

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

MAT 2550 of 2023

Arup Kumar Gupta

VS.

The State Bank of India & Ors.

For the Appellant : Mr. Biswaroop Bhattacharya,
Mr. Pratik Majumder,
Md. Salahuddin, Advocates

For the Respondent /Bank : Mr. S. K. Sinha,
Mr. S. Pal Chaudhuri,
Ms. Shilpi Paul,
Ms. Tithi Paul, Advocates

Heard & Judgement on: August 23, 2024

DEBANGSU BASAK, J.

1. Appeal is directed against an order dated August 8, 2023 passed in WPA 1152 of 2014.

2. Appellant as the writ petitioner challenged an order of suspension dated March 29, 2004 in the writ petition. Such writ petition was dismissed by the learned Single Judge on the ground that, the writ petitioner was dismissed from service by an order dated March 30, 2006 in a disciplinary proceeding. Such order of dismissal from service was not under challenge

in the writ petition. In such circumstances, learned Judge held that no relief could be granted to the writ petitioner/appellant herein.

3. Learned advocate appearing for the appellant submits that, the appellant applied for voluntary retirement by a letter dated February 1, 2004 with effect from February 29, 2004. He refers to the recommendation issued with regard thereto on February 25, 2004. He submits that, a disciplinary proceeding was sought to be initiated as against the appellant. A charge sheet dated December 12, 2005 was issued. A criminal proceeding was instituted as against the appellant and the appellant was taken into custody on January 10, 2006. Appellant was granted bail in such criminal proceeding on May 16, 2006. Such criminal proceeding resulted in a judgment of acquittal dated July 8, 2022.

4. Learned advocate appearing for the appellant submits that a money suit was instituted for recovery of the alleged loss allegedly suffered by the Bank at the behest of the appellant being Money Suit No. 14 of 2008. Such money suit was also dismissed by the Civil Court on March 18, 2014.

5. Referring to the service Rules governing the service of the appellant, State Bank of India Officers Service Rules, 1992 and in particular to Rules 19(1), 4th proviso and 19(3), he submits that, the Rule 19(3) is contrary to law. He submits that, the recommendations dated February 25, 2004 concluded the acceptance of the voluntary retirement sought for by the appellant by the writing dated February 1, 2004 with effect from February 29, 2004.

6. In support of the contention that, disciplinary proceeding was initiated once a charge sheet is issued, learned advocate appearing for the appellant relied upon **(1991) 4 SCC 109 [Union of India & Ors. vs. K. V. Jankiraman & Ors.]**.

7. Learned advocate appearing for the Bank submits that, the application for voluntary retirement made on February 1, 2004 was considered at the appropriate level. Appellant was informed by a letter dated March 19, 2004 that such application for voluntary retirement was yet to be accepted by the Competent Authority and that, till such time, such application is accepted, appellant should resume his duties at the place where he was posted. He submits that, Bank discovered various misdeeds at the behest of the appellant and issued suspension order dated March 29, 2004. He refers to the prayers made in the writ petition and submits that the final order of dismissal was never challenged by the appellant.

8. Appellant is governed by the provisions of the State Bank of India Officers Service Rules, 1992. Rule 19(1) 4th proviso which allows an officer who completed 20 years of service or 20 years pensionable service, as the case may be, to retire from service of the Bank, subject to him giving three months' notice in writing or paying in lieu thereof. Such proviso allows the Competent Authority to permit an officer to retire voluntarily subject to the fulfilment of the criteria laid down therein.

9. There are two parts to the 4th proviso to Rule 19(1) of the Service Rules of 1992. One part is an application for voluntary retirement coupled with a notice period or pay in lieu of notice period, subject to the applicant possessing qualifying period of service. The other part is the acceptance for request for voluntary retirement by the Competent Authority.

10. In the facts of the present case, appellant applied for voluntary retirement on February 1, 2004 with effect from February 29, 2004. Such application was processed and one authority of the Bank recommended acceptance thereof by a writing dated February 25, 2004.

11. Nothing is placed to suggest let alone establish that the recommendation dated February 25, 2004 was made by the Competent Authority or that the application for voluntary retirement of the appellant dated February 1, 2004 was accepted by the Competent Authority within the meaning of Rule 19(1), 4th proviso.

12. In fact, Bank by a letter dated March 19, 2004 informed the appellant that, his proposal for voluntary retirement was under consideration by the Competent Authority and that till such time the decision is taken with regard thereto, appellant should resume his duty. Bank also issued a suspension order dated March 29, 2004 suspending the appellant from services.

13. A disciplinary proceeding was initiated by issuance of a charge sheet dated November 23, 2004. Initiation of the disciplinary proceeding is in consonance with the ratio laid down in **K. V. Jankiraman (supra)**. Such disciplinary proceeding resulted in an order of dismissal being passed by the Disciplinary Authority against the appellant. Such order of dismissal from service dated March 30, 2006 is not under challenge in the writ petition under consideration.

14. In such circumstances, since the order of dismissal is not under challenge, the acquittal of the appellant in the criminal proceeding or the civil suit for recovery of money, falling as against the appellant, is of no consequence.

15. In such circumstances, we find no ground to interfere with the order under appeal.

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16. MAT 2550 of 2023 is **dismissed** without any order as to costs.

(Debangsu Basak, J.)

17. I agree.

(Md. Shabbar Rashidi, J.)

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