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

Date of decision: 13.08.2019

+ W.P.(C) 7518/2018

K. L. BHASIN Petitioner
Through Mr. Ashok Bhalla, Adv.

versus

PUNJAB NATIONAL BANK AND ORS. Respondents
Through Mr. Rajesh Kumar with Ms. Sakshi
Gaur, Advs.

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (O R A L)

1. Vide the present petition, the petitioner seeks directions thereby to set aside the Board of Directors Resolution dated 12.08.2006 of respondent no.1 with regard to appropriation of Bank Contribution of PF of the petitioner amounting to ₹76,020/- towards alleged losses, as intimated to the petitioner by the respondent no.2 vide letter dated 23.01.2018, with all consequential and attendant benefits.
2. Further seeks directions thereby to direct the respondents to release the Pensionary Benefits to the petitioner in terms of Regulation 33 of P.N.B.(Employees') Pension Regulations 1995 after completing the requisite formalities.

3. Also seeks direction to the respondents, to treat the Bank Contribution of PF of the petitioner, as his contribution towards Pension Fund and if any further amount is liable to be contributed by the petitioner towards Pension Fund, the same may kindly be deducted/set off, out of dues/arrears of Pension payable to the petitioner and the balance amount be released to the petitioner, along with interest.
4. Brief facts of the case are that the petitioner had joined Erstwhile New Bank of India on 01.11.1969 and was working as Manager (MMG/S-II), Branch Officer, Defence Colony, New Delhi.
5. On 17.07.1990, THE petitioner was placed under suspension Order and thereafter he was served with THE Charge Sheet dated 18.12.1990.
6. New Bank of India was amalgamated with Punjab National Bank vide Government of India Notification dated 04.09.1993, where after the petitioner became Officer Employee of Punjab National Bank.
7. After conducting the departmental enquiry in the charge-sheet dated 18.12.1990, the Disciplinary Authority inflicted major punishment of dismissal upon petitioner vide order dated 15.01.1994, the operative part of which reads as under:

“Keeping in view of the seriousness of the proven charges, I decide to impose upon Shri Bhasin Major

penalty of "Dismissal from Service which shall be a disqualification for future employment". Further, Shri Bhasin will not be entitled to any wages for the period of suspension excepting the subsistence allowance paid/payable."

8. On 29.09.1995 Punjab National Bank introduced "*P.N.B.(Employees') Pension Regulations 1995*".

9. On 07.12.2000, the petitioner filed Civil Writ Petition bearing W.P.(C) No. 7487/2000 challenging the punishment of dismissal, inflicted upon him by Punjab National Bank.

10. This Court while disposing of the Writ Petition to the limited extent, by converting the punishment of dismissal to the punishment of compulsory retirement, passed order which is as under:

"9. In view of the aforesaid discussion, this writ petition is allowed to the limited extent that the punishment imposed upon the petitioner from dismissal from services is converted to the punishment of compulsory retirement and which shall be also a disqualification for future employment with the respondent no./employer."

11. Being aggrieved, the respondent Punjab National Bank filed LPA No. 338/2017 against the aforesaid order & judgement dated 23.03.2017 which was disposed of by the Division Bench of this Court vide order dated 25.10.2017, which reads as under:

"Learned counsel appearing on behalf of the appellant

states that the latter would be satisfied if the appeal is disposed of with a clarification that the sole respondent would be entitled to terminal benefits strictly in accordance with the rules.

Learned counsel appearing on behalf of the respondent does not oppose this prayer made on behalf of the appellant.

In view of the foregoing, the appeal is disposed of with a clarification that the respondent shall be entitled to all terminal benefits only in accordance with the rules.”

12. Consequently, the petitioner submitted representation dated 10.11.2017 followed by representations dated 02.01.2018 and 08.01.2018 for release of his pension in view of Regulation 33 of “PNB (Employees') Pension Regulations, 1995” and other terminal benefits as admissible to him in view of his punishment being converted from dismissal to compulsory retirement.

13. Vide order dated 23.01.2018, the respondent-bank apprised the status of terminal benefits of the petitioner, stating, inter-alia, that the Bank Contribution of Provident Fund was appropriated towards loss whereas the petitioner is not eligible for pension under the extant provisions.

14. Learned counsel appearing on behalf of the petitioner submits that Punjab National Bank is a member of Indian Bank Association, which has issued Circular No. HR & IR/CIR/G2/BRK/4684 dated 16.03.2018, para 9 of which reads as under :

"8. To work out the methodology in this regard, a meeting of the GMs(HR) was convened on 28.02.2018 at IBA. After detailed discussions, a consensus has been arrived at to extend the option of pension to compulsorily retired employees/officers on same terms and conditions as mentioned in Bipartite Settlement/Joint Note dated 27.4.2010. As per the agreed terms and conditions of said Bipartite Settlement/Joint Note, Pension/Family Pension shall be payable with effect from 27th November, 2009, provided that employees/officers who are compulsorily retired after that date shall get pension from the respective dates of such retirement. Court cases, if any, in the matter may be withdrawn forthwith."

15. In terms of Final Order & Judgement dated 23.03.2017 in CWP No. 7487/2000 r/w Order dated 25.10.2017 in LPA No. 338/2017, the petitioner was deemed to be compulsory retired w.e.f. 15.01.1994 after completing more than 22 years of service and was entitled to Pension in terms of Regulation 33 of Pension Regulations which was applicable w.e.f. 01.11.1993.

16. Learned counsel for the petitioner has relied upon the case of ***United Bank of India vs Prasanta Kumar Roy and Others*** and ***Punjab National Bank vs C.P.Krishnaswamy & Ors.: (2012) 12 SCC 519***, whereby held that the employees who were compulsorily retired even before 01.11.1993 were allowed Pension in terms of Pension Regulations.

17. In the case of ***Ghanshyambhai Muljibhai Patel vs Bank of India***: 2013 IC 1941(Gujarat High Court), the High Court had allowed the petition

for payment of pension to an employee who had compulsorily retired even before 01.11.1993.

18. Learned counsel further submits that the case of the petitioner is on better footing and entitles him pension in terms of Extant Regulation 33 of Pension Regulations. However, the Disciplinary Authority had neither passed any Order for recovery of any alleged loss from the petitioner in terms of Regulation 4(d) of D&A Regulations nor the Bank's Contribution to PF of petitioner could be appropriated by the Bank without any Notice to the petitioner. Even otherwise, once the Respondent Bank has released the Gratuity to the petitioner under Payment of Gratuity Act, 1972, the plea of alleged loss is not sustainable.

19. On the other hand, learned counsel appearing for the respondents submits that the petitioner was dismissed from the Service vide order dated 15.01.1994 and appeal of the petitioner was also rejected by the *Appellate Authority* on 07.12.1994.

20. On 29.09.1995, Punjab National Bank introduced PNB (Employees') Pension Regulations 1995 with retrospective effect with different dates in respect of different categories.

21. Learned counsel for the respondents further submits that petitioner

had filed a W.P.(C) No.7487/2000 challenging the punishment inflicted upon him, which was allowed by this Court to the limited extent, by converting the punishment of dismissal to the punishment of compulsory retirement, vide judgment dated 23.03.2017, the operative part of which reads as under:

“10. The writ petition is allowed to the limited extent as stated above, leaving the parties to bear their own costs. Let the terminal benefits, whichever are payable to the petitioner in view of the passing of the present judgment, be released to the petitioner within a period of two months from today. Obviously, what would be the entitlement of the petitioner, taking the petitioner only as having compulsorily retired, will be the entitlement in accordance with the applicable rules of the respondent no.1/Punjab National Bank/ employer.”

22. Being aggrieved, respondent bank had challenged the order and judgment dated 23.03.2017, vide LPA No. 338/2017 which was disposed of vide Order dated 25.10.2017 which reads as under:

“Learned counsel appearing on behalf of the appellant states that the latter would be satisfied if the appeal is disposed of with a clarification that the sole respondent would be entitled to terminal benefits strictly in accordance with the rules.

Learned counsel appearing on behalf of the respondent does not oppose this prayer made on behalf of the appellant.

In view of the foregoing, the appeal is disposed of with a clarification that the respondent shall be entitled to all

terminal benefits only in accordance with the rules.

23. Thereafter, petitioner made representations requesting for release of his terminal dues including pensionary benefits.

24. The respondent vide letter dated 23.01.2018, while sanctioning Leave Encashment and Gratuity, apprised the petitioner that the bank Contribution of Provident Fund was appropriated by the Bank towards loss (by the Board in its Meeting held on 12.08.2006) therefore, the petitioner is not eligible for pension under the extant provisions, which has given rise to present Writ Petition.

25. Whereas, learned counsel for the petitioner submits that once the respondent bank has released the Gratuity to the petitioner under Payment of Gratuity Act, 1972, the plea of alleged loss is not sustainable. More so, there is a categorical observation in Order & Judgment dated 23.03.2017, *"however, the admitted position even as per the order dated 20.02.2017 is that there is no monetary loss which is caused to the respondent no./ employer."*

26. It is further submitted that before forfeiting and appropriating the Banks Contribution to PF of the petitioner and appropriating towards alleged loss to respondent Bank, neither any notice was given to the petitioner nor

the securities taken in account of the borrowers were handed over to the petitioner so as to enable him to recover the amount forfeited by the Bank after disposing/realizing of the securities mortgaged/available in the borrowers accounts.

27. Further submitted that there was no Pension Scheme earlier in the bank and the petitioner, like other Employees/Officers, was entitled to Bank's Contribution to PF in terms of Punjab National Bank Employees Provident Fund Trust Rules. It is not in dispute that the petitioner had completed service of more than 22 years on 15.01.1994 and was entitled to the Pension in terms of Regulations 33 of Pension Regulations which are applicable w.e.f 01.11.1993, as such, the Regulation 33 of Pension Regulation was deemed to be existing on 15.01.1994. On 29.09.1995 the Bank's Contribution to PF of the petitioner was lying with the respondents and not withdrawn by the petitioner.

28. Counsel for the petitioner submits that as per the Bipartite Settlement dated 29.10.1993 relates to Workmen Employees and is not applicable in the case of petitioner, as he was an Officer and had been working as Manager in MMG/S-II. As per PNB Employees Pension Regulations 1995 which were notified on 29.09.1995, on which date the petitioner was not in the service of

the Bank.

29. Counsel for the petitioner submits that on 29.09.1995, the bank contribution to PF was available with the respondents, which was illegally appropriated by the Board in its meeting held on 12.08.2006. In the intervening period, the respondent bank neither sought option of the petitioner nor refunded the bank's Contribution to PF to the petitioner. Thus, the respondents cannot take advantage of their own wrong. Even otherwise, the petitioner has exercised option for pension vide letter dated 10.11.2017, after dismissal of LPA No. 338/2017 vide Order dated 25.10.2017

30. To strengthen his arguments, learned counsel for the petitioner has relied upon the cases of ***United Bank of India vs. Prasanta Kumar Roy and Others*** And ***Punjab National Bank vs. C.P. Krishnaswamy & Ors.*** (2012) 12 SCC 519, whereby held that the employees who were compulsorily retired even before 01.11.1993 were allowed pension in terms of Pension Regulations.

31. In the case of ***Ghanshyambhai Muljibhai Patel (Supra)***, the Gujarat High Court had allowed the petition for payment of pension to an employee who had compulsorily retired even before 01.11.1993. Against the said Judgment, the Bank of India had filed LPA No.446/2013, which was

dismissed by the Hon'ble Division Bench of Gujarat High Court vide Final Order & Judgment dated 28.08.2013.

32. Being aggrieved, the respondent bank filed SLP (C) No.37207/2013 (Now CA No. 14666/2015) wherein, the Hon'ble Supreme Court of India had granted Leave vide Order dated 15.12.2015, but no interim/relief was granted therein. In fact, the Hon'ble Supreme Court of India vide Order dated 29.01.2019 specifically directed to pay pensionary benefits to the respondent in C.A. No. 14666/2015 arising out of SLP (C) No. 37207 of 2013 within a period of four weeks from the said date.

33. Counsel for the petitioner further submits that the case of petitioner is on better footing and entitles him pension in terms of Extant Regulation 33 of Pension Regulations, which was deemed to be existing on 15.01.1994.

34. Learned counsel further submits that the Circular dated 16.03.2018 issued by IBA cannot supersede the PNB Employees Pension Regulations 1995 and no distinction can be drawn between employees Compulsorily Retired before or after 29.09.1995.

35. Further the case of the petitioner is that Forfeiture of bank's Contribution to Provident Fund of the petitioner came to his knowledge vide letter dated 23.01.2018 as such, there is no delay in filing the writ petition.

36. Regulation 33 inter-alia provides that an employee compulsorily retired from service as a penalty on or after 1st day of November, 1993 in terms of Discipline and Appeal Regulations or settlement by the authority higher than the authority competent to impose such penalty may be granted pension at a rate not less than two-thirds and not more than full pension admissible to him on the date of his compulsory retirement if otherwise he was entitled to such pension on superannuation on that date. The petitioner neither exercised the option for pension in terms of Settlement dated 29.10.1993 or the Pension Regulations, 1995 nor refunded the banks Contribution to Provident Fund or authorized the Pension Fund Trust to transfer his banks Contribution to Provident Fund to the Pension Fund.

37. The petitioner filed W.P.(C) No. 7487 of 2000, inter alia, challenging the order dated 15.01.1994 passed by the Disciplinary Authority imposing punishment of dismissal from service which is to be disqualification for future employment upon the petitioner.

38. The Board of Directors of the respondent bank decided to appropriate ₹76,020.40 of the Banks Contribution of the Petitioner in view of the loss of ₹90.35 lacs caused to the Bank by the Petitioner in two accounts i.e. M/s Super Plastics and M/s Aakriti Steels (P) Ltd., which was in addition to three

more accounts involving ₹104.78 lacs in the Charge Sheet which was kept in abeyance in view of the punishment of dismissal imposed upon the Petitioner.

39. It is pertinent to mention here that vide order dated vide order dated 23.03.2017, this Court allowed W.P.(C) No.7487 of 2000 of the Petitioner limited to the extent of converting punishment of dismissal to that of compulsory retirement.

40. Vide order dated 25.10.2017 passed in LPA No. 338 of 2017, the Division Bench of this Court while recording the submission of the respondent bank, the appeal may be disposed of with a clarification that the petitioner would be entitled to terminal benefits strictly in accordance with rules and laws.

41. The respondent bank in reply to the letter dated 08.01.2018 of the petitioner, inter alia, informed (a) Own Contribution of PF already stands paid but Banks Contribution of PF has been appropriated towards loss caused to the Bank in the account of M/s Super Plastics and M/s Aakriti Steels (P) Ltd.; (b) Gratuity of ₹1 lac under the P.G. Act, 1972 is being released; (c) In view of unavailability of your leave record the maximum amount of Leave Encashment (240 days) with interest of ₹3,05,508.59 is

being paid; (d) Petitioner is not eligible for pension. An amount of ₹4,05,508.59 was credited in the account of the Petitioner on 23.01.2018.

42. Regarding the issue raised by the petitioner that petitioner is entitled to terminal benefits in accordance with rules; that Disciplinary Authority has not passed any order for recovery of any alleged loss; the banks Contribution to P.F. cannot be forfeited without notice to the petitioner.

43. Further case of the petitioner is that the Gratuity having been paid, the plea of alleged loss is not sustainable; as he has been informed about appropriation of ₹76,020/- of the bank Contribution in the Board Meeting held on 12.08.2006 by letter dated 23.01.2018 etc.

44. It is not in dispute that the Disciplinary Authority in the order dated 15.01.1994 has concurred with the finding of the Enquiry Officer, inter alia, that the Bank has been defrauded to the extent of ₹21.11 lacs in C.C. Account and ₹14.13 lacs in Term Loan Account as on 28.03.1990 in case of M/s Super Plastics and to the extent of ₹16.38 lacs in cash credit and ₹14.46 lacs in Term Loan Account of M/s Aakriti Steels Pvt. Ltd. The Disciplinary Authority has also noticed that Bank's huge fund of more than ₹1 crore has been put to jeopardy.

45. The subsequent order dated 20.02.2017, which was passed by the

Disciplinary Authority in compliance of the direction dated 24.11.2016 passed in W.P. (C) No. 7487 of 2000, clearly records as under:-

" The record reveals that the loan was sanctioned with various stipulations which were to be complied with, before disbursement of loan, Shri Bahasin did not comply with these stipulations and disbursed the loan without obtaining margin money from these companies. Further, the loss of ₹ 15 lacs to ₹ 20 lacs occurred approx. 26 years ago which was not a small amount at that time. As a prudent banker, it was his primary duty to safeguard the Bank's interest by following all the guidelines and procedure before recommending the loans. As incharge of the branch and responsible officer of the Bank, it was his duty to cross check/verify all the documents, financial data and genuineness of the promoters. Further, the penalty imposed upon Shri Bhasin was on the basis of lapses committed by him at the time of recommending the proposal and not merely due to his association with a chartered accountant who got business for the Bank. All these facts lead to conclusion that there was a malafide intention on his part and he connived with the party to cause huge loss to the Bank."

46. Thus, this Court while modifying the punishment of dismissal to the Compulsory Retirement by order dated 23.03.2017 has not interfered with the finding of loss recorded by the Disciplinary Authority in the earlier order dated 15.01.1994 or in the order dated 20.02.2017 .

47. The Rule 13 and Rule 14 of the PNB Employees Fund Trust inter-alia provides that the Bank shall have first lien of the contribution made by it to the individual account of any member together with interest thereon and

accretion thereto, to recover any loss, damages and liabilities which the Bank may at any time sustain or incur by reason of any dishonest act, deed or omission or gross misconduct of or by such member. Rule 14 further provides that where the Bank shall have a first lien, as provided in Rule 13, the Trustees shall on receipt of resolution passed by the Board of Directors of the bank shall pay to the bank the Banks Contribution to the Members Fund, to the extent such decision is taken by the Board and the payment so made shall be complete discharge of trustees and further the recovery of such loss by bank shall be limited to the extent of such financial loss only.

48. It is not in dispute that they have not challenged the above mentioned rules of the PNB Employees Fund Trust.

49. The loss caused to the bank by the petitioner has been specifically recorded in the order dated 15.01.1994 passed by the Disciplinary Authority based on the findings recorded by the Enquiry Officer in the Departmental Enquiry held against the Petitioner. Therefore, the submissions of the petitioner that he has not been given any opportunity before ascertaining the loss, is without any merit and substance.

50. The decision of the Board of Director to appropriate Banks Contribution to Provident Fund in terms of Rule 13 and 14 is a consequential

order based on the finding of the loss already recorded in the Departmental Enquiry. Therefore, neither further opportunity of hearing by the Board of Directors before appropriation was required nor any such opportunity has been provided or envisaged in Rule 13 & 14 of the Provident Fund Trust Rules. Further, as mentioned above, there is no challenge neither to the said Rules nor the procedure to be followed under the said Rules for appropriation of Banks Contribution to P.F.

51. The issue raised in the present petition is no longer *res integra*. The Full Bench of the Supreme Court has decided in the case of ***Senior Divisional Manager Life Insurance Corporation of India And Ors vs. Shree Lal Meena: (2019) 4 SCC 479.***

“ 26. There are some observations on the principles of public sectors being model employers and provisions of pension being beneficial legislations. We may, however, note that as per what we have opined aforesaid, the issue cannot be dealt with on a charity principle. When the legislature, in its wisdom, brings forth certain beneficial provisions in the form of Pension Regulations from a particular date and on particular terms and conditions, aspects which are excluded cannot be included in it by implication. The provisions will have to be read as they read unless there is some confusion or they are capable of another interpretation. We may also note that while framing such schemes, there is an important aspect of them being of a contributory nature and their financial implications. Such financial implications are both, for the contributors and for the state. Thus, it would be

inadvisable to expand such beneficial schemes beyond their contours to extend them to employees for whom they were not meant for by the legislature.”

52. Thus the arguments advanced by learned counsel for the petitioner and the judgment relied upon. is of no help to the petitioner in the present case.

53. In view of the above discussion and settled proposition of law, I find no merit in the present petition and the same is accordingly dismissed.

54. Pending application, if any, stands disposed of.

(SURESH KUMAR KAIT)
JUDGE

AUGUST 13, 2019
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