(2009) 11 AP CK 0027

In the Andhra Pradesh High Court

Case No : Writ Petition No. 16643 of 2009

G. Atchutha Rao APPELLANT

Vs

Union of India (UOI) and Sri K. Subramanyam RESPONDENT

Date of Decision : 24-11-2009

Acts Referred:

Official Secrets Act, 1923 — Section 5
Penal Code, 1860 (IPC) — Section 25, 405, 463
Union Bank of India (Employees) Pension Regulations, 1995 — Regulation 42, 43, 44, 45, 46
Union Bank of India Officer Employees (Conduct) Regulations, 1976 — Regulation 2

Citation : (2010) 1 ALD 158 : (2010) 1 ALT 82 : (2010) 3 LLJ 366 : (2010) 6 SLR 65

Hon'ble Judges : G. Rohini, J

Bench : Single Bench

Advocate : S. Rajan, for the Appellant; C.R. Sridharan, for Respondent Nos. 1 and 2 and G. Rama Subba Rao, for the Respondent

Final Decision : Dismissed

Judgement

G. Rohini, J.—This writ petition is filed seeking a declaration that the action of the 1st respondent - Union Bank of India in initiating disciplinary action against the petitioner vide Charge Memo dated 16.04.2009 and the subsequent proceedings dated 28.5.2009 appointing the 4th respondent as Inquiry Officer as arbitrary, illegal and without any authority of law.

2. It is not in dispute that the petitioner has retired from the services of the 1st respondent Bank on 31.08.2007 on attaining the age of superannuation. It is also not in dispute that the retirement benefits of the petitioner have been settled and the pension to which he is entitled to has been sanctioned. While so, the 2nd respondent by Memo dated 11.6.2008 while alleging that the petitioner while working as Branch Manager at Tanuku from 19.5.2005 to 6.6.2006 had committed certain omissions and commissions with regard to sanction of Agricultural Term Loan in favour of M/s. Sri Satya Sai Fish Ponds, called upon the

petitioner to submit his explanation for the lapses specified therein failing which the matter will be dealt with the provisions specified in Union Bank of India Officer Employees'' (Discipline and Appeal) Regulations, 1976 (for short, ''Discipline and Appeal Regulations, 1976'') or Union Bank of India (Employees) Pension Regulations, 1995. In response to the same, the petitioner gave a detailed explanation dated 6.8.2008 categorically denying the allegations.

3. However, the 1st respondent while observing that the explanation was not satisfactory and convincing, communicated the Articles of Charge dated 16.04.2009 alleging that the petitioner''s failure to monitor the account had resulted in financing an unviable scheme and had rendered the account Non-Performing Asset (NPA) with outstanding of Rs. 68.60 lakhs. It is also alleged that the lapses on the part of the petitioner constitute the following misconduct.

1. Failure to take all possible steps to ensue and protect the interest of the Bank.

2. Failure to discharge his duties with utmost devotion and diligence.

3. Failure to discharge his duties with utmost honesty and integrity.

4. Acting otherwise than in his best judgment in performance of his official duties.

4. The petitioner was called upon to submit his written statement of defence within seven (7) days by showing cause as to why the appropriate disciplinary action should not be initiated against him for the charges levelled against him. The petitioner submitted his written statement of defence and thereafter the 3rd respondent herein was appointed as an Inquiry Officer by proceedings dated 28.05.2009. Aggrieved by the same, the present writ petition is filed. It is primarily contended that the proceedings initiated against the petitioner are illegal and void since none of the rules/regulations governing the services of the 1st respondent Bank empowered the respondents to initiate disciplinary action against the officers who have retired from the services of the Bank. It is also contended that the writ petitioner is not an officer employee as defined under Regulation 2(i) of the Union Bank of India Officer Employees'' (Conduct) Regulations, 1976 since he has already retired from the services.

5. Having heard the learned counsel for both the parties and having perused the counter-affidavit filed on behalf of the respondents 1 and 2 as well as the other material available on record, I do not find substance in the contention that since the petitioner has retired from service the initiation of disciplinary proceedings is impermissible under law.

6. It is true that the definition of "officer employee" under Regulation 2(i) of Union Bank of India Officer Employees'' (Conduct) Regulations, 1976 does not expressly include a person who has retired from the service of the Bank. However, Regulation 48 of the Union Bank of India (Employees) Pension Regulations, 1995 specifically provides for initiation of departmental proceedings even against a pensioner subject to the time limit prescribed therein.

7. Regulation 48 runs as under:

48. Recovery of pecuniary loss caused to the Bank:

(1) The Competent Authority may withhold or withdraw a pension or a part thereof, whether permanently or for a specified period, and order recovery from pension of the whole or part of any pecuniary loss caused to the Bank if any departmental or judicial proceedings the pensioner is found guilty of grave misconduct or negligence or criminal breach of trust or forgery or for acts done fraudulently during the period of his service:

Provided that the Board shall be consulted before any final orders are passed:

Provided further that departmental proceedings, if instituted while the employee was in service, shall after the retirement of the employee, be deemed to be proceedings under these Regulations and shall be continued and concluded by the authority by which they were commenced in the same manner as if the employee had continued in service.

(2) No departmental proceedings, if not instituted while the employee was in service, shall be instituted in respect of an event which took place more than four years before such institution:

Provided that the disciplinary proceedings so instituted shall be in accordance with the procedure applicable to disciplinary proceedings in relation to the employee during the period of his service.

(3) Where the Competent Authority orders recovery of pecuniary loss from the pension ,the recovery shall not ordinarily be made at a rate exceeding one third of the pension admissible on the date of retirement of the employee:

Provided that where a part of pension is withheld or withdrawn, the amount of pension drawn by a pensioner shall not be less than the minimum pension payable under these Regulations.

8. A plain reading of Regulation 48 shows that the Bank is empowered to withhold or withdraw a pension or a part thereof and order recovery from the pension of the pecuniary loss caused to the Bank if in any departmental or judicial proceedings the pensioner is found guilty of grave misconduct or negligence or criminal breach of trust or forgery or for acts done fraudulently during the period of his service. However, no such departmental proceedings can be instituted in respect of an evident which took place more than four years before such institution if not instituted while the employee was in service.

9. In the instant case, the Agricultural Term Loan, in respect of which the alleged commissions and omissions on the part of the petitioner took place, was sanctioned on 30.01.2006 against an application made by the firm on 12.01.2006. Thus the impugned disciplinary proceedings have been instituted against the petitioner vide Charge memo dated 16.4.2009 well within the period of four years specified in Regulation 48(2) and the same cannot be held to be

without authority of law.

10. However, the learned counsel for the petitioner while relying upon Regulation 45 of Pension Regulations read with the Explanation of the expression "grave misconduct" in Regulation 46 vehemently contended that even the power conferred under the Pension Regulations is available to the 1st respondent Bank only in the event of serious crime and grave misconduct as defined in Clause (a) and Clause (b) of the Explanation to Regulation 46 and since the alleged charges against the petitioner do not come within the sweep of the said definitions, the impugned proceedings are illegal and arbitrary.

11. It is to be noticed that as per Regulation 42, future good conduct is an implied condition of every grant of pension and its continuance under the Pension Regulations. Regulation 43 provides that if the pensioner is convicted of a serious crime or criminal breach of trust or forgery or acting fraudulently or he is found guilty of a grave misconduct, the pension or a part thereof can be withdrawn by the competent authority. Regulation 45 further provides that before passing any such order the competent authority has to follow the procedure specified in Discipline and Appeal Regulations, 1976 or in Settlement as the case may be. Explanation to Regulation 46 of Pension Regulations defines the expressions "serious crime", "grave misconduct", "fraudulently", "criminal breach of trust" and "forgery" employed in Regulation 43.

12. Regulations 42, 43 and 46, to the extent relevant, read as under:

42. Pension subject to future good conduct - Future good conduct shall be implied condition of every grant of pension and its continuance under these regulations.

43. Withholding or withdrawal of pension - The Competent Authority may, by order in writing, withhold or withdraw, a pension or a part thereof, whether permanently or for a specified period, if the pensioner is convicted of a serious crime or criminal breach of trust or forgery or acting fraudulently or is found guilty of grave misconduct:

Provided that where a part of pension is withheld or withdrawn the amount of such pension shall not be reduced below the minimum pension per mensem payable under these Regulations.

46. Provisional Pension - (1) An employee who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued, a provisional pension, equal to the maximum pension which would have been admissible to him, would be allowed subject to adjustment against final retirement benefits sanctioned to him, upon conclusion of the proceedings but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld, etc., either permanently or for a specified period.

(2) In such cases the gratuity shall not be paid such an employee until the conclusion of the proceedings against him. The gratuity shall be paid to him on conclusion of the proceedings subject to the decision of the proceedings. Any recoveries to be made from an employee shall be adjusted against the amount of gratuity payable.

Explanation - In this chapter-

(a) The expression ''serious crime'' includes a crime involving an offence under the Official Secrets Act, 1923 (19 of 1923);

(b) the expression ''grave misconduct'' includes the communication of disclosure of any secret official code or password or any sketch, plan, model, article, note, document or information, such as is mentioned in Section 5 of the Official Secrets Act, 1923 (19 of 1923) which was obtained while holding office in the bank so as to prejudicially affect the interest of the general public or the security of the State;

(c) the expression ''fraudulently'' shall have the meaning assigned to it u/s 25 of the Indian Penal Code, 1860 (45 of 1860);

(d) the expression ''criminal breach of trust'' shall have the meaning assigned to it u/s 405 of the Indian Penal Code, 1860 (45 of 1860).

(e) the expression ''forgery'' shall have the meaning assigned to it u/s 463 of the Indian Penal Code, 1860 (45 of 1860).

13. Apparently, Regulations 43 to 47 deal with the conduct of the employee after his retirement. However, this is a case where the disciplinary proceedings are initiated for the alleged misconduct during the period of service. Such proceedings are governed by Regulation 48 alone which specifically deals with recovery of pecuniary loss caused to the Bank on account of the omissions and commissions of the employee during the period of his service. In such circumstances, the Bank is competent under Regulation 48 to institute departmental proceedings against an employee even after his retirement subject to the time limit prescribed in Regulation 48(2).

14. It is also relevant to note that as per Regulation 48 such departmental proceedings can be instituted not only where the pensioner is found guilty of grave misconduct but also where he is found guilty of negligence or criminal breach of trust or forgery or for acts done fraudulently during the period of his service. Even assuming that the Explanation to Regulation 46 is attracted to the proceedings instituted under Regulation 48 and that the commissions and omissions alleged against the petitioner in the articles of charge do not fall within the inclusive definition of the expression "grave misconduct" in Clause (b) of the Explanation to Regulation 46, the impugned proceedings cannot be held to be without authority. Under Regulation 48 departmental proceedings can be initiated even on the grounds of negligence or criminal breach of trust or forgery or for acts done fraudulently during the period of his service. The definitions of the

expressions "fraudulently", "criminal breach of trust" and "forgery" under the explanation to Regulation 46 are very wide and they shall have the meaning assigned to the said expressions u/s 25, Section 405 and Section 463 of I.P.C. respectively. Hence, there is no merit in the contention that the impugned proceedings are impermissible since the allegation do not constitute "grave misconduct" as defined in Explanation (b) to Regulation 43 of the Pension Regulations.

15. Since absolutely no case is made out to hold that the disciplinary proceedings are without authority, the interference by this Court at this stage is not warranted. It is for the respondents to arrive at a conclusion after conducting due enquiry as contemplated under the Discipline and Appeal Regulations, 1976 with regard to the alleged commissions and omissions on the part of the petitioner and it is always open to the petitioner to establish his case by participating in the enquiry.

16. For the aforesaid reasons, the Writ Petition is devoid of any merit and accordingly the same is dismissed. No costs.