

CASE NO.:
Appeal (civil) 4837 of 2005

PETITIONER:
Punjab National Bank

RESPONDENT:
M.L. Kalra and another

DATE OF JUDGMENT: 30/01/2008

BENCH:
S.B. SINHA & HARJIT SINGH BEDI

JUDGMENT:
J U D G M E N T

S.B. SINHA, J.

1. The short question involved in this appeal, is the interpretation of the provisions of the Punjab National Bank (Officers\022) Service Regulations, 1979 vis-à-vis Punjab National Bank (Employees\022) Pension Regulations, 1995 (in short \023Pension Regulations\024), which arises out of a judgment and order of the High Court of Delhi at New Delhi passed in LPA No. 336 of 2002.

2. Respondent herein was an employee of the New Bank of India. On or about 4th September, 1993 the said Bank was amalgamated with the appellant bank. A charge sheet was issued against the respondent on 19th August, 1993. He reached the age of superannuation on 30th November, 1994. Appellant, however, relying on or on the basis of Regulation 20 (3) (iii) of the National Bank (Officers\022) Service Regulations, 1979, continued the departmental proceedings against him. The same was completed after his retirement on 1st August, 1995. An order of punishment was passed by the disciplinary authority dismissing the respondent from service on 22nd March, 1996, directing :-

\023Provisions of Regulation 20(3)(iii) of Punjab National Bank Officers Service Regulations, 1979 were invoked vide letter dated 23.11.1994 and it was inter alia made clear to Shri Kalra that though he will cease to be in service of the bank on 30.11.1994 (on attaining the age of superannuation) but the disciplinary proceedings initiated against him will continue as if he was in service until the disciplinary proceedings are completed and final order is passed in respect thereof and that he will not be entitled for payment of retirement benefits till the proceedings are concluded and final order is passed thereon except his own contribution to CPF. The payment of terminal benefits to Shri Kalra, if any, will be made keeping in view the above order of \023dismissal\024.\024

3. An appeal preferred thereagainst by the respondent before the appellate authority was dismissed by an order dated 6th March, 1997 stating:-

\023The Board carefully considered the grounds of appeal preferred by Shri M.L. Kalra along with records of the case and after detailed discussions

observed that the petitioner has not brought out any case based on the merits, which warrants interference with the decisions of the Disciplinary Authority. As such, the Board decided to confirm the punishment of Major penalty of \021Dismissal\022 from service which shall be a disqualification for future employment\022 imposed on Shri M.L. Kalra by the Disciplinary Authority. Shri M.L. Kalra be informed accordingly.\024

4. In the meanwhile, the respondent was paid his provisional pension in terms of Regulation 46 of Pension Regulations from the date of superannuation till the date of dismissal i.e. 22nd March, 1996.

5. Respondent claimed that he was entitled to payment of the said provisional pension till 6th March, 1997 i.e. till the disposal of his appeal by the appellate authority. On the said premise a writ petition was filed by him. A learned Single Judge of the High Court by an order dated 22nd February, 2002 directed that the arrears of provisional pension also be paid for the period during which the appeal was pending. An intra-court appeal filed by the appellant had been dismissed by a Division Bench of the High Court by reason of the impugned judgment.

The High Court in support of its order relied on a decision of this Court in State of Maharashtra vs. Chandrabhan Tale : (1983) 3 SCC 387.

6. Mr. Amarendra Sharan, learned Additional Solicitor General, in support of the appeal submitted that the order of disciplinary proceeding culminated in an order passed by the disciplinary authority and in that view of the matter, the said order cannot be taken into consideration for the purpose of payment of provisional pension.

7. Mr. Ambhoj Kumar Sinha, learned counsel appearing on behalf of the respondent, on the other hand, submitted that a retired person cannot be directed to be dismissed and a distinction exists between a disciplinary proceeding and a departmental proceeding. As the Regulation 46, it was urged, refers to departmental proceedings, the appellant was entitled to payment of provisional pension till the date of determination of the appeal.

Regulations 42, 45 and 46 of the Pension Regulations if read conjointly, the learned counsel contended, would clearly show that the delinquent employee was entitled to payment of provisional pension subject of course to an order which may be passed by the disciplinary authority only for withholding or revision thereof.

8. Clause (b) of sub-regulation (2) of Regulation 22 of the Pension Regulations postulates that the delinquent employee would be entitled to receive pension if he is permitted to retire or retires on attaining the age of compulsory retirement while under suspension.

Terms and conditions of the services of an officer of the appellant-Bank are governed by the Punjab National Bank (Officers\022) Service Regulations, 1979 ; Regulation 20(3) (iii) whereof reads as under:-

\02320. Termination of Service

(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.\024

9, In this case we are not concerned with the legality or validity of the order of dismissal passed against the respondent. The issue before us is a short one.

10. On reading the two Regulations conjointly, the question which arises for consideration is as to whether a departmental proceeding can be said to be a disciplinary proceeding. We do not find any distinction in the said term in the context of the present dispute.

11. Regulation 22 of Pension Regulations reads as under :-

\02322. Forfeiture of service:-

(1) Resignation or dismissal or removal or termination of an employee from the service of the bank shall entail forfeiture of his entire past service and consequently shall not qualify for pensionary benefits;

(2) An interruption in the service of a Bank employee entails forfeiture of his past service, except in the following cases, namely:-

(a) authorized leave of absence;
(b) suspension, where it is immediately followed by reinstatement, whether in the same or a different post, or where the bank employee dies or is permitted to retire or is retired on attaining the age of compulsory retirement while under suspension;

(c) transfer to non-qualifying service in an establishment under the control of the Government or Bank if such transfer has been ordered by a competent authority in the public interest;

(d) joining time while on transfer from one post to another.

(3) Notwithstanding anything contained in sub-regulation (2), the appointing authority may, by order, commute retrospectively the periods of absence without leave as extraordinary leave.

(4)(a) In the absence of a specific indication to the contrary in the service record, an interruption between two spells of service rendered by a bank employee shall be treated as automatically condoned and the pre-interruption service treated as qualifying service;

(b) Nothing in clause (a) shall apply to interruption caused by resignation, dismissal or removal from service or for participation in a strike:

Provided that before making an entry in the service record of the Bank employee regarding forfeiture of past service because of his participation in strike, an opportunity of representation may be given to such bank employee.\024

12. When an order of dismissal or removal is passed, clause (1) of Regulation 22 would apply. Clause (2) will have application only when

an interruption in service takes place.

13. Services of an employee can be validly terminated only once. Only because an appeal has been provided against an order of dismissal from services, the same ipso facto would not mean that the same would remain under animated suspension.

14. The issue is covered by large number of decisions of this Court. In *Syndicate Bank Ltd. vs. K.R.V. Bhat* : [1968] 1 SCR 327 this Court held that an order of dismissal or discharge can be passed only once irrespective of when the finality in relation thereto is reached and all that the appellate authority considers is whether the order of dismissal requires to be sustained or modified.

In *P.H. Kalyani vs. M/s. Air France Calcutta* : [1964] 2 SCR 104 this Court observed that the operation of order of punishment made by the employer does not depend on its confirmation by the Court.

16. We may also notice that in a recent judgment this Court, in *Ramesh Chandra Sharma vs. Punjab National Bank and another*: 2007 (8) SCALE 240, upon taking into consideration both the provisions of the Service Regulations as also the Pension Regulations, opined :-

\02317. 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 service.

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.\024

17. The decision of this Court in *Chandrabhan Tale* (supra) was rendered in an absolute different fact situation. Therein the question which arose for consideration was as to whether subsistence allowance is payable even during the pendency of the appeal. In the facts and circumstances of that case, it was held that the subsistence allowance should be granted. We do not think that any ratio was laid down therein. Upon dismissal from services, the employee ceases to be in employment with effect from the date when the original order had been passed and not from the date of the order of the appellate authority subject, of course, to the condition that the original order is affirmed.

18. Reliance has been placed by the learned counsel for the respondent on *Union of India and others vs. J. Ahmed* : (1979) 2 SCC 286. We do not find any application of the said decision in the instant case which is merely an authority for the proposition as to what would constitute a \023misconduct\024.

19. For the reasons abovementioned the impugned judgment cannot be sustained and it is set aside accordingly. The Appeal is allowed. But in the facts and circumstances of the case, there will be no order as to costs.

JUDIS