(2016) 08 GAU CK 0010

In the Gauhati High Court

Case No : Writ Petition (C) No.1511 of 2015

Sri Prabin Kumar Baruah APPELLANT

Vs

The Assam Co-operative Apex Bank Ltd. RESPONDENT

Date of Decision : 09-08-2016

Acts Referred:

Citation : (2016) 3 CLR 477 : (2016) 6 GauLJ 311 : (2016) 6 GauLR 56 : (2017) 1 GauLT 297

Hon'ble Judges : Mr. Manojit Bhuyan, J.

Bench : Single Bench

Advocate : Mr. C. Baruah, Senior Advocate and Mr. T. Baruah, Advocate, for the Petitioner; Mr. P.N. Goswami, Standing Counsel Apex Bank, for the Respondents

Final Decision : Dismissed

Judgement

Manojit Bhuyan, J.—The petitioner was proceeded against in two departmental proceedings while he was working as the Internal Auditor of the Assam Co-operative Apex Bank Ltd. in the Accounts and Audit Department. It was initiated by two Show Cause Notices dated 24.12.2013 and 27.12.2013 respectively, which he had received on 28.12.2013. The Articles of Charges as per the Statement of Allegations were also served. The said charges pertained to gross dereliction and negligence of duty while conducting internal audit of Sualkuchi Branch and also for committing gross irregularities and fraudulent transfer of amounts while serving in the Dibrugarh Branch of the Bank. The petitioner was due to retire on 31.12.2013 and, accordingly, three days later a Release Order was issued by the Bank on 31.12.2013 relieving him from his duties. Immediately after his retirement, he made replies to the charges levelled against him vide two separate letters of like date i.e. 7.1.2014. In course of time and questioning the initiation of departmental proceedings, the petitioner instituted two writ petitions i.e. WP(C) 1207/2014 and WP(C) 1446/2014. Both the writ petitions stood disposed of by common order dated 11.9.2014 with the observation that since departmental proceedings have already been initiated, the petitioner would be at liberty to place his grievances and in the event the same is done, the disciplinary authority would consider the sustainability or otherwise of the said departmental proceedings. Direction was also made that in the event the petitioner raises grievances, consideration will also be had to all the attending facts and circumstances. As and when any preliminary issue regarding the sustainability or otherwise of the departmental proceeding is raised, the disciplinary authority of the Bank was directed to decide the same by passing a speaking order within two months from the date of raising such preliminary objection. Consequent thereto, the petitioner filed representation on 6.10.2014 stating his grievances by way of preliminary objections and for decision thereof. Request was made for passing a speaking order expeditiously as he was in extreme need of his retirement benefits. The said representation was considered and by the order dated 9.2.2015, issued under the hand of the Managing Director of the Bank, the same was not found sustainable. The petitioner was directed to appear before the enquiry along with his defence on the date as and when it would be communicated. The said order dated 9.2.2015 was issued in compliance of the Court?s order dated 11.9.2014. This order of 9.2.2015 as well as the departmental proceedings drawn up against the petitioner are put to challenge in the present writ petition. Additional prayer is also made for a direction to the Bank to pay all the retirement benefits to the petitioner.

2. Mr. C. Baruah, learned senior counsel, representing the petitioner submits that all along the petitioner was not given a fair deal by the respondent Bank. Initially he was denied promotion to the post of Officer Grade-E for which he had instituted WP(C) 5031/2003 claiming promotion w.e.f. 3.9.2002, the date when his contemporaries were granted promotion. An order was passed by this Court on 16.11.2010 directing the respondent Bank to take necessary steps towards promotion of the petitioner to the post of Officer Grade-E w.e.f. 3.9.2002 within three months from the date of the order. The adverse entries recorded in the petitioner?s Annual Confidential Reports in 2000 and 2001, which were also the subject matter in the writ petition, were expunged. Following the Court?s order, the Bank issued the order dated 27.10.2011 giving him retrospective promotion from 3.9.2002. Mr. Baruah also submits that departmental proceeding was also drawn up against the petitioner when he was working as Assistant Branch Manager attached to the Tinsukia Branch of the Bank. On the charges proved against him, it was proposed to inflict punishment by withholding one year?s increment with cumulative effect as per the provisions under the Assam Co-operative Apex Bank Ltd. (Staff) Rules, 1980. Even in respect of his promotion from Officer Grade-E to Officer Grade-D, his case was kept under sealed cover awaiting orders of the Board in respect of the departmental proceedings where punishment proposed was for withholding one year?s increment with cumulative effect. The petitioner made representation for granting him promotion at an early date on grounds that the proceedings initiated against him had since been disposed of by imposing punishment, as indicated above. Mr. Baruah also submits that from a perusal of the charges levelled against the petitioner in

respect of alleged anomalies at Sualkuchi Branch and that of Dibrugarh Branch, it would appear that there are no allegations with respect to misappropriation of money. As the petitioner has already retired from service and there being no question of any recovery of money, it is submitted that continuation of the departmental proceedings are wholly futile. In this respect, it is also contended that the petitioner is entitled to his retirement benefits, namely, the provident fund amount, leave salary, gratuity etc., which are required to be paid by the respondent Bank without brooking any delay. Further submission of Mr. Baruah is that charges relating to Sualkuchi Branch was basically on his perfunctory approach in carrying out the audit exercise in the said branch. That being so, Mr. Baruah have placed reliance in the case of Union of India and Ors. v. J. Ahmed, reported in (1979) 2 SCC 286 to say that any failure to attain the highest standard of efficiency in the performance of duty, thereby permitting an inference of negligence, would not constitute misconduct. It is submitted that in the absence of any ill motive, any acts of negligence, errors of judgment and for committing innocent mistake would not constitute misconduct. Accordingly, Mr. Baruah submits that having regard to the Show Cause Notice issued in respect of charges pertaining to Sualkuchi Branch, where allegations have been made on the perfunctory approach of the petitioner while undertaking audit of the branch, may be an act of negligence or not rising up to the standard of efficiency but the same would not certainly be an act of misconduct necessitating drawal and/or continuance of disciplinary proceedings against the petitioner, at least in respect of the charges pertaining to Sualkuchi Branch. Pertinent facts in respect of Dibrugarh Branch will be noticed in the submissions made on behalf of the Bank.

3. Mr. P.N. Goswami, learned counsel representing the Bank opens by saying that the writ petition, in its present form, is wholly premature. On facts, Mr. Goswami submits that the charges pertaining to Sualkuchi Branch may have indicated a perfunctory approach on the part of the petitioner, however, the same led the Bank to suffer huge pecuniary loss amounting to Rs.31,99,190/-. In so far as the charges pertaining to Dibrugarh Branch is concerned there are materials connecting the petitioner?s complicity in causing gross irregularities and fraudulent transfer of amounts. It is submitted that the charge of fraudulent transfer pertained to the period when the petitioner was working as Assistant Branch Manager (Br. i/c), covering the period from 4.10.2007 to 4.4.2012. Although the petitioner have alleged that such transfer had been made by one Sri Nayanjyoti Bora, who was an Assistant at Dibrugarh Branch, the letter dated 9.7.2008 (Annexure-16 to the writ petition), submitted by said Sri Nayanjyoti Bora, would go to show that he had admitted to change of the ID in the computer which, according to him, happened through oversight. An assurance was also given that the same would not happen in future. According to Mr. Goswami, this letter dated 9.7.2008 gains significance in view of the fact that fraudulent transfers continued to occur beyond the year 2008 until April, 2012 when the petitioner was serving as the Assistant Branch Manager in the Dibrugarh Branch. In any event, it is submitted that these are matters which

requires to be enquired into to reach a definite conclusion through departmental proceedings, which are presently on hold in view of the order passed by this Court on 20.3.2015.

4. As regards the power of the Bank to continue with departmental proceedings even after superannuation/ retirement from services of the Bank, Mr. Goswami submits that there is no embargo placed either in the Assam Co-operative Apex Bank Ltd. (Staff) Rules, 1980 or in the amendment brought about to Rules 46(c) in the year 2012. The pre-amended Rules allows departmental proceedings even after retirement, if initiation is made prior to retirement. The amended Rules, although allowing initiation of disciplinary proceedings even after superannuation, such proceedings are only confined to charges where pecuniary loss has been caused to the Bank by negligence, misconduct or breach of orders by an employee, to the extent of imposing penalty of recovery from retiral benefits of the whole or part of such pecuniary loss. Mr. Goswami submits that in the present case, initiation was made prior to the date of retirement of the petitioner and even if such disciplinary proceedings have been initiated after coming into force of the amendment made to Rule 46(c), the Bank was empowered to initiate and continue with the disciplinary proceedings as charges levelled against the petitioner in both the proceedings are in connection with pecuniary loss suffered by the Bank at the instance of petitioner. Mr. Goswami, therefore, submits that consequent upon the findings of the Enquiry Officer and decision taken by the Board, it would be open to the Bank to impose penalty of recovery from the retiral benefits of the petitioner, if the charges are found established. In this respect Mr. Goswami also submits that the departmental proceedings have to reach its logical conclusion and interference at this stage by the Court is not warranted. Mr. Goswami have placed reliance in the case of State of Uttar Pradesh v. Brahm Datt Sharma and Another, reported in (1987) 2 SCC 179 to say that merely because a Government servant have retired from service on attaining the age of superannuation, he cannot escape the liability of misconduct and negligence of financial irregularities. In the same breath, reliance is placed in the case of U.P. State Sugar Corporation Ltd. v. Kamal Swaroop Tondon, reported in (2008) 2 SCC 41 to say that although resignation from service brings about complete cessation of master and servant relationship, retirement from service does not do so and the master and servant relationship continues for grant of retiral benefits. In the said case, the Apex Court held that the Corporation was right in submitting that proceedings could have been continued after the retirement of the employee as far as the financial loss caused to the Corporation was concerned, because of negligence on the part of the employee. Lastly, Mr. Goswami places reliance in the case of Union of India and Ors. v. Upendra Singh, reported in (1994) 3 SCC 357 to submit that in a case where charges have been framed in a disciplinary inquiry, the Tribunal or Court can only interfere if on the charges so framed, no misconduct or other irregularity can be said to have been made out or the charges so framed are contrary to law. The Apex Court held that the function of the Court or Tribunal

while delving into the correctness or truth of the charges, is one of judicial review, the parameters of which have been repeatedly laid down by the Apex Court. It was observed that if a Court cannot interfere with the truth or correctness of the charges even in a proceeding against a final order, it is not understandable how can that be done by the Tribunal at the stage of framing of charges. Mr. Goswami submits that the ratio laid down is squarely applicable in the instant case and having regard to the gravamen of the charges, no interference is called for, more so, when the charges are at the stage of inquiry. In so far as the Apex Court judgment placed by the petitioner is concerned, Mr. Gowsami submits that the same having been rendered in a different context, it is not applicable in the facts of the instant case.

5. I have heard the learned counsels at length and have also perused the materials available on record. From the facts above, it thus appear that the issues for determination, as open to this Court, is whether the charges under inquiry are such that no element of misconduct or irregularities, prima-facie, are made out and/or that the same is in contravention of law, requiring interference of this Court. Also, whether in the facts and circumstances it would be just and proper to interfere with the charges at the inquiry stage, in exercise of the powers of the judicial review.

6. Before proceeding further, it would be apposite to clarify that in terms of Rules 46(c) of the aforesaid Staff Rules of 1980, pre-amended and amended, and having regard to the law laid down by the Apex Court in the case of State of Uttar Pradesh (supra), there is no bar for proceeding against the petitioner by way of a departmental enquiry despite having retired from service, in as much as, the charges constitute financial irregularities.

7. In so far as the impugned order dated 9.2.2015 is concerned, it shows that the point-wise objections raised by the petitioner were duly taken note of and answered accordingly. As regards the objection that the charges do not constitute misconduct, the same was negated by holding that the charges are laid for breach of Rules of the Bank, negligence, inefficiencies, acting in a manner detrimental to the interest and prestige of the Bank and other acts of misconduct specified in Rule 46(a) of the aforesaid Staff Rules of 1980. Also recorded in the said order dated 9.2.2015 is that the Show Cause Notices could be served upon the petitioner just prior to his retirement as the irregularities so detected were huge and diverse in nature, being carried on over a substantial period of time and it was only after thorough investigation, which was time consuming, that the Show Cause Notices could be issued. The objection raised by the petitioner that he was made to discharge function as Internal Auditor without being subjected to any training, the same was answered by stating that no special training was necessary for carrying out the task of Internal Auditor. Also, the irregularities detected at Sualkuchi Branch could only be found out on the basis of Report of the new incumbent functioning as Branch Manager of the said Sualkuchi Branch. As per the said Report, the petitioner was totally negligent in his duty and had

conducted the audit in such a manner causing huge pecuniary loss to the Bank. The said order dated 9.2.2015 also records that pursuant to the Show Cause Notices dated 24.12.2013 and 27.12.2013, the petitioner had duly replied to the same, thereby subjecting himself to the departmental proceedings.

8. A careful reading of the order dated 9.2.2015 apparently goes to show that the grievances raised by the petitioner by way of preliminary objections were duly met and answered to, in terms of the directions of this Court dated 11.9.2014 passed in WP (C) 1446/2014 and WP (C) 1207/2014. Accordingly, no interference is warranted in the order dated 9.2.2015, issued under the hand of the Managing Director of the respondent Bank.

9. The contours of the power of judicial review of this Court under Article 226 of the Constitution of India is too well settled. The general proposition is that where in a case the authority has reached a conclusion so unreasonable that no reasonable authority could ever come to it, then interference by the Court can be made, not as an appellate authority but as a judicial authority. In so far as interference into the truth or correctness of charges are concerned, the same is answered in the case of Union of India v. Upendra Singh (supra) wherein the law laid down is that interference by the Court can be made only if on the charges framed read with the imputations or particulars of the charges, no misconduct or other irregularity so alleged can be said to have been made out or that the charges so framed are contrary to any law. From a close perusal of the Articles of Charges as per the Statement of Allegations (Annexure-11 and 14 to the writ petition), it cannot be concluded that the allegations of misconduct and/or breach of Rules of the Bank and/or negligence and inefficiency, touching upon pecuniary loss to the Bank, has not been made out. The said allegations evidently requires to be enquired into to ascertain whether the same can well stand established or stand dropped. In any event, the departmental proceedings must reach its logical conclusion.

10. The prayers made by the petitioner for quashing the departmental proceedings as well as the order dated 9.2.2015 cannot be granted, the same being devoid of merits. No interference is called for in so far as the drawal and continuation of the departmental proceedings is concerned. However, the petitioner being a retired officer, it is expected of the respondent Bank to take steps for concluding the departmental proceedings as well as passing final order by the disciplinary authority as expeditiously as possible, preferably within a period of 4 (four) months from today. It is also expected of the petitioner to diligently participate in the same enabling completion of the enquiry within the period prescribed above. The interim order passed by this Court on 20.3.2015 stands vacated with the dismissal of the present writ petition. No cost.

