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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-9494-2020(O&M)

Date of decision: 07.05.2024

Virender Kumar

...Petitioner

Versus

Additional Registrar, Cooperative Societies (Credit),
Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Anurag Jain, Advocate with
Mr. Rahul Dahiya, Advocate,
for the petitioner.

Mr. Kapil Bansal, DAG, Haryana.

Mr. Rajvir Singh Sihag, Advocate,
for respondents No.2 and 3.

JASGURPREET SINGH PURI, J. (Oral)

CM-11123-CWP-2023

The present application has been filed for placing on record written statement on behalf of respondent No.2 alongwith Annexures R-2/1 to R-2/3.

For the reasons recorded in the application, the same is allowed.

Written statement on behalf of respondent No.2 alongwith Annexures R-2/1 to R-2/3 are taken on record subject to all just exceptions.

Main case

1. The present petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of *certiorari* for quashing of order dated 12.04.2019 (Annexure P-17) passed by respondent



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No.1 to the extent that the matter has been remanded back to respondents No.2 & 3 to carry put inquiry in pursuance of charge sheet dated 08.01.1981 with a further prayer for directing the respondent-Bank to treat him in service and pay him arrears of salary from the date of his suspension i.e. 22.12.1983 till reinstatement alongwith interest and to pay him subsistence allowance for the period of his suspension in terms of order passed by this Court in RSA No.1609/1995 and in SLP No.12538 of 2017. Further prayer has been made to release the pensionary benefits of the petitioner alongwith interest @ 18%.

Factual Matrix:-

2. The facts of the present case are that the petitioner namely, Virender Kumar was appointed as a Secretary with respondent-Bank on 23.03.1976. However, on 16.04.1977 his services were terminated by respondent-Bank. He challenged the aforesaid order of termination before the Registrar, Cooperative Societies who allowed the appeal filed before him on 21.05.1979 and thereafter, he joined the duties and was also paid back wages. On 08.01.1981, a charge-sheet was issued to the petitioner vide Annexure R-2/2 alleging that embezzlement was done by him on different counts of total amount which appears to be about Rs. 13,000/-. On the basis of the aforesaid charge-sheet, departmental proceedings commenced which culminated into an order of termination on 27.11.1981. He preferred a statutory appeal against the aforesaid order of termination and his appeal was allowed by the Appellate Authority on 27.10.1983. He was re-instated and a direction was issued for conducting a *de novo* enquiry because when the enquiry was conducted, there was violation of principles of natural justice and on this ground, the appeal was allowed. Thereafter, in pursuance of the aforesaid order in appeal, he as a consequence of the same was re-instated on 22.12.1983. Thereafter, on

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30.12.1983 in pursuance of the aforesaid appellate order *de novo* enquiry commenced and an Enquiry Officer was appointed. The Enquiry Officer in his report held that charges are proved against the petitioner vide report (Annexure P-5) on 22.03.1984. On the basis of the aforesaid enquiry report, the petitioner was dismissed from service on 10.12.1984. Against the aforesaid order of dismissal, the petitioner preferred a statutory appeal which was however dismissed on 31.07.1985. Against the aforesaid order of dismissal and the appellate order, the petitioner filed a civil suit for declaration and mandatory injunction which was decreed by the Civil Court on 04.06.1992. The respondent-Bank preferred an appeal against the aforesaid judgment and decree. The learned lower Appellate Court allowed the appeal on 21.01.1995. The petitioner assailed the aforesaid judgment passed by the lower Appellate Court by filing Regular Second Appeal i.e. RSA No.1609 of 1995 before this Court. The aforesaid RSA filed by the petitioner was allowed by a Co-ordinate Bench of this Court vide Annexure P-1 on 03.11.2016. It was so observed that the petitioner was not given proper opportunity to adduce evidence and to furnish documents that were relied upon by the prosecution in the enquiry which is mandatory and a Co-ordinate Bench of this Court relied upon various judgments of Hon'ble Supreme Court and set aside the judgment and decree passed by the lower Appellate Court dated 21.01.1995 and remanded the case back to the disciplinary authority to continue the disciplinary proceedings from the defective stage like furnishing list of documents and conclude the enquiry within a period of six months. This Court in RSA had also directed that the petitioner will be deemed to be under suspension from the date of dismissal till passing of final order in the disciplinary proceedings and the respondent-Bank

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was directed to pay the subsistence allowance for the intervening period within a period of six months.

3. The respondent-Bank assailed the judgment passed by this Court in aforesaid RSA by filing a Special Leave Petition before Hon'ble Supreme Court which was dismissed vide Annexure P-3 on 03.07.2017. Hon'ble Supreme Court observed as not inclined to interfere with the orders passed by the High Court except to the extent that the Bank was directed to conclude the departmental enquiry pending against the petitioner within three months after giving full opportunity of hearing to the petitioner and pass appropriate orders. The petitioner was also directed to cooperate in the enquiry and would not indulge in delaying tactics to prolong the outcome of the enquiry.

4. In pursuance thereof again the enquiry process started and the Enquiry Officer prepared a report and observed that the charges against the petitioner were proved. Consequent thereupon on 06.09.2017, the petitioner was again dismissed vide Annexure P-14. The petitioner thereafter filed a writ petition No.30112 of 2018 before this Court and a Co-ordinate Bench of this Court on the request of learned counsel for the petitioner dismissed the aforesaid writ petition as withdrawn vide Annexure P-16 with liberty to file appeal because he had filed the writ petition without availing the remedy of appeal. It was also directed that as the petitioner is a litigant since the year 1984 and a long time has already elapsed and he has already attained the age of superannuation, in case the petitioner files an appeal within a period of four weeks, then the Bank was directed to decide the same on merits without rejecting the same on account of delay by passing a speaking order within a period of three months.

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5. The aforesaid order was passed by a Co-ordinate Bench of this Court on 29.11.2018. The petitioner thereafter filed an appeal in pursuance of the aforesaid order. The aforesaid appeal was taken up by the Additional Registrar, Cooperative Societies (Credit), Haryana and vide Annexure P-17 dated 12.04.2019 accepted the appeal and remanded back the case at enquiry stage. The Additional Registrar, Cooperative Societies observed that it has been gathered that the petitioner should have been provided list of all the documents and witnesses so that he could have availed the opportunity to defend himself in a proper way but the Bank has failed to do so even after repeated requests made by the petitioner. It was further observed that the Bank was in a hurry to take decision without paying heed to the requests of the petitioner and therefore, the show-cause notice dated 17.08.2017 and the punishment orders dated 05.09.2017 and 06.09.2017 were set aside. It was directed that the Bank will provide an opportunity to the petitioner to defend himself and cross-examine the witnesses on the basis of report alongwith annexures submitted by the Joint Staff Committee. It was also made clear that the opportunity cannot be open ended and the matter should not be lingered on due to this. Thereafter, the enquiry proceedings again started and a notice was issued to the petitioner by the respondent-Bank for the same. Thereafter, the petitioner filed the present writ petition assailing the aforesaid order passed by the Additional Registrar, Cooperative Societies, Haryana to the extent that the matter was again remanded back for the third time and consequential relief was prayed for. There was no interim order passed by this Court. Thereafter, no progress took place in the departmental proceedings despite the fact that there was no interim order passed by this Court or any other Court and the matter was remanded on 12.04.2019 which is about five years ago.



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6. During the pendency of the present petition, the petitioner has unfortunately died on 02.10.2022 and now the legal representatives of the petitioner are on record. The LR's of the petitioner are his four children. Three are daughters and one is son and out of three daughters as of now two are married and one is unmarried and is of the age of 23 years.

Submissions by learned counsel for petitioner:-

7. Mr. Anurag Jain, learned counsel appearing on behalf of the petitioner submitted that it is a case where the petitioner struggled for his whole life starting from the year 1976 for almost 48 years. He struggled against the respondent-Bank and had to go through multiple rounds of litigation at different levels and he was not even paid salary for a long period of time i.e. since 1983 and could not even support his family which included three daughters, one son and his wife. His struggle ended with his own death in the year 2022. Due to arbitrary and illegal action of the Bank, he was not able to support his family because he could not earn.

8. Learned counsel submitted that when initially he was charge-sheeted on 08.01.1981, the action of the respondent-Bank in conducting the enquiry proceedings against him had been defective from stage one and because of the defect and serious lapses on the part of the respondent-Bank, lot of litigation was generated and the petitioner had to go from pillar to post repeatedly because of the fault of the respondent-Bank which included violation of principles of natural justice at various levels. He submitted that three times he was dismissed from service and three times the higher Courts set aside the order of dismissal and remanded the case back to the Enquiry Officer on the grounds of violation of principles of natural justice and in this way from the year 1981 onwards which is about 43 years, he had been litigating against

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the respondent-Bank for redressal of his grievances and for restoration of his rights which were withheld not in accordance with law but because of the fault of the respondent-Bank repeatedly by not following the procedure as set forth under the law and by not following the principles of natural justice, the matter went on for 43 years and ultimately, the petitioner died without getting any benefit or any money. He submitted that at that time all the children were minor and he had no other source of income to support them and for his whole life, he could not spend any money on his children and wife because whatever he had was spent on litigation.

9. Learned counsel further submitted that punishment orders were set aside by the Additional Registrar, Cooperative Societies vide Annexure P-17 on the ground of violation of principles of natural justice and the matter was remanded back to the Enquiry Officer. He submitted that the aforesaid order passed by the Additional Registrar, Cooperative Societies by which the punishment orders were set aside was passed on 12.04.2019 and it was also observed and made clear that the opportunity cannot be open ended and the matter should not be lingered on due to this and still the respondent-Bank did not further commence the enquiry in accordance with law and kept on waiting because of the pendency of the present case. He submitted that when the petitioner filed the present petition before this Court by assailing the order of the Additional Registrar, Cooperative Societies to the extent that the matter was remanded back, then there was no interim order passed by this Court and there was no embargo on the respondent-Bank and they could have further proceeded with the enquiry but from the year 2019, they did not take any step to conclude the enquiry and in the meantime, on 02.10.2022, the petitioner died. He submitted that in other words, after the passing of the order by the

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Additional Registrar, Cooperative Societies on 12.04.2019, the petitioner remained alive for more than three years and ultimately, he gave away to his destiny.

10. Learned counsel further submitted that now when the petitioner has died, then no enquiry can be conducted against a dead person and when no enquiry can be conducted against the petitioner, then the position as of today with regard to the status of the petitioner would be that the order of punishment passed against the petitioner has already been set aside and in other words, there was no order of punishment at all against the petitioner in any manner whatsoever at the time of the death of the petitioner the matter was still at enquiry stage and when there is no adverse order against the petitioner at the time of his death, then the petitioner was entitled for all the benefits because now no further enquiry can be conducted against a dead person. He submitted that in this way, the petitioner through his LR's is entitled for all the retiral benefits because the petitioner had already attained the age of superannuation on 28.02.2012 and therefore, from the date of his dismissal in the year 1981 till the notional date of his retirement i.e. 28.02.2012, he was entitled for pensionary benefits by counting his service. He also submitted that some amount as subsistence allowance was given to the petitioner after the RSA was decided and that amount can certainly be deducted from the total benefit that is to be given to LR's of the petitioner. He also submitted that not only the aforesaid retiral benefits but also the petitioner is entitled for salary for the period, he was out of service and also during the suspension period because of the reason that ultimately his order of punishment has been set aside and it is not a case that because of the fault of the petitioner that he kept away from discharging his duties but it is on record that by the orders passed by number of



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authorities including this Court that the orders of termination were bad in law because of violation of principles of natural justice at the end of the respondent-Bank. He submitted that the principle of 'no pay for no work' will not apply to the present petitioner in view of the settled law. He referred to a judgment of Hon'ble Supreme Court in *The Commissioner, Karnataka Housing Board Vs. C.Muddaiah*, 2007(7) SCC 689 where it was held that ordinarily if an employee has not worked and discharged his duties for the previous period, then the principle of 'no pay for no work' shall apply. However, the aforesaid principle of law is not an absolute principle and is subject to exceptions. Hon'ble Supreme Court in the aforesaid judgment carved out an exception wherein it was held that when it is proved on record that an employee has been deprived of discharging his duties because of the wrongful action of the organization and has been kept away because of the wrongful action of the organization, then in that situation the principle of 'no pay for no work' will not apply.

Submissions by learned counsel for respondent-Bank:-

11. Mr. Rajvir Singh Sihag, learned counsel appearing on behalf of the respondent-Bank submitted that against the orders passed by the Additional Registrar, Cooperative Societies, there was a provision of Revision which the petitioner has not exhausted and therefore, on this ground, the present petition is not maintainable. He submitted that it is a case where the petitioner (since deceased) had embezzled an amount of Rs. 13,000/- in the year 1981 when charge-sheet was issued to him and although for three times his orders of dismissal were passed and case was remanded back thrice but that would not mean that the petitioner was exonerated from the aforesaid charges and therefore, the petitioner is not entitled for salary. He submitted that so far as the



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retiral benefits are concerned, since the petitioner was dismissed from service, he was not entitled for the retiral benefits.

Analysis of submissions:-

12. I have heard the learned counsels for the parties at length.

13. Before proceeding further, the contention of the learned counsel for the respondent-Bank with regard to non-availing of the alternate remedy of Revision shall be dealt with first. It is a case where the petitioner had been litigating for four decades and had gone through multiple rounds of litigation from the year 1981 onwards and for number of times the case was remanded back to the enquiry stage. The petitioner has died during the pendency of the present petition and therefore not only after the death of the petitioner any Revision can be maintainable but even otherwise also, this Court is of the view that considering the background of the case, it is not in the interest of justice to relegate the legal representatives of the petitioner to avail the alternate remedy of filing a Revision which would further perpetuate litigation. In fact it was not proper on the part of respondent bank to have even raised this plea of alternate remedy when the petitioner had been litigating for four decades and his case was remanded back thrice and is still at the stage of enquiry when now the petitioner has died in the year 2022. This Court is of the view that the aforesaid objection taken by the respondent-Bank is not sustainable and therefore, it is rejected. No other preliminary objection has been raised by the learned counsel for the respondent-Bank with regard to the maintainability.

14. Coming on the merits of the case, this case falls in the category of rare cases where the petitioner had been agitating and litigating with respect to one charge-sheet issued against him on 08.01.1981 for a period of more than 40 years. He had been seeking compliance of principles of natural justice. Three



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times he was dismissed from service on the basis of allegation of embezzlement of about Rs. 13,000/- and three times the matter was remanded back by the higher authorities/Court. For the first time when the matter was remanded back, the same was by virtue of orders passed by the Appellate Authority on 27.10.1983 against his order of dismissal on the ground of violation of principles of natural justice. Thereafter, for the second time it was remanded back by a Co-ordinate Bench of this Court while deciding RSA vide Annexure P-1 on 03.11.2016. The relevant portion of the operative part of the aforesaid judgment is reproduced as under:-

*“9.) Insofar as discrepancies and not adopting the Rules in the inquiry like not furnishing list of documents and list of witnesses and not giving opportunity to examine and cross-examine witnesses by the appellant is concerned, the same is not disputed by the respondent Bank except stating that the appellant has not availed the opportunity. Whereas, the Trial Court has considered the issue relating to non-furnishing of list of documents and witnesses and so also not giving opportunity to examine and cross-examine witnesses in the inquiry. The order of dismissal is a major penalty and the appellant is a permanent employee. Therefore, before imposing a major penalty, the disciplinary authority is bound to follow the prescribed Rules and procedure before holding the charges levelled against the appellant as proved. The appellant has not been given proper opportunity to adduce evidence. Furnishing of documents relied upon by the prosecution in a enquiry is a mandatory as held by the Apex Court in the case of **Kashinath Dikshita Vs. Union of India and others (1986) 3 SCC 229**, **Kothari Filaments & Anr vs Commr. of Customs (2009) 2 SCC 192** and **Professor Ramesh Chandra Vs. University of Delhi and others (2015) 5 SCC 549**. Thus, the Appellate Court order 21.1.1995 dated is set aside; the matter is remanded to the disciplinary authority to continue the disciplinary proceedings from the defective stage like furnishing list of documents and conclude the inquiry within a period of six*



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months from today. The appellant is deemed to be under suspension from the date of dismissal till passing of final order in the disciplinary proceedings and the respondent-Bank is directed to pay the subsistence allowance for the intervening period within a period of six months.

15. A perusal of the aforesaid would show that it has been so observed by this Court that the petitioner has not been given proper opportunity to adduce evidence which was mandatory on the part of the prosecution in the enquiry and reference was made to the law laid down by the Hon'ble Supreme Court. The judgment was assailed by the Bank by filing SLP before Supreme Court and the following order was passed on 03.07.2017:-

“We are not inclined to interfere with the impugned order, except to the extent that we direct the petitioner-Bank to conclude the departmental inquiry pending against the respondent (delinquent employee) within three months from today and after giving full opportunity of hearing to the respondent and pass appropriate orders.

Needless to say, the respondent shall cooperate in the inquiry and would not indulge in delaying tactics to prolong the outcome of the inquiry.

So far as the issue with regard to payment of subsistence allowance is concerned, we grant liberty to the respondent to raise this plea before the appropriate court and no such plea being raised, the same shall be decided in accordance with law.

With the above directions, this Special Leave Petition is disposed of.

Pending interlocutory applications, if any, stand disposed of.”

16. Thereafter, the petitioner was again dismissed and for the third time the matter was remanded back by the Additional Registrar, Cooperative Societies vide Annexure P-17 again on violation of principles of natural justice by the Bank. The relevant portion of the operative part of Annexure P-17 is reproduced as under:-



“Therefore, it is gathered that the appellant should have been provided all list of documents and witnesses so that he could avail the opportunity to defend himself in a proper way but the respondent bank has failed to do so even after repeated requests of the appellant. The respondent bank was in a hurry to take the decision without paying heed to the requests of the appellant. Hence, the decision dated 16-08-2017 of the Administrative Committee, show cause notice dated 17-08-2017 and the decision of punishment dated 05-09-2017 and order dated 06-07-2017 are set aside. The respondent bank will provide opportunity to the appellant to defend himself and cross examine the witnesses on basis of the report alongwith annexures submitted by the joint staff committee. However, it is also made clear that the opportunity can't be open ended and the matter should not be lingered on due to this. The appellant can avail this in one go and he should not ask for it again and again. He is expected to co-operate the respondent bank in the process. Needless to mention that once this process is completed, then the disciplinary authority will take the decision on the report and/or further outcome of the above process. Therefore, the appeal of the appellant is accepted to the extent of above mentioned details. The decision was reserved on 25-03-2019 and announced on 12-04-2019. The parties be informed accordingly and the file be sent to the concerned branch.”

(emphasis supplied)

17. A perusal of the aforesaid would show that it was so observed by the Additional Registrar, Cooperative Societies that it has been gathered that the petitioner should have been provided list of all documents and witnesses so that he could have availed the opportunity to defend himself in a proper manner but the Bank had failed to do so despite repeated requests made by the petitioner. It was further observed that the respondent-Bank was in a hurry to take decision without paying any heed to the requests of the petitioner and

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therefore, the order of dismissal was set aside and again the case was remanded back to the Enquiry Officer. In this way, Additional Registrar, Cooperative Societies rather took a serious view with regard to the conduct of the Bank as aforesaid. The respondent-Bank did not challenge the aforesaid order but the petitioner assailed the same by filing the present writ petition to a limited extent of remanding the case back and with further prayers.

18. After the aforesaid order was passed on 12.04.2019, the petitioner was issued a notice by the respondent-Bank and thereafter, the present petition was filed on 13.03.2020. There was no interim order passed by this Court and therefore, there was no embargo on the respondent-Bank to have proceeded with the enquiry in pursuance of the order passed by the Additional Registrar, Cooperative Societies vide Annexure P-17. However, the respondent-Bank did not further make any progress in the enquiry. In this way, again the matter was kept pending and lingered on and unfortunately on 02.10.2022, the petitioner died.

19. The entire aforesaid rounds of litigation wherein thrice the matter was remanded back after setting aside the orders of dismissal went on for more than 40 years with regard to one charge-sheet that was issued on 08.01.1981 pertaining to allegation of embezzlement of about Rs. 13,000/-. As on the date of filing of the present petition and even as of today, the order of dismissal is not in existence because it has already been set aside and the respondent-Bank has not assailed the orders passed by the Additional Registrar, Cooperative Societies and therefore, there is no adverse/punishment order of any kind against the petitioner because it is still at enquiry stage. Since the petitioner has died, now no further enquiry can be conducted against the petitioner because the same cannot be conducted against a dead person. The position has gone to



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such an extent that the petitioner lost his life by struggling for more than 40 years and it is apparent from the aforesaid orders whereby the dismissal order was set aside repeatedly on the ground of non-adherence of principles of natural justice and rather violation of principles of natural justice and even the Additional Registrar, Cooperative Societies had taken a serious view against the Bank pertaining to their conduct.

20. In other words, for four decades, the petitioner had to knock the doors of different Courts at various levels only because the respondent-Bank repeatedly violated principles of natural justice while conducting a departmental enquiry which is quasi judicial in nature. Ultimately when he died in the year 2022, the enquiry was still at the same stage after remand orders passed thrice. This Court is of a considered view that there had been immense miscarriage of justice. Petitioner kept on seeking justice due to violation of principles of natural justice wherein thrice matter was remanded back to the stage of enquiry and the Bank repeatedly violated these rules of natural justice despite earlier action being vitiated due to such violation. It is indeed unfortunate and shocking.

21. The rationale and object behind the rules of natural justice is to secure justice and to prevent miscarriage of justice. These rules do not supplant the law of the land but they supplement it. These rules of natural justice are not codified canons but are recognised by all the civilised States and are of supreme importance when a quasi-judicial authority is determining disputes between the parties and even in the administrative action which involves civil consequences. The foremost principle of natural justice is known as ***audi alteram partem*** which says that no one should be condemned unheard.

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22. In view of the aforesaid facts and circumstances of the present case, the present petition is allowed. The order dated 12.04.2019 (Annexure P-17) to the extent whereby the matter has been remanded back is hereby quashed especially in view of the fact that the petitioner has already died and now no further enquiry can be conducted against a dead person.

23. Since there is no order of any punishment etc. against the petitioner, the legal representatives of the petitioner will be entitled for all the retiral benefits accrued to the petitioner on the date of his attaining the age of superannuation i.e. on 28.02.2012. The respondent-Bank is therefore directed to release all the retiral benefits to the legal representatives of the petitioner alongwith interest @ 6% per annum.

24. At this stage, learned counsel for the petitioner has pointed out that the wife of the petitioner has also died and petitioner during his life time had nominated his son namely, Sunil Beniwal as a nominee for taking his retiral benefits. The respondent-Bank is directed to check up the entire record regarding the same and in case there is a nomination with regard to taking of the retiral benefits, then the same shall be given to the nominee and in case there is no nomination, then it shall be equally divided amongst all the legal representatives. The aforesaid amount shall be paid within a period of four months from today.

25. So far as the prayer of the petitioner with regard to the grant of salary for the period during which he did not discharge his duties because of the repeated orders of dismissal is concerned, considering the background and the aforesaid sequence of events since the Bank has caused miscarriage of justice and illegally kept away the petitioner from discharging his duties, the petitioner shall also be entitled for grant of salary alongwith all consequential



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benefits from 22.12.1983 i.e. date of his initial suspension till the date he attained the age of superannuation i.e. 28.02.2012. The aforesaid amount shall also be paid within a period of four months from today. However, there shall be no order of interest on the same. Further, if any amount has already been paid to the petitioner in pursuance of the orders passed by this Court earlier vide Annexure P-1 or otherwise, then the same shall be adjusted. Law with regard to grant of financial benefits and salary for the period an employee is wrongfully kept out of service is no longer *res integra*. Paras 33 and 34 of judgment of Supreme Court in ***C. Muddaiah's case (Supra)*** are reproduced as under:-

“33. The matter can be looked at from another angle also. It is true that while granting a relief in favour of a party, the court must consider the relevant provisions of law and issue appropriate directions keeping in view such provisions. There may, however, be cases where on the facts and in the circumstances, the court may issue necessary directions in the larger interest of justice keeping in view the principles of justice, equity and good conscience. Take a case, where ex facie injustice has been meted out to an employee. In spite of the fact that he is entitled to certain benefits, they had not been given to him. His representations have been illegally and unjustifiably turned down. He finally approaches a court of law. The court is convinced that gross injustice has been done to him and he was wrongfully, unfairly and with oblique motive deprived of those benefits. The court, in the circumstances, directs the authority to extend all benefits which he would have obtained had he not been illegally deprived of them. Is it open to the authorities in such case to urge that as he has not worked (but held to be illegally deprived), he would not be granted the benefits? Upholding of such plea would amount to allowing a party to take undue advantage of his own wrong. It would



perpetrate injustice rather than doing justice to the person wronged.

34. We are conscious and mindful that even in absence of statutory provision, normal rule is 'no work no pay'. In appropriate cases, however, a court of law may, nay must, take into account all the facts in their entirety and pass an appropriate order in consonance with law. The court, in a given case, may hold that the person was willing to work but was illegally and unlawfully not allowed to do so. The court may in the circumstances, direct the authority to grant him all benefits considering 'as if he had worked'. It, therefore, cannot be contended as an absolute proposition of law that no direction of payment of consequential benefits can be granted by a court of law and if such directions are issued by a court, the authority can ignore them even if they had been finally confirmed by the Apex Court of the country (as has been done in the present case). The bald contention of the appellant-Board, therefore, has no substance and must be rejected."

26. The principle of 'no pay for no work' will not apply to the present petitioner in view of the aforesaid judgments of Hon'ble Supreme Court in ***The Commissioner, Karnataka Housing Board Vs. C. Muddaiah (Supra), Union of India Versus Jankiraman, 1991 (4) SCC 109 and Ramesh Kumar Vs. Union of India and others, 2015 (14) SCC 335*** because it is crystal clear that it was not because of the fault of the petitioner to have stayed away from the job but there are repeated observations by this Court and also by the Additional Registrar, Cooperative Societies that because of violation of principles of natural justice that the enquiry and punishment orders were vitiated and therefore since there was no fault of the petitioner and it was because of the fault of the Bank, the aforesaid principle of 'no pay for no work' shall not apply to the petitioner. The aforesaid payment of salary etc. shall also be paid to the nominee, in case his

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son has been nominated and in case there is no nomination, then it shall be equally divided amongst the legal representatives.

27. Considering the background and facts and circumstances of the present case with regard to more than 40 years of litigation by the petitioner pertaining to a charge sheet of the year 1981 in which till date there is no order of punishment in operation, it is the duty of this Court to also consider payment of costs. The aforesaid background and sequence of event make it clear that the petitioner had been litigating at different levels including Supreme Court, High Court, administrative authorities of the office of the Registrar, Cooperative Societies and before the departmental Enquiry Officer which went on for more than 40 years. The petitioner had four children to support who were minor at that time including three daughters and one son besides wife who has also died. From the year 1981 it appears that he was not paid anything except for some subsistence allowance in pursuance of the orders passed by this Court in RSA vide Annexure P-1. There is nothing on the record to suggest that the petitioner had any alternate employment. This Court takes a judicial cognizance of the fact that the petitioner who is now deceased must have spent a lot of money in litigation at numerous levels for more than 40 years and that too without any adequate source of income and therefore the money must have been diverted towards litigation which ought to have been utilized to support his family including four children and his wife. The conduct of the Bank is apparent from the orders passed by the Additional Registrar, Cooperative Societies and by a Co-ordinate Bench of this Court vide Annexure P-1 in RSA whereby every time disciplinary proceedings were commenced and he was dismissed, the Bank violated the principles of natural justice. Therefore, it was the bank who was at fault for not adhering to the principles of natural justice which ultimately



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resulted in litigation and for three times the dismissal orders were set aside and three times the matter was remanded back and it all got elongated for more than 40 years which was the time period during which the petitioner was to serve the Bank. It is an extremely unfortunate situation whereby because of the fault of the Bank, a person had to litigate for more than 40 years and instead of supporting his family, he diverted his money, if at all, towards litigation. It is not a case that at any point of time any fault can be found on the part the petitioner. Even till date there is no order of dismissal or punishment against the petitioner in operation because it has already been set aside. Overall conduct of the Bank deserves to be condemned and deprecated.

28. A Constitution Bench of Hon'ble Supreme Court in ***Olga Tellis and others Vs. Bombay Municipal Corporation and others, (1985) 3 SCC 545*** had laid down a law that right to livelihood is a part of Right to life under Article 21 of the Constitution of India. The present is a case where the right to livelihood of the petitioner has been taken away by the Bank and therefore, Right to life under Article 21 has also been infringed. Not only this, Right to property under Article 300-A of the Constitution of India has also been infringed. Not only Article 21 has been infringed qua the petitioner but it has also been infringed qua his entire family including four children and his wife.

29. In view of the aforesaid facts and circumstances, this Court deems it fit and proper to impose exemplary costs upon the respondent-Bank which are assessed as Rs. 10,00,000/- (Ten Lacs). The aforesaid costs shall be paid to all the legal representatives of the petitioner in equal proportion within a period of four months from today. This Court is conscious of the fact with regard to the quantum of costs but this Court has thought of imposing such exemplary costs which are to be proportionality divided amongst the children



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of the petitioner because being minor they also suffered at that point of time when the litigation was being conducted. It was not only the petitioner who suffered at the hands of the Bank but also his children including three daughters and one son have also suffered and therefore, the aforesaid costs are in the nature of compensation to them in view of the judgment of Hon'ble Supreme Court in *D.K. Basu Vs. State of West Bengal, 1997 (1) SCC 416* wherein it was observed that grant of compensation in proceedings under Article 32 or 226 of the Constitution of India for the established violation of the Fundamental Rights guaranteed under Article 21 is an exercise of the Courts under the public law jurisdiction for penalising the wrong-doer and fixing the liability for the public wrong on the State which failed in the discharge of its public duty to protect the Fundamental Rights of the citizen. It was further observed that the Courts have the obligation to satisfy the social aspirations of the citizens because the Courts and the law are for the people and expected to respond to their aspirations and a Court of law cannot close its consciousness and aliveness to stark realities. In the concluding part, it was further observed that it is a well accepted proposition in most of the jurisdictions that monetary or pecuniary compensation is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for redressal of the established infringement of the Fundamental Right to life of a citizen by the public servants and the State is vicariously liable for their acts.

30. In case the aforesaid costs are not paid to the legal representatives of the petitioner within the aforesaid period of four months, the same shall be recovered as arrears of land revenue.

31. The respondent-Bank shall be at liberty to fix the accountability of the concerned officer(s) by following appropriate procedure and in accordance

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with law and after fixing the accountability, may recover the aforesaid costs from the concerned officer(s) in this regard.

Conclusion:-

32. The present petition is allowed and following directions are issued:-

- (i) The order dated 12.04.2019 (Annexure P-17) to the extent whereby the matter has been remanded back is quashed as per para No.22.
- (ii) The legal representatives of the petitioner shall be entitled for all the retiral benefits accrued to the petitioner on the date of his attaining the age of superannuation i.e. on 28.02.2012 and respondent-Bank is directed to release the same to the legal representatives of the petitioner alongwith interest @ 6% per annum as per paras No.23 and 24.
- (iii) The legal representatives of the petitioner shall be entitled for grant of salary for the period the petitioner did not discharge his duties due to fault of respondent-Bank alongwith all consequential benefits from 22.12.1983 till 28.02.2012 as per paras No.25 and 26.
- (iv) The respondent-Bank is directed to pay costs of Rs.10,00,000/- (Ten Lacs) to the legal representatives of the petitioner in equal proportion as per paras No.29 to 31.

List this case for compliance purpose on 13.09.2024.

(JASGURPREET SINGH PURI)
JUDGE

07.05.2024
Rakesh

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No