210 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-25693-2018
Date of decision: 26.11.2021

B.R. Saini ....Petitioner

versus

State Bank of India and others ......Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Pritam Singh Saini, Advocate
for the petitioner.

Ms. Madhu Dayal, Advocate
for the respondents-SBI.

<u>FATEH DEEP SINGH, J.</u>

The petitioner-B.R. Saini joined the services of the respondents-SBI on 19.04.1974 on the post of Clerk-cum-Cashier. The petitioner was promoted as Officer under term MMGS-II with effect from 01.11.1990 and posted as Branch Manager in the District Shimla. The petitioner claims that though his service records was outstanding but on account of rivalry, he was issued with charge sheet dated 14.09.1998 over certain alleged acts of omission and commission at Bharari Branch (Shimla) and was placed under suspension on 19.07.1997. Upon completion of inquiry, the petitioner was removed from service vide order dated 22.01.2000. The departmental statutory appeals of the petitioner were dismissed throughout. It is, thereafter, the petitioner filed another CWP No.18940 of 2001 which was allowed vide order of this Court dated 22.03.2012 (Annexure P/3). The Letter Patent Appeal No.692 of 2012 filed by the Bank, stood dismissed vide orders dated 14.05.2012 (Annexure P/4). Thereafter, the Bank filed an SLP before the Apex Court and which was allowed vide order dated 15.12.2017 (Annexure P/5). In compliance with the orders (Annexure P/5), the petitioner claims to have filed a representation and having served for more than 25 years and 09 months with the respondent-Bank was paid provident fund, gratuity but was denied pension nor encashment of 06 months' earned leave balance. It is, thereafter, the present Civil Writ Petition under Articles 226/227 of the Constitution of India has been filed by the petitioner by way of seeking writ of *certiorari* for quashment of order dated 10.07.2018 (Annexure P-7) passed by the respondents seeking release of his pensionary benefits.

The respondents in their response besides taking preliminary objections of non-maintainability of the writ and that Rule 22 (i) (d) of the State Bank of India employees Pension Fund Rules (in short 'the Rules') were inapplicable to the case of the petitioners. On merits had not displaced the facts canvassed by the petitioner as to his employment and putting to an end the service of the petitioner with the respondents through recourse to law. It is claimed that since total pensionable service of the petitioner was 22 years 09 months less than prescribed period of 25 years, he was not entitled to pension and sought dismissal of the same.

Heard learned counsel of both the sides and perused the records.

The only rallying point that arises in this controversy is whether the period of suspension of the petitioner which comes to 02 years 06 months and 04 days can be treated to be service rendered by him with respondent-Bank. The vociferous arguments submitted by Ms. Madhu Dayal, Advocate for the respondents that in terms of Rule 22 1(A) of the Rules, the petition was found ineligible for pension and, therefore, his representation was rejected, when on the other hand, the counsel for the petitioner Mr. P. S. Saini, Advocate claims that this period of suspension has to be considered as part of the service.

Appreciating the submissions of the two sides, the ratios laid down in judgments titled as *'Lakshman Kumar Verma versus State Bank of India'* WP (S) No.6509 of 2002; *'Suresh Prasad Singh versus State Bank of India'* 2003(4) PLJR 518 and *'Raj Pal Singal versus State Bank of India'* CWP No.7588 of 2009 so sought to be put forth on behalf of the respondent had been adequately controverted by Mr. P. S. Saini, Advocate who has cited the judgments titled as *'UCO Bank and others versus Madanlal Swami'* 2013(3) CLR 1088 and *'V. Rama Rao versus The Chief General Manager and another'* 2014(3) LLJ 140. None of the ratios laid down in the citations filed by Ms. Madhu Dayal, Advocate advances the case of the Bank.

Appreciating the submissions, it cannot be termed that during the period of suspension of the petitioner, he was not part of the service with the respondents. It is well enshrined law that suspension is no punishment and that at the most, any such order of suspension is purely with a view to facilitate impartial inquiry by the Department and, thus, during the period of suspension, an employee is not permitted to work. Usually, employees are paid subsistence allowance under the Rules and not the actual salary to which he is found to be entitled to.

This Court does not feels inclined to accept that during the course of order of suspension, a person ceases to be an employee of the Department, Bank in the present case. Even the letter (P-7) is cryptic and does not enumerate as to the grounds on the basis of which, the pension is being denied under the Rules and rather, appears on the face of it, to be a guise to put an end to his claim to pension over his earlier acts of trade union activities. The purpose of suspension is nothing but to deny an employee monetary benefits during that relevant period and cannot be interpreted to be not part of service by not counting the period of suspension as period spent on duty as per these Rules at the most can be loosely interpreted that for that relevant period, the petitioner would be denied monetary benefits.

This Court is unable to accept the arguments of Ms. Madhu Dayal, Advocate that it tantamounts to forfeiture of service for that period of suspension and cannot be counted for the purposes of calculating the retiral benefits which is highly unfounded and preposterous proposition put forth on behalf of the respondent-Bank. Right to pension is a constitutional right by virtue of Article 300A under the Constitution and cannot be denied without there being a speaking order passed by the competent authority in accordance with the Rules and Regulations and the law. In this case P-7 falls short of these requirements and is nothing but a misuse of the provisions for which, there is no acceptable reasoning. Since, the petitioner during the period of suspension was and deemed to be an employee of the Bank and had been given subsistence allowance, thus, that period for the calculation of service rendered except entitlement to monetary benefits, needs to be made. The order (Annexure P-7) is hereby set aside, thereby, allowing the instant petition.

The petitioner, besides the pensionary benefits, shall be entitled to interest at the rate of 9% per annum from the date when the dues became due till the realization of the amount.

The present petition stands allowed.

(FATEH DEEP SINGH)
JUDGE

26.11.2021
Neha

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