In the High Court of Punjab and Haryana at Chandigarh

Civil Writ Petition No. 2490 of 2014
Date of Decision: 14.3.2016.

Vijay Kumar Handa (V.K.Handa) ....Petitioner

Versus

UCO Bank and another ....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. S.D.Sharma, Senior Advocate with
Ms. Bindu Goel, Advocate
for the petitioner.

Mr. Aseem Rai, Advocate
for the respondents.

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SABINA, J.

Petitioner has filed this petition under Article 226 of the Constitution of India seeking a writ in the nature of mandamus directing the respondents to release his retiral benefits.

Case of the petitioner, in brief, is that he was working as a Clerk with the respondent bank and was removed from service. The allegation against the petitioner was that he along with his co-employee R.N.Chopra had assaulted J.B.Bansal, another bank employee. The disciplinary authority ordered that the petitioner be dismissed from service vide order dated 14.12.1999. In an appeal filed by the petitioner, the Appellate Authority vide order dated 16.2.2000 converted the punishment of dismissal into removal from service with terminal benefits for the period of service he had rendered and it was further ordered that the removal from service would not be a disqualification for his future employment. Petitioner raised an industrial dispute and the labour Court vide its award dated 13.2.2004 substituted the punishment with stoppage of four increments for one year. Petitioner was ordered to be reinstated in service with 75% back-wages. Writ petition filed by respondent No. 1 against the award passed by the Labour Court was allowed by this Court vide order dated 25.3.2009 and the said order was upheld by the LPA Bench vide order dated 21.4.2010. Thereafter, petitioner submitted his request for release of his retiral benefits. On 25.10.2012, contribution made by the petitioner towards provident fund was released to him. However, other pensionary benefits had not been released to the petitioner.

Learned senior counsel for the petitioner has submitted that in terms of the order passed by the Appellate Authority dated 16.2.2000 (Annexure P-1), petitioner was entitled to be released his pensionary benefits. In support of his arguments, learned senior counsel has placed reliance on the decision of the Apex Court in **Civil Appeal No. 10956 of 2013** titled ***Bank of Baroda versus S.K.Kool (D) through LRs and another,*** wherein it was held as under:-

> *"Having considered the rival submissions we do not have the slightest hesitation in accepting the broad submission of Mr. Gupta that the Regulation in question is statutory in nature and the court should accept an interpretation which would not make any other provision redundant. Bearing in mind the aforesaid principle, we proceed to consider the rival contentions. The terms and conditions of*

service of the employees are governed and modified by the Bipartite Settlement. Various punishments have been provided under the Bipartite Settlement which can be inflicted on the employee found guilty of gross misconduct. In 2002, a Bipartite Settlement was signed by the Indian Banks' Association and the Banks' workmen's Union with regard to disciplinary action procedure. It is common ground that in the light of the said Bipartite Settlement, clause 6(b) was inserted as one of the punishments which can be inflicted on an employee found guilty of gross misconduct and the same reads as follows:

> *"6. An employee found guilty of gross misconduct may;*
>
> *(a) …………*
>
> *(b) be removed 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*
>
> *xxx xxx xxx"*

The employee undisputedly has been visited with the aforesaid penalty in terms of the Bipartite Settlement.

Article 22 of the Regulation, which is relied on to deny the claim of the employee reads as follows:

> *"22. Forfeiture of service:*

> *(1) Resignation or dismissal or removal or termination of an employee from the service of the Bank shall entail forfeiture of his entire past service and consequently shall not qualify for pensionary benefits."*

From a plain reading of the aforesaid Regulation, it is evident that removal of an employee shall entail forfeiture of his entire past service and consequently such an employee shall not qualify for pensionary benefits. If we accept this submission, no employee removed from service in any event would be entitled for pensionary benefits. But the fact of the matter is that the Bipartite Settlement provides for removal from service with pensionary benefits "as would be due otherwise under the Rules or Regulations prevailing at the relevant time". The consequence of this construction would be that the words quoted above shall become a dead letter. Such a construction has to be avoided.

The Regulation does not entitle every employee to pensionary benefits. Its application and eligibility is provided under Chapter II of the Regulation whereas Chapter IV deals with qualifying service. An employee who has rendered a minimum of ten years of service and fulfils other conditions only can qualify for pension in terms of Article 14 of the Regulation. Therefore, the expression "as would be due otherwise" would mean only such employees who are eligible and have put in *minimum number of years of service to qualify for pension. However, such of the employees who are not eligible and have not put in required number of years of qualifying service shall not be entitled to the superannuation benefit though removed from service in terms of clause 6(b) of the Bipartite Settlement. Clause 6(b) came to be inserted as one of the punishments on account of the Bipartite Settlement. It provides for payment of superannuation benefits as would be due otherwise. The Bipartite Settlement tends to provide a punishment which gives superannuation benefits otherwise due. The construction canvassed by the employer shall give nothing to the employees in any event. Will it not be a fraud Bipartite Settlement? Obviously it would be. From the conspectus of what we have observed we have no doubt that such of the employees who are otherwise eligible for superannuation benefit are removed from service in terms of clause 6(b) of the Bipartite Settlement shall be entitled to superannuation benefits. This is the only construction which would harmonise the two provisions. It is well settled rule of construction that in case of apparent conflict between the two provisions, they should be so interpreted that the effect is given to both. Hence, we are of the opinion that such of the employees who are otherwise entitled to superannuation benefits under the Regulation if visited with the penalty of removal from* *service with superannuation benefits shall be entitled for those benefits and such of the employees though visited with the same penalty but are not eligible for superannuation benefits under the Regulation shall not be entitled to that.*"

Learned senior counsel has next placed reliance on the decision of this Court in ***CWP No. 7636 of 2011*** titled ***Hardial Singh versus Bank of Baroda***, wherein it was held as under:-

"*The issue of whether the petitioner's entitlement could be denied must be seen in the context of how when the labour Court was affirming the decision of removal of service of the petitioner by the order passed by the disciplinary authority on 16.08.2001, which had removed him from service with superannuation benefits. The learned counsel for respondents would contend that the superannuation benefit, which was approved at the time of removal of service was such benefit other than the pensionary benefits, namely, gratuity, provident fund etc. I would reject this contention and hold that removal of service effected with superannuation benefit must be understood as including the pensionary benefit by the only fact that pension is an important component of a superannuation benefit and unless excluded specifically by an order, it shall not be taken as unavailable to an employee. The writ petition is, therefore, allowed directing the respondents to calculate the pension payable and release the same with interest 7.5% per annum from the*

> *date of termination of service till the date of payment. The amount shall be calculated and released to the petitioner within a period of 12 weeks from the date of receipt of copy of the order."*

Learned counsel for the respondents, on the other hand, has submitted that petitioner was not entitled for release of pension as he had not opted for the said benefit. The petitioner had been released his contribution to the provident fund and gratuity. Petitioner has also been released the bank's contribution to the provident fund.

In the present case, vide order dated 14.12.1999, petitioner was ordered to be dismissed from service with immediate effect. The Appellate Authority vide order dated 16.2.2000 (Annexure P-1) altered the punishment and held as under:-

> *"Accordingly I being the Appellate Authority hereby modify the orders dated 14.12.1999 passed by DA and impose the following penalty upon Shri V.K.Handa (PFM no. 22488) as under for charge proved.*
>
> *"Shri V.K. Handa (PFM No. 22488) is hereby removed from the bank's services with immediate effect. However, he will be entitled to receive the terminal benefit for the period of service he has rendered. The removal from services will not be a disqualification for his future employment."*
>
> *The above penalty will effect from the date of orders of the DA and all the concerned may be advised accordingly."*

The question that requires consideration is as to whether petitioner is entitled to the relief of pension in pursuance to the order dated 16.2.2000.

Case of the respondents is that petitioner is not entitled for pension as he had not opted for the same. Annexure P-19 is the circular issued by the respondents whereby one more option for pension was given to the employees who were in service any time prior to 29.9.1995 and could not opt for pension earlier. The said circular is dated 20.8.2010. As per the said circular, following employees could opt for pension:-

1) *Employees who were in service any time before 29th September 1995 and were/are in service on or after the date of Settlement/Joint Note dated 27.4.2010 and did not opt for Pension in response to our earlier offer or revoked Pension Option earlier and*

2) *Employees who were in service any time before 29th September 1995 and did not opt for Pension in response to our earlier offer or revoked Pension Option and retired before the date of Settlement/Joint Note dated 27.4.2010 and*

3) *Employees who were in service any time before 29th September 1995 and did not opt for Pension in response to our earlier offer or revoked Pension Option and voluntarily retired by Special Scheme (VRS 2000), after putting a minimum period of 15 years of Service and*

4) *Eligible family members of the employees who were in service any time prior to 29th September 1995 and did*

not opt for Pension in response to our earlier offer or revoked Pension Option and retired and expired subsequently before the date of Settlement/Joint Note as mentioned above and

5) *Eligible family members of the employees who were in service any time prior to 29th September 1995 but did not opt for Pension in response to our earlier offer or revoked Pension Option and expired during the service period before the date of Settlement/Joint Note as mentioned above."*

As per the said scheme, the employees could opt for pension on or before 18.10.2010. Petitioner submitted his option vide Annexure P-18 on 5.10.2010. Thus, the petitioner had submitted his option for pension in pursuance to circular Annexure P-19. The argument raised by the learned counsel for the respondents that the petitioner was not covered under circular Annexure P-19 as he had not retired but had been removed, is without any basis as the Appellate Authority while disposing of the appeal filed by the petitioner had specifically held that the petitioner would be entitled to receive terminal benefits for the period of service he had rendered. Thus, the petitioner was entitled to receive pension in view of the order passed by the Appellate Authority. Since the petitioner had not earlier opted for pension, he was entitled to opt for pension in terms of circular Annexure P-19).

Accordingly, this petition is allowed. Respondents are directed to process the case of the petitioner for pension in pursuance to the option Annexure P-18 given by him and release the pensionary benefits to him, expeditiously.

(SABINA)
JUDGE

March 14, 2016
Gurpreet