IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10192 of 2014

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Kamal Kishore Prasad, son of Late Naurat Mal Sharma, Resident of- 111, S.K. Nagar, Road No. 22, P.O.- Kidwaipuri, P.S.- Budha Colony, District- Patna

.... Petitioner/s

Versus

1. The State Bank of India through the Chairman of State Bank of India, Central Office Bockboy Reclannation, Mumbai- 400021
2. The Chief General Manager, State Bank of India, Local Head Office, West Gandhi Maidan, Patna- 800001
3. The General Manager-cum- appointing authority, State Bank of India, Local Head Office, West Gandhi Maidan, Patna- 800001
4. The Assistant General Manager, Region I, State Bank of India, Zonal Office, J.C. Road, Patna- 800004
5. The Deputy General Manager, State Bank of India, Zonal Office, J.C. Road, Patna- 800004
6. The Enquiry Officer, State Bank of India, Local Head Office, West Gandhi Maidan, Patna- 800001

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Lalit Kishore, Sr. Advocate
Mr. Rabindra Kumar Priyadarshi, Advocate

For the Respondent/s : Mr. Kaushlendra Kumar Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 22-08-2016

The petitioner prays for quashing of the order dated 17.2.2014 passed by the General Manager whereby the petitioner has been dismissed from the services of the State Bank of India with effect from 11.8.1999 under Rule 67(j) of the State Bank of India Officers Service Rules, 1992 (hereinafter referred to as 'the service rules'). The period of suspension suffered by the petitioner was also directed to be treated as not on duty. The statutory appeal filed by the petitioner has also been dismissed vide order dated 09.8.2014 passed by the Chief General Manager as the appellate authority which was communicated vide letter dated 13.8.2014. The order dismissing the appeal has been placed on record vide Annexure-15 to I.A. No. 2517 of 2015.

Learned counsel for the petitioner makes a prayer for allowing the interlocutory application and to permit him to question the appellate order as well which prayer is accordingly allowed. I.A. No. 2517 of 2015 is disposed of.

Mr. Lalit Kishore, learned senior counsel has appeared on behalf of the petitioner duly assisted by Mr. Rabindra Kumar Priyadarshi and the respondent Bank is represented by Mr. Kaushlendra Kumar Sinha.

Mr. Kishore has taken this Court through the sequence of events to submit that the petitioner was charged with lapses on sanction, disbursement and conduct of advances during his tenure as Branch Manager, Maroofganj Branch and Bakhtiyarpur Branch, the details of which finds mention in the memorandum of charges present at Annexure-3 series. A disciplinary proceeding commenced and the enquiry report is present at Annexure-5 holding the charges proved. An enquiry report was submitted holding Charge No. I to IV and VII to IX proved while Charge No. V and VI were held partly proved. The disciplinary authority disagreeing with the finding of the Enquiry Officer, forwarded the enquiry report accompanied with tentative reasons for disagreement. The disciplinary authority vide order passed on 11.8.1999 on consideration of the materials on record held the charge proved and imposed a penalty of dismissal on the petitioner, a copy of the order of dismissal is present at Annexure-7. The petitioner questioned the order of dismissal before this Court in CWJC No. 2739 of 2000 and a Bench of this Court found the order of dismissal unsustainable and which was quashed vide judgment and order passed on 26.3.2003. The petitioner was directed to be reinstated in service, however, the arrears of salary during the period the petitioner remained out of service on account of dismissal was to abide by the final decision in the departmental enquiry. The Bench taking note of the procedural infraction that the appointing authority had neither given reasons for disagreement nor opportunity was given to the petitioner to satisfy on the enquiry report, the order impugned dated 11.8.1999 passed by the appointing authority as well as the order passed by the appellate authority was held illegal and was quashed and set aside. The petitioner was reinstated in service, however liberty was granted to the appointing authority to proceed against the petitioner in accordance with law. The arrears of salary for the period of dismissal was to abide by final decision in the proceedings.

The Bank preferred an appeal before the Division Bench giving rise to L.P.A. No. 378 of 2003 and which was dismissed vide judgment and order passed on 22.4.2010. The Division Bench taking note of the fact that the date of superannuation of the petitioner had passed on 5.11.2009 restrained the Bank from proceeding any further against the writ petitioner. The petitioner was also held entitled to

75% of the back wages till superannuation for the period he remained out of service as well as to full salary for the period of suspension less the subsistence allowance.

The Bank questioned the judgment passed in L.P.A. No. 378 of 2003 before the Supreme Court giving rise to Civil Appeal No. 11146 of 2013. The Supreme Court while affirming the opinion of the writ Court has not accepted the modifications introduced by the Division Bench in the Letters Patent Appeal. The Supreme Court while quashing the judgment and order of the Division Bench in the Letters Patent Appeal and taking note of the fact that the writ petitioner had since retired on attaining the age of superannuation, the appointing authority was given liberty to take appropriate decision in the matter within two months of the receipt / production of a copy of the order.

It is in the light of the order passed by the Supreme Court that a notice was served on the petitioner on 06.2.2014 vide Annexure-11 series communicating the tentative reasons for disagreement by the appointing authority. The petitioner was given seven days time to respond. The petitioner filed his detailed response, a copy of which is a part of Annexure-11 series. Personal hearing was granted to the petitioner and which has culminated in the fresh order of dismissal with effect from 11.8.1999 passed by the General Manager-cum-Appointing Authority on 17.2.2014 impugned at Annexure-13. The petitioner preferred statutory appeal and which has been dismissed by the Chief General Manager-cum-Appellate Authority vide order passed on 09.8.2014. The petitioner being aggrieved is before this Court.

Mr. Lalit Kishore has questioned the order of dismissal on a limited score. According to Mr. Kishore, learned senior counsel, the master-servant relationship in between the Bank and the petitioner ceased on 05.11.2009 which is the date of superannuation of the petitioner in the normal course of service. According to Mr. Kishore, no disciplinary proceedings for dismissal could have been initiated against the petitioner after the lapse of the date of superannuation i.e. 05.11.2009. Learned counsel has referred to the judgment of the writ court placed at Annexure-8 to submit that the order(s) of the disciplinary authority and the appellate authority earlier passed against the petitioner on 11.8.1999 and 03.2.2000 respectively was set aside leaving it open for the Bank to proceed against the petitioner in accordance with law. It is submitted that the Bank did not choose to proceed against the petitioner rather it questioned the judgment of the writ court before the Division Bench in L.P.A. No. 378 of 2003 and even while the Letters Patent Appeal filed by the bank remained pending before this Court that the petitioner superannuated on 05.11.2009. He submits that the Division Bench has taken note of the superannuation of the petitioner in its judgment dated 22.4.2010. He submits that although the judgment of the Division Bench has been set aside by the Supreme Court in the Civil Appeal preferred by the Bank but the judgment of the writ court and the view expressed therein has been confirmed by the Supreme Court. It is submitted that in fact the Supreme Court taking note of the superannuation of the petitioner has directed the appointing authority to take a decision in the matter.

Learned senior counsel has referred to a Full Bench decision of this Court reported in **2000(1) PLJR 665 (Shambhu Saran & ors. Vs. State of Bihar)** to submit that the Full Bench in reference to the provisions underlying Rule 43(b) of the Pension Rules has held that even though a disciplinary enquiry which was initiated before retirement of a delinquent can be continued after his retirement but he cannot be punished with any of the penalties as provided under the Classification, Control and Appeal Rules though his pension can be withheld. According to Mr. Lalit Kishore insofar as the case in hand is concerned though the petitioner was reinstated in service by the writ court but the respondent Bank did not choose to abide by the directions to either reinstate the petitioner or to continue with the proceedings after reinstatement of the petitioner rather he was allowed to superannuate on his reaching the date of superannuation on 05.11.2009. According to learned senior counsel no punishment of dismissal could have been passed against the petitioner after 05.11.2009.

It is next with reference to Rule 19 of the 'service rules' submitted that even though a power is vested in the bank to extend the service of an employee and Rule 19(2) also vests jurisdiction to continue a disciplinary proceedings initiated before retirement at the discretion of the Managing Director but such exercise would be possible only in cases where a proceeding was continuing on the date of superannuation and not in the present case where the Bank did not choose to continue the proceedings rather allowed it to lapse on the date the petitioner reached the age of superannuation. Learned counsel with reference to the judgment of the Supreme Court reported in **(2014) 12 SCC 106 (State Bank of Patiala vs. Ram Niwas Bansal)**, paragraph 31, 33, 41, 44, 46 and 47 and another judgment reported in **(2013)16 (Chairman-cum-Managing Director Mahanadi Coalfield Ltd. Vs. Rabindranath Choubey) SCC 411**, paragraph- 18 to 22 has submitted that the proceedings could not have been revived by taking refuge under the Supreme Court judgment and thus the order of penalty is without sanction of law as no order of dismissal could have been passed with retrospective effect, after superannuation of the petitioner on 05.11.2009 especially when on the date of superannuation no disciplinary proceedings was continuing.

The argument of Mr. Kishore has been contested by Mr. K.K. Sinha, learned counsel appearing for the Bank who has taken this Court through the earlier orders passed in the case of the petitioner in the previous round of contest. Learned counsel has referred to the judgment of the learned single judge on the writ petition filed by the petitioner questioning his dismissal, a copy of which is annexed at Annexure-8 of the writ petition and the Division Bench judgment annexed at Annexure-9 to submit that the opinion of the single judge as well as the Division Bench stands noted in the judgment of the Supreme Court annexed at Annexure-10. He refers to paragraph-8 of the Supreme Court judgment to submit that the Supreme Court considered the order of the writ court whereby the Bench while quashing the order of the appointing authority has granted him liberty to proceed with the enquiry in accordance with law in the light of observations made in the order. He submits that the modifications introduced by the Division Bench while considering the Letters Patent Appeal of the Bank, has been commented upon by the Supreme Court in paragraph-9 of the judgment as strange. Learned counsel has next referred to the opinion of the Supreme Court in paragraph-11 to 13 of the judgment to submit that while the Supreme Court has affirmed the opinion of the writ court on the issue that the authority who hears the matter is the authority who should pass the final order but has interfered with the modifications introduced by the Division Bench and consequently the judgment and order of the Division Bench in Letters Patent Appeal was quashed and set aside. The Supreme Court taking note of the fact that the writ petitioner had retired from service on attaining superannuation, has directed the appointing authority to take appropriate decision in the matter. He submits that it is following the liberty so granted by the writ Court as confirmed by the Supreme Court that a show cause was issued to the petitioner vide Annexure-11 on 06.2.2014 and upon considering of the response of the petitioner and after giving opportunity of personal hearing, vide Annexure-12, that final orders have been passed on 17.2.2014 which was communicated vide letter present at Annexure-13. According to Mr. Sinha the proceedings remained pending on the date the petitioner superannuated and since the liberty granted by the writ Court was confirmed by the Supreme Court, that the Bank proceeded with the pending proceedings and which has culminated in the order of dismissal which suffers from no infirmity. Learned counsel has referred to Rule 19 of 'the rules' to submit that the power to continue a disciplinary proceedings initiated prior to retirement of a delinquent, even after his retirement, is vested with the authorities and since the proceedings were pending on the date of retirement of the petitioner and a liberty was already there in the orders of the writ Court as confirmed by the Supreme Court, the proceedings revived and which has resulted in the impugned orders, which requires no interference.

I have heard learned counsel for the parties and I have perused the records. The only issue which warrants a consideration is whether the disciplinary authority was within his jurisdiction to continue with the disciplinary proceedings initiated against the petitioner while in service, even after his attaining the age of superannuation and if the answer to the issue posed is in the affirmative then whether an order of dismissal could be passed with retrospective effect. For the purpose I would place on record Rule 19(1) and 19(3) which would be relevant for the issue posed before this Court:

> "19.(1) An officer shall retire from the service of the Bank on attaining the age of fifty-eight years or upon the completion of thirty years' service or thirty years' pensionable service if he is a member of the Pension Fund, whichever occurs first.
>
> Provided that the competent authority may, at its discretion, extend the period of service of an officer who has attained the age of fifty-eight years or has completed thirty years' service or thirty years' pensioinable service as the case may be, should such extension be deemed desirable in the interest of the Bank, so however, that the service rendered by the concerned officer beyond 58 years of age except to the extent of the period of leave due at that time will not count for purpose of pension.
>
> Provided further that an officer who had joined the service of the Bank either as an officer or otherwise on or after July, 19, 1969 and attained the age of 58 years shall not be granted any further extension in service.
>
> Provided further that an officer may, at the discretion of the Executive Committee, be retired from the Bank's service after he has attained 50 years of age or has completed 25 years' service or 25 years' pensionable service as the case may be, by giving him three months' notice in writing or pay in lieu thereof.
>
> Provided further that an officer who has

completed 20 years' service or 20 years' pensionable service, as the case may be, may be permitted by the competent authority to retire from the Bank's service, subject to his giving three months' notice or pay in lieu thereof unless this requirement is wholly or partly waived by it.

19.(2) …… ……. ……. ……

19.(3) In case disciplinary proceedings under the relevant rules of service have been initiated against an officer before he ceases to be in the Bank's service by the operation of, or by virtue of, any of the said rules or the provisions of these rules, the disciplinary proceedings may, at the discretion of the Managing Director, be continued and concluded by the authority by which the proceedings were initiated in the manner provided for in the said rules as if the officer continues to be in service, so however, that he shall be deemed to be in service only for the purpose of the continuance and conclusion of such proceedings.

Explanation: An officer will retire on the last day of the month in which he completes the stipulated service or age of retirement."

For reaching a conclusion on the issue posed hereinabove, I deem it necessary to mention some of the dates since this is a second round contest on the issue which reached the Supreme Court in the previous round of litigation.

11.8.1999: The first order of dismissal was passed vide Annexure-7.

26.3.2003: The petitioner questioned his dismissal in CWJC

No. 2739 of 2000 The learned Single Judge taking note of the fact that the appointing authority had neither served his tentative reasons for disagreement from the findings of the Enquiry Officer on the petitioner nor had the appointing authority given an opportunity of hearing to him, quashed the order of dismissal passed against the petitioner together with the appellate order but granting liberty to the appointing authority to proceed against the petitioner afresh but in accordance with law.

2003:L.P.A. No. 378 of 2003 was filed by the Bank questioning the order of the Single Judge. It is informed that since the judgment of the Single Judge was stayed by the L.P.A. bench, the petitioner was neither reinstated nor any order on payment of arrears of salary, was passed.

05.11.2009: The petitioner superannuated on reaching the age of 60 years while in a dismissed state, since though a reinstatement was ordered by the writ court but not acted upon by the bank by virtue of a stay order passed in L.P.A. No. 378 of 2003.

24.4.2010: L.P.A. No. 378 of 2003 filed by the Bank was dismissed with some modifications.

25.11.2013: Civil Appeal No. 11146 of 2013 of the Bank was allowed. The order passed by the Division Bench in the Letters Patent Appeal was set aside. The Supreme Court taking note of the fact that the petitioner had already superannuated on reaching age of superannuation, allowed the appointing authority to take appropriate decision in this regard.

06.2.2014: A show cause was served on the petitioner in consequence of the judgment and order of the Supreme Court. The petitioner filed his reply.

17.2.2014: Order of dismissal passed w.e.f. 11.8.1999 i.e. the date on which the 1st dismissal order was passed.

24.2.2014: Appeal dismissed.

I have briefly enumerated the sequence of events because in my opinion they are relevant for forming an opinion on the matter in contest. It is undisputed that even when the first termination order dated 11.8.1999, was quashed by the Single Judge vide judgment and order passed on 26.3.2003 and the petitioner was directed for reinstatement but the petitioner was not reinstated in service rather he reached his age of superannuation in a dismissed state on 05.11.2009 while the Letters Patent Appeal filed by the bank remained pending for final consideration. Meaning thereby, there was a cessation of a master-servant relationship in between the petitioner and the Bank on 05.11.2009. Secondly even though the learned Single Judge while allowing the writ petition had granted liberty to the appointing authority to proceed afresh in the matter, yet the appointing authority did not choose to do so rather allowed the petitioner to reach the age of superannuation. There is no dispute on the fact that even when the disciplinary proceeding was pending and the appointing authority was aware that the petitioner would be reaching his age of superannuation on 05.11.2009, yet no steps were taken by the bank to either extend the service of the petitioner in terms of Rule 19(1) nor any order was passed by the Managing Director/General Manager as the case may be, to continue the disciplinary proceedings even after the superannuation of the petitioner. On the contrary while the disciplinary proceedings were hanging limbo, the Bank allowed the petitioner to superannuate without taking recourse to the power vested in them under 19(1) or 19(3) of the Rules.

The Supreme Court was conscious of the situation and that is why, it left the matter at the discretion of the appointing authority but the import of the order of the Supreme Court was misconstrued by the General Manager cum appointing authority who purportedly in the light of the liberty so granted in the Supreme Court order served his tentative reasons of disagreement on the petitioner on 06.2.2014, in complete ignorance of the statutory position and without taking note of the fact that the disciplinary proceedings could not have been revived for continuation after the superannuation of the petitioner in absence of any positive order passed during the service tenure of the petitioner either under Rule 19(1) by extending service of the petitioner or under Rule 19(3) requiring a continuation of the disciplinary proceedings post superannuation. In fact once the petitioner had reached the age of superannuation then neither any such order under Rule 19(1) extending his service could be passed nor any order under Rule 19(3), could be passed to continue the proceeding nor the disciplinary proceedings in its original form could have continued post his superannuation. In my opinion this issue stands concluded in the judgment of the Supreme Court rendered in the case **Ram Niwas Bansal** (supra).

As I have already discussed though the disciplinary proceedings remained pending on 05.11.2009 when the petitioner attained his age of superannuation but in absence of any order passed by the competent authority under Rule 19(1) or Rule 19(3) of the Rules, it died its natural death and could not have been revived by the respondents post retirement of the petitioner. The act of extension of service and/or of continuation of a disciplinary proceedings post retirement, has to take place while a delinquent is in service and such executive decision cannot be passed after the superannuation of a delinquent nor can be made operative retrospectively.

The case in hand is in a worse situation for in the present case even at the stage of service of show cause following the decision of the Supreme Court, no such order either extending the service of the petitioner was passed nor there is any order of continuing the proceedings post retirement under Rule 19(3).

In the uncontested position discussed above and in view of the well settled legal position that neither a disciplinary proceedings can be continued post retirement nor a punishment of dismissal can be imposed on a superannuated employee, the order of dismissal dated 17.2.2014 passed by the General Manager impugned at Annexure-7 to the writ petition together with the order passed by the appellate authority dated 09.8.2014 impugned at Annexure-15 to I.A. No. 2517 of 2015 cannot be upheld and are quashed and set aside.

The writ petition is allowed.

Since the petitioner has superannuated in the normal course of business he shall be entitled to all consequential benefits viz arrears of salary as well as all retiral benefits, as admissible to him and for which steps be taken by the authorities concerned within three months from the date of receipt / production of a copy of this order.

(Jyoti Saran, J)

S.Sb/-

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