IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.2132 of 2016
In
Civil Writ Jurisdiction Case No.13131 of 2015

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1. The Chairman -cum- Managing Director, Central Bank of India, Central Office,16th Floor, Chander Mukhi, Nariman Point, Mumbai-400021
2. The Zonal Manager, Central Bank of India, Zonal Office, 374B, Exhibition Road, Patna.
3. The Regional Manager, Regional Office, Central Bank of India, Kalambagh Chowk, Law College Road, Muzaffarpur.
4. The Branch Manager, Central Bank of India, Dumra Branch, Sitamarhi.

(Respondents in the writ petition)
... ... Appellants

Versus

Shivajee Singh, Son of Late Ram Snehi Singh, Resident of Village- Dakarama, P.S.- Hathauri, District- Muzaffarpur.

(Petitioner in the writ petition)
... ... Respondent

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Appearance :
For the Appellant/s : Mr. Ajay Kumar Sinha
Mrs Manju Jha
For the Respondent : Mr. Sanjay Parasmani

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 11-07-2018

Whether discharge of an employee under 'the Settlement on the Industrial Disputes between Certain Banking Companies and their Workmen', as the same existed at the relevant point of time (hereinafter referred to as 'the Bipartite Settlement'), will entail forfeiture of pensionary benefits under the (Employees') Pension Regulations, 1995 of the Central

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Bank of India (hereinafter to be referred to as 'the Pension Regulations,1995'), is the solitary question, which this appeal under Clause 10 of the Letters Patent of this Court raises.

2. The Chairman-cum-Managing Director, Central Bank of India has put to challenge a judgment and order of a learned Single Judge of this Court, passed in CWJC No. 13131 of 2015 (Shivajee Singh Vs. Chairman-cum-Managing Director), wherein the discharge has been held to be along with pensionary benefits and not without interpreting various provisions of the extant Bipartite Settlement, and the Pension Regulations, 1995.

3. This appeal was admitted by order dated 20.12.2017 and has been placed for final hearing before this Court.

4. We have heard Mr. Ajay Kumar Sinha, learned counsel for the appellant-Bank, assisted by Mrs. Manju Jha, and Mr. Sanjay Parasmani, learned counsel for the respondent-writ petitioner.

5. The facts are not at all in dispute, which are short for the purpose of the present adjudication.

6. A peon in the Bank, the writ petitioner was subjected to a departmental proceeding which culminated into

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an order of "discharge from the Bank's service" passed by the disciplinary authority dated 05.01.1990, in terms of Clause 19.6 of the Bipartite Settlement. He had filed an appeal against the said order, which was dismissed by the appellate authority on 06.07.1990 (Annexure-2 to the writ petition). His writ petition, filed earlier before this Court giving rise to CWJC No. 5169 of 1990 against the order of discharge also failed. He lost before the Supreme Court also with the dismissal of SLP No. 43 of 1991 by an order dated 0308.1995 (Annexure-4 to the writ petition). The order of discharge thus attained finality.

7. The writ petitioner thereafter represented the appropriate authority, intimating his option to join the Pension Regulations, 1995. Nothing was, however, communicated to him before he received the letter dated 09.01.2004 (Annexure-6 to the writ petition) of the Branch Manager, Dumra Branch, Sitamarhi of the Central Bank of India, suggesting him to come to the Bank and receive an amount of Rs. 18,474.26 against his provident fund accumulations. He responded promptly to the said letter dated 09.01.2004 by writing a letter to the Branch Manager of the said Branch that he had opted for pension scheme and instead he was being offered the provident fund amount, though he was entitled for pension

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under the Pension Regulations, 1995. He again reiterated his claim for pension under the Pension Regulations, 1995, after adjusting the said amount of the provident fund. Nothing transpired thereafter. Subsequently, he learnt about the decision of the Supreme Court in the case of **Bank of Baroda Vs. S.K.Kool,** reported in **(2014) 2 SCC 715,** relying on which he again represented the Bank through his letter dated 21.11.2014 (Annexure-8 to the writ petition). In reply thereof, the Bank communicated to the writ petitioner, vide letter dated 20.11.2014 (Annexure-9 to the writ petition) that the said Supreme Court's decision in the case of **S.K.Kool** (supra) had no application in petitioner's case. When the writ petitioner again represented through another letter dated 18.03.2015 (Annexure-10 to the writ petition), the Regional Manager of the Bank, instead of allowing him pension under the Pension Regulations, 1995, asked him to submit specific details through the letter dated 19.03.2015 (Annexure-11 to the writ petition) in respect of terminal benefits, which he had received and those which he was entitled to receive, according to him.

8. Denial on the part of the Bank to allow pension, despite Supreme Court's decision in the case of **S.K.Kool**

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(supra) through letter dated 20.11.2014, made the writ petitioner approach this Court by filing the present writ application, giving rise to CWJC No. 13131 of 2015. There is no gainsay that the petitioner did not accept the provident fund amount at any stage, which he had requested to be adjusted for the purpose of grant of pension in terms of the Pension Regulations, 1995.

9. The Bank filed its counter affidavit in the writ proceeding, taking specific stand that since the petitioner had been discharged from the service under Clause 19.6 of the Bipartite Settlement, by way of punishment for gross misconduct, he was not entitled to pension and other benefits. The Bank relied on Clause 22 (1) of the Pension Regulations, 1995, which provides that "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. Be it noted that Pension Regulations, 1995, which came into force in October, 1995, has been made to apply to employees of the Bank, *inter alia*, in terms of Regulation 3(1) of the Pension Regulations, 1995 under Chapter II who;

> "1(a) were in the service of the Bank on or after the 1st of January, 1986 but

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had retired before the 1st day of November, 1993; and

(b) exercise an option in writing within one hundred and twenty days from the notified date to become member of the Fund; and

(c) refund within sixty days after the expiry of the said period of one hundred and twenty days specified in clause (b) the entire amount of the Bank's contribution to the Provident Fund including interest accrued thereon together with a further simple interest at the rate of six percent per annum on the said amount from the date of settlement of the Provident Fund account till the date of refund of the aforesaid amount to the Bank; or……."

10. The writ petitioner was apparently in the service of the Bank 'on or after 1st day of January, 1986'. He had exercised his option in writing within one hundred and twenty days from the notified date, to become a member of the Fund and had not received his provident fund amount even after the order of discharge was passed on 05.01.1990. These are admitted facts.

11. The appellants are relying on the expression

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'retired' in Clause (a) of Sub-Regulation (1) of Regulation 3 of the Pension Regulations, 1995 to make out a case that since the writ petitioner had not retired before the 1st day of November, 1993, rather he was discharged, the Pension Regulations, 1995, cannot apply to him, in view of the stipulation under Regulation 3 thereof.

12. In order to appreciate whether an order of discharge from service will have the consequence of forfeiture of past service and thereby pension in view of Regulation 22 of the Pension Regulations, 1995, we need to take note of Clause 19.6 of the Bipartite Settlement which reads thus:-

> "19.6. An employee found guilty of gross misconduct may:
> (a) be dismissed without notice; or
> (b) be warned or censured, or have an adverse remark entered against him; or
> (c) be fined; or
> (d) have his increment stopped; or
> (e) <u>have his misconduct condoned and be merely discharged;</u>
>
> (emphasis supplied)

13. It is amply clear from the language of Clause 19.6 (e) of the Bipartite Settlement that the order of discharge presupposes condonation of misconduct by the disciplinary

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authority. Condonation of misconduct is manifestly an essential concomitant of an order of discharge under Clause 19.6 of the Bipartite Settlement which can be seen from the language used therein.

14. In order to appreciate as to whether such order of discharge will entail forfeiture of pensioanry benefits, the learned Single Judge in the judgment under appeal, has taken note of the corresponding provisions in the subsequent Bipartite Settlement, 2002, as available under Clause 6(d) thereof which reads thus:-

> "6.(d) be discharged 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"

15. Upon examining the above-noted provision, and giving harmonious construction to Clause 19.6 (e) of the extant Bipartite Settlement,2002, the learned Single Judge has observed that it is permissible to allow pensionary benefits under the Pension Regulations, 1995, on discharge of an employee. The learned Single Judge has been mindful of the fact that the provisions under the Bipartite Settlement, 2002

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could not be made applicable in the case of the writ petitioner, who was no more in Bank's service when the said Bipartite Settlement, 2002 came into being. The learned Single Judge has, however, held that once the disciplinary authority condoned the misconduct, there would have been no occasion to hold that the discharge would be without any pensioanry or terminal benefits or without disqualification from future employment.

16. We may now move to Regulation 22 of the Pension Regulations, 1995. Strictly speaking, the said provision does not refer to the order of discharge to be a ground for forfeiture of entire past service, having consequence of disqualification for pensionary benefits. In case of discharge, misconduct having been found worth being condoned in the opinion of the disciplinary authority for any extenuating circumstance, it is difficult for us to hold that it shall have further penal consequence of forfeiture of past service.

17. Mr. Sinha, learned counsel, appearing on behalf of the Bank, has argued that an employee must retire within the meaning of of Sub-Regulation (x) and (y) of Regulation 2 of the Pension Regulations, 1995 to be entitled to pension

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under the Pension Regulations, 1995. If this submission of Mr. Sinha is to be accepted and interpretation as suggested is given, Clause 6(d) of the Bipartite Settlement, 2002 would be rendered otiose, since despite there being stipulation under Clause 6 (d) for discharge with superannuation benefits, an employee would be denied such benefits under the Pension Regulations.

18. In the case of **S.K.Kool** (supra), the Supreme Court had the occasion to consider Clause 6(b) of the Bipartite Settlement, 2002, which provides that the employee found guilty of gross misconduct "may be removed from service with superannuation benefits i.e. pension and/or the provident fund and gratuity as would be due otherwise under the Regulations prevailing at the relevant time and without disqualification from future employment". Faced with the provision under Regulation 22 of the Pension Regulations, 1995, which prescribes that removal of an employee shall entail forfeiture of his entire past service and consequently such employee shall not qualify for pensioanry benefits, giving harmonious construction to Regulation 22 of the Pension Regulations, 1995 and Clause 6(b) of the Bipartite Settlement, 2002, the Supreme Court in the case of **S.K.Kool** (supra)

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held in paragraph 15 as follows:-

> "15. 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 benefits 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 harmonize 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 Regulations 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

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> penalty but are not eligible for superannuation benefits under the Regulations shall not be entitled to that"
>
> (emphasis mine)

19. It is noteworthy that there is no requirement of condonation of misconduct for passing an order of removal from service under Clause 6(b) of the Bipartite Settlement, 2002. The case of the writ petitioner, in our view, is certainly on better footing where the disciplinary authority decided to pass an order of simple discharge from service, impliedly upon condoning his misconduct. In that background, if Clause 19.6(e) of the Bipartite Settlement and the Regulation 22 of the Pension Regulations, 1995 are harmoniously construed, we are of the view that it will be highly unjust and unfair to deny the pensionary benefits to the writ petitioner on the ground of forfeiture of his past service, after having condoned the misconduct itself.

20. Learned counsel for the appellants has raised a point of delay and laches on the part of the writ petitioner in approaching this Court. We are not inclined to accept the contention for two reasons. Firstly, because the communication by the Bank through the letter dated 20.11.2014, informing the petitioner that the judgment of

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S.K.Kool (supra) was not applicable in his case, gave the petitioner a fresh cause of action and, secondly, once a discretion has been exercised by the learned Single Judge by entertaining the writ application, in the facts and circumstances of the present case, the said discretion cannot be said to be an unreasonable exercise of discretion requiring interference in an intra-court appeal.

21. Situated thus, we do not find any merit in this appeal, which is accordingly dismissed.

22. No order as to cost(s).

(Jyoti Saran, J)

(Chakradhari Sharan Singh, J)

HR/-

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