

HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

LPASW no. 507/2000 Date of order: 02.12.2009
CMP nos. 151/2006 & 798/2000
&
Cross Appeal no. 122-A/2001

Dy. M. D State Bank of India and ors.
v
B. L. Sadhu and ors.

Coram:

Hon'ble Mr. Justice Barin Ghosh, Chief Justice.

Hon'ble Mr. Justice Sunil Hali, Judge.

Appearing counsel:

For appellant(s) : Mr. Gagan Basotra, Advocate.

For respondent(s) : Mr. P. N. Raina, Advocate.

i) Whether approved for reporting in Law journals etc.: **Yes.**

ii) whether approved for publication
in press: Options

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This appeal is against the judgment and order passed by a learned Single Judge of this Court on a writ petition whereby and under petitioner-respondent challenged an order passed by the disciplinary authority, i.e., the appellants, compulsorily retiring petitioner-respondent. The order under appeal quashed the said

order compulsorily retiring petitioner-respondent on the ground that the disciplinary proceeding was initiated on the basis of Rules which were not in vogue at the time when the disciplinary proceeding was initiated.

Since the learned Judge has not recorded in the judgment and order under appeal, and as the fact is not, that the authority exercising power while issuing the charge sheet was not competent to issue the charge sheet against writ petitioner-respondent in terms of the Rules then in vogue, we are *ad idem* with the learned counsel appearing in support of the appeal that the reason in support of the judgment and order under appeal, is interfereable, inasmuch as it is settled in law that, if the authority has power to exercise, but misquotes the source thereof, exercise of power cannot be interfered with.

However, one of the principal contentions in the writ petition was that petitioner-respondent, who was not under suspension, was not being paid his salaries since

1991, which prejudiced him as he could not defend himself the manner he should have defended himself in the inquiry. There is no dispute that the first charge sheet issued against the petitioner-respondent was dated May 22, 1992 and the second was dated July 19, 1992. There is also no dispute that in replies to these charge sheets, petitioner-respondent in no uncertain terms held out that he is not being paid his salaries. One charge sheet was pertaining to unauthorized absence from March 26, 1986 to November 2, 1988 and the other charge sheet pertained to misfeasance and malfeasance on the part of petitioner-respondent in discharge of his official duties, records whereof were then available at Sopore and Trehgam Branches of appellants. No step was taken by appellant-Bank in the counter affidavit filed to the writ petition to bring on record that any reasonable effort had been made by appellant-Bank to pay salaries to writ petitioner after 1991 or even during the period when the inquiry proceedings proceeded against petitioner-respondent, *ex parte*. On the conclusion of such inquiry,

the impugned punishment was imposed.

It is settled since the judgment of the Constitutional Bench of the Hon'ble Supreme Court rendered in ***Ghanshyam Das Shrivastava v. State of Madhya Pradesh***, reported in AIR 1993 SC 1183, and repeated many a times by the Hon'ble Supreme Court including in the case of ***Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. and anr.***, reported in AIR 1999 SC 1416, that non payment of subsistence allowance payable to an employee, who is facing a disciplinary action, vitiates the disciplinary proceeding in the event the disciplinary authority has been made known that for such non-payment the delinquent is unable to attend the disciplinary proceeding. In the instant case, as noted above, petitioner-respondent did, in reply to the charge sheets, indicate that he is not being paid his salaries since 1991 and, accordingly, such non-payment would prevent him from appropriately contesting the disciplinary proceeding, still then, admittedly, as it

appears from the record, no attempt was made to pay his salaries. In the appeal no contrary stand has been taken.

In the circumstances, the order impugned is not interfereable, which quashed the order of punishment and granted liberty to conduct inquiry in terms of existing rules, but, for the reasons indicated above and not for the reasons indicated in the judgment and order under appeal.

We, accordingly, dismiss the appeal. Cross objection shall stand disposed of accordingly.

(Sunil Hali)
Judge

(Barin Ghosh)
Chief Justice

Jammu,
02.12.2009
Tilak, Secy.