

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 26TH DAY OF FEBRUARY, 2021

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.47769/2015 (S -- RES)

R

BETWEEN

A.K.SIDDALINGAPPA
S/O ANJANAPPA, 61 YEARS,
RESIDING AT NO.4033,
8TH MAIN, 8TH CROSS,
KUMARASWAMY LAYOUT,
2ND STAGE, BENGALURU - 78
EARLIER WORKING AS
INCHARGE MANAGER OF
STATIONARY POOL,
SYNDICATE BANK,
REGIONAL OFFICE - II,
BENGALURU.

... PETITIONER

(BY SRI KIRAN V.RON, ADVOCATE FOR
SRI C.M.POONACHA, ADVOCATE (PHYSICAL HEARING))

AND

SYNDICATE BANK
BODY CONSTITUTED UNDER
BANKING COMPANIES ACT,
REPRESENTED BY ITS
MANAGING DIRECTOR /
EXECUTIVE DIRECTOR,
HEAD OFFICE AT MANIPAL - 576 104.

... RESPONDENT

(BY SRI SYED KASIF ALI, ADVOCATE FOR

SRI SUNDARASWAMY RAMADAS, ADVOCATE FOR
(PHYSICAL HEARING))

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO CALL FOR THE RECORDS LEADING TO THE ORDERS PASSED BY THE DISCIPLINARY AUTHORITY, APPELLATE AUTHORITY AND REVIEWING AUTHORITY DTD: 31.01.2014, 4.9.2014 & 19.11.2014 RESPECTIVELY ; QUASH ORDERS PASSED BY THE DISCIPLINARY AUTHORITY DTD: 31.01.2014 (UNDER ANNEXURE-AA TO THE WRIT PETITION) QUASH THE ORDERS PASSED BY THE APPELLATE AUTHORITY DTD: 4.9.2014 (UNDER ANNEXURE-AB TO THE WRIT PETITION) AND QUASH THE ORDERS PASSED BY THE REVIEWING AUTHORITY VIDE DTD: 19.09.2014 (UNDER ANNEXURE-AC TO THE WRIT PETITION) RESPECTIVELY BY ISSUE OF WRIT IN THE NATURE OF CERTIORARI AND GRANT ALL CONSEQUENTIAL BENEFITS FOLLOWING THEREFROM.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 01.02.2021, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING :-

ORDER

"My eye is my ear ; my hand is my mouth, laments the petitioner, having disability of hearing to the tune of 98%, challenging the action of the Bank in imposing a penalty without affording a reasonable opportunity of defence."

2. Brief facts of the case leading to the filing of the petition as borne out from the pleadings are that:

The petitioner joined the services of the respondent - Syndicate Bank (hereinafter referred to as 'the Bank' for short), a 'State' under Article 12 of the Constitution of India, as a Clerk on 25.10.1976. At the relevant point in time, the petitioner was working as Manager, a cadre in Middle Management Grade Scale II.

3. When the petitioner was functioning as a Manager In-charge of Stationery Pool of the Bank, having taken charge of the post on 22.12.2010. The petitioner sought approval of the competent Authority on 01.03.2011, for issuing a notice calling for bids from eligible agencies. Four of the agencies had applied pursuant to the bid notice. On 10.03.2011, the petitioner awarded contract in favour of the lowest

bidder - L1 along with a detailed office note as to how the said bid was executed.

4. After about a year, a show cause notice was issued to the petitioner on 30.03.2012, seeking the petitioner to show cause as to why the proceedings should not be initiated against him for certain irregularities in the process of the bid contract in 10.03.2011. The petitioner gave a detailed reply to the show cause notice seeking time and further demanded that he be given some documents to prepare his defence to the show cause notice. The Bank not acceding to the said reply, issued a charge sheet against the petitioner on 01.06.2012 and initiated enquiry proceedings. The petitioner then informed the Bank that the Bank is aware of the fact that he has disability of hearing impairment to the tune of 98% and sought legal assistance to defend him in the enquiry. When the Bank did not accede to

the request of the petitioner to engage a legal representative notwithstanding the disability of the petitioner, the petitioner approached this Court in writ petition No.44341/2012, which was dismissed by an order dated 21.10.2013.

5. After the dismissal of the writ petition, the petitioner requested the Bank to await the receipt of the certified copy of the order in the said writ petition, so that he could prefer an appeal. Not waiting for the receipt of the certified copy of the order in writ petition No.44341/2012, the matter was posted for cross-examination and on conclusion of the enquiry, the petitioner is found guilty of the allegations. The Disciplinary Authority passed an order dated 31.01.2014, imposing penalty of reverting the petitioner from the rank of MMGS- II to JMGS- I and fixing his pay at Rs.20,100/-. The petitioner filed an appeal before the Appellate Authority only to be

dismissed by order dated 04.09.2014. Aggrieved by the orders of both the Disciplinary Authority and the Appellate Authority, preferred a review before the Reviewing Authority which was also dismissed by order dated 19.11.2014. It is these orders that are called in question by the petitioner in this writ petition.

6. Heard Sri Kiran V. Ron, learned counsel for petitioner and Sri Syed Kasif Ali, learned counsel for respondent.

7. Learned counsel representing the petitioner submits that the Bank being fully aware that the petitioner did have a disability of hearing to the tune of 98% has treated the petitioner as a normal employee and denied both legal assistance and defence assistance and made the petitioner defend his

own case, which is violation of procedure and blatantly contrary to law.

8. He would further contend that the only intention of the respondent - Bank was to punish the petitioner and this plea of his can be gathered from the proceedings of the enquiry. He would submit that the petitioner is denied full pension notwithstanding his retirement long ago and would place reliance upon following judgment of the Hon'ble Division Bench of the High Court of Kerala in the case of **RAVEENDRAN VS. SOBHANA AND ANR.** reported in **AIR 2008 Ker 145.**

9. On the other hand, learned counsel appearing for the Bank would submit that the regulations of the Bank do not permit engaging a legal practitioner to be the defence representative of the petitioner and the petitioner was free to choose any of his Co-officers as

defence representative. If no Officer came to defend the enquiry, the burden of not providing a defence representative cannot be shifted to the respondent. The learned counsel would contend that the disability or otherwise the petitioner ought to have adhered to the norms of calling for tender which admittedly the petitioner has violated to do and would place reliance upon the following judgments:

- a. ***BANK OF INDIA VS. APURBA KUMAR SAHA*** reported in ***(1994) 2 SCC 615;***
- b. ***UNION OF INDIA AND OTHERS VS. P. GUNASEKARAN*** reported in ***AIR 2015 SC 545;***
- c. ***CHANDRAMA TEWARI VS. UNION OF INDIA*** reported in ***AIR 1988 SC 117;*** and
- d. ***SYNDICATE BANK AND OTHERS VS. VENKATESH GURURAO KURATI*** reported in ***AIR 2006 SC 3642.***

10. I have given my anxious consideration to the submissions made by the learned counsel for the respective parties and have perused the material on record and in furtherance whereof, the point that arises for my consideration is:

Whether the petitioner had a reasonable opportunity of defence in the disciplinary proceedings conducted against him and whether denial of it would result in the final order of penalty becoming vitiated?

11. To consider the said point, the facts have to be reiterated. The petitioner issued a notice for bidding of various sizes of computer stationery on 01.03.2011. The regular suppliers to the Bank were sent a copy of the bid notice pursuant to which the matter was placed before the competent Authority and an office note was drawn on 10.03.2011, awarding the supply of stationery to a particular applicant. This

became the subject matter of a show cause notice being issued against the petitioner on 30.03.2012. The petitioner by his reply dated 27.04.2012, in detail that he has not committed any misconduct as is alleged in the show cause notice.

12. Not being satisfied with the reply, a charge sheet is issued to the petitioner. On receipt of the charge sheet and voluminous documents, the petitioner gave a representation on 04.06.2012, seeking 30 days time to submit his reply, but the proceedings were not stalled. The petitioner again gave a representation stating that he wishes to engage the services of an Advocate, as the presenting Officer, who was a law graduate and had conducted numerous enquiries. He also brought it to the notice of the Bank that he is 98% disabled with hearing impairment and he has been treated in unfair manner.

13. The Enquiry Officer did not stall the proceedings on any ground urged by the petitioner and went on to record the plea of the petitioner. On 17.09.2012, the said proceedings are germane to be noticed and are extracted for the purpose of quick reference:

"Minutes of the Inquiry Proceedings

In terms of my Notice of Inquiry bearing No.INQ.NOTICE/CGS/467 dated 30.08.2012 and subsequent letter bearing No. INQ.NOTICE-2/CGS/467 dated 07.09.2012 the inquiry is commenced by marking the presence of the above persons at Regional Office, Bangalore.

At this stage, Sri R. Venkatraman, Manager (IR), Nodal Industrial Relations Cell, Regional Office (City), Hyderabad filed a letter dated 27.08.2012 of the Asst. General Manager (P), HO : Manipal, i.e. Disciplinary Authority, appointing him as Presenting Officer to present the case on behalf of the Management and the same is taken on record.

At this stage Sri A K Siddalingappa informed that he is participating in today's hearing without taking the assistance of any Defence Assistant and

he will avail the services of Defence Assistant at appropriate time.

Before commencement of the inquiry I explained the procedure of conducting the Departmental Inquiry and his rights and responsibilities to Sri Siddalingappa as under:

The Inquiry is being held as per the provisions of SBOE (D&A) Regulations, 1976 which permits the CSOE to engage a Defence assistant i.e., any co-officer employee working in the bank. Initially the Management would lead their evidence by producing more than documentary evidence which would be recorded on day to day basis and after conclusion of the evidence of each witness the CSOE can cross examine that witness. After conclusion of the Management's evidence, the Chargesheeted Officer employee would be given an opportunity to bring on record his statement of defence either orally or in writing taking into account the evidence brought on record by the Management. Thereafter he can lead his evidence both oral and documentary and he can also appear as a witness if he desires to do so. In that eventuality he should appear first as a witness and thereafter produce his other witnesses if any. The witnesses so examined by/on behalf of the CSOE will be cross examined by the Presenting Officer. In case the CSOE is not appearing as a witness the Inquiring Authority would put him questions in the form of General Examination. Thereafter the Management as well as the CSOE would be

given an opportunity to submit their arguments either orally or in writing. Thereafter, the Inquiring Authority would submit his report to the Disciplinary Authority and a copy of the same would be provided by the Disciplinary Authority to him for making his submissions, if any, on the same within the stipulated time. After this process, the Disciplinary Authority would award him the punishment if charges are held as proved taking into consideration the gravity of the misconduct and the CSOE can prefer an appeal against the same to the Appellate Authority if he is aggrieved by the punishment awarded to him.

During the preliminary Inquiry which is being held today the CSOE would be given an option to accept or deny the charge/allegations levelled against him and in case he admits the charge/allegations against him the same would be recorded and findings will be written by the IA. In case he denies the charge/allegations levelled against him, the same will be recorded and further inquiry proceedings will be held. The CSOE can verify the copies of the documents given to him by the Disciplinary Authority along with the Chargesheet with that of the originals/certified copies of the documents available with the PO and thereafter he can submit the list of documents, if any, required by him from the Management to the inquiring Authority within the stipulated time.

Since the Management has issued the Chargesheet under Inquiry it would prove the same by leading evidence.

Q. Sri A.K.Siddalingappa, have you understood the procedures, rules and regulations regarding holding of inquiry that has been explained to you in detail by me now?

Ans. I am not well versed in service conditions of officers, IR matter and presenting in Inquiry Forum by reliable English language. I have already explained you the procedure of conducting Inquiry in detail. There is a provision for engaging a Defence Assistant during the Inquiry to assist you to defend your case who may be well versed with the procedure of Inquiry proceedings and also well versed in English Language. Hence, you are advised to engage any co- Officer for your assistance. In case, you require a copy of the Syndicate Bank Officer Employee (D & A) Regulations 1976 to understand the procedure of conducting the Inquiries, the same will be supplied to you in due course.

It is true that you are providing Defence Assistant in the matter where I am not a member of any Union/Association in order to get Defence Assistant from them and I enquired with said Association/Union representatives / colleagues, they told me you are not a member of their Union/Association and thereby declined. I being a 98% loss of

hearing impairment in both ears I am not able to digest the contentions / questions, answers given/produced by the IA or PO in this forum. As per persons with disabilities (equal opportunities, protection of Rights in full participation) Act 1995 where Government given protection to the physically handicapped. In the instant case also. I humbly plead before this Forum kindly provide me Defence Assistant who knows IR matter/service matter in the better interest of the CSOE.

CSOE (Charge sheeted Officer Employee-petitioner)

The Inquiry commenced in terms of the notice and letter cited above wherein it is clearly mentioned that the CSOE can engage any Co- Officer as his Defence Assistant and he need not be a any Union/Association member. Further, there is no provision in Service Regulations to provide a Defence Assistant by the Management and the CSOE is free to engage any colleague officer for his defence. Knowing pretty well about the same, the CSOE appeared before this Inquiry Forum and in the beginning that he is participating in today's Inquiry without taking the assistance of any Defence Assistant. Now the CSOE is making the above contentions only to drag on the Inquiry proceedings. Further, this is only a

Preliminary Hearing which is meant for explaining the procedures and to know whether the CSOE admit or deny the charge leveled against him and to verify the documents provided to him. Further, the Management is not leading any evidence in today's Inquiry. As such, I direct the CSOE to participate in the proceedings."

(emphasis added)

In terms of the afore-extracted proceedings of the day i.e., 17.09.2012, the petitioner sought taking an assistance of any defence assistant and sought time. When he was asked whether he has understood the procedure of conducting the enquiry, he answered that the enquiry is in English language and pleaded before the Enquiry Officer that in the light of him being hearing impaired to the tune of 98%, he be given a defence assistant. The unjust ruling of the Enquiry Officer is that, there is no provision for the Management to provide defence assistant and directed that the petitioner should continue to participate in

the enquiry. This is the **first blow** to the petitioner as he is treated as a normal employee.

14. On the ground that he is meted out such a treatment by not granting legal assistance, the petitioner approached this Court in writ petition No.44341/2012, wherein this Court had initially granted an interim order of stay of the further proceedings of the order dated 10.09.2012. When the matter came up on 28.04.2011, this Court noticing the fact that the regulations do not allow the respondents to provide or engage the services of an advocate in the departmental enquiry and the writ petition was dismissed. The writ petition was dismissed on 21.10.2013.

15. The petitioner had applied for a certified copy which was yet to be released. As the petitioner had lost the case, the enquiry was resumed on

11.11.2013, on which day, the petitioner requested the Enquiry Officer to await for a certified copy of the order of the learned Single Judge so that he could prefer an appeal and on that ground, he sought an adjournment of the proceedings. The Bank refused to adjourn the matter. The proceedings dated 11.11.2013, read as follows:

"Minutes Of The Inquiry Proceedings

In Terms of my Notice of Inquiry dated 15.01.2013, the regular Inquiry was fixed to be held on 04.02.2013 and on subsequent days, if necessary. In view of the Stay granted by the Hon'ble High Court of Karnataka in Writ Petition No.44341/2012 (S - DE) filed by the CSOE, the Inquiry fixed to be held on 04.02.2013 has been deferred and the same was informed to the CSOE vide my letter dated 30.01.2013. Now, the Hon'ble High Court of Karnataka has dismissed the Writ Petition filed by the CSOE on 21.10.2013. In view of the above, the Inquiry is fixed to be held on 11.11.2013 at

11.00 AM at Regional Office - I, Bangalore and the same was informed to the CSOE vide my Notice of Inquiry dated 26.10.2013 which was delivered to the CSOE on 28.10.2013. Accordingly the Inquiry is commenced now by marking the presence of the above persons.

At this stage, I asked the CSOE once again about the defence assistant for which he informed that he is participating in today's Inquiry without availing the services of any defence assistant. He further submitted that regarding this issue, he filed the Writ Petition before the Hon'ble High Court of Karnataka.

At this stage, the CSOE submitted that he is participating in today's Inquiry in terms of my Notice of Inquiry. Further, he submitted a letter dated 11.11.2013 wherein it is mentioned that he had filed a Writ Petition No.44341 of 2012 which was disposed on 21.10.2013. The contents of the judgement are not yet released by the Hon'ble High Court of Karnataka till date. The internet copy of

the case is being enclosed herewith. It is further mentioned that

"in terms of your letter, I am appearing before you and submitting this letter confirming that I am in the process of filing Writ Appeal against the Final Order passed by the Single Judge in Writ Petition 44341/2012 filed before the Hon'ble High Court of Karnataka which was disposed on 21.10.2013. I am awaiting for the certified copy of the said Final Order to get the full text of the judgement contemplated / quoted in your letter under reference.

Further, in the Writ Petition I had prayed for directions for engaging a legal practitioner on the following grounds.

a) That I have been suffering from permanent hearing impairment to the extent of 98% and I am unable to understand the proceedings during the intended Domestic Inquiry.

b) That I am unable to understand the relevancy of the documents required for defence.

c) That I am not a member of any Trade Union / Association including SC/ST Union / Association and the co-employees are hesitant to defend me since I am reaching superannuation shortly and without defence, I cannot participate in the Inquiry proceedings.

d) That due to vengeance and to victimize me, I have been issued with the vitiated charge sheet and other grounds and hence I am preferring Writ Appeal as mentioned above.

Under the circumstances, I request you to keep the Inquiry proceedings under abeyance until the disposal of the intended Writ Appeal.

RULING:

Heard the submissions of the CSOE and also taken on record the letter dated 11.11.2013 submitted by the CSOE.

*It is on record that the Hon'ble High Court of Karnataka has dismissed the Writ Petition No.44341/2012 filed by the CSOE on 21.10.2013. **In view of the dismissal of the Writ Petition filed by the CSOE, it is decided to proceed further in this matter. The CSOE stated that he is in the process of filing a Writ Appeal against the dismissal of the Writ Petition, but did not produce any Stay Order or connected papers regarding filing of Writ Appeal. As such, the request of the CSOE to postpone the Inquiry on this ground cannot be considered.** Further, the grounds mentioned in the Writ Petition and the letter submitted by the CSOE today are somewhat different. In the Writ Petition has no where mentioned regarding the relevancy of the documents. Further, in the Preliminary Hearing itself, the CSOE was informed in*

detail about engaging a defence assistant. The Hon'ble High Court of Karnataka dismissed the CSOE's plea to engage an Advocate as his defence assistant. **As such, it is not possible at this juncture to adjourn the Inquiry and the CSOE is advised to participate in the Inquiry for further proceedings.**

Sd/-

Inquiring Authority

At this stage, the CSOE appealed that without knowing the contents of the judgment which was not released by the Hon'ble High Court of Karnataka and which was also not produced by the Inquiring Authority in the matter, it is not possible for him to participate in the Inquiry and requested to postpone the Inquiry, otherwise irreparable damage will be occurred to me and proceeding further with the Inquiry amounts to violation of principles of natural justice.

FINAL RULING:

*Since the Writ Petition is dismissed as per the information provided in the Website of Karnataka High Court on 21.10.2013 and the main plea in the Writ Petition is to engage the services of Advocate to defend his case in the Departmental Inquiry for various reasons which was also admitted by the CSOE, there is no point to adjourn the Inquiry. **Further, the CSOE will get sufficient opportunities to defend his case during the course of inquiry and cooperate for smooth completion of the Departmental Inquiry proceedings.**"*

(emphasis added)

In terms of the afore-extracted enquiry proceedings, all that the petitioner pleaded before the Enquiry Officer was that the order in writ petition No.44341/2012, was yet to be released and sought time to get a certified copy so that he will have an

opportunity to file an appeal before this Court and prayed that the enquiry be adjourned. For this, even without waiting for a certified copy and an opportunity to test it before the learned Division Bench, more so, in the light of the fact that the proceedings were stayed before the learned Single Judge, the Enquiry Officer proceeded to inquire and proceedings were conducted. This is the **second blow** to the petitioner.

16. The petitioner again pleaded in the enquiry that he is 98% hearing impaired in both the ears, he has not heard what has happened in the enquiry and has given reply assuming questions and also submitted that he has been pleading to give proceedings in writing or questions in writing so that he could answer the same in writing but again the Bank did not agree. The specific question and answer read as follows:

"DQ- 33(petitioner question): You know very well that I am being 98% impaired in both ears I have not heard properly what exactly is required by you. Accordingly I asked you to give me in writing which was not acceded by you. Do you agree?"

Ans: I do not agree." (Reply of Bank's representative)

The enquiry proceedings were concluded without providing reasonable opportunity to the petitioner and in the hottest haste. The Enquiry Officer pursuant to the report held that the petitioner guilty of the allegations. The report of the Enquiry Officer, a portion of which is germane reads as follows:

"It is on record that the CSOE vide his letter dated 06.10.2012 requested for 81 documents without mentioning the relevancy of documents to the allegations leveled against him and without specifying the names of the Custodians with whom the

documents are available and as such I have vide my letter dated 13.10.2012 advised the CSOE to resubmit his requirements within 3 days of receipt of the letter specifically stating as to how those documents would help him/relevant to his case to enable me to collect and provide the same. **Instead of giving the required information, the CSOE vide his letter dated 20.10.2012 once again requested me to provide the documents mentioned in his letter dated 06.10.2012. I informed the CSOE vide my letter dated 31.10.2012 that IA can procure the documents from the Custodians after verifying the relevancy of the documents to the charge/allegation leveled against the CSOE. It was further informed that I am not in a position to procure and handover the documents to the CSOE as he is not giving the relevancy and names of the custodians specifically. In the said letter the CSOE was informed about fixing the Regular hearing in the**

above matter to be held at Regional Office, Bangalore on 07.11.2012 and on subsequent days, if necessary with an advice to participate in the same failing which the inquiry will be held ex-parte."

(emphasis added)

Based upon the said report of the Enquiry Officer, the Disciplinary Authority imposed the following penalty:

"ORDER

For breach of Regulation No.3(1) read with Regulation No.24 of Syndicate Bank Officer Employees' (Conduct) Regulations 1976, the Grade/Scale of A K Siddalingappa be and is hereby reduced from MMGS II to JMGS- I by fixing his Basic Pay at ₹20,100/- with immediate effect."

and the appeal filed challenging the order of penalty also came to be rejected by the Appellate Authority by

order dated 04.09.2014, so also the review by order dated 19.11.2014. This is the final blow to the petitioner. It is to be noticed that the petitioner has never complained that he should not be proceeded against departmentally. But in the disciplinary proceedings, his plea was that he be given a reasonable opportunity of defence on him being 98% hearing impaired.

17. Hearing impaired are those in whom sense of hearing is non-functional for ordinary purposes of life. They do not hear / understand sound at all even with amplified speech. In medical standards, hearing impairment between 60 and 90% is said to be a severe impairment where it is total hearing loss in both the ears. It is not in dispute that the petitioner is hearing impaired to the tune of 98% beyond what medical standards declare as severe impairment. Therefore, any employer is morally and legally bound

to treat such employee who has a disability of any kind differently with as they are differently abled persons. This right of such hearing impaired employees not only flows from various international covenants but is a right recognized even on our constitutional canvas. It is common experience that persons with disabilities would be unable to lead life due to societal barriers and discrimination faced by them in employment. There are hardly meaningful attempts to assimilate them in the main stream of an organization. With the said principles, if the proceedings instituted and conducted against the petitioner is noticed *qua* his disability it can be unmistakably concluded that the employer did not provide him with reasonable opportunity of defence. At every stage of the proceedings, the petitioner is treated as if he is a regular employee with no disability.

18. Therefore, the petitioner ought to have been given all opportunities to defend himself in the enquiry even if it would mean providing of defence assistance. An employee in the status of the petitioner cannot be seen to be condemned unheard as he was suffering a disability of hearing and in the impugned proceedings, is without a shadow of a doubt condemned unheard.

19. It is also apposite to view the case of the petitioner under the parameters of Order 32 Rule 15 of the Code of Civil Procedure, 1908, though the provision deals with mental infirmity, a Division Bench of the High Court of Kerala while elaborating this principle has held that mental infirmity in the context of Order 32 Rule 15, includes physical defects like deafness or dumbness while saying so, it was also held that the Court is bound to conduct enquiry as to whether the deaf or dumb person is capable of protecting own interest, in the case of **Raveendran**

Vs. Sobhana and Anr. reported in **AIR 2008 Ker 145**. The relevant paragraphs are extracted for ready reference:

"10. *The decision under Order 32 Rule 15 involves very serious consequences as it results in the rights of a party to conduct his own litigation being taken away, and a guardianship being thrust upon him. In such circumstances, the Court has not only the mandatory jurisdiction to enquire into the need for appointment of a next friend, but also the obligation to consider whether the person of unsound mind or of mental infirmity appearing before it is indeed capable of protecting his interests. If that person is not capable of protecting his interests on his own, the Court has an obligation to protect his interests by appointing a next friend and if such person is capable of protecting his own interests, the Court has equally an obligation to see that a next friend or guardian is not superimposed on him, thereby depriving him of his right to*

take his own decisions. In the decision reported in *S.C. Karayalar v. V. Karayalar* (1968 (2) MLJ 150): (AIR 1968 Mad 346), it was held that holding of an enquiry under Order 32 Rule 15...” is thus inescapable and consent cannot vest jurisdiction in Court to dislodge or divest the right of a litigant to conduct his suit, by superimposing a guardian or a next friend.”

11. Thus, the legal position is that mental infirmity in the context of Order 32 Rule 15 is not mental disorder, insanity or mental illness. Weakness of mind due to any reason, making a person incapable of protecting his interests, is sufficient to unfold the protective umbrella under Order 32 Rule 15. Such infirmity can also be caused by physical defects like deafness or dumbness, whereby a person is made incapable of communicating his wishes, views or thoughts to others who are not acquainted with him. If such a person is before the Court in a suit or proceedings

either as plaintiff or defendant, the Court has a jurisdictional obligation to conduct an enquiry as to whether the person is capable of protecting his own interests. If in the judicial enquiry, if necessary and if required, conducted with the assistance of an expert, it is found that such person is incapable of protecting his interests in the suit or proceedings before the Court, the Court has an obligation to appoint a next friend for such person, and if the Court on the other hand finds that the person is otherwise capable of protecting his interests without a next friend, the Court shall remove the next friend if already available and permit the person, who is alleged to be of unsound mind or suffering from mental infirmity, to conduct the litigation himself. As held by the Supreme Court in Ram Chandra v. Man Singh (AIR 1968 SC 954), a decree passed against a minor without appointment of guardian is a nullity. The same principle

would apply as far as a person suffering from unsoundness of mind or mental infirmity as referred to in Order 32 Rule 15 is concerned.

12. *The Family Court, in the instant case has in fact framed an issue regarding the maintainability of the suit for declaration of the order in M.C. 231/99 as null and void. Since the petitioner is admittedly a deaf and dumb person, the Court could not have proceeded with the case without conducting an enquiry under order 32 Rule 15. Depending on the outcome of the enquiry the matter will have to be further considered in the light of the Full Bench decision of this Court in Pankajaksha Kurup's Case (AIR 1998 Ker 153) (supra) or in the light of the Bench Decision in Lakshmi Pillai Parvathi Pillai's case (supra). We set aside the order dated 16-5-2006 in O.P. 847/2000 and remit the matter to the Family Court, Thrissur. The Family Court shall consider O.P. 847/2000 in accordance with law and dispose of the same expeditiously."*

(emphasis supplied)

In the light of the law laid down by the Division Bench of the High Court of Kerala bringing in deafness or dumbness within the sweep of mental infirmity, the case at hand is viewed, the penalty imposed becomes unsustainable.

20. It is also necessary to consider the fact that an employee facing Departmental Enquiry would become tongue-tied to defend himself in the enquiry. Therefore, if a normal employee is facing a Departmental Enquiry becomes tongue-tied, the status of the petitioner being disabled to the tune of 98% would, without a shadow of a doubt, become incapacitated even to submit any defence. Insofar as the judgments relied on by the learned counsel appearing for the Bank is concerned, they are all cases rendered on the facts obtaining before the Apex Court and on the principle of judicial review of departmental proceedings and imposition of penalty.

Above all, those were all cases concerning normal employees. Therefore, the said cases are distinguishable on the facts of the case at hand without much ado, as the petitioner herein cannot be construed to be a normal employee for application of the principles laid down by the Apex Court in the cases relied on by the learned counsel appearing for the Bank.

21. The submission of the learned counsel appearing for the Bank for the matter to be remanded back to the hands of the Disciplinary Authority is also unacceptable, for the reason that the misconduct is of the year 2011; ten years have passed by; the petitioner has retired on attaining the age of superannuation; above all, the disability of the petitioner will have to be taken note of. For the folly of the Bank in its actions contrary to law as indicated

hereinabove, the petitioner cannot be at this stage of his life subjected to rigmarole of another set of disciplinary proceedings *albeit* its continuation in terms of the subject charge sheet.

22. For the aforesaid reasons, the action of the respondent - Bank cannot but be said to be in violation of principles of natural justice as in my considered view, the Bank has imposed penalty without permitting the petitioner to be defended in accordance with law. *It is not a violation of the Bank's rights, it is not a violation of a legal right, "it is violation of the petitioner's human right".*

23. For the praefatus reasons, the following:

ORDER

a. The writ petition is allowed.

- b. The orders dated 31.01.2014, 04.09.2014 and 19.11.2014 passed by the Disciplinary Authority, Appellate Authority and Reviewing Authority are all quashed.
- c. The petitioner is entitled to all consequential benefits that would flow from quashing of the aforesaid orders including the difference in salary and difference in pension.
- d. The Bank shall recalculate the pension of the petitioner and pay him the difference in pension.
- e. The petitioner shall also be entitled to any promotion that has been denied on account of pendency of aforesaid proceedings albeit notionally.

- f. The aforesaid directions shall be complied by the Bank within two months from the date of receipt of a certified copy of this order.

**Sd/-
JUDGE**

nvj