

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

+ W.P.(C) No. 456/2015

%

16th January , 2015

SUDHIR KUMAR JAIN

.....Petitioner

Through: Mr. Harish Malhotra, Sr. Adv. with
Mr. Sakesh Kumar, Adv.

VERSUS

UNION OF INDIA & ANR.

..... Respondents

Through: Mr. Narendra Kalra and Mr. Sumit
Rajput, Advs.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? **Yes**

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition filed under Article 226 of the Constitution of India the petitioner, who was the Chairman and Managing Director of the Syndicate Bank, impugns the order dated 22.9.2014 by which the services of the petitioner have been terminated with immediate effect in exercise of powers under sub-clause (1A) of Clause 8 of the Nationalised Banks (Management and Miscellaneous Provisions) Scheme 1970/1980 (hereinafter referred to as 'the 1970 Scheme'). This impugned order reads as under:-

F.No.1/10/2012/VIG (Part-1)
Government of India
Ministry of Finance
Department of Financial Services

New Delhi, Dated the 22nd, September, 2014
Bhadrapada 31, 1936 (Saka)

ORDER

In exercise of the powers conferred by sub-clause (1A) of Clause 8 of the Nationalised Banks (Management and Miscellaneous Provisions) Scheme 1970/1980, the Central Government hereby terminates the term of office of Shri Sudhir Kumar Jain as CMD, Syndicate Bank with immediate effect and with the direction the grant of three months' salary and allowances in lieu of the notice may be considered only if he is exonerated."

2. The relevant Clause 8 of the 1970 Scheme reads as under:-

“Clause-8. Term of office and remuneration of a whole-time Director including Managing Director-

(1) A whole-time Director including the Managing Director shall devote his whole-time to the affairs of the Nationalised Bank and shall hold office for such terms not exceeding five year as the Central Government may, after consultation with the Reserve Bank, specify and shall be eligible for re-appointment.

(1-A) Notwithstanding anything contained in sub-clause (1), the Central Government shall have the right to terminate the term of office of a whole-time Director, including the Managing Director, at any time before the expiry of the term specified under that sub-clause by giving to him a notice of not less than three months, in writing or three months salary and allowances in lieu of notice; and the whole-time Director, including the Managing Director, shall also have the right to relinquish his

office at any time before the expiry of the term specified under that sub clause by giving to the Central Government notice or not less than three months in writing.

(1-B) Any reference to a whole-time Director, including the Managing Director, in sub-clause (1-A) shall be construed as including a reference to the person holding office as such at the commencement of the Nationalised Banks (Management and Miscellaneous Provisions) (Second Amendment) Scheme, 1976.

(2) A whole-time Director, including the Managing Director shall receive from the Nationalised Bank such salary, allowance, fees & perquisites and be governed by such terms and conditions as the Central Government may determine, after consultation with the Reserve Bank.

(3) If a whole-time Director including the Managing Director is by infirmity or otherwise rendered incapable of carrying out his duties or is absent on leave or otherwise in circumstances not involving the vacation of his office, the Central Government may, after consultation with Reserve Bank, appoint another person to act in his place during his absence.

(4) The Central Government may, if it is satisfied that it is expedient in the interest of the nationalized bank so to do, remove a whole-time Director, including the Managing Director, from office:

Provided that no such removal shall be made except after-

(a) consultation with the Board, and

(b) giving a reasonable opportunity to the whole-time Director including the Managing Director of showing cause against the proposed action.”

3. A reading of Clause 8 of the 1970 Scheme with its sub-clauses

shows that there are two methods of termination of the employment of a Director including the Managing Director. One method is under sub-clause (1A) of Clause 8 of the 1970 Scheme and the second one is under sub-clause 3 of Clause 8 of the 1970 Scheme. Sub-clause (1A) of Clause 8 of the 1970 Scheme provides an exit route both to the employer and employee by means of a three months' notice. Sub-clause 3 of Clause 8 of the 1970 Scheme is for removal in the interest of the Nationalized Bank (viz Syndicate Bank in this case) and in which case there is a requirement to follow the principles of natural justice.

4. In my opinion, sub-clause (1A) of Clause 8 of the 1970 Scheme is a balanced clause because it gives an exit route both to the employer as well as the employee for bringing to an end to the contract of services of the petitioner as a Chairman or a Managing Director of the Syndicate Bank. The impugned order specifically refers to exercise of powers under sub-clause (1A) of Clause 8 of the 1970 Scheme, and therefore I cannot agree with the arguments urged on behalf of the petitioner that the termination of the petitioner in this case should be taken as having been effected in exercise of powers under sub-clause 3 of Clause 8 of the 1970 Scheme. If I accept this argument urged on behalf of the petitioner, I would be doing violence to the language of the impugned termination order dated 22.9.2014 which

specifically invokes only sub-clause (1A) of Clause 8 of the 1970 Scheme and not sub-clause 3 of Clause 8 of the 1970 Scheme.

5. Once sub-clause (1A) of Clause 8 of the 1970 Scheme is applicable, the argument urged on behalf of the petitioner by his senior counsel is that this sub-clause (1A) of Clause 8 of the 1970 Scheme must be completely complied with and since this sub-clause requires three months' pay to be given with the termination order, and since the impugned order thus does not give three months' pay, the impugned order thus falls foul of the language of sub-clause (1A) of Clause 8 of the 1970 Scheme, and therefore has to be set aside.

6. I do not agree with the argument urged on behalf of the petitioner that the termination order issued under the sub-clause (1A) of Clause 8 of the 1970 Scheme will fall merely because the three months' pay is not given to the petitioner in terms of the impugned order dated 22.9.2014. An order which is illegal on the ground that the requirement thereof being not complied with being the three months' notice pay, in my opinion will only have the effect that the petitioner pursuant to the impugned order will be entitled to be given the three months' notice pay and not that the termination itself is illegal. I say so because way back the Supreme Court in the case of *S.S. Shetty Vs. Bharat Nidhi Ltd., AIR 1958 SC 12* has held that

where there is an illegal termination of a contractual employment, the maximum entitlement of a contractual employee wrongly terminated is the notice pay as specified in the contract and not that the termination is illegal. In the present case, the notice pay which is specified by virtue of sub-clause (1A) of Clause 8 of the 1970 Scheme is a three months' notice pay and therefore, the entitlement of the petitioner alleging illegal termination will only be the three months' notice pay, inasmuch as, the appointment of the petitioner was for a period of five years or till further orders in terms of the appointment order dated 8.7.2013. This appointment order of the petitioner dated 8.7.2013 reads as under:-

F.No.4/4/2012-BO-I
Government of India
Ministry of Finance
Department of Financial Services
New Delhi, dated 8th July, 2013
Ashadha 17, 1935 (Saka)

NOTIFICATION

In exercise of the powers conferred by clause (a) of sub-section (3) of Section 9 of The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970/1980 read with sub-clause (1) of clause 3 and sub-clause (1) of Clause 8 of The Nationalised Banks (Management and Miscellaneous Provisions) Scheme, 1970/1980, the Central Government, hereby appoints Sh. Sudhir Kumar Jain (DoB: 21.07.1960), Executive Director, Bank of Baroda as Chairman and Managing Director, Syndicate Bank, for a period of five years from the date of taking over charge or until further orders,

whichever is earlier.” (underlining added)

7. Since the language of the aforesaid order dated 8.7.2013, makes it clear that the appointment is for a period of five years or till further orders, the appointment is for a term, and the term being a specific term, clearly therefore the ratio of the judgment of the Supreme Court in the case of *S.S. Shetty (supra)* will squarely apply, and consequently, the maximum entitlement of the petitioner will be to claim three months' notice pay and not seek quashing of the impugned order dated 22.9.2014 whereby services of the petitioner as a Chairman and Managing Director have been terminated.

8. Dismissed.

JANUARY 16, 2015
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VALMIKI J. MEHTA, J.