

*** THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 04.07.2014

+ **W.P.(C) 12562/2009**

J. P. SHARMA Petitioner

VERSUS

STATE BANK OF INDIA & ORS. Respondents

ADVOCATES WHO APPEARED IN THIS CASE:

For the Petitioner: Mr J.P. Sharma, petitioner in person.

For the Respondents: Mr. Rajiv Kapur, Advocate.

**CORAM :-
HON'BLE MR JUSTICE RAJIV SHAKDHER**

RAJIV SHAKDHER, J

1. This is a sad case where the petitioner perhaps rightly feels aggrieved by the actions of the respondents in having been made to go through three disciplinary proceedings. The petitioner was served with the three chargesheets, two of which were dropped, and one culminated with the petitioner being issued an “administrative warning”.

2. What is, however, not disputed before me by the petitioner, who appears in person, is that, the relief prayed for in the present writ petition, which essentially relates to regularization of a period of 720 days, and the consequent monetary benefits that ought to have flowed to him for the said period, both in terms of salary as well as the effect which it would have on gratuity and pension, were claimed in an earlier writ petition, being : WP(C) 5081/2013.

2.1 The said writ petition was disposed of by an order dated 27.09.2004. The order dated 27.09.2004, basically proceeded on obligations undertaken by both parties which, broadly, entailed enhancement of loan granted to the petitioner from Rs.1.50 lacs to Rs. 2 lacs. On respondent no.1 bank fulfilling the said obligation, based upon counter obligations undertaken by the petitioner, the petitioner was obliged to withdraw all cases and not raise any claim and dispute whatsoever in future qua respondent no.1 bank.

3. The petitioner, who appears in person, says that he has approached the court, once again, on account of the information which he received by taking recourse to the Right to Information Act, 2005. The information which the petitioner has received is in the form of a 'note' dated 15.01.2002.

3.1 Mr Sharma, the petitioner in person, relies upon paragraph 6 of the said note to contend that when, leave of 720 days was regularized by the concerned officer of respondent no.1 bank, there was no reference to the fact that this would entail loss of pay.

3.2 It is, therefore, Mr Sharma's contention that the affidavit which was filed on behalf of respondent no.1 bank by the concerned officer in WP(C) No. 5081/2003, was false. Mr Sharma, in particular, relies upon the following assertions made in the affidavit:

“....5. As per the instructions regarding delegation of Administrative Powers, contained in Circular Memo No. CDO:PM:20: 96-97 dated 14.02.97, extraordinary leave on loss of pay upto a period of 720 days can be sanctioned by the Circle CGM. The absence beyond 720 days can be condoned by the Managing Director & Group Executive (National Banking Group).

6. In view of the aforesaid High Court Order and the recommendations submitted by the DGM, Zonal Office, Jaipur, we recommend that absence of Shri J.P. Sharma for cumulative period of 720 days may be sanctioned. Thereafter,

we may submit our recommendations to the Managing Director & Group Executive (National Banking Group) for condoning Shri J.P. Sharma's absence beyond 720 days.

Submitted for approval, please..."

4. It is based on this singular fact that the instant petition has been filed. It may be noted that the petitioner had, in fact, moved an interlocutory application being: CM 14765/2006 in WP(C) 5081/2003, for the very same purpose. This application though was withdrawn by the petitioner on 27.08.2009 "...with liberty to initiate another appropriate proceeding in accordance with law....".

5. Mr Kapur, who appears on behalf of the respondents, has submitted that the petitioner has taken recourse to various proceedings for the very same relief including coercive proceedings by way of contempt petitions which, this court has refused to entertain.

5.1 The details of the proceedings, (which the petitioner evidently took recourse to) are set out in paragraph 3 of the counter affidavit filed on behalf of respondent no.1 bank. These proceedings are: CCP no. 81/2002, which was dismissed on 11.02.2003; CCP No. 645/2005, which was dismissed on 08.05.2006; CM No. 10607/2006, which was dismissed on 12.07.2007; and finally, CM No. 14765/2006 which, as noticed above, was dismissed as withdrawn on 27.08.2009.

5.2 As would be obvious from the narration of facts hereinabove, these proceedings were in addition to writ petition no. 5081/2003, which was disposed of by this court vide order dated 27.09.2004.

5.3 Mr Kapur, also submits that the note in issue, referred to above, which is dated 15.01.2002, has to be read in totality. It is his contention that paragraph 6 of the said note has to be read along with paragraph 5.

5.4 That apart, Mr Kapur has referred to Rule 37 of the SBI (Officers) Service Rules on leave (in short the Rules) to contend that leave, upto a maximum of 720 days, could only have been granted, on loss of pay.

5.5 In addition to the above, Mr Kapur, has also relied upon a memorandum dated 22.12.1982; in particular, reliance is placed on paragraph 7. The said paragraph reads as follows:

“....7. There is no provision by which an officer can be granted extra-ordinary leave on loss of pay beyond 360 days as absence in excess of 360 days is a breach of contract...”

5.6 Mr Kapur has endeavoured to read Rule 37 with memorandum dated 22.12.1982, to contend that, no way could, the period of 720 days have been regularized except on loss of pay.

6. I have heard the petitioner in person as well as Mr Kapur, learned counsel for the respondents. The grievance of the petitioner, if one were to trace the history of the petitioner, emanates from the following circumstances which he encountered while in service with respondent no.1 bank.

6.1 The petitioner, who was working with respondent no. 1 bank since 18.05.1972, had applied for voluntary retirement on 23.01.1999. The petitioner, evidently, in terms of the relevant rules had given the requisite notice of three months, necessary for seeking voluntary retirement. The ground on which the petitioner had sought voluntary retirement, was that, he had to look after his differently abled son.

6.2 The notice period of three months came to an end on 23.04.1999. The petitioner, therefore, took the stand that his request for voluntary retirement was deemed to have been accepted by respondent no.1 bank. Respondent no.1 bank, however, took a contrary stand which resulted in the petitioner

filing a writ petition in this court, for the first time, which was numbered as: WP(C) 4087/1999. Respondent no.1 bank took the stand before the court that it had in fact initiated disciplinary proceedings against the petitioner on the very same date on which the notice period was to come to an end, i.e., on 23.04.1999 and, therefore, the contention of the petitioner was without basis.

6.3 To cut a long story short, this petition came to be disposed of by an order dated 27.11.2001, which broadly, required the petitioner to rejoin services and, if he did so, respondent no.1 bank was to “sympathetically” consider the petitioner’s request for voluntary retirement. The court also observed that if, the petitioner’s request for voluntary retirement was accepted then, the alleged period of unauthorized absence would be regularized by passing an appropriate order in accordance with the rules of the bank, and that, thereupon, the petitioner would be allowed to proceed on voluntary retirement, and also, be paid all dues in that behalf.

6.4 It is not in dispute before me that the petitioner, pursuant to this order, rejoined service and that, thereafter, he was permitted by respondent no.1 bank to proceed on leave. The petitioner was, in fact, paid by respondent no.1 bank the following dues:

- “(i) Provident Fund – Rs. 4,53,533 + 6677 + 3495
- (ii) Gratuity – Rs. 2,97,021/-
- (iii) Leave salary - Rs. 1,05,529/-
(five months 7 days)
- (iv) Pension - Rs. 1,62,000/-
- Total - Rs. 8,66,255/-”

6.5 What remained therefore, was the payment of dues for the period between 23.04.1999 to 30.11.2001. To be noted, the petitioner rejoined

services at the Jaipur branch on 01.12.2001. It is also not disputed that the petitioner was paid the amount due towards encashable leave in the sum of Rs. 90,000/-. What is outstanding, as indicated right at the beginning, is the monetary benefits qua 720 days.

6.6 As a matter of fact, the period of leave, which required regularization, was 790 days. As per the extant rules, 720 days were regularized by the Chief General Manager of respondent no.1 bank, while the period beyond 720 days, which is the balance 70 days, were regularized by the Managing Director of respondent no.1 bank.

7. It is in this context that various proceedings were taken out by the petitioner, to which Mr Kapur has made a reference and, there is no dispute by Mr Sharma, that these proceedings were taken out by him. None of these proceedings met with any success.

7.1 I am, therefore, left to decide as to whether, the instant proceeding is maintainable in law and, if so, any relief can be granted to the petitioner?

8. According to me, in the strictest sense, the present proceeding is not maintainable as an identical petition (a fact which is not disputed) being: WP(C) 5081/2003 was disposed of by an order dated 27.09.2004. Though, the petitioner filed an application for grant of relief which was CM 14765/2006, the same was dismissed as withdrawn with liberty to the petitioner to file an appropriate proceedings in accordance with law. In my view, by this the learned Judge may have in fact given the petitioner leave to file a review petition and not a fresh writ petition.

8.1 Since the petitioner was appearing in person on that date, as well as today, I decided to take a broad view of the matter and, therefore, proceeded to examine the other aspect which is as to whether under the rules, the contention of the petitioner had any substance.

8.2 Therefore, even if one were to assume that the present petition is maintainable by treating it as a review petition, though it is woefully delayed, I am not able to persuade myself that any relief can be granted to the petitioner in law. The reason for this is the existence of Rule 37. The said rule, for the sake of convenience, is extracted hereinbelow:

“Extraordinary Leave

37. (1) An officer shall be eligible for extraordinary leave on loss of pay for not more than 360 days during the entire period of service. Such leave may not be availed of except for sufficient reasons on more than 90 days at a time.

Provided that in very special circumstances, the competent authority may grant extraordinary leave on loss of pay to an officer upto a total period of 720 days.

Provided further that extraordinary leave granted under this rule shall not count as service for pension...”

8.3 As would be evident, the concerned authority could have regularized the period up to a maximum of 720 days only on loss of pay. The contention of the petitioner that the note dated 15.01.2002 did not set this fact down in paragraph 6 is in my view not correct. The reason for this is that the relevant paragraph 6 has to be read along with paragraph 5.

9. Having regard to the Rule position and the note, in my view, the contention of Mr Sharma, that the averment made in the affidavit filed on behalf of respondent no.1 bank that the period of 790 days had been regularized without pay, was false, is not borne out from the record which has been placed before me. Having come to this conclusion, as indicated above, no relief can be granted to the petitioner.

10. I must, however, record that the petitioner has suffered on account of, perhaps, the many departmental proceedings taken out against him which did have much substance; but the court in the present circumstances, is

unable to grant him relief that he has prayed for in the writ petition. The petitioner has, however, presented the case with admirable poise, rarely seen in litigants harassed by circumstances.

11. The writ petition is disposed of with the aforesaid observations.

RAJIV SHAKDHER, J

JULY 04, 2014

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