

CASE NO.:
Appeal (civil) 5826 of 2007

PETITIONER:
General Manager, UCO Bank and Anr

RESPONDENT:
M. Venuranganath

DATE OF JUDGMENT: 12/12/2007

BENCH:
Dr. ARIJIT PASAYAT & AFTAB ALAM

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO. 5826 OF 2007
(Arising out of S.L.P. (C) No.23654 of 2004)

Dr. ARIJIT PASAYAT, J.

1. Leave granted.

2. Challenge in this appeal is to the Judgment of a Division Bench of the Andhra Pradesh High Court allowing the writ appeal filed by the respondent.

3. Background facts in a nutshell are as follows:
The respondent, who, at the relevant point of time was Branch Manager of appellant No.1-Bank and was posted at Nellore in Andhra Pradesh was charged and tried along with one Shrinivasulu s/o Chenchuramaiah for offences punishable under Sections 120-B, 471 and 477 of Indian Penal Code 1860 (in short the 'the IPC') and Section 5(2) read with Section 5 (1)(d) of the Prevention of Corruption Act, 1947 (in short the 'Prevention of Corruption Act'). Both the accused persons were tried in the Court of Special Judge for CBI cases. They were acquitted by judgment dated 11.12.2002 giving them benefit of doubt. The respondent was placed under suspension from 15.06.1988 till he was reinstated on 04.05.1993. After his reinstatement, departmental proceedings were initiated. The same were questioned by a writ petition being writ Petition No.15797 of 1994 which was allowed by learned Single Judge. But in writ appeal No.884 of 1998, a Division Bench directed dismissal of the writ petition. The departmental enquiry was concluded on 29.02.2003. The respondent was found guilty. So far as payment of salary, allowances etc. are concerned, relevant portion of the order read as follows:

"In the light of the above punishment the undersigned further directs that Sri M. Venu Ranganath will not be entitled to any salary and allowances and other attendant- benefits including increment for the period spent by him under suspension, save and except the Subsistence Allowance already paid to him during the said period."

3. The respondent filed writ petition being Writ Petition No.11615 of 1994 claiming pay and allowances for the period of suspension which was dismissed by a learned Single Judge.

Respondent filed Writ Appeal No.685 of 2004 which was allowed by the impugned order. It was inter-alia held by the Division Bench that Clause-22 of the applicable Manual i.e. A Manual on Disciplinary Action and Related Matters of UCO Bank governed the case and not Regulation 15(2) of the United Commercial Bank (Conduct and Discipline and Appeal) Regulation, 1976.

4. According to learned counsel for the appellants, the Division Bench was not justified in holding that Clause 22(8) of the Manual was to operate and not Regulation 15(2) of the Regulation. It is stated that the Manual is nothing but guidelines inducted and at the most, may be termed as Executive Instructions. The Regulations are statutory in nature.

5. It is pointed out that acquittal in a criminal case has nothing to do with departmental proceedings and law is clearly well settled. Notwithstanding acquittal in a criminal case, departmental proceedings can be initiated and/or continued.

6. In response, learned counsel for the respondent submitted that the factual position shows that the only time respondent was placed under suspension was because of the criminal case under Regulation 12(1)(b). Even though departmental proceedings were initiated, the respondent was never placed under suspension. According to her, the case covered by Regulation 15(2) relates to cases not covered by sub-Regulation (1).

7. There can be no doubt that criminal proceedings and departmental proceedings operate in different fields. Even though the person may have been acquitted in a criminal trial, there is no embargo on his being departmentally proceeded against. But the question here is slightly different. The relevant provisions need to be quoted:

"11. Special procedure in certain cases:

Notwithstanding anything contained in regulation 6 or regulation 7 or regulation 8 the Disciplinary Authority may impose any of the penalties specified in regulation 4 if the officer/employee has been convicted on a criminal charge, or on the strength of facts or conclusions arrived at by a judicial trial."

Regulation 12: Suspension:

(1) An officer employee may be placed under suspension by the competent authority -

(a) where a disciplinary proceeding against him is contemplated or is pending; or

(b) where a case against him in respect of any criminal offence is under investigation, inquiry or trial.

(2) An officer employee shall be deemed to have been placed under suspension by an order of the competent authority \026

(a) with effect from the date of his detention, if he is detained in custody, whether on a criminal charge or otherwise, for a period exceeding forty-eight hours;

(b) with effect from the date of

conviction, if in the event of a conviction for an offence, he is sentenced to a term of imprisonment exceeding forty-eight hours and is not forthwith dismissed or removed or compulsorily retired consequent to such conviction.

Explanation :- The period of forty-eight hours referred to in clause (b) of this sub-regulation shall be computed from the commencement of the imprisonment after the conviction and for this purpose, intermittent periods of imprisonment, if any, shall be taken into account.

(3) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon an officer employee under suspension is set aside in appeal or on review under these regulations and the case is remitted for further inquiry or action or with any directions, the order of his suspension shall be deemed to have continued in force on and from the date of the original order of dismissal, removal or compulsory retirement and shall remain in force until further orders.

(4) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon an officer employee under suspension is set aside or declared or rendered void in consequence of or by a decision of a court of law, and the disciplinary authority, on consideration of the circumstances of the case, decides to hold further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the officer employee shall be deemed to have been placed under suspension by the competent authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders.

(5) (a) An order of suspension made or deemed to have been made under this regulation shall continue to remain in force until it is modified or revoked by the authority competent to do so.

(b) An order of suspension made or deemed to have been made under this regulation may at any time be modified or revoked by the authority which made or is deemed to have made the order."

"Regulation 15: Pay allowances and treatment of service on termination of suspension:

(1) Where the competent authority holds that the officer employee has been fully exonerated or that the suspension was unjustifiable, the officer employee concerned shall be granted the full pay to which he would have been entitled had he not been suspended, together with any allowance of which he was in receipt immediately prior to his suspension, or may have been sanctioned subsequently and made

applicable to all officer employees.

(2) In all cases other than those referred to in sub-regulation (1), the officer employee shall be granted such proportion of pay and allowances as the Competent Authority may direct;

Provided that the payment of allowances under this sub-regulation shall be subject to all other conditions to which such allowances are admissible:

Provided further that the pay and allowances granted under this sub-regulation shall not be less than the subsistence and other allowances admissible under regulation 14.

3(a) In a case falling under sub-regulation (1) the period of absence from duty shall, for all purposes, be treated as a period spent on duty;

(b) In a case falling under sub-regulation (2), the period of absence from duty shall not be treated as a period spent on duty unless the Competent Authority specifically directs, for reason to be recorded in writing, that it shall be so treated for any specific purpose."

Clause 22.8 of the Manual "Where a suspended officer employee has been fully exonerated in the departmental enquiry or acquittal by the court of law of the charges levelled against him the competent authority holds that the suspension was unjustifiable, he would be entitled to all benefits to which he would have been normally entitled, had he been on duty. However, the employee in such a case would not be entitled to accumulate leave beyond the permissible limit."

8. A bare reading of Regulation 12 shows that suspension can be directed under two circumstances. The first is where a disciplinary proceeding against the concerned employee is contemplated or is pending; and the second is where a case against him in respect of any criminal offence is under investigation, inquiry or trial. Undisputedly, the respondent was placed under suspension under Regulation 12(i)(b). Regulation 15 deals with two types of situations. As the heading itself shows, it relates to pay and allowances and termination of service on termination or suspension. Sub-Regulation (1) deals with the power of competent authority on completion of the departmental enquiry. All other cases, except those covered by Sub-Regulation (1), the competent authority has to direct as regards the proportion of pay and allowances to be granted.

9. Clause 22 of the Manual deals with two situations. One is full exoneration in the departmental proceedings and other is acquittal by the court of law of the charges levelled. Clause 22(8) specifically deals with acquittal by criminal court. It does not exclude acquittal where accused has been given benefit of doubt. A close reading of Sub-Regulation (1) of Regulation 15 would show that the same is relatable to departmental proceedings. While other cases, meaning, cases not covered by departmental proceedings, which obviously would include the

criminal trial are covered by sub-regulation (2).

10. At this juncture, it would also be relevant to take note of Clause 21(9) of the Regulation. It deals with entitlements for benefits after acquittal by a criminal court.

11. The same reads as follows:

"Where a suspended employee has been fully exonerated in the departmental enquiry or honourably acquitted by the courts of law of the charges levelled against him, he would be entitled to all benefits to which he would have been normally entitled, had he been on duty. However, the employee in such a case would not be entitled to all benefits to which he would have been normally entitled, had he been on duty. However, the employee in such a case would not be entitled to accumulate leave beyond the permissible limit. However, if the employee is acquitted by being given the benefit of doubt he may be paid such portion of pay and allowances as the management may deem proper and the period of his suspension shall not be treated as period spent on duty unless the management so direct."

12. It is to be noted that Regulation 21(9) does not relate to officers and the respondent herein was an officer and, therefore, Regulation 21 has no relevance as it covers only the award staff.

13. Clause 22(8) obviously is relatable to Clause 15(2), meaning that it provides guidelines for operating sub-Regulation (2) of Regulation 15. The High Court was, therefore, justified in holding that because of Clause 22(8), the respondent was entitled to all benefits to which he would have been normally entitled, had he been on duty. Therefore, no interference is called for.

14. The appeal is, accordingly, dismissed. There will be no order as to costs.