

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.9785 OF 2017

Ashok Wamanrao Bankar
Since deceased through his LRs

- A) Sharda w/o. Ashok Bankar
Age : 53 years, Occu : Nil
- B) Kaustubh s/o. Ashok Bankar
Age : 23 years, occu : Education

Both R/o. Gathi, Gautam Nagar,
Aurangabad, Tq. & Dist. Aurangabad.

.. Petitioners

Versus

1. Union of India,
Through Secretary,
Banking and Finance Department,
Government of India, New Delhi.
2. Allahabad Bank
Head Office, 2, Netaji Subhas
Road Kolkotta, Tq. and Dist. Kolkotta
3. General Manager,
Allahaba Bank,
(Administration Department)
Head Office, 2, Netaji Subhash
Road, Kolkata, Tq. and Dist. Kolkata.
4. Deputy General Manager,
Allahabad Bank, Zonal Office Nagpur,
Tq. and Dist. Nagpur
5. Chief Manager & Disciplinary Authority,
Allahabad Bank, Zonal Office Nagpur,
Tq. and Dist. Nagpur

6. Branch Manager,
Allahabad Bank, Jamb (Parbhani),
Branch, Tq. and Dist. Parbhani. .. Respondents

...

Mr. D.A. Mane, Advocate h/f. Mr. P.K. Palve,
Advocate for the petitioner
Mr. Ajay G. Talhar, Advocate for Respondent No.1
Mr. Prashant K. Nikam, Advocate for Respondent Nos.2 to 6

...

**CORAM : MANGESH S. PATIL &
SANDEEP V. MARNE, JJ.**

**RESERVED ON : 30.09.2022
PRONOUNCED ON : 14.10.2022**

JUDGMENT (*PER* SANDEEP V. MARNE, J.):

. Heard. Rule. It is made returnable forthwith. Mr. Ajay G. Talhar, learned advocate waives service for respondent no.1 and Mr. Prashant K. Nikam, learned advocate waives service for respondent nos.2 to 6. At their joint request the matter is heard finally at the admission stage.

2. By the present petition, the petitioner seeks implementation of the penalty order dated 25.11.2011 by paying him all superannuation benefits in the form of Pension, Provident Fund, Gratuity, Commutation of Pension and leave encashment etc., along with interest. During pendency of the present petition, the petitioner has expired and his legal heirs have been brought on record.

3. In the disciplinary enquiry held against the petitioner on the charge of misappropriation of amounts while functioning as Cashier in the respondent – Bank, following punishment was imposed on him.

‘In view of the above, the undersigned as the Disciplinary Authority, confirms the proposed punishment as indicated in the show cause notice no. ZON/Vig/112 dated 4th November, 2011 and impose upon Sri Ashok W. Bankar, Clerk-cum-Cashier (now Single Window Operator), Jamb (Parbhani) branch (Under Suspension) the punishment as per clause 6(b) of Memorandum of Settlement dated 10th April 2002 that he “be removed from service with superannuation benefits i.e. Pension and / or Provident Fund and Gratuity as would be due otherwise under the Rules or Regulations prevailing at the relevant time and without disqualification from future employment.’
Further, the suspension period will not be treated as on duty and no other allowances except the subsistence allowance already paid will be released to Sri Bankar.’

4. It is the petitioner’s case that the punishment has been imposed under Clause 6 (b) of the Memorandum of Settlement dated 10.04.2002, which reads thus:

‘6. An employee found guilty of gross misconduct may:

a)

b) be removed from service with superannuation benefits i.e. Pension and / or Provident Fund and Gratuity as would be due otherwise under the Rules or Regulations prevailing at the relevant time and without disqualification from future employment; or

(c) to (i)

5. Mr. Mane, the learned Counsel for the petitioner would submit that the penalty order as well as clause 6 (d) of the Memorandum of Settlement clearly provide that upon imposition of the penalty of removal from service, the employee shall be entitled to all superannuation benefits. He would fairly concede that though the claim towards gratuity is also made in the petition, in the light of the communication dated 28.08.2014 forfeiting the amount of gratuity under the provisions of Payment of Gratuity Act, 1972, the petitioner is not pressing his claim towards gratuity and would resort to appropriate remedy in that regard. He would rely upon the decision of the Apex Court in **Bank of Baroda vs. S.K. Kool (D) Through LRs and Another**, Civil Appeal No.10956 of 2013 decided on 11.12.2013.

6. Per contra, Mr. Nikam, the learned Counsel appearing for respondent nos.2 to 6 – Bank would rely upon the provisions of Allahabad Bank (Employees') Pension Regulations, 1995 (hereinafter referred to as the 'Regulations'), particularly Rule 22 (1), which reads as under:

22. Forfeiture of Service :

(1) Resignation or dismissal or removal or termination of an employee from the service of the Bank shall entail forfeiture of his entire past service and consequently shall not

qualify for pensionary benefits;'

7. He would further submit that the petitioner has committed gross misconduct of misappropriation of amount of Rs. 45,73,960/- and that therefore no pensionary benefits can be granted in his favour. He would submit that the penalty order uses the expression 'as would be due otherwise under the rules or regulations' and therefore under the provisions of Rule 22, the petitioner cannot claim pension or pensionary benefits.

8. The issue involved in the present petition is squarely covered by the decision of the Apex Court in **Bank of Baroda vs. S.K. Kool** (*supra*). The Apex Court has considered the interplay between clause 6 (b) of the Memorandum of Settlement and Article 22 of the Regulations. The relevant portion of the judgment is reproduced below:

'Having considered the rival submissions we do not have the slightest hesitation in accepting the broad submission of Mr. Gupta that the Regulation in question is statutory in nature and the court should accept an interpretation which would not make any other provision redundant. Bearing in mind the aforesaid principle, we proceed to consider the rival contentions.

The terms and conditions of service of the employees are governed and modified by the Bipartite Settlement. Various punishments have been provided under the Bipartite Settlement which can be inflicted on the employee found guilty of gross misconduct. In 2002, a Bipartite Settlement was signed by the Indian Banks'

Association and the Banks' workmen's Union with regard to disciplinary action procedure. It is common ground that in the light of the said Bipartite Settlement, clause 6(b) was inserted as one of the punishments which can be inflicted on an employee found guilty of gross misconduct and the same reads as follows:

'6. An employee found guilty of gross misconduct may;

- a)*
- b) be removed from service with superannuation benefits i.e. Pension and/or Provident Fund and Gratuity as would be due otherwise under the Rules or Regulations prevailing at the relevant time and without disqualification from future employment, or*

xxx xxx xxx"

The employee undisputedly has been visited with the aforesaid penalty in terms of the Bipartite Settlement.

Article 22 of the Regulation, which is relied on to deny the claim of the employee reads as follows:

"22. Forfeiture of service:

(1) Resignation or dismissal or removal or termination of an employee from the service of the Bank shall entail forfeiture of his entire past service and consequently shall not qualify for pensionary benefits."

From a plain reading of the aforesaid Regulation, it is evident that removal of an employee shall entail forfeiture of his entire past service and consequently such an employee shall not qualify for pensionary benefits. If we accept this submission, no employee removed from service in any event would be entitled for pensionary benefits. But the fact of the matter is that the Bipartite Settlement provides for removal from service with pensionary benefits "as would be due otherwise under the Rules or Regulations prevailing at the relevant time". The consequence of this construction would be that the words quoted above shall become a dead letter. Such a construction has to be avoided.

The Regulation does not entitle every employee to pensionary benefits. Its application and eligibility is provided under Chapter II of the Regulation whereas Chapter IV deals with qualifying service. An employee who

has rendered a minimum of ten years of service and fulfils other conditions only can qualify for pension in terms of Article 14 of the Regulation. Therefore, the expression “as would be due otherwise” would mean only such employees who are eligible and have put in minimum number of years of service to qualify for pension. However, such of the employees who are not eligible and have not put in required number of years of qualifying service shall not be entitled to the superannuation benefit though removed from service in terms of clause 6(b) of the Bipartite Settlement. Clause 6(b) came to be inserted as one of the punishments on account of the Bipartite Settlement. It provides for payment of superannuation benefits as would be due otherwise. The Bipartite Settlement tends to provide a punishment which gives superannuation benefits otherwise due. The construction canvassed by the employer shall give nothing to the employees in any event. Will it not be a fraud Bipartite Settlement? Obviously it would be. From the conspectus of what we have observed we have no doubt that such of the employees who are otherwise eligible for superannuation benefit are removed from service in terms of clause 6(b) of the Bipartite Settlement shall be entitled to superannuation benefits. This is the only construction which would harmonise the two provisions. It is well settled rule of construction that in case of apparent conflict between the two provisions, they should be so interpreted that the effect is given to both. Hence, we are of the opinion that such of the employees who are otherwise entitled to superannuation benefits under the Regulation if visited with the penalty of removal from service with superannuation benefits shall be entitled for those benefits and such of the employees though visited with the same penalty but are not eligible for superannuation benefits under the Regulation shall not be entitled to that.”

9. Thus, in the **Bank of Baroda vs. S.K. Kool** (supra) the Apex Court has held that an employee inflicted with the punishment of removal from service is entitled to superannuation benefits. All the submissions made by Mr. Nikam for the Bank have been dealt with in the Apex Court decision. We would therefore proceed to follow the

decision in **S. K. Kool** (supra). Consequently, we pass the following order:

ORDER

- (i) The respondent – Bank is directed to pay all the superannuation benefits in the form of Pension, Provident Fund, Commutation of Pension and leave encashment to the petitioner with effect from 25.11.2011.
- (ii) If any amount is already paid to the petitioner under any of the above heads, the same shall be adjusted while paying him the arrears of superannuation benefits.
- (iii) Petitioner's entitlement to gratuity is not decided by us and he would be at liberty to canvass his claim for gratuity before the appropriate forum.
- (iv) The order be complied with within a period of four months from today.
- (v) The petition is accordingly allowed. Rule is made absolute in above terms.

(**SANDEEP V. MARNE, J.)**

(**MANGESH S. PATIL, J.)**