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**IN THE HIGH COURT OF KARNATAKA,
DHARWAD BENCH**

DATED THIS THE 14TH DAY OF JUNE, 2023

BEFORE

THE HON'BLE MR JUSTICE S.VISHWAJITH SHETTY

WRIT PETITION NO. 109981 OF 2015

BETWEEN:

GURURAJ S/O RAMACHARYA HAVANUR,

ETITIONER

(BY SRI. ANANT P SAVADI, ADVOCATE)

AND:

1. THE MANAGEMENT OF SYNDICATE BANK,
R/BY DEPUTY GENERAL MANAGER,
PERSONAL, HEAD OFFICE, SYNDICATE BANK,
MANIPAL, DIST: UDUPI.
2. THE GENERAL MANAGER,
(P) SYNDICATE BANK HEAD OFFICE,
MANIPAL, DIST: UDUPI.

... RESPONDENTS

(BY SRI. SURESH S GUNDI, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO THE HON'BLE COURT BE PLEASED TO PASS AN ORDER IN THE NATURE OF WRIT CERTIORARI QUASHING THE ORDER OF APPELLATE AUTHORITY- THE RESPONDENT NO.2 BEARING NO. 013-PD:IRD/DA-7 DATED 6TH DAY OF APRIL 2015 REJECTING THE APPEAL OF THE PETITIONER PRODUCED AT ANNEXURE-H & ETC.

THIS WRIT PETITION, HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 06.06.2023, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

**RAKESH S
HARIHAR**

Digitally signed by
RAKESH S HARIHAR
Location: High Court of
Karnataka, Dharwad
Date: 2023.06.15 11:04:13
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ORDER

This writ petition under Articles 226 and 227 of the Constitution of India is filed by the retired employee of the respondent – Bank with prayers to issue a writ of certiorari quashing the order Annexure – H dated 06.04.2015 passed by the 2nd respondent in proceedings bearing No.013 / PD : IRD / DA – 7 and also to issue a writ of mandamus directing the respondents to release the pension of the petitioner with interest at 18%.

2. Heard the learned counsel for the parties.

3. Facts leading to filing of this writ petition as revealed from the records narrated briefly are, the petitioner was working as Manager of the respondent – Bank at Ballari for the period between 2007 to 2011. On 03.11.2011, article of charges were issued against the petitioner for having violated the rules and norms of the Bank while processing the loans to the agriculturists. The petitioner had submitted his reply to the said article of charges on 11.11.2011. Thereafter, a corrigendum to the article of charges was served on the petitioner on 21.12.2011. Since the management was not satisfied with the reply given to the article of charges, an

enquiry was initiated against the petitioner. After completion of the enquiry, a report was filed by the Enquiry Officer holding that the charges against the petitioner were proved. After service of the said report, the petitioner had submitted his reply to the same. However, the Disciplinary Authority being not satisfied with the reply had passed an order of dismissal against the petitioner on 13.09.2014. In the meantime, on 13.05.2012, the petitioner had retired from service on attaining the age of superannuation. Aggrieved by the order of dismissal dated 13.09.2014, the petitioner had preferred an appeal which was dismissed by the 2nd respondent Appellate Authority on 21.11.2014 vide Annexure - H. Assailing the said order, the petitioner is before this Court.

4. Learned counsel for the petitioner submits that from the reading of the charge sheet itself, it can be said that the management was biased against the petitioner, as a decision was already taken for conducting an enquiry against the petitioner, even before he had submitted a reply to the article of charges. He submits that the petitioner was not supplied with the documents alongwith charge sheet and therefore, the enquiry was vitiated. In support of this contention, he has relied upon the judgments of the Hon'ble

Supreme Court in the cases of ***Bilaspur Raipur Kshetriya Gramin Bank and another vs. Madanlal Tandon*** reported in ***(2015) 8 SCC 461*** and ***G.V.Aswathanarayana vs. Central Bank of India, by Chairman, Bombay and others*** reported in ***ILR 2003 KAR 3066***. He submits that the charges found in the article of charges against the petitioner are vague in nature and therefore, the enquiry cannot be said to have been held in a fair and proper manner against the petitioner. In support of this contention, he has relied upon the judgment of the Hon'ble Supreme Court in the case of ***Chairman cum Managing Director, Coal India Limited and others*** reported in ***(2011) 5 SCC 142*** and in the case of ***G.V.Aswathanarayana vs. Central Bank of India, by Chairman, Bombay and others*** reported in ***ILR 2003 KAR 3066***. He submits that as on the date of passing the order of dismissal, the petitioner had already attained the age of superannuation and had retired from service and therefore, the continuation of the enquiry against the petitioner after retirement was bad in law. He submits that even if the regulations permitted the Bank to continue the enquiry even after retirement, punishment of dismissal cannot be imposed on the petitioner. In support of his contention, he has placed reliance on the judgment of the

Hon'ble Supreme Court in the case of ***UCO Bank and others vs. Rajendra Shankar Shukla*** reported in ***(2018) 14 SCC 92***.

5. Per contra, learned counsel appearing for the respondents submits that merely for the reason, in the article of charges it has been mentioned that petitioner was placed under suspension pending enquiry, no prejudice is caused to the petitioner and it cannot be said that management was biased against petitioner. He submits that the petitioner had not made any grievance before the Enquiry Officer that he was not served with the necessary documents. He has placed reliance on Annexure – R3 and submits that the petitioner on the other hand has admitted before the Enquiry Officer about the receipt of all documents from the Management and has also signed the order sheet. He submits that the judgment in the case of ***Rajendra Shukla*** has been over ruled by the Hon'ble Supreme Court insofar it had observed that punishment of dismissal cannot be passed after superannuation, in the subsequent judgment of the Honb'le Apex Court in the case of ***Chairman cum Managing Director, Mahanadi Coalfields Limited vs. Rabindranath Choubey*** reported in ***(2020) 18 SCC 71***.

6. I have given my anxious consideration to the arguments addressed on both sides and also perused the material on record.

7. The charge sheet dated 03.11.2011 which was issued to the petitioner vide regulation No.6 of the Syndicate Bank Officer Employees' (Discipline & Appeal) Regulations, 1976 is produced at Annexure - A and a perusal of the same would go to show that in the preamble of the said document, it has been mentioned that petitioner was placed under suspension with effect from 23.12.2010 pending enquiry into the alleged misconduct committed by him. By mentioning that the suspension order was passed pending enquiry, it cannot be said that the management was biased against the petitioner. Suspension orders are always passed pending enquiry against an employee and therefore, the contention of the petitioner that the enquiry held against him is bad in law as the management was biased against him, as it had already decided to hold an enquiry even before he had submitted his reply to the article of charges is meritless.

8. The respondent Bank has filed a detailed statement of objections and has produced the copy of the enquiry

proceedings at Annexure – R3. It is seen from Annexure – R3 that one Sri.K.Krishnamurthy, Senior Branch Manager was permitted to act as petitioner's Defence Assistant in the enquiry. During the course of enquiry, the petitioner had admitted that the list of witnesses and documents were made available to him. From a reading of the enquiry proceedings, it is seen that the petitioner has admitted during the course of enquiry that he had received the list of witnesses and documents by which the article of charges is proposed to be proved against him by the Management. Therefore, there is no merit in the contention of the petitioner that he was not served with the charge sheet documents on the basis of which charges were framed against him.

9. A perusal of the charge sheet which is available at Annexure – A would go to show that the charges are very clear against the petitioner and there is no vagueness in the same as sought to be contended by him. Separate charges have been framed against the petitioner in respect of each of the allegations made against him by the management. In support of the charge made against the petitioner, even the particulars of the documents and the persons to whom the loan was sanctioned is mentioned. Therefore, there is no merit even in

the contention of the petitioner that the charges against the petitioner are vague in nature. The judgments upon which reliance has been placed by the petitioner in support of this arguments of his, are therefore of no aid to him.

10. It is not in dispute that the regulations of the respondent - Bank provides that the departmental enquiry initiated against an employee while in service can be continued even after his retirement. On attaining age of superannuation, such employee ceases to be in service, but for the purpose of enquiry will continue as if he was in service until final orders are passed. Rule 20(3)(iii) of the Syndicate Bank (Officers') Service Regulations, 1979 reads as follows:

"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."

11. In the case of **Rajendra Shukla**, the Hon'ble Supreme Court at paragraph Nos.16, 17 and 18 had held as follows:

16. Finally, we may also draw attention to an unreported decision of this Court in UCO Bank and Ors. v. Prabhakar Sadashiv Karvade. In this decision, the Court considered the provisions of the Regulations that we are concerned with and held :

"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 make reference to another decision of this Court in UCO Bank and Anr. v. Rajinder Lal Capoor. This decision also related to the very same Regulations that we are concerned with.

17. *In dealing with these Regulations, it was observed by the Court in paragraph 22 of the Report as follows:-*

"22. 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."

18. *Under the circumstances, we have no hesitation in dismissing the appeal filed by the Bank also on the ground that the punishment of dismissal could not have been imposed on Shukla after his superannuation."*

12. The said judgment has been impliedly overruled by the Hon'ble Supreme Court in the case of **Chairman cum Managing Director, Mahanadi Coalfields Limited vs. Rabindranath Choubey** reported in **(2020) 18 SCC 71**, insofar it has observed that punishment of dismissal cannot be passed after superannuation. In the said case, the Hon'ble Supreme Court has observed that if the submission on behalf of the employee that after the employee has attained the age of superannuation and/or he has retired from service, despite Rule 34.2, no order of penalty of dismissal can be passed is

accepted, in that case, it will be frustrating permitting the authority to continue and conclude the disciplinary proceedings after retirement. If the order of dismissal cannot be passed after the employee has retired and/or has attained the age of superannuation, in the disciplinary proceedings which were instituted while the employee was in service, in that case, there shall not be any fruitful purpose to continue and conclude the disciplinary proceedings in the same manner as if the employee had continued in service. In paragraph Nos.45 and 47 of the said judgment, the Hon'ble Supreme Court has held as follows:

"45. In view of the various decisions, it is apparent that under Rule 34.2 of the CDA Rules inquiry can be held in the same manner as if the employee had continued in service and the appropriate major and minor punishment commensurate to guilt can be imposed including dismissal as provided in Rule 27 of the CDA Rules and apart from that in case pecuniary loss had been caused that can be recovered. Gratuity can be forfeited wholly or partially.

46. xxx

47. Thus considering the provisions of Rules 34.2 and 34.3 of the CDA Rules, the inquiry can be continued given the deeming fiction in the same manner as if the employee had continued in service

and appropriate punishment, including that of dismissal can be imposed apart from the forfeiture of the gratuity wholly or partially including the recovery of the pecuniary loss as the case may be."

13. In a case of proven misconduct, when the statute empowers the disciplinary authority for passing appropriate punishment and if the punishment imposed is upheld by the appellate authority, the Courts / Tribunals have very little scope to interfere. While considering the question of proportionality of sentence imposed on a delinquent, the Court should also take into consideration the nature of duty performed by him and other relevant circumstances which go into the decision making process. If the delinquent was holding a responsible post and if he has breached the trust and acted with dishonesty he is required to be dealt with iron hands. If honesty and integrity are in built requirements for the post held by him, no lenient view can be taken against him. Where a person deals with public money, highest degree of integrity, honesty and trustworthiness is a must and there cannot be any compromise on the same. Any misplaced sympathy or benevolence would have the effect of mitigating the seriousness of the charges and therefore the Courts are required to be cautious of the same.

14. The regulations of the respondent Bank provides for continuation of the disciplinary proceedings against an employee even after he retires on attaining the age of superannuation. The earlier judgments of the Hon'ble Supreme Court to the effect that no penalty order of dismissal can be passed against an employee as against whom disciplinary proceedings are continued even after his retirement on he attaining the age of superannuation, on the strength of the regulations which provides for the same, has been now overruled by the Hon'ble Supreme Court and it has been held that in an enquiry so held an order of punishment of dismissal can be imposed by the disciplinary authority on the employee. Therefore, the contention of the petitioner that an order of dismissal could not have been passed against the petitioner in an enquiry which was continued against him even after his retirement in spite of charges being proved against him deserves to be rejected.

15. The scope of judicial review in exercise of Article 226 of the Constitution of India as against findings recorded in a departmental proceedings and the punishment imposed on the basis of such findings is very limited and narrow. Unless such findings are patently illegal, perverse or based on no

evidence, in normal circumstances, the Courts / Tribunals cannot interfere with the same. The findings recorded by the Disciplinary Authority in the present case are supported by evidence. The petitioner has not pointed out any discrepancy in the evidence of the department. It is not the case of the petitioner that there is absolutely no evidence against him. Petitioner was holding a responsible post of Manager of a nationalized bank. Serious charges of misconduct have been made against the petitioner and as against proven misconduct, the disciplinary authority had thought it fit to pass an order of dismissal against the petitioner. Unless the punishment is shockingly / strikingly disproportionate or harsh, in normal circumstances, this Court cannot interfere with the same and that too when the said order of punishment has been confirmed by the Appellate Authority. In a properly held departmental enquiry, when the statutory requirements and principles of natural justice has been complied with, the scope for interference under Article 226 f the Constitution of India is bare minimum. The courts cannot act as appellate authority and re-appreciate the evidence and give a finding of its own.

16. The Hon'ble Supreme Court in the case of ***Union of India and others vs. Subrata Nath*** reported in **2022 SCC Online SC 1617** at para 21 has observed as follows:

"21. To sum up the legal position, being fact finding authorities, both the Disciplinary Authority and the Appellate Authority are vested with the exclusive power to examine the evidence forming part of the inquiry report. On finding the evidence to be adequate and reliable during the departmental inquiry, the Disciplinary Authority has the discretion to impose appropriate punishment on the delinquent employee keeping in mind the gravity of the misconduct. However, in exercise of powers of judicial review, the High Court or for that matter, the Tribunal cannot ordinarily reappreciate the evidence to arrive at its own conclusion in respect of the penalty imposed unless and until the punishment imposed is so disproportionate to the offence that it would shock the conscience of the High Court/Tribunal or is found to be flawed for other reasons, as enumerated in P. Gunasekaran (supra). If the punishment imposed on the delinquent employee is such that shocks the conscience of the High Court or the Tribunal, then the Disciplinary/Appellate Authority may be called upon to re-consider the penalty imposed. Only in exceptional circumstances, which need to be mentioned, should the High Court/Tribunal decide to

impose appropriate punishment by itself, on offering cogent reasons therefor."

No such exceptional circumstances are found in the present case. The writ petition lacks merit and accordingly the same is dismissed.

**Sd/-
JUDGE**

Rsh/Ct:Bck
List No.: 1 Sl No.: