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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No.6346 of 2014
Decided on : 03.07.2019

Parbodh Kumar

... Petitioner

Versus

Punjab & Sind Bank and others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present: Mr. G.S. Bal, Senior Advocate with
Ms. M.K. Madahar, Advocate for the petitioner.

Mr. R.N. Lohan, Advocate for the respondents.

G.S. Sandhawalia, J. (Oral)

Challenge in the present writ petition filed under Article 226/227 of the Constitution of India is to the order dated 23.08.2013 (Annexure P-4) whereby recovery of ₹15,000/- per month has been directed for a period of 3 years under Regulation 43 and 45 read with Regulation 48 of the Pension Regulations, 1995 by the Disciplinary Authority. The said order has further been upheld by the Appellate Authority on 29.11.2013 (Annexure P-8), whereby a finding has been recorded that the appellant could not produce documents in evidence which indicate that a loan of huge amount was given to M/s Pushap Agrotech Pvt. Ltd. Director of the company had not produced any document or account statement to confirm this fact and merely giving a affidavit to this effect has been held to be a afterthought.

2. Admittedly, the allegations as such pertained to the conduct of the petitioner after his retirement on 31.01.2011 as Branch Manager. Vide the charge-sheet dated 06.07.2012 (Annexure P-1) there were three

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allegations regarding his conduct. Mainly the dispute was regarding the cheque of ₹10 lakhs which had been issued by the Director of the said company, which was in favour of self or bearer. The petitioner has said to have filled in a voucher, whereby he wanted ₹5 lakhs to be credited in his joint account with his wife and the balance ₹5 lakhs was go to Smt. Surinder Kaur Behl wife of Shri Ranvir Singh Behl (the then Branch Manager). Second allegation was qua crediting of ₹8,65,000/- in the account of the petitioner which had not been reported to the competent authority and the last allegation was that the company might claim the amount of Rs.10 lakhs and further interest, as the amount had been wrongly debited and the bank could be exposed to loss.

3. As per the inquiry report dated 28.02.2013 (Annexure P-2), the first allegation was proved that the petitioner was not holder in due course of the cheque and Mr. Pawan who had signed on behalf of the company had not filled the credit voucher. Therefore, the payment credited in the account of the petitioner and in the account of Smt. Surinder Kaur Behl had been proved. Resultantly, the comments of the petitioner as such were called for after supplying him copy of the report of the Inquiry Officer, to which he had replied on 11.03.2013 (Annexure P-3).

4. Resultantly, keeping in view the said finding, the punishment had been imposed that he was guilty of the allegation and he had abused his ex officio position conferred upon him. The credit slip had been filled by his own hand writing and he had committed a fraud of ₹11.07 crores

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and had gained unlawfully ₹5 lakhs to safeguard his personal borrowings. It has been further held that the company as such had defrauded ₹11.07 crores and the petitioner unlawfully gained the payment of ₹5 lakhs. There was likely a loss of ₹11.07 crores to the Bank. The affidavit of the Director of the company was, thus, ignored in such circumstances.

5. Mr. Bal has pointed out that it had been brought to the notice of the Appellate Authority that a sum of ₹5 lakhs, which the petitioner as such was maintaining by way of a Fixed Deposit Receipt had been prematurely withdrawn as per bank statement (Annexure P-10) had been encashed on 15.04.2011. The said amount had been given as loan to the Director of the company. It is submitted that the amount which was being paid back by cheque on 25.05.2011 was only a return of the said amount. It is pointed out that show cause notice dated 24.10.2011 had also been issued prior to the charge-sheet being served and which had also been replied on 05.01.2012, in which the same defence had been taken. A photocopy of the said letter has now been placed on record as Annexure P-14. The relevant part of the said reply reads as under:-

> " 1. That I was retired from the Bank services on 31.01.2011 this is incorrect that the transaction of Rs. 5 lac credited in my joint A/c on 24.05.2011 of Rs.5 lac is illegal as stated by you in your show cause notice.
>
> 2. Mr. Rachit Bansal Partner Pushap Agrotech along with Mr. Behl Sr. Manager Approached me for financial help. Mr. Rachit Bansal stated that he is facing business crises and is in bad need of funds. Since, I am having family relations with Mr. Rachit Bansal and a good gesture, I lend him Rs.5 lac in cash after breaking my fixed deposit receipt of Rs. 5

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> lac to save his A/c from slippage to bad account. On 24.05.2011 I received a telephonic massage from Mr. Behl That he has received the amount of Rs.5 lac from Mr. Rachit Bansal. I visited the bank and filled credit voucher of Rs.5 lac and handed over to Mr. R.S. Behl. At the request of Mr. Behl I also filled another voucher of Rs. 5 lac for credit in SB A/c No.29209.
>
> 3) That it is correct that a sum of Rs.8,65,000/- is credited in joint of my wife and Self on 15.10.2010 which relates to the sale proceeds of my house. I have sold my house to Sh. Harminder Singh chahal a N.R.I who have made the Part Payment to me by a cheque of Rs.8,65,000/-. This transaction could not be Reported to the competent authority in property return as on 31.03.2011, Because I retired from Bank on 31.01.2011. Moreover, passing/routing of transaction Through our account No.21087 is a open fact and no concealment. A Xerox copy Of the cheque is enclosing for your perusal."

6. A perusal of the abovesaid reply would go on to show that there is sufficient material as such to show that before the charge-sheet also which was issued, the petitioner had taken a specific stand regarding loan given to Mr. Rachit Bansal. The Appellate Authority has already as noticed and come to the conclusion that there was no material which had been produced that this amount was given to the said company. The affidavit as such of the Director was not taken into consideration. The affidavit also is not a part of the paper-book.

7. In such circumstances, this Court is of the opinion that it would be appropriate if the Appellate Authority examines the issue from this angle as to whether the amount as such was being returned to Mr.

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Rachit Bansal on account of having been given by the petitioner on an earlier occasion after his retirement. The charge-sheet dated 06.07.2012 is more in the form of allegations regarding the mis-conduct of the petitioner as if he is still in service, as the allegations were that the he did not take all possible steps to ensure and protect the interests of the Bank and did not discharge his duties with utmost integrity, honesty, devotion and diligence.

8. As noticed the allegation are post retirement regarding the debiting the cheque on 24/25.05.2011. It is not disputed that concerned Branch Manager alongwith other officials has been also duly imposed penalty, whereby the proceeds of the cheque were permitted to be credited in the account of the petitioner and his wife and the wife of the then Branch Manager in violation of the instructions of the Drawers mandate.

9. Admittedly, the drawer as such had not raised any issue regarding this effect and has supported the case of the petitioner and also furnished the requisite affidavit regarding this aspect. Merely because the account gone bad on a subsequent occasion would not as such be a ground to disbelieve the stand of Mr. Rachit Bansal. It is not the case of the Bank in the charge-sheet that the loan was advanced to the said company for any fraudulent purpose or to benefit the said company.

10. Mr. Lohan, though has submitted that under Regulation 42 of the Punjab & Sind Bank (Employees') Pension Regulations, 1995, payment of pension is also subject to the future good conduct. The said

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regulation reads as under:-

> "**42. Pension subject to future good conduct**
>
> Further good conduct shall be an implied condition of every grant of pension and its continuance under these regulations."

11. In such circumstances, this Court is of the opinion that the Appellate Authority has to examine the issue from this aspect regarding the alleged mis-conduct of the petitioner, if any, and whether it is only an act as such of recovery of the alleged loan given after his retirement and whether the defence which had been taken at the initial stage also as now pointed is justified or not. Unfortunately, the petitioner did not raise the said issue while filing his comments on 11.03.2013 (Annexure P-3) after the receipt of the inquiry report, due to which it is necessitated for remand of the matter to the Appellate Authority.

12. Resultantly, the writ petition is partly allowed. The Appellate Authority order dated 29.11.2013 (Annexure P-8) is set aside. The Appellate Authority shall re-consider the issue in the abovesaid facts and circumstances. Since, the petitioner has retired way back on 31.01.2011, it is expected that the Appellate Authority would expeditiously decide the appeal, as it had done on an earlier occasion, within a period of 3 months from the receipt of the certified copy of this order.

(G.S. SANDHAWALIA)
JUDGE

JULY 03, 2019
Naveen

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No