IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 15264 of 2015

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Kaushal Kishore Thakur, Son of Late Brij Kishore Thakur, resident of Flat No.302, Raj Kishori Apartment, Kavi Raman Path, P.S.- Budhha Colony, District- Patna.

.... Petitioner/s

Versus

1. The Indian Bank through CMD.
2. The Executive Director Cum Appellate Authority, Indian Bank, Corporate Office Vigilance, Department, Post Box- No. 5555, 254, 260, Avvai Shammugam Salai, Royapeeth, Chennai-600014.
3. The General Manager, Disciplinary Authority, Indian Bank, Corporate Office, Vigilance, Department, Post Box- No. 5555, 254, 260, Avvai Shammugam Salai, Royapeeth, Chennai-600014.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ashhar Mustafa, Advocate.
For the State	:	Mr. Dr. Binay Kumar Singh & Mr. Amit Singh, Advocates.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 22-02-2016

Heard learned counsel for the parties.

As of now the grievance of the petitioner remains with regard to non sanction of leave encashment and also forfeiture of 1/3rd of his pension by the Indian Bank (hereinafter referred to as the 'Bank').

The petitioner was suspended and a departmental proceeding was conducted against him which resulted in his compulsory retirement by order dated 31.10.2011. The same was challenged in C.W.J.C. No. 4148 of 2013, which was disposed off by order dated 20.01.2014 remanding the matter to the Competent Authority for fresh consideration. Thereafter, upon reconsideration, the Bank passed an order on 02.06.2014 by which the earlier punishment has been upheld and is the subject matter of challenge in the pending C.W.J.C. No. 12365 of 2014.

Learned counsel for the petitioner submits that without going into the merits of the compulsory retirement which is the subject matter of another writ petition, as per the relevant statutory provisions, the petitioner is entitled to the benefit of leave encashment and even the forfeiture of $1/3^{rd}$ of his pension is not in accordance with the requirement of law and even the provision of the relevant Regulations. It is submitted that the pension of the petitioner is governed by Rule 33 of the Indian Bank (Employees) Pension Regulations, 1995 (hereinafter referred to as the 'Pension Regulation') which is quoted hereinbelow:-

> "33. **Compulsory Retirement Pension**
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> 1. An employee compulsorily retired from service as a penalty on or after 1st day of November, 1993 in terms of Indian Bank Officer Employees' (Discipline and Appeal) Regulations, 1976 or awards/settlements may be granted by the authority higher than the authority competent to impose such Penalty, pension at a rate not less than two-thirds and not more than full pension admissible to him on the date of his compulsory retirement, if otherwise he was entitled to such pension on superannuation on that date.
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> 2. Whenever, in the case of a bank employee, the Competent Authority passes an order (whether original, appellate or in exercise of power of review) awarding a pension less than the full compensation pension admissible under these regulations, the Board of Directors shall be consulted before such order is passed.
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> 3. A person granted or awarded under sub-regulation (1) or, as the case may be under sub-regulation (2), shall not be less than the amount of rupees three hundred and seventy five per mensem."

Learned counsel submits that as far as leave encashment is concerned, the same is governed by Regulation-38 of the Indian Bank (Officers) Service Regulations, 1979 (hereinafter referred to the 'Service Regulation') which is also quoted hereinbelow for ready reference:-

> "Lapse of leave Save as provided below, all leave to the credit of an officer shall lapse on resignation, retirement, death, LPA693/2013 Page 5 discharge, dismissal or termination for any reason.
>
> 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.
>
> Provided also that where an officer resigns from service on or after 1st April 2001 after giving due notice as in sub-regulation (2) of Regulation 20, he may be paid a sum equivalent to the emoluments in respect of privilege leave to the extent of half of such leave to his credit on the date of cessation of service, subject to maximum of 120 days".

He submits that as per Pension Regulation 33 relating to compulsory retirement pension though the Competent Authority has the power to impose penalty but the pension cannot be less than $2/3^{rd}$ and not more than full pension admissible on the date of compulsory retirement. It is submitted that the Bank while passing the order of reduction by $1/3^{rd}$ of the pension of the petitioner has done so on the ground that the Bank has suffered quantified loss. Learned counsel submits that in the charge there was no quantification of any loss which the Bank had suffered and thus the petitioner had absolutely no opportunity to meet the allegation and relying upon the same an order for forfeiture of $1/3^{rd}$ of the pension cannot be sustained. It is submitted that neither was the amount mentioned in the memo of charges nor subsequently any details of the same were provided to the petitioner much less giving him an opportunity so as to satisfy the Bank that the charge may not be proper against him. Learned counsel submits that by various decisions it has now been settled that before taking recourse to power under Pension Regulation 33 aforesaid for forfeiture of any portion of the pension, it is incumbent upon the Bank to give details of as well as to quantify the loss which it has suffered and the same should be provided to the delinquent giving him an opportunity to meet the allegation. For such proposition learned counsel has relied upon a Full Bench decision of the Punjab and Haryana High Court in the case of **UCO Bank and Others vs. Anju Mathur** [**Letters Patent Appeal No. 566 of 2012 (O&M)**] decided on 7^{th} March, 2013, the relevant being at paragraphs 22 and 23, where guidelines have been given before pension or gratuity can be deducted or withheld of any person and further holding that the loss has to be clearly spelt in the memo of charges itself along with materials to justify such charge. Learned counsel has also relied for the same proposition on a decision of the Delhi High Court in the case of **A.N. Puniwala vs Bank of India and Ors.** dated 25.04.2007 reported in **(2007) 3 GLR 2143**, the relevant being at paragraphs 15, 16 and 17. Learned counsel submits that even with regard to leave encashment, the Courts have held that even in the case of compulsory retirement, the same is payable as per the existing Service Regulations and cannot be denied to a compulsory retiree. For such proposition learned counsel has also relied on the decision of **UCO Bank** (supra), the relevant being at paragraph 26 as well as in the case of **Deepak Sapra vs Punjab National Bank** decided on 18.09.2013 of the Delhi High Court (**L.P.A. No. 693 of 2013**), the relevant being at paragraphs 6 to 10.

Learned counsel for the Bank, in opposition to the writ petition, submits that the stand of the petitioner that in the Memo of charges, the loss has not been quantified is erroneous for the reason that it is a very initial stage in the proceeding and as and when the Bank is in a position to get details of the loss from various records, it is brought to the notice of the petitioner and in fact he has taken part in the departmental proceeding where he was made aware of the loss and not being able to satisfy the Bank with regard to the said loss, the decision cannot be faulted. He further submits that the exercise of power under Pension Regulation 33 of withholding $1/3^{rd}$ pension is in accordance with the statutory provision and sound in law. As far as leave encashment is concerned, he submits that the Indian Bank Association, (hereinafter referred to as 'I.B.A.') which is a body consisting of all Banks which takes major policy decisions which is followed by all the Banks has issued circular only in the year 2015 with regard to allowing leave encashment even to persons who have been compulsorily retired under Pension Regulation-33 read with Service Regulation-38. He submits that the decision and subsequent letter of I.B.A. cannot be given retrospective effect and has been made effective prospectively.

Learned counsel for the petitioner, by way of reply submits that the Courts have clearly held that the delinquent has to be given details of the quantified loss and the materials in support thereof so that the principle of natural justice is effectively satisfied and the person has an opportunity to meet the charges against him in a manner which is not a mere formality. It is further submitted that the objection of the Bank in allowing leave encashment prospectively is also unsustainable for the reason that the Courts have only explained the original Service Regulation-38 holding that it does not entail forfeiture of leave encashment for compulsory retired employees and thus any decision by any association cannot have the effect of changing the law which has only been clarified and neither a new law has been settled nor the said provision has been read down by the decisions relied upon by the petitioner.

Having considered the rival contentions and the facts and circumstances of the case, the Court is in agreement with the submissions of learned counsel for the petitioner. Though, as per the Pension Regulation the power of the Bank to withhold $1/3^{rd}$ pension of a delinquent cannot be doubted or curtailed, however, the mode and manner to be adopted by the authority before taking such drastic action which is penal in nature visiting the person with civil consequences, has to be in accordance with law either explicit or implied. In the present case in view of the decisions relied upon by learned counsel for the petitioner where the Courts have rightly held that the requirement of arriving at a conclusion that the conduct of the delinquent has resulted the Bank with loss, the natural corollary is that the loss has to be quantified and details/materials regarding the same have to be provided to the delinquent along with the Memo of charges so as to give him an effective and meaningful opportunity of hearing. The same not being done in the present case, the order to withhold 1/3rd pension cannot be sustained and is according struck down. As far as leave encashment is concerned, there being no controversy that the Courts have held that a compulsory retiree is also entitled to the same and even lateron the I.B.A. having fallen in line, the entitlement in law being an admitted position, just because the I.B.A. has taken a decision to allow the same from a prospective date will not change the position in law. The petitioner thus on this count also is held entitled to payment of leave encashment and the decision to deny him the same is also struck down.

Accordingly, in view of the discussions made hearinabove, the writ petition stands disposed off holding that the petitioner is entitled to full pension as well as payment of leave encashment which shall be computed in accordance with law within four weeks from the date of production of a copy of this order before respondents no. 2 and 3. The payment required to be made pursuant to such computation shall also be so done within the next four weeks.

The amount of G.P.F. which the Bank has admitted in the present proceeding shall also be paid to the petitioner within four weeks from the date of production of a copy of this order before the respondents no. 2 and 3. The Court would also like to observe that the amount of G.P.F. which has been admitted in the present proceeding by the respondent Bank shall also be paid to the petitioner and if any formalities are required to be done on the part of the petitioner, he shall comply with the same within two weeks and whatever formality is to be completed on behalf of the Bank, the same shall also be so done within the next two weeks and the amount payable shall be so done within four weeks thereafter.

It is further made clear that all payment under any head which carries statutory interest, the same shall be paid to the petitioner from the date of entitlement till the date of payment. Whatever dues the petitioner may be owing to the respondent Bank, if the same has not been paid, the same shall not carry interest after the date of compulsory retirement for the reason that the Bank also had a greater amount payable to the petitioner compared to what the petitioner owes to the Bank and the account was required to be settled forthwith pursuant to such order of punishment.

(Ahsanuddin Amanullah, J.)

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