

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE**

HON'BLE SHRI JUSTICE VIVEK RUSIA

ON THE 14th OF FEBRUARY, 2023

W.P No. 1529 of 2022

BETWEEN:-

**MAHESH KUMAR SHARMA S/O SHRI GAURISHANKAR
SHARMA, AGED ABOUT 62 YEARS, OCCUPATION:
RETIRED, R/O: 1 TIRUPATI NAGAR, BEHIND
MAHAJAN HOSPITAL, MAGAJ PURA ROAD, DISTRICT
DHAR (MADHYA PRADESH)**

.....PETITIONER

(SHRI AMOL SHRIVASTAVA - ADVOCATE)

AND

**MADHYA PRADESH GRAMIN BANK THROUGH ITS
CHAIRMAN, 204, C-21 BUSINESS PARK, RING ROAD
RADISSION SQUARE (MADHYA PRADESH)**

.....RESPONDENT

(SHRI KAMLESH MANDLOI - ADVOCATE FOR RESPONDENT)

*This application coming on for admission this day, the court
passed the following:*

ORDER

Petitioner has filed this present petition challenging the validity of charge-sheet dated 27.05.2021 and the show-cause notice dated 15.09.2021.

2. The petitioner was appointed on 03.03.1984 on the post of Officer Scale JM-1 in the erstwhile Nimad Shetriya Gramin Bank. Thereafter, he was promoted to the post of Chief Manager and posted

Chief Manager, Ujjain Branch on 24.05.2017. The Narmada Malwa Gramin Bank became Narmada Jhabua Gramin Bank in the year 2012 and thereafter the same was merged and named M.P Gramin Bank in the year 2019. The petitioner was served with a show-cause notice dated 14.11.2019 by the respondent whereby certain shortcomings were highlighted in the disbursement of the loan accounts there himself and the petitioner was asked to submit a reply to the show-cause notice. The petitioner submitted a reply on 30.11.2019 and thereafter the petitioner stood retired from service w.e.f. 31.12.2019. After retirement, the retiral dues of the petitioner were withheld for which he made a representation. After one and a half years of retirement, a charge sheet dated 27.5.2021 was issued to the petitioner. The petitioner submitted an objection that after retirement, no departmental enquiry can be initiated against him under the ***M.P. Gramin Bank, Adhikari Avam Karmachari Vinnyam 2010***, (hereinafter referred to as Regulation of 2010) and thereafter, the petitioner has filed this present petition before this Court solely on the ground that under Regulation 45 an Officer or an employee who is under suspension on a charge of misconduct and who attains the age of superannuation, shall be deemed to be in service even after the age of superannuation for the specific purpose of continuation and conclusion of the disciplinary proceedings.

3. Shri Amol Shrivastava, learned counsel for the petitioner submits that at the time of retirement, the petitioner was not placed under suspension, therefore, he cannot be deemed to be in service for the purpose of continuation of enquiry. Apart from this, there is no

such provision for issuing a charge-sheet to a charge sheet yet in the regulation. Hence, the respondent has illegally and without authority issued a charge-sheet, which is liable to be quashed. After retirement, the petitioner cannot be treated as an employee/officer of the respondent/Bank.

4. The respondent has filed the reply by submitting that initially the petitioner was issued with the show-cause notice on 14.11.2019 pointing out certain irregularities that came into the knowledge of the respondent during the audit. The petitioner was directed to submit an explanation. After examining the reply, the bank decided to conduct a departmental enquiry against him, therefore, the charge-sheet was issued. Even, if the petitioner is retired during this period by virtue of the explanation of Regulation 10, the disciplinary proceedings shall be deemed to be contemplated or pending against an officer or employee if he has been placed under suspension or any show cause notice has been issued to him to show cause why the disciplinary proceedings should not be initiated against him.

5. Shri Kamlesh Mandloi, Advocate appearing for the respondent submits that explanation appended to Regulation 10 and Regulation 45(1) should be read co-jointly. The departmental enquiry is not liable to be quashed. It is further submitted that apart from the charge-sheet already issued to the petitioner, an additional charge-sheet has been issued alleging a loss of Rs.28,04,240.21/- with interest to the bank. Therefore, the petitioner cannot be permitted to go free after retirement with serious charges which are already there against him. Hence, the petition is liable to be dismissed.

6. Learned counsel for the petitioner submits that the similar provisions of the regulation in UCO Bank (Officers') Employee Service Regulations, 1979 came up for consideration before the Apex Court in the case of *UCO Bank & Anr. Vs. Rajinder Lal Capoor* reported in *(2007) 6 SCC 694*, in which the Apex Court has held that a bare perusal from Regulation 20(3)(iii) only when the disciplinary proceedings have been initiated against an officer of a bank despite attaining the age of superannuation can be continued because of a legal fiction. The delinquent officer would be deemed to be in service. The departmental enquiry is not initiated merely by the issuance of a show-cause notice, it is initiated only when a charge-sheet is issued. Therefore, in view of the aforesaid law laid down by Apex Court, the bank has no authority to initiate the departmental enquiry after the retirement of the petitioner from service.

7. The facts of the case as discussed above and the provisions of the law are not in dispute. Regulation 45 specifically deals in respect of the initiation of departmental proceedings after retirement. Regulation 45 is reproduced below:-

"45. Disciplinary proceedings after retirement:-

1. An officer or employee who is under suspension on a charge of misconduct and who attains the age of superannuation, shall be deemed to be in service even after the age of superannuation for the specific purpose of continuation and conclusion of the disciplinary proceedings and issue of final orders thereon.

2. The officer or employee who is under suspension shall not be eligible for any subsistence allowance for the period beyond the date of

superannuation.

3. The officer or employee against whom a disciplinary proceeding has been initiated shall cease to be in service on the date of superannuation but the disciplinary proceeding shall continue as if he was in service until the proceedings are concluded and the final order is passed in respect thereof.

4. The officer or employee against whom disciplinary proceedings have been initiated shall not receive any pay and/or allowances after the date of superannuation and also not be entitled to the payment of retirement benefits till the proceeding is completed and the final order is passed thereon except his own contribution to Contributory Provident Fund (CPF).

Explanation: For the purposes of this regulation, the normal retirement benefits such as encashment of privilege leave and Gratuity may be withheld till the completion of the disciplinary proceeding and passing of final order by the Competent Authority and the release of benefits shall be as per the final order of the Competent Authority.”

8. As per Clause-I of sub-regulation 45(I), only a suspended employee or officer on a charge of misconduct shall be deemed to be in service even after attaining the age of superannuation for the purpose of continuation and conclusion of the disciplinary proceedings. The challenge to the departmental enquiry or charge sheet is based on this provision alone. Chapter IV deals with the Conduct, Discipline and Appeals, Clause-16 & 17 deal with the in-service employees and officers, Clause-18 to 38 provides various Do's and Don'ts for the employees which may constitute negligence, inefficiency, any act

detrimental to the interest of the bank and attracts the penalties minor as well as major. Regulation 43 provides for corrupt practices. The respondents are relying on Clause-10 which deals with the termination of service by notice as per sub-regulation (1), no officer or employee shall leave or discontinue his service in the Bank without first giving notice in writing to the Appointing Authority and sub-rule (2) provides that despite anything contained contrary in sub-regulation (1), an officer or an employee against him departmental enquiry is contemplated or pending shall not leave, discontinue or resign from his service from the bank without prior approval of the authority and any notice of resignation and for this regulation only the disciplinary proceedings shall be deemed to be contemplated or pending against the employee or officer if he has been placed under suspension or any notice has been issued to him to show-cause why the disciplinary enquiry proceedings should not be instituted. If the employee or officer is under suspension or enquiry is contemplated there has to be an order passed by the Competent Authority in respect of leaving discontinuance or resignation of any employee with prior approval of appointing authority.

9. In the present case, after attaining the age of superannuation, the petitioner was permitted to retire from service for which Regulation 11 provides the provision for retirement after completion of 60 years of age. Regulation 10 applies before 60 years of the employee, applying quitting the service. Entire regulation 10 has been drafted to facilitate the employee/officers to leave or discontinue the services by giving notice and if such notice is given then appointing authority may

approve. This explanation of Clause-10 will not apply in the present case as he did not apply for quitting the service. The Apex Court in the case of *UCO Bank (supra)* has already held that the issuance of show cause notice cannot be equated with the issuance of a charge sheet as held by the Apex Court in the case of *Union of India Vs. K.V Jankiraman (1991) 4 SCC 109*. Before retirement, the petitioner was not placed under suspension and no departmental proceeding has been initiated. By issuing a charge-sheet respondent is relying on an explanation appended to Regulation 10 which specifically provides that for the purpose of this regulation disciplinary proceedings shall be deemed to be contemplated or pending against an officer or employee if has been placed under suspension or any notice has been issued to him to show-cause why the disciplinary proceedings should not be instituted against him. In the present case, before retirement, a show-cause notice had been issued to the petitioner but before the charge-sheet could be issued, he had attained the age of superannuation. The explanation is also a part of the Rules and according to which departmental proceedings shall be deemed to be pending if the show-cause notice has been issued. If this explanation is read with co-jointly of Regulation 45(3) that the officer or employee against whom disciplinary proceedings have been initiated shall cease to be in service on the date of superannuation but the disciplinary proceedings shall continue as if he was in service until the proceedings are concluded and final order is passed.

10. Regulation 39 provides penalties according to which an employee or officer who commits a breach of regulations, negligence,

commit acts detrimental to the interests of the bank or misconduct shall be liable for any or more penalties major as well as minor. It is settled law that now after even superannuation, the penalty of termination can be imposed after completion of departmental enquiry. When there are serious charges of causing loss to the bank then the employee should not go freely after retirement without facing any disciplinary enquiry. In the case of *UCO Bank & Anr. Vs. Rajinder Lal Capoor* only Regulation 20(3)(iii) of Service of Regulations Act, 1979 was considered and held that the Departmental proceedings will continue against the employee retired on the date of superannuation against whom the disciplinary proceeding has been initiated after issuance of charge-sheet but in the present case as per explanation appended to Regulation 10, the disciplinary proceedings shall be deemed to be contemplated or pending if the show-cause notice has been issued.

11. Therefore, the facts of this case are different, hence, the charge-sheet and the departmental enquiry are not liable to be quashed and the same shall continue even after attaining the age of superannuation.

In view of the above, Writ Petition is dismissed.

**(VIVEK RUSIA)
JUDGE**

AKANKSHA