

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ LPA 827/2004

Date of decision: January 30, 2006

PUNJAB NATIONAL BANK

..... Appellant

Through: Mr. Raj Birbal, Sr. Advocate with
Mr. Rajat Arora & Mr. Pramod
Yadav, Advocates

versus

B.D. LUTHRA

.... Respondent

Through: Mr. Keshav Dayal & Mr. Ashok
Bhalla, Advocates

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE MADAN B. LOKUR

1. Whether Reporters of local papers may be allowed to see the judgment?
- ✓ 2. To be referred to the Reporter or not?
- ✓ 3. Whether the judgment should be reported in the Digest ?

MARKANDEYA KATJU, CJ

1. This writ appeal has been filed against the impugned judgment of the learned Single Judgment dated 5.7.2004 by which he has allowed the writ petition.
2. Heard counsel for the parties and perused the record.
3. The facts in detail have been set out in the judgment of the learned Single Judge and hence we are not repeating the same except where necessary.
4. The petitioner had filed the writ petition praying for quashing of the order dated 24.4.1998 by which he was removed from service and the order dated 12.1.1999 by which his appeal was rejected. Petitioner also challenged the provisions of Regulation 20 (3) (iii) of the Punjab National Bank (Officers) Service

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Regulations, 1979 (hereinafter referred to as regulations). The petitioner has also prayed for directing the respondents to release the retirement benefits with interest.

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5. The facts as disclosed in the writ petition are that the petitioner was working as Chief Manager in the Punjab National Bank which is a nationalized bank and hence 'State' under Article 12 of the Constitution. While serving as Chief Manager in the Branch office, Jangpura Extension, New Delhi, a charge sheet dated 25.3.1996 was issued to the petitioner and allegedly served on him on 2.4.1996 through post while the petitioner had retired on superannuation on 31.3.1996.

6. A copy of the charge sheet is annexure P4 to the writ petition.

7. The charge sheet dated 25.3.1996 reads as follows:-

"Article I

He abused his official position and extended undue favour to the borrowers while sanctioning/enhancing credit facilities in their favour detrimental to Bank's interest.

Article II

He indulged in unauthorized business and jeopardized bank's funds.

Article III

He neglected post-sanction control to safeguard Bank's interest.

Article IV

He did not exercise proper administrative control over the branch resulting in shortage of S.F.F. items.

Shri Luthra failed to discharge his duties with utmost devotion, diligence and integrity and failed to take all possible steps to ensure protect

Bank's interest. He has thus committed misconduct in terms of Regulations 3(1) read with regulations 24 of PNB Officers Employees (Conduct) Regulations, 1977".

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8. Appended to the charge sheet were the submission of imputation and the charges in support of the articles of charges giving details of the allegations in the charge sheet. These imputations run into about 15 pages and hence we are not quoting the same in detail, but a perusal of the same shows that very serious allegations of grave financial irregularities have been made against the petitioner therein. These include extending undue favours while sanctioning/enhancing credit facilities, indulging in unauthorized business, neglecting post-sanction control to safeguard bank's interest, etc.
9. It is alleged in paragraph 5 of the writ petition that the aforesaid charges related to incidents which happened in the year 1990-92 but the charges were framed only on the eve of the petitioner's retirement and no action was taken earlier and even thereafter within a reasonable time.
10. It is alleged in paragraph 6 of the writ petition that most of the allegations as made in the charge sheet related to the period prior to his joining in the Minto Road Branch and the sanctions etc. covered by charges were made by his predecessor. It is alleged that the charges were false and baseless.
11. The petitioner gave his reply to the charge sheet on 25.4.1996 and denied the charges vide annexure P5. However, an inquiry was held and the inquiry officer gave his finding that out of the 40

sub charges, 10 were fully proved, 8 were partly proved and 22 were not proved. A copy of the inquiry report dated 6.2.1998 is annexure P14 to the writ petition. Thereafter the petitioner was removed from service by order dated 24.4.1998 annexure P1 to the writ petition.

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12. The petitioner filed an appeal to the Chairman-cum-Managing Director of the Bank vide annexure P16 to the writ petition. However, that appeal was rejected by order dated 12.1.1999 vide annexure P2 to the writ petition.

13. The petitioner then filed the writ petition which was allowed and hence this appeal.

14. As many as 12 arguments were raised before the learned Single Judge. Submissions No. 1, 5, 6, 7, 8, 9, 10, 11 & 12 were found by the learned Single Judge to have no merit.

15. However, the learned Single Judge has allowed the writ petition by accepting the arguments on contention Nos. 2, 3 & 4 which are referred to in paragraph 25 of his judgment.

16. The relevant discussion of these issues is from paragraph 58 to 63 of the impugned judgment. In paragraph 63 of the impugned judgment the learned Single Judge has referred to his own judgment in Writ Petition (C) 4417/1999 delivered the same day in which he held that giving effect to both the pension and the service regulations in the instant case would be that departmental proceedings would be deemed to be proceeded under the pension regulations. This would require the same to be concluded under the pension regulations and hence the penalty

has to be under the pension regulations.

17. We have carefully perused the judgment of the learned Single Judge in W.P (C) No. 4417/1999 dated 5.7.2004.

18. In paragraphs 1 to 73 of the said judgment, the learned Single Judge has decided the issues against the petitioner.

19. However, from paragraphs 74 to 96 the learned Single Judge has observed that there are two set of regulations which are relevant in this case.

20. The first is the PNB Officers (Service) Regulations, 1979. Regulation 20 (3) (iii) thereof states:-

"3(iii) The officer against whom disciplinary proceedings have been initiated will cease to be in service on the date of superannuation but the disciplinary proceedings will continue as if he was in service until the proceedings are concluded and final order is passed in respect thereof. The concerned officer will not receive any pay and/or allowance after the date of superannuation. He will also not be entitled for the payment of retirement benefits till the proceedings are completed and final order is passed thereon except his own contributions to CPF."

21. The other set of regulations is the PNB (Employees) Pension Regulations 1995. Regulation 48 (1) of the Pension Regulations thereof states:-

- 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 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 had continued in service;

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Provided also that no departmental or judicial proceedings, if not initiated while the employee was in service, shall be instituted in respect of a cause of action which arose or in respect of an event which took place more than four years before such institution.

2. 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."

22. Regulation 46 of the Pension Regulations states:-

Provisional Pension

1). An employee who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued, a provisional pension, equal to the maximum pension which would have been admissible to him, would be allowed subject to adjustment against final retirement benefits sanctioned to him, upon conclusion of the proceedings but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld etc either permanently or for a specified period.

2). In such cases the gratuity shall not be paid to such an employee until the conclusion of the proceedings against him. The gratuity shall be paid to him on conclusion of the proceedings subject to the decision of the proceedings. Any

recoveries to be made from an employee shall be adjusted against the amount of gratuity payable.”

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23. In paragraph 81 of his judgment the learned Single Judge accepted that both under the pension regulations and service regulations disciplinary proceedings if initiated before the superannuation of an employee can continue even after superannuation. However, the question was as to what penalty can be levied on such an employee. According to learned counsel for the petitioner, once an employee superannuates there is no question of his being in service and hence there can be no dismissal from service. However, Mr. Raj Birbal, learned counsel for the bank relying on Regulation 20 (3) (iii) of the service regulations submitted that the penalty of dismissal can be imposed upon such an officer employee.

24. The learned Single Judge in paragraph 86 of the judgment observed:-

“If the argument of the bank is accepted that continuation of the disciplinary proceedings as contemplated aforesaid would mean that penalty of dismissal/ removal from service can be passed, it would render nugatory the pension regulations and in particular Regulation 48 of the Pension Regulations.”

25. In paragraph 95 of his judgment he observed:-

“If a person ceases to be in employment, I fail to understand as to how a penalty of dismissal from service could be passed against the employee.”

With respect we cannot agree.

25. A bare perusal of Regulation 20 (3) (iii) of the PNB Officers (Service) Regulation, 1979 shows that disciplinary proceedings if

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initiated before the superannuation can continue as if the employee was still in service. The words "as if he was in service" are significant. They amount to a deeming provision or legal fiction that although the employee has superannuated he will still be treated as in service.

26. It is well settled that as regards a deeming provision or a legal fiction full effect has to be given to the same and it should be carried to its logical conclusion vide State of Bombay v. Pandurang Vinayak, AIR 1953 SC 244, p.246: 1953 SCR 773; American Home Products Corporation v. Mac Laboratories, (1986) 1 SCC 465, p. 501: AIR 1986 SC 137; Union of India v. Jalyan Udyog, supra, pp. 96, 97; P.E.K. Kalliani Amma v. K.Devi, AIR 1996 SC 1963, p. 1976 & C.I.T, Delhi v. S.Teja Singh, AIR 1959 SC 352, p. 355.

27. In East and Dwellings Company Ltd. vs. Finsbury Borough Council (1951) 2 All ER 587 in an oft-quoted passage, Lord Asquith observed:-

"If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequence and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it. The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs".

28. Since it has to be deemed that the employee even after superannuation continues in service, it follows he can also be dismissed.

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29. If we are to accept the argument of learned counsel for the writ petitioner that the employee cannot be dismissed after superannuation even if the enquiry commenced before the superannuation, we will be adding words to Regulation 20(3) (iii) of the Service Regulations because in such a case after the words 'final order' in Regulation 20 (3) (iii) we will be adding the words 'other than termination or dismissal'. It is well settled that the Court should neither add nor delete words from a statute vide M/s Ojas Industries (P) Ltd. v. Union of India, W.P (C) No. 7123/2005 decided on 22.12.2005 (vide paragraphs 39 to 56 of the said judgment). Hence, such interpretation should be eschewed.

30. Moreover, Regulation 48 subsequently permits withholding or withdrawal of a pension, whether fully or a part thereof, whether permanently or for a specified period, if in any departmental proceedings the pensioner is found guilty of grave misconduct or negligence or breach of trust or forgery while in service.

31. The first proviso of Regulation 48 permits the continuation of departmental proceedings if instituted while the employee was in service. Even after the retirement of the employee such proceedings shall be continued and concluded by the authority by which they were commenced in the same manner as if the employee had continued in service.

32. The words "in the same manner as if the employee has continued in service" is again a deeming fiction and hence full effect has to be given to this legal fiction, as stated above.

33. Thus, both Regulation 20 (3) (iii) of the Service regulations and Regulation 48 of the Pension Regulations incorporate a legal fiction under which even after retirement the employee will be deemed to be in service for the purpose of enquiry and punishment.

34. In Chairman & Managing Director United Commercial Bank vs. P.C.Kakkar AIR 2003 SC 1571, Damoh Panna Sagar Rural Regional Bank & another vs. Munna Lal Jain AIR 2005 SC 584 & State Bank of India vs. T.J.Paul 1999 (4) SCC 759 etc., Disciplinary Authority vs. N.B.Pattnaik, JT 1996 (4) SC 457, Tarachand Vyas vs Chairman and Disciplinary Authority, JT 1997 (3) SC 500, State Bank of India vs. Bela Bagchi, AIR 2005 SC 3272 it has repeatedly been held that higher standards of discipline, integrity and diligence are required from bank employees as compared to other employees. This is because a bank operates on public confidence, and if high standards of integrity and efficiency are not maintained, the public may lose faith in the bank and the depositors may withdraw their deposits causing a collapse of the bank. This view has been followed in the very recent decision of this Court in Oriental Bank of Commerce vs. Suresh Pathrella in LPA 1168-69/2005 dated 7.12.2005.

35. In State Bank of India vs. C. B. Dhall AIR 1998 SC 1500 the Supreme Court has held that even after superannuation of a person the enquiry can be continued under the Discipline and Appeal Regulations. A similar view has been taken in the case of G. Chanderasekhar vs. Chairman and Managing Director, ITI by the Kerala High Court vide JT 1999 LAB. I. C. 3219. In Disciplinary Authority-cum-Regional Manager vs. NB Pattnaik (1996) 9 SCC 69 the Supreme Court has held that exceeding of financial powers by a bank officer is a very serious misconduct even if no loss is caused to the bank.

36. For the reasons given above, the appeal is allowed and impugned judgment of the learned Single Judge is set aside and writ petition is dismissed.

M. Katju
CHIEF JUSTICE

Madan Lokur
MADAN B. LOKUR, J

January 30, 2006
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