

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1396 of 2018

In
Civil Writ Jurisdiction Case No.15361 of 2016

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Jagannth Prasad, S/o Radha Mohan Lal, Resident of Shivaji Path, Gola Road,
West Bailey Road, P.O.- Danapur Cantt, P.S.- Rupaspur, District- Patna.

... .. Petitioner-Appellant/s

Versus

1. The State Bank of India through its Chief General Manager, Local Head Office, Western Gandhi Maidan, Post Box No.103, Patna-800 001.
2. The Chief General Manager, State Bank of India, Local Head Office, Western Gandhi Maidan, Post Box No.103, Patna-800 001.
3. The Deputy General Manager, State Bank of India, Zonal Office, Patna.
4. The Assistant General Manager, State Bank of India, Human Resources Department, Local Head Office, Western Gandhi Maidan, Patna-800 001.
5. The Chief Manager, State Bank of India, Mithapur Branch, Patna- 800001.

... .. Respondents- Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Aditya Narain Singh, Advocate
		Mr. Kundan Kumar Sinha, Advocate
For the Respondent/s	:	Mr. S. D. Sanjay, Senior Advocate
		Mr. Anjani Kumar Mishra, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 01-03-2019

Heard Shri Aditya Narain Singh, learned counsel
for the appellant and Shri S. D. Sanjay, learned Senior Counsel
for the State Bank of India.

2. This appeal raises a dispute with regard to the



claim of interest by the appellant against the respondent-Bank which is stated to be overdue in respect of payments that were delayed and was not paid for more than a decade. It is in this background that the appellant filed Civil Writ Jurisdiction Case No.15361 of 2016 that has been partly allowed but the entire claim as set out by the appellant has been denied.

3. The facts shorn of unnecessary details are that the appellant was compulsorily retired on account of certain allegations of financial transaction irregularities against him for which a disciplinary enquiry was conducted resulting in the punishment order dated 27th of December, 2005. The appellant appears to have challenged the same in a writ petition before this Court that was allowed. The Bank went up in appeal and the Division Bench reversed the order of the learned Single Judge on 2nd December, 2010. Consequently, the punishment order against the appellant was upheld. The appellant challenged the said decision in Special Leave Petition before the Apex Court.

4. In between, the stand of the respondent-Bank is that it had dispatched a letter on 9th of March, 2011, the contents whereof are extracted hereinunder:-

State Bank of India
Mithapur Branch Patna-800001
(Code No.-1511) Tel-0612-
2210197

Shri Jagarnath Prasad,
S/o Late Radha Mohan Lal
Gola Road West Beily Road
PO- Danapur, Patna-14



Letter No. BM/217

Date: 09/03/2011

Dear Sir,

L.P.A. NO: 976 OF 2009 FILED BY BANK
AGAINST THE JUDGEMENT AND ORDER PASSED IN CWJC
NO. 5070 OF 2007
SBI VS JAGRATH PRASAD, JMGS-1
PROPOSAL FOR PAYMENT OF TERMINAL DUES

With reference to LHO letter No. PPG/VJ/1236 dated 26/02/2011 and PPG/VJ/1280 dated 07/03/2011 and also telephonic talk with you on 05/03/2011 & 08/03/2011, you are hereby requested to immediately submit the proposal for payment of terminal dues. Submission of proposal is essential to comply the orders of Hon'ble High Court of Patna. So please make yourself available immediately with proposal.

Yours Faithfully

Sd-

Branch Manager

Copy to Assistant General Manager (HR). State Bank of India Local Head Officer 8th Floor Patna for information please.

Yours Faithfully

Sd-

Branch Manager

5. The Special Leave Petition filed by the appellant was dismissed on 8th April, 2011. The appellant has denied the receipt of the letter extracted above.

6. The appellant was admittedly not paid his dues and the case of the respondent-Bank is that the appellant did not complete the formalities which he had been called upon to do so in terms of the letter dated 9th of March, 2011 and also because



of the fact that there were dues against the appellant on account of a loan having procured by him.

7. The Bank thereafter appears to have issued a notice on 17th of November, 2014. The same is extracted hereinunder for ready reference:-

State Bank of India

Mithapur Branch Patna-800001
(Code No.-1511) Tel-0612-2210197

Crs/misc/286

Date: 17/11/2014

Shri Jagarnath Prasad,
Back side of Gola Road Petrol Pump
ICICI Lomabard office building
West of Canal, New Bailey Road
Patna-801503

Dear Sir,

NPA A/C

A/C no. 10951748530 outstanding as on 31/10/2014-Rs.290828/- 80p.

A/C no. 10951980345 outstanding as on 31/10/2014-Rs 53973.45/-45p.

As per decision of the competent authority you have been compulsorily retired/removed from service of the Bank. On your ceasing to be in the Banks service as above, you are entitled to the Bank pension/gratuity/provident fund/and encashment of salary for the unutilized leave "subject to Banks right to recover any due amount due under a liability, if any incurred by you to the Bank". You are advised to submit appropriate applications as per the prescribed formats at the earliest to enable us to settle dues without any delay. **Please note that the failure on your part to submit the said applications within a week from the date hereto might result in delayed payment of your terminal dues and the Bank will not be liable for payment of any interest for the delay.**

Please acknowledge receipt of this letter.

Yours Faithfully

Sd-

Chief Manager



8. According to the appellant, no such letter had been served on him as issued in the year 2011 and it is for the first time in the year 2014 that the above quoted letter was received by him. Learned counsel has emphasized that had any letter been despatched in the year 2011, there would have been a reference to the same, but the letter dated 17.11. 2014 nowhere refers to the 2011 communication. It is also submitted that the letter of 2011 did not conform to the instructions which are Codified Circulars issued by the Bank itself and, therefore, the same cannot be relied upon by the Bank to justify its action.

9. It appears from the records that the aforesaid letter dated 17.11.2014 was followed by another letter dated 08.12.2014 to the same effect which is extracted hereinunder:-

State Bank of India

Mithapur Branch Patna-800001
(Code No.-1511) Tel-0612-2210197

Crs/misc/286

Date: 08/12/2014

Shri Jagarnath Prasad,
Back side of GOLA ROAD PETROL PUMP
ICICI Lomabrd office building
West of Canal, New Bailey Road
Patna-801503

Dear Sir,

NPA A/C

A/C no. 10951748530 outstanding as on 31/10/2014-Rs.290828/- 80p.

A/C no. 10951980345 outstanding as on 31/10/2014-Rs 53973.45/-45p.

As per decision of the competent authority you have been compulsorily retired/removed from service of the Bank. On your



ceasing to be in the Banks service as above, you are entitled to the Bank pension/gratuity/provident fund/and encashment of salary for the unutilized leave “subject to Banks right to recover any due amount due under a liability, if any incurred by you to the Bank”. You are advised to submit appropriate applications as per the prescribed formats at the earliest to enable us to settle dues without any delay. **Please note that the failure on your part to submit the said applications within a week from the date hereto might result in delayed payment of your terminal dues and the Bank will not be liable for payment of any interest for the delay.**

We have also send this letter on 17/11/2014 but you have failed to respond.

Please treat the matter as urgent and acknowledge receipt of this letter.

Yours Faithfully

Sd-

Chief Manager

10. This again was repeated by the dispatch of another letter dated 12.12.2014 which is extracted hereinunder:-

State Bank of India

Mithapur Branch Patna-800001
(Code No.-1511) Tel-0612-2210197

Crs/misc/286

Date: 12/12/2014

Shri Jagarnath Prasad,
Back side of Gola Road Petrol Pump
ICICI Lomabrd office building
West of Canal, New Bailey Road
P.O. Danapur Cant
Patna-801503

Dear Sir,

As per decision of the competent authority you have been dismissed from the Bank service. On your ceasing to be in the bank' service as



above, you are entitled for refund of your contribution to the State Bank of India Employee's Provident Fund Account. You are advised to submit appropriate applications as per the prescribed formats at the earliest to enable us to settle your claims without any delay. **Please note that failure on your part to submit the said applications within a week from the date hereto might result in delayed settlement of your claims and the Bank will not be liable for payment of any interest for the delay.**

This is without prejudice to Bank's right to recover any amount due under liability, if any, incurred by you to the Bank in terms of P.F. Rules.

Please acknowledge receipt of this letter.

Yours Faithfully

Sd-

Chief Manager

11. It is to be noted that the caution as highlighted in all the three letters above does not find place in the communication of 2011.

12. The relevant provisions in relation to the settlement of terminal benefits of a punished employee have been provided for in the Code, the applicability whereof is not disputed. The same is extracted hereinunder:-

“B) PUNISHED EMPLOYEE

On cessation of service by way of dismissal/ compulsory retirement/removal from service, the terminal dues will have to be settled as soon as possible. Since the Bank has introduced standard application forms, it is expected that the employee will submit such applications immediately so that terminal dues are settled at the earliest. **As the application may not be forthcoming from the**



employee who prefers to appeal against the decision, a registered letter should be sent on the employee's last known address on the lines given in ANNEXURE 32 or ANNEXURE 33 as the case may be vide Corporate Centre Circular No. CDO/ADM/SPL/1275 dated the 2nd June 1997 and CDO/PM/14/SPL/4975 dated the 21st November 1997.

All such cases should be settled expeditiously and the various steps to be followed in this regard are as under:

i) On completion of the disciplinary proceedings against the employee, the concerned Branch/Office where the employee was last posted before cessation of service, **should immediately take up the process even without the application from the employee and arrange for obtaining sanction of all eligible dues to the employees, irrespective of the fact whether he goes on appeal, review, legal remedy against the decision of the Disciplinary Authority.** These cases should also be reported to the PPG Department for their information and guidance.

ii) **On receipt of sanction of various terminal benefits due to him/her, the concerned employee may be advised by a Registered AD letter to the last known address on record with the Bank, conveying the sanction of the dues to him/her and requesting him/her to make necessary arrangements including completion of requisite formalities, for taking delivery of the cheques relating to the terminal dues. If the employee does not come forward to take delivery of cheque, such facts should be kept on record.**

Thereafter, the Bank may not be liable for payment of any overdue interest for any further delay that may arise in encashing the terminal dues; as such delays are not attributable to the Bank. This will enable the Bank to place on record that the



employee on account of his/her deeds delayed the settlement of the terminal dues. Periodical reminders by way of Registered AD letters may be sent to the ex-employee and still if there is no response to such communications, these should be kept on proper record in the usual manner. However, cases of abnormal delay may be referred to the PPG Department who in turn will guide the Office/Branch after consulting the Law Department.

iii) In the event the employee is reinstated in the Bank's service under the order of the Reviewing/Appellate Authority or the Court, he may be readmitted to the Fund, or the matter be dealt with as directed by the appropriate authority who orders the reinstatement.

iv) In case there is a Stay Order from the Court restraining the Bank from payment of the terminal dues, we may abide by the Court Order *vide Corporate Centre Circular No. CDO/PPG/KPE/7971 dated the 31st March 1998.*"

13. In respect of overdue interest, the provisions under the same Code are extracted hereinunder:-

“OVERDUE INTEREST

The Supreme Court has held that Pension and Gratuity are no longer any bounty to be distributed to employees on their retirement but have become, under the decision of this Court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment. The Court has not only allowed the payment of overdue interest on pension but also has



observed that the erring officials should be taken to task for any **culpable lapses resulting in delay in payment of pension due, so that a sense of accountability to the retired employee is generated. However, where the delay is attributed to the administrative reasons, the request for overdue interest should be considered and recommended on merits of each case.** The Circle may submit their recommendations for payment of interest with full details of the case and along with thier specific comments on staff lapses (if any) to the Dy. General Manager, PPG Department at Corporate Centre who shall obtain sanction from the Managing Director and Group Executive (NB). The period of delay will be from the date it is due or the date of order by the appropriate authority to the preceding date of actual payment of pension to the pensioner. **The rate of interest will be same as applicable to the Provident Fund for respective periods vide Corporate Centre Circular No.PA/CIR/83 dated 16th May 1986.**”

14. A perusal of the aforesaid provisions contained in the Circular which are in a compilation captioned as ‘Codified Circular Instructions on Settlement of Terminal Benefits’ indicate that even if an employee has gone in appeal, review or has availed of any legal remedy against the order of punishment, the same will not in any way impede the settlement of the dues which has to be arranged by the Bank after obtaining



sanction for all the eligible dues to the employee. The provisions extracted hereinabove clearly indicate the same. The Bank would be absolved of liability of overdue interest only thereafter.

15. The contention by Shri Singh is that the learned Single Judge while accepting the delay has bifurcated the liability by inferring that there was a contributory negligence on the part of the appellant. This in his submission is an incorrect inference, inasmuch as, under the provisions of the instructions quoted hereinabove, it is the obligation of the Bank to arrange for the payment of all such dues to which a punished employee is entitled even if the employee has not moved an application or even if he is contesting the punishment order before higher authorities. It is the submission of the learned counsel that the learned Single Judge has overlooked this aspect of the matter and has erroneously presumed a contributory negligence on the part of the appellant.

16. The second ground taken by the learned counsel is that the same instruction also provides for the rate of interest which as quoted above has to be the same as applicable to the deposits in provident fund for the respective periods. The rate of interest, therefore, could not have been quantified by the



learned Single Judge contrary to the own Circulars of the Bank.

17. Shri Singh has then urged that on facts also, the appellant had not received the intimation dated 9th March, 2011 which was otherwise also not in accordance with the provisions of the Circulars quoted hereinabove. Once the Circular requires the Bank itself to discharge its obligations, then overdue interest becomes payable unless the Bank communicates otherwise which has been done long after and, according to the appellant, for the first time on 8th of December, 2014. It is, therefore, submitted that the interest at the rate of such amount which is payable on provident fund deposits in respective years is liable to be paid to the appellant on the overdue amount since the date of the punishment order, i.e. 27th of December, 2005, up to 8th of December, 2014 or up till the date of actual payment, as the case may be. Thus, the interest was payable for this entire period which has been erroneously curtailed by the learned Single Judge and quantified to be payable for a period of only five years. This calculation, according to learned counsel for the appellant, is erroneous and based on no logic. The inference of contributory negligence being equally faulty, the consequence thereof while quantifying the interest payable has also fallen into error. Thus, the period for which the interest and the rate of



interest both have been incorrectly calculated by the learned Single Judge which should have been for the entire period as referred to above and at the rates as per the Circulars quoted hereinabove.

18. Shri S. D. Sanjay, learned Senior Counsel for the Bank, has taken the Court extensively through the counter affidavit filed on behalf of the Bank before the learned Single Judge to contend that according to the aforesaid Circulars, which are not statutory in nature, the only obligation of the Bank is to send a registered letter and inform the employee to complete the formalities.

19. The appellant in spite of having been called upon to do so way back in the year 2011 itself, he did not respond and in the absence of completion of formalities, neither any estimate could be drawn, nor any payment could be made. Shri Sanjay submits that the appellant had been transferred to many places and, therefore the entire information had to be collected from every Branch where the appellant was posted. It was the obligation of the appellant himself to disclose all claims apart from the details of the liability of the loan taken by him. In this view of the matter, if the Bank was entitled to receive any amount from the appellant, the same ought to have been



reflected in the application moved by the appellant which he deliberately did not do in spite of the communication having been sent to him. Shri Sanjay, therefore, submits that in the absence of any such deliberate default on the part of the Bank, there is no occasion to saddle the Bank with any interest.

20. He, however, submits that in view of the directions of the learned Single Judge, the Bank has already paid the amount as desired by the learned Single Judge and, therefore, there remains no dispute to be resolved by this Court. Shri Sanjay submits that the appellant's conduct in not cooperating with the Bank by furnishing the formalities as required, he cannot be permitted to raise this issue of charging interest.

21. A second limb of the same argument by Shri S. D. Sanjay is that in the first round of litigation up to the Apex Court, the appellant did not even plead or raise any such issue with regard to the payment of interest. This was noted by the Division Bench while allowing the appeal of the Bank where the appellant had been permitted to move a representation whereupon the Bank was called upon to take a decision on this aspect. Shri Sanjay contends that since the appellant did not chose to make any representation for the clearance of his post retiral dues as



desired by the Division Bench, then no delay can be attributed to the respondent-Bank. He, therefore, submits that on all scores, the appellant does not deserve any additional amount of interest as claimed by him.

22. We have considered the submissions raised. It is undisputed that in compliance of the judgement of the learned Single Judge, the Bank has acquiesced to the same and has made the payment as directed thereunder. The Bank has, therefore, not challenged the liability already fixed by the learned Single Judge to the extent as indicated in the judgement. In this background, when the Bank has not chosen to challenge the directions of the learned Single Judge and to the contrary has complied with the same, it can be safely assumed that the Bank professes to abide by its own Circulars. Even otherwise the argument that the Bank circulars contained in the compilation do not have statutory force is unacceptable as the Bank Employees apart being protected under the service conditions, the Bank cannot act arbitrarily or afford a discriminatory treatment amongst its employees. The appellant has a constitutional right guaranteed under Article 14 of the Constitution of India and if the same is violated, a petition of the present nature would be maintainable to enforce his rights for



claiming benefits available to him. The argument on behalf of the Bank that the circulars are not mandatory and it is within the discretion of the Bank to deny such claims also deserves rejection inasmuch as even directory provisions are not meant to be violated. The Bank is bound by its own circulars and guidelines which the Bank itself professes to be applicable.

23. The Bank has taken a defense that it had sent a letter on 9th of March, 2011. This letter was sent almost after six years of the punishment order which was passed in December, 2005. The letter also does not contain any such recital about the compliance of the procedure prescribed under the relevant Circulars extracted hereinabove. There is no recital of the said letter in the notice that was given subsequently to the appellant on 08.12.2014. The appellant has also denied having received any such letter. In this background, we are unable to find any fault on the part of the appellant so as to construe a contributory negligence on his part until he received a letter on 8th of December, 2014. It was the obligation of the Bank to have gathered the details relating to the payments that were due to the appellant. The contention of the learned counsel for the Bank that the appellant was a dismissed employee and that his services had been dispensed with on account of a disciplinary



proceeding does not take the matter any further, inasmuch as, the same Circular, the benefit whereof is being claimed by the appellant, provides for an obligation on the Bank to gather information and prepare the cheques of the amount that is payable to an employee on punishment. The entire directives relate to the cases of punished employees only. The rate of interest is applicable to all classes of payment, which the Bank professes to have been adopted in compliance of a Supreme Court judgement that is evident from the opening words recited in the Circular quoted hereinabove.

24. The payments which have been made after the issuance of the notice on 8th of December, 2014 are only in compliance of the judgement of the High Court. Even otherwise, the appellant cannot be held guilty for any negligence, inasmuch as, he was admittedly contesting the matter which he lost up to the Apex Court. It is for this reason that the Circular clarifies that the calculation has to be made by the Bank in the case of punished employees. The Bank, in the present case, therefore, appears to have discharged its obligation for the first time effectively under the letter dated 8th of December, 2014 in the background that the receipt of the letter dated 9th of March, 2011 has been denied and there is no



reference of this letter in the subsequent letters issued by the Bank in the year 2014. The contention, therefore, on behalf of the appellant in relation to the letter dated 09.03.2011 deserves acceptance.

25. Apart from this, it was the appellant's money which has been withheld and kept by the Bank itself. The Bank did not choose to release it and was withholding the same. The said money, therefore, shall be presumed to have held in trust on behalf of the appellant. The Bank being a commercial venture, therefore, had the same money in its own circulation which ought to have been paid to the appellant.

26. The contention on behalf of the Bank that there were certain dues against the appellant and that he had been removed from service by way of a punishment also does not appear to be an impediment in making of the payments. If the Bank had any dues against the appellant, it could have adjusted at that very time which was never objected to by the appellant. There is no material to indicate that the appellant refused to get the loan amount adjusted or prevented the Bank from adjusting it in any way. It was, therefore, the lapse on the part of the Bank which is clearly evident not only up to 9th March, 2011 but even thereafter till 08.12.2014. There is no contributory negligence



on the part of the appellant as assumed by the learned Single Judge, inasmuch as, the appellant was of the status of a punished employee for whose benefit the Circulars as quoted above are in existence. The Bank ought to have carried out its exercise and having failed to do so, it cannot deny interest to the appellant which is admissible at the rates as per the own Circular of the respondent-Bank. The learned Single Judge, therefore, fell into an error in splitting up the period on the strength of the communication dated 9th March, 2011. The learned Single Judge also erroneously assumed a rate of interest which otherwise is already prescribed under the own Circular of the Bank equal to the rate payable on the provident fund for the respective years.

27. The contention of the Bank that in view of the earlier round of litigation the appellant is estopped from raising a claim of interest has to be rejected that firstly the Division Bench observations dated 02.12.2010 does not place any such restriction nor any such issue was determined, rather the same was left open to the appellant to be represented which aspect had to be considered by the Bank. Sri Sanjay, learned Senior Counsel for the Bank submits that the appellant never represented and rather kept on litigating onwards. This in our



opinion does not debar the appellant from realising his dues upon punishment. The litigation was against the punishment order. The claim of the appellant against the punishment witnessed reversal by the Division Bench and, therefore, he chose to appeal before the Apex Court. His right to claim payments including interest therefore was alive and not obliterated for all times to come. Secondly it is the Bank which is now estopped from taking a defence as it has already acquiesced to the judgement of the learned Single Judge that partly allows the claim of the appellant.

28. For all the reasons aforesaid, the appeal is partly allowed to the extent the learned Single Judge has refused payments to the appellant. It is held that the appellant is entitled to his payments together with the rate of interest as referred to above with effect from the date of his punishment order up to the date of actual payment subject to adjustment of any dues against the appellant. The impugned judgment dated 25.08.2018, therefore, stands modified accordingly. The order passed by the Bank dated 28.12.2015 is quashed. The payments already made pursuant to the judgment of the learned Single Judge shall be adjusted and a final calculation shall be made in the light of what has been said above, whereafter the payments



shall be ensured to the appellant within a period of three months from the date of production of a certified copy of this order before the competent authority.

29. The appeal is, accordingly, allowed.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

Sunil/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	05.03.2019
Transmission Date	

