IN THE HIGH COURT OF JUDICATURE AT MADRAS
Reserved on : 06.03.2019
Pronounced on : 13.06.2019
CORAM
THE HONOURABLE MR. JUSTICE M.S.RAMESH
W.P.No.11473 of 2004

A.Venkataraman ... Petitioner

Vs

1.Syndicate Bank,
Chairman and Managing Director,
Head Office,
Manipal,
Karnataka State 576 119.

2.The General Manager (P),
Syndicate Bank,
Head Office, Manipal,
Karnataka State-576 119.

3.The Deputy General Manager,
Syndicate Bank,
Zonal Office,
27, Shakspeare Sarani,
Calcutta 700 017.

4.The Deputy General Manager,
Syndicate Bank,
Zonal Office,
Armenian Street,
Chennai-600 001. ... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified Mandamus, calling for the concerned records from the fourth respondent and to quash the order of the fourth respondent bearing Ref. No.ZOCH:PD:OS:G 294:99 dated 29.04.1999 and consequently direct the respondents to relieve the services pursuant to petitioner's letter of resignation dated 01.10.1998 by giving all terminal benefits including pension.

For Petitioner : Mr.Balan Haridas
For Respondents : Mr.Anand Gopalan
for M/s.T.S.Gopalan & Co.

O R D E R

The order under challenge in the present Writ Petition is one effecting the removal of services of the petitioner from the respondent bank, passed by the fourth respondent herein.

2. The brief facts of the case is as follows:

a) The petitioner herein has been in the services of the respondent bank from 29.09.1976 onwards. Since he has completed more than 10 years of services, he is entitled for pension. When the respondents had chosen to transfer the petitioner to its Zonal Office at Calcutta on 29.04.1993, the petitioner had expressed his inability to join the transferred post on medical grounds. Since he had not reported before the Calcutta Branch, a charge sheet came to be laid on 22.05.1995, pursuant to which, an enquiry was conducted. Consequently by an order dated 23.09.1996, the petitioner was directed to be removed from the services.

b) As against the same, the petitioner had filed an appeal before the first respondent herein and by an order dated 13.06.1998, the first respondent herein had reduced the punishment imposed by the Disciplinary Authority, into one of reduction in basic pay, by three stages, for a period of two years, with a further direction that he will not earn increments during the period of reduction and that the reduction will have an effect of postponing the future increments of pay. It was further ordered therein that reinstatement shall come into effect from the date of his reporting duty at the place of posting, within 15 days from the date of receipt of that order.

c) Inspite of the reduced punishment, the petitioner had not chosen to join the transferred place of posting and had sent a letter dated 01.10.1998 to the fourth respondent herein, raising queries as to whether he was entitled to opt for Voluntary Retirement Scheme (VRS) and if it was available, he had chosen to tender his option for VRS through the same letter. In the alternate, the petitioner had expressed his willingness to tender his resignation, in case he was not entitled to opt for voluntary retirement scheme.

d) The fourth respondent herein, through letters dated 05.01.1999 and 13.01.1999 had informed the petitioner that since the petitioner had not opted for pension, he cannot seek for VRS under the pension regulations and therefore advised the petitioner to call on them for considering his resignation.

e) It is in this background, the impugned order dated 29.04.1999 came to be passed by the fourth respondent observing that though the petitioner was called to report to the fourth respondent bank for the purpose of processing his resignation, he had not turned up and since he had failed to report for duties, it was observed that the petitioner had forfeited the benefits given to him by the Competent Authority and thereby, the original order of the Disciplinary Authority dated 23.09.1996, ordering the petitioner's removal from his services, was revived. Challenging the same, the present writ petition has been filed.

3. Heard Mr.Balan Haridas, learned counsel for the petitioner and Mr.Anand Gopalan, learned counsel appearing on behalf of the respondents.

4. Mr.Balan Haridas, learned counsel appearing for the petitioner submitted that the fourth respondent, being a subordinate officer to the first and second respondent has no authority to pass the impugned order. He would submit that this is not a case of grave misconduct and that since the petitioner was ailing from asthmatic problems and he had medical records to substantiate such a medical ailment, a lenient view ought of have been taken by the respondents and as such, the punishment of removal from services is dis-proportionate to the charges levelled for unauthorized absence. It is his further submission that when the impugned order came to be passed, the petitioner was not given an opportunity and since the impugned order amounts to enhancement of the punishment, such an act is in violation of principles of natural justice. The learned counsel also submitted that since the impugned order is prima-facie illegal, the same requires to be set aside and consequently, the petitioner should be deemed to have attained the age of superannuation, whereby, he would be entitled for pension in accordance with the Regulation 14 of the Syndicate Bank Employees pension Regulations, 1995.

5. Mr.Anand Gopalan, learned counsel appearing for the respondents submitted that the impugned order was just a communication of the orders of the first respondent. According to the learned counsel, the order of the appellate authority required the petitioner to join the services in the place of transfer, within 15 days from the date of receipt of a copy of the order and since the petitioner herein had failed to join the duty, it would amount to forfeiting the benefits extended to him and therefore the earlier orders of the Disciplinary Authority would automatically be revived. As such, the learned counsel would submit that this position alone was communicated to the petitioner herein through the impugned order and that the order as such was not passed by the fourth respondent. The learned counsel also submitted that when the appellate authority had modified the order, the petitioner herein was informed that he

was not eligible for pension since he has not opted for voluntary retirement scheme and that inspite of various communications calling upon him to come to the fourth respondent bank for the purpose of processing his resignation letter, the petitioner failed to turn up. It is in these circumstances, the impugned order came to be communicated to the petitioner. Insofar as the petitioner's entitlement for pension is concerned, the learned counsel submitted that the petitioner, at no point of time, opted for pension and as such, there was not necessity to consider his request for voluntary retirement scheme. Even otherwise, the learned counsel submitted that after the impugned order was passed, the petitioner herein had received his entire provident fund dues in the year 1999 itself, without any protest and therefore, the petitioner is precluded from seeking for the relief sought for in the writ petition. Questioning the maintainability of the prayer sought for in the writ petition, the learned counsel would submit that since the petitioner had clearly come up with a plea that he should be relieved from the services pursuant to his letter of resignation dated 01.10.1998, he is not entitled to the benefit of pension, since the resigned employee is not entitled for pension. Above all, the conduct of the petitioner in having received the terminal benefits and waited for five years before filing the writ petition itself would be a ground for rejecting the Writ Petition.

6. I have given careful consideration to the submissions made by the respective counsels.

7. One of the main contention raised by the petitioner is that when the respondents had transferred his service to Calcutta, he has expressed his intention to leave the services of the bank through resignation, subject to his entitlement for opting Voluntary Retirement Scheme. When the question of pension entitlement under the voluntary retirement scheme was under consideration, the fourth respondent had passed the impugned order restoring the original punishment of removal from service. The bank have taken a plea that since the petitioner did not comply with the order of the second respondent to report for duty at the transferred place, the original order of punishment was restored. It is also their contention that the respondents had not received any pension option from the petitioner and therefore he could not seek voluntary retirement under the pension scheme.

8.The petitioner's claim that he had opted for the voluntary retirement scheme through a letter dated 27.12.1995 purportedly sent by registered post, is denied by the respondents. Thereafter, when the original order of removal from service was modified by the Appellate Authority on 13.06.1998 into one of reduction in basic pay by three stages for a period of two years, the petitioner had sent a letter dated 01.10.1998, seeking for clarification as to whether he was entitled to opt for the voluntary retirement scheme. The receipt of this letter dated 01.10.1998 is not being denied by the respondents. The said letter of the petitioner is extracted below:-

> "To Dated: 1.10.1998
>
> General Manager (Personnel),
> Syndicate Bank,
> H.O. Manipal.
>
> Dear Sir,
>
> Ref: Your letter No. PDPASCN210870087N dated 24th August 1998 in response to my Fax dated 04.08.1998.
>
> I would like to know whether I am entitled to opt for VRS. If I am entitled for VRS, I would like to prefer VRS and I would go for commutation of 1/3rd of future pension and take rest as monthly pension. I joined the Bank in Sept. 1976.
>
> In case, I am not entitled under VRS, I am tendering my resignation, my resignation shall take effect after office hours on the date of joining the Chennai Zonal Office. I request you to waive 3 months notice required for tendering resignation.
>
> If entitled for VRS now I am tendering my application for VRS. (emphasis supplied)
>
> While ascertaining the amount I am entitled to, I request you to take into account conveyance allowance for May 1993 and Medical Benefit for the years 1994 to 1998 and all other entitlements.
>
> Thanking you,
>
> Yours faithfully,
>
> (A.VENKATARAMAN)"

9. When the petitioner's original punishment was modified, the petitioner had expressed that he was tendering his application for voluntary retirement scheme through the above letter dated 01.10.1998, if he was entitled for the scheme and in the alternate, he had tendered his resignation through the same letter. It is seen that the petitioner had clearly expressed his view that he was opting for voluntary retirement scheme through the above letter. This aspect has not been addressed by the respondents in their future correspondences nor

in the counter affidavit filed before this Court. Of course, the application would be subject to the petitioner's entitlement to opt for the scheme otherwise.

10. The only ground which the respondents have been rejecting the petitioner's claim for voluntary retirement scheme is that he had not opted for the scheme. When the petitioner had expressed a view in his letter dated 01.10.1998 that he is opting for VRS, the next course of action which ought to have adopted by the respondents, is to have called upon him to submit the necessary proforma application or in the alternate, to reject the petitioner's request made on 01.10.1998. It is the specific case of the petitioner that his request for the pension option was under consideration, when the respondents had passed the impugned order of punishment. While this Court does not intend to go into the disputed question of fact as to whether the original letter of option dated 27.12.1995 for VRS, was received by the respondents or not, in view of the subsequent letter dated 01.10.1998, it can be said that the petitioner did opt for the scheme through this letter.

11. It will not be out of place to mention here that the original VRS came to be later extended and the respondents had given a second option to the employees for joining the pension scheme. As such, the scheme was very much in vogue when the petitioner gave the letter dated 01.10.1998, opting VRS. In addition to this, the petitioner had also submitted his further option on 16.10.2010 also. However, the respondent bank had sent a letter dated 23.12.2010 stating that the petitioner was not eligible for the scheme as he was dismissed from the services of the bank. Such a reply pending the present Writ Petition, cannot be acceptable. The letter dated 27.10.2010 was produced before this Court, wherein the petitioner had exercised the second pension option without prejudice to the present Writ Petition. The challenge to the alleged termination, is the subject matter of the present Writ Petition. One of the main ground raised in the Writ Petition is that the petitioner's request, either for acceptance of his resignation or acceptance for his option of VRS, was under due consideration, when the impugned order was passed. While that being so, citing the dismissal of services as a reason for non-eligibility to the scheme is improper and arbitrary.

12. The factual position remains that when the petitioner was required to report for duty to the transferred place, he had categorically brought to the notice of the respondents that he was tendering his resignation in case he was not entitled for VRS. As a matter of fact, he had also opted for VRS atleast on 01.10.1998 and subsequently on 27.10.2010. When a specific request was made atleast on 01.10.1998, the respondents were not

justified in ignoring such a request of option and taking the stand that they had not received any option from the petitioner.

13. It is now seen that the petitioner had reached the age of superannuation and after all these developments, it would not be appropriate to direct the respondents to consider the petitioner's request for VRS. Nevertheless, taking into account that the petitioner had rendered about 12 years of service and also the fact that he had not indulged in any grave misconduct warranting a punishment of removal from service, this Court is of the opinion to take a lenient view to modify the punishment so as to enable him to receive the pension from 01.10.1998, which is the date on which he had tendered his resignation.

14. In the light of the aforesaid discussions, the impugned order passed by the fourth respondent in Ref. No.ZOCH:PD:OS:G 294:99 dated 29.04.1999 is hereby quashed. Consequently, the fourth respondent is directed to accept the petitioner's letter of resignation dated 01.10.1998 and consequently disburse all the terminal benefits including the pension, after adjusting any of the monetary benefits that he would have received. The fourth respondent shall endeavor to complete such an exercise of disbursement of monetary benefits and extension of pensionary benefits, within a period of eight weeks from the date of receipt of a copy of this order. The Writ Petition stands allowed in the above terms. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1.The Chairman and Managing Director,
Syndicate Bank,
Head Office,
Manipal,
Karnataka State 576 119.

2.The General Manager (P),
Syndicate Bank,
Head Office, Manipal,
Karnataka State-576 119.

3.The Deputy General Manager,
Syndicate Bank,
Zonal Office,
27, Shakspeare Sarani,
Calcutta 700 017.

4.The Deputy General Manager,
Syndicate Bank,
Zonal Office,
Armenian Street,
Chennai-600 001.

+1cc to Mr.Balan Haridas, Advocate sr.48109
+1cc to M/s.T.S.Gopalan, Advocate sr.47838

Order made in

W.P.No.11473 of 2004

vgii(co)
nr 02/07/2019