IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.1822 of 2013
Date of decision: 02.03.2015.

Nirmal Kumar Manon ..Petitioner

Versus

State Bank of India and others ..Respondents

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

1. **Whether reporters of local newspapers may be allowed to see judgment?**
2. **To be referred to reporters or not?**
3. **Whether the judgment should be reported in the Digest?**

Present: Mr. A.D.S. Jattana, Advocate
for the petitioner.

Mr. Vikas Chatrath, Advocate
for the respondents.

Daya Chaudhary, J.

The present writ petition has been filed by the petitioner under Articles 226/227 of the Constitution of India for quashing of letter dated 04.01.2013 (Annexure P-6), whereby, pension of the petitioner has wrongly been fixed on the basis of his pay received by him on 19.01.1985 and not on the basis of average of 12 months substantive salary drawn on the basis of re-fixed pay at the time of retirement/removal from service i.e., April 2007 till March 2008. A prayer has also been made for issuance of a writ of mandamus directing respondents to release all retiral benefits with interest.

Briefly, the facts of the case are that initially, the petitioner was appointed as Clerk in the respondent-Bank on 09.07.1971 and he was promoted as Junior Manager Grade Scale-I on 19.12.1979. Thereafter, he was appointed as Accountant. Some fraud was found to have taken place in respondent-Bank and the petitioner was placed under suspension during pendency of criminal proceedings initiated against him by CBI. Criminal proceedings were initiated against the petitioner but the departmental proceedings initiated against him were kept in abeyance. Thereafter, the petitioner was convicted by the Special Judge, CBI, Patiala on 17.02.1995 for offence punishable under Section 5(2) of the Prevention of Corruption Act read with Sections 420 and 120-B of Indian Penal Code. Due to said conviction, the petitioner was dismissed from service vide order dated 29.03.1996, consequent to the order/judgment passed in criminal case.

Aggrieved against the said judgment passed by Special Judge, CBI, Patiala, the petitioner filed appeal before this Court, which was allowed and the petitioner was acquitted of the charges on 12.03.2013.

On getting acquittal by this Court in criminal case, the petitioner preferred a representation for reinstatement along with back wages and accordingly, he was reinstated in service but respondent-Bank reserved its right to reopen the departmental proceedings. However, vide order dated 28.02.2005, he was placed under suspension in terms of Rule 68-A(1)(a) of the State Bank of India Officers Service Rules (for short 'the Rules').

The petitioner earlier filed **CWP No.13035 of 2005** wherein notice of motion was issued but subsequently, the same was amended and charge sheet was challenged. The said writ petition is still pending after admission vide order dated 29.01.2007. It was ordered that the salary/subsistence allowance of the petitioner shall be fixed/re-fixed properly, as during suspension the petitioner was paid subsistence allowance on the basis of salary paid in the year 1985.

Vide order dated 13.03.2008, the petitioner was removed from service under Rule 67(i) of the Rules and it was ordered that provisions of Rule 4(6)(a) & (b) of the Gratuity Act will not be attracted and suspension period shall be treated as period on duty for calculating the amount of pension. The substantive salary was fixed and arrears of pension were paid but no gratuity, provident fund and interest was paid.

The grievance of the petitioner is that while calculating the substantive salary of the petitioner, the increments payable were not calculated and as such, the order was passed by the Bank to calculate the pension of the petitioner whereas the same needs to be corrected on the basis of last 12 months average substantive salary drawn by him.

Learned counsel for the petitioner submits that while passing impugned order, the respondent-Bank considered 12 months average substantive salary for fixing the pension of the petitioner and order dated 13.03.2008 was set-aside. Learned counsel for the petitioner further submits that the petitioner is being paid pension by taking into consideration the substantive salary. The annual increments and other benefits were ignored while fixing the pension. Learned counsel also submits that the arrears of salary have been paid to the petitioner after fixing his substantive salary and the same has not been re-fixed properly by including annual increments and arrears of pension. A representation was also made but no action has been taken there upon.

Learned counsel for the respondents submits that under SBI Employees Pension Fund Rules, the pension is to be calculated on average of last 12 months salary drawn by the employee and not on the basis of last drawn subsistence allowance. The petitioner cannot be granted pension on the basis of hypothetical pay/subsistence allowance. Learned counsel for the respondents also submits that the pension of the petitioner was calculated on the basis of average monthly substantive salary drawn by an employee during last 12 months before his superannuation. The subsistence allowance does not amount to the salary and accordingly, the pension of the petitioner was calculated on the basis of average of last 12 months salary drawn by him.

Heard arguments of learned counsel for the petitioner as well as learned counsel for the respondents and have also perused the impugned order.

The issue for consideration before this Court is as to whether the pension of the petitioner has to be fixed as per substantive salary paid to him at the time of removal from service or the pension has to be fixed on the basis of salary paid to him in the year 1985.

The State Bank of India Employees' Pension Fund Rules are applicable in this case wherein 'salary' has been defined as under:-

> *“xxx xxx xxx*
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> *“Salary” means substantive or basis pay, provided that in respect of the period Ist January 1962 to 31st July 1966, salary shall mean:-*
>
> *(i) in the case of employees other than those covered by, or paid on the same basis as in, the Award of the National Industrial Tribunal in Reference 1 of 1960 (hereinafter referred to as “the Award”) substantive or basis pay.*
>
> *(ii) in the case of employees, other than subordinate staff, so covered by, or paid on the same basis as in the Award, eighty per cent of the awarded basis pay and*
>
> *(iii) in the case of the subordinate staff so covered by, or paid on the same basis as in,*

> *the Award, seventy five per cent of the awarded basis pay.*
>
> *From 1.9.1978 'salary' or 'substantive salary' shall include other emolument or such portion thereof of a member as may for the time being be permitted by the Bank to rank for superannuation benefits under the rules of service applicable to the member.”*

A perusal of aforesaid Rules would show that from 1.9.1978, salary or substantive salary shall include other emoluments or such portion thereof of a member as may for the time being be permitted by the Bank to rank for superannuation benefits.

As per Rule 21(ii) of the State Bank of India Employees' Pension Fund Rules, in case, ex-employee rejoins the Bank's service, the trustees in their absolute discretion may allow the period of his service prior to his rejoining to count for pension as if there had been no break in the continuity of such service.

Rule 23 (i) provides that pension will be calculated on the basis of average monthly substantive salary. The salary or substantive salary shall include other emoluments.

In the present case, order dated 13.03.2008 was set-aside and it was clearly held that the period of suspension will be treated as period on duty. The petitioner was to be paid actual salary and pension was to be fixed on the basis of this salary. The salary means basic pay and other allowances. In the rules, the salary has been defined to include substantive pay, which has been paid and order has been passed by regularizing the period of suspension as it was considered as duty period. Inspite of passing order treating the suspension period as duty period, the impugned order dated 04.01.2013 has been passed whereas while re-fixing pension, average of last 12 months and actual salary drawn was to be considered. The average salary of petitioner comes to ₹1,43,930/- and in case, the same is divided by 12, the average comes to ₹11,994/- and pension is to be paid every month on the basis of salary. The petitioner is being paid pension by taking a substantive salary by taking into consideration the old pay scale of 1987. The annual increments and other benefits have not been taken into consideration while fixing the pension. Once the arrears have been ordered to be paid to the petitioner after fixing his substantive salary including annual increments, then pension is also required to be re-fixed.

Accordingly, the present writ petition is allowed and impugned order dated 04.01.2013 (Annexure P-6) is set-aside. The respondent-Bank is directed to re-fix the pension of the petitioner keeping in view order dated 13.03.2008.

02.03.2015 **(DAYA CHAUDHARY)**
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