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

CWP No. 5846 of 2014
Reserved on: 11.02.2020
Date of decision: 18.02.2020

R.K. Nuniwal

......Petitioner

V/s.

Union Bank of India and others

.......Respondents

CORAM: - HON'BLE MR. JUSTICE SANJAY KUMAR

Present: Ms. Aashna Gill, Advocate,
for the petitioner.

Mr. K.K. Gupta, Advocate,
for the respondents.

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Sanjay Kumar, J.

The petitioner, a Scale-II officer in the service of the Union Bank of India at its Mani Majra Branch in Chandigarh, suffered the major penalty of compulsory retirement from service, *vide* order dated 09.09.2011. The same stood confirmed in appeal, *vide* order dated 28.02.2012.

While so, by notice dated 04.05.2012, the Bank called upon the petitioner to show-cause as to why his gratuity amount should not be forfeited. The petitioner submitted his reply thereto on 28.05.2012. However, by order dated 26.11.2013, the Bank directed forfeiture of the entire gratuity amount of ₹ 8, 73, 002/- payable to the petitioner.

Aggrieved thereby, the petitioner filed the present writ petition. He also challenged the action of the Bank in denying him leave encashment.

In so far as the petitioner's leave encashment is concerned, reference may be made to the judgment of this Court in ***'Surinder Singh V/s. Punjab and Sind Bank and another'*** ***[2016(1) SCT 563 : 2016(4) RSJ 425].*** The petitioner in that case was also subjected to compulsory retirement. However, he was also denied leave encashment. In this context, this Court observed that in terms of the applicable Rules there was no provision to deny leave encashment in the case of compulsory retirement.

In the case on hand, the order of punishment passed against the petitioner visited upon him only the major penalty of compulsory retirement from service. There was no further direction by the Disciplinary Authority with regard to any other benefits being withheld or forfeited. It is well settled that compulsory retirement from service, though a major penalty, would not entail forfeiture of terminal benefits.

It may also be noted that the Union Bank of India was a party to the judgment dated 24.05.2017 delivered by this Court in CWP No.1327 of 2015, titled ***'Satish Babu Gupta V/s Union Bank of India and others'***. A similar issue fell for consideration in that case and this Court held that, in terms of Regulation 38 of the Service Regulations of 1947, leave encashment could not be denied by the Bank to an employee who was compulsorily retired from service.

In such circumstances, this Court finds no tenable or legal basis for the Bank to deny the petitioner the benefit of leave encashment as per due procedure.

In so far as the issue of the petitioner's gratuity is concerned, the Bank asserted that the petitioner had unauthorizedly credited his own account and his son's account by clearing cheques to the tune of ₹26.17 lakh and misappropriated this amount between 25.05.2007 and 30.05.2008. It was in relation to this mis-conduct that he was compulsorily retired from service. The Bank therefore justified forfeiture of the gratuity amount payable to the petitioner on the ground that he had caused loss to it.

Though the Bank claimed in its written statement that it had suffered loss by the petitioner's misappropriation of funds to the tune of ₹ 26.17 Lakh, in its reply dated 24.01.2014 addressed to the petitioner under the Right to Information Act, 2005, the Bank admitted that the misappropriated amount had been recovered fully and that it had only suffered notional loss of interest which had not been calculated.

Mr. K.K. Gupta, learned counsel for the Bank, would fairly concede that no quantification has been undertaken even as on date with regard to the interest loss suffered by the Bank due to the diversion of funds by the petitioner for over a year.

Be it noted that even if a high rate of interest is adopted in this regard, it would not cover the entire gratuity amount payable to the petitioner, a fairly large sum, *viz.*, ₹8,73,002/-.

Section 4(6) of the Payment of Gratuity Act, 1972, permits forfeiture of gratuity only to the extent of the loss suffered by the employer. Presently, it is the admitted position that the Bank did not suffer loss to the extent of the principal amount, as the petitioner's misappropriation was only for a period of time. The loss would therefore be only the interest loss that the Bank suffered due to diversion of funds for that period. Admittedly, the Bank is yet to undertake quantification of this interest loss. Without embarking on this exercise, it is not open to the Bank to baldly deny the petitioner the benefit of his entire gratuity amount.

The writ petition is accordingly disposed of directing the Union Bank of India to permit the petitioner to encash the leave standing to his credit in accordance with the rules and due procedure. The Bank is further directed to initiate proceedings for quantifying the interest loss suffered by it owing to the established misappropriation of funds by the petitioner for over a year. The petitioner shall be issued a notice in this regard and after giving him due opportunity of hearing, the Bank shall ascertain the interest loss suffered by it in actual terms. Upon determination of such interest loss, the gratuity amount payable to the petitioner to that extent shall stand forfeited, subject to just exceptions, and the balance amount shall be remitted to the petitioner. This entire exercise shall be completed expeditiously and in any event, not later than six weeks from the date of receipt of a certified copy of this order.

No order as to costs.

(SANJAY KUMAR)
JUDGE

18.02.2020
rakesh

whether speaking/non speaking : *Yes/no*
whether reportable/non reportable : Yes/no