



Case Brief

Swawalamban Microfinance Financial Institution Limited vs. Labour Court and Others

Published Date

31 May, 2025

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Case Reference	080-WF-0034
Parties	Swawalamban Microfinance Financial Institution Limited (the “Petitioner”) v. Labour Court and others (the “Respondents”)
Court	Supreme Court (Full Bench)
Link	Full text link (available in Nepalese language only)

Facts of the Case

The Petitioner, a microfinance development bank licensed by Nepal Rastra Bank (NRB) (the Central Bank of Nepal) terminated the employment services of the Respondents on the grounds of misconduct, specifically for being absent from work for more than 30 days without prior notice. The decision was initially made by the Chief Executive Officer and later upheld by the Board of Directors (BOD) following an internal appeal by the Respondents. Dissatisfied with the decision, the Respondents filed an appeal before the Labour Court.

The Labour Court, upon hearing the matter, set aside the decision of the BOD. In response, the Petitioner filed a writ petition before the Supreme Court, challenging the jurisdiction of the Labour Court.

Ruling

The Supreme Court, by a majority of 4–1, ruled in favour of the Petitioner, holding that the Labour Court did not have jurisdiction to entertain the matter. Consequently, the Court dismissed the Labour Court’s order of reinstatement and upheld the BODs’ decision to terminate the Respondents. In addition, the Supreme Court issued an order dismissing all cases filed before the Labour Court concerning banks and financial institutions on the ground of lack of jurisdiction.

Key Issues Raised

This case has examined the broader applicability of the Labour Laws (Labor Act, 2074 and Labor Regulations, 2075) for banks and financial institutions, despite the primary question being confined to the appellate jurisdiction of the Labour Court over the decisions made by the BOD of the banks/financial institutions pertaining to the disciplinary actions. In this context, the major issues addressed are as follows:

Between the Labour Act, 2074 and the Banks and Financial Institutions Act, 2073 (BAFIA), which law should be regarded as the special law in matters relating to labour rights for banks and financial institutions?

This matter raises a significant judicial question regarding whether the Labour Act or BAFIA should be considered as the special law for labour rights in banking institutions. The Labour Act, 2074 does not specifically mention banks, it refers to "companies," a term broad enough to include banks and financial institutions. However, it is important to note that although banks and financial institutions fall within the definition of companies, they are subject to distinct regulatory procedures, being governed comprehensively by the Nepal Rastra Bank (NRB), the central regulatory authority for the banking sector.

Despite this, Section 133 of the BAFIA states that matters related to employees, such as appointment, discipline, and dismissal, shall be governed by internal byelaws. These byelaws are to be prepared in a format prescribed by NRB and must be approved by it. Based on this provision, before the Labour Act, 2074 came into force, it was argued that BAFIA is a special law for banks and financial institutions, particularly for matters already covered by the NRB-approved byelaws. However, after the Labour Act, 2074 was enacted, the Supreme Court's Division Bench in *Prime Commercial Bank Ltd. v. Labour Court and Others* (075-WO-0405) (Full text here) held that the Labour Act applied to banks and financial institutions.

In contrast, the Full Bench in the present case reached a different conclusion. It ruled that BAFIA is a special law and that employee-related matters in banks and financial institutions are to be regulated exclusively by the byelaws approved by NRB, as provided in Section 133 of BAFIA and supported by Section 108(3) of the Labour Act. Therefore, the Labour Act does not apply to banks and financial institutions.

Whether the Labour Court can exercise its appellate jurisdiction over the employment related decisions made by the BOD of banks and financial institutions?

Section 165 of the Labour Act, 2074 allows employees to appeal employment-related decisions to the Labour Court. However, if an enterprise has an internal appeal process outlined in its byelaws, that process must be followed first.

In this context, the Court held that employees of banks and financial institutions cannot appeal to the Labour Court, as the Labour Act does not apply to them. Although these institutions are not explicitly excluded under Section 180 of the Labour Act, the Court reasoned that since the Act provides exceptions for Special Economic Zones, and banks and financial institutions, being subject to special regulation and supervision by NRB, fall within a similar category. Therefore, they are considered excluded from the scope of the Labour Act.

Regarding the right to appeal, the Court clarified that such a right is still preserved within the internal mechanisms of banks and financial institutions. Specifically, employees retain the right to first appeal to the Chief Executive Officer and, subsequently, to the BOD. The Court further emphasized that these authorities possess the requisite qualifications and follow prescribed procedures, thereby fulfilling the requirement that appeals be heard by a competent authority

As a result, employment matters in these institutions are governed by internal byelaws approved under Section 133 of BAFIA, and the Labour Court has no jurisdiction over such cases.

Implications

After this decision, it can be reasoned that, banks and financial institutions are no longer governed by the Labour Act, 2074. As a result, the Labour Court does not have appellate jurisdiction over employment matters related to these institutions. Due to this, several labour-related disputes involving banks and financial institutions have been dismissed by the Labour Court for lack of jurisdiction.

Any decision made by BOD is considered final, unless the institution's internal by-laws specifically allow for an appeal to labour court. Since there is no alternative appeal mechanism beyond the decision of the BOD, affected employees do not have a direct legal remedy under the labour law framework. As a result, aggrieved parties may now resort to writ petitions as the sole available remedy, as provided under Articles 133 and 144 of the Constitution of Nepal, 2072. These provisions empower the Supreme Court and High Courts to issue writs as an equitable remedy for the enforcement of fundamental rights. Previously, writ jurisdiction was sought only after a decision was made by the Labour Court. However, under the current framework, writ petitions are filed directly before the High Court or Supreme Court, since the Labour Court no longer hears such cases.

Conclusion

This ruling raises concerns about the broader implications for employee rights and the interpretation of interdependent legal frameworks. A more balanced approach would have been to acknowledge BAFIA's role in sectoral governance while allowing the Labour Court jurisdiction in cases where BAFIA does not explicitly regulate employment disputes.

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