

**A.F.R.**

**Reserved on: 23.08.2022**

**Delivered on: 22.02.2023**

**Court No. - 6**

**Case :-** WRIT - A No. - 2000639 of 2008

**Petitioner :-** Virendra K Singh Chauhan

**Respondent :-** State Of U.P.Thr. Prin Secy Co Operative And 2 Ors

**Counsel for Petitioner :-** Piysh Asthana, Desh Deepak Singh, Rajeev Singh, Smriti Pandey

**Counsel for Respondent :-** C.S.C, Balram Yadav

**Hon'ble Irshad Ali, J.**

1. Heard Sri Desh Deepak Singh, learned counsel for the petitioner, learned Additional Chief Standing Counsel for respondent No.1- State and Sri Balram Yadav, learned counsel for respondent Nos.2&3.

2. The present writ petition has been filed before this Court seeking a writ, order or direction in the nature of certiorari quashing the impugned order dated 20.02.2007 (Annexure No.1) passed by respondent No.3 and order dated 30.09.2003 (annexure-5) with a further prayer to issue a writ, order or direction in the nature of mandamus commanding the respondent No.3 to release the amount of Rs.42,403/- along with interest of 14% that has been illegally deducted in respect of loan case of Sri Ishaq Ali.

3. Brief facts of the case are that the petitioner was working as Branch Manager in U.P. Sahkari Gram Vikas Bank Ltd., who after completion of service on attaining the age of superannuation retired from service on 31.12.2001.

4. The petitioner filed Writ Petition No.1840 (S/B) of 2001 before this Court against his date of superannuation fixed by the bank at the age of 58 years and claimed parity of 60 years in parity with government employees. The writ petition was admitted and an interim order was passed therein on 21.12.2001, whereby following direction was issued:

*"Admit.*

*Issue notice.*

*List in the week commencing 14.1.2002. In the meantime it would be open for the U.P. Cooperative Development Bank to consider the Government G.O. with regard to enhancement of age of superannuation of the petitioners to be 60 years. The retirement of the petitioners shall be subject to the decision of the writ petition."*

5. The Managing Director of the Bank passed an order on 30.09.2003 on the basis of which an order was passed on 20.02.2007, whereby the disciplinary initiation against the petitioner in the year 1997 was concluded after about two years of his retirement and a recovery of Rs.1,15,000/- along with upto date interest was directed against the petitioner from the dues payable to the petitioner.

6. Against the order dated 30.09.2003, the petitioner preferred appeal before the Board of Directors on 27.10.2003, which was rejected by the appellate authority and information in this regard was furnished to the petitioner by the General Manager (Administration) vide letter No.151609/karmik/2004-05 dated 13.12.2004.

7. For payment of retiral benefits, the petitioner preferred representation dated 18.07.2005 before the Managing Director, however, no heed was paid to the same. When, the request made by the petitioner vide representation dated 18.07.2005 was not replied with, he again filed another representation on 29.08.2006. Thereafter, he filed another representation before respondent No.3 on 19.07.2007 and when no response was received from the department, he contacted the concerned officials of the Bank, where he came to know that his all retiral benefits viz. gratuity, insurance, security and leave encashment etc. were adjusted against the liabilities fixed upon the petitioner and no amount was paid to the petitioner.

8. The petitioner filed an application under Right to Information Act asking the action taken in respect of deductions made against his retirement dues and asked to provide copy of the decisions taken in respect thereof. Thereafter, the Jan Suchna Adhikari of the bank supplied the information sought by the

petitioner vide letter dated 03.12.2007. By the information so provided, the petitioner came to know that the deductions were made against certain loan amounts disbursed by him in favour of certain persons.

9. In regard to aforesaid deductions, the petitioner made several representations / communications with the bank authorities and when there was no response, the present writ petition has been filed before this Court.

10. Submission of learned counsel for the petitioner is that the deductions made from gratuity, leave encashment, security and insurance claim of the petitioner is in violation of Rule 79(1)(d) of the Bank Service Rules, 1976. He further submitted that the gratuity cannot be adjusted / attached even against a decree obtained from a civil, criminal or revenue Court as it is protected under the Payment of Gratuity Act.

11. He further submitted that even if the version of the respondents is accepted on its face value, even then deductions made against the petitioner are premature, as the recovery proceeding is still pending at Revenue Department of R.C. sent by the bank.

12. He next submitted that the respondent – bank has illegally deducted an amount of Rs.42,403/- along with interest from dues of the petitioner against the loan of one Ishaq Ali, as the petitioner has no concern with the aforesaid loan granted.

13. He lastly submitted that there is no pension scheme in the bank and retiral dues are the only source of livelihood after the retirement and the respondent – bank has committed gross illegality in delaying / deducting the same. In support of his submissions, he placed reliance upon following judgments:

**a) Dev Prakash Tewari Vs. U.P. Co-operative Institutional Service Board, Lucknow and others; (2014) 7 SCC 260.**

**b) Bhagirathi Jena Vs. Board of Directors, OSFG and others; (1999) 3 SCC 666.**

**c) Brij Mohan V. State of U.P. and 5 Ors.; Writ-A No.42071 of 2016, order dated 16.01.2017.**

14. On the other hand, learned counsel for the respondent Nos. 2&3 oppose the submissions advanced by learned counsel for the petitioner and submitted that the order dated 30.09.2003 passed by the Managing Director of the respondent – bank was passed on the basis of disciplinary proceedings, in which the petitioner was found guilty for loss of Rs.1,15,000/- with interest and accordingly, recovery was directed to be made from post-retiral benefits of the petitioner.

15. He further submitted that it is settled proposition of law that the recovery of amount / loss caused to the department by the employee is recoverable from the gratuity and other payable post-retiral dues and therefore, there is no illegality in the recovery made by the respondent – bank from retiral benefits of the petitioner. In support of his submissions, he placed reliance upon following judgments:

a) **U.P. State Sugar Corporation Ltd. Vs. Kamal Swaroop Tondon; (2008) 2 SCC 41.**

16. Learned A.C.S.C. also adopted the submissions advanced by learned counsel for respondent Nos.2&3.

17. I have considered the submissions advanced by learned counsel for the parties and perused the material on record.

18. To resolve the controversy involved in the matter, the judgments relied upon by learned counsel for the parties are being quoted below:

a) **Judgments relied upon by learned counsel for the petitioner:**

i) **Dev Prakash Tewari (Supra):**

*"5. We have carefully considered the rival submissions. The facts are not in dispute. The High Court while quashing the earlier disciplinary proceedings on the ground of violation of principles of natural justice in its order dated 10-1-2006 granted liberty to initiate the fresh inquiry in accordance with the Regulations. The appellant who was reinstated in service on 26-4-2006 and fresh disciplinary proceeding was initiated on 7-7-2006 and while that was pending, the appellant attained the age of superannuation and retired on 31-3-2009. There is no provision in the Uttar Pradesh Cooperative Societies Employees Service Regulations, 1975 for initiation or*

*continuation of disciplinary proceeding after retirement of the appellant nor is there any provision stating that in case misconduct is established a deduction could be made from his retiral benefits."*

**ii) Bhagirathi Jena (Supra):**

*"In view of the absence of such a provision in the abovesaid regulations, it must be held that the Corporation had no legal authority to make any reduction in the retiral benefits of the appellant. There is also no provision for conducting a disciplinary enquiry after retirement of the appellant and nor any provision stating that in case misconduct is established, a deduction could be made from retiral benefits. Once the appellant had retired from service on 30-6-1995, there was no authority vested in the Corporation for continuing the departmental enquiry 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 full retiral benefits on retirement."*

**iii) Brij Mohan (Supra):**

*"A perusal of the aforesaid judgment it is manifestly clear that the facts of this case are squarely covered by the judgment in Dev Prakash Tewari (Supra). Learned counsel for the petitioner has failed to point out any provision under the Regulations, 1975 or any other guidelines under the Act, 202 to continue the disciplinary proceedings after the employee has retired. Accordingly, the order dated 22.06.2016 is set aside and it is held that the disciplinary proceedings initiated vide order dated 22.06.2016 stand lapsed. Accordingly, the writ petition is allowed."*

**b) Judgments relied upon by learned counsel for respondent Nos.2&3:**

**i) U.P. State Sugar Corporation Ltd. (Supra):**

*"In our opinion, Mahadevan does not held the respondent. No rigid, inflexible or invariable test can be applied as to when the proceeding should be allowed to be continued and when they should be ordered to be dropped. In such cases there is neither lower limit nor upper limit. If on the facts and in the circumstances of the case, the Court is satisfied that there was gross, inordinate and unexplained delay in initiating departmental proceedings and continuation of such proceedings would seriously prejudice the employee and would result in miscarriage of justice, it may quash them. We may, however, hasten to add that it is an exception to the general rule that once the proceedings are initiated, they must be taken to the logical end. It, therefore, cannot be laid down as a proposition of law or a rule of universal*

*application that if there is delay in initiation of proceedings for a particular period, they must necessarily be quashed."*

**19.** On perusal of the case laws cited by learned counsel for the parties, it is evident that there is no provision in the Uttar Pradesh Cooperative Societies Employees Service Regulations, 1975 for initiation or continuation of disciplinary proceeding after retirement nor is there any provision stating that in case misconduct is established, a deduction could be made from the retiral benefits.

**20.** Once the petitioner has retired from service on 31.12.2001, there was no authority vested in the corporation for continuing the departmental proceeding even for the purpose of imposing any reduction in the retiral benefits payable to the petitioner. In absence of such an authority, it is held that enquiry / disciplinary proceeding had lapsed and the petitioner was entitled to full retiral benefits on retirement. As the enquiry has lapsed, it is obvious that the petitioner would have to get the balance of the emoluments payable to him.

**21.** In view of reasons recorded above, the impugned orders dated 20.02.2007 (Annexure No.1) and 30.09.2003 (annexure-5) are hereby quashed.

**22.** The writ petition succeeds and is *allowed*.

**23.** The respondents are directed to pay the allowances / post retiral benefits to the petitioner as claimed in the writ petition in accordance with the rules and regulations within a period of eight weeks from the date of production of a certified copy of this order.

**Order Date :- 22.02.2023**

Adarsh K Singh