

Before Harsimran Singh Sethi, J.

S.K. GUPTA— *Petitioner*

versus

SARVA HARYANA GRAMIN BANK—*Respondents*

CWP No.4695 of 2014

January 17, 2019

A. Constitution of India, 1950—Art. 226 and 227—CCS (CCA) Rules, 1965— Disciplinary proceedings—Dead employee— Pensionary benefits—Charge sheeted employee died during pendency of writ petition—Legal heirs cannot defend allegations effectively—No inquiry after death—Pensionary benefits (Gratuity) to be released.

B. Government of India Instructions—Persuasive Value for Bank Employees.

Held that, once an employee against whom an allegation has been made is no more in this world, nobody on his behalf can defend those allegations. It is only the employee who would have the knowledge of the facts in respect of the allegations made against him/her and the same employee can defend himself/herself properly. After the death of the said employee, nobody can defend those allegations effectively as it could have been, had the employee was alive. Unless and until proper opportunity to defend is given, no proceedings can be held to establish the allegation. In the present case, after the death, it cannot be said that opportunity to defend the allegation can be given in any manner to the deceased employee/legal heirs. There will be no one to defend the allegations as the knowledge in respect of allegations alleged has also gone with the concerned employee and therefore, no inquiry can be allowed to continue after the death of the concerned employee.

(Para12)

Further held that, the instructions issued by the Government of India cannot be made applicable to respondent-Bank still, the same has a persuasive value to arrive at a decision. Once an employee of a Government of India who dies during the pendency of the writ petition, cannot be proceeded against after his death, it cannot be said that the same law cannot be followed in case of a bank unless there are any contrary instructions. No instructions contrary to the same has been

pointed out under which an proceedings against the dead employee will continue. (Para 13)

Ashok Tyagi, Advocate
for the *petitioner*.

Vipin Mahajan, Advocate
for the respondents.

HARSIMRAN SINGH SETHI, J.

(1) By this order, writ petition bearing Nos. CWP-4695-2014 as well as CWP-21107-2015 are being decided. Both the petitions have been filed by the petitioner-S.K.Gupta retired Senior Manager Gurgaon Gramin Bank now Sarva Haryana Gramin Bank. In the present CWP-4695-2014, the challenge is to the charge-sheet dated 06.04.2013 and order dated 04.07.2013 by which the inquiry officer was appointed to enquire into the allegations. In CWP-21107-2015, that too filed by the petitioner, prayer is for release of the pensionary benefits upon his retirement, which were being upheld by the respondents on account of disciplinary proceedings pending against the petitioner. For the sake of convenience, the facts as mentioned in the CWP-4695-2014 are being taken. As per the averment made in the writ petition, the petitioner joined the respondent-Bank on 21.03.1977 and he continued working there and retired from the services of the said Bank on 30.04.2012 as a Senior Manager. After retirement, the retiral benefit of the petitioner were not released. Ultimately, keeping in view certain irregularities, as were prima facie found against the petitioner, a departmental inquiry was initiated by serving a charge-sheet upon the petitioner on 06.04.2013 i.e., approximately after a period of one year from the date of his retirement. The said charge-sheet is under challenge in the present writ petition.

(2) This Court, while issuing notice of motion on 12.03.2014, stayed the proceedings in respect of the charge-sheet dated 06.04.2013. The order dated 12.03.2014 is reproduced as under;

“Learned counsel for the petitioner submits that the petitioner retired from service on 30.04.2012 on attaining the age of superannuation and at that time, no inquiry or proceedings were pending against him. Learned counsel further submits that on 06.04.2013, a charge sheet was served upon the petitioner, whereas, no disciplinary proceedings can be initiated after retirement as has been held in the judgment of Hon'ble the Apex

Court in case ***UCO Bank and another*** versus ***Rajinder Lal Kapoor***.

Notice of motion for 30.06.2014.

Meanwhile, proceedings against the petitioner in pursuance of charge sheet dated 06.04.2013 shall remain stayed.”

(3) The respondents have filed a reply justifying the issuance of the charge-sheet and the matter remained pending before this Court so as to decide, as to whether a charge-sheet could be issued to an employee after his retirement in view of the law laid down by the Hon'ble Supreme Court of India in ***UCO Bank and another*** versus ***Rajinder Lal Kapoor***¹

(4) Before any opinion could be formed by this Court, either in the favour of the petitioner or in the favour of the respondents, unfortunately, on 28.07.2018, the petitioner died. After his death, the legal heirs of the petitioner have been impleaded in the present writ petition.

(5) Counsel for the petitioner states that as no proceedings in respect of the charge-sheet were initiated in view of the order passed by this Court vide order dated 12.03.2014, now after the death of the petitioner, the said proceedings cannot be undertaken as there is no one to defend the allegation alleged by the bank in the charge-sheet dated 06.04.2013 as the petitioner, against whom the allegations were made in the charge-sheet has already died. Now the department cannot proceed in respect of the said charge-sheet for proving the same.

(6) In support of the above argument, counsel for the petitioner has relied upon the office memorandum issued by the Government of India, Ministry of Personnel Public Grievances & Pensions (Department of Personnel & Training) New Delhi, dated the 20th October, 1999 according to which, an employee against whom a disciplinary proceedings have been initiated and during the said proceedings, the concerned employee dies, the disciplinary proceedings should be closed immediately upon the death of the employee. The relevant instructions are reproduced herein as under;

“F.No. 11012/7/99-Estt (A)

Government of India

¹ 2007(6) SCC 694

Ministry of Personnel Public Grievances & Pensions

(Department of Personnel & Training)

New Delhi, dated the 20th October, 1999

Office Memorandum

Subject: CCS (CCA) Rules, 1965- procedure regarding closing of disciplinary cases in the event of death of the charged official.

 “1. The undersigned is directed to say that this Department has been receiving references seeking clarification whether disciplinary cases initiated against the Government servant under CCS(CCA) Rules, 1965, could be closed in the event of death of the charged officer during pendency of the proceedings. After careful consideration of all the aspects, it has been decided that where a Government servant dies during the pendency of the inquiry i.e. without charges being proved against him, imposition of any of the penalties prescribed under the CCS (CCA) Rules, 1965, would not be justifiable. Therefore, disciplinary proceedings should be closed immediately on the death of the alleged Government servant.

2. In so far as the persons serving in the Indian Audit and Accounts Department are concerned, this issues with the concurrence of the C&AG”.

(7) Further, the counsel for the petitioner has placed reliance upon the judgment of the Hon'ble Supreme Court of India in Civil Appeal No. 4858 of 1998 decided on 17.09.1998 titled as **Basudeo Tiwary** versus **Sido Kanhu University**² wherein the Hon'ble Supreme Court of India, in case of the death of an employee during the inquiry, held that after the death, no further inquiry can be undertaken. The relevant paragraph-12 of the said judgment is reproduced as under;

“12. The appellant has since demised during the pendency of these proceedings, no further direction either as to further inquiry or reinstatement can be given. We declare that the termination of the appellant by the respondent as per the notification referred to by us is invalid. Consequently, it would be deemed that the appellant had died in harness.

² 1998 (8) SCC 194

Needless to say that the appellant would become entitled to the payment of arrears of salary from the date of termination of his services upto the date of his death on the basis of last pay drawn by him. Let Respondent take action within a period of three months from today to work out the arrears due to the appellant from the date of his termination till his death and pay the same to his legal representatives.”

(8) Counsel for the petitioner states that while deciding the above mentioned case, the Hon'ble Supreme Court of India directed to release all the benefits to the legal heirs after the death of the employee.

(9) Counsel for the respondents states that the death of an employee will not abate the proceedings and the legal heirs can participate in the enquiry and the same can be taken to the logical end.

(10) Counsel for the respondents further states that the judgment cited by the learned counsel for the petitioner is in different facts and the circular issued by the Government of India, cannot be made applicable to an autonomous institution.

(11) I have heard the learned counsel for the parties.

(12) Once an employee against whom an allegation has been made, is no more in this world, nobody on his behalf can defend those allegations. It is only the employee who would have the knowledge of the facts in respect of the allegations made against him/her and the same employee can defend himself/herself properly. After the death of the said employee, nobody can defend those allegations effectively as it could have been, had the employee was alive. Unless and until proper opportunity to defend is given, no proceedings can be held to establish the allegation. In the present case, after the death, it cannot be said that opportunity to defend the allegation can be given in any manner to the deceased employee/legal heirs. There will be no one to defend the allegations as the knowledge in respect of allegations alleged has also gone with the concerned employee and therefore, no inquiry can be allowed to continue after the death of the concerned employee.

(13) Further, even though, the argument of the learned counsel for the respondents could be correct that the instructions issued by the Government of India cannot be made applicable to respondent-Bank still, the same has a persuasive value to arrive at a decision. Once an employee of a Government of India who dies during the pendency of the writ petition, cannot be proceeded against after his death, it cannot be said that the same law cannot be followed in case of a bank unless

there are any contrary instructions. No instructions contrary to the same has been pointed out under which an proceedings against the dead employee will continue. Therefore, the arguments raised by the counsel for the respondent that the instructions dated 20.10.1999 should not be made applicable cannot be accepted. Further, in some what similar circumstances, where an employee died during the pendency of the disciplinary proceedings, the Hon'ble Supreme Court of India in Basudeo Tiwary's case (supra) has categorically held that no inquiry proceedings can continue after the death of the employee. Hon'ble Supreme Court issued the directions to release the entitlement of the deceased employee in favour of the legal heirs.

(14) That be the position, this Court is of the view that after the death of the petitioner on 28.07.2018, disciplinary proceedings cannot continue. It is a matter of fact that no proceedings were undertaken by the respondents keeping in view the order passed by this Court dated 12.03.2014 vide which the proceedings in respect of the charge-sheet had been stayed by this Court. In view of the above, it is directed that no further proceedings shall be held in pursuance to the charge-sheet dated 06.04.2013 after the death of the petitioner.

(15) In CWP-21107 of 2015, the petitioner had prayed for the release of the pensionary benefits (gratuity only) which was being withheld by the department on account of the pending proceedings i.e., charge-sheet dated 06.04.2013.

(16) Now, once the Court is of the view that respondents cannot proceed against the deceased employee in respect of the charge-sheet dated 06.04.2013, and the same proceedings are deemed to have come to an end, a direction is issued to the bank to release the gratuity in favour of the legal heirs of the petitioner within a period of 02 months from the date of receipt of copy of this order. In case, there is any other benefit for which the deceased-employee was entitled for, the legal heirs will be free to file a representation claiming the same from the bank which representation shall also be considered at the time of the releasing the gratuity by passing a speaking order.

(17) The writ petition stands disposed of in above terms.

Shubreet Kaur