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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision :- 21.11.2019

+ W.P.(C) 2061/2008

KRISHAN DEV

..... Petitioner

Through: Mr.Manish Kumar, Adv.

versus

CENTRAL BANK OF INDIA

..... Respondent

Through: Ms.Rachna Gupta, Adv.

REKHA PALLI, J (ORAL)

1. The present writ petition filed by an ex-employee of the respondent/bank assails the order dated 30.07.2007 passed by the learned Central Government Industrial Tribunal cum Labour Court-II, Rajender Place, New Delhi in LCA. No.29/2006. Under the impugned award, the petitioner's claim was rejected.

2. The petitioner who had been serving in the respondent/Bank since January, 1971 applied for voluntary retirement as per the scheme floated by the respondent. Upon his request being accepted, he was released from service on 31.03.2001. Soon thereafter in May, 2001, the petitioner came to be apprehended in a criminal case arising out of FIR No.14/2001, which had been registered before his retirement and even though no disciplinary action was initiated by the respondent, the petitioner's pension as also the ex-gratia payment payable to him, in terms of the Bank's Voluntary Retirement Scheme,

2001 was withheld.

3. The petitioner therefore, approached the Central Government Industrial Tribunal cum Labour Court on 31.07.2006 by way of an application under Section 33C(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the I.D. Act) which came to be rejected under the impugned order dated 30.07.2007, by observing as under:-

“In the present case the workman has been found guilty of grave mis-conduct by the bank in the light of statement of the pensioner given to the Police and in view of the fact that trial is pending against the workman.

The confessional statement given to the Police is not admissible in evidence.' However, the Police has filed chargesheet in the Court and the trial is pending. After filing of the chargesheet the bank can held that the workman is prima faciedly guilty of gross mis-conduct and inquiry is not required in such cases. The workman cannot get benefit of not being convicted by a court of law. Chargesheet has been submitted by the Police. The trial is sun-judice.

The Police has filed chargesheet in the court after proper investigation. The filing of the chargesheet may be taken to be prima faciedly proved, that the applicant is guilty of gross mis-conduct for pension purposes. The competent authority may withheld the pension on apprehension of the pensioner having committed grave mis-conduct. On being convicted there is provision for withdrawal of pension or a part thereof. If there is provision for withdrawal of pension or a part thereof the competent authority may withheld pension on being prima faciedly satisfied that the pensioner has committed grave mis-conduct.”

4. Impugning the aforesaid order, learned counsel for the petitioner at the outset submits that during the pendency of the present writ petition, the petitioner has been honourably discharged by the

Criminal Court and, therefore, the very basis of the impugned order, no longer survives. In view of these changed circumstances, the impugned order rejecting his claim is not sustainable as the same was premised on the fact that a charge sheet had been filed against the petitioner and his trial before the criminal court was still pending, it had therefore been concluded that the petitioner was guilty of the alleged misconduct. He thus contends that now that the petitioner stands honourably discharged, his due pension and ex gratia payment should be released to him at the earliest. He, therefore, prays that the writ petition be allowed.

5. On the other hand, Ms.Rachna Gupta, learned counsel for the respondent while supporting the impugned order submits that mere discharge of the petitioner in the criminal proceedings does not change the fact that the petitioner had indulged in a serious misconduct and that he had also made a statement before the police clearly admitting his misconduct, which fact was noticed by the learned Labour Court. She therefore, prays that the writ petition be dismissed.

6. Having considered the submissions of the learned counsel for the parties and with their assistance perused the record, I find merit in the petitioner's contention. There is no doubt that in view of the petitioner's honourable discharge, the very basis of the impugned order no longer exists. Today, when the petitioner stands honourably discharged upon the Criminal Court finding that there was no evidence against him, it cannot be said that the petitioner is guilty of any misconduct whatsoever specially when no disciplinary action was

initiated against him. The findings of the Labour Court were based only on the premise that the petitioner's trial before the criminal court was still subjudice and once the proceedings have resulted in the petitioner's discharge, the impugned order cannot be sustained and is, therefore, set aside.

7. The writ petition is accordingly allowed by not only setting aside the impugned order but by further directing the respondent to release all the pensionary dues of the petitioner as also the ex-gratia payment due to him within eight weeks. It is further directed that in case the arrears are not paid to the petitioner within the next eight weeks, the same will carry interest at the rate of 10% per annum from the date of expiry of eight weeks.

8. The writ petition is disposed of in the aforesaid terms.

NOVEMBER 21, 2019

gm

REKHA PALLI, J.