

IN THE HIGH COURT OF TELANGANA AT HYDERABAD

W.P. No. 21502 of 2012

Between:

A. Satyam

... Petitioner

And

**The Waranagal District Cooperative
Central Bank, Rep. by its Chief Executive Officer,
And others.**

... Respondents

JUDGMENT PRONOUNCED ON: 05.06.2023

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

1. Whether Reporters of Local newspapers : Yes
may be allowed to see the Judgment?
2. Whether the copies of judgment may be
marked to Law Reporters/Journals? : Yes
3. Whether Their Lordships wish to
see the fair copy of the Judgment? : Yes

SUREPALLI NANDA, J

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

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> Head Note:

! Counsel for the Petitioner : Mr S. Rahul Reddy

^ Counsel for Respondents : Alladi Ravinder.

? Cases Referred:

1. (1993) 3 SCC 666
2. (2014) 7 SCC 260

HON'BLE MRS JUSTICE SUREPALLI NANDA**W.P. No. 21502 of 2012****ORDER:**

Heard the learned counsel for the petitioner and learned counsel for respondents.

2. The present Writ Petition is filed praying to issue a Writ of Mandamus declaring the action of the Respondents in continuing the alleged disciplinary enquiry after the retirement of the Petitioner on attaining the age of superannuation on 31.12.2012 and withholding the retirement benefits of 20 Months Gratuity and 240 days Leave Encashment on that ground as totally illegal, without jurisdiction and violative of Judgments of this Hon'ble High Court as well as Hon'ble Supreme Court reported in 1993(3) SCC P.666 and consequently to set aside the alleged enquiry against the petitioner and further direct the Respondents to release and pay the retirement benefits of 20 Months Gratuity and 240 days leave Encashment along with interest @ 24% on the delayed payment of said benefits to the petitioner.

3. The case of the Petitioner in brief, is as follows:

- a) Petitioner was an employee in the Respondent Bank from February, 1972, and on 31.01.2012 after attaining the age of Superannuation, the petitioner has been relieved from the post of Manager at Maripeda Branch.
- b) Respondent bank has not paid petitioner the Retirement benefits of 20 Months Gratuity and 8 Months Leave Encashment due to petitioner, on the reason and ground that there was a pending Disciplinary Action.
- c) A memo dated 19.03.2011 had been issued to the petitioner and the petitioner submitted explanation on 13.06.2011 requesting to drop further actions and the respondents have not taken any further action.
- d) After retirement, petitioner made a representation on 17.12.2012 praying to release and pay the gratuity and leave encashment due to petitioner.
- e) Misappropriation of fertilizer sale proceeds was detected in PACS Maripeda and allegations were levied against him

stating that the Petitioner failed to Inspect the fertilizer stocks and to report to his authorities.

f) On 17.03.2012, Respondents have issued proceedings referring to the Petitioners stating that the representation was not satisfactory and that they were appointing Enquiry Officer (The Deputy Manager of the bank) to verify the record completely and submit a detailed report.

g) Summons dated 20.04.2012 were issued by Enquiry Officer to the Petitioner and the petitioner had appeared before the Enquiry Officer on 28.04.2012 and had submitted a detailed reply stating that respondents cannot withhold petitioners benefits and continue the Disciplinary Enquiry.

h) Respondent bank has no power to withhold the retirement gratuity or leave encashment after retirement of the Petitioner.

i) As per the Memorandum of Settlement arrived between A.P. Cooperative Banks Association, Hyderabad and A.P. Bank Employees Federation/A.P. Cooperative Central Bank Employees Association on 07.08.2008 that, any employee

retiring on and after 07.11.1996 are entitled to 20 Months Gratuity and 240 days Leave encashment.

j) Since, the Petitioner has retired on 31.01.2012, the plea of the petitioner is that the petitioner is eligible for 20 Months Gratuity and 240 Days Leave Encashment. Hence this Writ Petition.

4. Brief facts of the Respondents are as follows:

a) Petitioner being the branch manager of Marripeda Brach, has committed a serious misconduct in respect of his duties and that he had colluded with the President, CEO of PACS and has caused loss to a tune of Rs. 7,29,447.80 to the respondent society.

b) Respondents issued a memo dated 19.03.2011 to the Petitioners and called for petitioner's explanation, wherein the Petitioner had submitted that fertilizer business being under taken either by PACS or by MARKFED and that petitioner had no knowledge about the bank guarantee furnished to MARKFED.

c) Further, the Petitioner had been informed about the Bank Guarantee vide circular dated RC.No/Bank guarantee/2010-11 dated 08.10.2010 and moreover, it is the duty of the petitioner to ensure that the payments are made to the bank from time to time.

d) However, due to petitioner's own volition of duties, MARKFED forfeited the Bank Guarantee supplied to them. As per section 6 (a), (b) & Sec (4), of the Payment of Gratuity Act, 1972, 50% of the gratuity and leave wages with the Bank, in view of the ongoing enquiry and 50% of the gratuities was remitted to his Bank account vide bank DD No. 084931 dated 31.01.2012.

e) PACS Marripeda had undertaken fertilizer business between June 2010 and September 2010 and the society had purchased the fertilizer from MARKFED on Credit Basis and had distributed to Rythos on cash basis and these facts came into light only when the Dy. General Manager had visited the PACS Marripeda on 13.11.2011 and verified the books of accounts.

f) Respondent not satisfied with the explanation of the Petitioner had appointed Enquiry Officer and the Enquiry Officer submitted the Enquiry report, that the allegations levelled against the Petitioner are proved. Further, there was an administrative delay but the enquiry was being conducted.

g) An employee retired from service as per the supra mentioned memorandum is entitled for 20 Months Gratuity and 240 days leave Encashment but all that was in the ordinary course but in the said instance, petitioner is facing Disciplinary Proceedings. Hence there are no merits in the case and is liable to be dismissed.

5. Para Nos. 6 and 7 of Writ Appeal No. 990 of 2014 filed against the orders of Writ Petition No. 21502 of 2012 reads as under:

"6. It is submitted that this Hon'ble Court following the Judgment of the Hon'ble Supreme Court has held against the Respondent Bank that it has no power to continue disciplinary proceedings after the retirement or power to withhold the retirement gratuity or leave encashment after retirement and also reported decisions in 2004(5) ALD P.603, 1999 (3) SCC P.666, 2002(1) ALD P.293 and 2006(2) ALD P.311, therefore, I

am also similarly situated and entitled to the same reliefs.

7. I submit that as per the Memorandum of Settlement arrived between A.P. Cooperative Banks Association, Hyderabad and A.P. Bank Employees Federation / A.P. Co-operative Central Bank Employees Association on 7.7.2008, an employee retiring on and after 7.11.1996 are entitled to 20 Months Gratuity and 240 Days Leave Encashment right and since I have retired on attaining the age of superannuation on 31.1.2012, I am entitled to the said benefits of 20 Months Gratuity and 240 days Leave Encashment and the action of the Respondents in withholding the said amount on grounds which are impermissible in law is totally illegal, without jurisdiction and violative of Articles 14, 21 and 300-A of Constitution of India."

PERUSED THE RECORD :

6. The order dt. 20.06.2014 passed in a batch of 3 writ petitions W.P.Nos. 15335/2014, 1909/2014 & 21502/2012 read as under :

"These three cases are not the isolated instances or the sporadic ones, which came to the notice of the Court concerned, where employees of the Cooperative Societies, either by design or by default, swindle huge sums of money and then ensure that before they attain

the age of superannuation, the same will not get detected either and even if, by any misfortune, it is detected, proper care is not employed in ensuring that the persons found responsible for misappropriation not rendering proper accounts, are not proceeded against strictly in accordance with law.

Every Cooperative Society has several provisions under the Andhra Pradesh Cooperative Societies Act, 1964, for securing the interests of the Societies. Interests of the society are far-more paramount than that of the individuals. However, I concede, in principle, that an employee of a Cooperative Society cannot be proceeded against, as a measure of discipline, after he retires from service on attaining the age of superannuation and in the absence of any specific provision for subjecting him to any such disciplinary control, after the retirement, he cannot be penalized unnecessarily and harassed in the name of interminable enquiries.

The Additional Registrar of Cooperative Societies, under Section 122 of the Act, is designated as the Chief Auditor. It is time that the Chief Auditor secures, in all the Service Byelaws of the Cooperative Societies Act, a provision incorporated for proceeding against the retired employees with the disciplinary proceedings not exceeding a period of one year from the date of

retirement so that they will not be harassed by interminable disciplinary proceedings. Similarly, the Chief Auditor shall also ensure that all competent authorities must necessarily entertain claims from the third parties for recovery of money from its employees and complete all such enquiries strictly in accordance with law and also with due observation of principles of natural justice, within a maximum period of six months from the date on which the Society receives such claim.

I consider it appropriate to implead the Chief Auditor, O/o the Commissioner for Cooperation & Registrar of Companies, Gruhakalpa Building, Nampally, Hyderabad, as a proper and necessary party to these writ petitions and accordingly implead him, so that appropriate steps and measures can be ensured.

Registry is directed to implead the Chief Auditor, O/o the Commissioner for Cooperation & Registrar of Companies, Gruhakalpa Building, Nampally, Hyderabad, as a party respondent to these writ petitions, communicate this order specifically directing him to file his response within a maximum period of four weeks from today and list these matters for consideration before appropriate Court after four weeks.

However, in view of the peculiar hardships that the retired persons would be exposed to for want of financial support, it is only appropriate that the

freezes on the bank accounts secured by the respondents shall be freed to the extent of 50% of the amounts lying in the respective accounts."

7. The Registry was directed to implead the Chief Auditor, Office of the Commissioner for Co-operation and Registrar of Co-operative Societies, Gruhakalpa Building, Nampally, Hyderabad as party Respondent to the writ petitions W.P.Nos. 15335/2014, 1909/2014 & 21502/2012 vide order of the Court dt. 20.06.2014. (referred to and extracted above).

8. Aggrieved by the said order dated 20.06.2014, the Petitioner herein had preferred an W.A.No.999 of 2014 the Hon'ble Court was pleased to allow the Writ Appeal as under :

"It is a matter of record that the appellants have retired from service. On retirement from service, they became entitled to be extended the benefits that have accrued over the length of their service. Prima facie, we find that either no disciplinary proceedings were initiated against the appellants while they were in service or if initiated, they were not continued, to enable the conclusion of the disciplinary proceedings. On retirement, the appellants ceased to be employees.

Much would depend upon the purport of the relevant service Regulations as to whether any disciplinary proceedings can be continued against the appellants. We are of the view that the ends of justice would be met, if the respondents are directed to release 75% of the retirement benefits to the appellants forthwith.

The writ appeals are accordingly allowed directing that the respondents shall release 75% of the retirement benefits to the appellants within four weeks. Such release however shall be subject to the result of the writ petitions.

The miscellaneous petitions filed in these writ appeals shall also stand disposed of. There shall be no order as to costs."

9. Para No.6 of the counter affidavit filed by the Respondents reads as under:

"Para 6. With regard to the para no.5 and 6 of the affidavit, it is submitted that contention of petitioner Bank has no provision to continue the disciplinary action or any other enquiry against a retired employee either in its bye laws or any other statutory provision enabling it to continue the same after the relationship of master and servant ceased exist is not correct hence denied. It is submitted that if any employee committed misconduct or misappropriated the amount or loss caused to the employer or commits criminal breach of

trust he is invited to face the enquiry and answerable to the same.

I further submit in this case the charge memo was issued before retirement only and in contemplation of enquiry under circumstances, the petitioner can not be exonerated or escaped from the allegations and disciplinary action.

The judgments cited by the petitioner in para no. 6 of the affidavit are not applicable in this case.

It is true that an employee who retires from service as per the memorandum of settlement is entitled to receive (20) months gratuity and leave encashment up to 240 days but it is in the normal course of retirement without any allegations and pending the disciplinary proceedings but herein the petitioner is facing the disciplinary proceedings hence it is not applicable to him."

10. Order dated 26.09.2013 passed in the W.A.No.1911 of 2005, reads as under:-

"The District Cooperative Central Bank Limited, represented by its General Manager, Warangal has filed this writ appeal challenging the order dated 09.06.2005 passed by a learned single Judge in W.P.No.2409 of 2005, whereby the writ petition was allowed directing the appellants to release not only the increments, which were due to the respondent/writ petitioner before his retirement, but also to pay the entire retiral benefits.

2. The respondent/writ petitioner was appointed as Staff Assistant in the appellant-bank on 01.03.1977 and retired from service in the same post on 31.03.2004 on attaining the age of superannuation. Prior to his retirement, disciplinary proceedings were initiated against him and charge sheet was issued on 07.02.2004 on certain irregularities. Even before an enquiry officer could be appointed, he was superannuated. Despite retirement of the respondent, the appellant-bank continued the disciplinary proceedings and did not release 50% of the retiral benefits. This action of the appellant-bank was challenged by the respondent by filing W.P.No.2409 of 2005, which has been allowed by order dated 09.06.2005.

3. Learned Standing Counsel for the appellant-bank submits that as the respondent was found to have committed certain irregularities while in service, the appellant-bank is entitled to withhold the retiral benefits of the employee.

4. On the other hand, learned counsel for the respondent/writ petitioner contended that since the disciplinary proceedings were not concluded prior to the superannuation of the respondent, in the absence of any specific rule or Bye-law to continue the disciplinary proceedings initiated against a retired employee of the bank, there is no justification for the appellant bank to withhold the retiral benefits of the respondent. In support of his contention, the learned counsel placed

reliance on a judgment of the Apex Court in BHAGIRATHIJENA v. BOARD OF DIRECTORS, O.S.F.C. Reliance is also placed on an unreported judgment in W.A.No.183 of 2005, dated 08.02.2005, wherein a Division Bench of this Court held that in the absence of any specific provision, continuance of disciplinary proceedings against a retired employee is illegal.

5. We have heard the learned counsel for the parties at length.

6. From a perusal of the aforesaid judgments, we find that there is no specific rule or Bye-Law which permits continuance of disciplinary proceedings initiated against a retired employee of the bank. In the absence of any specific provision, the appellant-bank could not have withheld the retiral benefits of the respondent/writ petitioner.

7. For the aforesaid reasons, we find no merit in the appeal filed by the appellant-bank.

8. Accordingly, this writ appeal is dismissed. No order as to costs."

11. Order dated 08.02.2005 passed in W.A.No.183 of 2005 reads as under:

"This writ appeal is filed by the respondent-Bank in the writ petition aggrieved by the order of the learned single Judge in allowing the writ petition filed by the writ petitioner respondent herein holding that the

continuance of disciplinary proceedings pursuant to the charge sheet dated 14.12.2000 have no legality, with a consequential direction to release the benefits to the petitioner including the amount of Rs.25,000/- recovered from the petitioner, in accordance with law.

The respondent herein is the writ petitioner.

According to the appellant, as the charge memo was issued even before retirement, the continuance of the disciplinary proceedings even after retirement, is in accordance with law.

It is also contended by the learned counsel that as per the order allowing the writ petitioner to retire was subject to the disciplinary proceedings already initiated and therefore, the appellant employer is entitled to proceed with the enquiry and the said enquiry ultimately resulted in imposition of penalty of Rs.25,000/-, which was in fact recovered from the writ petitioner. Therefore, the learned single Judge was not justified in allowing the writ petition.

The learned counsel appearing on behalf of the writ petitioner, however, supports the order of the learned single Judge and relies upon the judgment of the Apex Court in the case of BHAGIRATHIJENA VS. BOARD OF DIRECTORS, O.S.F.C.().

The Apex Court held in the above decision that in the absence of specific provision for the continuance of the disciplinary proceedings after retirement, the enquiry

would lapse and therefore, there could be no recovery proceedings.

The learned counsel also relied upon the judgment of the Division Bench of this Court reported in GENERAL MANAGER, ADILABAD DISTRICT CO OPERATIVE CENTRAL BANK LIMITED, ADILABAD VS. K.RANGARAO AND ANOTHER ()

Heard both sides and considered the material on record.

At the time of hearing, for a specific question, the learned counsel appearing for the appellant, is not able to show any specific provision which empowers the employer to continue the disciplinary proceedings after retirement of the writ petitioner-employee.

In the absence of any specific provision to that effect, the continuance of disciplinary proceedings, is illegal and therefore, the learned single Judge was right in holding that the continuance of the disciplinary proceedings as well as the conclusion of proceedings against the writ petitioner, would not have any affect as the proceedings initiated against the writ petitioner, would lapse on his retirement.

Under the above circumstances and in the light of the above referred decision of the Apex Court, we do not find any merits in the writ appeal.

Accordingly, this writ appeal is dismissed. However, 4 (four) Weeks time is granted to the appellant to refund the amount recovered from the writ petitioner as well as to pay any other amounts due to the writ petitioner."

DISCUSSION AND CONCLUSION :

12) A bare perusal of the counter affidavit filed by the Respondents indicates that the Respondents failed to justify their action to initiate or continue disciplinary proceedings after the retirement of the employee as per the Service Regulations of the Respondent Bank. Counter affidavit is silent to that effect and the Respondents fail to trace their power to do so by any relevant provisions or bye-laws or regulations. In BHAGIRATHIJENA VS. BOARD OF DIRECTORS, O.S.F.C., reported in 1999 (3) SCC 666 the Apex Court held that in the absence of any rule no Departmental enquiry can be conducted nor any deduction can be made from the retiral benefits. It was also held that enquiry initiated before retirement lapses on superannuation. In view of the settled legal position, this Court opines that the order impugned calling upon the Petitioner to furnish

his explanation within 3 days from the date of receipt of impugned show cause notice Rc.No.Admn./HRD-1/JFC/2014-15, dt. 13.01.2014 of the 2nd Respondent herein as to why the proposed punishment of dismissal from service should not be implemented is uncalled for or unwarranted, when admittedly as borne on counter the petitioner superannuated from service on 31.01.2012.

13. The Hon'ble Supreme Court in Dev Prakash Tiwari Vs. U.P. Co-operative Institutional Service Board reported in (2014) 7 SCC 260 in para 8 while reiterating the law laid down by the Hon'ble Supreme Court in BHAGIRATHIJENA VS. BOARD OF DIRECTORS, O.S.F.C., observed at paras 8, 9 and 10 as under :

"Para 8. Once the appellant had retired from service on 31.3.2009, there was no authority vested with the respondents for continuing the disciplinary proceeding even for the purpose of imposing any reduction in the retiral benefits payable to the appellant. In the absence of such an authority it must be held that the enquiry had lapsed and the appellant was entitled to get full retiral benefits.

Para 9. The question has also been raised in the appeal with regard to arrears of salary and allowances payable to the appellant during the period of his dismissal and up to the date of reinstatement. Inasmuch as the inquiry had lapsed, **it is, in our opinion, obvious that the appellant would have to get the balance of the emoluments payable to him.**

Para 10. The appeals are, therefore, allowed and the judgment and order of the High Court are set aside and **the respondents are directed to pay arrears of salary and allowances payable to the appellant and also to pay him all his retiral benefits in accordance with the rules** and regulations as if there had been no disciplinary proceeding or order passed therein. No costs."

14. In view of the fact that vide Express Memo dated 19.03.2011 and reminder dated 09.06.2011, petitioner was called upon to submit his explanation for the misappropriation taken place in the PACS Marripeeda and the petitioner was superannuated from service even as per the counter on 31.01.2012, the Writ Petition is allowed as prayed for and the respondents are directed to forthwith set-aside the alleged

proposed enquiry against the Petitioner and release and pay the retirement benefits of 20 Months Gratuity and 240 Days Leave Encashment and also other amounts legally entitled and due to the petitioner which had been withheld by the respondents herein unlawfully within a period of '4' (four) weeks from the date of receipt of the copy of the order.

Miscellaneous petitions, if any, pending shall stand closed.

SUREPALLI NANDA, J

Date: 05.06.2023

Note: L.R. copy to be marked
b/o
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