IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 20.12.2017
CORAM
THE HONOURABLE MR. JUSTICE R. SURESH KUMAR
W.P.No.32775 of 2003

Mr.N.Viswanathan … Petitioner

Vs.

1. The Chairman & Managing Director,
Central Bank of India,
Central Office,
Chandermukhi, Nariman Point,
Mumbai - 400 021.

2. The Asst. Manager,
Central Bank,
Zonal Office,48/49, Montieth Road, P.B.No.503,
Central Bank Building,
Chennai - 600 008.

3. The Regional Manager,
Central Bank of India,
Regional Office, Reheja Complex,
3rd Floor, P.B.No.377,
Anna Salai, Chennai - 600 002. … Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus, to call for the records of the respondents culminating in second respondent's reply ZO:PRS:DAD:2000/01:1019 dated 21.3.2001 and to quash the same and to direct the respondent to pay the sum of Rs.1.04 lacs (Rupees one lac and four thousand only) to the petitioner with appropriate interest from August 2000 till date of payment.
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For Petitioner : Mr.V.Kalyana Raman
for M/s.Aiyar & Dolia

For Respondents : Mr.Anand Gopalan
for M/s.T.S.Gopalan & Co.+

ORDER

The prayer sought for in this Writ Petition is for a Writ of Certiorarified Mandamus, calling for the records of the respondents culminating in 2^{nd} respondent's reply ZO:PRS:DAD:2000/01:1019, dated 21.3.2001, quash the same and direct the respondent to pay a sum of Rs.1.04 lacs to the petitioner with appropriate interest from August 2000 till the date of payment.

The necessary facts which are required to be noticed for the disposal of this Writ Petition, are as follows:

2.The petitioner joined the service as Clerk in the respondent Bank in the year 1970. He was promoted as Junior Management Cadre Scale I Officer in the year 1979 and he was further promoted as Middle Management Cadre Scale II in the year 1989. Thereafter, due to some violation on the part of the petitioner, a charge memo seems to have been issued against the petitioner and based on which, ultimately, an order of compulsory retirement dated 13.04.1999 was inflicted against the petitioner, by thus, he retired from service from the respondent Bank. Since the petitioner had been compulsorily retired, he would be eligible to claim the retirement benefits and accordingly, all retiral benefits had been paid. However, in August 2000, the respondent bank recovered a sum of Rs.1.04 lakhs from the petitioner stating that since the said amount had been paid by the Bank to the petitioner towards the encashment of privilege leave, as the petitioner had been retired compulsorily from service, he would not be eligible to encashment of privilege leave and on that scope, the said recovery has been made by the respondent Bank.

3.Subsequently, the petitioner seems to have made so many representations to the respondent Bank stating that he would be eligible to encashment of privilege leave and therefore, the said amount of Rs.1.04 lakhs wrongly recovered by them, should be paid to him. The said representations of the petitioner have been considered by the respondent Bank and accordingly, they passed an order/reply dated 21.03.2001, wherein among other things the encashment of ordinary leave on the part of the petitioner had been dealt with.

4.In the said order dated 21.03.2001, the respondent Bank has stated that since the petitioner had been compulsorily retired by way of punishment inflicted against him, as per Regulation 38 of the Central Bank of India (Officers') Service Regulations, 1979, he would not be eligible or entitled to claim the encashment amount of ordinary or privilege leave and therefore, the said recovery on that account from the petitioner by the respondent Bank is justifiable and therefore, the petitioner request to that effect for repayment of the said money of Rs.1.04 lakhs to the petitioner towards encashment of leave, would not be permissible and the said request of the petitioner therefore was rejected.

5.Since the said request of the petitioner had been rejected by an order of the respondent Bank dated 21.03.2001 with regard to the payment of amount equivalent to the encashment of ordinary/privilege leave, aggrieved over the same, the petitioner has filed this Writ Petition, challenging the said portion of the order of the respondent Bank dated 21.03.2001, with the aforesaid prayer.

6.The respondent Bank has filed a counter affidavit stating that, insofar as the disbursement of money, especially, the encashment of leave is concerned, it has to be dealt with in accordance with the Regulations of the Bank and in this regard, the Central Bank of India (Officers') service Regulations, 1979, has been relied upon by the respondents in the counter affidavit. According to the respondent Bank, as per Regulation 38 of the said Regulations, 1979, persons who retired from the Bank in ordinary course alone would be eligible to claim encashment of leave. Those who had ceased from the service of the Bank other than the regular mode shall not be entitled to the benefit of encashment of leave. When there is a specific bar in the Regulation 38 of the said Regulations, 1979, the said request made by the petitioner cannot be accepted and accordingly, it was rightly rejected by the respondent through the impugned order. Therefore, the respondents in their counter tried to justify the action on the part of the respondent Bank.

7.I have heard Mr.V.Kalyana Raman, learned counsel appearing for the petitioner and Mr.Anand Gopalan, learned counsel appearing for the respondents/Bank.

8.Mr.V.Kalyana Raman, learned counsel appearing for the petitioner would submit that, though Regulation 38 of the respondent Bank says that all leave shall lapse on the death of the officer, or if he ceases to be in the service of the Bank, it does not mean that an employee, who had been compulsorily retired also to be treated as an Officer or employee ceased to be employee of the Bank. Therefore, based on the Regulation 38, the benefit of encashment of leave to the person, like the petitioner, who have been compulsorily retired from service, of course, on getting the punishment, shall not be taken away even if he has been compulsorily retired.

9.In this regard, the learned counsel appearing for the petitioner would rely upon the following Judgments:

(1).W.P.No.27311 of 2010 in the matter of D.Kalaichelvan v. Union Bank of India rep by its Executive Director, (Appellate Authority), Industrial Relations Division, Central Office, Union Bank Bhavan, 239, Vidhan Bhavan, Mumbai-400 02 and another dated 25.07.2012.

(2)The Judgment of the Delhi High Court dated 18.09.2013 made in LPA.693 of 2013 in the matter of Deepak Sapra v. Punjab National Bank.

10.By relying upon these Judgments, the learned counsel appearing for the petitioner would contend that, the relevant Regulations of the Union Bank of India and Punjab National Bank as that of Regulation 38 of the respondent Bank, had been considered by our High Court in the first Judgment i.e., D.Kalaichelvan cited supra, and also, the Judgment of the Delhi High Court i.e., Deepak Sapra, cited above.

11.The learned counsel appearing for the petitioner would also submit that, the said Judgment of the Delhi High Court in fact followed the decision on the similar issue made by the Full Bench of Punjab and Haryana High Court, in the matter of UCO Bank and others v. Anuj Mathur, made in L.P.A.No.566 of 2012 dated 07.03.2013.

12.The learned counsel appearing for the petitioner, by relying upon the above said Judgments, would submit that in all these cases, the Courts have dealt with similar provisions as of Regulation 38 of the respondent Bank and that the person, who had been compulsorily retired, can also claim the encashment of leave and therefore, the said interpretation sought to be given by the Law Courts in the said Judgments, squarely applicable to the facts of the present case, as the respondent Bank by only relying upon the Regulation 38, denying the benefit of the encashment of leave. Therefore, the learned counsel appearing for the petitioner would submit that the petitioner is entitled to succeed in this Writ Petition.

13.On the other hand, Mr.Anand Gopalan, the learned counsel appearing for the respondent Bank would submit that, admittedly, the petitioner was retired from service by way of punishment. The respondent Bank is governed by the Service Regulations, 1979, and Regulation 38 of the said Regulations, 1979, specifically states that if an employee or officer ceases to be in the service of the Bank, all leave accrued on his account shall lapse. Only on the basis of the said Regulation 38, the benefit of encashment of leave on the part of the petitioner had been denied to him and accordingly, the payment which has been made to him for encashment of the said leave on wrong notion was sought to be recovered.

14.The learned Standing Counsel appearing for the respondent Bank would also submit that, though subsequently the law has developed, as number of High Courts have taken a view on the provision, which are similar or pari materia provisions of the other Banks and also pursuant to such development, the Indian Banks Association has come forward to issue a Circular, in which, most of the Banks have accepted that the employees who had been compulsorily retired by way of punishment would get the benefit of the encashment of leave, the said subsequent development will not in any way affect the decision taken by the respondent/Bank with the impugned communication. Therefore, the learned Standing Counsel appearing for the respondent/Bank would try to justify the decision taken by the Bank through the impugned communication.

15.I have heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents and perused the materials placed before this Court.

16.The only issue that has to be decided in this Writ petition is, as to whether, the petitioner is eligible or entitled to claim the benefit of encashment of leave (ordinary or special leave) in the teeth of Regulation 38 of the respondent Bank Regulations called Central Bank of India (Officers') Service Regulations, 1979.

17.For the sake of convenience, Regulation 38 of the Central Bank of India (Officers') Service Regulations, 1979, is extracted hereunder:

> "Regulation 38: Lapse of leave:
>
> All leave shall lapse on the death of the officer or if he cases to be in the service of the Bank, provided that where an officer dies in service, there shall be payable to his legal representative sums which would have been payable to the officer if he had availed of the privilege leave, that he had accumulated at the time of his death:
>
> Provided further 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 of privilege leave that he had accumulated."

18.Only based on such Regulation 38 as extracted above, the said benefit of encashment of leave was denied to the petitioner through the impugned communication.

19.Among the Judgments cited by the learned counsel appearing for the petitioner, the earliest is the decision of our High Court made in D.Kalaichelvan's case by order dated 25.07.2012. In the said Judgment, after having considered the said Regulation 38, the learned Judge has given the following interpretation and finding, which can be usefully referred to herein:

> "21.The learned counsel for the respondent vehemently contends, that the interpretation sought to be given by the learned counsel for the petitioner cannot be accepted, as reading of the regulation shows that leave to the credit of the officer lapses on resignation, retirement, death, discharge, dismissal or termination from service. The word 'termination' would include compulsory retirement, and therefore, petitioner is not entitled to encashment of accumulated privilege leave.
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> 22.This contention of the learned counsel for the respondent cannot be accepted. The

termination can be by two modes, i.e. simple termination in terms of contract and service without attaching any stigma, the employee can also be terminated for misconduct with stigma, but by no stretch of imagination termination can cover compulsory retirement.

23.The very object of imposing punishment of compulsory retirement for misconduct, is that an employee should not lose benefit which accrued to him for the service rendered till the date of compulsory retirement. The Regulation 38 being beneficial piece of legislation has to be interpreted to advance the object and not to defeat it and in case two views are possible one favouring the employee is to be accepted. In this case, no other view than the one that employee imposed with punishment of compulsory retirement is entitled to encashment of privilege leave can be formed."

20.Subsequently, a similar issue came up for consideration before the Punjab and Haryana High Court, in the matter of UCO Bank cited supra, where a decision was made on 07.03.2013 by the Full Bench of the Punjab and Haryana High Court. The said Court have also given the interpretation that, the Regulation denying the benefit of encashment of leave to the employee, who had been compulsorily retired, has to be interpreted in favour of the employee and such exclusion for the compulsorily retired employee is not permissible.

21.Following the said Full Bench of the Punjab and Haryana High Court, when a similar issue came up for consideration before the Delhi High Court, in the matter of Deepak Sapra cited supra, by order dated 18.09.2013, the Delhi High Court has considered the similar issue and has given the following findings:

"8. Thus, in respect of all categories of retirees, the first proviso states that such employees would be eligible to payment of leave encashment benefits. Advisedly, the regulation which was framed after prior consultation with and approval of the Central Government made no distinction between one class of retirees and another. Indeed there is no dispute about the fact that the cessation of service as a result of retirement can be on the occurrence of three contingencies - attainment of superannuation; option by the employee to voluntarily retire from the service, and the third, retirement of an employee upon imposition of a penalty or exercise by the employer upon imposition of a penalty or exercise by the employer of an option to compulsorily retire the employee on this attaining a certain age or having served for a certain number of years, in public interest. The first proviso makes no distinction between one class of retirees and another. In other words, each one of them, in terms of Regulation 38 of the 1979 Regulations is entitled to leave encashment benefit. In the case of those imposed with penalty of compulsory retirement, there is no dispute that pension - as applicable and other terminal benefits are given. In these circumstances, to single-out one class of retirees, i.e. those imposed with compulsory retirement and deny them the benefit of leave encashment would be contrary to plain intent of Regulation. This Court is clear that the first part of the learned Single Judge's reasoning that he preferred and relied upon the bank's circular of 18.01.2001 is clearly erroneous. That circular flies in the face of the first proviso to Regulation 38 of 1979 Regulations and could not have added words as it sought to, in the present instance. Another reason which persuades us to hold as we do, i.e. to say that compulsory retirees would be entitled to leave encashment benefits is that singling-out such class of employees for denial for one specific type of retirement benefit is also arbitrary and furthers no rationale, having regard to the express terms of Regulation 38 of the 1979 Regulations.

9.This Court is, therefore, of the opinion that the reasoning embodied in the Full Bench judgment of the Punjab and Haryana High Court in UCO Bank and Ors. v. Anju Mathur [LPA 566/2012, decided on 07.03.2013], which specifically dealt with Regulation 38, is the correct one. The effect and purport of the decision in Jitendra Kumar Srivastava (supra) is the same with one superadded reason that leave encashment benefits are property, being vested rights, which cannot be deprived of without authority of law. The conclusion that this Court is reaching is identical to that reached by the Supreme Court, i.e. that in the absence of specific regulation, depriving one class of retirees (such as those imposed with penalty of compulsory retirement) leave encashment benefits is unwarranted and unsupported in law.”

22.Subsequently, by a latest decision of the Madhya Pradesh High Court, Jabalpur, the very same respondent Bank's Regulation came up for consideration, where also a similar view had been taken by the Madhya Pradesh High Court interpreting the Regulation 38. The relevant portion of the said order are extracted hereunder:

"22. In the final result, on the aforementioned discussion of the relevant provisions of Regulations governing the petitioner and the facts of the case, this court is of the considered opinion that so far as the relief of Leave Encashment is concerned, the same is hereby rejected, but, the reduction of 1/3rd pension of the petitioner from his pension is held to be totally illegal, arbitrary and in violation of the provisions of the Pension Regulations of 1995 as also the Discipline and Appeal Regulations of 1976. Hence as such the impugned order dated 31.12.2004 is hereby quashed which relates to the reduction of pension and the respondents are directed to award the full pension from now on and they are further directed to clear the entire amount of 1/3rd pension which has been withheld since 08.03.2004 with interest @ 8% per annum. The aforesaid exercise be completed by the respondents within a period of 3 months from the date of receipt of certified copy of this order."

23.It has also been brought to the notice of this Court by the learned counsel appearing for the petitioner that, the Indian Bank's Association, after having considered the decision of the various High Court on the issue raised in this Writ Petition, which were in favour of the employees, had issued a circular directing the Banks, who are the members of the Association, to give a liberal interpretation, as has been given by the Law Courts in respect of Regulation 38 and by thus, even the employees, who had been compulsorily retired, shall be made eligible to claim the benefits of encashment of leave. This development in fact has been recorded by the Andhra Pradesh High Court in W.A.No.502 of 2016 in the matter of Andhra Bank represented by its Chairman & Managing Director, Saifabad, Hyderabad and others v. Y.Shivaji dated 12.08.2016. The relevant portion of the said order of the Andhra Pradesh High Court is extracted hereunder:

"18. Before concluding, here is an icing on the cake! Almost at the fag end of the hearing, learned counsel for the respondent placed before us letter dt.11.5.2015 of the Deputy Chief Executive of the Indian Banks Association wherein it was stated that based on various representations received from the banks, the decisions of the Courts, that of the Government of India, and the HR Committee, the Managing Committee at its meeting held on 30.4.2015 accepted the recommendations of the HR Committee and decided to permit encashment of Privilege Leave by the compulsorily retired employees/officers. This decision of the Indian Banks Association was approved by the Board of appellant No.1 bank in its Fourth Meeting held

> on 8.7.2015 at Hyderabad. When this material was placed before us, we have called upon appellant No.2 to explain their conduct in contesting the appeal, and he has sought to justify the same based on an earlier Circular dt.27.11.2000 as per which the compulsorily retired employees were held not entitled for leave encashment and that when the punishment of compulsory retirement was imposed on the respondent the said Circular was in force. Though in stricto sensu the benefit of the Boards Resolution dt.8.7.2015 cannot be made applicable to the respondent, what is pertinent is that Indian Banks Association has yielded to the preponderance of the judicial opinion on the interpretation of Regulation 38 of the Service Regulations and veered round to the reality that the Regulations do not deny a compulsorily retired employee of his right to encash the Privilege Leave. Thus, our view derives strength from the aforementioned decision of the Indian Banks Association and also the Resolution of the Board of Directors of appellant No.1."

24.By scanning all these Judgments referred to above, it reveals that the very same Regulation 38 of the respondent Bank or regulations in pari materia of the respective Banks have been considered widely and ultimately, concluded by the respective High Courts in each of the Judgments, that, Regulation 38 cannot be interpreted to deny the encashment of leave to the compulsorily retired employees. When such interpretation has been given by the Law Courts as referred to above and such legal position was accepted by the Indian Banks Association where all the Banks including the respondent Bank are members, the denial of such benefits, as has been reflected in the impugned communication, cannot be justified. Though such a decision had been taken some time in the year 2003, and subsequently only the relevant regulation had been interpreted in such a way in the above referred Judgments, since it is a beneficial legislation as has been rightly laid by the Law Courts, such benefit cannot be denied at any point of time and such denial through the impugned communication of the respondent Bank is liable to be interfered with.

25.In the result, the following orders are passed in this Writ Petition.

(1)The impugned communication denying the benefit of leave encashment of the petitioner and consequential denial of pay back a sum of Rs.1.04 lakhs to the petitioner is hereby quashed.

(2)The respondent Bank is directed to pay the said amount of Rs.1.04 lakhs to the petitioner with interest from August 2000 at the rate of Rs.6% per annum till the date of payment.

With these directions, this Writ Petition is allowed. No costs. The needful shall be done by the respondent Bank within a period of four weeks from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar(Cs III)

//True Copy//

Sub Assistant Registrar

mps

To

1. The Chairman & Managing Director,
Central Bank of India,
Central Office,
Chandermukhi, Nariman Point,
Mumbai - 400 021.

2. The Asst. Manager,
Central Bank,
Zonal Office,48/49, Montieth Road, P.B.No.503,
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3. The Regional Manager,
Central Bank of India,
Regional Office, Reheja Complex,
3rd Floor, P.B.No.377,
Anna Salai, Chennai - 600 002.

+1cc to Mr.T.S.Gopalan & Co. Advocate Sr.No.90943
+1cc to M/s.Aiyar & Dolia, Advocate Sr.No.90925

sm:20.02.2018