(2016) 03 GAU CK 0044

In the Gauhati High Court

Case No : WP(C) No. 5421 of 2012

Kiran Chandra Deka APPELLANT

Vs

State of Assam and Ors. RESPONDENT

Date of Decision : 22-03-2016

Acts Referred:

Assam Co-operative Apex Bank Limited Staff Rules 1980 — Rule 1980, 46

Citation : (2016) 5 GauLJ 293 : (2016) 4 GauLR 162 : (2016) 3 GauLT 256

Hon'ble Judges : Ujjal Bhuyan, J.

Bench : Single Bench

Advocate : Mr. T.C. Khatri, Mr. S.K. Jain and Mr. P. Mahanta, Advocates, for the Appellant; Mr. P.N. Goswami, SC, Apex Bank, for the Respondent

Final Decision : Disposed Off

Judgement

Ujjal Bhuyan, J.—Though hearing of this case was concluded on 05.01.2016, judgment could not be delivered for one reason or the other. Case was fixed for delivery of judgment on 01.02.2016 and then on 11.02.2016, but for paucity of time judgment could not be delivered. Case is listed today for delivery of judgment and accordingly judgment is dictated in the open Court.

2. Heard Mr. T.C. Khatri, learned counsel for the petitioner and Mr. P.N. Goswami, learned Standing Counsel, Apex Bank for the respondents.

3. By filing this petition under Article 226 of the Constitution of India, petitioner seeks quashing of order dated 18.11.2008, passed by the respondent No. 3, dismissing him from the service of Apex Bank with retrospective effect from 10.10.1987. Further prayer made is for reinstatement of the petitioner in service till his superannuation on 01.03.1998 and, thereafter, to pay him all the service and retiral dues to which he would be entitled.

4. It appears that petitioner has gone through a series of litigation, which has resulted in an enlarged factual matrix. However, for the sake of adjudication of the present case, only the relevant and essential facts would be taken note of.

5. Petitioner had joined service in the Apex Bank on 08.11.1957 as an Assistant. Over the years, he had risen through the ranks and at the relevant point of time, he was holding the post of Accountant and allowed to work as Branch In-Charge of Pathshala Branch.

6. On 15.11.1986, a show cause notice was issued to the petitioner as to why departmental action should not be taken against him for commission of alleged misconduct in the performance of his duties. It appears that 3 (three) charges were framed against the petitioner, which pertained to disbursement of loans to different beneficiaries.

7. Petitioner had submitted written statement denying the allegations. Written statement submitted by the petitioner was not found to be satisfactory. Consequently, an administrative enquiry was held, wherein petitioner participated.

8. According to the petitioner, no copy of the enquiry report was furnished to him and therefore, he was not aware of the findings of the Enquiry Officer.

9. By order dated 10.10.1987, petitioner was dismissed from service. Appeal filed by the petitioner before the Board of Directors was also rejected. Further appeal filed before the Administrative Council met a similar fate.

10. This led the petitioner to approach this Court by way of a writ petition, which was registered as Civil Rule No. 777 of 1992. The said writ petition was disposed of on 27.06.1995, by directing reconsideration of the appeal filed by the petitioner. This time, Board of Directors rejected the appeal filed by the petitioner. Since petitioner filed a further appeal before the Administrative Council, which was not being forwarded by the Board of Directors, petitioner approached this Court again by filing Civil Rule No. 3341 of 1996. The said writ petition was disposed of by this Court on 26.11.1998, directing consideration of petitioner''s appeal afresh by the Administrative Council.

11. Thereafter, the Administrative Council passed order dated 20.12.1999, dismissing the appeal of the petitioner.

12. Petitioner, thereafter, raised an industrial dispute relating to his dismissal from service, which led to making of a reference by the State Government in the Labour Department before the Labour Court, Guwahati, regarding justification or otherwise of dismissal from service of the petitioner. This led to registration of Reference Case No. 16 of 2001 before the Labour Court, Guwahati. The reference was contested by both the sides. Learned Labour Court passed award dated 30.12.2003, wherein, it was held that petitioner was not a workman within the meaning of Section 2 (s) of the Industrial Disputes Act, 1947, which would mean that the reference was not maintainable. However, learned Labour Court proceeded to decide validity of the dismissal of the petitioner, where after, it took the view that dismissal of the petitioner was justified.

13. Aggrieved, petitioner approached this Court by filing WP(C) No. 1306 of

2005. This Court vide Judgment and Order dated 27.11.2007 held that the finding recorded by the Labour Court that petitioner was not a workman did not suffer from any illegality or irregularity requiring interference by the Court. However, this Court held that when the petitioner was held to be not a workman, the Labour Court ought not to have proceeded further and ought not to have decided the reference on merit. Therefore, the Court declined scrutiny of the finding of the Labour Court regarding justification of the dismissal of the petitioner and instead examined validity of such dismissal. Thereafter, this Court held that dismissal of the petitioner stood vitiated because of violation of the principles of natural justice in view of non-furnishing of enquiry report to the petitioner. Referring to the decision of the Apex Court in the case of Managing Director, ECIL v. B. Karunakar; reported in (1993) 4 SCC 727, this Court set aside the dismissal order of the petitioner along with all consequential order(s) passed in appeal but gave liberty to the Apex Bank to recommence the disciplinary proceeding from the stage of submission of the enquiry report. Court held that since the petitioner had already retired from service, the recommenced enquiry against the petitioner, if the Apex Bank so desired, should be completed within a period of 4 (four) months from the date of judgment.

14. Managing Director of the Apex Bank, thereafter, wrote to the petitioner vide letter dated 20.03.2008, enclosing therewith a copy of the enquiry report furnished by the Enquiry Officer. It was stated that as per the enquiry report all the 3 (three) charges were established.

15. Petitioner in his reply dated 04.04.2008, stated that though the enquiry was conducted by the Enquiry Officer on 08.05.1987, the enquiry report was signed on 14.07.1986. If that be the date of the enquiry report, then it was prepared prior to the issuance of the show cause notice dated 15.11.1996. This only reflected the manner in which the departmental proceeding was conducted against the petitioner. Petitioner also pointed out that though this Court had directed conclusion of the departmental proceeding within 4 (four) months, the said period of 4 (four) months had long expired.

16. A further notice was issued to the petitioner by the Managing Director of Apex Bank dated 26.07.2008, stating that since the petitioner was found guilty in respect of all the charges the Bank proposed imposition of penalty of dismissal from service as per Rule 46 (a) (vi) of the Staff Rules of the Bank. Petitioner was asked to show cause against the proposed penalty.

17. Petitioner submitted reply on 18.08.2008, wherein he referred to his earlier reply dated 04.04.2008 and questioned the authenticity of the enquiry report. He also contended that since the Apex Bank could not complete the departmental proceeding within 4 (four) months as directed by this Court, it was not open to the Apex Bank to impose any penalty on the petitioner beyond the said period.

18. Since respondents failed to complete the departmental proceeding within 4 (four) months as directed by this Court, petitioner filed a writ petition before this

Court being WP(C) No. 4693 of 2008, seeking reinstatement in service with consequential benefits. This Court found that the Apex Bank had, in the meanwhile, completed the departmental proceeding, where after, Managing Director of the Apex Bank passed order dated 18.11.2008, imposing the penalty of dismissal from service on the petitioner. In view of passing of such order, this Court held that grievance raised by the petitioner did not survive. By order dated 20.11.2008, the writ petition was closed without expressing any opinion on the order dated 18.11.2008, giving liberty to the petitioner to challenge the legality and validity of the said order.

19. At this stage, a brief reference may be made to the order dated 18.11.2008. The discrepancy relating to recording of date of the enquiry report has been explained as an error made through oversight, being a minor human error. The Managing Director came to the conclusion that findings of the Enquiry Officer be accepted as all the charges framed against the petitioner stood established and that petitioner deserved punishment as per the Staff Rules of the Apex Bank. Accordingly, Managing Director imposed the penalty of dismissal from service on the petitioner with retrospective effect, i.e., from the date of the initial order dated 10.10.1987.

20. In the meanwhile, petitioner had filed an appeal before the Division Bench against the judgment of this Court dated 27.11.2007, passed in WP(C) No. 1306 of 2005, which was registered as Writ Appeal No. 69 of 2009. Though the appellate Court, prima facie, did not find any error in the impugned order, in the absence of any counsel for the appellant, the appeal was dismissed for non-prosecution. Application filed for restoration of the writ appeal was also dismissed on 16.08.2012. The Division Bench held that there was no ground to entertain the appeal and accordingly, it was dismissed.

21. Hence, the present writ petition, assailing the legality and validity of the order dated 18.11.2008.

22. Counter affidavit has been field by the respondents justifying the impugned decision. Delay in concluding the disciplinary proceeding as per order of this Court dated 18.11.2008 has been explained by stating that despite repeated requests petitioner did not submit his reply and also because of series of litigation indulged in by the petitioner. Discrepancy in the date of enquiry report has also been explained.

23. In the course of hearing, Mr Khatri, learned counsel for the petitioner argued that in the ordinary course petitioner would have attained the age of superannuation on 01.03.1998; the impugned order has been passed on 18.11.2008 after superannuation of the petitioner. Mr Khatri pointed out that, at the time of passing of the impugned order, Rule 46 of the Staff Rules of the Apex Bank was not amended and the unamended Rule did not contain any provision permitting disciplinary authority to impose penalty on an employee after retirement. Therefore, continuation of disciplinary proceeding and imposition of

penalty post retirement is illegal and untenable.

24. Mr Khatri has placed reliance on a decision of the Apex Court in the case of State Bank of India v. A.N. Gupta, reported in (1997) 8 SCC 60, in support of the proposition that once an employee ceased to be in the service of the bank, continuation of disciplinary proceeding was not permissible unless there was a specific provision to this effect in the relevant rules.

25. The point urged by Mr. Khatri regarding lack of competence of the disciplinary authority to impose penalty on a former employee of the Apex Bank post-retirement has not been specifically pleaded in the writ petition. This point was not urged in any of the proceedings, either before the disciplinary authority or before the appellate authority of the Apex Bank as well as before this Court in the earlier rounds of litigation. Moreover, it is seen that impugned penalty dated 18.11.2008 was passed by the disciplinary authority following opportunity granted by this Court in WP(C) No. 1306 of 2015 to recommence the disciplinary proceeding from the stage of submission of the enquiry report.

26. There is no dispute to the proposition of law laid down by the Apex Court in the case of A.N. Gupta (supra). However, having regard to the provision of Rule 46 of the Staff Rules of the Apex Bank, both the amended provision as well as the unamended provision, a Single Bench of this Court had the occasion to deal with the issue in the case of Pradip Narayan Senapati v. State of Assam [WP(C) No. 1846 of 2003], disposed of on 26.09.2011. That was a case, where service of the petitioner, an employee of Apex Bank was extended beyond superannuation for the purpose of continuation of departmental proceeding. It was noticed by this Court that Assam Co-operative Apex Bank Limited (Staff) Rules, 1980 was amended on 21.10.2002, by way of insertion of Clause-C to Rule 46, which enabled the Bank to complete disciplinary proceeding even after superannuation of the delinquent. This provision was made applicable to all pending departmental proceedings.

27. Thus, the above amendment came into effect from 21.10.2002. Prior to 21.10.2002, such a provision was not available in the Staff Rules. This Court also referred to the provision of Rule 120 of the Staff Rules, which provides that where no specific provision has been made in the Staff Rules in respect of any matter, the relevant rules of the State Government relating to such matter shall be followed as far as practicable. This Court on a conjoint reading of Rule 120 of the Staff Rules and Rule 21 of the Assam Services (Pension) Rules, 1969, took the view that it was within the competence and jurisdiction of the bank authority to continue with the departmental proceeding even after superannuation. Relevant portion of the judgment and order dated 26.09.2011, reads as under:-

"15. Irrespective of the amended provision, i.e., Rule 46 (c), the Bank was within its jurisdiction and competence to follow Rule 120 of the Rules of 1980, which provides that where no specific provision has been made in the Rules in respect of any matter, the relevant rules of the State Government relating to such matter shall be followed as far as practicable. Rule 21 of the Assam Services (Pension) Rules, 1969 provides for continuation of departmental proceeding against a retired employee, which was initiated before such retirement on attaining the superannuation age. It is in this context, Mr Goswami, learned Standing Counsel, Apex Bank, submits that when the aforesaid Rule makes such provision and Rule 120 of the aforesaid Rules of 1980 also provides for following Assam Services (Pension) Rule coupled with the fact that the respondent Bank is an instrument of the State, there was nothing wrong in continuing with the proceeding against the petitioner deeming him to be in service for the purpose. Even if no such order was passed like that of the impugned order, it was within the competence and jurisdiction of the bank authority to continue with the proceeding that was initiated against the petitioner even after his superannuation age and retiring from the bank service on that basis."

28. In the light of the above judgment of a coordinate bench of this Court in Pradip Narayan Senapati (supra), and, in view of the fact that the point urged by Mr. Khatri was never argued at any stage before any authority, nor pleaded, Court is not inclined to accept such contention urged on behalf of the petitioner.

29. Though petitioner has raised certain issues relating to date of enquiry report and non-completion of the recommenced departmental proceeding within 4 (four) months to cast aspersions on the validity of the impugned order, Court is of the view that instead of getting derailed on such trivial issues, it would be more appropriate to consider the impugned order dated 18.11.2008 to examine its legality and validity. Relevant portion of the impugned order dated 18.11.2008 is as under:-

"Whereas the Hon''ble Gauhati High Court directed the Bank to complete the process within 4 (four) months of time, but due to some unavoidable circumstances the process could not be completed in due time, and as such after careful examination of all relevant facts and circumstances together with the report of the Enquiry Officer, Enquiry Proceeding, Show Cause Notice dated 15.11.1986, reply to the Show Cause Notice and relevant records and statement, the undersigned has come to the conclusion that the findings of the Enquiry Officer be accepted as all the charges framed against him have been established and Sri Kiran Chandra Deka deserves punishment under the provision of the Staff Rules of the Bank. I am also of definite opinion that dismissal from service which shall ordinarily be a disqualification for future appointment inflicted on Sri Kiran Chandra Deka can only meet the ends of Justice and keep the prestige of the Bank. As such, I Mrs Nafifa Ahmed, ACS, Managing Director of the Bank in exercising the power conferred under Rule 46 (b) of the Staff Rules of the Bank, do hereby dismiss Sri Kiran Chandra Deka erstwhile Branch In-Charge of Pathsala Branch from service of the Bank with retrospective effect from the date of the order of the Bank dated 10.10.1987 under Rule 46 (a) (vi) of the Bank''s Staff Rule, (1980)."

30. From a careful perusal of the impugned order as extracted above, it is

evident that the disciplinary authority simply accepted the findings of the Enquiry Officer and, thereafter, decided to impose the penalty of dismissal from service on the petitioner. It goes without saying that enquiry report is only an opinion. Ultimate decision taking authority is the disciplinary authority, who has to take the final decision on the disciplinary proceeding drawn up against the delinquent employee. The enquiry report certainly is a relevant material to be considered by the disciplinary authority while considering guilt or otherwise of the delinquent. But the disciplinary authority has to give its own findings on each of the charges framed against the delinquent, which must be supported by cogent reasons. All these are not discernible from the impugned order. Moreover, when the Staff Rules provide for multiple penalties it becomes necessary for the disciplinary authority to examine as to which one of the several penalties would be appropriate keeping in mind the gravity of the misconduct. Some application of mind to the imposition of penalty must be discernible from the impugned order. Here also, such application of mind is not discernible.

31. That being the position, Court is of the considered opinion that impugned order dated 18.11.2008 cannot be sustained and is accordingly set aside and quashed. Matter is remanded back to the disciplinary authority to pass fresh order(s) having regard to all the relevant facts and circumstances of the case and in accordance with law keeping in mind the observations made above. While passing the fresh order(s), the disciplinary authority shall bear in mind the long litigation history of the case and the fact that petitioner is about 75 years of age now. Let such a fresh decision be taken within a period of 3 (three) months from the date of receipt of a certified copy of this order, which shall be communicated to the petitioner.

32. Writ petition is allowed to the extent indicated above.

33. No cost(s).