

CASE NO.:
Appeal (civil) 971 of 2007

PETITIONER:
Ramesh Chandra Sharma

RESPONDENT:
Punjab National Bank & anr

DATE OF JUDGMENT: 18/05/2007

BENCH:
S. B. Sinha & Markandey Katju

JUDGMENT:
J U D G M E N T

WITH
CIVIL APPEAL NO. 975 OF 2007

S. B. SINHA, J.

1. These two appeals arising out of the common judgment and order were taken up together for hearing and are being disposed of by this common judgment.

2. Before embarking upon the question involved in these matters, we may notice the fact of the matter.

3. Punjab National Bank (hereinafter referred to as the 'Bank') is a nationalized bank constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (1970 Act). While Ramesh Chandra Sharma (hereinafter referred to as the 'appellant') was working in the capacity of a Manager in the Bank's Latouche Road, Kanpur Branch, a disciplinary proceeding was drawn against him.

The following charges were levelled against him:

"ARTICLE -I

He acted negligently as also deliberately with improper motive while granting credit facility to various borrowers to the detriment of the interest of the Bank and thereby exposed huge funds of the Bank to jeopardy.

ARTICLE-II

He did not discharge his duties with utmost integrity by unauthorizedly associating outsiders through which he affected disbursement of the loan to various borrowers overlooking the fact that entire proceeds of the loan has not been received by the borrowers.

ARTICLE-III

He did not ensure to keep limitation alive in borrowal accounts, thereby exposing Bank's funds to jeopardy, as also incurred expenses beyond his vested financial powers."

Charge No. I was sub-divided into 24 sub-charges and Charge No. III was sub-divided into two sub-charges. All these charges were proved. A disciplinary proceeding was initiated in relation thereto.

4. The Enquiry Officer submitted a report to the Disciplinary Authority. By an order dated 13.11.1997 the Disciplinary Authority while holding the appellant guilty of the proved charges decided to impose upon him a major penalty of dismissal from Bank's service which shall ordinarily be a disqualification for future employment in terms of clause 4(j) of Punjab National Bank Officer Employees (Discipline & Appeals) Regulations, 1977. It was, however, stated that the terminal dues of the respondent would be settled.

An appeal preferred thereagainst by the appellant was dismissed by the Appellate Authority by an order dated 21.10.1998.

5. Aggrieved by and dissatisfied therewith the appellant filed a writ petition before the High Court of Judicature of Allahabad.

One of the contentions in the writ petition was that the appellant having allowed to superannuate on his reaching the age of superannuation on 31.1.1997, continuation of the disciplinary proceedings was bad in law. The High Court negatived the said contention. In its judgment, reliance, inter alia, was placed on a decision of this Court in Disciplinary Authority-cum-Regional Manager and others vs. Nikunja Bihari Patnaik [1996 (9) SCC 69]. It was held thus:

"We must mention that Shri V.A. Mohta, the learned counsel for the respondent, stated fairly before us that it is not possible for him to sustain the reasoning and approach of the High Court in this case. His only submission was that having regard to the age of the respondent (37 years) and the facts and circumstances of the case, this Court may substitute the punishment awarded to the respondent by a lesser punishment. The learned counsel suggested that any punishment other than dismissal may be imposed by this Court. We considered this request with the case it deserves, but we regret that we are unable to accede to it. The learned counsel for the Bank, Shri V.R. Reddy, Additional Solicitor General, also stated, on instructions of the Bank, that it is not possible for the Bank to accommodate the respondent in its service in view of his conduct."

6. Before the High Court, it appears, a copy of a Circular dated 5.3.1999 was placed for the purpose of raising a contention that the order of the Appellate Authority would be relevant to determine the controversy even if the same was issued subsequent to the order imposing punishment. The High Court observed thus :

"In view of the above, it may be desirable that the matter be remanded to the respondent authorities to pass an appropriate order setting aside the impugned orders. However, considering the fact that the matter is pending since long and in order to bring the litigation to an end and considering the gravity of the charges and financial loss suffered by the Bank, we substitute the order of dismissal by the order of withholding all retiral benefits as has been explained in the counter affidavit. However, no recovery of the loss to the Bank to the tune of Rs. 1, 14, 87,164.76 shall be

made from him."

Both the parties, being aggrieved by the impugned judgment of the High Court, are before us.

7. The questions which, in the facts and circumstances, arise for our consideration are (i) whether, in terms of the rules governing the terms and conditions of services of the employees of the Bank, it was permissible for it to continue the disciplinary proceedings despite the fact that the respondent attained the age of superannuation; and (ii) whether the High Court could have, in the facts and circumstances of the case, substituted the punishment imposed by the Appointing Authority and the Appellate Authority by its own.

8. Indisputably, Parliament enacted the Banking Companies (Acquisition and Transfer of Undertaking) Act 1970. Sub-section (2) of Section 19 thereof empowers the Board of Directors of the Bank to make regulations. In exercise of the said power read with Section 12 of the Act, the Board of Directors of the Appellant - Bank in consultation with the Reserve Bank of India and with the previous sanction of the Central Government made regulations known as the 'Punjab National Bank Employees (Pension) Regulations, 1995'.

9. Submissions of Mr. Pramit Saxena, learned counsel appearing on behalf of the appellant, are that:

- (i) the appellant having been permitted to retire from service, continuation of disciplinary proceedings and subsequent imposition of major punishment i.e. dismissal from service, is bad in law; and
- (ii) in any event, as the Disciplinary Authority clearly directed payment of the terminal dues and the said order having been upheld by the Appellate Authority, the High Court committed a manifest error in passing the impugned judgment.

10. Submissions of Mr. Dhruv Mehta, learned counsel appearing on behalf of the Bank, on the other hand, are :

- (i) that Regulation 20 (3)(iii) of the 1977 Regulations permits continuation of a disciplinary proceeding in terms whereof a legal fiction has been created, and hence the disciplinary authority had the requisite jurisdiction to impose an order of dismissal from service; and
- (ii) that the appellant is not entitled to the retirement benefits in terms of Regulation 22 of the Pension Regulation which provides for forfeiture of the entire past service of an employee and subsequent disqualification for obtaining pensionary benefits, inter alia, dismissal or removal from service.
- (iii) When a punishment of dismissal from service is imposed under a provision or statute, the delinquent officer loses his or her pensionary benefits as the same stands forfeited, and does not suffer from the doctrine of double jeopardy, as has been held in Union of India and others vs. Subedar Ram Narain and others [1998 (8) SCC 52] .

11. The question as to whether a departmental proceeding can continue despite the delinquent officer's reaching the age of superannuation would depend upon the applicability of the extant rules. It may be true that the question of imposition of dismissal of the delinquent officer from service when he has already reached the age of superannuation would not ordinarily arise. However, as the consequences of such an order is provided for in the service rule, in our opinion, it would not be correct to contend that imposition of such a punishment would be wholly impermissible in law.

Nikunja Bihari Patnaik (supra) is an authority for the proposition that an officer of the bank cannot be allowed to flout the existing rules. In

Nikunja Bihari Patnaik (supra) this Court held:

"In the case of a Bank - for that matter, in the case of any other organization - every officer/employee is supposed to act within the limits of his authority. If each officer/employee is allowed to act beyond his authority, the discipline of the organisation/bank will disappear; the functioning of the Bank would become chaotic and unmanageable. Each officer of the Bank cannot be allowed to carve out his own little empire wherein he dispenses favours and largesse. No organization, more particularly, a Bank can function properly and effectively if its officers and employees do not observe the prescribed norms and discipline. Such indiscipline cannot be condoned on the specious ground that it was not actuated by ulterior motives or by extraneous considerations. The very act of acting beyond authority - that too a course of conduct spread over a sufficiently long period and involving innumerable instances - is by itself a misconduct. Such acts, if permitted, may bring in profit in some cases but they may also lead to huge losses. Such adventures are not given to the employees of Banks which deal with public funds. If what we hear about the reasons for the collapse of Barings Bank is true, it is attributable to the acts of one of its employees, Nick Leeson, a minor officer stationed at Singapore, who was allowed by his superiors to act far beyond his authority. As mentioned hereinbefore, the very discipline of an organization and more particularly, a Bank is dependent upon each of its employees and officers acting and operating within their allotted sphere. Acting beyond one's authority is by itself a breach of discipline and a breach of Regulation 3. It constitutes misconduct within the meaning of Regulation 24. No further proof of loss is really necessary though as a matter of fact, in this case there are findings that several advances and over-drawals allowed by the respondent beyond his authority have become sticky and irrecoverable. Just because, similar acts have fetched some profit - huge profit, as the High Court characterizes it - they are no less blameworthy. It is wrong to characterize them as errors of judgment."

12. In this case also, the punishment of dismissal from service was upheld.

The question, we may notice, came up for consideration before this Court in State of U.P. vs. Bhram Datt Sharma [AIR 1987 SC 943], wherein this Court while interpreting Regulation 470 of the Civil Services Regulations in State of U.P. vs. Harihar Bhole Nath \026 2006 (11) SCALE 322, held as under:

"A plain reading of the regulation indicates that full pension is not awarded as a matter of course to a Govt. servant on his retirement instead, it is awarded to him if his satisfactory service is approved. If the service of a Govt. servant has not been thoroughly satisfactory the authority competent to sanction the pension is empowered to make such reduction in the amount of pension as it may think proper. Proviso to the regulation lays down that no order regarding reduction in the amount of pension shall be made without the approval of the appointing authority. Though the

Regulations do not expressly provide for affording opportunity to the Govt. servant before order for the reduction in the pension is issued, but the principles of natural justice ordain that opportunity of hearing must be afforded to the Govt. servant before any order is passed. Article 311(2) is not attracted, nonetheless the Govt. servant is entitled to opportunity of hearing as the order of reduction in pension affects his right to receive full pension. It is no more in dispute that pension is not bounty; instead it is a right to property earned by the Govt. servant on his rendering satisfactory service to the State."

The question, thus, as to whether continuation of a disciplinary proceeding would be permissible or the employer will have to take recourse only to the pension rules, in our opinion, would depend upon the terms and conditions of the services of the employee and the power of the disciplinary authority conferred by reason of a statute or statutory rules.

We have noticed hereinbefore that the Bank have made Regulations which are statutory in nature. Regulation 20(3)(iii) of the said Regulations reads thus:

"20 (3)(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."

The said Regulation clearly envisages continuation of a disciplinary proceeding despite the officer ceasing to be in service on the date of superannuation. For the said purpose a legal fiction has been created providing that the delinquent officer would be deemed to be in service until the proceedings are concluded and final order is passed thereon. The said Regulation being statutory in nature should be given full effect.

13. The effect of a legal fiction is well-known. When a legal fiction is created under a statute, it must be given its full effect, as has been observed in *East End Dwellings Co. Ltd. vs. Finsbury Borough Council* [1951 (2) All E.R. 587] as under:

"If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have from or accompanied it. One of these in this case is emancipation from the 1939 level of rents. The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs."

14. The issue is, thus, no longer res integra, which as would be evident from the ratio laid down by this Court from time to time.

In State Bank of India vs. C.B. Dhall [1998(2) SCC 544], it is held as under:

"Under Rule 20-B disciplinary proceedings if initiated against an employee before he retires from service could be continued and concluded even after his retirement and for the purpose of conclusion of the disciplinary proceedings, the employee is deemed to have continued in service but for no other purpose."

In Harihar Bhole Nath (supra) upon considering Regulations 351-A and 470 of the Civil Services Regulations, this Court following Bhram Datt Sharma (supra) opined as under:

"The right to withhold or withdraw the pension may arise in different situations. Two different contingencies are clearly envisaged under the Regulations, viz., if the pensioner is found guilty of misconduct either in departmental proceedings or in judicial proceedings. Although, prima facie, the proviso appended to Regulation 351-A does not envisage continuation of the proceedings, the same must be held to be existing on a plain reading thereof. Regulations 351-A and 470 provide for a composite scheme; by emphasizing that payment of pension is not automatic and it can be withheld if the conditions laid down therein are satisfied. Undoubtedly, before an order of withholding the amount of pension or a part thereof it is passed, the procedures laid down under the statute are required to be complied with. The procedural safeguards must be kept in mind. Limitations of application of the Rules again have to be borne in mind.

But the said Rules read with the Proviso and the Explanation appended thereto construed in their entirety clearly postulate that the proceeding initiated before the delinquent officer reached his age of superannuation would be valid."

This Court therein distinguished this decision in State of U.P. & Anr. vs. Shri Krishna Pandey [AIR 1996 SC 1656], Bhagirathi Jena vs. Board of Directors O.S.F.C & Ors. [1999(3) SCC 666] in the following terms:

"The High Court has placed strong reliance on State of U.P. & Anr. vs. Shri Krishna Pandey [AIR 1996 SC 1656], wherein the departmental enquiry was initiated after the delinquent officer reached his age of superannuation. Noticing Rule 351-A of the Civil Services Rules and that the departmental proceeding was initiated after the retirement of the employee, the same was held to be impermissible in law. Although it was not necessary to pronounce upon the construction of Rule 351-A involving a case where a departmental

proceeding was initiated prior to reaching of the age of superannuation by the delinquent officer, it was observed that as the officer had retired on 31st March, 1987 and proceedings were initiated against him on 12th April, 1991, proviso appended to the Rule would be applicable.

Reliance has also been placed on Bhagirathi Jena vs. Board of Directors, O.S.F.C. & Ors. [1999 (3) SCC 666], wherein this Court was concerned with interpretation of Regulation 17 of the Orissa State Financial Corporation Employees' Provident Fund Regulations, 1959".

To the same vein is the decision of this Court in State of U.P. & Ors. vs. R.C. Misra [2007(4) SCALE 595].

We are, therefore, of the opinion that it was permissible for the Bank to continue with the disciplinary proceedings relying on or on the basis of Regulation 20(3)(iii) of the Punjab National Bank (Officers') Service Regulations, 1979.

15. It is true that the Disciplinary Authority in its order while imposing punishment observed that the terminal dues of the appellant were to be settled. It was merely an observation to take case of a contingency which might arise. No positive direction was issued in that behalf and, thus, no legal right thereby was created in favour of the appellant to obtain the retiral benefits. What it meant thereby was that the law would take its own course.

16. We may also at this juncture notice the relevant provisions of the Punjab National Bank Employees' (Pensions) Regulations, 1995. Regulation 22 of the said Regulation reads as under:

"22 (i)- Resignation or dismissal or removal or termination of an employee from the services of the Bank shall entail forfeiture of his entire past service and consequently shall not qualify for pensionary benefits."

Indisputably as a consequence of the order imposing the punishment of dismissal from service the appellant would not have qualified for the pensionary benefits. Our attention, however, has been drawn by Mr. Saxena to Regulations 43 and 48 to contend that even for the purpose of withholding pension, a specific order in that behalf by a competent authority was required to be passed. Pension Regulation is meant to be applicable where pension is required to be paid. It also provides for recovery of pecuniary loss caused to the Bank from the pensionary benefits of the employee.

Regulations 43 and 48 of the Pension Regulation are as under:

"43. Withholding or withdrawal of pension. \026 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 of 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."

"48. Recovery of Pecuniary loss caused to the Bank \026 (1) The Competent Authority may withhold or withdraw a pension or a part thereof, whether permanently or for a specified period and order recovery from pension of the whole or part of any pecuniary loss caused to the Bank if in any departmental or judicial proceedings the pensioner is found guilty of grave misconduct or negligence or criminal breach of trust or forgery or acts done fraudulently during the period of his service:

Provided that the Board shall be consulted before any final orders are passed;

Provided further that departmental proceedings, if instituted while the employee was in service, shall, after the retirement of the employee, be deemed to be proceedings under these regulations and shall be continued and concluded by the authority by which they were commenced in the same manner as if the employee had continued in service;

(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.

(3) Where the Competent Authority orders recovery of pecuniary loss from the pension, the recovery shall not ordinarily be made at a rate exceeding one-third of the pension admissible on the date of retirement of the employee:

Provided that where a part of pension is withheld or withdrawn, the amount of pension drawn by a pensioner shall not be less than the minimum pension payable under these regulations."

17. Where a proceeding is initiated for withholding or withdrawal of pension, Regulation 43 of the Pension Regulations would be attracted. But provisions of the said Regulation if read in its entirety clearly go to show that an officer would not qualify for pensionary benefits, if inter alia, he is dismissed from services.

Regulation 48 empowers the Bank to recover pecuniary loss caused to it from the pensionary benefits. Regulation 20(3)(iii) of the Discipline and Appeal Regulations must be read in conjunction with the Pension Regulations. Where the employees are pension optees, Regulation 48(1) shall apply. In any event, if an officer is removed or dismissed from service under Regulation 4 of the (Discipline & Appeal) Regulations, the Bank need not take recourse to Regulation 48 of the Pension Regulations as Regulation 22 thereof would be attracted.

We are, therefore, of the opinion that the High Court committed a manifest error in passing the impugned judgment.

18. Moreover, it now a trite law that ordinarily the High Court should not interfere with the quantum of punishment imposed by the Disciplinary Authority. [See U.P.S.R.T.C. v. Ram Kishan Arora, 2007 (6) SCALE 721] It has not been found by the High Court that the punishment imposed upon the appellant was impermissible in law or wholly disproportionate to the misconduct found to have been committed by the delinquent officer.

19. Our attention has been drawn to a decision of this Court in S.P. Badrinath vs. Govt. of A.P. and others [2003(8) SCC 1]. This decision has no application in this case, as we have noticed in the present case that the acts of misconduct proved against the appellant were of grave nature.

20. The High Court itself has noticed a large number of decisions and formed the opinion that the charges levelled against the delinquent officer were of grave nature. A major punishment may be inflicted even where no pecuniary loss was caused to the Bank by reason of the act of the delinquent officer. In support of the aforementioned proposition of law, the High Court opined:

"The charges leveled against the petitioner, which were found proved upon enquiry, are quite serious in nature. The petitioner had engaged himself in reckless lending causing huge financial loss to the Bank to the extent of Rs. 1,14,87,164.76. It also shows that the petitioner had disbursed loan through middlemen and demanded and received illegal gratification from a borrower. We are of the considered opinion that in such cases, the officers of the Bank should not be permitted to continue in service at all.

Once the employer has lost the confidence in the employee and the bona fide loss of confidence is affirmed, the order of punishment must be considered to be immune from challenge, for the reason that discharging the office of trust and confidence requires absolute integrity. A necessary implication which must be engrafted on the contract of service is that the servant must undertake to serve his master with good faith and fidelity. In a case of loss of confidence, reinstatement cannot be directed. Granting such an employee the relief of reinstatement would be "an act of misplaced sympathy which can find no foundation in law or in equity." (Vide Air India Corporation Bombay Vs. V.A. Ravellow, AIR 1972 SC 1343; The Binny Ltd. Vs. Their Workmen, AIR 1973 SC 1403; Kamal Kishore Lakshman Vs. Management of M/s. Pan American World Airways Inc & Ors., AIR 1987 SC 229; Francis Kalein & Co. Pvt. Ltd. Vs. Their Workmen, AIR 1971 SC 2414; Regional Manager, Rajasthan SRTC Vs. Sohan Lal, (2004) 8 SCC 218; and Bharat Heavy Electricals Ltd. Vs. M. Chandrashekhar Reddy & Ors., 2005 AIR SCW 1232).

In Kanhaiyalal Agrawal & Ors. Vs. Factory Manager, Gwalior Sugar Co. Ltd., (2001) 9 SCC 609, the Hon'ble Supreme Court laid down the test for loss of confidence to find out as to whether there was bona fide loss of confidence in the employee, observing that, (i) the workman is holding the position of trust and confidence; (ii) by abusing such position, he commits act which

results in forfeiting the same; and (iii) to continue him in service/establishment would be embarrassing and inconvenient to the employer, or would be detrimental to the discipline or security of the establishment. Loss of confidence cannot be subjective, based upon the mind of the management. Objective facts which would lead to a definite inference of apprehension in the mind of the management, regarding trustworthiness or reliability of the employee, must be alleged and proved."

Reliance in this regard has also been placed by the High Court on the decision of State Bank of India vs. Bela Bagchi [AIR 2005 SC 3272].

21. The High Court, however, in our opinion, posed unto itself a wrong question of law that despite applicability of Regulation 20(3)(iii) of the Punjab National Bank Officer Employees' (Discipline and Appeal) Regulations, 1977, the Bank exceeded its jurisdiction in continuing the disciplinary proceedings after 31.1.1997 on which date the appellant reached the age of superannuation.

22. For the reasons aforementioned, the appeal preferred by the appellant must be dismissed and the one preferred by the Bank must be allowed. Resultantly, Civil Appeal No. 971 of 2007 is dismissed and Civil Appeal No. 975 of 2007 is allowed. However, in the facts and circumstances of the case, there shall be no order as to costs.