IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA-370-2018 (O&M)
Date of Decision: 23.02.2023

Punjab and Sind Bank and others **....Appellants.**

Versus

Virinder Pal Singh **...Respondent.**

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CORAM: HON'BLE MR. JUSTICE M.S. RAMACHANDRA RAO
HON'BLE MRS. JUSTICE SUKHVINDER KAUR

....

Present: Mr. R. Kartikeya, Advocate and
Ms. R. Akanksha, Advocate
for the appellants.

Mr. H.C. Arora, Advocate and
Ms. Sunaina, Advocate
for the respondent.

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M.S. RAMACHANDRA RAO, J.(Oral)

The instant LPA has been preferred by the appellants against the judgment dt. 28.07.2017 passed in CWP-12865-2014 by the learned Single Judge.

The respondent in the appeal was employed in the appellant-bank and a disciplinary action, by issuing a show cause notice, was initiated on 15.04.2011 on the allegations of certain irregularities alleged to have been committed in respect of grant of term loans etc.

During the pendency of the said disciplinary proceedings, the respondent attained the age of superannuation and retired from service on 30.09.2011.

Notwithstanding the said superannuation, the disciplinary proceedings ended in the imposition of penalty of reduction by three stages in the time scale of pay on permanent basis on 15.06.2013.

The respondent challenged the same by filing the appeal before the Appellate Authority, but the appeal also failed and was rejected on 19.04.2014.

Thereafter, the respondent preferred CWP-12865-2014, wherein he contended that such a penalty could not have been imposed upon him because he had already attained the age of superannuation and such penalty can only be imposed on serving employee of the bank.

The appellant-bank opposed grant of relief to him and contended that Regulation 48 empowered the disciplinary authority to proceed with the inquiry and to impose penalties including recovery, if any, of loss caused to the bank. Reliance was placed on Regulation 20(3)(iii) of the Punjab and Sind Bank (Officers) Service Regulation, 1982. It was, therefore, contended that there was no infirmity in the order of the disciplinary authority as well as the Appellate Authority.

The learned Single Judge agreed with the contentions of the respondent and held that since he retired from service on 30.09.2011, the penalty of reduction of pay by three stages imposed on 15.06.2013, after his retirement, could not have been imposed by the appellant-bank. Learned Single Judge interpreted Regulation 2 of the Punjab and Sind Bank (Officers) Service Regulation, 1982, as making the said Regulation applicable only to officers were still in service of the bank and not otherwise. Learned Single Judge, therefore, directed the appellant-bank to issue a fresh show cause notice for the purpose of taking action against the respondent under the Punjab and Sind Bank (Employees') Pension Regulations, 1995 and set aside the order dt.15.06.2013 imposing the penalty of reduction in three stages of pay as well as the order of the Appellate Authority passed on 19.04.2014.

Challenging the same, this appeal is filed by the appellant-bank.

Counsel for the appellant-bank placed reliance on the Three-Judges Bench decision of the Supreme Court in ***Chairman-cum-Managing Director, Mahanadi Coalfields Ltd. Vs. Rabindranath Choubey***[1] and contended that Regulations similar to that applied by the appellant-bank were considered in the said case; and the Supreme Court had authoritatively held that Regulation 34.2 of the Coal India Executives' Conduct Discipline and Appeal Rules, 1978, permits continuation of the disciplinary proceedings even after superannuation; and in view of the said provision (which is identical to clause (iii) of Regulation 20(3) of the Punjab and Sind Bank (Officers) Service Regulation, 1982), there is nothing wrong in the appellant-bank proceeding with the disciplinary action even after the respondent attained the age of superannuation. He also contended that in the said judgment, the Supreme Court had held that inquiry can be held in the same manner under Rule 34.02 as if the employee had continued in service and appropriate major and minor punishments commensurate to the guilt may be imposed including dismissal as provided under Rule 27 of the CDA Rules because there was deeming fiction in the Rules to treat an employee who has already retired as if he is continuing in service.

Counsel for the respondent cited the decision of the Supreme

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1 **(2020) 18 Supreme Court Cases 71**

Court in ***UCO Bank and others vs. Prabhakar Sadashiv Karvade***[2] and also the decision in ***UCO Bank and others vs. Rajendra Shankar Shukla***[3] and contended that the view taken by the learned Single Judge is correct and that the language contained in the Regulations of the appellant-bank makes it clear that any of the penalties, whether major or minor, can be imposed only on a serving officer employee of the bank; and by implication, they cannot be imposed on an officer employee after his retirement from service, though disciplinary proceedings can be initiated while the employee is in service and can be continued even after his retirement.

We have noted the contentions of both sides.

Both the decisions cited by the counsel for the respondent had been considered by the Three-Judges Bench of Supreme Court in the ***Chairman-cum-Managing Director, Mahanadi Coalfields Ltd.*** case (supra) and a contrary view was taken in the said judgment in the following terms:-

> *"45. In view of the various decisions, it is apparent that under Rule 34.2 of the CDA Rules inquiry can be held in the same manner as if the employee had continued in service and the appropriate major and minor punishment commensurate to guilt can be imposed including dismissal as provided in Rule 27 of the CDA Rules and apart from that in case pecuniary loss had been caused that can be recovered. Gratuity can be forfeited wholly or partially.*
>
> *47. Thus considering the provisions of Rules 34.2 and 34.3 of the CDA Rules, the inquiry can be continued given the deeming fiction in the same manner as if the employee had continued in service and appropriate punishment, including that of dismissal can be imposed apart from the forfeiture of*

2 **(2018) 14 Supreme Court Cases 98**

3 **(2018) 14 Supreme Court Cases 92**

the gratuity wholly or partially including the recovery of the pecuniary loss as the case may be." (emphasis supplied)

We may point out that in the majority judgment in the ***Chairman-cum-Managing Director, Mahanadi Coalfields Ltd.*** case (supra) at para 17, the majority of the Judges indicate that in a case where a departmental enquiry was instituted while the employee was in service and proceedings had been continued after his retirement, it would depend upon the rules what kind of punishment can be imposed after the employee had attained the age of superannuation. Likewise, in para 21 also, similar observation is made that what kind of punishment can be imposed would depend on the relevant service rule while referring to the decision in ***V.Padmanabham Vs. State of Andhra Pradesh,***[4] which considered the Rule 9 of the Andhra Pradesh Pension Code which provided for deemed continuance of the employee in service for the purpose of withholding or withdrawal of pension.

The dissenting Judge in ***Chairman-cum-Managing Director, Mahanadi Coalfields Ltd.*** case (supra) was of the opinion that what should be the nature of penalty is always dependent on the relevant scheme of the Rules and major penalties, unless the Rules provide for imposition of the same after superannuation could not have been imposed.

But both in Regulations of the appellants and in Rule 34.2 of CDA Rules considered in ***Chairman-cum-Managing Director, Mahanadi Coalfields Ltd.*** case (supra), there is no indication what kind of punishment should be imposed in case the employee retires during the pendency of disciplinary proceedings.

However, in view of the conclusion in the said case that it is

4 *(2009) 15 SCC 537*

permissible even to impose appropriate major and minor punishments commensurate to guilt if there is a provision to continue the departmental proceeding by deeming the employee as being in service even after his superannuation, we follow the majority view and hold that the action of the appellant-bank in imposing the penalty of reduction by three stages in time scale of pay on permanent basis on 15.06.2013 notwithstanding the retirement of the respondent from service on 30.09.2011, to be correct in law and therefore uphold the rejection of the respondent's appeal on 19.04.2014 and set aside the direction given by the learned Single Judge for issuance of a fresh show cause notice for taking action against the respondent under the Punjab and Sind Bank (Employees') Pension Regulations, 1995.

The appeal is allowed accordingly and CWP-12865-2014 is dismissed.

All pending applications, if any, stands disposed of accordingly.

(M.S. RAMACHANDRA RAO)
JUDGE

(SUKHVINDER KAUR)
JUDGE

23.02.2023
Komal

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