

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WA No. 188 of 2016**

(Arising out of order dated 4.2.2016 passed by learned Single Judge
in WP No.2330/2003)

1. Himanshu Namdeo, S/o Late Shri Bhola Nath Namdeo, aged about 39 years.
2. Jitendra Namdeo, S/o Late Shri Bhola Nath Namdeo, aged about 36 years
3. Namdeo, S/o Late Shri Bhola Nath Namdeo, aged about 34 years.
4. Rashmi Namdeo, D/o Late Bhola Nath Namdeo, aged about 28 years.
5. Manorama Namdeo, W/o Late Bhola Nath Namdeo, aged about 62 years

All R/o Purani Civil Lines, Ward No.13, Sarangapani Chal,
Rajnandgaon.

---- Appellants

Versus

1. Dena Bank, through its Managing Director, Head Office Maker Towers (E) Cuffe Parade Mumbai (MH) 400005.
2. Regional Manager, Dena Bank, Raipur (CG)
3. Branch Manager, Dena Bank Mohan Nagar, Durg (CG)
4. Superintendent of Police, Durg (CG)

---- Respondents

For Appellant	:	Mr. Parag Kotecha, Advocate
For Respondent No.1 to 3	:	Mr. Vinod Deshmukh, Advocate

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice

Hon'ble Shri Parth Prateem Sahu, Judge

Order on Board

Per P.R. Ramchandra Menon, CJ;

19/11/2019

1. The unfortunate plight of the appellants, who lost their breadwinner, and the action pursued by the respondent Bank, who was employer of the breadwinner, in issuing charge sheets

and finalizing the departmental proceedings leading to the order of punishment of dismissal from service, without actually serving the charge sheets and without ensuring participation of the delinquent employee in the said proceedings, is the subject-matter of challenge in this writ appeal.

2. The grievance is against the interference declined by the learned Single Judge in the writ petition, without considering the pleadings and prayers in a proper manner.
3. Heard learned counsel for the appellants as well as learned counsel representing the respondent Bank.
4. Sequence of events is as follows;
5. The petitioners/appellants are the children & widow respectively, of the person by name Late Bhola Nath Namdeo, who commenced his service in the respondent Bank in the year 1971. While working as 'Assistant Branch Manager', he was found missing from 14.11.1996. The Branch Manager of the respondent Bank himself filed a report/intimation before the police on 16.11.1996 (Annexure 'A' to writ appeal) about missing of the said employee. Investigation was going on, which however did not yield any positive result. Since the sole breadwinner of the family of the appellants was not heard for more than seven years, necessary proceedings were filed before the Civil Court for appropriate reliefs and after considering the pleadings, prayers and evidence brought on record, a declaration was made by the Court as to the 'civil

death' of Bhola Nath Namdeo, thus granting a decree on 28.2.2008 in this regard.

6. With reference to the turn of events, the appellants put forth a claim for granting family pension/retiral benefits and also sought to provide employment to one of the legal heirs under the Scheme for compassionate appointment. The request made by the appellants was not acceded to by the respondent Bank authorities and the petitioners/appellants were let known vide communication dated 12.2.1999 that a disciplinary proceeding was initiated against the employee and on finding him guilty, he was inflicted with the punishment of dismissal from service, as per order Annexure P-8 dated 31.12.1998; by virtue of which no benefit was liable to be given. This made them feel aggrieved, who approached this Court by filing writ petition with the following prayers:-

“(i) Hon'ble High Court may be pleased to quash the order dated 31.12.1998 communicated by letter dated 12.2.1999 being illegal and opposed to law.

(ii) Hon'ble High Court may be further pleased to grant family pension to the family members of Shri Bhola Nath Namdeo as he is missing since 14.11.1996.

(iii) Hon'ble High Court may be pleased to issue a writ of mandamus commanding the respondent to release terminal dues alongwith interest with penal interest with effect from 14.11.1996 to the petitioners forthwith.

(iv) Hon'ble High Court may be pleased to direct the respondents to grant compassionate appointment to the eligible family members as per their qualifications/policy of the bank.

(v) Any other relief to which the petitioners may be found entitled in the facts and circumstances of the case, may also kindly be granted to them.”

7. Prayers were sought to be resisted on the part of the respondent Bank by filing return.
8. The basic contention of the petitioners/appellants is that the departmental enquiry was finalized without serving any charge sheets and behind the back of the employee, by virtue of which there was violation of the fundamental rule of natural justice i.e. *audi alteram partem*, and hence the impugned order was not liable to be sustained. After hearing, the learned Single Judge observed that 'the writ petitioners were not the delinquent' and hence no right was conferred on them to raise contention with regard to violation of the principles of natural justice. The learned Single Judge also made reference to the ruling rendered by the Apex Court in the matter of **General Manager (Operations), State Bank of India & Anr v. R. Periyasamy** reported in **(2015) 3 SCC 101** to decline interference with the findings in the departmental enquiry and the course pursued by the Disciplinary Authority. Similarly, the decision in the matter of **General Manager, State Bank of India & ors v. Anju Jain** reported in **(2008) 8 SCC 475** was relied on to decline the relief with regard to compassionate appointment.
9. Learned counsel for the appellants virtually reiterated the submissions in terms of the pleadings raised as to the finalization of the enquiry proceedings without even serving any charge sheets and hence that the entire proceedings were *per-se* wrong and illegal in all respects. Learned Counsel also

submits that the 'missing report' was filed before the police by none other than the Branch Manager of the respondent Bank and as such, missing of the employee/breadwinner of the petitioners/appellants was very much known to the authorities of the Bank. This being the position, they were not supposed to finalize the enquiry proceedings, stated as initiated against the employee concerned, without actually serving the charge sheets and hence the termination of service of the employee was not liable to be entertained.

10. Learned counsel representing the respondent Bank submits that charge sheet was issued to the delinquent employee and enquiry was conducted by appointing an Enquiry Officer. The proceedings held on different dates have been specifically adverted to pointing out that, when the factum of missing of the delinquent employee from 14.11.1999 was brought to the notice of the Enquiry Officer, it was reported to the Disciplinary Authority. But the Enquiry Officer was instructed to proceed with the enquiry by the Disciplinary Authority and hence, the proceedings were finalized, ultimately arriving at the finding on guilt. It was on the basis of the findings on guilt, that the punishment was imposed by the Disciplinary Authority, which is not liable to be interdicted and hence, it was correctly decided by the learned Single Judge, submits the learned counsel.
11. There is no dispute with regard to the position of law discussed by the learned Single Judge referring to the verdict passed by

the Apex Court in **General Manager (Operations), State Bank of India & ors v. R. Periyasamy** reported in **(2015) 3 SCC 101**; which lays down that the Courts cannot act as an appellate authority to re-appreciate the evidence in disciplinary matters. Last sentence of the relevant paragraph of the verdict passed by the Apex Court extracted therein speaks it point blank that Courts will interfere with the findings in disciplinary matters, only if Principles of Natural Justice or Statutory Regulations have been violated; or if the order is found to be arbitrary, capricious, malafide or based on extraneous considerations.

12. With regard to the right of the petitioners/appellants to challenge the action taken by the Management/Employer Bank, it has been observed by the learned Single Judge in 'Paragraph-9' as follows:-

“9. The issue concerning violation of principles of natural justice viz. a viz. the petitioners does not impress this Court because the petitioners were not delinquent. Therefore, there was no right conferred on them of pleading their defence with the management of the Bank. The petitioners never appeared before the enquiry officer on their own to inform the enquiry officer or the Bank that the delinquent is missing, therefore, they should be allowed opportunity to plead their case. Even if the Bank Manager had also informed the police about missing of the delinquent employee, the fact remains that the petitioners never appeared before the enquiry officer. In matters concerning disciplinary proceeding, right of hearing is

afforded to the concerned employee and not to any other person. The charges on which the enquiry was initiated against late Shri Namdeo were concerning his working in the bank and dealing with the loan cases. Even otherwise, the petitioners were not in a position to place any material before the Bank to demolish the charges. It is not a case where the Bank proceeded to complete enquiry without recording any evidence or finding is based on no material.”

The consequences resulted because of the violation of the principles of natural justice and in conducting the domestic enquiry, without serving any charge sheet to the employee (their breadwinner) whose 'civil death' has been declared by the competent Civil Court and arriving at a guilt behind him, leading to punishment of dismissal from service; in turn denying the disbursement of service benefits including family pension stand highlighted by the appellants. They have every right to do so; for which, they need not be the delinquent persons and hence we respectfully disagree with the finding and reasoning given by the learned Single Judge in this paragraph.

13. On going through the materials on record, the undisputed fact remains that the person by name, Bhola Nath Namdeo, who was working as 'Assistant Branch Manager' in the respondent Bank, was found missing from 14.11.1996. Annexure-A filed along with the appeal, which is the 'missing report' dated 16.11.1999, was submitted by none other than the Branch Manager of the respondent Bank. There is no case for the

respondent Bank, that after filing of the missing report, the delinquent employee had appeared at any point of time or that the charge sheet (Annexure R-1) issued on 11.9.1997 was served to him, asking for his explanation. As a matter of fact, a charge sheet was issued in the year 1997, referring to some delinquency in connection with some loans sanctioned by the delinquent employee i.e. after his missing on 14.11.1996. Another charge sheet was issued to the delinquent on 8.6.1998 (Annexure R-2) referring to his unauthorized absence. No case is put up by the respondent Bank that the above charges were actually served to the delinquent employee, enabling him to set-up the defence. The domestic enquiry was finalized by the Enquiry Officer and findings were rendered as per Annexure R-3 report dated 13.8.1998. As per Annexure R-4, the report of the Enquiry Officer was accepted and the Disciplinary Authority inflicted the punishment of dismissal from service on 31.12.1998, which was communicated to the petitioners/ appellants vide Annexure P-8 dated 12.2.1999.

14. As mentioned above, despite the elaborate hearing and scrutiny of the records, the date/s on which the charge sheets (Annexure R-1 & R-2) were served upon the delinquent employee are not brought on record. We required the learned counsel for the respondent Bank to refer to any pleading in this regard or the proceedings filed before the Court to infer that the charge sheets were actually served to the delinquent employee to infer that he did not attend the enquiry despite service of

charge sheets, so as to sustain the course of action. This Court also asked whether any 'paper publication' was made, especially since the delinquent employee was admittedly missing. No positive answer could be furnished from the part of the respondent Bank. There is no such reference, as to the service of charge sheets, anywhere in the enquiry report (Annexure R-3). The proceedings reveal that the charge sheets were issued in the name of the delinquent employee in the year 1997-98, after his missing from duty and his place of residence from 14.11.1996 and this fact was brought to the notice of the police by the Branch Manager of the Bank itself on 16.11.1996. If the person concerned was missing, how the charge sheets could be served upon him, is a matter of serious concern. If the charge sheets were not served upon the delinquent employee, how the enquiry could be validly proceeded further, ultimately arriving at a finding on guilt by the Enquiry Officer; followed by upholding of the said finding by the Disciplinary Authority, leading to imposition of punishment? It is settled law, that the 'master and servant relationship' cannot be cut-off quite arbitrarily and the proceedings can be finalized only after serving charge sheet, if at all there is any instance of misconduct, and after affording an opportunity of hearing to prove the innocence. Since the respondents have not pleaded that the charge sheets were actually served upon the employee or that the issuance of charge sheets was ever published in any newspaper, with instruction to appear for answering the

charges in the domestic enquiry and since no material/ document has been produced before this Court in this regard, the course of action pursued by the respondent Bank finding the missing employee as guilty of any misconduct cannot be held as sustainable under any circumstance. This is more so, since what happened to the missing person is not discernible. Whether he has been abducted by anybody, whether he has been murdered by anybody or whether he has sustained any serious injuries and later succumbed to the same are not known. The Civil Court has already declared his 'civil death' after seven years, in appropriate proceedings. In such case, a pragmatic view, with humanitarian approach, has to be taken.

15. It is true that domestic enquiry may not be practical in certain exceptional circumstances. Even on taking the present case as one such instance, since the charge sheets could not be served before missing of the employee, the 'master and servant relationship' could have been cut-off, after publication of a notice in this regard. In other words, it could only be a "termination/removal simplicitor" from service and not with reference to any finding on guilt with regard to the alleged lapse in connection with the loan transactions or such other allegations.
16. Viewed in the above circumstances, we are of the view that the course pursued by the respondent Bank is wrong, unsustainable and is liable to be interdicted and we do so. As

a natural consequence, we set aside the findings rendered by the learned Single Judge in the writ petition declining to entertain the case projected by the petitioners/appellants.

17. Coming to the relief which could be legally aspired/claimed granted by this Court, it remains a fact that the delinquent employee was not in service of the respondent Bank from 14.11.1999, as he was missing. He joined service of the respondent Bank in the year 1971 and was virtually having a service of more than 25 years. This being the position, the employee can be deemed as left the service of the Bank from the next date of his missing on 14.11.1996; having the effect of "termination/removal simplicitor" i.e. without stigma, particularly since his 'civil death' has been declared by the Civil Court. We hold that the respondent Bank is liable to satisfy the retiral benefits to the petitioners/appellants, who are having the 'status of legal heirs' of the employee, who sustained a civil death. The benefits payable will include Gratuity, Provident fund, Leave Encashment, if any, and such other service benefits including the eligibility to get Family Pension. The amount due as above shall carry interest, which we fix at a nominal rate of 6% p.a. except in the case of 'Provident Fund' dues, if any, which shall carry the interest at the statutory rate. This shall be worked out and the amount due, including arrears of family pension, shall be released to the petitioners/appellants, against proper receipt, as expeditiously as possible, at any rate, within two months from the date of production of a

certified copy of this judgment.

18. With regard to remaining relief for getting 'compassionate appointment', we find that it is not liable to be entertained at this stage. The very purpose of compassionate appointment, as made clear by the Apex Court on many a time, is to give immediate support to the family and mitigate the hardships caused due to death of the breadwinner and to ensure that family is not thrown to the streets. In the instant case, since the missing of the employee was in the year 1996 and civil death was declared by the competent Civil Court in the year 2008, the claim in this regard is not liable to be entertained at this stage i.e. in the year 2019. We accept the submission made by learned counsel appearing for the respondent Bank in this regard and the prayer for grant of compassionate appointment to one of the petitioners/ appellants stands declined.

19. The writ appeal is allowed in part, to the extent as indicated above. No cost.

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

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-