

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: January 05, 2023

+ W.P.(C) 12042/2018 & CM. No. 46619/2018

SURESH PURI

..... Petitioner

Through: Mr. Kotla Harshvardhan, Mr. Kshitij
Maheshwari and Ms. Aishwarya Jain,
Advs.

versus

STATE BANK OF INDIA & ORS.

..... Respondents

Through: Mr. A. V. Rangam, Mr. Buddy A.
Ranganadhan and Ms. Nandini
Tomar, Advs.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

1. The present petition has been filed with the following prayers:

“(A) Issue a Writ of Certiorari or any other appropriate Writ or pass any other appropriate Order directing the Respondents to quash the Order dated 07.02.2017, bearing No. DPD/1688/2466, passed by the Disciplinary Authority of the Respondent against the Petitioner and accordingly direct the Respondent to pay the Petitioner an amount equal to the reduction in salary that was imposed as a result of the Order dated 07.02.2017 along with interest @ 18% p.a. from 07.02.2017 till realization;

(B) Issue a Writ of Certiorari or any other appropriate Writ and/or Order directing the Respondents to quash the Order dated 16.03.2017, bearing No. DPD/1711/2195,

passed by the Disciplinary Authority of the Respondent against the Petitioner;

(C) Declare that the Respondent has illegally withheld the salary of the Petitioner for the months of 01.02.2015 to 19.05.2015; and direct the Respondent to release the such withheld salary amount to the Petitioner along with interest @ 18% p.a. from 20.05.2015 till realization;

(D) Declare that the deductions to the tune of Rs. 28,500/- per month from 01.06.2016 to 31.03.2017 from the salary of the Petitioner are unlawful; and accordingly direct the Respondent to reimburse such deducted amount along with interest @ 18% p.a. from 01.06.2016 till realization;

(E) Issue a Writ of Mandamus or any other appropriate Writ or pass any other appropriate Order directing the Respondents to re-evaluate the amount of Pension, Provident Fund and Gratuity due to the Petitioner after taking into account the payments sought in prayer (a), (c) and (d) and release the differential amount alongwith interest@18% p.a. from 30.11.2017 upto realization;

(F) Declare that the appropriation of terminal benefits of the Petitioner towards payment of outstanding Home Loan, Education Loan and Vehicle Loan availed by the Petitioner from the Respondent is illegal;

(G) Issue a Writ of Mandamus or any other appropriate Writ and/or Order directing the Respondents to

(i) Reverse the debit of Rs. 9,68,027/- from the Personal OD Account of the Petitioner, bearing No. 67087136397, that was appropriated towards payment of outstanding Education Loan Amount alongwith interest @ 18% from the date of such debit upto realization ; and

(ii) Reverse the closure of the Education Loan Account, bearing No. 67064881260, maintained with the Saket

Branch of the Respondent and allow the Petitioner to continue the loan;

(H) Issue a Writ of Mandamus or any other appropriate Writ and/or Order directing the Respondents to

(i) Reverse the debit of Rs. 15,50,700/- from the Pension Account of the Petitioner, bearing No. 37233644175, that was appropriated towards payment of outstanding Home Loan and Vehicle Loan alongwith interest @ 18% from the date of such debit upto realization; and

(ii) Reverse the closure of the Home Loan Account, bearing No. 67166815214 and Vehicle Loan Account, bearing No. 67046842754, maintained with the Sector 18, Gurgaon Branch of the Respondent and allow the Petitioner to continue the loans;

(I) Issue a Writ of Mandamus or any other appropriate Writ and/or Order restraining the Respondent from marking any lien in the Petitioner's Account bearing No. 67087136397 and Personal OD Account, bearing No. 67087136397 and thereby prohibit it from appropriating the Provident Fund and Gratuity towards any outstanding payment;

(J) Award costs in favour of the Petitioner; and

(K) Pass such other Order or further orders or direction as this Hon'ble Court may deem fit and proper in the present circumstances.

2. The petitioner joined the State Bank of Travancore (for short, 'SBT') (which later merged with the respondent Bank in April, 2017) in May, 1981 as a Probationary Officer and superannuated on November 30, 2017. It is stated in the petition that the respondent No. 1 is a Nationalised Bank discharging public functions, and as such is an entity of the State and qualifies as 'State' under Article 12 of the

Constitution of India. According to Mr. Kotla Harshvardhan, learned counsel for the petitioner, this Court has the power to issue writs even against an authority which is located outside its territorial jurisdiction if a part of the cause of action arose within the Court's territorial jurisdiction. In this regard, he has relied upon the judgment in the case of *Shanti Devi vs. Union of India, 2020 SCC OnLine SC 908*. It is his case that since a part of the cause of action has arisen in New Delhi, the present Writ Petition is maintainable before this Court.

3. As far as the facts in the present case are concerned, it is stated that in the year 1985, the petitioner was sent on deputation to State Bank of India (for short, 'SBI'), Toronto, Canada and in the year 1988, he was posted in Mumbai for setting up a Foreign Exchange Dealing Cell. In 1993 the petitioner was promoted as a Scale-III Officer (Middle Management Grade Scale). Thereafter, the petitioner served in various branches of the Bank in Bangalore, Pune, Bhopal and Delhi. It is stated that the petitioner had an outstanding track record and under him, the branches at Bangalore, Pune, Bhopal and Delhi registered unprecedented achievements and exceptional performance. The petitioner became eligible for promotion to Scale-IV Post in the year 1998, however despite his excellent performance he was not promoted. In the year 2004, the petitioner approached this Court vide W.P. (C) No. 940/2005 seeking *inter alia* issuance of a Writ of Mandamus directing the respondent Bank to promote the petitioner to Scale-IV Post w.e.f 1998 along with consequential benefits. It is submitted that this Court had admitted the said petition on July 30, 2008 and the same is pending adjudication.

4. It is contended by Mr. Harshvardhan that immediately after the Notice was issued in W.P. (C) No. 940/2005, the respondent Bank started harassing and victimising the petitioner in numerous ways. He stated that the respondent Bank temporarily transferred the petitioner from Delhi to Kanpur in May, 2005 and then back to Delhi in December, 2005. He was given temporary postings till 2009. In other words, he was not given any assignment of a permanent nature. In December 2009, he was posted as Branch Manager of the Sector-18, Gurgaon Branch of the respondent Bank. Mr. Harshvardhan argued that the frequent transfers were in clear violation of the Transfer Policy of the respondent Bank which provides that the minimum period of retention in any one position at the same office shall be two years for Branch Managers and one year for officers other than Branch Managers.

5. Mr. Harshvardhan stated that only to restrain the petitioner from effectively pursuing the said litigation, the respondent, in May, 2012 again transferred him to Irinjalakuda, Kerala. The petitioner requested the respondent Bank to allow him to serve in Delhi or nearby branches in terms of transfer policy so that he could look after his father who was suffering from Parkinson's disease. However, the respondent Bank did not accept the request of the petitioner. Consequently, the petitioner approached this Court vide W.P. (C) No. 4083/2012 wherein by way of Order dated July 17, 2012, the respondent Bank was directed to consider the case of the petitioner sympathetically and to post him in the Northern Region. However, in violation of the said Order, the petitioner was transferred to Nagpur on

December 14, 2012. The petitioner continued insisting for a transfer to Delhi due to the pressing concern of his father's health and his request was in terms of the Transfer Policy of the erstwhile SBT which provides that hardships like sickness of serious nature of a dependent father would be considered in matters of transfer. Mr. Harshvardhan has placed on record the relevant paragraphs of the Transfer Policy which reads as under:

"General Guidelines

...

In regard to minimizing the hardships caused to officials consequent upon transfers, a system of recording transfer preferences for any personal reasons, as detailed herein after will be developed. The transferring authority while effecting transfers in accordance with the placement policy, will see to what extent can the transfer preferences, indicated by the official be accommodated

...

The priorities for consideration of hardship would be:

Sickness of a serious nature of the official or a member of his family i.e. dependent parent, wife or children, which would require some special treatment or facilities which are only available at specified centres.

..."

However, after one and a half years, the petitioner was transferred back to Delhi and was posted as Manager, Concurrent Audit in the month of May, 2014 for auditing various branches in Delhi Region, Gurgaon Branch being one among one of the branches assigned to him for audit, in May, 2014.

6. It is contended by Mr. Harshvardhan that till the petitioner's retirement, he had completed only five years and nine months in the

Delhi/Northern Zone. This is less than the maximum period of retention i.e., six years in a Zone under the Transfer Policy. In this regard, it was further contended that the stand taken by the respondent Bank that the petitioner had completed a period of 15 years in the Delhi Zone, and therefore, his request for transfer to Delhi, could not be considered under the Transfer Policy, is incorrect.

7. It is further submitted that the respondent Bank in order to support its stand has selectively culled out only a portion of the following Order of this Court dated July 17, 2012. However, the complete relevant paragraphs of the said Order are as follows:

*“7. The Division Bench of this Court has already held in **P.Rajapratap v. UOI & Ors : 2010 (1) SLR 123** while referring the decision in **UOI v. S. L. Abbas : AIR 1993 SC 2444** that a policy guideline regulating transfer of employees does not create any enforceable legal right in favour of an employee. It being settled law that transfer and posting is an incident of service and it is upto the respondent to decide where the employee should be deputed. Of course, where malice is proved, a Court can interdict a transfer posting order.*

8. Courts normally should not interfere into day-to-day transfer and posting. However, the case of the petitioner has not been considered on the grounds mentioned in the representation.”

8. The petitioner, in October, 2014 was again transferred to Kadakkavoor Branch, Kerala. On October 18, 2014, after attending office the petitioner had sought leave as his father’s medical condition was worsening and, on that date, he was not informed about his transfer Order. However, on October 20, 2014, the respondent Bank emailed the petitioner on his personal email ID, a letter dated October

18, 2014, in light of a transfer Order dated September 25, 2014, which had never been communicated to him. As the petitioner was busy taking care of his father, he checked his personal email only on October 27, 2014, and immediately wrote to the Deputy General Manager objecting to his relieving *in absentia* and also stating that he could not join the Kadakkavoor Branch, Kerala as his father's health condition was critical.

9. It is submitted that the petitioner was again constrained to approach this Court vide W.P.(C) No. 8652/2014 wherein the respondent Bank took the stand that it was imperative for the petitioner to be on rural posting for three years to be considered for promotion. Thus, during the hearing the petitioner agreed to join the Kadakkavoor Branch in Kerala. However, *vide* Order dated December 23, 2014, the respondent Bank was again directed to consider the petitioner's request for a rural posting in the Northern Zone if any vacancy arises.

10. Thereafter, the petitioner learnt that there was a vacancy in a rural/semi-urban area, in Bhiwadi Branch (Delhi Region) and accordingly applied through a window in the Personnel Administration Department (for short, 'PAD') website wherein the transfer preferences could be filled in. However, the same was not considered even though the aforementioned Order dated December 23, 2014, directed the respondent Bank to consider it. On January 10, 2015 and February 08, 2015, the petitioner wrote to the respondent Bank requesting it to consider him for transfer to Bhiwadi Branch or any other rural/semi-urban posting so that he can take care of his father who was in critical condition. However, in defiance of the order dated

December 23, 2014, the respondent Bank did not consider him for any such posting and adopted the stance that there was no such vacancy in Bhiwadi Branch. However, according to Mr. Harshvardhan, the Branch Manager in the Bhiwadi Branch had already completed her stipulated period of rural assignment in October, 2014 itself and the respondents misled the Court to that effect. She was made to continue in rural assignment for 45 months instead of 36 months so as to ensure that a vacancy is not created for the petitioner. On March 11, 2015, and March 26, 2015, the petitioner again wrote to the respondent Bank explaining the deteriorating condition of his father and his reasons for not being able to report at the Kadakkavoor Branch, Kerala and also requested that his absence be not treated as unauthorised leave.

11. That apart, Mr. Harshvardhan stated that it is apparent from the above-stated facts / events that the respondent Bank were only reprimanding the petitioner for having initiated litigation against it. Even after having full knowledge of the petitioner's father's deteriorating health condition, the respondent Bank transferred the petitioner to Kadakkavoor Branch, Kerala so as to ensure that he is unable to work properly. As a result, the petitioner joined the Kadakkavoor Branch, Kerala on May 20, 2015.

12. Mr. Harshvardhan contended that the respondent Bank withheld the petitioner's salary from February, 2015 to May, 2015 and did not release the same when the petitioner joined the Kadakkavoor Branch, Kerala. It is submitted that such withholding of salary was done without any authorisation and in violation of the rules governing the respondent. In the year 2012 when the petitioner had joined the

Nagpur Branch after a gap of 6 months, the salary for the preceding 6 months was paid to him on the date of joining. When the petitioner sought the release of his withheld salary vide letter dated June 25, 2015, the respondent Bank denied the same vide letter dated July 13, 2015 and asked him to submit a sick leave application on the ground that the petitioner's absence from service from October 18, 2014, to May 19, 2015, was unauthorised leave. The petitioner duly responded to the said allegation and again sought an independent inquiry into the matter of release of his salary vide letter dated July 31, 2015. However, the dues were not paid to the petitioner. It is his case that even if it is assumed that the respondent Bank was authorised to withhold salary for unauthorised absence, the same could not be done unless the charge was proved in a disciplinary proceeding.

13. After 22 years of being a Scale-III officer, the petitioner was promoted to Scale-IV post only on May 04, 2015, with effect from May 30, 2015, while he had become eligible for the said post in 1998 itself. The petitioner who had been seeking benefits for the Scale-IV promotion since 1998 through W.P. (C) No. 940/2005 accepted the promotion vide letter dated June 04, 2015, without prejudice to his rights and contentions in the pending litigation. It is stated that the said promotion was granted despite the fact that the petitioner had not completed the mandatory rural assignment which the respondent Bank had earlier contended was imperative for promotion. Furthermore, the fact that the respondent Bank promoted the petitioner after the alleged unauthorised absence also clearly proves that the allegation of unauthorised absence was immaterial and not of much consequence.

14. The petitioner again sought Privilege Leave (for short, 'PL') for 10 days from August 17, 2015, to August 26, 2015, on account of his father's critical health condition. However, the same was denied despite the fact that he had 240 PLs to his credit. The only reason for denial of the PL was that his earlier alleged leave from October 18, 2014, to May 19, 2015, was unauthorised which has not been regularised. However, the respondent Bank failed to consider the PL sought by the petitioner independently and completely ignored the fact that the petitioner was facing a medical emergency. Moreover, it is submitted that the petitioner was only telephonically informed that his leave was declined because his leave particulars were not available with the regional office. It is submitted that as the petitioner's father was critically ill, he had no option but to go to Delhi and he informed the respondent Bank about it vide email dated August 14, 2015.

15. It is submitted that the petitioner took leave on various dates on account of the ill health of his father and wife and each time submitted proper leave applications on account of 240 days of accumulated leave, however, the sanctions for requested leave were never conveyed.

16. On September 11, 2015, the respondent Bank served a Show Cause Notice upon the petitioner for having been on unauthorised leave from October 19, 2014, to May 19, 2015, and from August 17, 2015, to September 03, 2015. Consequently, in response, the petitioner again reiterated in his letter dated September 28, 2015, that due to his father's serious medical condition he had no option but to visit Delhi

on a regular basis and therefore, he had been requesting a posting close to Delhi.

17. In June, 2016 the petitioner was suddenly transferred from Kadakkavoor Branch, Kerala to Attingal Branch, Kerala with instructions to report at Attingal Branch, Kerala the next morning. The petitioner did not avail any PL after he joined the Attingal Branch, Kerala and as such should have been paid for nearly 240 days of PLs (Encashable Leave) at his credit, whereas only encashment of 190 days leave has been given to him. It is submitted that the petitioner's request for reckoning the leave details as available with Kadakkavoor Branch, Kerala has also not been considered.

18. It is contended by Mr. Harshvardhan that the respondents did not credit the petitioner's salary for the month of May 2016 on May 27, 2016. The salary was restored in June 2016 but with a monthly deduction of ₹28,500/-. It is averred that the said deduction was imposed by the respondent Bank without any prior notice, explanation and without any authorisation while disciplinary proceedings were already initiated. Consequently, as a result of the said deduction, the salary and terminal benefits being given to the petitioner are less than the actual amount.

19. It is further contended that even though the petitioner had been promoted to Scale IV Post, he was transferred to the Attingal Branch, Kerala in the month of June 2016 where there was no Scale-IV Post. The said decision was taken at a time when the merger of SBT with the SBI had been announced and the officers belonging to Kerala and serving in Delhi were being brought back to Kerala and consequently

vacancies had arisen in Delhi. However, the petitioner was not considered for a posting in Delhi and was transferred to Attingal Branch, Kerala.

20. It is submitted by Mr. Harshvardhan, that the table depicting the petitioner's posting between 1998 and 2012 provided by the respondent Bank in their submissions is incorrect. The following table gives an accurate representation of the petitioner's posting between 1998 until his retirement in 2017:

From	To	Branch	Designation
May 10, 1998	June 10, 2000	Bhopal (under the Trivandrum Zone)	Branch Manager
June 10, 2000	October 10, 2001	RK Puram, New Delhi	Manager (PSB)
October 10, 2001	April 10, 2004	Karol Bagh, New Delhi	Manager (Concurrent Auditor) reporting to the Inspection Department, Trivandrum
April 10, 2004	May 2005	Service Branch, New Delhi	Branch Manager
May 2005	December 2005	Kanpur (under the Delhi Zone)	Manager, Accounts
December 10, 2005	May 30, 2009	Commercial Branch, New Delhi (under the CNW)	Temporary assignment without any designation

		Zone, Trivandrum)	
June 01, 2009	May 18, 2012	Sector-18, Gurgaon	Branch Manager
December 15, 2012	May 2013	Main Branch, Nagpur	Manager, P&SB
May 2013	May 2014	Link Cell, Nagpur	Branch Head
May 2014	October 18, 2014	Inspection Department, Trivandrum	Concurrent Auditor for listed branches under the control of Regional Office, New Delhi reporting to the Inspection Department Trivandrum.
May 20, 2015	May 2016	Kadakkavoor Branch	Branch Head
May 2016	September 2016	Attingal Main Branch, Kerala	Manager, Accounts
September 2016	January 2017	On Deputation from Attingal Main Branch to the Inspection Department, Trivandrum, Kerala	Internal Auditor
January 2017	February 2017	NAC Branch, Poojapura,	Officiating Branch Head

		Trivandrum, Kerala	
February 2017	November 2017	Attingal Main Branch, Kerala	• Manager, Accounts upto April 15, 2017 • Branch Head from April 15, 2017 until retirement.

In regard to the above-stated table, it is submitted that the petitioner was deliberately and frequently transferred outside Delhi and harassed unduly by the respondent Bank.

21. The respondent Bank initiated disciplinary proceedings against the petitioner and served a charge sheet upon him on May 30, 2016, raising the following allegations:

- Unauthorised absence for a period of 213 days from October 19, 2014, to May 19, 2015.
- Unauthorised absence for 18 days from August 17, 2015, to September 03, 2015.
- Unauthorised leave for 209 days from May 19, 2012, to December 13, 2012.
- Habit of absenting himself from duty without prior permission.
- Brought unwarranted external pressure on the Bank whenever he was posted outside New Delhi.

In this regard, Mr. Harshvardhan submitted that on all the occasions stated above, the petitioner was facing a medical emergency on account of his father's precarious health condition. This was the sole reason why the petitioner had been requesting the respondent Bank for a posting close to Delhi. It is further submitted that the petitioner also informed the respondent Bank before absenting himself from work each time. It was the respondent Bank who despite having full knowledge of the petitioner's difficulties did not approve his leaves on time and did not give him a posting close to Delhi. Such conduct of the respondent Bank was in clear violation of its policy of granting leaves and transfer on compassionate grounds and in case of medical emergencies.

22. Furthermore, in pursuance of the disciplinary proceedings, an Inquiry Report was prepared and sent to the petitioner on January 13, 2017. It is the contention of Mr. Harshvardhan that the Inquiring Authority wrongly observed that all the charges mentioned in the charge sheet were proved. Thereafter, on the basis of the Inquiry Report, the disciplinary authority vide Order dated February 07, 2017, imposed a penalty of *"Reduction by one stage in the time scale of pay from the date of this Order till the date of his retirement viz November 30 2017, without cumulative effect, and not adversely affecting the Officer's pension and other retirement benefits"*. Accordingly, he stated that the Inquiry Report and the Order dated February 07, 2017, were baseless and against the rules and regulations of the respondent Bank.

23. It is averred that the respondent Bank had already formed a final opinion with regard to the petitioner's alleged unauthorised absence between October 19, 2014, to May 19, 2015, in April 2016 itself i.e., much prior to even framing of charges and a finding by the disciplinary authority. Furthermore, it is submitted that a post-decisional hearing where the disciplinary authority has already made up its mind even before giving an opportunity to the officer of being heard, is contrary to the principles of natural justice, and hence, bad in law. In this regard, Mr. Harshvardhan relied upon the judgments in the case of *Yoginath D. Bagde vs. State of Maharashtra, (1999) 7 SCC 739*, and *Shekhar Ghosh vs. Union of India, (2007) 1 SCC 331*.

24. Thereafter the petitioner appealed against the Order of the disciplinary authority dated February 07, 2017, on the following grounds:

- a) The disciplinary authority wrongly observed that the petitioner did not submit any reply to the charge sheet. In fact, the petitioner had requested certain documents vide letters dated June 17, 2016, July 01, 2016, July 23, 2016, August 03, 2016, August 10, 2016, September 01, 2016, September 08, 2016, and October 05, 2016. Neither were the said letters responded to by the respondent Bank nor were any of the documents provided.
- b) The disciplinary authority without referring to the contents of the annexures of the representation dated January 31, 2017, has incorrectly recorded that the petitioner has not responded to the charges.

c) From May, 2012 to December, 2012 the petitioner was not on unauthorised leave, rather he was requesting the respondent Bank to post him close to Delhi. He had also filed W.P. (C) No. 4083/2012 in July, 2012 wherein the respondent Bank was directed vide Order dated July 17, 2012, to consider posting him close to Delhi. Thereafter, only in December, 2012 the petitioner was posted to Nagpur. Thus, the period from May, 2012 to December, 2012 cannot be considered as an unauthorised absence. Moreover, the leave applications for the said period had also been submitted and leave had been granted by the respondent Bank vide sanction letters dated December 14, 2012, and March 31, 2013.

d) The allegation of unauthorised absence for a period of 213 days from October 19, 2014, to May 19, 2015, is also incorrect. The petitioner was relieved from service *in absentia* vide email dated October 20, 2014, which was sent on his personal email ID while he was already on a day's leave.

e) The allegation of putting external pressure for getting a favourable transfer was incorrect. However, the same had been adequately responded to by the petitioner and those letters are a part of the record of the respondent Bank.

f) The allegation of unauthorised absence for 18 days from August 17, 2015, to September 03, 2015, is also wrong. The petitioner's father was in a very serious condition so he had no option but to go to Delhi and he did so after informing the respondent. Further, the petitioner had sought PL and he

already had to his credit 240 days of PL and 400 days of sick leave apart from the unavailed casual leaves.

It is the case of the petitioner that, despite the above-stated reasons the appeal was rejected vide Order dated March 31, 2017, in violation of the rules and regulations of the respondent Bank and the principles of natural justice.

25. It is submitted that the inquiring authority, the disciplinary authority, as well as the appellate authority have completely overlooked the fact that the alleged unauthorised absence period was not willful, but it was effectuated by the ill health of the petitioner's father and his wife. It is further submitted that when unauthorised absence from duty is alleged, it must be proven that the absence was willful, otherwise, such absence does not amount to misconduct. In this regard, Mr. Harshvardhan relied upon the judgment in the case of ***Krushnakant B. Parmar vs. Union of India, (2012) 3 SCC 178.***

26. That apart, it is further submitted that the respondent Bank also raised some allegations against the petitioner with regard to a home loan of ₹20 lakhs that had been availed by him in December 2011 while he was the Branch Manager in Sector -18, Gurgaon Branch. As per the sanction letter, the loan was to be repaid in 191 months including a moratorium of 12 months and the repayment was to begin from January, 2013. A charge sheet dated July 26, 2016, was drawn against him containing the following charges:

- i. Defaulted in 42 installments.

- ii. Disbursed 3 installments of the loan amount in quick succession without ensuring the progress of construction.
- iii. Failed to obtain a stamped receipt from the builder for the installments received.
- iv. Failed to verify and ascertain the reputation and creditworthiness of the builder before recommending the home loan.
- v. Failed to conduct pre-sanction and post-sanction inspection.
- vi. Failed to contribute his margin money while releasing the installments.
- vii. Failed to obtain title deeds from the builder to create Equitable Mortgage (for short, 'EM') and for Central Registry of Securitisation Asset Reconstruction and Security Interest of India (for short, 'CERSAI') registration.
- viii. Failed to give a mandate to Human Resources Management System (for short, 'HRMS') for deduction of Housing loan installment from his salary, though 42 installments are overdue.

27. The Inquiry Authority in its report dated February 08, 2017, found the above-stated charges (i), (ii), (iii), (v) and (vi) to be correct. On the basis of the said report, the disciplinary authority on March 16, 2017, imposed a penalty of 'Censure' in accordance with Regulation 67(a) of the SBT (Officer's) Service Regulations, 1979. With regard to

the margin money, it is submitted that as the loan was a staff loan, the petitioner had only released ₹12,42,739.00 while the total demand raised by the builder was ₹17,51,883.35. The balance of ₹5,09,144.35 was the margin brought in upfront and paid by the petitioner and the said fact was deliberately ignored by the investigating and disciplinary authority. Since the property for which the home loan had been availed was not being constructed, the disciplinary authority also directed the petitioner to start repayment of the housing loan from March, 2017 till his retirement and the outstanding loan at the time of retirement be adjusted against his terminal benefits. In this regard, it is submitted that no such penalty for the appropriation of terminal benefits for closure of the loan is provided under Rule 67 of the SBT (Officer's) Service Regulations, 1979 and thus the same could not have been imposed. Moreover, Mr. Harshvardhan stated that the respondent Bank had no legal authority to make any reduction in the terminal benefits of the petitioner, by relying upon the judgment in the case of ***Bhagirathi Jena vs. Board of Directors OSFC & Ors., (1999) 3 SCC 666***. That apart, a Circular bearing No. SAMD/SARFAESI/1047 dated January 07, 2012, issued by the Stressed Asset Management Department of the respondent Bank provides step by step procedure for dealing with home loan accounts where the construction is at a standstill and the builder is enjoying the loan amount already disbursed. In such cases, the recourse of the bank is against the builder under the tripartite agreement executed between the bank, the builder and the person availing the loan facility. In the present case, the

respondent Bank was bound to follow the procedure laid down in the said Circular and the same was not followed.

28. Moreover, Mr. Harshvardhan stated that the respondents during the course of hearing have relied upon the decision of the Supreme Court in the case of ***Secretary, ONGC Ltd. vs. V.U. Warriar, (2005) 5 SCC 245***, to argue that Clause 5 of the Regulations therein is similar to Clause 67(d) of the SBT (Officer's) Service Regulations, 1979, and had been interpreted by the Supreme Court to mean that it is permissible to appropriate outstanding dues against the employee's gratuity amount. However, in ***ONGC Ltd. (supra)***, the relevant regulation on the basis which the Supreme Court held that it authorised such appropriation, reads as under:

"5. Recovery of dues.—The appointing authority, or any other authority empowered by the Commission in this behalf shall have the right to make recovery of the Commission's dues before the payment of the death-cum-retirement gratuity due in respect of an officer even without obtaining his consent or without obtaining the consent of the members of his family in the case of a deceased officer, as the case may be."

It is *ex facie* evident that the rule in ***ONGC Ltd. (supra)***, specifically authorised deduction from gratuity, which is not the case in the present matter.

29. It is submitted that the respondent's reliance on the judgment of the Supreme Court in the case of ***Chairman-Cum- Managing Director, Mahanadi Coalfields Limited vs. Rabindranath Choubey, 2020 SCC OnLine SC 470***, is also misplaced. In the said case the

Supreme Court on the basis of Rules 34.2 and 34.3 of the Conduct, Discipline & Appeal Rules, 1978, held that it was permissible for the employer to withhold the payment of gratuity even after the employee's retirement. In this regard, it is submitted that in both the cases relied upon by the learned counsel for the respondents i.e., **ONGC Ltd. (supra)** and **Chairman-Cum- Managing Director, Mahanadi Coalfields Limited (supra)**, the Supreme Court approved the deduction/withholding of gratuity since the rules of the respective employers, specifically provided for the same. However, the same is not the case in the present matter.

30. Reliance has been placed by Mr. Harshavardhan on the judgment in the case of **Bhagirathi Jena (supra)**, wherein the Supreme Court observed as follows:

“6. It will be noticed from the abovesaid regulations that no specific provision was made for deducting any amount from the provident fund consequent to any misconduct determined in the departmental enquiry nor was any provision made for continuance of the departmental enquiry after superannuation. 7. In view of the absence of such a provision in the abovesaid regulations, it must be held that the Corporation had no legal authority to make any reduction in the retiral benefits of the appellant. There is also no provision for conducting a disciplinary enquiry after retirement of the appellant and nor any provision stating that in case misconduct is established, a deduction could be made from retiral benefits....”

It is submitted that in the absence of any specific provision under the SBT (Officer's) Service Regulations, 1979, a generic phrase such as “*or such other amount*” ought to be read *ejusdem generis* with

“recovery from pay” and cannot under any circumstance be stretched to also include the terminal benefits of the petitioner.

31. That apart, it is contended by Mr. Harshvardhan that there is no justification for the closure of the petitioner’s daughter’s education and vehicle loan, which have been adjusted against the terminal benefits of the petitioner. It is submitted that the same was never a subject of the disciplinary proceedings initiated by the petitioner and there was no penalty imposed by the respondent Bank regarding the same. The said action of the respondent Bank was absolutely arbitrary.

32. He has opposed the reliance placed by the learned counsel for the respondents on the judgment of the Supreme Court in the case of ***U.P. State Sugar Corporation Ltd. vs. Kamal Swaroop Tondon, (2008) 2 SCC 41***. According to him, in the said case, the limited question was whether the departmental proceedings for recovery of loss caused to the employer from an employee’s terminal benefits could continue even after the employee’s retirement. Hence, it is only to that extent, the Supreme Court held that the recovery of financial loss from an employee’s terminal benefits even after his retirement was permissible and set aside the High Court’s judgment quashing such proceedings. However, the Supreme Court did not give any observation on the merits of the matter, leaving it open for the High Court to adjudicate as to whether the relevant regulation relied upon by the employer, actually permitted such deduction:

“41. For the foregoing reasons, the appeal is allowed and the order passed by the High Court is set aside. But since the High Court has allowed the petition only on the ground that the proceedings could not have been instituted against the writ-

petitioner, it would be appropriate if we remit the matter to the High Court so as to enable it to consider the rival contentions of the parties and take an appropriate decision on merits. We may clarify that we may not be understood to have expressed any opinion one way or the other on the controversy involved in the case and as and when the High Court will take up the writ petition, it will decide the same without being influenced by any observation made in this judgment. On the facts and in the circumstances of the case, the parties will bear their own costs."

In view of the above, Mr. Harshvardhan submitted that the adjustment of the petitioner's daughter's education loan against his Provident Fund (for short, 'PF') amount and his outstanding housing and vehicle loans against his gratuity and leave encashment amounts by the respondent, was unlawful.

33. It is further submitted by Mr. Harshvardhan that in its reply to the application numbered as CM. No. 42788/2017 in W.P. (C) No. 940/2005, the respondent Bank had specifically stated that the petitioner's daughter's education loan would not be closed and the outstanding amounts therein would not be adjusted from the terminal benefits. However, later, the respondents wrongfully defied their own stance and appropriated the terminal benefits towards the closure of both the loan accounts.

34. Further, it is averred that the petitioner was neither given prior notice of the same nor an opportunity of hearing before the education loan was closed. Therefore, as a result, the petitioner is not left with any resources to fund his daughter's education and has been unable to

raise loans in view of reduced income and adverse reporting in Credit Information Bureau (India) Limited (for short, 'CIBIL').

35. On October 03, 2017, the petitioner wrote to the Circle Development Officer of the respondent Bank outlining all the aforementioned issues so that the same could be settled before his retirement which was due in November 30, 2017. However, the respondent Bank did not address any concerns raised by the petitioner.

36. The petitioner in order to settle all issues before his superannuation, submitted a sick leave application in terms of the Order of the disciplinary authority along with medical prescriptions vide letter dated November 22, 2017, and sought the release of withheld salary and unauthorised deductions. However, the same was not considered by the respondent.

37. It is submitted that the disciplinary authority had only imposed a penalty of 'Censure' and closure of home loan. However, the petitioner negotiated with the builder who offered another already constructed unit in the same project. Consequently, the petitioner informed the respondent Bank about the same and requested that his home loan be continued after retirement or else he will not have a place to stay after retirement.

38. Furthermore, it is submitted that the petitioner superannuated on November 30, 2017. Even after his retirement, he continued requesting the respondent Bank to allow him to continue his home loan in light of the newly constructed unit that was offered to him vide email dated December 22, 2017, and letter dated January 23, 2018, and

even sought the intervention of the Chairman but his request was not considered.

39. Thereafter, the respondent Bank replied to the petitioner's representation on February 06, 2018, stating that they have no option but to follow the Order passed by the disciplinary authority and close the home loan by appropriating the terminal benefits towards the outstanding loan amount.

40. Mr. Harshvardhan averred that the appropriation of PF and gratuity and closure of home and education loans is against the settled principles of law. It is trite law that terminal benefits cannot be appropriated for settlement of outstanding loan amounts. This principle has also been embodied in Section 60(1)(g) of the Code of Civil Procedure, 1908 which provides that even for the execution of a decree of a Court of law, the gratuity and pension benefits cannot be attached. In this regard, Mr. Harshvardhan relied upon the judgment of the Supreme Court in the case of **Gorakhpur University and Ors. vs. Dr. Shitla Prasad Nagendra and Ors., (2001) 6 SCC 591**, wherein it was held that government employees have valuable rights in their terminal benefits and the same are immune from attachment, deduction or adjustment against any other dues from the employees.

41. It is contended that the Courts have also time and again held that terminal benefits are due to a bank employee under the employment contract and the loan amount are due from the employee to the bank under a separate agreement in the capacity of a customer. It is illegal and unacceptable for a bank to mark a lien on the terminal benefits of an employee for payment of outstanding loan amounts even

as a penalty in a disciplinary proceeding. In this regard, Mr. Harshvardhan relied upon the judgment in the case of ***Bidyut Baran Halder vs. The State Bank of West Bengal & Ors., 2018 LLR 32.***

42. That apart, it is also stated that the terminal benefits are valuable rights acquired and property of the employee, as guaranteed under Article 300A of the Constitution of India and are, therefore, immune from any deduction or adjustment against any other dues from the employee. In this regard, Mr. Harshvardhan relied upon the judgments in the cases of ***Gorakhpur University and Ors. (supra); Hira Lal vs. State of Bihar, (2020) 4 SCC 346; Rahul Sinha vs. State of West Bengal, 2006 SCC OnLine Cal 783; Anindita Jena v. General Manager, 2011 SCC OnLine Ori 130; Pranab Kumar Goswami vs. UCO Bank, 2015 SCC OnLine Gau 941, and Syndicate Bank vs. Sheela Julian, 2018 SCC OnLine Ker 4258.***

43. Moreover, it is submitted that even if it is assumed that the respondent Bank has a lien on the terminal benefits payable to the employee, it loses its possessory lien once the money is disbursed to the employee. To support the said averment, Mr. Harshvardhan relied upon the judgment in the case of ***United Bank of India vs. Bidyut Baran Halder & Ors., 2018 SCC OnLine Cal.*** Therefore, having credited the petitioner's terminal benefits, the respondent Bank could not have unilaterally adjusted the same against his outstanding loans.

44. In view of the judgments stated in the paragraphs above, it is submitted by Mr. Harshvardhan that the respondent Bank had no right to mark lien on the gratuity amount of the petitioner, especially when the said amount had already been credited to the petitioner's account

by the respondents in his pension account and maintained with the Bank's Malviya Nagar Branch. In this regard, he relied upon the judgment in the case of **Bidyut Baran Halder (supra)**, wherein the Calcutta High Court has held that even assuming that the bank has a lien on the terminal benefits payable, it loses such lien once the money is put in the account of the employee, and the same is exactly the scenario in the present petition.

45. Mr. Harshvardhan has controverted the stand of the respondent Bank that as per Section 171 of the Indian Contract Act, 1872, ("Contract Act" hereinafter) the respondent Bank has a lien over all the monies lying with it and therefore, it has the power to appropriate terminal benefits against the petitioner's outstanding loans. In support of the said averment, the learned counsel for the respondents has relied upon the judgment of the Supreme Court in the case of **Syndicate Bank vs. Vijay Kumar, (1992) 2 SCC 330**. Mr. Harshvardhan stated that the said judgment has no application to the facts of the present case, as in that case, the judgment-debtor who owned two Fixed Deposits (FDs), had executed two letters creating a lien in favour of the bank over the said Fixed Deposits Receipts (for short, 'FDRs') and in that background, the Supreme Court held that the two letters executed by the judgment-debtor created a lien in favour of the bank over the two FDRs.

46. In **Kodanad Service Co-operative Bank Ltd. vs. K.K. Sushama, W.A. No. 1628/2014**, the High Court of Kerala also held that **Syndicate Bank (supra)** would not have any applicability when the terminal benefits of the employee are at stake in view of the

overriding effect of the provisions under the Payment of Gratuity Act, 1972 (for short, 'Gratuity Act').

47. Furthermore, even under Section 4(6) of the Gratuity Act, gratuity can be forfeited only upon the termination of the employee. Therefore, in the present case, it is submitted that a general lien cannot be claimed by the respondent Bank over the terminal benefits of the petitioner especially in view of Section 4(6) of the Gratuity Act read with Section 14, which states that the Gratuity Act has an overriding effect over other enactments.

48. Moreover, it is submitted that the abrupt closure of the loan accounts of the petitioner was also illegal. The petitioner had executed an unconditional letter of authority dated December 09, 2011, permitting recovery of the EMIs from his salary account, however, the respondents failed to do so. Even the Inquiring Authority vide report dated February 08, 2017, found that “...*there was a lapse on the part of the bank in not invoking the unconditional authority letter executed by the CSO.*”

49. The PF amount was credited to the petitioner's personal overdraft (for short, 'OD') account on December 22, 2017, and simultaneously a lien of ₹38,46,265/- was marked in the account. The gratuity amount was credited on January 01, 2018, to his pension account and simultaneously a lien of ₹10,89,215/- was marked in the account. Thus, after his retirement the petitioner has been financially crippled without any fault on his part.

50. Mr. Harshvardhan stated that the petitioner's daughter had availed an education loan of ₹7,50,000/-, bearing Loan Account No.

67064881260, from the respondent Bank on February 04, 2008, for her graduation and the petitioner was a Co-applicant in this loan. It is submitted that the petitioner's daughter was regularly repaying EMIs of ₹16,600/- from November 2015, which were more than the amount of ₹14,500/- as specified in the repayment schedule. However, she had stopped paying EMIs when she stopped working, after securing admission in a post-graduate course in the year 2017, about which the respondents were duly informed. Thereafter, the petitioner accordingly requested the concerned branch vide letters dated May 03, 2017, May 16, 2017, and December 13, 2017, to defer the payment of EMIs till the completion of post-graduation course of his daughter and to approve the top-up loan for the payment of the fee amount. However, on February 15, 2018, the outstanding loan amount of ₹9,68,027/- was debited from the petitioner's personal OD account and appropriated towards the closure of his daughter's education loan. Thereafter, the petitioner wrote an e-mail to the branch asking for the reversal of the closure of the education loan of his daughter.

51. Subsequently, the respondent Bank informed the petitioner about the same vide letter dated February 15, 2018 and did not take any step to reverse the transaction. It is submitted that the petitioner had never authorised the respondent Bank to make debit any such amounts from his personal OD account and to appropriate it towards payment of education loan. Moreover, the petitioner's daughter was the main borrower and the education loan had to be repaid by her and not by the petitioner. Accordingly, the petitioner replied to the letter dated February 15, 2018, requesting for reversal of the credit of

₹9,68,027/- to the education loan account. As a result, the petitioner has been unable to raise funds to fund his daughter's education and pay her fee for the second year of her post-graduation studies which was due on April 24, 2018.

52. It is submitted that the closure of the education loan is illegal and deserves to be quashed. The Master Circular on Education Loans dated June 30, 2017, specifically in Clause 1.11 provides that if a student has availed a loan for graduation and thereafter, also pursues post-graduation, the repayment of such loan shall commence only upon completion of the second course. Thus, since the petitioner's daughter had taken up a post-graduation course in May, 2017, it was incumbent upon the respondent Bank to defer repayment of the loan and therefore, the education loan amount could not have been declared as a Non-Performing Asset (for short, 'NPA'). Consequently, the Regional Manager of the Tiruvanthapuram Branch of the respondent Bank had written a letter dated October 03, 2017 to the Branch Manager of the Saket Branch stating that the petitioner's case was suitable for extension of the moratorium period as the petitioner's daughter, was pursuing her post-graduation studies. Furthermore, Clause 1.31 of the Master Circular on Education Loans dated June 30, 2017, issued by the SBI states that "*No lien should be noted against PF balance of the member of staff....*".

53. On February 23, 2018, without any authorisation from the petitioner, the home loan account (bearing No. 67166815214) and vehicle loan account (bearing No. 67046842754) were closed by debiting money from the pension account of the petitioner and

crediting the same in his loan account. According to Mr. Harshvardhan, on August 07, 2018, the petitioner also wrote to the respondent Bank requesting for reversal of unauthorised debit from his pension account, but so far, he has not received any response.

54. Mr. Harshvardhan stated that on April 05, 2018, the petitioner complained to the Banking Ombudsman outlining the arbitrary acts of the respondent Bank and the harassment suffered by the petitioner but till date, the petitioner has not received any response from the Banking Ombudsman. Furthermore, vide letter dated April 21, 2018, the petitioner's daughter wrote to the Chairman, SBI appealing for intervention in the matter. In response to the same, the Chief Manager, SBI, after making multiple false assurances, in his letter dated May 11, 2018, addressed to the petitioner's daughter, stated that the petitioner in a meeting with the Regional Manager and the Chief Manager had been advised to apply for a fresh loan and the application would be considered favorably. In this meeting, the petitioner had also been assured orally that such application, when made, would be taken note of. Subsequently, the petitioner's daughter made further representations / applications to the Chief Manager, vide letter dated May 13, 2018, and to the Hon'ble Prime Minister vide letters dated May 13, 2018, and June 03, 2018. However, the petitioner's application for a fresh loan was rejected vide letter dated September 18, 2018.

55. Thereafter, another representation was made by the petitioner's daughter to the Banking Ombudsman on October 02, 2018. It is submitted that the entire correspondence between her, the Bank and

other authorities was also furnished in her mail to the Banking Ombudsman. In this regard, Mr. Harshvardhan stated that despite giving the said representation, there was complete inaction on the part of the Banking Ombudsman.

56. It is submitted that as far as the home loan agreement is concerned, the builder is ready and willing to hand over the possession of the flat in order to pay the balance consideration. However, the reversal of unauthorised debit from the petitioner's pension account is imperative to enable the payment of the balance amount. The petitioner is now retired and he has no other source of income. He has sought prayers as made in the petition.

57. A counter affidavit has been filed on behalf of respondent Nos.1 to 3, wherein the respondents have stated that the present petition is liable to be dismissed as no part of the cause of action arose in Delhi and even assuming that the Bank has branches in New Delhi, no part of the cause of action is even alleged to have arisen in any of the branches of the Bank in Delhi.

58. According to Mr. A.V. Rangam, learned counsel for the respondents, the cause of action arose when the petitioner was posted as the Chief Manager in Trivandrum district of Kerala and therefore the present petition is not maintainable as it does not fall within the territorial jurisdiction of this Court.

59. The petitioner was posted as Branch Manager of Sector-18, Gurgaon Branch of the respondent Bank and as the Branch Manager of the Kadakkavoor Branch, Kerala during which the petitioner has committed serious lapses by unauthorisedly absenting himself for long

periods and brought in unwarranted pressure for getting transfers, violating the rules and regulations of the respondent Bank, rendering him liable for disciplinary action under the Conduct, Discipline and Appeal Regulations of the SBT (Officer's) Service Regulations, 1979.

60. Charge sheet dated May 30, 2016 was issued against the petitioner with regard to the lapses committed by him. During the said period the petitioner was posted as the Chief Manager, erstwhile SBT, Kadakkavoor Branch, Trivandrum District, Kerala. Consequently, the petitioner was to submit a reply to the charge sheet within 15 days, failing which an inquiry was to be ordered. Despite the time period of 15 days along with an extension till July 31, 2016, which was granted to the petitioner, no reply was received by the respondent Bank. Thereafter, an inquiry was ordered into the charges and the charge-sheeted Officer (for short, 'CSO') / petitioner could make their representations within seven days.

61. On January 12, 2017, the Inquiry Authority submitted its final report and all five charges against the petitioner/CSO were found to have been proved.

62. On February 07, 2017, the disciplinary authority, passed an order finding the petitioner to be guilty of all the charges. However, the respondent Bank stated that owing to the fact that the petitioner had served the Bank for 36 years and was due to superannuate on November 30, 2017, a lenient view was taken and a reduced penalty of *reduction by one stage in the time scale pay from the date of this Order till the date of his retirement viz 30.11.2017, without cumulative effect,*

and not adversely affecting the officer's pension and other retirement benefits was imposed.

63. It is submitted that the petitioner is an officer of the respondent Bank and officers are subject to all India transfers and the petitioner is no exception. Consequently, it is stated that a normal assignment period of an official at a particular centre/position is 2-3 years. However, an official can be transferred at anytime, anywhere in India, due to administrative reasons and exigencies of service, to ensure optimum utilisation of the human resources in the best interest of the Bank. The petitioner's contention that he was not given an assignment of a permanent nature is not correct. The details of the petitioner's posting from 1998 to 2012 are as follows:

From	To	Branch	Designation
May 10, 1998	June 10, 2000	Bhopal	Branch Manager
June 10, 2000	October 10, 2001	RK Puram, New Delhi	Manager (PSB)
October 10, 2001	April 10, 2004	Karol Bagh, New Delhi	Manager (Concurrent Auditor)
April 10, 2004	December 10, 2005	Service Branch, New Delhi	Branch Manager
December 10, 2005	May 30, 2009	Commercial Branch, New Delhi	Manager (CDT)
June 01, 2009	May 18, 2012	Sector-18, Gurgaon	Branch Manager

64. Mr. Rangam submitted that as per the revised transfer policy of the respondent, the maximum period of retention of an official in a particular zone is 6 years and the maximum period of retention in any one position at the same office is 3 years. Moreover, the petitioner has completed 12 years in Delhi Zone and three years in Sector 18, Gurgaon Branch in 2012. The respondent Bank submitted that the petitioner was not given any permanent assignment and the petitioner's contention that he was transferred in contravention of the transfer policy is absolutely false.

65. The petitioner's request was considered, in accordance with the Order of this Court dated July 17, 2012 in W.P. (C) No. 4083/2012 and the posting to Irinjalakuda Branch, Kerala was modified to Nagpur Branch. It is further submitted that the petitioner had already completed 12 years in the Delhi Zone while filing the present petition and his request for transfer to Delhi could not be acceded to as per the transfer policy. As contended, the petitioner is requesting a transfer to Delhi in accordance with the transfer policy. However, the transfer policy according to the respondent Bank, permits an officer to remain in a Zone for a maximum period of 6 years whereas the petitioner himself has completed 12 years in the zone as of 2012. Though the transfer policy provides for consideration on compassionate grounds, the same depends on administrative exigencies and cannot be exercised for each and every such request. The inability to accede to the petitioner's request has been communicated to the petitioner by the respondent Bank vide letter dated September 04, 2012. The petitioner,

having enjoyed favorable posting for 12 years, as against the transfer policy, cannot be dealt with more sympathetically than he already has.

66. He stated that this Court in its judgment dated July 17, 2012, in W.P. (C) No. 4083/2012 passed directions to consider the case of the petitioner sympathetically, with which the respondent Bank complied. However, the Court also observed that “.....*The Division Bench of this Court has already held in P.Rajapratap v. UOI & Ors : 2010 (1) SLR 123 while referring the decision in UOI v. S. L. Abbas : AIR 1993 SC 2444 that a policy guideline regulating transfer of employees does not create any enforceable legal right in favour of an employee. It being settled law that transfer and posting is an incident of service.....*”.

67. He submitted that all officials are mandatorily required to complete the prescribed period of minimum years of service in a grade for them to be considered for promotion and also certain mandatory assignments in rural/semi-urban branches/ operational/independent line assignments. As per that transfer policy of the respondent Bank, for promotion from Middle Management Grade Scale (for short, ‘MMGS’) III to Senior Management Grade Scale (for short, ‘SMGS’) IV, the officer has to complete 4 years of service in MMGS-III and the mandatory assignment of 3 year’s service in rural/semi-urban branches and 2 years of satisfactory independent line assignment during his tenure as an officer of the respondent Bank. In this regard, reliance is placed upon the judgment in the case of *State Bank of India and Ors. vs. Kashinath Kher and Ors., 1996 (8) SCC 762*, wherein the Supreme Court has held that “*rural/semi-urban assignment is mandatory criterion for considering promotion of employees*”.

68. The respondent Bank had issued a Circular dated August 27, 2014, requiring the officers to register their option for placement in mandatory assignments. The officers were required to log in to the PAD website and register their names if they had any shortfall for being considered for promotion. The officers who opted for mandatory assignments also undertook that they can be posted anywhere in the Bank for completing the above assignment. The petitioner being a Scale-III officer has only completed about 5 months of rural/semi-urban posting in his entire service. As such petitioner has not completed his mandatory rural/semi-urban posting which is required for consideration of his promotion. The petitioner voluntarily made a request by logging in to the Bank's website for giving him a rural/semi-urban posting so as to enable him to complete the mandatory 3 years rural/semi-urban posting. Accordingly, in October 2014, the petitioner was transferred from Nagpur Branch to Kadakkavoor Branch, Kerala and the relieving letter was issued to the petitioner on October 18, 2014. However, instead of joining the Kadakkavoor Branch, Kerala, the petitioner absented himself and did not report to work. He was on unauthorised absence w.e.f October 19, 2014, to May 19, 2015, and as such the entire period between October 19, 2014, to May 19, 2015, was treated as unauthorised absence.

69. It is submitted by Mr. Rangam that the contention of Mr. Harshvardhan on behalf of the petitioner that the transfer Order dated September 25, 2014, was never communicated to the petitioner is not true as the transfer Order of the officials are generally uploaded on the PAD website of the bank through a Circular. The transfer Order in

question was also similarly uploaded in the PAD website vide Circular No. 66/2014 dated September 25, 2014, and the same is accessible to all employees of the respondent Bank. Moreover, the relieving letter of the official was sent to his address at Delhi vide Letter No.AGM/TVM/157 dated January 30, 2015.

70. It is further submitted that during the hearing of W.P. (C) No. 8652/2014, the petitioner has agreed to join the Kadakkavoor Branch, Kerala and accordingly the Order dated December 23, 2014 was passed. However, the petitioner continued his unauthorised absence and did not join the branch till May 19, 2015. Since no vacancy existed in any of the rural/semi-urban branches in the Northern Region, the respondent Bank could not provide him posting in Northern Region.

71. As far as the contention of the petitioner regarding the vacancy in the Bhiwadi Branch is concerned, he submitted that there was no vacancy at the said branch at the time and the petitioner cannot demand the respondent Bank to create a vacancy at a particular branch accommodating the petitioner. The transfer and postings are done based on the administrative exigencies and an official cannot be transferred just for the reason that he/she had completed 2/3 years of the service, for the sake of accommodating/creating a vacancy for the petitioner. A letter vide reference No. PAD/AKR/279 dated January 23, 2015, was sent by the respondent Bank to the petitioner in this regard, informing him that his request for posting at the Bhiwadi Branch could not be accepted and that the petitioner is required to immediately report to duty as his absence continued to be

unauthorised. That apart, in response to the letter dated February 08, 2015, sent by the petitioner, the respondent Bank sent a letter dated March 03, 2015, vide reference No. PAD/AKR/622 to the petitioner informing him that his repeated requests for transfer to Bhiwadi Branch could not be acceded to and since he had been unauthorisedly absent from duty for a period exceeding the time limit prescribed under the SBT Officer's Service Regulations, 1979 he would be penalised accordingly.

72. It is the submission of Mr. Rangam that the allegation of the petitioner with respect to the withholding of the salary is false. Subsequent to the petitioner's posting at Kadakkavoor Branch, Kerala vide Order dated September 25, 2014, the petitioner went on unauthorised absence from October 19, 2014, to May 19, 2015, and absented himself for 213 days without prior permission and also without submitting leave applications, despite serving two notices. On an earlier occasion, the petitioner went on unauthorised absence for a period of 209 days from May 18, 2012, to December 13, 2012, when the petitioner was posted at Irinjalakuda Branch, Kerala. However, the respondent Bank took a lenient view at that time and released his salary on his rejoining the bank. Furthermore, it is stated that the petitioner cannot adopt the same strategy throughout his career in order to avoid posting that he does not like. Absenting from duty unauthorisedly is not the right of any employee. Despite repeated reminders, the petitioner failed to submit any satisfactory explanation or leave application for the above periods. It is stated that the respondent Bank was left with no other option but to treat the period as

unauthorised absence on the loss of pay and to stop salary payment for the above stated period. According to him, no application of leave was submitted and therefore, the period of unauthorised absence was not be regularised and was treated as loss of pay. Moreover, as the salary was paid for part of the period of his unauthorised absence (i.e., during October 19, 2014, to January 31, 2015) inadvertently, the same was recovered at the rate of ₹2800/- per month from his salary from June 2016 to March 2017.

73. It is submitted that despite a history of unauthorised absence, initiation of disciplinary proceedings and poor performance, the petitioner was promoted to the post of Scale-IV on May 04, 2015, only on the basis of humanitarian consideration and not on merit and hence the petitioner cannot claim back wages/backdated promotions.

74. Addressing the contention that the petitioner's application leave was ignored, Mr. Rangam submitted that the petitioner was a habitual absentee and lacked discipline. Even after several reminders, the petitioner failed to submit the leave applications for the period on unauthorised leave and the same has to be treated as loss of pay. Therefore, the petitioner cannot claim an exemption for the rules and regulations of the respondent Bank as a matter of right to suit his personal requirements. For the mere reason that an employee has sufficient leave, the balance does not oblige the Bank to sanction leave. The same is decided upon taking into consideration the administrative exigencies. It is stated that the petitioner at the relevant time had already proceeded on leave (unauthorised absence) and sanctioning of further leave would have affected the smooth

functioning of the respondent Bank and the morale of other employees.

75. That apart, sanctioning of leave is not a matter of right of an employee. It is the discretion of the sanctioning authority, considering various administrative exigencies. It is stated that no employee can go on leave without prior sanctioning of the same by the appropriate authority. The respondent Bank stated that the petitioner first went to unauthorised absence then demanded sanction of leave, which is not acceptable. Furthermore, it is stated that all officers of the respondent Bank are provided with a leased accommodation facility and it is expected that the dependents of officers normally reside with them.

76. Furthermore, the transfer of an employee is the prerogative of the Bank and employees are bound to adhere to the instructions. The contention of the petitioner that vacancies were created in the year 2016 in the pretext of the merger is baseless and without any merit. Every year, around 30-35% of the officers are transferred from one position/place to another position/place. The respondent Bank had never taken any decision to bring back the officers belonging to Kerala.

77. As far as the disciplinary proceedings for the alleged lapses in the home loan of the petitioner are concerned, it is submitted that on November 17, 2011, an amount of ₹20 Lakhs was sanctioned as a loan to the petitioner by the respondent Bank and an EM of flat under construction at Faridabad, Haryana and lien on PF balances was held to be as a security against the loan amount. That apart, the petitioner has not raised any dispute that there was a default in the account.

Moreover, in the inquiry it has been proved that the petitioner defaulted in the repayments to the housing loan availed by him, disbursed 3 installments of the loan amounting to ₹12,42,739/- in quick succession without ensuring the progress of construction, failed to obtain stamped receipts for the installments disbursed, failed to conduct pre-sanction and post-sanction inspection and also failed to create EM, CERSAI registration. The petitioner also failed to give his mandate in HRMS for the recovery of the loan. On the basis of the Charge Sheet Memo no. DPD/1711/858 dated July 26, 2016, it was concluded that, out of 8 charges, 5 charges were treated as proved and 2 charges were treated as partially proved. Accordingly, for the said lapses committed by the petitioner, he was awarded the punishment of 'Censure' by the disciplinary authority. The disciplinary authority has also directed the petitioner to start repayment of the housing loan, which was then pending, from March 2017 onwards till retirement and to adjust the outstanding of the loan at the time of retirement against his terminal benefits.

78. It is further stated that the respondent Bank has the right to set off the dues of a defaulter. In the present case, no asset was created out of the funds availed by the petitioner. As per the policies of the Bank, loans to staff are extended at a concessional rate and also based on the salary paid by the bank. The respondent Bank has every right to recover the amount due from the terminal benefits of the employee, provided an extension for the tenure of loan beyond retirement is not granted.

79. It is submitted that the sanction letter regarding the housing loan dated November 17, 2011, specifically provides for marking of lien against the PF balance of the official as security against the loan availed by him. The petitioner who is well aware of the provisions of classifying an account as NPA had failed to adhere to instructions in his own case. Moreover, the petitioner cannot expect permission for each and every request made by him and the same shall only be considered on merit and within the framework of the instructions of the bank and its management.

80. It is averred by Mr. Rangam that the respondent Bank had duly sent proper communication to the petitioner vide letter No. MAMOM/MISC/12/2017-18 dated November 30, 2017, informing him that his request regarding the reversal of monthly deductions with regard to the housing loans as well as the continuance of the housing loan cannot be considered as per the Order of the disciplinary authority dated March 16, 2017. The Order dated March 16, 2017, directed that “...the outstanding in the account at the time of retirement, is to be adjusted against his [the petitioner’s] terminal benefits....”. Moreover, the said Order of the disciplinary authority is supported by Regulation 67(d) of the SBT (Officers) Service Regulations, 1979 which contemplates as follows:

“....Recovery from pay or such other amount as may be due to him of the whole or part of any pecuniary loss caused to the Bank....”.

81. That apart, an email communication was also sent to the petitioner on February 06, 2018, giving detailed reasoning as to why

the respondent Bank was unable to review the Order passed by the disciplinary authority.

82. He has placed reliance on the judgment of the Supreme Court in the case of **ONGC Ltd. (supra)** wherein it was held that the gratuity paid to the employee is for the services rendered by him. It was further held that if any kind of financial loss has been suffered by the employer due to misconduct of a workman, the same can be recovered by the employer by withholding payment of gratuity. According to Mr. Rangam, in the said judgment the Court further stated that the loss could be of such a nature that the discipline of workers is at risk.

83. That apart, he also relied upon the judgment in the case of **U.P. State Sugar Corporation Ltd. (supra)** wherein the Supreme Court held by following the judgment in the case of **UCO Bank vs. Sanwar Mal**, Civil Appeal No. 3192/1999, wherein it was stated that the relation between an employer and an employee cannot be said to cease post-retirement. The same continues for the grant of retiral benefits. Moreover, the said judgment also dealt with the Rule of the Employer which is in *pari materia* with Rule 67(d) of the SBT (Officers) Service Regulations, 1979 in the present case.

84. To counter the submission made by Mr. Harshvardhan with respect to Section 4(6) of the Gratuity Act, reliance has also been placed by Mr. Rangam on the case of **Chairman-Cum-Managing Director, Mahanadi Coalfields Limited (supra)** wherein though the question, inter alia, involved the issue as to whether a Disciplinary Proceeding commenced during the service of the employee could be continued and concluded after his superannuation, it has been held

inter alia, Section 4(6) of the Gratuity Act, shall prevail over Section 4(1) of the Gratuity Act, as provisions of Section 4(6) contain non-obstante clause as to Section 4(1). Hence, gratuity would not become payable mandatorily as provided in Section 4(1). It was further held that the punishment of withholding gratuity can be given but the only exception carved against the said rule is the presence of a specific provision regarding the same.

85. On May 11, 2018, according to Mr. Rangam, the respondent Bank had addressed a letter to the petitioner's daughter informing her of the reasons for the closure of the loan account and debiting the outstanding loan amount from the petitioner's account. The loan account had turned into an NPA and an amount of ₹9.05 lakhs was due from the petitioner exclusive of the interest amount. The petitioner was a co-borrower in the loan account, and he was contacted many times through telephone, letters, notices and meetings. However, the loan account continued to be NPA and the branch concerned was not in a position to recommend to the sanctioning authority for extension/grant moratorium in the NPA education loan account.

86. It is submitted that the respondent Bank has a banker's lien on all the monies lying with it under Section 171 of the Indian Contract Act, 1872. In this regard, Mr. Rangam relied upon the judgment of the Supreme Court in the case of *Syndicate Bank (supra)*. Furthermore, it is submitted that the petitioner being a co-borrower of the loan, the respondent Bank was well within its contractual and statutory right to recover any outstanding dues from either of the borrowers, their liability being joint and several. There is no principle of law that the

bank must seek to recover outstanding amounts from only one of the borrowers.

87. The contention of Mr. Harshvardhan that the respondent Bank had made an oral assurance regarding the issuance of a fresh loan is denied. In this regard, Mr. Rangam it is submitted that in the letter dated May 11, 2018, there was no assurance given by the respondent Bank, rather it was stated that the bank would 'consider' the application favourably as per the prevailing Education Loan Scheme. The respondent Bank vide letter dated September 18, 2018, having considered the previous track record of the petitioner and his 3 previous accounts having become NPA, rejected and cancelled the petitioner's application for issuance of a fresh education loan.

ANALYSIS

88. Having heard the learned counsel for the parties and perused the record, I find that the petitioner has in the writ petition prayed for multiple reliefs which do not flow from a definite cause of action. To that extent, the present petition is bad for mis-joinder of causes of action. In any case, in effect the petitioner is seeking the following prayers:

- (i) Quash order dated February 07, 2017 and for payment of salary reduced by the bank;
- (ii) Quash order dated March 16, 2017;
- (iii) Release salary for the period February 1, 2015 to May 19, 2015;
- (iv) Declare the deduction to the tune of ₹28,500/- per month from June 01, 2016 to March 31, 2017 as illegal;

- (v) Direct recalculation of pension, PF and gratuity after taking into account the payments to be made at (i), (iii) and (iv) above and pay the difference in the amount with interest;
- (vi) Reverse the debit of ₹9,68,027/- that was recorded towards payment of educational loan amount with 18% interest;
- (vii) Reverse the closure of education loan amount and allow the petitioner to continue the same;
- (viii) Reverse the debit of ₹15,50,700/- from the pension account appropriated towards payment of outstanding Home Loan and Vehicle Loan alongwith interest @ 18% and allow the petitioner to continue the loan;
- (ix) Restrain the respondent Bank from marking any lien in the petitioner's account and Personal OD account and thereby prohibit it from appropriating the PF and Gratuity towards any outstanding payment.

89. Given the multifarious reliefs sought, at the outset, I intend to deal with the challenge to the order dated February 7, 2017. The said order was passed on a charge sheet issued to the petitioner on May 30, 2016 whereby a penalty of reduction by one stage in time scale of pay from the date of the order till the date of retirement, i.e., November 30, 2017, without cumulative effect and not adversely effecting the officer's pension and other retiral benefits, was passed. The appeal filed by the petitioner against the order dated February 7, 2017 was rejected vide order dated March 31, 2017.

90. It may be stated, no challenge was made to the order of the Appellate Authority dated March 31, 2017. The order dated February

7, 2017 having merged with the order dated March 31, 2017 to which no challenge is made, shall have the effect of there being no challenge to the penalty. Be that as it may, the charges that were framed against the petitioner vide charge sheet dated May 30, 2016 that resulted in the order dated February 07, 2017, in brief are the following:

- (i) The petitioner while working as Manager, Regional Office, New Delhi was posted as Manager (PSB) in Kadakkavoor Branch on October 18, 2014, failed to report to the branch and remained unauthorisedly absent for a period of 213 days from October 19, 2014 to May 19, 2015.
- (ii) Unauthorised absence for 18 days from August 17, 2015 to September 3, 2015, then authorised leave for 209 days from May 19, 2012 to December 13, 2012.
- (iii) Habit of absenting himself from duty without prior permission.
- (iv) Brought unwarranted external pressure on the Bank whenever he was posted outside Delhi.

91. The Inquiry Officer who conducted the Inquiry had submitted his report wherein he has held that all the charges which have been framed against the petitioner have been proved.

92. The submission of Mr. Harshvardhan, learned counsel for the petitioner with regard to charge sheet / findings and the penalty is primarily that the petitioner was facing a medical emergency on account of his father's precarious health condition. For this reason, the petitioner had been requesting the respondent Bank for posting him close to Delhi but in vain.

93. It is his case that the petitioner had been informing the respondent Bank, before absenting himself from work every time. He concedes to the fact that the respondent Bank despite having full knowledge of the petitioner's difficulties did not approve his leaves on time and did not give him a posting close to Delhi. This according to Mr. Harshvardhan is in violation of the policy of granting leaves and transfer on compassionate grounds and in case of medical emergency.

94. Mr. Harshvardhan has relied upon the order passed by this Court in W.P.(C) 4083/2012 on July 17, 2012 filed by the petitioner, wherein it was directed that the respondent Bank shall consider posting him close to Delhi. Thereafter, it was only in December, 2012 the petitioner was posted to Nagpur. Thus, the period from May, 2012 to December, 2012 cannot be considered as an unauthorised absence.

95. The period of unauthorised absence of 213 days from October 19, 2014, to May 19, 2015, is also contested on the ground that the petitioner was relieved from service *in absentia* vide email dated October 20, 2014, when he was already on leave.

96. Even the unauthorised absence of 18 days from August 17, 2015, to September 03, 2015, is also denied by Mr. Harshvardhan, who justified the absence because of the petitioner's father illness.

97. Even the contention of the respondents of the petitioner putting external pressure for getting favourable transfer is denied by Mr. Harshvardhan.

98. Before I deal with the submissions made by Mr. Harshvardhan, it is necessary to refer to the findings of the Inquiry Officer on these charges framed vide charge sheet dated May 30, 2016:

“Finding on Charge No. 1

The charge is that the CSO unauthorisedly absented himself from duty for a period of 213 days from 19.10.2014 to 19.05.2015. While functioning as the Manager (Concurrent Audit) of Regional Office, New Delhi he was transferred and posted as Manager (PSB) at Kadakkavoor Branch vide transfer order dated 18.10.2014, He failed to report for duty at Kadakkavoor branch. He neither obtained prior sanction from the appropriate authority nor submitted leave applications for the period of his absence. He failed to join duty at Kadakkavoor Branch despite repeated reminders dated 30.01.2015 and 09.03.2015 by the controller viz, Assistant General Manager III, Zonal Office, Thiruvananthapuram He also failed to submit leave letters for his absence. Sri Suresh Puri thereby unauthorisedly absented himself for a period of 213 days from 19.10.2014 to 19.05.2015 defying the orders of the appropriate authority which tantamount to indiscipline and insubordination, for which he is accountable.

Presenting Officer in his argument note has submitted that the CSO was relieved of his duties as at the close of business on 18.10.2014 by the DGM, RO, New Delhi the Controller, while he was working as Manager (Concurrent Audit) of our Regional Office, New Delhi instructing him to report at our Kadakkavoor Branch after availing joining time. The CSO did not report for duty at our Kadakkavoor Branch and absented himself from duty for 213 days, unauthorisedly, without submitting any leave application or seeking prior permission from the Controller. Registered Notices were issued to the CSO to report for duty within 10 days from the date of receipt of the letter and the same was also not complied with. He submits that the CSO has violated regulation no 42 and 43 of OSR 1979.

The Defence Representative has submitted that the CSO could not join the duties of the Bank as his father was ill,

which needs a humanitarian consideration. Again, that the CSO had completed only 3 years in the Delhi Region and his representations to retain him was not heeded to. The DR again argued that the entire scenario culminated only because the CSO had filed a case before the Hon. High Court. DR has requested to take cognizance of the pathetic personal condition of the CSO and take a view under humanitarian grounds.

I have gone through the written arguments submitted by both sides and the exhibits brought before me. The Presenting Officer could bring in exhibits to prove that even after repeated requests from the controller the CSO had not joined duty, (ME3 (letter no AGM/TVM/157 dated 30.01.2015), ME4 (letter no AGM/TVM/183 dated 09.03.2015 and MES (letter no: AGM/TVM/01 dated 18.04.2016)). The exhibits produced before me (ME1) could prove that the CSO was relieved from his duties as on 18.10.2014. He has not joined duty up to 19.05.2015 ME5 and ME6 (letter no: AGM/III/T/23 dated 13.08.2015), letters sent by the Controller to CSO makes it evident that the CSO has not submitted any leave letter. Non submission of leave letters, even after the repeated requests of the Controller cannot be accepted at any cost. While dealing with official indiscipline and insubordination, not reporting for duty and non submission of leave letter and absenting without permission are violations of the regulations contained in the SBT OSR of 1979. ME11 (the bio data of the officer) makes it evident that the CSO was working in RK Puram Branch, New Delhi during 2000-2001, Karol Bagh Branch, New Delhi during 2001-2004, Service Branch, New Delhi from 10.04.2004 to 10.12.2005 Commercial Branch, New Delhi from 10.12.2005 to 30.05.2009, Sector 18 Gurgaon Branch from 01.06.2009 to 18.05.2012 etc. The argument of the defence that they are not provided with a posting at New Delhi is not found to be correct. The defence could not bring in any valid documents or arguments to prove their

contentions. With what all exhibits and written briefs brought before me I am inclined to decide the charge as proved.

Finding on Charge No. 2

The charge leveled against the CSO is that he left the station, ignoring the rejection of leave applied for, which is communicated to him well in advance. Further he has overstayed for 8 more days and had not submitted neither any valid reason for leave nor the leave letter. He has availed leave unauthorisedly, without prior permission, thereby refused to abide by the directions of the controller, which tantamount to indiscipline and insubordination, for which he is accountable.

The presenting officer in his written brief has argued that the CSO has not submitted any leave applications / medical certificates for his long period of absence in spite of the Controller's request to submit the same. Since the CSO has not submitted any leave letter the period of unauthorised absence/ leave was not regularised. The Controller has rejected the application submitted by him for a period of 10 days, and communicated the same. The CSO ignored the orders of rejection of the leave applied for, by the Controller, and had left the station without permission from the sanctioning authority and overstayed for 8 more days, which is against the provisions contained in the OSR.

The defence representative argued that the CSO had to rush to New Delhi to attend his father, since he is in a critical condition. The action of the Controller in denying leave and taking action against a son who went to attend his father who is critically ill is against all human practices and conventions.

I have gone through the arguments of both sides and find that the CSO had applied for 10 days PL from 17.08.2015 to 26.08.2015 on 11.08.2015 (Annx ME6). Sanctioning

Authority, the Controller vide his letter dated 13.08.2015 informed the CSO that they are unable to sanction the leave applied for, since he had not submitted the leave applications, for leave availed earlier (ME6). The same information of rejection of the leave applied for was communicated through email dated 14.06.2015 (ME7). CSO is well aware of the fact that his earlier leave/absence from duty is still pending for approval, since he has not submitted the leave application. The DR argued that the CSO's father's condition became so critical and he was called to Delhi and had to rush to Delhi to admit his father to hospital. The leave was applied on 11.08.2015 for the period from 17.08.2015 and hence an emergent situation cannot be observed. If the CSO had no other option than to avail the leave, to attend his ailing father, he would have appraised the matter with his Controller and obtained sanction. Non submission of the previous leave letter to get the earlier unauthorised leave availed sanctioned and proceeding on leave letter to get the earlier unauthorized leave availed sanctioned and proceeding on leave after knowing fully well that the leave application is rejected, cannot be accepted. I infer that Sri Suresh Puri had not made any sincere attempt to take up the matter with the Controller concerned, convince them of the urgency and got the leave sanctioned. Instead he proceeded on leave and left station without permission or sanction from the Controller, knowing fully well that his leave application is rejected. In the circumstances detailed above I find that CSO has not obeyed the instructions of the controller in submission of leave letters already availed, to regularise the same, and had availed the leave which was rejected by the sanctioning authority, brings to light that the CSO refused to abide by the directions of the controller, which tantamounts to indiscipline and insubordination, for which he is accountable. I am inclined to treat the charge as Proved.

Finding on Charge No. 3

The charge against the CSO is that he was unauthorisedly absent for 209 days from 19.05.2012 to 13.12.2012 and did not obey the lawful orders of the General Manager (HR) while he was transferred from Sector 18, Gurgaon to Irinjalakuda Branch.

The presenting officer has submitted in his brief that the CSO did not join for duty at our Irinjalakuda branch after being relieved from Sector 18, Gurgaon. He remained unauthorisedly absent for 209 days and had not submitted any leave letter and thereby violated the service regulations. Even the letter issued by the General Manager (HR) was not heeded to. The act of the CSO is violation of the rules contained in SBT OSR. This amounts to willful insubordination and disobedience of lawful and reasonable orders of the management.

The defence representative in his written brief has submitted that the CSO was not in the habit of taking leave and that can be verified from his past records. The situation explained earlier compelled him to be in home or hospital and he had no other choice but to be at his home town Delhi.

I have examined the exhibits and submissions of both sides and find that the CSO remained unauthorisedly absent for a period of 209 days from 19.05.2012 to 13.12.2012. Even after repeated instructions the CSO has not submitted the leave letter for the period. The letter / order issued by the General Manager (HR) was also not headed to. I find that the CSO has refused to obey the lawful orders of the organization / superiors, the CSO / DR could not produce any evidences/ documents to the contrary. The act, the CSO is violation of the regulation contained in the OSR and thereby I am inclined to find the charge as proved.

Finding on Charge No. 4

The charge against Sri. Suresh Puri, the CSO, is that he is in the habit of absenting from duty without prior intimation/ permission or sanction from appropriate authority. He also does not submit proper leave applications for his absence despite repeated reminders from Branch head/ Controller /Regional Office. Such acts and habit of the CSO, in absenting without notice or prior permission, has caused administrative issues and lead to customer dissatisfaction in the Branch. Being a senior Manager holding the position of the Branch Head, such acts of Sri Suresh Puri tantamounts to indiscipline and insubordination, for which he is accountable.

The presenting officer in his written brief has submitted that the CSO has unauthorisedly absented from duty on several occasions and had not submitted any leave letters. These are evident from the exhibits produced in the enquiry. Upon the request of the officer, the Bank had to change the orders which created many administrative issues to the Bank. The acts of the CSO in having not taken all possible steps to protect the interest of the Institution and not having discharged his duties with utmost devotion and diligent are instances of insubordination and indiscipline.

The defence representative argued that that the CSO was never in the practice of taking leave, as alleged in the Charge sheet. The situation explained above compelled him to be in home or hospital and he had no other choice but to be at his home town Delhi. The DR has represented that the CSO is a loyal and sincere Officer.

I have examined the charge on the basis of the exhibits produced before me and the written briefs submitted by the presenting officer and the defence representative. ME3, ME4, ME5, ME8, ME10, ME12, ME13 evidences that the CSO had absented from duty without prior permission from the sanctioning authority and had not submitted any leave letter to that effect, even after repeated instructions

from higher ups. Non submission of leave letters even after the instructions from the sanctioning authority and absenting from the duties of the bank without prior permission are not acceptable from a senior manager like the CSO in this case. The arguments of the DR/CSO would have been considered if the CSO had absented unauthorisedly for once. The CSO is found to be unauthorisedly absent without prior permission/ sanction, many times repeatedly. The defence could not present any records or arguments to the contrary. With the available evidences I am inclined to treat the charge as proved.

Finding on Charge No.5

The charge against the CSO are that the CSO is in the habit of bringing in unwarranted external pressure for getting a favorable transfer to New Delhi deviating from the transfer policy, whenever he was posted outside New Delhi, unauthorisedly absent for a period of 209 days from 19.05.2012 to 13.12.2012 and not reported for duty despite instructions to join immediately by the General Manager (HR) and unauthorisedly absent for 213 days from 19.10.2014 to 19.05 2015 and such acts of the CSO, ignoring the warning letters served to him, which tantamounts to indiscipline and insubordination, for which he is accountable.

The presenting officer has submitted that the CSO was unauthorisedly absent for 209 and 213 days respectively which can be identified from ME11 (the bio data details of the CSO). While transferred to Irinjalakuda from Sector 18, Gurgaon, he availed transfer advance of Rs.38000/- and remained unreported unauthorisedly for 208 days. In the mean time the CSO represented for a comfortable amended posting, ignoring Regulation 42 of OSR 1979, and the Bank posted him at Nagpur Main Branch by issuing a modified transfer order (ME 15). Further, when the CSO was transferred from Regional Office New Delhi to Kadakkavoor branch on 18.10.2014, he remained

unauthorisedly absent for 213 days up to 19.05.2016 (ME 11). For getting favorable transfers, he brought in external pressure on several occasions for which he has been cautioned by the General Manager (HR) (ME 16, 17, 18) for violating Regulation 57 of SBT OSR, 1979 which reads as follows. "No Officer shall bring or attempt to bring any political or other outside influence including that of individual directors or members of the Board to bear upon any superior authority to further his own interest in respect of matters pertaining to his service in the Bank". These acts of the CSO are evidences of indiscipline, insubordination and having behaved against the policies/ Instructions of the Bank in spite of caution letters and as such the charge is proved.

The defence representative has submitted that the allegation that he had brought in external pressure for getting a favorable transfer to Delhi, is totally wrong and is based on false information. The CSO never approached any outside person for recommendation for a favorable transfer to Delhi and is not aware of this. Some of the friends of his father may have helped him by recommending for his transfer, by seeing and understanding his pathetic situation. The DR further went on describing the performance of the CSO in his official capacity and the personal hardships experienced by him. He has requested to view the entire case on humanitarian grounds.

I have examined the arguments of both sides and the exhibits produced before me. Regarding the allegation of bringing in of unwarranted external pressure for getting a favorable transfer, the presenting officer could bring in the copies of the letters issued to the CSO by the General Manager (HR) - (ME 16, 17 and 18). ME 16 SBT/PAD/VGR/1850 dated 24.07. 2016 specifically states that the Bank had received the request of the CSO for transfer through SBI, Corporate Office, Mumbai

recommended by Sri. Rajiv Thakru, Secretary of Finance, Government of India, Letter Nos.; ME17, letter No PAD/SBT/1179 dated 14.05.2013 and ME18, letter no: PAD/SBT/1377 dated 03.06.2013, issued by the General Manager (HR) advising the CSO that he has violated the regulation 57 of the SBT Officers Service Regulations, 1979, which reads as “No officer shall bring or attempt to bring any political or other outside influence including that of individual directors or members of the Board to bear upon any superior authority to further his own interest in respect of matters pertaining to his service in the Bank.” CSO / DR could not produce any evidence to prove that they are ignorant of the same, at least the copies of the replies submitted by the CSO in this regard, to prove their argument. The charge of unauthorisedly absent from duties for a period of 209 days was examined as charge no 3 and is proved. The CSO was also unauthorisedly absent for another period of 213 days, discussed in detail in charge no 1 and stands proved. In total the acts of Sri Suresh Puri as alleged as charge no 5 tantamounts to indiscipline and insubordination, for which he is accountable. I am inclined to decide the charge as proved.”

99. The above findings of the Inquiry Officer on each of the charges framed against the petitioner are reasoned, and as such he is justified in coming to the conclusion that the charges framed against the petitioner have been proved.

100. I agree with the submission made by Mr. Rangam that the petitioner being an Officer of the respondent Bank, is liable to be posted in anywhere in India. In other words, an official can be transferred at any time anywhere in India for administrative reasons and exigency of service to ensure optimum utilisation of the human resources in the best interest of the Bank.

101. He also justified the transfer of the petitioner to Kerala on the ground of revised transfer policy of the respondent Bank which contemplates maximum period of retention of an official in a particular zone as six years and maximum period of retention in any one position at the same office as three years. He highlighted the fact that the petitioner had completed 12 years in Delhi Zone including three years in Gurgaon Branch in the year 2012.

102. Insofar as the order passed by this Court in W.P.(C) 4083/2012 is concerned, Mr. Rangam's submission is that the petitioner had already completed 12 years in Delhi Zone, as such his request for transfer to Delhi could not have been acceded to as per the transfer policy and was rightly transferred to Nagpur which is nearer to Delhi.

103. I also agree with his submission that the transfer policy does provide that transfer can be made on compassionate grounds, but the same is subject to administrative exigencies and cannot be invoked for each and every request. He had heavily relied upon the Bank's letter dated September 4, 2012 wherein the Bank has in clear and unequivocal terms mentioned that the petitioner has been transferred keeping in view the fact that he has completed more than six years of service in Delhi Zone. That apart, the letter also highlights the fact that the rural posting cannot be given to him as there was no rural branch in and around Delhi where he could have been accommodated. It is settled law that an employee has no right to seek his posting / transfer to a particular place. It is for the employer keeping in view the administrative exigency and the interest of the employer to decide

where to post an employee. Such a decision cannot be interfered with unless it is made in *mala fide* exercise of power.

104. According to him, even the plea of Mr. Harshvardhan that the transfer order having been modified, to Nagpur, the period absence of the petitioner between May 19, 2012, to December 13, 2012, need to be treated as period in service, is misplaced.

105. I have seen the order dated July 17, 2012, wherein this Court has held that the Court should not interfere in day to day transfer / posting and only directed the respondent Bank to consider the petitioner's case sympathetically and if possible he may be posted in Northern Region.

106. Suffice to state, there is no direction of this Court to post the petitioner in the Northern Region. The Bank considered the representation of the petitioner and posted him in Nagpur which is nearer to Delhi. This posting at Nagpur cannot be construed to mean that his posting to Irinjalakuda, Kerala was illegal and contrary to policy. It is only on compassionate ground, this Court had directed the consideration of his representation. Hence, this plea of Mr. Harshvardhan is also liable to be rejected.

107. The transfer of the petitioner from Nagpur to Kadakkavoor Branch, Kerala in October 2014 which place the petitioner did not join and remained unauthorisedly absent w.e.f. October 19, 2014 to May 19, 2015 was contested by Mr. Harshvardhan only on the ground that the transfer order was never communicated to the petitioner and that he was relieved while he was on leave is also not appealing.

108. The case of the Bank as highlighted by Mr. Rangam is that the transfer order is generally uploaded on the PAD website of the Bank through a circular. The transfer order in question was also similarly uploaded in the PAD website vide Circular No.66/2014 dated September 25, 2014 and the same was accessible to all employees of the respondent Bank. Moreover, it is the case of the respondent Bank, the relieving letter of the official was sent to the petitioner's address at Delhi vide letter dated January 30, 2015.

109. Mr. Rangam had also highlighted the fact that during the hearing of W.P.(C) 8652/2014, the petitioner has agreed to join the Kadakkavoor Branch, Kerala and accordingly the order dated December 23, 2014 was passed. However, the petitioner remained on unauthorised absence and did not join the branch till May 19, 2015.

110. Additionally, I must state that it cannot be said that an officer cannot be relieved *in absentia*. It is settled law that once a transfer order has been issued, the same can be construed as an order relieving the officer, unless and until a specific order has been issued by the Competent Authority specifying the date relieving the officer.

111. That apart, the petitioner having come to know of the issuance of the transfer order should have sought his relieving to join the place of transfer.

112. I must also deal with the submission of Mr. Harshvardhan that there was a rural vacancy available at Bhiwadi Branch of the Bank and the petitioner could have been accommodated in the said branch which is nearer to Delhi. Such a plea is also unsustainable from more than one reason; firstly the Bank has in clear terms stated that no such

vacancy was available at Bhiwadi Branch. Even otherwise, it is not for an employee to seek appointment at a particular place. It is the discretion of the employer keeping in view the exigency of the service to post an employee at a place where the services of an employee are more suitable. Hence, it is clear that the petitioner could not have been posted in the Northern Region having remained in the same region for much beyond the permissible limit of six years, i.e., 12 years and hence was rightly posted out of the zone, which the petitioner resisted on one ground or the other. He was rightly issued the charge sheet having not joined the place of posting.

113. I find that the petitioner, being a senior officer of the Bank, his not joining the place of posting makes the misconduct more serious. In fact, the Bank has taken a compassionate view in imposing the penalty of reduction by one stage in the time scale of pay till the date of retirement.

114. I do not see any reason to interfere with the impugned order dated February 7, 2017. Insofar as the reliance placed on the decision of the Supreme Court in *Yoginath D. Bagde (supra)* is concerned, I see no applicability of the judgment in the facts of this case. Mr. Harshvardhan except stating that the respondent Bank had already formed a final opinion with regard to the petitioner's alleged unauthorised absence, has not shown any document of the bank in support of the submission. Insofar as the judgment in the case of *Krushnakant B. Parmar (supra)* is concerned, in view of my above conclusion, the judgment also has no applicability.

115. Now coming to the challenge to the order dated March 16, 2017, the same is a penalty order issued based on a charge sheet dated July 26, 2016 whereby the petitioner was imposed a penalty of “censure” with an additional direction that he should start repayment of the Housing Loan from March 2017 till his retirement.

116. By the charge sheet dated July 26, 2016, the following charges were framed against the petitioner relatable to the Housing Loan of ₹20 Lakhs availed by him in 2011. The charges were:

- (i) He defaulted in paying 42 installments.
- (ii) Disbursed 3 installments of the loan amount in quick succession without ensuring the progress of construction.
- (iii) Failed to obtain a stamped receipt from the builder for the installments released.
- (iv) Failed to verify and ascertain the reputation and creditworthiness of the builder before recommending the loan.
- (v) Failed to conduct pre-sanction and post-sanction inspection.
- (vi) Failed to contribute his margin money while releasing the installments.
- (vii) Failed to obtain title deeds from the builder to create EM and for CERSAI registration.
- (viii) Failed to give a mandate to HRMS for deduction of Housing Loan installment from his salary, though 42 installments are overdue.

117. Suffice to state, the Inquiry Officer in his report dated February 8, 2017 had found the charges at serial Nos.1, 2, 3, 5 and 6 as proved.

118. The plea of Mr. Harshvardhan on this challenge is that no such penalty for appropriation of terminal benefits for closure of the loan is provided under Rule 67 of the SBT (Officer's) Service Regulations, 1979 and thus the same could not have been imposed. Furthermore, as per circular issued by the Stressed Asset Management Department of the respondent Bank provides step by step procedure for dealing with home loan accounts where the construction is at a standstill and the builder is enjoying the loan amount already disbursed, the recourse of the Bank is against the builder under the tripartite agreement executed between the bank, the builder and the person availing the loan facility. According to Mr. Harshvardhan, the respondent Bank did not follow the circular in the case of the petitioner.

119. Before I deal with the submission made by Mr. Harshvardhan, it is necessary to highlight the findings of the Inquiry Officer with regard to the charge Nos.1, 2, 3 5 and 6 as under:

"Finding on Charge No. 1

The charge is that Sri. Suresh Puri, the CSO, had availed a staff housing loan amounting to Rs.20/- lakhs from our Sector 18, Gurgaon Branch, New Delhi, while he was working as Branch Manager, on 09.12.2011, to be repaid in 191 installments, including the moratorium period of 12 months. He is expected repay the loan in monthly installments of Rs.16,000/- each and the repayment has to commence from January, 2013 onwards, CSO being a senior Officer and the Branch Manager, who is well aware of the terms and conditions of the sanction and repayment, has not yet commenced the repayment and the a/c is running highly irregular. Despite various reminds sent on different dates by the controller, the account is running irregular and likely to

be classified as NPA incurring loss to the Bank for which he is responsible and accountable.

Sri Suresh Puri, the CSO had availed a staff housing loan of Rs.20/- lakhs on 09.12.2011 as per sanction dated 17.11.2011. As per the terms of sanction the amount has to be repaid in 191 installments, (inclusive of the moratorium period of 12 months) of Rs.16,000/- each. The repayment was expected to commence from 09.01.2013, after the expiry of the moratorium period. The presenting officer argued that despite various notices/ reminders sent to the CSO asking him to repay the over dues and regularise the account, he has not responded and repaid the amount which made the account run highly irregular. The defence representative argued that the CSO had give unconditional authority letter in favor of the Bank for recovery of EMI from his salary account, whenever the repayment starts, but the bank has not invoked this instruction and hence the allegation in the charge sheet and the argument of the presenting officer that the CSO had intentionally not repaid the loan should not be accepted. He further argued that the CSO has requested for extension of moratorium period which was not considered by the Bank and the loan has not been disbursed in full. I find that there is a lapse on the part of the Bank in not invoking the unconditional authority letter executed by the CSO. The Bank would have debited the account of the CSO as per his letter and recovery should have been effected. Even though there is a lapse on the part of the Bank, the CSO is also duty bound to repay the loan, which he has already availed by ensuring that the installments are debited to his account in time. As a senior officer who is expected to know the rules and regulations of the bank, the CSO failed to ensure the same. I find that the CSO has not responded to the various letters (ME2) sent the Bank to repay the loan and to regularise the account. The DR/ CSO could not

produce any evidence to their argument that they had requested for extension of the moratorium period. Almost 60% of the sanctioned amount for the housing loan is already released, including reimbursement of Rs.5.14 lakhs to the account of the CSO. The repayment should have been started as per the schedule in the sanction letter. In these circumstances, I find that there is a lapse on the part of the CSO and hence I am inclined to find the charge as proved.

Finding on Charge No.2

The charge leveled against Sri. Suresh Puri, the CEO, in that while functioning as the Branch Manager of our Sector 18, Gurgaon Branch, New Delhi failed to ensure that disbursement of his own housing loan is in proportion with payment schedule mentioned in the allotment letter. The progress of construction was not ensured while disbursing 3 installments of the loan and thereby failed to be more diligent in disbursing loans.

I find that there was a lapse on the part of the CSO in not maintaining the inspection register and conducting inspections as per the instructions of the Bank. Defence could not produce any document/ evidence to rebut the argument of the presenting officer that he has not conducted inspection or maintained the required inspection register as per instructions of the Bank The statement of the builder that the construction work has started and is going on in full swing was not verified by the bank authorities. In this particular case, since the borrower is the Branch Manager himself, he should have given more attention/ exercised abundant caution to the instructions before release of the installments of the loan. The observations/ remarks of the present Branch Manager and Dy. Manager advances on 25.09.2015 and 03.06.2016 (Ext.ME7) brings to light that they do not find any construction in the land earmarked for the project. This is contrary to the

statement of the builder in ME3/I dated 01.11.2011, which could have found out, inspection was conducted, before release of the installments. Further it is construed that the CSO in his capacity as borrower beneficiary / allottee of the flat must have appraised and noticed the non commencement of construction in the ear marked land for the project and, before effecting disbursement. Moreover I find that the disbursal was not in tune with the agreement. In the circumstances mentioned above I am inclined to treat the charge as proved.

Finding on Charge No.3

The charge against the CSO is that he as the Branch Manager failed to ensure end use of funds released and obtained stamped receipt from the builder for the installments disbursed.

I find that the CSO has not followed the instructions of the Bank while releasing / disbursing installments of the loan amount sanctioned. Defence could not bring in any document / proof / evidence of having obtained stamped receipt for the installments disbursed from the builder and ensured the end use of funds released. Ext. ME 7 the inspection register brings to light that land earmarked for the unit, for which they had released 3 housing loan installments, is lying vacant as on 25.09.2015 and illegally taken possession by a third party as on 03.06.2018, whereas ME3/I the letter from M/s BPTP Limited, the builder, on 01.11.2011 said that the construction work has started and is going on in full swing. It is evident that the Branch has not inspected the property and ensured the end use of funds. Moreover the stamped receipts for the installments received by the builder is also not produced. In the circumstances detailed above I am inclined to treat the charge as proved.

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Finding on Charge No.5

The charge against the CSO is that he as the Branch Manager of Sector 18, Gurgaon branch failed to conduct pre-sanction and post-sanction inspections and recorded his observations in the inspection register / report fill the last disbursement made by him on 11.05.2012.

As per the instruction of the Bank the CSO would have arranged / conducted personal inspection of the property mentioned in the agreement, before releasing each installment to ensure the correctness off the statement contained in the letter of the builders. I also agree with the argument of the PO that the CSO simply ignored the various circular instructions and there is no evidence of pre / post sanction inspection and end use of funds while releasing the installments on housing loan which is a serious dereliction of duties on the part of the CSO. The DR/CSO could not produce any evidence to substantiate their arguments that they had made regular inspections. Even the Inspection register maintained by the branch could not be produced. In the circumstances detailed above, I am inclined to decide that the charge is proved.

Finding on Charge No.6

The charge against the CSO is that he as the Branch Manager of Sector 18, Gurgaon branch released the installments of his own housing loan to the builder without contributing his own share of margin as applicable to staff housing loan, thereby violated the Bank's instructions.

An amount of Rs.12,42,739/- was disbursed in three installments (2 nos of installments to the builder and another was reimbursed to the CSO as per the stipulation contained in the sanction letter). The defence

could not bring in any evidence to prove that the CSO had brought in his margin share in the loan component. The presenting officer could bring in evidences, ME3 - the demand letter from the builder, ME4 and ME5 and ME10, to prove that the amount is released to the builder. There is evidence that 3 installments were disbursed from the loan account ME10/2. The argument of the defence that the demand of the builder was a higher amount, cannot be considered as ME3/1 shows that the amount payable (current demand) is only Rs.5,92,319.19. Rs.1,36,419/ was also released to the builder and the proportionate contribution of margin as applicable to staff housing loan is not seen brought in. Hence the argument of the PO that the CSO had violated the Bank's instructions in this regard sustains. In these circumstances detailed above I conclude that the charge is proved."

120. At the outset, I may state that the charges which have been framed against the petitioner have to be seen from the perspective that the loan has been availed by the petitioner as an employee of the Bank, who was also holding the position of the Branch Manager, from which Branch the loan was availed. If the charges framed and the findings arrived at by the Inquiry Officer are seen, it becomes apparent that the charges have been rightly proved by the Inquiry Officer based on cogent evidence and justification.

121. The reliance placed by Mr. Harshvardhan on the circular dated January 7, 2012 with regard to the Stressed Asset Management Department of the respondent Bank is primarily related to Housing Loan where no mortgage is executed, where the circular contemplated initiation of SARFAESI proceedings against the borrower as well as builder.

122. Suffice to state, the said circular is primarily with regard to the procedure to be followed where the Housing Loan is availed by a person, who is not an employee and the procedure to be followed thereon whereas the charges have been framed against the petitioner, who was as an employee of the Bank who has availed the loan from the same Branch where he was the Branch Manager. Seen in that context, the charges have been rightly framed and proved by the Inquiry Officer.

123. I must state that though the charges are of very serious nature, the only penalty imposed is that of censure, i.e., minimum of the penalty contemplated under the Rules. I see no infirmity in the order dated March 16, 2017, to the extent of penalty of censure imposed on the petitioner.

124. Now coming to the issue of recovery of housing loan, vehicle loan and educational loan, first I intend to deal with the issue of recovery of housing loan/vehicle loan. At the outset I may state, the housing loan document is a sanction letter dated November 17, 2011 filed along with the counter affidavit as ANNEXURE R-11, sanctioning an amount of ₹ 20 lakhs for a flat under construction in Faridabad, Haryana. The lien for the said loan was marked on the PF balances of the petitioner and the loan was to be repaid in 191 months including moratorium period of twelve months. The plea of Mr. Harshvardhan was that it is not the case of the respondent Bank that the petitioner had defaulted in paying any installment, which plea has been disputed by Mr. Rangam. Be that as it may, there is no dispute that the outstanding amounts of the housing loan and vehicle loan have

been recovered/adjusted by the respondent Bank from the pension account of the petitioner where the pension/gratuity/leave encashment were credited. The issue that needs to be decided now is whether the respondent Bank could have recovered the outstanding amounts of the housing and vehicle loan from the pension account of the petitioner.

125. I may at this stage state that it is the settled position of law, once the gratuity and leave encashment has been disbursed to the employee, the amount loses the character of gratuity amount/leave encashment. Reference in this regard is made to the judgment of Calcutta High Court, in ***Bidyut Baran Halder (supra)*** wherein the following has been stated:

“37. Even assuming that the Bank had a lien on the gratuity amount payable to Bidyut, in our opinion, the Bank lost such loan once the money was put in the account of Bidyut albeit a frozen account. It is elementary law that a banker's possessory lien is lost once it gives up possession. This Court has held in several cases that except under Sec. 4(6) of the 1972 Act, no deduction can be made from the amount of gratuity payable to an employee under the provisions of the said Act. In this connection reference may be had to the cases in Ram Ranjan Mukherjee v. Mining and Allied Machinery Corporation Ltd. (supra) and Eastern Coalfields Limited v. Kripa Sankar Somany (supra). In Radhey Shyam Gupta v. Punjab National Bank (supra), the Apex Court held that retiral benefits such as pension and gratuity even when received by the retiree, do not lose their character and continue to be covered by proviso (g) to Sec. 60 (1) of the CPC and continue to enjoy immunity against attachment. In State of Jharkhand v. Jitendra Kumar Srivastava (supra), the Apex Court reiterated that gratuity and pension are not bounties. An employee earns these benefits by dint of his long, continuous and faithful service. It is hard earned benefit which accrues to an employee and is in the nature of ‘property’. Such right to property cannot be taken

*away without due process of law as per the provisions of Article 300A of the Constitution of India. It was held that the attempt of the appellant State Government to take away a part of pension or gratuity or even leave encashment without any statutory provision could not be countenanced. In the unreported judgment of a Division Bench of the Kerala High Court in **WA 1628 of 2014 in WP (C) 923 of 2014** the employer Bank sought to adjust alleged dues from the deceased employee against the gratuity payable to his legal heirs. The Division Bench upheld the learned Single Judge's order striking down such action on the part of the Bank holding that the gratuity due to an employee could not be withheld except under Sec. 4(6) of the 1972 Act. The Bank had also argued that it had a right of lien under Sec. 171 of the Contract Act. The Division Bench held that the amounts claimed by the legal heirs of the deceased employee were the terminal benefits that were due to the deceased employee and the same could not be retained by taking recourse to the lien of the Bank and in any event, having regard to Sec. 14 of the Payment of Gratuity Act which gives it overriding effect, such right of lien could not be exercised by the Bank in respect of the gratuity amount."*

126. In any case, it is the case of the respondents as contended by Mr. Rangam that the Bank has every right to recover such outstanding amounts from the petitioner. In support of this submission, he has relied upon the judgment in the case of **Chairman-Cum- Managing Director, Mahanadi Coalfields Limited (supra)**. In the said case, the appellant, the Chairman-Cum-Managing Director, Mahanadi Coalfields Limited had invoked the provision of the Gratuity Act, more specifically, Section 4(6), pursuant to disciplinary proceedings held against the employees therein. It is not such a case here for the reason that though proceedings were held against the petitioner, the recovery of the amount is not in terms of any penalty imposed on the

petitioner. Moreover, the penalty imposed is that of censure and not of termination. That apart, I find that in the said case, Rule 34.3 of the Regulations permits withholding of the gratuity during the pendency of the proceedings and pursuant thereto even recovery of the same. Whereas, Mr. Harshvardhan has in support of his case relied upon the judgment in the case of **Gorakhpur University and Ors. (supra)** wherein the Supreme Court has held as under:-

“5. We have carefully considered the submission on behalf of the respective parties before us. The earlier decision pertaining to this very University, reported in S.N. Mathur [(1996) 2 ESC 211 (All)] is that of a Division Bench, rendered after considering the principles laid down and also placing reliance upon the decisions of this Court reported in R. Kapur [(1994) 6 SCC 589 : 1995 SCC (L&S) 13 : (1994) 28 ATC 516] which, in turn, relied upon earlier decisions in State of Kerala v. M. Padmanabhan Nair [(1985) 1 SCC 429 : 1985 SCC (L&S) 278] and Som Prakash [(1981) 1 SCC 449 : 1981 SCC (L&S) 200 : AIR 1981 SC 212] . This Court has been repeatedly emphasizing the position that pension and gratuity are no longer matters of any bounty to be distributed by the Government but are valuable rights acquired and property in their hands and any delay in settlement and disbursement whereof should be viewed seriously and dealt with severely by imposing penalty in the form of payment of interest. Withholding of quarters allotted, while in service, even after retirement without vacating the same has been viewed to be not a valid ground to withhold the disbursement of the terminal benefits. Such is the position with reference to amounts due towards provident fund, which is rendered immune from attachment and deduction or adjustment as against any other dues from the employee. In the context of this, mere reliance on behalf of the appellant upon yet another decision of a different Division Bench of the very High

Court rendered without taking note of any of the earlier decisions of this Court but merely proceeding to decide the issue upon equitable considerations of balancing conflicting claims of respective parties before it does not improve the case of the appellant any further. Reliance placed for the appellant University on the decision reported in Wazir Chand [(2001) 6 SCC 596: JT 2000 Supp (1) SC 515] does not also sound well on the facts and circumstances of this case. It is not clear from the facts relating to the said decision as to whether the person concerned was allowed to remain in occupation on receipt of the normal rent as in the present case. As noticed earlier, the case of the contesting respondent in this case is that the university authorities regularly accepted the rent at normal rates every month from the petitioner till the quarters were vacated and that in spite of request made for the allotment of the said quarters in favour of the son of the respondent, who is in the service of the University, no decision seems to have been taken and communicated though it is now claimed in the court proceedings that he is not entitled to this type of accommodation. Further, the facts disclosed such as the resolutions of the University resolving to waive penal rent from all Teachers as well as that of the Executive Council dated 18-7-1994 and the actual such waiver made in the case of several others cannot be easily ignored. The lethargy shown by the authorities in not taking any action according to law to enforce their right to recover possession of the quarters from the respondent or fix liability or determine the so-called penal rent after giving prior show-cause notice or any opportunity to him before ever even proceeding to recover the same from the respondent renders the claim for penal rent not only a seriously disputed or contested claim but the University cannot be allowed to recover summarily the alleged dues according to its whims in a vindictive manner by adopting different and discriminatory standards. The facts disclosed also show that it is almost one year after the

vacation of the quarters and that too on the basis of certain subsequent orders increasing the rates of penal rent, the applicability of which to the respondent itself was again seriously disputed and to some extent justifiably too, the appellant cannot be held to be entitled to recover by way of adjustment such disputed sums or claims against the pension, gratuity and provident fund amounts indisputably due and unquestionably payable to the respondent before us. The claims of the University cannot be said to be in respect of an admitted or conceded claim or sum due. Therefore, we are of the view that no infirmity or illegality could be said to have vitiated the order, under challenge in this appeal, to call for our interference, apart from the further reason that the disbursements have already been said to have been made in this case as per the decision of the High Court.”

(emphasis supplied)

127. It is necessary to state here that, Mr. Rangam has also justified the impugned action by relying on the order dated March 16, 2017 of the disciplinary authority, wherein, it is stated that the outstanding in the account at the time of retirement is to be adjusted against the terminal benefits and also on Regulation 67(d) of the SBT (Officers') Service Regulations, 1979, which contemplates recovery from pay or such other amount as may be due to him of the whole or part of any pecuniary loss caused to the Bank. Suffice to state, the letter dated March 16, 2017 is contrary to the terms of the loan which contemplates a particular term of repayment of the same and not termination of loan at the retirement of the petitioner. If the Bank was of the view that they had no security for the loan advanced, they could have continued this lien on the PF balance, even, after retirement, as such a clause was agreed to by the respondent Bank and the petitioner.

But they could not precautionarily terminate the loan and adjust the balance against the terminal benefits of the petitioner.

128. Mr. Harshvardhan is justified in relying upon the above judgments. I also agree with his submission that the terminal benefits having been credited, though in the pension account of the petitioner, could not have been unilaterally adjusted against outstanding amounts of loan, more so when the term of loan was still subsisting. If the petitioner has defaulted in repaying the loan, the respondent Bank should have availed such remedy as available in law. So it must be held the recovery/adjustment of the amount of ₹15,50,700/- from the account of the petitioner by the respondent Bank is clearly untenable.

129. Now coming to the issue wherein the challenge is to the recovery/adjustment of the amount of ₹9,68,027/- against the education loan taken by the daughter of the petitioner, with the petitioner as a co-borrower. The said amount was adjusted against the OD account maintained by the Bank. In this case, as per the sanction letter of September 08, 2008 the loan limit was ₹7,50,000/-. The term of repayment was of 156 months i.e., approximately 13 years, w.e.f. August 08, 2008, which would mean the term was to expire in the year 2021. In this case also the lien was on the PF balances, along with a personal guarantee tendered by the wife of the petitioner. It appears that an amount of ₹22,89,325/- which was the PF dues of the petitioner was credited in his OD account and thereafter, an amount of ₹9,68,027/- was debited therefrom as repayment/adjustment against the educational loan on February 15, 2018. According to Mr.Harshvardhan, in terms of Master Circular dated June 30, 2017

issued by the respondent Bank relating to education loan for the children and wards of its staff, no lien can be maintained on PF, However the respondent Bank instead of maintaining a lien on the PF, as per the loan document, has recovered the amount from the OD account of the petitioner, to which his PF dues were credited, which is impermissible, being in contravention to the terms set out in the sanction letter itself. This submission of Mr. Harshvardhan is appealing for more than one reason: (1) the recovery has not been made from the PF balances. At this stage I may state, even if it is the case of the petitioner that no lien can be maintained on PF balances in terms of the Master Circular of the Bank dated June 30, 2017, I am of the view that this plea will be unsustainable in the facts of this case when the petitioner has accepted the terms of the sanction letter dated November 17, 2011. (2) Once the PF dues have been credited in the OD account, it loses the character of PF dues on which a lien was marked by the petitioner for taking the education loan. In other words, there is no agreement between the parties for repayment/adjustment of the educational loan from the OD account. Even to that extent, this recovery shall be illegal. (3) Further, I find that the recovery is also premature as the period of loan would have expired only in the year 2021, whereas, the recovery has been made in the year 2018. There are no rules and regulations shown by the respondents for recovery of the amount against the OD account. In this regard, the plea on behalf of the Bank is that loans to staff are extended at a concessional rate and also based on the salary paid by the bank. So, the Bank has every right to recover the amount due from the terminal benefits of the employees

provided an extension for the tenure of loan beyond retirement is not granted. In other words, as the petitioner had retired, the loan has to be recovered. But that would not answer the adjustment of loan against the OD account of the petitioner, as nothing precluded the respondent Bank to continue the lien on PF balances till the term of the loan had come to an end.

130. It may also be stated that Mr. Rangam has relied on the judgment in the case of *Syndicate Bank (supra)* to contend that in terms of Section 171 of the Contract Act, the respondent Bank has a Banker's Lien on all the monies lying with it. Hence, the outstanding loan amounts could have been adjusted against the said money. I have seen the judgment. The same is not applicable to the facts of this case, inasmuch as in that case, the issue was whether the bank has lien over certain FDRs. The respondent therein had executed two letters dated September 17, 1980 creating a lien in favour of the bank over two FDR's. It is not such a case here. There is no lien created with regard amount lying in the pension account and OD account. So, in that sense the Bank had no lien to adjust the amounts.

131. Additionally, the Kerala High Court in the case of *Kodanad Service Co-operative Bank Ltd. (supra)* on which reliance placed by Mr. Harshvardhan, has clearly held that the judgment in the case of *Syndicate Bank (supra)* shall not be applicable where the terminal dues are involved. Relevant portion of the judgment is as follows:-

“11. Insofar as the bankers lien or general lien claimed by the counsel for the appellant is concerned, the bank has a right of lien against a customer as provided under Section 171 of the Contract Act, which has also been

*recognized by the Supreme Court in the judgment in **Syndicate Bank Vs. Vijay Kumar and others** [AIR 1992 SC 1066]. Insofar as this case is concerned, the amount claimed by the 1st respondent is the terminal benefits that are due to the deceased employee, which in our view, cannot be retained by taking recourse to the lien of the bank. At any rate having regard to Section 14 of the Payment of Gratuity Act, which provides for the overriding of the said Act, this right cannot be exercised by the bank.*

(emphasis supplied)

132. Insofar as reliance placed by Mr. Rangam on the judgment of the **ONGC Ltd. (supra)** is concerned, the same has no applicability here as there is a clear stipulation in the ONGC Regulations for adjustment of any dues payable by the employee to the ONGC against the terminal benefits of the employee. One of the submission of Mr. Rangam was by relying upon Clause 67(d) of the SBT (Officers') Service Regulations, 1979 to justify the recovery of the amounts. The said stipulation is reproduced as under:-

“(d) Recovery from pay or such other amount as may be due to him of the whole or part of any pecuniary loss caused to the bank by negligence or breach of orders.”

133. A perusal of the same would clearly reveal that the said recovery is to be effected by way of a penalty pursuant to disciplinary proceedings held against an officer. Though proceedings held against the officer resulted in a minor penalty of “censure”, there is no order as a penalty for recovery from pay or such other amount as may be due to him of the whole or part of any pecuniary loss caused to the Bank by

negligence or breach of orders. In fact, the direction in the order is for the petitioner to start repayment of the housing loan from March, 2017 onward till his retirement and the outstanding dues in the account at the time of retirement is to be adjusted against the retirement dues. This direction does not find mention in the penalties under Regulation 67. That apart, the recovery pre-supposes pecuniary loss caused to the bank by negligence or breach of orders. There is no finding in the report of the Inquiry Officer that any loss has been caused to the Bank because of misconduct, for which penalty was imposed on the petitioner. So, to this extent, of the directive in the order dated March 16, 2017, is unsustainable.

134. So, it follows that the recovery of ₹15,50,700/- and ₹9,68,027/- from the petitioner is not tenable. The respondent Bank is directed to refund the said amounts with interest at the rate of 5% per annum from the date of recovery till refund. The aforesaid shall not preclude the Bank to continue the loan (if permissible) and/or proceed against the petitioner for the recovery of the loan amount as permissible, and in accordance with law.

CM. No. 46619/2018

In view of my decision in the writ petition, this application has become infructuous and is dismissed as such.

V. KAMESWAR RAO, J

JANUARY 05, 2023/aky