(2007) 10 KAR CK 0062

In the Karnataka High Court

Case No : Writ Petition No. 6196 of 2004

H. Surendra Shenoy APPELLANT

Vs

Syndicate Bank RESPONDENT

Date of Decision : 01-10-2007

Acts Referred:
Syndicate Bank Officers Service Regulations, 1979 — Regulation 19, 19 (2)

Citation : (2008) 119 FLR 781 : (2008) 3 KarLJ 167 : (2007) 4 KCCR 311 SN

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : Prasanna, for P.S. Rajagopal, for the Appellant; Radhesh Prabhu, for Tukaram B. Pai, for the Respondent

Final Decision : Dismissed

Judgement

D.V. Shylendra Kumar, J.—Writ petition is by an officer-employee of the Syndicate Bank who has been eased out of service under Regulation 19 of the Syndicate Bank (Officer''s) Service Regulations, 1979 in terms of the impugned order dated 21.10.2003, copy produced as Annexure-G to the writ petition, who has questioned the legality of this order. Petitioner has sought for quashing of the same on this premise that the petitioner was not given an effective opportunity either to represent against the order or his appeal against the order has been properly considered; that the Management has virtually passed the order behind the back of the petitioner by withholding information from the petitioner; that a committee which has been constituted for the purpose of examining the case of the petitioner for the purpose of Regulation 19 had not been properly constituted; that the committee has gone beyond its brief by taking into account extraneous matters and therefore, the order should be quashed.

2. It is also incidentally contended by the learned Counsel for the petitioner that the order is virtually one which stigmatises the petitioner and therefore, not giving proper opportunity in terms of the service conditions of the Bank applicable to the officer - employees of the Bank is violative of the Syndicate

Bank Officer-Employees'' (Discipline and Appeal) Regulations, 1976.

3. One another ground of attack on the impugned order is while the provision itself stipulates three months notice to be issued to such employees, it has not been complied with, in the present case.

4. The respondent, on being notified, after entering appearance through counsel has also filed statement of objections. Sri. Radhesh Prabhu, learned Counsel for the Bank with reference to the statement of objections submits that the impugned order is one passed in terms of Regulation 19 of Rules, which reads as under:

19(1): The age of retirement of an officer employee shall be as determined by the Board in accordance with the guidelines issued by the Government from time to time.

Provided that the Bank may, at its discretion, on review by the Special Committee/Special Committees, as provided hereinafter in Sub-Regulation 92), retire, if it is of the opinion that it is in the public interest, an officer employee on or at any time after the completion of 55 years of age or on or at any time after the completion of 30 years of total service as an Officer employee or otherwise, whichever is earlier.

Provided further that before retiring an Officer employee, at least three months notice in writing or an amount equivalent to three months'' substantive salary/ pay and allowances, shall be given to such Officer employee.

Provided further that an Officer aggrieved by the order of the Competent Authority, as provided in Sub-regulation (2) may within one month of the passing of the order, given in writing a representation to the Board of Directors against the decision of the competent authority, an on receipt of such representation from the concerned officer, the Board of Directors shall consider his representation and take decision within a. period of three months.

Where the Board of Directors decides that the order passed by the Competent Authority is not justified, the concerned Officer shall be reinstated as though the Competent Authority has not passed the order

Provided also that nothing in this regulation shall be deemed to preclude an Officer employee from retiring earlier pursuant to the option exercised by him in accordance with the rules in the Bank.

Explanation : An Officer employee will retire on the last day of the month in which he completes his age of retirement.

Provided that an Officer employee whose date of birth is on the first day of a month shall retire from service on the afternoon on the last day of the preceding month on attaining the age of retirement.

19(2) - The Bank shall constitute a Special Committee/special committees consisting of not less than three members, to review, whether an Officer employee should be retired in accordance with the first provision to this regulation. Such Committee/Committees shall from time to time, review the case of each Officer employee and no order of retirement shall be made unless the Special Committee/Special committees recommend/s in writing to the Competent Authority the retirement of the Officer employee.

and therefore, no interference is warranted. Sri. Prabhu, has also countered the submissions based on other ground. Sri. Prabhu submits that Regulation 19(2) is regarding reviewing the case of many officers of the Bank who have either crossed the age of 55 years of age or at any time after the completion of 30 years. As on 1.7.1999 though in fact the committee has considered the case of as many as 974 officers, that the petitioner was one amongst 8 persons who have been recommended for being retired is terms of Rule 19 of the Regulations, that the Bank having taken action in pursuance of the recommendation of the committee, does not stigmatise the petitioner and it is perfectly in consonance with the regulations and the writ petition is required to be dismissed.

5. Learned Counsel for the respondent submitted that it cannot be characterised as one casting stigma, on the petitioner as it is strictly in consonance with the regulations.

6. Though Sri. Prasanna, learned Counsel for the petitioner, has vehemently urged it is virtually one which stigmatises the petitioner and has particularly relied on para 19 of the statement of objections and submitted that committee has also taken into consideration the earlier conduct of the petitioner including the present one which not only amounts to the petitioner being punished twice for the same misconduct while the present order becomes an order in the nature of penalty and therefore, the order is bad, I am of the view it cannot be so for the simple reason that where the regulation itself enables the bank to review the entire past performance of the officers who have crossed the age of 55 or have put in 30 years of service and when such examination takes place, if the past conduct indicates any such lapse etc, it necessarily is an input in assessing the performance and for taking a decision as to retain the service of such employee or to retire the employee. The order is not as a measure of any punishment, but one of retiring the petitioner in terms of Regulation 19 and therefore, the order cannot be quashed on the ground that is one which stigmatises the petitioner and for want of opportunity or for not holding an enquiry the order is bad.

7. The third ground that though under the Regulations three months time is fixed and it has not been issued, is met by the learned Counsel for the respondent pointing out that it is one of three months notice or salary in lieu of notice and that the petitioner has been paid three months salary for the notice period and therefore, no fault can be attributed to the order on this premise. It is true that the lacuna in not issuing the notice within time can be corrected by making good the amount. The respondent has communicated that the amount in lieu of notice period is being paid. Therefore, there is no violation of the requirements of

compliance prior to the issue of the notice.

8. Such being the facts and circumstance, I do not find scope for interference with the impugned order in exercise of the writ jurisdiction under Article 226 of the Constitution of India.

9. The subject matter is essentially an employer-employee dispute and it is best left to the employer though the respondent bank is State for the purpose of Article 12 of the Constitution of India and to that extent the matter has been examined. This Court does not sit in appeal over the decisions of the respondent-Bank nor is it possible, given the nature of the order at Annexure-G and the fact that further representations/appeal to the higher authority having been considered and rejected, there is no scope of interference in this appeal. Accordingly, the writ petition is rejected.