IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

209 **CWP No.2314 of 2017**
Date of Decision: 22.10.2019

Surinder Singh ....Petitioner

Versus

Punjab & Sind Bank and another ....Respondents

CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA

Present: Mr. Praveen Gupta, Advocate
for the petitioner.

Mr. R.N. Lohan, Advocate
for the respondents.

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G.S. SANDHAWALIA, J. (ORAL)

The present writ petition has been filed under Article 226/227 of the Constitution of India challenging the order dated 07.10.2016 (Annexure P-6) whereby the benefits of leave encashment as such had been declined on the ground that in case of compulsorily retired employees/officers, the cut of date as provided is 30.04.2015.

Counsel for the petitioner has relied upon the judgment of the Full Bench passed in ***UCO Bank & others Vs. Anju Mathur, 2013(3) SCT 272*** to contend that regulation 38 of the UCO Bank Officers Service Regulations is pari materia to the Regulation 38 of the Punjab & Sind Bank (Officers) Service Regulations, 1982. It is, accordingly, submitted that once the matter stands duly covered and even the respondent-bank has recognized the said aspect fixing the cut of date as such on 30.04.2015 would not be justified, as even the complete reading of Regulation 38 would not give reasonable ground as such to the banks to withhold the payment leave encashment on the basis of the order of compulsorily retirement.

Mr. Lohan, on the other hand submitted that there is a considerable delay of approximate 4 years in approaching the Court since the petitioner had been compulsorily retired on 12.03.2012 (Annexure P-1) and therefore, the petition should be dismissed on this ground.

It is not disputed that the petitioner had filed an appeal against the order of compulsorily retirement which was rejected by the Appellate Authority on 14.12.2012 (Annexure P-2). The petitioner was given his revised pension on 03.04.2013 (Annexure P-3) and thereafter he submitted his request dated 03.10.2016 (Annexure P-5) praying for claim of leave encashment which has been rejected vide impugned order dated 07.10.2016 (Annexure P-6).

A reading of the communication dated 11.05.2015 (Annexure P-7) of the Indian Bank's Association would also go on to show that the matter was reconsidered since some affected officers had approached various High Courts and got relief in their favour. Government of India, Department of Personnel & Training, on 13.02.2006 had also decided that in such cases where the Government servants are compulsorily retired as a measure of punishment and in whose cases, if a cut in pension (including gratuity) had been ordered, the benefit of encashment of earned leave at the time of such retirement was to be allowed. Only because the meeting as such of the Managing Committee took place on 30.04.2015, the cut off date has been fixed.

In such circumstances, counsel for the petitioner is well justified to hold out that once Regulation 38 of UCO Bank was subject matter of consideration before the Full Bench in ***Anju Mathur (supra)*** under identical situations, the claim as such for the benefit of the leave encashment cannot be denied on the ground of limitation. The interest of the respondent-bank can be thus protected to the extent that the interest would become payable from the date of rejection order which was passed on 07.10.2016 (Annexure P-6) immediately on the petitioner moving a representation only on 03.10.2016. The delay as such would not stand in the way of this Court to grant benefits, in view of the reading of the Regulation in favour of the employees by the Full Bench. The question before the Full Bench and the discussion as such reads as under:

> *"RE: WHETHER THERE CAN BE FORFEITURE OF LEAVE ENCASHMENT AMOUNT OF A PERSON WHO HAS BEEN GIVEN THE PUNISHMENT OF COMPULSORY RETIREMENT:*
>
> *25. At the outset, we are forced to remark that reasons given in Ashwani Kumar Sharma (supra) are not legally correct, as the compulsory retirement by way of punishment is also treated as ordinary termination of service on which we have already given our decision hereinabove.*
>
> *26. We have also reproduced Regulation 38 of the Officers Regulations, which deals with leave encashment. This regulation states that leave shall lapse in certain circumstances. Proviso thereto, however, provides an explanation and makes a provision for leave encashment in those cases where an officer "retires" from service. The question is as to whether this retirement would mean retirement on attaining the age of superannuation or retirement caused by other modes as well, including compulsory retirement. It cannot be disputed that compulsory retirement occasioned otherwise than by way of penalty would be covered by the proviso and leave encashment would*

be admissible as in that eventuality also, the officer "retires" from service. However, unlike Regulation 46 of the Officers' Regulations, the cases where the retirement comes by way of penalty of compulsory retirement, are not excluded. Therefore, when an officer "retires" from service, in whatever manner, he is eligible for leave encashment. In the case of O.P. Garg (supra), this issue was specifically dealt with by this Court in the following manner:

> *"The petitioner in the present case had been wrongly denied encashment of leave through a careless mis-interpretation of Regulation 38 and without considering its proviso. From the Regulation 38 it would be revealed that all leave lapses on resignation, retirement, death, discharge, dismissal or termination. What this means is that on the happening of any of the above events an officer cannot insist that he should be permitted to continue in service to the extent of leave which still stood to his credit. Since leave lapses, the concerned officer must leave service. Funnily leave of an officer who dies while in service also lapse. It seems the framers of regulation probably thought that a dead person may continue on leave till the expiry of the leave to his credit, unless a regulation was framed.*
>
> *Be that as it may, it is the proviso to Regulation 38 which applies to the petitioner's case and has been actually discussed in Ashwani Kumar Sharma's case (supra). As regards payment of gratuity made to the petitioner of Rs.2,17,351/- on August 16, 2001, learned counsel submitted that these amounts had been paid without interest and referred to the order Annexure P/7 dated December 29, 2003 regarding payment of simple interest @ 10% for the period July 27, 1999 to August 15, 2001 on the aforesaid gratuity amount. Although interest was not paid to the petitioner at the time of release of the principal amount of gratuity on August 16, 2001, a sum of Rs.20325/- was the second*

> *installment received by the petitioner on November 17, 2004 but the second installment was paid without interest. Therefore, the petitioner is entitled to 10% interest on this amount from the due date (July 17, 1999) till the actual payment made on November 27, 2004.*
>
> *In view of the above discussion, this petition is allowed. The petitioner shall be entitled to payment of emoluments for the period of privilege leave that he had earned (leave encashment) alongwith interest @ 10% from July 26, 1999 till date of payment."*
>
> *27. We agree with the aforesaid reasons. We are, therefore, of the view that respondent would be entitled to leave encashment."*

Regulation 38 of the Punjab & Sind Bank (Officers') Service Regulations 1982 reads as under:

> *"**38. LAPSE OF LEAVE***
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> *Save as provided below, all leave to the credit of an officer shall lapse on resignation, retirement, death, discharge, dismissal or termination.*
>
> *Provided that where an officer retires from the 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 representatives, 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."*

Accordingly, keeping in view the above, the writ petition is allowed and the order dated 07.10.2016 is quashed. The respondent-bank shall pay the entitlement of leave encashment alongwith interest @ 8% per annum from 07.10.2016 till the date of payment. In case, the payment is not made within a period of 2 months after receiving certified copy of this order, interest element shall go up to 10% per annum.

The present writ petition stands allowed, accordingly.

(G.S. SANDHAWALIA)
22.10.2019 **JUDGE**
pvd

Whether speaking/reasoned Yes/No
Whether reportable Yes/No