

WPO/312/2020

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

JAYANTA SAHA

-Versus-

BANK OF INDIA AND ORS.

BEFORE:

The Hon'ble JUSTICE RAJASEKHAR MANTHA

Date : 13th April, 2021.

Appearance:

Mr. Purnasish Gupta, Adv.

Ms. Mary Datta, Adv.

...for the petitioner.

Mr. R.N. Majumder, Adv.

...for the Bank.

The Court : The petitioner prays for leave encashment of a sum of Rs.8 lakhs, residual salary of Rs.7 lakhs for suspension period and full pension from November, 2019 with arrears. He also prays for release of entire gratuity amount of Rs.17 lakhs and one-third balance of his pension that has been denied to him.

The brief facts of the case are that the writ petitioner was functioning as a Manager of the Lindsay Street Branch of Bank of India. Departmental proceedings were initiated against the petitioner that culminated in an order dated 19th October, 2019 whereby he was dismissed from service. The writ petitioner was, prior thereto, under suspension from 19th November, 2018.

It was ordered that the petitioner would forfeit his entire gratuity under the Gratuity Rules of the Bank of India in this regard. It was further ordered that the period of suspension shall not be treated as 'on duty'.

The bank released the provident fund contribution of the petitioner for a sum of Rs.19,15,137.15 together with interest and the same was credited to the petitioner's account on 29th July, 2020. A statement of account to that effect has been enclosed with the report filed by the bank.

The bank, however, in terms of Rule 31 of the Bank of India Pension Regulation, 1995 sanctioned a compassionate allowance upto two-thirds of the pension that would normally be payable to the petitioner. The petitioner is admittedly getting the same month to month. Regulation 31 of The Bank of India Pension Regulation, 1995 is set out hereinbelow:

"31. Compassionate Allowance:,"

- (1) *An employees, who is dismissed or removed or terminated from service, shall forfeit his pension.
provided that the authority higher than the authority competent to dismiss or remove or terminate him from service may, if-*
 - (i) *such dismissal, removal, or termination is on or after the 1st day of November, 1993: and*
 - (ii) *The case of deserving of special consideration, sanction a compassionate allowance not exceeding two-thirds of the pension which would have been admissible to him on the basis of the qualifying service rendered up to the date of his dismissal, removal or termination.*

(2) The Compassionate Allowance sanctioned under the proviso to sub-regulation (1) shall not be less than the amount of minimum pension payable under regulation 36 of these regulations."

A plain reading of Regulation 31 of the said Regulation indicates that the entire service of the petitioner stands forfeited upon an order of dismissal, as would his pension. The Bank, in its wisdom, has allowed the compassionate allowance of two-third of pension.

In so far as the claim for arrears of salary for the period of suspension is concerned, the same cannot be entertained as the final order of dismissal, passed against the petitioner, in fact, specifically ordered that the period of suspension shall not be treated as "service".

The forfeiture of gratuity is in terms of the Bank of India Gratuity Rules, particularly, Clause 8 thereof. The said clause is in harmony with Sections 4 and 6 of the Payment of Gratuity Act, 1972.

The bank relies upon a circular dated 11th May, 2016 which has specifically ordained that employees who are dismissed from service, are not entitled to any leave encashment.

The petitioner has accepted the final order and the same has been acted upon by the parties.

This Court, therefore, does not find any infirmity in the decision of the Bank. The petitioner appears to have been paid

all of his dues in accordance with law. No relief can, therefore, be granted to the petitioner. The claim for full pension is not sustainable in law. The other prayers made are equally unsustainable. The writ petition must, therefore, fail and is dismissed without any order as to costs.

(RAJASEKHAR MANTHA, J.)

A/s.