31.08.2023
DL-20
(Sanjay)
Ct.no.11

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 11169 of 2022

Shyama Prasad Dey.
Vs.
Bangiya Gramin Vikash Bank & Ors.

Mr. Debabrata Saha Roy,
Mr. Indranath Mitra,
Mr. Subhankar Das ...for the petitioner.

Mr. Baidurya Ghosal,
Ms. Aatreyee Dutt
...for the respondent nos.1 to 5.

By this writ petition, the petitioner questions the propriety of the order dated 9th August, 2021 passed by the Chairman, Banygiya Gramin Vikash Bank (hereinafter referred to as the bank) whereby it was held that the petitioner would not qualify for pension in view of Regulation nos. 2(K), 20 and 31 of Bangiya Gramin Vikash Bank (Employees) Regulations, 2018 (in short, the Pension Regulations, 2018) since after conclusion of a disciplinary proceeding contemplated against the petitioner, the punishment of compulsory retirement from service was awarded to him on 5th December, 2013.

The synopsized form of the facts unfolded in the writ petition and its accompanying documents are that the petitioner carried the order of punishment in appeal but the appeal fails. Then the petitioner assailed the charge-sheet, the order of punishment and the order of the appellate authority by preferring a Writ Petition *vide.* W.P. no. 9215(W) of 2014 which was dismissed by the Hon'ble Justice Sanjib Banerjee (as His Lordship then was) on 26.03.2014.

The order dated 26.03.2014 was impugned in an appeal registered as AST 165 of 2014 and in connection with the appeal , an application being ASTA 124 of 2014 were also taken out. By an order dated 7.08.2015, the appeal and the connected application were disposed of directing the Board to consider the appeal preferred by the petitioner afresh and to pass appropriate order within four months from the date.

The order passed by the Hon'ble Division Bench of this court in AST 165 of 2014 and ASTA 124 of 2014 was assailed in the Hon'ble Supreme Court but taking out the Petitions for Special Leave to Appeal (C) nos. 1210-1211 of 2016 which was dismissed on 21.04.2017.

During pendency of the Special Leave Petition before the Hon'ble Supreme Court, by an order dated 09.11.2015, the appeal preferred against the order of punishment was dismissed and the order of punishment was affirmed.

On 3rd January, 2019 and also on 11th February, 2019, the petitioner made two separate representations praying for release of his terminal benefits including EFP as per the relevant regulations of the Pension Regulations, 2018.

By a letter dated 22.03.2019 addressed to the Section Officer concerned , the Chief Manager of the bank advised the petitioner to submit dully filled in prescribed form for release of provident fund and in the same letter, the Chief Manager observed that the petitioner is eligible to get pension from December, 2016 but the same Chief Manager *vide.* a letter dated 17.06.2019 negated the petitioner's claim for pension.

The petitioner challenged the order dated 17.06.2019 by preferring a writ petition vide. W.P.A. no. 23795 of 2019 which was disposed of 01.03.2021 by the Hon'ble Justice Rajasekhar Mantha. The operative part of the order dated 01.03.2021 is as follows:

> *"In these circumstances and with the consent of the parties, the Chairman, Bangiya Gramin Vikash Bank shall pass suitable orders under Regulation 31 of the Pension Regulations of the Bank for the year 2018 positively within a period of three months from the date of communication of a copy of this order. The Chairman will be*

> *entitled to take appropriate legal advise on the interpretation of the Rules of the Pension Regulations and pass suitable orders. It is expected that the pension, arrears thereof and other entitlements of the petitioner would be released in terms of the order of the Chairman within a month from any decision that the Chairman may take in this regard…"*

The order dated 01.03.2021 was not complied with and hence, the petitioner was constrained to filed one contempt petition being CPAN 904 of 2021. But during pendency of the contempt petition, the Chairman by passing an order dated 9.8.2021 turned down the petitioner's prayer for release of pension. The concluding part of the order dated 9.8.2021 reads thus;

> *"Therefore, after considering all perspective of the case, I hereby conclude that the punishment awarded i.e. "Compulsory Retirement" on 05.12.2013 to Sri Shyama Prasad Dey since passed before the effective date i.e. 01.04.2018 for implementation of Pension Regulations, 2018, there is no scope in the regulation to provide pension benefits with retrospective effect. Therefore, Sri Shyama Prasad Dey does not fall under the category of Compulsory Retirement Pension as defined in the Bangiya Gramin Vikash*

> *Bank (Employee') Pension Regulation, 2018. So, he is not entitled to get any pension as he is not eligible under the provision of Bangiya Gramin Vikash Bank (Employees') Pension Regulation, 2018 and he is not entitled to get any pensionary benefit under the Regulation."*

This present writ petition has been preferred assailing the order dated 09.08.2021 passed by the Chairman of the bank.

Mr. Debabrata Saha Roy, learned advocate appearing for the petitioner, submits that nowhere in the order of punishment, it was indicated that the past service of the petitioner would be forfeited. He claims that the petitioner has completed qualifying service for pension. He contends that initially, the employees of the bank were governed under the Employees' Pension Scheme, 1995 and then, the Pension Regulations, 2018 have been adopted by the bank concerned. He arduously contends that on conjoint reading of Regulation 2(i), 2(x), 13, 14 and 32(1) of the Pension Regulations, 2018, it would be explicit that notwithstanding the fact that the Pension Regulations, 2018 came into effect after the compulsory retirement of the petitioner, the petitioner would be entitled to get pension as per the Pension Regulations, 2018. He contends that the Chief Manager in his letter dated

22.03.2019 held that petitioner is eligible for pension from December, 2016 but subsequently, the same Chief Manager turned around and held that the petitioner shall not be eligible for pension and other terminable benefits including the benefits accrued in favour of the petitioner on account of privilege leave accumulated in his credit. Placing his reliance upon an unreported judgment passed by a Hon'ble Single Bench of the Hon'ble High Court of Judicature at Patna in Civil Writ Jurisdiction Case no. 12921 of 2019, he strenuously contends that the Banks (Employees) Pension Regulation, 2018, which is applicable to the employees and officers of Dakshin Bihar Gramin Bank, is in pari materia of Pension Regulations, 2018. He claims that dealing with the same issue, the Hon'ble High Court of Judicature at Patna in Civil Writ Jurisdiction Case no. 12921 of 2019 held that the person identically circumstanced with the petitioner would be entitled to get pension as per the Pension Regulations, 2018.

In response, Mr. Ghosal, learned Advocate appearing on behalf of the bank, vehemently opposes the prayers of the petitioner. He submits that the petitioner was made to retire compulsorily in 2013 and consequently, the petitioner cannot get the pension under the Pension Regulations, 2018. He contends that the Pension Regulations, 2018 cannot be given retrospective operation and due to bar created under Regulations 20 and 31, the petitioner is not entitled to get the pension. He further contends that to get the pension under the Pension Regulations, 2018, one employee was required to exercise option but the petitioner could not get any opportunity to exercise any option to enjoy the pension under the Pension Regulations, 2018. He submits that since master – servant relation stood terminated much prior to the date the Pension Regulations, 2018 came into effect, the petitioner is not entitled to get any opportunity to exercise option to avail of that benefits as per Pension Regulations, 2018. To embolden his submission, he placed reliance upon an unreported judgment passed by a coordinate bench of this court in WPA 11922 of 2023.

Heard the learned Advocates of the parties and perused the materials on record. Admittedly, the petitioner compulsorily retired from service on 5th December, 2013 and the punishment imposed upon the petitioner has attained its finality. The petitioner accepts the punishment imposed upon him and thereafter he approached the Chairman of the concerned Bank for release of his pension and other retirement benefits claiming that he is entitled to get the aforesaid benefits as per the Pension Regulations, 2018. Admittedly, in his letter dated 22.03.2019, the Chief Manager of the Bank held that the petitioner is eligible for pension from December, 2019 but ultimately, the Chairman negated the claim of the petitioner giving reference to the three specific Regulations namely, Regulation nos. 2(K), 20(1) and 31 of the Pension Regulations, 2018 in the order and the Chairman took the plea the Pension Regulations, 2018 cannot be given retrospective operation.

As per Regulations 2(k) of the Pension Regulations, 2018, the effective date of the Pension Regulations, 2018 is 1st April, 2018 whereas the 'notified date' within the meaning of Regulation 2(s) of Pension Regulations, 2018 is 31st October, 2018. Regulation 2(x) defined the word "retirement", which is extracted as follows:-

> *(x) "retirement" means cessation from Bank's service,-*
> *(i) on attaining the age of superannuation as specified in the service regulations;*
> *(ii) on voluntary retirement in accordance with provisions contained in regulation 28;*
> *(iii) on premature retirement by the Bank before attaining the age of superannuation in accordance with provisions contained in regulation 30;*

Regulation no. 13 lays down that subject of the order provisions of these regulations, an employee who has rendered a minimum of ten years of service in the Bank shall qualify for pension.

Regulation no. 3 deals with the "Application" of the Pension Regulation, 2018. On careful reading of Regulation 3 is to appear that the employees of the concerned bank were divided in three categories, namely, (i) the employee, who was in service of the bank on or after 1st September, 1987 but retired on or before 31st March, 2010; (ii) the employee who was in service of the bank on or after 1st September, 1987 and who continued to be in service of the bank on or after the 'notified date', i.e. 31st October, 2018; and (iii) the employee who was in service of the bank between the 1st September, 1987 and 31st March, 2010 and continued in service on or after effective date, i.e. 1st April, 2018 but retired before the 'notified date', i.e., 31st October, 2018 and such employees for being notified under the Pension Regulations, 2018 were required to exercise option and refund the employer's contribution to the provident fund along with interest.

The Regulation no. 20 deals with the provisions for 'Forfeiture of Service'. Regulation no. 20(1) speaks that the resignation, not amounting to voluntary retirement or dismissal or removal or termination of an employee from the service of the Bank shall entail for forfeiture of his entire pas service and consequently, shall qualify for pension whereas the Regulation no. 20(2) lays down that an interruption in the service of an employee entails forfeiture of his past service, except in the following cases, namely –(a) authorized leave of absence, (b) suspension, where it is immediately followed by reinstatement, whether in the same or a different post, or where the employee dies or is permitted to retire or is retired under the provisions of the Service Regulations while under suspension.

Regulation 31 deals with 'compulsory retirement pension' and it lays down that the employee compulsorily retired from service as a penalty, on or after the effective date in terms of the service regulations may be granted by the authority higher than the authority competent to impose such penalty, pension at a rate not less than two-thirds and more than full pension admissible to him on the date of his compulsory retirement, if otherwise he was entitled to such pension on superannuation on that date.

So, it is vivid and luminescent that the Regulation 31 is applicable to that employee only who 'compulsorily retired from service as a penalty' on or after the effective date, i.e. 1st September, 2018.

Hence, there is no scintilla of doubt that the Regulation nos.20 and 31 are not applicable to the petitioner and the petitioner's past service can never be claimed to have been forfeited under Regulation 20.

Needless to say, the petitioner compulsorily retired on 5th December, 2013. Regulation 32(1) says that an employee, who was in service between 1st September, 1987 and 31st March, 2010 and retired from service of the bank before 31st March, 2018 shall, subject to the provisions of these Regulations, be entitled to payment for pension from the effective date.

Admittedly, the petitioner was in service between 1st September, 1987 and 31st March, 2010 and admittedly he retired before 31st March, 2018 and the word "retired" used in the Regulation 32(1) of the Pension Regulations shall include the employee who prematurely and/or compulsorily retired from the service also.

So, there is an irresistible conclusion that as per the provision of Regulation 32(1), the petitioner is entitled to get pension and other terminal benefits, admissible to him. The judgment relied upon by Mr. Ghosal is distinguishable on facts.

In view thereof, the order dated 9th August, 2021 passed by the Chairman of the bank is set aside and the respondent no.2 is hereby directed to afford an opportunity to the petitioner to exercise his option and to deposit the employer's contribution to the provident fund along with interest accrued thereon for being governed under the Pension Regulation, 2018. On receipt of such option and the amount of employer's contribution along with interest and upon completion of all other requisite formalities, the Chairman of the bank shall release the pension and other terminal benefits as would be admissible to the petitioner including benefits for privilege leave accumulated in his credit till the date of his compulsory retirement positively within a period of six weeks from the date of submission of such option form.

With these aforesaid observations and directions, WPA 11169 of 2022 is disposed of.

There shall be no order as to costs.

Urgent photostat certified copy of this judgment and order, if applied for, be given to the parties on fulfilling necessary formalities.

(Partha Sarathi Chatterjee, J.)