IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11954 of 2021

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Kameshwar Singh Son of Shri Ram Janam Singh, Resident of Mohallah - Magadh colony, Road No. 1, House No. 777 P.O. - Gaya, P.S. - Magadh Medical College Gaya, District- Gaya, Pin Code - 823001 (Bihar).

... ... Petitioner/s

Versus

1. Canara Bank through its Managing Director and Chief Executive Officer, Having its Head Office at 112 J.C. Road, Bangalore, - 560002 (Karnataka).
2. Managing Director and Chief Executive Officer, Canara Bank, Having its Head Office at 112 J.C. Road, Bangalore - 560002 (Karnataka).
3. The Executive Director (HRD) Perssonel Wing/ H.R. Wing, Canara Bank, having its Head Office At 112 J.C. Road, Bangalore, - 560002 (Karnataka).
4. The General Manager (HRD), Perssonel Wing/ H.R. Wing, Perssonel Management Section, Having its Head Office at 113/1, Jeevan Prakash Building, J.C. Road, Bangalore, - 560002 (Karnataka).
5. The Deputy General Manager, Canara Bank, Circle Office, Lav Kush Tower, 3rd Floor, Post Box No. 195, Exhibition Road, Patna- 800001 (Bihar).

... ... Respondents

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Appearance :

For the Petitioner/s	:	Mr. Jai Prakash Singh, Advocate
		Mr. Harendra Singh, Advocate
For the Canara Bank	:	Mr. Siddharth Harsh, Advocate

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN

ORAL ORDER

5 19-01-2023 Heard learned counsel for the petitioner and counsel for the Canara Bank.

The present writ petition has been filed by the petitioner directing the Respondent-Bank to pay the Leave Encashment of the superannuated employee as compulsory retired from service in the light of Regulation No. 34 and 38 of the Canara Bank (Officers) Service Regulations 1979 under which the petitioner is entitled for Leave Encashment, which has not been paid to him alongwith interest 18% from the date of retirement till date of actual payment with any other relief or reliefs for which the petitioner may be entitled.

Counsel for the petitioner submits that petitioner is a retired bank officials of Canara Bank, a Government of India undertaking established by the Banking Companies (Acquisition and transfer of Undertakings) Act, 1970 hereinafter called as “Bank”.

Petitioner was appointed on the post of clerk in the Respondent-Bank on 19.11.1978 and promoted as an officer of the bank on 01.04.2000. In the year 2008 he was posted as Scale-1 Officer at Gaya where he was served a charge sheet on 14.02.2009 and on the basis of said charge, proceeding has been initiated against him, which resulted into punishment of compulsory retirement by his Disciplinary Authority vide order dated 18.08.2009, which he received on 30.08.2009.

Being aggrieved and dissatisfied the petitioner preferred before the appellate authority who has finally decided this matter on 22.03.2010 against this petitioner and again in the review jurisdiction, the matter was decided against the petitioner on 30.07.2010 with no remarks of forfeiture of any retiral benefits. It is stated that the petitioner got his retiral dues as Pension, Gratuity and other terminal dues but his Leave Encashment was not paid upon which petitioner has made several representation to the authorities and subsequently filed the present writ petition. The legal issue he raised before this Court is that every banks service regulation has been guided by the Indian Bank Association (I.B.A.) and for the payment of leave encashment to the compulsory retired employees as per regulation 38 of Bank Officiers Regulations 1979, there is no specific statement relating to its forfeiture. Counsel further submits that the services of the petitioner as primarily guided by the Canara Bank(Officers) Service Regulation, 1979 (Annexure-3). The relevant part is present at page-48 of the writ petition as follows:

> ***"38. LAPSE OF LEAVE***
>
> *Save as provided below, all leave to the credit of an Officer shall lapse on resignation, retirement, death, discharge, dismissal or termination for any reason.*
>
> *Provided that where an Officer retires from the services of the Bank, he shall be eligible to be paid a sum equivalent to the emoluments of any period, not exceeding 240 days of privilege leave that he had accumulated.*
>
> *Provided further that where an Officer dies while in service, there shall be payable to his*

legal representative, a sum equivalent to the emoluments for the period not exceeding 240 days of privilege leave to his credit as on the date of his death.

Provided also that where an officer leaves or discontinues his services by resignation on or after Ist April, 2001 after giving due notice under Sub Regulation (2) of Regulation 20, he may be paid a sum equivalent to the emoluments in respect of privilege leave to the extent of half of such leave to his credit on the date of cessation of service, subject to a maximum of 120 days."

Counsel submits that in the said clause it is no where mentioned that leave encashment shall lapse by virtue of compulsory retirement. Counsel further submits that the judgement reported in Annexure-5 i.e. **CWJC No. 17150 of 20-17 Atmesh Kumar Roy Vs. Madhya Bihar Gramin Bank & Anr.** as well as Annexure-6 **CWJC No. 15264 of 2015 Kaushal Kishroe Thakur Vs. Indian Bank through CMD and others**. The same question was well tested and answered and it was held that petitioner is entitled for the payment of his leave encashment. Counsel further submits that being aggrieved and dissatisfied with the judgment passed in CWJC No. 15264 of 2015 the bank has preferred LPA No.580 of 2016 before the Division Bench and the Division Bench has pleased to approved the decision of Single Bench and held held that

> " *To single out one class of retirees, i.e. those imposed with compulsory retirement and deny them benefit of leave encashment, would be contrary to intent of Regulations. ……..*"

Counsel for the petitioner submits that in view of the Regulation of Canara Bank as well as in view of the categorical finding of Hon'ble Division Bench of this Court, the respondent may be directed to pay his leave encashment with immediate effect.

Counsel for the Canara Bank submits that service condition of the officers employee is governed by Canara Bank (Officers') Service Regulations, 1979, Canara Bank Officer Employees' (Conduct) Regulations, 1976 and Canara Bank Officer Employees' (Disciplinary & Appeal) Regulations, 1976. On factual matrix the counsel for respondent has not opposes anything but submits that the petitioner is not eligible for payment of leave encashment as per the Regulation 38 of Canara Bank (Officers') Service Regulations, 1979.

Counsel for the Bank made submission that the word compulsory retirement does not cover the word retirement.

Counsel submits that in the year 2015 the Board of Directors of Bank have promoted for extending the facility of privilege leave encashment of both officers and workman employees imposed with the punishment of “Compulsory Retirement” on or after 30.04.2015. Counsel further submits that the punishment of compulsory retirement has been made to the petitioner in the 18.08.2009, therefore, he is not entitled for any benefit. He also submits that petitioner has made representation in the year 2010, therefore, according to him the date of punishment is of 2009, representation is of 2010 and therefore, his representation was rejected.

After going through the records, on the facts after hearing and after considering the Law, counsel for respondent admits that this benefit has come in the year 2015. The Regulation 38 does not create any bar in payment of leave encashment to a person, who has compulsory retired and particularly this legal issue has been decided elaborately in CWJC No.15264 of 2015 which are set-out hereinbelow:-

> “*Accordingly, in view of the discussions made hearinabove, the writ petition stands disposed off holding that the petitioner is entitled to full pension as well as payment of leave encashment which shall be computed in accordance with law*

within four weeks from the date of production of a copy of this order before respondents no. 2 and 3. The payment required to be made pursuant to such computation shall also be so done within the next four weeks.

The amount of G.P.F. which the Bank has admitted in the present proceeding shall also be paid to the petitioner within four weeks from the date of production of a copy of this order before the respondents no. 2 and 3. The Court would also like to observe that the amount of G.P.F. which has been admitted in the present proceeding by the respondent Bank shall also be paid to the petitioner and if any formalities are required to be done on the part of the petitioner, he shall comply with the same within two weeks and whatever formality is to be completed on behalf of the Bank, the same shall also be so done within the next two weeks and the amount payable shall be so done within four weeks thereafter.

It is further made clear that all payment under any head which carries statutory interest, the same shall be paid to the petitioner from the date of *entitlement till the date of payment. Whatever dues the petitioner may be owing to the respondent Bank, if the same has not been paid, the same shall not carry interest after the date of compulsory retirement for the reason that the Bank also had a greater amount payable to the petitioner compared to what the petitioner owes to the Bank and the account was required to be settled forthwith pursuant to such order of punishment."*

And the said decision was approved further in LPA No.580 of 2016 which are set-out hereinbelow:-

"According to us, since the Regulations, which was framed after prior consultation and the approval of Central Government, has made no distinction between one class of retirees and another, such distinction cannot be made by the appellants. There is no dispute about the fact that cessation of service as a result of retirement can be on the occurrence of following contingencies – (i) attainment of superannuation; (ii)option by the employee to voluntarily retire from the service, (iii) retirement of an employee upon imposition of a penalty or exercise by the employer upon imposition

of a penalty and (iv) exercise by the employer of an option to compulsorily retire the employee as a dead wood. However, in each one of them, in terms of Regulation 38 of Service Regulation, employee concerned would be entitled to leave encashment benefit, because in the case of those imposed with penalty of compulsory retirement, there is no dispute that pension – as applicable and other terminal benefits are admissible unless the order of punishment lays down otherwise.

*The Apex Court, in the case of T**he State of Jharkhand Vs. Jitendra Kumar Srivastav [(2013) 12 SCC 210]**, has held that retiral benefits are property, being vested rights, which cannot be deprived of without authority of law.*

In these circumstances, it has to be held that, to single out one class of retirees, i.e., those imposed with compulsory retirement and deny them the benefit of leave encashment, would be contrary to intent of the Regulations.

Thus, we agree with the views, expressed by the learned Single Judge in the judgment, under appeal, that in the absence of specific regulation, *depriving one class of retirees (such as, those imposed with penalty of compulsory retirement) leave encashment benefits is unwarranted and not supported by law. This issue is also, accordingly, decided against the appellants."*

I am of this view that petitioner is entitle for payment of his leave encashment and hence, the present writ petition is allowed.

Since on the point of interest this Court has not opined any view, the petitioner is at liberty to file representation for the same.

(Dr. Anshuman, J.)

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