IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CM-15936-CWP-2015 in/and
CWP No. 1629 of 2011 (O&M)
Date of Decision: 04.10.2016

R.C. SIDHU ***.. Petitioner***

VS.

CANARA BANK AND OTHERS ***..Respondents***

CORAM: ***HON'BLE MR. JUSTICE KULDIP SINGH.***

Present: Mr. R.S. Chauhan, Advocate,
for the petitioner.

Mr. D.S. Nalwa, Advcocate,
for the respondents.

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KULDIP SINGH, J (ORAL)

CM No. 15936 of 2015

Prayer in this application filed under Section 151 of the Civil Procedure Code for listing the main case which stands adjourned sine die, to some actual date of hearing.

Heard. Application is allowed and since the learned counsels are ready with arguments, the writ petition is taken on Board for hearing today.

CWP No. 1629 of 2011

On perusing the file of the present writ petition, it comes out that there is a Civil Miscellaneous application bearing *CM No. 5456 of 2011,* filed under Order 6 Rule 17 read with Section 151 of Civil Procedure Code, for amendment of the writ petition.

Learned counsel for the respondents has no objection to the amended writ petition. In view thereof, the application is allowed and the amended writ petition is taken on record.

By way of this writ petition filed under Article 226/227 of the Constitution of India the petitioner seeks issuance of writ of certiorari for setting aside the orders dated 17.02.2011 *(Annexure P-21)* vide which the gratuity payable to the petitioner has been forfeited. Prayer is also made for issuance of writ of mandamus directing the respondents to release the retiral benefits particularly for grant of gratuity, leave encashment and commuted pension with interest.

The facts of the case which are necessary for the disposal of the present case are that the petitioner was working as Divisional Manager in Canara Bank. He was served with a charge-sheet on 18.07.2008. An inquiry was conducted in which ultimately on 19.08.2009 the order of "removal from service, which shall not be a disqualification for future employment" was passed. The petitioner challenges the said order in appeal. The appellate authority vide order dated 28.09.2010 *(Annexure P-1)* converted the order of "removal from service" to the order of "compulsorily retirement" on 28.09.2010. The said order has now become final. Thereafter, it comes out that the petitioner was issued show cause notice dated 03.01.2011 *(Annexure P-19)* for forfeiture of the gratuity. After obtaining the reply, impugned order dated 17.02.2011 *(Annexure P-21)* was passed vide which the explanation was rejected and gratuity was forefeited.

In the reply, the respondent-Bank has justified the forfeiture of the gratuity and non-payment of leave encashment on the basis of the Canara Bank Officer Employees' (Discipline & Appeal) Regulations, 1976 (for short "Regulations, 1976") applicable to the petitioner.

I have heard learned counsel for both the parties.

Undoubtedly, the service of the petitioner was governed by the Regulations called the Canara Bank Officer Employees' (Discipline & Appeal) Regulations, 1976. In the said regulations, the compulsory retirement is one of the major penalties.

Regulation 46 of the said Regulations, 1976 is with regard to payment of gratuity which is reproduced as under:-

> ***"46. GRATUITY***
>
> *(1) Every Officer shall be eligible for gratuity on :*
>
> *(a) Retirement*
>
> *(b) Death*
>
> *(c) Disablement rendering him unfit for further service as certified by a medical Officer approved by the Bank.*
>
> *(d) Resignation after completing ten years of continuous service; or*
>
> *(e) Termination of service in any other way except by way of punishment after completion of 10 years of service.*
>
> *(2) The amount of Gratuity payable to an Officer shall be one month's pay for every completed year of service, subject to a maximum of 15 months pay.*
>
> *Provided that where an Officer has completed more than 30 years of service, he shall be eligible by way of Gratuity for an additional amount at the rate of one half of a month's pay for each completed year of service beyond 30 years.*
>
> *Provided further that pay for the purpose of Gratuity for an Officer who ceased to be in service during the period 01.07.1993 to 31.10.1994 shall be with regard to scale of pay as specified in Sub Regulation (1) of Regulation 4.*
>
> *Provided also that pay for the purpose of Gratuity of an Officer who ceased to be in service during the period 01.04.1998 to 31.10.1999*

shall be with regard to scale of pay as specified in Sub Regulation (2) of Regulation 4.

NOTE:

If the fraction of service beyond completed years of service is 6 months or more, Gratuity will be paid pro-rata for the period."

First of all I will deal with the payment of gratuity.

It also comes out that during the proceedings, the pension and commuted pension has been paid to the petitioner and the same is no more an issue. Now only the payment of gratuity and leave encashment are being pressed by the learned counsel for the petitioner.

Taking of the case regarding gratuity, learned counsel for the respondent-bank has relied upon clause (e) of the Regulation 46, vide which the gratuity can be withheld in case of termination of service in any other way except by way of punishment after completion of 10 years of service.

In this case, the compulsorily retirement was one of the punishment which was imposed upon the petitioner and which has now become final. The matter was examined by the full bench of this Court in *UCO Bank Vs. Anju Mathur; 2013(2) CLR 211*. In the said case, the full bench of this Court held that the gratuity benefit can be withheld provided the proper procedure is followed. In the said case, the liberty was given to the bank to issue proper show cause notice indicating the actual loss and pass the final order after giving due opportunity to the employee.

In the present case, the show cause notice was issued in which it was alleged that the petitioner has caused the loss to the tune of ₹244.05 lakhs to the Bank. He had given the explanation to the said show cause notice, the same was considered and impugned order was passed.

I am of the view that in this case, the Bank has followed the proper procedure. In the inquiry, the charges were proved against the petitioner. Even in the appeal, the appellate authority held that the charges are proved. However, keeping in view the previous service of the petitioner, order of "removal from service" was reduced to "compulsorily retirement" thereby saving the pension of the petitioner. In the circumstances it cannot be said that the order *(Annexure P-21)* is illegal or arbitrary, therefore, the same is upheld. Consequently it is held that the petitioner is not entitled to gratuity.

Now coming to the payment of leave encashment.

Learned counsel for the respondent-bank has relied upon regulation 38 which is reproduced as under:-

> ***"38. LAPSE OF LEAVE***
>
> *Save as provided below, all leave to the credit of an Officer shall lapse on resignation, retirement, death, discharge, dismissal or termination for any reason.*
>
> *Provided that where an Officer retires from the services of the Bank, 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 representative, 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 leaves or discontinues his services by resignation on or after the 1st April, 2001 after giving due notice under 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 a maximum of 120 days."*

The learned counsel for the respondent has argued that in case of compulsory retirement leave encashment can also be withheld.

In the full bench judgment of UCO Bank's case (supra), it was held that in the case of compulsory retirement the employee is entitled to leave encashment.

Learned counsel for the respondents relied upon the Single Bench Judgment of Delh high court passed in *W.P. (C) No. 5282 of 2012* titled as *R.K. Jain Vs. Punjab and National Bank* decided on 02.07.2013.

The perusal of the said judgment shows that it has been provided in the said regulation 38 of the Regulation, 1976 that the officer who retires from service of the bank shall be eligible for leave encashment but not exceeding to 240 days. The said regulation does not provide as in case of regulation of gratuity that in case of compulsory retirement/termination by way of punishment, the leave encashment can also be withheld. Therefore, even from the plain reading of regulation 38 (ibid) it is clear that even a person who is compulsorily retired is entitled to leave encashment. In the circumstances, the full bench authority of UCO Bank (Supra) is directly applicable to the facts of the present case. Accordingly, the petitioner is held entitled to leave encashment. Consequently his prayer to that extend has to be allowed.

Learned counsel for the petitioner, further prayed that the provident fund was released after a period of six months.

I am of the view that in view of the disciplinary proceedings against the petitioner, for the delay of short period, he is not entitled to interest.

In the circumstances, writ petition is partly allowed and partly dismissed. The prayer for quashing of order dated 17.02.2011 (*Annexure P-21)* for withholding the gratuity is upheld. However, writ of mandamus is issued directing the respondent-bank to release the leave encashment to the petitioner within two months from the receipt of the copy of the order alongwith interest @ 9 % per annum from the date of compulsory retirement till payment.

October 4, 2016 **(KULDIP SINGH)**
Suresh Kumar **JUDGE**

Whether speaking / reasoned	***Yes*** ✓ / ***No***
Whether Reportable	***Yes*** ✓ / ***No***