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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No.5299 of 2011

Chandra Prakash Soni S/o Shri Sadan Lal Soni, Aged about 64 years, R/o House No.27/98, New Shanti Nagar, Raipur, District-Raipur (CG)

---Petitioner

Versus

1. Managing Director, Central Bank of India, Chandramukhi, Nariman Point, Mumbai (Maharashtra) 400021.

2. Zonal Manager, Central Bank of India, Bombay Market, G.E. Road, Raipur (CG)

3. Branch Manager, Central Bank of India, Bhatapara Branch, Bhatapara, District Raipur (CG)

---Respondents

For Petitioner	:	Mr. N.K.Vyas, Advocate
For Respondents	:	Mr. B.D. Guru, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

10/12/2015

1. Central Bank of India inflicted penalty of removal to the petitioner, who at the relevant point of time was working as Clerk-cum-Cashier, by order dated 7.10.2006 with superannuation benefits i.e. pension and /or provident fund and gratuity. Thereafter, the petitioner made an application on 13.11.2006 claiming superannuation benefits, which was not granted to him leading to filing of this writ petition stating inter-alia that withholding of pensionary benefits is a serious matter and as such, the petitioner is entitled for pensionary benefits and withholding of pensionary benefits is unsustainable and bad in law. Therefore, a writ of mandamus be issued to the respondent-Bank directing it to release the pensionary benefits of the petitioner along with interest.

2. Respondent-Bank has filed its return stating inter-alia that the petitioner is not entitled for pensionary benefits as punishment of removal from service has been imposed by the order impugned and the Central Bank of India (Employees) Pension Regulations, 1995 (hereinafter referred to as "the Regulation") is applicable to the petitioner. Article 22 of the Regulation provides that resignation or dismissal or removal or termination of an employee from the service of the Bank shall entail forfeiture of his entire past service and consequently shall not qualify for pensionary benefits. Hence, the petitioner, having been visited with the penalty of removal from service, is not entitled for pensionary benefits in the light of the above-stated Regulation.

3. Mr.N.K.Vyas, learned counsel appearing for the petitioner would submit that services of the petitioner were governed by the Bipartite Settlement signed by the Indian Banks' Association and the Banks' Workmen Union with regard to disciplinary action procedure. Clause 6 (b) of the Bipartite Settlement clearly provides that an employee found guilty of gross misconduct may be removed from service with superannuation benefits and as such, the petitioner is clearly entitled for pensionary benefits. The inaction on the part of the respondent-Bank in not releasing the superannuation benefits of the petitioner is clearly arbitrary and therefore, a writ of mandamus be issued directing the respondents to release superannuation benefits along with reasonable interest.

4. Mr.B.D.Guru, learned counsel appearing for the respondents while opposing the submission of Mr.Vyas would submit that Article 22 (1) of the Regulation clearly bars and disqualify the petitioner for pensionary benefits on account of his removal from service and as such, the writ petition deserves to be dismissed.

5. I have heard learned counsel appearing for the parties, given thoughtful consideration to submissions made by the learned counsel for the parties and gone through the record with utmost circumspection.

6. Overriding issue that crops up for consideration would be whether the petitioner who has been removed from service is entitled for pensionary benefits in the light of Article 22 (1) of the Regulation ?

7. In order to resolve the controversy, it would be appropriate firstly to refer the impugned order dated 7.10.2006 (Annexure P/1) by which the petitioner has been inflicted with penalty of removal from service. The order impugned states as under:-

> "Ref. No.RO-HRD:DAD:2005-06:1099 Date 07.10.2006
>
> **ADMINISTRATIVE ORDER**
>
> In the departmental enquiry held against Shri C.P. Soni, Clerk (Under Suspension) Branch Office-Bhatapara with regard to Charge Sheet No. RO/HRD.DAD/2005-06/1724, dated 15.02.2006, the undersigned in the capacity of Disciplinary Authority vide his Final Order No. RO:HRD:DAD:2006-07:1098, dated 07.10.2006 has awarded the penalty of "**BE REMOVED FROM SERVIDE WITH SUPERANNUATION BENEFITS i.e. PENSION AND /OR PROVIDENT FUND AND GRATUITY AS WOULD BE DUE OTHERWISE UNDER THE RULES OR REGULATIONS PREVAILING AT THE RELEVANT TIME AND WITHOUT DISQUALIFICATION FROM FUTURE EMPLOYMENT"** under Clause 6(b) of Disciplinary Action Procedure dated 10.4.2002 to Mr.C.P. Soni, Clerk (Under

Suspension) Branch Office, Bhatapara.

Mr. C.P.Soni is hereby informed that the above punishment stands inflicted on him with immediate effect i.e. from 07.10.2006.

(C.K. Pandey)

REGIONAL MANAGER

TO,

MR. C.P. SONI

CLERK (UNDER SUSPENSION)

BRANCH OFFICE

BHATAPARA

8. Clause 6 of the Bipartite Settlement dated 10th April, 2002 entered into between Indian Banks' Association and Banks' Workmen Union which provides that punishment to be inflicted to an employee who is found guilty of misconduct. Clause 6 (b) of the Bipartite Settlement states as under:-

> (b) be removed from service with superannuation benefits i.e. Pension and / or Provident Fund and Gratuity as would be due otherwise under the Rules or Regulations prevailing at the relevant time and without disqualification from future employment."

9. Article 22 (1) of the Regulation, which is relied on to deny the claim of the employee states as under:-

> "22. Forfeiture of service.-(1) Resignation or dismissal or removal or termination of an employee from the service of the Bank shall entail forfeiture of his entire past service and consequently shall not qualify for pensionary benefits."

10. Submission of Mr.Guru, learned counsel for the respondents would be that Article 22(1) of the Regulation is clearly applicable and the petitioner having been removed from service of the respondent-Bank, he would not qualify for pensionary benefits, whereas Mr.Vyas, learned counsel for the petitioner, would submit that the employee found guilty of misconduct and removed from service with superannuation benefits is entitled for superannuation benefits that flows from binding settlement entered into between the parties.

11. The question as to whether the petitioner is entitled for superannuation benefits on his removal from service in the light of sub-clause (1) of Article 22 of the Regulation is no longer res-integra and stands conclusively and authoritively decided by Their Lordships of the Supreme Court in the matter of **Bank of Baroda v. S K. Kool (D) through LRs. & Anr.**[1], in which the question before the Supreme Court was whether the legal heirs of the deceased were entitled for superannuation benefits in the

1 2014 AIR SCW 252

light of Article 22 of the Bank of Baroda (Employees) Pension Regulation which para-materia Regulation that of Article 22(1) of the instant Regulation, Their Lordships clearly held that the employees who are otherwise entitled for superannuation benefits under the Regulation if visited with the penalty of removal from service with superannuation benefits shall be entitled for those benefits. Paragraph 13 and 14 of the report states as under:-

> "13. From a plain reading of the aforesaid Regulation, it is evident that removal of an employee shall entail forfeiture of his entire past service and consequently such an employee shall not qualify for pensionary benefits. If we accept this submission, no employee removed from service in any event would be entitled for pensionary benefits. But the fact of the matter is that the Bipartite Settlement provides for removal from service with pensionary benefits "as would be due otherwise under the Rules or Regulations prevailing at the relevant time". The consequence of this construction would be that the words quoted above shall become a dead letter. Such a construction has to be avoided.
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> 14. The Regulation does not entitle every employee to pensionary benefits. Its application and eligibility is provided under Chapter II of the Regulation whereas Chapter IV deals with

qualifying service. An employee who has rendered a minimum of ten years of service and fulfils other conditions only can qualify for pension in terms of Article 14 of the Regulation. Therefore, the expression “as would be due otherwise” would mean only such employees who are eligible and have put in minimum number of years of service to qualify for pension. However, such of the employees who are not eligible and have not put in required number of years of qualifying service shall not be entitled to the superannuation benefit though removed from service in terms of clause 6(b) of the Bipartite Settlement. Clause 6(b) came to be inserted as one of the punishments on account of the Bipartite Settlement. It provides for payment of superannuation benefits as would be due otherwise. The Bipartite Settlement tends to provide a punishment which gives superannuation benefits otherwise due. The construction canvassed by the employer shall give nothing to the employees in any event. Will it not be a fraud Bipartite Settlement? Obviously it would be. From the conspectus of what we have observed we have no doubt that such of the employees who are otherwise eligible for superannuation benefit are removed from service in terms of clause 6(b) of the Bipartite Settlement shall be entitled to superannuation benefits. This is the only construction which would harmonise the two provisions. It is well settled rule of construction

> that in case of apparent conflict between the two provisions, they should be so interpreted that the effect is given to both. Hence, we are of the opinion that such of the employees who are otherwise entitled to superannuation benefits under the Regulation if visited with the penalty of removal from service with superannuation benefits shall be entitled for those benefits and such of the employees though visited with the same penalty but are not eligible for superannuation benefits under the Regulation shall not be entitled to that."

Thereafter, Their Lordships of the Supreme Court further held that the employee's heirs are entitled for superannuation benefits and directed that benefits should be paid along with 6% per annum. Paragraph 15 of the report states as under:-

> 15. Accordingly, we hold that the employee's heirs are entitled to superannuation benefits. The entire mount that the respondent is found entitled to along with interest at the rate of 6% per annum should be disbursed within 6 weeks from the date of receipt/communication of this Order."

12. Reverting back to the facts of the present case, it is quite vivid that the respondent-Bank has removed the petitioner's service with superannuation benefits i.e. pension and /or provident fund and gratuity as would be due otherwise under the Rules or Regulations prevailing at the relevant time and without disqualification from future employment and therefore, the petitioner by virtue of clause 6 (b) of the Bipartite Settlement would clearly be entitled for superannuation benefits as held by Their Lordships of the Supreme Court in the matter of **Bank of Baroda** (supra), which squarely applies to the facts of the present case. Consequently, the petitioner is held to be entitled for superannuation benefits.

13. Consequently, the writ petition is allowed and order impugned dated 7.10.2006 (Annexure P/1) passed by the Regional Manager, Central Bank of India, Raipur is hereby quashed. It is held that the petitioner is entitled to superannuation benefits. The entire amount that the petitioner is found entitled to along with interest at the rate of 6% per annum should be disbursed to the petitioner within 10 weeks from the date of receipt/communication of this order. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
JUDGE

B/-