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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **LPA 292/2017**

P K SHANGLOO ..... Appellant

versus

UNION OF INDIA & ORS ..... Respondents

\+ **LPA 293/2017**

ASHOK KUMAR LOOMBA ..... Appellant

versus

UNION OF INDIA & ORS ..... Respondents

\+ **LPA 337/2017**

N K MEHTA ..... Appellant

versus

UNION OF INDIA & ORS ..... Respondents

Through : Sh. Rajesh Kumar Gautam, Advocate, for Respondent No.2, in Item Nos.12 to 14.

Sh. Rajat Arora, Advocate, for Respondent No.3 in Item Nos. 12 to 14.

Sh. Brajesh Kumar, Advocate, for UOI, in Item Nos. 12 and 13.

Sh. Rajesh Kumar and Sh. Gaurav Kumar Singh, Advocates, for Respondent No. 2 in Item Nos. 12 to 14.

Sh. Rajat Arora, Advocate, for Respondent No.3 in Item Nos. 12 to 14.

Sh. Dev. P. Bhardwaj, CGSC with Sh. Satya Prakash Singh, Advocate, for UOI, in Item No.14.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE SUNIL GAUR

O R D E R

% 24.08.2017

1. The appellants' grievance in these appeals is that the learned Single Judge fell into error in holding that interest was not payable for the period that the appellants were placed under suspension pending completion of enquiry after the dates of their originally scheduled superannuation.

2. The facts are that the appellants were the employees of the Punjab National Bank (PNB). In all their cases, upon their respective dates of

attaining superannuation, the bank intimated that disciplinary proceedings were pending against them under the regulations. Consequently, the appellants were not paid any terminal or pensionary dues. In all the cases, the enquiries cumulatively resulted in imposition of major penalty - by and large, reduction by 3-4 stages in pay scales. After the passing of the disciplinary orders, the terminal dues (the payments due, i.e. gratuity and leave encashment) were paid.

3. All the petitioners were aggrieved by the late payment of leave encashment amounts and approached this Court under several writ petitions. It is contended on their behalf that leave encashment is not a terminal benefit and that it ought to have been released upon their attainment of the age of superannuation which in their case was the date of retirement. Learned Single Judge, after considering the submissions, declined the contentions and dismissed the petitions.

4. Learned counsel for the appellants has relied upon Rule 20 of the *Punjab National Bank Officer Employees' Service Regulations, 1979* [hereafter "the 1979 Regulations"], to say that the said provision does not bar payment of leave encashment dues and that it was, therefore, withheld without authority of law; the subsidiary consideration was that terminal benefits and pensions are not bounties. Learned counsel relied upon the Supreme Court ruling in *Shri Anant. R. Kulkarni v. Y.P. Education Society and Ors*. [Civil Appeal No.3935/2013, decided on 26.04.2013] AIR 2013 SC 2096, to say that the dues ought to have been paid on the date of their superannuation and not postponed till the completion of enquiry.

5. Learned counsel for the Bank, on the other hand, relies upon the

ruling in *Canara Bank v. D.R.P. Sundharam* 2016 (12) SCC 724. It is contended that a plain reading of Regulation 20 of the 1979 Regulations which was similar to the one in issue in that case too [i.e. *Canara Bank (Officers') Service Regulations,* 1979] would show that the concerned employee against whom enquiry is ordered at the point of time when he is about to attain superannuation is deemed to be in service till termination of enquiry itself. Till such time, payment of dues would not arise. Learned counsel also relied upon Regulation 38 of the 1979 Regulations. The judgment in *Sundharam (supra)* pertinently holds as follows:

> *"3. The relevant regulations which would govern the controversy that has arisen in the present case are Regulations 20(3)(i), 20(3)(ii) and 20(3)(iii) of the Canara Bank (Officers') Service Regulations, 1979, which may be extracted hereinbelow:*
>
> *"20 Termination of service-*
> *(1)XXXXXXXXXXXXXXXXXXXX*
>
> *(3)(i) An officer against whom disciplinary proceedings are pending shall not leave/discontinue or resign from his service in the bank without the prior approval in writing of competent authority and any notice or resignation given by such an officer before or during the disciplinary proceedings shall not take effect unless it is accepted by the competent authority.*
>
> *(ii) Disciplinary proceedings shall be deemed to be pending against any employee for the purpose of this Regulations if he has been placed under suspension or any notice has been issued to him to show cause as to why disciplinary proceedings shall not be instituted against him and will be deemed to be pending until final orders are passed by the competent authority.*

(iii) The officer against whom disciplinary proceedings have been initiated will cease to be in service on the date of superannuation but the disciplinary proceedings will continue as if he was in service until the proceedings are concluded and final order is passed in respect thereof. The officer concerned will not receive any pay and/or allowance after the date of superannuation. He will also not be entitled for payments of retirement benefits till the proceedings are completed and final order is passed thereon except his own contribution to CPF."

4. A reading of the Regulations would go to show that Regulation 20(3)(i) deals with serving bank employees who during the pendency of a departmental proceeding may seek to retire or resign from service. Such a course is prohibited except with the approval of the Bank. Regulation 20(3)(ii) clarifies that the disciplinary proceeding would be deemed to be pending where a notice has been issued to show cause why disciplinary proceedings shall not be instituted or the officer has been placed under suspension. Regulations 20(3)(iii) contemplates that an officer against whom a disciplinary proceeding has been initiated may superannuate but he will be deemed to have continued in service until the proceedings are concluded. It is the meaning and effect of Regulation 20(3)(iii) which would require an authoritative pronouncement from this Court in terms of the reference made."

6. The Regulation 38 in the present case reads as follows:

"38. Lapse of Leave Save as provided below, all leave to the credit of an officer shall lapse on resignation, retirement, death, dismissal or termination for any reason.

Provided that where an officer retires from 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 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 resigns from service on or after 1" April, 2001 after giving due notice as in 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 maximum of 120 days."

7. It is evident from a joint reading of Regulations 20(3) and 38 that the entitlement of an employee/officer to leave encashment itself arises only upon his termination or ceasing to be in employment. Since *de jure* point of termination of employment gets postponed on account of initiation of disciplinary proceedings upon the attainment of the age of superannuation, the question of payment of dues such as leave encashment amounts does not arise; the entitlement accrues only upon completion of enquiry.

8. The only exception to this provision is that till the completion of enquiry, the concerned employee would be entitled to provisional payment of pension. However, the legal effect of continuance in service does not in any manner brittle down.

9. For the above reasons, the Court does not find any infirmity with the reasoning of the learned Single Judge. The appeals are consequently dismissed.

S. RAVINDRA BHAT, J

SUNIL GAUR, J

AUGUST 24, 2017/ajk