



WEB COPY

W.P(MD)No. 4912 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE PARESH UPADHYAY

and

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P(MD)No. 4912 of 2022

and W.M.P. (MD) No.4047 of 2022

M.Malayappan

.. Petitioner

Vs

1.Assistant General Manager (HR),
Disciplinary Authority,
Canara Bank, Circle Office,
Madurai - 625 001.

2.The General Manager,
Canara Bank, Circle Office,
Madurai - 625 001.

3.The Managing Director and Chief Executive Officer,
Canara Bank,
Head Office,
J.C. Road,
Bangalore.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Declaration declaring that the 2nd part of Regulation 20(3)(iii) of Syndicate Bank (Officers') Service Regulation, 1979, presently Canara Bank (Officers') Service Regulation so far as it affects the provisions of Payment of Gratuity Act is void and non-est, quashing the same and directing the respondents 1 and 2 to pay the Gratuity amount to the petitioner with interest forthwith.

For Petitioner : Mr.S.K.Mani

For Respondents : N.Dilipkumar

ORDER

[Made by PARESH UPADHYAY, J.]

1. This petitioner was in service of the respondent Bank and has attained the age of superannuation in June 2018. At the time of his retirement, one departmental inquiry was pending against him and therefore his gratuity is not released by the Bank. The said officer has filed this petition with the following prayer:-

"Therefore it is prayed that this Honourable Court may be pleased to issue a Writ of Declaration or any other appropriate writ or any other appropriate



Writs or order or direction declaring that the 2nd part of Regulation 20(3)(iii) of Syndicate Bank (Officers') Service Regulation, 1979, presently Canara Bank (Officers') Service Regulation so far as it affects the provisions of Payment of Gratuity Act is void and non-est, quashing the same and directing the respondents 1 and 2 to pay the Gratuity amount to the petitioner with interest forthwith."

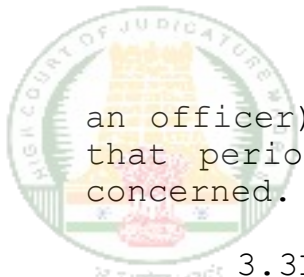
2. The issue before this Court is, whether Regulation 20 (3)(iii) of the Syndicate Bank (Officers') Service Regulations, 1979 as amended upto 31 December 2002, (quoted herebelow) is legal or needs to be declared void as claimed by the petitioner. The relevant part of the said Regulation reads as under:-

"(iii) The Officer against whom disciplinary proceedings have been initiated will cease to be in service on the date of superannuation but the disciplinary proceedings will continue as if he was in service until the proceedings are concluded and final order is passed in respect thereof. The concerned Officer will not receive any pay and/or allowance after the date of superannuation. He will also not be entitled for the payment of retirement benefits till the proceedings are completed and final order is passed thereon except his own contributions to CPF."

(emphasis supplied)

3.1 Learned advocate for the petitioner has submitted that, the petitioner had initially joined the service of the respondent Bank in the year 1983 as a Clerk. He had worked as Clerk till year 2010. Thereafter he was promoted as an Officer in September 2010 and he attained the age of superannuation in June 2018. At the time of retirement, one departmental inquiry was pending against him (initiated vide charge-sheet dated 22 June 2018) and in view of the Regulations of the Bank, his gratuity was not paid, which is the cause for him to challenge the sustainability of the Regulation, as quoted above. It is pointed out that, the petitioner had challenged the initiation of the said departmental inquiry by filing W.P.(MD) No. 15027 of 2018 before this Court which was disposed of as withdrawn vide order dated 31 January 2022. It is submitted that even then the gratuity is not paid and therefore this petition is filed challenging the very Regulation under which the gratuity is withheld.

3.2 Learned advocate for the petitioner has further submitted that, the provision under challenge is in conflict with Section 14 of the Payment of Gratuity Act and considering the overriding effect of the said section, this Regulation needs to be declared as null and void. It is further submitted that, the



an officer) for the period from the year 1983 to 2010 and therefore that period needs to be protected so far payment of gratuity is concerned.

3.3 Learned advocate for the petitioner has also referred to some additional papers from the paper-book dated 21 March 2022 to contend how the petitioner could not be held responsible for the act which is treated to be misconduct on his part. It is submitted that this petition be entertained.

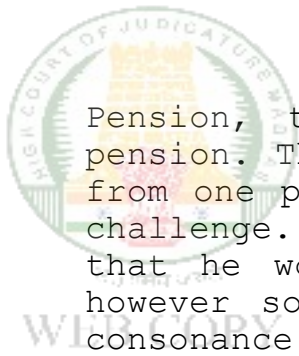
4. Having heard learned advocate for the petitioner and having considered the material on record this Court finds as under:-

4.1 It is not in dispute that the petitioner was an officer within the definition of Regulation 3(j) of the respondent Bank. He has attained age of superannuation in June, 2018. At the time of his retirement, departmental inquiry was pending against him. The legality of the said departmental inquiry is not the subject matter of this petition and therefore that aspect is not required to be gone into. Pendency of the departmental inquiry for all these years, though may appear to be harsh, while deciding the legality of a statutory Regulation, that would not be a relevant factor and therefore that aspect is not taken into consideration by this Court. The nature of the allegation against the petitioner would also not be a relevant factor for this petition.

4.2 The only point for consideration before this Court is whether the Regulation of the respondent bank, which is stated to have been framed in exercise of powers under Section 19 read with sub-section (2) of Section 12 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, can be said to be illegal in any manner.

4.3 Firstly it needs to be noted that, it can not be disputed that the Board of Directors of the respondent Bank is the competent authority to frame these regulations. Competence is not even the ground of challenge. Therefore on the ground of competence, we do not find any infirmity in the regulation under challenge.

4.4 The only point pressed into service and which needs to be answered by this Court is whether this Regulation can be said to be in conflict with the provisions of the Payment of Gratuity Act, 1972. In this regard it is noted that, true it is that Section 14 of the Payment of Gratuity Act does have overriding effect, however the gratuity claimed by the petitioner from the respondent Bank is not flowing from the provisions of the Payment of Gratuity Act, 1972. The gratuity claimed by the petitioner is part of the retirement dues which is available to the Officer of the respondent Bank, which includes pension and gratuity, both. Learned advocate for the petitioner has, during the course of hearing, on being asked to submit that, of the Contributory Provident Fund and



Pension, the petitioner had opted for pension and he does get pension. Thus, the petitioner has already got the benefit (pension) from one part of the Regulation, the second part of which is under challenge. An employee / officer can not be permitted to contend that he would take part of the Regulation as retirement benefit however so far the remaining part is concerned, it has to be in consonance with the Payment of Gratuity Act. According to us, payment of retirement dues to the Officers of the Bank is made as per the Regulations which are statutory in nature and challenge thereto of part thereof can not be examined in piece meal manner. The challenge by the petitioner, in this factual background is rejected. The harshness of the consequence of pendency of departmental inquiry qua the petitioner can not be the guiding factor to decide the sustainability of a statutory Rule. This petition is therefore rejected.

5. For the above reasons, this writ petition is dismissed. No costs. Consequently, connected Miscellaneous Petition would not survive.

Sd/-

Assistant Registrar (T&P)

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/ /2022

Sub Assistant Registrar(CS)

ssm/14

To

1.Assistant General Manager (HR),
Disciplinary Authority,
Canara Bank, Circle Office,
Madurai - 625 001.

2.The General Manager,
Canara Bank, Circle Office,
Madurai - 625 001.

3.The Managing Director and Chief Executive Officer,
Canara Bank,
Head Office,
J.C. Road,

+1 CC to M/s.N.DILIPKUMAR, Advocate (SR-13638[F] dated 22/03/2022)

+1 CC to M/s.S.K.MANI, Advocate (SR-13776[F] dated 23/03/2022)

W.P (MD)No.4912 of 2022
21.03.2022

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