IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.6248 OF 2018

Vijayan s/o Chandrashekar Nair, Civil Lines, Nagpur
-vs-
General Manager (HR) Bank of India, Bandra Kurla Complex, Bandra East Mumbai

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Office notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders.

Shri S. S. Ghate, Advocate for petitioner.
Shri A. T. Purohit, Advocate for respondent.

CORAM : A. S. CHANDURKAR AND VINAY JOSHI, JJ.
DATE : FEBRUARY 10, 2020

The petitioner who was serving as Senior Manager with the respondent-Bank stood superannuated on 31/01/2015. On 17/07/2018 he was issued a Memorandum along with articles of charge in which it was stated that on account of acts of misconduct committed during the period from 19/10/2013 to 16/10/2014, the Bank proposed to enquire into the same. The statement of allegations accordingly was issued to the petitioner on 27/07/2018. Since according to the petitioner the enquiry proceedings were initiated after about three years from his superannuation he has challenged the same by way of the present writ petition particularly on the ground that after having superannuated from service, the Service Regulations of the Bank did not permit holding of such enquiry thereafter.

2. Shri S. S. Ghate, learned counsel for the petitioner submits that the petitioner having superannuated on

31/01/2015 and there being no provision in the Discipline and Appeal Regulations of the Bank permitting holding of any enquiry proceedings against an employee who had superannuated, such initiation of proceedings was without the authority of law. He referred to the provisions of the Bank of India Officer Employees' (Conduct) Regulations, 1976. He submitted that as per Regulation 45 of the Regulations, the Competent Authority was required to follow the procedure specified in the Discipline and Appeal Regulations if it was felt that the pensioner was prima facie guilty of grave misconduct. In absence of any provisions in the Discipline and Appeal Regulations permitting the Bank to enquire into allegations of misconduct by a pensioner, initiation of proceedings itself was illegal and without jurisdiction. In support of the aforesaid submissions the learned counsel placed reliance on the following decisions :

a) UCO Bank and anr. vs. Rajinder Lal Capoor (2007) 6 SCC 694.

b) UCO Bank and anr. vs. Rajinder Lal Capoor (2008) 5 SCC 257.

c) Canara Bank vs. D.R.P. Sundharam (2016) 12 SCC 724

d) Canara Bank vs. D.R.P. Sundharam (2016) 12 SCC 729.

Thereafter by referring to Regulation 48 and especially sub-clause (2) thereof it was submitted that in any event, period of more than four years having lapsed since the alleged misconduct took place and the charge-sheet having been issued on 27/07/2018 it was beyond the prescribed period. On these counts it was submitted that the disciplinary proceedings initiated by the Bank were liable to be set aside.

3. Shri A. T. Purohit, learned counsel for the respondent-Bank on the other hand submitted that Regulation 45 permits the Competent Authority to hold an enquiry against a pensioner and it was merely the procedure prescribed that was required to be followed in such cases. The right to hold an enquiry against a pensioner having been so recognised, it was not necessary to provide for the same again in the Discipline and Appeal Regulations. Regulation 48(2) further substantiates this right. Referring to the charge-sheet in question it was submitted that since the misconduct was between the period from 19/10/2013 to 16/10/2014 the same was within a period of four years from the date of issuance of charge-sheet. It was open for the petitioner to face the enquiry and get himself exonerated. He relied upon the decision in ***Asif Badremunir Tahasildar vs. State of Maharashtra and anr. 2018(6) Mh.L.J. 850*** in that regard.

4. We have heard the learned counsel and we have perused the Regulations in question. Regulation 45 stipulates that if the Competent Authority prima facie finds a pensioner guilty of grave misconduct it is required to follow the procedure specified in Discipline and Appeal Regulations while holding an enquiry. Regulation 48(2) stipulates that if no departmental proceedings are instituted when the employee was in service the same shall not be

instituted in respect of any event which had taken place more than four years before such institution. In the present case the period of alleged misconduct is stated to have been committed between 19/10/2013 to 16/10/2014. Thus it is found that initiation of the enquiry proceedings is in accordance with Rule 48(2) since Regulation 45 of the Pension Regulations enables a pensioner to be proceeded against if it is found that he is prima facie guilty of grave misconduct. The procedure under Discipline and Appeal Regulations is thus required to be followed. It was therefore not necessary to provide for the same again in the Discipline and Appeal Regulations. On this count the decisions relied upon by the learned counsel for the petitioner are clearly distinguishable.

6. Accordingly by clarifying that it is open for the petitioner to raise all permissible defences in response to the charge-sheet as issued and keeping all points in that regard open, the writ petition is dismissed with no order as to costs.

The ad interim relief granted on 27/09/2018 shall continue to operate for a period of four weeks from today and it shall cease to operate automatically after that period.

JUDGE **JUDGE**