IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 1327 of 2015 (O/M)
Date of decision : 24.5.2017

Satish Babu Gupta ....... Petitioner (s)

Versus

Union Bank of India and others ....... Respondent (s)

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Durgesh Aggarwal, Advocate, for the petitioner.

Mr. Saurabh Bhardwaj, Advocate, for respondents.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

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KULDIP SINGH J. (ORAL)

The petitioner, who was working as a Senior Manager in MMGS Scale-II with respondent-bank, was subjected to departmental inquiry and vide order dated 12.3.2010 (Annexure-P-4), he was awarded the major penalty of compulsory retirement from service of respondent-bank with immediate effect. Thereafter, respondent-bank passed the order dated 13.2.2012 and 17.2.2012 (Annexures-P-6 and P-7 respectively), whereby the gratuity of the petitioner, amounting to Rs. 5,14,950/-, was forfeited under Section 4, Sub-section 6(b)(ii) of the Payment of Gratuity Act, 1972 and Clause 3 to Schedule-'A' of the Bank's Gratuity Rules. Further, on the representation of the petitioner dated 12.2.2013, he was informed, vide letter dated 15.2.2013 (Annexure-P-11), that his gratuity has been forfeited, vide order dated 14.2.2012. He was further informed that he is not entitled to pension as he did not opt for the same in response to Staff Circular No. 4229, dated 26.10.1995 and that the second option offered on 27.4.2010 is not available to him since he was compulsorily retired from service. Regarding leave encashment, it is stated that as per the Union Bank of India (Officers) Service Regulations, 1979 (in short 'Regulations of 1979'), on account of termination, the leave encashment is not to be paid to the petitioner. Regarding Death Relief Fund (in short 'DRF'), it was stated that since the petitioner was compulsorily retired from service, he is not entitled to the DRF. Another order dated 16.12.2013 (Annexure-P-12) to the same effect was also passed in response to e-mail of the petitioner. In the present case, the petitioner has challenged the said orders dated 13.2.2012, 17.2.2012, 15.2.2013 and 16.12.2013 (Annexures-P-6, P-7, P-11 and P-12 respectively). The petitioner ultimately prayed that after quashing these orders/letters, he should be allowed gratuity, leave encashment, pension and DRF. The petitioner also claims interest on the said payments.

In the written statement, respondents have taken the stand that the petitioner was compulsorily retired from service. The petitioner had not opted for the pension scheme. He had opted for provident fund scheme, in which the bank also contributed. Accordingly, the contribution of the petitioner as well as the contribution of the bank, total amounting to Rs. 16,21,159.83, was paid to him on 12.3.2010. He was not entitled to second option as he was not eligible for the same having been compulsorily retired from service. It was further stated that on account of proved mis-conduct and act involving moral turpitude, the gratuity of the petitioner was forfeited correctly. It was further stated that the leave encashment is a part of retirement benefits and under Regulation 38 of Regulations of 1979, as applicable to the Union Bank of India, the termination of services for any reason whatsoever would dis-entitle the officer to the benefits of privileged leave not exceeding 240 days. It was further stated that the petitioner is not entitled to DRF, as per Clause 4 (e) of the Death Relief Fund Scheme.

I have heard the learned counsels for both the parties and have also carefully gone through the file.

In the present writ petition, the petitioner claims (i) gratuity; (ii) pension; (iii) leave encashment; and (iv) DRF.

First of all, I will take the case of DRF. Clause 4 (e) of the DRF Scheme lays down as under :-

> "4 (e) In the event of a member ceasing to be in the service of the Bank on account of retirement on superannuation, amount of Rs. 25,000/- only will be paid out out of the fund to such member. Even staff members who may retire voluntarily from the services of the Bank will be eligible for this ex-gratia. Staff members who resign/compulsorily retired/dismissed/ terminated from the service of the Bank by way of disciplinary action will not be entitled to ex-gratia and the contribution made by them towards the Fund will not be refunded (Annexure-IV)."

The said clause makes it clear that in case of compulsory retirement, the benefit of DRF is not granted. Therefore, the petitioner is not entitled to DRF.

Now coming to the case of the petitioner for pension, the petitioner was admittedly member of the provident fund scheme. The learned counsel for the petitioner claims that after compulsory retirement of the petitioner on 31.3.2010, fresh options were invited to opt for the pension scheme, vide letter dated 27.8.2010 (Annexure-P-16). The said option was to be exercised within 60 days. The learned counsel for the petitioner states that the petitioner had exercised the said option and that the same was improperly not acceded to.

I am of the view that the petitioner has not placed on file the copy of the option showing the date on which he exercised the same, nor he has challenged the act of respondent in declining the said option and the grounds on which it was declined. No relief is sought to set aside the action of respondent in declining the said option. Unless the petitioner is allowed to exercise said option, he cannot become entitle to claim pension. However, the pension scheme (Annexure-P-16) shows as to which of the retirees, on or after 27.4.2010 can exercise the option. Clause 7 of the said Pension Scheme lays down as under :-

> "7. Not eligible for pension option :
> Indian Banks' Association has clarified that Officers who retired voluntarily in terms of Regulation 19 of Officers' Service Regulations and Employees / Officers who resigned, dismissed, terminated and compulsorily retired, are not eligible for pension option."

The clause itself makes it clear that the employee, who has resigned, dismissed, terminated and compulsorily retired, is not eligible for the said pension scheme. Neither the said clause of the pension scheme has been challenged before this Court, nor the action of respondent in refusing to accept the option has been challenged. Therefore, the petitioner is not entitled to relief of pension in this case.

Now, coming to the gratuity, the gratuity of the petitioner has been forfeited on the ground that it is proved that the petitioner had sanctioned UGC loans without adhering to the scale of finance and NPA borrowers were accommodated and higher credit limits were sanctioned to them/their family members in order to adjust the previous irregular loans. Further, it was stated that there was a difference of Rs. 15,000/- regarding various transactions. The punishment order dated 12.3.2010 (Annexure-P-4) shows that the allegations proved were that had the borrower not brought irregularities to the branch, the petitioner would have embezzled Rs. 15,000/-. It goes to show that the petitioner had not actually embezzled the amount and that there was possibility that the would have embezzled the amount. The grounds, on which the gratuity can be forfeited, are laid down under Section 4(6) of the Payment of Gratuity Act, 1972, and further under Regulation 46 of the Regulations of 1979.

Section 4(6) of the Payment of Gratuity Act, 1972, is reproduced as under :-

> "Section 4(6)
> Notwithstanding anything contained in sub-section (i) -
> (a) the gratuity of an employee, whose services have been terminated for any act, willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so cause.
> (b) the gratuity payable to an employee (may be wholly or partially forfeited)
> (i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part; or
> (ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude provided that such offence is committed by him in the course of his employment."

The perusal of the said section shows that the gratuity can be forfeited, in case the services were terminated for willful omission or negligence causing any damage or loss. In such case, the forfeiture of gratuity is to the extent of damage or loss. The second ground is when the services are terminated for an offence involving moral turpitude committed during the course of employment.

I am of the view that in the present case, no financial loss was caused by the petitioner to the bank due to his alleged negligence. Therefore, his case is not covered under Section 4(6)(a) of the Payment of Gratuity Act, 1972. As far as Section 4(6)(b)(ii) of the Payment of Gratuity Act, 1972, is concerned, the negligence of not showing transaction or granting loan against the norms or violating the norms is not an act of moral turpitude. Even as per the punishment order dated 12.3.2010 (Annexure-P-4), it was an act of negligence. Therefore, the requirement of Section 4(6)(b)(ii) of the Payment of Gratuity Act, 1972, is also not satisfied.

Now, coming to Regulation 46 of the Regulations of 1979, the same is reproduced as under:-

"Regulation 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."

It also goes to show that the gratuity could be declined in case of termination of services. There is a marked difference in the termination and compulsory retirement. The word 'termination' cannot deem to include the compulsory retirement or any other punishment. Therefore, the requirements of Regulation 46 of Regulations of 1979 are also not satisfied. As such, the impugned order dated 13.2.2012 (Annexure-P-6), forfeiting the gratuity is hereby quashed.

Now, coming to the leave encashment, the same has been declined on account of Regulation 38 of Regulations of 1979. The same 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 :

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 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 death.

Provided also that where an officer leaves or discontinues his services by resignation on or after 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 the 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."

The perusal of the said regulation also shows that the leave encashment shall lapse on resignation, retirement, death, discharge, dismissal or termination. However, the proviso lays down that in case of retirement of the officer, he shall be liable to be paid a sum equivalent to the emoluments of the period not exceeding 240 days of the privilege leave he had accumulated.

Regulation 38 of Regulations of 1979 does not lay down that in case of compulsory retirement of an officer, the leave encashment shall not be paid to him. Therefore, the impugned order dated 16.12.2013 (Annexure-P-12), declining the leave encashment and gratuity, is also illegal and the same is hereby quashed.

As a result of the foregoing findings, the present writ petition is partly allowed and partly dismissed. The claim of the petitioner for pension and DRF is dismissed. Respondent-bank is directed to release the gratuity and leave encashment to the petitioner alongwith interest at the rate of 9% per annum, starting three months from the date of his compulsory retirement till the date of payment.

(KULDIP SINGH)
JUDGE

24.5.2017
sjks

Whether speaking / reasoned : Yes

Whether Reportable : No