

CASE NO.:
Appeal (civil) 2739 of 2007

PETITIONER:
UCO Bank & Anr

RESPONDENT:
Rajinder Lal Capoor

DATE OF JUDGMENT: 18/05/2007

BENCH:
S.B. Sinha & Markandey Katju

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO. 2739 OF 2007
[Arising out of S.L.P. (C) NO. 668 OF 2007]

S.B. SINHA, J :

1. Leave granted.

2. This appeal is directed against a Judgment and order dated 08.09.2006 passed by a Division Bench of the High Court of Punjab and Haryana at Chandigarh in Letters Patent Appeal No. 174 of 2006, affirming the Judgment and Order dated 11.07.2006 passed by a learned Single Judge of the said Court in CWP No. 1902 of 2001 whereby the Writ Petition filed by the respondent herein challenging the correctness or otherwise of the orders dated 27.09.1999 and 01.12.2000 passed by the Disciplinary Authority and the Appellate Authority respectively, was allowed in part by converting the punishment of removal from the service of the respondent into compulsory retirement with effect from the date of superannuation i.e. 01.11.1996.

3. The basic fact of the matter is not in dispute.

Appellant No.1 herein is a Nationalised Bank. It framed several regulations in exercise of its power conferred upon it under Section 19 (2) of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, inter alia, UCO Bank Officer Employees' Services Regulations, 1979. The Government of India launched a scheme known as 'Prime Minister Rozgar Yojana' (PMRY) with an objective to provide sustained employment to 10 lacs educated unemployed Urban Youth, the salient features whereof, inter alia, are as under :

"a) The scheme would cover whole of the country from 1994-1995 onwards.

b) The educated unemployed entrepreneurs would be given a subsidy of 15% subject to a ceiling of Rs.7500/- each for starting the micro-enterprises.

c) The beneficiary would be required to bring 5% of the project cost as margin money.

d) An eligible entrepreneur under the scheme could take a composite loan upto Rs.1 lac from a bank

without a collateral guarantee project for formal sponsoring/recommending back to the branches for sanction."

4. The Reserve Bank of India issued guidelines/directions to work out the modalities in respect of implementation of the said scheme to the Scheduled Commercial Banks from time to time. Pursuant to one of such directions, the Board of Directors of the Appellant-Bank in terms of a Circular letter dated 31.07.1995 authorized the Branch Managers in Scales I & II to sanction composite loans upto Rs.1 lac, stating :

" During the last year, some of the Branch Managers in scale I & II did not have the necessary sanctioning powers to sanction and disburse the PMRY applications sponsored to them. This had resulted in considerable delay and Divisional Offices were required to process these applications and advice sanctions to those branches which could not dispose of applications at their level. To obviate this difficult situation our Board of Directors have recently vested the Branch Managers in Scale I & II with necessary sanctioning powers and the Branch Managers in scale I & II are now authorized to sanction compositors loans (both term loan and working capital finance) upto Rs. 1 lac in each case in respect of PMRY scheme sponsored to them. This delegation of powers has already been advised vide H.O. Circular No. CHD/SISB/18/95-96 Dt. 16.6.95."

5. Respondent while working in the capacity of the Branch Manager of his Branch disbursed loan within the capacity to various persons whose names had been recommended by the Chairman, Task Force Committee under PMRY Scheme, 1996. For his alleged acts of omission and commission which included the purported irregularities committed by him in sanctioning and disbursing the loans under the PMRY Scheme, a show cause notice was issued upon him on 24.10.1996. On the eve of his retirement i.e. on 30.10.1996, another show cause notice was issued to him purported to be in connection with the irregularities committed by him in sanctioning and disbursing loans under the said Scheme, while working as Branch Manager at Kohara Branch of the appellant-Bank in 1996. Admittedly he was allowed to superannuate on 1.11.1996. He was however, not paid his retiral benefits. He made a representation therefor. Inter alia, on the premise that a sum of Rs. 1 lac could not be recovered from the two borrowers, the retiral benefits were not disbursed. The Regional Office of the appellant-bank, however, recommended grant of terminal benefits in favour of the respondent, by a letter dated 14.05.1998 addressed to the Zonal Office of the appellant-bank stating :

"In respect of the irregularities committed by Sh. Capoor vide our show cause notice dated 30.10.1996 served on Sh. Capoor had since been replied and in view of his request dt. 8.5.97 to keep Rs.50,000/- out of his terminal benefits as security against the loan advanced to Sh. Satinder Singh (PMRY

case) and the letter was sent to you which was enclosed with our letter No. CDO/P/PER/97-98/1881 DT. 14.5.97. Accordingly, we have kept Rs.50,000/- in the shape of FDR for a 4 years 6 months with our Kohara branch. The present position of the loan account of Sh. Satinder Singh as of 20.3.98 is balance outstanding Rs.71,064/- with overdue of Rs. 9414/-. Sh. Satinder Singh had deposited in the said loan account of Rs.50,000/- as instalments upto 20.3.1998 and the last instalment is due in June 2001.

Sh. Capoor has since vacated the leased accommodation provided to him when he was posted as Manager at branch office Kohara and he has returned all the furniture provided at his residence less 4 regulators of fans and about Rs.2500/- has been claimed by the landlord as electricity bill pending against the said occupation which will be recovered from his terminal benefits.

In view of the above facts, we recommend that Sh. Capoor should be allowed the terminal benefits after retirement and no RDA be initiated against him."

6. Curiously, despite the said recommendation, a charge-sheet was issued on or about 13.11.1998. The articles of charges against him read as under :

"1. Sh. R.L.Capoor had failed to discharge his duties with utmost integrity, honesty, devotion & diligence which is violative of Regulation 3(1) of UCO Bank Officer Employees (Conduct) Regulations, 1976 as amended.

2. Sh. R.L.Capoor in the exercise of powers conferred on him, acted otherwise, than in his best judgment which is violative of Regulation 3(3) of UCO Bank Officer Employees' (Conduct) Regulations, 1976, as amended.

3. Sh. R.L. Capoor failed to take all possible steps to ensure the integrity and devotion to duty of all persons under his control and authority which is violative of Regulation 3(4) of UCO Bank Officer Employees' (Conduct) Regulations, 1976, as amended."

7. In the disciplinary proceedings, the Enquiry Officer in his report dated 13.09.1999 opined that the Charges Nos.1 and 2 had been proved, whereas Charge No. 3 had not been proved. The summary of the findings of the Enquiry Officer are as under :

Allegation No.1 First Part	proved
Second Part	not proved
Allegation No.2 2(a)	proved
2(b)	proved
2(c)	Not proved
2(d)	Proved
2(e)	Proved

2(f)	Not proved
2(g)	Not proved
2(h)	Not proved
Second part	Not proved

Allegation No.3	Not proved
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Allegation No.4	Not proved
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Charge No.1

The CSOE had failed to discharge his duties with utmost integrity, honesty, devotion and diligence which is violation of Regulation 3(1) of UCO Bank Officer Employees' (Conduct) Regulation, 1976 as amended.

Proved as per discussions under allegations 1 & 2

Charge No.2

The CSOE in exercise of powers conferred on him acted otherwise than in his best judgment which is Violative of Regulation 3(3) of UCO Bank Officer Employees' (Conduct) Regulation, 1976 as amended.

Proved as per discussions under allegations 1 & 2

Charge No.3

The CSOE failed to take all possible steps to ensure the integrity and devotion to duty of all persons under his control and authority which is violative of Regulation 3(4) of the UCO Bank Officer Employees' (Conduct) Regulation, 1976 as amended.

Not proved

8. The Disciplinary Authority by an order dated 27.09.1999, however, upon purported consideration of the findings of the Enquiry Officer as also the comments thereupon by the respondent, imposed upon the respondent, the penalty of removal from service. The appeal preferred thereagainst was dismissed by the Appellate Authority by an order dated 01.12.2000. Respondent filed a Writ Petition in the High Court of Punjab and Haryana, praying for quashing of the charge-sheet dated 13.11.1998 as also the orders dated 27.09.1999 and 01.12.2000. The learned Single Judge of the said Court, as indicated hereinbefore, allowed the Writ Petition in part opining that the respondent was guilty of commission of procedural irregularities in the matter of sanctioning and disbursing the amount of loans under the PMRY Scheme. The learned Judge arrived at a finding that the punishment imposed upon the respondent was grossly disproportionate, vis--vis, the gravity of charges framed against him and upon taking into consideration the fact that the respondent had an unblemished 40 years of service career. It was, thus, held that imposition of the said penalty after he attained the age of superannuation would not be proper. It was, therefore, opined that the penalty of removal from service should be converted to that of compulsory retirement.

9. The Letters Patent Appeal preferred against there has been dismissed by a Division Bench of the said Court.

10. Appellants are, thus, before us.

11. Mr. Raju Ramachandran, learned Senior Counsel appearing on behalf of the appellant, would submit :

i) The High Court committed a manifest error in passing the impugned judgment so far as it interfered with the quantum of punishment imposed upon the respondent by the Disciplinary Authority and the Appellate Authority.

(ii) Interference with the finding of fact arrived at in a departmental enquiry being impermissible, the High Court committed a manifest error in passing the impugned judgment.

(iii) Validity of the charge-sheet having not been interfered with, the learned Single Judge committed a serious error in interfering with the quantum of punishment.

12. Strong reliance, in this behalf, has been placed on Disciplinary Authority-cum-Regional Manager & Ors. v. Nikunja Bihari Patnaik, [(1996) 9 SCC 69]; Bank of India & Anr. v. Degala Suryanarayana, [(1999) 5 SCC 762]; Chairman and Managing Director, United Commercial Bank & Ors. v. P.C. Kakkar, [(2003) 4 SCC 364], Damoh Panna Sagar Rural Regional Bank and Anr. v. Munna Lal Jain, [JT 2005 (1) SC 70] and [(2006) 10 SCC 572].

13. Mr. Deepak Sibbal, learned counsel appearing on behalf of the respondent, on the other hand, contended :

(i) The appellant bank having not suffered any financial loss, the purported irregularities committed by the respondent were trivial in nature.

(ii) A target having been fixed to be achieved by the Appellant-Bank in respect of the PMRY Scheme and emphasis was laid upon every Branch Manager to achieve the same, it cannot be said that the respondent exceeded his jurisdiction in the matter of sanctioning and disbursing the loans.

(iii) Only because the purpose for grant of loan was changed and recommendation of the Task Force Committee was not strictly adhered to, cannot by itself be a ground for imposition of such a harsh punishment, particularly when no ill will or motive on his part was alleged or established.

14. It is evident from the report of the Enquiry Officer that the illegalities which are said to have been committed are principally two being :

1) The proposal of the Task Force for grant of loan for Rs.50,000/- for the purpose of setting up a cream separator was altered to dairy and a sum of Rs. 95,000/- was sanctioned therefor.

2) Two cheques for a sum of Rs.19,5000/- and Rs. 5,000/- were issued in favour of Shri Paramjit Singh, who is the real brother of the borrower Satinder Singh.

15. The charges of forgery and interpolation also are said to have been restricted to the said transactions only.

16. We agree with the contention of Mr Raju Ramachandran that ordinarily the High Court should not interfere with the quantum of punishment imposed by the Disciplinary Authority. It is also true that the officers of the bank enjoys a part of confidence in them even a Manager of a Bank is found to have embezzled or misappropriated any amount, or exceeded the jurisdiction in the matter of grant of sanction of loans, the Court takes a strict view of the matter.

17. The High Court, therefore, may not be correct in arriving at its opinion. However, as would appear from the discussions made hereinafter, initiation of the departmental proceedings itself, in our considered opinion, was wholly illegal and without jurisdiction.

18. The fact that charge-sheet was issued only on 13.11.98 was not in dispute. It also stands admitted that the respondent attained the age of superannuation on or before 01.11.1996. Disciplinary Proceedings admittedly were initiated against the respondent in terms of Regulation 20 (3) (iii) of UCO Bank Officer Employees Services Regulations, 1979 which reads as under:

"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."

19. A bare perusal of the said provision would clearly show that by reason thereof a legal fiction has been created. We are not oblivious of the legal principle that a legal fiction must be given full effect but it is equally well-settled that the scope and ambit of a legal fiction should be confined to the object and purport for which the same has been created.

20. In Dilip S. Dahanukar v. Kotak Mahindra Co. Ltd. and Anr. [2007 (5) SCALE 452], it was observed :

"46. Legal fiction, it is well-settled, must be construed having regard to the purport of the statute. {See Sadashiv Dada Patil vs. Purushottam Onkar Patil (D) By Lrs. [2006 (10) SCALE 21]; M.P. State Electricity Board vs. Union of India & Ors. [2006 (9) SCALE 194]; Maruti Udyog Ltd. vs. Ram lal & Ors. [(2005) 2 SCC 638]; Bharat Petroleum Corpn. Ltd. vs. P. Kesavan & Anr. [(2004) 9 SCC 772]}"

21. The aforementioned Regulation, however, could be invoked only when the Disciplinary Proceedings had clearly been initiated prior to the respondent's ceasing to be in service. The terminologies used therein are of seminal importance. Only when a disciplinary proceeding has been initiated against an officer of

the bank despite his attaining the age of superannuation, can the disciplinary proceeding be allowed on the basis of the legal fiction created thereunder, i.e., continue "as if he was in service". Thus, only when a valid departmental proceeding is initiated by reason of the legal fiction raised in terms of the said provision, the delinquent officer would be deemed to be in service although he has reached his age of superannuation. The departmental proceeding, it is trite law, is not initiated merely by issuance of a show cause notice. It is initiated only when a chargesheet is issued (See Union of India etc. etc. v. K.V. Jankiraman, etc. etc. reported in AIR 1991 SC 2010). This aspect of the matter has also been considered by this Court recently in Coal India Limited & others v. Saroj Kumar Mishra [2007 (5) SCALE 724] wherein it was held that date of application of mind on the allegations levelled against an officer by the Competent Authority as a result whereof a chargesheet is issued would be the date on which the disciplinary proceedings said to have been initiated and not prior thereto. Pendency of a preliminary enquiry, therefore, by itself cannot be a ground for invoking Clause 20 of the Regulations. Albeit in a different fact situation but involving a similar question of law in Coal India Ltd. (supra) this Court held :

"13. It is not the case of the appellants that pursuant to or in furtherance of the complaint received by the vigilance department, the competent authority had arrived at a satisfaction as is required in terms of the said circulars that a chargesheet was likely to be issued on the basis of a preliminary enquiry held in that behalf or otherwise.

14. The circular letters issued by the appellants put restrictions on a valuable right of an employee. They, therefore, are required to be construed strictly. So construed there cannot be any doubt whatsoever that the conditions precedent contained therein must be satisfied before any action can be taken in that regard."

It was further more observed that :

"20. A departmental proceeding is ordinarily said to be initiated only when a chargesheet is issued."

(See also Union of India v. Sangram Keshari Nayak 2007 (6) SCALE 348)

22. 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 chargesheet, 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.

23. 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 initiated against the respondent became vitiated in law.

24. We are not oblivious of the peculiar legal position obtaining in this case. A gross illegality has been committed by the appellant in initiating a departmental proceeding against the respondent but he did not question the same. The learned Single Judge of the High Court held him guilty of commission of some irregularities. He did not question the correctness or otherwise of the said order also.

25. However, the legal effect of the order passed by the learned Single Judge could be that he became entitled to receive all retiral benefits. Thus, in our opinion, it is permissible for him to raise all contentions in support of the order passed by the learned Single Judge, in terms of the provisions contained in Order 41, Rule 33 of the Code of Civil Procedure and the principles akin thereto.

26. Furthermore, the respondent has retired as far back as on 01.11.1996. At this late stage, we are of the opinion that we should not allow an illegality to be perpetuated which is otherwise apparent on the face of his record.

27. We, therefore, are of the opinion that although the learned Single Judge and also the Division Bench of the High Court may not be correct in passing the impugned judgments, we should in exercise of discretionary jurisdiction under Article 142 of the Constitution of India, should allow the Writ Petition of the respondent to do complete justice to the parties.

28. We direct the appellant to pay all retiral benefits to the respondent expeditiously.

29. The Appeal is dismissed with aforementioned directions. However, in the facts and circumstances of the case, there shall be no order as to costs.