

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:

THE HON'BLE JUSTICE Shekhar B. Saraf

W.P.A. 3383 of 2021

Sri Nirbhay Lodh

Vs.

The UCO Bank & Ors.

For the Petitioner	:	Mr. Ranjan Kali, Adv.
		Ms. Mitul Chakroborty, Adv.
		Ms. Mili Saha, Adv.
		Ms. Payel Nath, Adv.

For the UCO Bank	:	Mr. Soumen Das, Adv.
		Mr. Sourjya Roy, Adv.

Last Heard On : September 20, 2023

Judgement On : September 27, 2023

Shekhar B. Saraf, J.:

1. The instant writ petition has been filed by the petitioner, Sri Nirbhay Lodh praying for a writ of and/or a writ in the nature of Mandamus commanding the Chief Executive Officer and Managing Director, UCO Bank/respondent no.2 to release the arrear salary from the date of suspension till the date of superannuation and other retiral benefits such as gratuity, leave encashment and balance provident fund with interest. The petitioner has also prayed for a writ of and/or a writ in the nature of Mandamus seeking directions against respondent no.2 to dispose of the representation made by the petitioner through letter dated November 21, 2019 in relation to receiving his service benefits as well as other retirement benefits.

Facts:

2. I have laid down the factual matrix of instant case below:-
 - a. The writ petitioner was appointed as a Junior Economist with the respondent Bank in 1982 where after completing a probationary period he was posted in Burdwan Regional Office of the UCO Bank. The petitioner was posted at various branches of the said Bank.
 - b. A chargesheet bearing No. BO/KOL/VIG/224/2006-7 dated August 31, 2006 was issued against the petitioner by the Assistant General Manager (Disciplinary Authority), UCO Bank (hereinafter

referred to as 'AGM (Disciplinary Authority)') where a total of seven charges were brought against the petitioner for his conduct while he was a Manager of the Beadon Street Branch, UCO Bank.

- c. The petitioner was placed on suspension vide an order dated November 7, 2006 issued by the AGM (Disciplinary Authority). Upon submission of the inquiry officer's report dated March 24, 2007, charge no.1 was partly proved, charge no.2 was not proved, and charge no.3,4,5,6 and 7 were proved against the petitioner. Such inquiry report was forwarded to the petitioner by the AGM (Disciplinary Authority) through a letter vide Memo No. NO/EDL/VIG/520/2006-07 dated March 27, 2007.
- d. On May 10, 2007, the AGM (Disciplinary Authority) delivered an order based on the findings of the inquiry report, where the petitioner was dismissed from service. Such a dismissal order was appealed before the Appellate Authority on May 16, 2007, where the Appellate Authority rejected the prayer of the petitioner. After such rejection by the Appellate Authority vide order dated July 9, 2007, the petitioner preferred a review petition before the Reviewing Authority on October 26, 2007, which upheld the punishment imposed by the AGM (Disciplinary Authority) vide order dated May 9, 2008.
- e. The petitioner filed a writ application being No. W.P. 14061 (W) of 2008 before a co-ordinate bench of this High Court seeking

withdrawal of the charge sheet dated August 31, 2006, the order of suspension dated November 7, 2006, the inquiry report, final order of punishment dated May 10, 2007, the Appellate order dated July, 9, 2007 and the order of the Reviewing Authority dated May 9, 2008. The petitioner attained the age of superannuation on July 31, 2015 and had argued before the co-ordinate bench of this High Court that the dismissal order was in violation of Article 311 of the Constitution of India. The learned Single Judge allowed the writ petition vide order dated October 1, 2015 and set aside and quashed the order of the AGM (Disciplinary Authority) dated May 10, 2007, and as a consequence the orders of the Appellate and Reviewing Authorities were set aside and quashed as well.

- f. The respondent Bank filed an appeal being MAT No. 8 of 2016 on January 4, 2016, against the order of the co-ordinate bench of this High Court dated October 1, 2015. Such an appeal was filed with a stay application being CAN No. 1408 of 2016. The said order dated October 1, 2015, was stayed for a period of four weeks by an order of the Division Bench of this High Court dated July 26, 2016. It is also pertinent to note that such a stay order dated July 26, 2016, was not extended subsequently.
- g. Furthermore, the petitioner through letter dated November 21, 2019, expressed grievances against the respondents for not providing him with his legitimate dues despite the order of the co-

ordinate bench of this High Court dated October 1, 2015 which set aside and quashed the dismissal order against the petitioner.

- h. The petitioner filed the present writ petition being WPA 3383 of 2021 seeking retiral benefits, including provident fund and gratuity, alleging that the respondent Bank had not released the same on the grounds that the appeal being MAT No. 8 of 2016 was still pending. The learned Single Judge gave an order dated April 22, 2022 where it was specified that the parties were at liberty to mention the matter for “hearing” in the list after an expiry of ten weeks and such parties would be at liberty to approach the Appeal Court even during pendency of the writ petition.
- i. During such pendency of the instant writ petition, the Division Bench of this High Court dismissed the appeal in MAT NO. 8 of 2016. The said appeal was dismissed vide order dated June 27, 2023 where the Division Bench of this High Court did not find any reason to interfere with the findings of the learned Single Judge in the order dated October 1, 2015. The Division Bench of this High Court upheld the order of the co-ordinate bench of this High Court dated October 1, 2015 and consequently affirmed its directions to set aside and quash the dismissal order against the petitioner along with the orders of the Appellate and Review Authority.

Contentions:

3. The counsel for the petitioner has made the following submissions:-

- a. It is the contention of the petitioner that presently, a sum of Rs.2,36,00,000/- (Rupees Two Crores Thirty-Six Lacs only) has accumulated after addition of the retiral benefits and other statutory claims against the respondents.
- b. That due to the order of the Division Bench of this High Court dated June 27, 2023, the dismissal order by the AGM (Disciplinary Authority), along with the Appellate and Review Authority orders stand quashed. It has been argued that after the dismissal of the appeal by the respondent Bank, there is nothing standing against the petitioner to get his due salary arrears, retirement benefits including gratuity, the balance provident fund and other such statutory claims.
- c. It was submitted by the petitioner that the respondent Bank's argument against providing the petitioner his due service and retirement benefits is solely based on the possibility of pendency of another appeal which they may file in the future. According to the petitioners, such possibility of pendency of appeal cannot be grounds for the petitioner not receiving his overdue salary arrears, retirement and service benefits.

4. The counsel for the respondents initially contended that nothing was payable to the petitioner since the petitioner was dismissed from service and such dismissal was grounds for withholding gratuity amount and non-payment of leave encashment. Furthermore, the respondent Bank also submitted that an appeal was pending before the Division Bench of this High Court in MAT NO. 8 of 2016 and hence, the petitioner was not entitled to get any relief as prayed in this instant writ petition during such pendency.

Observation and Analysis:

5. I have heard the learned counsels appearing for both parties and perused the materials on record.
6. The petitioner's order of dismissal dated May 10, 2007, was dismissed by a co-ordinate bench of this High Court vide order October 1, 2015, and such an order of the learned Single Judge was upheld by the Division Bench of this High Court. The order of the Division Bench of this High Court dated June 27, 2023, has gone into the merits of the appeal and found no error in the order dated October 1, 2015, passed by the learned Single Judge.
7. It is pertinent to note that the Division Bench of this High Court vide order dated June 27, 2023, has dismissed the appeal of the respondents, and consequently quashed the dismissal order against the petitioner by upholding the findings of the Single Judge bench.

Therefore, I see no merit in the arguments of the respondents to deny the petitioner his salary arrears, retirement and service benefits on grounds of pendency of appeal or the order of dismissal of service since both such grounds are redundant after the order of the Division Bench of this High Court dated June 27, 2023.

8. Additionally, the argument of the respondent Bank that they may file an appeal challenging the order of the Division Bench of this High Court in the future and therefore, in the eventuality of pendency of such future appeal, the petitioner must not receive his salary arrears, retirement and service benefits, is not sound in law. The possibility of pendency of future appeals cannot be grounds for not withholding an employee's salary arrears, retirement and service benefits.
9. I also feel compelled to point that that the tedious nature of the judicial process in this country cannot be used as a convenient tool by employers to harass employees. Even if one does not consider the inherent imbalance of power relations between the employer and employee, the possibility of another stage of litigation in the future cannot be cited as a valid ground for denial of salary arrears, retirement and service which are the right of the employee. It is disappointing to see how some have/are using the judicial system, to cause delay unnecessarily and illegally against enforcement of fundamental rights of an employee.

10. I am of the opinion that the two contentions of the respondent Bank including pendency of appeal before the Division Bench of this High Court and the order of dismissal of service against the petitioner, are superfluous and redundant after the order dated June 27, 2023.

11. Accordingly, this Court gives the following directions.

Order and Directions:

12. There is no reason why the respondents cannot disburse petitioner's salary arrears, retirement and service benefits. The respondent no.2 is directed to provide the petitioner his salary arrears, retirement and service benefits starting from one month from the date of his superannuation with interest at 6% per annum, within a period of 6 weeks from date.

13. Accordingly, this Writ Petition being WPA 3383 of 2021 is allowed. There shall be no order as to the costs.

14. An urgent photostat-certified copy of this order, if applied for, should be made available to the parties upon compliance with requisite formalities.

(Shekhar B. Saraf, J.)