IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2865 OF 2014

Shri. Capt. Radhashyam Sahoo ..Petitioner

Vs.

Central Bank of India and 3 Others ..Respondents

Mr. P. J. Prasada Rao for the Petitioner
Mr. Sudhir Talsania, Senior Advocate a/w Mr. Sagar Seth, Ms. Radha Ved i/b M/s. Sanjay Udeshi and Co. for Respondent nos. 1 to 4.

CORAM : NARESH H. PATIL &
Z. A. HAQ, JJ.

DATE : 09th AUGUST 2017.

P.C.

1 The petitioner was in employment of Central Bank of India. He was superannuated on 31/08/2014. While he was in service two charge-sheets were issued against him on 05/06/2010 and 31/07/2014. The inquiry could not be completed while petitioner was in service. The General Manager of respondent addressed a communication dated 14/08/2014 which reads as under:

> "*Your attention is drawn to the disciplinary Action Proceedings pending against you in respect of the Charge-sheets dated 05/06/2010 and 31/07/2014 issued to you.*
>
> *You are superannuating on 31/08/2014 and the said Disciplinary Proceedings in respect of the said charge-sheets cannot be completed by the said date. Under the circumstances, after going through the facts placed before him, the Competent Authority has invoked the Regulation*

20.3 (iii) of the Central Bank of India (Officers') Service Regulations, 1979, in the subject Disciplinary Action Proceedings against you.

In view of the invocation of the said Regulation in the subject charge-sheets, please note that the said Disciplinary Proceedings would continue against you in the same manner as if you were/are in the service of the Bank until the said proceedings in respect of the said charge-sheets are concluded and Final Orders are passed in respect thereof. In terms of the said Regulation 20.3 (iii) of the Central Bank of India (Officers') Service Regulations, 1979 as amended up to date, you will not receive any pay and/or allowance after the said date of superannuation. You will not be entitled to the payment of retirement benefits until the said proceedings are completed and the Final Orders are passed thereon. You will, however, be paid your own contribution to the Provident Fund".

2 The petitioner filed Writ Petition no. 10579 (W) of 2011 seeking direction to respondent not to proceed further in disciplinary proceedings pending against him during the pendency of a criminal case. It is informed by the counsel that interim relief granted therein still continues. The present petition was filed in the year 2014 with following prayers:

*"**A.** That this Hon'ble Court may be pleased to exercise its jurisdiction under Article 226 of the Constitution of India and issue a writ of Mandamus or writ in the nature of Mandamus or any other appropriate writ direction or order commanding the respondents to act according to law and to forthwithcancel and/or set aside and/or rescind and/or withdraw the purported order No. CO: HRD: gm: 2014-15, dated 14-08-2014 (**Exhibit-A**), issued by the Respondents herein.*

***B.** That this Hon'ble Court be pleased to quash and set aside and/or declare the regulation 20.3 (iii) of the Central Bank of India Officers Service Regulation 1979.*

***C.** That this Hon'ble Court be pleased to direct the respondents to issue directions to the Respondents to pay all the retirement dues including Gratuity, Provident Fund, Leave Encashment and all other consequential benefits".*

3 The learned counsel for the petitioner submits that Regulation 20.3 (iii) of Central Bank of India officer Employees (Discipline and Appeal) Regulations, 1976 is unreasonable, arbitrary and is contrary to the provisions of the payment of Gratuity Act, 1972 and therefore, it is required to be struck down. Though petitioner retired on 31/08/2014, by communication dated 14/08/2014, his services were continued by the employer and therefore, he must be deemed to be in service for all purposes including payment of salary and other emoluments. Admittedly inquiry is not completed. The counsel further submits that he is entitlement at least for payment of gratuity which is his right. Regulation 20.1 (f) of Central Bank of India officer Employees (Discipline and Appeal) Regulations, 1976 reads as under:

> "*An officer employee whose services are terminated under sub-regulation (a) above shall be paid Gratuity, Provident Fund including employer's contribution and all other dues that may be admissible as per rules notwithstanding the years of service rendered*".

4 The learned senior counsel appearing for respondent submits that in view of the Regulation 20.3 (iii), once the disciplinary proceedings have been initiated, the concerned officer will not receive any pay and/or allowances after the date of superannuation. Such employee also is not entitled for payment of retirement benefits till the proceedings are completed and final order is passed. The learned counsel further submits that in view of the same, petitioner is not entitled as of now for any benefits.

After conclusion of inquiry, passing of final order, these issues could be looked into by the employer.

The counsel placed reliance on the reported judgment of the Hon'ble Apex Court in the case of **Ramesh Chandra Sharma Vs. Punjab National Bank and Another**[1] wherein the Hon'ble Apex Court has observed as under:

> "***13***. *The question as to whether a departmental proceeding can continue despite the delinquent officer's reaching the age of superannuation would depend upon the applicability of the extant rules. It may be true that the question of imposition of dismissal of the delinquent officer from service when he has already reached the age of superannuation would not ordinarily arise. However, as the consequences of such an order is provided for in the service rule, in our opinion, it would not be correct to contend that imposition of such a punishment would be wholly impermissible in law.*
>
> ***18.*** *The effect of a legal fiction is well-known. When a legal fiction is created under a statute, it must be given its full effect, as has been observed in East End Dwellings Co. Ltd. v. Finsbury Borough Council as under:*
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> > *"If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have from or accompanied it. One of these in this case is emancipation from the 1939 level of rents. The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs".*
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> ***20.*** *In State Bank of India v. C.B. Dhall it was held as under: (SCC p. 553, para 17)".*
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> > *"17. Under Rule 20-B disciplinary proceedings if initiated against an employee before he retires from service could be continued and concluded even after his retirement and for the purpose of conclusion of the disciplinary proceedings, the employee is deemed to have continued in service but for no other purpose".*

1 **[(2007) 9 Supreme Court Cases 15]**

> ***21.*** *In State of U.P. V. Harihar Bhole Nath [(2006) 13 SCC 460] upon considering Regulations 351-A and 470 of the Civil Services Regulations, this Court following Bhram Datt Sharma opined as under: (SCC pp. 468-69, paras 21-22)*
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> > *21 The right to withhold or withdraw the pension may arise in different situations. Two different contingencies are clearly envisaged under the Regulations, viz., if the pensioner is found guilty of misconduct either in departmental proceedings or in judicial proceedings. Although, prima facie, the proviso appended to Regulation 351-A does not envisage continuation of the proceedings, the same must be held to be existing on a plain reading thereof. Regulations 351-A and 470 provide for a composite scheme; by emphasizing that payment of pension is not automatic and it can be withheld if the conditions laid down therein are satisfied. Undoubtedly, before an order of withholding the amount of pension or a part thereof it is passed, the procedures laid down under the statute are required to be complied with. The procedural safeguards must be kept in mind. Limitations of application of the Rules again have to be borne in mind.*
> >
> > *22. But the said Rules read with the Proviso and the Explanation appended thereto construed in their entirety clearly postulate that the proceeding initiated before the delinquent officer reached his age of superannuation would be valid".*

5 We have perused record, considered the submission advanced. It is necessary to quote Regulation 20.3 (iii) of Central Bank of India officer Employees (Discipline and Appeal) Regulations, 1976 which read as under:

> "*The officer against whom disciplinary proceeding have been initiated will ceased to be in service on the date of superannuation but the disciplinary proceedings will continue as if he was in service until the proceedings are concluded and final order is passed in respect thereof. The concerned officer will not receive any pay and/or allowance after the date of superannuation. He will also not be entitled for payment of retirement benefits till the proceedings are completed and final order is passed thereon except his own contributions of CPF".*

6 Admittedly, petitioner was superannuated on 31/08/2014. Prior to

superannuation, two disciplinary inquiries were initiated against the petitioner which are still pending. The employer, therefore denied any benefits to petitioner as disciplinary inquiries were pending against the petitioner.

7 Section 4 and 7 of Gratuity Act, 1972 read as under.

> "***4. Payment of Gratuity***.- *(1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years,-*
> *(a) on his superannuation, or*
> *(b) on his retirement or resignation,*
> *(c) on his death or disablement due to accident or disease:*
>
> *Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement:*
>
> *[Provided further that in case of death of the employee, gratuity payable to him shall be paid to his nominee or, if no nomination has been made, to his heirs, and where any such nominees or heirs is minor, the share of such minor, shall be deposited with the Controlling Authority who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed, until such minor attains majority].*
>
> *(2) For every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days' wages based on the rate of wages last drawn by the employee concerned:*
>
> *Provided that in the case of a piece-rated employee, daily wages shall be computed on the average of the total wages received by him for a period of three months immediately preceding the termination of his employment, and, for this purpose, the wages paid for any overtime work shall not be taken into account:*
>
> *Provided further that in the case of [an employee who is employed in a seasonal establishment, and who is not so employed throughout the year], the employer shall pay the gratuity at the rate of seven days' wages for each season.*

(3) The amount of gratuity payable to an employee shall not exceed [ten lakh rupees].

(4) For the purpose of computing the gratuity payable to an employee who is employed, after his disablement, on reduced wages, his wages for the period preceding his disablement shall be taken to be the wages received by him during that period, and his wages for the period subsequent to his disablement shall be taken to be the wages as so reduced;

(5) Nothing in this section shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer.

(6) Notwithstanding anything contained in sub-section (1),-
(a) the gratuity of an employee, whose services have been terminated for any act, wilful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused;

(b) the gratuity payable to an employee [may be wholly or partially forfeited].

(i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or

(ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.

***7. Determination of the amount of Gratuity**.- (1) A person who is eligible for payment of gratuity under this Act or any person authorised, in writing, to act on his behalf shall send a written application to the employer, within such time and in such form, as may be prescribed, for payment of such gratuity.*

(2) As soon as gratuity becomes payable, the employer shall, whether an application referred to in sub-section (1) has been made or not, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the controlling authority specifying the amount of gratuity so determined.

(3) The employer shall arrange to pay the amount of gratuity, within thirty days from the date it becomes payable to the person to whom the gratuity is payable.

(3-A) If the amount of gratuity payable under sub-section (3) is not paid

by the employer within the period specified in sub-section (3), the employer shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate, not exceeding the rate notified by the Central Government from time to time for repayment of long term deposits, as that Government may, by notification specify:

Provided that no such interest shall be payable if the delay in the payment is due to the fault of the employee and the employer has obtained permission inwriting from the Controlling Authority for the delayed payment on this ground].

(4)(a) If there is any dispute as to the amount of gratuity payable to an employee under this Act or as to the admissibility of any claim of, or in relation to, an employee for payment of gratuity, or as to the person entitled to receive the gratuity, the employer shall deposit with the Controlling Authority such amount as he admits to be payable by him as gratuity.

[(b) Where there is a dispute with regard to any matter or matters specified in Clause (a), the employer or employee or any other person raising the dispute may make an application to the Controlling Authority for deciding the dispute.]

[[(c)] The Controlling Authority shall, after due inquiry and after giving the parties to the dispute a reasonable opportunity of being heard, determine the matter or matters in dispute and if, as a result of such inquiry any amount is found to be payable to the employee, the Controlling Authority shall direct the employer to pay such amount or, as the case may be, such amount as reduced by the amount already deposited by the employer.]

[(d)] The Controlling Authority shall pay the amount deposited, including the excess amount, if any, deposited by the employer, to the person entitled thereto.

[(e)] As soon as may be after a deposit is made under Clause (a), the Controlling Authority shall pay the amount of the deposit-

(i) to the applicant where he is the employee; or

(ii) where the applicant is the employee, to the [nominee or, as the case may be, the guardian of such nominee or] heir of the employee if the Controlling Authority is satisfied that there is no dispute as to the right of the applicant to receive the amount of gratuity.

(5) For the purpose of conducting an inquiry under Sub-Section (4), the controlling authority shall have the same powers as are vested in a Court, while trying a suit, under the Code of Civil Procedure,1908 (5 of 1908), in respect of the following matters namely:-

(a) enforcing the attendance of any person or examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) issuing commissions for the examination of witnesses.

(6) Any inquiry under this Section shall be a judicial proceeding within the meaning of Sections 193 and 228, and for the purpose of Section 196, of the Indian Penal Code, 1860 (45 of 1860).

(7) Any person aggrieved by an order under sub-section (4), may, within sixty days from the date of the receipt of the order, prefer an appeal to the appropriate Government or such other authority as may be specified by the appropriate Government in this behalf:

Provided that the appropriate Government or the appellate authority, as the case may be, may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the said period of sixty days, extend the said period by a further period of sixty days.

[Provided further that no appeal by an employer shall be admitted unless at the time of preferring the appeal, the appellant either produces a certificate of the controlling authority to the effect that the appellant has deposited with him an amount equal to the amount of gratuity required to be deposited under subsection

(4), or deposits with the appellate authority such amount.]

(8) The appropriate Government or the appellate authority, as the case may be, may, after giving the parties to the appeal a reasonable opportunity of beingheard, confirm, modify or reverse the decision of the controlling authority".

8 We have perused relevant Regulation 20.3 (iii) which dis-entitles the employee from receiving pay and/or allowance or any retirement benefits till

proceedings are completed and also perused Section 4 & 7 of the Gratuity Act 1972.

9 Having considered Statutory provisions, judgment cited (supra) and the Regulation placed before us, we find that the petitioner has not made out a strong *prima facie* case for raising challenge to the validity of the Regulations. In the facts of the case, we find that the petitioner at this stage would not be entitled for payment of any allowance or retirement benefits. There is no merit in the petition.

10 Petition stands dismissed.

[Z. A. HAQ, J.] **[NARESH H. PATIL, J.]**