BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 08.03.2022
CORAM:
THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.(MD) No.11524 of 2021
and
W.M.P.(MD) No.9047 of 2021

R.P.Ilango Yadav ... Petitioner

vs.

1.Carara Bank
rep.by its Managing Director & CEO
HO, 112, J.C.Road
Bangalore-560 002

2.The Board of Directors
Canara Bank
Board Secretariat
Canara Bank HO, 112 JC Road
Bangalore-560 002

3.The Assistant General Manager /
Disciplinary Authority
HRM SECTION : (DA CELL)
Canara Bank Circle Office
524, Anna Salai
Teynampet
Chennai-600 018

4.R.Ganesh
The Inquiring Authority
Chief Manager
Canara Bank, Thiruvallur
Chennai

5.N.Balasubramani
The Presenting Officer
Manager
Canara Bank
Sriperumbudur Branch
Kanchepuram District ... Respondents
[R4 & R5 are impleaded vide Court Order dated 16.09.2021 in W.M.P.(MD) No.11686 of 2021]

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorari calling for the records pertaining to the impugned charge memo in Ref.No.CNC DAC 463 E - 37 (CSO-08/2021), dated 05.04.2021, on the file of the respondent No.3 and quash the same as illegal.

For Petitioner : Mr.R.P.Ilango Yadav, Party-in Person
For Respondents : Mr.N.Dilip Kumar

O R D E R

The charge memorandum, dated 05.04.2021, issued by the third respondent, is under challenge in this writ petition.

2. In respect of certain allegations, articles of charges were framed against the petitioner and the petitioner submitted his explanation denying the charges.

3. The petitioner appearing in person articulated his case by stating that he was allowed to retire from service on 31.05.2019 and the impugned charge memo has been issued after his retirement and therefore, it is untenable. The petitioner is of the opinion that the Honourable Supreme Court, in clear terms, has held that no disciplinary action shall be initiated in respect of the retired employees and therefore, on that ground also, the impugned charge memo is to be quashed.

4. The learned counsel appearing for the respondent – Bank objected the said contention by stating that the impugned charge memo was issued invoking the provisions of Canara Bank (Employees') Pension Regulation, 1995 (hereinafter, referred to as “the Pension Regulation”), which permit initiation of disciplinary proceedings against the retired employees. It is further contended that the enquiry proceedings have already been completed and the petitioner also defended his case before the Enquiry Officer. Thus, the writ petition is to be rejected.

5. The question arises whether disciplinary proceedings shall be initiated against the retired employee. No doubt, in certain circumstances, the Honourable Supreme Court clarified that in respect of non-pensionable services, such actions may not be permissible, in the absence of any provision or otherwise. However, in respect of pensionable services, the Pension Regulation governs the actions to be initiated and the procedures to be followed for the purpose of initiation of such actions against the retired employees. Therefore, a distinction is to be drawn with reference to the employees working in the pensionable Establishments and the employees working in the non-pensionable Establishments. As far as non-pensionable Establishments are concerned, the employer – employee relationship severed due to retirement. However, a lien continues in respect of the non-pensionable Establishments. Therefore, the Pension Regulation / Rules, as applicable to the Pensionable Services, have been invoked for the purpose of initiation of actions, if such Pension Regulation / Rules permit to do so. In certain Pension Regulations, a time limit is prescribed for initiation of action. Therefore, this Court is of the opinion that the general proposition cannot be adopted in respect of the Pensionable Services as in the present case, admittedly, the petitioner is a pensioner and receiving monthly pension under the Pension Regulation of the respondent - Bank. Therefore, the Pension Regulation would be applicable to the petitioner. In this regard, it would be relevant to refer Regulations 42, 43, 45 and 48 of the Pension Regulation, which read as follows:

> *"Regn.42. Pension subject to future good conduct:- Future good conduct shall be implied condition of every grant of pension and its continuance under these regulations.*
>
> *Regn.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.*
>
> *Regn.45. Pensioner guilty of grave misconduct:- In a case not falling under Regulation 44 if the Competent Authority considers that the pensioner is prima facie guilty of grate misconduct, it shall, before passing an order, follow the procedure specified in Canara Bank Office Employees' (Discipline and Appeal) Regulation, 1976 or in Settlement as the case may be.*
>
> *Regn.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 for 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 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;

Provided also that the 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 instituted while the employee was in service, shall be instituted in respect of an event which took place more than four years before such institutions;

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 a rate exceeding one-third of pension admissible on the date of retirement of the employee."

6. The impugned charge memo also indicates that the proceedings are issued based on the Regulations 43, 45 and 48 of the Pension Regulation. This being the factum, there is no impediment for the respondent - Bank to initiate disciplinary proceedings against the petitioner / retired employee. The fact remains that the enquiry proceedings are already completed. The petitioner has also co-operated for completion and defended his case in the manner known to law by producing documents and evidence. The petitioner in person clarified that he has submitted all the correspondences and the relevant materials before the Enquiry Officer for consideration and to take a decision.

7. This being the factum established, the respondent – Bank has to consider all the facts and circumstances of the case on merits and in accordance with law and take a decision as expeditiously as possible within a period of eight weeks from the date of receipt of a copy of this order.

8. Before parting with this order, this Court expresses it's opinion that the petitioner appearing in person articulated his case in a very reasonable manner and also understanding the legal implications involved in respect of the Pension Regulation. The way in which he represented his case certainly deserves to be appreciated. The Authorities Competent have to consider the petitioner's overall performance also while taking a decision in the disciplinary proceedings.

9. With these observations and directions, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(AD-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

krk

To

1.The Managing Director & CEO,HO,
Carara Bank 112, J.C.Road Bangalore-560 002

2.The Board of Directors
Canara Bank, Board Secretariat
Canara Bank HO, 112 JC Road, Bangalore-560 002

3.The Assistant General Manager /
Disciplinary Authority
HRM SECTION : (DA CELL)
Canara Bank Circle Office
524, Anna Salai, Teynampet, Chennai-600 018

+1 CC to M/s.N.DILIPKUMAR, Advocate (SR-10915[F] dated 09/03/2022)

W.P.(MD) No.11524 of 2021
and
W.M.P.(MD) No.9047 of 2021
08.03.2022

ks(CO)
TR(21.03.2022) 5P 5C