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

Date of Decision:-15.01.2020.

+ W.P.(C) 2709/2010& C.M.No.5408/2010

SYNDICATE BANK

..... Petitioner

Through: Mr.Rajesh Mahendru, Adv.

versus

SURESH KUMAR YADAV

..... Respondent

Through Mr.B.K.Pal, Adv.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The present petition assails the award dated 17.09.2009 passed by the learned Labour Court No. 1, Karkardooma Court, New Delhi in I.D. No. 47/2004. Under the impugned award, the Labour Court has held the petitioner's action of reducing the respondent's basic pay by two stages in the applicable pay scale for a period of two years, by way of punishment for his misconduct, as justified. However, the Labour Court directed the petitioner to fix the respondent's basic pay, upon expiry of the period of penalty, at Rs. 8980/- along with FPP of Rs. 421/- and PQP of Rs. 121/- w.e.f. 29.07.2003, by granting him two increments for the period of his punishment in accordance with the circular dated 16.03.2004. The petitioner

was also directed to fix the basic pay of the respondent at Rs.8980/- along with FPP of Rs. 421 and an enhanced PQP of Rs. 242/- w.e.f. 29.07.2004.

2. The respondent workman, while posted as a clerk in the petitioner Bank's Farukh Nagar Branch, was placed under suspension on 29.07.1999 for misbehaving with a senior officer. Consequently, the respondent was served with a chargesheet dated 18.08.1999 for gross misconduct, wilful damage or attempt to cause damage to the petitioner's property and for performing acts prejudicial to the interest of the Bank. Subsequent thereto, the respondent was also served with the notice of enquiry dated 12.07.2000. In his reply dated 24.07.2000 to this notice, the respondent expressed his remorse for his conduct and undertook to behave appropriately in the future, provided that he was treated with leniency in the matter by permitting him to resume duties and have his case considered under Clause 19.12(e) of the Bipartite Settlement. Accordingly, on 29.07.2000, the Disciplinary Authority awarded him the punishment of reduction of pay by two stages for a period of two years for each count of misconduct under clauses 19.5(c), 19.5(d) and 19.5(j) of the Bipartite Settlement, which penalties were directed to run concurrently. It was further directed that the respondent's period of suspension would be excluded while computing his years of service, except for the purpose of terminal benefits, and no salary will be paid to him during this time, with the exception of the subsistence allowance already being paid to him. The respondent unsuccessfully challenged the punishment awarded to him before the Appellate Authority, and thereafter raised an industrial dispute on the ground that in the show cause notice served to him, the

petitioner had never mentioned that it proposed to withhold his increment for the suspension period. The petitioner's dispute was referred to the Labour Court 03.09.2004 on the following terms:

“Whether the action of the management of Syndicate Bank in fixing the pay in pursuant of punishment awarded by the Disciplinary Authority of reduction of basic pay by two stages in the scale of pay for a period of two years on Shri S.K. Yadav Clerk and non-grant of increment is legal and justified? If not, what relief the workman in (sic) entitled”

3. Before the Labour Court, the respondent contended that in the show cause notice dated 25.07.2000, the petitioner had not mentioned that it also proposed to withhold his increments during the period of his suspension, by way of punishment. As regards his basic pay, the respondent contended that he was receiving Rs.8600/- as basic pay prior to his suspension, which was reduced by two stages and brought down to Rs.7540/-w.e.f. 03.08.2000 when his punishment was effected. He contended that, however, once the period of punishment had ended w.e.f. 29.07.2002, his basic pay could not be restored to Rs.8600/- by bypassing the increment he would have been entitled to during the period of suspension, i.e. January 2000, but instead ought to have been restored to Rs. 8980/- [Rs. 8600+ Rs. 380 (increment for January 2000)]. He contended that the Bipartite Settlement, which governs his conditions of service in the petitioner Bank, does not provide for disallowing increments which are rightly accruing to a workman and that, therefore, the petitioner's decision to forego his increment was completely arbitrary and violative of its own prevailing policies. On the

other hand, the petitioner opposed the respondent's claim by stating that in the light of his egregious conduct involving the assault and verbal abuse of a senior officer, the Disciplinary Authority had rightly directed that increment for the period of suspension be withheld from the respondent.

Vide the impugned Award, the Labour Court held as under:

“12. Workman claims that Bipartite Settlement nowhere restricts the management from counting period of suspension as part of service. His contention is uncalled for, since order of punishment announces that period of suspension shall not be treated as part of service nor the workman will be entitled to any wages for that period, except subsistence allowance already paid. Therefore, for that period he cannot claim any increment unless the said period of suspension is held to be spent on duty, while adjudicating the reference sent by the appropriate Government as referred above. EPP can be released in favour of the workman after one year on reaching the maxima of the scale. As testified by Shir Jain the workman reached the maxima of scale on 29.7.2002, when his basic pay was restored after completion of the punishment. Consequently, EPP was granted to the workman on 29.7.2003. The workman can be granted personal qualification pay on completion of one year after reaching the maxima of the scale, therefore, personal qualification pay increment was granted to him on 29.7.2003 and the other increment was granted to him on 29.7.04. The management was justified in granting EPP and PQP to the workman on the dates as detailed above. No illegality or unjustifiability was found in the action of the management. Issue is, therefore, answered accordingly.

13. In view of the above discussion, the workman is entitled for fixation of his pay at Rs.7900/- on 01.01.2001, on release of annual increment. His pay is to be fixed at Rs. 8600/- on 01.01.2002, on release of annual increment. On 29.07.2002, his pay is to be fixed at Rs.8980/-, on restoration of his pay on completion of punishment. His basic pay is to be fixed at Rs. 8980/-, besides F.P.P. of Rs. 421/- and

PQP of Rs. 121/- on 29.07.03 and it is to be fixed at Rs. 8980/- besides FPP of Rs. 421/- and PQP of Rs. 242/- on 29.07.04. An award is accordingly passed.”

4. The present petition has been filed assailing the directions in paragraph 13 of the impugned award, to refix the respondent's pay w.e.f. 29.07.2003 and 29.07.2004.

5. In support of the petition, learned counsel for the petitioner submits that the Labour Court has failed to appreciate that in terms of the circular dated 16.03.2004 the respondent was entitled to get increments only during the subsistence of his period of punishment, not during the period of his suspension. Even otherwise, since the respondent himself had refused the petitioner's offer to release the increments for his period of punishment to him, he was only entitled to receive basic pay of Rs.8600/- at the conclusion of his punishment. The Labour Court, on the other hand, has proceeded to grant the respondent increments of Rs. 380 (for January 2001) and Rs. 680 (for January 2002) which was his penalty period, and has computed his basic pay by adding these increments to Rs. 7540, which was his basic pay for this period. He, therefore, contends that the Labour Court has proceeded on an erroneous computation of the respondent's basic pay by misreading the evidence of its witnesses and, therefore, prays that the impugned award be set aside.

6. On the other hand, learned counsel for the respondent while supporting the impugned award submits that the findings of the Labour Court are based on a correct appreciation of facts which do not warrant any

interference by this Court. He submits that once it is the petitioner's own case that vide circular dated 16.03.2004 the respondent was entitled to receive annual increments which he would have drawn in the normal course but for his punishment, then evidently upon completion of the penalty period on 29.07.2002 his basic pay ought to have been restored to Rs.8600/- and he ought to have been granted increments thereon. This necessarily implied that his basic pay would have been Rs. 8980, which was the maximum basic pay permissible in the pay scale applicable to him and, therefore, he was rightly held to be entitled to Rs.8980/- along with FPP of Rs. 421/- and PQP of Rs. 121/- w.e.f. 29.07.2003 and to an enhanced PQP of Rs. 242/- w.e.f. 29.07.2004. He, therefore, prays that the writ petition be dismissed.

7. I have heard learned counsel for the parties and, with their assistance, perused the record.

8. There is no dispute regarding the fact that in the light of the penalty imposed on him, the respondent's basic pay was reduced from Rs. 8600/- to Rs. 7540/- w.e.f. 03.08.2000. However, when the period of punishment came to an end in August 2002, the respondent was entitled to have his basic pay restored to Rs. 8600/- and to receive the increments due on his basic pay for January 2001 and 2002, which fell within the period of punishment and would have raised his basic pay to the maximum limit existing in the pay scale applicable to him, i.e., Rs. 8980/-. At this point, the respondent ought to have been granted FPP (Fixed Personal Pay) and PQP (Professional Qualification Pay) which was payable to him, in terms

of the applicable rules, after one year of attaining the maximum basic pay accruing in his pay scale. He was also entitled to a further enhancement of PQP for every succeeding year that he remained in the maximum basic pay in his pay scale.

9. Since the impugned award grants the respondent basic pay of Rs.8980/- w.e.f. 29.07.2002, which was the maximum basic pay in his pay scale, and further directs payment of FPP @ Rs. 421/- and PQP @ Rs. 121/- w.e.f. 29.07.2003 and an enhanced PQP @ Rs. 242/- w.e.f. 29.07.2004, which are reliefs rightly accruing to him in terms of the petitioner's own circular, I find no infirmity or perversity in the decision of the Labour Court.

10. The writ petition, being meritless, is dismissed along with pending applications with no order as to costs.

REKHA PALLI, J

JANUARY 15, 2020