IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 21.01.2015

DATE OF DECISION: 27.01.2015

CORAM:

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.A. No.219 of 2014

D. Jagadeesan ... Appellant/Petitioner

vs.

1 Bank of Baroda
N.26, G-Block
Bandra Kurla Complex
Bandra (E)
Mumbai - 500 051
represented by its Executive Director

2 Bank of Baroda
T. Nagar Branch
No.15, Gopalakrishna Iyer Street
T. Nagar
Chennai 600 017
represented by its
General Manager (SZ) ... Respondents

Writ Appeal filed under Clause 15 of the Letters Patent challenging the order dated 14.12.2012 passed in W.P. No.20364 of 2011. Petition under Article 226 of the Constitution of India praying for issue of a Writ of Mandamus directing the respondents to grant encashment of leave for 8 months, accrued interest for P.F. From 01.07.2003 to 04.11.2008, six months pay and allowances as per the service conditions of Officers employed in Bank of Baroda, with interest and further to treat the period of suspension as duty period and pay the arrears of salary from 18.08.2001 to 31.03.2003 to the petitioner.

For appellant Mr. S.N. Ravichandran

For respondents Mr. P.V. Ramachandran

JUDGMENT

SATISH K. AGNIHOTRI, J.

By the instant intra-Court appeal, the appellant assails the order dated 14.12.2012 passed by the Writ Court in W.P. No.20364 of 2011, whereunder, the said writ petition was dismissed. The writ petitioner preferred the said writ petition, seeking a direction to the respondents to grant encashment of leave for 8 months, accrued interest for Provident Fund from 01.07.2003 to 04.11.2008, 6 months pay and allowances as per the service conditions of officers employed in Bank of Baroda and also to treat the period of suspension as duty period and pay the arrears of salary from 18.08.2001 to 31.03.2003, to him.

2 For the sake of brevity and convenience, the parties are referred to as per their rank in the instant appeal.

3 The factual backdrop leading to the filing of the aforesaid writ petition are that the appellant, while working as Senior Manager of the respondent bank, was placed under suspension on 18.08.2001 in contemplation of the proposed disciplinary enquiry on an allegation of misappropriation/embezzlement of cash to the tune of Rs.50,000/-. A charge memo dated 11.09.2011 to that effect was issued to the appellant. After proper enquiry, the appellant was dismissed from service by order dated 28.03.2003 and thereafter, the departmental appeal preferred by the appellant was also dismissed on 27.09.2003. Thereagainst, a writ petition being W.P. No.35916 of 2003, was filed by the appellant on the file of this Court. This Court, having considered all aspects of the matter, held that the punishment of compulsory retirement would meet the ends of justice, because the appellant and his family can lead some respectable life in the society with the punishment of compulsory retirement, rather than the punishment of dismissal from service and as such, the punishment of dismissal from service was converted to one of compulsory retirement. Thereafter, the appellant made a representation to the respondents to treat the period of suspension as duty period and also sought grant of consequential benefits. Pursuant thereto, on 14.10.2008, the respondent bank sanctioned a sum of Rs.3,08,330/- payable in two instalments towards Gratuity. A sum of Rs.2,93,500/- and the balance amount of Rs.14,830/- was also paid on the same day separately. In addition, Provident Fund to the tune of Rs.7,23,472/- with interest for 3 months as per Rule 21 of the Bank of Baroda Provident Fund Rules was paid to the appellant on 04.11.2008. The other reliefs sought by the appellant were rejected. Being aggrieved, the appellant had come up with the instant writ petition, seeking the aforestated directions.

4 The contention of the learned counsel for the appellant before this Court is that once the punishment of termination has been converted to one of compulsory retirement, the appellant is entitled to encashment of Privilege Leave under provisions of Regulation 33 and Clause 8.1.3 of Regulation 38 under Chapter VII of the Bank of Baroda (Officers) Service Regulations, 1979 (for short "the Service Regulations, 1979). In support of this contention, the learned counsel relies on a decision of the Supreme Court in Bank of Baroda vs. S.K. Kool (Dead) through legal representatives and another, [(2014) 2 SCC 715]. The other contention of the learned counsel for the appellant is that in the absence of any express prohibition in Service Regulations qua grant of Privilege Leave in respect of a compulsorily retired person, the Bank of Baroda Officer Employees' (Discipline and Appeal) Regulations, 1976, (for short "Regulations, 1976) cannot override Service Regulations and as such, the appellant is entitled to encashment of Privilege Leave. His yet another argument is that when the appellant is entitled to retirement benefits and other terminal benefits such as Gratuity, Provident Fund and Pension, as a natural corollary, he is entitled to encashment of Privilege Leave as well. The appellant further claimed leave encashment and also treatment of suspension period as "duty period".

5 Per contra, the learned counsel for the respondent bank would submit that the appellant was not fully exonerated and that the punishment of dismissal from service was converted to one of compulsory retirement only for the purpose that he and his family could lead some respectable life in the society without a taint of dismissal. It is further contended that under the provisions of the Service Regulations, 1979, encashment of leave is permitted only when an employee earns leave during his service. Further, according to the learned counsel, so far as treating the suspension period as duty period is concerned, it is a part of punishment, as, in enquiry, the allegation of misappropriation/embezzlement has been found proved which was sustained in the departmental appeal and even before this Court as well, in the earlier writ petition, viz., W.P. No.35916 of 2003. Thus, the order passed by the Writ Court is perfect, warranting no interference whatsoever.

6 We have considered the rival contentions of both the parties and examined the relevant provisions of law.

7 It is indisputable that the charges of misappropriation of the amount alleged against the appellant while he was working as a Senior Manager with the respondent bank, was found proved and the same was upheld by this Court in W.P. No.35916 of 2003. It is also not in dispute that the order of dismissal from service was converted to one of compulsory retirement, not on account of the fact that the said punishment of dismissal from service was disproportionate to the charges levelled against the appellant, but, keeping in view, the fact that the appellant, as well as his family,

would not be in a position to lead a respectable life in the society with a taint of dismissal and as such, the punishment of dismissal from service was converted to one of compulsory retirement.

8 Regulation 4 of the Regulations, 1976 deals with penalties. Both "compulsory retirement" and "dismissal" are under the ambit of major penalties. Regulation 13 provides in no uncertain terms that no leave shall be granted to an officer/employee under suspension. Regulation 15 provides that if an officer/employee is fully exonerated or suspension was found unjustifiable, the officer/employee concerned shall be granted full pay to which he would have been entitled, had he not been suspended and the period shall be treated as period spend on duty. In the case on hand, as aforestated, the appellant was neither exonerated from the punishment nor was his suspension found unjustifiable. Thus, the period spent by the appellant during suspension shall not be treated as period spent on duty.

9 Regulation 33 under Chapter VII of the Service Regulations, 1979 deals with Privilege Leave as under:

- An officer shall be eligible for privilege leave computed at one day for every 11 days of service on duty provided that at the commencement of service, no privilege leave may be availed of, before completion of 11 months of service on duty.

- An officer on privilege leave shall be entitled to full emoluments for the period of leave.

- The period of privilege leave to which an officer is entitled at any time shall be the period which he had earned, less the period of the leave availed of.

- On and from 1.1.1990, privilege leave may be accumulated up to not more than 240 days except where leave has been applied for and it has been refused.

- An officer desiring to avail of privilege leave shall ordinarily give not less than 1 month's notice of his intention to avail of such leave.

10 Clause 8.1 of Regulation 38 deals with clarifications in respect of various types of leave like Casual Leave, Privilege Leave, Sick Leave, Additional Sick Leave, Maternity Leave and Extra Ordinary Leave. Clause 8.1.3 of Regulation 38 deals with clarification in respect of Privilege Leave as contemplated under Regulation 33. Sub-clause 12 of Clause 8.1.3 of the said Regulation provides that where an officer retires from the bank's service, he shall be paid a sum equivalent to the emoluments of any period of privilege leave that he had accumulated and that adjustment/personal allowance will be

included in emoluments for the purpose of encashment of accumulated privilege leave at the time of retirement in terms of Regulation 38 of the Officers' Service Regulations. Sub-clause 13 of Clause 8.1.3 of the said Regulation reads as follows:

> "13. The above benefit is also extended to officers who opt for Voluntary Retirement either under Regulation 19 (I) of Bank of Baroda Officers' Service Regulations, 1979 or under Regulation 29 of Bank of Baroda (Employees') Pension Regulations, 1995. However, this benefit is not available to officers whose services are terminated or who are compulsorily retired as punishment as per Regulation 4 of Bank of Baroda Officers Employees (Discipline and Appeal) Regulations, 1976." (Emphasis supplied)

It clarifies that the benefit is not available to the officers whose services are terminated or who are compulsorily retired as punishment as per Regulation 4 of the Regulations, 1976.

11 Thus, the contention of the learned counsel for the appellant that there is no express provision in Service Regulations qua grant of Privilege Leave in respect of a compulsorily retired person and as such, the Regulations, 1976 cannot override Service Regulations is rejected.

12 Regarding the appellant's claim of grant of 6 months emoluments as additional retirement benefit, Clause 4.1 – "Eligibility" under Chapter "Additional Retirement Benefit" of the Service Regulations, 1979, provides that in case of dismissal, discharge, termination, compulsory retirement and resignation, additional retirement benefit shall not be payable, irrespective of any number of years of service. For ready reference, the said provision is quoted below:

> "4.1 The scheme for additional retirement benefits provides that an officer on his retirement/voluntary retirement/death shall be eligible for payment of 6 months emoluments as additional retirement benefit, provided he had completed 25 years of service in the Bank.
>
> In the same manner, award staff member on Retirement/Voluntary Retirement/Death shall be eligible for additional retirement benefit, provided he had completed 30 years of service in bank.
>
> However, in case of dismissal, discharge, termination, compulsory retirement and resignation, additional retirement benefit shall not be payable, irrespective of any number of years of service."

Emphasis supplied

Thus, the claim of the appellant for payment of 6 months emoluments has rightly been denied as the punishment of dismissal from service was converted to compulsory retirement.

13 In the light of the aforestated statutory provision, we are of the firm view that the Writ Court has rightly come to the conclusion that the appellant is not entitled to encashment of leave, benefit of Privilege Leave, pay and allowances for six months and also the relief of treating the suspension period as duty period.

14 In Bank of Baroda (supra), the Supreme Court was considering a case of a Clerk who was held as a workman. The Supreme Court found that the workman was entitled to the benefit of bi-partite settlement signed by the Indian Banks' Association and the Banks' Workmen's Union with regard to the disciplinary action procedure. In that context, the following observation was made:

> "15. 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 Regulations 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 Regulations shall not be entitled to that."

15 In the case on hand, concededly, the appellant was a Senior Manager and his service condition was not governed under any bi-partite agreement which was the subject matter in Bank of Baroda, Ibid. and thus, the said decision is of no assistance to the case of the appellant.

16 In view of the foregoing, we do not find any reason whatsoever to interfere with the order passed by the Writ Court.

17 As a sequel, the writ appeal fails and is accordingly dismissed. Costs made easy.

Sd/-
Assistant Registrar

//True Copy//
Sub Assistant Registrar

cad
To

1 The Executive Director
Bank of Baroda
N.26, G-Block
Bandra Kurla Complex
Bandra (E)
Mumbai - 500 051

2 The General Manager (SZ)
Bank of Baroda
T. Nagar Branch
No.15, Gopalakrishna Iyer Street
T. Nagar
Chennai 600 017

+ 1 cc to Mr.S.N. Ravichandran, Advocate Sr.4210
+ 1 cc to Mr.P.V. Ramachandran, Advocate Sr.3876

W.A.No.219 of 2014

JSV(CO)
Eu 06.02.15