
(2012) 10 AHC CK 0051

Allahabad High Court (Lucknow Bench)

Case No: Writ Petition No. 420 (SB) of 2008 with W.P. No. 383 (S/B) of 2011

Mohd. Yar Khan

APPELLANT

Vs

District Co-Operative
Bank Ltd. and another

RESPONDENT

Date of Decision: Oct. 8, 2012

Citation: (2013) 136 FLR 864

Hon'ble Judges: S.V.S. Rathore, J; Rajiv Sharma, J

Bench: Division Bench

Final Decision: Allowed

Judgement

Rajiv Sharma and S.V.S. Rathore, JJ.

Heard learned Counsel for the parties and perused the record.

The petitioner, who was an employee of District Co-operative Bank Ltd., Barabanki, while working on the post of Branch Manager had undergone disciplinary proceedings by issuing a charge-sheet in the year 1977. The said inquiry was concluded and order of punishment insofar as removal from service has been passed on 19.10.1985. The said order of removal from service was assailed by the petitioner in Writ Petition No. 867 (SB) of 1986 whereby this Court vide judgment order dated 3.10.1989 quashed the order of removal and provided liberty to the respondents to proceed with the inquiry, if they so desire. The respondents did not start the inquiry while the petitioner was in service, however at the fag end vide order dated 29.1.2008 the inquiry was again started but the same could not be concluded prior to the attaining the age of superannuation and as such, the petitioner filed instant writ petition for quashing of the order dated 29.1.2008 of the institution of inquiry as there-is no provision under the U.P. Co-operative Societies Act, 1965 to continue with the inquiry after attaining the age of superannuation.

Since during the pendency of the instant writ petition, the petitioner was not paid post retiral dues as such, he preferred a writ petition numbered as 1654 (SB) of 2010, which was disposed of vide order dated 2.1.2010 with a direction to decide the representation

of the petitioner. Writ Petition No. 383 (SB) of 2011 was filed by the petitioner with the prayer to quash the order dated 29.1.2012 passed by the Secretary, District Co-operative Bank Ltd., Barabanki whereby prayer of the petitioner was declined for payment of the salary for the period of his suspension and also for the period during which he remained out of job.

2. In support of his submission, learned Counsel for the petitioner has placed reliance upon a judgment of this Court in the case of [U.P. State Ware Housing Corp. Vs. Brish Bhan Singh and Another](#), : wherein this Court in paragraph-9 held as under:

In the case in [Bhagirathi Jena Vs. Board of Directors, O.S.F.C. and Others](#), their Lordships of Hon"ble Supreme Court have reiterated the aforesaid proposition of law and held that the disciplinary proceedings cannot continue after superannuation unless it is provided under the Service Rules or Regulation Relevant portion from the judgment of Bhagirathi Jena (Supra), is reproduced as under:

7 In view of the absence of such 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 Once the appellant had retired from service on 30 6 1995, there was no authority vested in the Corporation for continuing the departmental enquiry even for the purpose of imposing any reduction in the retiral benefits payable to the appellant In the absence of such authority, it must be held that the enquiry had lapsed and the appellant was entitled to full retiral benefits on retirement

9. The question has also been raised in the appeal in regard to the payment of arrears of salary and other allowances payment to the appellant during the period he was kept under suspension and upto the date of superannuation Inasmuch as the enquiry had lapsed, it is, in our opinion, obvious that the appellant would have to get the balance of the emoluments payable to him after deducting the suspension allowance that was paid to him during the abovesaid period

10. The appeal is therefore allowed directing the respondent to pay arrears of salary and allowances payable to him during the period of suspension upto the date of superannuation after deducting the suspension allowance paid to him for the said period and also to pay the appellant, all the retiral benefits otherwise payable to him in accordance with rules and regulation applicable, as if there had been no disciplinary enquiry or order passed therein

To which Mr. Rakesh Kumar Nigam, learned Counsel for the respondents did not dispute this fact

3. In view of the above legal position, the inquiry so instituted/restarted in January, 2008 cannot be allowed to continue after attaining the age of superannuation i.e. 30 9 2008 As such, impugned order dated 291 2008 passed by authority concerned is liable to be quashed and is hereby quashed. As Writ Petition No 420 (SB) of 2008 has already been allowed by this Court inter alia on the ground that inquiry cannot be allowed to continue after attaining the age of superannuation and as such, the order of punishment, which has been passed to the effect that the petitioner is not being paid salary for the period of his suspension and also for the period during which he remained out of job is liable to be quashed and is hereby quashed Writ Petition No 383 (SB) of 2011 is also allowed The petitioner is also entitled for payment of salary for the period of his suspension and for the period he remained out of job, accordingly, if the same has not been paid to him, the respondents are directed to pay the same.