

Uco Bank & Anr vs Rajinder Lal Capoor on 31 March, 2008

Equivalent citations: AIR 2008 SUPREME COURT 1831, 2008 AIR SCW 2526, 2008 (5) SRJ 267, 2008 (3) SERVLJ 257 SC, 2008 (6) SCALE 1, 2008 (5) SCC 257, (2008) 3 LAB LN 122, (2008) 3 SCT 371, (2008) 6 SERVLR 1, (2008) 6 SCALE 1, (2008) 5 ESC 793, (2008) 2 ALL WC 2030, (2009) 1 BANKCLR 220

Author: S.B. Sinha

Bench: S.B. Sinha, Markandey Katju

CASE NO.:

Review Petition (civil) 748 of 2007

PETITIONER:

UCO Bank & Anr

RESPONDENT:

Rajinder Lal Capoor

DATE OF JUDGMENT: 31/03/2008

BENCH:

S.B. Sinha & Markandey Katju

JUDGMENT:

JUDGMENT ORDER REVIEW PETITION (C) NO. 748 OF 2007 IN CIVIL APPEAL NO. 2739 OF 2007 S.B. SINHA, J :

1. Review Petitioners herein have filed this application for review of this Court's judgment and order dated 18.05.2007 passed in Civil Appeal No. 2739 of 2007.
2. Respondent was working with the appellant Bank. Almost immediately prior to his retirement, he was asked to show cause as to why action under the UCO Bank (Officers') Service Regulations, 1979 (for short "the 1979 Regulations") should not be taken against him by notices dated 24.10.1996 and 30.10.1996.
3. Respondent reached his age of superannuation on 30.11.1996. A disciplinary proceeding was initiated against him immediately thereafter. A charge sheet, however, was issued only on 13.11.1998. He was dismissed from service upon initiating a departmental proceedings.
4. A writ petition filed by him was allowed. Petitioner Bank filed an appeal upon grant of special leave thereagainst. One of the questions which arose for

consideration before this Court was whether in absence of any chargesheet having been issued, the disciplinary proceedings could be said to have been initiated in view of the decisions of this Court in Union of India etc. etc. v. K.V. Jankiraman, etc. etc. [AIR 1991 SC 2010], Union of India and Ors. v. Sangram Keshari Nayak [2007 (6) SCALE 348] and Coal India Ltd. and Ors. v. Saroj Kumar Mishra [2007 (5) SCALE 724].

5. When the said question was raised, the 1979 Regulations were not before us. This Court asked the learned counsel to handover the regulations by the next day. It was not complied with.

However, on 18.05.2007 when the judgment was to be delivered, a prayer was made to defer the pronouncement of the judgment so as to enable the appellants to place the regulations. The said prayer was declined and the judgment was pronounced. It is in the aforementioned factual backdrop, this review petition has been filed.

6. In the review application, the petitioner inter alia seeks to bring to our notice the relevant provisions of the 1979 Regulations so as to contend that by reason thereof, a legal fiction has been created to the effect that a disciplinary proceedings shall be deemed to be pending, if the delinquent officer was placed under suspension or any notice was issued to him to show cause why any disciplinary proceedings shall not be initiated against him and will be deemed to be pending until the final orders are passed by the competent authority.

7. Indisputably, the appellants have framed three different regulations governing the conditions of service of its employees.

8. The UCO Bank Officer Employees' (Discipline and Appeal) Regulations, 1976 (for short "the 1976 Regulations") have been framed by reason of Section 19 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 in consultation with the Reserve Bank of India and with the previous sanction of the Central Government. Regulation 4 of the 1976 Regulations provides for the penalties. Regulation 6 provides for the procedure for imposing major penalties. Sub-regulation (1) of Regulation 6 provides that no proceeding for imposing major penalties shall be initiated except after an inquiry is held in accordance with the provisions thereof. Sub-regulation (2) of Regulation 6 provides that when the disciplinary authority is of the opinion that there were grounds for inquiring into the truth of any imputation of misconduct, an inquiry officer is to be appointed. Sub-Regulations (3), (4) and (5) of Regulation 6 read as under:

"(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, 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.

(4) On receipt of the written statement of the officer employee, or if no such statement is received within the time specified, an enquiry may be held by the Disciplinary Authority itself, or if it considers it necessary so to do appoint under sub-

regulation (2) an Inquiring Authority for the purpose:

Provided that it may not be necessary to hold an inquiry in respect of the articles of charge admitted by the officer employee in his written statement but shall be necessary to record its findings on each such charge.

(5) The Disciplinary Authority shall, where it is not the inquiring authority, forward to the inquiring authority:

(i) a copy of the articles of charges and statement of imputations of misconduct or misbehaviour; "

9. In exercise of the same power, the Board of Directors have also framed the UCO Bank Officer Employees (Conduct) Regulations, 1976 (for short "the 1976 Conduct Regulations") providing for the code of conduct for the bank officers. Any breach in terms of Regulation 24 of the 1976 Conduct Regulations is deemed to constitute a misconduct punishable under the 1976 Regulations.

10. The 1979 Regulations were also framed under the same power by the Board of Directors of the Bank. The 1979 Regulations deal with different terms of the employment of service. Chapter IV deals with appointments, probation, confirmation, promotions, etc. Chapter V deals with allowances. Chapter VI deals with medical aid, residential accommodation, etc. Chapter VII provides for the kinds of leave to which an employee is entitled to. Chapter VIII provides for traveling allowances, etc. Chapter IX provides for provident fund and pension. Chapter X provides for transfer of employees from one branch to another. Chapter XI provides for power to implement regulations.

11. We are concerned herein with Regulation 20 of the 1979 Regulations which finds place in Chapter IV. As noticed hereinbefore, the heading of the said Regulation is 'termination of service'. Regulation 20 ex facie does not deal with termination of service by way of misconduct which is governed by the 1976 Regulations and the 1976 Conduct Regulations.

12. Regulation 20 of the 1979 Regulations reads as under:

"20(1)(a) Subject to sub-regulation 3 of regulation 16 where the Bank is satisfied that the performance of an officer is unsatisfactory or inadequate or there is a bonafide suspicion about his integrity or his retention in the Bank's service would be prejudicial to interests of the Bank, and where it is not possible or expedient to proceed against him as per the disciplinary procedure, the Bank may terminate his services on giving him three months' notice or emoluments in lieu thereof in accordance with the guidance issued by the Government from time to time.

(b) Order of termination under this sub-

regulation shall not be made unless such officer has been given a reasonable opportunity of making a representation to the Bank against the proposed order.

(c) The decision to terminate the services of an officer employee under sub-regulation (a) above will be taken only by the Chairman and Managing Director.

(d) The officer employee shall be entitled to appeal against any order passed under sub-

regulation (a) above by preferring an appeal within 15 days to the Board of Directors of the Bank. If the appeal is allowed, the order under sub-

regulation (a) shall stand cancelled.

(e) Where an officer employee whose services have been terminated and who has been paid an amount of three months emoluments in lieu of notice and on appeal his termination is cancelled, the amount paid to him in lieu of notice shall be adjusted against the salary that he would have earned, had his services not been terminated and he shall continue the Bank's employment on same terms and conditions as if the order of termination had not been passed at all.

(f) An officer employee whose services are terminated under sub-regulation (a) above shall be paid Gratuity, Provident Fund including employer's contribution and all other dues that may be admissible to him as per rules notwithstanding the years of service rendered.

(g) Nothing contained hereinabove will affect the Bank's right to retire an officer employee under Regulation 19(1).

2. An officer shall not leave or discontinue his service in the Bank without first giving a notice in writing of his intention to leave or discontinue his service or resign. The period of notice required shall be 3 months and shall be submitted to the competent authority as prescribed in these regulations.

Provided further that the competent authority may reduce the period of 3 months or remit the requirement of notice.

3(i) An officer against whom disciplinary proceedings are pending shall not leave/ discontinue or resign from his service in the bank without the prior approval in writing of competent authority and any notice or resignation given by such an officer before or during the disciplinary proceedings shall not take effect unless it is accepted by the competent authority.

(ii) Disciplinary proceedings shall be deemed to be pending against any employee for the purpose of this regulation if he has been placed under suspension or any notice has been issued to him to show cause why disciplinary proceedings shall not be instituted against him and will be deemed to be

pending until final orders are passed by the competent authority.

(iii) 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 for the payment of retirement benefits till the proceedings are completed and final order is passed thereon except his own contributions to CPF."

13. Sub-regulation (1) of Regulation 20 of the 1979 Regulations, thus, deals with termination of service where the performance of an officer is unsatisfactory or inadequate or where there is a bona fide suspicion about his integrity or where his retention in the bank's service is prejudicial to interests of the disciplinary procedure. Other Sub-regulations of Regulation 20 provides for the mode and manner in which such termination may be effected as also his entitlement to prefer an appeal thereagainst and other benefits to which he would be otherwise entitled to.

14. Sub-regulation (2) of Regulation 20 of the 1979 Regulations places an embargo on an official to leave or discontinue his service of the bank without giving a notice in writing. It prescribes a period of notice. Sub- regulation (3) of Regulation 20, however, places an embargo on an officer to leave or discontinue or resign from service without the prior approval in writing of the competent authority and a notice or resignation given by such an officer before or during the disciplinary proceedings shall not take effect unless it is accepted by the competent authority. Clause (ii) of Sub-regulation (3) of Regulation 20 must be considered from that aspect of the matter. It raises a legal fiction. Such legal fiction has been raised only for the purpose of "this Regulation" and for no other, which would mean Regulation 20(1). The final orders which are required to be passed by the competent authority although indisputably would be in relation to the disciplinary proceedings but evidently it is for the purpose of accepting resignation or leaving or discontinuing of the service by the employee concerned or grant of approval thereof. Clause (ii) of Sub- regulation (3) of Regulation 20 in effect and substance acts as a proviso to Clause (i) thereof.

15. Clause (iii) of Sub-regulation (3) of Regulation 20 is an independent provision. It provides for continuation of the disciplinary proceedings. Such disciplinary proceedings indisputably for the purpose of applicability of Sub- regulation (3) must have been initiated in terms of the 1976 Regulations.

16. It is worth noticing the distinction between terminologies "proceeding pending" or "proceeding initiated". Clause (ii) of Sub-regulation (3) of Regulation 20 defines what would be pending, viz., for the purpose of attracting Clause (i) thereof.

A disciplinary proceeding is initiated in terms of 1976 Regulations, which are applicable only in a case where a proceeding is initiated for the purpose of taking disciplinary action against a delinquent officer for the purpose of imposing a punishment on him.

Disciplinary proceedings, thus, are initiated only in terms of the 1976 Regulations and not in terms of the 1979 Regulations. It is worth noticing that the 1979 Regulations would be attracted when no disciplinary proceeding is possible to be initiated. The 1976 Regulations, however, on the other hand, would be attracted when a disciplinary proceeding is initiated.

Both operate in separate fields. We do not see any nexus between Regulations 20(1) and 20(2) of the 1979 Regulations and the 1976 Regulations.

17. The 1976 Regulations provide for the mode and manner in which a disciplinary proceeding is initiated. It expressly provides for service of charge sheet. Service of charge sheet is a necessary ingredient for initiation of disciplinary proceeding. A preliminary enquiry is not contemplated under the 1976 Regulations. If such an enquiry is held, the same is only for the purpose of arriving at a satisfaction on the part of the disciplinary authority to initiate a proceeding and not for any other purpose.

18. If it is found that a disciplinary proceeding can be and should be initiated, recourse to the 1976 Regulations would have to be taken, if not, the 1979 Regulations may be resorted to if the conditions precedent therefor are satisfied. It is only with a view to put an embargo on the officer to leave his job, Clause (ii) of Sub-Regulation (3) of Regulation 20 of the 1979 Regulations has been made. Its scope is limited.

19. We have noticed hereinbefore that each regulations operates in different fields. When a proceeding is initiated for the purpose of taking any disciplinary action on the ground of any misconduct which might have been committed by the officer concerned indisputably the procedures laid down in the 1976 Regulations are required to be resorted to.

20. The 1979 Regulations would be attracted only for the purpose of termination of service. Had the intention of the regulation making authority been that the legal fiction created under Clause (ii) of Sub-regulation (3) of Regulation 20 would cover both Clauses (i) and (iii), the same should have been placed only after Clause (iii). In such an event, Clause (ii) of Sub-regulation (3) of Regulation 20 should have been differently worded. Some non-obstante clause would have been provided for making an exception to the applicability of the 1976 Regulations when a legal fiction is created, although it is required to be taken to the logical conclusion [See East End Dwellings Co. Ltd. v. Finsbury Borough Council, [(1951) 2 All.E.R 587], but the same would not mean that the effect thereof would be extended so as to transgress the scope and purport for which it is created.

In UCO Bank and Anr. v. Rajinder Lal Capoor [(2007) 6 SCC 694] it has been held:

"We are not oblivious of the legal principle that a legal fiction must be given full effect but it is equally well-settled that the scope and ambit of a legal fiction should be confined to the object and purport for which the same has been created."

In Imagic Creative Pvt. Ltd. v. The Commissioner of Commercial Taxes and Ors. [JT 2008 (1) SC 496], this Court opined:

"26. We have noticed hereinbefore that a legal fiction is created by reason of the said provision. Such a legal fiction, as is well known, should be applied only to the extent for which it was enacted. It, although must be given its full effect but the same would not mean that it should be applied beyond a point which was not contemplated by the legislature or which would lead to an anomaly or absurdity.

27. The Court, while interpreting a statute, must bear in mind that the legislature was supposed to know law and the legislation enacted is a reasonable one. The Court must also bear in mind that where the application of a Parliamentary and a Legislative Act comes up for consideration; endeavours shall be made to see that provisions of both the acts are made applicable."

It is now a well-settled principle of interpretation of statutes that the court must give effect to the purport and object of the Act. Rule of purposive construction should, subject of course to the applicability of the other principles of interpretation, be made applicable in a case of this nature. In *New India Assurance Company Ltd. v. Nusli Neville Wadia and Anr.* [JT 2008 (1) SC 31], this Court held:

"50 With a view to read the provisions of the Act in a proper and effective manner, we are of the opinion that literal interpretation, if given, may give rise to an anomaly or absurdity which must be avoided. So as to enable a superior court to interpret a statute in a reasonable manner, the court must place itself in the chair of a reasonable legislator/ author. So done, the rules of purposive construction have to be resorted to which would require the construction of the Act in such a manner so as to see that the object of the Act fulfilled; which in turn would lead the beneficiary under the statutory scheme to fulfill its constitutional obligations as held by the court *inter alia* in *Ashoka Marketing Ltd* (*supra*).

51. Barak in his exhaustive work on 'Purposive Construction' explains various meanings attributed to the term "purpose". It would be in the fitness of discussion to refer to Purposive Construction in Barak's words:

"Hart and Sachs also appear to treat "purpose" as a subjective concept. I say "appear" because, although Hart and Sachs claim that the interpreter should imagine himself or herself in the legislator's shoes, they introduce two elements of objectivity: First, the interpreter should assume that the legislature is composed of reasonable people seeking to achieve reasonable goals in a reasonable manner; and second, the interpreter should accept the non-rebuttable presumption that members of the legislative body sought to fulfill their constitutional duties in good faith. This formulation allows the interpreter to inquire not into the subjective intent of the author, but rather the intent the author would have had, had he or she acted reasonably."

(Aharon Barak, *Purposive Interpretation in Law*, (2007) at pg. 87)

52. In *Bharat Petroleum Corpn. Ltd. v. Maddula Ratnavalli and Ors.*, (2007) 6 SCC 81, this Court held:

"The Parliament moreover is presumed to have enacted a reasonable statute (see Breyer, Stephen (2005): *Active Liberty: Interpreting Our Democratic Constitution*, Knopf (Chapter on Statutory Interpretation - pg. 99 for "Reasonable Legislator Presumption")."

53. The provisions of the Act and the Rules in this case, are, thus required to be construed in the light of the action of the State as envisaged under Article 14 of the Constitution of India. With a view to give effect thereto, the doctrine of purposive construction may have to be taken recourse to.

[See 2007 (7) Scale 753 : *Oriental Insurance Co. Ltd. vs. Brij Mohan and others.*]"

All the regulations must be given a harmonious interpretation. A Court of law should not presume a 'cassus omissus' but if there is any, it shall not supply the same.

If two or more provisions of a statute appear to carry different meanings, a construction which would give effect to all of them should be preferred. [See *Gujarat Urja Vikash Nigam Ltd. v. Essar Power Ltd.*, 2008 (3) SCALE 469]

21. In terms of the 1976 Regulations drawing up of a charge sheet by the disciplinary authority is the first step for initiation of a disciplinary authority.

Unless and until, therefore, a charge sheet is drawn up, a disciplinary proceedings for the purpose of the 1976 Regulations cannot be initiated.

22. Drawing up of a charge sheet, therefore, is the condition precedent for initiation of a disciplinary proceedings. We have noticed in paragraph 15 of our judgment that ordinarily no disciplinary proceedings can be continued in absence of any rule after an employee reaches his age of superannuation. A rule which would enable the disciplinary authority to continue a disciplinary proceedings despite the officers reaching the age of superannuation must be a statutory rule. A' fortiori it must be a rule applicable to a disciplinary proceedings.

23. There cannot be any doubt whatsoever that the employer may take resort to a preliminary inquiry, but it will bear repetition to state that the same has a limited role to play. But, in absence of the statutory rules operating in the field, resorting to a preliminary enquiry would not by itself be enough to hold that a departmental proceeding has been initiated.

24. Initiation of a disciplinary proceeding may lead to an evil or civil consequence. Thus, in absence of clear words, the court must lean in favour of an interpretation which has been applied by this Court in the main judgment.

In *Workmen of M/s. Firestone Tyre and Rubber Co. of India (P) Ltd. v. Management and Others* [(1973) 1 SCC 813], this Court held that Section 11-A of the Industrial Disputes Act must be interpreted in the light of the legal principles operating in the field. [See also *Haryana Urban Development Authority v. Om Pal* (2007) 5 SCC 742]

25. For the reasons aforementioned, we are of the opinion that it is not a fit case where we should exercise our jurisdiction.

26. This petition is dismissed. In the facts and circumstances of this case, however, there shall be no order as to costs.