

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE K.K. SASIDHARAN
and
THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALU

W.A. No. 67 of 2018
and
C.M.P. No. 581 of 2018

S.V. Sankar ... Appellant/Petitioner

-vs-

1. State Bank of India,
Rep. by its General Manager -cum- Disciplinary Authority,
Network 2, Circle Top House,
16, College Lane, Chennai LHO,
Chennai - 600 006.
2. The Assistant General Manager,
Enquiry Officer,
State Bank of India,
Vigilance Department,
Circle Top House,
16, College Lane, Chennai LHO,
Chennai - 600 006. ... Respondents/Respondents

PRAYER:- Writ Appeal filed under Clause 15 of Letters Patent,
praying to set aside the order dated 15.11.2017 in W.P. No. 1839
of 2017.

सत्यमेव जयते

Prayer in WP No.1839/2017 : Writ Petition filed under Article 226 of the constitution of India praying to issue a writ of certiorarified mandamus after calling for the records relating to the order bearing Ref. No.VIG/SKV/138 dt 5.1.2017 readwith VIG/SKV/140 dt 6.1.2017 and consequential order bearing Ref. No. VIG/SKV/146 dt 19.1.2017 passed by the 1st respondent disciplinary authority and to quash the same as being illegal arbitrary without jurisdiction beyond Rule 19 (3) of the SBI Officers Service Rules contrary to the order dt 6.10.2016 in W.A. No.788 of 2016 and consequently to direct the respondents to mediate and settle the matter as between parties.

For Appellant : Mr. N.G.R. Prasad
for M/s.Row & Reddy

For Respondents: Mr. G. Masilamani, Senior Counsel
for Mr. K. Sankaran

J U D G M E N T

(Judgment of the Court was delivered by P.D. AUDIKESAVALU, J.)

The intra-Court Appeal arises out of the order dated 15.11.2017 in W.P. No. 1839 of 2017 passed by the Learned Judge of this Court dismissing the Writ Petition filed by the Appellant.

2. During the earlier hearing on 15.02.2019, this Court had passed the following self-explanatory order:-

"The Writ Petition filed by the appellant challenging the proceedings dated 5 January 2017, 6 January 2017 and 19 January 2017, taking further action for conducting the enquiry against the appellant was dismissed by the learned Single Judge. The present appeal is filed against the order dated 15 November 2017 in W.P. No. 1839 of 2017.

2. The Disciplinary Authority during the currency of this intra court appeal, concluded the proceedings and passed an order dated 17 October 2018, imposing punishment on the appellant. The Disciplinary Authority taking a lenient view of the matter, imposed the penalty of recovery of Rs.4,80,000/- from the terminal benefits payable to the appellant. The order was made effective from 31 October 2016 taking into account the date of his superannuation.

3. There is a provision for filing appeal under Rule 69(1) and (2) of the State Bank of India Officers' Service Rules, 1992.

4. The Bank initiated disciplinary proceedings against the appellant by issuing a charge memo on 6 October 2008. The appellant approached this Court on multiple occasions challenging the charge memo and the subsequent proceedings. There were series of orders passed by this Court issuing string of directions. The Division Bench earlier made an observation calling upon the parties to settle the matter by reference to mediation. However, the proceedings continued, resulting in passing the order by Disciplinary

Authority.

5. After hearing the learned counsel for the appellant and the learned Senior Counsel appearing on behalf of the State Bank of India, we are of the view that the disciplinary proceedings should come to an end at the level of the Bank, instead of further adjudicating the matter before this Court.

6. We give liberty to the appellant to submit an appeal before the Appellate Authority as provided in terms of Rule 69(1) and (2) of the State Bank of India Officers' Service Rules, 1992. The appeal shall be filed before the Appellate Authority on or before 1 March 2019. The Appellate Authority shall take a decision on merits on or before 31 March 2019.

7. The appellant joined the service on 19 January 1979 as a Stenographer and thereafter, he was promoted to the officer cadre. The appellant attained the age of superannuation on 31 October 2016. the appellant is yet to receive the retirement benefits from the Bank. The pendency of the disciplinary proceedings alone contributed for the delay. We therefore direct the Appellate Authority to take a lenient view in the matter and consider modifying the penalty imposed by the Disciplinary Authority. It is made clear that only on account of the mental agony suffered by the appellant for the past ten years, we are issuing this direction, which is purely humanitarian in nature and has no reference to the charges framed by the Bank. We hope that the Appellate Authority would take an appropriate decision to give a quietus to the matter.

8. Post on 3 April 2019 for production of appellate order."

3. When the matter is taken up for hearing today, it is informed by both sides that the Appellate Authority of the Respondent/Bank, viz., the Chief General Manager, State Bank of India, Local Head Office, Chennai had passed an order on 28.03.2019, which reads as follows:-

"12. After carefully perusing the submissions made by the Appellant in his appeal. I note that he has not raised any notable point of merit to rebut the allegations/charges which are already accepted by him and held as "proved" by the Disciplinary Authority. Upon an independent and dispassionate application of mind and careful consideration of facts and circumstances of the case. I am of the opinion that

the penalty imposed on him by the Appointing Authority is proportionate to the gravity of lapses and there is no plausible ground to interfere with the order of the Appointing Authority. However, the Hon'ble Madras High Court has directed vide their Order dated 15.02.2019 to take a lenient view in the matter and consider modifying the penalty imposed by the Disciplinary Authority. It is also made clear that this direction is being issued purely on humanitarian grounds and has no reference to the charges framed by the Bank. In the circumstances, I modify the penalty inflicted on Shri. S.V. Sankar, Officer MMGS - III as "Recovery of Rs.3,80,000/- (Rupees Three Lakhs Eighty Thousand Only)" and order accordingly."

In view of the aforesaid subsequent developments, nothing survives for further adjudication of the orders passed by the Respondents that were impugned in the Writ Petition, which has been dismissed.

4. Mr. N.G.R. Prasad, Learned Counsel appearing for the the Appellant vehemently contended that the Appellant had attained the age of superannuation on 30.10.2016 and in view of the departmental proceedings initiated against the Appellant, his terminal benefits have not been disbursed to him till date and that in view of the long drawn litigation between the parties, this Court may fix the outer time limit for the Respondents for settling his terminal benefits along with interest at the rate of 15% per annum, after deducting the said amount of Rs.3,80,000/- that has been inflicted as penalty.

5. Mr. G. Masilamani, Learned Senior Counsel, assisted by Mr. K. Sankaran, Learned Counsel appearing for the Respondents, on instructions, submitted that the terminal benefits remaining to be paid to the Appellant are as follows:-

S. No.	Particulars	Amount
1.	Gratuity	Rs.10,00,000/-
2.	Employer's contribution to Provident Fund	Rs.21,96,362/-
3.	Leave encashment	Rs.8,07,416/-

It is strenuously urged that as the Respondent had suffered a huge loss to the extent of Rs.53,00,000/- due to misfeasance of the Appellant, his terminal benefits could not be disbursed to him till accountability was fixed on him in the disciplinary proceedings initiated for the same to assess the amount of loss

to be recovered from him, which could not be completed due to the litigation protracted at his behest and as such, when there has not be any culpable delay on the part of the Respondents, the question of paying interest for those amounts would not arise.

6. The Hon'ble Supreme Court of India in H. Ganghanume Gowda -vs- Karnataka Agro Industries Corporation Ltd., [(2003) 3 SCC 40] and Y.K. Singla -vs- Punjab National Bank [(2013) 3 SCC 472] have reiterated the legal position from Section 7(3A) of the Payment of Gratuity Act, 1972, that if the amount of gratuity payable to an employee within 30 days from the date of cessation of his employment is not paid, there is no discretion to the employer to deny interest which would have to be paid at such rate not exceeding the rate notified by the Central Government from time to time, and the only exception for the same would be:-

- (i) when the delay in the payment of gratuity is due to the fault of the employee; and
- (ii) the employer has obtained permission in writing from the Controlling Authority under the Payment of Gratuity Act, 1972, for the delayed payment on this ground.

In the absence of having obtained any such permission from the Controlling Authority under the Payment of Gratuity Act, 1972, for the delayed payment of gratuity, the Appellant would be entitled to the gratuity amount due with interest at the rate fixed by the Central Government from time to time under the aforesaid statutory provision.

7. Insofar as interest on Provident Fund is concerned, in the circular No. CDO/P & HRD-PPFG/51/2011-12 dated 12.08.2011, the Corporate Centre of the Respondent/Bank at Mumbai had issued the following instructions:-

"4. It has been decided that even in cases of delay attributable to the employee, on receipt of the claim, interest may be paid at Savings Bank Rate (Staff) or at the rate of interest payable on the Provident Fund at the material time, whichever is lower, from the date of normal retirement to the actual date of refund of Provident Fund balance to the employee.

Please note to bring the contents of this circular to the notice of all concerned."

In view of the same, the Appellant shall be entitled to interest at the rate on the aforesaid terms for that amount during the period of delay.

8. Coming to the leave encashment and arrears of pension and other benefits due (except gratuity and provident fund), if any, the same shall be paid to the Appellant with interest at such

rate as may be fixed under the relevant statutory provisions and if no such rate has been fixed and there is no prohibition for awarding interest for the same under the relevant statutory provisions, at the rate applicable from time to time on the fixed deposits of its customers during the period of delay for the respective amounts.

9. As agreed by the Learned Counsel for the Appellant, the Respondents shall deduct the sum of Rs.3,80,000/- fixed as loss recoverable from the Appellant in the order dated 28.03.2019 passed by the Appellate Authority of the Respondent/Bank, from the aforesaid terminal benefits and the balance amount due shall be expeditiously paid to the Appellant under acknowledgment along with a working-sheet showing the calculations and a report of compliance in that regard shall be filed before the Registrar (Judicial) of this Court by 30.04.2019. It is needless to add here that it shall be ensured that the monthly pension of the Appellant from 01.05.2019 onwards is paid on the due dates without fail.

10. In the result, the Writ Appeal is disposed on the aforesaid terms. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar (CS-I Cell)

//True copy//

Sub Assistant Registrar

vjt

To

1. The General Manager -cum- Disciplinary Authority,
State Bank of India
Network 2, Circle Top House,
16, College Lane, Chennai LHO,
Chennai - 600 006.
2. The Assistant General Manager,
Enquiry Officer,
State Bank of India,
Vigilance Department,
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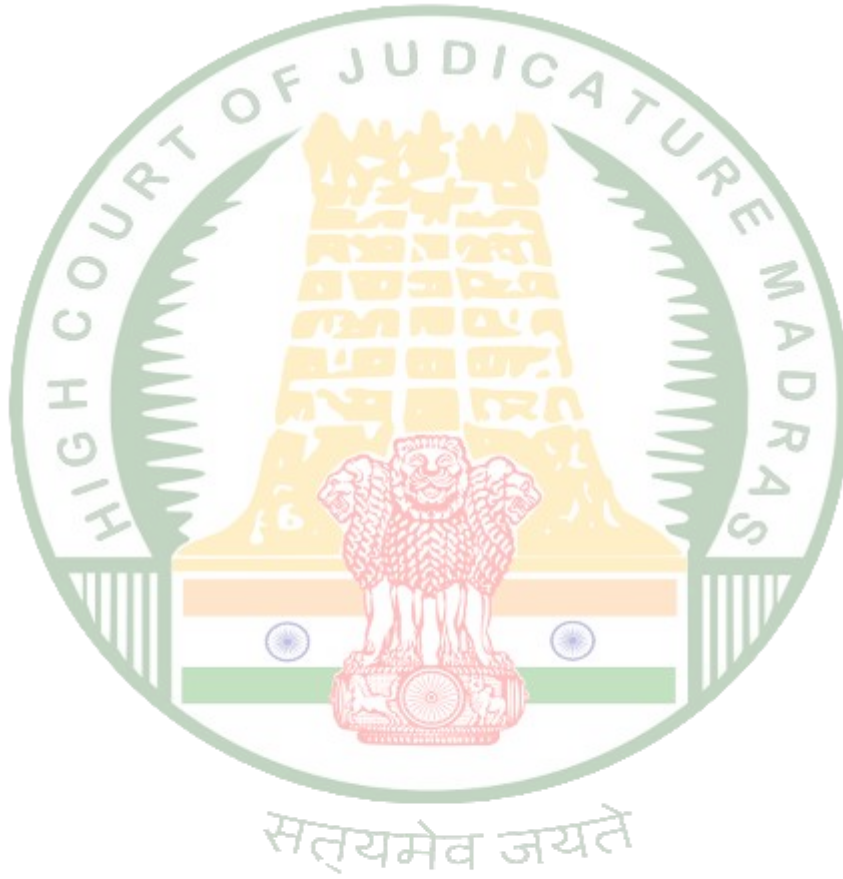
Copy to

The Registrar (Judicial),
Madras High Court,
Chennai - 600 104.

+1cc to M/s.Row & Reddy, Advocate SR.No.32099

W.A. No. 67 of 2018

BR(CO)
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