BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P.(MD)No.8065 of 2021
and
W.M.P.(MD)Nos.6166 of 2021 and 339 of 2023

M.Siva ... Petitioner

versus

1. The Deputy General Manager/
Appellate Authority,
Canara Bank,
I.R. Section,
Human Resource Wing,
Head Office : 112, J.C. Road,
Bangalore – 560 002.

2. The Assistant General Manager/
Disciplinary Authority,
Canara Bank,
Circle Office,
Human Resource Management Section,
Madurai.

3. Chelladurai,
Inquiring Authority,
Canara Bank,
Circle Office,
Madurai. ... Respondents

Writ Petition filed under Article 226 of Constitution of India, seeking for the issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned Charge Sheet issued by the 2nd respondent vide MDUC HRM DAC CS 12/2020 dated 10.06.2020, the impugned order of punishment imposed by the 2nd respondent vide proceedings No.MDUC HRM DAC 5399/2020 dated 15.09.2020 and the consequential impugned order passed by the 1st respondent dated 31.03.2021 which was conveyed to the petitioner vide proceeding No.MDUC HRM DAC 0539/2021 dated 03.04.2021 and quash the same as illegal, improper, unconstitutional and arbitrary and consequently direct the respondents to refund the amount of Rs.20,000/- per month deducted so far from September 2020 onwards from the petitioner's pension.

For Petitioner	:	Mr.R.Murugan
For R1 and R2	:	Mr.N.Dilipkumar
For R3	:	No appearance

ORDER

The petitioner is a retired employee of the Canara Bank. He served as a Manager of the Canara Bank and retired from service on 30.06.2017.

After the retirement, the petitioner was issued with a charge memo dated 10.06.2020 that the petitioner has caused a financial loss to the Bank to the tune of Rs.62,08,198/-, while he was working as a Manager of Canara Bank, Thumbalam Branch. Thereafter, an Enquiry Officer was appointed by the Disciplinary authority to conduct the enquiry. After conducting the enquiry, the Enquiry Officer has filed his report, based on which, the second respondent, by his proceedings dated 15.09.2020, passed an order imposing a punishment of recovery of Rs.20,000/- p.m. From his pension for a period of 84 months. Aggrieved over the same, the petitioner preferred a statutory appeal before the first respondent and the same was rejected by order dated 31.03.2021. Challenging the impugned charge memo dated 10.06.2020, the consequential order of punishment dated 15.09.2020 and the dismissal order of the first respondent/appellate authority dated 31.03.2021, the petitioner has filed this writ petition.

2. The learned counsel appearing for the petitioner submits that once the petitioner retired from service from the respondent Bank, then, he ceased to be an employee of the Bank. Therefore, the respondent Bank is not entitled to initiate departmental proceedings as against the petitioner

after three years from the date of his retirement. The learned counsel has also relied on a Judgment of the Hon'ble Supreme Court in ***UCO Bank and another vs. Rajinder Lal Capoor***, wherein, the Hon'ble Supreme Court has stated as follows:

> "21. The aforementioned Regulation, however, could be invoked only when the Disciplinary Proceedings had clearly been initiated prior to the respondent's ceases to be in service. The terminologies used therein are of seminal importance. Only when a disciplinary proceeding has been initiated against an officer of the bank despite his attaining the age of superannuation, can the disciplinary proceeding be allowed on the basis of the legal fiction created thereunder, i.e., continue "as if he was in service". Thus, only when a valid departmental proceeding is initiated by reason of the legal fiction raised in terms of the said provision, the delinquent officer would be deemed to be in service although he has reached his age of superannuation. The departmental proceeding, it is trite law, is not initiated merely by issuance of a show cause notice. It is initiated only when a chargesheet is issued (See Union of India etc. Etc. v. K.V. Jankiraman, etc. etc. reported in AIR 1991 SC 2010). This aspect of the matter has also been considered by this Court recently in Coal India Limited & others v. Saroj Kumar Mishra (2007 (5) SCALE 724) wherein it was held that date

of application of mind on the allegations levelled against an officer by the Competent Authority as a result whereof a chargesheet is issued would be the date on which the disciplinary proceedings said to have been initiated and not prior thereto. Pendency of a preliminary enquiry, therefore, by itself cannot be a ground for invoking Clause 20 of the Regulations. Albeit in a different fact situation but involving a similar question of law in Coal India Ltd. (supra) this Court held :

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

It was further more observed that :

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

3. The learned counsel appearing for the petitioner submits that the impugned charge memo dated 10.06.2020 was issued as against the petitioner under Regulation No.6 of Canara Bank Officer Employees' (Discipline and Appeal) Regulations, 1976 and not under the Canara Bank Employee's Pension Regulation, 1995. Therefore, the impugned charge memo is without jurisdiction. Hence, the impugned charge memo dated 10.06.2020, the consequetial order of punishment dated 15.09.2020 and the dismissal order of the appellate authority dated 31.03.2021 are liable to be set aside.

4. The learned counsel appearing for the respondent Bank, by referring to Regulation No.48(2) of the Canara Bank Employee's Pension Regulation, 1995, states that the Bank is entitled to institute a disciplinary proceedings for the event which took place more than four years before such institution. The learned counsel, by relying on the Judgment of the Hon'ble Supreme Court in ***Brajendra Singh Yambem vs. Union of India and another*** reported in ***(2016) 9 SCC 20*** submits that the Hon'ble Supreme Court has held that in the cases of serious misconduct, the limitation, which

has been prescribed under the Regulation 48 of the Canara Bank Employee's Pension Regulation, 1995, cannot be strictly imposed and it can also be extended.

5. The learned counsel appearing for the respondents further submits that the petitioner, while serving as a Manager in Thumbalam Branch, has sanctioned 31KCC loans without the knowledge of the borrowers/customers and without involving the Agricultural Extension Officer/Advance Section Officer. He further submits that the petitioner sanctioned loans without obtaining chitta, adangal, KYC & photos. The documents which were found in the loan applications are found to be fake, the signatures of the customers were also mismatched while tallying and there were no signatures of the officers in NF 482 & NF 803 of loan documents. He further submits that several transactions were authorized by the petitioner without verifying the genuineness of the transactions and accordingly, the petitioner misappropriated the funds of the customers and caused a financial loss to the tune of Rs.62,08,198/- to the Bank.

6. The learned counsel for the respondent, by relying on Regulation No.43 of the Canara Bank Employee's Pension Regulation, 1995, submits that if an employee is convicted of a serious crime or criminal breach of trust or forgery or acting fraudulently or is found guilty for grave misconduct, a part of his pension can be withheld or withdrawn. The learned counsel for the respondents further submits that though the charge memo was issued as per the Canara Bank Officer Employees' (Discipline and Appeal) Regulations, 1976, the proceedings was initiated as against the petitioner after his retirement, as per Regulation 48(2) of the Canara Bank Employee's Pension Regulation, 1995. He further submits that Regulation 45 of the Canara Bank Employee's Pension Regulation, 1995, has prescribed the proceedure for conduct an enquiry as per the Canara Bank Office Employees (Discipline and Appeal) Regulation, 1976. Therefore, the charge memo was issued under Regulation 6 of the Canara Bank Office Employees' (Discipline and Appeal) Regulation, 1976.

7. This court considered the rival submissions made and also persued the materials placed on record.

8. The issue raised by the petitioner before this Court is that the disciplinary proceedings was initiated against a retired employee after a period of 2 ½ years. Admittedly, the petitioner is a retired employee of the respondent bank. The disciplinary proceedings was initiated against the petitioner by issuing a charge memo dated 10.06.2020.

9. Regulation 48(2) of the Canara Bank Employee's Pension Regulation, 1995, enables the Department to proceed with the departmental proceedings in respect of an event which took place more than four years before such institution. Regulation 48(2) of the Canara Bank Employee's Pension Regulation, 1995, is extracted as under:

> "48. Recovery of Pecuniary loss caused to the Bank:-
>
> (1) ....
>
> (2) No departmental proceedings, if not instituted while the employee was in service, shall be instituted in respect of an event which took place more than four years before such institution:
>
> Provided that the disciplinary proceedings so instituted shall be in accordance with the procedure applicable to disciplinary proceedings in relation to the employee during the period of his service."

10. Regulation 43 of the Canara Bank Employee's Pension Regulation, 1995, enables the disciplinary authority to withhold or withdraw the amount of pension, if the pensioner is convicted of a serious crime or criminal breach of trust or forgery or acting fraudulently or is found guilty for grave misconduct. The same is also extracted as under.

> "43. Withholding or withdrawal of pension:- The Competent Authority may, by order in writing, withhold or withdraw a pension or a part thereof, whether permanently or for a specified period, if the pensioner is convicted of a serious crime or criminal breach of trust or forgery or acting fraudulently or is found guilty of grave misconduct;
>
> Provided that where a part of pension is withheld or withdrawn the amount of such pension shall not be reduced below the minimum pension per mensem payable under these regulations."

11. The learned counsel for the petitioner pointed out that the charge memo was issued under Regulation No.6 of the Canara Bank Officer Employees' (Discipline and Appeal) Regulations, 1976 and not under the Canara Bank Employee's Pension Regulation, 1995. Therefore, the learned

counsel for the petitioner disputed the contention of the learned counsel for the respondents that the proceedings was initiated under the Canara Bank Employee's Pension Regulation, 1995. Therefore, the impugned charge memo dated 10.06.2020 and the consequetial order of punishment dated 15.09.2020 cannot be sustained.

12. In response to the submission of the learned counsel for the petitioner, the learned counsel for the respondents submits that the procedures for conducting an inquiry under the Canara Bank Employee's Pension Regulation, 1995, has been provided in Regulation No.45 of the Canara Bank Employee's Pension Regulation, 1995 and that it can be followed by the procedure as specified in the Canara Bank Officer Employees' (Discipline and Appeal) Regulations, 1976

13. The Hon'ble Supreme Court, in ***Brajendra Singh Yambem vs. Union of India and another*** reported in ***(2016) 9 SCC 20***, has also held as follows:

> “41. The similar question of law came for consideration before this Court in the case of Shri Krishna Pandey ((1996) 9 SCC 395), wherein, it was held as uner:

"6. It would thus be seen that proceedings are required to be instituted against a delinquent officer before retirement. There is no specific provision allowing the officer to continue in service nor any order passed to allow him to continue on re-employment till the enquiry is completed, without allowing him to retire from service. Equally, there is no provision that the proceedings be initiated as a disciplinary measure and the action initiated earlier would remain unabated after retirement. If Regulation 351- A is to be operative in respect of pending proceedings, by necessary implication, prior sanction of the Governor to continue the proceedings against him is required. On the other hand, the Regulation also would indicate that if the officer caused pecuniary loss or committed embezzlement etc. due to misconduct or negligence or dereliction of duty, then proceedings should also be instituted after retirement against the officer as expeditiously as possible. But the events of misconduct etc. which may have resulted in the loss to the Government or embezzlement, i.e., the cause for the institution of proceedings, should not have taken place more than four years before the date of institution of proceedings. In other words, the departmental proceedings must be instituted before lapse of four years from the date on which the event of misconduct etc. had taken place. Admittedly, in this case the officer had retired on 31-3-1987 and the proceedings were initiated on 21-4-1991. Obviously, the event of embezzlement which caused pecuniary loss to the State took place prior to four years from the date of his retirement. Under these circumstances, the State had disabled itself by their deliberate omissions to take appropriate action against the respondent and allowed the officer to escape from the provisions of Regulation 351-A of the Regulations. This order does not preclude proceeding with the investigation into the offence and taking action thereon." (emphasis laid by this Court)

42. to 52. ....

53. Though we have answered the questions of law framed in this case in favour of the appellant and set aside the impugned judgment by allowing these appeals, however, having regard to the seriousness of the allegations made against the appellant, in exercise of power of this Court under Article 142 of the Constitution of India, we direct the Disciplinary Authority to continue the disciplinary proceedings and conclude them within six months in accordance with the relevant provisions of law as well as the principles of natural justice. If the same are not completed within the said time period by the disciplinary authority, the said liberty granted by this Court in this order to the respondents will not ensue to their benefit."

14. In view of the provisions under the Canara Bank Employee's Pension Regulation, 1995, this Court is not inclined to accept the contention of the learned counsel for the petitioner. Accordingly, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

20.11.2024

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NCC : Yes / No.
Index : Yes / No.
Internet : Yes / No.

To

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   I.R. Section,
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   Head Office : 112, J.C. Road,
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B.PUGALENDHI, J.

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