

72. 18.02.2022
BD Ct.15

W.P.A. 8836 of 2016

(Through Video Conference)

Subodh Chandra Jana

-vs-

The State of West Bengal & Ors.

Mr. Balailal Sahoo

Mr. Sankha Prasad Ray

... for the petitioner.

Mr. Dhiman Kumar Sengupta

Ms. Sweta Saha

... for the respondent nos.

4 & 5.

Affidavit in reply filed on behalf of the writ petitioner is taken on record.

The writ petitioner was the supervisor of Howrah District Central Co-operative Bank Limited (hereinafter referred to as "Bank Authority") against whom suspension order was issued on 25th November, 2004 in contemplation of disciplinary proceedings. The disciplinary proceeding was thereafter initiated against the petitioner which was culminated into an order of dismissal dated 29th September, 2007. Such order of dismissal was questioned by the petitioner on preferring departmental appeal before the appellate authority and ultimately the appellate authority confirmed

the order of dismissal by issuing order dated 2nd February, 2008.

The petitioner questioned the order of dismissal as well as order of the appellate authority by filing the writ petition being W.P. 6481(W) of 2008 which was allowed by a Co-ordinate Bench on 14th June, 2012 quashing the order of dismissal dated 29th September, 2007. The Bank authority preferred an intra court appeal being MAT 1384 of 2012, inter alia, challenging the order of the Co-ordinate Bench dated 14th June, 2012. The said appeal was disposed of by the Hon'ble Division Bench vide order dated 2nd August, 2013 and the relevant part of the order of the Hon'ble Division Bench is quoted below:

“Mr. Chatterjee, replied that even assuming but not admitting that the punishment was intended to be inflicted under Clause 28.5(a) the highest punishment could not have been inflicted without assigning special reasons for that. There are no special reasons appearing from the document by which the punishment was inflicted.

Faced with the difficulty Mr. Bhattacharyya, submitted that his client is willing to step down the punishment to Clause 28.5(b).

We have considered the rival submissions and are of the opinion that the charge was duly proved.

Considering the submission that the appellant is willing to step down the punishment under Clause 28.5(b) of the Rules, the order under challenge is set aside. The order of dismissal is

substituted by an order of removal of the writ petitioner from service with all superannuation benefits.”

Mr. Balailal Sahoo, learned advocate, appearing on behalf of the petitioner has relied upon the order of the Hon’ble Division Bench dated 2nd August, 2013 and has submitted that since the order of dismissal was converted into an order of removal from service the petitioner is entitled to receive terminal benefits considering such order of removal from service. It is contended that all the terminal benefits are required to be paid by making necessary calculations up to the date of retirement of the petitioner i.e., 30th April, 2013. In addition thereto the writ petitioner has also claimed the balance amount towards his salaries for the period from 25th November, 2004 being the date of suspension of the petitioner till the date of order of punishment issued on 29th September, 2007 adjusting 50% of subsistence allowance which was already paid to the petitioner at the material point of time.

In the present writ petition challenge has been thrown to the decision of the Bank authority as contained in letter dated 20th January, 2014 annexure P-4 to the writ petition, on the score that

while calculating the dues of the petitioner the bank authority made calculations considering the service of the writ petitioner up to November, 2004 since petitioner was suspended w.e.f. 25th November, 2004. In view of such calculation which was up to November 2004 according to the petitioner less amount has been paid to him towards gratuity and leave salary.

Mr. Dhiman Kumar Sengupta, learned advocate, appears on behalf of the Bank authority and submits that though Coordinate Bench allowed the writ petition of the petitioner herein by passing order dated 14th June, 2012 but such order was modified by the Hon'ble Division Bench while allowing the appeal of the Bank authority by virtue of order dated 2nd August, 2013.

It has also been drawn attention of this Court to the relevant part of the order dated 2nd August, 2013 whereby the Hon'ble Division Bench has categorically observed that charge against the petitioner was duly proved. Considering the facts of the case the Hon'ble Division Bench only directed that in case of imposing punishment upon the petitioner Clause 28.5(b) shall be applied instead of

Clause 28.5(a). As a result whereof the order of dismissal was substituted by an order of removal of the writ petitioner from service with all superannuation benefits.

Accordingly, Mr. Sengupta has defended the impugned decision of the Bank authority dated 20th January, 2014 whereby the Bank authority for releasing terminal benefits in favour of the petitioner made calculations up to November, 2004.

This Court has heard the learned advocates representing the parties and also perused the order of the Hon'ble Division Bench dated 2nd August, 2013 and the decision of the Bank authority dated 20th January, 2014 issued for releasing superannuation benefits in favour of the petitioner.

On consideration of the order of dismissal which was primarily passed by the Bank authority on 29th September, 2007 which was substituted by an order of removal of the writ petitioner from service with all superannuation benefits it appears to this Court that the order of dismissal has been in effect converted into an order of removal from service which is dated 29th September, 2007. If this Court proceeds on the basis of order of removal

from service as a nature of punishment inflicted upon the petitioner in that event the order of suspension dated 25th November, 2004 has merged with the order of punishment dated 29th September, 2007. Therefore, while considering release of terminal benefits in favour of the petitioner by the bank authority in terms of the order of the Division Bench dated 2nd August, 2013 the said bank authority is required to calculate the terminal benefits by considering the service of the petitioner up to 29th September, 2007 in stead of November, 2004.

Accordingly, the order of the Bank authority dated 20th January, 2014 is set aside and this Court directs the concerned authority to take a fresh decision on quantum of terminal benefits payable to the petitioner in terms of the order of the Hon'ble Division Bench dated 2nd August, 2013 upon considering the service of the petitioner up to the date of punishment which is 29th September, 2007. The concerned authority of the respondent bank is directed to pass order regarding release of terminal benefits in terms of aforesaid direction and observation within a period of four weeks from this date and the order to be passed by the

authority concerned shall be communicated to the petitioner within two weeks thereafter.

With the above observation and direction the writ petition stands disposed of.

There shall be, however, no order as to costs.

Urgent Photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Saugata Bhattacharyya, J.)