts and that is fair: but we cannot say that principles of natural Justice require that an employer must wait for the decision at least of the criminal trial court before taking action against an employee. In Shri Bimal Kanta Mukherjee v. M/s. Newsmen's Printing Works 1956 Lab AC 188. this was the view taken by the Labour Appellate Tribunal. We may, however, add that if the case is of a grave nature or involves questions of fact or law. which are not simple, it would be advisable for the employer to await the decision of the trial court, so that the defence of the employee in the criminal case may not be prejudiced'.

42. In Tata Oil Mills Co. Ltd. 's case (supra) in paragraph 9 of the Reported decision the Hon'ble Supreme Court observed as follows:--

There is yet another point which remains to be considered. The Industrial Tribunal appears to have taken the view that since criminal proceedings had been started against Raghavan, the domestic enquiry should have been stayed pending the final disposal of the said criminal proceedings. As this court has held in the Delhi Cloth & General Mills Ltd. v. Kushal Bhan : (1960)ILLJ520SC . It is desirable that if the Incident giving rise to a charge framed against an workman in a demestic

enquiry is being tried in a criminal court, the employer should stay the domestic enquiry pending the final disposal of the criminal case. It would be particularly appropriate to adopt such a course where the charge against the workman is of a grave character, because in such a case, it would be unfair to compel the workman to disclose the defence which he may take before the criminal court. But to say the domestic enquiries may be stayed pending criminal trial is very different from anything (sic) that if an employer proceeds with the domestic enquiry in spite of the fact that the criminal trial is pending, the enquiry for that reason alone is vitiated and the conclusion reached in such an enquiry is either bad in law or mala fide. In fairness, we ought to add that Mr. Menon did not seek to justify this extreme position. Therefore, we must hold that the industrial Tribunal was in error when it characterised the result of the domestic enquiry as mala fide partly because the enquiry was not stayed pending the criminal proceedings against Raghavan. We accordingly hold that the domestic enquiry in this case was properly held and fairly conducted and the conclusions of fact reached by the Enquiry Officer are based on evidence which he accepted as true. That being so. It was not open to the Industrial Tribunal to reconsider the same questions of fact and come to a contrary conclusion.'

43. Thus from the above two decisions, namely, Delhi Cloth & General Mills' case and Tata Oil Mill Co. Ltd.'s case it is evident that principles of natural justice do not require that an employer must wait for the decision of the criminal trial court before taking any departmental disciplinary action against an employee. It is further evident that to say that the domestic enquiries may be stayed pending criminal trial is very different from saying that if an employer proceeds with the domestic enquiry in spite of the fact that the criminal trial is pending, the enquiry for that reason alone is vitiated and the conclusion reached in such an enquiry is either bad in law or mala fide.

44. In Kusheswar Dube's case (supra) Hon'ble Supreme Court considered Delhi Cloth and General Mill's case : (1960)ILLJ520SC , Total Oil Mill's case : (1964)ILLJ113SC and Jagn Bahadur's case : 1969 CriLJ267 . In Kusheswar Dube's case [supra] in paragraph 6 of the Reported decision the Hon'ble Supreme Court observed as follows:--

The view expressed in the three cases of this court seem to support the position that while there could be no legal bar for simultaneous proceedings being taken, yet, there may be cases where it would be appropriate to defer disciplinary proceedings awaiting disposal of the criminal case. In the latter class of cases it would be open to the delinquent employee to seek such an order of stay or injunction from the court. Whether in the facts and circumstances of a particular case there should or should not be such simultaneity of the proceedings would then receive judicial consideration and the court will decide in the given circumstances of a particular case as to whether the disciplinary proceeding should be interdicted, pending criminal trial. As we have already stated that it is neither possible nor advisable to evolve a hard and fast, straightjacket formula valid for all cases and of general application without regard to the particularities of the individual situation. For the disposal of the present case, we do not think it necessary to say anything more, particularly when we do not intend to lay down any general guideline.'

45. Thus It is apparent that in Kusheswar Cube's case (supra) Hon'ble Supreme Court laid down that whether in the facts and circumstances of a particular case there should or should not be simultaneity of the proceedings requires judicial consideration and the court will decide in the given circumstances of a particular case as to whether disciplinary proceeding should be interdicted, pending criminal trial. The whole object of slaying the departmental proceeding pending criminal trial is not to compel the employee to disclose the defence which he may take before the criminal court. It appears from the records of this instant case that on 31.10.95 Samresh Banerjee, J. passed the following order:--

'Let this matter appear as a contested application eight weeks hence. Affidavit-in-opposition be filed within four weeks and reply thereto be filed within two weeks thereafter.

Pending hearing of the application there will be an interim order to the effect that the petitioner will participate in the disciplinary proceedings without prejudice to the rights and contentions in the writ petition and the respondents will proceed with the departmental proceedings but no final order will be passed without the leave of the

court.'

Therefore, it is apparent that the learned court judicially considered the facts and circumstances of the instant case and decided not to interdict the departmental proceeding, pending criminal proceeding. It appears from the records of this case that enquiry has been completed in terms of the aforesaid court's order dated 31.10.95. Therefore, it cannot be said that the domestic enquiry completed in terms of the court's order dated 31.10.95, only for the reason that a criminal case is pending against the writ petitioner is vitiated and that the conclusion reached in the said departmental proceeding is bad in law and mala fide. Under these circumstances the contention of the respondent that the enquiry proceeding is vitiated due to pendency of the criminal case is not acceptable and is rejected.

46. It was argued on behalf of the petitioner that the respondents have taken steps to prosecute the petitioner or to get him prosecuted for offences and, therefore, the respondents ought to have waited for one year to initiate any departmental proceeding on the charge of 'gross misconduct' or of 'minor misconduct'. The learned advocate for the petitioner relied upon clause 19.4 of the bipartite settlement. The said clause 19.4 of the bipartite settlement reads as follows:--

'If after steps have been taken to prosecute an employee or to get him prosecuted, for an offence, he is not put on trial within a year of the commission of the offence, the management may then deal with him as if he had committed an act of gross misconduct' or of 'minor misconduct', as defined below provided that if the authority which has to start prosecution proceedings refuses to do so or comes to the conclusion that there is no case for prosecution it shall be open to the management to proceed against the employee under the provisions set out below in clauses 19.11 and 19.12 infra relating to discharge, but he shall be deemed to have been on duty during the period of suspension, if any. and shall be entitled to the full wages and allowances and to all other privileges for such period. In the event of the management deciding, after enquiry, not to continue him in service, he shall be liable only for termination with three months pay and allowances in lieu of notice as provided in clause 19.3 (supra). If within the pendency of the proceedings thus instituted he is put on trial such proceedings shall be stayed

pending the completion of the trial, after which the provisions mentioned in clause 19.3 above shall apply.'

47. It is not the case of the petitioner that the bank (respondent No. 3) filed any complaint case against the petitioner before any learned criminal court. It also does not appear that the bank (respondent No. 3) lodged any information or complain with the Police against the petitioner. In this context reference may be made to paragraph 7 of the writ petition which reads as follows:--

That your writ petitioner on the call of the aforesaid letter dated 25.10.94 (Annexure-'B') resumed or joined his duties on the day of 7th November, 1994. On joining on 7.11.94 the said Senior Branch Manager of Burrabazar branch asked your petitioner to visit or meet Burrabazar Police Station authority, your petitioner as per advice of the said Senior Branch Manager met the said Police Authority and came back to the said branch of the bank. Your petitioner in the said Police Station came to know that he was called for some irregularities in Savings Bank Accounts of Bank customers on the FIR filed by Burrabazar branch, Calcutta by the respondent No. 3'.

48. The petitioner did not say that against him any complain or information was lodged by the bank with the police. Bank might have lodged information or complaint with the Police regarding some irregularities in the savings bank accounts but that does not mean that the bank took steps to prosecute the petitioner or to get him prosecuted. If in course of investigation or enquiry it is found by the Police Authority that the petitioner is involved with the irregularities then Police may initiate criminal proceeding against the petitioner but it cannot be said that the bank took steps to prosecute the petitioner or to get him prosecuted. From the petition it does not appear that the bank (respondent No.3) has either filed any complaint against the petitioner before the criminal court or lodged any information or complain with the police against the petitioner.

49. This court is of the view that only in those cases where the bank has either filed a complaint before the criminal court against an employee or lodged an information or complain with the police against an employee disclosing his name, the provision 'steps have been taken to prosecute an employee or to get him

prosecuted', is attracted.

50. No material has been placed before this court to indicate that the respondent No. 3 has taken any step to prosecute the writ petitioner or to get him prosecuted. Under these circumstances this court is of the view that Clause 19.4 of the bipartite settlement is not attracted in the instant case.

51. The expression 'offence' as used in Chapter XIX of the bipartite settlement has been defined in clause 19.2 of the bipartite settlement. The said clause 19.2 reads as follows:--

'By the expression 'offence' shall be meant any offence involving moral turpitude for which an employee is liable to conviction and sentence under any provision of law.'

52. It was argued by the learned Advocate for the respondents that the charges levelled against the petitioner by the charge-sheet (Annexures 'F & 'G' of the petition) do not involve moral turpitude and therefore charges do not constitute 'offence' within the meaning of the aforesaid clause 19.2 of the bipartite settlement. At this stage it will be necessary to refer to the meaning of the word 'moral turpitude'.

53. In *Durga Singh v. State of Punjab* , 'moral turpitude' was held to be a term generally taken to mean a conduct contrary to justice, honesty, modesty or morals and contrary to what a man owes to fellowman or to society in general.

54. In *Baleshwar Singh v. District Magistrate and Collector, Banaras* : AIR1959 All71 . It was observed as follows:--

'The expression 'moral turpitude' is not defined any where. But it means anything done contrary to justice, honesty, modesty or good morals. It implies depravity and wickedness of character or disposition of the person charged with the particular conduct. Every false statement made by a person may not be moral turpitude, but it would show to it disclosed vileness or depravity in the doing of any private and social duty which a person owes to his fellowman or to the society in general. If, therefore, the individual charged with a certain conduct owes duty either to another

individual or to the society in general to act in a specific manner or not to act and the still acts contrary to it and does so knowingly, his conduct must be held to be due to vileness and depravity. It will be contrary to accepted customary rule and duty between man and man. A duty has been cast on individuals not to act in a certain manner and divert public servants from the normal course. This is a duty which every individual who is governed by the above law owes to the society whose servant, every public servant obviously is and individual conduct in giving false information of a public servant in the circumstances stated in section 182(a) too is. therefore, contrary to justice, honesty and good morals and shows depravity of character and wickedness.'

55. In *Rishal Singh v. Chandgiram* 0065/1966 a learned Division Bench of Hon'ble Punjab High Court held that the offence of being in possession of unlicensed revolver implies no depravity or wickedness of the character or disposition which would involve any moral turpitude.

56. *Baleshwar Singh's* case (AIR 59 All 71) was considered in *Mangali v. Chhakilal* : AIR1963 All527 . In Mangal's case the learned Judge after extracting the observation in *Baleshwar Singh's* case observed as follows:--

'With great respect, it appears to me that some of the observations made in the decisions have been too widely stated, and if followed literally may make every act punishable in law as offence involving moral turpitude. That, however, could not be the intention with which those observations were made. From a consideration of the Dictionary meaning of the words 'moral' and 'turpitude' as well as the real ratio decidendi of the cases, the principles which emerges appears to be that the question whether a certain offence involves moral turpitude or not will necessarily depend on the circumstances in which the offence is committed, it is not every punishable that can be considered to be an offence involving moral turpitude. Had that been so, the qualification involving moral turpitude, would not have been used by the legislature and it would have disqualified every person who had been convicted of the Offence. The tests which should ordinarily be applied for judging whether a certain offence does not involve moral turpitude appear to be: (1) Whether the act leading to a conviction was such as could shock the moral

conscience of society in general. (2) Whether the motive which led to the act was a base one. and (3) Whether on account of the act having been committed the perpetrator could be considered of a depraved character or a person who was to be looked down upon by the society. No absolute standard can be laid down for deciding whether a particular act is to be considered one involving moral turpitude, but the above are the general tests which should be applied and which should in most cases be sufficient for enabling one to arrive at a correct conclusion on the question.'

57. In Indian Overseas Bank's case (supra) the learned Judge of Hon'ble Delhi High Court in paragraph 21 of the reported decision observed as follows:--

'These authorities clearly lay down that there must be something so wicked and depraved in the action before an offence can be called as involving moral turpitude. The mere fact that a person is held guilty under some law would not mean that he was guilty of an offence involving moral turpitude.'

58. The learned Judge in Indian Overseas in paragraph 22 of the reported decision observed as follows;--

'Mr.Pai in this connection referred me to Bouvier's Law Dictionary, page 247 where 'moral turpitude' is defined as 'an act or baseness, vileness or depravity in the private and social duties which a man owes to his fellowmen or to society in general, contrary to the accepted and customary rule of right and duty between man and man. In my view moral turpitude' can only mean vileness and depravity of character and I cannot persuade myself to hold that the offence in this present case is one which Involves 'moral turpitude'.

59. In Jai Singh Rangaraw Rout v. Maharashtra State Electricity Board reported in (1980) 1 LLJ 117 the learned Judge of the Hon'ble Bombay High Court observed as follows:--

The term 'moral turpitude' by its very nature is somewhat nebulous because it involves an examination of an action in the light of the prevailing moral norms. Unlike legal norms moral norms are somewhat nebulous. They can vary from time

to lime, from society to society and even from individual to individual. Hence it is quite possible than an action which may be violative of moral norms in one society may appear acceptable to another society. Hence one can only judge the action in any given case in the light of what one considers to be the prevailing moral norms of the society in which such an action has taken place. Secondly, the action should not merely be contrary to moral norms, but it should involve a violation of the moral code in such a manner that it indicates baseness or depravity of character.'

60. In Black's Law Dictionary, 6th edition at page 1517 the term 'moral' has been explained as below:--

'Moral turpitude. A term of frequent occurrence in statutes, especially those providing that a witness' conviction of a crime involving moral turpitude may be shown as tending to impeach his credibility. In general, it means neither more nor less than 'turpitude; i.e. anything done contrary to justice, honesty, modesty, or good morals. It is also commonly defined as an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellowman or to society in general, contrary to the accepted and customary rule of right and duty between man and man. Although a vague terra, it implies something immoral in itself regardless of its being punishable by law. Thus excluding unintentional wrong or an improper act done without unlawful or improper intent. It is also said to be restricted to the gravest offences, consisting of felonies, infamous crimes, and those that are *Malum-in-Se* and disclose a depraved kind. *Bartos v. United States District Court for District of Nebraska*, CCA Neb. 19F 2d 722. 724.'

61. Reference may also be made to the *Management of Tractors and Firms Equipments Ltd v. The Presiding Officer*, 1st Additional Labour Court and T.A. Das (1993(1) MLJ 41). In this case the learned Judge of the Hon'ble Madras High Court, in paragraph 16 of the reported decision *intra alia*, observed as follows:--

'From the above it is clear that every act punishable in law would not amount to an offence involving moral turpitude. If that had been the intention, then there is no necessity at all for all statutes to say that a person convicted of an offence involving moral turpitude will be exposed to certain consequences or disqualification. The legislature would have merely stated that a person who is

punished for violation of any law would be exposed to such consequences, or disqualification. The question whether conviction for a particular offence involves moral turpitude will depend upon the facts and circumstances of the case. However, in order to come within the scope of the phrase 'moral turpitude' there must be an element of baseness and depravity in the act for which a particular individual has been punished. The act must be vile or harmful to society in general or contrary to accepted rules of right and duties between man and man. Mere violation of a particular statute cannot amount to the commissions of an act involving moral turpitude. I am in complete agreement with Shrivastava, J. of Allahabad High Court in Mangali v. Chhakilal, who has laid down the following tests:-

- (1) Whether the act leading to conviction was such as could shock the moral conscience of society in general?
- (2) Whether the motive which led to the act was a base one? and
- (3) Whether on account of the act having been committed the perpetrator could be considered to be of depraved character or a person who was to be looked down upon by the society'?

62. After considering the above referred observations this court is of the view that the term 'moral turpitude' involves an examination of an action on the touch stone of the prevailing moral norms. Moral norms can vary from time to time, from society to society and from individual to individual. But in the term 'moral turpitude', the word 'moral' describes conduct that conforms to the generally accepted rules which society recognizes should govern every one in his social and commercial relations with others. regardless of whether those rules constitute legal obligations. The adjective 'moral' when used in connection with the word 'turpitude' means any manner or custom relating to or according to the received and customary rule of right and duty between man and man; relating to the private and social duties of men as distinguished from-civil responsibilities. 'Turpitude' is base or shameful character; baseness, vileness; depravity, wickedness; inherent baseness or vileness of principle, words, or actions; shameful wickedness; depravity. 'Moral' in combination with 'Turpitude' is a tautological expression which does nothing more

than add emphasis to the word 'Turpitude', 'Moral Turpitude' is an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellowmen or the society in general, contrary to the accepted and customary rule of right and duty between man and man. In its legal sense it includes everything done contrary to justice, honesty, modesty or good morals. It implies something immoral in itself regardless of its being punishable by law. An offence may not involve moral turpitude.

63. It appears from the charge-sheet (Annexure-'F' of writ petition) that the writ petitioner was charged as follows:-

- (a) You tampered bank 's records,
- (b) You helped perpetration of fraud,
- (c) You did acts prejudicial to the interest of the bank,
- (d) You did acts involving or likely to involve the bank in serious loss,
- (e) You did acts tarnishing the image of the bank, (f) You did acts unbecoming of a bank employee.

Without any shade of doubt it can be said that charges (c). (d). (e) & (f) quoted hereinabove. at no stretch of imagination, can be described as offences involving moral turpitude. True that the charge (b) quoted hereinabove does not allege that the petitioner himself committed fraud, it alleges that the petitioner helped perpetration of fraud. An act of a bank employee helping perpetration of fraud certainly involves moral turpitude. A crime in which is an ingredient is a 'crime involving moral turpitude'. State v. Brodson, 103 NW 2d 912, 914, 11 Wis 2d 124. Words and Phrases. Permanent Edition, Vol. 10A. An action of helping perpetration of such crime also involves moral turpitude. An act of a bank employee, tampering bank's records also involves moral turpitude because it is contrary to justice, honesty, and good morals. Therefore, charges (a) and (b) quoted hereinabove involve moral turpitude. Under these circumstances this court is of the view that the learned counsel for the respondents is not wholly correct in submitting that the charges brought against the petitioner by Annexure-'F' & 'G' of

the petition do not constitute an offence involving moral turpitude.

64. It is an admitted fact that trial in connection with the criminal proceeding has not yet been started. The learned Advocate for the respondents relied upon *Vijoy Singh v. Central Bank of India* (1984(2) SLR 191), in the said case the learned Division Bench of Hon'ble Punjab and Haryana High Court while considering clause 19.4 of the bipartite settlement held that clause 19.4 of the bipartite settlement applies in two contingencies, firstly, if the accused is to be put to trial, departmental enquiry cannot be initiated on the same allegations and secondly, if the departmental enquiry is initiated and subsequently the person is put on trial in the criminal court such proceeding is to be stayed. The learned Division Bench held that only when the charge is framed it can be said that the accused has been put on trial. It is undisputed in the instant case that the petitioner has not so far been charged by the criminal court. That being the position departmental enquiries could be initiated against the petitioner.

65. It was argued by the learned advocate for the respondents that the petitioner challenged the charge -sheet and as no punitive action has yet been taken, it is difficult to state, apart from speculation what the outcome of the proceeding will be. In case the petitioner is punished, it will certainly be open to him either to file an appeal provided in the relevant rules or to take other action that he may be advised to resort to. The learned advocate for the respondents submitted that the writ petition is premature and should be rejected on this ground itself. The learned advocate for the respondents relied upon *Chanan Singh v. Registrar, Cooperative Societies Punjab and Ors.* : (1976) IILLJ98SC . The relevant paragraph is paragraph 5 of the reported decision which reads as follows:--

'Other obstacles in the way of granting the appellant relief were also urged before the High Court and before us but we are not inclined to investigate them for the short reason that the writ petition was in any case premature. No punitive action has yet been taken. It is difficult to state, apart from speculation what the outcome of the proceedings will be. In case the appellant is punished it is certainly open to him either to file an appeal as provided in the relevant rules or to take other action that he may be advised to resort to but it is not for us, at the moment to consider

whether a writ petition will lie or whether an industrial dispute should be raised or whether an appeal to the competent authority under the rules is the proper remedy, although these are issues which merit serious consideration.'

66. This court is of the view that Chanan Singh's case (supra) has no manner of application in the facts and circumstances of the instant case. The writ petition was moved, inter alia, on the ground that pending Criminal Proceeding, departmental proceeding cannot continue. Hon'ble Supreme Court in Kusheshwar Dube's case (supra) laid down that when criminal proceeding and departmental proceeding are continuing simultaneously it would be open for the delinquent employee to seek an order of stay or injunction from the court and whether in the facts and circumstances of a particular case there should or should not be such simultaneously of the proceedings would then receive judicial consideration and the court will decide in the given circumstances of a particular case as to whether the disciplinary proceeding should be interdicted, pending criminal trial. In view of principles laid down by Hon'ble Supreme Court in Kusheshwar Dube's case and in view of the facts and circumstances involved in the instant case this court is of the view the petition is not premature.

67. It was argued on behalf of the petitioner that the respondents ought to have waited for one year after lodging a complaint, with the police. It has been stated earlier in this judgment that no evidence has been produced before this court to show that the respondents took any step to prosecute the petitioner or to get him prosecuted. Therefore, this court is of the view that the words 'he is not put on trial within a year of the commission of the offence' In clause 19.4 of the bipartite settlement have no manner of application in the facts and circumstances of this case. That apart, it is to be noticed that the period of waiting for one year starts from the 'commission of the offence' and not from the date of either lodging complain before the police or filing a complaint petition before the learned criminal court. Therefore, the contention of the learned advocate that the respondents had no jurisdiction, authority and competence to initiate departmental enquiry against the petitioner fails.

68. It was argued on behalf of the petitioner that he was not given proper opportunity to give his explanation in connection with the charges levelled against him and, therefore, provisions of clause 19.1 of the bipartite settlement have been violated. It appears from Annexure 'F' of the writ petition that the petitioner was given reasonable and proper opportunity to give his explanation. In Annexure 'F' of the writ petition, it had been stated as follows :--

'You may, if you so desire, submit to the said Enquiry Officer your written statement of defence at least three days before the date of enquiry.'

69. According to the petitioner, the said charge-sheet was served upon the petitioner on 30.6.95. The petitioner on 4.7.95 wrote a letter to the respondent to know the position if the alleged charge-sheet was issued after complying with the provisions contained in Clause 19.4. of the Bipartite settlement. It is also the case of the petitioner that he received the corrigendum of the charge-sheet (Annexure 'G' of the writ petition) on 17.7.95. It appears that on 19.7.95. the petitioner again sent a written representation to the respondent No. 1. It is the petitioner's case that on 1.11.95, the petitioner received a letter/order-sheet from the respondent No.4 (E.O) proposing *intra alia* that the regular hearing of the enquiry would be held on and from 14.11.95 on regular basis. Therefore, it is evident that the petitioner had proper and reasonable opportunity to give his explanation in connection with the charge-sheet. Therefore, it cannot be said that the provisions of clause 19.1 of the bipartite settlement have been violated by the respondents. The learned counsel for the petitioner relied upon the case of *Managing Director, U.P. Warehousing Corporation and Ors. v. Bijoy Narayan Bajpayee* : (1980)ILLJ222SC . The learned counsel relied upon paragraphs 11 and 21 of the reported decision. The learned counsel for the petitioner relied upon the following lines from paragraph 14 of the reported decision:

'A regular departmental enquiry takes place only after the charge-sheet is drawn up and served upon the delinquent and the latter's explanation is obtained.'

70. The contention of the learned Advocate of the petitioner is that the petitioner could not give any effective explanation in respect of the charges levelled against him by the charge-sheet and, therefore, no regular departmental enquiry took

place. It has been noticed earlier that ample opportunity was given to the petitioner to submit his explanation in connection with the charges levelled against him by the charge-sheet. Therefore, the submissions made on behalf of the petitioner cannot be accepted. In the facts and circumstances of the case discussed earlier, paragraph 21 of U.P. Warehousing Corp.'s case (supra) also has no manner of application in this case.

The learned advocate for the petitioner referred to-

(a) State of U.P. v. Md. Nooh (AIR 1958 SC 86).

(b) Surwalmal Purohit and Anr. v. Collector of Central Excise & Land Custom, Shilling and Anr. (AIR 1964 Assam and Nagaland 121).

(c) N. Raghaban Pillai v. Union of India (1996(1) CLJ 197) in support of his contention that in the instant case the writ of *certiorari* can be issued as the enquiry held against the petitioner is a quasi-judicial enquiry and, therefore, alternative remedy is not a bar. This court has already stated earlier in this judgment that the provisions contained in the bipartite settlement are not statutory provisions themselves and have no statutory force and, therefore, it cannot be enforced in a writ jurisdiction .

71. The learned Advocate for the petitioner also relied upon Rabindra Nath Ghosal v. University of Calcutta reported in (Cal LT 1991(1) HC 465). It was argued on behalf of the petitioner that the petitioner suffered mental torture, agony and oppression for the departmental proceedings which told heavily upon him coupled with uncertainty of his future. It was submitted by the learned advocate for the petitioner that this court should exercise its jurisdiction under Article 226 of the Constitution and quash and set aside the order of suspension (Annexure 'E' of the writ petition), charge-sheet (Annexure 'F' of the writ petition) and the corrigendum (Annexure 'G' of the writ petition). This court is of the view that Rabindra Nath Ghosal's case (supra) has no manner of application in the facts and circumstances involved in the instant case.

72. The learned advocate for the petitioner also referred to the Management of the 'Hindu', Madras, Secretary, Hindu Office and National Press Employees Union and another : (1960)ILLJ187Mad . The learned Advocate for the petitioner referred to and relied upon paragraphs 5 & 6 of the Reported decision in 'The Hindu's case (supra). This court carefully considered those two paragraphs and is of the view that in the facts and circumstances involved in the instant case, the said decision has no manner of application in the instant case.

73. It was argued on behalf of the petitioner that since the petitioner retired from the service on 31st December. 1995 the departmental proceeding against him is no longer relevant and should be quashed or set aside. The learned advocate for the respondents submitted that in the interest of Justice, a delinquent committing misuse of public money should not be allowed to escape punishment even after retirement. Reliance was placed upon Union of India v. Ajoy Kr. Patnaik reported in : AIR 1996 SC280 . At paragraph 10 of the reported decision Hon'ble Supreme Court observed, inter alia, as follows:--

'..... It is true that pending the proceedings the respondent has already retired from service on attaining age of superannuation, but that would not provide a ground to dispose of this matter without giving any finding on the action taken by the competent authority. Otherwise, in all cases it would cause grave damage to the public justice. The employee would get away with it due to pending proceedings. Therefore, it needs to be considered and decision rendered thereon whether the action taken by the Government or the competent authority is valid in law. In that perspective, mere retirement of the officer by efflux of time pending proceeding would not be a ground to close the matter.'

74. This court is of the view that in view of the above quoted observation of the Hon'ble Supreme Court and in view of clause 48 of the Bank of Baroda (Employees) Pension Regulations, 1995 (for short Pension Regulation), the retirement of the petitioner pending departmental proceeding cannot cast any cloud on such departmental proceeding. Mere retirement of the petitioner by efflux of time pending departmental proceeding would not be a ground to close the matter. In this connection reference may be made to the second proviso to

Regulation 48(1) of the Pension Regulation. Regulation 48(1) of the Pension Regulation reads as follows:--

'The Competent Authority may withhold or withdraw a pension or a part thereof. whether permanently or for a specified period, and order recovery from pension of the whole or part of any pecuniary loss caused to the Bank if in any departmental or judicial proceedings the pensioner is found guilty of grave misconduct or negligence or criminal breach of trust or forgery or acts done fraudulently during the period of his service:

Provided that the Board shall be consulted before any final orders are passed:

Provided further that departmental proceedings, if instituted while the employee was in service, shall, after the retirement of the employee, be deemed to be proceedings under these regulations and shall be continued and concluded by the authority by which they were commenced in the same manner as if the employee had continued in service:

Provided also that no departmental or judicial proceedings, if not initiated while the employee was in service, shall be instituted in respect of a cause of action which arose or in respect of an event which took place more than four years before such institution.'

75. In view of the discussions made hereinabove. the writ petition fails and the same is dismissed. Interim order, if any, is vacated. Interlocutory applications are also disposed of. However, there shall be no order as to costs.

Immediately after the judgment was delivered, the learned advocate for the petitioner prayed for stay of the operation of the judgment and order passed today. The learned advocate appearing for the respondents opposed the prayers. Considered the prayer made on behalf of the writ petitioner and the same is refused.

76. Petition dismissed