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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Judgment: 17th September, 2018*

+ LPA 358/2018

UNION BANK OF INDIA Appellant

Through Mr. O.P. Gaggar & Mr. Gautam
Krishna Deka, Advocates.

versus

RAKESH KUMAR PURI Respondent

Through Mr. M.M. Singh & Mr. Jitendra
Kumar, Advocates.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J. (ORAL)

CM APPL 26482/2018 (delay in filing)

1. This application has been filed by the applicant/appellant seeking condonation of 16 days delay in filing the appeal.
2. The prayer made in this application is not opposed. Accordingly, delay of 16 days in filing the appeal is condoned.
3. The application stands disposed of.

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4. Challenge in this appeal is to the order dated 06.04.2018 passed by learned Single Judge of this Court while allowing the petition filed by the petitioner/respondent herein, directions were issued to the reviewing authority of the appellant/bank to reconsider the order dated 29.08.2017 within six weeks from the date of order passed by learned Single Judge.

5. Some necessary facts required to be noticed for disposal of this appeal are that the respondent herein was working as a Chief Manager with the appellant bank. As per the bank, on account of discovery of irregularities conducted by the respondent on various counts, show cause notices were issued to the respondent on 08.01.2015, 04.02.2015 and 10.12.2015. Not being convinced with the explanation rendered by the respondent, articles of charge were issued against the respondent on 22.04.2016. The detailed show cause notices issued on 08.01.2015, 04.02.2015 and 10.12.2015 were made as statement of allegation in support of articles of charge. Since, the respondent was about to retire, the bank invoked provisions of the Officers Service Regulation's regulation 20 (3) which empowers the bank to continue with the disciplinary proceedings already initiated against the employee prior to his superannuation. The respondent superannuated on 30.04.2016. The inquiring authority on 09.08.2016 submitted his report holding the respondent guilty of some of the charges levelled against him. However, the disciplinary authority did not agree with the finding of the inquiring authority on 05.10.2016 and held that some of the charges were not proved against the delinquent officer and accordingly, an opportunity to represent/explain was given to the officer. Thereafter, on 31.12.2016, a punishment order imposing major penalty of dismissal from service was passed. The undated appeal filed by the respondent was rejected by the appellate authority which led to filing of the writ petition being W.P. (C) 3353/2018.
6. Counsel for the appellant submits that the matter was decided on the first date of hearing without any opportunity having been granted to

appellant/bank to file counter affidavit or seek complete instructions. Counsel submits that the learned Single Judge has placed reliance on the observations made by the Supreme Court in the case of **UCO Bank & Ors. Vs. Rajendra Shankar Shukla** reported in 2018 SCC Online SC 133. The following passages were quoted, which reads as under :

"19. Under the circumstances, we have no hesitation in dismissing the appeal filed by the Bank also on the ground that the punishment of dismissal could not have been imposed on Shukla after his superannuation.

20. However, we must observe that the learned Single Judge had held against the Bank and the Division Bench also held against the Bank. Notwithstanding this the Bank preferred this appeal. The appeal was preferred despite at least two decisions delivered by this Court making the legal position clear. The Bank would have been well-advised to follow the law laid down by this Court rather than unnecessarily litigate against an employee who has superannuated. We have no doubt that Shukla must have spent a considerable amount in litigation. Accordingly, while dismissing the appeal, we impose costs of Rs. 1 lakh which will be paid to Shukla within 4 weeks from today towards his legal expenses."

7. Learned counsel for the appellant contends that this judgment was passed by a Bench of two judges and the same is per incuriam since a contra view has been taken by a decision rendered by a three judges Bench in the case of **State Bank of India Vs. Ram Lal Bhaskar & Another** reported in JT 2011 (12) SC 286. Reliance is placed on para 6, which is reproduced below :

"6. We have perused the decision of this Court in **UCO Bank and Another v. Rajinder Lal Capoor** (supra) and we find that in the facts of that case the delinquent officer had already superannuated on 01.11.1996 and the charge-sheet was issued after his superannuation on 13.11.1998 and this

Court held that the delinquent officer having been allowed to superannuate, the charge-sheet, the enquiry report and the orders of the disciplinary authority and the appellate authority must be held to be illegal and without jurisdiction. In the facts of the present case, on the other hand, we find that the charge-sheet was issued on 22.12.1999 when the respondent no.1 was in service and there were clear provisions in Rule 19(3) of the State Bank of India Officers' Service Rules, 1992, that in case disciplinary proceedings under the relevant rules of service have been initiated against an officer before he ceased to be in the Bank's service by the operation of, or by virtue of, any of the rules or the provisions of the rules, the disciplinary proceedings may, at the discretion of the Managing Director, be continued and concluded by the authority by which the proceedings were initiated in the manner provided for in the rules as if the officer continues to be in service, so however, that he shall be deemed to be in service only for the purpose of the continuance and conclusion of such proceedings. We may mention here that a similar provision was also relied on behalf of UCO Bank in ***UCO Bank and Another v. Rajinder Lal Capoor*** (supra) in regulation 20(3)(iii) of the UCO Bank Officers Employees Service Rules, 1979, but this Court held that the aforesaid regulation could be invoked only when the disciplinary proceedings had been initiated prior to the delinquent officer ceased to be in service. Thus, the aforesaid decision of this Court in ***UCO Bank and Another v. Rajinder Lal Capoor*** (supra) does not support the respondent no.1 and there is no merit in the contention of the counsel for the respondent no.1 that the enquiry and the order of dismissal were illegal and without jurisdiction.”

(emphasis added)

8. Counsel for the appellant submits that in the present case also, articles of charge were framed prior to the superannuation of the respondent. Learned counsel also submits that in the case of ***Chairman-cum-***

Managing Director Mahanadi Coalfield Limited Vs. Rabindranath Choubey reported in (2013) 16 SCC 411, two Judges Bench of the Supreme Court has referred the issue to a larger Bench. In paras 21 and 23, the Court held as under :

“21. It is thus, clear that the question as to whether penalty of dismissal could be imposed after a retirement was not categorically raised or dealt with. No doubt, penalty of dismissal was inflicted upon the employee in that case. But it was not specifically on in clear terms contended that such a penalty could not be imposed on an employee who is already permitted to retire. At the same time, innuendo, the judgment gives a semblance of indication that such a penalty is permissible because of the reason that as per the rules, for the purposes of enquiry, the employee shall be deemed to be in service. As a sequitor, one can deduce the principle that when the Rules, by creating fiction, treat the officer still in service, albeit for the limited purpose of the continuance and conclusion of such proceedings, then any of the prescribed penalties, including dismissal, can be imposed. However, as we have pointed out above, the issue of permissibility of penalty of dismissal on such a retired official was neither raised nor any direct discussion followed thereupon. At the same time, fact remains that penalty of dismissal, even after the retirement, was upheld. This goes contrary to the dicta laid down in *Jaswant Singh Gill* (supra) which took the view that no major penalty is permissible after retirement was not even referred to.

23. It is the case of the appellant that in the charge sheet served upon the respondent herein, there are very serious allegations of misconduct alleging dishonestly causing coal stock shortage amounting to Rs. 31.65 crores, and thereby causing substantial loss to the employer. If such a charge is proved and punishment of dismissal is given thereupon, the provisions of Section 4(6) of the Payment of Gratuity would naturally get attracted and it would be within the discretion of the appellant to forfeit the gratuity payable to the respondent. As a corollary one can safely say that the

employer has right to withhold the gratuity pending departmental inquiry. However, as explained above, this course of action is available only if disciplinary authority has necessary powers to impose the penalty of dismissal upon the respondent even after his retirement. Having regard to our discussion above of Jaswant Singh Gill (supra) and Ram Lal Bhaskar (supra), this issue needs to be considered authoritatively by a larger Bench. We, therefore, are of the opinion that present appeal be decided by a Bench of three Judges.”

9. It is thus contended that the issue as to whether order of dismissal can be passed in respect of an employee who has been superannuated is still pending. Counsel submits that the appellant would have no hesitation in complying of the directions of the learned Single Judge. However, the passage of the judgment quoted in the case of **UCO Bank** (supra) should not come in the way of appellant while deciding the representation of the respondent. Counsel for the respondent submits that the articles of charge have not been proved against the respondent. He submits that even after four show cause notices issued against him, respondent was posted in a sensitive place which would show that the Bank had full faith in him. Counsel for the respondent however does not dispute that the issue in question has been referred to a larger Bench. He submits that the respondent has rendered 38 years of unblemished service and therefore, his representation may be considered unaffected by any observations made in the order passed by learned Single Judge. Ordered accordingly.
10. In view of the stand taken by learned counsel for the parties, the appeal stands disposed of. Needless to say that the appellant would consider the representation of the respondent in accordance with law and further

in case, the respondent is aggrieved, he may seek such remedy as available in accordance with law.

11. As prayed, it would be open for the respondent to make a fresh representation which shall be decided expeditiously and not in any case later than 8 weeks from the date of receipt of fresh representation.

CM APPL. 26481 (stay)

12. The application stands disposed of in view of the order passed in the appeal.

G.S.SISTANI, J.

SANGITA DHINGRA SEHGAL, J

SEPTEMBER 17, 2018

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