

UCO Bank and Ors. Vs. M.B. Motwani (D) through LRS. & Ors.

Civil Appeal No. 8516 of 2011
2023-01-01 | Rajesh Bindal, J.
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Full judgment text

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[Civil Appeal No. 8516 of 2011]

Rajesh Bindal, J.

1. The challenge in the present appeal is to the judgment¹ of the High Court² passed in A Writ Petition³. Vide the aforesaid judgment, the Division Bench of the High Court had set aside the order dated 03.03.1993, passed by the appellant-Bank, wherein the punishment of dismissal was imposed upon the respondent no.1 and the order dated 23.07.1993, by which the appeal filed by him was dismissed by the Appellate Authority.

Facts

2. Briefly the facts, available on record, are that the respondent no.1 was appointed as an Apprentice in the appellant- Bank⁴ in the year 1952. In the year 1974, he was posted as a Branch Manager at Moradabad Branch. From there, he was transferred to Calcutta Main Branch as an Assistant Manager. In the year 1976, the respondent no.1 was promoted and was transferred to Bombay as Senior Management Scale-IV Officer. Between the year 1988-90, he served as an Assistant General Manager at Bombay Main Branch.

He attained the age of superannuation on 02.07.1991 and was due to retire on 31.07.1991. An intimation notice for retirement was served upon him on 07.05.1991. Immediately, thereafter on 17.06.1991, the respondent no.1 was served with a memo requiring him to explain the irregularities and lapses relating to certain accounts during his tenure when he was heading the Bombay Main Branch. Vide letter dated 20.06.1991, he sought time and certain documents to enable him to reply to the show cause notice.

A fresh notice was served upon him on 06.07.1991, to which the respondent no.1 again sought time and the documents for filing his reply. On 15.07.1991, the General Manager (Personnel) exercising power under Regulation 12 of the 1976 Regulations⁵ placed the respondent no.1 under suspension and ordered that the respondent no.1 shall not be retired from the service of the Bank, despite attaining the age of superannuation under Regulation 20(3)(iii) of the 1979 Regulations⁶.

3. Aggrieved by the order of suspension, the respondent no.1 preferred an appeal which was dismissed by the Appellate Authority on 07.11.1991. A chargesheet dated 07.12.1991 was served upon the respondent no.1 on 10.12.1991 and he was called upon to face the departmental enquiry. The respondent no.1 filed his reply to the chargesheet, denying all the allegations as baseless. The order of suspension was challenged by the respondent no.1 by filing a Writ Petition⁷ before the High Court, which was disposed of on 10.01.1992, with certain directions regarding the enquiry, while not interfering with the order of suspension.

4. On 09.04.1992, the Inquiry Officer submitted his report. On 03.03.1993, the Disciplinary Authority dismissed the respondent no.1 from the service under Regulations 7(3) read with Regulation 4- D of the 1976 Regulations. The respondent no.1, aggrieved against the order of dismissal, preferred a statutory appeal, which was dismissed by the Appellate Authority on 23.07.1993.

5. The aforesaid order was challenged by the respondent no.1 by filing a Writ Petition³ in the High Court, which was allowed vide impugned order. Against the aforesaid order, the appellant- Bank is in appeal before this Court.

Arguments

6. Mr. Vikramjit Banerjee, learned Additional Solicitor General of India appearing for the appellant-Bank, submitted that the impugned judgment of the High Court has been passed on a wrong premise, without

properly appreciating the arguments. The 1979 Regulations clearly permitted action even against a retired employee. He submitted that Regulation 20 thereof which was duly approved by the Reserve Bank of India and the Central Government has to be given its full effect. However, the High Court has gone wrong in holding that a chargesheet was required to be issued, though the 1979 Regulations provide that a show cause notice was good enough to show that proceeding has been initiated against an employee.

7. With reference to the amendment in Regulation 20 of 1979 Regulations, he referred to a communication dated 01.07.1985 from the Government of India, Ministry of Finance, Department of Economic Affairs (Banking Division) addressed to the Chief Executive Officers of the Nationalised Banks, wherein a direction was issued to initiate process for amendment of Regulation 20 of the 1979 Regulations.

The draft of the said amendment, as approved by the Board of Directors in its meeting held on 31.08.1985, was forwarded to the Government of India, Ministry of Finance and to the Reserve Bank of India for its formal sanction. On 17.12.1985, the Reserve Bank of India granted approval to the proposed amendment. Thereafter, the Government of India also granted approval on 30.01.1986.

After the aforesaid approvals were received, the appellant-Bank had put up the amendment before the Board of Directors for adoption on 12.03.1986, which was duly approved on 17.04.1986. A circular was issued to all the branches of the Bank on 28.05.1986, informing them about the amendment made in the 1979 Regulations.

8. Referring to the Regulation 20(3)(b) of the 1979 Regulations, the learned counsel for the appellant-bank argued that this clearly provides that the disciplinary proceedings against an employee shall be deemed to be pending on the date of retirement in case a show cause notice has been issued to him before that. Regulation 20(3)(c) of the 1979 Regulations further provides that an officer under suspension of a charge of misconduct shall not be retired or permitted to retire on attaining the age of superannuation. He shall be retained in the service till the inquiry into the charge levelled against him is concluded and a final order passed thereon.

9. Learned counsel for the appellant-Bank further argued that the High Court had misdirected itself while referring to the 1979 Regulations as being amended in the year 1993 i.e., after the retirement date of the respondent no.1. Whereas the fact remains that these were amended in the year 1986 itself. Though this Court opined in the case of UCO Bank & Anr. v. Rajender Lal Capoor (2007) 6 SCC 6948 that, any proceeding against an employee shall be deemed to be pending only when a chargesheet is issued, but the judgment was delivered while ignoring true meaning of the plain language used in Regulation 20 of the 1979 Regulations.

He further submitted that on the same day another judgment was delivered by the same Bench of this Court in Ramesh Chandra Sharma v. Punjab National Bank (2007) 8 SCALE 240, wherein this Court opined that, the Regulation should be given full effect even with reference to the legal fiction provided therein. Identical Regulations with reference to the case of Punjab National Bank (supra) were under consideration therein.

Subsequently, the matter was referred to a three-Judge Bench of this Court for consideration in Canara Bank v. D.R.P. Sundharam, (2016) 12 SCC 724, wherein this Court upheld the view expressed in UCO Bank v. Rajinder Lal Capoor, (2008) 5 SCC 2579. However, the fact remains that in that case the issue was not considered in its entirety with reference to the 1979 Regulations and its true spirit, especially the deeming provisions.

He further submitted that recently in Chairman-cum-Managing Director, Mahanadi Coalfields Ltd. v. Rabindranath Choubey, (2020) 18 SCC 71, a three-Judge Bench of this Court had expressed its reservation with reference to the view expressed in Rajender Lal Capoor -I (supra) delivered by a Two-Judge Bench of this Court.

10. While concluding the argument, the learned counsel for the appellant-Bank submitted that the impugned judgment of the High Court goes even beyond the views expressed by this Court in Rajender Lal Capoor -I (supra). In any case, there being a conflict of opinion among the two judgments of Three-Judge Benches each i.e., Canara Bank (supra) and Mahanadi Coalfields Ltd. (supra), the matter may be referred to a larger Bench.

11. In response, Mr. Aman Hingorani, learned counsel appearing for the respondent no.1, submitted that the facts of the case in Rajender Lal Capoor -I (supra) were totally different, as in that case chargesheet had

been issued to the employee while he was in service. Hence, the proceeding could continue even after his retirement. The judgment of this Court in Mahanadi Coalfields (supra) is also not relevant as the issue involved therein was altogether different.

There also, the chargesheet was issued to the employee during the course of his employment, after which the employee was suspended. The suspension order was revoked, however, the departmental inquiry remained pending till superannuation. In any case, reference in the aforesaid judgment was made to Rajender Lal Capoor -I (supra) and not to the views expressed by a Three-judge Bench of this Court in Canara Bank (supra), which upheld the views expressed by a Two-Judge Bench in Rajinder Lal Capoor -II (supra).

12. He further submitted that the 1979 Regulations do not provide for any procedure to be followed for inquiry or the punishment which can be imposed. For this, the disciplinary authority will have to refer to the 1976 Regulations, which provide that after retirement of an employee, the only punishment which could be awarded is with reference to the retiral benefits and not termination from service.

13. It was further submitted by learned counsel for the respondent no.1 that even if the amendment to Regulation 20 of the 1979 Regulations as proposed by the Bank had been approved by the Reserve Bank of India and thereafter by the Government of India and adopted by the appellant-Bank on 17.04.1986, however, any amendment in the Regulations would take effect only after its publication in the Official Gazette in terms of the amendment made in Section 19(1) of the 1970 Act.10 Admittedly, the idea behind the publication in the Official Gazette is to make the affected people aware about the changes in law.

Admittedly, there was no publication in the Official Gazette and for the first time, the appellantbank had issued a circular to all the branches on 28.05.1986, regarding the amendment carried out in Regulation 20 of the 1979 Regulations. After the amendment in Section 19(1) of 1970 Act, the pre-requisite of the publication through gazette notification was required to be complied with. On failure of publication in the Official Gazette, the amended provisions of Regulation 20 could not be enforced against the respondent no.1.

The counsel for the respondent no.1 referred to the judgment of this Court in B.K. Srinivasan v. State of Karnataka, (1987) 1 SCC 658 and Rajendra Agricultural University v. Ashok Kumar Prasad, (2010) 1 SCC 730. He further submitted that even prior to the judgment of this Court in Rajender Lal Capoor -II (supra), this Court in United Bank of India Officers Association v. United Bank of India, 1987 (1) LLJ 104, had struck down the 1979 Regulations.

14. He further submitted that even the Government of India vide letter dated 15.12.1988, addressed to all Nationalised Banks, requested that the Regulation 20 of the 1979 Regulations having been held to be ultra vires by this Court in United Bank of India Officers Association's case (supra), the same should not be invoked by the Banks.

15. While concluding the argument, counsel for the respondent no.1 submitted that, the respondent no.1 had expired on 30.12.2012. He is now represented by his legal representatives. No retiral dues were paid to the employee (i.e., respondent no. 1) concerned. Hence, on account of delay, direction should be issued to the appellant-Bank for payment thereof, along with interest.

16. We have heard learned counsel for the parties and perused the relevant referred record.

Discussion

17. Before we proceed to consider the arguments raised by the learned counsel for the parties, we deem it appropriate to refer to the legal position with reference to the arguments raised regarding Regulation 20 of the 1979 Regulations.

18. The undisputed facts on record are that the respondent no.1 while serving as Assistant General Manager at Bombay Main Branch, had attained the age of superannuation on 02.07.1991 and was due to retire on 31.07.1991. An intimation notice for retirement was served upon him on 07.05.1991. Immediately, thereafter on 17.06.1991, the respondent no. 1 was served a memo, requiring him to explain the irregularities and lapses related to certain accounts during his tenure, when he was heading the Bombay Main Branch.

The aforesaid notice was served upon the respondent no.1 on 20.06.1991. He sought time and certain documents to enable him to reply to the show cause notice. A fresh notice was served upon him on

06.07.1991, to which the respondent no.1 again sought time and the documents for final reply. On 15.07.1991, the General Manager (Personnel) exercising power under Regulation 12 of the 1976 Regulations placed the respondent no.1 under suspension and ordered that he shall not be retired from the service of the bank, despite attaining the age of superannuation under Regulation 20(3)(iii) of the 1979 Regulations.

The respondent no.1, aggrieved against the order of suspension, preferred an appeal, which was dismissed by the Appellate Authority. Thereafter, the chargesheet was served upon the respondent no.1 on 07.12.1991. The respondent no.1 filed his reply to the chargesheet denying all the allegations being baseless. The order of suspension was challenged by the respondent no.1 by filing a Writ Petition before the High Court, which was disposed of on 10.01.1992, with certain directions regarding the inquiry, while not interfering with the order of suspension.

On 03.03.1993, the Disciplinary Authority dismissed the respondent no.1 from service under Regulations 7(3) read with 4(d) of the 1976 Regulations. The respondent no.1, aggrieved against the order of dismissal, preferred a statutory appeal, which was dismissed by the Appellate Authority on 23.07.1993. The aforesaid order was challenged by the respondent no.1 by filing a writ petition in the High Court, which was allowed by the impugned order.

Legal Position

19. Vide judgment of this Court in United Bank of India Officers Association's case (supra), Regulation 20 of the United Bank of India Regulations 1979 which was identical, was held to be unconstitutional and void.

20. The matter was considered subsequently by this Court in Rajender Lal Capoor -I (supra). In that case, the employee concerned had attained the age of superannuation on 30.10.1996. Show cause notice was issued to him on 24.10.1996. Chargesheet was issued on 13.11.1998. Finally, after the enquiry, he was removed from service. The statutory appeal filed against the order of punishment of removal, was dismissed by the Appellate Authority.

In a challenge to the aforesaid order, the High Court opined that the punishment of removal was disproportionate vis-à-vis the gravity of charge framed against him. Finally, it was directed that the punishment of removal be converted into compulsory retirement. The intra-court appeal against the aforesaid appeal was dismissed by the High Court. The matter was agitated before this Court.

20.1. While interpreting the 1979 Regulations, this Court opined that the legal fiction created in clause (iii) of Sub-Regulation 20(3) of the 1979 Regulations, must be given full effect, but it is wellsettled that the scope and ambit of the legal fiction should be confined to the object and purport for which the same has been created. It was opined that the 1979 Regulations could be invoked only when the disciplinary proceeding had been initiated prior to the ceasing of the employees service.

The delinquent employee would be deemed to be in service, although he has reached the age of superannuation, only if a valid departmental proceeding had been initiated. The departmental proceeding was not initiated merely on issuance of a show cause notice. It is initiated only when a chargesheet is issued. That is the date of application of mind on the allegations levelled against an employee by the competent authority. Pendency of a preliminary disciplinary inquiry by itself cannot be a ground for invoking Regulation 20 of the 1979 Regulations.

On an employee having been allowed to superannuate, only proceeding inter alia including, withdrawal of his pension or any other retiral dues under the applicable regulation, could have been initiated. As in that case, the chargesheet was issued after the employee had already superannuated, the same along with inquiry report and the order of punishment was set aside. The order of removal or dismissal from service can be passed only when an employee is in service.

If a person is not in employment, the question of terminating his service ordinarily would not arise unless there exists a specific rule in this behalf. In the aforesaid case, even though the employee was not in appeal before this Court against the order of his compulsory retirement but still this Court invoking the principles, as contained in Order XLI Rule 33 CPC, granted relief to the respondent.

21. The Bank, being aggrieved against the aforesaid judgment of this Court, filed a review petition, which was decided by this Court in Rajinder Lal Capoor -II (supra). While harmoniously construing the 1976 and 1979 Regulations, this Court opined that Clause (iii) of Sub-Regulation 20 (3) of the 1979 Regulations is an

independent provision. It provides for continuation of disciplinary proceeding which must have been initiated in terms of the 1976 Regulations.

The 1979 Regulations will be applicable only in a case where proceeding has been initiated for the purpose of taking disciplinary action against a delinquent officer for the purpose of imposition of punishment on him. The disciplinary proceeding, thus, is initiated only in terms of the 1976 Regulations and not in terms of the 1979 Regulations. The complete procedure for holding the disciplinary proceeding is provided only in the 1976 Regulations.

The 1979 Regulations would be attracted independently where no disciplinary proceeding is to be initiated. However, when read in context of Regulation 20(3), initiation and pendency of disciplinary proceeding is a must. The 1976 Regulations provided for the mode and manner in which the disciplinary proceeding is initiated. It expressly provides for service of chargesheet which is a sine qua non for disciplinary proceeding.

While putting the tools for interpretation and giving a harmonious construction to the provisions of the 1976 and the 1979 Regulations, this Court opined that if the intention of the Regulation making authority had been that the legal fiction as created in Clause (ii) of Sub-Regulation (3) of Regulation 20 of the 1979 Regulations would cover both clauses (i) and (iii), the same should have been placed only after clause (iii). In such an event, clause (ii) of Sub-Regulation (3) of Regulation 20 should have been differently worded. With these observations, the review petition filed by the Bank was dismissed.

22. In Canara Bank's case (supra), this Court noticed that the earlier judgments of this Court in the cases of Rajender Lal Capoor -I & Rajender Lal Capoor -II (supra) were delivered by the Division Bench of this Court. When the matter came up for hearing, having a doubt on the view expressed, reference was made to a larger Bench of this Court vide order dated 04.08.2010.

A Bench consisting of Three Judges of this Court found that the provisions of the 1976 Regulations with reference to initiation of the disciplinary proceeding has been correctly appreciated and interpreted, especially with reference to the departmental proceeding. This Court had quoted with approval paras 14 to 23 of the aforesaid judgment of this Court in Rajender Lal Capoor-II (supra) by which the review petition, filed by the Bank in Rajender Lal Capoor -I (supra), was dismissed. Para 8 thereof is extracted below:

"8. On an exhaustive consideration of the manner in which the provisions have been analysed and the clear and unambiguous language of the same and also having regard to the provisions of the 1976 Regulations of the Bank with regard to initiation of disciplinary proceeding we have no doubt in our mind that the meaning given to the provisions of the Regulations in the said case is correct and does not require any reconsideration.

From the above it would follow that by virtue of the provisions contained in Regulation 20(3)(iii), a disciplinary proceeding initiated by means of a charge-sheet prior to the retirement of a bank employee would continue even after his retirement in view of the deeming provision contained in the said Regulation 20(3)(iii) by which the officer is deemed to continue in service till completion of the proceedings."

23. From the aforesaid referred judgments of this Court especially by a larger Bench consisting of Three Judges, in our opinion, there is no merit in the present appeal as the principles laid down therein have been followed by the High Court. In the case in hand, the deceased employee had attained the age of superannuation on 31.07.1991, whereas the chargesheet was issued to him on 07.12.1991. Meaning thereby that on the date of his superannuation, no disciplinary proceeding was pending against him.

24. The arguments raised by the learned counsel for the appellant-Bank that the matter needs to be referred to a larger Bench as the legal fiction and true spirit of the 1976 and the 1979 Regulations have not been considered by this Court, is merely to be noticed and rejected, as the larger Bench consisting of Three-Judges in Canara Bank's case (supra) had already considered the judgment of the Division Bench of this Court in Rajender Lal Capoor -I and Rajender Lal Capoor -II cases (supra) and had reiterated the same legal position.

25. The observation made in para 38 of the Mahanadi Coalfields Limited (supra), as relied upon by the learned counsel for the appellant-Bank, will also not come to its rescue for the reason that the observation was made while referring to the judgment of this Court in Rajender Lal Capoor -I (supra) and not the Rajender Lal Capoor -II (supra) and also in Canara Bank's case (supra) where on a reference to a Larger Bench the law laid down in Rajender Lal Capoor's (II) case (supra) was reiterated.

26. The judgment of this Court in Punjab National Bank's case (supra), as relied upon by the learned counsel for the appellant- Bank, is also distinguishable on facts as in that case the chargesheet was issued to the employee concerned before his retirement.

Conclusion

27. For the reasons mentioned above, in our opinion, the appeal filed by the appellant-Bank is meritless and the same is accordingly dismissed with costs, quantified at ₹25,000/-.

28. At the time of hearing, it was pointed out by the learned counsel for the respondent no.1 that the employee had expired during the pendency of this appeal on 30.12.2012. It has been noticed by the Division Bench in the impugned judgment of the High Court that the subsistence allowance was not paid to the deceased employee.

As we have set aside the punishment order inflicted on the deceased employee, all the service benefits due to him along with interest @ 7% per annum from the date of his retirement till the payment is made, shall be paid by the appellant-Bank to his legal heirs within a period of three months from the date of receipt of copy of this judgment.

29. The appeal is accordingly dismissed

1 Dated 30.07.2009.

2 High Court of Bombay

3 Writ Petition No. 15 of 1995.

4 United Commercial Bank.

5 The United Commercial Bank Officer, Employees (Discipline and Appeal) Regulations, 1976.

6 The United Commercial Bank Officer's Service Regulations, 1979.

7 Writ Petition No. 3667 of 1991.

8 Rajender Lal Capoor - I.

9 Rajender Lal Cooper -II.

10 The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970.

Source disclosure: Complete sanitized public judgment text retained for research. Official-primary replacement and later-history closure remain pending.

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