BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on:	Delivered on:
29.07.2021	28.10.2021

CORAM:
THE HONOURABLE MS.JUSTICE V.M.VELUMANI
W.P.(MD).No.18122 of 2018
and
W.M.P.(MD)Nos.16022 of 2018 & 19893 of 2019

V.Chidambaram,
(Roll No.19984)
[Assistant General Manager (Retired)
Indian Overseas Bank,
Rajouri Garden Branch,
Delhi.] .. Petitioner

Vs.

1.General Manager / Disciplinary Authority,
Indian Overseas Bank,
Central Office, 763, Anna Salai,
Chennai - 600 002.

2.The Assistant General Manager,
Indian Overseas Bank,
Regional Office - Rachna Building, 3rd Floor,
2, Rajendra Place, Pusa Road,
New Delhi - 110 008. .. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of writ of Certiorarified Mandamus, to call for the records on the file of the 1st respondent herein in No.Do:GM(CH):DA:VIG:9609 & 9610:491 : 2018 - 2019 dated 27.04.2018, the Memorandum of Allegations and Articles of Charges served on 14.05.2018 and to quash the same.

For Petitioner : Mr.Isaac Mohanlal
Senior Counsel
for M/s.Isaac Chambers
For Respondents : Mr.N.Dilipkumar

O R D E R

(The matter is heard through “Video Conferencing/Hybrid Mode”.)

The petitioner has filed the present Writ Petition to quash the Memorandum of Allegations and Articles of Charges of the 1st respondent dated 27.04.2018, bearing No.Do:GM(CH):DA:VIG:9609 & 9610:491 : 2018 - 2019, served on him, on 14.05.2018.

Case of the Petitioner:

2. The petitioner joined the respondent Bank as an Agriculture Officer in March, 1982. After 32 years of service, with his best abilities and sincerities, diligently with utmost honesty, retired from service on 30.04.2014. The General Manager of the respondents' Bank, by his letter dated 25.04.2014, appreciated petitioner's service and honorably relieved the petitioner.

2(i). The petitioner retired from service from 30.04.2014, as an Assistant General Manager, at Rajouri Garden Branch, (Region : Delhi). After four years of his retirement, the impugned Memorandum of Allegations and Articles of Charges dated 27.04.2018 was forwarded by the 2nd respondent on 05.05.2018, which was received by the petitioner on 14.05.2018, after prescribed period of limitation of four years. As per the RELILEVING OFFICER CERTIFICATE dated 02.03.2013, the petitioner worked at Rajouri Garden Branch, (Region : Delhi) only for 1 year and 99 days, viz., reported to duty on 03.01.2013, assumed charge of the said Branch on 24.01.2013 and retired from the said Branch on 30.04.2014.

2(ii). The petitioner submitted his detailed explanation dated 01.06.2018, denying all the allegations referred to in the articles of charges. The 1st respondent on receipt of explanation, did not decide whether the explanation is satisfactory or not and without informing the petitioner, decided to hold an enquiry by appointing the Assistant General Manager, Large Corporate Branch, as the inquiring officer.

2(iii). As per Regulation 48(2) of the INDIAN OVERSEAS BANK (EMPLOYEES') PENSION REGULATIONS, 1995, "No Departmental Proceedings can be instituted in respect of the event that took place more than 4 years, before such institution".

2(iv). As per Section 5 "INSPECTING OFFICIALS" of the Central office Circular Est/42/2009-2010 dated 19.06.2009, "No disciplinary proceedings against official for his lapse will ordinarily lie if not detected within two successive internal inspections or four years from the date of event, whichever is later. It will not extend if identified beyond the above stipulated period".

2(v). The petitioner retired from service on 30.04.2014. After retirement, 3 Central Internal Office Inspections would have been conducted between 30.04.2014 to 14.09.2017. The charge sheet was issued to the petitioner after four years of his retirement. There is no reference about any successive internal inspections or any lapse have been detected. The 1st respondent failed to consider this aspect while issuing charge sheet to the petitioner.

2(vi). The charge is leveled against the petitioner under Regulations 3(1), 3(3) and 3(4) of the Employees' Conduct Regulations. The 1st respondent has not pointed out how the petitioner had not taken any possible steps to protect the interest of the Bank and discharge his duties with utmost integrity, honesty and devotion and diligence and do nothing, which is unbecoming of an officer employee.

2(vii). The 1st respondent failed to consider Clause Sec.5 of the Circular. The identical issue was considered by the Delhi High Court in a batch of Writ Petitions and held that proviso to Regulation 48(2) would come into play and respondent is prevented from taking action against the petitioners therein beyond four years from the date of event. The events alleged against the petitioner happened during the period from 30.12.2012 to 30.04.2014. The petitioner retired on 30.04.2014 and the charge sheet was served on the petitioner on 14.05.2018, beyond four years, even though the charge memo was signed on 27.04.2018.

2(viii). The 1st respondent failed to consider that all loan amounts were sanctioned / confirmed by the Regional Office and not by the petitioner. The petitioner retired from service on 30.04.2014 and he cannot be held responsible for the irregularity for the period from 30.04.2014 to 14.09.2017, when he was not in service. The date mentioned in the charge sheet is as though the petitioner was in service till 14.09.2017. The 1st respondent failed to consider Clause I (ii) of the Central Office Circular Est/42/2009-2010, dated 19.06.2009, wherein it has been clearly stated "Risk Taking" is an integral part of banking business.

2(ix). The Chief Manager of the Indian Overseas Bank, by his letter dated 07.03.2014, ratified to the National Banking General Manager Office, (North) Delhi, the branch sanction of Rs.88.75 Lakhs loan granted on 27.11.2013 and Regional Office permitted to sanction a Duty Draw Back (DDB) loan to the tune of Rs.137 Lakhs on 06.01.2014. The 1st respondent failed to consider that MONTHLY RETURN ON ADVANCE GRANTED, A COMPUTERIZED STATEMENT is sent to Regional Office every month on regular basis. When the petitioner was relieved on 30.04.2014, the officer who had taken over charge from the petitioner has not made any adverse report against the petitioner.

2(x). The petitioner worked in Rajouri Garden Branch, (Region : Delhi) only for a concerned period of 1 year and 99 days and during that period, the petitioner had not violated any circular or "Staff Accountability Policy for Non performing Credit". The allegations made by the 1st respondent relates to events that happened before the petitioner assumed charge in the branch on 24.01.2013 and retired on 30.04.2014. The charge sheet issued against the petitioner is without jurisdiction and not permitted under the Rules. After four years, no charge sheet can be issued as per Regulation 48(2) of the Pension Regulations. The charges leveled against the petitioner are not fraudulent or loss of Bank / Government money. There is no *prima facie* case for initiating the disciplinary proceedings against the petitioner. As per the rules and circular of the Bank, the 1st respondent has no authority or power to initiate disciplinary proceedings against the petitioner. If disciplinary proceedings is continued, it will cause prejudice and mental stress to the petitioner, who is aged 64 years, after retirement from his service.

Case of the Respondents:

3. The respondents filed counter affidavit. The petitioner worked prior to retirement at Rajouri Garden Branch, (Region : Delhi). The irregularities and cause of action for which the impugned charge is issued had happened in Delhi and this Writ Petition is not maintainable in this Court. Similar Writ Petition filed before this Court was dismissed and the same is reported in ***2017 (1) CWC 750 (V.Pandiselvam Vs. Regional Commissioner of Provident Fund and other).*** The Writ Petition was dismissed on the ground that mere residence of petitioner cannot clothe the Court with jurisdiction, unless part of cause of action had arisen in the said place and the said judgment is squarely applicable to the facts of the present case. The cause of action arose at Delhi when the petitioner purchased bills disregarding the warning signals and non-renewal of limits by the Regional Office, on 31.03.2014, when the accounts were classified as Non-Performing Assets and on 04.08.2015 and 05.08.2015, when the accountability report was submitted fixing staff accountability on the petitioner.

3(i). While the petitioner was working as the Assistant General Manager, Rajouri Garden Branch, (Region : Delhi), there were certain omissions and commissions involving expert oriented concerns namely, M/s. Mismo Impex and M/s. Shangrila Impex. The limits were short reviewed and renewed by the Regional Office, Delhi on 28.09.2012, stipulating the condition that outstanding due of M/s. Mismo Impex has to be brought as to Rs.550 lakhs and M/s. Shangrila Impex to Rs.500 lakhs. The Branch was advised to find exit route from the account and no fresh bill was to be purchased and it was also stipulated that no fresh bill was to be purchased till the outstanding was brought down to the reduced level and on 10.10.2013 and 28.09.2013 respectively, limits expired. After expiry of limits on 10.10.2013 and 28.09.2013, the petitioner, on 15.03.2014 submitted a renewal proposal to the Regional Office. The Regional Office declined sanction of the limits proposed by the petitioner. The petitioner had been purchasing foreign bills without sanction from the Regional Office, inspite of glaring signs of sickness. Instead of bringing down the outstanding, the petitioner purchased the bills exceeding discretionary power of the branch. The petitioner had exceeded his discretionary power by sanctioning five loans against Duty Draw Back on 06.01.2014, 06.03.2014 and 11.03.2014, aggregating to Rs.187 lakhs. On 31.03.2014, the accounts were classified as Non-Performing Assets (NPA). Due to the irregularities committed, the outstanding of Rs.17.83 crore plus undebited interest in both accounts were difficult of recovery.

3(ii). After retirement of petitioner, staff accountability exercise was conducted and by the reports dated 31.07.2015 and 04.08.2015, accountability was fixed on the petitioner. Due to action of the petitioner during his tenure, the accounts have become Non-Performing Assets (NPA). The disciplinary action was initiated under Regulations 43 and 45 and not under Regulation 48 of the Indian Overseas Bank (Employees) Pension Regulation, 1995 and power under Regulations 43 and 45 are distinct and proviso to Regulation 48 is not a bar to the power under Regulations 43 and 45. The contention that proceeding is time-barred is misconceived. The petitioner has submitted his explanation dated 01.06.2018, which shows that the petitioner admitted the jurisdiction of respondents to institute disciplinary action. In the reply, the petitioner admitted in several places abuse of power on his part. Only after completion and final outcome of disciplinary proceedings, it can be seen whether the petitioner is guilty or not.

3(iii). The respondents, in paragraph Nos.6 to 15, denied each and every contention of the petitioner made in the grounds of the affidavit and elaborately stated as to how those contentions are untenable.

3(iv). When the accounts involving crores of rupees go bad and remain unrecoverable, it is the duty of the Bank to take all efforts to avert loss to the maximum extent possible and corrective steps by taking departmental proceedings against the concerned staff. The respondents Bank is a public institution and it must be run on healthy lines and protect the interest of the Bank by taking appropriate steps on the staff, who has caused heavy loss to the Bank and he cannot be allowed to go scot-free, simply on the reason that there is passage of time since retirement and prayed for dismissal of the Writ Petition.

4.**<u>The petitioner filed reply to the counter affidavit filed by the respondents</u>**:

In the reply affidavit, the petitioner submitted that the petitioner retired from service of the respondent Bank on 30.04.2014, without any stigma. After retirement, the employer and employee bond will cease. After retirement, the petitioner is having his residence at Madurai. The petitioner received the impugned order, which was communicated in the address given above, at Madurai. The respondents raised the issue of territorial jurisdiction even at the time of admission of the Writ Petition itself. This Court refused to accept the said plea and admitted the Writ Petition as maintainable. The respondents are estopped from raising the very same plea again and again.

4(i). In paragraph Nos.4 to 16 of the reply affidavit, the petitioner has elaborately stated the procedure to be followed in respect of the facilities granted to the two firms viz., M/s. Mismo

Impex and M/s. Shangrila Impex. The petitioner has stated that the facilities were sanctioned before he assumed charge of Rajouri Garden Branch, (Region : Delhi) and his predecessor, for three years, failed to reduce the limit as instructed by the Regional Manager. After the petitioner took charge of the branch, the Regional Manager permitted the petitioner to continue the transaction with two firms, though the outstanding was not brought down as per earlier proceedings. Every purchase of bill was done only with due intimation of the Regional Manager and with his oral permission over phone, the same was ratified later as per Regulation 3(3) of Indian Overseas Bank Officer Employees' (Conduct) Regulations,1976. By these transactions, the Bank gained substantial amount of profit. The Bank will not declare any amount as Non-Performing Assets for small lapse, considering the nature of business. The petitioner purchased few bills from the said firms on 12.02.2014, 28.02.2014, 06.03.2014 and 11.03.2014. As per the instructions by the General Manager dated 07.03.2014, the petitioner submitted renewal proposal in respect of both the firms, on 15.03.2014. The status of the same was not known to the petitioner and kept pending till his retirement on 30.04.2014.

4(ii). The entire loan transaction and purchase of bills during the said period was done only with the permission of Regional Manager and General Manager and denied the averments that loans and purchase of bills were done without sanction of Regional Manager. There was no loss to the Bank during his tenure. During the tenure of petitioner till 30.04.2014, the accounts were not declared as Non-Performing Assets (NPA). The petitioner was not aware that accounts were declared as Non-Performing Assets (NPA) on 31.03.2014 and it may be declared with retrospective effect, after the petitioner retired from service. The alleged staff accountability reports dated 31.07.2015 and 04.08.2015 are not served on the petitioner and the same were prepared behind the back of petitioner.

4(iii). The petitioner, in paragraph Nos.18 to 21 of the reply affidavit, contended that charges are not distinct, but vague and indefinite. The disciplinary proceedings is initiated in violation of Regulations 48(2) and 6(3) of Indian Overseas Bank Officer Employees' (Discipline & Appeal) Regulations, 1976. As per Regulation 48(2), no departmental proceedings shall be initiated in respect of an 'event' that took place more than four years, before such institution. The last bill was purchased by the petitioner on 11.03.2014 and four years expired on 10.03.2018. The charge memo is dated 27.04.2018 and was served on the petitioner only on 14.05.2018, much after four years of 'event'.

4(iv). The averments that charge memo was issued under Regulations 43 and 45 is untenable. The same applies to the employees against whom disciplinary proceedings was initiated either prior to retirement or during the time of retirement and found guilty. Regulation 43 will apply to the pensioners only when the pensioner was found guilty of grave misconduct and there must be an order in writing by the competent authority. The petitioner was not found guilty and there was no order in writing. Regulation 45 deals with procedure for invoking Regulation 43. Both the Regulations are subject to the conditions stipulated under Regulation 48, which restricts initiation of any such disciplinary proceedings after a period of four years from the 'event'.

4(v). The mere submission of reply will not confer any jurisdiction to the respondents to proceed further with the impugned order. There is no estoppal in law. The issue of charge memo is illegal and Writ Petition challenging the same is not premature. Due to unblemished service of petitioner, he was given periodical promotion up to Scale 5 Officer (AGM). Not even a single allegation was made against the petitioner. The enquiry of disciplinary proceeding after four years from the date of retirement is illegal. In paragraph Nos.28 to 33 of reply affidavit, the petitioner has reiterated the earlier averments and denied the contention of the respondents in paragraph Nos.10 to 18 of the counter affidavit and elaborately made contentions as to how the said averments are not tenable.

4(vi). During the tenure of petitioner, the Bank did not suffer any loss and gained a lot from the transactions made with the two firms viz., M/s.Mismo Impex and M/s. Shangrila Impex and hence, disciplinary proceedings initiated against the petitioner is not warranted. The respondents allowed the petitioner to retire with all retirement benefits. The petitioner is continuously receiving pension. The petitioner has undergone heart bye-pass surgery and is not keeping good health and prayed for allowing the Writ Petition.

5.The learned Senior Counsel appearing for the petitioner filed written arguments and made submissions elaborately that the petitioner has not committed any irregularity or misconduct. The charge memo issued by the respondents is illegal and issued only to harass the petitioner. The learned Senior Counsel submitted that as per Regulation 48(2) of the INDIAN OVERSEAS BANK (EMPLOYEES') PENSION REGULATIONS, 1995, no departmental proceeding can be initiated against the pensioner for an event that occurred more than 4 years of such institution. As per Section 5 “INSPECTING OFFICIALS” of the Central office Circular Est/42/2009-2010 dated 19.06.2009, no disciplinary proceedings could lie if not detected within two successful internal inspections. The learned Senior Counsel further submitted that the petitioner retired from service on 30.04.2014. After retirement, three Central Internal Inspection would have been conducted between 30.04.2014 and 14.09.2017. The charge memo was issued after four years of retirement. The same is barred by limitation, as the same has been issued beyond four years of “event”. It is not correct to state that disciplinary proceedings was initiated under Regulations 43 and 45 of the INDIAN OVERSEAS BANK (EMPLOYEES') PENSION REGULATIONS, 1995. The said Regulations do not apply to the present case. All the provisions of Pension Regulations, 1995, must be considered as a whole and Regulations 43 and 45 cannot be read separately and said Regulations are covered by Regulation 48 (2). The very same issue was considered by the Hon'ble Delhi High Court in a batch of Writ Petitions and it was held, disciplinary proceedings initiated against the petitioner after four years of event is barred and not maintainable. The learned Senior Counsel appearing for the petitioner contended that after retirement, the petitioner is residing at Madurai and is receiving pension at Madurai. Apart from the same, the charge memo along with covering letter was served at Madurai and therefore, the cause of action has arisen at Madurai and this Court has jurisdiction to entertain the Writ Petition. Further, at the time of admission itself, the learned counsel appearing for the respondents raised the issue of jurisdiction. This Court rejected the same and admitted the Writ Petition as maintainable. The respondents are estopped from raising the same issue again and prayed for allowing the Writ Petition.

6. The learned Senior Counsel appearing for the petitioner relied on the following judgments:

(i) ***Common order dated 18.08.2015 in W.P.(C).No.6382 of 2015 & etc., batch [Harpreet Singh Makbkar Vs. Punjab and Sind Bank] -***

> "***9.*** *A perusal of Regulations 43 and 45, no doubt, would reveal that they are related to withholding or withdrawal of pension for a grave misconduct. In other words, the departmental proceedings can be initiated for the purpose of withholding or withdrawal of pension if the pensioners are convicted for a serious crime or criminal breach of trust or forgery or acting fraudulently or is found guilty of grave misconduct. At the same time, Regulation 48 also contemplates withholding or withdrawal of pension, whether permanently or for specified period, and order recovery from pension of the whole or part of pecuniary loss caused to a bank if in a departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence or criminal breach of trust or forgery or acts done fraudulently during the period of service. Regulation 43 stipulates, withholding or withdrawal of pension for the reasons stated therein. Regulation 45 prescribes the procedure to be followed before it is concluded that pensioner is guilty of grave misconduct. Regulation 48 contemplates withholding or withdrawal of pension and additionally, order recovery from pension of the whole or part of pecuniary loss, in the eventuality, the pensioner is found guilty of grave negligence or a misconduct, or criminal breach of trust, or forgery or acts done*

fraudulently/ done during the period of service. Proviso (3) thereto is a clause relating to limitation inasmuch it stipules for 'no departmental proceedings for any event which took place more than four years before such institution'. Regulations 43 and 45 have to be read in conjunction with Regulation 48. Regulation 48 is not specific for recovery of pecuniary loss as urged by Mr. Arora, counsel for the respondent. It also contemplates withholding or withdrawal of pension or a part thereof, whether permanently or for a specified period. I note, the charge sheet issued to the petitioners is in terms of Regulation 43 read with Regulations 45 and 48 of the Pension Regulations, 1995, hence, the submission of Mr. Arora is not sustainable on the face of the provisions under which, the charge sheets have been issued.

....

***13.**Hence, it is suffice to conclude that 3rd Proviso would come into play in the facts of these cases inasmuch as the enhancement of bank guarantee from Rs. 10 Crores to Rs. 20 Crores was effected on February 6, 2009. The show cause notice(s) was issued on September 28, 2013, which was after the retirement of the petitioners as well as beyond a period of four years. In any case, the show cause notice(s) is not initiation of a departmental proceeding. Be that as it may, even the charge sheets have been issued on December 26, 2014, which is also beyond a period of four years from the date of the event i.e. February 6, 2009. Hence, the respondent is precluded from taking any action against the petitioners.*

....

***15.** In the cases in hand, it is the stand of the petitioners that the charge sheets issued are without jurisdiction and not permitted under the Rules, and since, no response was received, they have approached this Court. It is clear, the issue raised in the present petitions goes to the root, on the maintainability of the charge sheets in violation of 3rd Proviso to Regulation 48(1) and the same could be challenged by the petitioners at the threshold so as to avoid rigours of a departmental proceedings, which in law, are not maintainable. Thus, the submission of Mr. Arora needs to be rejected. The plea of Mr. Arora on the circular of CVC also needs to be rejected in view of statutory nature of Regulation 48(1) of Pension Regulations, 1995.*

***16.** In view of the above discussion, the present writ petitions are allowed. The charge sheet(s) dated*

December 26, 2014 issued to the petitioners are quashed."

(ii) ***(2013) 4 SCC 161 [Union of India and others Vs. Anil Kumar Sarkar]*** -

"***17.***_Inasmuch as we are concerned about the first question, the dictum laid down by this Court relating to the said issue is as follows:-_

> *"16. On the first question, viz., as to when for the purposes of the sealed cover procedure the disciplinary/criminal proceedings can be said to have commenced, the Full Bench of the Tribunal has held that it is only when a charge-memo in a disciplinary proceedings or a charge-sheet in a criminal prosecution is issued to the employee that it can be said that the departmental proceedings/criminal prosecution is initiated against the employee......."*

....

19. *In Coal India Limited & Ors. vs. Saroj Kumar Mishra, AIR 2007 SC 1706, this Court, in para 22, has held that*

> *"18.A departmental proceeding is ordinarily said to be initiated only when a charge-sheet is issued."*

20._In Chairman-cum-Managing Director, Coal India Limited and Others vs. Ananta Saha and Others, (2011) 5 SCC 142, this Court held as under:_

> *"27. There can be no quarrel with the settled legal proposition that the disciplinary proceedings commence only when a charge-sheet is issued to the delinquent employee. (Vide Union of India v. K.V.Jankiraman, (1991) 4 SCC 109 and UCO Bank v. Rajinder Lal Capoor, (2007) 6 SCC 694)"*

21._We also reiterate that the disciplinary proceedings commence only when a charge sheet is issued. Departmental proceeding is normally said to be initiated only when a charge sheet is issued."_

(iii) ***(2014) 9 SCC 329 [Nawal Kishore Sharma Vs. Union of India and others]:***

*"**16.** Regard being had to the discussion made hereinabove, there cannot be any doubt that the question whether or not cause of action wholly or in part for filing a writ petition has arisen within the territorial limit of any High Court has to be decided in the light of the nature and character of the proceedings under Article 226 of the Constitution. In order to maintain a writ petition, the petitioner has to establish that a legal right claimed by him has been infringed by the respondents within the territorial limit of the Court's jurisdiction.*

***17.** We have perused the facts pleaded in the writ petition and the documents relied upon by the appellant. Indisputably, the appellant reported sickness on account of various ailments including difficulty in breathing. He was referred to hospital. Consequently, he was signed off for further medical treatment. Finally, the respondent permanently declared the appellant unfit for sea service due to dilated cardiomyopathy (heart muscles disease). As a result, the Shipping Department of the Government of India issued an order on 12.4.2011 cancelling the registration of the appellant as a seaman. A copy of the letter was sent to the appellant at his native place in Bihar where he was staying after he was found medically unfit. It further appears that the appellant sent a representation from his home in the State of Bihar to the respondent claiming disability compensation. The said representation was replied by the respondent, which was addressed to him on his home address in Gaya, Bihar rejecting his claim for disability compensation. It is further evident that when the appellant was signed off and declared medically unfit, he returned back to his home in the District of Gaya, Bihar and, thereafter, he made all claims and filed representation from his home address at Gaya and those letters and representations were entertained by the respondents and replied and a decision on those representations were communicated to him on his home address in Bihar. Admittedly, appellant was suffering from serious heart muscles disease (Dilated Cardiomyopathy) and breathing problem which forced him to stay in native place, wherefrom he had been making all correspondence with regard to his disability compensation. Prima facie, therefore, considering all the facts together, a part or fraction* *of cause of action arose within the jurisdiction of the Patna High Court where he received a letter of refusal disentitling him from disability compensation."*

(iv) ***(2020) 10 SCC 766 [Shanti Devi Alas Shanti Mishra Vs. Union of India and others]:***

***"28.** Form the facts of the present case, we are of the considered opinion that part of cause of action has arisen within the territorial jurisdiction of Patna High Court. The deceased petitioner was continuously receiving pension for the last 08 years in his saving bank account in State Bank of India, Darbhanga. The stoppage of pension of late B.N. Mishra affected him at his native place, he being deprived of the benefit of pension which he was receiving from his employer. The employer requires a retiring employee to indicate the place where he shall receive pension after his retirement. Late Shri B.N. Mishra had opted for receiving his pension in State Bank of India, Darbhabga, State of Bihar, which was his native place, fromwhere he was drawing his pension regularly for the last 08 years, stoppage of pension gave a cause of action, which arose at the place where the petitioner was continuously receiving the pension. We, thus, are of the view that the view of the learned Single Judge as well as the Division Bench holding the writ petition not maintainable on the ground of lack of territorial jurisdiction was completely erroneous and has caused immense hardship to the petitioner.*

....

***32.**As noted above, the learned single Judge has also observed that petitioner ought to have filed the writ petition in Jharkhand High Court where his earlier writ petition was pending. The earlier writ petition which was initially filed in 2006 in Patna High Court was for refund of the amount as noted above. After dismissal of the writ petition by Patna High Court on the ground of lack of territorial jurisdiction, Shri B.N. Mishra had filed a Writ Petition No.4930 of 2013 in Jharkhand High Court for the relief which was claimed in Writ Petition No.13955 of 2006. As noted above, the cause of action for filing the Writ Petition No. 5999 of 2014 was entirely different. Stoppage of pension and asking for refund of more than Rs. 08 lakhs amount had serious adverse effect on the petitioner, who was staying at his native place Darbhanga. A retired employee, who is receiving pension, cannot be asked to go to another court to file the writ petition, when he has a cause of action for filing a writ petition in Patna High Court. For a retired employee* *convenience is to prosecute his case at the place where he belonged to and was getting pension. The submission of the learned counsel for the respondent Nos.1 to 3 on principle of forum non conveniens has no substance.*

33. *In result, we allow the appeal, set aside the judgment of the Patna High Court and hold that Writ Petition No. 5999 of 2014 was fully maintainable at Patna High Court and learned Single Judge and Division Bench committed error in dismissing the writ petition on the ground of lack of territorial jurisdiction. The writ petition stands revived before the Patna High Court.*

(v) (2013) 6 SCC 515 [Anant R.Kulkarni Vs. Y.P.Education Society and others]:

*"**18.** This Court in NOIDA Entrepreneurs Association v. NOIDA & Ors., AIR 2011 SC 2112, examined the issue, and held that the competence of an authority to hold an enquiry against an employee who has retired, depends upon the statutory rules which govern the terms and conditions of his service, and while deciding the said case, reliance was placed on various earlier judgments of this Court including B.J. Shelat v. State of Gujarat & Ors., AIR 1978 SC 1109; Ramesh Chandra Sharma v. Punjab National Bank & Anr., (2007) 9 SCC 15; and UCO Bank & Anr. v. Rajinder Lal Capoor, AIR 2008 SC 1831.*

....

24.*Thus, it is evident from the above, that the relevant rules governing the service conditions of an employee are the determining factors as to whether and in what manner the domestic enquiry can be held against an employee who stood retired after reaching the age of superannuation. Generally, if the enquiry has been initiated while the delinquent employee was in service, it would continue even after his retirement, but nature of punishment would change. The punishment of dismissal/removal from service would not be imposed."*

(vi) ***(1996) 9 SCC 395 [State of U.P. and another Vs. Shri Krishna Pandey]:***

*"**4.**A reading thereof clearly indicates that the Governor reserves to himself the power and right to withhold or withdraw pension or a part thereof, whether permanently or for a specified period. Equally, he has right to order recovery from pension of the whole or part of any pecuniary loss caused to Government when it is found in a departmental or judicial proceedings that*

the delinquent was guilty of grave misconduct or has caused pecuniary loss to the Government by his misconduct or negligence while he was continuing in service including the period of his re- employment after retirement. But the conditions precedent are that the departmental proceedings should be initiated only either before retirement or during re-employment and the same shall not be instituted without the sanction of the Governor. It should be in respect of an event which may have taken place not more than 4 years before the institution of such proceedings.

....

***6.**.............But the events of misconduct etc. which may have resulted in the loss to the Government or embezzlement, i.e., the cause for the institution of proceedings, should not have taken place more than four years before the date of institution of proceedings. In other words, the departmental proceedings must be instituted before lapse of four years from the date on which the event of misconduct etc. had taken place. Admittedly, in this case the officer had retired on March 31, 1987 and the proceedings were initiated on April 21, 1991. Obviously, the event of embezzlement which caused pecuniary loss to the State took place prior to four years from the date of his retirement. Under these circumstances, the State had disabled itself by their deliberate omissions to take appropriate action against the respondent and allowed the officer to escape from the provisions of Rule 351-A of the Rules. This order does not preclude proceeding with the investigation into the offence and taking action thereon."*

7.Per Contra, the learned counsel appearing for the respondents submitted that the Writ Petition is not maintainable in this Court. The misconduct committed by the petitioner happened at Rajouri Garden Branch, Delhi and charge memo issued is by the Central Office at Chennai. The fact that the petitioner is residing at Madurai and receiving pension at Madurai cannot give raise to a cause of action and that cannot be a factor for territorial jurisdiction. The learned counsel appearing for the respondents submitted that the Court held that residence of particular individual will not give raise to cause of action. The learned counsel appearing for the respondents relied on the following judgments:

(i) *2017 (1) CWC 750 [V.Pandiselvam Vs. Regional Commissioner of Provident Fund and other]:*

*"**3.**Merely because the petitioner is residing at Madurai, that does not mean this Court has jurisdiction*

to direct the respondents to consider the request of the petitioner dated 16.08.2016 which has been made to EPF authorities at Hubli, Karnataka State. In this regard, it is relevant to consider the judgment of the Hon'ble Division Bench of this Court in E.Mary Oliviya vs. E.Jsohua Milton, reported in (2008) 7 MLJ 1012, wherein, the Division Bench has categorically held that mere residence of the petitioner cannot clothe the court with jurisdiction unless part of cause of action had arisen in the said place."

(ii) W.P.(MD).No.9901 of 2021 [K.S.Selvam Vs. The Executive Director/Appellate Authority, Canara Bank and others]:

*"**5.** The question whether the mere service of a notice to a person at his residence would entitle him to seek legal remedy under Article 226 of the Constitution of India before the High Court where his residence is situated, arose for adjudication before the Hon'ble Supreme Court in **State of Rajasthan -vs- Swaika Properties** [1985 (3) SCC 217], in which it has been held as follows:-*

"8. The expression 'cause of action' is tersely defined in Mulla's Code of Civil Procedure:

"The 'cause of action' means every fact which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court."

In other words , it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. The mere service of notice under S. 52(2) of the Act on the respondents at their registered office at 18-B , Brabourne Road, Calcutta i.e. within the territorial limits of the State of West Bengal, could not give rise to a cause of action within that territory unless the service of such notice was an integral part of the cause of action. The entire cause of action culminating in the acquisition of the land under s. 52(1) of the Act arose within the State of Rajasthan i.e. within the territorial jurisdiction of the Rajasthan High Court at the Jaipur Bench.

The answer to the question whether service of notice is an integral part of the cause of action within the meaning of Art. 226(2) of the Constitution must depend upon the nature of the impugned order giving rise to a cause of action. The notification dated February 8, 1984 issued by the State Government under S. 52(1) of the Act became effective the moment it was published in *the official Gazette as thereupon the notified land became vested in the State Government free from all encumbrances. It was not necessary for the respondents to plead the service of notice on them by the Special Officer, Town Planning Department, Jaipur under S. 52 (2) for the grant of an appropriate writ, direction or order under Art. 226 of the Constitution for quashing the notification issued by the State Government under S. 52(1) of the Act. If the respondents felt aggrieved by the acquisition of their lands situate at Jaipur and wanted to challenge the validity of the notification issued by the State Government of Rajasthan under S. 52 (1) of the Act by a petition under Art. 226 of the Constitution, the remedy of the respondents of the grant of such relief had to be sought by filing such a petition before the Rajasthan High Court, Jaipur Bench, where the cause of action wholly or in part arose." "*

Applying the aforesaid principles, afortiorari the mere fact that the appeal filed by the Petitioner was despatched from his residence at Tenkasi, within the territorial limits of jurisdiction of the Madurai Bench of this Court, would not form any part of 'cause of action' for the Writ Petition to arise for directing the disposal of that appeal by the First Respondent whose 'seat of authority' is not situated within its territorial limits."

7(i). The learned counsel appearing for the respondents further submitted that the judgments relied on by the learned Senior Counsel appearing for the petitioner are not applicable to the facts of the present case as those cases relate to withholding pension already sanctioned and punishment imposed. The present case relates to disciplinary action and whether the respondents can continue with the same or not. Therefore, this Court has no territorial jurisdiction.

7(ii). The learned counsel appearing for the respondents further contended that the respondents have initiated disciplinary proceedings under Regulations 43 and 45 of the INDIAN OVERSEAS BANK (EMPLOYEES') PENSION REGULATIONS, 1995 and not under Regulation 48. The respondents have initiated disciplinary proceedings for withholding the pension granted to the petitioner. The Regulations 43 and 45 are the Regulations applicable for the disciplinary proceedings initiated by the respondents. The Regulation 48 will apply only when the respondents are seeking to recover from the petitioner. All the three Regulations are distinct and not connected with other Regulations. The proviso to Regulation 48 is applicable only to the said Regulation and not to the Regulations 43 and 45. The contention of the learned Senior Counsel that disciplinary proceedings initiated after 4 years of event is barred and respondents have no jurisdiction to initiate disciplinary proceedings, are without merits.

7(iii). The learned counsel appearing for the respondents referred to averments made in the counter affidavit, Regulations, charge memo and submitted that disciplinary proceedings initiated is valid and claims of the petitioner are without any merits of the Writ Petition.

7(iv). The learned counsel appearing for the respondents further submitted that even if the disciplinary proceedings initiated is barred by limitation, in view of serious nature of misconduct, the Court can permit the respondents to continue the proceedings as held by the Hon'ble Apex Court in para 53 of the judgment reported in ***2016 9 SCC page 20 [Rajendra Vs. Union of India and another].***

8. Heard the learned Senior Counsel appearing for the petitioner as well as the learned counsel appearing for the respondents and perused the materials available on record.

Conclusion-

9. From the materials on record and submissions of the learned Senior Counsel appearing for the petitioner and the learned counsel appearing for the respondents, it is seen that the learned counsel appearing for the respondents has raised a technical plea that this Court has no territorial jurisdiction to entertain the present Writ Petition. The learned Senior Counsel appearing for the petitioner raised a plea that disciplinary proceedings initiated by the respondents are barred by limitation.

Whether this Court has territorial jurisdiction to entertain the present Writ Petition?

10. From the materials on record, the following are admitted facts:

(1) The petitioner, after 32 years of service, retired from service on 31.08.2014, as an Assistant General Manager from Rajouri Garden Branch, Delhi.

(2) After retirement, the petitioner is residing at Madurai and is receiving pension at Madurai.

(3) The Regional Office, Chennai of respondents' Bank initiated disciplinary proceedings against the petitioner by the impugned charge memo dated 27.04.2018 and issued the same on 05.05.2018.

(4) The covering letter and charge memo were served on the petitioner on 14.05.2018 at Madurai and petitioner submitted his explanation to the charge memo from Madurai.

10(i). On these facts, the learned Senior Counsel appearing for the petitioner contended that the cause of action for the Writ

Petition arose at Madurai and this Court has territorial jurisdiction to entertain the Writ Petition.

10(ii). On the other hand, it is the contention of the learned counsel appearing for the respondents that the petitioner committed misconduct in Rajouri Garden Branch, Delhi and charge memo is issued from Regional Office, Chennai. The residence of the petitioner does not create any cause of action. The petitioner can file Writ Petition only at Principal Bench. The learned counsel appearing for the respondents relied on the orders of this Court reported in ***2017 (1) CWC 750,*** cited supra and the order dated 09.06.2021 in W.P.(MD). No.9901 of 2021.

10(iii). On the other hand, the learned Senior Counsel appearing for the petitioner contended that the petitioner received charge memo at Madurai and cause of action has arisen within the jurisdiction of this Court and Writ Petition is maintainable. The learned Senior Counsel appearing for the petitioner relied on following judgments (***2014) 9 SCC 329*** and (***2020) 10 SCC 766*** referred to above.

10(iv). Any legal proceedings has to be initiated, where the cause of action has arisen. The cause of action is bundle of facts and each fact forms part of cause of action. Section 20 of C.P.C. deals with suits to be instituted where the defendant resides or cause of action arises. As per Section 20 (c) of C.P.C., a suit can be instituted where the cause of action, wholly or partly, arises. Article 226 (2) of the Constitution of India is pari materia of phraseology used in Section 20 (c) of C.P.C. Article 226 (2) reads as follows:

> "*(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories."*

10(v). The Hon'ble Apex Court, in paragraph nos.40 and 41 of the judgment reported in ***2007 (6) SCC 769 (M/s. Ambica Industries vs. Commissioner Of Central Excise)***, held that the interpretation of Section 20 (c) of C.P.C. shall apply to writ proceedings also. It was held that "the expression "cause of action" used in clause (2) of Article 226 of the Constitution of India indisputably even if a small fraction thereof accrues within the jurisdiction of the Court, the Court will have jurisdiction in the matter though the doctrine of forum conveniens may also have to be considered. The expression material fact is also known as integral facts". In the judgment of the Hon'ble Apex Court reported in ***AIR 2008 SC 685 (Laxman Prasad vs. Prodigy Electronics Ltd. & another),*** it has been held that defendant should not be put to trouble and expenses for traveling long distances, in order to defend himself. These principles were reiterated by the Hon'ble Apex Court in the judgment reported in ***(2014) 9 SCC 329*** and ***(2020) 10 SCC 766***, referred to above. In paragraph nos.31 and 32 of the judgment reported in ***(2020) 10 SCC 766***, the Hon'ble Apex Court considered the forum conveniens and in paragraph no.32, held "a retired employee, who is receiving pension, cannot be asked to go to another court to file the writ petition, when he has a cause of action for filing a writ petition in Patna High Court". In that case, stoppage of pension and asking for refund of more than Rs.8,00,000/- held to adversely affect the petitioner who was staying at his native place, Darbhanga. On consideration of these facts, the Hon'ble Apex Court held that the Writ Petition was maintainable in Patna High Court and pensioner need not approach the Hon'ble Jharkhand High Court for relief.

10(vi). In the present case also, disciplinary proceedings is initiated against the petitioner, who is a pensioner residing in Madurai and received charge memo in Madurai. The averments of the petitioner that he received charge memo in Madurai is not denied by the respondents. In view of the same, the ratio in the said judgments of the Hon'ble Apex Court reported in ***(2014) 9 SCC 329*** and ***(2020) 10 SCC 766*** are squarely applicable to the facts of the present case. In the order reported in ***2017 (1) CWC 750,*** referred to above, this Court considered the residence of the petitioner but there is no mention whether the petitioner received any order or communication at his residence or not. The order dated 09.06.2021 made in W.P.(MD).No.9901 of 2021 and order reported in ***2017 (1) CWC 750*** do not advance the case of the respondents in view of the judgments of the Hon'ble Apex Court referred to above.

10(vii). In view of the above facts and judgment of the Hon'ble Apex Court, I hold that this Court has territorial jurisdiction to entertain the Writ Petition.

Whether disciplinary proceedings initiated by the respondents is barred by limitation ?

11.From the materials on record, it is seen that the petitioner retired on 31.03.2014 as Assistant Manager, from Rajouri Garden Branch, Delhi of the respondents' Bank. The respondents initiated disciplinary proceedings by a charge memo dated 27.04.2018, which was issued by covering letter dated 05.05.2018 and was received by the petitioner on 14.05.2018. The above dates are not denied by the respondents. The learned Senior Counsel appearing for the petitioner contended that no disciplinary proceedings can be initiated against the pensioner for an event which took place four years earlier while the petitioner was in service. The learned Senior Counsel appearing for the petitioner relied on Regulation 48 (2) of the INDIAN OVERSEAS BANK (EMPLOYEES') PENSION REGULATIONS, 1995. According to the learned Senior Counsel, there is no dispute that the disciplinary proceedings was initiated after four years of his retirement for an “event” that took place much earlier than the retirement of petitioner. The learned Senior Counsel relied on the common order dated 18.08.2015 made in W.P.(C).Nos.6382 of 2015 and etc., batch, rendered by the Hon'ble Delhi High Court. The identical issue of limitation was considered by the Hon'ble Delhi High Court and by order dated 18.08.2015, quashed the charge memo as time barred. The learned Senior Counsel referred to paragraph nos.9, 13, 15 and 16 of the said judgment and prayed for quashing the impugned charge memo. The learned Senior Counsel further contended that the Regulations have to be read as a whole and Regulations 43 and 45 cannot be read separately and cannot contend that Regulation 48 (2) does not apply for a disciplinary proceedings in respect of Regulations 43 and 45. The limitation prescribed under Regulation 48 (2) applies to disciplinary proceedings initiated under any of the Regulations.

12. On the other hand, it is the contention of the learned counsel appearing for the respondents that the disciplinary proceedings is initiated under Regulations 43 and 45 for withholding pension and not under Regulation 48 for recovery of any amount from the petitioner. The limitation prescribed in Regulation 48 (2) applies only when the respondents initiate disciplinary proceedings under Regulation 48 and it does not apply to disciplinary proceedings initiated under Regulations 43 and 45 and no time limit is prescribed for initiating the disciplinary proceedings under these Regulations and prayed for dismissal of the Writ Petition.

13. From the memorandum of allegations and articles of charges served on the petitioner, it is seen that the same is issued alleging that the petitioner committed certain acts of omission and commission, contravening Regulations 3(i), 3(iii) and 3(iv) of the Indian Overseas Bank Officer Employees' (Conduct) Regulations,1976, constituting misconduct punishable under Regulation 43, to be read with 45 of the Indian Overseas Bank Officer Employees' (Conduct) Regulations,1976. The misconduct alleged, took place on 30.04.2014, i.e., before the petitioner retired.

13(i). Regulations 43, 45 and 48 are extracted hereunder for easy reference to decide whether the impugned disciplinary proceedings is within the time or barred by limitation.

“43.Withholding or withdrawal of pension:-

The Competent Authority may, by order in writing, withhold or withdraw a pension or a part thereof, whether permanently or for a specified period, if the pensioner is convicted of a serious crime or criminal *breach of trust or forgery or acting fraudulently or is found guilty of grave misconduct:*

provided that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the minimum pension per mensem payable under these regulations.

45.Pensioner guilty of grave misconduct:-

In a case not falling under regulation 44 if the Competent Authority considers that the pensioner is a prima facie guilty of grave misconduct, it shall, before passing an order, follow the procedure specified in the Indian Overseas Bank Officer Employees' (Discipline and Appeal) Regulation, 1976 or in Settlement as the case may be.

48. Recovery of Pecuniary loss caused to the Bank :-

(1) The Competent Authority may withhold or withdraw a pension or a part thereof, whether permanently or for a specified period , and order recovery from pension of the whole or part of any pecuniary loss caused to the Bank if in any departmental or judicial proceedings the pensioner is found guilty of grave misconduct or negligence or criminal breach of trust or forgery or acts done fraudulently during the period of his service :

provided that the Board shall be consulted before any final orders are passed :

provided further that departmental proceedings, if instituted while the employee was in service, shall, after the retirement of the employee, be deemed to be proceedings under these regulations and shall be continued and concluded by the authority by which they were commenced in the same manner as if the employee had continued in service :

(2) No departmental proceedings, if not initiated while the employee was in service, shall be instituted in respect of an event which took place more than four years before such institution :

provided that the disciplinary proceedings so instituted shall be in accordance with the procedure applicable to disciplinary proceedings in relation to the employee during the period of his service.

3) Where the Competent Authority orders recovery of pecuniary loss from the pension, the recovery shall not ordinarily be made at rate exceeding one -third of pension admissible on the date of retirement of the employee : provided that where a part of pension is withheld or withdrawn , the amount of pension drawn by *a pensioner shall not be less than the minimum pension payable under these regulations."*

14. It is the contention of the learned counsel appearing for the respondents that Regulation 48 (2) applies only to Regulation 48 and does not apply to Regulations 43 and 45. According to learned counsel appearing for respondents, the said two Regulations relate to withholding or withdrawal of pension, while Regulation 48 relates to recovery of loss caused by the pensioner to the Bank. In view of the same, Regulation 48 (2) does not apply to Regulations 43 and 45. This contention is not acceptable, as Regulation 48 also empowers the respondents to withhold or withdraw the pension and in addition to the same, order recovery from the pension of the whole or part of any pecuniary loss caused to the Bank. Regulation 48(2) starts with "No departmental proceedings". A reading of Regulation 48 (2) shows that it relates to all departmental proceedings and is not restricted to Regulation 48 only. All the three Regulations along with Regulation starting from 42, are in chapter IX General Conditions. In view of the arrangement of said Regulations under the heading 'General Regulations', all the Regulations, especially Regulations 43 & 45 are to be read in conjunction with Regulation 48, especially 48(2).

15. Identical Regulations 43, 45 and 48 of Punjab & Sind Bank and identical issue of limitation came up for consideration before the Hon'ble Delhi High Court in W.P.(C).Nos.6382 of 2015 and etc., and batch. The Hon'ble Delhi High Court considering Regulations 43, 45 and 48 and judgments of the Hon'ble Apex Court, held that Regulations 43 and 45 have to be read in conjunction with Regulation 48 and also held that Regulation is not specific for recovery of pecuniary loss and it contemplates withholding or withdrawal of pension or part thereof, whether permanently or for a specific period. Regulations 43, 45 and 48 of the respondents' Regulations are identical, as the said Regulations of Punjab & Sind Bank. The Hon'ble Delhi High Court held that petitioners have claimed that charge sheet issued are without jurisdiction and not permitted under the Rules, which goes to the root of maintainability of the charge sheet in violation of Regulation and therefore, the Writ Petitions were maintainable. After elaborately considering the Regulations and judgments, the Hon'ble Delhi High Court quashed the charge sheet issued to the petitioners therein. The reasoning of the Hon'ble Delhi High Court is squarely applicable to the facts of the present case. The disciplinary proceedings is initiated for an 'event' that happened before 30.04.2014. The charge memo has been served to the petitioner on 14.05.2018, after four years of the 'event', the same is barred by limitation, as per the Regulation 48(2), and without jurisdiction.

16. The learned counsel appearing for the respondents referring to the judgment of the Hon'ble Apex Court reported in ***2016 9 SCC***

page 20, referred to above, submitted that even if the disciplinary proceedings initiated is not maintainable, the respondents may be permitted to proceed with the disciplinary proceedings as the charges leveled against the petitioner are serious and grave in nature. The Hon'ble Apex Court held that memo of charges dated 22.08.2008 and 16.10.2009 were clearly beyond the period of four years and quashing the same, permitted the disciplinary authority to continue the disciplinary proceedings and conclude the same within the stipulated time. The Hon'ble Apex Court has granted such permission, exercising the power under Article 147 of the Constitution of India. This Court has no such power and cannot permit the respondents to continue the disciplinary proceedings.

17. For the above reasons, the Writ Petition is maintainable in this Court and the disciplinary proceedings impugned in the present Writ Petition is barred by limitation, not maintainable and without jurisdiction.

For the above reason, this Writ Petition stands allowed. Consequently, the Miscellaneous Petitions are closed. No costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

gsa/krk

To

1.The General Manager / Disciplinary Authority,
Indian Overseas Bank,
Central Office, 763, Anna Salai,
Chennai - 600 002.

2.The Assistant General Manager,
Indian Overseas Bank,
Regional Office - Rachna Building, 3rd Floor,
2, Rajendra Place, Pusa Road,
New Delhi - 110 008.

+1 CC to Mr.K.RAGATHEESH KUMAR, ADVOCATE, M/s.ISAAC CHAMBERS, Advocate (SR-33223[F] dated 29/10/2021)

+1 CC to M/s.N.DILIPKUMAR, Advocate (SR-33249[F] dated 29/10/2021)

W.P.(MD).No.18122 of 2018
28.10.2021

VR(CO)
GC/NS(22.11.2021) 23P 5C