

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4725 OF 2010  
(Arising out of SLP(C)No.23141 OF 2009)

UCO BANK & ORS.  
TS

.....APPELLAN

VERSUS

PRABHAKAR SADASHIV KARVADE  
NT

.....RESPONDE

O R D E R

Leave granted.

In this appeal, the appellants have questioned the

correctness of judgment dated 29.04.2009 of the Division Bench of

Madhya Pradesh High Court which dismissed the writ appeal

preferred by the appellants against the order of the learned

Single Judge who allowed the writ petition filed by the

respondent and held that penalty of dismissal from service could

not be imposed upon him after his retirement from service with

effect from 31.12.1993.

A perusal of the record shows M/s. Mangaldeep, a customer of

appellant No.1 - Bank filed a complaint before the National

Consumer Disputes Redressal Commission in 1992 alleging

deficiency of service. The then Zonal Manager of the Bank and

the respondent were impleaded as parties in the complaint.

After

some time, the Zonal Manager issued a charge-sheet to the

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respondent, which became subject matter of challenge in Writ

Petition No.244/1994 filed by the respondent in the High Court of

Madhya Pradesh. In the writ petition filed by him, the respondent

also challenged the amendment made by appellant No.1 - Bank in

the service regulations. By an order dated 17.11.1995, the learned Single Judge declined to quash the charge-sheet or strike down the amendment made in the service regulations but directed that an authority higher than the Zonal Manager should look into the grievance of the respondent and decide whether any action is required to be taken against him. Letters Patent Appeal No.69 of 1996 filed by the respondent was disposed of by the Division Bench of the High Court with a direction that the General Manager should take a decision in the matter within a period of two months.

In compliance of the direction given by the Division Bench of the High Court, General Manager (Personnel) passed an order dated 13.07.2000 whereby he directed that a fresh charge-sheet be served upon the respondent. Accordingly, charge-sheet dated 9.9.2000 was issued for holding an inquiry against the respondent under the UCO Bank Employees' (Discipline and Appeal) Regulations, 1976 (for short, 'the Discipline and Appeal Regulations'). In all 15 charges of financial irregularities were levelled against the respondent.

The respondent challenged order dated 13.7.2000 and charge-sheet dated 9.9.2000 in Writ Petition No.2024/2000, which was dismissed by the learned Single Judge vide order dated 15.4.2004.

After conducting detailed inquiry, the Inquiry Officer submitted report dated 19.7.2003. He concluded that some of the charges levelled against the respondent have been proved, some have been partly proved and some have not been proved. Upon receipt of the inquiry report, the disciplinary authority issued notice dated 28.10.2003 to the respondent so as to enable him to submit comments on the inquiry report. Finally, the disciplinary authority passed order dated 12.10.2004, whereby the respondent was dismissed from service. The Appellate Authority dismissed the appeal preferred by the respondent.

The respondent challenged the orders of the disciplinary authority and the Appellate Authority in Writ Petition No.2233 of

2006 on several grounds including the one that he could not have been dismissed from service after retirement on attaining the age of superannuation. The learned Single Judge referred to Regulation 20(3)(iii) of the UCO Bank (Officers) Service Regulations, 1979 (for short, 'the 1979 Regulations'), Regulation 45 of the UCO Bank (Employees') Pension Regulations, 1995 (for short, 'the Pension Regulations'), the judgments of this Court in Union of India and others v. J. Ahmed (1979) 2 SCC 286, High Court of Punjab & Haryana v. Amrik Singh (1995) Supp 1 SCC 321 and UCO Bank and another v. Rajinder Lal Capoor (2007) 6 SCC 694 and held that penalty of dismissal from service could not have been imposed upon the respondent who had retired from service

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more than 11 years prior to the imposition of punishment. The Division Bench approved the view taken by the learned Single Judge and dismissed the Letters Patent Appeal filed by the appellants.

We have heard Mr. Raju Ramachandran, learned senior counsel for the appellants and Ms. Pragati Neekhara, learned counsel for the respondent and carefully scanned the record. Regulation 4 of the Discipline and Appeal Regulations, Regulation 20(3)(iii) of the 1979 Regulations and Regulation 46 and 48 of the Pension Regulations (as reproduced in the paper book of the appellant), which have bearing on the decision of this appeal read as under:

"Discipline and Appeal Regulations

4. PENALTIES:

The following are the penalties which may be imposed on an officer employee, for acts of misconduct or for any other good and sufficient reasons:-

MINOR PENALTIES:

- (a) Censure;
- (b) withholding of increments of pay with or without cumulative effect;
- (c) withholding of promotion;
- (d) recovery from pay or such other amount as may be due to him of the whole or part of any pecuniary loss caused to the Bank by negligence or breach of orders.

- (e) reduction to a lower state in the time-scale of pay for a period not exceeding 2 years, without cumulative effect and not adversely affecting the officer's pension.

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#### MAJOR PENALTIES:

- (f) save as provided for in (e) above reduction to a lower stage in the time-scale of pay for a specified period, with further directions as to whether or not the officer will earn increments of pay during the period of such reduction and whether on the expiry of such period the reduction will or will not have the effect of postponing the future increments of his pay.
- (g) reduction to a lower grade or post,
- (h) compulsory retirement;
- (i) removal from service which shall not be a disqualification for future employment;
- (j) dismissal which shall ordinarily be a disqualification for future employment.

#### 1979 Regulations

20(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.

#### The Pension Regulations

46.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 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.

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(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.

Explanation - In this chapter -

48.Recovery of Pecuniary loss caused to the Bank.- (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 that the Board shall be consulted before any final orders are passed.

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.

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 be 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.

A reading of the plain language of Regulation 4 of the Discipline and Appeal Regulations and Regulation 20(3)(iii) of the 1979 Regulations makes it clear that any of the penalties, whether major or minor can be imposed only on a serving officer employee of the Bank. This necessarily implies that none of the penalties specified in Regulation 4 of the Discipline and Appeal Regulations can be imposed on an officer employee after his retirement from service, though in terms of Regulation 20(3)(iii) of the 1979 Regulations, the disciplinary proceedings initiated against an officer employee before his retirement can be continued and final order is passed and further that such officer employee is not entitled to retiral benefits till the conclusion of disciplinary proceedings and passing of final order. The only

exception to this is that the officer is entitled to receive his own contribution to CPF. However, there is nothing in the language of these regulations from which it can be inferred that the disciplinary authority has the power to impose a substantive punishment on retired officer employee. This becomes more explicit from a conjoint reading of Regulation 48 of the Pension Regulations which empowers the competent authority to withhold or withdraw a pension or a part thereof and order recovery from pension of the whole or part of any pecuniary loss caused to the bank if in a departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence or criminal

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breach of trust or forgery or acts done fraudulently during the period of his service. Second proviso to Regulation 48 contains

a fiction and lays down that if the departmental proceedings are instituted while the employee was in service, the same shall be deemed to be proceedings under the regulations and continued and concluded as if the employee had continued in service.

The third

proviso imposes a bar on the initiation of departmental or judicial proceedings against an employee after his retirement in respect of an event which took place more than 4 years before such institution. The sum and substance of these regulations is

that even though a departmental inquiry instituted against an officer employee before his retirement can continue even after his retirement, none of the substantive penalties specified in Regulation 4 of 1979 Regulations, which include dismissal from service, can be imposed on an officer employee after his retirement on attaining the age of superannuation.

Therefore, we

have no hesitation to hold that order dated 12.10.2004 passed by the disciplinary authority dismissing the respondent from service, who had superannuated on 31.12.1993 was ex facie illegal and without jurisdiction and the High Court did not commit any error by setting aside the same.

We may also observe that master and servant relationship between the respondent and the employer i.e., appellant No.1 -

Bank had come to an end for all practical purposes on 31.12.1993

i.e., the date of superannuation. The departmental inquiry

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initiated against the respondent before his retirement could be continued for a limited purpose for determining whether or not he is entitled for full pensionary benefits and gratuity.

This view is amply supported by other judicial precedents.

In High Court of Punjab & Haryana v. Amrik Singh (supra), this Court referred to an earlier judgment in D.V. Kapoor v. Union of India (1990) 4 SCC 314, Rule 2.2 of the Pension Rules applicable to the employees of the High Court and observed:

"It is seen that the learned Chief Justice of the High Court, on the administrative side, while passing the order of dismissal agreed with the enquiry officer's finding that the respondent committed embezzlement and mentioned that the order of dismissal would come into immediate effect from the date of the order. In other words, he appears to have intended to say that the order of dismissal will be operative from the date of the order of the dismissal. But it would appear that the Chief Justice was not apprised that the delinquent had already been retired from service on completion of two years' period of extended service of re-employment with effect from 31-8-1982. Therefore, the order of giving effect to the order of dismissal from the date of its order was of no consequence and became superfluous as he was no longer in service as on that date."

In UCO Bank and another v. Rajinder Lal Capoor (supra), this

Court referred to the relevant regulations and observed:

"The respondent, therefore, having been allowed to superannuate, only a proceeding, inter alia, for withholding of his pension under the Pension Regulations could have been initiated against the respondent. Discipline and Appeal Regulations were, thus not attracted. Consequently the charge-sheet, the enquiry report and the orders of punishment passed by the disciplinary authority and the appellate authority must be held to be illegal and without jurisdiction.

An order of dismissal or removal from service can be passed only when an employee is in service. If a person is not in employment, the question of terminating his services ordinarily would not arise unless there exists a specific rule in that behalf. As Regulation 20 is not applicable in the case of the respondent, we have no other option but to hold that the entire proceeding

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initiated against the respondent became vitiated in law."

In the result, the appeal is dismissed. However, keeping in



( Satish K.Yadav )  
Court Master

( Phoolan Wati Arora )  
Court Master

( Signed order is placed on the file )