

HIGH COURT OF CHHATTISGARH, BILASPUR

(Judgment reserved on 05.07.2019)

(Judgment delivered on 18 .07.2019)

WRIT APPEAL No. 172 OF 2019

(Arising out of the order dated 31.01.2019 passed in W.P(S) No. 6863 of 2016 by the learned Single Judge)

1. Chief General Manager, State Bank of India Local Head Office, Hoshangabad Road, Bhopal District : Bhopal, Madhya Pradesh
2. General Manager (D & PB), State Bank of India, Local Head Office, Hoshangabad Road, Bhopal Madhya Pradesh.
3. Deputy General Manager (B & O), State Bank of India, Zonal Office, Byron Bazar, Raipur Chhattisgarh. **--- Appellants**

Versus

M. Raju, S/o Late M. Musalayya, Aged About 66 Years Ex. Assistant Manager, State Bank of India, Branch - Bande, Jagdalpur Chhattisgarh R/o C/o Shri Romio Jacob, House No. 274, Janta Colony, Tilak Nagar, Ward No. 10, Gudiyari Raipur, District Raipur District : Raipur, Chhattisgarh **--- Respondent**

Presence:

For the Petitioners	:	Mr. J.K. Gilda, Sr. Advocate with Mr. P.R. Patankar, Advocate
For the respondent	:	In person

Hon'ble Shri Justice P.R. Ramachandra Menon, Chief Justice &
Hon'ble Shri Justice Goutam Bhaduri, Judge

CAV JUDGMENT/ORDER**Per Goutam Bhaduri, J**

1. The writ appeal is against the order dated 31.1.2019 passed by the learned single Judge in W.P(S) No. 6863/2019 whereby the order

dated 06.10.2003 directing the compulsory retirement of the respondent and the subsequent order of the appellate authority dated 19.03.2004 whereby the departmental appeal was dismissed by the appellate authority, were set aside.

2. **(a)** The facts of the case are that the respondent/petitioner was working as Assistant Manager of the appellant Bank at Bande Branch. The allegations are relating to the year 2002. On 26.03.2002, the petitioner came to the Branch in drunken condition and sought leave on the ground that his mother was seriously ill and lying on her death bed. Since the said fact was allegedly found to be incorrect, his leave application was rejected. Despite refusal of the leave application, the respondent/petitioner left the headquarters i.e., Bande at 12.30 p.m., taking along-with him cash safe keys of the Branch without there being any sanction of leave from the competent authority and went to Pakhanjur. The further charge made against the petitioner is that again on 01.07.2002 the petitioner unauthorizedly left the Bank and kept the keys of the strong room with him, therefore, the Branch was constrained to keep the cash in fire proof safe outside the strong room which is against the guidelines/norms of RBI.
- (b)** Thereafter, the appellants Bank initiated disciplinary proceedings against the respondent and placed him under suspension on 12.08.2002. Subsequently the charges sheet was served on him on 30.09.2002. After conducting the enquiry, the report was submitted by the enquiry officer on 10.06.2003. Thereafter, the disciplinary authority concurred with the finding of the enquiry officer and obtained comments from the respondent/petitioner. Subsequently, the appointing authority considered the proceedings of enquiry and the findings of disciplinary authority and considering the gravity of misconduct, imposed the punishment of compulsory retirement in terms of Rule 67(h) of the State Bank of India Officers' Service Rules

1992 vide order dated 06.10.2003. The said order directing compulsory retirement was subject of challenge in departmental appeal. The appellate authority has rejected the appeal on 19.03.2004.

(c) Thereafter the respondent/petitioner initially preferred a Writ Petition (S) No.243/2005 before the High Court to quash the order of compulsory retirement dated 06.10.2003 and the order dated 19.03.2004 passed in appeal. When the said writ petition came up for hearing on 15.11.2011, the petitioner sought permission to withdraw the petition with liberty to approach the Bank with a fresh representation in view of the circular (Annexure P-9) existing as on 30th June 2002 and accordingly the writ petition was dismissed as withdrawn with such liberty.

(d) Thereafter, the representation was filed by the respondent/petitioner on 14.12.2011 before the Chief General Manager Local Head Office, Bhopal, claiming the benefit of circular dated 15.04.1987 and on the ground that the codified circular was existing as on 30.06.2002. The representation of the petitioner was rejected by order dated 28.05.2012 on the ground that the order of compulsory retirement imposed by the departmental authority has attained finality and the circular was merely directory in nature and no relief was granted.

(e) In the meanwhile, the respondent/petitioner had complained before the National Commission for Scheduled Casts. The said Commission by letter dated 31.03.2014 directed the appellants-Bank to consider the withdrawal of the compulsory retirement. The same was challenged by the Bank before the Delhi High Court by filing W.P(C). No. 6579 of 2014 and by order dated 19.09.2016, the recommendation of the Committee was set aside by the Delhi Court. Thereafter, the petitioner filed the present writ petition bearing WP(S)

No.6863/2016 before this Court challenging the order of compulsory retirement passed by the appointing authority on 06.10.2003 which was affirmed by the Appellate Authority vide order dated 19.03.2004 and further the order dated 28.05.2012 whereby the representation of the petitioner was rejected was also under challenge.

3. **(A)** The reply was filed by the appellants Bank wherein it has been stated that the petitioner committed various acts of misconduct i.e., frequently attending the office in drunken condition; misbehaving with the staff; often absenting from duty and making withdrawals without maintaining sufficient balance in his bank account etc. It is further submitted that on earlier occasion the respondent employee was suspended on 30.03.2001 for misbehaving with the bank staff and customers wherein he admitted his guilt and punishment of withholding of one increment of pay for two years without cumulative effect was awarded.

(B) The bank further stated that despite such punishment, the respondent did not improve his conduct and again on 26.03.2002 he was caught in a drunken state of mind in the Branch on the ground that his mother was seriously ill and lying on her death bed which on enquiry was found to be incorrect and accordingly leave application was rejected. However, the respondent abruptly left the Headquarter i.e., Bande without there being any sanction from the authority and went to Pakhanjur. Thereafter, the respondent/petitioner was served with charge sheet along-with statement of allegations and articles of charges, which was replied. Since the reasons put forth by the respondent-employee was not satisfactory, the departmental enquiry was conducted.

(C) It is further stated that after conducting the enquiry, all opportunities were given to the respondent to defend him through a defence representative including the opportunity to cross examine the

witness produced by the bank and also to produce his witnesses etc. After the enquiry, the report was submitted by the Officer on 10.06.2003 wherein he found that out of 8 charges, 6 were totally proved and two were partly proved. Thereafter, the disciplinary authority agreed with the finding of the enquiry officer and forwarded a copy of enquiry report to the respondent/petitioner and advised him to submit his explanation thereto. The disciplinary authority after perusal of the entire record of the enquiry and submissions made by the respondent, concurred with the findings of the Inquiry Authority and forwarded the report to the Appointing Authority. Thereafter, considering the records of enquiry proceedings and gravity of misconduct, the appointing authority has imposed the punishment of compulsory retirement in terms of Clause 67(h) of the State Bank of India Officers Service Rules vide order dated 06.10.2003. The respondent on receipt of such order passed by the appointing authority, preferred appeal and the appellate authority too dismissed his appeal vide order dated 19.03.2004 thereby the penalty imposed on respondent was upheld.

(D) It is further stated by the appellant Bank that initially the respondent preferred a writ petition bearing No.243/2005 before the High Court of Chhattisgarh whereby the orders dated 06.10.2003 and 19.03.2004 were subject matters of challenge. After reply was filed by the Bank, the petitioner withdrew the said writ petition on the basis of circular dated 15.04.1987 issued from the Corporate Center bearing PA/CIR/82. Consequently, by order dated 15.11.2011, the High Court dismissed the writ petition with liberty to approach the Bank as per the Circular which was filed as Annexure R-17. The respondent thereafter filed representation before the Bank on the basis of circular dated 15th April 1987 and in reply the Bank informed by letter dated 28.05.2012 that the compulsory retirement

imposed by the appointing authority and affirmed by the appellate authority has attained its finality. The bank in its reply further contended that all the principles of natural justice were followed and further the circular on which the respondent had relied upon was merely directory in nature and the punishment of compulsory retirement can be imposed even if the person has not completed 25 years of service or 20 years of pensionable service with the attainment of the age of 50 years. The Bank further contended that the respondent would not be entitled to receive any pension as he was not eligible to get the same.

4. The learned Single Judge came to a finding that according to the circular of the Bank dated 15.04.1987 which was issued on the basis of RTI in the year 2002 since the petitioner did not attain the age of 50 years, the punishment of compulsory retirement could not have been inflicted. Further with respect to the finding arrived in the enquiry, it was held that the Bank has failed to bring the evidence and examine the witnesses to prove the misconduct. It was further held that in order to prove the alleged intoxication, the primary evidence could have been produced which the Bank has not proved. The Court held that under the circumstances, the punishment of compulsory retirement imposed on respondent cannot be sustained. Being aggrieved by such order, the Bank has preferred this appeal.
5. Mr. A.K. Gilda Senior Advocate assisted by Mr. P.R. Patankar, Advocate, would submit that the respondent was initially charge-sheeted in the year 2001 and he was awarded punishment of *“withholding of one increment of pay for two years without cumulative effect”* which he admitted and it is stated that despite giving him opportunity to set right his behaviour, he again recurred the same and came to the Bank in drunken condition to perform the duties and misbehaved with customers as well as colleagues and on false

ground tried to take leave. He further submits that when the leave was refused, he forcibly went away with the key of cash chest of the Bank and left the headquarters. He further submits that the respondent had withdrawn different amounts from his account despite non-availability of sufficient balance and manipulation was made for such withdrawals, for which, the charge sheet was issued. He submits that the reply of the respondent would show that he admitted all the charges and out of 8 charges, six were totally proved and two were partly proved. It is further submitted that the finding of learned single judge based on circular dated 15.04.1987 cannot be acted upon as the said circular automatically stood substituted when the SBI Officers' Service Rules, 1992 (henceforth called as "Rules 1992") came into being. He would further submit that the petitioner has filed earlier writ petition wherein the similar prayer was made but it was withdrawn without any liberty to file afresh for the same cause of action and in this case, similar orders are under challenge. Therefore, this petition would be barred on the principles of constructive *res-judicata*. In support of his contention, he placed reliance in ***AIR 1965 S.C. 1150; AIR 1978 SC 7483 : (1978) 3 SCC 119 Para-9 and AIR 1999 S.C. 509 : (1991) 1 SCC 81 Paras 11, 12, 13.*** He further submits that the Rules of 1992 having been promulgated, the Circular dated 15.04.1987 cannot be acted upon. He further submits that appreciation of evidence collected in departmental enquiry would not be within the domain of this Court. He placed reliance in ***(1984) 1 SCC 43 (Paras 32, 33, 41)*** and would submit that the discretion under Article 226 cannot be exercised in this case.

6. **(A)** The respondent who chose to appear in person would contend that the order passed by the learned Single Judge is well merited which does not call for any interference. He referred to the Codified

Circular and would submit that the same was operative till 30th June 2002, which speaks that the punishment of compulsory retirement would not take place in a Bank unless the officer has completed the required pensionable service. It is contended that in order to get pensionable service, the officer is required to put in 25 years of service or 20 years of pensionable service with the attainment of age of 50 years. He submitted that under the circumstances, the earlier writ petition was sought to be withdrawn with a hope that his representation would be decided as per the existing circular of 30th June 2002. The respondent would further submit that in respect of pensionable service as against the compulsory retirement, the clarification was sought by him from the Bank under the RTI. During the course of arguments, he referred to certain letter and submitted that as per the State Bank of India Employees Pension Fund, an employee would be entitled to get pension after completion of 20 years of pensionable service provided that he attained the age of 50 years.

(B) The respondent further submitted that when the reply was given by the Bank, he again asked the information with respect to the compulsory retirement of the respondent and in the year 2011, the information was supplied to him and as per the retirement clause of the Bank, the officer may be retired from the Bank service after he has attained the age of 50 years and has completed 20 years of pensionable service or 25 years of service. He submitted that he was given information by the Bank to the effect that the rule provides that the officer can be retired from the Bank service only at the instance of the Executive Committee. Consequently, It is submitted that when the rules do not provide for compulsory retirement, he could not have been retired compulsorily as the Circular puts a rider that he cannot be retired unless completed pensionable service. The respondent/

petitioner would further submit that in earlier round of litigation, on the basis of information given by the Bank, he has withdrawn the petition and again made a representation but that too was dismissed. It is further submitted that since the initial writ petition was withdrawn on the basis of circular of the bank, the subsequent petition was maintainable before the learned Single Judge.

7. We have heard learned counsel for the appellants and the respondent in person and perused the judgment passed by the learned single judge as also the documents annexed to the writ petition.
8. The record would show that the respondent had filed earlier writ petition bearing No. W.P(S) No.243 of 2005 and as prayed by him, vide order dated 15.11.2011, the said writ petition was permitted to be withdrawn with liberty to approach the Bank on the basis of Circular dated 15.04.1987 (Annexure P-9). The said circular speaks that the compulsory retirement should not be effected where the concerned officer has not completed the pensionable service. It would be clearly evident that the respondent thereafter made certain representation claiming the right as per the circular dated 15.04.1987 which was disallowed by order dated 28.05.2012, which ultimately gave rise to filing of the subsequent petition bearing WPS No.6863 of 2016 and the learned single Judge set aside the order dated 28.5.2012 whereby representation was rejected. Further, the order of compulsory retirement passed by the appointing authority and confirmed by the appellate authority was also set aside. Hence, the Bank has preferred the writ appeal.
9. A perusal of the writ petition and the documents annexed thereto would show that the respondent had sought the relief for setting aside the order dated 28.05.2012, rejecting the representation as also the order of compulsory retirement dated 06.10.2003 and the appellate order dated 19.03.2004. The records show that earlier withdrawal of

the petition was made on the basis of circular dated 15th April 1987. The circular was meant for the bank staff to whom the compulsory retirement could not be given, who has not attained the pensionable service. The Circular which was relied upon by the respondent was perused. The earlier petition was withdrawn based on contents of such circular which was supplied to the petitioner during the pendency of such writ petition. In such circumstances, when the earlier writ petition was withdrawn with liberty to make a representation, the respondent/petitioner was not heard on merits and looking to the tenor of the circular on the basis of which this writ petition was withdrawn, it cannot be said that the subsequent filing of the petition was barred on the principles of *res-judicata*. As such, the principles of *res judicata* as has been prescribed in **AIR 1965 S.C. 1150 Devlal Modi v. Sales Tax Officer, Ratlam; AIR 1978 S.C. 7883** would not be applicable to the instant case as no adjudication was made on merits and if such proposition is adopted, the respondent/petitioner would be deprived of justice to pursue his case.

10. Now turning to the finding of learned single judge, it has been held that the compulsory retirement could not be invoked in view of the existing circular dated 15.04.1987 as the petitioner had not obtained pensionable service of the Bank. This makes us to refer to the circular which was placed on record. Undoubtedly, the respondent was supplied the copy of codified circular under the RTI Act, which was complied as Settlement of Terminal Benefits for Provident Fund, Gratuity, Pension & Family Pension(Current as on 30th June 2002). The particulars of such circular would be relevant and quoted below :

“ ELIGIBILITY OF PENSION IN CASE OF REMOVAL/
COMPULSORY RETIREMENT:

(1) COMPULSORY RETIREMENT – SBIOSR-67(h)

The provision of voluntary retirement in terms of Corporate Centre Circular No.A/CIR/140 dated 20th September, 1986 is

an optional scheme and it is for the employee to avail of this facility. For this purpose, the 4th proviso to the para 19(1) of the State Bank of India DTCS order 1979 alone was amended to enable the officer to seek permission for retirement on completion of 20 years pensionable service BUT A CORRESPONDING RIGHT HAS NOT BEEN GIVEN TO THE BANK TO RETIRE AN OFFICER AT 20 YEARS SERVICE 20 YEARS PENSIONABLE SERVICE. AS SUCH, NO AMENDMENT TO 3RD PROVISIO TO PARA 19(1) OF STATE BANK OF INDIA DTCS HAS BEEN MADE. THEREFORE, IT WILL NOT BE IN ORDER TO INFLICT THE PENALTY OF COMPULSORY RETIREMENT UNLESS AN OFFICER HAS COMPLETED REQUIRED PENSIONABLE SERVICE i.e., 25 YEARS OR PENSIONABLE SERVICE IN TERMS OF RULE 22(i)(d) OR 20 YEARS OF PENSIONABLE SERVICE WITH ATTAINMENT OF AGE OF 50 YEARS IN TERMS OF RULE 22(i)(a) VIDE CORPORATE CENTRE CIRCULAR No. PA/CIR/82, DATED 15TH APRIL, 1987”

11. Admittedly, on the date of compulsory retirement, the respondent/ petitioner had not attained the age of 50 years. In order to get pensionable service, according to the Circular, the employee should have completed 25 years of service in terms of Rule 22(i)(d) or 20 years of pensionable service with attainment of age of 50 years in terms of Rule 22(i)(a). On the date of compulsory retirement though the employee had completed 20 years of service, but he was below 50 years of age i.e., 48 years 5 months and 6 days despite he put on total service of 24 years 9 months and 11 days.
12. The reading of said circular would show that it was in reference to State Bank Officers' Service Rules 1979 whereas after 1992, the State Bank of India Officers' Service Rules 1992 came into force. The said rules have been framed in exercise of powers conferred under sub-section (1) of section 43 of the State Bank of India Rules, 1955. In Rule 67 compulsory retirement has been shown as “major penalty”. For the sake of reference, Rule 67 is relevant and quoted

below:

“Penalties

67. Without prejudice to any other provisions contained in these rules, any one or more of the following penalties may be imposed on an officer, for an act of misconduct or for any other good and sufficient reason to be recorded in writing:-

Minor Penalties

- (a) Censure;
- (b) Withholding of increments of pay with or without cumulative effect;
- (c) Withholding of promotion;
- (d) recovery from pay or such other amount as may be due to him of the whole or part of any pecuniary loss caused to the Bank by negligence or breach of orders.
- (e) reduction to a lower stage in time-scale of pay for a period not exceeding 3 years, without cumulative effect and not adversely affecting the officer's pension

Major penalties

- (f) Save as provided for in (e) above reduction to a lower stage in the time-scale of pay for a specified period, with further directions as to whether or not the officer will earn increments to pay during the period of such reduction and whether on the expiry of such period the reduction will or will not have the effect of postponing the future increments of his pay;
- (g) reduction to a lower grade or post;
- (h) *compulsory retirement***
- (i) removal from service;
- (j) dismissal.”

13. In such situation, when the Service Rules 1992 came into existence and when punishment of compulsory retirement was inflicted to the petitioner, there was no rider in Rule 67 that in case an employee has not completed the pensionable service, the compulsory retirement could not be inflicted. The circular on which the learned

single judge has placed reliance though was issued under the RTI Act to the respondent in the year 2012 but the said circular cannot be given an over-riding effect to the SBI Service Rules 1992 which has statutory force. More so, the reading of circular dated 15.04.1987 shows that creates right in favour of an employee to seek compulsory retirement and if the compulsory retirement is inflicted by way of major penalty it cannot be invoked. The aforesaid proposition is supported by the ratio of law laid down in **(1990) 4 SCC 481 State Bank of India v. S. Vijaya Kumar** wherein the Supreme Court held that when the right of dismissal has been conferred to the Higher Officer under the regulation then any other mode of dismissal may not be possible. Likewise, vice versa when the regulation i.e., State Bank of India Officers' Service Rules 1992 do not carve out any exception to inflict major penalty of compulsory retirement, the circular cannot be read with Rule 67 as it would be an addition to the statute i.e., SBI Service Rules, 1992.

14. Even if the Circular dated 15th April 1987 and further Codified Circular Instruction which is claimed by the respondent to have been supplied under RTI Act in the year 2012 are accepted, it will not over ride the Service Rules of 1992. This proposition can be supported by the ratio of law laid down in **AIR 1990 SC 166 Paluru Ramkrishnaiah v. Union of India** wherein at para 11 the Supreme Court has laid down that the Executive Instruction could make a provision only with regard to a matter which was not covered by the Rules and the Executive Instruction could not over ride any provision of the rule. Therefore, the Circular dated 15.4.1987, which refers to Service Condition Rules 1979 will not over ride the subsequent Service Rules of 1992. Hence, we are unable to sustain the finding of the learned Single Judge that the petitioner could not be proceeded on compulsory retirement as he has not completed 50 years of age on the date he was inflicted such

punishment.

15. Now turning to the finding of fact by learned Single Judge that in departmental enquiry, the allegations were not proved by primary evidence and documentary evidence, the Supreme Court in case of **(2011) 11 SCC 355 Union of India v. Manab Kumar Guha** has laid down that the High Court while exercising the power of judicial review in respect of order of disciplinary authority does not act as a court of appeal and appraise evidence and interference can only be warranted when the finding is perverse. Likewise, way back in **(1984) 1 SCC 43 – K.L. Tripathi v. State Bank of India** the ratio has been laid down that when the rules of natural justice have not been flouted and the enquiry has been conducted as per the norms of service condition Rules, subsequently the same cannot be challenged on the ground that no opportunity has been given.
16. Further in **2014 AIR SCW 6657 – Union of India v. Guna Sekharan** the Supreme Court has held that the High Court should not re-appreciate the evidence and interfere with the finding of fact unless it is perverse and further it should not go into the proportionality of punishment unless it shocks its conscience. Para 13 of the said decision is relevant and quoted below:

“13. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge No.1 was accepted by the Disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into re-appreciation of the evidence. The High Court can only see whether :

“a. the enquiry is held by a competent authority;

- b. the enquiry is held according to the procedure prescribed in that behalf;
 - c. there is violation of the principles of natural justice in conducting the proceedings;
 - d. the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
 - e. The authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;
 - f. The conclusion, on the very fact of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;
 - g. The disciplinary authority had erroneously failed to admit the admissible and material evidence;
 - h. The disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;
- The finding of fact is based on no evidence

Under Article 226/227 of the Constitution of India, the High Court shall not :

- (i) re-appreciate the evidence;
- (ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law.
- (iii) go into the adequacy of the evidence;
- (iv) go into the reliability of the evidence;
- (v) interfere, if there be some legal evidence on which findings can be based;
- (vi) correct the error of fact however grave it may appear to be;
- (vii) go into the proportionality of punishment unless it shocks its conscience”

17. When we revert back to the fact of this case it would show that the learned single judge has appreciated the veracity of the evidence led in the departmental enquiry. When we refer to the question of departmental enquiry and the documents filed along-with the reply, initially it would show that on earlier occasion, respondent was subjected to enquiry in the year 2001 on the allegation of (i) attending office in drunken state frequently; (ii) misbehaving with the staff; (iii) frequent unauthorised absence etc., (iv) making withdrawals without

maintaining sufficient balance in his bank account etc. The said charges were initially admitted and no major penalty was inflicted and the respondent/petitioner was only visited with minor penalty of withholding of one increment for two years without cumulative effect on 26th July.

18. Subsequently, the charge sheet was again served on the respondent on 30.09.2002 (Annexure R-5) which includes the allegations that (i) on 26.3.2002 the respondent has attended the Bank in inebriated condition and gave application for leave on the ground that his mother was on death bed and on refusal of the leave by the Branch Manager, he forcibly proceeded on unauthorized leave at 12.30 p.m., and took away the cash safe keys along-with him. Later on, the fact of indisposition of his mother was found to be wrong when the branch staff enquired into the matter; (ii) the bank scroll was not properly closed and there were certain cuttings in the Bank Cash Scroll on some pages and certain pages were missing; (iii) balance was not done by the respondent employee in the progressive book of savings and recurring deposit account for the quarter year ending of Dec. 2001 and March 2002; (iv) the withdrawal of Rs.1000/- was made without any entry; (v) the verification of relative day books was also not done. Two withdrawal forms were passed without posting them in ledger which results in overdrawing in the respective accounts; (vi) despite the presence of the Bank manager in the bank on 08.03.2002 sanction was made by the respondent for payment of petty cash bills and payment was also made by him; (viii) the respondent-employee unauthorisedly remained absent on 01.07.002 and the keys of strong room was kept with him and for want of keys, the strong room could not be opened, therefore the balance cash was kept outside the strong room in fire proof safe.

19. The reply thereto was submitted by the respondent vide Annexure R-6 wherein few of charges were admitted by him. Thereafter, on enquiry, he was found guilty and disciplinary proceeding report was given and out of 8 charges, 1 & 7 were partly held to be proved while 2 to 6 & 8 were fully proved. Thereafter, the copy was served and he was compulsorily retired. The learned single judge has referred that certain witnesses were not produced to prove the fact of intoxication. When the reply of respondent is examined, it would show that he has admitted most of the charges and with respect to intoxication and inebriated condition, learned single judge held that it could have been proved by primary evidence. When such findings are examined as against the disciplinary proceedings, it clearly shows that the enquiry officer has held that allegation no.1 was partially proved. The enquiry report shows that allegation No.1 contained that the employee came to the bank premises in intoxicated condition and thereafter forcibly proceeded on leave. The former part of allegation No.1 that the employee came to the Bank in intoxicated condition was not accepted. Consequently the enquiry report also does not hold the respondent guilty of attending the office in intoxicated condition. However, in latter part of allegation No.1, his unauthorised absence on that day from 12.30 p.m. was held to be proved. Hence, the finding of learned single judge that the 1st allegation has not been proved in absence of any evidence cannot be allowed to sustain. When most of the averments of petition have been answered by the appellant Bank in reply in respect of disciplinary enquiry and allegations were proved against the respondent/employee there was no requirement of further evidence to again prove the same. Further the enquiry report shows that full opportunity was given by the Bank to the respondent and the documents were also exhibited in support of their claim.

20. The scope of judicial review in respect of penalty/punishment has to be decided on the principles of **Wednesbury** and the Supreme Court in **(2005) 7 SCC 338 V. Ramana versus A.P.S.RTC** has held that the punishment imposed by the disciplinary authority or the appellate authority cannot be subjected to judicial review unless the same is shocking to the conscience of the Court/Tribunal. Here in the instant case, when the findings of the enquiry officer are seen it shows that out of 8 charges, 6 were fully proved and two were partly proved. However, the respondent did not suffer any dismissal or removal from service instead the Bank has given him compulsory retirement whereby he was entitled to receive the gratuity and other emoluments.
21. The respondent who is present in person during the course of arguments referred to communication made with the Bank Officials. The reference was also made to the State Bank of India Employees' Pension Fund Rules, which is framed in exercise of State Bank of India Officers Service Rules 1992. He submits that since the pension Rules are recurring the cause of action to receive the pension, as such, it was only when the information was provided by the Bank under the RTI Act along-with the circular, he withdrew the earlier writ petition with liberty to file representation. The representation was submitted and it was dismissed by the Bank by order dated 28.05.2012. In the order of rejection of such representation, no reference has been made to show how and why the circular, which purports that compulsory retirement cannot be inflicted to a person who has not attained the pensionable service, was issued. The same remained unanswered. The said circular was issued to the respondent/petitioner in the year 2012. The SBI Pension Rules purports several conditions. In such circumstances and in the given facts situation of this case, the respondent shall be at liberty to make

a fresh representation to the Appellants/Bank and we expect that the Bank authorities shall decide the same without prejudice to the right which may accrue in favour of the respondent/petitioner and also pass a speaking order in respect of the entitlement of the respondent to get pension according to the pension rules existing in the Bank.

22. Accordingly, the writ appeal stands allowed. The order of the learned Single Judge is set aside. The parties shall follow the observations made at Para 21 of this order.

Sd/-
(P. R. Ramachandra Menon)
Chief Justice

Sd/-
(Goutam Bhaduri)
Judge