

(2001) 10 AP CK 0073
In the Andhra Pradesh High Court
Case No : WA No. 162 of 2001

General Manager, Adilabad District Co-operative Central Bank Limited APPELLANT

Vs

K. Ranga Rao and Another RESPONDENT

Date of Decision : 31-10-2001

Acts Referred:

Citation : (2002) 1 ALD 293 : (2003) 4 ALT 463 : (2002) 93 FLR 94

Hon'ble Judges : S.B. Sinha, C.J;V.V.S. Rao, J

Bench : Division Bench

Advocate : R.V. Subba Rao, for the Appellant; M. Dilip Rao and Government Pleader for Co-operative Societies, for the Respondent

Judgement

V.V.S. Rao, J.—This writ appeal is filed by the General Manager, Adilabad District Co-operative Central Bank Limited, aggrieved by judgment dated 13-10-2000 passed by a learned single Judge of this Court in WP No. 11338 of 2000. By impugned judgment, the learned single Judge set aside the proceedings dated 27-7-2000 issued by the bank withholding the retirement benefits and continuing any disciplinary proceedings subsequent to the retirement of the writ petitioner, first respondent herein, on the ground that no disciplinary enquiry can be held against an employee who was allowed to retire on attaining the age of superannuation.

2. The facts are admitted which in brief are as follows. The first respondent at the relevant time was Person-in-charge of the Primary Agricultural Co-operative Society, Tandur. At or about 1995, some financial irregularities in sanctioning of the loans were alleged. An enquiry was conducted in accordance with Section 51 of the A.P. Co-operative Societies Act, 1964 ("the Act"). In the meanwhile the first respondent was promoted as Manager. The Divisional Co-operative Officer appears to have submitted a report on 3-3-1999. On the basis of the said report, a charge memo dated 16-6-1999 was issued against the first respondent. Other Managers and Supervisors were also prima facie found responsible for alleged

lapses and misappropriation of funds of the bank. The charge framed against the first respondent is as follows.

Charge:

The Manager/PIC has failed in discharging his legitimate duties and responsibilities as Manager.

Allegation:

The Manager/PIC has disbursed loans in his tenure without observing formalities, passing resolution, verification of accounts as on date with cash book and drawals receipts and payments, proforma of balance sheet, profit and loss account. The person-in-charge has not seen the books of accounts and caused for misutilisation of funds of the society. His deliberate dereliction of duties caused misappropriation of funds of the society. The lapses are of serious nature and relate to misappropriation of funds and grave financial irregularities.

3. The first respondent submitted explanation on 30-6-1999. Even before any progress could be made in the enquiry, the appellant passed the impugned order on 27-7-1999 according permission for the first respondent to retire on 31-7-1999 observing that the same is "without prejudice to the disciplinary action to be initiated against him as per the Service Regulations". Though he was retired he was not paid his provident fund, gratuity, leave salary and group insurance amounts. He made number of representations to the appellant. It may be mentioned that after his retirement the appellant issued a notice dated 21-7-2000 to show-cause as to why steps should not be taken for recovery of the amounts. Therefore, the first respondent filed writ petition to quash the said memo issued in 1999 and also prayed for a declaration that non-payment of retiral benefits is illegal.

4. The appellant defended the case inter alia contending that the bank has incurred loss due to the negligence on the part of the first respondent and that as he was retired subject to initiation of enquiry it is permissible for the employer to hold disciplinary enquiry. The learned single Judge by the impugned order placed reliance on the judgment of the Supreme Court in Bhagirathi Jena v. Board of Directors, OSFC AIR 1999 SCW 1442, allowed the writ petition holding that retiral benefits cannot be withheld.

5. The learned Counsel, Sri R.V. Nagabhushana Rao, appearing for the appellant - Bank contends that there is no estoppel against initiating proceedings for recovery of loss caused to the bank, that the decision of the Supreme Court in Bhagirathi Jena (supra) has no application and that as the first respondent was allowed to retire subject to initiation of disciplinary enquiry, there cannot be any embargo to proceed with the enquiry. The learned Counsel for the first respondent, Sri M. Dilip Rao refutes these contentions. He submits that the employee is governed by Adilabad District Co-operative Central Bank Service Bye-laws which do not contain any provision to conduct a disciplinary enquiry after

retirement of the employee. Therefore, having allowed the first respondent to retire, it is not permissible for the appellant to conduct enquiry and on that ground to withhold the payment of retirement benefits. It is also submitted that the charges relate to certain alleged dereliction in discharging of the duties in relation to Primary Agricultural Co-operative Society, Tandur during the period from October, 1994 to March, 1995 when the petitioner worked as person-in-charge of the Society. He submits that there is no truth in the allegations and that issuing the show-cause notice for recovery of alleged loan is itself impermissible under law.

6. The law is well settled that when a relationship of master and servant-employer and employee is not only covered by a contract, but by reason of statutory rules, regulations or bye-laws, such relationship results in "status", the conditions of such contract or service are determined by such service rules, regulations and bye-laws. It is also well settled that when an employee retires from service, the relationship of employee-employer and/or master-servant comes to an end and no power inheres in the employer to take disciplinary action. It would, however, be different if the employer files a criminal case against the employee in relation to criminal conduct while in employment even though such employee retires from employment. The same is not due to the reason of the existence of any relationship of master and servant but by reason of the fact that a criminal offence is against the State and not only with reference to an employment.

7. The State Government Pension Rules as well as Central Government Pension Rules reserve power to the competent authority with the prior sanction of the Head of the State to initiate enquiry even against a pensioner. There may be other statutory service rules, which enable the employer to take disciplinary action against the retired employee. These cases do not present any difficulty, because the statutory rules themselves enable the employer to conduct disciplinary enquiry even against a retired employee. The employee at the time of recruitment is presumed to be governed by all the rules and regulations existing at the time of appointment as well as those rules to be made in future governing the service. In the absence of any rules, regulations and bye-laws, an implied term of contract cannot be read into the contract of service nor an employer could rely on such implied term of contract to conduct a disciplinary enquiry against the retired employee.

8. The question of taking disciplinary proceedings against the retired employee would not arise after the relationship of employee and employer had ceased. It is well settled law that if disciplinary action is sought to be taken against an employee it must be done before he retires. In *State of Punjab Vs. Khemi Ram*, it was held that if a disciplinary enquiry cannot be concluded before the date of retirement, the course open to the authority is to pass an order of suspension and refuse to permit the concerned public servant to retire and retain him in service till such enquiry is completed and final order is passed therein. In *State Bank of India v. A.N. Gupta* AIR 1998 SC 159, the Apex Court held:

..... We cannot agree with the plea of the bank that sanctioning of retirement must be understood as sanctioning of service which in term must be understood as approval of service. Proceeding in the garb of disciplinary proceedings cannot be permitted after an employee has ceased to be in service of the bank as Service Rules do not provide for continuation of disciplinary proceedings after the date of superannuation.

9. Also see State Bank of India Vs. C.B. Dhall, .

10. In Bhagirathi Jena's case it was held that in the absence of any rule no departmental enquiry can be conducted nor any deduction can be made from the retiral benefits. It was also held that enquiry initiated before retirement lapses on superannuation. In view of the settled legal position, we cannot accept the submission of the learned Counsel for the appellant that even after the retirement, an enquiry against the first respondent is permissible. Though the appellant-Bank framed service bye-laws, even according to the learned Counsel for appellant, there is no bye-law specifically permitting the bank to continue or initiate disciplinary enquiry against superannuated Manager. We accordingly reject the contention of appellant.

11. Having regard to the authoritative pronouncements of the Apex Court, there cannot be any doubt whatsoever that despite the fact that the writ petitioner had been allowed to retire without prejudice to the right of the employer to continue the disciplinary proceedings, the same was not permissible in law. The only course open to the authorities is not to allow the petitioner to retire on superannuation. Proceedings can be initiated against a retired employee only for the purpose of withholding the whole or part of pension provided there exists any provision therefor.

12. Yet another aspect of the matter is whether the appellant-Bank is entitled to take action under Sections 51 and 61 of the Act (surcharge proceedings) against the first respondent. If a case could be made out, it is always permissible for the appellant to initiate surcharge proceedings against the first respondent. That cannot by itself be a reason for the Adilabad District Co-operative Central Bank to withhold provident fund, leave salary and group insurance amounts payable to the first respondent in accordance with law.

13. Accordingly, we direct the Adilabad District Co-operative Central Bank Limited the appellant herein, to pay retiral benefits i.e., provident fund, leave salary and group insurance amounts to the first respondent immediately, preferably within a period of eight weeks from the date of receipt of a copy of this order. Insofar as the gratuity amount is concerned, it is well settled that in proper cases, in the discretion of the employer, gratuity amount can be denied.

14. Subject to above modifications and observations, the writ appeal is disposed of. However, there shall be no order as to costs.