IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :27.01.2020

CORAM:

THE HON'BLE MR. JUSTICE M.GOVINDARAJ

W.P.No.15657 of 2011 &
M.P.No.1 of 2011 and M.P.2 of 2011

V. Ramarathinam ... Petitioner

Vs.

1. Punjab National bank,
   rep. By its Assistant General
   Manager (HRD)/(Disciplinary Authority),
   HRD Department,
   Disciplinary Action Cell,
   Circle Office,
   Mount Road,
   Chennai 600 002.
2. The Chief Manager,
   Disciplinary Authority, HRD Department,
   Disciplinary Action Cell,
   Circle Office,
   Mount Road,
   Chennai 600 002.
3. The Senior manager/Enquiry Officer,
   Punjab National Bank,
   Sowcarpet Branch,
   Chennai 600 003. ... Respondents

Prayer : Writ Petition filed under Article 226 of Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records of the first respondent dated 17.3.2011 bearing No.CO:HRD:IR:M:C: and quash the same with consequential direction to disburse the arrears of pensionary benefits attached to the petitioner in pursuant to the option which was exercised by petitioner on 27.08.2010.

For Petitioner : Mr. Balan Haridas
for Mr.R.Senniappan

For respondents: Mr.R.Jayaprakash

ORDER

The petitioner was appointed as a clerk cum cashier on 6.2.1985 in the respondent Bank. He was removed from service on 11.8.2010 for certain misconducts vide proceedings of the 2nd respondent in CO:HRD:IR:CS dated 11.8.2010. The petitioner had challenged the punishment of removal from service with superannuation benefits in W.P.No.19667 of 2010 and this Court, by its order dated 28.9.2011, had set aside the order and remitted the matter back to the authorities for re-consideration.

2. The respondent Bank, vide its order made in CO/CHN/HRD, dated 14.12.2011, has once again imposed the punishment of removal from service with superannuation benefits i.e., pension or provident fund as per the regulations, to take effect from original date of termination, i.e., 11.8.2010. However, it appears that he made a request for payment of pension by his letter dated 3.3.2011. The respondents in proceedings No.CO:HRD:IR:M:C dated 17.3.2011 rejected the same, which is under challenge in this writ petition.

3. According to the petitioner, in a Bipartite Settlement arrived at between the Management and Union, clause 6(b) was inserted under the column punishment, as per which, in addition to existing punishments, if an employee was found guilty of gross misconduct, a punishment of removal from service with superannuation benefits, i.e., pension, provident fund and gratuity, as would be due otherwise under the Rules/Regulations prevailing on the relevant time and without disqualification from future employment can also be imposed. In the instant case, the petitioner was imposed with a punishment as per para 6 (b) of the Bi-Partite Settlement dated 10.2.2002. Therefore, he is entitled to pension, provident fund and gratuity as would be due otherwise under the code.

4. According to him, the 1st respondent bank by way of settlement dated 27.4.2010 ,had given one more option to the employees to join in the pension scheme within 60 days from the date of notification. This was circulated to the employees and the petitioner had exercised his option on 27.8.2010, within 60 days. In view of the order passed by this court in W.P. No.19667/2010 dated 28.9.2011 setting aside the punishment, it is his contention that he should be deemed to be in service on the date of exercise of his option for the pension scheme viz. 27.8.2010. Therefore, he is eligible for penionary benefits. Therefore, the rejection of his request for pension by the impugned order in proceedings dated 17.3.201, bearing No.CO:HRD:IR:M:C: dated 17.3.2011 , is illegal and is liable to be set aside.

5. Learned counsel appearing for the respondent bank would vehemently contend that the petitioner is not at all entitled to any pension or any termination benefits in view of regulation 22 of the Punjab National Bank (Employees') Pension Rules, 1995. As per the regulation, resignation or dismissal or removal or termination of an employee from the service of the bank shall entail forfeiture of his entire past service and consequently shall not qualify for pensionary benefits. Therefore, the petitioner is not entitled to get any pensionary benefits and in support of his contention he relied on the following judgments rendered by the Honourable Supreme Court viz., (i) Appeal (Civil) 3192 of 1999, dated 11.3.2004 (UCO Bank and others Vs. Sanwar Mal ) and (ii) Arikaravula Sanyasi Raju vs. Branch Manager, State Bank of India, Visakhapatnam (Andhra Pradesh) and others, reported in AIR 1997 SC 2268.

6. He would further contend that the pension Rules issued by the 1st respondent, as found by the Honourable Supreme Court, is a statutory code and that will prevail upon other settlements reached. Therefore the petitioner is not entitled to any pensionary benefits. Moreso, the option exercised on 27.8.2010, when the petitioner was not in service, is only a dead letter and it cannot be acted upon. The petitioner was terminated on 11.8.2010 and any option called for by Circular after the date of termination will not confer any right on the petitioner to exercise any option. Moreso, when the removal from service after intervention of this High Court, had taken effect from 11.8.2010, in any view, the petitioner was not in service, then option was called for, from employees for exercising their option. Therefore, the petitioner is not entitled to any benefits and the impugned order does not warrant any interference.

7. I have considered the rival submissions.

8. From the perusal of materials placed before this court, it is clear that by way of Bipartite settlement dated 10.2.2002, clause 6(b) was inserted in the service conditions, as per which, any person who was found guilty of grave misconduct, a punishment of removal from service with superannuation benefits can be imposed. In that case he is entitled to receive pension or provident fund or gratuity which are otherwise due, to him as per the Rules and Regulations. It is noted that pursuant to a Settlement dated 27.4.2010, between management and workers one more option was given to the PF optees to join the Pension Scheme. The petitioner has exercised his option on 27.8.2010. In the meanwhile, he was removed from service by order dated 11.8.2010, and the said order of removal was set aside by this court in W.P.No.19667 of 2010 dated

28.09.2011. In that circumstances, as to whether the petitioner was deemed to be in service on the date of issuance of the Circular to exercise option and his exercise of option on 27.8.2010 is valid or not? is the issue to be decided.

9. It is an admitted fact that the above said punishment was imposed on 11.8.2010. This court, considering the violation of principles of natural justice, set aside the order and directed the respondent to consider his objections dated 10.8.2010 and to afford him opportunity of personal hearing. For all purposes, the punishment was set aside and disciplinary action was continued against the employee by the management. As long as the employer-employee relationship continued between the parties, he was paid his salary or not, the relationship continued. On that date, no one could have claimed that the same punishment would be affirmed. Approach to the issue with open mind would have resulted either way i.e. imposition of a severe or lesser punishment. In that view of the matter, the matter was sub-judice till 14.12.2011. It is pertinent to bear in mind that original proceedings were revived by the order of this court and not the appellate proceedings. The court directed the respondent to consider the issue afresh, which means status quo ante.

10. As per the directions of this Court, the punishment was imposed by the 1st respondent on 14.12.2011. The punishment shall take effect from the date of passing it and not from any other date which has no rational nexus to the same. Till such time, the petitioner should be deemed to be in service of the first respondent. In that view of the matter, I consider that the contentions placed by the learned counsel for the petitioner before this Court has some force.

11. Pursuant to the scheme issued on 28.4.2010, while the petitioner was in service, a circular calling for option, vide circular No.8/2010 was circulated on 16.8.2010. The petitioner exercised his option on 27.8.2010, hence option shall be deemed to have been exercised, while he was in service. Therefore, the petitioner is entitled to pension, if he is otherwise eligible.

12. Since, it is decided that the petitioner was in service on the date of introduction of another option, it is to be seen as to whether Regulation 22 of Punjab National Bank (Employees') Pension Regulation 1995 will affect the pension benefits of the petitioner or not? When this question was dealt with by the Honourable Supreme court in the case of (Bank of Baroda Vs. S.K. Kool (D) through Legal Heirs and another), in Civil Appeal No.10956 /2013, dated 11.12.2013, it is held as under

> "In 2002, a Bipartitle Settlement was signed by the Indian Banks' Association and the Banks'

Workmen's Union with regard to disciplinary action procedure. It is common ground that in the light of the said Bipartite Settlement, clause 6(b) was inserted as one of the punishments which can be inflicted on an employee found guilty of gross misconduct and the same reads as follows:

"6. An employee found guilty of gross misconduct may:

(a) ...............

(b) be removed from service with superannuation benefits i.e. Pension and/or Provident Fund and Gratuity as would be due otherwise under the Rules or Regulations prevailing at the relevant time and without disqualification from future employment, or

xxx xxx

xxx"

The employee undisputedly has been visited with the aforesaid penalty in terms of the Bipartite Settlement.

Article 22 of the Regulation, which is relied on to deny the claim of the employee reads as follows:

"22. Foreiture of service:

(1) Resignation or dismissal or removal or termination of an employee from the service of the Bank shall entail forfeiture of his entire past service and consequently shall not qualify for pensionary benefits."

From a plain reading of the aforesaid Regulation, it is evident that removal of an employee shall entail forfeiture of his entire past service and consequently such an employee shall not qualify for pensionary benefits. If we accept this submission, no employee removed from service in any event would be entitled for pensionary benefits. But the fact of the matter is that the Bipartite Settlement provides for removal from service with pensionary benefits "as would be due otherwise under the Rules or Regulations prevailing at the relevant time". The consequence of this construction would be that the words quoted above shall become a dead letter. Such a construction has to be avoided.

The Regulation does not entitle every employee to pensionary benefits. Its application and eligibility is provided under Chapter II of the Regulation whereas Chapter IV deals with qualifying service. An employee who has rendered a minimum of ten years of service and fulfils other conditions only can qualify for Pension in terms of Article 14 of the Regulation. Therefore, the expression "as would be due otherwise" would mean only such employees who are eligible and have put in minimum number of years of service to qualify for pension. However, such of the employees who are not eligible and have not put in required number of years of qualifying service shall not be entitled to the superannuation benefit though removed from service in terms of clause 6(b) of the Bipartite Settlement. Clause 6(b) came to be inserted as one of the punishments on account of the Bipartite Settlement. It provides for payment of superannuation benefits as would be due otherwise. The Bipartite Settlement tends to provide a punishment which gives superannuation benefits otherwise due. The construction canvassed by the employer shall give nothing to the employees in any event. Will it not be a fraud Bipartite Settlement? Obviously it would be. From the conspectus of what we have observed we have no doubt that such of the employees who are otherwise eligible for superannuation benefit are removed from service in terms of clause 6(b) of the Bipartite Settlement shall be entitled to superannuation benefits. This is the only construction which would harmonsie the two provisions. It is well settled rule of construction that in case of apparent conflict between the two provisions, they should be so interpreted that the effect is given to both. Hence, we are of the opinion that such of the employees who are otherwise entitled to superannuation benefits under the Regulation if visited with the penalty of removal from service with superannuation benefits shall be entitled for those benefits and such of the employees though visited with the same penalty but are not eligible for superannuation benefits under the Regulation shall not be entitled to that.

Accordingly, we hold that the employee's heirs are entitled to superannuation benefits. The entire amount that the respondent is found entitled to along with interest at the rate of 6% per annum should be disbursed within 6 weeks from the date of receipt/communication of this order.'



13. The Honourable Supreme Court had dealt with clause 6(b) of punishment, pursuant to the Bipartite Settlement dated 10.2.2002 along with Regulation 22 of the 1st respondent's Pension Rules and it has categorically discussed that the harmonious construction of both these provisions will lead to

show that a person removed from service with superannuation benefits, will be entitled to pension and other benefits. Accordingly, the present petitioner is also entitled to pensionary and other benefits.

14. The decisions relied upon by the learned counsel for the respondents in (i) Appeal (Civil) 3192 of 1999, dated 11.3.2004 (UCO Bank and others Vs. Sanwar Mal) and (ii) Arikaravula Sanyasi Raju vs. Branch Manager, State Bank of India, Visakhapatnam (Andhra Pradesh) and others, reported in AIR 1997 SC 2268 are not applicable to the present case, for the reason that the punishment order of removal from service was issued prior to the Bipartite Settlement dated 10.4.2002. In one case, the petitioner therein, was removed with effect from 25.5.1990 and in another case, the petitioner therein, had resigned from service on 25.2.1988. As stated above, the punishment of removal from service with superannuation benefits like pension or provident fund or gratuity are not available to them. There is no occasion to deal with the above situation for the Honorable Supreme Court in those matters. Therefore, the above said judgments are not applicable to the facts of the present case.

15. Learned counsel for the respondent would also rely on the judgment of High Court of Calcutta, reported in MANU/WB/0356/2019 ( State Bank of India and others Vs. Golam Jilani and others) dated 18.2.2019, wherein, the Division Bench held that a person who retired was removed from service before attaining age of 50 years. Insofar as the State Bank of India is concerned, it has a separate Scheme called State Bank of India Employees Pension Fund Rules and that the said Rules was considered as a complete code by itself. Rule 22 of those Rules lay down an eligibility criteria that for claiming pension, an employee should have completed 20 years of pensionable service and he should have attained the age of 50. In that case, the Honourable Division Bench has held that as the criteria laid down under Rule 22 was not satisfied, the employee was not deemed otherwise, eligible for pension, therefore, the claim for pension was rejected. In the instant case, the rule regarding eligibility criteria under Chapter II of Punjab National Bank (Employees) Pension Regulation, 1995 does not specify any age limit. Therefore the said judgment is also not applicable to the facts of the present case on hand.

16. In view of the same, I find the impugned order dated 17.3.2011, is not sustainable. As held by the Honourable Supreme Court in (Bank of Baroda Vs. S.K. Kool (D) through Legal Heirs and another), the petitioner is entitled to all superannuation benefits along with interest at the rate of 6%

per annum. In the result, the writ petition is allowed. The 1st respondent Bank is directed to settle all the dues to the petitioner along with interest at the rate of 6% per annum within a period of eight weeks from the date of receipt of copy of this order. No costs. Consequently, connected M.P.Nos.1 and 2 of 2011 are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1.The Assistant General,
Punjab National bank,
Manager (HRD)/(Disciplinary Authority),
HRD Department,
Disciplinary Action Cell,
Circle Office,
Mount Road,
Chennai 600 002.

2.The Chief Manager,
Disciplinary Authority, HRD Department,
Disciplinary Action Cell,
Circle Office,
Mount Road, Chennai 600 002.

+1cc to Mr.Senniappan, Advocate Sr.6238
+1cc to Mr.R.Jayaprakash, Advocate Sr.6600



W.P.No.15657 of 2011 &
M.P.No.1 of 2011



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srg 05/10/2020