

CASE NO.:
Appeal (civil) 5364 of 2005

PETITIONER:
STATE BANK OF INDIA AND ANR.

RESPONDENT:
BELA BAGCHI AND ORS.

DATE OF JUDGMENT: 31/08/2005

BENCH:
ARIJIT PASAYAT & ARUN KUMAR

JUDGMENT:
JUDGMENT

ARIJIT PASAYAT, J. :

Leave granted.

The State Bank of India and its Regional Manager, Region-II, Calcutta, Deputy General Manager, Zonal Office and Branch Manager, Berhampore Branch, question correctness of the judgment rendered by a Division Bench of the Calcutta High Court holding that continuation of the proceedings initiated against Shri Snigdha Kanti Bagchi (hereinafter referred to as the 'employee') after the date of his superannuation was illegal without jurisdiction. The said employee had filed a writ petition where the present appellants and the Union of India, Secretary, Ministry of Finance (Banking), proforma respondent were impleaded as opposite parties. In the writ petition prayer was made to quash order passed in the disciplinary proceedings initiated which was continued after the alleged date of superannuation. A learned Single Judge of the High Court held that under the Service Rules of the Bank it was not permissible to continue the proceedings beyond the date of superannuation and, therefore, the decision of the authorities was bad. Appeal was filed by the Bank and its functionaries questioning correctness of the conclusions of learned Single Judge. The High Court by the impugned judgment upheld the decision of the learned Single Judge. It is to be noted that during the pendency of the writ application before the learned Single Judge, the employee had expired and in his place his widow and daughter (the respondent Nos. 1 and 2 in this appeal) were impleaded as parties.

Factual background needs to be noted in brief :

The employee was placed under suspension vide order dated 3.12.1986 and charge-sheet was issued in the departmental proceedings on 3.12.1986. Allegations were to the effect that the employee had received money from an account-holder for depositing in his savings bank account, but did not deposit the amount. A fictitious credit entry was made in the pass-book of the account-holder. This had happened on 10th October, 1985. Again in May, 1996 the account-holder handed-over money which was also not deposited and fraudulent entry was made. On 9th April, 1985 by four withdrawal slips money was withdrawn. Similar was the position on another date. A hand-note was executed in favour of the account-holder. Cheques for re-payment of the amounts collected were issued which were dishonoured. This happened on five occasions. According to the Bank the acts committed constitute individually and collectively gross misconduct as defined in paragraph 521(4)(j) of the Sastry Award as retained by the Desai Award. This also constituted moral turpitude as laid down in paragraph 521(1) of the aforesaid Awards. In the charge-sheet it was indicated that if established punishment as laid down in paragraph 521(5) of the aforesaid Awards i.e. dismissal without notice can be imposed. During continuation of the proceedings on 22nd April, 1988 the Bank by its order intimated the employee that it had been decided to

grant extension of service by a period of three months w.e.f. 1st May, 1988 to 31st July, 1988 to facilitate completion of departmental proceedings pending. Accordingly, he was granted extension of service w.e.f. 1st May, 1988. Show-cause reply was submitted by the employee on 31.5.1988. By order dated 2.7.1988 the employee was dismissed from Bank's service with immediate effect. An appeal was preferred before the Deputy General Manager, Regional Office, requesting that on humanitarian grounds the punishment inflicted may be remitted so that the employee could set his terminal benefits. The prayer was rejected. As noted above, with petition filed was allowed by the learned Single Judge on the ground that order of dismissal was passed after the age of superannuation. The Division Bench also confirmed the order primarily placing reliance on a decision of this Court in State Bank of India v. A.N. Gupta and Ors., [1997] 8 SCC 60. It was held that departmental proceedings cannot be continued after retirement unless there was specific provision to that effect in the relevant Service Rules. According to the Division Bench the Service Rules of Imperial Bank of India (in short 'Imperial Bank') were applicable and order of termination was bad.

According to the Bank the order of the High Court is clearly erroneous. It lost sight of the fact that the order of dismissal was passed during the extended period of service. The employee had participated in the proceedings and at no point of time had questioned legality of the departmental proceedings. In fact, after the extension the employee had accepted subsistence allowance during the period enquiry was in progress. Show-cause notice was issued indicating proposed punishment. In reply request was made only for imposition of lighter punishment. Therefore, it was not open to the learned Single Judge and the Division Bench to hold that the order of dismissal was bad. It was pointed out that Para 11.1. of Chapter XI of the All India State Bank Staff Federation Agreement at the relevant time was in operation and the same reads as follows :

"In suppression of paragraph 15.13 of the Desai Award, a workman shall normally retire on reaching the age of 58 years. The Bank will, however, grant to a workman who continues to be physically fit and efficient an extension of service upto 60 years of age but service beyond 58 years of age will not be counted for any purpose connected with or in relation to pension."

It was further submitted that the decision in A.N. Gupta's case (supra) is clearly distinguishable on facts.

Learned counsel for the respondents 1 and 2 on the other hand submitted that the decision in A.N. Gupta's case (supra) fully applies to the facts of the case. Mere participation in the proceedings cannot be of any consequence when the proceedings were without jurisdiction. The person on whose complaint the disciplinary proceedings were initiated had written to the Bank that he had no further claim and the disciplinary proceedings may be dropped. In any event, no loss was caused to the bank. Therefore, the order of dismissal was not proper.

In A.N. Gupta's case (supra) this Court was considering the effect of Rule 20 of the Imperial Bank of India Employees Provident Fund Rules in the background of Rules 10 and 11 Imperial Bank of India Pension and Guarantee Fund Rules. It was held that the departmental proceedings cannot be continued after retirement. On the facts of that case it was held once an employee ceases to be in the service of Bank and continuation of the proceedings was not permissible unless there was a specific provisions to the effect in the relevant rules.

Decision in A.N. Gupta's case (supra) was considered in State Bank of India v. C.B. Dhall, [1998] 2 SCC 544. It was noted that Rules 20-A and 20-B were introduced by State Bank of India (Supervising Staff) Service Rules, 1975 (for short 'Service Rules') which postulate continuation of departmental proceedings even after an employee ceases to be in the Bank's service. This

was introduced w.e.f. 1.4.1977. They read as follows:

"20-A. Notwithstanding anything to the contrary in these rules, no employee who has ceased to be in the Bank's service by the operation of, or by virtue of, any rule, shall be deemed to have retired from the Bank's service for the purpose for the Imperial Bank of India Employee' Pension and Guarantee Fund Rules or the State Bank of India Employees' Pension Fund Rules unless such cessation of services has been sanctioned as retirement for the purpose of either of the said pension fund rules as may be applicable to him.

20-B. In Case disciplinary proceedings under these rules have been initiated against an employee before the cases to be in the Bank's service by the operation of, or by virtue of, any of these rules, the disciplinary proceedings may, at the discretion of the Managing Director, be continued and concluded by the authority by which the proceedings were initiated in the manner provided for in these rules as if the employees continues to be in service, so however, that he shall be deemed to be in service only for the purpose of the continuance and conclusion of such proceedings."

Rules 20-A and 20-B of the Service Rules have been framed under Service 43 of the State Bank of India Act, 1955. The Imperial Bank was constituted under the Imperial Bank of India Act, 1920 which was repealed by State Bank of India Act, 1955 by which the State Bank of India was constituted. Section 7 of the Act deals with the transfer of service of existing employees and employees of the Imperial Bank to the State Bank.

Rules 20-A and 20-B of the Service Rules have been framed under Section 43 of the State Bank of India Act, This Section is as under :

"43. State Bank may appoint officers and other employees. - (1) The State Bank may appoint such number of officers, advisers and employees as it considers necessary or desirable for the efficient performance of its functions, and determine the terms and conditions of their appointment and service.

(2) The officers, advisers and employees of the State Bank shall exercise such powers and perform such duties as may, by general or special order be entrusted or delegated to them by the Central Board."

Section 43 empowered the state Bank to determine the terms and conditions of the appointment and service of its officers and employees. These officers and employees exercise such powers and perform such duties as may be entrusted or delegated to them by the Central Board or the State Bank. Section 50 of the State Bank of India Act empowers the Central Board to make regulations but Section 43 is independent of Section 50. Rules 20-A and 20-B make material difference and ratio and A.N. Gupta's case (supra) is clearly inapplicable to the facts of the present case.

The effect of the decision in C.B.Dhall's case (supra) was not noticed by the Division Bench. It is further to be noted that undisputedly the extension of service was made in order to facilitate the completion of departmental proceedings. At no point of time during continuance of the proceedings the employee had questioned legality of the proceedings. Even if there can be any acquiesce to confer jurisdiction, yet the settlement was binding on the parties (as quoted above para 11.1 of Chapter XI). State of the respondent is that extension can be given to a physically fit and efficient person and same could not have been granted for completing the departmental proceedings. Such a plea is clearly untenable in view of the applicable Rules.

In terms of Rule 20-A and 20-B the bank had the discretion to continue the service of an employee for the purpose of continuance and conclusions of the departmental proceedings. The High Court was, therefore, clearly in error in holding order of dismissal from service to be bad.

Respondents 1 and 2 have highlighted the alleged withdrawal of grievances of the account-holder and the absence of any loss to the bank.

A Bank officer is required to exercise higher standards of honesty and integrity. He deals with money of the depositors and the customers. Every officer/employee of the Bank is required to take all possible steps to protect the interests of the Bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a Bank officer. Good conduct and discipline are inseparable from the functioning of every officer/employee of the Bank. As was observed by this Court in *Disciplinary Authority-cum-Regional Manager v. Nikunja Bihari Patnaik*, [1996] 9 SCC 68, it is no defence available to say that there was no loss or profit resulted in case, when the officer/employee acted without authority. The very discipline of an organization more particularly a bank is dependent upon of its officers and officers acting and operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and is a misconduct. The charge against the employee were not casual in nature and were serious. That being so, the plea about absence of loss is also sans substance.

Judged from any angle, the judgment of the learned Single Judge and the Division Bench which are impugned cannot be maintained and are set aside. The appeal is allowed without any order as to costs.