**(2014) 08 TP CK 0027**

**In the Tripura High Court**

**Case No :** WP (C) No. 434 of 2012

**Sudha Bindu Saha VsThe State of Tripura**

**Date of Decision :** 22-08-2014

**Acts Referred:**

**Citation :** (2014) LabIC 4451

**Hon'ble Judges :** S.C. Das, J

**Bench :** Single Bench

**Advocate :** S.C. Das, Advocate for the Appellant; S. Chakraborty, Addl. G.A. and R. Chakraborty, Advocate for the Respondent

**Final Decision :** Disposed Off

## Judgement

S.C. Das, J.—By filing this writ petition the petitioner challenged Memorandum No. 1-416/ARDB/DP/VOL-II/931-35 dated 28.06.2012 (Annexure-10 to the writ petition) whereunder the General Manager of Tripura Cooperative Agriculture and Rural Development Bank Ltd.. (respondent No. 4) directed re-inquiry of the disciplinary proceedings against the petitioner after his superannuation from service and prayed for setting aside/quashing the said Memo. dated 28.06.2012. Also, inter alia, prayed for directing the respondents to release his retiral benefits.

2. Heard learned counsel, Mr. S.C. Das for the petitioner and learned Addl. G.A., Mr. S. Chakraborty for respondent Nos. 1 to 3 and learned counsel, Mr. R. Chakraborty for respondent Nos. 4 to 7.

3. The petitioner while was working as Grade III officer of Tripura Cooperative Agriculture and Rural Development Bank Ltd. (for short, Bank), a disciplinary proceedings was initiated against him on 02.07.2011 on certain five numbers of definite article of charges. He retired from service on 30.11.2011. The inquiring authority, appointed by the disciplinary authority submitted its report on 29.02.2012(Annexure-7 to the counter affidavit) holding that the charges were not proved. The disciplinary authority, i.e. respondent No. 4 was not satisfied with the report of the inquiring authority dated 29.02.2012 and by impugned Memo. dated 28.06.2012(Annexure-10 to the writ petition) directed re-inquiry

against the petitioner. Having aggrieved the petitioner challenged the said Memo. dated 28.06.2012 by filing this writ petition.

4. Learned counsel, Mr. S.C. Das appearing for the petitioner submits that respondent No. 4 is a Cooperative Society and it is guided by its own Service Rules, namely "Service Rules for the Employees of Tripura Cooperative Land Development Bank Ltd." The Rule does not prescribe initiation or continuation of a disciplinary proceedings against an employee after his retirement and so the direction of respondent No. 4 for fresh inquiry of the disciplinary proceedings against the petitioner cannot sustain. In support of his contention learned counsel referred the case of Bhagirathi Jena Vs. Board of Directors, O.S.F.C. and Others, and the case of Dev Prakash Tewari v. U.P. Cooperative Institutional Service Board, Lucknow & Ors., in Civil Appeal Nos. 5848-49 of 2014 decided on 30.06.2014 by the apex Court. Learned counsel also contended that impugned Memo. dated 28.06.2012(Annexure-10) is a cryptic order without assigning any reason as to why re-inquiry is necessary. So, the order is liable to be set aside and quashed.

5. Learned counsel, Mr. R. Chakraborty appearing on behalf of respondent Nos. 4 to 7 submitted that the Bank is running in huge loss. Its accumulated loss has become double to its share capital. Bank has suffered financial loss for the misconduct of the petitioner and therefore the loss is liable to be recovered from the service benefits of the petitioner in due process. He has also submitted that there is no specific rule for initiation of disciplinary proceedings against an employee of the Bank but for fair ends of justice to deal with an employee who indulges in illegal activities, it should be presumed that the Bank authority has power to proceed against an employee though Rule is silent. In support of his contention learned counsel referred the case of U.P. State Sugar Corporation Ltd. and Others Vs. Kamal Swaroop Tondon, He has also submitted that the inquiry report submitted by the inquiring authority is completely a mechanical one having no justification at all and therefore the Board of Directors did not agree with the inquiry report and decided for fresh inquiry against the petitioner. There is nothing wrong in the action taken by the Board of Directors of the Bank and so the writ petition should be dismissed.

6. Learned Addl. G.A., Mr. Chakraborty submitted that the dispute is between the Cooperative Society, i.e. the Bank and its employee and the State Government has been unnecessarily made party to it.

7. It is an admitted position that respondent No. 4 is a Cooperative Society and so it is guided by its own Bye Laws/Rules. The Service Rules for the Employees of Tripura Cooperative Land Development Bank Ltd. (for short, Rules) prescribes the provision for departmental action against its employees in Rules 29 to 34, wherein, admittedly there is no provision to initiate or continue a disciplinary proceedings against an employee after his retirement. The Supreme Court in the case of Kanwar Singh Saini Vs. High Court of Delhi, has held that this is a settled proposition that conferment of jurisdiction is a legislative function and it can

 

neither be conferred with the consent of the parties nor by a superior court, and if the court passes order/decree having no jurisdiction over the matter, it would amount to a nullity as the matter goes to the roots of the cause(para 22).

8. In the case of Bhagirathi Jena(supra) the Supreme Court has held that in the absence of a specific provision a departmental inquiry cannot continue against an employee after his retirement. We may gainfully refer here para 6, 7 and 8 of the judgment which reads as follows:

"6. It will be noticed from the abovesaid regulations that no specific provision was made for deducting any amount from the provident fund consequent to any misconduct determined in the departmental enquiry nor was any provision made for continuance of the departmental enquiry after superannuation.

7. In view of the absence of such provision in the abovesaid regulations, it must be held that the Corporation had no legal authority to make any reduction in the retiral benefits of the appellant. There is also no provision for conducting a disciplinary enquiry after retirement of the appellant and nor any provision stating that in case misconduct is established, a deduction could be made from retiral benefits. Once the appellant had retired from service on 30-6-1995, there was no authority vested in the Corporation for continuing the departmental enquiry even for the purpose of imposing any reduction in the retiral benefits payable to the appellant. In the absence of such authority, it must be held that the enquiry had lapsed and the appellant was entitled to full retiral benefits on retirement.

8. Learned Senior Counsel for the respondent placed reliance on the judgment of this Court in T. S. Mankad v. State of Gujarat reported in 1989 Supple (2) SCC 110. It is true that that was a case of imposing a reduction in the pension and gratuity on account of unsatisfactory service of the employee as determined in an enquiry which was extended beyond the date of superannuation. But the above decision cannot help the respondent inasmuch as in that case there was a specific rule namely Rule 241-A of the Junagadh State Pension and Parwashi Allowance Rules, 1932 which enabled the imposition of a reduction in the pension or gratuity of a person after retirement. Further, there were rules in that case which enabled the continuance of departmental enquiry even after superannuation for the purpose of finding out whether any misconduct was established which could be taken into account for the purpose of Rule 241-A. In the absence of a similar provision with Regulations of the respondent-Corporation, the above judgment of Mankad''s case cannot help the respondent."

9. The case of Dev Prakash Tewari(supra), is also a case of Cooperative Society and a disciplinary proceeding was initiated after retirement of an employee of the Cooperative Society and the facts of that case is identical to that of the present case. Referring to its earlier decision in Bhagirathi Jena(supra) the Supreme Court in para 6 of the judgment has held:

"6. We have carefully considered the rival submissions. The facts are not in dispute. The High Court while quashing the earlier disciplinary proceedings on the ground of violation of principles of natural justice in its order dated 10.1.2006 granted liberty to initiate the fresh inquiry in accordance with the Regulations. The appellant who was reinstated in service on 26.4.2006 and fresh disciplinary proceeding was initiated on 7.7.2006 and while that was pending, the appellant attained the age of superannuation and retired on 31.3.2009. There is no provision in the Uttar Pradesh Co-operative Employees Service Regulations, 1975, for initiation or continuation of disciplinary proceeding after retirement of the appellant nor there is any provision stating that in case misconduct is established a deduction could be made from his retiral benefits. An occasion came before this Court to consider the continuance of disciplinary inquiry in similar circumstance in Bhagirathi Jena''s case (supra) and it was laid down as follows:

"5. Learned Senior Counsel for the respondents also relied upon Clause (3) (c) of Regulation-44 of the Orissa State Financial Corporation Staff Regulations, 1975. It reads thus: "When the employee who has been dismissed, removed or suspended is reinstated, the Board shall consider and make a specific order:-

(i) Regarding the pay and allowances to be paid to the employee for the period of his absence from duty, and

(ii) Whether or not the said period shall be treated as a period on duty."

6. It will be noticed from the abovesaid regulations that no specific provision was made for deducting any amount from the provident fund consequent to any misconduct determined in the departmental enquiry nor was any provision made for continuance of the departmental enquiry after superannuation.

7. In view of the absence of such a provision in the abovesaid regulations, it must be held that the Corporation had no legal authority to make any reduction in the retiral benefits of the appellant. There is also no provision for conducting a disciplinary enquiry after retirement of the appellant and nor any provision stating that in case misconduct is established, a deduction could be made from retiral benefits. Once the appellant had retired from service on 30.6.95 there was no authority vested in the Corporation for continuing the departmental enquiry even for the purpose of imposing any reduction in the retiral benefits payable to the appellant. In the absence of such an authority, it must be held that the enquiry had lapsed and the appellant was entitled to full retiral benefits on retirement."

10. Respondent No. 4 is a Cooperative Society and it is guided by its own rules regarding disciplinary matters of its employees. The rules admittedly does not prescribe any provision for a disciplinary action after retirement of an employee. So, the ratio of the above decision of the apex Court is clearly applicable in the case of the petitioner. Since there is no specific rule for initiation and/or continuation of a departmental proceedings after retirement of an employee, the respondent No. 4 has no authority to initiate and/or continue the departmental

 

proceedings against the petitioner after his retirement.

11. Learned counsel, Mr. Chakraborty for respondent Nos. 4 to 7 has referred the case of U.P. State Sugar Corpn. Ltd. (supra) wherein the apex Court has held that no rule of universal application can be laid down that if there is delay in initiation of proceedings for a particular period, they must necessarily be quashed. Therefore, when departmental proceedings were initiated against the delinquent on basis of show cause notice served upon him while he was very much in service it cannot be said that, the proceedings were initiated after respondent retired and that there was no power, authority or jurisdiction with the employer Corporation to take any action against the employee.

The ratio of this decision is not applicable to the present case since it is a case of a Corporation whereas the case at hand is of a Cooperative Society which is guided by its Bye Law and own Service Rules.

12. Further, as I find, the impugned Memo. dated 28.06.2012 (Annexure-10) has assigned no reason at all for directing re-inquiry against the petitioner. Memo. dated 28.06.2012 reads as follows:

Tripura Co-Operative Agriculture & Rural Development Bank Ltd.

Ph. No. (0381) 232-3972

HEAD OFFICE-OFFICE LANE AGARTALA-799001

Gram:-"BHOOMIBANK"

Ref. No: 1-416/ARDB/DP/VOL-II/2010-11/931-35

dated 28.06.2012

MEMORANDUM

In pursuant to the approval of the Registrar of Cooperative Societies, Govt. of Tripura, Vide his letter No. F.P. RS. 726/Coop/92 dated 19.06.2012 Sri Chamak Debbarma, DRCS (West District) has been appointed as Inquiring officer for conducting the re-inquiry on the disciplinary proceedings against Sri Sudha Bindu Saha, Ex-Gr-IV Officer of the bank.

Similarly the Management of the bank is pleased to appoint Sri S.C. Biswas, Retd. Gr-II Officer(now re-employed) to act as presenting officer to represent this particular case until further order.

This is as per further approval of the President, TCARDB Ltd. accorded vide Note No--4 of concerned F. No. 1-416/ARDB/DP/VOL-II/2010-11.

This will take with immediate effect.

(B.K. Roy) General Manager

A bare reading of the above Memo. clearly indicates that no reason has been assigned by respondent No. 4 while directing re-inquiry of the disciplinary proceedings against the petitioner.

13. In view of the discussions and the legal positions explained above, the writ petition is allowed. The impugned Memo. dated 28.06.2012(Annexure-10 to the writ petition) directing re-inquiry of the disciplinary proceedings against the petitioner is quashed. All retiral benefits of the petitioner should be released immediately unless otherwise barred.

Parties to bear their own costs.

14. The writ petition accordingly stands disposed of.

 