**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

RSA No.4887 of 2009 (O&M)
Date of decision: 10.09.2015

Punjab & Sind Bank and another ... Appellants

Vs.

Narinder Singh Manchanda ... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. I.P.Singh, Advocate
for the appellants.

Mr. Prateek Pandit, Advocate
for the respondent.

AMIT RAWAL J. (Oral)

Challenge in the present appeal is to the impugned judgments and decrees of the Courts below, whereby, the suit filed by the respondent-plaintiff, for declaration to the effect that the order dated 31.10.2003 passed by defendant No.2, dismissing the respondent-plaintiff from service with retrospective effect, particularly when the plaintiff had already retired from service, vide order dated 02.02.2001 has been held to be illegal and not binding and a decree for mandatory injunction, has been passed in favour of the respondent-plaintiff and against the defendant-appellants directing

Bank to disburse all the consequential service benefits, on the premise that the impugned order dated 31.10.2003 was never passed.

Mr. I.P.Singh, learned counsel appearing on behalf of the appellant-defendants submits that vide order dated 02.02.2001, respondent-plaintiff had retired from service but a condition was imposed that in case, anything was found against him, department would be at liberty to take action. Along with an order, a cheque of notice period was also handed and amount of VRS was not disbursed. Bank, after the retirement of the plaintiff-respondent realized that he had disbursed 41 loan cases worth more than ₹ 60 lacs to different persons, just, within three days without involving any Bank official and accordingly, the respondent-plaintiff was served with a charge sheet on 05.02.2002. Thereafter, a reply was filed and an enquiry officer was appointed. Enquiry officer proved the charges against the plaintiff. On the basis of the enquiry report, disciplinary authority, vide order dated 31.10.2003, treated the respondent-plaintiff, dismissed from service. He further submits that the trial Court has committed illegality and perversity in decreeing the suit, inasmuch as per Regulation 48 of the Punjab and Sind Bank (Employees) Pension Regulations, 1995, the appellant-Bank is within its right to initiate the departmental proceedings against the employee, even after his retirement and this aspect was brought to the notice of the Courts below, thus, there is a mis-direction and perversity, therefore, present appeal involves substantial questions of law arise to be determined by this Court.

Mr. Prateek Pandit, learned counsel appearing on behalf of the respondent-plaintiff submits that Regulation 48, vehemently relied upon by the appellants, has already been interpreted by the Hon'ble Supreme Court in civil appeal No.4725 of 2010 titled as **UCO Bank and others vs. Prabhakar Sadashiv Karvade**, vide judgment dated 20.05.2010, wherein, it has been held, that Regulation 48 would apply only to the employees against whom proceedings have been initiated while they were in service and not after the retirement, therefore, there is no illegality and perversity in the impugned judgments and decrees of the Courts below, much less, no substantial question of law arise to be determined by this Court.

In rebuttal, Mr. I.P.Singh, Advocate, submits that with regard to withholding of payment of gratuity, the matter has been referred to the Larger Bench by the Hon'ble Supreme Court in case Ch.cum-Managing Director Mahandi Coalfield Ltd. vs. Rabindranath Choubey **2014(1) SLR 431 (S.C.)** and therefore, respondent-plaintiff cannot be permitted to rely upon the dictum laid down by the Hon'ble Supreme Court in UCO Bank's case (supra).

I have heard learned counsel for the parties and appraised the paper book.

It would be apt to refer Regulation 48, which reads thus:-

"Regulation 48(1)

"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 can be initiated in respect of cause of action which arose within a period of four years before such institution."

The aforementioned regulation has been interpreted by the Hon'ble Supreme Court and relevant portion of the same reads thus:-

"A reading of the plain language of Regulation 4 of the Discipline and Appeal Regulations makes it clear that any of the penalties, whether major or minor, can be imposed on an officer/employee of the Bank. This necessarily implies that an officer/employee who is no longer in the service of the Bank cannot be dismissed or vitiated with any other penalty. Of course, in terms of Regulation 20(3) (iii) of the 19.9 Regulations, the disciplinary proceedings initiated against an officer, employee before his retirement can be continued and final order passed and such officer employee is not entitled to retiral benefits till the conclusion of disciplinary proceedings and passing of final order. The only exception to this is that the concerned officer employee is entitled to receive his own contribution to CPF. Regulation 46 of the Pension Regulations postulates payment of provisional pension to an employee who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or departmental proceedings are continued. However, he is not entitled to gratuity till the conclusion of such proceedings. Regulation 48 empowers the competent authority to withhold or withdraw pension or a part thereof and order recovery from pension of the whole or part of

any pecuniary loss caused to the bank in a departmental or judicial proceeding, the pensioner found guilty of grave misconduct or negligence or criminal breach of trust or forgery or acts done fraudulently during the period of his service. Second proviso to Regulation 48 contains a fiction and lays down that if the departmental proceedings are instituted while the employee was in service, the same shall be deemed to be proceedings under the regulations and continued and concluded as if the employee had continued in service. The third proviso to Regulation 48 impress a bar on the initiation of departmental or judicial proceedings against an employee after his retirement in respect of an event which took place more than 4 years before such institution. The sum and substance of these regulations is that even though a departmental inquiry instituted against an officer employee before his retirement can continue after his retirement, none of the substantive penalties specified in Regulation 4 of the Discipline and Appeal Regulations, which include dismissal from service, can be imposed on an employee after his retirement on attaining the age of superannuation. Therefore, we have no hesitation to hold that order dated 12.10.2004 passed by the disciplinary authority dismissing the respondent from service, who *had superannuated on 31.12.1993 was ex facie illegal and without jurisdiction and the High Court did not commit any error by quashing the same."*

The Hon'ble Supreme Court while interpreting the Regulation 48, ibid, has laid down the ratio decidendi that Bank would not within its power to initiate the departmental proceedings against the employee, who, has retired, i.e, after retirement. In essence, the proceedings can only be initiated before his retirement. It has further gone to the extent, in holding that none of the substantive penalties specified in Regulation 4 of the Discipline and Appeal Regulations, which include dismissal from service can be imposed on the employee, after his retirement on attaining the age of superannuation. In the instant case, admittedly, the respondent-plaintiff had retired on 02.02.2001 by availing VRS scheme and there is no estoppel to the respondent-plaintiff to challenge the order of dismissal, despite imposed of conditions, in the order dated 02.02.2001.

It is also a matter of record that respondent-plaintiff has been served with a charge sheet, but no show cause notice had been issued to him.

The order, whereby, the Hon'ble Supreme Court had referred the matter to the Larger Bench in **Ch.cum Managing Director Mahanadi Coalfield Ltd.'s case (supra)**, pertain to payment of gratuity, as to whether it would be permissible in law for the Bank to withhold the payment of gratuity, owing pendency of disciplinary proceedings against him, even after superannuation of an employee from service. However, the instant case is not a case of kind, where the enquiry had been initiated prior to superannuation, as noticed above, the enquiry proceedings were initiated after the retirement, thus, in my view, reference order would not apply to the facts and circumstances of the present case.

In these circumstances, the Hon'ble Supreme Court had taken the view in **UCO Bank and another vs. Rajinder Lal Capoor; 2007(6) SCC 694**, where an employee is allowed to superannuate, no enquiry can be initiated against him.

The ratio decidendi culled out in **Punjab and Sind Bank vs. S. Ranveer Singh Bawa 2004(4) SLR 9 (SC)**, leads to an irresistible conclusion that where an employee had obtained the VRS scheme and before its acceptance, seeks withdrawal, in such cases, Bank can initiate departmental proceedings. In the instant case, respondent-plaintiff has not sought the withdrawal of the VRS scheme.

In my view, the finding rendered by the Courts below are based on appreciation of oral and documentary evidence, much less, regulations governing the terms and conditions relied upon by an employee. Thus, there is no illegality and perversity in the impugned judgments and decrees of the Courts below, much less, no substantial question of law arise to be determined by this Court.

Accordingly, the appeal is dismissed.

(AMIT RAWAL)
JUDGE

September 10, 2015
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