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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 21st October, 2024

+ W.P.(C) 1289/2015

AMARJIT SINGH

.....Petitioner

Through: Mr. Puneet K. Verma, Advocate

versus

PUNJAB & SIND BANK

.....Respondent

Through: Mr. R. Tyagi and Ms. Kittu Bajaj,
Advocates with Mr. Nikhil Kumar, Officer (HR),
Punjab & Sind Bank, Head Office, Kidwai Nagar**CORAM:****HON'BLE MS. JUSTICE JYOTI SINGH****JUDGMENT****JYOTI SINGH, J. (ORAL)**

1. This writ petition has been preferred on behalf of the Petitioner assailing the impugned charge sheet dated 12.09.2009 and order dated 02.02.2013 whereby a penalty of withholding of pension to the extent of Rs.12,000/- for a period of 15 years was imposed on the Petitioner as well as order dated 25.11.2013 by which the Appellate Authority dismissed the appeal dated 22.04.2013, preferred by the Petitioner against the penalty order.

2. Case set out by the Petitioner in the writ petition is that Petitioner was relieved from the service in the Respondent Bank/Punjab and Sind Bank ('Bank') on his request for voluntary retirement after rendering unblemished service of 34 years and 7 months in different positions and at different places in the Bank. On 15.07.2009, charge sheet was issued against the Petitioner, which was challenged by him in this Court on several grounds in Writ Petition being W.P.(C) 10968/2009 and the petition was allowed on



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21.11.2013, against which the appeal filed by the Bank is pending. Another charge sheet was issued on 12.09.2009, pursuant to which disciplinary proceedings were commenced and the Inquiry Officer ('IO') tendered his report dated 27.10.2011 with a finding that the charges were proved. Petitioner submitted his representation against the report on 02.12.2011. The Chairman and Managing Director ('CMD') passed an order on 02.02.2013 imposing the penalty of withholding of pension to the extent of Rs.12,000/- per month for 15 years but without ascertaining any alleged loss caused to the Bank. Petitioner filed an appeal before the Board of Directors on 22.04.2013, which was rejected by a non-speaking order on 25.11.2013 and the review petitions filed on 26.02.2014 and 10.05.2014 suffered the same fate and were rejected on 02.06.2014 on the ground that there was no provision to review the order of the Appellate Authority.

3. Petitioner filed an application under the Right to Information Act, 2005 (RTI Act) to which a response was received on 16.06.2014 that the alleged loss suffered by the Bank was yet to be assessed and further vide letter dated 07.08.2014, Petitioner was informed that loss of more than Rs.20 crores had been recovered by the Bank from Whitefield International Private Limited after filing a suit for recovery.

4. Challenging the impugned charge sheet and the penalty as well as the appellate orders, learned counsel for the Petitioner argues that there are 04 different regulations applicable to the officers of the Bank i.e. (A) Punjab & Sind Bank Officer Employees (Conduct) Regulations 1981; (B) Punjab & Sind Bank Officer Employees' (Discipline & Appeal) Regulations 1981 ('Discipline and Appeal Regulations'); (C) Punjab & Sind Bank (Officers) Service Regulations 1982; and (D) Punjab & Sind Bank Employees' Pension



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Regulations 1995 ('Pension Regulations'). After retirement of an officer, only Pension Regulations are applicable as a retired employee does not fall within the definition of 'officer employee' under the Discipline and Appeal Regulations. As per Regulation 43 of Pension Regulations, it is only the 'Competent Authority' which can withhold or withdraw pension or a part thereof if the pensioner is convicted of a serious crime or criminal breach of trust or forgery or acts fraudulently or is found guilty of grave misconduct. 'Competent Authority' has been defined in the Regulation as the authority appointed by the Board for the purpose of these regulations and the expression 'Disciplinary Authority' is not mentioned in the Pension Regulations for the simple reason that no disciplinary proceedings can be initiated against a retired employee of the Bank for imposing the penalties prescribed under Discipline and Appeal Regulations and only the Competent Authority under the Pension Regulations can pass an order under Regulation 43 in respect of pension.

5. It is further argued that the Bank issued a Circular bearing No. 2374 dated 20.12.1995 under Pension Regulations and prescribed the Competent Authorities and the Appellate Authorities for different level of officers and for officers in Scale-IV and above, the Competent Authority prescribed is the CMD while the Appellate Authority is the Board of Directors. Petitioner retired as a Scale-IV officer and therefore post his retirement, the CMD was the Competent Authority to pass an order under Regulation 43. It is a settled law that no authority subordinate to the Competent Authority can pass an order against a retired employee and therefore, the proceedings which culminated in the impugned order withholding part of the pension, initiated pursuant to a charge sheet issued by the General Manager (P) of the Bank,



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who was not the Competent Authority, are *non est* and void in the eyes of law. Bank realised the illegality in the charge sheet issued by the General Manager (P) and the consequent proceedings and therefore the final order was passed by the CMD, but this does not legalise the charge sheet which was issued by an incompetent authority and thus the entire proceedings stand vitiated and the penalty deserves to be set aside.

6. *Per contra*, learned counsel for the Bank argues that the penalty was rightly imposed on the Petitioner as the charges were serious and the grave misconduct of the Petitioner resulted in a loss of Rs.13.34 crores to the Bank. It is wrong for the Petitioner to contend that proceedings cannot be initiated against a retired employee under Discipline and Appeal Regulations and in support reliance was placed on Regulation 45 of Pension Regulations which provides that in a case falling under Regulation 44 if the Competent Authority considers that pensioner is *prima facie* guilty of grave misconduct, it shall, before passing an order, follow the procedure specified in Discipline and Appeal Regulations. Pension Regulations are made in exercise of powers conferred by Section 19(f)(2) of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 after consultation with Reserve Bank of India and with previous sanction of the Central Government and being statutory in character, permit initiation of departmental action even after retirement of the employee. Even assuming for the sake of argument, the charge sheet was issued by an incompetent Authority, the final penalty order was issued by the CMD and therefore the irregularity, if any, in issuance of the charge sheet stands ratified. Moreover, the Board of Directors, which is the Appellate Authority, rejected the appeal of the Petitioner against the penalty order which clearly means and connotes



that the entire disciplinary proceedings stood approved and ratified.

7. Heard learned counsels for the parties and examined their contentions.

8. Petitioner was the Chief Manager of the Bank when he sought and was granted voluntary retirement and consequent thereto, he was relieved on 24.07.2008. After over one year of retirement, present charge sheet was issued on 12.09.2009 by General Manager (P) against the Petitioner. The proceedings initiated pursuant to the charge sheet culminated into a penalty of withholding of part of the pension due to the Petitioner, to the extent of Rs.12,000/- per month for 15 years. Appeal filed by the Petitioner was rejected and the review petitions were not entertained on the ground that there was no provision for filing review petitions.

9. The only ground pressed before this Court by the learned counsel for the Petitioner is that the charge sheet issued on 12.09.2009 was by an incompetent authority and therefore, the charge sheet is illegal and without jurisdiction and consequently, the proceedings stand vitiated and the penalty deserves to be quashed. This argument in turn is predicated on a legal plea that after retirement, the Disciplinary Authority envisaged under the Discipline and Appeal Regulations cannot initiate disciplinary proceedings as no penalty prescribed under the said Regulations can be imposed post-retirement and it is only the Competent Authority, prescribed under the Pension Regulations, who has the power to impose penalty of withholding/ withdrawing pension, in whole or in part, under Regulation 43.

10. In my considered view, there is merit in the contention. There is no dispute that the impugned charge sheet was issued more than one year after Petitioner was relieved on voluntary retirement by the Bank. Charge sheet was issued by General Manager (P) and not by the CMD. After retirement,



no disciplinary proceedings can be initiated under the Discipline and Appeal Regulations and the field is covered entirely by the Pension Regulations. A bare perusal of the Pension Regulations shows that the expression ‘Disciplinary Authority’ is conspicuously absent and what is referred to and defined is ‘Competent Authority’ which means the authority appointed by the Board for the purpose of Pension Regulations. While the Discipline and Appeal Regulations refer to ‘officer employee’ as a person who is holding a supervisory administrative or managerial post in the Bank or any other person appointed and functioning as an officer of the Bank by whatever designation called and includes a person whose services are temporarily placed at the disposal of the Central/State Government or any other Government undertaking/Public Sector Bank/Reserve Bank of India etc., Pension Regulations only refer to expressions such as ‘pensioner’/ ‘retirement’/ ‘retired’/ ‘date of retirement’ etc. Regulation 43 deals with withholding or withdrawal of pension and is as follows:-

“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. Plain reading of Regulation 43 makes it clear as day that it is only the ‘Competent Authority’ which has the power to withhold or withdraw pension or a part thereof of a pensioner if he is guilty of a serious crime etc. or grave misconduct and it needs no reiteration that the Bank itself understands the difference between a ‘Disciplinary Authority’ and ‘Competent Authority’ and which is why the two Regulations have



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separately described these Authorities, one in the context of disciplinary proceedings when an employee is in service and one in the context of Pension Regulations, when an employee has retired and is in receipt of pension, provisional or regular. It is, therefore, not open to debate that it is only the Competent Authority which can exercise power under Regulation 43 and therefore, the charge sheet not issued by the Competent Authority will be without jurisdiction and further proceedings thereto shall vitiate. It is an admitted position that under the Pension Regulations, Bank had issued a Circular bearing No. 2374 dated 20.12.1995 prescribing the Competent Authority which has the power and jurisdiction to initiate proceedings and pass order under Regulation 43. For ready reference, the Circular is scanned and placed below:-

PUNJAB & SIND BANK
(A Government of India Undertaking)

ANNEXURE.....

From H.O. PROVIDENT FUND DEPTT SAFDARJUNG ENCLAVE NEW DELHI - 110029	To All Branches / Controlling offices
Staff Circular No.2374	Dated: 20.12.1995

All Branches / Controlling Offices,

**Reg: Punjab & Sind Bank (Employees')
Pension Regulations, 1995**

In terms of the Punjab & Sind Bank Pension (Employees') Regulations, 1995 the following Competent/ Appellate Authorities have been appointed by the Board of Directors of the Bank:-

S.No.	Category of Staff	Competent Authority	Appellate Authority
1.	Award Staff posted in Branches and Zonal Offices	Zonal Manager	DGM (P)
2.	Award Staff posted in Head Office Depots.	DGM (P)	GM (P)
3.	Officers in Scale I, II and III	DGM (P)	GM (P)
4.	Officers in Scale IV and above	CMD	Board of Directors

This is for the information of all the staff members.



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12. The Circular clearly prescribes that for officers in Scale-IV and above, the Competent Authority is the CMD while Board of Directors is the Appellate Authority and therefore, no Authority other than the CMD had the jurisdiction to issue the charge sheet and most certainly not a subordinate authority i.e. General Manager (P), who had actually issued the charge sheet. The Circular is not disputed by the Bank and in fact, during the course of hearing, learned counsel for the Respondent had fairly and candidly admitted that the Circular governs the field. Therefore, in my view, the charge sheet having been issued by an incompetent authority was illegal and without jurisdiction and proceedings initiated pursuant thereto as well as the consequent penalty order deserves to be quashed.

13. There is no gainsaying that when a complete mechanism is provided under the Pension Regulations in Regulation 43 for withholding or withdrawing the pension, in whole or in part, for reasons stated therein, the power can be exercised only by the Competent Authority i.e. the CMD and no one else. Once the field is covered by Pension Regulations, the Discipline and Appeal Regulations, which pertains to disciplinary proceedings against serving employees, cannot be imported for taking action against a retired employee. The argument of the learned counsel for the Respondent is that Regulation 45 of Pension Regulations itself provides that in cases falling under Regulation 44, if the Competent Authority considers that the pensioner is *prima facie* guilty of grave misconduct, it shall, before passing an order follow the procedure specified in Discipline and Appeal Regulations. The long and short of the argument is that once the Regulation envisages that resort can be had to Discipline and Appeal Regulations, there is no illegality in the Disciplinary Authority under the said Regulations



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issuing the charge sheet. The argument *albeit* ingenious, cannot be accepted. Regulation 45 only provides that if the pensioner is *prima facie* guilty of grave misconduct and the Competent Authority is inclined to proceed against him, then no order shall be passed without following the 'procedure' laid down in the Discipline and Appeal Regulations. Therefore, the only mandate is that no penalty will be imposed without following the due procedure prescribed under Regulation 6 of the Discipline and Appeal Regulations, which involves issuance of charge sheet, holding an inquiry by leading evidence, rendering an inquiry report etc. In fact, this very Regulation uses the expression 'Competent Authority' and not 'Disciplinary Authority'. Respondent has been unable to point out any Regulation which permits the Disciplinary Authority to initiate proceedings against the retired employee and therefore, the charge sheet without jurisdiction cannot sustain in law.

14. Though subtly, counsel for the Respondent has also argued that even assuming that the charge sheet was issued by an incompetent authority, the charge sheet and the proceedings stood approved and ratified once the CMD passed the penalty order and the Board of Directors dismissed Petitioner's appeal. This argument though may appeal at the first blush cannot be sustained in law. In ***Marathwada University v. Seshrao Balwant Rao Chavan, (1989) 3 SCC 132***, the Supreme Court held that when a Statute prescribes a particular body to exercise the power, it must be exercised only by that body and not by anybody else, unless it is delegated and the law provides for such delegation. Principles of ratification do not have any application with regard to exercise of powers conferred under statutory provisions and statutory authorities cannot travel beyond the power



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conferred and any action without power has no legal validity. It is *ab initio* void and cannot be ratified. In ***Government of Andhra Pradesh and Others v. K. Brahmanandam and Others*, (2008) 5 SCC 241**, the Supreme Court *albeit* in the context of appointments made in violation of mandatory provisions of a Statute held that the appointments were illegal and thus void and illegality cannot be regularised, only an irregularity can be. To the same effect is the judgment of the Supreme Court in ***V.C., Banaras Hindu University and Others v. Shrikant*, (2006) 11 SCC 42** and the judgment of the Allahabad High Court in ***Dr. Sunita Chandra (now S/S) v. Union of India thru. Secy. Ministry of Human Resource Development and Others*, 2019 SCC OnLine All 4860**. It will be useful to allude to a judgment of this Court in ***Dr. M.S. Frank v. Delhi University & Ors.*, 2013 SCC OnLine Del 4347**, where the Court while dealing with a challenge to the disciplinary proceedings held that assuming there could be a ratification of an action taken, the same would be acceptable in law only if it is at the initial stage so that the decision can be taken afresh in which case no prejudice in fact or law will be caused to the Petitioner and not when the issue of ratification comes up after the inquiry proceedings are completed and IO has given the report and DA has taken the action, as was in the case of ***Marathwada University (supra)***. In the present case, there is no doubt that the charge sheet was issued by General Manager (P) and was without jurisdiction. This is a clear illegality and makes the Charge Sheet *ab initio* void and therefore, there can be no ratification and that too, after the inquiry was completed and the IO had rendered his report.

15. For all the aforesaid reasons, the Charge Sheet cannot be sustained in law and consequently, the inquiry proceedings and resultant penalty order



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and appellate order are untenable. This writ petition is thus allowed quashing the Charge Sheet dated 12.09.2009 and the inquiry proceedings as well as the penalty order dated 02.02.2013 and appellate order dated 25.11.2013. Petitioner is held entitled to full pension which shall be released to him within a period of three months from the date of receipt of this judgment with interest @ 6% p.a. from the date the same fell due till the date of actual payment. Needless to state, the amount due will be paid after adjusting the pension already paid to the Petitioner, since the penalty is of withholding of pension to the extent of Rs.12,000/- for 15 years.

JYOTI SINGH, J

OCTOBER 21, 2024/YA/shivam