

(2014) 12 MP CK 0012
In the Madhya Pradesh High Court
Case No : Writ Appeal No. 290/2010

Nanak Chand Makhijani

APPELLANT

Vs

UCO Bank

RESPONDENT

Date of Decision : 16-12-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 409, 420
Prevention of Corruption Act, 1988 — Section 13(1)(d)

Citation : (2014) 12 MP CK 0012

Hon'ble Judges : Sheel Nagu, J;S.K. Gangele, J

Bench : Division Bench

Advocate : M.P.S. Raguvanshi and Ajay Bhargava, Advocate for the Appellant;
Ankur Mody, Advocate for the Respondent

Judgement

S.K. Gangele, J.—The appellant has filed this appeal against the order dated 23-02-2010 passed by the writ Court in Writ Petition No. 544/2001. The appellant challenged his order of dismissal dated 29/09/2009 and the order of appellate authority dismissing the appeal before the writ Court.

2. The appellant was appointed as Clerk-cum-Typist in the United Commercial Bank on 23/01/1959. He was further promoted to the post of Special Assistant in the year 1976 and thereafter promoted to the post of Junior Management Grade Scale-I and Middle Management Grade Scale II. A charge-sheet was issued against the appellant on 10/03/1993. A departmental enquiry was conducted. He was retired from service w.e.f. 01/5/1997. The order of dismissal was passed on 29/09/1991.

3. The writ Court considered merits of departmental enquiry and recorded findings that the departmental enquiry was conducted in accordance with law and there was no illegality or irregularity in the departmental enquiry. The appellant was also prosecuted for commission of offence under Sections 13(1)(d) & (1)(2) of Prevention of Corruption Act read with Sections 409 and 420 of Indian Penal Code. He was convicted by the trial Court. Thereafter, an appeal

was filed by the appellant before this Court, which is pending.

4. Learned counsel for the appellant has contended that after dismissal from service of the appellant, the employee and employer relationship between the Bank and the appellant came to an end. Hence, the departmental enquiry could not be continued against the appellant and an order of dismissal cannot be passed.

5. Learned counsel for the Bank has contended that in accordance with provisions of regulations, named as ""UCO Bank Officers" Service Regulations, 1979"", the Bank has power and authority to continue the disciplinary proceedings even after retirement of an employee and invoking the aforesaid regulations, the Bank continued the departmental enquiry against the appellant and thereafter, passed an order of dismissal. Hence, the order is in accordance with law.

6. Regulation 20(3)(iii) of UCO Bank Officers" Service Regulations, 1979 as amended, is relevant for deciding the controversy raised in the appeal. The said regulation reads as under:-

"The officer against whom disciplinary proceedings have been initiated will cease to be in service on the date of superannuation but the disciplinary proceedings will continue as if he was in service until the proceedings are concluded and final order is passed in respect of thereof. The concerned officer will not receive any pay and/or allowance after the date of superannuation. He will also not be entitled for the payment of retirement benefits till the proceedings are completed and final order is passed thereon except his own contribution to CPF."

7. In accordance with aforesaid regulation, the disciplinary proceedings initiated against the officer while in service, would continue even after retirement of the officer. He was in service until the proceedings are concluded and final order is passed in respect thereof.

8. The aforesaid regulation authorizes the Bank to continue the departmental proceedings after retirement of an officer if departmental enquiry was initiated while the officer was in service.

9. In the present case, charge-sheet was issued against the appellant on 10/03/1993. He retired from service in the year 1997 and thereafter, the order of dismissal was passed on 29/09/2009. When the departmental enquiry was initiated the appellant was in service and certainly, it could be continued after retirement of the appellant also.

10. The principle of law in regard to continuation of departmental enquiry after retirement from service against a bank employee if it was initiated prior to retirement, has been considered by three Judges Bench of Hon"ble Supreme Court in the case of State Bank of India Vs. Sramlal Bhaskar and Another, reported in (2011) 10 SCC 249 and Hon"ble Supreme Court has held as under:-

"9. We have perused the decision of this Court in UCO Bank and Another Vs. Rajinder Lal Capoor, and we find that in the facts of that case the delinquent officer had already superannuated on 1-11-1996 and the charge-sheet was issued after his superannuation on 13-11-1998 and this Court held that the delinquent officer having been allowed to superannuate, the charge-sheet, the enquiry report and the orders of the disciplinary authority and the appellate authority must be held to be illegal and without jurisdiction. In the facts of the present case, on the other hand, we find that the charge-sheet was issued on 22-12-1999 when Respondent 1 was in service and there were clear provisions in Rule 19(3) of the State Bank of India Officers Service Rules, 1992, that in case disciplinary proceedings under the relevant rules of service have been initiated against an officer before he ceased to be in the bank's service by the operation of, or by virtue of, any of the rules or the provisions of the Rules, the disciplinary proceedings may, at the discretion of the Managing Director, be continued and concluded by the authority by whom the proceedings were initiated in the manner provided for in the 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.

10. We may mention here that a similar provision was also relied on behalf of UCO Bank in UCO Bank v. Rajinder Lal Capoor in Regulation 20(3)(iii) of the UCO Bank Officer Employees' Service Regulations, 1979, but this Court held that the aforesaid regulation could be invoked only when the disciplinary proceedings had been initiated prior to the delinquent officer ceased to be in service. Thus, the aforesaid decision of this Court in UCO Bank v. Rajinder Lal Capoor does not support Respondent 1 and there is no merit in the contention of the counsel for Respondent 1 that the enquiry and the order of dismissal were illegal and without jurisdiction."

11. In the aforesaid judgment, Hon'ble Supreme Court has held that if an enquiry was initiated against the employee during his service tenure, it would be continued after retirement for the purpose of the continuance and conclusion of enquiry proceedings.

12. As quoted above in this order, the Bank regulation also provides the same. Hence, the arguments advanced by learned counsel for the appellant has no merit and it is hereby rejected. In regard to the merits of enquiry proceedings, learned counsel for the appellant has not challenged the merits. The writ Court has considered the merits in detail. There is no illegality in the findings recorded by the writ Court in this regard.

13. Consequently, we do not find any merit in this writ appeal. It is hereby dismissed. No order as to costs.