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**(2005) 01 GAU CK 0022**

**In the Gauhati High Court**

**Case No :** WP (C) No. 7420 of 2004

Prabindra Nath Bhattacharjya APPELLANT

Vs

Assam Co-operative Apex Bank Ltd. and Another RESPONDENT

**Date of Decision :** 18-01-2005

**Acts Referred:**

**Citation :** (2005) 2 GLR 274

**Hon'ble Judges :** Biplab Kumar Sharma, J

**Bench :** Single Bench

**Advocate :** G.K. Bhattacharyya and P. Sarmah, for the Appellant; M.K. Choudhury, for the Respondent

**Final Decision :** Allowed

# Judgement

B.K. Sharma, J

1. By means of this writ application, the petitioner has assailed the legality and validity of the order dated 4.7.2003 by which while allowing the petitioner to go on retirement on attaining the age of superannuation with effect from 30.9.2003 deemed the petitioner to be in service as per the provisions of Rule 46(c), of the Staff Rules of the Bank till final disposal of the CBI enquiry including the alleged irregularity of finance involving the petitioner.

2. The petitioner was an employee under the respondent bank serving as Manager, Planning and Development Department at the time of his retirement. On receipt of the aforesaid impugned communication dated 4.7.2003, although the petitioner was allowed to go on retirement with effect from 30.9.2003 by order dated 30.9.2003, in view of his deemed continuance in service pending the alleged CBI enquiry, he has not been provided with the retirement benefits. It is under these circumstances, the petitioner has approached this Court seeking quashing of the impugned communication dated 4.7.2003 with all consequential retirement benefits as admissible to the petitioner under the rules.

3. No affidavit in opposition has been filed by the respondent bank. I have heard

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Mr. G.K. Bhattacharyya, learned senior advocate assisted by Mr. P. Sarmah, learned counsel for the petitioner. Also heard Mr. M.K. Choudhury, learned senior counsel for the respondent bank assisted by Mr. M. Dutta, learned counsel. Mr. Bhattacharyya referring to the Rule 46 (c) of the Staff Rules on the basis of which the impugned communication dated 4.7.2003 has been made, submits that the provisions of the said rules are not at all applicable to the facts and circumstances involved in this case. He further submits that even if the provisions are made applicable, the bank authority cannot detain the petitioner indefinitely toward deprivation of the retirement benefits without giving any finality to the matter.

4. Mr. M.K. Choudhury, learned senior counsel for the respondent bank submits that since the matter is under investigation by the CBI and has not attained its finality, the respondent bank is not in a position to release the retirement benefits in favour of the petitioner. He submits that as per the provision of Rule 46(c) of the Staff Rules, the petitioner although is deemed to be in service till the conclusion of the enquiry relating to financial irregularities, he will not be entitled to any retirement benefits.

5. I have considered, the rival submissions made by the learned counsel for the parties and the materials available on record. Rule 46(c) of the Staff Rules centering around which the, present controversy has arisen reads as follows :

Rule No. 46(c):

Notwithstanding anything contained in the Staff Rules of the Bank for the time being in force, an employee of the Bank shall be subject to disciplinary proceedings for any alleged acts of omission and commission causing pecuniary loss to the Bank or in any other way harming the reputation, prestige and good-will of the Bank, and for any acts of violations of the provisions of the Bye-Laws and Staff Rules or any standing orders/instructions/Circulars/procedures of the Bank, even after their superannuation/retirement from the services of the Bank, for such reasonable period so as to enable the Bank to complete the disciplinary proceedings initiated at the earliest and without any reasonable cause of delay on the part of the Bank.

Provided that during such extended period of service, the concerned employee would not be entitled to any salaries and other service benefits and his retiral benefits would remain withheld till the charges levelled against him are finally disposed of as per existing provision of the Staff Rules of the Bank. The concerned employee would be provided with all opportunities for effective participation in the disciplinary proceedings. On his failure to participate In the disciplinary proceeding, the Bank will be at liberty to proceed ex-parte and impose punishments commensurate with the gravity of the offence as deemed fit and proper by the Management of the Bank. In case any punishment is inflicted, such punishment shall be deemed to have been effective on the date of retirement/superannuation.

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Notwithstanding anything contained in the Staff Rules of the Bank the Managing Director shall be the competent authority to extend service of the concerned employees without any service benefit beyond the period of retirement/ superannuation for the purpose of departmental proceedings.

This Rule shall also be applicable to all existing pending cases of Departmental proceedings as on the date of the Circular issued in this regard."

6. The said provision of Rule 46(c) which came to be incorporated by way of an amendment pursuant to the judgment of this Court passed-on 19.2.2002 in C.R. No. 164/97 speaks of continuation of the service of the incumbent beyond the age of superannuation deeming him to be in service for the purpose of conclusion of departmental proceeding. As per the said Rule, during such continuation and till conclusion of the departmental proceeding, the incumbent will not be entitled to any retirement benefits. Rule 46(c) as quoted above, speaks of only departmental proceeding initiated against the bank employee/officer. It is in this context, Mr. G.K. Bhattacharyya, learned senior counsel for the petitioner submits that the provision cannot be applied to the case of an employee or officer who has gone on retirement on attaining the age of superannuation and that the said provision would only be

applicable in respect of employee/officer against whom the departmental proceeding was initiated while in service.

7. There is no dispute that till date no departmental proceeding has been initiated against the petitioner. A departmental proceeding is set to motion by issuing a charge sheet against the delinquent. Mr. M.K. Choudhury, learned senior counsel for the respondent bank fairly submits that the petitioner has not been issued with any charge sheet pertaining to any departmental proceeding till date. However, he submits that in view of pendency of the CBI enquiry pertaining to some financial irregularities, the provision of Rule 46(c) will be applicable in the case of the petitioner.

8. In the impugned order dated 4.7.2003, there is no indication of the involvement of the petitioner. The impugned order only speaks of deeming the petitioner to continue in service pending final disposal of the CBI enquiry investigating the financial irregularities of Brahmaputra Sugar manufacturing Co. Ltd. The said communication dated 4.7.2003 does not involve the petitioner directly. It only speaks of the CBI enquiry pertaining to some financial irregularities in respect of Brahmaputra Sugar Manufacturing Co. Ltd. There is no indication as to how the petitioner is involved in such financial irregularities. It is only by way of drawing a presumption against the petitioner. However, no definite materials could be placed by the respondent bank against the petitioner. No affidavit in opposition has also been filed by the respondent bank.

9. As already noticed above, the aforesaid provision of Rule 46(c) is applicable only to a departmental proceeding pending against a retiree. It is not the case of the respondent bank that any departmental proceeding has been initiated

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against the petitioner. Even otherwise also it will be unfair to deny the retirement benefits to a retiree by way of initiation of departmental proceeding after his retirement without there being any specific provision in the Staff Rule.

10. As submitted by Mr. Bhattacharyya, learned senior counsel for the petitioner even after the retirement of the petitioner from service on attaining the age of superannuation with effect from 30.9.2003, no departmental proceeding has been initiated against the petitioner till date. There is no sight of completion of the alleged CBI enquiry. As noticed above, there is no indication of involvement of the petitioner in the CBI enquiry.

11. In view of the above, I am of the considered opinion that Rule 46(c) of the Staff Rules is not applicable to the case of the petitioner. Consequently, the impugned communication dated 4.7.2003 is liable to be set aside and quashed which I accordingly do.

12. The petitioner shall now be entitled to all retirement benefits as may be admissible under the relevant bank rules. He shall be paid the retirement benefits at the earliest and at any rate not later than one month from today.

13. The writ petition stands allowed. There shall be no order as to costs.

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