* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **<u>W.P.(C) No.6838/2010</u>**

% **30th April, 2015**

SH. GURCHARAN SINGH ..... Petitioner

Through: Mr. Samar Bansal, Advocate with Mr. Vinayak Mehrotra, Advocate.

versus

PUNJAB & SIND BANK ..... Respondent

Through: Ms. Kittu Bajaj, Advocate.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

<u>VALMIKI J. MEHTA, J (ORAL)</u>

1. By this writ petition filed under Article 226 of the Constitution of India, petitioner seeks the relief that respondent/Bank/erstwhile employer, be directed to release the entire terminal benefits pursuant to petitioner's VRS application being accepted on 28.2.2001, and that petitioner be also paid interest for delayed payment. Also, directions are sought that the respondent/Bank should not make certain illegal deductions as stated in para 18 of the writ petition.

2. It is an undisputed position that the petitioner applied for VRS under the 2000 VRS Scheme of the respondent/Bank and the same was accepted only conditionally by the respondent/Bank vide its letter dated 28.2.2001. The reason for only conditionally accepting the VRS application of the petitioner was that against the petitioner two departmental proceedings were said to be pending. Petitioner challenged the conditional acceptance, but the appeal filed by the petitioner was rejected by the Chairman and Managing Director (CMD) of the respondent/Bank on 27.4.2001.

3. However, petitioner did not challenge this order dated 27.4.2001 in any judicial proceeding accepting the finality of the order dated 27.4.2001. Once there is finality to the order dated 27.4.2001 there is also finality to the order of conditional acceptance of VRS by the respondent/Bank vide its letter dated 28.2.2001 i.e petitioner can thus only be paid his terminal dues in terms of the VRS Scheme on conclusion of the departmental proceedings pending against the petitioner.

4. Against the petitioner two departmental proceedings were said to be pending as per the respondent/Bank. One of the proceedings (hereinafter "1st proceedings") cannot be said to be departmental proceedings inasmuch as there was no formal charge-sheet issued against the petitioner and no enquiry officer was appointed to look into the charges. Petitioner was only asked for

certain explanations by the respondent/Bank by its letter dated 17.10.1999 and which was responded to by the petitioner vide his reply dated 1.8.2000. A reference to the counter affidavit of the respondent/Bank also shows that as regards these so-called departmental proceedings against the petitioner there was no charge-sheet and no enquiry proceedings were conducted. Respondent/Bank formally dropped these 'proceedings', as per the counter affidavit of the respondent/Bank itself, vide order dated 6.5.2008.

5. Therefore, once there were no 1st proceedings against the petitioner, and in fact the petitioner was 'exonerated', because the proceedings itself were dropped, the legal effect thereof will have to be seen as to entitlement of the respondent/Bank in such circumstance to withhold the amounts of terminal dues of the petitioner on the one hand and simultaneously continue to claim payment of interest against the petitioner with respect to certain loan accounts of the petitioner.

6. There were a second departmental proceedings against the petitioner and these second proceedings resulted in the order of the Disciplinary Authority dated 5/8.3.2004 imposing the punishment upon the petitioner of reduction by four stages in the time scale of pay and that such reduction will have consequential effect on computation of terminal benefits and fixing of pension payable to the petitioner. Admittedly, this order dated

5/8.3.2004 became final as the petitioner never challenged the same. Petitioner therefore cannot escape the consequences of this order and therefore till passing of this order respondent/Bank was hence justified in withholding the terminal dues of the petitioner on conditional acceptance of the VRS application.

7. I may at this stage clarify that though the issue of three alleged illegal deductions made against the petitioner by the respondent/Bank and as stated in para 18 of the writ petition, was initially argued for all the three deductions, however, ultimately only one alleged deduction is questioned, being of the amount of Rs.56,287/- and which has been deducted by the respondent/Bank on account of housing loan dues of the petitioner with the Rajendra Place Branch of the respondent/Bank. Petitioner in support of his argument that nothing is due in this account, relies upon the letter dated 14.3.2001 issued by the respondent/Bank showing nil position in the accounts at the Rajendra Place Branch. The counter affidavit of the respondent/Bank however takes up the stand that there was an amount due in the housing loan account no.63066 of the petitioner at the Rajendra Place Branch for an amount of Rs.56,283/- and which amount has to be adjusted against amounts payable to the petitioner. Of course, the amount which would be due in the loan account will be the amount due to the respondent/Bank as on the specific date

of 1.4.2004, and the reason for which date I am giving subsequently in this judgment.

8. The summary from the abovestated facts is as under:-

(i) Petitioner made a VRS application in terms of the VRS Scheme of the respondent/Bank of the year 2000.

(ii) Petitioner's VRS application was only conditionally accepted by the respondent/Bank vide its letter dated 28.2.2001 and which conditional acceptance stands as it became final on the petitioner's appeal to the competent authority of the respondent/Bank being rejected on 27.4.2001.

(iii) With respect to one alleged departmental proceedings, i.e the 1st proceedings, the same were not departmental proceedings in the eyes of law because no charge-sheet was issued and no enquiry officer was appointed to enquire into the charges and only certain explanations were asked for from the petitioner. Ultimately even these so called proceedings were dropped in terms of the order of the respondent/Bank dated 6.5.2008.

(iv) Against the petitioner with regard to the second proceedings, the Disciplinary Authority vide its order dated 5/8.3.2004 imposed the punishment of reduction of pay by four stages with consequential reduction effect on terminal benefits and pension and which order became final. Petitioner's dues under the VRS Scheme were released only in August, 2008.

9. (i) In my opinion, so far as the 1st proceedings are concerned, once no departmental proceedings existed against the petitioner as there was no charge-sheet in this 1st proceedings and no enquiry officer was appointed, and, which proceedings in any case were completely dropped by the respondent/Bank vide its order dated 6.5.2008, these so called proceedings cannot be a reason for condoning the delay by the respondent/Bank in releasing of the amounts due to the petitioner on acceptance of petitioner's VRS application. Petitioner, however, will only be entitled to payments of terminal benefits and pension about 30 days after passing in the second proceedings of the order of the Disciplinary Authority on 5/8.3.2004 thereby giving a time of about three odd weeks to the respondent/Bank to process and calculate the dues payable to the petitioner taking the order of the Disciplinary Authority dated 5/8.3.2004 as final. After 1.4.2004 there was no entitlement in the respondent/Bank to delay payment of the benefits to the petitioner due under the VRS Scheme.

(ii) Therefore, what are the amounts which are payable to the petitioner, would be the amount payable as on 1.4.2004, and whatever the respondent/Bank has to deduct on account of the dues of the petitioner in the housing loan account (if any) and the credit card account, will also have to be adjusted as per the position standing to the debit of the petitioner in these accounts as on 1.4.2004 against the credit of the dues payable to the petitioner under the VRS Scheme. This date of 1.4.2004 is necessary to be specified as the date for adjusting respective liabilities of the petitioner and the respondent/Bank against each other because once the dues and amounts on 1.4.2004 were due to the petitioner, they were available to the petitioner for being set off against the dues which would be due to the respondent/Bank from the petitioner on 1.4.2004. Once the amount due to the respondent/Bank from the petitioner on account of his loan account is set off as on 1.4.2004, then on the balance thereafter which is payable to the petitioner, there would be delay as the amounts were paid to the petitioner only in August, 2008 and therefore, petitioner on the amount which after adjustment had to be paid to him as on 1.4.2004 on that amount till August, 2008 the petitioner will have to be paid reasonable rate of interest. In my opinion, this reasonable rate of interest would be interest @ 9% per annum simple especially because the petitioner is a senior citizen.

10. In view of the above, this writ petition is allowed to the extent that respondent/Bank would now take the date of 1.4.2004 as the date for paying of the amounts to the petitioner under the VRS Scheme, calculate the amounts due to the respondent/Bank from the petitioner in any loan account of the petitioner to be squared off as on 1.4.2004 by the petitioner, and calculate

as on 1.4.2004 what would be the balance amount payable by the respondent/Bank to the petitioner as on 1.4.2004 after squaring off the liabilities of the petitioner towards the respondent/Bank. It is further clarified that in case with respect to the housing loan account as on 1.4.2004 there would be found no dues against the petitioner either on account of the letter of the respondent/Bank dated 14.3.2001 or any other reason, no deduction will be made towards the housing loan account, but if the accounts maintained by the respondent/Bank show that there were dues of the petitioner towards the respondent/Bank in the housing loan account of the petitioner at the Rajendra Place Branch as on 1.4.2004 the respondent/Bank will be entitled to adjust the amount due in the housing loan account of the petitioner at Rajendra Place Branch on 1.4.2004 in order to arrive at the final figure of the VRS benefits which would be payable to the petitioner on 1.4.2004. On the amounts which will become payable to the petitioner on 1.4.2004 petitioner will be paid interest @ 9% per annum simple from 1.4.2004 till 31.8.2008 inasmuch as certain amounts under the VRS Scheme were duly paid to the petitioner in the month of August,2008. If as on 1.9.2008 after recalculation of payment etc as stated above, amounts still remain to be paid to the petitioner, then, even on such balance amount interest @ 9% per annum simple will be payable and the respondent/Bank is now directed to release the amount of balance if any which would be payable to the petitioner as on 1.9.2008 alongwith interest thereon @ 9% per annum simple within a period of two months from today. While conducting this exercise with respect to amounts due and payable to the petitioner as on 1.4.2004 and 1.9.2008 a detailed chart will be prepared by the respondent/Bank showing that debits and credits as on 1.4.2004 and 1.9.2008 along with the relevant documents and the consequent balance to the credit of the petitioner on these dates so that when the balance amount if any is paid to the petitioner now within two months, petitioner knows as to how the amounts which have been paid to him have been calculated by the respondent/Bank.

11. The writ petition is allowed and disposed of in terms of the aforesaid observations.

APRIL 30, 2015 **VALMIKI J. MEHTA, J**

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