BEFORE THE MADURAI BENCH OF THE MADRAS HIGH COURT

Reserved on	Pronounced on
20.01.2023	06.02.2023

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. (MD) NO.7785 OF 2020

P.Mathivanan Inbaraj .. Petitioner

- Vs -

1. The General Manager (Personnel Dept.)

Canara Bank,
Head Office, J.C.Road
Bangalore – 01.

2. The General Manager (HR)/

Competent Authority, Syndicate Bank
Corporate Office
Bangalore. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus calling for the records relating to the impugned order bearing Ref. No.954/HRD:IRD/DA-6/PSN dated 05.12.2019 issued by the 2nd respondent and quash the same and consequently direct the respondents to repay the pension amount recovered from the petitioner within the time stipulated by this Court.

For Petitioner : Mr. M.Gnanagurunathan, for
Mr. K.Swamidurai

For Respondents : Mr. N.Dilipkumar

ORDER

Assailing the order passed by the 1st respondent in and by which 30% pension was directed to be permanently withdrawn in respect of the delinquency alleged to have been committed by the petitioner while in service of the respondent bank, the present writ petition has been filed.

2. Shorn of unnecessary details, the facts, as could be derived from the affidavit filed by the petitioner in support of the present petition is as under :

The petitioner joined the services of the bank on 14.2.1983 as Probationary Officer and through the series of promotions granted to the petitioner, at the time of his superannuation on 31.07.2016, the petitioner was working as Branch Manager. It is the further averment of the petitioner that he was visited with a charge memo dated 24.5.2016, barely two months prior to his retirement, in which six charges were leveled against him. It is the further averment of the petitioner that the said charges related to the period 30.08.2012 to 01.09.2015 during the period when the petitioner was working as Branch Manager at Madurai Moondrumavadi Branch.

3. It is the further averment of the petitioner that in respect of the said charge memo, the petitioner submitted his explanation on 27.5.2016 and the disciplinary authority, not being satisfied with the explanation, ordered enquiry and, accordingly, enquiry was conducted resulting in submission of report on 14.7.2016. It is the further averment of the petitioner that the enquiry report, though held that the irregularities, which were charged against the petitioner were only procedural in nature, however considering the past services and achievements of the petitioner, recommendation was made to take a lenient view and to retire the petitioner peacefully. However, the disciplinary authority, viz., the Assistant General Manager (P), Syndicate Bank, had imposed the major penalty of reduction of basic pay by seven stages in the time scale of pay for the remaining period of his service vide proceedings dated 27.07.2016 and the petitioner was allowed to retire from service on 31.07.2016. The petitioner had

accepted the aforesaid order and had not challenged the same before the appellate authority and, accordingly, the said order attained finality, based on which the petitioner was paid all the retiral benefits, inclusive of pension.

4. It is the further averment of the petitioner that all of a sudden, to the shock and surprise of the petitioner, the 2nd charge memo was issued by the 2nd respondent vide proceedings dated 18.7.2018 under Regulations 43 and 45 of the Syndicate Bank (Employees') Pension Regulations, 1995 (for short 'Pension Regulations') r/w Regulation No.6 of Syndicate Bank Officer Employees (Discipline & Appeal) Regulations, 1976 (for short 'DA Regulations'). Curiously, the said charge memo also pertained to the period between 30.08.2012 to 01.09.2015 when the petitioner was working at Madurai Mandrumavadi Branch as its Manager in respect of which earlier charge memo was issued resulting in imposition of punishment on the petitioner. 16 charges were leveled against the petitioner of which nine charges related to sanctioning of bogus term loans to Self Help Group members without necessary permission, while five other charges related to granting subsidy under the Swarna Jayanthi Shahari Rozgar Yojana and

allowed withdrawal of the subsidy fraudulently, which had caused monetary and reputational loss to the bank.

5. It is the further averment of the petitioner that the 2nd charge memo was issued for the very same set of charges for which the petitioner was already visited with a charge memo while in service and punishment of reduction in basic pay was imposed and, therefore, giving another charge memo for the very same issue is nothing but an act of double jeopardy. It is the further averment of the petitioner that enquiry was conducted leading to the submission of the enquiry report in which the enquiry officer had held that few of the charges were held not proved, while some other charges were held partly proved and some of the charges were held to have been proved and upon receipt of the report, the petitioner submitted his explanation on 9.8.2019. It is the further averment of the petitioner that the 2nd respondent, thereafter, had issued the impugned order imposing the punishment of 30% cut in pension permanently vide proceedings dated 5.12.2019. It is the further stand of the petitioner that the petitioner having retired from service and there being no provision for appeal against the aforesaid order available under the Pension Regulations, the petitioner is

constrained to file the present writ petition challenging the impugned order before this Court under Article 226 of the Constitution of India.

6. Learned counsel appearing for the petitioner submitted that withholding or withdrawal of pension can be made under the Pension Regulations only if an employee, who has since retired, has been convicted of a serious crime or for grave misconduct or acting fraudulently. In the case on hand, the petitioner, who has since retired and against whom the charge memo has been issued has neither been convicted of a serious crime nor there is any criminal breach of trust or forgery or acting fraudulently against the bank by the petitioner except for discharging his duties and, therefore, invocation of Regulations 43 and 45 of Pension Regulations r/w Regulation 6 of the DA Regulations to withdraw pension payable to the petitioner is wholly misconceived and unsustainable.

7. It is the further submission of the learned counsel for the petitioner that Regulations 43 and 45 of the Pension Regulations are not stand-alone provisions and they lean on Regulation 48, which is the Regulation, which gives power to the

respondent to initiate a disciplinary proceeding against a retired employee. It is the submission of the learned counsel that insofar as Regulation 48 of Pension Regulations is concerned, clause (2) of Regulation 48 mandates that no departmental proceedings shall be instituted against a retired employee in respect of any event which took place more than four years before such institution, if such proceeding was not instituted while the employee was in service.

8. Laying great emphasis on the above, it is the submission on behalf of the petitioner that clause (2) of Regulation 48 of the Pension Regulations having not been taken aid of even in the charge memo, the whole disciplinary proceedings cannot survive legal scrutiny, more so, considering the fact that the events which are the subject matter of the 2nd charge memo have taken place four years before the proceedings have been instituted against the petitioner. It is the further submission of the learned counsel that in the absence of resorting to Regulation 48 (2) of the Pension Regulation, the charge memo issued invoking Regulations 43 and 45 do not have legs to stand and, accordingly, the charge memo itself deserves to be struck down. It is the further submission of the learned counsel

for the petitioner that without resorting to Regulation 48 (2), imposing punishment on the petitioner by invoking Regulation 48 is wholly erroneous, perverse and shows clear non-application of mind.

9. It is the further submission of the learned counsel that all the events, which formed the basis for the issuance of the 2nd charge memo, subsequent to the retirement of the petitioner, have all taken place four years prior to the institution of the proceedings, which is only are they barred by limitation in view of Regulation 48 (2) of the Pension Regulations, but the 2nd charge memo cannot survive for the simple reason that for the very same set of charges, while the petitioner was in service, enquiry was taken up, which has resulted in the imposition of major penalty of reduction of basic pay by seven stages in the time scale of pay for the remaining period of service vide proceedings dated 27.07.2016. It is the contention on behalf of the petitioner that for the same set of charges for which the petitioner has already been punished, imposing punishment once again on the basis of a 2nd charge memo is nothing but an act of double jeopardy, which is wholly impermissible and, therefore, the impugned order deserves to be set aside.

10. It is the further submission of the learned counsel for the petitioner that the charge of grave misconduct, alleged against the petitioner, as forms the imputation in the charge sheet, could in no way be termed to be a grave misconduct necessitating the imposition of a punishment to withdraw part of the pension. It is the submission of the learned counsel that error of judgment in discharging the official function is *per se* not a misconduct and in the case on hand, even for the sake of argument if it is to be accepted that the act of the petitioner borders on misconduct, that could only be termed to be an error of judgment of the petitioner while discharging his duties in disbursal the loan and granting the subsidies, which cannot be brought within the ambit of grave misconduct warranting the imposition of punishment of withdrawal of pension.

11. Pointing about the above fallacies, learned counsel for the petitioner prays that very many infirmities and illegalities galore in the order passed by the 2nd respondent, which is in stark violation of the procedures prescribed under the Pension Regulations as well as the DA Regulations, which cannot survive legal

scrutiny and, therefore, the said order deserves to be set aside and this writ petition allowed.

12. In support of the aforesaid submissions, learned counsel for the petitioner placed reliance on the following decisions :-

i) *V.Chidambaram – Vs – General Manager/Disciplinary Authority & Ors. (MANU/TN/8245/2021); and*

ii) *Baljit Singh Handa & Ors. – Vs – Punjab & Sind Bank & Ors. – W.P. (C) No.2846/2017, etc. – Dated 01.02.2021);*

iii) *Naresh Kumar Goel – Vs – Syndicate Bank (W.P. (C) No. 8782/2019 – Dated 04.07.2022); and*

iv) *Arinder Singh Bedi – Vs – Punjab & Sind Bank & Ors. (CM-3466-CWP-2021 – Dated 19.07.2022)*

13. Per contra, learned standing counsel appearing for the respondents submit that the charges against the petitioner are essentially grave and serious in nature and the petitioner had indulged in fraudulent activities, thereby causing substantial financial as well as reputational loss to the respondents, which has been duly established in the enquiry, as is evident from the report of the enquiry

officer and this Court would normally not interfere with the said findings unless it is shown that it is perverse and illegal and in such a backdrop, this Court ought not to interfere with the punishment imposed on the petitioner by the disciplinary authority under the garb of judicial review.

14. It is the further submission of the learned standing counsel that limitation of four years for initiating a departmental proceedings as prescribed under Regulation 48 (2) of the Pension Regulations cannot be imported to Regulations 43 and 45, as the said regulations do not prescribe any time limit for withholding or withdrawal of pension for grave misconduct. It is the further submission of the learned standing counsel that the Articles of Charge issued to the petitioner pertains only to Regulations 43 and 45 and does not take within its fold Regulation 48. Such being the case, the order of penalty to withhold 30% of pension permanently cannot be said to be illegal, which is an order passed under Regulation 43 and there is no order to recover the pecuniary loss caused to the Bank, which is the essence of Regulation 48. It is also the submission of the learned standing counsel that some of the events are well within the period of

four years and even on that ground, without admitting, even for the sake of argument, Regulation 48 would stand attracted.

15. It is the further submission of the learned standing counsel that the order of imposition of penalty of withdrawal of pension by 30% permanently has not been passed under Regulation 48, but has been passed under Regulations 43 and 45. It is the further submission of the learned standing counsel that the argument placed on behalf of the petitioner that Regulations 43 and 45 should be read in conjunction with Regulation 48 is wholly misconceived, as Regulation 48 is applicable only in case of recovery of pecuniary loss caused, whereas the penalty of withholding or withdrawal of pension, as provided under Regulation 43 does not pertain to the recovery of pecuniary loss caused, but relates to punishment imposed for grave misconduct or fraudulent acts of the employee.

16. It is the further submission of the learned standing counsel that the limitation provided under Regulation 48 (2) is only for the purpose of initiating disciplinary proceeding, if pecuniary loss caused to the bank is sought to be recovered from the employee, while in service, so as to off-set the loss caused to

the bank by such fraudulent acts. Therefore, Regulations 43 and 45 are not required to be read in conjunction with Regulation 48.

17. It is the further submission of the learned standing counsel that Regulation 43 is a standalone provision, by which penalty can be imposed on the employee on being found guilty of a grave misconduct and Regulation 45 is the charging provision by which power is given to the competent authority to resort to disciplinary procedure under the DA Regulations for the purpose of granting a fair and reasonable opportunity to the pensioner. It is the further submission of the learned standing counsel that Regulations 43 and 48 both provides for withdrawal or withholding of pension and in addition to it, Regulation 48 provides for recovery of pecuniary loss from pension. If the submission of the petitioner is to be accepted, there would have been no necessity for providing punishment in both Regulations 43 and 48. Therefore, the object and intent of the law makers is clear from the construction and plurality of the provision and in the absence of any ambiguity in the language, literal interpretation ought to be given to the said provisions and, therefore, the contention of the petitioner that the limitation provided under Regulation 48 (2) would get extended to Regulation 43 and 45 as

well is wholly misconceived and misplaced. In this regard, learned standing counsel for the respondents drew the attention of this Court to the decision of the Constitution Bench of the Apex Court in ***Padma Sundara Rao – Vs – State of T.N. (2002 (3) SCC 533)***, wherein the Hon'ble Supreme Court has held that the court cannot read anything into a statutory provision which is plain and unambiguous.

18. It is the further submission of the learned standing counsel that even according to the articles of charge in the charge memo dated 24.5.2016 and the subsequent charge memo dated 18.7.2018, both relate to different set of facts and different events, as is evident from the articles of charge and, therefore, there arises no question of double jeopardy and the continuance of departmental proceedings against the petitioner on account of the 2nd charge memo cannot be said to be illegal or erroneous.

19. It is the further submission of the learned standing counsel that the petitioner has not questioned the 2nd charge memo on the applicability of Regulation 48, but had, with due diligence, participated in the enquiry and has

not raised a ground relating to clause (2) of Regulation 48 and that being the case, the petitioner cannot now come before this Court, after punishment has been imposed, and question the 2nd charge memo at this belated point of time as being impermissible and illegal on the question of limitation as provided for under Regulation 48 (2).

20. It is the further submission of the learned standing counsel that the decision of the learned single Judge of this Court in *Chidambaram's case (supra)* relied on by the learned counsel for the petitioner would not in any way further the case of the petitioner for the simple reason that the said order does not in any way speak as to how Regulations 43 and 45 lean on Regulation 48 so as to attract the issue of limitation. The said decision has merely said that Regulations 43 and 45 should be read in conjunction with Regulation 48 as all the aforesaid Regulations find place under Chapter IX – General Conditions. In this regard, learned standing counsel placed reliance on the decision of the Hon'ble Supreme Court in the case of ***Ramesh Chandra Sharma – Vs – Punjab National Bank & Anr. (2007 (9) SCC 15)*** to buttress his contention that Regulations 43 and 45 operate independently of Regulation 48 (2) and the limitation prescribed therefor

in Regulation 48 (2) cannot be the basis for injecting the limitation into Regulations 43 and 45.

21. In fine, it is the submission of the learned standing counsel that without questioning the validity and admissibility of the enquiry at the earliest point of time, participation of the petitioner with open eyes in the enquiry resultantly resulting in the order of withdrawal of pension by 30% passed by the 2nd respondent cannot be put in issue at this point of time, more so on the question of limitation, when Regulations 43 and 45 in no way leans on Regulation 48 and the said provisions being stand-alone provisions, operate independently of Regulation 48 and rightly the 2nd respondent has imposed the penalty, which cannot be held to be arbitrary, illegal or perverse and, therefore, no interference is warranted with the same.

22. This Court paid its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record as also the various decisions relied on behalf of the parties.

23. On the question relating to the power of this Court in dealing with matters by invoking its powers of judicial review, time and again, it has been held that the power of this Court is not ousted, but it should be exercised with caution and circumspection and that this Court should not sit in appeal over the decision of the disciplinary authority; rather, it is the duty of this Court to see whether there is an error in law, which can very well be corrected by the writ Court, but the Court is only precluded from correcting any error of fact. In ***Director General of Police, RPF & Ors. - Vs – Rajendra Kumar Dubey (C.A. No.3820/2020 dated 25.11.20)***, the Hon'ble Supreme Court, adverting to the various decisions of the Apex Court relating to the interference by the High Court in exercise of its writ jurisdiction with respect to disciplinary proceedings, held as under :-

> *"12.1 ...... It is well settled that the High Court must not act as an appellate authority, and re-appreciate the evidence led before the enquiry officer.*
>
> *We will advert to some of the decisions of this Court with respect to interference by the High Courts with findings in a departmental enquiry against a public servant.*
>
> *In **State of Andhra Pradesh v S.Sree Rama Rao**, a three judge bench of this Court held that the High Court under Article 226 of the Constitution is not a court of appeal over the decision of the authorities holding a departmental enquiry against a public*

servant. It is not the function of the High Court under its writ jurisdiction to review the evidence, and arrive at an independent finding on the evidence. The High Court may, however interfere where the departmental authority which has held the proceedings against the delinquent officer are inconsistent with the principles of natural justice, where the findings are based on no evidence, which may reasonably support the conclusion that the delinquent officer is guilty of the charge, or in violation of the statutory rules prescribing the mode of enquiry, or the authorities were actuated by some extraneous considerations and failed to reach a fair decision, or allowed themselves to be influenced by irrelevant considerations, or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion. If however the enquiry is properly held, the departmental authority is the sole judge of facts, and if there is some legal evidence on which the findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a writ petition.

These principles were further reiterated in the ***State of Andhra Pradesh v Chitra Venkata Rao****. The jurisdiction to issue a writ of certiorari under Article 226 is a supervisory jurisdiction. The court exercises the power not as an appellate court. The findings of fact reached by an inferior court or tribunal on the appreciation of evidence, are not re-opened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be* *corrected by a writ court, but not an error of fact, however grave it may be. A writ can be issued if it is shown that in recording the finding of fact, the tribunal has erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence. A finding of fact recorded by the tribunal cannot be challenged on the ground that the material evidence adduced before the tribunal is insufficient or inadequate to sustain a finding. The adequacy or sufficiency of evidence led on a point, and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the tribunal."*

(Emphasis Supplied)

24. From the ratio laid down above, it is implicitly clear that the Courts, in exercise of its power of judicial review, cannot extend the examination to the correctness of the act of the disciplinary authority, but only limit itself to the manner in which the decision has been arrived at by the authorities and whether the same is in accordance with law. This Court is to test only the correctness of the decision arrived at by the authorities on the basis of the evidence before it and not proceed with the case as if it is an appeal against the impugned order.

25. On the touchstone of the above principles laid down above, while this Court is conscious of its duties and responsibilities while exercising its powers of judicial review, is bound to point out that the issue in the present case is more on the question of law, particularly, with respect to the applicability of Regulations 43 and 45, which is to be read in conjunction with Regulation 48 (2), which is put in issue before this Court and, therefore, this Court is very well clothed with power and jurisdiction to dwell deep into the issue.

26. Before proceeding to analyse the issue with regard to the decisions, which have been relied upon by the learned counsel for the petitioner with regard to the applicability of Regulation 48 (2) as a bar for proceeding against the petitioner, the relevant provisions of the Pension Regulations and the DA Regulations, which forms the basis of the charge, requires to be adverted to for better appreciation of the case.

27. The charges have been framed against the petitioner by invoking Regulations 43 and 45 of the Pension Regulations r/w Regulation 6 of the DA Regulations and they are quoted hereunder for proper appreciation :-

*“**<u>Pension Regulations</u> :-***

***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 prima facie guilty of grave misconduct, it shall, before passing an order, follow the procedure specified in Syndicate Bank Officer Employees’ (Discipline and Appeal) Regulations, 1976 or in Settlement as the case may be.”*

<u>DA Regulations</u> :-

6. Procedure for imposing Major penalties :

1) No order imposing any of the Major Penalties specified in Clauses (g), (g), (h), (i) and (j) of Regulation 4 shall be made except after an inquiry is held in accordance with this Regulation.

* * * * * * *”

28. Though the charges have been framed under Regulations 43 and 45 of Pension Regulations, however, the petitioner bases his claim case on clause (2) of Regulation 48 of the Pension Regulation to contend that no departmental proceeding could be instituted against the pensioner in respect of an event which took place more than four years prior to the institution of such departmental proceeding. For better appreciation, Regulation 48 of the Pension Regulation is quoted hereunder :-

*"**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 order 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 proceeding, 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 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 a rate exceeding 1/3rd of the 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".

29. In the light of the provisions aforesaid, while it is the stand of the petitioner that Regulations 43 and 45 are not stand-alone provisions and they lean on Regulation 48 and in such a scenario, no departmental proceeding can be initiated in respect of an event which took place more than four years before such institution, however, it is countered by the respondents by contending that Regulations 43 and 45 are stand-alone provisions and they have no leaning over

Regulation 48 for the reason that Regulation 48 only pertains to recovery of pecuniary loss caused to the bank and if any pecuniary loss suffered by the bank is sought to be recovered, then in such a scenario, no departmental proceedings could be initiated in respect of any event which took place more than four years before such institution and if not, then there is no necessity to advert to the provisions under Regulation 48.

30. Reliance is placed on the decision of a learned single Judge of this Court in *V.Chidambaram's case (supra)*, by the petitioner, wherein the learned single Judge has held that Regulations 43 and 45 should be read in conjunction with Regulation 48 and that the departmental proceedings, as provided under clause (2) of Regulation 48 does not restrict itself only to Regulation 58. In the aforesaid context, it has been held as under :-

> *"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 MANU/SC/0942/2016 : 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 levelled 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."

31. Similar view has resurfaced at the hands of the learned single Judge of the Delhi High Court in *Baljit Singh Handa's case (supra)* in which as well, it has been held that the provision under Regulation 43 and 48 run parallel and, therefore, necessarily clause (2) of Regulation 48 requires to be fulfilled. In the said context, it has been held as under :-

> ***"****73. Mr. Singh is justified in relying upon the Judgment of this Court in the case of Harpreet Singh Makkar (supra) wherein in Para 9, while dealing with Regulation 48 of the Pension Regulations this Court has held as under:*
>
> > *"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, W.P.(C) 2846/2017 and connected matters Page 53 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."

32. In the wake of the aforesaid decisions, it is the stand on behalf of the petitioner that no departmental proceedings having been instituted in respect of an event which took place more than four years before such institution, the present proceedings initiated which has culminated in the punishment is bad and the imposition of punishment of by invoking Regulations 43, 45 and 48 of the Pension Regulations is wholly arbitrary, perverse and unsustainable.

33. To maintain judicial decorum, the Courts are normally required to follow the ruling of a coordinate Bench of even composition. In the case on hand, the decisions referred to supra have held that Regulations 43 and 45 are to be read in conjunction with Regulation 48 (2), by holding that Regulation 43 and 45 are not stand-alone provisions, but lean on Regulation 48 (2). However, the order in *V.Chidambaram's case* is bereft of proper reason as to how Regulation 48 (2) conjuncts Regulation 43 and 45 so as to enforce Regulation 48 (2) over Regulation 43 and 45. It merely records that Regulations 43 and 45 should be read in conjunction with Regulation 48 (2) without in any way explaining the legal reasoning for arriving at such a finding. Further, the decision of the Delhi High

Court on similar lines only has persuasive value and that cannot be termed to be a binding precedent for this Court to act upon. In such view of the matter, this Court is duty bound to analyse Regulations 43, 45 and 48 to find out whether Regulation 43 and 45 would be exclusive of Regulation 48 (2) or is it an inclusive provision, which cannot survive without the aid of Regulation 48 (2).

34. Regulations 43, 45 and 48 have already been extracted above and all the abovesaid provisions fall within the General Conditions as provided for under Chapter IX of the Pension Regulations. A perusal of Regulation 43 and 45 reveals that while Regulation 45 is the charging provision in and by which action can be taken on a pensioner by the competent authority, Regulation 43 is the punishing provision in and by which punishment can be inflicted on a pensioner upon the charges being proved. However, insofar as Regulation 48 is concerned, clause (2) of Regulation 48 is the charging provision, whereas clause (1) of Regulation 48 is the punishing provision and it is a concise and closed provision, which caters to charging as well as punishing a pensioner for any delinquency. This is clear from the manner in which Regulation 48 is drafted, in that Regulation 48 starts with open quotes at clause (1) and the quote closes with the proviso to clause (3).

35. Further, a careful perusal of Regulation 43 reveals that the same pertains to withholding or withdrawal of pension, which can be ordered by the competent authority, by an order in writing, whether permanently or for a specified period, on a pensioner, who stands convicted of a serious crime or criminal breach of trust or forgery or acting fraudulently or is found guilty of grave misconduct. Regulation 45 pertains to the procedure to be followed by the competent authority, upon arriving at a *prima facie* satisfaction, as to the guilt of a pensioner for a grave misconduct, as specified in the DA Regulations or Settlement as the case may be.

36. On a conjoint reading of Regulation 43 and 45, it transpires that upon *prima facie* satisfaction as to the guilt of a pensioner, invoking Regulation 45, the competent authority is bound to follow the procedure specified in the DA Regulations or the Settlement as the case may be and, thereafter, the outcome of the same would result in the invocation of Regulation 43.

37. Regulation 48 also falls under the General Conditions under Chapter IX as Regulations 43 and 45, but it specifically pertains to the *Recovery of Pecuniary loss caused to the Bank*. While Regulation 43 and 45 is not specific with regard to the nature of the delinquency and only imposes punishment of withdrawal or withholding of pension of the pensioner for a particular period of time or permanently, however, Regulation 48 is specific, in that, not only punishment is provided for to be imposed on the pensioner, but the loss caused by the pensioner, while in the service of the bank could be recovered from the pension payable to the pensioner.

38. Clause (1) of Regulation 48 clothes the competent authority to withhold or withdraw 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. Provisio to clause (1) provides that before any order is passed, the Board shall be consulted and that the departmental proceedings, if instituted while the

employee was in service, shall, after retirement of the employee, be deemed to be proceedings under the Pension Regulations and shall be continued and concluded by the authority which commenced the same in the manner as if the employee had continued in service.

40. The main plank on which the petitioner bases his case, at the risk of repetition, is mainly on clause (2) of Regulation 48, which stipulates that 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 institution and proviso therein also provides 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. Therefore, it is the contrite stand of the petitioner that the events, which has culminated in the charges having taken place four years before the initiation of the department proceedings, no departmental proceedings could be initiated. Clause (3) of Regulation 48 clothes the competent authority with power to recover the pecuniary loss from pension at a prescribed rate.

41. Reading Regulation 45 and 48 in tandem, which provisions provide for conduct of enquiry, both the provisions provide for following a different procedure insofar as conduct of departmental proceeding is concerned. Regulation 48 provides for following the procedure prescribed under the DA Regulations with respect to the proceedings initiated while the pensioner was in service and on and from retirement, the proceedings would be deemed to be proceedings under the Pension Regulations, whilst Regulation 45 provides for procedure provided in the DA Regulations to be followed with no provision to deem the proceedings to be continued under the Pension Regulations at any point of time, meaning thereby that both the provisions operate in different fields.

42. What is conspicuously present in both Regulations 45 and 48 is a prescribed procedure, which is to be followed in the event a departmental proceeding is sought to be initiated against a pensioner for certain acts of omission and commission, which is prescribed in the aforesaid provisions.

43. However, one aspect, which disjuncts Regulation 45 from 48 to make it a stand alone provision is that in respect of Regulation 45, the competent authority has to arrive at a *prima facie* opinion as to the guilt of the pensioner of grave misconduct, which is not only absent in Regulation 48, but for a departmental proceeding to be initiated under Regulation 48, the mandate provided under clause (2) therein should be fulfilled.

44. Such being the case, a *prima facie* opinion arrived at by the competent authority in Regulation 45 cannot be imported into Regulation 48 inasmuch as the competent authority, upon forming a *prima facie* opinion, shall resort to disciplinary proceedings under the DA Regulations in Regulation 45, but it is not the case with regard to initiation of departmental proceedings under Regulation 48 (2).

45. Furthermore, one aspect, which is pertinent to be observed is that Regulation 48 concerns recovery of pecuniary loss caused to the bank in which the competent authority is clothed with power not only withhold or withdraw pension of the pensioner permanently or for a specified period but can also order

recovery from pension to cover the pecuniary loss caused to the bank. However, such is not the case insofar as Regulation 43 is concerned, which permits the competent authority only to withhold or withdraw pension upon the pensioner being found guilty of acts, which have been specified under Regulation 43. But that alone is not the case. While invoking Regulation 43, the competent authority could withdraw or withhold pension of a pensioner, however, under Regulation 48, if punishment provided for is sought to be imposed, including recovery from pension, then the competent authority is bound to consult the Board and obtain approval before passing such an order. Therefore, by no stretch, could it be presumed or held that Regulations 43 and 45 leans on Regulation 48 so as to attract the rigours provided for under Regulation 48 (2). Importing Regulation 48 (2) to Regulations 43 and 45 to hold that in the event of non-compliance of clause (2) of Regulation 48 would in effect bar the bank from taking any action against a pensioner, who had committed fraud and grave misconduct during the tenure of service, would be nothing but a premium being granted to the pensioner to go scot-free, unmindful of the mishandling and misuse of public money for the fraudulent deeds committed by the pensioner.

46. In this regard, useful reference could be had to the decision of the Hon'ble Supreme Court in *Padma Sundara Rao's case (supra)*, wherein, the Hon'ble Apex Court has held as under :-

> *"The rival pleas regarding re-writing of statute and casus omissus need careful consideration. It is well settled principle in law that the Court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent. The first and primary rule of construction is that the intention of the Legislation must be found in the words used by the Legislature itself. The question is not what may be supposed and has been intended but what has been said. "Statutes should be construed not as theorems of Euclid". Judge Learned Hand said, "but words must be construed with some imagination of the purposes which lie behind them". (See Lenigh Valley Coal Co. v. Yensavage 218 FR 547). The view was re-iterated in Union of India and Ors. V. Filip Tiago De Gama of Vedem Vasco De Gama (AIR 1990 SC 981).*
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> *14. While interpreting a provision the Court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary. [See Rishabh Agro Industries Ltd. Vs. P.N.B. Capital Services Ltd. (2000 (5) SCC*

515)]. `The legislative casus omissus cannot be supplied by judicial interpretative process. Language of Section 6 (1) is plain and unambiguous. There is no scope for reading something into it, as was done in Narasimhaiah's case (supra). In Nanjudaiah's case (supra), the period was further stretched to have the time period run from date of service of High Court's order. Such a view cannot be reconciled with the language of Section 6 (1). If the view is accepted it would mean that a case can be covered by not only clauses (i) and/or (ii) of the proviso to Section 6 (1), but also by a non-prescribed period. Same can never be the legislative intent.

15. Two principles of construction one relating to casus omissus and the other in regard to reading the statute as a whole appear to be well settled. Under the first principle a casus omissus cannot be supplied by the Court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the Legislature. "An intention to produce an unreasonable result", said Danckwerts, L.J., in Artemiou v. Procopiou (1966 1 QB 878), "is not to be imputed to a statute if *there is some other construction available". Where to apply words literally would "defeat the obvious intention of the legislation and produce a wholly unreasonable result" we must "do some violence to the words" and so achieve that obvious intention and produce a rational construction. [Per Lord Reid in Luke v. I.R.C. (1966 AC 557) where at p. 577 he also observed: "this is not a new problem, though our standard of drafting is such that it rarely emerges".] "*

(Emphasis Supplied)

47. From the above decision it is manifestly clear that all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision make a consistent enactment of the whole statute.

48. Further, the word *'and'* occurring between withhold or withdrawal of pension and order of recovery from pension clearly establishes that recovery of pecuniary loss is the pivot in Regulation 48, while it is not so in Regulation 43, which merely provides for withdrawal or withholding of pension by the competent authority. In the case on hand, as already aforesaid, Regulation 48

pertains to *recovery of pecuniary loss caused to the bank* and, therefore, in that context, the other clauses in the said provision should be looked at. That could be the only reason why Regulations 43 and 48 provides for similar punishment with an addition in Regulation 48 providing for recovery from pension. The intention of the law makers is writ large in providing similar punishment in both the Regulations with an additive factor in Regulation 48 and placing it under the heading *"Recovery of Pecuniary Loss caused to the Bank"* and, therefore, necessarily, the mandates provided under Regulation 48 would govern the context under which the clauses are placed and it cannot be imported to the other Regulations. This clearly shows that Regulations 43 and 48 are exclusive and does not require the support of the other in any manner.

49. In effect, while Regulation 48 is a stand-alone provision which caters to both imposition of punishment in the form of withdrawal or withholding of pension as also recovering the loss caused to the bank from the pension of the pensioner, Regulations 43 and 45 are dependent on each other, as one being the charging provision and the other being the punishing provision, which enables the competent authority to impose punishment on the pensioner in the form of

withholding or withdrawal of pension alone with no strings attached with regard to recovering the loss caused by the act of a pensioner.

50. Further, as already aforesaid, one other thing, which is very much conspicuous in Regulation 48 is the proviso to clause (1) of Regulation 48, which provides that the before any order is passed, the Board shall be consulted, meaning thereby that even for the purpose of passing any order withholding or withdrawal of pension and also for recovery from pension, the Board requires to be consulted, but such is not the case with Regulation 43 which provides for withholding or withdrawal of pension, which can be passed by the competent authority without reference to the Board. Therefore, rendering a finding that Regulations 43 and 45 have to be read in conjunction with Regulation 48 is a gross misinterpretation and is very much against the ratio laid down by the Hon'ble Apex Court in *Padma Sundara Rao's case*.

51. Be that as it may. This Court would now turn back to the DA Regulations, which provides the procedure for imposition of major penalties. Regulation 6 of the DA Regulations provides the procedure for imposing major

penalties of which clause (1) of the said Regulation stipulates that no major penalty shall be imposed, which is specified in clauses (f), (g), (h), (i) and (j) of Regulation 4 except after conduct of an inquiry in accordance with the DA Regulations. From the above, it is evident that on the competent authority coming to a *prima facie* satisfaction as to the pensioner having committed a grave misconduct as provided under Regulation 43 of the Pension Regulation, has to resort to the procedure provided for under Regulation 6 of the DA Regulations by conducting an enquiry, whereinafter only, the competent authority can invoke Regulation 43 of the Pension Regulation to impose punishment on the pensioner by withholding or withdrawal of pension either for a specified time or permanently. However, for the purpose of imposing punishment provided under Regulation 43, there is no necessity for the competent authority to consult the Board before passing any order.

52. In this backdrop, Regulation 48 (2) requires to be looked into to ascertain whether the non-initiation of departmental proceedings on the pensioner within four years of the happening of an event, would bar initiation of the disciplinary proceedings by the employer under all circumstances irrespective

of the nature of the punishment that would be imposed on the pensioner upon conclusion of the proceeding.

53. As already stated above, Regulation 48 relates to recovery of pecuniary loss caused to the Bank, wherein clause (2) mandates that 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 institution. Though clause (2) of Regulation 48 starts with the words *"No departmental proceedings"*, however, what is to be seen is the heading under which the said provision stands. It falls under the heading *"Recovery of Pecuniary loss caused to the Bank"*. In effect, it means that only if the competent authority intends to recover the pecuniary loss caused to the bank by the act of the pensioner while in service, the competent authority could resort to Regulation 48 and in such a situation clause (2) of Regulation 48 would get attracted. Therefore, if a departmental proceedings is to be initiated for the purpose of recovering the pecuniary loss caused to the bank from the pension of the erstwhile employee, then in such a scenario, it should be instituted within a period of four years from the date on which the event took place and any period

beyond four years from the date on which the event took place, no departmental proceeding could be initiated. Further, if such a departmental proceeding is initiated, before any order is passed either for withholding or withdrawing the pension and also an for order of recovery from pension, the Board shall be consulted by the competent authority before passing any order.

54. However, if the intention of the competent authority is not to recover, from pension, the pecuniary loss caused to the bank, there is no necessity for the competent authority to resort to Regulation 48 and the competent could very well resort to Regulation 45 and in such circumstances, departmental proceedings could be initiated by following the procedure prescribed under the DA Regulations and subject to the outcome of the enquiry, the competent authority can pass orders under Regulation 43 without resorting for any consultation with the Board. In the aforesaid scenario, by no means could Regulation 43 and 48 be read in conjunction and both the Regulations stand in isolation and are to be invoked in the scenarios, which the competent authority decides, subject to what the competent authority intends to do on the outcome of the proceedings, if any, initiated against the pensioner.

55. In *V.Chidambaram's case*, the learned Judge has not dealt with the interpretation of the provisions, but has merely held that Regulations 43 and 45 should be read in conjunction with Regulation 48 without elaborating as to how both the provisions could be conjuncted. However, merely on the strength of the wordings in Regulation 43, which is almost similar to the wordings in Regulation 48, learned single Judge had gone on a tangent and held that Regulation 43 and 45 should be read in conjunction with Regulation 48, which has resulted in rendering a finding which fails to address all the provisions in the Pension Regulations in proper perspective resulting in an erroneous interpretation of the aforesaid Regulations. The decision in and *Baljit Singh Handa's case (supra),* which only has persuasive value and traverses the path as taken in *V.Chidambaram's case (supra)* cannot be the basis for this Court to render a finding on similar lines.

56. Further, it is to be pointed out that pursuant to the 2nd charge memo, the petitioner had also partaken in the enquiry in which the petitioner has not taken any stand with regard to the legality of the enquiry, which has led to the

submission of the enquiry report, whereinafter, the impugned order has come to be passed. The petitioner having submitted himself to the enquiry and not having questioned the same at the earliest point of time cannot, at a belated stage, more particularly after his unsuccessful attempt to come out unscathed in the enquiry, come before this Court and claim that the enquiry was illegal, as the mandate provided under Regulation 48 (2) has not been complied.

57. One other aspect, which has been stressed before this Court is that the 2nd charge sheet dated 18.07.2018 reveals that the charges have been framed under Regulations 43 and 45 of the Pension Regulations r/w Regulation 6 of the DA Regulations, meaning thereby, that disciplinary proceedings have been initiated by invoking Regulation 45 of Pension Regulation r/w Regulation 6 of the DA Regulations. This Court, supra, has already held that there is no embargo for the competent authority in inflicting the punishment under Regulation 43 for the charges framed under Regulation 45 of the Pension Regulation r/w Regulation 6 of the DA Regulations for withholding/withdrawal of pension, there being no punishment imposed for recovering the pecuniary loss suffered by the bank from the pension, which alone would attract Regulation 48 of the Pension Regulation.

However, a perusal of the order impugned herein reveals that while imposing punishment, erroneously and without proper application of mind, the competent authority has also roped in Regulation 48 of the Pension Regulation. As already aforesaid, Regulation 48 could be invoked for imposing punishment only after the Board has been consulted. However, in the case on hand, withdrawal/withholding of pension has been passed by the competent authority without reference to the Board, meaning thereby, that Regulation 48 of the Pension Regulation has not been resorted to. However, as aforesaid, erroneously Regulation 48 has been mentioned in the order while imposing the punishment of withdrawal/withholding of pension permanently. The said erroneous inclusion of Regulation 48 in the operative portion of the order imposing punishment would not in any way affect the punishment imposed on the petitioner as the proceedings have not been initiated under Regulation 48. Therefore, this Court makes it clear that the punishment imposed on the petitioner by the 2nd is only in relation Regulations 43 and 45 of Pension Regulations and not under Regulation 48 of the Pension Regulations.

58. For the reasons aforesaid, this Court is of the considered view that there is no illegality or perversity in the order passed by the 2^{nd} respondent and the impugned order insofar as it imposes the punishment of withholding/withdrawal of 30 % of the pension of the petitioner permanently under Regulations 43 and 45 does not require any interference at the hands of this Court.

59. Accordingly, this writ petition fails and the same is dismissed. There shall be no order as to costs. Consequently connected miscellaneous petitions are closed.

06.02.2023

Index : Yes / No

GLN

To

1. The General Manager (Personnel Dept.)
   Canara Bank,
   Head Office, J.C.Road
   Bangalore – 01.

2. The General Manager (HR)/

Competent Authority, Syndicate Bank
Corporate Office
Bangalore.

M.DHANDAPANI, J.

GLN

PRE-DELIVERY ORDER IN
W.P. (MD) NO.7785 OF 2020

Pronounced on
06.02.2023