

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14718 of 2019

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Birendra Kumar, son of Late Nand Kishore Prasad, resident of Teachers Colony, Ramchandrapur, P.S.- Laheri, Bihar Sharif, District- Nalanda at Bihar Sharif

... .. Petitioner/s

Versus

1. The Dakshin Bihar Gramin Bank (earlier known as Madhya Bihar Gramin Bank) having its Head Office at Sri Vishnu Commercial Complex, Ashochak, Patna- 800016.
2. The Chairman, Dakshin Bihar Gramin Bank having its office at Sri Vishnu Commercial Complex, Ashochak, Patna- 800016.
3. The General Manager, Dakshin Bihar Gramin Bank having its Office at Sri Vishnu Commercial Complex, Ashochak, Patna- 800016.

... .. Respondent/s

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Appearance :

For the Petitioner : Mr.Prashant Sinha, Advocate
For the Respondents : Mr.Suresh Pd Singh No.1, Advocate

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT
Date : 15-06-2020

The matter has been listed today for consideration through video conferencing in view of the nationwide lockdown on account of COVID-19 pandemic.

2. The learned counsels are appearing and making submissions from their residence. The Court Master and Secretary are also part of this virtual Court proceedings from their homes, all with the aid of audio visual technology.

3. The learned counsel for the petitioner and the learned Counsel for the respondent-Bank have made their submissions.



4. The writ petition substantially claims pensionary benefits and leave encashment dues.

5. The relevant facts are that on 14.12.2015 a charge memo was issued to the petitioner for alleged misconduct while posted as Branch Manager in the Bargaon Branch when he was a Scale-II Officer. On 28.12.2014, i.e., three days prior to his superannuation, which was due on 31.12.2015, the petitioner was served with a letter (Annexure 1(A)). By the said communication, the petitioner was to continue as in service until the proceedings initiated under charge memo dated 14.12.2015 were concluded and final order was passed in respect thereof. The communication was in terms of Regulation 45(3) of the Madhya Bihar Gramin Bank (Officers & Employees) Service Regulations, 2010 (hereinafter referred to as "the 2010 Regulations). The communication was explicit to the effect that the petitioner would not receive any pay or allowances after the date of superannuation (31.12.2015). He would also not be entitled to payment of retirement benefits till conclusion of the proceedings by passing of final order therein, except his own contribution to the Contributory Provident Fund. Such stipulation was in terms of Regulation 45(4) of the 2010 Regulations.



6. In the disciplinary proceedings, the petitioner has been visited with the punishment of compulsory retirement. The same is dated 19.10.2016 and the punishment of compulsory retirement is under Regulation 39(1)(b)(iii) of the 2010 Regulations.

7. The petitioner's Counsel submits that in view of the Gazette Notification dated 02.11.2018 (Annexure 6 of the writ petition), the petitioner cannot be deprived of his pensionary dues' entitlement on account of punishment of compulsory retirement. Referring to the Gazette Notification dated 02.11.2018 notifying Madhya Bihar Gramin Bank (Employees') Pension Regulations, 2018 (hereinafter referred to as "the 2018 Regulations), he submits that Regulation 20 thereof contemplates forfeiture of service only in case of resignation not amounting to voluntary retirement, dismissal, removal or termination of an employee from the service of the Bank. He submits that compulsory retirement has consciously been not mentioned in Regulation 20 of the 2018 Regulations.

Further referring to Regulation 31 of the 2018 Regulations, the petitioner's Counsel submits that an employee who compulsorily retired from service as a penalty would be entitled to grant of 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. He submits that a conjoint reading of these two provisions in 2018 Regulations makes it clear that the order of compulsory retirement does not entail forfeiture of his service and that he is entitled to 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.

In the alternative, the petitioner's Counsel has submitted that even if the petitioner is covered by the 2010 Regulations, then also he would be entitled to the benefit of leave encashment for 240 days and denial of the same is legally unsustainable.

8. Learned counsel representing the respondent-Bank submits that the claims made in the writ petition are devoid of any merit and the petitioner is not entitled to any relief. Referring to the 2018 Regulations, it is submitted that the same cannot be made the basis of the petitioner's claim for pension, since it has come into force in the year 2018, long after the petitioner's due date of retirement, i.e., 31.12.2015. It is also submitted that the petitioner has also been subjected to departmental proceedings in respect of financial irregularities committed by him while he was posted in Bargaon Branch. He has indulged in large scale financing contrary to the loan circulars. He has not documented mortgages and



granted loans without mortgage and therefore caused huge loss and jeopardized the interest of the Bank. The punishment of compulsory retirement dated 19.10.2016 does not contemplate payment of pension to the petitioner under the 2010 Regulations, which was in force at the time of his retirement. The punishment is prior to the “effective date” contemplated under Regulation 31 of the 2018 Regulations. Thus, the petitioner is not entitled to pension under the 2010 Regulations, in force at the time when he was visited with the punishment of compulsory retirement.

9. After hearing the parties, this Court would find that the 2018 Regulations has come into existence by publication in the Gazette of India dated 12.12.2018 (Annexure 6), much after the order of punishment of compulsory retirement dated 19.10.2016 (Annexure 2) and after his due date of superannuation, i.e., 31.12.2015. The petitioner thus is not covered by the provisions of 2018 Regulations.

10. This Court would consider it useful to reproduce Regulations 2(1)(k), 20 and 31 of the 2018 Regulations. The same read as follows :

“2(1)(k) “effective date” means the 1st day of April, 2018;

20. Forfeiture of Service.-

(1) Resignation not amounting to voluntary retirement or dismissal or removal or termination of an employee from the service of



the Bank shall entail for forfeiture of his entire past service and consequently shall not qualify for pension under these regulations.

(2) An interruption in the service of an employee entails forfeiture of his past service, except in the following cases, namely:-

(a) authorised leave of absence;

(b) suspension, where it is immediately followed by reinstatement, whether in the same or a different post, or where the employee dies or is permitted to retire or is retired under the provisions of the Service Regulations while under suspension.

“31.Compulsory retirement pension-

An employee compulsorily retired from service as a penalty, on or after the effective date, in terms of the Service Regulations, may be granted by the authority higher than the authority competent to impose such penalty, 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:

Provided that where the pension awarded under this regulation is less than the full pension admissible under these regulations, the Board of Directors shall be consulted before such order is passed.”

(emphasis mine)

The same appears to contemplate grant of pension at the rates specified therein to an employee compulsorily retired from service as a penalty, on or after the “effective date” (01.04.2018).

11. The petitioner has been awarded with a major punishment of compulsory retirement dated 19.10.2016 after a full-fledged enquiry proceedings, which till date has not been



interfered with by any authority. The said order of punishment compulsorily retired the petitioner much prior to the “effective date” under Regulation 31 of the 2018 Regulations. The expression “effective date” mentioned in Regulation 31 of the 2018 Regulations has been defined in Regulation 2(1)(k) of the 2018 Regulations as being the 1st day of April, 2018 (01.04.2018).

12. It is not the petitioner’s case that he has been visited with the compulsory retirement on or after the “effective date”. Even, in terms of the 2018 Regulations, which are not applicable to the petitioner, the pension may arguably have been granted only if compulsory retirement by way of punishment was on or after the effective date. Facts are not so in the instant proceedings. The petitioner has been compulsorily retired much before the effective date, i.e., 01.04.2018. The 2018 Regulations are thus not applicable to the petitioner’s claim. The petitioner’s compulsory retirement is dated 19.10.2016.

13. In so far as the petitioner’s claim for grant of benefit of leave encashment for 240 days, this Court taking note of Regulation 61 of the 2010 Regulations would grant liberty to the petitioner to approach the authority, namely, the Chairman, Dakshin Bihar Gramin Bank, Patna (Respondent No.2), with his claim.



14. In case the petitioner approaches, the respondent No.2, the claim should be considered and decided by a reasoned and speaking order, in accordance with law, within a period of three months from the date of receipt/production of a copy of this order, along with the petitioner’s representation, which should be filed within eight weeks.

15. The writ petition stands disposed of with liberty as aforesaid.

(Madhuresh Prasad, J)

PNM

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	
Transmission Date	N.A.

