

204

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP 15710-2015 (O&M)

Date of Decision: 27.01.2020

R.C. Rajput

... Petitioner

Versus

Union Bank of India and another

... Respondents

CORAM : Hon'ble Mr. Justice Harsimran Singh Sethi

Present : Mr. B.B. Bagga, Advocate with
Ms. Sakshi Roda, Advocate
for the petitioner.

Mr. Saurabh Bhardwaj, Advocate
for the respondents.

HARSIMRAN SINGH SETHI, J.(Oral)

In the present writ petition the challenge is to the order Annexure P-14 dated 15.12.2014 by which the claim of the petitioner for the grant of pensionary benefits under the Union Bank of India (Employees) Pension Regulation, 1995 (hereinafter referred to as '1995 Regulations') has been declined by placing reliance upon the letter issued by the respondent-bank being Staff Circular No.5690 dated 27.08.2010 (hereinafter referred to as '2010 circular').

As per the averments made in the writ petition, petitioner initially joined the Union Bank of India (hereinafter referred as Bank) as a Clerk. He was promoted on various posts from time to time and reached the

status of Deputy General Manager. Before the petitioner attained the age of superannuation, a charge sheet under Union Bank of India Officer Employees' (Conduct) Regulation 1976 read with Union Bank of India Officer-Employees' (Discipline and Appeal) 1976 was served upon the petitioner on 19.07.2004 alleging various irregularities. The said charge sheet dated 19.07.2004 remained pending against the petitioner till he attained the age of superannuation on 30.09.2004. Petitioner was allowed to retire, subject to the outcome of the disciplinary proceedings which were pending against him on the date of his retirement.

Respondent-Bank finalized disciplinary proceedings and punishment of compulsory retirement was imposed upon the petitioner vide order dated 01.11.2006 (Annexure P-5). After the passing of the order dated 01.11.2006 (Annexure P-5), petitioner was to be treated as a compulsorily retired employee instead of normally retired.

After the compulsory retirement of the petitioner, respondents passed an order on 28.02.2007 (Annexure P-6) withholding the gratuity of the petitioner. As per the contention raised in the petition, no benefit, for which a retired employee is entitled for, was extended to the petitioner.

The petitioner approached the respondents for the release of the pensionary benefits by claiming that he is to be treated as a retired employee for all intents and purposes even after imposition of Punishment of Compulsory Retirement and hence he is entitled for release of pensionary benefits. Said plea of the petitioner was declined by the respondents vide order dated 15.12.2014 (Annexure P-14). The said denial of the release of the pensionary benefits was based upon clause 7 of the Staff Circular No.

5690 dated 27.08.2010, according to which, any employee, who retires voluntarily or resigns or is dismissed or is terminated or is compulsorily retired is not eligible for the grant of pension. This order rejecting the claim of the petitioner for the benefit of pension under 1995 Regulations is under challenge.

Upon notice of motion respondents have filed reply. In the reply, the respondents are again relying upon clause 7 of the 2010 circular to deny the petitioner the grant of pensionary benefits under the 1995 Regulation.

Learned counsel for the petitioner states that Clause 7 of the circular No. 5690 dated 27.08.2010 has already been considered by the Competent Court of law and is held to be not applicable upon the employees who are compulsory retired.

I have heard the learned counsel for the parties and have gone through the record with their able assistance.

The only question which is raised for the consideration of this Court in the present writ petition is whether clause 7 of the circular No.5690 dated 27.08.2010 will be applicable in the facts and circumstances of the present case so as to deny the petitioner the benefit of 1995 Regulations, relating to the grant of pensionary benefits for which a retired employee is entitled for.

This question is no longer res-integra as the same has already been considered by the Madras High Court while deciding ***Writ Petition No. 15766 of 2013*** titled as ***D. Kalaichelvan Vs. Union Bank of India*** on 01.04.2015. The said writ petition was also filed by an employee of the

Union Bank of India, who was similarly situated as the present petitioner and was compulsorily retired and was also denied the benefit of pension by placing reliance upon the circular No. 5690 dated 27.08.2010. Madras High Court, after considering the pension Regulations which came into existence in the year 1995, held that the Staff Circular dated 27.08.2010 cannot take away the benefits, which the statutory Regulations issued in the year 1995, grants to an employee. Madras High Court held that no regulation under 1995 Pension Regulations, denies the pension to a compulsorily retired employee and once the statutory Regulations does not deny the benefit of pension to compulsorily retired employee, benefit of pension cannot be taken away by a circular as the 2010 Circular will not supersede the statutory 1995 Regulations.

The relevant paragraph of the judgment of the Madras High Court is as under:-

11. “The core issue is as to whether the Bank was correct in denying the benefits of pension to those who were compulsorily retired notwithstanding the employees pension regulations 1995, which provides for compulsory retirement pension.

12. The Bank introduced a pension scheme in 1995, in the name and style of Employees Pension Regulations, 1995. Some of the employees failed to submit their option within the cut off date. Subsequently, Indian Banks' Association, advised the banks for implementation of the settlements signed with the

workmen in respect of extending another option to join the pension scheme to serving employees/retirees. Based on the said decision, Union Bank of India issued circular no. 5690 dated 27 August 2010. The Circular has to be read in the light of the Pension Regulations, 1995. The circular is only for the purpose of giving another option to join the scheme. The pension scheme remained the same viz., is none other than Union Bank of India (Employees) Pension Regulations, 1995, which provides for compulsory retirement pension. Even though Clause 7 of the circular restricted the benefits of those who retired voluntarily in terms of regulation 19, the fact remains that pension regulation has not been amended correspondingly. Therefore, as on today, there is a valid regulation providing for pension to the compulsory retirees. In case the Bank is of the view that pension should be restricted to those who have retired voluntarily, they should make corresponding amendment to the pension regulations. The Pension Regulations, 1995, is statutory in nature. The circular was issued only pursuant to the said Regulation. The circular cannot override the provisions of the regulations. It was only to give one more option to the employees, the circular was issued. The circular

cannot therefore restrict the benefits of option to a set of employees notwithstanding existence of the regulation which provides for pension even to compulsorily retired employees.

13. The petitioner is entitled to certain service benefits on account of his compulsory retirement. In fact, in the earlier round of litigation, this Court made it very clear that the petitioner should not lose benefits which accrued to him for the service rendered by him, till the date of compulsory retirement. Such being the case, the Bank was not correct in incorporating Clause 7 for the purpose of denying benefits to compulsorily retired employees. I am therefore of the view that Clause 7 should be quashed insofar as it restricts option to join the pension scheme by compulsorily retired employees.

14. In the result, clause 7 of the circular no.5690 dated 27 August 2010 insofar as it denied the benefits to the compulsorily retired employees is quashed. Similarly, the order dated 13 February 2013, is also set aside.

15. The respondents are directed to consider the option given by the petitioner to join the pension scheme pursuant to the circular 5690 dated 27 August 2010 on merits and without reference to clause no.7. Such exercise shall be completed within a period of three

months from the date of receipt of a copy of this order.

16. In the upshot, I allow the Writ Petition. No costs.”

A bare perusal of the above judgment would show that the same objection, which is being raised by the respondent in the present writ petition, has been considered and rejected by the Madras High Court. That be so, once the law has been settled by the competent Court of law, raising of the same objection qua the petitioner which already stands negatived was not available with the respondent-bank especially when the same question of law was settled by the Madras High Court against the respondent-bank itself.

The judgment in ***D. Kalaichelvan's case (supra)*** has already attained finality as the appeal preferred against the said order, has already been dismissed by the Division Bench of Madras High Court on 15.11.2016. Hon'ble Supreme Court of India dismissed the appeal preferred by respondent-Union Bank of India against judgment in ***D. Kalaichelvan's case (supra)*** and the same has already attained finality. Learned counsel for the respondent has not been able to show that the benefits accruing under the order passed by the Madras High Court in ***D. Kalaichelvan's case (supra)***, has not been extended to the concerned employee. That being so once a benefit of pension to a similarly situated compulsorily retired employee has already been extended, there is no ground to deny the same to the petitioner.

Further, learned counsel for the respondent has not been able to point out any fact which differentiate the case of the petitioner from that of ***D. Kalaichelvan's case (supra)*** so as to disentitle the petitioner herein, the

benefits of the judgment rendered by the Madras High Court in ***D. Kalaichelvan's case (supra)*** which has already attained finality. In the absence of any distinction, the petitioner is entitled for the same relief, as has been extended by the Madras High Court to ***D. Kalaichelvan (supra)***.

The second relief which is being sought by the learned counsel for the petitioner is the grant of leave encashment. Learned counsel for the petitioner argues that the benefit of leave encashment has also not been extended to a compulsorily retired employee by the respondent-Bank.

Learned counsel appearing on behalf of respondent states that once an employee has been imposed punishment of compulsory retirement and that to in disciplinary proceedings, the benefit of leave encashment cannot be availed by the said retired employee who has been compulsorily retired as a matter of punishment.

This question of law is also no longer res integra and has been decided by the Full Bench of this High Court in ***UCO bank and others vs. Anju Mathur 2013(3) SCT 272***, wherein this Court has held that once an employee has retired, the benefit for which a retired employee is entitled for, is to be extended even though, the retirement was a compulsory retirement. The question of law whether compulsory retirement will be an impediment in the release of the pensionary benefits has been discussed and negatived in paragraph 26 of the judgment. Full Bench of this Court in ***Anju Mathur's case (supra)*** held that the termination of the services of an employee could be in various ways and one of the mode is compulsory retirement. A compulsorily retired employee has been held entitled for the grant of leave encashment as the same does not envisage any conditions.

The relevant paragraph of the judgment is as under:-

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 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) along with interest @ 10% from July 26, 1999 till date of payment.”

Learned counsel for the respondent is unable to distinguish the judgment in Anju Mathur's case (*supra*) from that of the present petitioner so as to disentitle the petitioner the benefit of the same and therefore, keeping in view the law laid down by Full Bench of this Court in *Anju Mathur's case (supra)*, the petitioner is also held entitled for the grant of leave encashment.

Keeping in view the above, the claim of the petitioner as far as grant of pension under 1995 Regulations and grant of leave encashment is concerned, the same are allowed being covered by the settled principles of law settled in *D. Kalaichelvan's case (supra)* and *Anju Mathur's case (supra)*. The respondents are directed to consider the claim of the petitioner and grant the benefits of pension under 1995 Regulation and leave encashment to the petitioner within a period of two months from the receipt of the certified copy of this order.

As far as the claim of the petitioner for the grant of gratuity is

concerned, the same is not being considered by this Court as the learned counsel for the petitioner prays that petitioner will avail the statutory remedy as provided under the Payment of Gratuity Act 1972 for the said claim. With regard to the claim of death relief fund, learned counsel for the petitioner states that petitioner will approach the respondent by filing appropriate representation raising his claim qua the said component. Learned counsel for the respondents states that in case any claim is raised by the petitioner for the grant of this benefit by filing any representation, appropriate orders will be passed by Competent Authority within a period of three months of the receipt of the said representation.

Keeping in view the above, the present writ petition is allowed qua the claim raised by the petitioner for the grant of pension under 1995 Regulations as well as for the grant of leave encashment.

The petitioner will avail the appropriate remedies for the remaining claims as noticed above in this order.

(HARSIMRAN SINGH SETHI)
JUDGE

27.01.2020
Parveen Sharma

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