

(2013) 10 DEL CK 0053

Delhi High Court

Case No: Writ Petition (C) No. 7481 of 2008

D.B. Madaan

APPELLANT

Vs

Punjab National Bank
and Others

RESPONDENT

Date of Decision: Oct. 29, 2013

Hon'ble Judges: Valmiki J Mehta, J

Bench: Single Bench

Advocate: Arti Mahajan, for the Appellant; Jagat Arora and Mr. Rajat Arora, for the Respondent

Final Decision: Allowed

Judgement

Valmiki J Mehta, J.

By this writ petition, the petitioner who superannuated from the respondent-bank on 30.06.2007, impugns the departmental proceedings initiated against him in terms of the chargesheet post retirement dated 06.10.2008. Petitioner also prays for directions against the respondent no. 1-bank to make payment of the retirement benefits alongwith interest. The following admitted facts in the present case be noted:

(i) The show cause notice was issued to petitioner on 30.05.2007 asking the petitioner to show cause as to why disciplinary proceedings should not be initiated.

(ii) Petitioner replied to the show cause notice in terms of the reply dated 12.06.2007.

(iii) Petitioner superannuated subsequently on 30.06.2007.

(iv) Before superannuation of the petitioner, the respondent no. 1-bank vide its order dated 28.06.2007 passed an order of continuation of the disciplinary proceedings initiated pursuant to the show cause notice dated 30.05.2007. By the same order the retirement benefits to the petitioner were directed not to be paid.

(v) The charge sheet was issued to the petitioner on 06.10.2008 i.e. after his retirement.

2. I may note that there were certain other legal proceedings because petitioner had impugned the show cause notice dated 30.05.2007 by filing a writ petition in this Court being W.P. (C) No. 1290/2008, and which was disposed of by the order dated 15.09.2008 directing the bank to take a conscious decision for issuing of the charge sheet, and the impugned chargesheet was thereafter issued, however, the issue in the present case only turns upon entitlement of the bank to commence the disciplinary proceedings after the superannuation of an employee. Related to this issue is the issue that when does the disciplinary proceedings commence i.e. whether on issuance of a show cause notice proposing disciplinary proceedings or only on issuing of the chargesheet.

3. The issue in the present case is squarely covered as per the ratio of the judgment of the Supreme Court in the case of [UCO Bank and Another Vs. Rajinder Lal Capoor](#), This judgment holds that Regulation 20(3)(ii) of the 1979 Regulations of the bank which provides for a deeming provision of commencement of the departmental inquiry on issuing of a show cause notice is limited to the type of proceedings envisaged under sub-Rule (1) of Regulation 20 of 1979 Regulations. What is thus held is that the benefits of Regulation 20(3)(ii) of deemed commencement of disciplinary proceedings on issuing of a show cause notice proposing disciplinary proceedings does not enure for the benefit of the bank where no charge sheet is issued against the employer prior to his retirement for the disciplinary proceedings taken in terms of the 1976/1977 Regulations.

4. At this stage it is relevant to mention that so far as the respondent no. 1-bank is concerned, there are two Regulations which are in question. The first Regulations are the 1976 Regulations and they are called Punjab National Bank Officer Employees (Discipline and Appeal) Regulations, 1977 and Punjab National Bank (Officers) Service Regulations, 1979. Whereas the 1977 Regulations provide the procedure with respect to disciplinary proceedings against bank's employees, the 1979 Regulations with its Regulation 20 deals with those proceedings for terminating the services which arise not out of the disciplinary proceedings in terms of 1977 Regulations but under the circumstances specified in Regulation 20 (1) of the 1979 Regulations. Since it is entire Regulation 20 which would be relevant, let me at this stage reproduce the same, and which reads as under:

20. Termination of Service

20.(1)(a) Subject to Sub-Regulation (3) of Regulation 16, where the Bank is satisfied that the performance of an officer is unsatisfactory or inadequate or there is a bonafide suspicion about his integrity or his retention in the Bank's service would be prejudicial to the interests of the Bank and where it is not possible or expedient to proceed against him as per the disciplinary procedure, the Bank may terminate his services on giving him three months' notice or emoluments in lieu thereof in accordance with the guidelines issued by the Government from time to time.

(b) Order of termination under this sub-regulation shall not be made unless such officer has been given a reasonable opportunity of making a representation to the Bank against the proposed order.

(c) The decision to terminate the services of an officer employee under sub-regulation (a) above will be taken only by the Chairman & Managing Director.

(d) The officer employee shall be entitled to appeal against any order passed under sub-regulation (a) above by preferring an appeal within 15 days to the Board of Directors of the Bank. If the appeal is allowed the order under sub-regulation (a) shall stand cancelled.

(e) Where an officer employee whose services have been terminated and who has been paid an amount of three months emoluments in lieu of notice and on appeal, his termination is cancelled, the amount paid to him in lieu of notice shall be adjusted against the salary that he would have earned, had his services not been terminated and he shall continue in the Bank" employment on same terms and conditions as if the order of termination had not been passed as all.

(f) An Officer employee whose services are terminated under sub-regulation (a) above shall be paid Gratuity, Provident Fund including employer"s contribution and all other dues that may be admissible to him as per rules notwithstanding the years of service rendered.

(g) Nothing contained hereinabove will affect the Bank"s rights to retire an officer employee under Regulation 9 (1).

20.(2) An officer shall not leave or discontinue his service in the Bank without first giving a notice in writing of his intention to leave or discontinue his service or resign. The period of notice required shall be 3 months and shall be submitted to the Competent Authority as prescribed in these regulations.

Provided further that the Competent Authority may reduce the period of 3 months or remit the requirement of notice.

20.(3)(i) An officer against whom disciplinary proceedings are pending shall not leave/discontinue or resign his service in the bank without the prior approval in writing of Competent Authority and any notice or resignation given by such an officer before or during the disciplinary proceedings shall not take effect unless it is accepted by the Competent Authority.

(ii) Disciplinary proceedings shall be deemed to be pending against any employee for the purpose of this regulation if he has been placed under suspension or any notice has been issued to him to show cause why disciplinary proceedings shall not be instituted against him and will be deemed to be pending until final orders are passed by the Competent

Authority.

(iii) The officer against whom disciplinary proceedings have been initiated will cease to be in service on the date of superannuation but the disciplinary proceedings will continue as if he was in service until the proceedings are concluded and final order is passed in respect thereof. The concerned officer will not receive any pay and/or allowance after the date of superannuation. He will also not be entitled for the payment of retirement benefits till the proceedings are completed and final order is passed thereon except his own contribution to CPF.

5. It is this very regulation which was the subject matter of interpretation by the Supreme Court in UCO Bank's case (supra) and the Supreme Court held as under:

(i) Regulation 20(3)(ii) only applies to proceedings which are those as contained in Regulation 20 (1) and not to those proceedings which are disciplinary proceedings in terms of 1976 Regulations (1977 Regulations so far as the respondent no. 1-bank is concerned).

(ii) The benefits of Regulation 20(3)(ii) providing a deeming fiction of commencement of disciplinary proceedings on issuance of a show cause notice applies only to proceedings under Regulation 20 (1), and in other cases of disciplinary proceedings under the 1977 Regulations of the respondent no. 1-bank, disciplinary proceedings only commence on issuance of a chargesheet and not issuance of a show cause notice seeking explanation for commencement of disciplinary proceedings.

(iii) Regulation 20(3)(i) and (iii) do apply to disciplinary proceedings in terms of the 1977 Regulations of the respondent no. 1-bank, and effectively it is held that for the benefits of sub-Regulations (i) and (iii) of Regulation 20(3) to apply to the bank it is necessary that a chargesheet is issued before superannuation of the bank's employee.

(iv) The deeming fiction of Regulation 20(3)(ii) can only apply for the benefit of proceedings under Regulation 20 (i) of the 1979 Regulations and not for disciplinary proceedings under the 1977 Regulations of the respondent no. 1-bank.

6. The relevant paras of the judgment of Supreme Court in the case of UCO Bank (supra) are paras 13 to 23 and 29 to 31 and the same read as under:-

13. Sub-regulation (1) of Regulation 20 of the 1979 Regulations, thus, deals with termination of service where the performance of an officer is unsatisfactory or inadequate or where there is a bona fide suspicion about his integrity or where his retention in the bank's service is prejudicial to interests of the disciplinary procedure. Other Sub-regulations of Regulation 20 provides for the mode and manner in which such termination may be effected as also his entitlement to prefer an appeal thereagainst and other benefits to which he would be otherwise entitled to.

14. Sub-regulation (2) of Regulation 20 of the 1979 Regulations places an embargo on an official to leave or discontinue his service of the bank without giving a notice in writing. It prescribes a period of notice.
15. Sub-regulation (3) of Regulation 20, however, places an embargo on an officer to leave or discontinue or resign from service without the prior approval in writing of the competent authority and a notice or resignation given by such an officer before or during the disciplinary proceedings shall not take effect unless it is accepted by the competent authority. Clause (ii) of Sub-regulation (3) of Regulation 20 must be considered from that aspect of the matter. It raises a legal fiction. Such legal fiction has been raised only for the purpose of "this Regulation" and for no other, which would mean Regulation 20(1). The final orders which are required to be passed by the competent authority although indisputably would be in relation to the disciplinary proceedings but evidently it is for the purpose of accepting resignation or leaving or discontinuing of the service by the employee concerned or grant of approval thereof. Clause (ii) of Sub-regulation (3) of Regulation 20 in effect and substance acts as a proviso to Clause (i) thereof.
16. Clause (iii) of Sub-regulation (3) of Regulation 20 is an independent provision. It provides for continuation of the disciplinary proceedings. Such disciplinary proceedings indisputably for the purpose of applicability of Sub-regulation (3) must have been initiated in terms of the 1976 Regulations.
17. It is worth noticing the distinction between terminologies "proceeding pending" or "proceeding initiated". Clause (ii) of Sub-regulation (3) of Regulation 20 defines what would be pending, viz., for the purpose of attracting Clause (i) thereof.
18. A disciplinary proceeding is initiated in terms of 1976 Regulations, which are applicable only in a case where a proceeding is initiated for the purpose of taking disciplinary action against a delinquent officer for the purpose of imposing a punishment on him. Disciplinary proceedings, thus, are initiated only in terms of the 1976 Regulations and not in terms of the 1979 Regulations.
19. It is worth noticing that the 1979 Regulations would be attracted when no disciplinary proceeding is possible to be initiated. The 1976 Regulations, however, on the other hand, would be attracted when a disciplinary proceeding is initiated. Both operate in separate fields. We do not see any nexus between Regulations 20(1) and 20(2) of the 1979 Regulations and the 1976 Regulations.
20. The 1976 Regulations provide for the mode and manner in which a disciplinary proceeding is initiated. It expressly provides for service of charge sheet. Service of charge sheet is a necessary ingredient for initiation of disciplinary proceeding. A preliminary enquiry is not contemplated under the 1976 Regulations. If such an enquiry is held, the same is only for the purpose of arriving at a satisfaction on the part of the disciplinary authority to initiate a proceeding and not for any other purpose.

21. If it is found that a disciplinary proceeding can be and should be initiated, recourse to the 1976 Regulations would have to be taken, if not, the 1979 Regulations may be resorted to if the conditions precedent therefore are satisfied. It is only with a view to put an embargo on the officer to leave his job, Clause (ii) of Sub-Regulation (3) of Regulation 20 of the 1979 Regulations has been made. It's scope is limited.

22. We have noticed hereinbefore that each regulations operates in different fields. When a proceeding is initiated for the purpose of taking any disciplinary action on the ground of any misconduct which might have been committed by the officer concerned indisputably the procedures laid down in the 1976 Regulations are required to be resorted to.

23. The 1979 Regulations would be attracted only for the purpose of termination of service. Had the intention of the regulation making authority been that the legal fiction created under Clause (ii) of Sub-regulation (3) of Regulation 20 would cover both Clauses (i) and (iii), the same should have been placed only after Clause (iii). In such an event, Clause (ii) of Sub-regulation (3) of Regulation 20 should have been differently worded. Some non-obstante clause would have been provided for making an exception to the applicability of the 1976 Regulations when a legal fiction is created, although it is required to be taken to the logical conclusion [See *East End Dwellings Co. Ltd. v. Finsbury Borough Council* (1951) 2 All.E.R. 587], but the same would not mean that the effect thereof would be extended so as to transgress the scope and purport for which it is created.

29. In terms of the 1976 Regulations drawing up of a charge sheet by the disciplinary authority is the first step for initiation of a disciplinary authority. Unless and until, therefore, a charge sheet is drawn up, a disciplinary proceedings for the purpose of the 1976 Regulations cannot be initiated. Drawing up of a charge sheet, therefore, is the condition precedent for initiation of a disciplinary proceedings. We have noticed in paragraph 15 of our judgment that ordinarily no disciplinary proceedings can be continued in absence of any rule after an employee reaches his age of superannuation. A rule which would enable the disciplinary authority to continue a disciplinary proceedings despite the officers reaching the age of superannuation must be a statutory rule. A fortiori it must be a rule applicable to a disciplinary proceedings.

30. There cannot be any doubt whatsoever that the employer may take resort to a preliminary inquiry, but it will bear repetition to state that the same has a limited role to play. But, in absence of the statutory rules operating in the field, resorting to a preliminary enquiry would not by itself be enough to hold that a departmental proceeding has been initiated.

31. Initiation of a disciplinary proceeding may lead to an evil or civil consequence. Thus, in absence of clear words, the court must lean in favour of an interpretation which has been applied by this Court in the main judgment.

(underlining added).

7. Since the admitted facts in this case are that chargesheet was issued to the petitioner only on 06.10.2008 i.e. well after superannuation of the petitioner on 30.06.2007, therefore, in terms of the ratio in the case of UCO Bank (supra), disciplinary proceedings are initiated only on issuance of a chargesheet and not on issuing of show cause notice, and therefore, disciplinary proceedings could not be validly initiated in terms of the chargesheet issued after the superannuation of the petitioner. The impugned chargesheet is therefore liable to be and is accordingly quashed for this reason itself.

8. I may note that the basic charges against the petitioner with respect to the chargesheet issued on 06.10.2008 were with respect to factual allegations of the year 1989 i.e. roughly 19 years earlier and when petitioner was the employee of his then employer M/s. New Bank of India and which bank subsequently merged with the present respondent no. 1-Punjab National Bank. Since the charge sheet itself is quashed, and therefore there are no valid disciplinary proceedings against the petitioner, the respondent no. 1-bank also cannot invoke Regulation 20(3)(iii) to retain the retirement benefits of the petitioner. In view of the above, writ petition is allowed by quashing of the charge sheet dated 06.10.2008 issued against the petitioner and directing that petitioner be paid his retirement benefits alongwith interest @ 6 % per annum simple on the retirement dues payable with effect from 01.07.2007 and till the amount is paid to the petitioner. Parties are liable to bear their own costs.