IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Shekhar B. Saraf

W.P.A. No. 5611 of 2020

I.A. No. 1 of 2020 (C.A.N. 3378 of 2020)

Sandipta Gangopadhyay
Versus
Indian Bank & Ors.

For the Petitioner : Mr. Shuvro Prokash Lahiri, Adv.,

For The State Respondents : Mr. Om Narayan Rai, Adv.,
Mr. Saikat Roy Chowdhury, Adv.,

Heard on : 29.06.2020, 28.07.2020, 7.08.2020, 09.09.2020 & 18.09.2020

Judgment on : 04.12.2020

Shekhar B. Saraf, J.:

1. The writ petitioner essentially has invoked the writ jurisdiction of the Court, to demand the payment of back-wages. The petitioner has alleged that such payment of back-wages is due to him as a result of the unjustified prolongation of suspension imposed by his employer, the Respondent Bank.

2. The petitioner is currently in the employ of the Indian Bank, posted as the incumbent Senior Manager of the aforesaid bank in its Stressed Asset Management Branch in Kolkata. Such employment is a result of the amalgamation of Indian Bank along with his erstwhile employers, the Allahabad Bank, which based on the decision of the Union Ministry of Finance to merge certain public sector banks, provided for such merger under "The Amalgamation of Allahabad Bank into Indian Bank Scheme, 2020", vide notification no. GSR 156(E) dated March 4, 2020. As a consequence, with effect from April 1, 2020, the Allahabad Bank stands amalgamated into the Indian Bank.

3. The facts of the case possess a checkered history, and therefore, demand some elucidation.

    a. The petitioner had joined the erstwhile employer - Allahabad Bank, originally in 2008 as a Manager (Credit) at its Zonal Office at Behala. However, he was subsequently transferred to the bank's Adisaptagram Branch. It was while he was posted there that the petitioner alleges that he was a victim of a criminal conspiracy hatched by a loan applicant at the branch, namely Shri Moni Majumdar, who displayed the sizeable exercise of his 'political' clout.

    b. On August 20, 2014, the petitioner was arrested by the police authorities stationed at the Mogra Police Station based on a First Information Report (F.I.R.) that was instituted by the alleged vindictive loan-applicant/complainant (a third-party to this *lis*) in case no. 316 of 2014.

The case was initiated under Section 7 of the Prevention of Corruption Act, 1988 (hereinafter referred to as the "PCA") wherein it was alleged that the petitioner had demanded and consequently accepted illegal gratification to the tune of INR 25,000/- from the complainant to process and sanction a loan to the complainant.

c. As the writ petitioner's period of police detention post his arrest exceeded forty-eight (48) hours, the petitioner was placed under deemed suspension in terms of the governing Service Regulations applicable to the petitioner, namely, the Allahabad Bank Officer Employees' (Discipline & Appeal) Regulations, 1976 (hereinafter referred to as the "1976 Regulations") by the competent authority under Regulation 12(2)(a) of the said Regulations. This order of deemed suspension was communicated to the petitioner on August 23, 2014.

d. With promptitude, the petitioner appealed against the above order of deemed suspension dated August 23, 2014 before the General Manager, by filing a written representation dated September 23, 2014 and sought for revocation of the such order of deemed suspension. The pertinent authority considered the representation filed and declined the petitioner's request by a communication dated January 19, 2015.

e. The petitioner challenged this appellate order dated January 19, 2015 by instituting a writ petition being W.P. No. 5762 of 2015. The learned Single Judge, upon hearing both parties, allowed the writ petition by an order dated March 3, 2015. While setting aside the order dated January 19, 2015, it parted with the directions to the Chief Manager of the Allahabad Bank to reconsider the petitioner's plea and revoke the deemed order of suspension in accordance with law while communicating a reasoned order to the petitioner within four weeks from the date of the said order.

f. The Appellate Authority of the Bank, based on such directions of the learned Single Judge of this Court, considered the petitioner's representation once again and rejected his request for revocation of the deemed suspension dated August 23, 2014 by an order dated March 18, 2015. Constrained for options, the petitioner preferred another writ petition being W.P. No. 7288(W) of 2015 assailing the above order dated March 18, 2015.

g. By an order dated April 21, 2015, the learned Single Judge set aside the order of the Appellate Authority of the bank dated March 18, 2015, and directed for the reinstatement of the petitioner 'by the beginning of May, 2015' while specifying that the petitioner would be entitled to his regular salary and emoluments from the day the petitioner resumes his duties. The learned Singh Judge also added a caveat, that it would be open to the bank authorities to transfer the petitioner to any other branch or assign him any such duty wherein he may not have the opportunity of tampering with the elements of the investigation in the ongoing case registered against him.

h. The Respondent Bank, immediately pressed for a stay of the order passed by the learned Single Judge dated April 21, 2015. A learned Division of this Court, while considering MAT 699 of 2015 in addition to CAN 4436 of 2015, by an order dated June 8, 2015, granted a stay of the operation of the impugned order dated April 21, 2015 for a period of three months, while recording that the dictum of the Supreme Court that had been relied on by the learned Single Judge did very little to serve the case of the petitioner (respondent in MAT 699 of 2015).

i. The intra-court appeal bearing FMA No. 3451 was taken up for a hearing by a learned Division Bench of this Court in August 2017 and the judgment of the Court dated August 16, 2017, brought with it a divergence of findings. While the Hon'ble Justice Patherya held in favour of the Bank and set aside the impugned order dated April 21, 2015, the Hon'ble Mr. Justice Subrata Talukdar differed in his interpretation, and chose to uphold the impugned order.

j. Based on such divergence of opinion of the two Hon'ble Judges constituting the said Division Bench, the matter was placed before the Hon'ble Chief Justice, who accordingly referred the matter to a Referral Bench comprising the Hon'ble Mr. Justice Sahidullah Munshi, by an order of assignment dated December 10, 2018.

k. As the matter was taken up by the Referral Bench, the learned Judge disposed of the reference by an order dated August 30, 2019 while holding that the decision of the Respondent Bank in prolonging the suspension without initiation of departmental proceedings was opposed to the due process of law, a facet entrenched within the contours of

Article 21 of the Constitution and that the petitioner was 'entitled to get all benefits pursuant to the order impugned.'

l. Based on the order of the Referral Bench, the Respondent Bank finally revoked the order of deemed suspension dated August 23, 2014 by an order dated October 23, 2019 while specifying that such revocation would be effective from the date he assumed the duties at his place of posting as ordered by the pertinent authorities and the period of suspension served by the petitioner would be treated as "non-duty", meaning thereby that he would be ineligible to draw his regular salary and ancillary emoluments sans the subsistence allowance that was already paid to him for the above mentioned period.

m. The petitioner joined his new place of posting based on the order dated October 23, 2019 but subsequently filed a written representation dated February 7, 2020 with the concerned authority, requesting for the release of his regular salary, increments, allowances, *et al* in compliance with the orders of this Court dated August 30, 2019 and April 21, 2015.

n. By an order dated May 20, 2020, the Assistant General Manager of the Respondent Bank informed the petitioner that his request for the grant of back wages by the bank, had been rejected. Aggrieved by the said decision, the petitioner has yet again challenged this order of the bank dated May 20, 2020 by filing this writ petition and has sought the grant of back-wages for the period served under deemed suspension.

4. Based on the narration of events and the arguments advanced by both the parties, I need to deal with two issues which are stated hereinafter:

   I. Whether the petitioner is entitled to receive back-wages for the period served under deemed suspension by the order dated August 23, 2014?

   II. If the first question is answered in the affirmative, the amount of back-wages that the petitioner is entitled to receive from the Respondent Bank?

5. Mr. Shuvro P. Lahiri, the learned counsel for the petitioner has drawn my attention to the orders of the learned Single Judge dated April 21, 2015 as well as the Referral Bench dated August 30, 2019, and has assiduously submitted that based on a conjoint reading of the two orders, there should be no hesitance in granting the petitioner the back-wages for the period served under deemed suspension. While initially as per the averments made out in the writ petition, the period of consideration for the grant of back-wages stretched between August 23, 2014 to October 23, 2019, Mr. Lahiri subsequently, amended this plea and argued that the period of consideration would commence from April 21, 2015, that is, from the date the order of the learned Single Judge was passed in W.P. No. 7288(W) of 2015 which had directed the grant of regular salary and emoluments to the petitioner from the date he joined his service. The very same order, Mr. Lahiri has argued, directed his reinstatement by the beginning of May 2015.

6. Mr. Lahiri has also argued that the period of deemed suspension, served by the petitioner, without any initiation of disciplinary proceedings by the

Respondent Bank, is *non est* in the eyes of the law and given that the order passed by the Referral Bench had neither been challenged nor modified, the Bank was legally obligated to give effect to the same.

7. Mr. Lahiri has conspicuously drawn my attention to **Regulations 15(1)** and **15(3)(a)** of the **1976 Regulations** which envisages the grant of full pay to a suspended employee of the Bank if either such employee has been ***fully exonerated*** **or if** ***such suspension was unjustifiable.*** If either of the conditions stand fulfilled, the period of absence from duty, while serving the period of suspension, would be deemed as spent ***'on duty'***.

8. While also arguing that the Respondent Bank has resorted to a wanton violation of the 1976 Regulations by not initiating the disciplinary proceeding against the petitioner, Mr. Lahiri has also argued that the conditional reinstatement of the petitioner by the order dated October 23, 2019 further perpetuates the administrative highhandedness and exhibits a blatant example of the abuse of dominant position and unequal bargaining power by the Respondent Bank.

9. In support of his contention that a suspended employee is entitled to the receipt of full benefits upon his reinstatement alongside the adjustment of subsistence allowance, Mr. Lahiri has placed his reliance on the following decisions of the Supreme Court in ***O.P. Gupta –v- Union of India*** reported in ***(1987) 4 SCC 328***, ***The Commissioner, Karnataka Housing Board –v- C. Muddiah*** reported in ***(2007) 7 SCC 689***, ***General Manager, UCO Bank –v- M. Venuranganath*** reported in ***(2007) 13 SCC 251***, ***Raj Narain –v- Union***

of India reported in ***(2019) 5 SCC 809***; the Division Bench decision of this Court in ***The Naba Ballygunge Mahavidyala –v- Goutam Basu***, reported in ***2018 (4) CHN (CAL) 225*** and Single Bench decision of this Court in ***Purnendu Kumar Bagchi –v- Indian Overseas Bank*** reported in ***2017 (1) CHN (CAL) 563***.

10. Mr. Rai, the learned counsel for the Respondent Bank, has countered the arguments advanced by Mr. Lahiri. He contends that neither the order of the learned Single Judge dated April 21, 2015 nor the order of the Referral Bench dated August 30, 2019 had explicitly ruled for the grant of back-wages to the petitioner for the period served under deemed suspension. To support this argument, he placed reliance on the decisions of the Supreme Court in ***Rajasthan SRTC –v- Ladulal Mali*** reported in ***(1996) 8 SCC 37*** and ***Rajasthan SRTC –v- Shyam Bihari Lal Gupta*** reported in ***(2005) 7 SCC 406***.

11. Mr. Rai also contends that since the petitioner himself had acknowledged his alleged involvement in the commission of a crime, the petitioner was barred from claiming back-wages. In support of this limb of his argument, he placed his reliance on the following Supreme Court judgments: ***Ranchhodji Chaturji Thakore –v- Superintendant Engineer, Gujarat Electricity Board*** reported in ***(1996) 11 SCC 603***, ***Krishnakant Raghunath Bibhavnekar –v- State of Maharashtra*** reported in ***(1997) 3 SCC 636***, ***Union of India –v- Jaipal Singh*** reported in ***(2004) 1 SCC 121*** and ***UPSRTC Ltd. –v- Sarada Prasad Misra*** reported in ***(2006) 4 SCC 733***.

12. Mr. Rai has also relied on ***Gurpal Singh –v- High Court of Judicature of Rajasthan*** reported in ***(2012) 13 SCC 94*** to contend that the justification for grant or claim of back-wages is to be considered stage-wise. He has also argued that the reliance placed on Regulation 15 of the 1976 Regulations by the petitioner, is wholly misplaced as it has no bearing in the matter, for the suspension was justifiable and this has not been stated to the contrary by either of the orders of this Court dated April 21, 2015 or August 30, 2019. Lastly, Mr. Rai also argues that the principle of "No Work, No Pay" is squarely attracted to this case and thereby repels the demand of the petitioner for the grant of back-wages for the period served under deemed suspension.

13. I have heard the learned counsels appearing on behalf of both the parties at length and have perused the materials that they have been placed on record.

14. Given how the interpretative tussle revolves around sub-clauses (1) and (3) of Regulation 15 of the 1976 Regulations, it would be appropriate to set it out as follows:

> "**15. Pay, Allowances and Treatment of Service on Termination of Suspension. –** (1) Where the competent authority holds that the officer employee <u>has been fully exonerated</u> or that <u>the suspension was unjustifiable</u>, the officer employee concerned shall be granted the full pay to which he would have been entitled, had he not been suspended together with any allowance of which he was in receipt immediately prior to his suspension or may have sanctioned subsequently and made applicable to all officer employees.
>
> (2) *****
>
> (3) (a) In a case falling under sub-regulation (1) the period of absence from duty shall, <u>for all purposes, be treated as a period spent on duty</u>.

(b) ***** ”

Emphasis supplied.

15. The erstwhile Respondent Bank now stands amalgamated into the Indian Bank, and it appears that the Indian Bank also has similar disciplinary regulations, viz. Indian Bank Officer Employees (Discipline and Appeal) Regulations, 1976 wherein Regulation 15 is in *pari materia* to the Regulation extracted above.

16. Therefore, the focal point around which revolves the probable success or failure of the petitioner in securing the grant of back-wages for the period spent under deemed suspension depends on either of two scenarios: either the petitioner showcases that he has been fully exonerated or that his suspension was unjustifiable and the same has been determined as such by the competent authority. It is axiomatic to state that for the competent authority of the Respondent Bank to reach such a conclusion, the initiation of departmental proceedings against the petitioner/ delinquent employee was a *sine qua non.*

17. However, before I venture into exploring the specificities involved in the *lis*, I am bewildered by the fact that the Respondent Bank chose not to initiate departmental proceedings against the petitioner/delinquent employee ever since he was first placed under deemed suspension by the order dated August 23, 2014. A perusal of the judgment rendered by the Hon’ble Referral Bench sheds some much needed spotlight on this curious factual aspect.

18. The Referral Bench, in its order dated August 30, 2019 had recorded and dealt with the following arguments advanced by Mr. Sanyal, learned advocate appearing for the Respondent Bank.

> "The last limb of argument advanced by Mr. Sanyal that *the delinquent was placed under suspension the suspension had to be prolonged because the criminal prosecution was initiated by a third party who obtained loan after allegedly bribing the appellant.* The documents involving the criminal prosecution, according to the appellant/Bank, are all lying in the Court which is in seisin with the criminal prosecution. *Therefore, according to the Bank although, it contemplated for a departmental proceeding but it could not be done due to absence of documents.*
>
> Mr. Lahiri learned counsel appearing for the appellant submitted that it is palpably wrong in making such submission that the Bank is helpless to initiate departmental proceeding because they are not having the documents with them. Mr. Lahiri has pointed out before this Court from the Appellate Authority's order dated 18th March 2015 *where the said authority at page 71 of the paper book observed "now, the entire records of the case along with relevant papers/documents have been placed before me for taking a decision in the matter. I, as Appellate Authority, have gone through the entire records, applied my mind and observed as under* ……"
>
> **Having regard to such position it cannot be perceived that the Bank Authority's explanation for not initiating departmental proceeding is for want of papers**. The appellant has not canvassed before this Court what are the documents the Bank Authorities have placed in support of the evidence. **No explanation is forthcoming as to the stage of the criminal prosecution and the Bank's role therein."**

Emphasis supplied.

19. It becomes apparent that even the Referral Bench was astonished at the lackadaisical manner in which the Respondent Bank has refused to initiate departmental proceedings against the petitioner, merely because the case papers/documents were in the possession of the appropriate court which was seized with the case against the petitioner. With the Appellate Authority's order dated March 18, 2015 proving such fact to the contrary, the Referral bench had refused to accept the Bank's argument that such

departmental proceeding was not initiated against the delinquent employee merely for want of the case documents. It also appears that no explanation was furnished by the Bank when enquired about the stage of the criminal prosecution and the Bank role's therein.

20. The Supreme Court in ***State Bank of India –v- R.B. Sharma*** reported in ***(2004) 7 SCC 27***, had stated that it is a fairly well-settled position in law that on basic principles, proceedings in criminal case and departmental proceedings can go on simultaneously, except where departmental proceedings and criminal case are based on the same set of facts and the evidence in both the proceedings is common. The relevant portion is extracted below:

> "8. **The purpose of departmental enquiry and of prosecution are two different and distinct aspects**. Criminal prosecution is launched for an offence for violation of a duty the offender owes to the society, or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. **The departmental enquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible**..."

Emphasis supplied.

21. A similar position was reiterated by the Supreme Court in ***Ajit Kumar Nag –v- General Manager (PJ), Indian Oil Corporation Ltd., Haldia*** reported in ***(2005) 7 SCC 764***.

> "11...[I]n our judgment, the law is fairly well settled. Acquittal by a criminal court would not debar an employer from exercising power in accordance with Rules and Regulations in force. **The two proceedings, criminal and departmental, are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in**

accordance with service rules......The rule relating to appreciation of evidence in two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused 'beyond reasonable doubt', he cannot be convicted by a court of law. **In departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of "preponderance of probability".** Acquittal of the appellant by a Judicial Magistrate, therefore, does not *ipso facto* absolve him from the liability under the disciplinary jurisdiction of the Corporation."

Emphasis supplied.

22. Finally, the Supreme Court in ***Avinash Sadashiv Bhosale –v- Union of India*** reported in ***(2012) 13 SCC 142***, reiterated its principles culled out in ***Karnataka SRTC –v- M.G. Vittal Rao*** reported in ***(2012) 1 SCC 442***, in such cases of 'simultaneously proceedings' and recorded them as follows:

"54.1. **There is no legal bar for both proceedings to go on simultaneously.**

54.2. The only valid ground for claiming that the disciplinary proceedings may be stayed would be to ensure that the defence of the employee in the criminal case may not be prejudiced. But even such grounds would be available only in cases involving complex questions of fact and law.

54.3. **Such defence ought not to be permitted to unnecessarily delay the departmental proceedings. The interest of the delinquent officer as well as the employer clearly lies in a prompt conclusion of the disciplinary proceedings.**

54.4. Departmental proceedings can go on simultaneously to the criminal trial, except where both the proceedings are based on the same set of facts and the evidence in both the proceedings is common."

Emphasis supplied.

23. Therefore, it becomes clear beyond skepticism, that the Respondent Bank was not impeded in any way whatsoever when it comes to initiating a departmental proceeding against the petitioner/delinquent employee. Both

proceedings would have run simultaneously and operated in different fields. It is not the case herein that they were codependent on one another.

24. Such instances of employers displaying administrative highhandedness is not unknown in the realm of service law. It is an issue which has been often berated by the Supreme Court in a catena of cases. Such constructive criticism has however failed to achieve substantive gains to mend the ways of such employers. And precisely because of this reason the Supreme Court in ***Prem Nath Bali –v- Registrar, High Court of Delhi*** reported in ***(2015) 16 SCC 415***, a decision rendered on December 16, 2015, issued the following pointed directions:

> "26. Time and again, this Court has emphasized that it is the duty of the employer to ensure that the departmental enquiry initiated against the delinquent employee is concluded within the shortest possible time by taking priority measures. **In cases where the delinquent is placed under suspension during the pendency of such inquiry then it becomes all the more imperative for the employer to ensure that the inquiry is concluded in the shortest possible time to avoid any inconvenience, loss and prejudice to the rights of the delinquent employee.**
>
> 27. As a matter of experience, we often notice that after completion of the inquiry, the issue involved therein does not come to an end because if the findings of the inquiry proceedings have gone against the delinquent employee, he invariably pursues the issue in court to ventilate his grievance, which again consumes time for its final conclusion.
>
> 28. Keeping these factors in mind, **we are of the considered opinion that every employer (whether State or private) must make sincere endeavour to conclude the departmental enquiry proceedings once initiated against the delinquent employee within a reasonable time by giving priority to such proceedings and as far as possible it should be concluded within six months as an outer limit.** Where it is not possible for the employer to conclude due to certain unavoidable causes arising in the proceedings within the time frame then **efforts should be made to conclude within reasonably extended period depending upon the cause and the nature of inquiry but not more than a year.**"

Emphasis supplied.

25. Though the Respondent Bank preferred to challenge the order of the learned Single Judge dated April 21, 2015, nothing prevented them from initiating a departmental proceeding against the petitioner. Under the 1976 Regulations, while the petitioner was placed under deemed suspension by virtue of Regulation 12(2) since he was detained in police custody over a period excess of forty-eight hours, the same Regulations also contained Regulation 5 which contemplates that the competent authority may institute disciplinary proceedings and impose penalties. The 1976 Regulations are a code in itself and its provisions are closely inter-linked, rather than operate in isolated silos. Though deemed suspension was initiated under Regulation 12(2) automatically, in due course, the suspension proceedings could have been transposed under Regulation 5, by initiating regular departmental proceedings post issuing a Memorandum of Charges against the petitioner. That would have been the lawful route that ought to have been exercised by the Respondent Bank.

26. The Supreme Court, in ***Ajay Kumar Choudhary –v- Union of India*** reported in ***(2015) 7 SCC 291***, which was relied on by the learned Single Judge in the order dated April 21, 2015 and also subsequently endorsed by the Referral Bench, had specifically directed for the following:

> "21. **We, therefore, direct that the currency of a suspension order should not extend beyond three months if within this period the memorandum of charges/charge-sheet is not served on the delinquent officer/employee; if the memorandum of charges/charge-sheet is served, a reasoned order must be passed for the extension of the suspension.** As in the case in hand, the Government is free to transfer the person concerned to any department in any of its offices within or outside the State so as to sever any local or personal contact that he may have and which he may misuse for obstructing the investigation against him. The Government may

> also prohibit him from contacting any person, or handling records and documents till the stage of his having to prepare his defence. We think this will adequately safeguard the universally recognized principle of human dignity and the right to a speedy trial and shall also preserve the interest of the Government in the prosecution. **We recognize that previous Constitution Benches have been reluctant to quash proceedings on the grounds of delay, and to set time-limits to their duration. However, the imposition of a limit on the period of suspension has not been discussed in prior case law, and would not be contrary to the interests of justice.**"

Emphasis supplied.

27. Therefore, while the Supreme Court endorses that the imposition of a time-limit on the period of suspension might have been *res integra*, prior to ***Ajay Kumar Choudhary (supra)***, it had settled the law once the judgment was so rendered. Coupled with the dictum of ***Prem Nath Bali (supra),*** it becomes patently clear that the ***indefinite*** deemed suspension of the petitioner was *de hors* the Respondent Bank's own Regulations which they were expected to follow and enforce. This ill behoves of a Respondent Bank to function in such an autocratic manner, no less than a 'State' as defined under Article 12 of the Constitution. And this is precisely the reason why the learned Referral Bench had held that in its view, 'prolonged suspension opposes due process focused in the Constitutional mandates'. I concur with such view wholeheartedly.

28. Therefore, while the deemed suspension, at the onset vide order dated August 23, 2014 might not have been bad in law, the unexplained prolongation of the deemed suspension order and the reluctance/non-inclination/failure of the Respondent Bank authorities to initiate regular disciplinary proceedings by transposing it under Regulation 5 of the 1976

Regulations by issuing a memorandum of charge to the delinquent employee/petitioner, while the appeal remained in pendency before the Referral Bench, has coloured the entire exercise in *mala fides*, and for this reason, this prolongation of deemed suspension is sufficient grounds to be held as a case of an 'unjustifiable suspension' under Regulation 15(1) of the 1976 Regulations.

29. Now, I turn my attention towards the operative portion of the order passed by the Referral Bench dated August 30, 2019. It is extracted as follows:

> "In my view the authority's decision to prolong the suspension without initiation of the departmental proceeding is opposed to the due process of law emerged from the Constitution. **The petitioner is entitled to get all benefit pursuant to the order impugned.**
> Reference made before this Court is thus, disposed of."

Since, the reference made to 'order impugned' in the order dated August 30, 2019 was the order of the learned Single Judge dated April 21, 2015, I also reproduce the operative portion of such order below:

> "**The indefinite period of suspension in case of the petitioner must end with immediate effect**. Accordingly, the appellate order impugned dated March 18, 2015 and the decision of the bank to continue the suspension of the petitioner are set aside and **the petitioner is permitted to join such duties as the bank may assign to the petitioner by the beginning of May, 2015.**
> It will be open to the bank to transfer the petitioner to some other branch or assign such duties that may not involve any contentious matter. The petitioner should be communicated his next place of posting within a period of a week from date. **The petitioner will be entitled to the regular salary and emoluments from the day the petitioner resumes his duties.**
> W.P. 7288 (W) of 2015 is allowed as above, but without any order as to costs."

Emphasis supplied.

30. Mr. Rai has argued in view of paragraph 44 of the Supreme Court' decision in ***Kunhayammed –v- State of Kerala*** reported in ***(2000) 6 SCC 359***, which

serves as a leading authority on the 'doctrine of merger', the only order that now stands is the appellate order dated August 30, 2019 of the Referral Bench and the order dated April 21, 2015 had merged with such order, and accordingly, the petitioner should be eligible for the payment of wages from the date that he resumed his services, that is, October 29, 2019.

31. In my opinion, the enunciation of the law and the arguments of Mr. Rai is correct, albeit only to an extent. The Supreme Court in ***Kunhayammed (supra),*** had ruled that where an appeal or revision is provided against an order passed by a court, tribunal or any other authority before superior forum and such superior forum modifies, reverses or affirms the decision put in issue before it, the decision by the subordinate forum merges in the decision of the superior forum and it is the latter which subsists, remains operative and is capable of enforcement in the eye of the law. However, for the order of the superior forum, in this case – the order of the Referral Bench- to be enforced in the eyes of the law, reference compulsorily has to be made to the entirety of the order of the Single Judge dated April 21, 2015, notwithstanding that it stands merged with the order dated August 30, 2019. The Respondent cannot resort to a convenient case of 'salami-slicing' of the order dated April 21, 2015 and lose sight of the fact that the learned Single Judge had ordered that the petitioner be allowed to join such duties as assigned by the Respondent bank by the beginning of May 2015.

32. On a related point, Mr. Rai has also argued that back-wages cannot be granted unless expressly directed by the Court. He placed his reliance on decisions of the Supreme Court in ***Rajasthan SRTC (supra)*** and ***Shyam***

Bihari Lal Gupta (supra) to further this argument. However, with effect from the date of the order dated August 30, 2019, the order of the learned Single Judge, which until previously was subject to judicial scrutiny, stood affirmed and merged with the order of the Referral Bench. The clock, therefore, now starts ticking from April 21, 2015 and colours the order dated April 21, 2015 as an implicit order for the grant of back wages to the petitioner.

33. It is true that the back-wages is not necessarily granted by the Court in each and every case. Mr. Rai also relied on ***Ranchhodji Chaturji Thakore (supra)*** to contend that where the petitioner by his own rendition of facts had stated that he was suspended because of his own alleged involvement in the commission of a crime, back-wages cannot be paid in such cases. However, the petitioner has not admitted to the commission of the alleged offence in the case; rather it was an averment stating the entanglement of the petitioner in a purportedly false case of bribery. That is for the criminal court, which is seized of the matter to determine based on cogent evidence. But this precedent is very much distinguishable on the facts. In ***Ranchhodji Chaturji Thakore (supra)*,** the Court had declined to pay back-wages to the appellant as the appellant was convicted by the Session Judge under Section 302 of the IPC and sentenced him to life. Based on such ruling, the respondents dismissed him from service. While the Division bench of the High Court subsequently acquitted him, the appellant was obviously not around to render services to his employer, which unlike in this case, was not so. In this case, the respondents have showcased enough indolence even when it comes to the prosecution of the case before the appropriate criminal

court, as recorded by the Referral Bench. And therefore, this case does not help the respondent.

34. As for the case of ***Krishnakant Raghunath Bibhavnekar (supra),*** the appellant was acquitted by the criminal court and subsequently was reinstated in his employment post suspension, based on which the Court declined to grant back-wages. In this case, the petitioner has neither been subjected to regular disciplinary proceedings nor has the criminal court come to a decision. Either way, I have previously exhibited that nothing prevented the Respondents from initiating regular disciplinary proceedings rather than mechanically wait for the verdict of the criminal court, and unlawfully prolonging its order of deemed suspension. ***Jaipal Singh (supra)*** placed its reliance on ***Ranchhodji Chaturji Thakore (supra)*** and thereby perpetuates a line of reasoning, I am not inclined to agree with. These judgments are all prior to the Supreme Court's directives under ***Ajay Kumar Choudhary (supra)*** and ***Prem Nath Bali (supra)*** in 2015 and given such change in the position of law post 2015, I reiterate the emphasis on time-bound completions of departmental enquiries pursuant to both these precedents of 2015.

35. It has been more than five years and no departmental proceedings have been initiated against the petitioner. As this Court had directed that the petitioner was entitled to get 'all benefits' pursuant to the impugned order dated April 21, 2015, the petitioner's plea for the grant of back-wages is *prima facie*, meritorious.

36. When it comes to the consideration of the grant of back-wages, the Court needs to be mindful of certain conditions and factors that need to be fulfilled. These have been elaborately laid down by the Supreme Court in a catena of cases; the prominent ones being ***Hindustan Tin Works –v- Employees*** reported in ***(1979) 2 SCC 80***, ***J.K. Synthetics Ltd. –v- K.P. Agarwal*** reported in ***(2007) 2 SCC 433*** and ***Deepali Gundu Surwase –v- Kranti Junior Adhyapak Mahavidyalaya*** reported in ***(2013) 10 SCC 324*** and the last judgment on the subject in recent times, ***Jayantibhai Raojibhai Patel –v- Municipal Council, Narkhed*** reported in ***2019 SCC OnLine SC 1071***. However, the Supreme Court laid down certain comprehensive principles in ***Deepali Gundu Surwase (supra)*** which have since, guided many decisions of constitutional courts in the country when it comes to the adjudication of the grant of back-wages, including ***Jayantibhai Raojibhai Patel (supra)*** and ***The Naba Ballygunge Mahavidyala (supra),*** which is relied on by Mr. Lahiri.

37. Upon an examination of many of its past precedents, the Court laid down the following principles in ***Deepali Gundu Surwase (supra)***:

> "38. The propositions which can be culled out from the aforementioned judgments are:
>
> 38.1. In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.
>
> 38.2. The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.

38.3. Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the court of first instance that he/she was not gainfully employed or was employed on lesser wages. **If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.**

38.4. The cases in which the Labour Court/Industrial Tribunal exercises power under Section 11-A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and / or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages.

38.5. **The cases in which the competent court or tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the concerned Court or Tribunal will be fully justified in directing payment of full back wages. In such cases, the superior Courts should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc., merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The courts must always be kept in view that in the cases of wrongful / illegal termination of service, the wrongdoer is the employer and the sufferer is the employee/workman and there is no justification to give premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages.**

38.6. **In a number of cases, the superior courts have interfered with the award of the primary adjudicatory authority on the premise that finalisation of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the**

disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The Courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer, i.e., the employee or workman, who can ill-afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases it would be prudent to adopt the course suggested in *Hindustan Tin Works (P) Ltd. v. Employees.*

38.7. The observation made in *J.K. Synthetics Ltd. v. K.P. Agrawal* that on reinstatement the employee/workman cannot claim continuity of service as of right is contrary to the ratio of the judgments of three Judge Benches referred to hereinabove and cannot be treated as good law. This part of the judgment is also against the very concept of reinstatement of an employee/workman."

Emphasis supplied.

38. Now, Mr. Rai, learned counsel for the Respondent Bank has relied upon the principle of "No Work, No Pay". At the very onset, I must state that I am not convinced with such line of argumentation. This principle is applicable in those cases, strictly speaking where, the employee willingly chooses not to work and discharge the public duty cast upon him; not in cases where the employee is willing to work but is prevented from discharging his duties by his employer where no fault can be attributed to such employee.

39. The Division Bench of this Court in ***The Naba Ballygunge Mahavidyala (supra),*** a case wherein the respondent employee was permitted to the grant of full back-wages upon being fully exonerated in departmental proceedings, had ruled:

"47. The approach adopted by the Supreme Court in the aforesaid decisions that it is for the workman to plead that he is not gainfully employed and it is not the initial burden of the employer to prove that the workman was/is in gainful employment, appears to us, to be a clear departure from the earlier position of law laid down by judicial precedents requiring the employer to raise the plea of the workman being in gainful employment, to deprive him of full back wages. **The earlier position, we are inclined to believe, stands restored in view of the decision in Deepali Gundu Surwase (supra).**

48. That apart, the majority of the aforesaid decisions rendered on consideration of the question of entitlement to full back wages, arose out of proceedings between employers and workmen under the ID Act. **The difference between employment on the basis of a private contract and employment governed by statutory provisions is one of great significance, sight of which cannot be lost by us.** Not doubting the discretionary element that is present in ordering back wages to be paid, **the situation would take a different turn if the terms and conditions of service of a staff are regulated by statutory provisions, which provide for full back wages in certain conditions**; and if at all enforcement of such provisions are sought for, before the writ court, on the ground that the prior conditions for enforcement are satisfied, we are of the considered opinion that the Court would be failing in its duty if it were to still exercise its discretion within narrow confines and limit the back wages to a certain percentage. In a given case where the employer is found to have taken recourse to disciplinary proceedings against a particular inconvenient employee (whose terms and conditions of service are governed by statutory provisions) to ensure that he is thrown out of employment and, thus, he loses his job, the Court would be justified upon reaching the conclusion that the action was not taken bona fide and without sufficient justification to enforce the right conferred on such employee by the statute; or else, to deprive him of even a part of the pay and allowances, which he would have otherwise been entitled to upon performing his duty, would amount to a punishment without just cause and could encourage scheming employers to secure such punishment in a roundabout way against other inconvenient employees and exploit them to the hilt."

Emphasis supplied.

40. Mr Rai, in my opinion, should have rather focused his energy in showcasing that the petitioner was gainfully employed during the period served under deemed suspension rather than mechanically pleading that back-wages could not be paid simply because of the principle of "No Work, No Pay". The petitioner has already made the case that he has particularly, only drawn the subsistence allowance paid during the period served under deemed suspension, as mandated by the disciplinary regulations and the onus had shifted to the Respondent Bank to illustrate a case of gainful employment. This is the condition precedent that needs to be satisfied based on the principles culled out in ***Deepali Gundu Surwase (supra)*** and reiterated by

this Court in ***Naba Ballygunge Mahavidyala (supra)***. And unfortunately, this condition precedent stands unfulfilled.

41. I shift my focus to the decision of this Court rendered in ***Purnendu Kumar Bagchi (supra),*** relied on Mr. Lahiri. The case involved an interpretation of a Regulation 15 of the Indian Overseas Bank's Disciplinary Regulations, which are in *pari materia* to the Regulation 15 of the 1976 Regulations that I am concerned with. The similarity of facts showcases that just as the petitioner in this case was served with a departmental order upon reinstatement which stated that the period served under deemed suspension was to be considered as not spent on duty, so was the case with the petitioner in ***Purnendu Kumar Bagchi (supra)*** as well. However, since the petitioner was completed exonerated of the charges, the learned Single Judge ruled that Regulation 15(3)(a) of the *pari materia* Regulations was squarely attracted and permitted the grant of full back-wages at the rate of eight percent interest, to the petitioner.

42. I have for reasons laid bare in detail above, ruled that this illegal prolongation of deemed suspension of the petitioner over the course of more than five years is a sufficient ground to be held as a case of an 'unjustifiable suspension' under Regulation 15(1) of the 1976 Regulations. And accordingly, the stipulation of payment of full wages under Regulation 15(1) of the 1976 Regulations stands attracted in this matter and therefore, the period commencing from May, 2015 until the date of his reinstatement, shall be considered as period spent 'on duty', in accordance with Regulation

15(3)(a) of the 1976 Regulations. **Consequently, the first question is answered in the affirmative**.

43. Since, Regulation 15(1) of the 1976 Regulations itself envisages payment of 'full pay' upon fulfilment of either of its in-built criteria, the petitioner is entitled to the payment of full back-wages for the period aforementioned stated, subject to the adjustment of the amount already paid as subsistence allowance.

44. My observations are also explicitly reinforced by the decision of the Supreme Court in ***Deepali Gundu Surwase (supra)***. Time bound completions of disciplinary proceedings have strongly been urged by the Supreme Court. The Respondent has come up short through their varied acts, omissions and contravened their very own departmental regulations while an employee has been subjected to much stigma and harassment with no end in sight. Much water has flown under the bridge, the Respondent Bank has changed its own manifestation and governance structure, and much diverse litigation has been pursued by the petitioner in the pursuit of justice. In my opinion, the curtains now need to draw to an honourable close.

45. Accordingly, the office order bearing no. SAMB/Admn/19 dated May 20, 2020, issued by the Assistant General Manager of the Respondent Bank which had declined the petitioner's request for grant of full-pay is set aside.

46. The Respondent Bank and its authorities are also hereby directed to pay the differential salary to the petitioner within 4 weeks for the period commencing from May, 2015 till the date of his joining, alongwith interest payable at the

rate of 8 percent per annum. In the event, the Respondent Bank does not make payment within 4 weeks, a further penal interest at the rate of 4 per cent per annum shall be payable on the differential salary till the date of payment. **The second question is answered accordingly.**

An Afterword:

47. It has generally been the system of this Court not to impose costs upon any of the parties unless there is material suppression of facts and/or when the petition is extremely frivolous and vexatious. However on due consideration and discussion with wiser minds, I am now of the view that it is necessary to impose costs to reduce the plethora of litigations in this country. Such costs are required to be imposed under two circumstances. Firstly, when the petition filed is extremely vexatious and without any merit whatsoever. Secondly, costs are required to be imposed when the State authorities including their representatives and officers act in a blatantly illegal manner and/or refuse to comply with the letter and the spirit of the law forcing a petitioner to knock the doors of the Courts for justice to be subserved. The present case falls in the latter category wherein the petitioner has been made to wait for over five years for his just dues. One need not repeat the circumstances as the same have been incorporated in the judgment above. Suffice it to say that the respondent bank has continued to use its dominant position to harass the petitioner of his original dues. This attitude of the bank officials in pushing the monkey of their shoulders and only acting once the matter is settled by a Constitutional Court is leading to the umpteen litigations and unless such actions are punished with costs, the plague that

is embedded in the psychology of such officials cannot be obliterated. In light of the above observations, I impose costs of Rs. 25,000/- upon the respondent bank to be paid to the petitioner along with the sums indicated above. This Court sincerely hopes that the wiser minds in the decision making process in the bank shall now comply with these orders and not continue the litigation any further to bring quietus to the *lis*. The bank should take into consideration that even though they have a right to appeal, the said right may not always be the right course of action.

48. In conclusion thereof, this writ petition is allowed.

49. This Court would like to thank the counsels for their prodigious assistance in this matter.

50. Urgent photostat certified copy of this order, if applied for, should be made available to the parties upon compliance with the requisite formalities.

(Shekhar B. Saraf, J.)