

(2016) 06 KAR CK 0142

In the Karnataka High Court

Case No : Writ Appeal No. 16538 of 2011 (S-DIS)

K.P. Narayanan Kutty

APPELLANT

Vs

State Bank of India

RESPONDENT

Date of Decision : 17-06-2016

Acts Referred:

State Bank of India (Officers Service) Rules, 1992 — Rule 68(3)(ii)

Citation : (2016) 5 KantLJ 658 : (2016) 3 KCCR 2504

Hon'ble Judges : Jayant Patel and Mrs. B.V. Nagarathna, JJ.

Bench : Division Bench

Advocate : Sri M. Narayana Bhat, Advocate, for the Appellant; Sri Ramdas, Senior Advocate for Sri Karthik Raghavan, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Mrs. B.V. Nagarathna, J.—The appellant was the petitioner in W.P. No. 12887 of 2006. He has assailed the order of the learned Single Judge dated 5-9-2011 by which, his writ petition has been dismissed.

2. Briefly stated the facts are that the petitioner joined the services of the respondent-Bank in the year 1964 and after several promotions while he was working as a Branch Manager of Shivajinagar Branch, Bengaluru, he was placed under suspension in the year 1985. As no charges were framed, he challenged the order of suspension in W.P. No. 15516 of 1987. The said writ petition was allowed by order dated 16-11-1987 and he resumed his duties in the Bank. But another order of suspension was issued to him on 19-2-1988 and charge-sheet of the same date was also served on him. One of the charges was with regard to opening of a current account in the name of M/s. Stanley Electronics without seeking an opinion from the banker of the said party. Another charge pertained to grant of overdraft facilities in exercise of discretionary power and non-reporting of such sanction to the Controlling Authority. The third charge pertained to extension of Demand Draft facility without sanctioning a separate limit which was required. Yet another charge pertained to permitting the unit to

draw in excess of the cash credit account without reporting to the Controlling Authority. One more charge was with regard to discounting bills without sanctioning a separate bill discounting limit. Petitioner replied to the said charges contending that there were no irregularities committed by him. Not being satisfied with the said reply, an enquiry against the petitioner was ordered. Ultimately the petitioner was dismissed from service on 28-3-1989. He filed an appeal assailing the said order of dismissal which was also dismissed.

3. The order of dismissal was challenged in W.P. No. 4840 of 1990, which was allowed by this Court by order dated 16-2-1999, against which the respondent-Bank filed an appeal which was dismissed. The Bank preferred special leave petition before the Hon"ble Supreme Court. When the matter was pending therein, petitioner attained the age of superannuation on 15-3-1999 and retired from service on 31-3-1999. Petitioner contended that as the order of dismissal had been set aside by this Court and the matter was pending before the Hon"ble Supreme Court till he attained superannuation he was entitled to subsistence allowance. When his request was not favourably considered, petitioner filed another writ petition in W.P. No. 12422 of 2000 which was allowed by this Court by order dated 28-6-2000. That was challenged by the respondent-Bank in W.A. No. 4547 of 2000 which was disposed of by judgment dated 5-6-2003. In the interregnum, special leave petition was considered by the Hon"ble Supreme Court, leave was granted and it was converted as a civil appeal but the appeal was dismissed by judgment dated 16-1-2003. Thereafter the petitioner made a representation demanding his entire salary till retirement and consequential benefits.

4. It was his case that the Bank could not proceed against him except as provided under Rule 19(3) of State Bank of India Officers Service Rules, 1992 (hereinafter referred to as "Rules" for the sake of brevity).

5. In response, show-cause notice dated 30-4-2003 was issued by the Deputy General Manager to the petitioner indicating that the findings of the inquiry were proposed to be reversed by the General Manager. A reply was submitted by the petitioner. However, by order dated 4-9-2004 petitioner was dismissed from service with effect from 28-6-1989 in terms of Rule 68(3)(iii) of the Rules. An appeal was preferred against the said order which was rejected. Aggrieved by the same, petitioner preferred the writ petition out of which this appeal arises.

6. Several contentions were raised on behalf of the petitioner as well as the respondent-Bank before the learned Single Judge. The learned Single Judge on considering the rival contentions dismissed the writ petition by order dated 5-9-2011. Hence, the appeal.

7. We have heard Sri M. Narayana Bhat, learned Counsel appearing for the appellant and Sri Ramdas, learned Senior Counsel for Sri Karthik Raghavan, Counsel for respondent-Bank and perused the material on record.

8. Learned Counsel for the appellant contended that the inquiry proceedings are

vitiated on account of there being violation of principles of natural justice. He submitted that the petitioner had requested for copies of certain documents such as control returns to prove that the matter in controversy had been brought to the notice of the Controlling Authority as per Banking norms but the said documents were not supplied to the petitioner on the premise that they were privileged documents. Certain other documents such as inspection reports, in order to demonstrate that no irregularities have been pointed out by the internal auditor, statutory auditor and inspector were also not supplied. Copies of bills returned and particulars of cash credit account were also not given to the petitioner. Thus having been denied these vital documents, petitioner was seriously prejudiced in defending his case, was his submission.

9. He next contended that the charges framed against petitioner were vague and lacking in material particulars. Even otherwise, the charges did not affect the business of the Bank as no such allegation found a place in the charges. He further contended that the order of dismissal of the petitioner has been passed retrospectively although the Rules do not provide for which a situation. In the absence of any such Rule, the order of dismissal with retrospective operation from 28-6-1989 was one without jurisdiction. 1"his was because as on the date the order of dismissal was imposed, petitioner had retired from service on attaining the age of superannuation and was entitled to all benefits till that date. In fact, the inquiry itself could not have been continued after the superannuation of the petitioner unless permission was taken from the higher authority for continuation of enquiry under Rule 19(3) of the Rules.

10. Learned Counsel also contended that having regard to the nature of charges, the punishment imposed was wholly disproportionate. Petitioner could not have been dismissed from service, assuming but not conceding, the charges against him were proved. He further contended that without issuance of notice, payment of gratuity and provident fund have been withheld. Moreover, the Disciplinary Authority had differed from the views expressed by the Inquiry Officer in the inquiry report in respect of certain charges and therefore it was incumbent for the Disciplinary Authority to issue notice to the petitioner conveying reasons as to why the Disciplinary Authority differed from the Inquiry Officer and after ascertaining reply from the petitioner and on consideration of the same, the punishment, if any, could have been imposed.

11. It was also contended that there were several directions issued by this Court as well as by the Hon"ble Supreme Court in various writ petitions filed by the petitioner prior to his dismissal from service on 6-9-2004. The directions issued in those cases have not been complied with by the respondent-Bank. He therefore contended that the learned Single fudge could not have dismissed the writ petition, rather, the order of punishment ought to have been quashed and consequentially, the petitioner is entitled to all monetary benefits.

12. Learned Counsel for the appellant therefore contended that the writ appeal may be allowed by setting aside the judgment of the learned Single Judge and

quashing the order of dismissal passed by the respondent-Bank against the petitioner on 6-9-2004.

13. Per contra, learned Counsel appearing for the respondent-Bank supporting the order of the learned Single Judge contended that there is no merit in the appeal. He submitted that except in respect of four charges, all other charges were proved in the inquiry. That the directions issued by this Court as well as by the Hon"ble Supreme Court concerning the petitioner have all been complied with by the Bank. After the order of the Hon"ble Supreme Court, notice was issued to the petitioner with regard to taking a contrary opinion from that of the Enquiry Officer and proposing the punishment to which petitioner replied and thereafter on 6-9-2004 tire order of dismissal was passed.

14. Rule 67 of the Rules prescribes the penalties that could be imposed including that of dismissal which the Bank has rightly imposed. Also there has been no infraction in complying with the principles of natural justice while conducting the inquiry and that there is no merit in the appeal which may be dismissed, was the submission.

15. Learned Counsel for the respective parties have relied upon certain decisions which shall be referred to later.

16. The narration of facts in detail clearly indicates that this appeal has had a checkered history. It is not necessary to once again recount the facts except to consider the directions issued by this Court as well as by the Hon"ble Supreme Court in the previous proceedings concerning the petitioner so as to at the outset, ascertain as to whether there has been compliance with those directions or whether the order of dismissal is illegal, being contrary to those directions:

(a) W.P. No. 4840 of 1990 was filed by the petitioner challenging the initial order of dismissal dated 28-6-1989 of the petitioner as well as the order of the Appellate Authority filed against the said order which was also dismissed. This Court allowed the writ petition by order dated 16-2-1999 and the operative portion of the order reads as under:

"4. In the case on hand, admittedly, no opportunity has been afforded by the Disciplinary Authority before recording its own reason for disagreement with the findings recorded by the Inquiring Officer. If that is so, in my opinion, the order of dismissal of the petitioner by the respondent-Bank is liable to be quashed. In the result, I pass the following order.

5. Writ petition is allowed. The order of dismissal by the respondent-Bank and the Appellate Authority which are impugned in this writ petition are quashed. However, liberty is reserved to the Disciplinary Authority to reconsider the matter afresh in the light of the decision of the Supreme Court referred to above."

(b) That order was assailed by the Bank in W.A. No. 2101 of 1999 in an intra-Court appeal before the Division Bench which by its judgment dated 11-3-1999 dismissed the appeal, the relevant portion of which reads as under:

"Learned Single Judge relying upon the judgment of the Supreme Court in Punjab National Bank and Others v. Kunj Behari Misra, 1998 (4) JT 549 has allowed the writ petition on the short point that the Disciplinary Authority did not afford a fresh opportunity to the writ petitioner-respondent while disagreeing with the Enquiry Officer on the charges of which the respondent had been exonerated which amounted to violation of principles of natural justice. There is no infirmity in the order of the Single Judge. Liberty has already been reserved with the Disciplinary Authority to pass a fresh order in the light of the decision of the Supreme Court referred to above.

2. Dismissed."

(c) Against the judgment of the Division Bench of this Court dated 11-3-1999 passed in W.A. No. 2101 of 1999, the Hon"ble Supreme Court in C.A. No. 3781 of 1999 dismissed the appeal of the respondent-Bank with the following observations:

"... In para 19 of the judgment in Punjab National Bank's case, extracted above, when it is clearly stated that the principles of natural justice have to be read into Regulation 7(2) (Rule 50(3)(11)) of State Bank of India (Supervising Staff) Service Rules, is identical in terms applicable to the present case) and the Delinquent Officer will have to be given an opportunity to persuade the Disciplinary Authority to accept the favourable conclusion of the Enquiry Officer, we find it difficult to accept the contention advanced. On behalf of the appellants that unless it is shown that some prejudice was caused to the respondent, the order of dismissal could not be set aside by the High Court.

Therefore, we are in respectful agreement with the decision of this Court in Punjab National Bank's case being directly on the point. Moreover, in this case the High Court has given liberty to the appellants to proceed the case in accordance with law. Under these circumstances and in view of liberty given, as stated above, we do not find any good reason to upset the impugned order. Consequently, the same is affirmed and the appeal is dismissed with no order as to costs."

(d) W.P. No. 12422 of 2000 was filed by the petitioner seeking arrears of salary and other allowances due to him from 28-6-1989, the date on which he was dismissed from service in the first instance up-to-date of payment along with interest at current rate. That writ petition was disposed of by order dated 28-6-2000 with the following observations and directions:

"(5) Sri Ramdas, learned Senior Counsel submitted that the petitioner attained the age of superannuation on 15-3-1999. Therefore, I direct the Bank to pay subsistence allowance to the petitioner from the date of dismissal till 15-3-1999. This payment is subject to the result of the special leave petition pending before the Supreme Court. Since this Court has given liberty to the Bank to initiate fresh proceedings in the light of the decision of the Supreme Court referred to in the orders passed in the writ petition and the writ appeal, it is just and necessary

to put the petitioner on certain terms. Therefore, I direct the petitioner to withdraw the subsistence allowance that may be paid by the Bank in view of the directions referred to above on furnishing bank guarantee by way of security. This Bank guarantee shall subsist till the decision of the Supreme Court.

(6) With the above observations, writ petition is disposed of. Compliance within four weeks from today."

(e) The aforesaid order was also challenged by the respondent-Bank in W.A. No. 4547 of 2000 before the Division Bench which, by its judgment dated 5-6-2003 disposed of the appeal in the following terms:

"2. In the order impugned in this appeal, the learned Single Judge has directed the appellant-Bank to pay subsistence allowance to the respondent from the date of dismissal till 15th March, 1999. Since the order passed by this Court quashing the order of dismissal of the respondent from the services of the Bank has reached finality and a fresh enquiry is required to be held by the Bank, as observed by us earlier, in our view the Bank has no option but to pay the subsistence allowance directed to be paid by this Court. Further, we do not find any error in the order impugned. It is also necessary to point out that the learned Single Judge in the order impugned has directed the respondent to furnish Bank Guarantee and withdraw the subsistence allowance. However, in view of the fact the civil appeal has now been dismissed, it is needless to point out that since the Bank is under an obligation to pay the subsistence allowance to the respondent it cannot insist on furnishing of the Bank Guarantee for payment of subsistence allowance to the respondent in terms of the order made by this Court in the order impugned in this appeal.

3. The appellant-Bank is given four weeks time to comply with the direction given by the learned Single Judge in the order impugned, without insisting on furnishing of Bank Guarantee.

4. Accordingly, this writ appeal is disposed of."

17. Before we proceed to give our findings on the respective contentions, it would be necessary to complete the narration of the facts subsequent to the judgment of the Hon"ble Supreme Court dated 16-1-2003. On 3-4-2003, the petitioner addressed a letter to the Chairman of the respondent-Bank seeking full salary and allowances and other terminal benefits on the premise that his services stood restored from 25-2-1985 (date of first suspension order) and that he remained in service till 31-3-1999 when he retired on attaining the age of superannuation. Thereafter, on 4-5-2003 petitioner requested for implementation of the directions of the Hon"ble Supreme Court in C.A. No. 3781 of 1999. A similar request was made to the Bank on 6-11-2003. In the meanwhile, show-cause notice dated 30-4-2003 was issued by the Deputy General Manager of the Bank. The petitioner replied to the said show-cause notice. Thereafter order dated 6-9-2004 together with the order of the Disciplinary Authority dated 14-7-2004 was issued to the petitioner. By order dated 6-9-2004 petitioner was

dismissed from service in terms of Rule 68(3)(iii) of the Rules. The petitioner preferred an appeal before the Appellate Authority which rejected the appeal by order dated 7-7-2005 issued along with communication dated 19-7-2005.

18. Order of dismissal dated 6-9-2004 impugned in the writ petition is reproduced herein for immediate reference:

"Private and Confidential

AGM-I-16

Sri K.P. Narayana Kutty,

No. 433, 7th Cross, 5th Main,

Jagadeeshnagar, Bangalore.

Dated 6-9-2004

Dear Sir,

Disciplinary Proceedings

State Bank of India Officers Service Rules, 1992

I refer to the charge-sheet bearing No. Dis. Con.: 98, dated 19-2-1988 and the inquiry ordered into charges levelled against you. The findings of the Inquiring Authority were furnished to you under Letter No. Dis. Con.16/458, dated 30-4-2003. I have carefully perused and examined the records of the enquiry proceedings and also your written submissions dated 26-12-2003. I have also considered averments made by you during the personal hearing afforded to you on 16-4-2004.

2. The Enquiry Officer has held that charge 1(b) to 1(e), I(e)(ii), I(e)(iii), II(i), II(ii), II(iii)(a), II(v) and IV are proved in their entirety. Charges 1(a), 1(f), 1(g), 1(h), II(iv), 111(a), 111(b) and V are partially proved and charges I(e)(i), II(iii) (b) and (vi) are not proved.

3. In respect of the disagreement with the findings of the Enquiry Officer with regard to the Charges 1(f), 1(h), II(ii) and V and holding these charges as proved in its entirety by the earlier order of the Disciplinary Authority, the matter has been reconsidered as a result of decision of the Supreme Court in Civil Appeal No. 3781 of 1999 (disposed of on 16-1-2003) and the aforesaid written submissions and oral submissions have been carefully considered and evaluated by me. I hold that the said charges are also proved.

4. I enclose a copy of my recommendations dated 14-7-2004 submitted to the Appointing Authority (General Manager (D and PB)). For the reasons detailed therein my recommendations to impose upon you the penalty of "Dismissal" in term of Rule 67(j) of State Bank of India Officers Service Rules, 1992 has been approved by the Appointing Authority (General Manager (D and PB)) in terms of

Rule 68(3)(III) of State Bank of India Officers Service Rules, 1992. A copy of order dated 4-9-2004 passed by Appointing Authority (General Manager (D and PB)) is enclosed. This order shall come into force with retrospective effect from the date of the earlier order 28-6-1989 and it shall be supplemental thereto. The period from 28-6-1989 upto 15-3-1999 has been counted for suspension under Rule 21 of State Bank of India Employees' Pension Fund Rules, 1955. However, in accordance with Rule 14 of the said Rules, any claim for pension stands forfeited in view of your dismissal from service and you will also not be eligible for payment of Gratuity and Bank's contribution to Provident Fund. The period of suspension has been dealt with as such and you have been paid the subsistence allowance pursuant to the order passed by the Division Bench of the Karnataka High Court in Writ Appeal No. 4547 of 2000, dated 5-6-2003.

5. If you prefer to make an appeal to the Appellate Authority against the punishment imposed upon you, you may do so within 45 days from the date of receipt of this letter, as provided for in Rule 69(1) and 69(2) of State Bank of India Officers Service Rules, 1992.

6. Please acknowledge receipt of this letter on the duplicate copy hereof.

Yours faithfully,

Deputy General Manager and Disciplinary Authority."

The operative portion of the order of the Appellate Authority dated "-7-2005 reads as under:

"Accordingly, I hereby uphold the imposition of the penalty of "Dismissal" in terms of Rule 67(j) of State Bank of India Officers' Service Rules, 1992 on Sri K.P. Narayanan Kutty passed by the Competent Authority. However, taking into account the fact that the Official has been paid subsistence allowance for the period 28-6-1989, i.e. the date of the original order till his superannuation i.e. 15-3-1999, I modify the date of dismissal to be altered to 15-3-1999. This order shall come into force with effect from 15-3-1999 i.e. the date of superannuation. I also order that the period from 28-6-1989 up to 15-3-1999 (date of superannuation) be treated as under suspension under Rule 21 of State Bank of India Employees' Pension Fund Rules and not be counted for the purpose of terminal benefits. However, in accordance with Rule 14 of the said Rules, any claim for pension stands forfeited in view of the dismissal from service. Consequently, I hold that Sri K.P. Narayanan Kutty shall not be eligible for payment of gratuity and also the Bank's contribution to the provident fund. I also hold that the Gratuity be forfeited and be adjusted towards the loss caused to the Bank in terms of Section 4(6)(a) of the Payment of Gratuity Act, 1972. The period of suspension has been dealt with as such and he has already been paid the subsistence allowance pursuant to the orders passed by the Division Bench of the Karnataka High Court in Writ Appeal No. 4547 of 2000 in W.P. No. 12422 of 2000."

19. Having regard to the aforesaid developments in the case, we propose to consider the correctness of the order of the learned Single Judge impugned in this writ appeal having regard to the following three aspects viz.: (1) compliance with orders and directions of this Court and the Hon"ble Supreme Court in the earlier proceedings concerning the petitioner; (2) imposition of punishment with retrospective effect; and (3) withholding of gratuity and Provident Fund while imposing the punishment of dismissal from service.

20. As already noted while the disciplinary proceedings were still pending and had not attained finality, petitioner retired from service on attaining the age of superannuation. Rule 19 of the Rules deals with retirement. Rule 19(3) is relevant in the instant case. It reads as under:

"19. (3) In case disciplinary proceedings under the relevant rules of service have been initiated against an officer before he ceases to be in the Bank's service by the operation of, or by virtue of, any of the said rules or the provisions of these rules, the disciplinary proceedings may, at the discretion of the Managing Director, be continued and concluded by the authority by which the proceedings were initiated in the manner provided for in the said rules as if the officer continues to be in service, so however, that he shall be deemed to be in service only for the purpose of the continuance and conclusion of such proceedings."

Under Rule 68(3)(ii) the procedure contemplated where the Disciplinary Authority disagrees with the findings of the Inquiring Authority is stated as under:

"68. (3)(ii) The Disciplinary Authority, if it disagrees with the findings of the Inquiring Authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge, if the evidence on record is sufficient for the purpose."

Rule 68-A(4) and 68-A(5) which deal with suspension read as under:

"68-A. (4) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon an officer under suspension is set aside or declared or rendered void in consequence of, or by, a decision of a Court of Law, and the Disciplinary Authority on consideration of the circumstances of the case decides to hold further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the officer shall be deemed to have been placed under suspension by the Disciplinary Authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders.

68-A. (5)(a) An order or suspension made under this rule shall continue to remain in force until modified or revoked by the authority which made the order;

(b) An order of suspension made under this rule may at anytime be modified or revoked by the authority which made the order."

21. From the narration of facts, it is noted that pursuant to the issuance of

articles of charges against the petitioner on 19-2-1988, enquiry was conducted against him. The report of the Inquiry Officer was furnished to the petitioner. Certain findings of the Inquiry Officer as stated in the enquiry report were reversed in respect of certain charges. No notice was issued to the petitioner prior to reversal of the findings given by the Inquiry Officer. By order dated 28-6-1989 the petitioner was dismissed from service and the Appellate Authority affirmed the order of dismissal. In W.P. No. 4840 of 1990 this Court held that no opportunity was given to the petitioner nor were reasons recorded for disagreement with the findings of the Inquiry Officer. It was held that the order of dismissal by the respondent-Bank was illegal and it was quashed as also the order of the Appellate Authority. Liberty was given to the Disciplinary Authority of the Bank to reconsider the matter in light of the decision of the Hon''ble Supreme Court in the case of Punjab National Bank and Others v. Kunj Behari Misra, 1998 (4) JT 549. The order of the learned Single Judge is dated 16-2-1999. The appeal filed against that order was dismissed on 11-3-1999. The special leave petition filed by the Bank before the Hon''ble Supreme Court which was converted into civil appeal was also dismissed on 16-1-2003. By then i.e., on 31-3-1999 petitioner had retired from service on attaining the age of superannuation. Subsequent to the setting aside of the order of dismissal by this Court, the Bank did not reinstate the petitioner. In the interregnum, the petitioner sought for payment of his arrears of his salary and allowances on the premise that he was reinstated in service, subsequent to the order of this Court dated 16-2-1999 i.e., for the period from the date of his dismissal i.e., 28-6-1989 till the date of his superannuation on 31-3-1999. But in W.P. No. 12422 of 2000 disposed of on 28-6-2000, this Court directed the Bank to pay only subsistence allowance to the petitioner from the date of dismissal till 15-3-1999 the day on which he attained superannuation on the premise that he was continued under suspension despite the order of dismissal by this Court. The payment of subsistence allowance was subject to the result of the special leave petition pending before the Hon''ble Supreme Court. The withdrawal of the subsistence allowance was also on furnishing a Bank Guarantee way of security which was to subsist till the decision of the Hon''ble Supreme Court. In W.A. No. 4547 of 2000 filed by the Bank against order dated 28-6-2000 passed by the learned Single Judge in W.P. No. 12422 of 2000 while disposing of the appeal, the Division Bench of this Court granted the respondent-Bank four weeks time to comply with the aforesaid directions without insisting on furnishing of Bank Guarantee. Subsequently the Hon''ble Supreme Court in C.A. No. 3781 of 1999, disposed of on 16-1-2003 and held that liberty given by this Court to the Bank may be availed of and confirmed the orders of this Court.

22. It is the contention of the respondent-Bank that on 30-4-2003 the departure made by the Bank with regard to findings of the Inquiry Authority were furnished by Letter No. DIS/CON 16/458 and reply was given by the petitioner dated 26-12-2003 and personal hearing was afforded to the petitioner on 16-4-2004 on the aforesaid aspect of the matter as also on the payment to be imposed on

petitioner. In the copy of the proceedings enclosed to the communication dated 6-9-2004 extracted above, it is noted that the findings of the Inquiry Officer with regard to the charges 1(f), 1(h), II(ii) and V have been disagreed with by the Disciplinary Authority and it has been held that these charges are also proved after considering the submissions made by the petitioner in writing and his averments made during the personal hearing. This is evident on a conjoint reading of Annexure-Y along with its enclosure dated 14-7-2004. Therefore, it is held that there is compliance with the directions of this Court and the Hon''ble Supreme Court extracted supra on the aforesaid aspect of the matter.

23. The next aspect is with regard to the contention of petitioner's Counsel to the effect that the penalty of dismissal from service could not have been imposed with retrospective effect i.e., prior to the dismissal order dated 16-9-2004. It is also contended that the penalty is harsh and disproportionate to the charges levelled against the petitioner.

24. We have perused the charges issued against the petitioner. Under Rule 167(e) to 67(h) of the Rules reduction to a lower grade or post, or to a lower stage in a time scale; compulsory retirement; removal from service and dismissal, are the major penalties. The order of dismissal being retrospective in nature, whether impermissible in law, shall be considered first.

25. The question is as to whether the order of dismissal dated 6-9-2004 could have been effective from 28-6-1989 i.e., with retrospective effect coinciding with the first order of dismissal, which was in fact set aside by this Court. On perusal of Annexure-Y, dated 6-9-2004 it is clear that the dismissal order is from retrospective effect and it is stated to be supplemental to the order of dismissal dated 28-6-1989. The period from 28-6-1989 up to 15-3-1999 when the petitioner retired from service on attaining the age of superannuation has been treated as suspension in terms of Rule 21 of State Bank of India Employees' Pension Fund Rules, 1955. But under Rule 14 of the said Rules, any claim of pension stands forfeited in view of dismissal from service. On the one hand, it is stated that the period from 28-6-1989 up to 15-3-1999 is treated as suspension. On the other hand, the claim for pension is forfeited. No doubt, if an employee is dismissed from service then he is not entitled to pension. But in the instant case, what has to be noticed is that the impugned order of dismissal is with effect from 28-6-1989, though the order has been passed on 6-9-2004 i.e., with retrospective effect. The question is as to whether such an order could have been passed particularly having regard to the fact that the petitioner had retired from service on 15-3-1999 and when the earlier order of dismissal 28-6-1989 had been set aside by this Court and he was deemed to be under suspension in terms of Rule 68-A(4), from the date of earlier order of dismissal until further orders, which in the instant case can be construed to be from 28-6-1989 till 15-3-1999 when the petitioner retired from service. In fact, a direction was also issued by this Court in W.P. No. 12422 of 2000 disposed of on 28-6-2000 and judgment dated 5-6-2003 passed in W.A. No. 4547 of 2000 for payment of subsistence

allowance for the aforesaid period. Therefore, for the aforesaid period when subsistence allowance was directed to be paid by this Court, the petitioner is deemed to be in service but under suspension until he retired on attaining the age of superannuation. Hence, he is entitled to subsistence allowance for the aforesaid period. In case the same has not been paid till date a direction ought to issue in this appeal for the said payment.

26. In view of the aforesaid discussion, the petitioner is deemed to be in service from 28-6-1989 till 15-3-1999, though under suspension. He was entitled to subsistence allowance for the said period. In the circumstances, the order of dismissal could not have been with effect from 28-6-1989. That portion of the order dated 6-9-2004 is hence illegal and the same is liable to be quashed. Then the question is, whether the order of dismissal is effective from the date of the order i.e., 6-9-2004, which is after the superannuation of the petitioner on attaining the age of retirement.

27. In this context, it would be relevant to refer to the decisions of the Hon''ble Supreme Court as well as this Court with regard to imposition of punishment on an employee who has already superannuated from service and where the disciplinary proceedings are concluded subsequent to such superannuation. The question is as to whether the punishment to be imposed must be retrospective or prospective in nature i.e., from the date of imposition of punishment or as to whether the punishment must be from the date of superannuation from service. Of course, in the instant case, the punishment is indeed retrospective i.e., from the date of earlier order of dismissal i.e., 28-6-1989 which is wholly illegal. In other words, the question is as to how the period from the date of superannuation till the date of imposition of punishment should be treated in the instant case i.e., from 31-3-1999 till 6-9-2004. In this regard, it is already noted that the enquiry proceedings under Rule 19(3) could continue even after the delinquent employee attained superannuation. The contention of the respondent-Bank is that if the enquiry was initiated prior to superannuation of the employee and the said enquiry continued even after the employee reached the age of superannuation and if ultimately penalty of dismissal from service is imposed, the employee concerned would not be entitled to any retrial benefit. In this context, decision of the Apex Court in the Hon''ble Supreme Court in Ramesh Chandra Sharma v. Punjab National Bank and Another, (2007) 9 SCC 15, is relevant, particularly at paragraph 18, wherein it has been stated that when a legal fiction is created under the statute, it has been given its full effect as has been observed in East End Dwelling Company v. Finsbury Borough Council, (AER 599-D-2) All E.R. 587 (HL). Another decision on the same lines is State Bank of India v. Ram Lal Bhaskar and Another, (2011) 10 SCC 249. Subsequently, the Hon''ble Supreme Court in Chairman-cum-Managing Director, Mahanadi Coalfield Limited v. Rabindranalh Choubey, (2013) 16 SCC 411 has referred the matter to a Larger Bench after considering the aforesaid two decisions. This Court in Sri C.M. Machaiah and Others v. Bank of taroda and Others, W.A. No. 676 of 2006 connected with W.A. Nos. 808, 2062 and 169 of 2006 and 3948 of 2005,

disposed of on 8-6-2011 has also held to the same effect as in Ramesh Chandra Sharma's case.

28. We may also record that, subsequently again such a situation arose before the Apex Court in case of State Bank of Patiala and Another v. Ram Niwas Bansal (dead) through L.Rs., AIR 2014 SC 1264. The Apex Court after considering its earlier decision including the case of Ramesh Chandra and Ramlal Bhaskar observed at paragraph 38 as under:

"38. In the case at hand, the disciplinary proceeding was initiated against the Delinquent Officer while he was in service. The first order of dismissal was passed on 23-4-1985. The said order of punishment was set aside by the High Court and the officer concerned was directed to be reinstated for the limited purpose, i.e., supply of enquiry report and to proceed in the disciplinary proceeding from that stage. The said order was not interfered with by this Court. The Bank continued the proceeding. Needless to emphasise, the said continuance was in pursuance of the order of the Court. Under these circumstances, it has to be accepted that the concept of deemed continuance in service of the officer would have full play and, therefore, an order of removal could have been passed after finalisation of the departmental proceeding on 22-11-2001. We have already held that the said order would not have been made retrospectively operative, but that will not invalidate the order of dismissal but it would only have prospective effect as has been held in R. Jeevaratnam v. State of Madras, AIR 1966 SC 951."

(emphasis supplied)

The aforesaid shows that the order in the disciplinary proceedings could not have been made retrospectively operative but that would not invalidate the order of dismissal as such which would have prospective effect. In R. Jeevaratnam v. State of Madras, AIR 1996 SC 951, the Hon'ble Apex Court has opined that there is an order of dismissal with retrospective effect, then the said order is a composite order but separable. One part of the order is the dismissal order, the second part of the order is the dismissal order being with retrospective effect. The two parts of the order are severable. Where an order of dismissal with retrospective effect is invalid, there is no reason why the first part of the order i.e., the order of dismissal should not be given the fullest effect. The Court cannot pass an order of dismissal but it can give effect to the valid and severable part of the order.

29. Further, as noted above, in case of Chairman-cum-Managing Director, Mahanadi Coalfield Limited v. Rabindranath Choubey, (2013)16 SCC 411, after considering Ram Lal Bhaskar's case, Apex Court comprising of two Hon'ble Judges, has found it appropriate to refer the matter to a Larger Bench and the relevant observations made at paragraph 21 can be extracted for ready reference as under:

"21. It is thus clear that the question as to whether penalty of dismissal could be

imposed after retirement was not categorically raised or dealt with in Ram Lal case. No doubt, penalty of dismissal was inflicted upon the employee in that case. But it was not specifically or in clear terms contended that such a penalty could not be imposed on an employee who is already permitted to retire. At the same time, innuendo, the judgment gives a semblance of indication that such a penalty is permissible because of the reason that as per the rules, for the purposes of enquiry, the employee shall be deemed to be in service. As a sequatur, one can deduce the principle that when the Rules, by creating fiction, treat the officer still in service, albeit for the limited purpose of the continuance and conclusion of such proceedings, then any of the prescribed penalties, including dismissal, can be imposed. However, as we have pointed out above, the issue of permissibility of penalty of dismissal on such a retired official was neither raised nor any direct discussion followed thereupon. At the same time, the fact remains that penalty of dismissal, even after the retirement, was upheld. This goes contrary to the dicta laid down in Jaswant Singh Gill which took the view "that no major penalty is permissible after retirement and was not even referred to."

(emphasis supplied)

Thereafter, at paragraph 23 of the said decision, the Apex Court concluded inter alia as under:

"23. As a corollary one can safely say that the employer has right to withhold the gratuity pending departmental inquiry. However, as explained above, this course of action is available only if Disciplinary Authority has necessary powers to impose the penalty of dismissal upon the respondent even after his retirement. Having regard to our discussion above of Jaswant Singh Gill and Ram Lal Bhaskar's cases, this issue needs to be considered authoritatively by a Larger Bench. We, therefore, are of the opinion that the present appeal be decided by a Bench of three Judges."

(emphasis supplied)

30. The upshot of the aforesaid discussion is that, it cannot be concluded that there is no power to impose punishment after the enquiry is concluded though, prior thereto, employee concerned has reached the age of superannuation. However, it is a different matter as to what type of punishment could be imposed and further whether prospectively or with a retrospective effect, are aspects which may be required to be examined.

31. In the instant case, however, having regard to the fact that this Court had earlier ordered that the petitioner was entitled to subsistence allowance from 28-6-1989 to 31-3-1999, the petitioner is deemed to be in service for the said period, but under suspension and therefore, was entitled to subsistence allowance for the aforesaid period from 28-6-1989 to 31-3-1999 as the proceedings of the enquiry were not concluded and also the order of dismissal dated 28-6-1989 was set aside and mired in legal controversy before this Court

as well as the Hon"ble Supreme Court. Tire petitioner retired from service on 31-3-1999 and the impugned order of dismissal is dated 6-9-2004. In the circumstances, for the said period between 1-4-1999 till 5-9-2004, the petitioner was not subjected to any order of punishment . Hence, for the said period, the petitioner was entitled to his pensionary benefits as the impugned order of dismissal dated 6-9-2004 has to construed to be only prospective in nature from that date. The order of dismissal with retrospective effect from 28-6-1989 is liable to be quashed.

32. In view of the aforesaid discussion, we hold that the order of penalty should be considered with effect from 6-9-2004 prospectively and not retrospectively from 28-6-1989. Therefore, whatever pensionary benefits the petitioner could have received or received from 1-4-1999 till 6-9-2004, the same cannot be recovered from him as he was entitled to the same. But from 6-9-2004 onwards, the petitioner would not be entitled to any pensionary benefits. However, in case no pensionary benefits, which the petitioner is entitled to have been paid to the petitioner from 1-4-1999 till 6-9-2004, then a direction is to be issued to the respondent-Bank to pay the same.

33. In view of the above, we do not wish to dilate on the aspect of proportionality of punishment as the order of dismissal with effect from 28-6-1989 is set aside and it is construed to be with effect from 6-9-2004.

34. The next aspect is with regard to the forfeiture of Gratuity and Bank's contribution to Provident Fund. Before any forfeiture of the said payments could be made, the procedure contemplated under the respective Acts and Rules must be complied with. Rule 24 of the State Bank of India Employees' Provident Fund Rules reads as under:

"24. If any member shall be dismissed from the service of the Bank for any fault or other cause justifying dismissal, he shall not be entitled to receive, unless permitted to do so by the Trustees, the sums contributed by the Bank to his provident fund account, or any interest credited to that account on the sums so contributed. Provided that when any member is so dismissed, any amount due under a liability incurred by the member to the Bank (not exceeding in any case the sums so contributed by the Bank and interest thereon) shall be paid by the Trustees to the Bank out of the sum standing to the credit of the member's account."

The petitioner was entitled to receive the Provident Fund on attaining the age of superannuation as on that day, he was not a dismissed employee. The earlier order of dismissal passed in the year 1989 had been set aside and the subsequent order was passed only on 6-9-2004. Therefore, the petitioner was entitled to the Bank's contribution to the Provident Fund Account also, on attaining the age of superannuation.

35. As far as the payment of gratuity is concerned, under Section 4 of the Payment of Gratuity Act, 1972, gratuity is payable to an employee on the

termination of his employment after he has rendered continuous service for not less than five years on his superannuation. Under sub-section (6) of Section 4, the gratuity of an employee, whose services have been terminated for any act, wilful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused.

In the instant case, there is no evidence or finding to the effect that the petitioner had caused any loss or damage to the Bank. Therefore, the Bank could not have withheld payment of gratuity under the provisions of the Act when the petitioner retired from service or on his later dismissal from service.

36. We are of the view that the respondent-Bank was not right in withholding the payment of Gratuity and Bank's contribution towards Provident Fund. Therefore that portion of the order dated 6-9-2004 is quashed. A direction shall ensue to the Bank to pay the said amounts with stipulated interest from the dates they were due, till the date of realisation, within a stipulated period.

37. Having regard to the fact that in the earlier litigation the petitioner has not been able to succeed with regard to his contentions regarding violation of principles of natural justice in the conduct of the enquiry proceedings particularly with regard to non-supply of relevant documents and having regard to the subsequent proceedings, we are of the view that those contentions stand concluded and could not have been reagitated by the petitioner before the learned Single Judge in the writ petition out of which this appeal arises, as the writ petition concerned challenge to orders dated 6-9-2004, 14-7-2004, 4-9-2004, 19-7-2005 and 7-7-2005 only. Also the earlier order of dismissal dated 28-6-1989 had been quashed by this Court in W.P. No. 4840 of 1990 and no appeal was filed by the petitioner with regard to the manner in which the enquiry was conducted subsequent to the order dated 16-2-1999 passed in W.P. No. 4840 of 1990 although the order of dismissal was set aside. Therefore, for this reason also we do not propose to consider submissions regarding alleged violation of principles of natural justice in the enquiry proceedings in this appeal.

38. No other contention being raised, the appeal is liable to be allowed in part with costs and in the following manner:

1. The respondent-Bank which has dismissed the petitioner from service with retrospective effect from 28-6-1989 is quashed. It is held that the order of dismissal is prospective from 6-9-2004.

2. For the period from 19-2-1988 to 28-6-1989 and for the period from 29-6-1989 till the date of superannuation i.e., 31-3-1999, petitioner is entitled to subsistence allowance. The same to be paid to the petitioner forthwith, in case the same has yet not paid. Consequently, a direction is issued to release pension if any from 1-4-1999 to 5-9-2004 to the petitioner forthwith.

3. The petitioner is entitled to payment of his entire Provident Fund (Bank's

contribution as well as petitioner's contribution).

4. Petitioner is entitled to gratuity benefits on retirement, on attaining the age of superannuation.

39. The payments at 3 and 4 are to be paid as per the stipulated interest, I within a period of two months from the date of receipt of the certified copy of this order, as it is submitted at the Bar that the petitioner is seriously ill and virtually on the death bed.