A S. VASUNDARA

v.

CANARA BANK AND ORS.

OCTOBER 28, 1996

B [K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

Service Law :

Canara Bank Officer Employees (Discipline and Appeal)
C *Regulations—Regulations 4,6,7,8 and 11—Employee convicted on a criminal charge—Authorities invoking Regulation 11 and imposing penalties—Held, since there is already a finding of conviction recorded by the Criminal Court, though the sentence was suspended by the High Court on appeal, authorities still competent to take action under Regulation 11.*

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CIVIL APPELLATE JURISDICTION : Special Leave Petition (C) No. 20461 of 1996.

From the Judgment and Order dated 9.9.96 of the Madras High Court in W.P. No.17011 of 1994.

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A.T.M. Sampath for the Petitioner.

The following Order of the Court was delivered :

F These special leave petitions have been filed against the Order of the Division Bench of the Madras High Court made on September 9, 1996 in Writ Petition Nos. 17011/94 and 9851/87.

The admitted facts are that the petitioner, while working as a Manager
G of the respondent-Bank, was charged on November 3, 1986 for an offence punishable under Sections 420, 467, 471, 477 IPC read with Section 5(1)(d) of the Prevention of Corruption Act, 1947 (for short, the 'Act'). The trial Court convicted the petitioner for an offence under Section 420 and 477A IPC and 5(2) read with 5(1)(d) of the Act and sentenced to undergo one year imprisonment and also imposed a fine of Rs. 3,000 on each of the
H counts. On appeal, the High Court suspended the sentence on September

15, 1987 and enlarged the petitioner on bail. The respondents had issued a show cause notice pending trial to the petitioner on September 24, 1987. The petitioner challenged the same which was subsequently withdrawn. After the conviction, they issued another notice to the petitioner on September 12, 1994. The petitioner challenged the show cause notice in the above writ petition. The High Court in the impugned order dismissed the same. Shri Sampath, learned counsel for the petitioner, contended that the conviction on the basis of a criminal charge is not one of the specified enumerated misconducts. Removal does not lead the conviction due to the misconduct under the Regulation. Therefore, Regulations 6,7 and 8 would not apply to the facts in this case. Consequently, Regulation 11 of the Canara Bank Officer Employees' (Discipline and Appeal) Regulations does not get attracted. The action taken, therefore, is without jurisdiction. We find no force in the contention. It is true that the High Court had suspended the operation of the judgment but nonetheless the conviction recorded by the trial Court cannot be obliterated. It is still conviction but only redemption is that by operation of the suspension, the petitioner is not required to undergo the sentence pending appeal in the High Court. Regulation 11 reads as under:

> "Regulation 11:-
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> Not withstanding anything contained in Regulation 6 or Regulation 7 or Regulation 8 the Disciplinary Authority may impose any of the penalties SPECIFIED IN Regulation 4, if the Officer employee has been convicted on a Criminal Charge or on the strength of facts or conclusions arrived at by a judicial trial."

The respondents have specifically stated that on account of the conviction by the criminal court on a criminal charge, the action is sought to be taken for taking action under the Regulations. The *non obstante* clause engrafted in Regulations 11 takes out the necessity to follow the procedure prescribed in Regulation 6, 7 or 8, as the case may be, by excluding the operation of Regulations 6, 7 and 8. The authority is empowered to take action against the delinquent employee for imposition of any of the penalties specified in Regulation 4. Only in two cases, Regulation 11 could be invoked, namely, conviction of a criminal charge or on the strength of facts of conclusions arrived at by a judicial trial. In view of the fact that criminal court had recorded the conviction of the appellant for offences under Sections 420, 477A and 5(2) read with Section

A 5(1)(d) of the Act. The invocation of Regulation 11 stands applicable.

It is then contended that the conviction must be such that leads to the criminal misconduct under the Regulation and then only the action could be taken. We find no force in the contention. If the action is taken for any of the misconducts specified in Regulation 4, the procedural requirements
B contemplated under Regulations 6, 7 and 8 as the case may be, are required to be followed and order passed. In other words, if any delinquent employee of the Bank was convicted of a criminal charge, action is taken not on the basis of the misconducts on the basis of a crime committed by the employee by abuse of the office or on the basis of an offence that led to the conviction on a criminal charge or on the strength of facts or conclusions arrived at
C by a judicial trial irrespective of the abuse of office. Since the petitioner is not an employee governed by the proviso to Article 311(2) of the Constitution, we need not go into the contention leading to the conviction as to whether the authority can take disciplinary, action pending criminal proceedings. In this case, since there is already a finding of conviction recorded by the criminal court, though the sentence was suspended by the
D High Court on appeal, the authorities are still competent to take action under Regulation 11. Therefore, the High Court was clearly right in not interfering with the notice issued to the petitioner.

The petitions are accordingly dismissed.

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G.N. Petitions dismissed.