243

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.8991 of 2018 (O&M)
Date of decision : 17.01.2023

Varinder Kalia ....Petitioners

Versus

Punjab Gramin Bank and another ....Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Anil Ghanghas, Advocate for
Mr. Vipin Mahajan, Advocate
for the petitioner.

Mr. Bhushan Bhatia, Advocate
for the respondents.

PANKAJ JAIN, J.

Varinder Kalia, the petitioner seeks writ in the nature of certiorari for quashing of order dated 30th of January, 2018 passed by respondent No.2 and the chargesheet served upon the petitioner vide Annexures P-3 and P-4.

2. Petitioner was serving as officer in the respondent-Bank and earned promotions to become Manager. He was appointed on 8th of January, 1985 and was due to retire on attaining the age of superannuation on 31st of January, 2018. 31st of January, 2018 being holiday on account of Guru Ravi Dass Jayanti he was relieved on 30th of January, 2018. Before the petitioner could be relieved he was

served with the order of suspension on 30th of January, 2018 itself. Suspension order has been placed on record as Annexure P-1. Thereafter, Chargesheet was served upon the petitioner on 23rd of March, 2018. Counsel for the petitioner asserts that from the Regulations governing the service condition of the petitioner, it is evident that the disciplinary proceedings against the petitioner cannot be initiated after his retirement as on 30th of January, 2018 there was no chargesheet pending against the petitioner. He submits that merely service of suspension order (Annexure P-1) will not have an effect of disciplinary proceedings against the petitioner and, thus, service of chargesheet on the petitioner after he retired from the services cannot be sustained. In support of his contention, counsel for the petitioner relies upon law laid down in **UCO Bank and another vs. Rajinder Lal Capoor, (2008) 5 SCC 257**.

3. Per contra, counsel for the respondents submits that a bare perusal of suspension order (Annexure P-1) would reveal that the petitioner was placed under suspension on 30th of January, 2018 in token of disciplinary proceedings against him and the chargesheet was to follow which was served upon him on 23rd of March, 2018. He, thus, submits that the order of suspension dated 30th of January, 2018 (Annexure P-1) has an effect on initiation of departmental

proceedings against the petitioner and the same are fully covered under Regulations 45 and 46 of the Punjab Gramin Bank (Officers and Employees) Service Regulations, 2010. In order to hammerforth his contention, counsel for the respondents relies upon judgment passed by Apex Court in **Civil Appeal No.2949 of 2014 titled as United Bank of India vs. Bachan Prasad Lall** to submit that merely because an employee stood superannuated during the pendency of the proceedings, the same shall not have an effect of absolving him from the misconduct which he had committed in discharge of his duties.

4. I have heard counsel for the parties and have gone through the records of the case.

5. In the considered opinion of this Court, the questions that arise for consideration are -

(i) Whether order of suspension dated 30th of January, 2018 passed against the petitioner amounts to initiation of inquiry proceedings against him?

(ii) Whether the inquiry proceedings could be initiated against the petitioner after his retirement ?

6. In order to answer aforesaid two questions it will be apt to peruse the relevant regulations contained in Regulations No.45 and 46 of the Punjab Gramin Bank (Officers and Employees) Service

Regulations, 2010, which read as under :-

> **45. Disciplinary proceedings after retirement**.-
>
> (1) An officer or employee who is under suspension on a charge of misconduct and who attains the age of superannuation shall be deemed to be in service even after the age of superannuation for the specific purpose of continuation and conclusion of the disciplinary proceedings and issue of final orders thereon.
>
> (2) The officer or employee who is under suspension shall not be eligible for any subsistence allowance for the period beyond the date of superannuation.
>
> (3) The officer or employee against whom disciplinary proceeding has been initiated shall cease to be in service on the date of superannuation but disciplinary proceeding shall continue as if he was in service until the proceedings are concluded and final order is passed in respect thereof.
>
> (4) The officer or employee against who disciplinary proceeding has been initiated shall not receive any pay an/or allowances after the date of superannuation and also not be entitled for the payment of retirement benefits till the proceeding is completed and final order is passed thereon except his own contribution to Contributory Provident Fund (CPF).
>
> Explanation : For the purpose of this regulation, the normal retirement benefits such as encashment of privilege leave and Gratuity may be withheld till the completion of the disciplinary prceeding and passing of final order by the Competent Authority and the release of benefits shall be as per the final order of the competent Authority.
>
> **46. Suspension.-** An officer or employee may be placed under suspension by the competent Authority and during such

suspension period, the officer or employee shall be entitled for the following subsistence allowance, namely,-

1. In case of an officer:

(A) Basic Pay

(i) For the first three months of suspension, one third (1/3) of the basic pay which the officer was drawing on the date prior to the date of suspension irrespective of the nature of enquiry.

(ii) For the subsequent period,-

(a) where the enquiry is held departmentally by the bank, one half (½) of the basic pay the officer was drawing on the date prior of the date of suspension;

(b) Where the enquiry is held by an outside agency, one third (1/3) of the basic pay of the next three months and one half (½) of the remaining period of suspension;

(**B**) Allowances:

For the entire period of suspension, dearness allowance and other allowances excepting special allowance, if any, will be calculated on the reduced pay as specified in terms (i) and (ii) of clause (A) of sub-regulation (1) of regulation 46 as the prevailing rates or at rates applicable to similar category of officers.

2. Employee:

(**A**) Basic Pay

(i) For the first three months of suspension, one third (1/3) of the basic pay which the officer was drawing on the date prior to the date of suspension irrespective of the nature of enquiry

(ii) For the subsequent period, -

(a) where the enquiry is held departmentally by the bank, one half (½) of the basic pay the officer was drawing on the date prior of the date of suspension;

(b) After one year, full pay if the departmental enquiry is not delayed for reasons attributable to the concerned employee or any of his representative(s);

(c) Where the enquiry is held by an outside agency, and said agency has come to the conclusion not to prosecute the employee, full pay shall be payable after six months from the date of receipt of report of such agency or one year after suspension, whichever is later, and in the event the enquiry is not delayed for reasons attributable to the employee or any of his representative(s).

(**B**) Allowances :

For the entire period of suspension, dearness allowance and other allowances excepting special allowance, if any, will be calculated on the reduced pay as specified in items (i) and (ii) of clause (A) of sub-regulation (1) of regulation 46 as the prevailing rates or at rates applicable to similar category or employees:

Provided that no officer or employee shall be entitled to receive payment of subsistence allowance unless he furnishes a declaration that he is not engaged in any other employment, business, profession or vocation:

Provided further that if during the period of suspension an officer or employee retired by reason of his attaining the age of superannuation, no subsistence allowance shall be paid to him from the date of his retirement."

7. A bare perusal of Regulation No. 45 which has been put in service by the respondents justifying their action of continuing disciplinary proceedings against the petitioner itself contemplates the situation where an employee or officer is under suspension on a charge of misconduct and who attains the age of superannuation. Meaning thereby that on the day the employee/officer attains age of

superannuation there should be a charge of misconduct against him in order to invoke Regulation No.45. Admittedly, no chargesheet was pending against the petitioner on 30th of January, 2018 i.e. the day he was relieved on having attained the age of superannuation. The issue w.r.t. the date of initiation of the departmental proceedings against an employee in law is no more *res integra* and is covered by law laid down by Apex Court in the case of **Union of India etc. vs. K.V. Jankiraman etc, AIR 1991 SC 2010**, followed further in **Dilip S. Dahanukar vs. Kotak Mahindra Co. Ltd. and another, 2007(2) RCR (Criminal) 636** and further followed **in UCO Bank & Anr. vs. Rajinder Lal Capoor (supra)** wherein Apex Court held as under :-

> "18. The fact that charge-sheet was issued only on 13.11.98 was not in dispute. It also stands admitted that the respondent attained the age of superannuation on or before 01.11.1996. Disciplinary Proceedings admittedly were initiated against the respondent in terms of Regulation 20 (3) (iii) of UCO Bank Officer Employees Services Regulations, 1979 which reads as under:
>
>> "The officer against whom disciplinary proceedings have been initiated will cease to be in service on the date of superannuation but the disciplinary proceedings will continue as if he was in service until the proceedings are concluded and final order is passed in respect thereof. The concerned officer will not receive any pay and/or allowance after the date of superannuation. He will also not be entitled for the payment of retirement benefits till the proceedings are competed and final order is passed

thereon except his own contributions to CPF."

19. A bare perusal of the said provision would clearly show that by reason thereof a legal fiction has been created. We are not oblivious of the legal principle that a legal fiction must be given full effect but it is equally well-settled that the scope and ambit of a legal fiction should be confined to the object and purport for which the same has been created.

20. ***In Dilip S. Dahanukar v. Kotak Mahindra Co. Ltd. and Anr. [2007 (5) SCALE 452]***, it was observed :

> "46.Legal fiction, it is well-settled, must be construed having regard to the purport of the statue. {See ***Sadashiv Dada Patil vs. Purushottam Onkar Patil (D) By Lrs. [2006 (10) SCALE 21]; M.P. State Electricity Board vs. Union of India & Ors. [2006 (9) SCALE 194]; Maruti Udyog Ltd. vs. Ram lal & Ors. [(2005) 2 SCC 638]; Bharat Petroleum Corpn. Ltd. vs. P. Kesavan & Anr. [(2004) 9 SCC 772]}***"

21. The aforementioned Regulation, however, could be invoked only when the Disciplinary Proceedings had clearly been initiated prior to the respondent's ceases to be in service. The terminologies used therein are of seminal importance. Only when a disciplinary proceeding has been initiated against an officer of the bank despite his attaining the age of superannuation, can the disciplinary proceeding be allowed on the basis of the legal fiction created thereunder, i.e., continue "as if he was in service". Thus, only when a valid departmental proceeding is initiated by reason of the legal fiction raised in terms of the said provision, the delinquent officer would be deemed to be in service although he has reached his age of superannuation. The departmental proceeding, it is trite law, is not initiated merely by issuance of a show cause notice. It is initiated only when a chargesheet is issued (See ***Union of India etc. etc. v. K.V. Jankiraman, etc. etc. reported in AIR 1991 SC***

2010). This aspect of the matter has also been considered by this Court recently in ***Coal India Limited & others v. Saroj Kumar Mishra [2007 (5) SCALE 724]*** wherein it was held that date of application of mind on the allegations levelled against an officer by the Competent Authority as a result whereof a chargesheet is issued would be the date on which the disciplinary proceedings said to have been initiated and not prior thereto. Pendency of a preliminary enquiry, therefore, by itself cannot be a ground for invoking Clause 20 of the Regulations. Albeit in a different fact situation but involving a similar question of law in Coal India Ltd. (supra) this Court held :

> "13. It is not the case of the appellants that pursuant to or in furtherance of the complaint received by the vigilance department, the competent authority had arrived at a satisfaction as is required in terms of the said circulars that a chargesheet was likely to be issued on the basis of a preliminary enquiry held in that behalf or otherwise.
>
> 14. The circular letters issued by the appellants put restrictions on a valuable right of an employee. They, therefore, are required to be construed strictly. So construed there cannot be any doubt whatsoever that the conditions precedent contained therein must be satisfied before any action can be taken in that regard."

It was further more observed that :

> "20. A departmental proceeding is ordinarily said to be initiated only when a chargesheet is issued."

(See also ***Union of India v. Sangram Keshari Nayak 2007 (6) SCALE 348***)

22. Respondent, therefore, having been allowed to superannuate, only a proceeding, *inter alia*, for withholding of his pension under the Pension Regulations could have been initiated against the respondent. Discipline and Appeal Regulations were, thus not

> attracted. Consequently the chargesheet, the enquiry report and the orders of punishment passed by the Disciplinary Authority and the Appellate Authority must be held to be illegal and without jurisdiction."

8. In view of the aforesaid circumstances, this Court has no hesitation in holding that in the absence of chargesheet pending as on 30th of January, 2018, condition precedents for invoking Regulation 45 is not satisfied and any chargesheet subsequent to the same cannot have an effect of creating a legal fiction wherein the petitioner can be said to be in service for continuation of disciplinary proceedings against him to justify the action of respondents.

9. In view of the aforesaid facts, the present writ petition is allowed. Chargesheet initiated vide Annexures P-3 and P-4 is ordered to be quashed and the impugned order (Annexure P-1) placing the petitioner under suspension cannot be said to have an effect of placing the petitioner under suspension with an intent to continue disciplinary proceedings against him as on the said date there was no disciplinary proceedings pending against the petitioner in the absence of any chargesheet.

10. Respondents are directed to release retiral benefits of the petitioner along with interest @ 6% per annum, within a period of

three months from the date of receipt of certified copy of this order.

January 17, 2023 **(PANKAJ JAIN)**
Dpr **JUDGE**

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No