

(1992) 10 DEL CK 0046

In the Delhi High Court

Case No : Civil Writ Appeal No. 2185 of 1988

S.P. Jain

APPELLANT

Vs

Punjab National Bank and Others

RESPONDENT

Date of Decision : 19-10-1992

Acts Referred:

Penal Code, 1860 (IPC) — Section 380, 406, 420, 506

Citation : (1993) 25 DRJ 40 : (1993) 1 ILR Delhi 577 : (1993) 1 LLJ 655 : (1992) RLR 542

Hon'ble Judges : P.N. Nag, J

Bench : Single Bench

Advocate : M.N. Sehgal and G.A. Khan, for the Appellant;

Judgement

P.N. Nag, J.

(1) The petitioner in this writ petition has challenged the order of the respondent Punjab National Bank dated 7th October, 1987, Annexure-I, whereby the suspension of the petitioner for the period from 30th April, 1976, when the petitioner was "suspended, to 30th April, 1981, the date of superannuation, has been held to be justified and it has been ordered by it that no full salary and allowances shall be payable to Shri S.P. Jain, except the subsistence allowance admissible to him under the Regulations.

(2) The relevant facts which emerges from the pleadings of the parties are that the petitioner while he was in working as Manager at Branch Office, Dev Nagar, New Delhi of (he respondent bank was served with the charge sheet dated 23rd March, 1976 on certain charges of grave and serious nature and he was placed under suspension with effect from 30.4.1976. Another charge sheet dated 14th October, 1976 was also served upon him for irregularities committed during his incumbency at Branch Office. Dev Nagar. As the action on the part of the petitioner prima facie tent amounted to offence, an First Information Report on 1st June, 1977 under Sections 380, 420, 406 and 506 read with Section 120B of the Indian Penal Code was also filed. The disciplinary proceedings were also

initiated against him. The petitioner in the year 1979, moved the High Court for stay of the departmental proceedings "pending against him which was rejected vide order dated 14th March, 1980. However, in the L.P.A. No. 58/80. this Court ordered for keeping the departmental proceedings in abeyance till the disposal of the criminal case against the petitioner. As a result thereof, the departmental proceedings against the petitioner were stayed and could not be completed. However, the petitioner was retired from the bank service on" attaining the age of superannuation on 30th April, 1981.

(4) In the month of March, 1982, the petitioner filed a suit for declaration in the court of the Subordinate Judge, Delhi, claiming that decree for declaration be made" in his favor declaring him to be continued in bank's service and that he be entitled to monthly payment of subsistence allowance beyond 30th April, 1981. till the criminal case/disciplinary action against him is finalised, alternatively declaration to the effect that the petitioner be entitled to duty pay for the period from 30.4.1976 to 30.4.1981 and be allowed all other retirement benefits towards Provident Fund, Gratuity etc. The Sub Judge did not grant relief to the petitioner. However, in the appeal, the Additional District Judge, Delhi, on 8th July, 1987 passed a decree to the effect that the petitioner would be entitled to full retirement benefits comprising of Provident Fund, Gratuity, which may be implemented within a period of two months from the date of the order and regarding pay and allowances for the period of suspension, the competent authority may pass appropriate orders in terms of regulation 15.2 of Punjab National Bank Officer Employees (Discipline & Appeal) Regulation, 1977 (hereinafter referred to as "the Regulations, 1977"). It appears that the retirement benefits like pension, provident fund, gratuity have been paid in terms of the order of the Court. However, the dispute remains only for treating the period of suspension under Regulation 15:2 of the Regulations, 1977. In terms of the decree passed by Additional District Judge, Delhi, the Competent Authority after considering the relevant material passed the impugned order Annexure - 1.

(5) The petitioner has challenged the impugned order Annexure-1 on various grounds, inter alias that on the date of superannuation the relationship between the employer and employee has ceased to exist and suspension order automatically stands revoked; that the impugned order Annexure-I as been passed without complying with the principles of natural justice; and he has been honourably acquitted by the learned Magistrate, Bahadurgarh vide judgment dated 30th May, 1987, Annexure-VI and the Competent Authority should have passed order under Regulation 15.1 and not under Regulation 15.2 of the said Regulations.

(6) The stand taken by the respondent is that the respondent has passed the impugned Annexure-I in terms of regulation 15.2 of the Regulations, 1977, in view of the order and decree of Hon"ble Additional District Judge, Delhi dated 8th July, 1987 and that this question cannot be re-agitated, as it is barred by principle of res judicata. Further the departmental proceedings could not be

completed because of the order passed by the Hon"ble High Court. Again the case is covered under Regulation 15.2 of the Regulations, 1977 as held by the Additional District Judge and the impugned order has been passed squarely under the aforementioned provisions No doubt the petitioner has sought for certain other reliefs as well but learned counsel for the petitioner during the course of arguments has confined to only; the grant of relief for treating the period of suspension from 30.4.1976 to 30.4.1961 as the period on duty and for quashing of Annexure-I.

(7) Nobody has appeared for the respondent. As already referred to, the impugned order dated 7th October, 1987, Annexure-I has been passed in obedience to the directions of the Court of Additional District Judge, Delhi, whereby the Additional District Judge has directed the Competent Authority to pass an appropriate" order in terms of Regulation 15(2) of the Regulations, 1977. This order undoubtedly has to be passed in accordance with law. If the order has been passed by the respondents contrary to law, certainly, that can be challenged in this Court and such a direction, cannot operate as res judicata in the present writ petition. The objection, to this effect by the respondents that the matter has been already decided by the Additional District Judge and that the petition is barred by principles of res judicata is not applicable and has to be rejected.

(8) Learned counsel for the petitioner vehemently submitted that the petitioner was permitted to be retired by the respondents without any objection. After the petitioner attained the age of superannuation, the relationship, of master and servant between the respondent and petitioner ceased to exist. Therefore, the earlier order of suspension which was passed by the respondents has necessarily to be treated as having lapsed.

(9) There is a good deal of force in this submission. The principle is well settled that on attaining the age of superannuation, by the respondents without any objection the relationship of master and servant between them has ceased to exist and, Therefore, the order of suspension passed earlier has ceased to operate with the retiring of the petitioner from the service of the respondents. In H.L. Mehta V. Union of India and others, 1974 S.L.R. 379. the question arose whether after the order of dismissal, which was subsequently set aside, the order of suspension passed earlier also ceased to exist and did not revive thereafter by the subsequent setting aside the order of dismissal. In this context the Supreme Court held "as under- -

"THIS decision leaves no room for doubt as to the correct legal position and the conclusion must, Therefore, inevitably follow that when the order of dismissal was passed on 26th October, 1967, the order of suspension dated 11th April, 1963 ceased to exist and it did not revive thereafter by the subsequent setting aside of the order of dismissal by the first part of the impugned order."

(10) In State of Karnataka and Others Vs.R.S.Naik. 1983(3) S.L.R.49. the point

in controversy arose whether on retirement the suspension stood revoked on severance of status of master and servant in respective of intended prosecution pending against the employee and ultimate result thereof. Division Bench of that Court has observed and held that having once permitted the respondent to retire without any objection, the earlier order of suspension has necessarily to be treated as having lapsed and it is; no longer available for being regained by the disciplinary authority or the appellate authority. In the circumstances, the period of suspension has to be treated as duty only and cannot be treated as under suspension.

(11) The law laid down in the aforementioned authority equally apply with force to the present case. In the instant case the petitioner has been allowed to retire by the respondent on attaining the age of superannuation without any objection and, Therefore, earlier order of suspension automatically stand revoked. After the relationship "between master and servant has ceased to exist, the respondent has no jurisdiction to pass this order.

(12) Learned counsel for the petitioner further contended that before passing the order, Annexure-I, the respondent should have been afforded an opportunity to show cause against such an order, keeping in view. and in consonance with the provisions of natural justice, as the petitioner is adversely affected by such an order. In support of this submission, he relied upon M. Gopala Krishna Naidu V. State of Madhya Pradesh 1987(1) S.L.R, 800. He further contended that the petitioner has since been honorably acquitted in a criminal court, his case should have been considered by the Competent Authority under regulation 15(1) read with 15(3) of the Regulations, 1977 and not under Regulation 15(2) of the said Regulations. It is not necessary to decide these questions, as the petitioner succeeds on the first submission, as discussed above. As already held, suspension order automatically stands revoked on retirement as the relationship of master and servant has ceased to exist after the retirement.

(13) In the light of the above discussion, the impugned order Annexure-I is set aside. The respondents are directed to treat the period of suspension of the petitioner from 30th April, 1976 to 30th April, 1981, as duty. The petitioner shall be entitled to consequential benefits. The petitioner shall also be entitled to costs from the respondents, quantified as Rs.1,000.00 .