

2023 LiveLaw (SC) 42

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
KRISHNA MURARI; J., BELA M. TRIVEDI; J.

09.01.2023

CIVIL APPEAL NO. 175 OF 2023 (Arising out of SLP (C) No. 9819 of 2018)
STATE BANK OF INDIA & ORS. versus KAMAL KISHORE PRASAD

Service Law - SBI Officers Service Rules - When the first dismissal order against a person in service is in force, irrespective of all pending litigations or his age of superannuation, he cannot be deemed to be continuing in service.

(Arising out of impugned final judgment and order dated 01-02-2018 in LPA No. 2035/2016 passed by the High Court of Judicature at Patna)

For Petitioner(s) Mr. Balbir Singh, Ld. ASG Mr. Sanjay Kapur, AOR Ms. Megha Karnwal, Adv. Mr. Arjun Bhatia, Adv. Mr. Lalit Rajput, Adv. Ms. Anu Sura, Adv. Ms. Akshata Joshi, Adv.

For Respondent(s) Mr. Kripa Shankar Prasad, AOR Ms. Alisha Shaili, Adv. Mr. Ainul Ansari, Adv.

J U D G M E N T

BELA M. TRIVEDI, J.

1. Leave granted.

2. The present appeal is directed against the judgment and order dated 01.02.2018 passed by the High Court of Judicature at Patna in LPA No. 2035 of 2016, whereby the High Court has dismissed the appeal filed by the Appellant-Bank and confirmed the order passed by the Single Bench.

3. The short facts giving rise to the present petition are that the respondent while posted as a Branch Manager at Marufganj Branch and at various other branches, was found to have committed various lapses, in respect of which he was suspended on 14.06.1993 in terms of Rule 50A(i)(a) of SBIOSR, 1992. On the departmental proceedings having been conducted against him, the Inquiry Authority had submitted its report on 09.03.1998, whereby some of the allegations were found to be proved and some were found to be partly proved. The Disciplinary Authority agreed with some of the findings recorded by the Inquiry Authority and called upon the respondent to make his submissions on the same. However thereafter the matter was sent to the Appointing Authority, which imposed the penalty of "Dismissal from Service" as per the order dated 11.08.1999.

4. The respondent being aggrieved by the said order had filed a Writ Petition being no. 2739 of 2000 before the High Court which came to be allowed by the Single Bench vide order dated 26.03.2003. The Appellant-Bank aggrieved by the said order had filed an LPA being no. 378 of 2003. On 09.05.2003, the Division Bench stayed the implementation of the order dated 26.03.2003 passed by the Single Bench, however finally dismissed the said LPA vide order dated 22.04.2010. In the meantime, the respondent attained the age of superannuation on 30.11.2009. The Appellant-Bank having filed SLP (C) No. 16541 of 2010 challenging the order dated 22.04.2010 passed by the Division Bench, the same came to be allowed by this Court on 25.11.2013. While allowing the SLP, this Court observed as under:

"10. We have heard learned counsel for the parties to the *lis*.

11. The Writ Court while deciding the writ petition filed by the respondent against the orders passed by the Appointing Authority had followed the dicta of this court wherein it is said that the person who hears the matter should necessarily pass an order. The Division Bench of the High Court in its judgment has referred to the subsequent decisions of this Court. In our opinion, we need not have to refer to those decisions. It is now a well settled principle that the person who hears the matter requires to pass an order.

12. Since, that is the view of the Learned Single Judge, we are of the opinion that such a view cannot be taken exception to by us. However, the Division Bench while rejecting the Letters Patent Appeal filed by the appellant-bank has made certain observations which in our opinion, would not arise in the matter of this nature. Therefore, we cannot sustain the judgment and order passed by the Division Bench of the High Court.

13. In the result, we allow this appeal and set aside the judgment and order passed by the Division Bench of the High Court in Letters Patent Appeal No.378 of 2003. Since we are told that the delinquent officer has already retired from service on attaining the age of superannuation, we now direct the Appointing Authority to take appropriate decision as expeditious as possible, at any rate within two months from the receipt of copy of this order.

14. All the contentions of all the parties are kept open. Ordered accordingly.”

5. In view of the above order passed by this Court, the Appointing Authority issued a show-cause notice to the respondent on 06.02.2014, to which the respondent submitted his response on 10.02.2014. The Appointing Authority after granting personal hearing to the respondent on 14.02.2014, passed an order on 17.02.2014 imposing upon the respondent the penalty of “Dismissal from Service” in terms of Rule 67(J) of SBISOR w.e.f. 11.08.1999 and treating his period of suspension as not on duty.

6. Being aggrieved by the said order passed by the Appointing Authority, the respondent filed Departmental appeal before the Appellate Authority on 24.02.2014, which came to be dismissed on 09.08.2014. The respondent therefore again approached the High Court by way of filing CWJC No. 10192 of 2014. The Single Bench of the High Court vide the order dated 22.08.2016 allowed the said petition, and quashed and set aside the order of dismissal passed by the Appellant-Bank and directed the Appellant-Bank to pay all the consequential benefits i.e., arrears of salary and retiral benefits within 3 months thereof. The aggrieved appellant-bank filed LPA being no. 2035 of 2016 on 17.10.2016, which came to be dismissed by the Division Bench vide the impugned order dated 01.02.2018.

7. The learned ASG Mr. Balbir Singh for the Appellant-Bank vehemently submitted that the High Court had committed gross error in confirming the order passed by the Single Bench, and in misinterpreting the Rule 19(1) and 19(3) of the SBIOSR, 1992. According to him, this Court in the first round of litigation had allowed the appeal filed by the Appellant-Bank and set aside the order passed by the Division Bench, and while observing that the person who hears the matter requires to pass an order, had directed the Appointing Authority to take appropriate decision within 2 months, keeping all the contentions of the parties open. The appointing authority, therefore had issued a show-cause notice to the respondent and after giving him an opportunity of hearing had passed the order of dismissal, which was wrongly set aside by the Single Bench and by the Division Bench.

8. However, the learned counsel Mr. Kripa Shankar Prasad appearing for the respondent submitted that an affirmative action was expected to be taken by the

Appellant-Bank in view of the order passed by the Supreme Court on 25.11.2013, as the respondent had already attained the age of superannuation pending the proceeding before the High Court. He further submitted in the said order the Supreme Court had set aside the order of Division Bench, however had agreed with the view expressed by the Single Bench that as per the settled legal principle, the person who hears the matter is required to pass an order. According to him, the Supreme Court had granted the liberty only to the extent of directing the Appointing Authority to take appropriate action in accordance with law as the respondent had attained the age of superannuation. Under the circumstances, the Appointing Authority was required to take steps either to extend the service of the respondent in terms of Rule 19(1), or to continue the disciplinary proceedings, even after the superannuation of the respondent under Rule 19(3) of the Rules, however the Appellant-Bank did not take recourse to any of the said rules. He further submitted that the discretion to continue with the disciplinary proceedings had to be exercised as an affirmative action by taking a conscious decision, which the Appointing Authority of the Appellant-Bank had failed to take, and on the contrary passed the order of dismissal with retrospective effect which was not legally permissible.

9. Since much reliance has been placed by the learned counsel appearing for the respondent on Rule 19(1) and 19(3) of the SBIOSR Rules, the same are reproduced for the sake of convenience.

"19.(1) An officer shall retire from the service of the Bank on attaining the age of fifty-eight years or upon the completion of thirty years' service or thirty years' pensionable service if he is a member of the Pension Fund, whichever occurs first.

Provided that the competent authority may, at its discretion, extend the period of service of an officer who has attained the age of fifty-eight years or has completed thirty years' service or thirty years' pensionable service as the case may be, should such extension be deemed desirable in the interest of the Bank, so however, that the service rendered by the concerned officer beyond 58 years of age except to the extent of the period of leave due at that time will not count for purpose of pension.

Provided further that an officer who had joined the service of the Bank either as an officer or otherwise on or after July, 19, 1969 and attained the age of 58 years shall not be granted any further extension in service.

Provided further that an officer may, at the discretion of the Executive Committee, be retired from the Bank's service after he has attained 50 years of age or has completed 25 years' service or 25 years' pensionable service as the case may be, by giving him three months' notice in writing or pay in lieu thereof.

Provided further that an officer who has completed 20 years' service or 20 years' pensionable service, as the case may be, may be permitted by the competent authority to retire from the Bank's service, subject to his giving three months' notice or pay in lieu thereof unless this requirement is wholly or partly waived by it.

19.(2)

19.(3) In case disciplinary proceedings under the relevant rules of service have been initiated against an officer before he ceases to be in the Bank's service by the operation of, or by virtue of, any of the said rules or the provisions of these rules, the disciplinary proceedings may, at the discretion of the Managing Director, be continued and concluded by the authority by which the proceedings were initiated in the manner provided for in the said rules as if the officer continues to be in service, so however, that he shall be deemed to be in service only for the purpose of the continuance and conclusion of such proceedings.

Explanation: An officer will retire on the last day. of the month in which he completes the stipulated service or age of retirement."

10. On the bare perusal of the said Rules it clearly transpires that as per Rule 19(1) of the Rules, an officer could retire from the service of the bank on attaining the age of 58 years or upon the completion of 30 years' service or 30 years' of pensionable service if he is a member of the Pension Fund whichever occurs first, subject to the provisos mentioned therein. As per the Rule 19(3), in case the disciplinary proceedings under the relevant rules of service have been initiated against an officer before he ceases to be in the Bank's service by operation of, or by virtue of any of the rules, the disciplinary proceedings may at the discretion of Managing Director be continued and concluded, as if the officer had continued to be in service. However, the officer in that case shall be deemed to be in service only for the purpose of the continuance and conclusion of such proceedings.

11. So far as the facts of the present case are concerned, the disciplinary proceedings against the respondent were already initiated and had stood concluded, culminating into dismissal from service as per the order dated 11.08.1999 passed by the Appointing Authority. The said order was challenged by the respondent by filing the Writ Petition, which came to be allowed by the Single Bench on 26.03.2009 whereby the order of dismissal was set aside, nonetheless the Appellant-Bank having preferred the LPA No. 378 of 2003, the Division Bench had stayed the operation and implementation of the said order passed by the Single Bench on 09.05.2003. The said LPA came to be dismissed on 22.04.2010, in the meantime on 30.11.2009, the respondent attained the age of superannuation i.e., during the time, when the operation of the order of Single Bench was stayed. Thus, the order of Single Bench setting aside the order of dismissal passed by the Appointing Authority having been stayed by the Division Bench, the respondent could not be deemed to have continued in service, and also when he had attained the age of superannuation on 30.11.2009. Thereafter, the order of Division Bench dated 22.04.2010 passed in the LPA 378 of 2003 having been set aside by this Court while allowing the appeal filed by the Appellant-Bank vide the order dated 25.11.2013, again it could not be said that the respondent was continued in service, till he attained the age of superannuation.

12. The reliance placed by the learned counsel for the respondent on Rule 19(3) of the Rules is also thoroughly misplaced in as much as Rule 19(3) contemplates a situation, when the disciplinary proceedings against a bank officer, have already been initiated, and are pending when the officer ceases to be in the Bank's service, and in that case the Managing Director in his discretion may continue and conclude the disciplinary proceedings against the officer as if the officer continues to be in service. However, in the instant case, there was no question of Managing Director exercising such discretion under Rule 19(3) as the disciplinary proceedings initiated against the respondent had already culminated into his dismissal as per the order dated 11.08.1999 passed by the Appointing Authority. Though the said order of dismissal was set aside by the Single Bench, the order of Single Bench had remained stayed pending the LPA filed by the Bank; and though the LPA was dismissed by the Division Bench, the said order in LPA was set aside by this Court, observing that the person who hears the matter has to decide it.

13. It was only pursuant to the direction given by this Court vide the order dated 25.11.2013, the Appointing Authority was expected to hear the respondent and pass appropriate order. This Court had kept all the contentions of all the parties open.

Hence the Appointing Authority after issuing show-cause notice and granting opportunity of hearing to the respondent had passed the order imposing the penalty of “Dismissal from Service” w.e.f. 11.08.1999, i.e., from the date when the first order of dismissal was passed by the Appointing Authority. Since all the contentions were kept open by this Court while allowing the appeal filed by the Appellant-Bank, as such no affirmative action was expected from the AppellantBank, as sought to be submitted by the learned counsel for the respondent. The said order of Appointing Authority dismissing the respondent from service after granting opportunity of hearing to the respondent was in consonance with the direction given by this Court and could not be said to be arbitrary illegal or in violation of Rule 19(3) of the said Rules. The impugned order of the High Court setting aside the said order of dismissal being under misconception of facts and law deserves to be quashed and set aside.

14. In that view of the matter the impugned order passed by the Division Bench confirming the order passed by the Single Bench, is hereby accordingly set aside.

15. The appeal stands allowed.

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