

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 97 OF 2016**

Anilkumar Shannimal Gupta		Petitioner
Vs.		
Allahabad Bank and others		Respondents

P. J. Thorat Advocate for the Petitioner
Mr. Abhay Kulkarni for the Respondents

**CORAM : NARESH H. PATIL &
Z. A. HAQ, JJ.
DATE : 16th AUGUST 2017.**

P.C.

1 Heard. By this petition, petitioner has challenged the initiation of disciplinary proceedings against him and has prayed that they be quashed.

2 The contention of the petitioner is that the petitioner is charge-sheeted in respect of the incident which is alleged to have taken place on 03/02/2009, that the petitioner has retired from service on 31/12/2011 on attaining the age of superannuation and the departmental inquiry is initiated against him on 03/11/2015 i.e. after almost more than 6 years and 2 months of the incident and this is not permissible. The petitioner has relied on the provisions of clause 48 of the Allahabad Bank (Employees') Pension Regulations 1995, specially the 2nd proviso below sub clause 1 of clause 48 to contend that the disciplinary inquiry cannot be initiated after 4 years of the incident. The learned Advocate for the petitioner has relied on the Judgment given by the Division Bench of

this Court at Aurangabad in the case of **Gopal s/o Digambarrao Baride Vs. The Municipal Council, Beed through its Chief Officer** in **Writ Petition No. 3582 of 2013** on 31/03/2015 to support his arguments.

3 The learned Advocate for the respondent/employer has submitted that though the incident occurred on 03/12/2009, the illegality committed by the petitioner because of which bank has suffered the losses of Rs. 23,60,184/- is detected by the vigilance squad on 09/09/2014 and therefore, the cause of action for initiating departmental inquiry against the petitioner arose on 09/09/2014 and the departmental inquiry is initiated against the petitioner on 03/11/2015 i.e. well within the period of limitation prescribed by the above referred Regulations. It is submitted that the charges levelled against the petitioner are serious and because of his misconduct, bank is put to huge loss as recorded above.

4 After hearing the learned Advocates for the respective parties, we find that the submissions made on behalf of the petitioner relying on the 2nd proviso below sub clause 1 of clause 48 of the Regulations are mis-directed. The 2nd proviso below sub clause 1 of clause 48 of the Regulations provides that the departmental or judicial proceedings against the employee cannot be instituted in respect of the cause of action which arose or in respect of an event which took place more than 4 years before the institution of the departmental or

judicial proceedings. According to the respondent/bank, cause of action for initiating departmental inquiry against the petitioner has arisen on 09/09/2014 when the Assistant General Manager, Vigilance Department declared that fraud has been committed on the bank while sanctioning and disbursing the amount of loan to the employees alleged to be working in Mahatma Phule Education Society's Mahatma Phule Pre-primary School and Knowledge Point, Mahatma Phule, Naigaon, Dadar, Mumbai.

2nd proviso below sub clause 1 of clause 48 of the Regulations of the respondent/bank enables the respondent/bank to institute the departmental proceedings against an employee within 4 years of the incident or within 4 years of arising of cause of action.

5 The Judgment given in the case of **Gopal s/o Digambarrao Baride** (Supra) relied upon by the learned Advocate for the petitioner does not assist the petitioner as that Judgment is given while considering the Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982. Rule 27 (2) (b) (ii) of the Maharashtra Civil Services (Pension) Rules, 1982 lays down that the departmental proceedings, if not instituted while the government servant was in service, shall not be instituted, in respect of any event which took place more than 4 years before institution of the departmental proceedings. In the present case, the Regulations of the Bank enables the respondent/bank to institute

departmental proceedings till 4 years of arising of cause of action and as recorded above, the question as to when the cause of action has arisen, being the disputed question of fact, it cannot be examined in the extra ordinary jurisdiction.

The Judgment in the case of **State of UP and Another Vs. Shri Krishna Pandey [(1996) 9 Supreme Court Cases 395]** also considers Regulation 351-A of Civil Services Regulations which is similar to Rule 27 (2) (b) (ii) of Maharashtra Civil Services (Pension) Rules, 1982 and for the reasons recorded above, this Judgment is also not of any assistance to the petitioner.

6 In our view, it will not be possible for us to determine whether the cause of action for initiating departmental inquiry against the petitioner has arisen on 03/02/2009 or 09/09/2014, while exercising the extra ordinary jurisdiction under Article 226 of the Constitution of India. It would be appropriate to leave it to the parties to prove their case at the departmental inquiry.

7 In view of the above, without expressing any opinion on the challenges raised by the petitioner in the petition, the petition is dismissed.

In the circumstances, the parties to bear their own costs.

[Z. A. HAQ, J.]

[NARESH H. PATIL, J.]