

**IN THE HIGH COURT AT CALCUTTA
(CONSTITUTIONAL WRIT JURISDICTION)**

APPELLATE SIDE

Present:

The Hon'ble Justice Partha Sarathi Chatterjee

WPA 4024 of 2021

Uttam Batabyal

-Vs.-

Paschim Banga Gramin Bank & Ors.

For the Petitioner : Mr. Debabrata Saha Roy

Mr. Indranath Mitra

Mr. Subhankar Das

Mr. Neil Basu

For the Respondents : Mr. Baidurya Ghoshal

Heard on : 18.07.2023

Judgment on : 25.07.2023

Partha Sarathi Chatterjee, J:- The conundrum posited in this writ petition is whether the disciplinary proceeding contemplated against the writ petitioner after he demitted his office is tenable or not.

For better appreciation of the issue of law emerging out of obtaining factual matrix, the necessitous facts required to be adumbrated are that the petitioner joined as Junior Clerk-cum-Cashier on 23.11.1983 in Howrah Gramin Bank. In 1987, he was promoted to the post of Field Supervisor (subsequently, re-designated as Scale-I Officer) and in 2000, he was promoted to Scale -II Officer. In 2012 he was posted at Batore Branch. The petitioner retired from his service on attaining the age of superannuation on 31.12.2016.

Howrah Gramin Bank, Burdwan Gramin Bank and Mayurakshi Gramin Bank were constituted under the Regional Rural Bank Act, 1976 and by virtue of a notification *vide.* dated 26.2.2007, issued by the Ministry of Finance, Department of Economic Affairs (Banking Divn.), Government of India, the aforesaid three banks were amalgamated to a single bank, namely, PBGB and it started functioning under the sponsorship

of UCO Bank and under the guidance and control of the Government of India and National Bank for Agriculture and Rural Development (in short, NABARD) and the service conditions of the Officers and employees of the PBGB were governed by the Paschim Banga Gramin Bank (Officers and Employees) Service Regulations, 2010 (in short, the Service Regulations).

In exercise of the powers conferred by Section 30 read with Sub-section (1) of Section 17 of the Regional Rural Banks Act, 1976, the Board of Directors of PBGB after having consultation with UCO Bank, National Bank and Government of India, promulgated Paschim Banga Gramin Bank (Employees) Pension Regulations, 2018 (in short, the Pension Regulations) w.e.f. 15th November, 2018. The petitioner opted for being governed by the Pension Regulations and accordingly, his pension was released but his commuted value of pension amounting to Rs. 10, 09, 062 was withheld.

On 03.06.2019, i.e. after almost two and half years, the Chairman, PBGB issued a show-cause notice against the petitioner seeking explanation as to why suitable action would not be taken against him. The petitioner replied to that show-

cause notice on 29.6.2019 and on 7.3.2020, he was slapped with a charge-sheet vide. dated 7.3.2020 in which four charges were framed against the petitioner basing upon 14(fourteen) numbers of statements of allegation.

The petitioner submitted his detailed reply to the charge-sheet and under a memorandum and a notification, both dated 11.11.2020, the Enquiry Officer and the Presenting Officer were appointed.

In such chronological events, since the authority concerned has issued a charge sheet in contemplation of a disciplinary proceeding initiated against the petitioner after his retirement, questioning the tenability of the charge sheet dated 7th March, 2022, this writ petition has been preferred. Being so directed, the respondents filed affidavit-in-opposition to the writ petition but the petitioner has not filed his response to that affidavit-in-opposition.

Mr. Saha Roy, learned advocate appearing for the writ petitioner argued the matter on behalf of the writ petitioner. Arguments advanced by Mr. Saha Roy, as crystallized, are that the Pension Regulations came into force on the date of their

publication in the official gazette i.e. on 15th November, 2018. The petitioner retired on 31.12.2016 and on 7.3.2020, a charge sheet was issued against the petitioner taking recourse to the Regulation nos. 43 of 46 of the Pension Regulations on allegation of violation of Regulation nos. 18 and 20 of the Service Regulations. According to Mr. Saha Roy, Pension Regulations cannot be invoked to contemplate a disciplining proceeding against the petitioner who retired prior to the date the Pension Regulations came into effect.

The second plank of submission of Mr. Saha Roy is the Regulation 43 can be invoked only if a pensioner is *prima facie* found to be guilty of '*grave misconduct*'. He submits that the expression '*grave misconduct*' has been defined in the explanation 'b' of Regulation No. 44 as the commission or disclosure of any secret official code or password etc. as referred in Section 5 of the Official Secret Act 1923 so as to prejudicially affect the interest of the general public or the security of the State. He asserts that no such allegations have been levelled against the petitioner which can be termed as '*grave misconduct*'. Drawing my attention to Regulation nos. 18 and 20 of Service

Regulations, he contends that the allegations levelled against the petitioner do not attract Regulation nos. 18 and 20 of the Service Regulations. He further submits that in view of Regulation 46 sub-clause (2), no disciplinary proceedings could have been initiated against the petitioner. In support of his such contention he laid immense emphasis on an unreported decision of Madhya Pradesh High Court, Jabalpur Bench pronounced on 10th December, 2020 in case of *Subhas Chandra Join vs. MP Gramin Bank and Ors.*

Mr. Saha Roy argues that the provisions of the Pension Regulations which empowered the PBGB to grant pension to its retired employees of PBGB being the beneficial legislation can be given retrospective effect but the provisions which authorized the PBGB to contemplate disciplinary proceeding against its retired employee being the penal legislation cannot be given retrospective effect. According to him, beneficial circular can be applied retrospectively but the oppressive circular has to be applied prospectively. In support of such contention, he placed reliance upon a judgment delivered in case of *Director of Income Tax,*

Circle 26(1), New Delhi –vs- S.R.M.B. Dairy Farming Pvt. Ltd.
reported in (2018)13 SCC 239.

The next limb of submission of Mr. Saha Roy is that the allegations levelled against the petitioner is that he recommended his higher authority to sanctions loans to two borrowers without verifying the documents and subsequently, it was detected that two borrowers used fake documents to procure the loans. He submits that the petitioner was a mere recommending authority not the sanctioning authority and consequently, for the frauds perpetrated on the bank by the borrowers, the petitioners cannot be penalized. Mr. Saha Roy contends that such disciplinary proceedings cannot be held to be legal and the charge sheet forming the basis of the disciplinary proceedings should be set aside.

Per contra, Mr. Ghosal learned advocate appearing for the respondents drawing my attention to the order dated 05.03.2021 passed by a coordinate bench of Court in this writ petition submits that a coordinate bench has held that the judgement of *Subhas Chandra Join (supra)* has no manner of application in the case at hand and since the petitioner has availed of the

provisions of the Pension Regulations to enjoy the monthly pension he is bound by the entire Regulations of 2018. In elaboration of this contention, he submits that the petitioner cannot be allowed to adopt pick and choose policy and claim that out of entire Pension Regulations, only some of the Regulations thereof will be applicable to him. He argues that the petitioner is enjoying pension as a benefit of his past service and hence, he cannot claim that his past employer cannot take step to contemplate disciplinary proceeding against him invoking the Pension Regulations.

He further contends that a coordinate bench held that as per Regulation 3(c), the Regulation nos. 43 to 46 will be applicable to the petitioner and Regulation no. 43 has empowered the respondents to invoke the relevant provisions of the Service Regulations.

He submits that the order dated 05.03.2021 was assailed by the writ petitioner in an appeal being FMA No. 1251 of 2021 which has been disposed of by a Hon'ble Division Bench headed by the Hon'ble Justice Subrata Talukdar (as His Lordship then was) affirming the order dated 5.3.2021.

He contends that due to acts and omissions of the petitioner, the bank has suffered financial loss to the tune of more than 7 (Seven) Crores. He submits that not only against the petitioner but against all the officials including the sanctioning authority the disciplinary proceedings have been initiated and 1/3rd of their basic monthly pension and/or salary are being deducted and the borrowers who practiced fraud upon the bank are still languishing in jail.

Taking me to the contents of the affidavit-in-opposition Mr. Ghosal submits that during stint of the petitioner, one M/s Ereeck Technologies approached the bank for cash credit facility of Rs. 5 Crores and Term loan of Rs. 2 Crores on 16/03/2016 and within two days they said proposal was cleared by the petitioner and placed before the sanctioning authority. On 28/03/2016 the loan was sanctioned which was declared NPA in 2017. On enquiry, it was detected that the deed was fake and no pre-sanction verification was not made by the petitioner, KYC norms had not been followed and even the title deeds had not been verified and a branch Manager of a bank is primarily responsible for verification of those documents. Similarly, in

2015 a credit facility of Rs. 30 Lacks was sanctioned to one M/s future films on the basis of the recommendation of the petitioner and in that case also the loan account slipped to NPA and the fraud was detected. He submits that disciplinary Proceedings initiated against the petitioner has been concluded and an order of punishment has been passed giving a direction for reduction the basic pension of the petitioner by 1/3rd till he draws his pension but in pursuance with the order passed by the Hon'ble Division Bench, the order of punishment has not been given effect to.

In reply, Mr. Saha Roy contends that while passing the interlocutory order the coordinate bench opined that the views taken in that order were *prima facie* view and such views were taken only for the purpose of consideration of the prayer for interim order of the writ petitioner. He further submits that it is well settled proposition of the law the respondent cannot make out a new case in the affidavit-in-opposition. He submits that in their exception, the respondents have travelled beyond the statements of allegation brought in the charge sheet and hence, no reliance should be placed on the contents of the affidavit-in-

opposition used by the respondents. He submits that the respondents have illegally withheld the commuted value of the pension of the petitioner which should be directed to be released.

It is axiomatic that if the rules governing the service condition of the employee permits the employer to continue the disciplinary proceedings after the retirement of the employee and to withhold and withdraw the pension, the employer may contemplate and conclude the disciplinary proceedings against its retired employee and take steps for withholding and/or reduction of his pension. In this context, reference to the authority in *Secretary, Forests Department-vs- Abdur Rasul Chowdhury reported in (2009) 7 SCC 305* would be instructive. It is well settled proposition that when charges are serious and when the institution has suffered monetary loss due to alleged omissions and commissions of its employee done during his tenure of service, disciplinary proceedings can be initiated and concluded against the employee even after his retirement if the service rules so permit.

Article 20(1) of the Constitution prohibits the legislature to give retrospective effect to the criminal law, however, it does not

prohibit to fix civil liability retrospectively. It would be apposite to refer the judgment delivered in case of *State of Gujarat –vs- Raman Lal reported in (1983) 2 SCC 33* in which a five judges' bench of the Hon'ble Apex Court held that the legislature is competent to legislate with retrospective effect to take away or impair any vested right but such laws shall not contravene fundamental rights. Legislature within its competence can legislate retrospective service rules.

Regulation no. 43 of Pension Regulations lays down that if the competent authority considers that the petitioner is prima facie guilty of grave misconduct, it shall, before passing an order, follow the procedure specified in the Service Regulations . Regulation 46 of the Pension Regulations, which deals with the provisions for '*Recovery of pecuniary loss caused to the Bank*', has empowered the Bank to withhold or withdraw a pension or 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. The proviso to Regulation no. 46 says that disciplinary proceeding initiated under the Regulation 46 shall be in accordance with the procedure applicable to disciplinary proceedings in relation to the employee during the period of his service. Regulation no.41 has empowered to withhold or withdraw pension if the pensioner is convicted of a serious crime or criminal breach of trust or forgery or fraudulent act or is found guilty of grave misconduct.

So, if a pensioner is convicted of the aforesaid offences in a judicial proceedings , the competent authority is empowered to withhold or withdraw the pension without initiating any disciplinary proceeding but if the pensioner is prima facie guilty of grave misconduct, negligence or criminal breach of trust or forgery or acts done fraudulently during the period of his service, then to recover the pecuniary loss caused to the bank due to such acts of pensioner, competent authority may contemplate disciplinary proceeding for a limited purpose for recovery of pecuniary loss caused to the bank by withholding or withdrawing a pension or a part thereof.

Settled proposition of law is that the mere fact that a law or rule looks back certain events that have already taken place does not necessarily mean that the said law or rule operates from a date anterior to its promulgation. A law or rule may take into account the previous events or facts yet it may operate only prospectively as from the date of its promulgation. Retrospective or ex post facto legislation is one in which rights already acquired under previous transactions, or previous rules are taken away as from a date anterior to the promulgation of legislation or by which something that was invalid, when actually done, is sought to be validated. If rights are taken away not as from a date anterior to the promulgation of a law but only as from the date of its actual promulgation, such legislation cannot be described as retroactive legislation, it acts only prospectively.

Penal statutes which create new offences are always prospective, but penal statutes which create disabilities, though ordinarily interpreted prospectively, are sometimes interpreted retrospectively when there is a clear intendment that they are to be applied to past events. Settled principle is that the Act of Parliament shall ordinarily be prospective unless the legislature

in clear and unambiguous terms manifests its intention to give it respective effect but such principle does not apply when penal statute does not create new offence but authorise some action based on past conduct. To such statutes, if expressed in language showing retrospective operation, the aforesaid principle is not applied (see, the case of State of Bombay –vs- Vishnu Ramchandra reported in AIR 1961 SC 307).

It is well settled principle of law that *‘no man has such a vested right in his past crimes and their consequences as would entitle him to insist that in no future legislation shall any regard whatever be had to his previous history’* and if the object of the statute is not to inflict punishment but to protect the public from the misconduct of any person, such misconduct which was done before the operation of a statute may be relied upon (see, *State of Bombay* (supra)).

Initially, the petitioner’s pension was released under the Employees’ Pension Scheme, 1995 and then he has exercised option to be a member of the fund created under the Regulation no. 4 of the Pension Regulations, 2018 upon refund of the amounts received by him under the Scheme of 1995 and he has

become a pensioner within the meaning of Regulation no. 2(v) of Pension Regulations, 2018 w.e.f. 15.11.2018 being the date of promulgation of the Pension Regulations. While releasing pension from the fund created under Regulation no. 4 in favour of the petitioner, the competent authority reserved its right to withhold or withdraw the pension in case any of the conditions contained in Regulation nos. 41 to 46 is fulfilled. So, it is quite vivid and luminescent that the Pension Regulations look back to the past conduct of a pensioner to recover the loss of public money.

The petitioner had exercised option to be governed under the new Regulations and hence, the entire Regulations shall be applicable to him and he cannot claim that only some of the provisions of that Regulations will be applicable to him and the rest would be inapplicable to him. One cannot claim that in a transaction, he will enjoy his rights without incurring any liability attached thereto. In view of discussion made hereinabove, the first limb of submission of Mr. Saha Roy cannot be accepted.

The expression '*grave misconduct*' has been explained in Exp. (b) of Regulation 44 . Explanation (b) of Regulation no. 44 has been worded as follows:

(b) 'grave misconduct' includes the communication or disclosure of any secret official code or password or any sketch, plan, model, article, note , documents or information, such as it is mentioned in section 5 of the Official Secrets Act, 1923 (19 of 1923) which was obtained while holding office in the Bank so as to prejudicially affect the interests of the general public or the security of the State.

Legislature has used the word 'include' to define the expression '*grave misconduct*'. Use of the word 'include' in any definition or interpretation clause indicates an intention of the legislature to enlarge the meaning of the word used in the statute. When any word or expression is defined using the word 'include', the meaning will be extensive. To deal with an inclusive definition, it would be iniquitous to put a restrictive interpretation upon terms of wider denotation.

While defining the expression '*grave misconduct*', legislature intended that while giving natural and ordinary meaning to that expression, commissions of acts enumerated in Official Secrets Act shall also be included. The definition and interpretation of the expression '*grave misconduct*' shall not be restricted only to

the acts or actions enumerated in Explanation (b) of Regulation no. 44.

It is noteworthy that one appeal being FMA no. 1251 of 2021 was preferred to impugn the order of the coordinate bench dated 5.3.2021 passed in this writ petition and the Hon'ble Division Bench disposed of the appeal, *inter alia* by passing the following orders :

“... Accordingly, the DP be completed within a further period of six weeks from this date by the respondents/the Bank without permitting the writ petitioner/appellant to take unnecessary adjournments.

It is made clear that in the event the writ petitioner/appellant stays away from the DP inspite of intimation by the respondents/the Bank, the Bank shall be entitled to complete the DP in his absence and present the report of the Disciplinary Authority (for short DA) before the Hon'ble Single Bench.

However, in the event the writ petitioner/appellant attends the DP as intimated by the Bank, the appellant shall be entitled to an interim protection to the effect that the final order

of the DA shall not be given effect to without the leave of the Hon'ble Single Bench.

It is reiterated that this order of interim protection shall stand automatically vacated in the event the writ petitioner/appellant stays away from the DP without just cause. It is also made clear that the time period for completing the DP as directed by this order binds both the parties."

Since the respondent has continued and concluded the disciplinary proceedings in difference to the order passed by the Hon'ble Division Bench in FMA 1251 of 2021 and it would be against the judicial discipline and comity for this court to frustrate the disciplinary proceedings and to quash the charge sheet.

It is well-known that a decision is an authority for what it decides and not can logically be deduced therefrom. Even in slight distinction on fact or an additional fact may make a lot of difference in decision making process. The judgment is a precedent for the issue of law that is raised and decided and not observations made in the facts of any particular case. In case of *Subhas Chand Jain (supra)*, there was no Regulation in M.P. Gramin Bank (Officers and Employees) Service Regulations,

2010 empowering the competent authority to contemplate disciplinary proceedings after retirement of its employee and there is no dispute as regards proposition of law laid down in the judgment of *Director of Income Tax, Circule 26(1), New Delhi (supra)*, however, the same is distinguishable on facts.

It is worthwhile to note that in the case in hand the order of punishment has been passed awarding a punishment of reduction of the basic monthly pension of the petitioner by 1/3rd till he draws his pension. In view of such sequence of facts, no interference is called for in the writ petition. The respondents are at liberty to give effect to the order of punishment.

Suffice it to observe that the Service Regulations has made provision for appeal against the order of punishment passed by the disciplinary authority and the petitioner is the liberty to prefer appeal against the order of punishment on all grounds available to the petitioner in law and in fact.

Since the order of punishment have been passed directing reduction of the basic pension of the petitioner by 1/3 till he draws the pension leaving the commuted value of pension untouched, the respondent no. 2 is directed to release commuted

value of pension along with the interest accrued therein till the date of actual payment thereof to the petitioner within four weeks from the date.

With this observation an order the writ petition is being **WPA 4024 of 2021** stands thus **disposed of**, however, without any order as to the Court.

Parties shall be entitled to act on the basis of a server copy of this Judgement and Order placed on the official website of the Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Partha Sarathi Chatterjee, J.)