

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

227

**RSA 535 of 2013 (O&M)
Date of decision:30.11.2016**

State Bank of Patiala

.... Appellant

Versus

Dewan Chand Gupta and others

.... Respondents

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

Present: Mr. Animesh Sharma, Advocate for the appellant.

Mr. K.V.Aggarwal, Advocate for respondent No.1

P.B. Bajanthri, J. (Oral)

In the instant appeal, the State Bank of Patiala have questioned the order of the trial and appellate court dated 30.01.2009 and 18.10.2012.

2. The respondent No.1 was working as a Branch Manager in the appellant-State Bank of Patiala. The respondent No.1 joined service on 10.08.1972 and he completed 30 years of service on 06.08.2002.

3. Respondent was aggrieved by the order dated 06.08.2002 by which respondent has been retired from service after completion of 30 years of service and his services have been relieved on 31.08.2002 as per the regulations of the Bank. Both the courts have held that respondent was subjected to disciplinary proceedings for remaining unauthorized absent for 2 spells. In one of the spell the petitioner has not been provided an opportunity in the inquiry proceedings.

Disciplinary proceedings are coming in the way of considering his name for extension of service under Regulation 19 of the State Bank of Patiala (Officers' Service) Regulations, 1979. Thus, the claim of the respondent was allowed. The appellant bank presented this appeal questioning the decisions of both the courts below.

4. Learned counsel for the appellant submitted that the respondent's name was considered for the purpose of extension of service under Regulation 19 of the State Bank of Patiala (Officers' Service) Regulations, 1979. Competent authority have examined the case of the respondent for the purpose of extension of service. Extension of service has been declined on the score that he was charge sheeted for remaining absent for about 7 months and 19 days and he has been penalized by imposing the penalty of reduction of pay on 17.09.2002. Respondent aggrieved by the imposition of penalty, he preferred a suit before the trial court. The trial court affirmed the order of reduction of pay thus, it has attained finality. Further material consideration is relating to another spell of unauthorized absence for the period from 07.08.2001 to 07.12.2001 for which charge sheet was filed and the same was not proceeded by the Bank. Thus, the conduct of the respondent has been taken note of by the competent authority i.e. Executive Committee. Perused the decision of Executive Committee as well as Review committee who have refused to recommend extension of service of the respondent. The committee also passed the remarks which reads as under:-

**“Comments of Chief Manager, Disciplinary
Proceedings Deptt.**

*Shri Diwan Chand Gupta, MMGS-III, while working as
Branch Manager, Patiala (Treasury) branch remained*

unauthorisedly absent from duty for which he was served with a charge sheet dated 20.07.2001. Enquiry in the case is in progress.

ii) He again proceeded on leave in an unauthorized manner for which he was served with a charge sheet dated 01.12.01. The case has been kept in abeyance as an enquiry is already under way in a similar case.”

5. In view of the decision taken by the Executive Committee of the Bank both the courts has exceeded its jurisdiction in allowing the claim of the respondent on the score that respondent has not been given adequate opportunity in respect of allegations relating to unauthorized absence. It is an extraneous material for the purpose of deciding the issue whether the respondent is entitled to extension of service after completion of 30 years read with Regulation 19(1). In not giving extension of service under Regulation 19(1) is not a penalty. It is ultimately discretionary of the appellant Bank and such discretionary has been exercised by passing a speaking order by the Executive Committee. Therefore, the respondent has not made out a case so as to seek for extension of service under Regulation 19(1) irrespective of he was subjected to disciplinary proceedings for remaining unauthorized absent or not. Thus, courts below have erred in granting relief.

6. Learned counsel for the appellant relied on the decision of Supreme Court passed in the case titled as ***D.C.Aggarwal (Dead) by LRs, versus State Bank of India and another*** reported in 2006(5) SCC 153 in particularly paras 29 and 31 which reads as under:-

29. The argument of the learned counsel for the appellant proceeded on a misapprehension of the

manner in which extension of service is to be granted. In [State Bank of Bikaner and Jaipur and others v. Jag Mohan Lal](#) (hereinafter "Jag Mohan Lal") this Court had occasion to point out that a rule under which extension of service can be granted beyond the normal age of retirement, does not invest a legal right in the employee to be granted such an extension. The very same regulation as in this case was interpreted in [Jag Mohan Lal](#) and it was pointed out therein that the sole purpose of giving extension of service is to promote the interest of the Bank and not to confer any benefit or favour on retiring officers. It was pointed out that it was not a conferment of a benefit or privilege on officers. Merely because the officer has put in the requisite number of years of service, that does not earn him/her that benefit or privilege. This Court observed: (SCC p.225, para 12)

"12. The Bank, however, is required to consider the case of individual officers with due regard to (i) continued utility; (ii) good health; and (iii) integrity beyond reproach of the officer. If the officer lacks one or the other, the Bank is not bound to give him extension of service. In this case, the Bank has shown to the High Court that the case of the respondent was considered and he did not fit in the said guidelines. The High Court does not sit in an appeal against that decision. The High Court under [Article 226](#) cannot review that decision."

31. *It appears to us that these principles were not kept in mind by the learned Single Judge when he interfered with the discretion of the respondent Bank not to grant an extension to the appellant. The Division Bench has, however, rightly applied the legal principle stated in Jag Mohan Lal and found that there was no such right vested in the appellant to demand an extension beyond the age of fifty-eight years. Further, in the facts and circumstances of the case, the Division Bench found that the extension had been refused for good reasons and was not liable to be interfered within its writ jurisdiction. We agree with this reasoning of the High Court.”*

7. On the other hand, learned counsel for the respondents submitted that imposition of penalty and pendency of charge memo would not be a hurdle for granting extension of service under Regulation 19 of the State Bank of Patiala (Officers' Service) Regulations, 1979. He has also relied on the decision of Supreme Court reported in 2006(5) SCC 153 titled as ***D.C.Aggarwal, versus State Bank of India and another***. He is relying on paras 11 and 26 which reads as under:-

“11. During the pendency of the litigation between the appellant and the respondent-bank, the appellant was granted extension in service from 10.3.1991 to 9.9.1993 i.e. upto the age of fifty-eight years by a letter dated 9.9.1993. He was also informed that the Review Committee had not recommended further extension of his service in terms of Rule 15 of the State Bank of India Service Rules; as a result of which, the appellant would

retire on attaining the age of superannuation with effect from 10.9.1993. The appellant preferred an appeal before the Chairman of the respondent-bank, which was turned down. Thereafter, he filed Civil Writ Petition No.12062 of 1993, which was also dismissed by the Division Bench on 5.10.1993. He then carried Special Leave Petition 17752/1993 to this Court. Leave was granted therein and the resultant Civil Appeal No. 1609/1994 was allowed on 11.3.1994. This Court disposed of the appeal by the following operative order: (SCC p. 134, para 4)

"In the result, this appeal succeeds and is allowed. The orders passed by the High Court, the Appellate Authority and the Review Committee are quashed. The respondents are directed to constitute a fresh committee of the personnel mentioned in the rule itself. In case the appellant had made any allegation against any of those Deputy Managing Directors, then the committee shall comprise of Deputy Managing Directors, other than those who are mentioned in the rules. The earlier Deputy Managing Directors who were the members of the committee shall not be members of the new committee. The recommendations of the committee shall be placed before the competent authority who shall be different and higher in rank than the members who shall constitute the committee. Such committee shall be constituted within two weeks from today and the decision by the competent authority shall be taken within two weeks thereafter."

26. *As a result of the order made by this Court in Civil Appeal No.1609/1994 dated 11.3.1994, together with the order made on 13.5.1994 in I.A. No. 3 of 1994, the respondent-bank requisitioned the services of S.*

Doreswamy, Chairman-cum-Managing Director, Central Bank of India to act as the Chairman/Competent Authority of a three-member committee to make recommendations as to whether the appellant's services were to be extended till the age of sixty years. As we have already pointed out, the other two members of the committee were R. Vishwanathan, Deputy Managing Director (Commercial Banking) and G. Kathuria, Deputy Manager Director (Treasury and Investments Management). In the course of the hearing, the parties accepted the names of the above-mentioned officers without demur or protest. The two members of the Committee i.e. R. Vishwanathan and G. Kathuria, considered the entire service record of the appellant and recommended that it was not in the respondent-bank's interest to give an extension in service to the appellant. The Chairman of the Committee/Competent Authority also concurred with this recommendation. The recommendations thus made by the Committee were accepted by the management of the respondent-bank."

8. Question for consideration in the present appeal is whether the respondent is entitled to continuing service beyond 06.08.2002 the date on which he completed 30 years of service or not with reference to Regulation 19 of the State Bank of Patiala (Officers' Service) Regulations, 1979 when the respondent completed 30 years of service. The appellant have taken up respondent's matter for consideration either to extend or not to extend by the executive committee who is the competent authority. After assesing the merits of the respondent's case so also while recording reasons for refusal to extend the services of the respondent beyond 06.08.2002 they have passed remarks that he remained absent. That apart, it was noticed from the record that the respondent was subjected to disciplinary proceedings for remaining

unauthorized absent for 7 months and 19 days during the period from 2000 to 2001 for which he was penalized by imposing the penalty of reduction of pay which has attained finality before the trial court. Thereafter, the respondent once again remained absent during pendency of the enquiry in respect of earlier unauthorized absence. Therefore, the conduct of the respondent has been taken note of by the Executive Committee in not giving extension of service beyond 06.08.2002. This court cannot re-appreciate the recording of the Executive Committee or substitute decision, who have vested with the discretionary power to decide either to grant extension of service or not under the statutory rules which has been exercised appropriately as is evident from the record.

9. Perusal of the decision of the Supreme Court in particularly paras 30 and 31 it is observed that ultimately discretionary power is vested with the Bank so as to give extension of service to an officer or employee or not. Infact, in the present case Executive Committee have recorded reasons for not giving extension. Thus, no interference in the matter is called for.

10. In view of these facts order of trial court dated 30.01.2009 and order of the appellate court dated 18.10.2012 are set aside.

11. RSA is allowed.

30.11.2016

pooja saini

**(P.B.BAJANTHRI)
JUDGE**

Whether speaking/reasons

Yes/No

Whether Reportable:

Yes/No