(2015) 10 DEL CK 0217

In the Delhi High Court

Case No : LPA 673, 674, 675, 676 and 677/2015

Punjab & Sind Bank — APPELLANT

Vs

Nand Lal Phatnani and Others — RESPONDENT

Date of Decision : 09-10-2015

Acts Referred:

Citation : (2016) 1 AD 725 : (2015) 234 DLT 589

Hon'ble Judges : Pradeep Nandrajog and Mukta Gupta, JJ.

Bench : Division Bench

Advocate : Jagat Arora and Rajat Arora, Advocates, for the Appellant; Vivek Singh, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—Whether the learned Single Judge has correctly opined that the issue raised in the five writ petitions filed by the five respondents in the above captioned five appeals was covered in their favour as per the decision reported as State of U.P. and Another Vs. Shri Krishna Pandey, and that the decision reported as State of West Bengal Vs. Pronab Chakraborty, was not applicable, is the question which arises for consideration before this Bench in the five captioned appeals.

2. The respondent in each appeal was an employee of the appellant bank. Nand Lal Phatnani the respondent in LPA No. 673/2015 superannuated on May 31, 2010. Harvinder Pal Singh the respondent in LPA No. 674/2015 superannuated on July 31, 2011. Paramjit Singh Anand the respondent in LPA No. 675/2015 superannuated on July 30, 2013. Parminder Singh the respondent in LPA No. 676/2015 superannuated on August 27, 2010 and Harpreet Singh Makker the respondent in LPA No. 677/2015 superannuated on November 30, 2012. All of them were charge-sheeted under charge- sheet(s) dated December 26, 2014. Whereas Nand Lal Phatnani, Harpreet Singh Makker and Paramjit Singh Anand were charge-sheeted for the same acts of omission and commission, being members of a loan committee, pertaining to enhanced limits of a bank guarantee

furnished by the bank at the instance of M/s. Zoom Developers Pvt. Ltd.; Harvinder Pal Singh and Parminder Singh were charge-sheeted concerning the enhancement of the said bank guarantee in their capacity as a Branch Manager and the General Manager. Therefore, it is apparent that allegations in the charge-sheet against Nand Lal Phatnani, Harpreet Singh Makker and Paramjit Singh Anand were the same concerning acts of omission and commission and against Harvinder Pal Singh and Parminder Singh were near identical, bringing out the acts of omission and commission by the two. Concededly the common ground of all parties i.e. the appellant bank and the respondents in the five appeals is that the acts of omission and commission complained of, preceded four years from the date when the charge-sheet was issued.

3. The issue turned on the power of the competent authority to issue the charge-sheet in light of the Punjab & Sind Bank (Employees) Pension Regulations, 1995 (hereinafter referred to as the Regulations). As per the five charge-sheeted employees, no departmental proceedings could be instituted against them because the event(s) in respect of which they were charge-sheeted took place more than 4 years before the initiation of the disciplinary proceedings in view of Regulation 48(2) of the Regulations, which reads : No departmental proceedings, if not instituted while the employee was in service, shall be instituted in respect of an event which took place more than four years before such institution. As per the appellant the power to initiate disciplinary proceedings by issuing a charge-sheet with respect to events which took place more than 4 years before initiation of the disciplinary proceedings had to be found in Regulation 43 of the Regulations.

4. The arsenal for the debate between the parties were the two respective decisions noted by us in paragraph one above.

5. Holding in favour of the respondents, the learned Single Judge has held that Regulation 43 and 45 no doubt empower the management of the bank to withhold or withdraw pension for a grave misconduct but at the same time Regulation 48 also contemplated withholding of withdrawal of pension, whether permanently or for a specified period. The argument by the bank that Regulation 48 would come into play if the bank intended to recover a pecuniary loss to it has been rejected by the learned Single Judge, and the reasoning is to be found in paragraph 9 of the impugned decision which reads as under:-

"9. A perusal of Regulations 43 and 45, no doubt, would reveal that they are related to withholding or withdrawal of pension for a grave misconduct. In other words, the departmental proceedings can be initiated for the purpose of withholding or withdrawal of pension if the pensioners are convicted for a serious crime or criminal breach of trust or forgery or acting fraudulently or is found guilty of grave misconduct. At the same time, Regulation 48 also contemplates withholding or withdrawal of pension, whether permanently or for specified period, and order recovery from pension of the whole or part of pecuniary loss caused to a bank if in a departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence or criminal breach of trust or forgery or acts done fraudulently during the period of service. Regulation 43 stipulates, withholding or withdrawal of pension for the reasons stated therein. Regulation 45 prescribed the procedure to be followed before it is concluded that pensioner is guilty of grave misconduct. Regulation 48 contemplates withholding or withdrawal of pension and additionally, order recovery from pension of the whole or part of pecuniary loss, in the eventuality, the pensioner is found guilty of grave negligence or a misconduct, or criminal breach of trust, or forgery or acts done fraudulently/done during the period of service. Proviso (3) thereto is a clause relating to limitation inasmuch it stipules for ''no departmental proceedings for any event which took place more than four years before such institution''. Regulations 43 and 45 have to be read in conjunction with Regulation 48. Regulation 48 is not specific for recovery of pecuniary loss as urged by Mr. Arora, counsel for the respondent. It also contemplates withholding or withdrawal of pension or a part thereof, whether permanently or for a specified period. I note, the charge-sheet issued to the petitioners is in terms of Regulation 43 read with Regulations 45 and 48 of the Pension Regulations, 1995, hence, the submission of Mr. Arora is not sustainable on the face of the provisions under which, the charge-sheets have been issued."

6. Thereafter the learned Single Judge has noted the Rule which was considered by the Supreme Court in Pronab Chakraborty''s case and the Regulation which was considered by the Supreme Court in Krishna Pandey''s case and has concluded that the pari-materia regulation was the one considered in Krishna Pandey''s case and thus has held that his decision had to be guided by the decision in Krishna Pandey''s case.

7. Since we are re-chartering the voyage undertaken by the learned Single Judge we have to look at the same light houses which fell en-route and guided the journey navigated by the learned Single Judge. They would be the applicable Regulations of the appellant bank, the Rule considered by the Supreme Court in Pronab Chakraborty''s case and the Regulation considered by the Supreme Court in Krishna Pandey''s case.

8. Regulations 43, 45 and 48 of the Punjab & Sind Bank (Employees'') Pension Regulations, 1995 read as under:-

"43. Withholding or withdrawal of pension:-

The Competent Authority may, by order in writing, withhold or withdraw a pension or a part thereof, whether permanently or for a specified 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: Provident that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the minimum pension per mensem payable under these regulations.

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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 Punjab & Sind Bank Officer Employees'' (Discipline and Appeal) Regulations, 1982 or in Settlement as the case may be.

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48. Recovery of Pecuniary loss caused to the Bank:-

(1) The Competent Authority may withhold or withdraw a pension or a part thereof, whether permanently or for a specified period, and order recovery from pension of the whole or part of any pecuniary loss caused to the bank if in any departmental or judicial proceedings the pensioner is found guilty of grave misconduct or negligence or criminal breach of trust or forgery or acts done fraudulently during the period of his service.

Provided that the Board shall be consulted before any final orders are passed.

Provided further that departmental proceedings, if instituted while the employee was in service, shall, after the retirement of the employee, be deemed to be proceedings under these regulations and shall be continued and concluded by the authority by which they were commenced in the same manner as if the employee has continued in service.

(2) No departmental proceedings, if not instituted while the employee was in service, shall be instituted in respect of an event which took place more than four years before such institution;

Provided that the disciplinary proceedings so instituted shall be in accordance with the procedure applicable to disciplinary proceedings in relation to the employee during the period of his service.

(3) Where the Competent Authority orders recovery of pecuniary loss from the pension, the recovery shall not ordinarily be made at a rate exceeding one-third of the pension admissible on the date of retirement of the employee;

Provided that where a part of pension is withheld or withdrawn, the amount of pension drawn by a pensioner shall not be less than the minimum pension payable under these regulations."

9. Rule 10 of the West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971 considered in Pronab Chakraborty''s case reads as under:-

"10. Right of the Governor to withhold pension in certain cases-

(1) The Governor reserves to himself the right of withholding or withdrawing a pension or any part of it whether permanently or for a specified period, and the right of ordering the recovery from a pension of the whole or part of any

pecuniary loss caused to Government, if the pensioner is found in a departmental or judicial proceeding to have been guilty of grave misconduct or negligence, during the period of his service, including service rendered on re-employment after retirement:

Provided that

(a) such departmental proceeding if instituted while the officer was in service, whether before his retirement or during his re-employment, shall after the final retirement of the office, be deemed to be a proceeding under this article and shall be continued and concluded by the authority by which it was commenced in the same manner as if the officer had continued in service;

(b) Such departmental proceedings, if not instituted while the office was in service, whether before his retirement or during his re-employment

(i) shall not be instituted save with the sanction of the Governor;

(ii) shall not be in respect of any event which took place more than four years before such institution; and

(iii) shall be conducted by such authority and in such place as the Governor may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the officer during his service."

10. Regulation 351-A of the Civil Services Regulations considered in Krishna Pandey''s case reads as under:-

"The Governor reserves to himself the right of withholding or withdrawing a pension or any part of it, whether permanently or for a specified period and the right of ordering the recovery from a pension of the whole part of any pecuniary loss caused to Government, if the pensioner is found in departmental or judicial proceedings to have been guilty of grave mis-conduct, or to have caused pecuniary loss to Government by misconduct or negligence, during his service, including service rendered on re-employment after retirement:

Provided that

a) Such departmental proceedings, if not instituted while the officer was on duty either before retirement or during re- employment-

i) shall not be instituted save with the sanction of the Governor,

ii) shall be in respect of an event which took place not more than four years before the institution of such proceedings, and

iii) shall be conducted by such authority and in such place or places as the Governor may direct and in accordance with the procedure applicable to proceedings on which an order of dismissal from service may be made.

b) judicial proceedings, if not instituted while the officer was on duty either before retirement or during re- employment, shall have been instituted in accordance with sub-clause (ii) of clause (a) and

c) the Public Service Commission, U.P., shall be consulted before final orders are passed.

Explanation - For the purpose of this article

a) departmental proceedings shall be deemed to have been instituted when the charges framed against the pensioner are issued to him, or if the officer has been placed under suspension from an earlier date, on such date; and

i) in the case of criminal proceedings, on the date on which a complaint is made, or a charge-sheet is submitted, to a criminal court; and

ii) in the case of civil proceedings, on the date on which the plaint is presented or, as the case may be, an application is made, to a civil court.

Note:- As soon as proceedings of the nature referred to in this article are instituted the authority which institutes such proceedings shall without delay intimate the fact to the Audit Officer concerned."

11. A perusal of Regulation 43 of the Punjab & Sind Bank (Employees) Pension Regulations 1959 makes it clear that the competent authority may withdraw or withhold full pension or part pension if the pensioner is convicted of a serious crime or criminal breach of trust or forgery or acting fraudulently. These grounds would relate to a conviction at a criminal trial. It also empowers the competent authority to withdraw or withhold full pension or part pension if the pensioner is found guilty of grave misconduct. The said Regulation deals with the power of the competent authority to levy the penalty on a pensioner. Regulation 48 deals with a different area concerning departmental proceedings. Sub-Regulation 1 is a near verbatim reproduction of Regulation 43. Sub-Regulation 2 of Regulation 48 curtails the power of the competent authority to initiate departmental proceeding against a pensioner. As per the Sub-Regulation the departmental proceedings against a pensioner cannot be instituted in respect of an event which took place more than four years before such institution.

12. The argument of learned counsel for the appellant that the source of power to initiate departmental proceedings against pensioners is to be found in Regulation 43 is neither here nor there for the reason the bar created by Sub-Regulation 2 of Regulation 48 is a limitation regarding point of time within which the power to initiate departmental proceedings against a pensioner has to be commenced.

13. The reasoning of the learned Single Judge in para 9 of the impugned decision is sound.

14. In Pronab Chakraborty''s case (supra) the admitted fact was that Pronab Chakraborty was served with a charge-sheet on July 31, 2007 and he attained

the age of superannuation on January 31, 2008. He challenged the continuation of the departmental proceedings against him and had relied upon Rule 10 of the West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971. The observations of the Supreme Court that Sub-Rule 1 of Rule 10 contemplates two different kinds of punishments have to be understood in said context, of the charge-sheet being issued before Pronab Chakraborty superannuated. Reliance by Pronab Chakraborty on sub-para (b) of Sub-Rule 1 of Rule 10 was clearly misplaced because it comes into operation if departmental proceedings were initiated after the superannuation of the employee.

15. Regulation 351A of the Central Civil Service Regulations are pari- materia with Regulation 48A of the Punjab & Sind Bank (Employees) Pension Regulations, 1995 and thus the learned Single Judge has correctly held that the law declared by the Supreme Court in Krishna Pandey''s case (supra) was applicable.

16. The position therefore would be that against serving employees of the appellant bank disciplinary proceedings can be initiated for acts of omission and commission if they constitute a misconduct irrespective of limitation, but with respect to employees who have superannuated from service the disciplinary proceedings cannot be initiated if they relate to events which took place more than 4 years before the institution of the disciplinary proceedings.

17. The feeble attempt made by learned counsel for the appellant that Courts do not interfere with charge-sheets, is noted and rejected because it is settled law that a jurisdictional issue concerning a charge-sheet can be the subject matter of a challenge to the very initiation of the departmental proceedings. It is trite that issues concerning limitation go to the root of the jurisdiction.

18. The appeals are accordingly dismissed but without any orders as to costs.

