**(2014) 03 KAR CK 0080**

**In the Karnataka High Court**

**Case No :** Writ Appeal No. 3563 of 2009 (S-RES)

Syndicate Bank,Head Office At Manipal — APPELLANT

Vs

B. Santhosh Rao — RESPONDENT

**Date of Decision :** 04-03-2014

**Acts Referred:**

**Citation :** (2014) 4 KarLJ 477 : (2014) 3 LLN 712

**Hon'ble Judges :** Ravi V. Malimath, J;K.L. Manjunath, J

**Bench :** Division Bench

**Advocate :** K. Radhesh Prabhu for Prabhu and Dave, Advocate for the Appellant; Nagaprasanna, Advocate for P.S. Rajagopal Associates, Advocate for the Respondent

**Final Decision :** Dismissed

## Judgement

1. Aggrieved by the order dated 25-8-2008, passed by the learned Single Judge in W.F. No. 7166 of 2004, allowing the petition by directing the respondent-bank to compute the pensionary benefits, on the basis that the petitioner would have retired in the usual course and other consequential reliefs, the respondent has filed the present appeal. The case of the respondent is that he joined the services of the appellant-bank on 21-10-1969 as an Officer Trainee and was thereafter confirmed in the services by the bank as an Officer in the Junior Management Grade Scale-L With effect from 1-4-1975, he was promoted as Manager in Middle Management Grade Scale-II. That he was above average in his performance.

2. The respondent''s wife who is physically handicapped is also an employee of the appellant-Bank. That her order of transfer was questioned by her and an appropriate relief was granted by the Commissioner for persons with disabilities. In this background, the case of the respondent is that holding a grudge against him adverse remarks were made against him.

3. The age of retirement is 60 years. However, the Bank could retire a person on

he attaining the age of 55 years or completing thirty years of service in terms of the Service Regulations. The appellant-bank in exercise of the powers under Regulation 19(1) of the Syndicate Bank Officers'' Service Regulations, 1979 (hereinafter referred to as ''Regulation'') served the respondent with an order dated 28-10-2003, to the effect that he shall retire from the services of the bank with effect from 1-2-2004 and he shall stand relieved from the services of the Bank after the office hours on 31-1-2004.

4. The respondent made a representation against the same, which was rejected. He was accordingly relieved from service. Aggrieved by the same, he filed the instant writ petition. The respondent contended that the impugned order to retire him is erroneous. That the action of the appellant in doing away with the services of the respondent on the ground that he is not desirable and that his continuance in service is against public interest, is erroneous. That such an order could not have been passed, except after holding an enquiry. That under the Regulations, compulsory retirement is a specific major penalty that could be imposed for proved acts of misconduct, after holding an enquiry in accordance with Law. That the impugned order is not proceeded by any notice or enquiry. That there was no basis for the special committee to from an opinion that the petitioner services be dispensed with.

5. On the other hand, the appellant contended that the appeal filed by the respondent has been considered and rejected. That there is no harassment or humiliation caused to him. That the rules and regulations have been strictly followed while passing the impugned order. That the claim that his performance is above average, is incorrect. On the contrary, he was never upto the mark and did not live upto the standards expected. That the appellant-bank has a discretion to retire a person after completion of 55 years or 30 years of service etc. Therefore, in view of the background of the respondent, the special committee has considered his case and thereafter has passed the impugned order. Therefore, no interference is called for.

6. The learned Single Judge on considering the contentions was of the view that the action of the appellant-bank is unfair. That the records would indicate that apart from the year 1999-2000, there is no indication that his performance was below average. On the contrary, during the end of the year 2003, he was rated as ''above average''. That the performance of the petitioner does not seem to be on the negative side. Therefore, the action of the appellant-bank was unjustified. Hence, the writ petition was allowed with a direction that the petitioner is entitled to count the years of service which he would have been entitled to discharge for the purposes of his pensionary benefits. Accordingly, the bank was directed to recalculate the pensionary benefits that the petitioner would be entitled to, proceeding on the assumption that he would have retired in the usual course, after the age of attaining superannuation and to pay all such compensation with interest at the rate of 6% from the date on which it fell due upto the date of payment. Aggrieved by the same, the respondent-bank has filed the present

 

appeal.

7. Sri K. Radhesh Prabhu, the learned Counsel for the appellant contends that the impugned order is bad in law and liable to be set aside. That the learned Single Judge committed an error in misreading the material on record. That the past history of the respondent shows that he did not live upto the mark. That his confidential reports were not satisfactory. That he has been punished for various acts of misconduct in the past and it is only on considering all these materials, that the impugned order has been passed. Therefore, the finding of the learned Single Judge with reference to only one year of the confidential report is erroneous.

8. It is further pleaded that the overall performance of the respondent would have to be considered and not just a stray reference to the confidential reports. That the entire career of the respondent would have to be considered. In support of his contention he relies on the judgment of the Hon''ble Supreme Court in the case of Rajasthan State Road Transport Corporation and Others Vs. Babu Lal Jangir, .

9. On the other hand, Sri Naga Prasanna, learned Counsel for the respondent defends the impugned order. He contends that there is no error committed by the learned Single Judge that calls for interference. Hence, he pleads that the appeal be dismissed.

10. On hearing learned Counsels and on perusal of the material on record, we are of the considered view that appropriate relief requires to be granted.

11. Regulation 19(1) and 19(2), reads as follows:

"19. (1) The age of retirement of an officer employee shall be as determined by the Board in accordance with the guidelines issued by the Government from time to time:

Provided that the Bank may, at its discretion, on review by the Special Committee/Special Committees, as provided hereinafter in sub-regulation (2), retire, if it is of the opinion that it is in the public interest, an officer employee on or at anytime after the completion of 55 years of age or on or at any time after the completion of 30 years of total service as an officer employee or otherwise, whichever is earlier:

Provided further that before retiring an officer employee, at least three months'' notice in writing or an amount equivalent to three months'' substantive salary/ pay and allowances, shall be given to such Officer employee:

Provided further that an officer aggrieved by the order of the Competent Authority, as provided in sub-regulation (2) may within one month of the passing of the order, given in writing a representation to the Board of Directors against the decision of the Competent Authority, and on receipt of such representation from the concerned officer, the Board of Directors shall consider his representation and take decision within a period of three months. Where the Board of Directors decides that the order passed by the Competent Authority is not justified, the concerned officer shall be reinstated as though the Competent Authority has not passed the order:

Provided also that nothing in this regulation shall be deemed to preclude an officer employee from retiring earlier pursuant to the option exercised by him in accordance with the rules in the Bank.

Explanation.--An Officer employee will retire on the last day of the month in which he completes his age of retirement:

Provided that an Officer employee whose date of birth is on the first day of a month shall retire from service on the afternoon on the last day of the preceding month on attaining the age of retirement.

(2) The Bank shall constitute a Special Committee/Special Committees consisting of not less than three members, to review, whether an Officer employee should be retired in accordance with the first provision to this regulation. Such Committee/Committees shall from time to time, review the case of each Officer employee and no order of retirement shall be made unless the Special Committee/Special Committees recommend/s in writing to the Competent Authority the retirement of the Officer employee".

12. It is contended by the respondent that he was compulsorily retired, without following Regulation 19. On considering the material on record, we are of the considered view that compulsorily retiring the respondent is not opposed to the provisions of Regulation 19. The requirements of Regulation 19 have been complied with. That a Special Committee had been constituted to consider the case of the respondent. That not only the respondent but various other cases were also considered and consequently eight officers were compulsorily retired. The respondent was issued with order dated 28-10-2003, indicating 1-2-2004 as the date on which he would be relieved. He was also informed that he can file a representation. Therefore, the contention of the respondent that Regulation 19 has not been followed, is unacceptable.

13. The further contention that the act of compulsorily retiring the respondent from services is a stigma. We have considered the said contention. In an identical situation, the Hon''ble Supreme Court, in the case of Baikuntha Nath Das and another Vs. Chief District Medical Officer, Baripada and another, , held that a compulsory retirement is a subjective satisfaction which is arrived at on the basis of the entire service records. That a compulsory retirement, does not amount to punishment. It implies no stigma. Therefore, we are of the view that the power exercised by the appellant in terms of Regulation 19, is just, appropriate and reasonable. It is based on the material on record. There has been no violation of Regulation 19. Further compulsorily retiring him, does not amount to a stigma.

 

14. The appellant has relied on the certified copy of the order dated 25-10-2003 of the Special Committee along with connected matters. The same would show the performance appraisal for the past 10 years of the respondent. So also enclosed is the records of the disciplinary action initiated/concluded, which are as follows:

(a) He was compulsorily retired from service with effect from 10-12-1983, after departmental enquiry for negligence of duties, acts of insubordination, including failure to carry out transfer order and unauthorised absence from 25-10-1981. The Reviewing Authority reinstated him purely on humanitarian grounds with a penalty of reduction of basic pay by one stage in the time scale of pay.

(b) He was issued with a charge-sheet under major penalty, dated 13-6-1989 for disobeying the orders of the Divisional Manager, unwillingness to work and putting his signature by recording under protest. He was imposed a penalty of reduction in basic pay by two stages with effect from 8-1-1991.

(c) He was issued with a charge-sheet under major penalty dated 26-2-1990 for the reason that he failed to attend as many as 42 urgent/important/bills/letters/ correspondence for verification/processing before his higher authority and deliberately kept them pending inspite of repeated advice. He unauthorisedly sanctioned certain lawyer''s bills on his own falsely representing himself as Deputy Divisional Manager. He unauthorisedly issued instructions to the Manager, Karwar Branch to try for mass recovery. He was imposed with the penalty of reduction in basic pay by three stages with effect from 30-4-1991.

(d) He was issued with a SIL under minor penalty dated 6-8-1996 for the reason that he was issued with a transfer order for which he made unwarranted remarks on the functioning of the bank. He had also submitted a letter to the Deputy General Manager, making remarks against the management and functioning of the bank by questioning the authority of his superiors and criticized certain decisions taken by his superiors. He was imposed with the penalty of censure from 12-3-1997.

(e) He was issued with the charge-sheet under major penalty dated 24-2-1999 for failure to report for duty when he was transferred and thereby committed an act of willful insubordination. He remained unauthorisedly absent for 167 days. He was imposed with the penalty of reduction in basic pay by 2 stages for two years with cumulative effect for each misconduct with effect from 27-6-2000.

15. On consideration of these materials, the appellant-Bank were of the view that except for the years 2001-2002 and 2002-2003, the service records of the officer for the five years from 1998 to 2003 and even the previous ones is found to be one of continuous non/under performance, lack of initiative and efforts to develop managerial capacities, negative approach and non-co-operative attitude towards superiors and colleagues. That he was already compulsorily retired in the year 1983 which was reviewed purely humanitarian grounds. Taking all these factors into consideration and since he had completed the age of 55 years, he

was compulsorily retired.

16. The learned Single Judge has not considered these aspects of the case. On the contrary, the learned Single Judge was of the view that the indication that his work was negative in the year 1999-2000 can even be attributed to an aberration, since his wife has been transferred against the Regulations. We are of the considered view that such an assumption is erroneous.

17. In the judgment of the Hon''ble Supreme Court in the case of Rajasthan State Road Transport Corporation, while considering the very issue on hand, held at paras 22 and 23 as follows:

"22. It clearly follows from the above that the clarification given by a two-Judges Bench judgment in Badrinath Vs. Government of Tamil Nadu and Others, is not correct and the observations of this Court in The State of Punjab Vs. Gurdas Singh, to the effect that the adverse entries prior to the promotion or crossing of efficiency bar or picking up higher rank are not wiped off and can be taken into account while considering the overall performance of the employee when it comes to the consideration of case of that employee for premature retirement.

23. The principle of law which is clarified and stands crystallised after the judgment in Pyare Mohan Lal Vs. State of Jharkhand and Others, is that after the promotion of an employee the adverse entries prior thereto would have no relevance and can be treated as wiped off when the case of the Government employee is to be considered for further promotion. However, this "washed-off theory" will have no application when the case of an employee is being assessed to determine whether he is fit to be retained in service or requires to be given compulsory retirement. The rationale given is that since such an assessment is based on "entire service record", there is no question of not taking into consideration the earlier old adverse entries or record-of the old period. We may hasten to add that while such a record can be taken into consideration, at the same time, the service record of the immediate past period will have to be given due credence and weightage. For example, as against some very old adverse entries, where the immediate past record shows exemplary performance, ignoring such a record of recent past and acting only on the basis of old adverse entries, to retire a person will be clear example of arbitrary exercise of power. However, if old record pertains to integrity of a person then that may be sufficient to justify the order of premature retirement of the Government servant".

18. Therefore, the Hon''ble Supreme Court was of the view that the entire Service Records would have to be considered. In the instant case, the respondent was already terminated in the year 1983. Therefore, if the entire service records would have been considered, it would justify the decision of the bank that it would not be appropriate to continue the respondent in the service of the bank. Therefore, keeping in mind his entire Service Records as well as the judgment of the Hon''ble Supreme Court, we are of the considered view that the

 

learned Single Judge committed an error in granting relief to the respondent. The learned Single Judge failed to consider the entire service records of the respondent. The consideration of the Service Register only for the particular year by the learned Single Judge is inappropriate. In terms of the Regulations and based on the material on record, especially his Service Records, we are of the considered view that the learned Single Judge committed an error in granting relief to the respondent. Under these circumstances, we are of the considered view that the reasonings assigned by the learned Single Judge are erroneous. For the aforesaid reasons, the appeal is allowed. The order dated 25-8-2009, passed by the learned Single Judge in W.P. No. 7166 of 2004 is set aside. The writ petition is dismissed.