

IN THE HIGH COURT AT CALCUTTA
(Constitutional Writ Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Krishna Rao

WPA 17834 of 2019

Bidyut Baran Halder

Versus

United Bank of India & Ors.

Mr. Sirsanya Bandopadhyay

Mr. Soham Kumar Roy

.....For the Petitioner

Ms. Parna Roy Chowdhury

Ms. Payel Ghosh

.....For the Respondent/Bank

Heard on : 23.02.2022

Judgment on : 07.04.2022

Krishna Rao, J.: The instant writ application is directed against the order passed by the Assistant General Manager (D & IR), United Bank of India, Head Office, 11, Hemanta Basu Sarani, Kolkata dt. 28.03.2019 wherein the request of the petitioner for grant of compassionate allowance is rejected.

Initially the petitioner was appointed in the clerical cadre in the year 1981 and was posted as Cash Cleck. In the year 2004 the petitioner was selected as Computer Operator in the sanctioned post in terms of the Memorandum of Settlement dt. 29th, October, 1993. On completion of

unblemished 25 years of service, the petitioner was awarded with Silver Jubilee Award.

In the year 2007, the respondent bank noticed about unusual transactions from the account of the petitioner and with the Over Draft Account maintained in the bank. On 1st November, 2007, the bank had issued notice to the petitioner and directed the petitioner to clarify about the unusual transactions. Though the petitioner had submitted his clarification but the bank was not satisfied with the same and accordingly the petitioner was transferred from Kulpi Branch to Malda Region. The Bank had also initiated disciplinary enquiry against the petitioner by issuance of chargesheet dt. 7th July, 2008. On completion of enquiry, the disciplinary authority had passed an order of penalty of Dismissal without Notice in terms of Clause 6 (a) of the Memorandum of Settlement.

After the dismissal of the petitioner from service, the petitioner had made representation for release of his pensionary benefits but the same was rejected on the ground of dismissal from service without notice under Clause 6 (a) of the Bipartite Settlement dt. 10th April, 2002. Thereafter the petitioner had made an application on 11th July, 2018 to the respondent Bank praying for grant of Compassionate Allowance with effect from 1st June, 2009 in terms of Clause (1) and (2) of the Regulation 31 of the United Bank of India (Employees) Pension Regulation, 1995.

As the request made by the petitioner for grant of Compassionate Allowance was not considered and was pending before the bank and accordingly the petitioner had preferred a writ application before this Court

being WP No. 20498 (W) of 2018 and the coordinate bench of this Court had disposed of the said writ application on 21.12.2018 by directing the bank to take a reasoned decision within a period of eight weeks. After the order passed by the coordinate bench of this court the bank had passed the impugned order on 28.03.2019.

Mr. Sirsanya Bandopadhyay, Ld. Advocate representing the petitioner submitted that the Hon'ble Division Bench of this Court in its order dt. 18th January, 2018 held that petitioner did not cause any damage or loss or destruction of property belonging to the bank and the petitioner was dismissed from service without any financial implication and admittedly the bank has not suffered any pecuniary loss. It is further submitted that under Regulation 31 of the United Bank of India Employees' Pension Regulation, 1995, the petitioner is entitled to get compassionate allowances.

The counsel for the petitioner further urged that the petitioner had rendered 28 years of service and due to his unblemished service on completion of 25 years the petitioner was awarded with Silver Jubilee Award. It is further argued that the petitioner is a senior citizen and belongs to Schedule Caste category and is facing financial hardship to maintain his family and is also suffering from various ailment.

Ld. Counsel for the petitioner further submitted that as per Clause 45 (a) of the 11th Bipartite Settlement dt. 11.11.2020 Clause 5 (j), from the date of settlement shall be read as under:

“ doing any act of gross negligence or negligence involving or likely to involve the bank in serious loss”

By referring the said clause the petitioner submitted that the bank has not suffered any serious loss.

Ld. Counsel for the petitioner further relied upon clause 45 (g) of the 11th Bitartite Settlement dt. 11.11.2020 which reads as follows :

The following shall be added as clause 7 (r):

“ Misconducts covered under clause 7 (a) to (q) shall not be made out as ‘gross misconduct’ under clause 5.”

The counsel for the petitioner submitted that the petitioner has not committed any gross misconduct.

The counsel for the petitioner relied upon the judgements reported in (2014) 11 SCC 684 (Mahinder Dutt Sharma – versus – Union of India & Ors), (1994) 2 SCC 594 (Hindalco Industries Ltd.- versus- Union of India & Ors) and (2020) 9 SCC 510 (Trustees of H.C. Dhanda Trust – versus- State of Madhya Pradesh & Ors).

Ms. Parna Roy Choudhury, Ld. Advocate representing the respondent bank submitted that being aggrieved with the order of the disciplinary authority, the petitioner had preferred an appeal but the same was also dismissed and now the petitioner has filed writ petition challenging the order of the disciplinary authority and appellate authority and the same is pending for adjudication. Ld. Counsel had further submitted that subsequent to imposition of punishment, terminal benefits as admissible to the petitioner is already paid to the petitioner.

Ld. Counsel for the respondent further submitted that during the enquiry it was found that an amount of Rs. 5,98,952/- and Rs. 5,50,000/- were withdrawn by the petitioner from the Cash Credit account of Ghatakpur Bharatmata Self Help Group on 26.05.2006 and 05.06.2007 respectively and out of the said amount an amount of Rs. 2,50,000/- was credited to the petitioner's Over Draft account and an amount of Rs. 5,70,000/- was credited to the joint account of the petitioner and his wife.

Ld. Counsel for the respondent further submitted that it is also proved that the said amount was subsequently withdrawn from the said account. It was also proved that the daughter and the wife of the petitioner were the treasurer and secretary of the said Self Help Group.

The Counsel for the respondent further submitted that the petitioner had not only misutilized his possession as an employee of the bank by channelizing the amount of loan sanctioned for Ghatakpur Bharatmata Self Help Group by depositing the same in his own Over Draft account and also in the joint account maintained by the petitioner and his wife. It is further submitted that the petitioner had also withdrawn the amount from time to time for his personal gain, thereby defeating the very purpose of sanctioning the loan to Self Help Group. It is further submitted that the fund borrowed from the bank was siphoned and utilized for the purpose totally unrelated to the operation of Self Help Group.

The Counsel for the respondent further submitted that Compassionate Allowance cannot be sought as a matter of right unless there are some exceptional circumstances. The Counsel for the respondent further

submitted that the bank is entitled to recover an outstanding balance account in four loan accounts availed by the petitioner during his service period. The Counsel for the respondent further submitted that the petitioner had already assailed the order of punishment before the Hon'ble High Court and the same is pending for adjudication. The Counsel for the respondent also relied upon the judgment reported in (2014) 11 SCC 684 (Mahinder Dutt Sharma -vs- Union of India & Ors.).

Considered the rival submissions of the parties, documents available on record and the judgment relied by the parties. In the year 2007, the bank came to know that the petitioner has made some unusual transaction in the Over Draft account of the petitioner and bank had issued notice to the petitioner for clarification. The petitioner failed to submit justification with regard to the said unusual transaction and accordingly, the disciplinary proceeding was initiated. The petitioner participated in the disciplinary proceeding and during the disciplinary proceeding it was proved that an amount of Rs. 5,98,952 and Rs. 5,50,000/- was withdrawn from the Cash Credit account of Ghatakpur Bharatmata Self Help Group on 26.05.2006 and 05.06.2007 respectively and out of the said amount, an amount of Rs. 2,50,000/- was credited in the Over Draft account of the petitioner and an amount of Rs. 5,70,000/- was credited in the joint account of the petitioner and his wife. It was further proved that the deposited amount was subsequently withdrawn from the said account. During the enquiry it is also proved that the daughter of the petitioner and the wife of the petitioner are the treasurer and secretary of the said Self Help

Group. After completion of the enquiry, the petitioner was dismissed from service without notice in terms of Clause 6 (a) of the Memorandum of settlement dt. 10.04.2002. After the order of punishment, the petitioner has made an application before the Disciplinary Authority for grant of Compassionate Allowance in terms of Clause 31 of United Bank of India (Employees) Pension Regulation 1995.

Clause 31 of the Regulation reads as follows:-

“31. Compassionate Allowance.

(1) An employee, who is dismissed or removed or terminated from service, shall forfeit his pension

Provided that the authority higher than the authority competent do 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 is 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 the amount of minimum pension payable under Regulation 36 of these regulations.”

The Competent Authority had rejected the request of the petitioner for grant of Compassionate Allowance by passing the following order:-

“Thus, after careful evaluation of your claim for compassionate allowance in the light of solemn order dated 21/12/2018 passed by Hon’ble Justice Arijit Banerjee of Calcutta High Court in W.P. no. 20498 (W) of 2016, I find that you have not brought in any extenuating circumstances warranting sanction of compassionate allowance to you rather, you sought it as a right. Since, you had failed to bring in any extenuating circumstances and as your services were terminated for acts involving element of fraud, I do not find your case to be deserving to be considered for compassionate allowance

under Regulation 31 of the United Bank of India (Employees') Pension Regulations, 1995 and hence, your representation dated 01/08/2018 is hereby, rejected."

The petitioner had relied upon the judgment passed by the Division Bench of this Court in MAT 1522 of 2017 dt. 08.01.2017 and submitted that the Hon'ble Division Bench has held that bank had not suffered any pecuniary loss by reason of alleged misconduct of the petitioner and as such the petitioner is entitled to get the Compassionate Allowance. The Hon'ble Division Bench had passed the said order in connection with release of gratuity of the petitioner as the authorities have not released the gratuity amount to the petitioner and accordingly, the petitioner had approached the Hon'ble High Court. In the said case, there was no occasion for the Hon'ble Division Bench to deal with the matter regarding grant of Compassionate Allowance. The respondents inflicted punishment upon the petitioner for dismissal from service due to the act of dishonestly towards the employer Bank and thus the said judgment is not applicable in the instant case. The petitioner as well as the respondents relied upon the judgment reported in (2014) 11 SCC 684 (Mahinder Dutt Sharma -vs- Union of India & Ors.). In the said case, the Hon'ble Supreme Court framed the guidelines to determine the claim of Compassionate Allowance which are as follows:-

"14. In our considered view, the determination of a claim based under Rule 41 of the Pension Rules, 1972 will necessarily have to be sieved through an evaluation based on a series of distinct considerations, some of which are illustratively being expressed hereunder:

14.1. (i) Was the act of the delinquent, which resulted in the infliction of the punishment of dismissal or removal from service, an act of moral turpitude? An act of moral turpitude is an act which has

an inherent quality of baseness, vileness or depravity with respect to a concerned person's duty towards another, or to the society in general. In criminal law, the phrase is used generally to describe a conduct which is contrary to community standards of justice, honesty and good morals. Any debauched, degenerate or evil behaviour would fall in this classification.

14.2. (ii) Was the act of the delinquent, which resulted in the infliction of the punishment of dismissal or removal from service, an act of dishonesty towards his employer? Such an action of dishonesty would emerge from a behaviour which is untrustworthy, deceitful and insincere, resulting in prejudice to the interest of the employer. This could emerge from an unscrupulous, untrustworthy and crooked behaviour, which aims at cheating the employer. Such an act may or may not be aimed at personal gains. It may be aimed at benefiting a third party to the prejudice of the employer.

14.3. (iii) Was the act of the delinquent, which resulted in the infliction of the punishment of dismissal or removal from service, an act designed for personal gains from the employer? This would involve acts of corruption, fraud or personal profiteering, through impermissible means by misusing the responsibility bestowed in an employee by an employer. And would include acts of double-dealing or racketeering, or the like. Such an act may or may not be aimed at causing loss to the employer. The benefit of the delinquent could be at the peril and prejudice of a third party.

14.4. (iv) Was the act of the delinquent, which resulted in the infliction of the punishment of dismissal or removal from service, aimed at deliberately harming a third-party interest? Situations hereunder would emerge out of acts of disservice causing damage, loss, prejudice or even anguish to third parties, on account of misuse of the employee's authority to control, regulate or administer activities of third parties. Actions of dealing with similar issues differently, or in an iniquitous manner, by adopting double standards or by foul play, would fall in this category.

14.5. (v) Was the act of the delinquent, which resulted in the infliction of the punishment of dismissal or removal from service, otherwise unacceptable, for the conferment of the benefits flowing out of Rule 41 of the Pension Rules, 1972? Illustratively, any action which is considered as depraved, perverted, wicked, treacherous or the like, as would disentitle an employee for such compassionate consideration.

15. While evaluating the claim of a dismissed (or removed from service) employee, for the grant of compassionate allowance, the rule postulates a window for hope, "...if the case is deserving of special consideration...". Where the delinquency leading to punishment, falls in one of the five classifications delineated in the

foregoing paragraph, it would ordinarily disentitle an employee from such compassionate consideration. An employee who falls in any of the above five categories, would therefore ordinarily not be a deserving employee, for the grant of compassionate allowance. In a situation like this, the deserving special consideration, will have to be momentous. It is not possible to effectively define the term “deserving special consideration” used in Rule 41 of the Pension Rules, 1972. We shall therefore not endeavour any attempt in the said direction. Circumstances deserving special consideration, would ordinarily be unlimited, keeping in mind unlimited variability of human environment. But surely where the delinquency levelled and proved against the punished employee, does not fall in the realm of misdemeanour illustratively categorized in the foregoing paragraph, it would be easier than otherwise, to extend such benefit to the punished employee, of course, subject to availability of factors of compassionate consideration.”

In the said judgment the Hon’ble Supreme Court has framed the guidelines for determination of claim of compassionate allowance and the case of the petitioner is covered under clause 14.2 and 14.3 of para 14 of the judgement referred supra and thus this court is of the view that the petitioner is not entitle to get compassionate allowance.

The petitioner relied upon the judgment reported in (2020) 9 SCC 510 (Trustees of H.C. Dhanda Trust – versus- State of Madhya Pradesh & Ors.) specifically para 22 of the said judgment but the said judgment is not applicable in the case of the petitioner as the respondents have exercise their discretion reasonably and in accordance with law.

The judgement referred by the petitioner reported in (2014) 2 SCC 715 (Bank of Baroda – versus- S.K. Kool & Anr) and relied para 10 of the said judgment but the same is not applicable in the instant case as the respondents have acted in terms of Clause 31 of the United Bank of India (Employees) Pension Regulation, 1995 and the higher authority of the bank

had found that the case of the petitioner does not deserves any special consideration.

The petitioner relied upon the judgment reported in (1994) 2 SCC 594 (Hindalco Industries Ltd. – versus- Union of India & Ors.) particularly paragraph 7. In the instant case, the respondents have considered the request made by the petitioner by taking into account of all aspect and it is found that the conduct of the petitioner was personal profiteering, through impermissible means by misusing responsibility bestow upon the petitioner and thus the said judgment is not applicable in the instant case.

In the instant case, the bank had initiated disciplinary proceeding against the petitioner on the allegation that the petitioner had withdrawn an amount of Rs. 5,98,952/- and Rs. 5,50,000/- from the Cash Credit account of Ghatakpur Bhatatmata Self Help Group on 26.05.2006 and 05.06.2007 respectively and out of said amount, the petitioner has withdrawn an amount of Rs. 2,50,000/- was credited to the Over Draft account of the petitioner and the amount of Rs. 5,70,000/- was credited to the joint account maintained in the name of the petitioner and his wife. After full-fledged enquiry the charge levelled against the petitioner was proved and consequently the petitioner was dismissed from service without any notice in terms of Clause 6 (a) of the Memorandum of Settlement dt. 10.04.2002, the Hon'ble Supreme Court in the case of Mahinder Dutt Sharma (supra) has fixed the guidelines with regard to the entitlement of compassionate compensation. The case of the petitioner is covered in paragraph 14.2 and 14.3 of the judgment of Mahinder Dutt Sharma (supra).

As per the judgment of Mahinder Dutt Sharma in paragraph 15 it is held that an employee who falls in any of the above categories would, therefore, ordinarily not be a deserving employee, for grant of Compassionate Allowance.

In view of the facts and circumstances as mentioned above this Court is of the view that the impugned order passed by the Assistant General Manager dt. 28.03.2019 does not require any interference.

WPA No. 17834 of 2019 is thus dismissed.

Parties shall be entitled to act on the basis of a server copy of the Judgment and Order placed on the official website of the Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Krishna Rao, J.)