

2008 SupremeCourtOnline 0005

## **SUPREME COURT OF INDIA**

*Before:- H.K. Sema and R.V. Raveendran, JJ.*

STATE BANK OF INDIA & Ors. – Appellants

Versus

S.N. GOYAL – Respondent

Civil Appeal Nos. 4243-4244 of 2004.

2.5.2008.

**Law – Substantial question of law – A substantial question of law is one that affects the final decision in a case between parties. Questions that arise incidentally or collaterally without bearing on the outcome are not substantial. Courts may admit or reject second appeals based on whether they involve substantial questions of law, and may reformulate such questions during the hearing or preparation of the judgment.[Para 9.1]**

**Specific Relief Act, 1963, Section 14 – Enforcement of a contract of personal service – The nature of relief granted to an employee depends on whether their employment is governed purely by contract or by statute/statutory rules – If the latter applies, courts can declare termination null and void and order reinstatement – However, if the relationship is purely contractual, the contract of personal service will not be specifically enforceable – State Bank of India Officers Service Rules, Rule 50(4) and 68(3).**

*Held,*

There is thus a clear distinction between public employment governed by statutory rules and private employment governed purely by contract. The test for deciding the nature of relief – damages or reinstatement with consequential reliefs – is whether the employment is governed purely by contract or by a statute or statutory rules. Even where the employer is a statutory body, where the relationship is purely governed by contract with no element of statutory governance, the contract of personal service will not be specifically enforceable. Conversely, where the employer is a non-statutory body, but the employment is governed by a statute or statutory rules, a declaration that the termination is null and void and that the employee should be reinstated can be granted by courts. [Para 11]

**Practice and procedure – Evidence cannot be considered for a plea that was not put forward in the pleadings – Order of removal was challenged on grounds of natural justice, but the respondent did not amend the plaint to include this**

**additional ground - No issue was framed in that behalf - No amount of evidence on a plea that was not put forward in the pleadings can be looked into - In the absence of necessary pleading and issue, neither the trial court nor the appellate court could have considered the contention and recorded a finding thereon - - It is only in writ petitions the High Court has wide discretion to call for the record and examine the same and pass appropriate orders..[Para 13]**

Specific Relief Act, 1963, Section 14 - Termination - Quantum of punishment - Where the enquiry was found to be fair and proper and the finding of guilt in the enquiry in respect of a serious charge was found to be valid, in the absence of any other valid ground of challenge, the courts below ought to have held that the penalty of removal from service did not warrant any interference and dismissed the suit . [Para 15]

***Functus officio* - Once an Authority exercising quasi judicial power, takes a final decision, it cannot review its decision unless the relevant statute or rules permit such review - Question is as to at what stage, an Authority becomes *functus officio* in regard to an order made by him - In civil courts, where a judgment is reserved, mere dictation does not amount to pronouncement, but where the judgment is dictated in open court, that itself amounts to pronouncement - But even after such pronouncement by open court dictation, the Judge can make corrections before signing and dating the judgment. Therefore, a Judge becomes *functus officio* when he pronounces, signs and dates the judgment (subject to section 152 and power of review) - Qua quasi judicial authorities - While some quasi judicial tribunals fix a day for pronouncement and pronounce their orders on the day fixed, many quasi judicial authorities do not pronounce their orders, some publish or notify their orders, some prepare and sign the orders and communicate the same to the party concerned - A quasi judicial authority will become *functus officio* only when its order is pronounced, or published/notified or communicated (put in the course of transmission) to the party concerned - When an order is made in an office noting in a file but is not pronounced, published or communicated, nothing prevents the Authority from correcting it or altering it for valid reasons - But once the order is pronounced or published or notified or communicated, the Authority will become *functus officio*. [para 15, 19, 21]**

*Held*, Appointing Authority had only tentatively approved the proposal of the disciplinary authority that a lenient view be taken by imposing a penalty of reducing the pay by four stages in the time scale; and that on 3.5.1995, a final decision was taken in regard to the penalty and that final order was communicated to the respondent as per letter dated 30.6.1995. Therefore, the contention that the Appointing Authority had earlier passed a final order on 18.1.1995 and had become *functus officio* and therefore, he could not charge the said order dated 18.1.1995 is liable to be rejected.

**Constitution of India, Articles 14 and 226 - State Bank of India Officers Service Rules, Rules 50(4) and 68(3) - Chief Vigilance Officer neither issued any direction to the Appointing Authority to impose a higher punishment nor altered the**

**finding regarding guilt - He merely gave his opinion - Subsequent note put up by the disciplinary authority and the order passed thereon by the appointing authority imposing the penalty of removal, show that they were on independent consideration of the question - Neither refer to the opinion or the view expressed by the Chief Vigilance Officer - No material to show that the order imposing punishment was on the dictates of the Chief Vigilance Officer - There was no mechanical acceptance of any suggestion or advice by the Chief Vigilance Officer nor consideration of any extraneous material as assumed by the courts below - So long as the decision was not on the dictates of the Vigilance Department or other outside authority, but on independent consideration, the order of removal cannot be faulted. [Para 23, 24]**

**Natural justice - Violation of - Though in the suit, the respondent had challenged the enquiry as being opposed to principles of natural justice, he gave up those contentions before the first appellate court, and restricted the challenge to the quantum of punishment and non-grant of back wages - Cannot therefore be permitted to revive the contention that the Enquiry Officer violated the principles of natural justice in conducting the enquiry - Pleaindgs.[Para 27]**

**Banking - Branch Manager - A Bank survives on the trust of its clientele and constituents - The position of the Manager of a Bank is a matter of great trust - The employees of the Bank in particular the Manager are expected to act with absolute integrity and honesty in handling the funds of the customers/borrowers of the Bank - Any misappropriation, even temporary, of the funds of the Bank or its customers/borrowers constitutes a serious misconduct, inviting severe punishment - When a borrower makes any payment towards a loan, the Manager of the Bank receiving such amount is required to credit it immediately to the borrower's account - If the matter is to be viewed lightly or leniently it will encourage other Bank employees to indulge in such activities thereby undermining the entire banking system - The request for reducing the punishment is misconceived and rejected. [Para 28]**

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