

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2015

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.12098 of 2004

A.Marrappan

... Petitioner

Vs.

1.The Chief General Manager,
State Bank of India,
Local Head Office,
College Road, Chennai - 6.

2.The Branch Manager,
State Bank of India,
Gudalur Branch,
The Nilgiris District.

3.The Chief Manager,
State Bank of India,
Namakkal Branch.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue writ of certiorarified mandamus to call for the records pertaining to advise of pension/family pension issued by the third respondent on 19.01.2004 and quash item No.9, namely, total qualifying service for pension stated at 20 years 10 months and 18 days and consequently, to direct the respondents to revise the pay and allowances including the fixation of pay in the category of senior assistant on completion of 17 years of qualifying service given effect to 01.04.1999 and to pay the arrears with the interest, and to direct the respondent to calculate the qualifying service of the petitioner as 22 years 2 months and 18 days by regularising and including the 16 months period of suspension as qualifying service and to pay the arrears with interest from 01.04.2003 onwards till the date of payment by the respondents.

For Petitioner :Mr.N.S.Nandakumar
For Respondents :Mr.K.Sankaran

ORDER

The petitioner entered into the service of the respondent Bank as Clerk-cum-Cashier. Thereafter, while he was working in Tiruchenkodu Branch, he was placed under suspension on 11.09.1998, as he was implicated in three private criminal cases. However, during

the pendency of the criminal cases, the order of suspension was revoked and thereafter, he joined duty on 13.01.2000. Subsequently, on reaching the age of superannuation, he retired from service on 31.03.2003. Though he was reinstated after acquittal from the above said criminal cases, he was denied with the consequential monetary benefits, by the impugned order.

2. Assailing the impugned order, learned counsel appearing for the petitioner submitted that during the suspension period i.e. from 11.09.1998 to 12.01.2000, the petitioner's pay was reduced to 1/3rd for the first three months and thereafter, he was paid with 50% for the next nine months and subsequently, he was paid with full pay. Though the petitioner made a representation for settling the remaining benefits, no order has been passed, however, the third respondent issued advice proceedings dated 19.01.2004 towards the pension and family pension and other monetary benefits, by deducting the suspension period of 16 months from the qualifying service, but, no separate proceeding was passed either by the disciplinary authority or by the first respondent indicating as to how the period of suspension treated after giving reasonable opportunity to the petitioner. Therefore, it is further submitted that a direction should be issued to the respondent to calculate the qualifying service of the petitioner as 22 years 2 months and 18 days by regularising and including the suspension period of 16 months.

3. In reply, learned counsel appearing for the respondents submitted that as per Clause 3(c) of the Memorandum of Settlement dated 10.04.2002 relating to the Disciplinary Action and the Procedure for Workmen Staff, the period of absence shall not be treated as period spent on duty unless the management so directs. In the present case, admittedly, the petitioner was implicated in three private criminal cases. Subsequently, though he was acquitted in respect of two cases, he was convicted in respect of one case, which, on appeal, was reversed by giving benefit of doubt. Therefore, as per Clause 3(c) of the Memorandum of Settlement dated 10.04.2002, the period of his absence shall not be treated as period spent on duty. It is further submitted that as per the above said Clause, unless the disciplinary authority directs by an express order treating the suspension period as duty period, the petitioner is not entitled to claim that the above said period should be treated as duty. Thus, the contention of the petitioner that the disciplinary authority did not pass any order regularising the above said period is not sustainable.

4. Learned counsel for the respondents further submitted that, in terms of the above said settlement governing the disciplinary action, the disciplinary authority is required to pass an order only if he considers the suspension period as duty period. Therefore, when no such order is passed by the disciplinary authority, there is no scope for including the suspension period for

pensionable service. Thus, the respondent Bank has rightly deducted the suspension period of 16 months inconsonance with the above said settlement, therefore, no such fault can be found against the respondents.

5. In support of his submissions, he has also relied upon a judgment of the Hon'ble Apex Court in the case of Krishnakant Raghunath Bibhavnekar v. State of Maharashtra and others ((1997) 3 SCC 636) to say that the very cause for suspension of the petitioner and taking punitive action against him was his conduct that led to his prosecution for the offences under the Indian Penal Code, since the petitioner himself has invited the foundation for prosecution. By citing so, it is further submitted that although the criminal cases ended in acquittal, grant of the consequential prayer, namely, regularising the period of suspension, cannot be a matter of course. With these submissions, he prayed for dismissal of the writ petition.

6. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

7. It is an admitted fact that the petitioner was placed under suspension on 11.09.1998, while he was working as Clerk-cum-Cashier, on the premise that he implicated in three criminal cases. However, pending criminal cases, the order of suspension was revoked and he joined duty at Gudalur Branch on 13.01.2000. Thereafter, on reaching the age of superannuation, he retired from service on 31.03.2003. In the meanwhile, he was acquitted in the criminal cases, except in one case, which, on appeal, was reversed by giving him the benefit of doubt. Immediately on his acquitted from the criminal cases, the petitioner made a representation to the respondents for settling the terminal benefits by regularising the suspension period i.e. from 11.09.1998 to 12.01.2000. However, the third respondent issued advise proceedings dated 19.01.2004 towards the pension and family pension and other monitory benefits by deducting the suspension period of 16 months from the qualifying service. Therefore, the contention of the petitioner is that without there-being any specific order calling upon the petitioner to show cause as to why the suspension period of 16 months should not be treated as duty period, the respondent ought not to have deducted the said suspension period from qualifying service. Such contention of the petitioner cannot be sustained in view of the Memorandum of Settlement dated 10.04.2002. For better appreciation, Clause 3(c) of the said Settlement is extracted hereunder:

"3(c): If he be acquitted, it shall be open to the management to proceed against him under the provisions set out below in Clauses 11 and 12 infra relating to discharges. However, in the event of the management deciding after enquiry not to continue him in service, he shall be liable only for termination of service with three months'

pay and allowances in lieu of notice. And he shall be deemed to have been on duty during the period of suspension, if any, and shall be entitled to the full pay and allowances minus such subsistence allowance as he has drawn and to all other privileges for the period of suspension provided that if he be acquitted by being given the benefit of doubt he may be paid such portion of such pay and allowances as the management may deem proper, and the period of his absence shall not be treated as a period spent on duty unless the management so directs."

A mere reading of the above said Clause clearly depicts that unless the disciplinary authority directs by an express order treating the suspension period as duty period, the petitioner is not entitled to claim to treat the suspension period of 16 months as duty period. It further shows that the disciplinary authority is required to pass an order only if he considers the suspension period as duty period. However, in the case on hand, there was no such order passed by the disciplinary authority treating his suspension period as duty period, therefore, in view of the above said Clause, I am of the view that there is no need to pass separate order to treat the period of his absence as a period spent on duty. Thus, the impugned order passed by the respondent deducting 16 months of suspension period from qualifying service, cannot be found fault. Accordingly, for the reasons cited supra, the writ petition fails and the same is dismissed. No Costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

rkm

To

- 1.The Chief General Manager,
State Bank of India, Local Head Office,
College Road, Chennai - 6.
- 2.The Branch Manager, State Bank of India,
Gudalur Branch, The Nilgiris District.
- 3.The Chief Manager, State Bank of India,
Namakkal Branch.

+ 1 cc to Mr.N.S.Nandakumar, Advocate SR.14081
+ 1 cc to Mr.K. Sankaran, Advocate SR.13733

KU(CO)

EU 21.04.2015

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