

(2011) 08 AHC CK 0115
In the Allahabad High Court
Case No : Service Single No. 405 of 2011

Ajeet Kumar Singh

APPELLANT

Vs

Hardoi District Co-Operative Bank Ltd. and Another

RESPONDENT

Date of Decision : 17-08-2011

Acts Referred:

Constitution of India, 1950 — Article 311, 351A

Citation : (2012) 1 ADJ 53

Hon'ble Judges : Devendra Kumar Arora, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Devendra Kumar Arora, J.—By means of present writ petition, the Petitioner has challenged the orders dated 03.01.2011 and 07.01.2011 passed by opposite party No. 2, whereby opposite party No. 2 has served a notice of initiation of re-enquiry after the retirement of the Petitioner and adjusted an amount of alleged over-drafts given to the societies for the payment of salaries of their employees from the retiral benefits of the Petitioner.

2. The facts which emerged from the pleadings of the writ petition are that the Petitioner had joined the Hardoi District Corporation Bank in the year 1972 as Clerk cum Typist and on account of his excellent work and conduct he was promoted as Junior Branch Manager. The Petitioner while posted as Junior Branch Manager (Class-III employee) in Gopamau Tadiyawa and Ahrauri Branch of the Bank, placed under suspension vide order dated 03.06.2000 in contemplation of departmental enquiry on the charges of giving over-drafts to the Societies for the payment of salaries of their employees. The enquiry officer appointed by the opposite parties was objected by the Petitioner, but the request of change of enquiry officer was neither rejected nor accepted. The documents demanded by the Petitioner was also not provided and ultimately Petitioner was compelled to submit his reply without perusal of the relevant documents. After submission of the reply to the charge-sheet, without conducting any enquiry and affording

opportunity to defend by the enquiry officer, an enquiry report was submitted on 20.11.2000, holding the charges proved against the Petitioner, in respect of irregular overdrafts of Rs. 782050.06. A show-cause notice was issued on 02.01.2001 to the Petitioner requiring him to explain as to why the recovery of the aforesaid amount be not made from him. The Petitioner submitted a detailed reply to the show-cause notice on 16.01.2001, but No. decision was taken thereon by the opposite parties for several months. Another show-cause notice dated 16.05.2001 was issued to the Petitioner wherein he was required to explain why his services may not be dismissed from the bank. The Petitioner submitted reply to the show-cause notice explaining therein that he had not acted irregularly while permitting the overdrafts to the societies as the same was permitted under the circular dated 11.05.1987 of the Registrar. The disciplinary authority without considering the fact that neither the copies of the relevant documents were supplied to the Petitioner nor any date, time and place was fixed by the enquiry officer for holding the oral enquiry, passed the order dated 11.04.2002 thereby dismissing the Petitioner from service of the Bank.

3. The Petitioner challenged the dismissal order before this Court by means of writ petition No. 2931(S/S) of 2002. This Court after examining the original record of the disciplinary proceedings as well as appreciating the submission of learned Counsel for the Petitioner, came to the conclusion that enquiry was not conducted in accordance with law and principles of natural justice. The Court quashed the order of dismissal dated 11.04.2002 and opposite parties were given liberty to conduct enquiry afresh from the point where time, date and place was to be fixed for the enquiry and pass a fresh orders accordingly, if they so choose. The Court after appreciating the fact that the Petitioner is going to retire very soon, directed opposite parties to complete the enquiry as quickly as possible, say within a maximum period of three months from the date a certified copy of order is placed before them. The Petitioner served the certified copy of order before opposite party No. 2 along with an application for permitting him to resume his duties on 02.11.2010 and the same was duly received in the office of opposite party No. 2. The opposite party No. 2 in pursuance to the application/ letter of the Petitioner dated 02.11.2010, informed the Petitioner vide letter dated 03.11.2010 that Hon''ble High Court by means of judgment and order dated 28.10.2010 only quashed the dismissal order, but there is No. direction for allowing the joining of the Petitioner as such his joining in the bank was baseless and was unacceptable.

4. The Petitioner was constrained to approach this Court in its contempt jurisdiction by means of contempt petition No. 2674 (C) of 2010 against the non-compliance of the order dated 28.10.2010, in which notices were issued to the opposite parties to appear personally on 29.11.2010. The opposite parties appeared before this Court and informed that they had filed Special Appeal No. 818 of 2010 against the judgment and order dated 28.10.2010 passed by the learned Single Judge. The Special Appeal was dismissed by means of order dated 01.12.2010. After dismissal of the Special Appeal, the opposite parties in

contempt proceedings gave an undertaking that the judgment of this Court would be complied with without any loss of time. In the meantime, the Petitioner attained the age of superannuation on 30.11.2010. The opposite party No. 2 issued an order dated 03.01.2011, which shows the Managing Committee of the Bank in its meeting dated 31.12.2010 took a decision that in pursuance of the orders of the Hon'ble High Court the enquiry be initiated and Sri Suresh Chandra Saxena, Junior Branch Manager be appointed as enquiry officer.

5. The learned Counsel for the Petitioner submits that the order dated 03.01.2011, addressed the Petitioner as dismissed Junior Branch Manager, whereas the dismissal order had already been quashed by this Court. Another order was passed on 7.1.2011 thereby sanctioning retiral benefits as well as the arrears of pay for the period the Petitioner remained out of service due to dismissal order and in the said order a sum of Rs. 782050.06 has been shown to be adjusted towards the alleged irregular overdraft permitted by the Petitioner to the Societies for payment of salaries to their employees.

6. The submission of learned Counsel for the Petitioner is that on the one hand the opposite parties have initiated the enquiry proceedings against the Petitioner and on the other hand the aforesaid sum has been adjusted without arriving to the conclusion regarding the liability of the Petitioner to pay the same to the Bank and as such the impugned order dated 07.01.2011 is illegal and arbitrary to the extent that a sum of Rs. 782050.06 has been adjusted against the retiral dues and arrears of the Petitioner.

7. The further submission of learned Counsel for the Petitioner is that under service Regulation applicable to the bank, there is No. provision with the opposite parties to initiate any enquiry or continue any enquiry after superannuation of an employee. It is also submitted that when this Court quashed the dismissal order, one month's time was there before the date of superannuation of the Petitioner, but the opposite parties did not make any attempt to initiate the enquiry and conclude the same before the date of superannuation. Another submission of learned Counsel for the Petitioner is that the liberty given by the Hon'ble Court cannot be construed as a direction to hold an enquiry, even after more than two months of superannuation as the Rules do not provide for holding any enquiry after superannuation. The liberty granted to the opposite parties was required to be utilized within a period permissible under the service Regulation i.e. before retirement of the Petitioner and, therefore, the shelter sought to be taken by the opposite parties of the observation/liberty given by this Court while issuing impugned order is not legally permissible. It is also submitted that the enquiry officer appointed by the opposite parties is junior to the Petitioner and he cannot act as an enquiry officer against the Petitioner. The last submission of learned Counsel for the Petitioner is that even presuming but not admitting that the opposite parties can proceed against the Petitioner on the basis of liberty given by this Court, but that liberty comes to an end after expiry of three months. The certified copy of the judgment and order dated 28.10.2010 was served on

opposite party No. 2 on 02.11.2010 and the period of three months came to an end on 1st February, 2011 and opposite parties cannot proceed in any manner against the Petitioner after expiry of the maximum period granted by this Court.

8. The learned Counsel for the Petitioner in support of his submissions placed reliance on the judgment of this Court reported in 1999 (17) LCD 24 (P.N. Srivastava v. State of U.P. and Ors.), in which it has been held that the Government is under duty to comply with the orders within time fixed by the Court and in any case, if it was not possible to comply within time for whatsoever reason, then the only course open to them to seek extension of time or further directions. The relevant paragraphs No. 13,14 and 16 are reproduced as under:

13. In view of the nature of the decision of this Court dated 27.08.1996, the opposite parties had No. option but to complete the enquiry within four months. It further implies that in case the opposite parties were unable to do so, they could approach the court and seek further extension of time. In M.L. Sachdev Vs. Union of India and another, the apex court held that the government was under duty to comply with the order within time set by the court and in any case if it was not possible to comply within time for whatsoever reason, then the only course open was to seek extension of time or further instructions. (also see State of Bihar and others Vs. Subhash Singh, 14. It is thus clear that opposite parties instead of approaching the court for seeking extension of time for completion of enquiry deliberately proceeded to complete the enquiry and passed the impugned order after expiry of stipulated period of four months.

16. In view of what has been discussed above, the impugned order dated 18.10.1997 as contained in Annexure 1-A suffer from legal infirmities. The opposite parties have failed to comply with the directions of this Court as contained in the order dated 27.08.1996 in letter and spirit. No. enquiry worth the name was conducted. No. evidence was recorded or produced in the presence of the Petitioner. He was not afforded opportunity to cross-examine the witnesses, witnesses named by him were not examined in the enquiry and opposite parties failed to extend the benefit of reasonable opportunity as envisaged under Article 311 of the Constitution to the Petitioner. The enquiry in the circumstances stands vitiated and the impugned order passed on the findings of the enquiry officer cannot stand.

9. The learned Counsel for the Petitioner further placed reliance on the judgment reported in 2008 (3) ALJ 4 (DB) (Rajya Krishi Utpadan Mandi Parishad, U.P. and Anr. v. Public Service Tribunal, U.P. and Ors.), in which it has been held that the disciplinary proceedings cannot continue after superannuation in the absence of rules providing for the same.

10. Learned Counsel for the opposite parties fairly admitted that there is No. provision under the service rules/Regulation for holding departmental proceedings after superannuation of an employee.

11. I have considered the submissions of learned Counsel for the respective

parties and gone through the record.

12. Since legal questions are involved in the present petition as to; whether the opposite parties can proceed against the Petitioner and hold departmental proceedings in the absence of any rules, whether the opposite parties can proceed against the Petitioner in view of the liberty given by this Court by means of judgment and order dated 28.10.2010 in writ petition No. 2931 (S/S) of 2002 after expiry of the time frame fixed by this Court.

13. In view of the aforesaid legal questions, without calling for reply or counter affidavit, this Court proceed to decide the present writ petition on the basis of legal submissions made by learned Counsel for respective parties.

14. Admittedly, the dismissal order dated 11.04.2002 was quashed by this Court by means of judgment and order dated 28.10.2010 passed in writ petition No. 2931 (S/S) of 2002. The perusal of order reveals that the opposite parties were given liberty to conduct enquiry afresh from the point where time, date and place was to be fixed for the enquiry and pass a fresh orders accordingly, if they so choose. The Court also taken into consideration the fact that the Petitioner was going to retire very soon and, therefore, the opposite parties were directed to complete the enquiry as quickly as possible, say within a maximum period of three months from the date a certified copy of order is placed before them. The Annexure No. 5 of the writ petition reveals that the copy of the judgment and order dated 28.10.2010 was submitted before opposite party No. 2 along with application for permitting the Petitioner to resume his duties as the order dismissing him has been quashed by this Court on 02.11.2010. The Annexure No. 5 also indicates the receiving on 2.11.2010 in the office of opposite party No. 2. As per liberty and directions, the opposite parties were bound to complete the disciplinary proceedings by 1st February, 2011. Another aspect of the matter is that in view of the liberty given by the Court, the opposite parties were required to examine the issue in accordance with rules and Regulations and if, there was No. provision under the service rules to conduct the enquiry proceedings after superannuation, then the only option was with the opposite parties to complete the enquiry proceedings before the date of superannuation of the Petitioner. In the present case, admittedly, the opposite parties issued an order on 03.01.2011 for holding afresh enquiry after more than one month of the date of superannuation of the Petitioner.

15. The Hon"ble Supreme Court in the case of Bhagirathi Jena Vs. Board of Directors, O.S.F.C. and Others, pleased to observe that in the absence of any provision for conducting disciplinary enquiry after retirement, No. proceedings can be initiated. Paragraph No. 6 of the said judgment reads as under:

6. In view of the absence of such provision in the above-said Regulations, it must be held that the Corporation had No. legal authority to make any reduction in the retiral benefits of the Appellant. There is also No. provision for conducting a disciplinary enquiry after retirement of the Appellant and nor any provision

stating that in case misconduct is established, a deduction could be made from retiral benefits. Once the Appellant had retired from service on 30.06.1995, there was No. authority vested in the Corporation for continuing the departmental enquiry even for the purpose of imposing any reduction in the retiral benefits payable to the Appellant. In the absence of such authority, it must be held that the enquiry had lapsed and the Appellant was entitled to full retiral benefits on retirement.

16. This Court while relying the judgment of Bhagirathi Jena (Supra) in the matter of Rajya Krishi Utpadan Mandi Parishad, U.P. and Anr. v. Public Service Tribunal, U.P. and Ors., 2008 (3) ALJ 4 (DB), pleased to hold that after superannuation, the disciplinary proceedings cannot go on in the absence of any specific rule. The relevant paragraphs No. 33, 34, 35, and 36 read as under:

33. The counsel for the contesting Respondents has cited Bhagirathi Jena Vs. Board of Directors, O.S.F.C. and Others, (the Bhagirathi Jena case); and the two other decision of our court reported in Dr. RB ESC 915: (2000 All LJ 1719) and Ravindra Singh Rathore Vs. District Inspector of Schools and Others, The decisions of our court rely upon the Bhagirathi Jena case. These cases are relevant for deciding the issue involved in the present case. 34. In the Bhagirathi Jena case, the charged employee was suspended and disciplinary inquiry was started before his superannuation. However the inquiry could not finish before his superannuation. The charged employee was relieved after superannuation without prejudice to the claim of the employer. The disciplinary proceedings were continued after his superannuation. The charged employee filed a writ petition, which was dismissed by the High Court. The charged employee took the matter to the Supreme Court.

35. The Supreme Court, after noticing that there was neither any specific provision to deduct the amount from the provident fund nor any provision to continue disciplinary proceeding, held:

"In view of the absence of such provision in the above said Regulations, it must be held that the Corporation had No. legal authority to make any reduction in the retiral benefits of the Appellant. There is also No. provision for conducting a disciplinary enquiry after retirement of the Appellant nor any provision stating that in case misconduct is established, a deduction could be made from retiral benefits. Once the Appellant had retired from service on 30.06.1995, there was No. authority vested in the Corporation for continuing the departmental enquiry even for the purpose of imposing any reduction in the retiral benefits payable to the Appellant. In the absence of such authority, it must be held that the enquiry had lapsed and the Appellant was entitled to full retiral benefits on retirement.

36. The position in this case is similar. The effect of quashing of punishment order is that the disciplinary proceedings revive and are pending. No. provision has been pointed out for continuing the departmental enquiry or making deduction from post retiral benefits (apart from Article 351A, which we have held

is not applicable). In view of the same, the disciplinary proceedings cannot go on: the Petitioner is entitled to the salary and post retiral benefits (minus the subsistence allowance that he has already received).

17. In view of the above, this Court comes to the conclusion that No. enquiry proceedings could have been processed against the Petitioner after his attaining the age of superannuation and if for the sake of argument, it can be said that the opposite parties can process enquiry proceedings even after the superannuation of the Petitioner in view of the liberty granted by this Court vide judgment and order dated 28.10.2010, the same could not have been continued after expiry of three months i.e. 1st February, 2011, without seeking specific permission from the Court.

18. Another aspect of the matter is that the charge of making irregular overdrafts payment to the Societies for payment of salaries of their employees, could not be proved, therefore, the direction to adjust alleged amount from the retiral dues of the Petitioner could not have been made by the opposite parties.

19. In view of the above, the writ petition is allowed and the impugned orders dated 03.01.2011 and 07.01.2011 are hereby quashed. The consequences to follow.