

GAHC010312962019



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/9499/2019

ABANI KUMAR DAS
S/O. LT. DHANESWAR DAS, R/O. BARPETA ROAD (MINAL NAGAR), WARD
NO.8, P.O. SIMLAGURI, P.S. BARPETA, DIST. BARPETA.

VERSUS

ASSAM GRAMIN VIKASH BANK AND 2 ORS.
REP. BY ITS CHAIRMAN, BHANGAGARH, GUWAHATI-781005, ASSAM.

2:CHAIRMAN

ASSAM GRAMIN VIKASH BANK
BHANGAGARH
GUWAHATI-781005
ASSAM.

3:GENERAL MANAGER

ASSAM GRAMIN VIKASH BANK
BHANGAGARH
GUWAHATI-781005
ASSAM

Advocate for the Petitioner : MR D CHOUDHURY

Advocate for the Respondent : MR. B BANERJEE, SC, AGVB

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

ORDER

02.04.2024

Heard Mr. D. Choudhury, learned counsel for the petitioner. Also heard Mr. A. Ganguly, learned counsel for the respondent No. 1.

2. The petitioner was appointed as Field Supervisor and posted in the Head Office under the erstwhile Pragjyotish Gaonlia Bank. The Pragjyotish Gaonlia Bank, subsequently came to be amalgamated with Assam Gramin Vikash Bank. Taking consideration of the services rendered by the petitioner, he was promoted in due course to the Branch Manager (Grade-I), Manager (Grade-II) and the Senior Manager. He rendered his service with due diligence and to the best of his best abilities till he superannuated from his services on 31.12.2017. Although the petitioner superannuated from service, he was denied of his rightful pension. It is submitted that during his service period, certain anomalies were alleged to have been committed by the petitioner and in that context the Bank authorities had proposed to hold an enquiry under its regulations. The charge-sheet was issued and the petitioner submitted his reply. The bank authorities subsequently upon having considered the matter, informed the petitioner that they had condoned the matter and dropped the charges. These allegations pertained to that period of service rendered while being posted at the Paneri branch of the Bank. However, the bank authorities have claimed that during his service rendered at the Sorbhag Branch, the petitioner had closed the account of one 'Asomi NGO' on his free will and volition which had outstanding liabilities against the venture capital fund under NABARD Scheme and the said NGO received interest free ventured capital fund from NABARD. As the petitioner had closed the account on his own volition, no liability could be

affixed on the borrower by the Bank. This action was considered by the Bank to be totally unauthorized and without following due procedure prescribed and accordingly under Regulation 40 of the Assam Gramin Vikash Bank (Officers and Employees) Service Regulations 2010, the Board of Directors decided that the residual amount of the venture capital fund will be adjusted or recovered from the erring officers or the borrower. Since it could not be recovered from the borrower, the petitioner having caused loss to the bank, the same was sought to be adjusted from his pension or retiral benefits as per the decision of the Board of Directors dated 27.09.2018 of the Assam Gramin Vikash Bank.

3. The learned counsel for the petitioner submits that this is not permissible as the proceedings, if any, were initiated well after the petitioner had superannuated and that apart the allegations that the petitioner had caused loss to the branch of the Bank is without any basis and the said decision has been arrived at by the Board of Directors without initiating any enquiry or any fact finding process to affix the responsibility on the petitioner. Such action of the Board of Directors is not conformity with the provisions of the Regulations and therefore cannot withstand the scrutiny of law and the same therefore needs to be set aside and all retiral benefits payable to the petitioner ought to be released.

4. The learned counsel for the petitioner submits that during the period he had rendered services, the only proceedings which was initiated was in respect of certain acts or omissions alleged to have been indulged by the petitioner during his tenure at the Paneri Branch of the bank. The show cause notice was issued and he had tendered his reply and upon due consideration, the Bank dropped the proceedings and condoned the alleged misconduct by communication dated 29.12.2018. As such there was no Departmental

Proceedings pending at the time the petitioner had superannuated which will permit the Bank authorities to withhold his pension or other retiral benefits. In support of his contention, the learned counsel for the petitioner refers to a Judgment of the Apex Court rendered in *B.S. Hari Commandant Vs. Union of India & Ors*, reported in *2023 Legal Eagle (SC) 407*. He submits that where there is no evidence of any misconduct or any incriminating materials against the officer pointing to his guilt, there is no question of imposing any penalty on the petitioner and withholding his retiral benefits.

5. Per contra, Mr. A. Ganguly, learned Standing Counsel for the bank submits that the petitioner's retiral benefits partially has been released. However, in view of the decision taken by the Board of Directors of the Bank, it is only the leave encashment benefit which has been withheld by the bank. The petitioner's arrear pension was released on 06.03.2020. He has been receiving his due pension from the month of July, 2019. His gratuity was released on 29.05.2019. The Group Savings Linked Insurance Scheme through LIC of India was furnished to the petitioner on 03.09.2020. Except the leave encashment arrears, no other amount is pending by the authorities and this amount has not been released in view of the decision taken by the Board of Directors of Assam Gramin Vikash Bank on 27.09.2018.

6. The learned counsel for the parties have been heard. Pleadings on record have been carefully perused. The facts in the writ petition are not disputed. The petitioner after rendering his service, superannuated from the bank. The proceedings which were initiated by the Bank authorities against the petitioner were considered to have been dropped in view of the communication dated 29.12.2018 wherein the Chairman of the Bank informed the petitioner that he was condoned for the referred irregularities. It is also not in dispute that

pursuant to the communication dated 29.12.2018, there were any disciplinary proceedings initiated against the petitioner in respect of any other alleged misconduct or irregularity. The petitioner thereafter superannuated from service. Except for the decision taken by the Board of Directors by communication dated 27.09.2018, no other decision has been placed on record by the respondents to show that any departmental proceeding was initiated by the Bank against any of his alleged misconduct or any decision thereto has been serviced.

7. The decision of Board of Directors dated 27.09.2018, it is relevant for the purpose of this case is extracted below:

“Agenda Item No.

Circulation Board Note No. 05/2018

Date: 27.09.2018

Board of Directors

Reg: Debit Suspense Account for payment of Venture Capital Fund to NABARD.

National Bank for Agriculture and Rural Development vide its circular No. 32/ICD-6/2005 dated 16.02.2005 had sanctioned a good number of interest free loan to individual borrowers through our different branches under Venture Capital Fund Scheme for Dairy, Poultry, Agri-Clinic and Agri Business Schemes since 2005-2006. The scheme was designed in such manner that NABARD had shared 50% of total project cost which was interest free loan, Bank had shared 40% as term loan of the TFO which attract bank's normal rate of interest and 10% of TFO was borne by the individual borrower as own contribution. The borrower had to repay the bank loan with interest and VCF (NABARD portion) within stipulated time frame. As per scheme, bank had to refund the NABARD portion out of recovered amount @5/9th ratio from borrower as per their demand. Bank had received an amount of Rs.4,77,35,519.00 against 351 numbers of branches as Venture Capital Fund from NABARD on different dates. Out of which an amount of Rs.3,36,84,495.50 have already been refunded to NABARD. Now as per demand of NABARD we have to

remit the residual amount of Rs.1,40,51,023.50 involving 32 number of branches immediately failing which it will appear as non-compliance by the Bank. Since these accounts are dated long back and prior to CBS finding complete records reconciling and recovering the amount from the borrower will take more time. In the meantime NABARD has stated that as per clause 11.1 of the release of Venture Capital, the bank is bound to refund the amount after 9 (nine) years irrespective of the fact that borrower has refunded the amount since the selection of borrower has been done by the bank.

From the record available with Bank there are mainly two reasons for non-recovery of residual amount of Rs.1,40,51,023.50

i) Non detection of account.

ii) Account closed because of knowledge gap by the officials at the branch level.

In order to comply with the directions of NABARD we propose to Debit Rs.1,40,51,023.50 (Rupees one crore forty lakhs fifty one thousand twenty three and paise fifty only) from suspense account and remit the fund to NABARD so that the Bank do not default. Further, we will continue to recover the amount from accounts after identification and checking of records. In cases where the a/cs has been closed we will direct the erring officials to either recover the amount from the borrower or deposit the amount so that the Bank do not incur any loss on this account.

We will be updating the status in every Board meeting till all amounts is adjusted.

Resolution:

If the board members agree, the following resolution may kindly be adopted.

Resolved that to comply the demand of NABARD, Bank have to debit Suspense account for Rs.1,40,51,023.50 (Rupees one crore forty lakhs fifty one thousand twenty three and paise fifty only) to make necessary payment of residual amount of Venture Capital Fund and thereafter bank will adjust the amount from branches either recovery receipt from

borrower or from the erring officials.

Sd/- Sd/- Sd/- Sd/-
Asstt. Manager(Credit) Sr. Manager(Credit) Chief Manager(Credit) General Manager”

8. A careful perusal of the decision extracted above reveals that the venture capital funds Scheme for Diary, Poultry, Agri-Clinic and Agri Business Scheme since 2005-2006 was introduced by NABARD in collaboration with the Assam Gramin Vikash Bank. The scheme was designed in such a manner that NABARD has shared 50% of the total project cost which was interest free, Bank had shared 40% as term loan of the TFO and 10% of the TFO was borne by the individual borrower as their own contribution. The borrower had to repay the bank loan with interest and VCF within the stipulated time frame. As per the scheme, the Bank had to refund NABARD portion, the portion out of the recovered amount at the rate of 5/9th ratio from the borrower as per their demand. Each of the amount which were remitted back to the NABARD, an amount of Rs. 1,40,51,023.50 involving 32 number of branches have not been refund due to failure at the Branches. The Board of Directors arrived at a finding that from the records available, there were two main reasons for non-recovery of the residual amount of Rs. 1,40,51,023.50 (Rupees One Crore Forty Lakhs Fifty One Thousand Twenty Three and paise fifty only) namely

- (i) Non detection of account,
- (ii) account closed because of knowledge gap by the officials at the Branch level.

Consequently, the Bank further resolved that the amount of Rs. 1,40,51,023.50 (Rupees One Crore Forty Lakhs Fifty One Thousand Twenty Three and paise fifty only) was to be remitted from the suspense account to the

NABARD. Further the Bank will continue to recover the amount from the accounts after identification and checking of records. In cases where the accounts have been closed, the erring officials can be directed to either recover the amount from the borrower or deposit the amount so that the Bank does not incur any loss and the amounts are adjusted.

9. The respondents have referred to this particular communication to say that while all other retiral benefits the petitioner have been released only the leave encashment arrears have been withheld as the petitioner is seen to be one of the erring official who had closed the account of a borrower without the complete recovery.

10. After careful perusal of the pleadings on record and also considering the rival submissions, it is seen that there is no material placed before the Court regarding the involvement of the petitioner causing loss to the Bank more particularly in respect of the venture capital funds scheme floated by the NABARD. There are no particulars available before this Court to arrive at a finding that the petitioner was involved in respect of the allegations levelled for causing losses to the Bank authorities. There is no explanation placed before the Court on behalf of the Bank as to why proceedings as contemplated under law was not initiated against the petitioner to arrive at a finding in respect of the involvement of the petitioner towards causing financial losses to the Bank. The bank authorities have merely stated that in view of the decision taken by the Board of Directors, the leave encashment arrears have been withheld by invoking Regulation 40(a) which permits the respondent bank to take such steps against the erring officials where it is reasonably not practicable to observe the procedure laid down under Regulation 39. Regulation 39 lays down a detailed procedure regarding the enquiry to be conducted against any officer

on alleged misconduct. It is submitted that the Bank authorities have urged that since the petitioner has retired from service and it was not reasonably practicable to hold the enquiry, provisions of Regulation 40(e) has been invoked and the amount due to the petitioner has been withheld. Such procedure adopted by the Bank cannot be accepted. It is implicit in every procedure proposed to be adopted by any authority including Banks that notice is to be issued to the person affected by any such decision likely to be taken by the Bank. In the facts of the present case, there is no dispute that pursuant to the decision taken by the board of directors in the minutes dated 27.09.2018, the petitioner was not specifically named in the said minutes. No other procedure or proceedings have been placed before the Court to indicate that the authorities have decided to initiate such proceedings pursuant to decisions taken by the Board of Directors or on the basis of cogent materials available before the authorities. Rather the Bank authorities have admitted that the petitioner having retired, no proceeding was initiated against the petitioner and as a consequence thereof, on the basis of the decision taken by the Board of Directors in its meetings held on 27.09.2018, the bank authorities have withheld the amount by invoking Clause 40(e). The petitioner has never been put to notice that his leave encashment will be withheld or adjusted against such amount on the ground that the petitioner has caused financial losses to the Bank.

11. The spirit of Article 14 of the Constitution of India is ingrained in any such decisions taken by any authority which will have a civil consequence on any individual. It is not necessary to specifically provided for compliance of laws of natural justice. It is ingrained in every procedure when any such authority including bank authorities contemplate to initiate any action against any employees which will have a civil consequence. It is implicit that before the

authorities come to a finding regarding the alleged misconduct or the guilt of any officers, the petitioner ought to have been put to a notice. Without complying such procedures, any action that may be taken by any such authorities including the Bank authorities arriving at a conclusion in respect of such misconduct and thereby passing consequential orders like withholding of financial dues that to when the officer has already superannuated is completely unacceptable.

12. In view of the above discussions, it has to be held that there is no material placed before the Court that Bank has arrived at a finding that towards the guilt of the petitioner calling for consequential action having civil consequences. They can be no decision to impose penalty or pass consequential adverse orders against any officer without the person being put to notice and a procedure acceptable in law is followed by the authority to arrive at a finding that the person concerned is indeed guilty of the allegations made against him.

13. Under such circumstances, the respondents authority are forthwith directed to release all retiral dues including leave encashment arrears in respect of the writ petitioner without any further delay.

14. The respondent authority will calculate the dues payable to the petitioner and release the same within a period of 30 (thirty) days from the date of receipt of certified copy of this order.

15. The writ petition is accordingly allowed as indicated above. No order as to cost.

JUDGE

Comparing Assistant