IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.2035 of 2016
In
Civil Writ Jurisdiction Case No.10192 of 2014

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1. State Bank of India through the Chairman of State Bank of India, Central Office Bockbay Reclannation, Mumbai- 400 021
2. The Chief General Manager, State Bank of India, Local Head Office, West Gandhi Maidan, Patna- 800 001
3. The General Manager-cum- Appointing Authority, State Bank of India, Local Head Office, West Gandhi Maidan, Patna- 800 001
4. The Assistant General Manager, Region -I, State Bank of India, Zonal Office, J.C. Road, Patna- 800 004
5. The Deputy General Manager, State Bank of India, Zonal Office, J.C. Road, Patna- 800 004
6. The Enquiry Officer, State Bank of India, Local Head Office, West Gandhi Maidan, Patna

... ... Appellants

Versus

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.

... ... Respondent

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Appearance :

For the Appellants	:	Mr. Chittaranjan Sinha, Senior Advocate
		Mr. Sanjiv Kumar. Advocate
		Miss. Surya Nilambari, Advocate
For the Respondent	:	Mr. Lalit Kishore, Senior Advocate
		Mr. Rabindra Kumar Priyadarshi, Advocate

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date : 01-02-2018

Heard learned senior counsels representing the appellant State Bank of India as well as the private respondent.

Since the learned single Judge allowed the writ application of the private respondent and set aside the order of dismissal dated 17.02.2014 passed by the General Manager with effect from

11.08.1999 and allowed the writ application, the intra-Court appeal has been preferred by the Bank.

After having given a detailed hearing to the learned senior counsel for the appellant as also perused the original records relating to the departmental proceeding held and conducted against the delinquent, we seem to be more in agreement with the final conclusion and the decision rendered by the learned single Judge that there were sufficient materials factual and legal to interfere with the decision of the Bank to dismiss the employee.

At the outset, one of the infirmities, which emerges from the order of dismissal dated 17.02.2014, is that the order of dismissal is supposed to take effect from 11.08.1999. Since no law supports retrospective dismissal, therefore, on the face of it such decision suffers from serious legal infirmity, which, in turn, by itself was a good ground for interference.

With due credit to the learned senior counsel representing the Bank, he does not get into an argument on this aspect of the matter because law or the principle in relation to retrospective dismissals cannot change from case to case. Such conduct of the learned senior counsel shows his grace and dispassion in assistance.

The other aspect, which is also core to the issue, is that after the Hon'ble Apex Court vide order dated 25.11.2013 allowed the civil appeal of the Bank, set aside the order of the Division Bench passed in the Letters Patent Appeal and allowed the Bank to proceed in the matter, one fact intervened i.e. that the delinquent had superannuated as far back as 30.11.2009. In other words, the master servant relationship had come to an end even before L.P.A. No. 378 of 2003 was decided on 24.04.2010 or the Civil Appeal by the Hon'ble Apex Court on 25.11.2013. No doubt, the Hon'ble Apex Court was surely informed that the delinquent had already superannuated on reaching the age of superannuation, but the question which has been considered by the learned single Judge and answered against the Bank is something which is agitating the Bank in the present appeal.

The line of argument of the learned senior counsel for the appellant Bank is that since the Hon'ble Apex Court permitted the appointing authority to take appropriate steps or action against the concerned employee and since the Bank was duly fortified by the legal advice of the senior counsel of the Bank that the authorities could proceed against the person and take it to its logical end because of the judicial direction, there was no necessity or mandate to follow the Rule of the Bank relating to such situation.

The relevant rule, which is the matter for adjudication, has been reproduced by the learned single Judge as part of the order.

Even we are tempted to reproduce the Rule 19(1) and 19(3) for ready reference :

"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' pensionable 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."

From reading of the two provisions of the Rule, it is clear that the Bank was conscious of the fact that there could be an occasion where an employee can superannuate and there could be an occasion to extend his service for the reasons provided in Rule 19(1) or in a situation where a disciplinary proceeding is required to be continued. By a deeming fiction the service for the purposes of continuance of the departmental proceeding can be extended.

A reading of Rule 19(3) in no unambiguous terms does not allow this Court to accept the line of argument urged at the bar on behalf of the appellant that there was no necessity for the Managing Director to take an affirmative decision in the present case with regard to the continuance of the disciplinary proceeding against the private respondent. The Rule clearly lays down that discretion is vested in the Managing Director. At his discretion the disciplinary proceeding may continue or may be dropped. Here the word 'discretion' means that there has to be an affirmative action and a conscious decision is required to be taken. Neither the original record nor any material has been brought on record to show that the Managing Director took a decision to continue with the services of the delinquent with the object of completing the exercise, which was required to be carried on to take the disciplinary action to its logical conclusion.

To some extent we do not agree with the observation of the learned single Judge that something was required to be done under Rule 19(1). The relevant rule for the purposes of this case is Rule 19(3). However, we do agree with the learned single Judge that the observation of the Hon'ble Apex Court cannot be read to mean that the rules and regulations governing the employees and delinquents of the bank is required to be given a go bye.

This Court is not willing to investigate whether the Bank was justified in going by the opinion of the learned senior counsel that the direction of the Hon’ble Apex Court was enough to proceed from the stage and nothing more was required to be done because the Hon’ble Apex Court had already been sounded on the factual position that the employee had superannuated.

We are, in fact, of the opinion that no Court ever gives a direction to do an act or perform a duty contrary to the law or a statute or a rule. Therefore, if the State Bank of India omitted or got mislead into proceeding against the employee without exercise of power under Rule 19(3) then they cannot escape the consequences of such serious omission and this Court will not interfere with the order of the learned single Judge by finding fault in any manner.

The authorities of the State Bank of India, which is one of the prime public sector bank and have rich experience both in banking as well as in dealing with the issues relating to even departmental proceeding against employees of the bank cannot be given any leeway or benefit of doubt on the issue of exercise of power and authority under the Rules.

The above reasons coupled with the detailed reasons provided by the learned single Judge for interfering with the decision of the authorities to dismiss the employee in question are good enough ground to dismiss the appeal.

We refrain from interfering with the decision of the learned single Judge in any manner.

The appeal is dismissed.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

Pawan/-

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