IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.4816 of 2012 (O&M)
Date of decision: 16.07.2015.

Surinderjit Singh ..Petitioner

Versus

Punjab and Sind Bank and another ..Respondents

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

1. Whether reporters of local newspapers may be allowed to see judgment? Yes/No
2. To be referred to reporters or not? Yes/No
3. Whether the judgment should be reported in the Digest? Yes/No

Present: Mr. K.K. Gupta, Advocate
for the petitioner.

Mr. J.S. Sathi, Advocate
for the respondents.

Daya Chaudhary, J.

CM-8480-CWP-2015

This application is for placing on record accompanying documents.

Application is allowed and documents annexed with the application are taken on record.

CWP-4816-2012

The present writ petition has been filed for issuance of a writ in the nature of certiorari for quashing of the charge-sheet dated 30.08.2005 (Annexure P-1), whereby, the petitioner was chargesheeted for release of the loan amount on the basis of irregular documents; inquiry report dated 03.10.2006 (Annexure P-2), whereby, the petitioner along with the Branch Incharge was found jointly responsible; order of penalty dated 30.12.2006 (Annexure P-3), whereby, the penalty of dismissal was imposed; order dated 30.06.2008 (Annexure P-4) passed by the Appellate Authority, whereby, the appeal filed by him was dismissed; order dated 25.11.2008 (Annexure P-5), whereby, the penalty of dismissal was converted into that of compulsory retirement without issuing any notice and order dated 16.09.2010 (Annexure P-6), whereby the benefit of leave encashment has been denied.

Learned counsel for the petitioner has restricted his prayer only with regard to release of retiral benefits as only the amount of gratuity has been paid whereas the amount of leave encashment and pension has been denied. He also submits that the petitioner is also entitled for interest on the delayed amount of leave encashment as well as pension.

Petitioner-Surinderjit Singh was posted as Scale-I Desk Officer in the Loan Section of respondent No.2 at Amritsar. The loan application of a private party was forwarded by him to the higher officers and finally, it was approved by the Branch Incharge. On 07.05.2005, a show cause notice was issued to the petitioner asking his explanation about the irregularities committed in grant of loan limit to said party. The allegation against the petitioner was that certain irregular documents were accepted by him while releasing the loan limit to the party. Thereafter, a charge-sheet was issued to him and Inquiry Officer was appointed for conducting the inquiry into the charges levelled against him. As per inquiry report submitted by the Inquiry Officer, the charge to the extent of his joint responsibility with his Branch Manager i.e., the Sanctioning Authority was proved against the petitioner. The Punishing Authority vide order dated 30.12.2006 passed an order of dismissal from service, which was further upheld by the Appellate Authority on 30.06.2008 but the Reviewing Authority by taking into consideration the finding recorded by the Inquiry Officer, modified the penalty from dismissal to compulsory retirement vide order dated 25.11.2008.

Learned counsel for the petitioner submits that even in case of compulsory retirement, the petitioner is entitled for retiral benefits. The amount of provident fund was sanctioned but the petitioner opted to switch over the pension scheme on deposit of employer's share (already paid). Learned counsel for the petitioner also submits that the claim of the petitioner for grant of leave encashment has not been considered and even the pension has been denied to him. Only the amount of gratuity has been paid and the petitioner is also ready to deposit the amount of provident fund received by him. Learned counsel for the petitioner has also relied upon judgments of this Court in ***UCO Bank and others vs. Ashwani Kumar Sharma, LPA No.191 of 2006 decided on 01.02.2010, The***

Financial Commissioner and Principal Secretary to Govt. Haryana, Irrigation Department, Civil Secretariat, Chandigarh, vs. Hasan Singh Kanwar, 2010 (1) SLR 788, judgments of Andhra Pradesh High Court in ***Sreeram Ramamurthy vs. Andhra Bank rep. by its Chairman & Managing Director, Pattabhi Bhavan, Saifabad, Hyderabad and three others, Writ Petition No.9069 of 2011, decided on 22.03.2012, Andhra Bank, Head Office, Saifabad, Hyderabad and three others vs. Sreeram Ramamurthy, Writ Appeal No.902 of 2012, decided on 08.08.2013*** as well as judgment of High Court of Karnataka in ***N. Suresh Prabhu vs. Corporation Bank and another, Writ Petition No.122 of 2011 and other connected cases decided on 30.08.2012*** in support of his contentions.

Learned counsel for the respondents opposes the submissions made by learned counsel for the petitioner and submits that a detailed inquiry was conducted and after giving fair opportunity of hearing to the petitioner, the finding was recorded by the Inquiry Officer that all the five charges levelled against him in the charge-sheet were proved to the extent of his joint responsibility with the Sanctioning Authority i.e., the Branch Manager who expired before taking any disciplinary action against him and thereafter, the order of dismissal was passed on 30.12.2006. Keeping in view the death of Sanctioning Authority, the order of dismissal was modified to compulsory retirement, which is not a major punishment under the

Bank regulations. Learned counsel for the respondents-Bank also submits that at the time of compulsory retirement, the petitioner opted for provident fund and not for pension and accordingly, the provident fund as well as the amount of gratuity was sanctioned and paid to him. The pension is to be given to an employee on attaining the age of superannuation but the petitioner was compulsorily retired and he did not opt for pension.

Heard arguments of learned counsel for the petitioner as well as learned counsel for the respondents.

Admittedly, the petitioner has restricted his prayer regarding the release of retiral benefits by stating that the amount of gratuity has already been released whereas the amount of leave encashment and pension has been denied. It is also the argument of learned counsel for the petitioner that the petitioner is ready to return the amount of provident fund received by him.

Regulation 38 of the Services Regulations, 1979, which is relevant for deciding the issue involved in the present writ petition is reproduced as under: -

> *"38. Lapse of Leave. Save as provided below, all the leave to the credit of an officer shall lapse on resignation, retirement, death, discharge, dismissal or termination; Provided that where an officer retires from the bank's service he shall be eligible to be paid a sum equivalent to the*

> *emoluments of any period, not exceeding 240 days, of privilege leave that he had accumulated. Provided further that where an officer dies while in service, there shall be payable to his legal representatives, a sum equivalent to the emoluments for the period, not exceeding 240 days, of privilege leave to his credit as on the date of his death."*

Proviso to Regulation 38 clearly shows that an officer is entitled to leave encashment even in case of compulsory retirement. Thus, there is no provision for withholding gratuity and leave encashment even in case of compulsory retirement.

Same issue was considered by the learned Single Bench against which LPA No.191 of 2006 was filed by the Bank and the same was dismissed on 01.02.2010 by holding that learned Single Bench has rightly allowed the amount of leave encashment. An employee is entitled to gratuity as well as leave encashment even in case of compulsory retirement.

Similar observation has been made by this Court in **Hasan Singh Kanwar's case (supra)** as well as by Andhra Pradesh High Court in **Sreeram Ramamurthy's case (supra)** wherein the pension was allowed even in case of compulsory retirement.

An objection has also been raised by learned counsel for the respondents that the petitioner is not entitled to pension as he did not opt for pension whereas the same issue was considered in **N Suresh Prabhu's case (supra)**.

In view of the facts and law position as explained above, there is merit in the contentions raised by learned counsel for the petitioner and as such, the claim of the petitioner for leave encashment and pension is allowed subject to deposit of the amount of provident fund already accepted by him, within a period of one month from the date of receipt of certified copy of this order. The respondents are directed to release the amount of leave encashment and pension within a period of two months from the date of deposit of amount by the petitioner.

The petitioner is also held entitled to interest @ 9% per annum after expiry of three months from the date of compulsory retirement till the payment is released.

16.07.2015 **(DAYA CHAUDHARY)**
neetu **JUDGE**