

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE**

MONDAY, THE 10TH DAY OF AUGUST 2015/19TH SRAVANA, 1937

WA.No. 1766 of 2002 (B)

**AGAINST THE ORDER/JUDGMENT IN OP 13836/1997 of HIGH COURT OF KERALA
DATED 28/05/2002**

APPELLANT(S)/RESPONDENTS:

- 1. SYNDICATE BANK, REPRESENTED BY ITS
GENERAL MANAGER (P), HEAD OFFICE, MANIPAL**
- 2. DEPUTY GENERAL MANAGER,
SYNDICATE BANK, ZONAL OFFICE, SASTHAMANGALAM
TRIVANDRUM**

BY ADV. SRI.M.PASHOK KUMAR

RESPONDENT(S)/PETITIONER:

**P.I. BABU,
PUTHENPEEDIKAYIL HOUSE,
KOOTATHUKULAM, KERALA**

**BY ADV. SRI.GRASHIOUS KURIAKOSE (SR.)
BY ADV. SRI.GEORGE MATHEWS**

**THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 10-07-2015, ALONG
WITH WPC. 28914/2009 & COC. 1977/2012, THE COURT ON 10-08-2015 DELIVERED
THE FOLLOWING:**

WA NO.1766/02

APPENDIX

APPELLANTS' EXHIBITS

ANNEXURE 1: THE PHOTOCOPY OF THE JUDGMENT IN CC 28/98
OF THE SPECIAL JUDGE (SPE/CBI-II) ERNAKULAM.

//True Copy//

PS to Judge

Rp

ASHOK BHUSHAN, C.J.

“C.R.”

&

A.M. SHAFFIQUE, J.

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W.A. No. 1766/02, WP(C) No.28914/09

&

COC No.1977/12

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Dated this, the 10th day of August, 2015

J U D G M E N T

Shaffique, J.

WA No.1766/02 is filed by the respondents in OP No.13836/1997 challenging judgment dated 28/5/2002. The respondent herein is the writ petitioner, who is hereinafter referred as the petitioner. By the impugned judgment, the learned Single Judge had set aside the enquiry proceedings and the dismissal order imposed on the petitioner, giving liberty to the appellants to take appropriate proceedings including fresh enquiry against the petitioner.

2. The facts involved in the above original petition would disclose that the petitioner while working as Manager of Syndicate Bank was placed under suspension on the allegation that he had opened two Savings Bank accounts and had disbursed loan amounts to two fictitious persons. After issuing show cause

notice dated 27/5/1995, an enquiry was conducted in which he was found guilty and he was dismissed from service by Ext.P10 order. The appeal filed by the petitioner was dismissed by Ext.P11 order and the writ petition was filed challenging the disciplinary proceedings as well as the imposition of punishment, which was confirmed in appeal.

3. The learned Single Judge after evaluating the entire factual and legal issues involved in the matter relating to challenge against the disciplinary proceedings held that the enquiry proceedings was vitiated by non compliance of principles of natural justice. It was also held that no material evidence were forthcoming in the enquiry and persons who were actually connected with the grant of loan were not examined. In the said circumstances, it was found that the enquiry proceedings were vitiated and therefore the learned Single Judge interfered with the enquiry proceedings as well as the order issued granting punishment.

4. The main contention urged on behalf of the appellants is that the learned Single Judge had gone beyond the scope of judicial review and has set aside the enquiry proceedings on re-appreciation of facts and evidence which was not warranted under the circumstances. Further, it is contended that two criminal cases

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were registered against the petitioner and he was found guilty in one case under sections 409, 465, 467 and 471 of Indian Penal Code read with Section 13(2) of the Prevention of Corruption Act and was sentenced to undergo rigorous imprisonment for a period of three years and a fine of ₹5,000/- for the offence under Section 409 IPC, and separate punishments were awarded in respect of other offences. It is therefore contended that under Regulation 11 of the Syndicate Bank Officer Employees' (Discipline & Appeal) Regulations, 1976 (hereinafter referred to as the '1976 Regulations'), it was mandatory on the part of the disciplinary authority to impose penalty on an officer who has been convicted in a criminal case.

5. It is also contended that the Bank had produced sufficient evidence to prove the charges against the petitioner and the available documents which were relied upon by the Bank to prove the guilt has already been made available to the petitioner during enquiry and merely for the reason that certain documents which were not relevant were not produced or made available, was not sufficient to hold that the enquiry was in any manner vitiated.

6. W.P.(C) No.28914/2009 is filed by the delinquent employee, who is the petitioner in O.P.No.13836/1997, seeking for

a direction to the respondent Bank to reinstate him in service with effect from 6/12/1996 and to grant him all consequential benefits including seniority and back wages. The facts as disclosed in the writ petition would indicate that after the judgment of the learned Single Judge in O.P. No.13863/1997, by which the disciplinary proceedings has been set aside, WA No. 1766/2002 was filed by the Bank, which was disposed by judgment dated 26/7/2005, by which this Court without going into the merits of the case, held that since the petitioner was convicted in CC No.28/1998 by the Special Judge, CBI II, Ernakulam, it would be appropriate that the dismissal already ordered is converted as a dismissal based on conviction and it was further observed that in case the conviction is modified or annulled in appeal, the Bank could initiate further action as directed by the learned Single Judge or in terms of the 1976 Regulations. The Bank filed R.P. No.554/2007 against judgment dated 26/7/2005 in the above writ appeal. The said review petition was disposed of by order dated 28/11/2008 observing that Bank would be entitled to file a fresh review petition if the conviction and sentence in CC No.28/1998 is set aside in appeal.

7. Petitioner had preferred Crl.Appeal No.900/1999 against the conviction in CC No.28/1998. By judgment dated 13/2/2009,

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the conviction and sentence were set aside and he was acquitted from all charges. Petitioner therefore submitted Ext.P5 representation dated 11/4/2009 requesting the Bank to review the entire disciplinary proceedings and to permit him to rejoin duty. The writ petition is filed stating that since the Bank did not file any review petition, the petitioner is entitled for reinstatement in service with effect from 6/12/1996 as there were no pending disciplinary proceedings nor any conviction from any court.

8. Counter affidavit is filed by the 3rd respondent Bank *inter alia* stating that though he was acquitted in CC No.28/1998 by the appellate court, as far as CC No. 27/1998 was concerned, there was a finding of guilt against the petitioner, but the said case was discharged and the petitioner was acquitted only for want of sanction under Section 19 of the Prevention of Corruption Act. Further it is stated that a fresh review petition as R.P.No. 173/2010 has been filed in the writ appeal, which has been allowed as per Ext.R3(e) and therefore, a final decision can be taken in the matter only after the disposal of the writ appeal. It is also stated that the petitioner attained age of superannuation on 28/2/2011 and therefore the writ petition, being devoid of merits, is liable to be dismissed.

9. Contempt Case No.1977/2012 has been filed by the petitioner, the delinquent officer, alleging non compliance of directions issued by this Court in IA No.6882/2012 in WP(C) No.28914/2009. It is stated that by interim order dated 1st June, 2012 in IA No.6882/2012, direction was issued to the respondent Bank to sanction provisional pension in accordance with Regulation 46 of the (Syndicate Bank) Employees' Pension Regulation, 1995, pending further orders in the writ petition. It is alleged that based on Annexure A1 order, petitioner had submitted representations but having known about the order, there is wilful contempt by not complying with the said direction.

10. The respondents have filed counter affidavit and additional counter affidavit stating that pension could be sanctioned only after satisfying certain procedural formalities. Bank had forwarded the required documents to the petitioner to enable him to submit application as required under the Regulations. Copy of the said letter is produced as Annexure R3(a). Further it is stated that the Bank had sanctioned provisional pension to the petitioner retrospectively w.e.f. 1/3/2011, which is his deemed date of retirement. The pension calculation statement is Annexure R3(c) and an amount of ₹2,31,973/-, which includes provisional pension

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with arrears upto December, 2012 was credited in his account. It is stated that petitioner had withdrawn the said amount on 15/1/2013. In the additional affidavit filed, it is stated that the Court had not ordered payment of any backwages pending disposal of W.P.(C) No.28914/2009. It was therefore contended that the Bank had not committed any contempt as alleged.

11. Heard Sri.M.P.Ashok Kumar, learned counsel appearing on behalf of the appellants and learned senior counsel Sri.Grashious Kuriakose appearing on behalf of the respondent/petitioner.

12. The entire issue relating to the disciplinary proceedings are now germane for consideration and the entitlement of the petitioner for any benefits from the Bank will depend upon the finality of the judgment of the learned Single Judge. It is argued by the learned counsel for appellants that, by virtue of Section 10(1) (b)(i) of the Banking Regulation Act, there is no provision to employ a person who is convicted for an offence involving moral turpitude. It is contended that the learned Single Judge was not justified in setting aside the order of dismissal in a case where the petitioner was already convicted by the Court. Further, the argument is that two criminal cases were registered against the petitioner. In CC No.27/1998 he was found guilty but was acquitted only for want of

sanction. In CC No. 28/1998, he was found guilty by the trial court but he was acquitted by the appellate court. The argument is that as long as the finding of guilt in CC No.27/1998 remains, the Bank was justified in not reinstating the petitioner in service and further as long as the said finding remains, there is prohibition to employ the petitioner. This aspect of the matter had been completely ignored by the learned Single Judge while setting aside the order of dismissal.

13. Another argument raised is regarding the exercise of jurisdiction by the learned Single Judge. It is contended that the learned Single Judge was not justified in reviewing the materials made available or indulging in re-appreciation of evidence. Reference is made to the judgment of the Supreme Court in **Government of T.N v. A.Rajapandian** [(1995) 1 SCC 216] **Union of India v. P.Gunasekaran** [(2015) 2 SCC 610] and **J.Jayalalitha v. State of T.N.** [(2015) 3 SCC 131]. The argument is that when the disciplinary authority is the sole judge of facts and has arrived at a finding based on some evidence, it is not open for the High Court in exercise of power under Article 226 to re-appreciate the evidence. The learned counsel made specific reference to the extracts of oral testimony of the witnesses which is

made mention in the judgment, to indicate that virtually the learned Single Judge had re-appreciated the entire evidence while coming to the conclusion that the evidence of Vigilance Officer was not sufficient to prove the charges against the petitioner. He also referred to judgment in **Syndicate Bank v. Mahim** (2000 (2) KLJ 151) and the judgments of the Supreme Court in **Tara Chand Vyas v. Chairman & Disciplinary Authority** [(1997) 4 SCC 565] **Divisional Controller, KSRTC (NWKRTC) v. A.T.Mane** [(2005) 3 SCC 254] and **State Bank of India v. Narendra Kumar Pandey** [(2013) 2 SCC 740]. In regard to the finding relating to violation of principles of natural justice, it is argued that the obligation of the disciplinary authority is only to provide the relevant documents and the documents which are relied upon by the enquiry officer alone need be supplied and non supply of other irrelevant documents was not crucial to the enquiry. He also relied upon the judgment of the Supreme Court in **Chadrama Tewari v. Union of India** [AIR 1988 SC 117] and **State of U.P & Ors. v. Ramesh Chandra Mangalik** [(2002) 3 SCC 443].

14. Further it is argued that when serious allegations are raised against Bank officers who are bound to maintain honesty and dignity and if it is found that they have involved in fabricating

of records, the said charges should not be dealt with casually and the punishment of dismissal cannot be stated as shockingly disproportionate to the proved charges. Learned counsel relied upon the judgment in **Cholan Roadways Ltd. v. G.Thirugnanasambandam** [(2005) 3 SCC 241] and **C.M.D. United Commercial Bank v. P.C.Kakkar** [AIR 2003 SC 1571].

15. Another argument raised is that the acquittal in criminal case would not amount to an automatic reinstatement in service. It is argued that merely for the reason that the petitioner had been acquitted in the criminal cases cannot be a reason for immediate reinstatement as it amounts to a premium for his misconduct. He also relied upon the judgments of the Supreme Court in **Management of Reserve Bank of India, New Delhi v. Bhopal Singh Panchal** [(1994) 1 SCC 541] and **Union of India and another v. Bihari Lal Sidhana** [(1997) 4 SCC 385]. It is also argued that if a corrupt Manager is reinstated, it will encourage other Bank employees to indulge in such activities which has to be prevented by the Bank by imposing punishment commensurate to the proved charges. He relied upon the judgment of the Supreme Court in **State Bank of India and Others v. S.N.Goyal** [(2008) 8 SCC 92].

16. On the other hand, Sri.Grashious Kuriakose, senior counsel arguing on behalf of the petitioner supported the judgment of the learned Single Judge and submitted that the enquiry was conducted in gross violation of the principles of natural justice and the learned Single Judge was justified in coming to the conclusion that there was no material to prove the charges against the petitioner. It is argued that lack of relevant materials can definitely be a reason for invoking the jurisdiction of this Court under Article 226 of the Constitution of India. It is further argued that the Enquiry Officer only relied upon the oral testimony of a Vigilance Officer who had no connection whatsoever with the charges levelled against the petitioner. He was not a witness competent enough to depose to the facts of the case. He had only prepared a report based on certain materials and the report itself was not forthcoming. These were the aspects that weighed in the mind of the learned Single Judge while forming an opinion that the evidence was lacking in the enquiry proceedings. Further, to substantiate the defence raised by the petitioner, certain documents were called for, which were not supplied, which clearly amounts to violation of the principles of natural justice. Therefore, it is argued that the entire disciplinary proceedings were vitiated

and the learned Single Judge had correctly set aside the enquiry proceedings and the consequential orders.

17. Learned counsel submits that, as matters stand now, the petitioner had exceeded his age of superannuation and it is not open for the Bank to proceed with an enquiry as directed by the learned Single Judge, as the petitioner is no more in service. When that opportunity was available immediately after the judgment of the learned Single Judge and even when the appeal was pending, no steps were taken by the Bank to conduct a fresh enquiry. Having not done so, the petitioner is entitled for all the benefits that had been deprived from him, while he was kept out of employment.

18. Learned counsel also referred to the procedure for imposing major penalties which is covered by the 1976 Regulations. He specifically referred to Sub Regulations 10 (b), 11 and 12, which read as under;

“10(b) The Inquiring Authority shall also record an order that the Officer Employee may for the purpose of preparing his defence-

i) inspect within Five Days of the order or within such further time not exceeding Five Days as the Inquiring authority may allow, the documents listed;

ii) submit a list of documents and witnesses that he wants for the inquiry;

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iii) be supplied with copies of statements of witnesses, if any, recorded earlier and the Inquiring Authority shall furnish such copies not later than three days before the commencement of the examination of the witnesses by the Inquiring Authority;

iv) give a notice within ten days of the order or within such further time not exceeding ten days as the Inquiring Authority may allow for the discovery or production of the documents referred to in item (ii).

Note: *The relevancy of the documents and the examination of the witnesses referred to in item(ii) shall be given by the officer Employee concerned."*

"11) The Inquiring Authority shall, on receipt of the notice for the discovery or production of the documents, forward the same or copies thereof to the authority in whose custody or possession the documents are kept with a requisition for the production of the documents on such date as may be specified.

12) On the receipt of the requisition under Sub-Regulation (11), the authority having the custody or possession of the requisitioned documents, shall arrange to produce the same before the Inquiring Authority on the date, place and time specified in the requisition:

Provided that the authority having the custody or possession of the requisitioned documents, may claim privilege if the production of such documents will be against the public interest or the interest of

the Bank. In that event, it shall inform the Inquiring Authority accordingly”.

It is contended that there is absolute non compliance of the above Regulations. It is contended that when list of documents which the petitioner intended to rely upon were submitted to the Enquiry Officer, he permitted production of only a few documents and treated other documents as irrelevant, which itself was enough to prove that there was violation of the principles of natural justice.

19. It is further contended that the enquiry was a farce. In respect of criminal cases charged against him as CC No.27/1998 and 28/1998, it is stated that in both the cases, he was not found guilty. As far as the findings in CC No.27/98, learned counsel argued that the said findings cannot be challenged by the accused as he was not found guilty of the charges and even assuming that certain findings are there, it cannot be a reason to hold that he was found guilty of a charge involving moral turpitude. Learned counsel also submits that there is a clear finding by the appellate court in the criminal appeal that there is absolutely no evidence to prove the charges against him and that the persons who had opened the Bank accounts were not fictitious. Therefore, the entire edifice of the factual finding in the enquiry proceedings has gone

and the Bank cannot discard the judgment in the criminal appeal.

20. Having regard to the aforesaid contentions, the question to be considered is whether learned Single Judge was justified in interfering with the enquiry proceedings and the punishment orders. Though the learned counsel for the petitioner relied upon various judgments, we do not think that a detailed narration of the said judgments would be necessary to consider this appeal. Position of law in this regard is well settled. In ***Gunasekaran's case*** (supra), Supreme Court while considering the validity of departmental proceedings against Government servant held as under in paragraphs 12 and 13;

“12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:
(a) the enquiry is held by a competent authority;
(b) the enquiry is held according to the procedure

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prescribed in that behalf;

(c) there is violation of the principles of natural justice in conducting the proceedings;

(d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;

(e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;

(f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;

(g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;

(h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

(i) the finding of fact is based on no evidence.

13. *Under Articles 226/227 of the Constitution of India, the High Court shall not:*

(i) reappreciate the evidence;

(ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

(iii) go into the adequacy of the evidence;

(iv) go into the reliability of the evidence;

(v) interfere, if there be some legal evidence on which findings can be based.

(vi) correct the error of fact however grave it may appear to be;

(vii) go into the proportionality of punishment unless it shocks its conscience".

21. The Apex Court also referred to various other judgments relevant upon the point especially **State of A.P. V. S Sree Rama Rao** [AIR 1963 SC 1723], **State of A.P v. Chithra Venkata Rao** [(1975) 2 SCC 557], **Railway Board v. Niranjan Singh** [(1969) 1 SCC 502] and also **State of Haryana v. Ratan Singh** [(1977) (2 SCC 491] and it is held that in all subsequent decisions of the Supreme court upto the **Chennai Metropolitan Water Supply and Sewerage Board v. T.T. Murali Babu** [(2014) 4 SCC 108], these principles have been consistently followed adding practically nothing more or altering anything. Therefore, without going into any other judgments as cited above, it would be relevant to consider whether the interference by this Court in the concerned disciplinary proceedings any way contravenes the law laid down by the Apex Court and as referred to in paragraphs 12 and 13 of the said judgment.

22. Before proceeding further, we would narrate the allegations raised against the petitioner in the memo of charges. Ext.P2 dated 9/10/1995 is the charge sheet given to the petitioner as per regulation 6 of the 1976 Regulations. The Article of charge indicates that the petitioner, while functioning as Manager at Thodupuzha Branch during the period from 7/6/1993 and

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17/3/1994, got opened/caused opening SB accounts in the name of P.V.Johnny and P.V.Mathew as introduced by him and thereafter sanctioned/arranged/released two loans for ₹25,000/- each in their names under OSL 36/93 and 44/93 respectively by committing/causing to be committed certain irregularities. Further, he allowed withdrawal of the loan proceeds credited to the respective SB accounts by obtaining and filling in the respective withdrawal slips by himself, that the loans in question were repaid by him by making lumpsum payments on 12/7/1994 and 3/2/1995. It is alleged that the parties in whose names the loans were sanctioned are fictitious/benami. This, according to the Bank, amounts to misusing his official position for deriving undue pecuniary advantage for the benefit of self/others best known to him at the cost of the Bank. This, also amounts to failure to discharge duties with integrity, honesty, devotion and diligence contravening regulation No.3(1) read with regulation No.24 of the 1976 Regulations. A statement of imputations and the irregularities noticed also formed part of the charge memo.

23. Ext.P4 is the letter issued by the petitioner to the Enquiry Officer during departmental enquiry. He had given a list of documents for giving effective defence and has stated that the said

documents/informations are in the custody of Thodupuzha Branch. He has also stated that he may be permitted to adduce any other documents/witnesses during the course of enquiry. The Inquiring Authority by letter dated 25/4/1996 informed the petitioner as well as the Presenting Officer regarding the list of documents given by the petitioner. It is indicated as under; *"After perusing the details, I have allowed documents as detailed in the annexure. The Presenting Officer shall make arrangements for verification of these allowed documents by the defence within 30 days of receipt of this letter and arrange to furnish copies of these documents wherever possible/practicable. The documents allowed by me as above is subject to claiming privilege if any by the management on any of the documents"*. The Annexure to Ext.P5 would show that he had given reasons for disallowing document Nos.1 to 4, 8, 9, 11 and 12 and 13. The relevant extract of the annexure reads as under;

"The following documents sought for by Sri.P.I.Babu, relating to chargesheet No.2626/IRC/CGS-6/95/TVZ dated 9.10.1995 are disallowed by me for the reasons mentioned below:

Document No.	Reason for disallowing
1 to 4	<i>Relates to a cheque discounted. These documents cannot in any way be useful in proving that the party is a bonafide one.</i>

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Document No.	Reason for disallowing
8	<i>Not relevant in proving the bonafides of the party.</i>
9	<i>It is true that a loan account can be closed before its due date. The charge is that the CSOE himself closed the loan accounts of third parties which speaks about the circumstances appearing against him.</i>
11 & 12	<i>Reports of the branch to DC/ZO and communication to the branch by the DO/ZO are irrelevant since the burden of proving the bonafides of the parties rests with the CSOE and he has to rely on the documents/records relating to the period of opening of accounts in the name of the parties and sanctioning of loans to them.</i>
13	<i>The CSOE himself is the introducer of the subject accounts, and hence the question of branch sending a letter to him is totally irrelevant.</i>

24. On receipt of the aforesaid letter, petitioner again sent Ext.P6 letter dated 30/4/1996 wherein he had further stated that the instrument represented by CDD 178 would definitely prove that the payee viz., P.V.Johnny is real and valid consideration was passed over to him by the drawer of the instrument and hence he had requested for item No.1. Item No.2 would prove that CDD 178 was a real transaction in the books of the Bank and instrument was sent to the drawee Bank and the instrument was realised in due course. Item No.3 would prove that the instrument was sent directly to the drawee Bank at that place for realisation. He

narrates the importance of each and every document and further states that disallowance of the said documents would deprive an opportunity of the defence to prove that the allegation was baseless and not *bona fide*. He states that he does not insist for document No.9. He further requested for all the documents except item No.9. To the aforesaid letter, a reply is send by the Inquiring Authority on 18/5/1996 stating that the documents disallowed by him was after careful consideration of all the aspects of the case and hence the contentions in the letter does not warrant allowing of the documents earlier disallowed by him. Ext.P8 is the proceedings of the enquiry and Ext.P9 dated 9/10/1995 is the inquiry report by which it was found that the articles of charges levelled against the petitioner have been proved substantially in the enquiry. Ext.P10 dated 6/12/1996 is the order passed the disciplinary authority dismissing him from service and Ext.P11 dated 4/2/1997 is the order passed by the appellate authority rejecting his appeal against the order of dismissal.

25. The facts being so, the main contention urged by the appellants, that the learned Single Judge was not justified in having a re-look into the evidence based on which the enquiry officer had found the charges to be proved, is to be first considered. In fact,

the learned Single Judge proceeded to consider the evidence for two purposes. One is whether it was proper on the part of the Enquiry Officer to have denied the documents relied upon as defence, by the petitioner. The second is whether there was any direct evidence to prove the charges. It is observed that when serious allegations are raised against the petitioner, only the Vigilance Officer who conducted the preliminary enquiry was examined and the cashiers, clerks or any other person in the Bank during the relevant time were not examined. It is observed that non examination of any such persons, who were working in the Bank at the relevant time when the loan was granted or at the time when the loan was repaid, coupled with the fact that documents requested by the party were not given to him, amounts to violation of natural justice as well as the Regulations.

26. Therefore, even assuming that the learned Single Judge was not justified in re-appreciating the evidence relied upon by the Enquiry Officer to prove the charges, still, we have to consider whether the disciplinary proceeding was vitiated for non compliance of the principles of natural justice or whether there is any violation of the procedure prescribed under the Regulations. In a writ petition seeking for judicial review, the most important

aspect to be considered is whether the enquiry is held according to the procedure prescribed in that behalf and whether there is violation of the principles of natural justice in conducting the proceedings.

27. A reference to the Regulations will clarify the above position. Regulation 6 relates to the procedure for imposing major penalties. It is stated in Regulation 6(1) that no order imposing any major penalties shall be made except after an inquiry is held in accordance with the Regulations. Sub Rule (3) further indicates that where it is proposed to hold an inquiry, the disciplinary authority shall frame definite and distinct charges on the basis of allegations against the Officer Employee which shall be communicated in writing to the Officer Employee, for him to submit a written statement of his defence. By Sub Rule (4) either the disciplinary authority can conduct an enquiry by itself or if it considers necessary so to do, appoint an Inquiring Authority. Sub Rule (5) indicates that if the disciplinary authority is not the Inquiring Authority, it shall forward to the Inquiring Authority all the documents like articles of charges and statement of imputation of misconduct, copy of the written statement of defence, a list of documents by which list of witnesses by whom articles of charge

are proposed to be substantiated, copy of the statements of the witness, if any, evidence in that regard and copy of the order appointing the Presenting Officer. Sub rules (6) and (7) relates to appointment of Presenting Officers. Sub rule (8) is the procedure to be adopted by the Inquiring Authority for the purpose of enquiry. Sub Rule (10) is the procedure which the Inquiring Authority has to follow when the officer does not admit all or any of the articles of charge. As already indicated, by virtue of sub rule (10)(b)(ii), the officer employee is entitled to submit a list of documents and witnesses that he wants for the inquiry. It is apparent in this case that the petitioner had given such a list of documents that he wants for the inquiry. The material furnished on record and as evident indicates that the petitioner having submitted a list of documents and has requested the Inquiring Authority to make available the said records, the same was disallowed by the Inquiring Authority. The argument of learned counsel for the petitioner is that the Inquiring Authority had no right to disallow production of any such document. He submits that when the regulation clearly indicates that the officer employee is entitled to submit an application showing the list of documents to be supplied, it was incumbent on the Inquiring Authority to have called upon the

Presenting Officer/disciplinary authority to produce the same. He himself had no right to disallow a document. He specifically refers to sub rules (11) and (12), which clearly indicate that the Inquiring Authority, on receipt of the notice for discovery or production of the documents, has to forward the same to the authority in whose custody or possession the documents are kept, with a requisition for production of the documents on such date as may be specified. By virtue of sub rule (12), the authority having custody or possession of the requisitioned documents shall either produce the same before the Inquiring Authority or can claim privilege, if the production of such documents will be against public interest or the interest of the Bank. In that event, the said authority shall inform the Inquiring Authority accordingly. Therefore, it is clear that the Inquiring Authority had no power to disallow a document which is called upon to be produced by the concerned authorities.

28. Here is a case where the Inquiring Authority himself disallows certain documents which he is not expected to do as per the Regulations. Hence, it is clear that there is non compliance of the procedure prescribed under the rules as far as the present enquiry is concerned.

29. Coming to the next question regarding relevancy of the

documents, it is evident that even after the enquiry authority disallowing the documents, petitioner had sent a letter dated 30/4/1996 explaining the necessity of the documents and the reason for the same except document No.9. Still, the documents were not supplied to him. The relevancy of the documents which are called for by the defence cannot be questioned by the Enquiry Officer at the time of production of records. Once the documents are received and if it is not found to be relevant, he need not rely upon the same. But the privilege for non production of the documents can only be claimed by the person who is in custody of the said documents. No such eventuality has arisen in the case.

30. Under such circumstances, in the absence of a proper explanation forthcoming from the custodians of the document relating to the irrelevancy or the privilege they have exercised, we are of the view that, non production of the documents requested by the petitioner, clearly amounts to violation of principles of natural justice. Certain documents, which according to the petitioner were relevant to prove his innocence, were withheld without any reason and that too by the Inquiring Authority who had no discretion in the matter and therefore, for that reason itself, the disciplinary proceedings can be found to be vitiated.

31. Learned counsel for appellants however made specific reference to Regulation 11 of the 1976 Regulations, which reads as under;

“11. Special Procedure in Certain Cases:

Notwithstanding anything contained in regulation 6 or regulation 7 or regulation 8 the Disciplinary Authority may impose any of the penalties specified in Regulation 4 if the Officer Employee has been convicted on a criminal charge, or on the strength of facts or conclusions arrived at by a judicial trial:

Provided that the Officer Employee may be given an opportunity of making representation on the penalty proposed to be imposed before any order is made”.

It is argued that even at the time when the learned Single Judge passed the impugned judgment, the petitioner was convicted in CC No.28/1998 and therefore the learned Single Judge could not have set aside the order of dismissal. But it is relevant to note that the order of dismissal which was impugned was not one passed under Regulation 11. Regulation 11 starts with a *non obstante* clause by which the disciplinary authority is given the power to impose any of the penalties specified in Regulation 4 if the employee has been convicted on a criminal charge or on the strength of facts or conclusions arrived at by a judicial trial. The impugned orders which were set aside by the learned single Judge was apparently

not passed under Regulation 11 and despite the conviction in the criminal charge during the relevant time, Bank did not take any proceedings pursuant to Regulation 11. The said option was available to the Bank which they did not do. Further, as matters stand now, there is no conviction on a criminal charge and no steps had been taken pursuant to Regulation 11, on the strength of conclusions arrived in a judicial trial. Therefore, merely for the reason that there is a power available under Regulation 11 by itself cannot be a reason to come to a finding that the learned Single Judge was not justified in setting aside the order of dismissal.

32. The foremost argument raised by the learned counsel for the appellant is with reference to Section 10(1)(b)(i) of the Banking Regulation Act, 1949. Section 10(1)(b)(i) of the Banking Regulation Act, 1949 is extracted hereunder;

“10. Prohibition of employment of managing agents and restrictions on certain forms of employment.— (1) No banking company—
(a) shall employ or be managed by a managing agent; or
(b) shall employ or continue the employment of any person—
(i) who is, or at any time has been, adjudicated insolvent, or has suspended payment or has compounded with his creditors, or who is, or has been, convicted by a criminal court of an offence

involving moral turpitude; or....”

The above provision indicates that a Bank shall not employ or continue employment of any person who has been convicted by a criminal court for an offence involving moral turpitude. It is apparent that this is a restriction imposed on the Bank. Of course, under Regulation 11, the Bank could have dismissed the employee on his being convicted on a criminal charge. But the fact remains that, as matters stand today, no steps had been taken by the Bank, pursuant to Regulation 11, nor there is any conviction as matters stand now. Presently, it may not be possible for the Bank to take any enquiry proceedings in the light of the directions issued by the learned Single Judge, since the petitioner had already attained his age of superannuation. Further, section 10 of the Banking Regulation Act is a prohibition against the Bank and merely for the reason that the Bank did not take any action to terminate his service at the relevant point of time, cannot be a reason to set aside the judgment which has been decided taking into consideration the entire factual aspects involved in the matter.

33. Therefore, though the learned Single Judge had even gone to the extent of finding the propriety of the evidence adduced, still, the finding regarding violation of natural justice and

non compliance of the Regulations still holds good which by itself can be a reason to set aside the enquiry proceedings and the consequential orders.

34. In the result, we are of the view that no error had been committed by the learned Single Judge in setting aside Exts.P8, P9, P10 and P11. We, therefore, confirm the judgment of the learned Single Judge and dismiss this writ appeal.

35. In WP(C) No.28914/2009, on the same set of facts, petitioner had sought for reinstatement in service w.e.f. 6/12/1996 and to grant him all consequential benefits including seniority, back wages etc. As already indicated, since he had attained the age of superannuation during the pendency of the above writ petition, the claim for reinstatement has become infructuous. However, it has to be verified whether he is entitled for any monetary or other benefits including salary and other allowances during the period while he was kept out of employment. The petitioner was placed under suspension on 17/3/1994. He was dismissed from service on 6/12/1996. The order of dismissal was set aside by the learned Single Judge as per judgment dated 28/5/2002. WA No.1766/2002 was filed by the Bank and initially the said appeal was disposed of by judgment dated 26/7/2005 by observing that on account of

subsequent events, the issue agitated in the writ appeal at the instance of the Bank need not be considered. In fact, it was brought to the notice of this Court that in the meantime, petitioner was convicted by the criminal court as per judgment of the CBI Special Court on 29/11/1999. In para 2 of the said judgment, it was mentioned that *"But in the light of conviction and sentence, necessarily he has to face further dismissal from service and it is only appropriate that the dismissal already ordered be converted as dismissal based on such conviction; and of course, in case the appeal against conviction is modified or annulled, Bank will be free to initiate further action either as directed by the learned Single Judge or in terms of clause 11 of the Syndicate Bank Officer Employees' (Discipline & Appeal) Regulations, 1976"*. The Bank filed RP No.544/2007, as in between there was a claim for salary by the petitioner based on the Division Bench judgment and contending that no steps were taken for further disciplinary action. It was clarified that the effect of dismissal will have an additional ground, that is conviction in criminal case to sustain it. It was further observed that if the said ground goes by setting aside conviction and sentence in appeal, it will be open to the Bank to file a further review petition. Petitioner was acquitted of the criminal

charges as per judgment dated 13/2/2009 in Crl.Appeal No.900/1999. Thereafter also, no steps were taken by the Bank to conduct a fresh enquiry in terms of the direction issued by the learned Single Judge nor to proceed under Regulation 11 of the 1976 Regulations. Without doing so, they filed another review petition by which the judgment of the learned Single Judge was reviewed and the matter was considered by us afresh.

36. We have already upheld the judgment of the learned Single Judge. Now the only question to be considered is whether the petitioner is entitled for any benefits proceeding on the basis that there is no conviction against him and that no enquiry is possible under Regulations 6 and 11 of the 1976 Regulations. Reference can be made to Regulations 12 (3), (4), (5), 15, (1), (2) and (3);

"12. Suspensions:

(1) xxxxx

(2) xxxxx

(3) *Where a penalty of dismissal, removal and compulsory retirement from service imposed upon an Officer Employee under suspension is set-aside in appeal or on review under these regulations and the case is remitted for further inquiry or action or with any directions, the order of his suspension shall be deemed to have continued in force on and from the date of the original orders of dismissal,*

removal or compulsory retirement and shall remain in force until further orders.

(4) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon an Officer Employee under suspension is set aside or declared or rendered void in consequence of or by a decision of a court of law, and the disciplinary authority, on consideration of the circumstances of the case, decides to hold further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the Officer Employee shall be deemed to have been placed under suspension by the competent authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders.

(5) a) An order of suspension made or deemed to have been made under this regulation shall continue to remain in force until it is modified or revoked by the authority competent to do so.

b) An order of suspension made or deemed to have been made under this regulation may at any time be modified or revoked by the authority which made or is deemed to have made the order.

15. Pay, Allowances and Treatment of Service on Termination of Suspension:

(1) Where the competent authority holds that the Officer Employee has been fully exonerated or that the suspension was unjustifiable, the Officer Employee concerned shall be granted the full pay to which he would have been entitled, had he not

been suspended, together with any allowance of which he was in receipt immediately prior to his suspension, or may have been sanctioned subsequently and made applicable to all Officer Employees.

(2) In all cases other than those referred to in Sub-Regulation (1), the Officer Employee shall be granted such proportion of pay and allowance as the competent authority may direct;

Provided that the payment of allowances under this Sub-Regulation shall be subject to all other conditions to which such allowances are admissible:

Provided further that the pay and allowances granted under this Sub-Regulation shall not be less than the subsistence and other allowances admissible under regulation 14.

(3) a) In a case falling under Sub-Regulation (1), the period of absence from duty shall, for all purposes, be treated as a period spent on duty;

b) In a case falling under Sub-Regulation (2), the period of absence from duty shall not be treated as a period spent on duty unless the Competent Authority specifically directs, for reasons to be recorded in writing, that it shall be so treated for any specific purpose”.

37. Learned counsel for petitioner relied upon the Full Bench judgment of this Court in **State of Kerala v. Joseph** (2015 (1) KLT 56) to contend for the position that when an employee against whom disciplinary proceedings are initiated by issuance of

an order of suspension followed by his dismissal, in terms of Rule 18(iii)(a) of the K.C.S. (C.C.&A.) Rules, on his reinstatement, he has to be put back in the position in which he was at the time of his dismissal from service.

38. On the other hand, learned counsel for the Bank would submit on the basis of the judgments already relied upon and also Section 10 of the Banking Regulation Act that immediately after judgment of the learned Single Judge, which was on 28/5/2002, petitioner could not have been reinstated in service on account of the conviction in CC No.28/1998. He was acquitted only as per judgment dated 13/2/2009 and in the meantime, there was direction to consider the dismissal as one under Regulation 11 as well. It is also submitted that being such a serious offence of falsification and fabrication of records, though he is acquitted of the charges by the criminal court, Bank was not liable to reinstate him in service or to give him the consequential benefits.

39. But we have to consider the issue in hand based on the present state of affairs and the regulations that are applicable to the factual situation. It is not in dispute and as already held by us that there is no conviction by criminal court as far as the petitioner is concerned and disciplinary proceedings had been set aside by

this Court. He was acquitted in the criminal case on 13/2/2009. Therefore, the bar under Section 10 in continuing a person as an employee while he was convicted in an offence involving moral turpitude has ceased to have any application atleast from the said date. But when the conviction is set aside by a competent court, then the only option available to the Bank was to proceed with the enquiry as already directed by the learned Single Judge or to take steps under Regulation 11. Rather than proceeding to take any further action, the Bank decided to seek review of the judgment in WA No.1766/2002. Now that we have already decided by confirming the judgment of the learned Single Judge, the factual position would be that there is no order of dismissal in the disciplinary proceedings.

40. Regulation 12 deals with suspension and the procedure to be adopted thereon. Regulation 12(3) indicates that if penalty of dismissal is set aside in appeal or on review under the regulations and the matter is remitted for further inquiry, the order of suspension shall be deemed to have continued in force on and from the date of the original orders of dismissal. Even though the order of dismissal is not set aside in appeal or in review, under the regulations, by virtue of the judgment dated 28/5/2002 of the

learned Single Judge, Bank could have continued with the order of suspension pending enquiry. Rule 12(4) which is extracted above indicates that when a penalty of dismissal is set aside in consequence of a decision of a court of law and the disciplinary authority decides to hold further enquiry, the officer employee shall be deemed to have been placed under suspension by the competent authority from the date of original order of dismissal. Therefore, in view of the judgment dated 28/5/2002 of the learned Single Judge, the employee concerned remains to be under suspension provided it is decided to hold further enquiry. But in the present case, without holding any further enquiry, the Bank challenged the judgment of the learned Single Judge. Regulation 15 deals with the pay, allowances and treatment of service on termination of suspension. Regulation clearly indicates that if the competent authority holds that the officer employee has been fully exonerated or that the suspension was unjustifiable, he is entitled for full pay to which he would have been entitled, had he not been suspended, together with any allowance of which he was in receipt immediately prior to his suspension, or may have been sanctioned subsequently and made applicable to all officer employees. Sub Regulation (2) of Regulation 15 indicates that in all other cases

than those referred in sub regulation (1), the officer employee shall be granted such proportion of pay and allowance as the competent authority may direct. Further sub regulation 3 (a) indicates that in a case falling under sub regulation (1), the period of absence from duty shall, for all purposes, be treated as a period spent on duty.

41. Having regard to the aforesaid factual situation, we are of the view that the petitioner is entitled to treat the entire period of service till the date of superannuation without any break for the purpose of pension and the Bank shall recompute the pension and pay the same within a period of two months. In regard to the monetary benefits, taking into consideration the contentions urged by the Bank with reference to Section 10(1)(b)(i) of the Banking Regulation Act and the incapacity of the Bank to re-employ the petitioner during the time when conviction was in force, it is for the Bank to consider his entitlement for the monetary benefits from the date of conviction in CC No.28/1998 until he was acquitted by judgment of this Court in Crl.Appeal No.900/1999. Hence, there will be a direction to the Bank to consider the said entitlement of the petitioner during the relevant time as aforesaid. However, in respect of all other periods, that is from the date of suspension till the date of conviction in CC No.28/1998 and from the date of

acquittal as per judgment in Cri.Appeal No.900/1999 till the date of superannuation, petitioner will be entitled for all the monetary benefits and other allowances. Such amount shall be computed and paid to the petitioner within a period of two months from the date of receipt of a copy of this judgment.

42. With reference to Contempt Case (C) No.1977/2012, it is evident that steps were taken by the Bank in terms of Annexures R3(a) and R3(b) to sanction the provisional pension and certain arrears have also been given to the petitioner. Under such circumstances, we do not think that the Bank has committed wilful disobedience of the judgment and accordingly the contempt petition stands closed.

In the result, the Writ Appeal is dismissed and Contempt Case is closed.

W.P.(C) No.28914/2009 is disposed of as under;

- (1) That the petitioner shall be entitled for full pension taking into consideration the entire period of service without any break in service.
- (2) In regard to monetary benefits, the petitioner shall be entitled for all monetary benefits and allowances from the date of

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suspension till the date of conviction in CC No.28/1998 and thereafter from the date of acquittal in Crl.Appeal No.900/1999 till the date of superannuation.

(3) In respect of the intervening period, i.e., between the date of conviction and the date of acquittal, the Bank shall consider the petitioner's entitlement for monetary benefits and pass appropriate orders.

(4) The entire payment as well as the consideration of the petitioner's claim shall be completed within a period of two months from the date of receipt of a copy of this judgment.

Sd/-

ASHOK BHUSHAN, CHIEF JUSTICE

Sd/-

A.M. SHAFFIQUE, JUDGE

Rp

//True Copy//

PS to Judge