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

% *Date of Decision : June 29, 2015*

+ **LPA 174/2000**

CANARA BANK & ANR. Appellants
Represented by: Mr.Naveen R.Nath, Advocate

versus

JAGDISH MITTER MAINI Respondent
Represented by: None

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J. (Oral)

1. Working as a Manager with Lakshmi Commercial Bank (a private banking company) the respondent was placed under suspension on February 27, 1984 and was served with a charge memorandum on March 26, 1984. Before the inquiry could proceed Lakshmi Commercial Bank was amalgamated with Canara Bank in terms of a gazette notification dated August 23, 1985. The scheme of merger did not include in the list of employees of Lakshmi Commercial Bank (to be the employees of Canara Bank) who were under suspension and thus an issue arose as to what would happen to such employees.

2. In the decision reported as AIR 1987 SC 686 K.I.Shepard & Ors. Vs. UOI the Supreme Court held that these employees (suspended) would be

deemed to be employees of Canara Bank. Thus, the respondent had to be treated as an employee of Canara Bank.

3. Canara Bank proceeded with the inquiry proceedings by appointing an Inquiry Officer and nominated a presenting officer. Inquiry proceedings concluded and resulted in the levy of a penalty of being dismissed from service.

4. The respondent filed a writ petition questioning the continuance of the disciplinary proceedings against him as also the penalty levied. The contentions of the respondents in said regards have been negated by the learned Single Judge vide impugned order dated February 04, 2000. The respondent has not challenged said findings and thus the same have attained finality.

5. On the issue of whether the respondent could be treated as under suspension by Canara Bank, the learned Single Judge has held that with effect from August 25, 1985 the respondent cannot be treated to be under suspension and thus has directed that for the period post August 24, 1985 till respondent was dismissed from service he would be entitled to full salary and for which finding the reasoning of the learned Single Judge is the view taken by a Division Bench of the Madhya Pradesh High Court.

6. The reasoning being that since the notification dated August 23, 1985 made no reference to the employees of Lakshmi Commercial Bank who were under suspension, the legal consequences would be that such employees would have to be treated as not to be under suspension post August 24, 1985.

7. In LPA No.47/2007 Inder Raj Malhotra Vs. Canara Bank & Anr. decided on February 01, 2007, a Division Bench of this Court, in paragraphs 9 to 13, dealing with a case identical on facts, held as under:-

“9. It is the contention on behalf of the appellant that although a disciplinary proceeding can be continued against the appellant, but his continued suspension is illegal, particularly in view of the judgment of the Madhya Pradesh High Court in M.P.No.132/89 entitled as Sudarshan Kumar Dhall Vs. Canara Bank, which was decided on 25.7.1991. We have perused the said judgment. It was held by a Division Bench of Madhya Pradesh High Court that the order of suspension got merged with the order of termination and once the order of termination was set aside, the order of suspension could not revive.

10. The question that falls for our consideration is whether on the merger of the Lakshmi Commercial Bank with the Canara Bank and with the services of appellant having been taken over by the Canara Bank under scheme as modified by the Supreme Court, would the order of suspension automatically get revoked or would it continue to be in operation. No direction or order was passed by the Supreme Court for terminating suspension order. The Supreme Court on the other hand had clearly stated that all actions taken against the concerned person would continue. Order of suspension was not set aside and de novo proceedings were never directed. Departmental proceedings were to continue from the same stage. The order of suspension which was passed would also continue to operate and it cannot be said that it has lapsed because services of the appellant were taken over by the Canara Bank.

11. Supreme Court in the case of K.I.Shepherd was not considering and examining the question whether Order of suspension passed against an employee of the Transferor Bank shall cease to operate as a result of the Scheme of Merger. Further the Scheme by itself did not postulate termination of services of an employee under suspension as a result of departmental proceedings. The Scheme provided that upon merger of the Transferor Bank with the Canara Bank services of some employees including the appellant herein will not be absorbed.

12. We may also notice here that in Civil Appeal

No.4885/1982 titled Canara Bank, Indore Vs. Sudershan Kumar Dhall, the Supreme Court noticed the contention of Canara Bank that doctrine of merger is not attracted in the present case as suspension order never got merged into an order of termination. Thereafter, it was observed directing that the employees against whom the departmental proceedings were pending and also in these cases where order of suspension was made would be absorbed in the service of Canara Bank and would continue to get the same scale and salary with continuity of service.”

8. Hearing of the instant appeal was being deferred, at the asking of the respondent, because Inder Raj Malhotra had challenged the decision dated February 01, 2007 passed by a Division Bench of this Court before the Supreme Court but withdrew the Petition for Special Leave to Appeal (C) No.12086/2007 on January 17, 2014 with liberty granted to seek a review of the decision dated February 01, 2007, which review petition being RP No.146/2014 was dismissed by the Division Bench on March 25, 2014 and learned counsel for the appellant informs that Inder Raj Malhotra has not proceeded any further to the Supreme Court.

9. We would thus be bound by the law declared by a co-ordinate Bench of this Court in LPA No.47/2007.

10. Following the reasoning in the decision dated February 01, 2007 in LPA No.47/2007, we allow the appeal and set aside the impugned order dated February 04, 2000 in so far it has allowed W.P.(C) No.2634/1989 filed by the respondent directing that with effect from August 24, 1985 till the respondent was dismissed from service he would be entitled to salary and other monetary benefits as if he had served. We declare that for the period in question the respondent would be treated as under suspension and would be entitled to be paid only subsistent allowance; and if the same has not been paid the same would be paid to the respondent.

11. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

JUNE 29, 2015
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