IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 81 of 2015 (O&M)
2408 Date of decision:16.11.2016

R.D.Sagar

.... Petitioner

Versus

State Bank of India and another

.... Respondents

CORAM: Hon'ble Mr. Justice P.B. Bajanthri

Present: Mr. K.L.Arora, Advocate for the petitioner.

Mr. Kapil Kakkar, Advocate for the respondents.

P.B. Bajanthri, J. (Oral)

In the instant writ petition, the petitioner has questioned the validity of the order dated 30.01.2014 by which the respondents have imposed the penalty of dismissal from service under Rule 67(j) of State Bank of India Officer' Service Rules w.e.f 10.06.1985 and the order vide which suspension period has been treated as suspension only and he is not entitled for difference of salary or allowance for the suspension period vide Annexure P11.

2. The petitioner joins respondent Bank in the year 1966 as a Godown Keeper and thereafter he has earned promotions. While working as a Branch Manager he was subjected to two disciplinary proceedings which were initiated on 29.09.1983 and 04.01.1984 and it was concluded in imposing the penalty of dismissal from service on 10.06.1985.

3. Feeling aggrieved by the order of dismissal he preferred an appeal before the appellate authority. The appellate authority rejected the petitioner's appeal on 29.01.1987. Still aggrieved by the orders of the

disciplinary authority and appellate authority, he filed a suit before the trial Court. The trial Court held that the order of disciplinary authority as well as appellate authority are illegal on 25.05.1990. The respondents Bank aggrieved by the decision of the trial court dated 25.05.1990 preferred an appeal before the appellate court. The appellate court affirmed the order of the trial court on 04.03.1992. Further respondent-Bank filed RSA before this court and the same was disposed of on 06.08.2008 while setting aside the order of dismissal dated 10.06.1985 and remanded the matter to the disciplinary authority to pass a fresh order which reads as under:-

> "*The present appeal is, therefore, partly allowed. Order dated 10.06.1985 passed by the Punishing Authority is quashed and the matter is remanded back to the Punishing Authority to pass a fresh order after giving opportunity to the plaintiff to make a representation on the penalty proposed to be imposed".*

4. The respondents filed Special Leave Application before the Supreme Court against the order passed in RSA dated 06.08.2008. The Supreme Court while disposed of Special Leave Appeal No. 26713-26716 of 2010 on 25.11.2013 passed the following order:-

> *"S.L.P.(C) Nos.26713-26716/2010:*
>
> *Delay condoned.*
>
> *Dismissed. However, we direct the Disciplinary Authority to take a decision pursuant to the orders passed by the High Court dated 06.08.2008 as expeditiously as possible, at any rate, within two months' time from today The Disciplinary Authority will communicate the said decision to the deliquent official within two weeks' time thereafter.*

Ordered accordingly.

S.L.P.(C) No.16541/2010 and S.L.P.(C) No.25040/2012:

List on 25th November, 2013 under separate numbers.

(G.V.Ramana) *(Vinod Kulvi)*
Court Master *Asstt. Registrar"*

5. Thus order passed in RSA dated 06.08.2008 has become final. Consequently, respondent Bank -punishing authority was required to pass fresh order after giving opportunity to the petitioner. The petitioner has been provided opportunity and the disciplinary authority proceeded to impose the penalty of dismissal from service w.e.f. 10.06.1985 under Rule 67(j) of State Bank of India Officers Service Rules. Thus, the petitioner is aggrieved by the order dated 30.01.2014 vide Annexure P11 presented this petition.

6. Learned counsel for the petitioner submitted that the respondents are incorrect in imposing the penalty of dismissal from service w.e.f. 10.06.1985. This court in RSA while setting aside the order dated 10.06.1985 directed the respondents Bank to pass a fresh order. Therefore, this court has not directed them to impose the penalty retrospectively. That apart, statutory rule do not provide for imposition of any penalty from retrospective date. Therefore, the order dated 30.01.2014 is liable to be set aside. It was further contended that in view of setting aside the order of dismissal dated 10.06.1985 by this Court in RSA No.1102 of 1992 decided on 06.08.2008, the petitioner is entitled for arrears of salary with consequential service benefits during the intervening period from 10.06.1985 till the date of his retirement on 05.11.2003. It was further contended by learned counsel for the petitioner that in respect of

retrospective dismissal is impermissible he relied on 3 decisions of this court titled as :

1. ***Ex.Constable Satinder Pal Singh versus State of Punjab*** reported in 2002(1) S.C.T. 614.
2. ***Pawan Kumar versus State of Haryana*** reported in 1995 (2) S.C.T.651
3. ***Constable Bhola Singh versus State of Punjab and others*** reported in 2013(4) S.C.T.319

7. Per contra learned counsel for the respondents submitted that this court while passing order in RSA No. 1102 of 1992 on 06.08.2008 while quashing the order dated 10.06.1985 directing the punishing authority to pass a fresh order after giving opportunity to the petitioner. Thus, the petitioner has been provided full opportunity before passing the order dated 30.01.2014 by which the petitioner has been punished by imposing the penalty of dismissal from service w.e.f. 10.06.1985. Therefore, there is no infirmity whatsoever and the Bank have complied the order of this court as well as order of the Supreme Court dated 06.08.2008 and 22.11.2013 respectively.

8. Learned counsel for the respondents-Bank further submitted that dismissing the petitioner from retrospective date, even though provision do not provides for this. However, this court in RSA has strengthen their hands in passing a fresh order. Therefore, there is no infirmity and the petitioner has been dismissed from service w.e.f. 10.06.1985 and he is not entitled for any monetary benefits as claimed by him.

9. Learned counsel for the respondents vehemently contended that no court has directed for his reinstatement while setting aside the order dated 10.06.1985, Therefore, he is not entitled for reinstatement and consequently, any monetary benefits. It was also contended that the

petitioner has not been chargesheeted once again after setting aside the order of dismissal dated 10.06.1985 in the RSA. Therefore, rightly they have imposed the penalty of dismissal from service w.e.f 10.06.1985. It was further contended that he retired on 05.11.2003. Therefore, from 06.11.2003 till passing of the order dated 30.01.2014 there is no master and servant relationship. Consequently, imposition of penalty of dismissal from service from retrospective date is impermissible. Hence they have imposed the penalty w.e.f. 10.06.1985.

10. Heard learned counsel for the parties.

11. Perusal of the order passed in RSA No. 1102 of 1992 decided on 06.08.2008 it is evident that the order dated 10.06.1985 imposing the penalty of dismissal from service has been set aside and the matter was remanded back to the punishing authority to pass fresh order after giving opportunity to the petitioner. As on 06.08.2008 the petitioner ceased to be an employee of the respondent Bank. Therefore, either of the party should have brought to the notice of this court that the disciplinary authority has no power to impose the penalty of dismissal from service for the reasosns that as on 06.08.2008 he was not in service. Further the same was not taken before the Supreme Court. While deciding the RSA on 06.08.2008 there is no specific order that punishing authority has given liberty to impose particular penalty on the petitioner. Therefore, passing a fresh order means in accordance with law. As on 30.01.2014 applicability of State Bank of India service regulation is not applicable to retired employees of the bank. Therefore, invoking Rule 67(j) of the State Bank of India's Regulation on retired employee is impermissible. That apart, there is no statutory provision for imposition of penalty of dismissal from service from

retrospective effect (10.06.1985). Moreover, as on 05.11.2003 the date on which the petitioner retired from service penalty of dismissal from service is not existing in the eye of law. Therefore, he deemed to be retired as a serving employee/officer. Learned counsel for the respondents contended that retrospective dismissal is permissible, in view of the decision passed in RSA No. 1102 of 1992 on 06.08.2008. This court while deciding RSA only directed the punishing authority to pass a fresh order. No where it is stated that penalty could be imposed retrospectively by the punishing authority. In other words, the neither statutory provision nor this court has strengthen the hands of the respondents bank to impose the penalty of dismissal from service from retrospective effect and that apart the respondents have invoke rule 67(j) of the Bank Regulations wherein competent authority is empowered to impose penalty of dismissal from service and not retrospective and as on 30.01.2014 the petitioner is not an employee/officer of the respondents Bank so as to invoke Bank Officers' Regulations in particularly, read with applicability clause read with Rule 67(j). Therefore, the contention of the respondents is not tenable and not supported by any statutory provision. The contention of the respondents that no court has directed for reinstatement of the petitioner after setting aside the order dated 10.06.1985 therefore, the petitioner is not entitled for monetary benefits for the intervening period from 10.06.1985 till quashing of the order of this Court in RSA on 06.08.2008 is concerned. It is to be noted that on technical grounds both the orders of disciplinary and appellate authority are held to be illegal. Consequently, this court in RSA quashed the order dated 10.06.1985 and remanded the matter to the punishing authority to pass a fresh order. Therefore, on technical ground trial court as well as this court in RSA held that the order of dismissal dated 10.06.1985 is illegal. Quashing of an order in effect would be restoring the position prior to date of dismissal as held by the Supreme Court in the case of ***Shree Chamundi Mopeds Ltd vs Church Or South India Trust Assn.*** reported in **1992 AIR 1439** reads as under:

> "*10. In the instant case, the proceedings before the Board under Ss. 15 and 16 of the Act had been terminated by order of the Board dated April 26, 1990 whereby the Board, upon consideration of the facts and material before it, found that the appellant-company had become economically and commercially non-viable due to its huge accumulated losses and liabilities and should be wound up. The appeal filed by the appellant-company under S. 25 of the Act against said order of the Board was dismissed by the Appellate Authority by order dated January 7, 1991. As a result of these orders, no proceedings under the Act was pending either before the Board or before the Appellate Authority on February 21, 1991 when the Delhi High Court passed the interim order staying the operation of the Appellate Authority dated January 7, 1991. The said stay order of the High Court cannot have the effect of reviving the proceedings which had been disposed of by the Appellate Authority by its order dated January 7, 1991. While considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a*

result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence. This means that if an order passed by the Appellate Authority is quashed and the matter is remanded, the result would be that the appeal which had been disposed of by the said order of the Appellate Authority would be restored and it can be said to be pending before the Appellate Authority after the quashing of the order of the Appellate Authority. The same cannot be said with regard to an order staying the operation of the order of the Appellate Authority because in spite of the said order, the order of the Appellate Authority continues to exist in law so long as it exists, it cannot be said that the appeal which has been disposed of by the said order has not been disposed of and is still pending. We are, therefore, of the opinion that the passing of the interim order dated February 21, 1991 by the Delhi High Court staying the operation of the order of the Appellate Authority dated January 7, 1991 does not have the effect of reviving the appeal which had been dismissed by the Appellate Authority by its order dated January 7, 1991 and it cannot be said that after February 21, 1991, the said appeal stood revived and was pending before the Appellate Authority. In that view of the matter, it cannot be said that any proceedings under the Act were pending before the Board or the Appellate Authority on the date of the passing of the order dated August 14, 1991 by the learned Single Judge of the Karnataka High Court for winding up of the company or on November 6, 1991 when the Division Bench passed the order dismissing O.S.A. No. 16 of 1991 filed by *the appellant-company against the order of the learned Single Judge dated August 14, 1991. Section 22(1) of the Act could not, therefore, be invoked and there was no impediment in the High Court dealing with the winding up petition filed by the respondents. This is the only question that has been canvassed in Civil Appeal No. 126 to 1992, directed against the order for winding up of the appellant-company. The said appeal, therefore, fails and is liable to be dismissed."*

12. In the case of ***Managing Director Ecil vs B. Karunakar*** reported in **1994 SCC, Supl. (2) 391** held that if the penalty is set aside and matter is remanded to the disciplinary authority or appellate authority on technicalities in such circumstances the intervening period is required to be treated as an employee is deemed to be under suspension. Having regard to the principle laid down in the aforesaid decision, in the present case, the petitioner's service is to be treated as deemed to be under suspension from 10.06.1985 to 05.11.2003 the date on which he attained age of supernnuation and retired from service. Therefore, the petitioner is entitled for subsistance allowance for the interevening period from 10.06.1985 to 05.11.2003.

13. In view of the above facts and circumstances, Annexure P11 dated 30.1.2014 is set aside. However, reserving liberty to the disciplinary authority to pass fresh order if it is permissible under the statutory regulation while taking into consideration that the petitioner has already attained age of superannuation and retired from service on 05.11.2003. At the best the respondents bank can impose the penalty if any against the retired Bank officer. If such provision is available to the respondent Bank

they can exercise same and pass fresh order within a period of 4 months from today and regulate the suspension period in accordance with law. Further they are directed to extend the retiral benefits admissible in accordance with law. Such exercise shall be undertaken by them within the period of 6 months from today. The respondents-Bank are directed to calculate the subsistance allowance for the period from 10.06.1985 to 05.11.2003 and disburse the same within a period of 3 months from today. However, it is made clear that the petitioner is not entitled for any interest on the subsistance allowance to be paid by the respondents-Bank for the period from 10.06.1985 to 05.11.2003.

14. At this stage, learned counsel for the respondent submitted that certain amount have already been settled towards payment of salary. The same shall be taken into consideration while calculating subsistance allowance for the period from 10.06.1985 to 05.11.2003.

(P.B.BAJANTHRI)
JUDGE

16.11.2016
pooja saini

Whether speaking/reasons Yes/No

Whether Reportable: Yes/No