

**\* THE HONOURABLE SRI JUSTICE CHALLA GUNARANJAN**

**+ WRIT PETITION NO:25019/2004**

% 08.01.2026

# S.B.G. Sarma, E.G. District.

.....Petitioner

And:

\$ Bank Of Baroda Mumbai and  
Others

....Respondents.

!Counsel for the Petitioner

: Mr.K LAKSHMINARAYANA

^Counsel for the respondents

: Mr.T.S.VENKATA RAMANA,  
Mr.SATYANARAYANA DHARA

<Gist:

>Head Note:

? Cases referred:

1. (1995) 6 SCC 749
2. (2013) 12 SCC 372
3. W.A. No.1367 of 2024, dated 09.12.2024
4. 2024 SCC OnLine SC 3369
5. (1991) 4 SCC 109
6. (2007) 6 SCC 694
7. (2007) 9 SCC 625
8. (2016) 12 SCC 724
9. 2023 SCC OnLine SC 1327

**HIGH COURT OF ANDHRA PRADESH**

**\* \* \* \***

**WRIT PETITION NO:25019 /2004**

**DATE OF JUDGMENT PRONOUNCED: 08.01.2026**

**SUBMITTED FOR APPROVAL:**

**THE HON'BLE SRI JUSTICE CHALLA GUNARANJAN**

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|--|--------|
| 1. Whether Reporters of Local newspapers<br>may be allowed to see the Judgments? | Yes/No |
| 2. Whether the copies of judgment may be<br>marked to Law Reporters/Journals     | Yes/No |
| 3. Whether Your Lordships wish to see the<br>fair copy of the Judgment?          | Yes/No |

**CHALLA GUNARANJAN, J**

APHC010471822004



**IN THE HIGH COURT OF ANDHRA PRADESH  
AT AMARAVATI**

Bench Sr.No:-1  
[3506]

**WRIT PETITION NO: 25019 of 2004**

S.B.G. Sarma, E.G. District. ...Petitioner  
Vs.  
Bank Of Baroda Mumbai 4 Others and Others ...Respondent(s)

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Advocate for Petitioner: Mr.K LAKSHMINARAYANA  
Advocate(s) for Respondent(s): Mr.T.S.VENKATA RAMANA,  
Mr.SATYANARAYANA DHARA

**CORAM :SRI JUSTICE CHALLA GUNARANJAN**

**DATE : 8<sup>th</sup> January 2026**

**ORDER:**

Writ petitioner initially assailed the charge memo vide Lr.No.BCC/HRM/IL/95/DA190/7021, dated 26.08.2003/02.09.2003, issued by 2<sup>nd</sup> respondent purportedly in exercise of powers under Regulation 45 & 48 of Bank of Baroda Officer Employees' Pension Regulations, 1995 (hereinafter, referred to as 'Pension Regulations') r/w Sub-Regulation 6(3) of Bank of Baroda Officer Employees' (Discipline & Appeal Regulations), 1976 (hereinafter, referred to as 'DA Regulations') to be arbitrary, illegal and without jurisdiction.

2. Subsequent to filing of writ petition, as the 2<sup>nd</sup> respondent has passed order dated 21.04.2006 imposing penalty of withdrawing 1/3<sup>rd</sup> of pension permanently as a measure of punishment, petitioner sought for amendment of prayer by laying challenge to the said order. This Court, by order dated 11.06.2008, passed in W.P.M.P. No.19752 of 2006, allowed such prayer.

3. (a) Petitioner was initially appointed as clerk in the 1<sup>st</sup> respondent bank. Eventually, he got promoted to various levels in the bank. Petitioner, during his tenure, had worked as Senior Manager at Kakinada Branch during the period from 1999 till January 2003. He stated to have applied for voluntary retirement on 20.01.2003 in pursuance of the scheme that then existed. Though the respondents were supposed to act on the said application within three months, as otherwise the same amount to deemed acceptance, after repeated reminders with delay, the said request came to be accepted on 1/2 of July, 2003, retiring the petitioner w.e.f. 20.01.2003. Subsequently, 2<sup>nd</sup> respondent issued memorandum dated 26.08.2003/02.09.2003 communicating statement of allegations and articles of charges purportedly issued in exercise of Regulation 45 and 48

of Pension Regulations r/w Regulation 6(3) of DA Regulations, alleging that petitioner while working as Senior Manager at Kakinada Branch, reported to have committed certain acts and deeds of omission and commission which amounted to misconduct in terms of Regulations 3 and 24 of Bank of Baroda Officer Employees' (Conduct) Regulations, 1976 (hereinafter, referred to as 'Conduct Regulations').

(b) The statement of allegations communicated had set out the details of transactions in relation to allowing of credit facilities and disbursement of funds to the named customers, which amounted to serious irregularities and in turn, likely to incur financial loss to the tune of 86.82 lakhs (approx). As petitioner was not diligent and that his actions including omissions showing lack of due care and caution were likely to result in severe financial loss to the bank, the same stated to be qualified to be misconduct necessitating initiation of disciplinary action.

(c) Petitioner submitted statement of defense on 14.11.2003, however, as the respondents continued to proceed with the proposed disciplinary proceedings, he filed present writ petition

challenging the very issuance of charge memo to be illegal, arbitrary and without jurisdiction.

(d) Pending the writ petition, based on the enquiry officer's report and after hearing the petitioner, the disciplinary authority/ 2<sup>nd</sup> respondent passed order dated 21.04.2006 imposing punishment of withdrawal of 1/3<sup>rd</sup> pension permanently. Petitioner assails the very initiation of disciplinary proceedings and also the consequential punishment order.

4. (a) The respondents have filed detailed counter inter alia taking stand that petitioner has an efficacious alternative remedy of appeal and review against the impugned order of punishment envisaged under Regulations 17 and 18 of DA Regulations. Therefore, the writ petition cannot be entertained.

(b) Further that on two earlier occasions, petitioner was subjected to disciplinary proceedings while in service, one resulted in issuance of warning without any punishment, which related to the allegations during his tenure at Allahabad Branch and the second resulted in an order of punishment dated 09.10.2002, by which penalty of reduction to a lower stage in the time scale of pay for a period not exceeding one year without

cumulative effect and not adversely affecting pension so imposed, and attained finality.

(c) Later, though petitioner applied for voluntary retirement and that he was allowed to retire, having found that he indulged in further irregularities, which came to be highlighted while petitioner's request for VRS was pending consideration, he was issued charge memo dated 26.08.2003/02.09.2003 and consequential punishment order dated 21.04.2006 was passed after due enquiry and providing sufficient opportunity to the petitioner. Therefore, the penalty of withdrawal of 1/3<sup>rd</sup> pension permanently admissible on the date of retirement, as imposed do not suffer from any infirmity.

(d) It is further stated that the disciplinary proceedings have been initiated even before completion of notice period of VRS i.e., 29.01.2003, therefore, for all purposes, it has to be construed that the disciplinary proceedings validly initiated against petitioner while he was in service.

**5.** Heard Sri K.Lakshmi Narayana, learned counsel for petitioner and Sri T.S.Venkata Ramana, learned Senior Standing Counsel for Bank of Baroda, appearing for respondents.

6. This Court during the course of hearing, when it was brought to notice that petitioner was not paid gratuity and also commuted pension under the guise of pendency of the writ petition, by orders dated 24.04.2025, directed the respondent bank to pay the same together with interest @ 12% per annum tentatively from the date of which aforesaid amounts fell due till the date of actual payment. Thereafter, the respondent bank has filed additional counter affidavit on 16.07.2025 inter alia stating that in pursuance to aforesaid directions an amount of seven lakhs was paid towards gratuity of which ₹3,50,000/- was principal and the remaining to be interest assessed as per Section 8 of Gratuity Act, 1972, which postulates that the interest payable should in no case exceed the principal amount of Gratuity. It is also stated that petitioner is being paid full pension together with applicable dearness allowance, considering basic pension of ₹9,509/-, however, as the pension regulations provide for maximum condition of 1/3<sup>rd</sup> of basic pension i.e., ₹3,170/- with corresponding commutation value multiplier which translates to commutation amount of ₹4,22,244/-, as excess amount has been paid, it is required to recover ₹8,49,560/- for the period from January, 2003 to April, 2025.

7. Petitioner filed reply to the said additional counter. In the said reply, petitioner has contended that the respondents have not provided the working sheet as to how the amount of gratuity of ₹3,50,000/- came to be determined and the reasons why the amount was not paid immediately after his retirement, therefore, the bank was not justified in trying to restrict the payment of interest by applying Section 8 of payment of Gratuity Act, 1972, which has no application in the facts and circumstances of the case.

8. Even with respect to the commuted pension, it has been stated that neither any worksheet nor any reasons were furnished as to why the respondent had not undertaken such exercise, and rather now it is trying to take shelter under the guise of making payment of full pension. Even with respect to additional retirement benefit of ₹1,49,970/-, though stated to be released, it is asserted that no such payment has been paid till date nor any proof thereof has been furnished in support thereof.

9. Learned counsel for petitioner mainly canvassed following points:

(a) The very issuance of charge memo purportedly in exercise of Regulation 45 and 48 of DA Regulations r/w Regulation 6(3) of DA Regulations r/w Regulation 3 and 24 of Conduct Regulations proposing disciplinary action against petitioner, who by then ceased to be employee of the respondent bank, is clearly without jurisdiction.

(b) In elaboration of said argument, it is contended that both DA Regulations and as well as Conduct Regulations would apply only to person who as on the date of initiation of proceedings continued to work with the bank and that too, they contemplate initiation of disciplinary proceedings for acts of misconduct as envisaged therein.

(c) Inasmuch as petitioner does not fall within the meaning of clause 2(i) and clause 3(j) of Conduct Regulations and DA Regulations respectively, which defined 'Officer – Employee' as petitioner ceased to be employee by that date, both these regulations would have no application and the 2<sup>nd</sup> respondent had no jurisdiction to proceed against petitioner under the said Regulations. Insofar as clause 45 of pension regulations is concerned, the same would apply only to a pensioner if prima

facie to be found guilty of grave misconduct and consequence thereof clause 48 provided for recovery of pecuniary loss caused to the bank on account of either departmental or judiciary proceedings determining the pensioner to be guilty of grave misconduct or negligence or criminal breach of trust or forgery or for acts done fraudulently during the period of his service.

(d) It is also contended that the recovery contemplated under Regulation 48 cannot be ordered by competent authority unless Board has been consulted before any final orders were passed for effecting such recovery.

(e) Learned counsel for petitioner therefore contended that neither Regulations 45 and 48 authorized the 2<sup>nd</sup> respondent to initiate disciplinary proceedings, much less punishment of withdrawing 1/3<sup>rd</sup> of pension. He further contended that the punishment imposed under the impugned order is neither traceable to minor nor major penalty as envisaged in DA Regulations, therefore, even otherwise, the punishment imposed is not authorized by Rules, hence is illegal.

(f) He lastly contended that the charge memo was issued on the premise that the bank is likely to incur financial loss of 86.82

lakhs (approx), the disciplinary authority found that the bank would incur a loss of approximately 11.63 lakhs which was also not clearly stated as to how such loss was likely to result, in absence of specific determination of pecuniary loss actually caused, question of invoking Regulation 48 to recover such pecuniary loss does not arise.

**10.** (a) Per contra, learned counsel for the respondent bank, while reiterating the contents of the counter, contended that since, as against the impugned punishment order, there is efficacious alternative remedy of appeal and also review provided under Regulations 17 and 18 of DA Regulations, petitioner, without exhausting such remedies, cannot maintain the present writ petition.

(b) He further contended that as necessary internal steps were mooted which ultimately culminated in issuance of charge memo, which requires certain prior banking formalities, merely because petitioner was retired w.e.f. 21.01.2003, it cannot be said that the DA and Conduct Regulations would not apply to petitioner.

(c) The allegations in the charge memo clearly constitute to be that of misconduct, in particular as envisaged under Regulation 3

of Conduct Regulations, the bank was justified in invoking Regulation 24 of the said Regulation, which otherwise envisaged to proceed against the petitioner for breach of provisions of said regulation, which deemed to constitute a misconduct punishable under DA Regulations. Therefore, by invoking Regulation 6(3) of DA Regulations, the disciplinary proceedings were initiated for imposing major penalties. However, the disciplinary authority during the course of enquiry though having come to conclusion that the charges against petitioner were clearly proved based on cogent evidence, has taken lenient view in imposing penalty of withdrawing 1/3<sup>rd</sup> of pension permanently by taking lenient view.

(d) Therefore, it cannot be said that the 2<sup>nd</sup> respondent lacked jurisdiction or the findings as arrived at were perverse. As an alternative submission, it is contended that even if this Court comes to conclusion that the punishment imposed by disciplinary authority shocks the conscience of the court, the matter be remitted back to disciplinary authority with a direction to pass appropriate order as Courts cannot assume the function of disciplinary authority to decide the quantum of punishment which function is exclusively conferred on the competent authority. In support thereof, reliance is placed on decisions of the Hon'ble

Apex Court in **B.C.Chaturvedi v. Union of India and others**<sup>1</sup> and **Lucknow Kshetriya Gramin Bank (Now Allahabad, Uttar Pradesh Gramin Bank) and another v. Rajendra Singh**<sup>2</sup> and Division Bench Judgment of the High Court of Telangana in **Bank of Baroda v. Gajjala Narender**<sup>3</sup>.

**11.** Perused the record and considered rival submissions.

**12.** Petitioner was subjected to disciplinary proceedings at three different points in time. There is no dispute that first two disciplinary actions were while he was in service and there is some amount of dispute coming to the third and present disciplinary proceedings, which is subject matter in the present writ petition. The details and outcome of first two disciplinary proceedings really have any concern bearing on the subject disciplinary proceedings under challenge. Though petitioner and also respondents tried to advert to the same, this Court finds it unnecessary to delve into the same.

**13.** Petitioner worked as Senior Branch Manager at Kakinada during the period from 1999 to January, 2003. At that juncture, he had applied for voluntary retirement and the said request

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<sup>1</sup> (1995) 6 SCC 749

<sup>2</sup> (2013) 12 SCC 372

<sup>3</sup> W.A. No.1367 of 2024, dated 09.12.2024

eventually came to be accepted by the bank by its proceedings dated 1/2-July, 2003, retiring petitioner w.e.f. 21.01.2003. Petitioner has been issued charge memo dated 26.08.2003/02.09.2003. There is no dispute on above events so far. Perusal of the letter of acceptance dated 1/2-July, 2003 issued by the bank would indicate that the request of petitioner for voluntary retirement was accepted by the bank w.e.f. 20.01.2003, subject to conditions set out therein. There is nothing in those conditions to suggest the bank contemplated disciplinary action against petitioner. Therefore, though respondents in counter tried to say there was something in cooking and indeed appropriate action was initiated to set in motion disciplinary proceedings, nothing is placed before this Court except for said assertion and the letter of acceptance referred to above speaks otherwise. So it is clear that petitioner ceased to be employee of bank w.e.f. 20.01.2003 and that the disciplinary proceedings came to be initiated much later.

**14.** In the aforesaid background, the legal submissions made are required to be considered. In order to appreciate the contentions, it is opt to notice relevant Regulations on the subject:-

(i) Charge memo was issued purported to be exercising powers under Regulations 45 and 48 of Pension Regulations. Section 19(2)(f) of Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, empowers Board of Directors of the banks in consultation with Reserve Bank of India and with previous sanction of Central Government to make Regulations with respect to establishment and maintenance of superannuation, pension, provident fund or other funds for the benefit of officers or employees of the bank. In exercise of such powers, 1<sup>st</sup> respondent bank has issued Pension Regulations. Chapter IX of said Regulations had set out General Conditions. Regulations 45 and 48 read as under:

**“45. Pensioner guilty of grave misconduct.-** In a case not falling under Regulation 44 if the Competent Authority considers that the pensioner is prima facie guilty of grave misconduct, it shall, before passing an order, follow the procedure specified in Bank of Baroda Office Employees' (Discipline and Appeal) Regulation, 1976 or in Settlement at the case may be.

**48. Recovery of Pecuniary loss caused to the Bank.- (1)** The Competent Authority may withhold or withdraw a pension or a part thereof, whether permanently or for a specified period, and order recovery from pension of the

whole or part of any pecuniary loss caused to the Bank if in any departmental or judicial proceedings the pensioner is found guilty of grave misconduct or negligence or criminal breach of trust or forgery or for acts done fraudulently during the period of his service: Provided that the Board shall be consulted before any final orders are passed: Provided further that where a part of pension is withheld or withdrawn the amount of pension drawn by a pensioner shall not be less than the minimum pension payable under these regulations: Provided also that the departmental proceedings, if instituted while the employee was in service, shall, after the retirement of the employee, be deemed to be proceedings under these regulations and shall be continued and concluded by the authority by which they were commenced in the same manner as if the employee had continued in service. (Notified in Government Gazette on 08/08/2017)

(2) No departmental proceedings, if not instituted while the employee was in service, shall be instituted in respect of an event which took place more than four years before such institutions: (Notified in Government Gazette on 08/08/2017) Provided that the disciplinary proceedings so instituted shall be in accordance with the procedure applicable to disciplinary proceedings in relation to the employee during the period of his service. (3) Where the Competent Authority orders recovery of pecuniary loss from the pension, the recovery shall not ordinarily be made at a

rate exceeding one-third of the pension admissible on the date of retirement of the employee.”(Notified in Government Gazette on 08/08/2017)

(ii) The 1<sup>st</sup> respondent likewise, in exercise of powers conferred under Section 19 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 issued Bank of Baroda Officer Employees’ (Discipline and Appeal) Regulations, 1976 and Bank of Baroda Officer Employees’ (Conduct) Regulations, 1976. The following Conduct Regulations relevant read thus:

**“2(i) “Officer employee”** means a person who holds a supervisory, administrative or managerial post in the bank or any other person who has been appointed and is functioning as an officer of the bank, by whatever designation called and includes a person whose services are temporarily placed at the disposal of the Central Government or a State Government or any other Government undertaking or any other public sector bank or the Reserve Bank of India or any other organization but shall not include casual, work charged, or contingent staff or the Award staff;-

### **GENERAL**

3. (1) Every officer employee shall, at all times take all possible steps to ensure and protect the interests of the

bank and discharge his duties with utmost integrity, honesty, devotion and diligence and do nothing which is unbecoming of an officer employee.

(2) Every officer employee shall maintain good conduct and discipline and show courtesy and attention to all persons in all transactions and negotiations.

(3) No officer employee shall, in the performance of his official duties or in the exercise of powers conferred on him, act otherwise than in his best judgment except when he is acting under the direction of his official superior.

#### **ACTS OF MISCONDUCT**

24. A breach of any of the provisions of these regulations shall be deemed to constitute a misconduct punishable under the Bank of Baroda Officer Employee's (Discipline and Appeal) Regulations, 1976."

(iii) Likewise, the following DA Regulations, which are relevant read thus:

(j) "Officer employee" means a person who holds a supervisory administrative or managerial post in the Bank or any other person who has been appointed and is functioning as an officer of the bank by whatever designations called and includes a person whose services are temporarily placed at the disposal of the Central Government or a State Government or any other Government undertaking or any other public sector bank or

the Reserve Bank of India or any other organisation, but shall not include casual work charged for contingent staff or the award staff:

#### **4 . PENALTIES**

The following are the penalties, which may be imposed on an officer employee, for acts of misconduct or for any other good and/or sufficient reasons.

##### **MINOR PENALTIES**

- (a) Censure,
- (b) Withholding of increments of pay with or without cumulative effect;
- (c) Withholding of promotion;
- (d) Recovery from pay or such other amount as may be due to him of the whole or part of any pecuniary loss caused to the Bank by negligence or breach of orders;
- (e) Reduction to a lower stage in the time scale of pay for a period not exceeding 3 years, without cumulative effect and not adversely affecting the officer's pension.

##### **MAJOR PENALTIES**

- (f) Save as provided for in (e) above reduction to a lower stage in the time scale of pay for a specified period, with further direction as to whether or not the officer will earn increments of pay during the period of such reduction and whether on the expiry of such period the reduction will or

will not have the effect of postponing the future increments of his pay;

(g) Reduction to a lower grade or post;

(h) Compulsory retirement;

(i) Removal from service, which shall not be a disqualification for future employment;

(j) Dismissal, which shall ordinarily be a disqualification for future employment.

## **6 . PROCEDURE FOR IMPOSING MAJOR PENALTIES**

3. Where it is proposed to hold an inquiry, the Disciplinary Authority shall, frame definite and distinct charges on the basis of the allegations against the officer employee and the articles of charge, together with a Statement of the allegations, list of documents relied on along with copy of such documents and list of witnesses along with copy of Statement of witnesses, if any, on which they are based, shall be communicated in writing to the officer employee, who shall be required to submit, within such time as may be specified by the Disciplinary Authority (not exceeding 15 days), or within such extended time as may be granted by the said Authority, a written statement of his defence.

"Provided that wherever it is not possible to furnish the copies of documents, disciplinary authority shall allow the officer employee inspection of such documents within a time specified in this behalf"

**17. APPEAL** (1) An officer employee may prefer an appeal to the Appellate Authority within 45 days from the date of receipt of the order imposing upon him any of the penalties specified in Regulation 4 or against the order of suspension referred to in regulation 12. Provided that the Appellate authority may entertain the appeal after expiry of the said period, if it is satisfied that the applicant has sufficient cause for not preferring appeal in time.

**18. REVIEW**

Notwithstanding anything contained in these regulations, the Reviewing Authority may at any time within six months of the date of the final order, either on his own motion or otherwise review the said order, when any new material or evidence which could not be produced or was not available at the time of passing the order under review and which has the effect of changing the nature of the case, has come or has been brought to his notice and pass such orders thereon as it may deem fit.”

**15.** A combined reading of the above set of regulations framed by 1<sup>st</sup> respondent bank go to show that, every officer employee as defined under Regulation 2(i) & 3(j) of respective Regulations has been regulated with a code of conduct during the employment and performance of official duties. Such of those officer employees who do not fall in line or deviate with the code of conduct and commit breach of provisions of Conduct Regulations

would be deemed to constitute a misconduct punishable under DA Regulations. The Conduct Regulations therefore clearly envisaged what constitutes a misconduct calling for disciplinary action. The DA Regulations however deal with the penalties to be imposed on an officer employee for such acts of misconduct and provide for major and minor penalties as set out therein. It also specifies the procedure for imposing major penalties under Regulation 6 and procedure for imposing minor penalties under Regulation 8. Regulations 17 and 18 provided for appeal and review against the orders imposing penalties. These two sets of Regulations essentially govern the scope and ambit of misconduct, penalty and procedure for initiation of disciplinary action.

**16.** Insofar as Pension Regulations are concerned, the same are envisaged for specific purpose of establishment and maintenance of superannuation, pension, provident or other funds for the benefit of officers and other employees of the bank. The same does not contemplate any punishment or disciplinary action by itself. However, under Chapter IX – General Conditions are specified, which inter alia deal with withholding or withdrawal of pension in certain scenarios. Regulation 43 empowers

competent authority to withhold or withdraw pension if the pensioner is found to have convicted in a serious crime or involved in criminal breach of trust or forgery or acted fraudulently or found guilty of grave misconduct. Before such order is to be passed under Regulation 43 to withhold or withdraw the pension, Regulation 45 mandates competent authority to follow the procedure specified in DA Regulation. The expression grave misconduct falling in Chapter IX has been defined to include the inaction or disclosure of any secret official code or password etc., as defined therein. It is no doubt an inclusive definition.

**17.** Regulation 48 empowers competent authority to withhold or withdraw pension of any pensioner if in any departmental or judicial proceedings such pensioner is otherwise found guilty of grave misconduct or negligence or criminal breach of trust or forgery or for acts done fraudulently during the period of his service and such order of recovery should be made only after prior consultation with the Board. Keeping in view the above explained scheme in which the three sets of regulations operate, the facts in the present case are required to be tested.

**18.** Neither the counter refer to any such prior approval of Board nor any material is placed before this Court to show that the 2<sup>nd</sup> respondent did seek such approval of the board before passing the impugned penalty order. Further, it is well settled and established principle of law that if a particular thing has to be done in a manner envisaged, either must be done accordingly or not at all. Therefore, even otherwise assuming that the respondents were embarking on the enquiry as contemplated under Pension Regulations, limited to the extent of withholding and withdrawing the pension, the concerned authority is required to follow the procedure in strict compliance with the manner and method prescribed therein.

**19.** As seen from the definition of officer employee, there is any amount of ambiguity that only a person who holds a supervisory administrative or managerial post or any other person who has been appointed and functioning as an officer of the bank alone would qualify to be officer employee who is susceptible to be proceeded under those regulations. There is no specific provision as such in either Conduct Regulations, DA Regulations or Bank of Baroda Service Regulations, making these regulations applicable to the retired employees. In fact, the Bank of Baroda (Officers')

Service Regulations, 1979, which were framed by the respondent bank, in exercise of powers conferred under Section 19 r/w Section 12(2) of the Banking Companies (Acquisition and transfer of Undertakings) Act, 1970, which provided for certain terms and conditions of appointment and service of officers in the said bank, have been made applicable to the officers either working in the said bank or those who have been posted and deputed to any other post and service.

**20.** Regulation 20(iii) thereof specified that in case disciplinary proceedings were initiated against the officers, even if such officer ceases to be in service on account of superannuation, nevertheless the disciplinary proceedings would continue as if he was in service until the proceedings are concluded and final orders are passed. Recently, the Hon'ble Apex Court in **State Bank of India and others v. Navin Kumar Sinha**<sup>4</sup>, while dealing with more or less similar scenarios had an occasion to survey the relevant legal position and the law with regard to initiation of the disciplinary proceedings against an employee post superannuation or retirement by taking due notice of the judgments rendered in cases of **Union of India v.**

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<sup>4</sup> 2024 SCC OnLine SC 3369

**K.V.Jankiraman<sup>5</sup>, UCO Bank v. Rajinder Lal Capoor<sup>6</sup>, Coal India Ltd. v. Saroj Kumar Mishra<sup>7</sup>, Canara Bank v. D.R.P. Sundharam<sup>8</sup>, UCO Bank v. M.B.Motwani<sup>9</sup>**, which candidly held that no disciplinary proceedings can be initiated after delinquent employee or officer retired from the office on attaining the age of superannuation. Further that the disciplinary proceedings are deemed to be initiated only upon issuance of charge memo/charge sheet, but not on issuance of show cause proposing departmental action. The following two passages of above judgement would be opt for reference. Paras 21 and 31 of the said judgment read as under:

“**21.** A three-Judge Bench of this Court in *Canara Bank v. D.R.P. Sundharam* examined the meaning and effect of Regulation 20(3)(iii) of the Canara Bank (Officers') Service Regulations, 1979 which is *pari materia* to Regulation 20(3)(iii) of the UCO Bank Officer Employees' Services Regulations, 1979 in the light of the view taken in *Rajinder Lal Capoor* (supra) and held that Regulation 20(3)(iii) is a stand-alone provision. By virtue of the said provision, a disciplinary proceeding initiated by means of a chargesheet prior to the retirement of a bank employee

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<sup>5</sup> (1991) 4 SCC 109

<sup>6</sup> (2007) 6 SCC 694

<sup>7</sup> (2007) 9 SCC 625

<sup>8</sup> (2016) 12 SCC 724

<sup>9</sup> 2023 SCC OnLine SC 1327

would continue even after his retirement in view of the provision contained in Regulation 20(3)(iii). In the facts of that case, the Bench noted that disciplinary proceeding was initiated by submission of chargesheet after the retirement of the respondent. Therefore, while confirming the decision of the High Court, this Court dismissed the appeal filed by Canara Bank.

**31.** As has been held by this Court on more than one occasion, a subsisting disciplinary proceeding i.e. one initiated before superannuation of the delinquent officer may be continued post superannuation by creating a legal fiction of continuance of service of the delinquent officer for the purpose of conclusion of the disciplinary proceeding (in this case as per Rule 19(3) of the Service Rules). But no disciplinary proceeding can be initiated after the delinquent employee or officer retires from service on attaining the age of superannuation or after the extended period of service.”

*(emphasis supplied by this Court)*

**21.** Therefore, the very initiation of disciplinary proceedings against the petitioner, who admittedly ceased to be employee of the bank w.e.f. 21.01.2003 is clearly without jurisdiction.

**22.** As this Court has expressed opinion that the very initiation of disciplinary proceedings post retirement is without jurisdiction, the contention of learned counsel for respondent bank that

petitioner has an efficacious alternative remedy of appeal rather than invoking writ jurisdiction pales into insignificance. It is trite law that even if a party has an alternative remedy provided under statute, it is no bar to invoke the jurisdiction under Article 226 if it is demonstrably shown that the authority lacked jurisdiction.

**23.** Coming to the other aspect of imposing penalty of 1/3<sup>rd</sup> of pension as a measure of punishment, as could be seen from the Regulation 4 of DA Regulations, which is the only source of power posed on the 2<sup>nd</sup> respondent to impose penalty of major or minor in nature, clearly the one that has been now imposed do not figure, therefore, as it is well settled proposition of law that the authority has no inherent power to devise punishments, its own or new punishments, which otherwise are not contemplated by rules clearly violates Article 14 and therefore, is illegal and without jurisdiction. Though learned counsel for respondent bank had made an alternative submission that if in case it is found that the penalty imposed is outside the statutory framework, inasmuch as the disciplinary authority has found the charges to be proved by recording cogent reasons, the matter should be remitted back to the disciplinary authority for imposing appropriate penalty, since this Court has already expressed opinion that the very initiation of

disciplinary proceedings against petitioner/retired employee is without jurisdiction, aforesaid alternative submission deserves rejection.

**24.** Even otherwise, only in cases where the punishment imposed if found to be shockingly disproportionate to the charges levelled, as this Court in exercise of jurisdiction under Article 226 of Constitution of India in the process of judicial review would only confine to examine the decision making process and not decision itself, matter requires to be remitted back to the disciplinary authority for imposing appropriate punishment. Since this Court has analyzed the scheme of pension regulations as well, it is of the opinion that the general conditions stipulated under Chapter IX only empowered competent authority to withhold or withdraw the pension by making appropriate order and before passing such order to follow the procedure contemplated under the DA Regulations, however, the enquiry that is contemplated in making the order of withholding or withdrawal should be in relation to a case of serious crime or criminal breach of trust or forgery or acting fraudulently or is found guilty of grave misconduct.

**25.** The expression of grave misconduct as referred to in Chapter IX, which is placed along with the other expressions namely, serious crime, fraudulently, criminal breach of trust, forgery, definitely stands on higher pedestal than the expression 'misconduct' as referred to in Conduct Regulations. Therefore, in normal course, the disciplinary proceedings are initiated for any of the acts falling within the expression misconduct as envisaged under Conduct Rules, ipso facto would not entitle the competent authority to initiate recovery under Regulation 48, rather, there should be a specific enquiry and order as contemplated under Regulations 43 and 45, which completely stand on a different footing all together. Unless such exercise is undertaken and appropriate orders are passed and the exact amount of pecuniary loss caused is assessed, no recovery can be effected from the pension. Further, such recovery of pecuniary loss can be made by competent authority, preceded by prior consultation with the Board, which is mandatory. Therefore, the impugned punishment order passed by 2<sup>nd</sup> respondent neither satisfies the requirement of Regulation 4 of DA Regulations nor qualifies to be an order under Regulation 45 r/w 48 of Pension Regulations.

**26.** In view of the above, the issuance of impugned charge memo and also the consequential punishment order are declared to be illegal and without jurisdiction and accordingly, the same stands quashed. The respondent bank is directed to release all pensionary benefits on account of acceptance of VRS, including that of pensionary benefits within a period of two months from the date of receipt of the order, after adjusting the amounts, if any, already released.

**27.** In the result, this writ petition is allowed. No costs.

As a sequel, miscellaneous petitions pending in this case, if any, shall stand closed.

**CHALLA GUNARANJAN, J**

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