

(1986) 08 KL CK 0038
In the High Court Of Kerala
Case No : O. P. No. 1072 of 1982

B. Gunapathy

APPELLANT

Vs

State Bank of India and others

RESPONDENT

Date of Decision : 29-08-1986

Acts Referred:

State Bank of Travancore (Officers) Service Regulations, 1979 — Section 19(2)

Citation : (1987) KLJ 357

Hon'ble Judges : K. Sukumaran, J

Bench : Single Bench

Advocate : M. N. Sukumaran Nair, for the Appellant; M. Pathrose Mathal and Joseph Vellappally, for the Respondent

Final Decision : Dismissed

Judgement

K. Sukumaran J.

1. The petitioner was an employee of the State Bank of Travancore. He climbed up the official ladder and came to the rung of Manager, A Grade Officer. On 10-12-1980, the 1st respondent-Bank issued Ext, P2 memo intimating the petitioner about the disciplinary action proposed by it. The articles of charge and statement of imputations of misconduct were communicated to him, and he was asked to put forward his defence. The explanation dated 31-1-1981 submitted by the petitioner did not appear to be satisfactory to the Management. It therefore decided upon an enquiry against the petitioner. That decision was communicated to the petitioner under Ext. P3 dated 28-9-1981. The petitioner appears to have written a letter on 15-10-1981, apparently in relation to his retirement from service. The letter has not been produced in the original petition and its contents not even indicated in the statement of facts. The reply of the 1st respondent to that letter is Ext. PI dated 27-11-1981. Paragraphs 2 and 3 of the letter which are relevant for the consideration of the contentions raised in the original petition, read:

2. It has been decided in terms of Regulation 19 [1] of the State Bank of Travancore [Officers] Service Regulations, 1979, not to grant extension of service and, accordingly, you will stand retired from the service of the Bank at the close of 30th Nov. 1981.

3. As disciplinary proceedings are pending against you, the said proceedings will be continued and concluded and you shall be deemed to be in service only for the purpose of the continuation and conclusion of the said proceedings in terms of Regulation of 19 [2] of State Bank of Travancore [Officers] Service Regulations, 1979

The disciplinary proceedings were pursued thereafter. The petitioner raised a preliminary objection before the 3rd respondent - Enquiry Officer. The very legality of the continuance of the proceedings against the - petitioner was challenged on the ground that the petitioner had already ceased to be an employee. The Enquiry Officer took the view that in terms of the Service Rules the petitioner continued to be in service for the purpose of the inquiry. The enquiry was thereafter adjourned to 21-1-1982. It was at this juncture that the petitioner approached this Court questioning the correctness of the view taken by the Enquiry Officer and seeking to stop the enquiry proceedings against him. Though the counter affidavits were filed in 1982 itself [that of the 1st respondent on 13-10-1982, and that of the 2nd respondent on 1-12-1982], the case drifted all along. On 25-6-1986, C. M. P. No. 14473 of 1986 was filed by the petitioner producing therewith Ext. P6 containing the relevant extract of Regulation 19 dealing with the age of retirement.

2. Regulation 19 [2] which is material reads as follows:

In case disciplinary proceedings under the relevant regulations of service has been initiated against an officer before he ceases to be in the Bank's service by the operation of, or by virtue of any of the said regulations or the provisions of these regulations the disciplinary proceedings may, at the discretion of the Managing Director, be continued and concluded by the authority by which the proceedings were initiated in the manner provided for in the said regulations as if the officer continues to be in service, so however, that he shall be deemed to be in service only for the purpose of the continuance and conclusion of such proceedings Explanation An officer will retire on the last day of the month in which he completes the stipulated service or age of retirement.

In the present case, there is no dispute that the last day of the month in which the petitioner completed the stipulated service or age of retirement is 30-11-1981. The disciplinary proceedings had been initiated long before that date, on 10-12-1980. Regulation 19 [2] squarely applies in the present case, as disciplinary proceedings had been initiated against the petitioner before he ceased to be in the Bank's service under the Regulations In such cases, disciplinary proceedings could be continued and concluded as if the officer continued to be in service. The Managing Director if given a discretion to decide

whether such proceedings should be so continued. This is understandably so. There may be disciplinary proceedings of a venial nature. It may not be in the interest of the institution or of the employee to spend time and energy in pursuit of such proceedings. Things would be otherwise, if the allegations and misconduct are grave and serious. It will be only proper that disciplinary proceedings in respect of such matters are pursued. The pursuit of disciplinary proceedings in such cases have a purpose to fulfill. They intend to serve not only the punishment of the individual for the lapses established on his part; they are intended to tone up the moral calibre and morale of an important public institution. No employee should have a feeling that at about the time of his exit from service, he could with impunity break all norms of proper conduct. Any temptation on the part of the employees to indulge in such unbecoming activities, has to be strongly dealt with by a public authority, which has concern for the establishment of proper discipline in its institution, The responsibility is all the more great, when the public authority is one like the State Bank, which has to act in trust for the multitudinous depositors who have reposed their confidence in the proper and efficacious style of functioning expected of that institution. A legislative or other device by which the employee is subjected to the disciplinary proceedings notwithstanding the attainment of his age of superannuation and the retirement from service in that sense, is fully justified. Many service rules do contain such a salutary provision. A necessary fictional situation is created by the relevant provisions in such circumstances. Notwithstanding the crossing of the ordinary date of retirement from service, the employee continues in service so as to be amenable and subject the disciplinary proceedings which have been initiated against him earlier than that date. The petitioner who had enjoyed all the benefits and protections of the rules in his career and in his service, cannot lightly get rid of the rigour of the same set rules providing for his fictional continuation in service.

3. Counsel for the petitioner submitted that such a fictional continuance in service operates only in a limited field; in field of disability from his point of view; and not in relation to the possible fields where he could have picked up the plums and berries of office. The contention in the bare form is that by such fictional continuance in service, he does not get the salary and emoluments which ordinarily go with service. Such a fictional operation of the provisions, which exposes the ex-employee to the trials and tribulations of an exacting enquiry proceeding, is arbitrary, irrational and unfair. -- according to the petitioner, I am unable to accept the above contention. It is essentially for the authorities which make the laws or regulations to suitably modulate the provisions with reference to the object in view. To achieve such a purpose, even a fictional situation can be created. The exact area where fiction should operate, is essentially if not entirely left to the authority which makes law or frames the regulations. The court will not interfere with such provisions even if it may appear that there is a more satisfactory way of dealing with such a situation In the present case, I do not find any arbitrariness whatever in the provision. An

employee who has misconducted himself while in service, must necessarily pay the penalty for it. It will be a miscarriage of justice, if in relation to his actions and omissions, he could go scot free as it were, merely for the accident of his attainment of the age of superannuation in the course of the pending disciplinary proceedings. An employee who is rightly proceeded against for the misconduct, cannot with grace submit that the entire show should be switched off for the only reason that he has reached a particular stage and age in his life. It is this necessity to ensure that the guilty do really get their punishment that gets reflected in provisions providing for fictional continuance in service notwithstanding the attainment of ordinary age of superannuation. If the employee could claim all benefits of service even in relation to an extended fictional service, it will virtually undermine the very purpose of initiating disciplinary proceedings for a misconduct. It should not be that an honest officer has to retire at the age of superannuation only to be content with the retiral benefits, whereas a dishonest one could continue to be in receipt of emoluments and perquisites for the entirety of the duration of the disciplinary proceeding. Limiting the fictional operation in such a situation is fully justified. The object behind the fiction is to punish an officer if and when the misconduct against him is proved notwithstanding the ordinary age of superannuation. That purpose is fully served by his notional continuation in office for that limited purpose. Nothing more is desirable or necessary. The authority framing the regulation is not obliged to be over generous in such a situation to an undeserving hand. The complaint about the infraction of Article 14 is totally devoid of substance in the above circumstances.

4. Section 63 of the State Bank of India (Subsidiary Bank) Act, 1959, empowers the Central Board of Directors of the State Bank of India to make regulations concerning the officers and employees of the Bank. Disciplinary proceedings form an important aspect in relation to the service of an officer or an employee. Regulation 19 is fully within the ambit of Section 63.

5. The complaint about the unfettered discretion being conferred on the Managing Director for the continuation of disciplinary proceedings is also without any force. It is to be assumed, in the absence of any indication to the contrary, that the power would be exercised by the Managing Director in the light of various relevant factors. No circumstance has been brought about to show that the continuation of the disciplinary proceedings as against the petitioner was in any way- unwarranted or unnecessary. In the light of the above discussion, the writ petition fails. It is accordingly dismissed with costs, including advocate fee of Rs. 500/-.