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

Date of decision: August 18, 2015

+ W.P.(C) 6382/2015, CM No.11631/2015

HARPREET SINGH MAKBKAR Petitioner

Through: Mr.Vivek Singh, Adv.

versus

PUNJAB AND SIND BANK Respondent

Through: Mr.Jagat Arora, Adv. with Mr.Rajat Arora, Adv.

+ W.P.(C) 6383/2015, CM No.11633/2015

PARMINDER SINGH Petitioner

Through: Mr.Vivek Singh, Adv.

versus

PUNJAB AND SIND BANK Respondent

Through: Mr.Jagat Arora, Adv. with Mr.Rajat Arora, Adv.

+ W.P.(C) 6384/2015, CM No.11635/2015

NAND LAL PHATNANI Petitioner

Through: Mr.Vivek Singh, Adv.

versus

PUNJAB AND SIND BANK Respondent

Through: Mr.Jagat Arora, Adv. with Mr.Rajat Arora, Adv.

+ W.P.(C) 6385/2015, CM No.11637/2015

PARAMJIT SINGH ANAND Petitioner

Through: Mr.Vivek Singh, Adv.

versus

PUNJAB AND SIND BANK Respondent

Through: Mr.Jagat Arora, Adv. with Mr.Rajat Arora, Adv.

+ W.P.(C) 7298/2015, CM No.13408/2015

HARVINDER PAL SINGH Petitioner

Through: Mr.Vivek Singh, Adv.

versus

PUNJAB & SIND BANK

..... Respondent

Through: Mr.Jagat Arora, Adv. with Mr.Rajat Arora, Adv.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

V. KAMESWAR RAO, J (Oral)

1. As these five writ petitions involve identical issue with more or less similar facts, they are being disposed by this common order.
2. The issue which falls for consideration in this batch of writ petitions is whether, in view of third proviso to Regulation 48(1) of the Punjab and Sind Bank (Employees') Pension Regulations, 1995 ('Pension Regulations, 1995' in short), the respondent could have issued charge sheets to the petitioners on December 26, 2014 after their superannuation/retirement in respect of a cause of action/event which took place four years before the date of charge sheet.
3. The common facts are that the petitioners in W.P.(C) Nos. 6382/2015, 6384/2015 & 6385/2015 were part of a Loan Committee, which recommended the enhancement of bank guarantee from Rs. 10 Crores to Rs. 20 Crores in respect of one M/s. Zoom Developers Private Ltd. The petitioners in W.P.(C) Nos. 6383/2015 and 7298/2015, while working as Branch Manager/General Manager, on the recommendations of the Loan

Committee, sanctioned enhancement of bank guarantee limit from Rs. 10 Crores to Rs. 20 Crores to the said M/s. Zoom Developers Private Ltd.

4. It is noted that M/s. Zoom Developers Private Ltd. defaulted and lending became sticky leading to litigation. The respondent bank issued show cause notice(s) to all the petitioners on September 28, 2013, asking for their comments on the commission of irregularities committed by them while recommending/sanctioning the enhancement of bank guarantee from Rs. 10 Crores to Rs. 20 Crores in respect of M/s. Zoom Developers Private Ltd. The petitioners except the petitioner in W.P.(C) 6383/2015, submitted their comments to the show cause notice in the month of November/December, 2013. It is noted that the petitioner in W.P.(C) 6383/2015 could not able to submit his comments as he was not given the requisite documents he had sought for. Be that as it may, the petitioners were issued charge sheets on December 26, 2014 in respect of credit extended to M/s. Zoom Developers Private Ltd. It is the common ground of all the petitioners in reply to the charge sheet, apart from the merit of the charge, that the event complained about, happened more than four years before the date of charge sheet, the departmental proceedings cannot be initiated after retirement. It is their case that despite pointing the illegality,

the respondent bank did not withdraw the charge sheets issued to them, instead, appointed Enquiry Officer in all the cases. When these writ petitions were listed before this Court on July 7, 2015, except in W.P.(C) 7298/2015, this Court noting that the Enquiry Officer has fixed the date of proceeding as July 8, 2015, directed the Enquiry Officer to defer the proceedings after the next date of hearing i.e. August 18, 2015.

5. Pleadings are complete.

6. The only submission made by Mr. Vivek Singh, learned counsel appearing for the petitioners is that in view of the 3rd Proviso to Regulation 48(1), the subject matter of the charge sheet being enhancement of the bank guarantee from Rs. 10 Crores to Rs. 20 Crores in respect of M/s. Zoom Developers Private Ltd. on February 6, 2009, which is a date/event beyond four years of the date of issuance of charge sheets to the petitioners on December 26, 2014, no departmental proceedings could have been initiated against them. In this regard, he would rely upon the judgments of the Supreme Court in the cases reported as **1996 (9) SCC 395, State of U.P. and Anr. Vs. Shri Krishna Pandey** and **2013 (6) SCC 515, Anant R. Kulkarni Vs. Y.P. Education Society and Ors.** to contend that the Rules governing the service conditions of the petitioners are determining factors as to whether a

departmental enquiry can be held against the petitioners, who stood retired after reaching the age of superannuation or by taking voluntary retirement. During the course of the submission, Mr. Vivek Singh, learned counsel for the petitioners has drawn my attention to a judgment of this Court in the case reported as **2014 (140) DRJ 162 Amarjit Singh Vs. Punjab and Sind Bank**, wherein, this Court has held that, when the charge sheet has been issued after the retirement, there cannot be valid departmental proceedings on the basis of only issuance of show cause notice as there is no rule in the bank that departmental proceedings are deemed to have commenced on issuance of show cause notice and when a charge sheet has been issued after retirement of the employee. I have been informed that the judgment in the case of **Amarjit Singh (supra)** is under challenge before the Division Bench in LPA No. 774/2014. Since, he has not urged this point, it may not be necessary for me to go into that issue. The issue raised is whether the limitation of four years would be applicable to the facts.

7. Mr. Jagat Arora, learned counsel appearing for the respondent bank would submit that the present petitions are premature inasmuch as the charged officer must await the outcome of the proceedings in the enquiry before challenging the same. He would rely on the judgment of the

Supreme Court in the case reported as **2007 (1) LLN 773, Union of India Vs. Kunisetty Satyanarayana**. That apart, it is his submission that Regulation 48 has no application in the facts of these cases as the same is applicable when the recovery of pecuniary loss caused to the bank is sought to be recovered. According to him, in terms of Regulations 43 and 45, the respondent bank is within its right to proceed departmentally against the petitioners for the purpose of pension, even though they have retired on attaining the age of superannuation/voluntary retirement. In this regard, he would rely upon the judgment of the Supreme Court reported as **2015 Labour Industrial Cases 685 State of West Bengal Vs. Pronab Chakraborty**. He would also state that the guidelines issued by the CVC are very clear; the limitation of four years shall not be applicable in cases of fraud; other criminal offences; cases where mala fide are inferable and be observed.

8. Having considered the submissions made by the learned counsel for the parties, insofar as the submission that Regulation 48 has no applicability in view of Regulations 43 and 45 is concerned, I reproduce hereunder the said Regulations for a better understanding of the submissions made:

“43. Withholding or withdrawal of pension The competent authority may, by order in writing, withhold or withdraw a

pension or a part thereof, whether permanently or for a specified period, if the pension is convicted of a serious crime or criminal breach of trust or forgery or acting fraudulently or is found guilty of grave misconduct. Provided that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the minimum pension per mensem payable under these regulations.

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45. Pension guilty of grave misconduct In a case not falling under regulation 44 if the Competent Authority considers that the pensioner is prima facie guilty of grave misconduct, it shall, before passing an order, follow the procedure specified in Punjab & Sind Bank Officer Employees' (Discipline & Appeal) Regulations, 1982 or in Settlement as the case may be.

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48. Recovery of Pecuniary loss caused to the Bank (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. (2) No departmental proceedings, if not instituted while the employee was in service, shall be instituted in respect of an event which took place more than four years before such institution; Provided that the disciplinary proceedings so instituted shall be in accordance with the procedure applicable to disciplinary proceedings in relation to the employee during the period of his service. (3) Where the Competent Authority orders recovery of pecuniary loss from the pension, the recovery shall not ordinarily be made at a rate exceeding one-third of the pension admissible on the date of retirement of employee; Provided that where a part of pension is withheld or withdrawn, the amount of pension drawn by a pensioner shall not be less than the minimum pension payable under these regulations”.

9. A perusal of Regulations 43 and 45, no doubt, would reveal that they are related to withholding or withdrawal of pension for a grave misconduct. In other words, the departmental proceedings can be initiated for the purpose

of withholding or withdrawal of pension if the pensioners are convicted for a serious crime or criminal breach of trust or forgery or acting fraudulently or is found guilty of grave misconduct. At the same time, Regulation 48 also contemplates withholding or withdrawal of pension, whether permanently or for specified period, and order recovery from pension of the whole or part of pecuniary loss caused to a bank if in a 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 service. Regulation 43 stipulates, withholding or withdrawal of pension for the reasons stated therein. Regulation 45 prescribes the procedure to be followed before it is concluded that pensioner is guilty of grave misconduct. Regulation 48 contemplates withholding or withdrawal of pension and additionally, order recovery from pension of the whole or part of pecuniary loss, in the eventuality, the pensioner is found guilty of grave negligence or a misconduct, or criminal breach of trust, or forgery or acts done fraudulently/ done during the period of service. Proviso (3) thereto is a clause relating to limitation inasmuch it stipules for 'no departmental proceedings for any event which took place more than four years before such institution'. Regulations 43 and 45 have to be read in

conjunction with Regulation 48. Regulation 48 is not specific for recovery of pecuniary loss as urged by Mr. Arora, counsel for the respondent. It also contemplates withholding or withdrawal of pension or a part thereof, whether permanently or for a specified period. I note, the charge sheet issued to the petitioners is in terms of Regulation 43 read with Regulations 45 and 48 of the Pension Regulations, 1995, hence, the submission of Mr. Arora is not sustainable on the face of the provisions under which, the charge sheets have been issued.

10. Insofar as the reliance placed by Mr. Arora, on the judgment of the Supreme Court in the case of *State of West Bengal Vs. Pronab Chakraborty (supra)* is concerned, the same relates to a charge sheet issued to the respondent in that case on July 31, 2007 whereas the respondent retired on attaining the age of superannuation on January 31, 2008. On the contention of the respondent before the High Court that he having retired on attaining the age of superannuation on January 31, 2008, departmental proceedings initiated against him, could not be allowed to proceed further, the High Court accepted the prayer. In the order impugned before the Supreme Court dated December 22, 2010, the High Court interpreted the Rule 10(1) of the West Bengal Services (Death-cum-Retirement Benefits)

Rules, 1971, which is reproduced hereunder, that departmental proceedings being conducted against an individual employee could proceed further after the employee's retirement, only when allegations contained in the charges levelled against him depict pecuniary loss to the State Government:-

“10. Right of the Governor to withhold pension in certain cases. - (1) The Governor reserves to himself the right of withholding or withdrawing a pension or any part of it whether permanently or for a specified period, and the right of ordering the recovery from a pension of the whole or part of any pecuniary loss caused to Government, if the pensioner is found in a departmental or judicial proceeding to have been guilty of grave misconduct or negligence, during the period of his service, including service rendered on re-employment after retirement:

Provided that-

(a) such departmental proceeding if instituted while the officer was in service, whether before his retirement or during his re-employment, shall after the final retirement of the officer, be deemed to be a proceeding under this article and shall be continued and concluded by the authority by which it was commenced in the same manner as if the officer had continued in service;

(b) Such departmental proceedings, if not instituted while the office was in service, whether before his retirement or during his re-employment—

(i) shall not be instituted save with the sanction of the Governor;

(ii) shall not be in respect of any event which took place more than (four years) before such institution; and

(iii) shall be conducted by such authority and in such place as the Governor may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the officer during his service;

(c) no such judicial proceeding, if not instituted while the officer was in service, whether before his retirement or during his re-employment shall be instituted in respect of a cause of action which arose or an event which took place more than (four years) before such institution.... ”

The High Court further was of the view that the charges levelled against the respondent, did not depict any pecuniary loss to the State Government, the proceedings against the respondent could not be continued after January 31, 2008. The Supreme Court, in appeal against the order of the High Court, was of the view that Rule 10(1) stipulates two kinds of punishments, firstly,

the right of withholding or withdrawal the pension, which the delinquent employee is entitled to, permanently or for specified period and secondly, the right of ordering the recovery from a pension, of the whole or part of any pecuniary loss caused to the Government. The Supreme Court held, that, the above two punishments can be inflicted on a delinquent even after his attaining the age of superannuation, provided he is found guilty of grave misconduct or negligence during the period of service. Further, the Supreme Court in para 5 has held as under:

“5. It is therefore apparent, that it is not only for pecuniary loss caused to the Government that proceedings can continue after the date of superannuation. An employee can be proceeded against, after the date of his retirement, on account of “... grave misconduct or negligence ...”. Therefore, even in the absence of any pecuniary loss caused to the Government, it is open to the employer to continue the departmental proceedings after the employee has retired from service. Obviously, if such grave misconduct or negligence, entails pecuniary loss to the Government, the loss can also be ordered to be recovered from the concerned employee. It was therefore not right for the High Court, while interpreting Rule 10(1) of the 1971 Rules to conclude, that proceedings after the date of superannuation could continue, only when the charges entailed pecuniary

loss to the Government”.

11. The abovesaid judgment as relied upon by Mr. Arora, is distinguishable as the question which falls for consideration in the present cases is different from the one which fell for consideration before the Supreme Court. The issue which falls for consideration is covered by the judgment of the Supreme Court in the case of ***Shri Krishna Pandey (supra)***, wherein, the Supreme Court was considering Regulation 351(A) of Central Civil Services (Pension) Rules, 1972, which reads as under:

"The Governor reserves to himself the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and the right of ordering the recovery from a pension of the whole part of any pecuniary loss caused to Government, if the pensioner is found in departmental or judicial proceedings to have been guilty of grave mis-conduct, or to have caused pecuniary loss to Government by misconduct or negligence, during his service, including service rendered on re-employment after retirement:

Provided that

a) such departmental proceedings, if not instituted while the officer was on duty either before retirement or during re-employment-

i) shall not be instituted save with the sanction of the Governor,

ii) shall be in respect of an event which took place not more than four years before the institution of such proceedings, and

iii) shall be conducted by such authority and in such place or places as the Governor may direct and in accordance with the procedure applicable to proceedings on which an order of dismissal from service may be made.

b) judicial proceedings, if not instituted while the officer was on duty either before retirement or during re-employment, shall have been instituted in accordance with sub-clause (ii) of clause (a) and

c) the Public Service Commission, U.P., shall be consulted before final orders are passed. Explanation - For the purpose of this article -

a) departmental proceedings shall be deemed to have been instituted when the charges framed against the pensioner are issued to him, or if the officer has been placed under suspension from an earlier date, on such date; and

i) in the case of criminal proceedings, on the date on which a complaint is made, or a charge sheet is submitted, to a criminal court; and

ii) in the case of civil proceedings, on the date on which the plaint is presented or, as the case may be, an application is made, to a civil court.

Note:- As soon as proceedings of the nature referred to in this article are instituted the authority which institutes such proceedings shall without delay intimate the fact to the Audit Officer concerned."

12. In the case of ***Shri Krishna Pandey (supra)***, the departmental enquiry was initiated against the respondent for embezzlement of Rs.2,47,779/-, on attaining the age of superannuation on March 31, 1987, he was allowed to retire from service. FIR was lodged and investigation was in progress. When no pension was paid to him, he challenged the same before the High Court. The High Court allowed the petition, directing the petitioner to pay pension. The Supreme Court, on an interpretation of the Regulation 351(A) of Civil Service Regulation, in para 6, has held as under:

"6. It would thus be seen that proceedings are required to be instituted against a delinquent officer before retirement. There is no specific provision allowing the officer to continue in service nor any order passed to allow him to continue on re-employment till the enquiry is completed, without allowing him to retire from service. Equally, there is no provision that the proceedings be initiated as disciplinary measure and the action initiated earlier would remain unabated after retirement. If Rule 351- A is to be operative in respect of pending proceedings,

by necessary implication, prior sanction of the Governor to continue the proceedings against him is required. On the other hand, the rule also would indicate that if the officer caused pecuniary loss or committed embezzlement etc. due to misconduct or negligence or dereliction of duty, then proceedings should also be instituted after retirement against the officer as expeditiously as possible. But the events of misconduct etc. which may have resulted in the loss to the Government or embezzlement, i.e., the cause for the institution of proceedings, should not have taken place more than four years before the date of institution of proceedings. In other words, the departmental proceedings must be instituted before lapse of four years from the date on which the event of misconduct etc. had taken place. Admittedly, in this case the officer had retired on March 31, 1987 and the proceedings were initiated on April 21, 1991. Obviously, the event of embezzlement which caused pecuniary loss to the State took place prior to four years from the date of his retirement. Under these circumstances, the State had disabled itself by their deliberate omissions to take appropriate action against the respondent and allowed the officer to escape from the provisions of Rule 351-A of the Rules. This order does not preclude proceeding with the investigation into the offence and taking action thereon”.

13. Hence, it is suffice to conclude that 3rd Proviso would come into play in the facts of these cases inasmuch as the enhancement of bank guarantee from Rs. 10 Crores to Rs. 20 Crores was effected on February 6, 2009. The show cause notice(s) was issued on September 28, 2013, which was after the retirement of the petitioners as well as beyond a period of four years. In any case, the show cause notice(s) is not initiation of a departmental proceeding. Be that as it may, even the charge sheets have been issued on December 26, 2014, which is also beyond a period of four years from the date of the event i.e. February 6, 2009. Hence, the respondent is precluded from taking any action against the petitioners.

14. Insofar as the judgment referred to by Mr. Arora in the case of *Kunisetty Satyanarayana (supra)* is concerned, the Supreme Court in the said case was primarily concerned with facts wherein the challenge was made to the charge sheet alleging that he does not belong to Konda Kapu community which was an ST community and as such, was not entitled to reservation under ST category. The Supreme Court was of the view that the challenge to the charge sheet was premature as a mere charge sheet or show cause notice, does not give rise to any cause of action because it does not amount to any adverse order which affects the rights of any party, unless the

same has been issued by a person, who has no jurisdiction to do so. According to the Supreme Court, it is quite possible, after considering the reply to the show cause notice or after holding the enquiry, the authority concerned, may drop the proceedings or hold that the charges are not established. It is well settled that a writ lies when a party infringes the right of other party. A mere show cause notice or the charge sheet does not infringe the right of anyone.

15. In the cases in hand, it is the stand of the petitioners that the charge sheets issued are without jurisdiction and not permitted under the Rules, and since, no response was received, they have approached this Court. It is clear, the issue raised in the present petitions goes to the root, on the maintainability of the charge sheets in violation of 3rd Proviso to Regulation 48(1) and the same could be challenged by the petitioners at the threshold so as to avoid rigours of a departmental proceedings, which in law, are not maintainable. Thus, the submission of Mr. Arora needs to be rejected. The plea of Mr. Arora on the circular of CVC also needs to be rejected in view of statutory nature of Regulation 48(1) of Pension Regulations, 1995.

16. In view of the above discussion, the present writ petitions are allowed. The charge sheet(s) dated December 26, 2014 issued to the petitioners are

quashed.

17. No costs.

CM Nos.11631/2015, 11633/2015, 11635/2015, 11637/2015 & 13408/2015

In view of the order passed in the writ petitions, the applications stand disposed of as infructuous.

V. KAMESWAR RAO, J

AUGUST 18, 2015/akb