

THE HON'BLE SRI JUSTICE S. V. BHATT

WRIT PETITION No.2627 of 2003

ORDER:

Heard Sri Shiva for petitioner and Sri Ramana for respondent.

The petitioner prays for Mandamus declaring the action of respondents in not releasing terminal benefits and not regularizing the period of suspension from 23-02-1998 to 12-06-2000 as illegal, arbitrary and unconstitutional. The petitioner prays for a direction to pay terminal benefits to which the petitioner is entitled to, and also salary and allowances for the suspension period from 23-02-1998 to 12-06-2000 with interest @ 18% per annum.

The circumstances relevant for disposal are stated thus:-

The petitioner joined the Co-operative Central Bank (for short 'the Bank') as Typist. He was promoted as Supervisor and Manager. On 23-02-1998, the petitioner was placed under suspension by the Bank. On 27-09-1999, the Anti-Corruption Bureau issued sanction letter for prosecuting petitioner. The complaint filed against petitioner has been numbered as C.C.No.6 of 2000 on the file of the Additional Special Judge for SPE and ACB Cases-cum-V Additional Chief Judge, City Civil Court, Hyderabad. On the application filed by petitioner, the Special Court discharged him vide order dated 07-06-2002. The petitioner was reinstated into service. While so, Lr.Pc.No.164/ 2001-2002 dated 15-03-2002 advance notice of retirement was issued retiring petitioner by 01-07-2002 for petitioner attained the superannuation age of 58 years. The case of petitioner is that he was retired from service in terms of advance notice dated 15-03-2002.

Now the complaint of petitioner is that the Bank in spite of retiring petitioner from service with effect from 01-07-2002 did not settle the terminal benefits.

The petitioner filed Memo dated 01-03-2017 setting out the amounts payable by the respondents upon retirement to petitioner and which reads thus :-

S No.	Description	Remarks
a.	Difference of Salary and Allowances and the Subsistence allowance for 6 months from the date of suspension i.e. 26.2.1998	2/3 rd of Salary and Allowance as he was paid only 1/3 rd as Subsistence Allowance.
b.	Difference of Salary and Allowances and the subsistence allowance from the expiry of 6 months of suspension till 10.6.2000 (Date of reinstatement)	1/4 th of Salary and Allowances as the Subsistence Allowance was enhanced from 1/3 rd to 3/4 th of Salary and Allowances due to the petitioner.
c.	Leave Encashment of 2 months as petitioner.	As the period of suspension is liable to be treated as on duty, he would be entitled to Earned Leave at the rate of 30 days per year and the same could be encashed at the time of his retirement
d.	Interest on amounts towards gratuity, leave encashment and provident fund contributions released after 2 years of retirement pursuant to the order of this Hon'ble Court in Writ Petition Miscellaneous Petition No.6907 of 2004.	At the rate of 6%per annum with quarterly rests from the date on which the same became due and payable till the date of actual payment.
e.	Interest on amounts due as shown as items a to c supra.	At the rate of 6%per annum with quarterly rests from the date on which the same became due and payable till the date of actual payment.

The petitioner contends that non-payment of amounts, referred to above, is illegal, arbitrary and unconstitutional.

The petitioner alleges that he has been retired from service with effect from 01-07-2002 and there is no rule or regulation authorizing continuation of any departmental or disciplinary action against him. Therefore, the respondent is under legal obligation to pay the sums referred to above and non-payment is illegal and unconstitutional. The petitioner, as a matter of fact, submits that the petitioner is acquitted by ACB Court and in view of acquittal on merits, non-payment of terminal benefits is illegal, arbitrary and unconstitutional.

The petitioner places reliance upon *GENERAL MANAGER, ADILABAD DISTRICT CO-OPERATIVE CENTRAL BANK LIMITED Vs. K.RANGA RAO AND ANOTHER*¹ and *U.P. STATE CO-OPERATIVE LAND DEVELOPMENT BANK LIMITED Vs. CHANDRA BHAN DUBEY AND OTHERS*² to contend that firstly continuation of disciplinary proceeding after retirement is impermissible and secondly denial of terminal benefits without punishment or conviction by criminal court is unconstitutional.

The respondent filed counter affidavit by taking preliminary objection on the maintainability of writ petition against the Co-operative Bank and a few objections in fact on the entitlement of petitioner to the sums referred to above. As regards the first objection, having regard to the ratio of the Hon'ble Supreme Court in *CHANDRA BHAN DUBEY's* case (2 supra), firstly the objection is merely noted to be rejected.

Admittedly, the respondent during pendency of writ petition, on 08-06-2004 paid a sum of Rs.2,75,000/- and on 13-07-2004 paid a sum of Rs.1,11,725/-. In all, the respondent paid a sum of Rs.3,86,925/- to

¹ 2002-II-LLJ-983

² AIR 1999 SC 753

petitioner under various heads. In *RANGA RAO's* case (1 supra), this Court, after considering the service conditions of employees in a Co-operative Bank held and further directed the respondent therein as follows :-

“Having regard to the authoritative pronouncements of the Apex Court, there cannot be any doubt whatsoever that despite the fact that the petitioner had been allowed to retire without prejudice to the right of the employer to continue the disciplinary proceedings, the same was not permissible in law. The only course open to the authorities is not to allow the petitioner to retire on superannuation. Proceedings can be initiated against a retired employee only for the purpose of withholding the whole or part of pension provided there exists any provision therefor.

Yet another aspect of the matter is whether appellant-Bank is entitled to take action under Sections 51 and 61 of the Act (surcharge proceedings) against the first respondent. If a case could be made out, it is always permissible for the appellant to initiate surcharge proceedings against the first respondent. That cannot by itself be a reason for the Adilabad District Co-operative Central Bank to withhold provident fund, leave salary and group insurance amounts payable to the first respondent in accordance with law. (emphasis added).

Accordingly, we direct the Adilabad District Co-operative Central Bank Limited, the appellant herein, to pay retiral benefits i.e. provident fund, leave salary and group insurance amounts to the first respondent immediately, preferably within a period of eight weeks from the date of receipt of a copy of this order. Insofar as the gratuity amount is concerned, it is well settled that in proper cases, in the discretion of the employer, gratuity amount can be denied.”

Having regard to the binding precedent in *RANGA RAO's* case (1 supra), this Court is of the view that denial of terminal benefits is illegal and unconstitutional, the petitioner is entitled to the sums, referred to above and no other objection is raised by the respondent against these amounts.

The petitioner since retired from service on 01-07-2002, the Court considers it appropriate to order the writ petition by directing the respondent to pay the amounts covered by clauses 'a to c' within three months from the date of receipt of a copy of this order. The amount, as directed by this Court, if not paid within three months, it is made clear that the respondent

comes under obligation to pay interest from the respective dates on which the amounts have become payable. It is made clear that the amounts already paid are given credit while determining the balance amount payable to petitioner.

The writ petition is ordered as indicated above. No order as to costs.

Miscellaneous petitions, if any, pending, shall stand closed.

Dt: 01-03-2017
Prv

S. V. BHATT, J



THE HON'BLE SRI JUSTICE S. V. BHATT



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01-03-2017

Prv