

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.04.2015

CORAM:

THE HONOURABLE MR. JUSTICE V.DHANAPALAN
AND
THE HONOURABLE MR. JUSTICE R.S.RAMANATHAN

W.A.No.1005 of 2011

1. Canara Bank
rep. by its General Manager,
Head Office,
112, J.C. Road,
Bangalore 560 002.
 2. The Deputy General Manager,
Canara Bank,
Circle Office,
St. Mary's Campus,
East Veli Street,
Madurai 625 001.
- Appellants
- vs.
- S.Radhakrishnan
- Respondent

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 12.01.2011 passed in W.P.No.7745 of 2002.

W.P.No.7745 of 2002:- Writ petition has been filed under Article 226 of the Constitution of India to issue a writ in the nature of Certiorarified mandamus calling for records from the respondents relating to the impugned letter bearing ref.MDUC SSO 68 E9 VRV dt.8.1.2002 of the Asst. General Manager, Canara Bank, Circle office, Madurai 1(Ex.A) and quash the same and consequently directing the respondents to refix the petitioner's pension counting the period of 189 days of leave on loss of pay availed by the petitioner as qualifying service for pension, pay the arrears with interest at 18% p.a.

For Appellants : Mr.C.Seethapathy

For Respondent : Mr.Govarthan for
M/s.Row & Reddy

J U D G M E N T

(Judgment of the Court was delivered by V.Dhanapalan,J.)

Heard Mr.C.Seethapathy, learned counsel for the appellants and Mr.Govarthan, learned counsel appearing for the respondent.

2. This Writ Appeal is directed against the order dated 12.01.2011 passed by the learned Single Judge in W.P.No.7745 of 2002, wherein, the sanctioning authority was directed to dispose of the representation made by the writ petitioner within a period of three months from the date of receipt of the certified copy of the order.

3. Before the Writ Court, the respondent herein challenged the impugned letter of the appellant Bank vide Ref.MDUC SSO 68 E9 VRV, dated 08.01.2002 and seeking to quash the same, sought for a consequential direction to the appellant Bank to refix the respondent/writ petitioner's pension counting the period of 189 days of leave on loss of pay availed by the writ petitioner as qualifying service for pension, pay the arrears with interest at 18% p.a.

4. After hearing the learned counsel on either side and on a consideration of the case, the learned Single Judge passed the order under challenge on 12.01.2011. Relevant portion of the same shall read thus:

"10. On consideration, I find no force in the stand taken by the respondent. The reading of the letter of Govt. of India and Indian Banks' Association, which is the basis of impugned order, shows that both the Central Govt. and Indian Banks' Association, proceeded on the basis that the regulations cannot have retrospective effect. This stand cannot be sustained in law, as the reading of regulations would show that the word used is "sanctioning authority". In the context of pension regulations, it would be sanctioning authority sanctioning the pension and not the Government. The cause of action to consider the right would arise only while sanctioning the pension, thus the petitioner was entitled to consideration of his claim on merit, on the date of retirement. The application of regulations therefore would not be retrospective as was contended by Government of India and Indian Banks Association.

11. In the present case, in March 2002, when the request of the petitioner for voluntary retirement was accepted, the Regulations were in force. Therefore, the petitioner was entitled to the benefit under the said Regulations.

12. The petitioner was on medical leave, and the period under consideration was treated to be leave without pay, as no leave was available. Petitioner therefore availed the leave for the reasons beyond his control. The proviso to rule in fact was added to cover of such cases only. On the date of consideration and case of the petitioner regulations were in force, therefore the respondents were not right in rejecting the claim by treating that regulations were not applicable.

13. For the reasons stated, the writ petition is allowed. The impugned order is set aside. Writ in the nature of mandamus is issued directing the second respondent to reconsider the representation made by the petitioner and take an independent decision as to whether 10 months leave period can be counted for the purpose of grant of pensionary benefits by ignoring the letters of Finance Ministry as well as Indian Bank Officers Association as they do not apply to the Regulations under consideration.

14. Keeping in view, the petitioner was on leave due to accident he met with, as pleaded before this Court, sympathetic view to be taken while considering the case of the petitioner. The sanctioning authority is hereby directed to dispose of the representation made by the petitioner within a period of three months from the date of receipt of certified copy of this order.

15. In the result, the writ petition is allowed with the direction mentioned. No costs."

5. Pursuant thereto, when the matter is taken on appeal against the order of the learned Single Judge, the Honourable First Bench while issuing notice to the respondent observed that it is made clear that pendency of this appeal will not come in the way of the appellants to dispose of the representation, as directed by the learned Single Judge.

6. Thereafter, the respondent/writ petitioner's representation dated 06.09.2001 to the appellant Bank was taken into consideration by the appellant Bank and a decision was taken rejecting the request of the respondent. However, it was made clear therein that the reply is without prejudice to the contentions before the Division Bench of this Court.

7. The main plea of the appellant is that as per the Regulation of the Bank, the period in question will not come within the power of the discretionary right of the authority. Therefore, according to the appellant Bank, the decision arrived thereon cannot go against the Canara Bank (Employees') Pension Regulations, 1995.

8. Since, following the order of remand dated 12.01.2011 passed by the learned Single Judge, the appellant Bank has considered the representation of the respondent/writ petitioner vide its Letter dated 09.06.2011 and rejected his claim, there ends the matter and nothing survives for consideration in this Writ Appeal.

9. In fine, this Writ Appeal is dismissed as having become infructuous, as the direction of the learned Single Judge has been complied with. However, it is open to the parties to work out their remedy in the manner known to law. No costs. Consequently, connected M.P.No.1 of 2011 is closed.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

aeb

1 cc to M/s. Row and Reddy, Advocate, Sr. 19297
1 cc to Mr.P.R. Raman, Advocate, Sr. 19193

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W.A.No.1005 of 2011

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