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UCO BANK & ORS.

v.

RAJENDRA SHANKAR SHUKLA

(Civil Appeal No. 2693 of 2013)

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FEBRUARY 15, 2018

**[MADAN B. LOKUR AND DEEPAK GUPTA, JJ.]**

*Service Law – Dismissal from service after superannuation – Propriety of – Respondent while in charge of extension counter of appellant-Bank issued a cheque in 1991, from his account in appellant-Bank, for Rs.3 lakhs in favour of his brother while he had only about Rs.1,000/- in his account – Notwithstanding the ‘stop payment’ communication by respondent to the Bank, respondent’s brother presented the cheque and it was temporarily encashed – Respondent was issued charge sheet in 1998– Respondent superannuated in January, 1999 but disciplinary proceedings continued against him and he was dismissed from service by order of Disciplinary Authority – High Court quashed the said order – Held: There was enormous delay of about 7 years in issuing charge sheet against respondent, for which there is no explanation – On this ground itself, charge sheet against respondent is liable to be set aside – Even if the charge against respondent was proved, it was an action personal to him and would not amount to misconduct within the purview of the Conduct Regulations applicable to bank employees – Further, before the charge sheet was issued to respondent, he was placed in a higher category as Manager and was also allowed to cross the efficiency bar – If the Bank was serious about proceeding against respondent for misconduct, they would not have granted him such benefits –Also, the respondent was denied his pension as well as subsistence allowance which prevented him from effectively participating in the disciplinary inquiry – On this ground also, the proceedings against respondent are vitiated – Punishment of dismissal could not have been imposed on respondent after his superannuation – No reason to interfere with the judgment of High Court – Costs of Rs. 1 lakh imposed on appellant – UCO Bank (Officers’) Service Regulations, 1979 – Regulation 20(3)(iii) – UCO Bank Officer Employees’*

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*(Conduct) Regulations, 1976 – UCO Bank(Employees) Pension Regulations, 1995 – Negotiable Instruments Act, 1881.* A

*Service Law – Subsistence allowance – Entitlement to, during pendency of departmental enquiry – Discussed – Access to justice.*

**Dismissing the appeal, the Court**

**HELD: 1.1 Even if the charge was proved against the respondent, it would not amount to a misconduct within the purview of the Conduct Regulations applicable to bank employees but was an action personal to him. Assuming misconduct was proved, appropriate action could be taken under the UCO Bank (Employees) Pension Regulations, 1995 in accordance with law and if permissible. The respondent’s direction to ‘stop payment’ would perhaps have made him liable for some action by his brother but certainly not by the Bank. [Paras 10, 11][641-B-D]** B C

**1.2 There is no explanation for the enormous delay of about 7 years in issuing a charge sheet against the respondent. On this ground itself, the charge sheet against the respondent is liable to be set aside due to the inordinate and unexplained delay in its issuance. What compounds the default on the part of the Bank is that the respondent was placed in a higher category as a Manager in July, 1994. He was also allowed to cross the efficiency bar in August, 1996. Surely, if the Bank was serious about proceeding against the respondent for misconduct, they would not only have taken prompt action in issuing a charge sheet but would not have granted him the benefit of being placed in a higher category or crossing the efficiency bar. [Paras 12, 13] [641-E-H]** D E

**1.3 An employee is entitled to subsistence allowance during an inquiry pending against him or her but if that employee is starved of finances by zero payment, it would be unreasonable to expect the employee to meaningfully participate in a departmental inquiry. Access to justice is a valuable right available to every person, even to a criminal, and indeed free legal representation is provided even to a criminal. In the case of a departmental inquiry, the delinquent is at best guilty of a misconduct but that is no ground to deny access to pension (wherever applicable) or subsistence allowance (wherever applicable). The respondent was denied his pension as well as subsistence allowance which** F G H

A prevented him from effectively participating in the disciplinary inquiry. On this ground as well, the proceedings against the respondent are vitiated. The punishment of dismissal could not have been imposed on the respondent after his superannuation. [Paras 14, 15 and 19][642-C-D, A-B; 643-D]

B *UCO Bank and Ors. v. Prabhakar Sadashiv Karvade* [Decision dated 20.5.2010 by Supreme Court in Civil Appeal No. 4725 of 2010] ; *UCO Bank and Anr. v. Rajinder Lal Capoor* 2007 (6) SCC 694 : [2007] 7 SCR 543 – relied on.

C Case Law Reference

[2007] 7 SCR 543                      relied on                      Para 17

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2693 of 2013.

D From the Order dated 07.05.2010 of the High Court of Chhattisgarh at Bilaspur in Writ Appeal No.60 of 2007.

P.H. Parekh, Sr. Adv, Rajesh Singh, Vishal Prasad, Shishir Mathur, Viresh B. Saharya, Akshat Agarwal, Advs. for the appearing parties.

The Judgment of the Court was delivered by

E **MADAN B. LOKUR, J.** 1. This appeal raises an interesting question of law on access to justice in a departmental inquiry. In our opinion, the respondent (Rajendra Shankar Shukla) was not given a fair opportunity to defend himself by denying him financial resources. On the merits of the case also, we are of the view that the impugned judgment and order of the High Court does not call for any interference.

F 2. The allegation against Shukla was that while in charge of the extension counter of the UCO Bank from 3<sup>rd</sup> October, 1987 to 8<sup>th</sup> July, 1994 he issued a cheque on 25<sup>th</sup> January, 1991 for an amount of Rs.3 lakhs in favour of his brother. At that time, Shukla had only about Rs.1,000/- in his account. We are only concerned with this broad allegation.

G 3. Shukla was issued a charge sheet on 20<sup>th</sup> May, 1998 (after about 7 years) by the respondent (Bank) under the provisions of the UCO Bank Officer Employees' (Conduct) Regulations, 1976. The articles of charge against Shukla were as follows:-

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(I) Shri R.S. Shukla issued/got issued a cheque on his joint account without making any arrangement of adequate balance and intention to honour it, only to cause wrongful benefit to his relative, at the cost of the Bank. He has thus failed to discharge his duties with utmost integrity and honesty, which is violative of Regulation 3 of UCO Bank Officer Employees' (Conduct) Regulations, 1976 as amended. A B

(II) Shri Shukla, by making available the official correspondence (exchanged between regional office, Raipur and his branch) to his son which he later quoted in his proposal for compromise of Transport Loan availed by him, has not only acted against the interest of the Bank but also has deliberately divulged information of a confidential nature to a person - his son, not entitled to it, which is violative of Regulation 4 of UCO Bank Officer Employees' (Conduct) Regulations, 1976 as amended. C

(III) By availing loans and that also frequently, far in excess of the permissible amount against NSCs and FDRs without paying interest at the applicable rates, Shri R.S. Shukla has failed to discharge his duties with devotion, honesty and utmost integrity. This act is violative of Regulation 3 of UCO Bank Officer Employees' (Conduct) Regulations, 1976 as amended. D E

4. Shukla was due to superannuate on 31<sup>st</sup> January, 1999. A few days prior to his superannuation, the Competent Authority issued a letter invoking Regulation 20(3)(iii) of the UCO Bank (Officers') Service Regulations, 1979 (for short "the Regulations"). Regulation 20(3)(iii) reads as follows:- F

"The officer against whom disciplinary proceedings have been initiated will cease to be in service on the date of superannuation but the disciplinary proceedings will continue as if he was in service until the proceedings are concluded and final order is passed in respect thereof. The concerned officer will not receive any pay and/or allowance after the date of superannuation. He will also not be entitled of the payment of retirement benefits till the proceedings are completed and final order is passed thereon except his own contributions to CPF." G

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A 5. In view of the aforesaid Regulation, Shukla ceased to be in service on 31<sup>st</sup> January, 1999 on attaining his superannuation but the disciplinary proceedings against him continued. Shukla denied the charges levelled against him but the Enquiry Officer submitted a report in which Charges 1 and 3 were proved while Charge 2 was not proved. B The Disciplinary Authority came to the conclusion that all three charges were proved and as far as Charge 1 is concerned, he passed an order on 30<sup>th</sup> June, 1999 dismissing Shukla from service which would ordinarily be a disqualification for future employment.

C 6. A departmental appeal was filed by Shukla. During the pendency of the departmental appeal, Shukla filed a writ petition in the Madhya Pradesh High Court. Later, the departmental appeal filed by Shukla was dismissed. The writ petition was transferred to the Chhattisgarh High Court and by a judgment and order dated 21<sup>st</sup> December, 2006 the learned Single Judge allowed the writ petition and quashed the order dated 30<sup>th</sup> June, 1999 passed by the Disciplinary D Authority. An appeal filed by the Bank was dismissed by the impugned judgment and order dated 7<sup>th</sup> May, 2010 by the Division Bench of the High Court. It is under these circumstances that the present appeal was filed in this Court.

E 7. At the outset, we make it clear that the learned senior counsel for the Bank candidly submitted that he was concerned only with Charge 1 and did not seek to justify the correctness of the findings of the Disciplinary Authority in respect of Charge 2 and Charge 3.

F 8. The learned Single Judge noted a few extremely relevant facts. Undoubtedly the cheque was issued by Shukla on 25<sup>th</sup> January, 1991 (although he claimed his wife had signed the cheque) but he directed the Bank to 'stop payment' by a communication dated 6<sup>th</sup> March, 1991. Notwithstanding the 'stop payment' communication, his brother presented the cheque for encashment on 2<sup>nd</sup> April, 1991 and it was temporarily encashed.

G 9. We have been informed by learned counsel for Shukla that on 19<sup>th</sup> July, 1994 he was promoted to higher category as Manager and on 12<sup>th</sup> August, 1996 he was permitted to cross the efficiency bar. These events occurred before the charge sheet was issued to Shukla.

H 10. The learned Single Judge took the view that there was no prohibition in a bank employee having an account in the same bank and

that in case a cheque issued by such an employee was dishonoured, action may be taken by the complainant under the provisions of the Negotiable Instruments Act, 1881 but the Bank could not take action under the UCO Bank Officer Employees' (Conduct) Regulations, 1976. In view of this conclusion, the learned Single Judge held that even if Charge 1 is proved, it would not amount to a misconduct within the purview of the Conduct Regulations applicable to bank employees. It was further held that assuming misconduct was proved, appropriate action could be taken under the UCO Bank (Employees) Pension Regulations, 1995 in accordance with law and if permissible.

11. The Division Bench of the High Court found no error in the view taken by the learned Single Judge and accordingly dismissed the appeal filed by the Bank. The Division Bench held that the action by Shukla in issuing a cheque for Rs. 3 lakhs when he had only about Rs. 1,000/- in his account did not amount to misconduct but was an action personal to him. The High Court also noted that his direction to 'stop payment' would perhaps have made him liable for some action by his brother but certainly not by the Bank.

12. We do not find any reason to interfere with the judgment and order passed by the High Court. However, it is necessary for us to highlight a few facts which were brought to our notice during the course of submissions made by learned counsel. The first issue of concern is the enormous delay of about 7 years in issuing a charge sheet against Shukla. There is no explanation for this unexplained delay. It appears that some internal discussions were going on within the Bank but that it took the Bank 7 years to make up its mind is totally unreasonable and unacceptable. On this ground itself, the charge sheet against Shukla is liable to be set aside due to the inordinate and unexplained delay in its issuance.

13. What compounds the default on the part of the Bank is that Shukla was placed in a higher category as a Manager on 19<sup>th</sup> July, 1994 while all these discussions were going on in the Bank. He was also allowed to cross the efficiency bar on 12<sup>th</sup> August, 1996 again while the discussions were going on. Surely, if the Bank was serious about proceeding against Shukla for misconduct, they would not only have taken prompt action in issuing a charge sheet but would not have granted him the benefit of being placed in a higher category or crossing the efficiency bar.

A 14. We were also little taken aback to learn from learned counsel  
for Shukla that after his superannuation on 31<sup>st</sup> January, 1999 Shukla  
was paid nothing during the pendency of the disciplinary inquiry.  
He was not paid his salary because he had superannuated. For some  
reason he was not paid his pension, perhaps because a departmental  
B inquiry was pending against him. He was also not paid any subsistence  
allowance during the period that the disciplinary inquiry was pending  
and even thereafter till 30<sup>th</sup> June, 1999. In other words, Shukla was  
made to face a financial crunch and presumably, he did not have a fair  
opportunity of defending himself.

C 15. An employee is entitled to subsistence allowance during an  
inquiry pending against him or her but if that employee is starved of  
finances by zero payment, it would be unreasonable to expect the  
employee to meaningfully participate in a departmental inquiry. Access  
to justice is a valuable right available to every person, even to a criminal,  
and indeed free legal representation is provided even to a criminal. In  
D the case of a departmental inquiry, the delinquent is at best guilty of a  
misconduct but that is no ground to deny access to pension (wherever  
applicable) or subsistence allowance (wherever applicable). As far as  
Shukla is concerned he was denied his pension as well as subsistence  
allowance which prevented him from effectively participating in the  
disciplinary inquiry. On this ground as well, the proceedings against  
E Shukla are vitiated.

16. Finally, we may also draw attention to an unreported decision  
of this Court in *UCO Bank and Ors. v. Prabhakar Sadashiv Karvade*.<sup>1</sup>  
In this decision, the Court considered the provisions of the Regulations  
that we are concerned with and held :

F “The sum and substance of these Regulations is that even though  
a departmental inquiry instituted against an officer employee before  
his retirement can continue even after his retirement, none of the  
substantive penalties specified in Regulation 4 of 1979 Regulations,  
which include dismissal from service, can be imposed on an officer  
employee after his retirement on attaining the age of  
G superannuation. Therefore, we have no hesitation to hold that order  
dated 12.10.2004 passed by the disciplinary authority dismissing  
the respondent from service, who had superannuated on 31.12.1993  
was ex facie illegal and without jurisdiction and the High Court  
did not commit any error by setting aside the same.”

H <sup>1</sup>C.A. No. 4725 of 2010 decided on 20<sup>th</sup> May, 2010

17. We may also make reference to another decision of this Court in *UCO Bank and Anr. v. Rajinder Lal Capoor*.<sup>2</sup> This decision also related to the very same Regulations that we are concerned with. A

18. In dealing with these Regulations, it was observed by the Court in paragraph 22 of the Report as follows:-

“The respondent, therefore, having been allowed to superannuate, only a proceeding, inter alia, for withholding of his pension under the Pension Regulations could have been initiated against the respondent. Discipline and Appeal Regulations were, thus not attracted. Consequently the charge-sheet, the enquiry report and the orders of punishment passed by the disciplinary authority and the appellate authority must be held to be illegal and without jurisdiction.” B C

19. Under the circumstances, we have no hesitation in dismissing the appeal filed by the Bank also on the ground that the punishment of dismissal could not have been imposed on Shukla after his superannuation. D

20. However, we must observe that the learned Single Judge had held against the Bank and the Division Bench also held against the Bank. Notwithstanding this the Bank preferred this appeal. The appeal was preferred despite at least two decisions delivered by this Court making the legal position clear. The Bank would have been well-advised to follow the law laid down by this Court rather than unnecessarily litigate against an employee who has superannuated. We have no doubt that Shukla must have spent a considerable amount in litigation. Accordingly, while dismissing the appeal, we impose costs of Rs. 1 lakh which will be paid to Shukla within 4 weeks from today towards his legal expenses. E F

Divya Pandey

Appeal dismissed.

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<sup>2</sup>(2007) 6 SCC 694