(2013) 08 DEL CK 0218

In the Delhi High Court

Case No : Writ Petition (C) No. 7866 of 2012

J.B. Chaudhry APPELLANT

Vs

Indian Overseas Bank and Others RESPONDENT

Date of Decision : 22-08-2013

Acts Referred:

Constitution of India, 1950 — Article 12
Payment of Gratuity Act, 1972 — Section 4(6)

Citation : (2014) 1 AD 720 : (2013) 203 DLT 23

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Sewa Ram, for the Appellant; Kunal Tandon, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—By this writ petition, the petitioner, who was an employee of the respondent No. 1-bank, impugns the chargesheet dated 2.8.2012 basically on the ground that same could not have been issued after the petitioner had superannuated from service. I have had an occasion to consider this aspect in detail in the case of Prof. Marmar Mukhopadhyay Vs. Union of India and Ors. in W.P. (C) No. 2566/2007 decided on 18.7.2013. In this judgment, I have given the reasons as to why enquiry proceedings can be initiated and continued even after superannuation of an employee. The first reason which I have given is that every entity has a right to withhold the amount lying in its pocket, and even appropriate the same, with respect to its claim towards an employee who claims amounts from it/organization/employer. It has also been held by the Supreme Court in its judgments in the cases of State of Maharashtra Vs. M.H. Mazumdar, and State of Uttar Pradesh Vs. Brahm Datt Sharma and Another, that there is no bar in initiating and continuing the disciplinary proceedings after superannuation of an employee. The following are the relevant paragraphs of the judgment in the case of Prof. Marmar Mukhopadhyay (supra) and the same read as under:-

10. On behalf of respondent no. 2-UGC, the following judgments have been

relied upon:-

(i) State of Uttar Pradesh Vs. Brahm Datt Sharma and Another, and

(ii) State of Maharashtra Vs. M.H. Mazumdar,

11. In the case of M.H. Mazumdar (supra) reliance is placed upon paras 4 to 6 of the judgment and which read as under:-

4. There is no dispute that the respondent had retired from service on attaining the age of superannuation on September 1, 1977 and charges were served on him on October 16, 1978 after about a year of his retirement. Undisputably the proceedings against the respondent were initiated after the respondent ceased to be in service of the State Government. The proceedings culminated into an order of the State Government reducing the respondent''s pension by 50 per cent. The question is whether the State Government was competent to take action against the respondent by reducing his pension. Conditions for grant of pension to a Government servant of the State of Maharashtra are regulated by the Bombay Civil Services Rules (hereinafter referred to as the Rules). Rule 184 provides for grant of pension admissible under the rules to Government servant who is borne on its establishment. Rules 188 and 189 relevant for our purpose are as under:

188. Government may make such reduction as it may think fit in the amount of the pension of a Government servant whose service has not been thoroughly satisfactory.

189. Good conduct is an implied condition of every grant of pension. Government may withhold or withdraw a pension or any part of it if the pensioner be convicted of serious crime or be found to have been guilty of grave misconduct either during or after the completion of his service, provided that before any order to this effect is issued, the procedure referred to in Note I to Rule 33 of Bombay Civil Services Conduct, Discipline and Appeal Rules shall be followed.

5. The aforesaid two Rules empower Government to reduce or withdraw a pension. Rule 189 contemplates withholding or withdrawing of a pension or any part of it if the pensioner is found guilty of grave misconduct while he was in service or after the completion of his service. Grant of pension and its continuance to a Government servant depend upon the good conduct of the Government servant. Rendering satisfactory service maintaining good conduct is a necessary condition for the grant and continuance of pension. Rule 189 expressly confers power on the Government to withhold or withdraw any part of the pension payable to a Government servant for misconduct which he may have committed while in service. This Rule further provides that before any order reducing or withdrawing any part of the pension is made by the competent authority the pensioner must be given opportunity of defence in accordance to the procedure specified in Note I to Rule 33 of the Bombay Civil Services Conduct, Discipline and Appeal Rules. The State Government''s power to reduce or withhold pension by taking proceedings against a Government servant even

after his retirement is expressly preserved by the aforesaid Rules.

The validity of the Rules was not challenged either before the High Court or before this Court. In this view, the Government has power to reduce the amount of pension payable to the respondent. In M. Narasimhachar Vs. The State of Mysore, and State of Uttar Pradesh Vs. Brahm Datt Sharma and Another, , similar Rules authorising the Government to withhold or reduce the pension granted to the Government servant were interpreted and this Court held that merely because a Government servant retired from service on attaining the age of superannuation he could not escape the liability for misconduct and negligence or financial irregularities which he may have committed during the period of his service and the Government was entitled to withhold or reduce the pension granted to a Government servant.

6. The High Court in our view committed serious error in holding that the State Government had no authority to initiate any proceedings against the respondent. In B.J. Shelat v. State of Gujarat and Ors, disciplinary proceedings had been initiated against the Government Servant for purpose of awarding punishment to him after he had retired from service. The ratio of that decision is not applicable to the instant case as in the present case the purpose of the enquiry was not to inflict any punishment; instead the proceedings were initiated for determining the respondent''s pension. The proceedings were taken in accordance with Rules 188 and 189 of the Rules. It appears that the attention of the High Court was not drawn to these Rules.

(Emphasized portions relied upon by respondents)

12. On the basis of the aforesaid paras, it is argued by the respondents that since in accordance with the Rules 188 and 189 of the Bombay Civil Services Rules Supreme Court entitled continuation and conduct of the enquiry even after retirement, hence even in the facts of the present case, there is nothing in Section 4(6) of the Payment of Gratuity Act, 1972, which prohibits holding of an enquiry and in fact this provision permits holding of an enquiry even after superannuation of charged official because this provision after passing of appropriate orders entitles forfeiture of the gratuity of retired employee. It is argued that in the present case, orders of the Disciplinary Authority could not be passed only on account of interim orders of the Court, and which orders otherwise would have been passed and therefore, an act of the Court cannot harm the respondent no. 2 i.e. Disciplinary Authority of respondent no. 2 should now be allowed to pass an appropriate order and which order will decide as to whether respondent no. 2 is entitled to withhold the gratuity amount because one or more of the requirements of Section 4(6) of the Payment of Gratuity Act, 1972 stand satisfied or not. It is also argued that three Judge Division Bench in M.H. Mazumdar (supra) very categorically states that merely because a government servant retires from service on attaining the age of superannuation he cannot escape the liability of misconduct or negligence or financial irregularities which he may have committed during the period of his service, and,

consequently the Government was entitled to withhold or reduce the pension granted to a Government servant by conducting enquiry proceedings even after retirement of an employee. It is argued that the provision of Section 4(6) of the Payment of Gratuity Act must be read in the same manner as was done by the Supreme Court qua Rules 188 and 189 of the Bombay Civil Services Rules i.e. Section 4(6) does permit holding of disciplinary proceedings after the retirement of an employee and then to pass an order of forfeiture of gratuity.

13. In Brahm Datt Sharma''s case (supra) reliance is placed upon para-5 and which reads as under:-

5. The question which falls for consideration is whether notice dated 29.1.86 was invalid and liable to be quashed. The learned single Judge of the High Court quashed the notice on the sole ground that the allegations specified in the show cause notice were the same which had been the subject matter of departmental inquiry resulting in the respondent''s dismissal from service, and since dismissal order had been quashed in the writ petition, it was not open to the State Govt. to take proceedings for imposing any cut in the respondent''s pension on the same set of charges. We do not agree with the view taken by the High Court. While quashing the order of dismissal the learned Judge did not quash the proceedings or the charges instead; he had quashed dismissal order merely on the ground that the respondent was not afforded opportunity to show cause against the proposed punishment as the recommendation with regard to the quantum of punishment made by the Inquiry Officer had not been communicated to him. In fact while allowing the writ petition the learned single Judge himself observed in his order dated 10.8.84 that it would be open to the State Govt. to draw fresh proceedings if it was permissible to do so. The High Court did not enter into the validity of the charges or the findings recorded against the respondent during the inquiry held against him. After the decision of the writ petition, it was open to the State Govt. to have taken up proceedings against the respondent from the stage at which it was found to be vitiated. Had the respondent not retired from service on attaining the age of superannuation it was open to the State Govt. to pass order awarding punishment to him after issuing a fresh show cause notice and supplying to him a copy of the recommendation made by the Inquiry Officer. There was no legal bar against the State Govt. in following such a course of action. There were serious allegations of misconduct against the respondent which had been proceeded against him during inquiry, those charges remained alive even after quashing of the dismissal order and it was therefore open to the State Govt. to take action against the respondent in accordance with the rules. No disciplinary proceedings could be taken as the respondent had retired from service, the Govt. therefore considered it appropriate to take action against him under Article 470 of Civil Service Regulations. The Regulation vests power in the appointing authority to take action for imposing reduction in the pension, as the State Govt. is the appointing authority it was competent to issue show cause notice to the respondent. The notice specified various acts of omissions and commissions with a view to afford respondent opportunity to show that he had

rendered throughout satisfactory service and that the allegations made against him did not justify any reduction in the amount of pension. If disciplinary proceedings against an employee of the Govt. are initiated in respect of misconduct committed by him and if he retires from service on attaining the age of superannuation, before the completion of the proceedings it is open to the State Govt. to direct deduction in his pension on the proof of the allegations made against him. If the charges are not established during the disciplinary proceedings or if the disciplinary proceedings are quashed it is not permissible to the State Govt. to direct reduction in the pension on the same allegations, but if the disciplinary proceedings could not be completed and if the charges of serious allegations are established, which may have bearing on the question of rendering efficient and satisfactory service, it would be open to the Govt. to take proceedings against the Govt. servant in accordance with rules for the deduction of pension and gratuity. In this view the High Court committed error in holding that the show cause notice was vitiated.

(Emphasis as relied on by respondents)

14. Specific reliance is placed on behalf of respondent no. 2 upon that portion of para-5 above which states that if disciplinary proceedings against an employee of the government are initiated with respect to misconduct committed by him during the period of service, and if such employee retires from service on attaining age of superannuation but before completion of the departmental proceedings, it is open to the Government to direct deduction to be made from his pension on proof of the allegations made against him. Reliance is also placed on the last few lines of the said para which holds that it would be open to the Government to take disciplinary proceedings against the government servant in accordance with the rules for deduction from his pension and gratuity. More importantly, it is argued by the respondents relying upon the observations in Brahm Datt Sharma''s case (supra) that Disciplinary Authority if it accepts the report of the Enquiry Officer will give a specific notice to the petitioner not only for challenging the enquiry report but also as to why gratuity of the petitioner should not be forfeited in terms/in compliance with Section 4(6). It is argued that the disciplinary proceedings will now in fact stand converted to enquiry/ departmental proceedings u/s 4(6) of the Payment of Gratuity Act.

15. One thing is clear from all the judgments which have been cited on behalf of both the parties that Supreme Court has held that there must be an entitlement in accordance with the statutory rules or rules of the organization which entitle withholding of terminal benefits such as pension or gratuity or other terminal benefits and if rules so provide then enquiry proceedings can be held even after retirement of an employee. I may note that rules, whether the same are statutory or they are non-statutory rules of the organization, will pertain to different heads of payment to be made for different terminal benefits such as pension or gratuity or provident fund or leave encashment and the like. What is required to be emphasized is that whenever an employer-organization seeks to

withhold or forfeit any payment under any one particular head of terminal benefits payable to an employee on superannuation, that action qua that head of terminal benefit will have to be justified in accordance with the relevant rules as applicable, whether statutory or otherwise. None of the judgments of the Supreme Court (except the judgment in the case of Jaswant Singh Gill (supra) and which is discussed hereinafter) state that there is disentitlement to withhold or forfeit terminal benefits or to continue with the enquiry even if there does exist, either any statutory rules or rules of the employer-organization for the purpose. The most important aspect to be noted is of distinction between enquiries to impose punishment to an employee and those enquiries to withhold or forfeit certain terminal benefits. While the latter is permitted even after retirement in accordance with the relevant provisions, the former is not permitted vide para 6 of the M.H. Mazumdar''s case (supra).

16. At this stage, with all respect and humility to the ratios of the judgments of the Supreme Court stated above, I have to observe that every individual i.e. whether a private individual or a corporate body or Union Government or State Government etc, if it has moneys in its hand, of any person, then, if such private person or corporate body or the Union or State Government or any other legal entity has been caused loss or damages or other loss to its property (i.e. of the employer-organization) by the person whose money is held, then, such an individual or body or Union Government or the State Government is surely under the general law entitled to adjust/appropriate or at least withhold the amounts in its pockets for the amount due to it till there is adjudication of contested contentions involving disputed questions of fact in appropriate court case of having or not having caused the loss by an employee. What I mean to say is that it is one thing of a right to conduct or continue with enquiry after superannuation in terms of the relevant statutory or non-statutory rules, and it is a totally separate thing to claim entitlement of withholding or appropriation/adjustment under general law. Even if there may be no right to hold an enquiry for withholding/forfeiture/adjustment/appropriation, yet, under general law this entitlement of withholding etc is always there and with the only exception that if any laws or rules of the organization mandates that the terminal benefits be paid and there cannot be withholding/appropriation of the same. Putting it differently, entitlement to withhold or appropriate/adjust in accordance with the general law is subject to any statutory provisions or rules of the employer-organization which does not entitle withholding or the appropriation/adjustment because the said statutory rules or rules of the organization in fact on the contrary directs payment to be made of terminal benefits in the event of superannuation of an employee. Therefore, I hold that an employer-organization which is the Union of India or the State Government or an instrumentality of State under Article 12 of the Constitution of India may not be able to conduct disciplinary proceedings after retirement of a person, however, there always exists entitlement to withhold etc the amounts under general law unless a statutory rule or rule of the organization mandates payment of the amounts to a superannuated employee. I

have recently had an occasion to consider this aspect in the judgment in the case of Jagat Singh Vs. Syndicate Bank & Ors. W.P. (C) 5177/2011 decided on 8.7.2013, and in which judgment I have relied upon an earlier Division Bench judgment of this Court in the case of Walchandnagar Industries Ltd. Vs. Cement Corporation of India, The relevant paragraphs of the judgment in the case of Jagat Singh (supra) are paras 4 to 8 and which read as under:-

4. I asked the counsel for the respondent No. 1-Bank to show me what are the rules of the respondent No. 1-Bank which entitles the respondent No. 1-Bank either to withhold or appropriate the amounts which are otherwise due to an ex-employee. Learned counsel for the respondent No. 1-Bank says that as of today no rules are filed on the record of this Court. In my opinion, even if no rules are filed on the record, yet, whether for withholding or for appropriation of the amounts, the respondent No. 1-Bank which is a State under Article 12 of the Constitution of India cannot do so without conducting necessary enquiries which hold the petitioner guilty of the alleged losses caused to the bank. Thereafter, it was perfectly permissible for the respondent No. 1-Bank to appropriate or at least withhold the amounts which are now claimed by the petitioner, unless a law mandates payment to the petitioner. I may mention that simple withholding of an amount is not illegal because even if there are no rules of an organization (and a relevant rule is Rule 9 of CCS (Pension) Rules, 1972 entitling withholding of pension and gratuity) even under the general law, an organization can always withhold or appropriate/adjust amounts lying with it because payment in spite of a claim of withholding an appropriation would amount to payment to be made to an ex-employee which would result in payment of a disputed amount which is claimed by the organization on account of losses caused by the employee. In fact there is always a legal right to appropriate amounts already in the hands of a person and which belongs to another person, if the person holding/appropriating the same does it towards his entitlement vide Walchandnagar Industries Ltd. Vs. Cement Corporation of India, . The only exception is if law or rules of the employer direct/require the payment and thus disentitles appropriation/ adjustment. As already stated above, appropriation is actually adjustment in legal terms and is part of the genre of equitable set off.

5. I also asked the counsel for respondent No. 1-Bank to show me the enquiry proceedings and the orders which were passed entitling the respondent No. 1-Bank to withhold the amount as stated in the communication dated 27.07.1999, however, counsel for the respondent No. 1-Bank has failed to show me any Departmental Proceedings i.e. issuance of show cause notice, holding of an enquiry and thereafter passing of an order holding the petitioner guilty of causing losses to the respondent No. 1-Bank and, therefore, the entitlement of respondent No. 1-Bank to appropriate this amount.

6. Therefore, the order which is required to be passed in the facts of the present case is that before appropriating the amount i.e. deciding that the amount has not to be paid to the petitioner, the respondent No. 1-Bank will have to hold

enquiry against the petitioner. Respondent No. 1-Bank is entitled to conduct an enquiry to find out whether petitioner is liable for the losses as stated in the letter dated 27.07.1999. However, on a query put to the counsel for the petitioner, counsel for the petitioner on instructions from petitioner who is present in the Court, states that petitioner will not participate in the enquiry which is to be conducted by the respondent No. 1-Bank. If that be so, it will be a futility to direct respondent No. 1-Bank to conduct an enquiry proceeding for determining the amounts which are stated as having been appropriated in the letter dated 27.07.1999.

7. In view of the aforesaid position, there are disputed questions of facts which require trial as to whether or not petitioner has caused losses to the respondent No. 1-Bank or that no loss is caused to the respondent No. 1-Bank. If loss is caused, under the general law, respondent No. 1-Bank can always withhold and appropriate the amount due to it from the person who caused loss to the respondent No. 1-Bank. Allowing of the writ petition would therefore amount to passing of a money decree for an amount when there exists disputed questions of facts. It is only after such disputed questions of facts are decided by an appropriate civil court in favour of the petitioner can then there be issued the direction as being prayed by the petitioner.

8. In view of the above, the writ petition is dismissed reserving liberty to the petitioner to file a civil suit for recovery of the amounts which are claimed by him and the amount respondent No. 1-Bank is held presently entitled to withhold the amounts of the petitioner with it subject to the final decree of the civil court.

17. Before this Court, when we focus ourselves on the facts and issues as raised in this case, decision is required of this Court with respect to the two issues. The first issue is whether in the facts of the present case, there is no entitlement of the respondent no. 2/employer-organization to continue with departmental enquiry after retirement of the petitioner for the purpose of forfeiting of gratuity after the superannuation of the petitioner, and secondly that even if there is no entitlement to continue with the departmental enquiry, yet, there is no entitlement in the respondent no. 2-employer organization to withhold etc the amounts which it claims are lying with it, and for the loss which the employer-organization claims had been caused to it on account of the superannuated employee.

18. The four judgments relied upon by both the parties i.e. the earlier judgments in the cases of M.H. Mazumdar (supra) and Brahm Datt Sharma (supra) on behalf of the respondents and A.N. Gupta (supra) and Bhagirathi Jena (supra) on behalf of petitioners, lay down the ratio that if rules exist of the employer-organization or there are such statutory rules which deal with the subject, then, departmental proceedings can go on even after retirement of an employee. In the cases of A.N. Gupta (supra) and Bhagirathi Jena (supra) it was held that departmental proceedings after retirement could not be continued because there were no rules of the employer-organization permitting continuation of the

proceedings. In the case of M.H. Mazumdar (supra) and Brahm Datt Sharma (supra) Supreme Court entitled continuation of the departmental proceedings inasmuch as it was held that the relevant rules in those cases did permit continuation of departmental enquiry or in fact initiation of departmental enquiry after the retirement/termination of services of an employee. Therefore there is no conflict between the ratios of the two judgments in the cases of A.N. Gupta (supra) and Bhagirathi Jena (supra) relied upon on behalf of the petitioners and M.H. Mazumdar (supra) and Brahm Datt Sharma (supra) on behalf of the respondents.

19. Now, let us turn to the ratio laid down by the Supreme Court in the case of Jaswant Singh Gill (supra) as relied upon on behalf of the petitioner. A reading of the judgment shows that in the facts of the case before the Supreme Court the order of dismissal of services of an employee was not passed simply on the ground that the employee had in the meanwhile superannuated, though the Disciplinary Authority held that actions of the employee were such that he would have been visited with the punishment of dismissal from service, if he had not superannuated, and hence the Departmental Authority therefore directed forfeiture of gratuity. This order of the Departmental Authority was set aside by the Supreme Court by giving two reasons. The first reason was that the Supreme Court held that in spite of a rule of the employer-organization which permitted continuation of departmental proceedings after retirement, yet, the said rule cannot prevail because on retiring of an employee the question of imposing a major penalty by removal or dismissal from services would not arise because services had not been extended for the said purpose. It was held that once an employee is permitted to retire, disciplinary proceedings initiated before retirement cannot continue for imposing a major penalty. Accordingly, Section 4(6) of the Payment of Gratuity Act, 1972 was read to mean that impression "termination of services" will have to be read to mean passing of orders of termination of services before retirement of the employee. The second reason given by the Supreme Court was that since the Disciplinary Authority had not quantified the loss or damages hence the requirement of sub-clauses of Section 4(6) of the Payment of Gratuity Act was not complied with and hence for this second reason gratuity could not be forfeited. In a way the second reasoning given by the Supreme Court in the case of Jaswant Singh Gill (supra) is an alternative reasoning to the first reasoning because if first reasoning stood of no entitlement existing for imposing a penalty against a retired employee, there was no further need or requirement for the Supreme Court to hold that loss or damage in terms of Section 4(6) is not quantified. Issue of quantification would have only arisen if in terms of the first reason given that the employee would had not retired, but factually, the employee had retired in the case of Jaswant Singh Gill (supra) and in spite of that fact of the retirement having taken place Supreme Court denied entitlement of forfeiture of gratuity on the ground that the Disciplinary Authority had not quantified the loss or damage and therefore in a way took the order of the Departmental Authority as passed after retirement as

valid and yet held that the order will have no bearing because the order did not quantify the loss or damage.

20. The issue is whether the first reasoning which is given by the Supreme Court in the case of Jaswant Singh Gill (supra) that no punishment can be imposed after retirement of an employee is a valid ratio in law.

21. In my opinion, the ratio of the Supreme Court in the case of Jaswant Singh Gill (supra) that although the rules of the employer-organization permit continuation of the departmental proceedings yet departmental proceedings cannot continue after retirement, is in direct conflict with the ratios of the four earlier judgments in the cases of A.N. Gupta (supra), Bhagirathi Jena (supra), M.H. Mazumdar (supra) and Brahm Datt Sharma (supra). In all these four judgments, it is specifically held by the Supreme Court that if the rules of the employer-organization permit continuation of departmental proceedings after retirement of an employee such proceedings can continue. It is settled law that a later Division Bench of same number of Judges of the Supreme Court cannot prevail over an earlier Division Bench of same number of Judges of the Supreme Court. This is so held by the Supreme Court in the case of Union of India (UOI) and Others Vs. S.K. Kapoor, and para 9 of which reads as under:-

9. It may be noted that the decision in S.N. Narula Vs. Union of India (UOI) and Others, was prior to the decision in Union of India (UOI) and Another Vs. T.V. Patel, It is well settled that if a subsequent coordinate Bench of equal strength wants to take a different view, it can only refer the matter to a larger Bench, otherwise the prior decision of a coordinate Bench is binding on the subsequent Bench of equal strength. Since, the decision in S.N. Narula case was not noticed in T.V. Patel case, the latter decision is a judgment per incuriam. The decision in S.N. Narula case was binding on the subsequent Bench of equal strength and hence, it could not take a contrary view as is settled by a series of judgments of this Court.

Therefore, in my opinion, the ratio laid down in the case of Jaswant Singh Gill (supra) (by a Division Bench of two judges) that even if there are rules of the employer-organization to permit continuation of departmental proceedings after retirement, yet such proceedings cannot continue to stand in view of the ratios of earlier Division Bench judgments of two judges of the Supreme Court. Further it is settled law that judgment of a Division Bench of larger number of Judges will prevail over the judgment of a lesser number of Judges of a Division Bench of the Supreme Court as held in the Constitution Bench judgment in the case of Union of India (UOI) and Another Vs. Raghubir Singh (Dead) by Lrs. Etc., The decision of the Supreme Court in the case of M.H. Mazumdar (supra) is of a Division Bench of three Judges and therefore will prevail over the judgment of the Supreme Court in the case of Jaswant Singh Gill (supra) and which is of a Division Bench of two judges. It also may be additionally noted that in the judgment in the case of Jaswant Singh Gill (supra) no reference is being made to the binding judgment of the Division Bench of three Judges in the case of M.H.

Mazumdar (supra).

22. Therefore, looking at it from any manner i.e. whether earlier judgment in the case of M.H. Mazumdar (supra) being of a Division Bench of three Judges or that earlier judgment of same number of Judges of a Division Bench prevails over the later judgment of the same number of Judges of the Division Bench, I am bound to follow the ratio which is laid down by the Supreme Court in the judgments in the cases of M.H. Mazumdar (supra) and Brahm Datt Sharma (supra).

23. In view of the aforesaid discussion with respect to bindingness of the ratios in the judgments of M.H. Mazumdar (supra) and Brahm Datt Sharma (supra) we will have to read the provisions of Section 4(6) of the Payment of Gratuity Act. Once the ratio of the judgment of the Supreme Court is that departmental proceedings can continue even after retirement if the rules of the organization or statutory rules so permit, then, I am of the opinion that the provision of Section 4(6) of the Payment of Gratuity Act must be read by putting more stress not on the aspect of the fact that dismissal order or termination of services order against an employee cannot be passed after retirement but the substance and heart of Section 4(6) is that the action of the employee is such that loss or damage caused to the employer during the period of service of the employee and which can result in an order of termination of services i.e. what is important is not passing of an actual order of termination of services before retirement but the loss or damage caused to the employer-organization which can entail order of termination of services of an employee if the employer had continued to be in service. The fact that order of termination of services cannot be passed because of retirement of the employee in the meanwhile cannot mean that the loss or damage has not been caused to the employer which otherwise could have resulted in dismissal/termination of services of an employee. That being so, the provisions of Section 4(6) will have to be read in the same manner as was done by the Supreme Court with reference to Bombay Civil Services Rules 188 and 189 in the case of M.H. Mazumdar (supra) i.e. entitling an employer to continue with the departmental proceedings even after retirement of the employee.

24. I do not find anything in the applicable provision of Section 4(6) of the Payment of Gratuity Act, 1973 which brings to an end automatically the continuation of an enquiry against a charged employee merely on account of superannuation/retirement. If the provisions of Rules 188 and 189 have been held in the case of M.H. Mazumdar (supra) to enable continuation of the departmental proceedings after retirement of an employee, I find that the provision of Section 4(6) also does provide entitlement of forfeiture on account of loss or damages caused by an employee and which entitlement does not bear any co-relation to the incidence of retirement of an employee because nothing in Section 4(6) of the Payment of Gratuity Act at all provides that on retirement there is disentitlement to continue the enquiry/departmental proceedings against a superannuated employee. All that the provision of Section 4(6) provides is that once the services have been terminated i.e. in effect can be terminated if

employee was in service or the employee being found guilty of act or willful omission or negligence causing any damage or loss or destruction of property belonging to the employer, then, forfeiture can be made of the gratuity, and if that be so, this provision does not in any manner prohibit continuing of the departmental enquiry after superannuation of the charged official/retiring employee.

25. Therefore, in the facts of the present case, I hold that there is no disentitlement of the employer-organization-respondent no. 2 to continue with the departmental enquiry against the petitioner/charged official because the relevant provision being Section 4(6) of the Payment of Gratuity Act, 1972 does not bring to an end an enquiry which is commenced during the employment, and in fact, the said provision 4(6) entitles commencing of an enquiry even after retirement of a charged official, and which is also the ratio of M.H. Mazumdar (supra). I therefore interpret the provision of Section 4(6) of the Payment of Gratuity Act to entitle the employer-organization not only to continue a departmental enquiry after superannuation of an employee but also to commence departmental proceedings against the employee even after his superannuation/retirement, subject to the fact that such proceedings are not disciplinary proceedings but are enquiries/departmental proceedings to determine the existence of conditions of Section 4(6) of the Payment of Gratuity Act.

26. The matter does not end at that. I have already referred to the judgment delivered by me in the case of Jagat Singh (supra). Even assuming that the respondent no. 2 has arguendo no right to continue with the departmental proceedings against the petitioner, I am of the opinion that nothing in Section 4(6) mandates actual payment to a retired employee in the facts of the cases such as the present where it is only because of interdicting by a learned Single Judge of this Court of passing of a final order in a disciplinary proceedings and only because of which an order has not been passed for quantifying the loss or damage which could have resulted in terminating the services of an employee on account of an act or willful omission or negligence causing damage or loss to or destruction of, property belonging to an employer. That order if had been allowed to be passed it could have consequently entitled forfeiting of the gratuity on account of the loss caused. An act of Court harms no one. Interim orders cannot have existence for creating vested rights of substantive proceedings. Since I have held that respondent no. 2 was entitled to commence or continue inquiry even after retirement of an employee, I now entitle the respondent no. 2 to pass appropriate orders by its appropriate authority (because admittedly the departmental proceedings have come to an end and enquiry report has been given) in terms of above observations that the proceedings will now not be disciplinary proceedings for imposing punishment but the proceedings will be in terms of Section 4(6) of the Payment of Gratuity Act, 1972 and as to whether any of its requirements stand satisfied for passing of the order in the departmental proceedings for forfeiture of gratuity. The position in the present

case in this regard will be slightly different than the ratio of the judgment in the case of Jagat Singh (supra) because in the present case, the situation is not that the charged official is not willing to participate in the departmental enquiry/ proceedings. Therefore, once the respondent no. 2 as an instrumentality of the State has conducted the departmental proceedings in which the petitioner has participated, the respondent no. 2 will in accordance with the orders to be passed by the appropriate authority, or any other Appellate Authority if so provided, take action, and as per the orders of such Departmental Authorities pay or withhold or forfeit the gratuity of the petitioner. In case the orders of the Departmental Authorities pass a particular order which does not entitle forfeiture of the gratuity of the petitioner, then, the respondent no. 2 will be bound to release the gratuity amount or part thereof or whatever amount as the case may be to the petitioner.

27. In view of the above, the writ petition is dismissed by holding that there is no disentitlement in the respondent no. 2/employer-organization to continue with the departmental enquiry against the petitioner/charged official merely because the petitioner/charged official has superannuated/retired during the pendency of the enquiry proceedings. In view of the long passage of time and so that the necessary finality is achieved with respect to issues for or against the petitioner, the appropriate authority is directed to pass appropriate orders within a period of eight weeks from today. It is also ordered that if there have to be further departmental proceedings, including of appeal, then preferably all the departmental proceedings will be concluded within a period of six months from today. Parties are left to bear their own costs.

2. The issue therefore in the present case, in my opinion, is squarely covered by my judgment in the case of Prof. Marmar Mukhopadhyay (supra). Therefore, there is no bar on the respondent No. 1-bank in initiating departmental proceedings against the petitioner even after his superannuation. Of course, the proceedings which will be taken will be to decide the issue of withholding or forfeiting any of the terminal benefits of the petitioner.

3. Learned counsel for the petitioner argued before me the following additional aspects to distinguish the judgment in the case of Prof. Marmar Mukhopadhyay (supra):-

(i) The respondent No. 1-bank in its communication dated 23.1.2013 filed as Annexure P-19 to the rejoinder admits that there are no Regulations of the bank to initiate departmental proceedings against an already retired/superannuated officer and therefore proceedings initiated against the petitioner must forthwith fail.

(ii) The Division Bench of this Court in the case of D.B. Madan Vs. Punjab National Bank and Another, has held that since the chargesheet is not drawn up prior to superannuation there is a case made out for stay of further disciplinary proceedings.

(iii) The defence of the respondent No. 1-bank in the counter-affidavit that action was initiated as per Pension Regulations is without basis because as per the relevant Pension Regulations only if a person is convicted by Court or is prima facie guilty of grave misconduct orders can be passed for conducting of enquiry under the Pension Regulations.

(iv) The authority which has issued the chargesheet in the present case is not the Chairman who was authorized to issue the chargesheet and therefore the chargesheet must fail.

4. None of the issues which have been argued on behalf of the petitioner in this case have merit and all the arguments are rejected for the reasons as stated hereinafter.

5. Firstly, in my opinion, the letter dated 23.1.2013 of respondent No. 1-bank filed as Annexure P-19 cannot help the petitioner for two main reasons. Firstly, there is no estoppel against the law and if law states that departmental proceedings can be conducted to withhold terminal benefits, an admission contrary to law made in the letter of the respondent No. 1-bank cannot bind the bank. Secondly, this letter only shows that disciplinary proceedings cannot be initiated against the retired/superannuated officer whereas in the present case as per the judgment delivered by me in the case of Prof. Marmar Mukhopadhyay (supra) proceedings will not be disciplinary proceedings but will be departmental proceedings to decide the entitlement to withhold and forfeit the terminal benefits. I note that in the present case chargesheet is issued against the petitioner with respect to financial irregularities in conduct of his duties while he was acting as the Chief Manager of the Gole Market Branch, New Delhi. Therefore, in my opinion, petitioner cannot contend that because of the admission of the respondent No. 1-bank, no departmental proceedings can be initiated against the petitioner.

This argument urged on behalf of the petitioner is therefore rejected.

6. The second ground which is urged by placing reliance upon the judgment of a Division Bench of this Court in the case of D.B. Madan (supra) is again without basis because the Division Bench only passed an interim order to stay further proceedings and which was subject to final decision in the writ petition. Interim orders do not create vested rights as they are passed in the facts of a particular case. The issue of entitlement to initiate and continue departmental proceedings after retirement of an employee has been specifically dealt with by me in the case of Prof. Marmar Mukhopadhyay (supra) and I have held that departmental proceedings can be initiated and continued even after retirement of an employee although the nature of the departmental proceedings will change from disciplinary proceedings to departmental proceedings to decide the entitlement of the employer/organization to withhold and forfeit the terminal benefits.

This argument of the petitioner is also therefore rejected.

7. The third argument of the petitioner is based on the Pension Regulations 44 and 45 however, Regulations 42 and 43 will also be relevant and therefore the Regulations 42 to 45 are reproduced as under:-

42. Pension subject to further good conduct:-

Future good conduct shall be an 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 withdrawn a pension or a part thereof, whether permanently or for a specific 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 mensum payable under these regulations.

44. Conviction by Court:-

Where a pensioner is convicted of a serious crime by a Court of law, action shall be taken in the light of the judgment of the Court relating to such conviction.

45. Pensioner guilty of grave misconduct:-

In a case not falling under regulation 44 if the Competent Authority considers that the pensioner is prima facie guilty of grave misconduct, it shall, before passing an order, follow the procedure specified in Indian Overseas Bank Officer Employees'' (Discipline and Appeal) Regulations, 1976 or in Settlement as the case may be.

8. What the counsel for the petitioner argues by reference to Regulation 44 is an argument which has to be seen in the context of earlier Regulations 42 and 43. Regulation 44 only gives one of the reasons on the basis of which pension can be stopped i.e. conviction on account of a serious crime by Court of law and that Regulation does not say that for other reasons pension cannot be stopped. In fact, Regulation 42 makes it clear that future good conduct shall be an implied condition of every grant of pension and its continuance under these regulations. Regulation 43 read with Regulation 45 shows that if a retired employee is found guilty of misconduct there is an entitlement to withhold or withdraw the pension. Regulation 45 lays down the procedural requirement that the necessary procedure provided in the Indian Overseas Bank Officer Employees'' (Discipline and Appeal) Regulations, 1976 will have to be followed. Therefore, in my opinion, there is no basis that Pension Regulations of the respondent No. 1 prevent conducting of departmental proceedings after superannuation/retirement of an employee. In fact, the Regulations provide otherwise i.e. they specifically provide that in case of grave misconduct departmental proceedings can be initiated for withholding or withdrawing of the pension even after the retirement/

superannuation, and also that good conduct is necessary for continuing of the pension.

9. The final argument which is urged on behalf of the petitioner is that the chargesheet has not been issued by the appropriate authority. In support of this argument, counsel for the petitioner has also placed reliance upon the definition of "Competent Authority" as found in Regulation 2(e) of the Indian Overseas Bank Officer Employees'' (Conduct) Regulations, 1976 of the respondent No. 1. Surely, a company functions through its Board, however, such Board does and in fact has delegated powers with respect to various aspects to various authorities of the bank. A general argument that it is only the Chairman which is the competent authority therefore cannot in any manner assist the petitioner. In any case, I would leave this aspect to be urged and decided in the departmental proceedings which have been initiated against the petitioner. The issue as to whether or not the Chairman is the competent authority will also be an issue which the petitioner can raise in the departmental proceedings and which will be decided in the departmental proceedings inasmuch as before me there is no sufficient material filed by the petitioner to decide this issue one way or the other.

10. In view of the above, this writ petition is without any merit. The issue is squarely covered by my judgment in the case of Prof. Marmar Mukhopadhyay (supra) and respondent No. 1 can initiate departmental inquiry even after superannuation of an employee. This writ petition is therefore dismissed, however, it is clarified that the departmental proceedings which will take place against the petitioner will not be disciplinary proceedings but departmental proceedings in order to decide whether all terminal benefits of the petitioner can be withheld/withdrawn by the respondent No. 1-bank and which will include the pension payable to the petitioner. It is further clarified in terms of ratio in the case of Prof. Marmar Mukhopadhyay (supra) that in case the petitioner deems it fit not to appear in departmental proceedings, then, the respondent No. 1 will have a right to withhold and forfeit the amount which the respondent No. 1 claims against the petitioner, subject however to decision of any civil court with respect to disputed questions of fact and law which would be urged in the civil court proceedings. In view of the above, writ petition is therefore dismissed, leaving the parties to bear their own costs.

