

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13131 of 2015

Shivajee Singh, S/o Late Ram Snehi Singh, Vill- Dakarama, P.S.- Hathauri, Dist- Muzaffarpur.

.... Petitioner

Versus

1. Chairman Cum Managing Director, Central Bank of India, Central office 16th Floor, Chandra Mukhi Nariman Point, Mumbai-400021.
2. Zonal Manager, Central Bank of India, Zonal Office, 374B, Exhibition Road, Patna.
3. Regional Manager, Regional Office, Central Bank of India, Kalam Bag Chauk, Law College Road, Muzaffarpur.
4. Branch Manager, Central Bank of India, Dumra Branch, Sitamarhi.

.... Respondents

Appearance :

For the Petitioner : Mr. Sanjay Parasmani, Advocate
For the Respondents : Mr. Ajay Kumar Sinha, Advocate

CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 25-05-2016

I have heard parties and perused the records of the case.

Through this writ application the petitioner seeks direction to the respondents to grant pension and other terminal benefits including gratuity, provident fund and leave encashment etc. which have not been paid to him till date.

The petitioner claims to have joined the Central Bank of India (hereinafter referred to as 'the Bank') on the post of peon at its Ara Branch on 14.9.1970. Petitioner was appointed as clerk at Sitamarhi Branch after having cleared written and oral test on 5.8.1978. However, a departmental proceeding was initiated against



the petitioner on 24.12.1987 and on 5.1.1990 he was discharged from the Bank service vide an order contained in Annexure 1. Petitioner preferred appeal which was dismissed vide Annexure 2. Thereafter he approached this Court by filing C.W.J.C. No. 5169/1990 which was also dismissed. His Special Leave to Appeal No. 43/91 was also dismissed on 3.8.1995.

However, in view of the nature of the punishment awarded by the Bank, i.e. “ discharge from the Bank’s service”, petitioner approached the authorities by writing a letter dated 29.12.1995, as contained in Annexure 5, intimating his intention to join Employees’ Pension Regulations, 1995 (for the sake of brevity ‘the Pension Regulations’). It is claimed that though he pursued the matter regularly but he did not get anything except oral assurance. Finally, he received a letter dated 9.1.2004, as contained in Annexure 6, intimating him that he should come and receive a cheque for an amount of Rs. 18,474.26 against the head of provident fund. However, he replied vide Annexure 7 dated 21.1.2004 that he has opted for pension scheme but was never informed regarding that and, in place of that, he was being offered provident fund amount though he was entitled to receive pension. Thus, he made a request to adjust the aforesaid amounts and take a decision for payment of pension. However, nothing was done. Thereafter, the petitioner came to know



about a judgment dated 11.12.2013 passed by the Apex Court in **Civil Appeal No. 10956 of 2013/(Special Leave Petition (Civil) No. 17054 of 2009) Bank of Baroda Versus S.K.Kool (D) through LRS. And Anr.** a copy of which has been produced at the time of hearing. He again wrote a letter demanding pension on 21.11.2014 (Annexure 8). In reply thereof the Bank communicated the petitioner vide Annexure 9 dated 20.11.2014 that the judgment of the Apex Court quoted by him does not apply in his case. The petitioner again wrote a letter (Annexure 10). Ultimately, the Bank intimated vide Annexure 11 dated 19.3.2015 to submit a specific reply as to what terminal benefits has already been given to him and what amount should have been paid according to him. Though knowing fully well that no terminal benefit has been given to the petitioner and the petitioner has refused to accept the provident fund amount requesting to adjust the same and grant pension in terms of the Pension Regulations, such letter was written, this writ application has been filed.

A counter affidavit has been filed on behalf of the Bank taking a clear stand that, since the petitioner has been discharged from the service under clause 19.6 by way of punishment for gross misconduct, he is not entitled for pension and other benefits. Clause 22 of the Pension Regulations has been referred in this regard.

Now the issue which emerges for adjudication in this case is as to whether the petitioner, having been awarded punishment of discharge under Clause 19.6 of the Bipartite Settlement, would be entitled to receive pension and other terminal benefits?

The order of punishment has been appended as Annexure 1 which indicates in clear term that the punishment is being awarded in terms of Clause 19.6 of the Bipartite Settlement which was in operation at the relevant period and the punishment imposed was discharge from the Bank service.

For better appreciation the relevant Clause from the Bipartite Settlement, a copy of which was produced at the time of hearing, is extracted as under:-

“ 19.6 An employee found guilty of gross misconduct may:

- (a) be dismissed without notice; or
- (b) be warned or censured, or have an adverse remark entered against him; or
- (c) be fined; or
- (d) have his increment stopped; or
- (e) have his misconduct condoned and be merely discharged.”

It is clear from the aforesaid that the punishment of discharge has been provided under Clause 19.6. (e) which indicates in clear term that this punishment would mean that



misconduct is condoned and the employees would merely be discharged. The punishment inflicted upon the petitioner being under Clause 19.6.(e), another question would arise that if the misconduct has already been condoned and, thereafter, he has been discharged then whether it would mean or not that he would be entitled for pensionary benefit and other terminal benefit if otherwise he has necessary qualifying service entitling for such benefits?

Subsequently on 10th of April 2002 another Bipartite Settlement came into existence and perusal of the relevant provision of discharge would be interesting which is provided under Clause 6 (d) of 2002 of Bipartite Settlement. Though the 2002 Bipartite Settlement would not be applicable in the case of the petitioner as he was discharged in the year 1990 itself, however, it would be beneficial for harmonious construction of the provision which is applicable in the case of the petitioner and hence the relevant provision under Clause 6(d) of Bipartite Settlement, 2002 is also extracted as under:

“6.(d) be discharged from service with superannuation benefits i.e. Pension and/or Provident Fund and Gratuity as would be due otherwise under the Rules or Regulations prevailing at the relevant time and without disqualification from future employment: or”



From bare perusal of the aforesaid it would emerge that a person can be discharged from service with superannuation benefits as also without disqualification from future employment. Other provisions of punishment being dismissal, removal, compulsory retirement or brining down to lower stage in the scale of pay, stopping of increment etc. for gross misconduct. There is no other mode of discharge provided for gross misconduct under Clause 6 except the aforesaid Clause 6(d) which is discharged from the service with superannuation benefits.

Therefore, upon the reading of two provisions it would emerge that discharge from service has been provided in the subsequent Bipartite Settlement along with superannuation benefits. It may, however, be argued on behalf of the respondents that since it has been clarified in the subsequent Bipartite Settlement that the discharge would be with pensionary and other terminal benefits, the same not having been provided in the earlier Bipartite Settlement, which is applicable in the case of the petitioner under Clause 19.6.(e), the petitioner would not be entitled for pensionary and other terminal benefits.

This limb of argument may appear to be attractive but on deeper scrutiny it would appear that even under the earlier provision it has been stated in clear terms that the meaning of



concerned punishment would be that the misconduct has first to be condoned and, thereafter, merely discharge from service is there. Once the misconduct has been condoned there would be no occasion to hold that the discharge would be without any pensionary or terminal benefit or without disqualification from future employment.

Even Clause 22 of the Pension Regulations, which has been vehemently referred and highlighted by the learned counsel appearing for the Bank and which is a provision of forfeiture of service, lays down that only resignation, dismissal, removal or termination of employee would entail forfeiture of his entire past service and, as a consequence, he would not qualify for pensionary benefits. Discharge from service being absent from the aforesaid provision contained in Clause 22(1) of the Pension Regulations, it would have to be held that the same would not entail forfeiture of the past service. The Apex Court in **Bank of Baroda (supra)** has held that even on removal from service, in the given case, the Clause 22(1) of the Pension Regulations would not be applicable. Such construction would never be harmonious as the same would make the provision contained in Clause 6(b) of the Bipartite Settlement, 2002 providing removal from service with superannuation benefit, a dead letter. It would be rendered otiose. This Court would agree with the view of the Bank authority that the aforesaid judgment of

the Apex Court would not apply in the case of the petitioner for the two reasons. First reason that it was a case of removal from service under Clause 6(b) of the Bipartite Settlement, 2002 which is not applicable in the case of the petitioner and secondly, he has not been removed rather has been discharged from service.

However, in my considered view the petitioner's case is on better footing as the harmonious construction of discharge under Clause 19.6 of the Bipartite Settlement would be that petitioner's gross misconduct has been condoned first and then he has been discharged, if it is to be read as discharge without pensionary benefits and other terminal benefits and disqualification from future employment, that would render the first part of Clause 19.6.(e) otiose or redundant. Therefore, it is held that the discharge of the petitioner was along with all the pensionary and terminal benefits if he has qualifying service. Now from perusal of the Pension Regulations it appears that the employees who were in service of the Bank on or after the 1st day of January, 1986 but had retired before the 1st day of November, 1993 as per Regulation 3.(1).(a) would be eligible for pension scheme. Secondly, as per Clause 3.(2).(a), if he had retired on or after the 1st day of November, 1993 but before the notified date then again he would be entitled for the scheme.

The petitioner's claims that he is having qualified



service under the Pension Scheme if he is treated to have discharged with the pensionary benefits, could not be denied by learned counsel appearing for the Bank. The petitioner, though has not given the date of his superannuation but has claimed that he stands qualified under the scheme only impediment being the discharge from the service. As would appear from statements made in the counter affidavit, the claim of the petitioner that he has rendered sufficient years of service to qualify under the scheme, has not specifically been denied by the Bank. The discharge having been held as above to be along with the pensionary benefits, in my view, the petitioner would be entitled for pensionary benefits in terms of the aforesaid provisions of the pension scheme if he otherwise qualifies. The objection raised by the Bank regarding the delay and laches in filing the writ application would also not be acceptable inasmuch as the Bank itself vide letter dated 19.3.2015 (Annexure 11) has asked the petitioner to give the specific details about what terminal benefits he got and what he should have been paid though it was well known to the Bank authority that petitioner had already refused to accept the provident fund amount requesting it to be merged so that he could get pensionary benefit. Another objection made at the time of hearing that the petitioner has not filled up his form in detail, thus, he is not entitled under the pension scheme would also not be tenable

inasmuch as the petitioner had already expressed and opted for grant of benefit under the pension scheme. He has admittedly written a letter to the authority that he wants to opt for pension but the authorities itself were of the view that in view of discharge from the service, he would not be entitled for such benefit.

Thus, in my view, the letters of the petitioner as contained in Annexure 5 and Annexure 7 should be accepted as his option and necessary formality of filling up and submitting form in prescribed proforma should be completed by the Bank after granting the petitioner reasonable time for doing that and, thereafter, his claim for payment of pension and terminal benefit should be considered by the Bank authority.

Accordingly, this writ application is allowed. However, there would be no order as to costs.

(Dr. Ravi Ranjan, J)

Spd/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	15.6.2016
Transmission Date	NA