IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on 15.11.2022

Orders delivered on 09. 01.2023

CORAM :

THE HON'BLE Mrs.Justice **J.NISHA BANU**

W.P.No.31837 of 2015

N.Hariharan .. Petitioner

Vs

1. Union Bank of India,
rep. by General Manager (P&HR)
Appellate Authority,
No.239, Vidhan Bhawan Marg,
Nariman Point,
Mumbai - 400 021.

2. The Chief Manager,
(Disciplinary Authority),
Union Bank of India,
No.139, Broadway,
Nodal Regional Office,
Chennai - 600 108.

3. The Branch Manager,
Union Bank of India,
Ennore Branch,
Kathiwalkam Municipality Complex,
Kathiwalkam High Road, Ennore,

Chennai - 600 057. ..Respondents.

PRAYER: Writ Petition filed under Article 226 of the Constitution to issue a Writ of Certiorarified Mandamus to call for the concerned records form the 1st and 3rd respondents, quash the order of the 1st respondent dated 07.09.2013 bearing CO:IRD:4899:2013 insofar as as holding that the order of compulsory retirement will be prospective and that the petitioner will not be entitled to receive any benefits during the intervening period and the order of the3rd respondent dated 1.7.2015 bearing STF:RL:2015 restricting the privilege leave encashment for 35 days as illegal, arbitrary and contrary to law and consequently direct the respondents to pay the arrears of pension from 14.03.2007 to 07.09.2013 and also the encashed value of 205 days of privilege leave along with interest at the rate of 18% per annum.

For Petitioner : Mr.Balan Haridas

For Respondents : Mr.Anand Gopalan
for Ms. T.S.Gopalan and Co.

**ORDER**

The petitioner has challenged the order of the 1st respondent dated 07.09.2013 bearing CO:IRD:4899:2013 insofar as holding that the order of compulsory retirement will be prospective and that the petitioner will not be entitled to receive any benefits during the intervening period and the order of the 3rd respondent dated 1.7.2015 bearing STF:RL:2015 restricting the privilege leave encashment for 35 days as contrary to law and consequently, direct the respondents to pay the arrears of pension from 14.03.2007 to 07.09.2013 and also the encashed value of 205 days of privilege leave along with interest at the rate of 18% per annum.

2. The brief facts of the case of the petitioner are as follows:

The petitioner joined the respondent bank on 09.03.1974 as a Subordinate staff and was promoted to the post of Cashier cum Clerk in the year 1982. The petitioner was working in Washermenpet Branch till 30.05.1996. Thereafter, he was transferred to Madras Main Branch. While he was working there, a show cause notice was issued and he was placed under suspension by order dated 11.06.1996 and a charge memo dated 13.05.1997 was issued in respect of the alleged incident while he worked at Washermenpet Branch. The allegation against the petitioner is that he received Rs.2000/- from one Smt.Mumtaz for sanction of loan to Mr.M.Akbar Ali. The petitioner gave explanation and the suspension was revoked on 29.07.1997. In respect of the charge memo dated 13.05.1997, criminal proceedings were initiated and during trial, the prosecution witness, Smt.Mumtaz deposed that she did not give any bribe. Therefore, the petitioner was acquitted after full trial by judgment dated 28.11.2002 in C.C.No.16 of 1998. Subsequently, another charge memo dated 05.10.1999 was issued alleging that the petitioner availed housing loan of Rs.34,800/- in November 1994 and Rs.24,500/- in May 1997 and did not deposit the Sale Deed obtained from the Housing Board. The petitioner took the original NOC issued by Tamilnadu Housing Board from the respondent Bank and collected the sale deed on 16.09.1991 but failed to deposit the sale deeds and sold the flat on 11.10.1991 without getting permission from the respondent Bank. While so, after nearly 9 years of the issuance of charge memos, the enquiry was commenced on 15.06.2006. A common enquiry was conducted with respect to both the charge memos. In the absence of any legal evidence, the enquiry officer by a report dated 14.11.2006 held the charges have been proved. Thereafter, second show cause notice dated 19.01.2007 was issued and by order dated 14.03.2007, imposed the punishment of termination by giving three months pay. The petitioner preferred an appeal on 20.04.2007 and only on 07.09.2013, after repeated representation by the petitioner, the 1st respondent passed an order on the appeal by reducing the punishment of termination of service with 3 months pay to that of compulsory retirement from the service of the bank and the order will be prospective and the petitioner will not be entitled to receive any benefits for the intervening period. The petitioner has been given pension from September, 2013 and denied pension from 14.03.2007 to 07.09.2013. Hence, the writ petition has been filed for the aforesaid relief.

3. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents.

4. Learned counsel for the petitioner would submit that the 1st respondent has converted the punishment of termination to one of compulsory

retirement with prospective effect. Although compulsory retirement may be a punishment contemplated under the Bi Partite Settlement, Compulsory retirement with prospective effect is not a punishment contemplated under the Bi Partite Settlement and hence, the order of the 1st respondent dated 07.09.2013 to that effect is illegal and liable to be set aside.

5. Learned counsel would further submit that the inordinate delay on the part of the respondent Bank in disposing of the petitioner's appeal will not disentitle the petitioner from the benefits. There is absolutely no justification or reasoning given by the 1st respondent in its order dated 07.09.2013 for the inordinate delay on its part in disposing the petitioner's appeal. In fact, the 1st respondent has even referred to the appeal and representation of the petitioner in the impugned order. The respondent bank contends that they were unaware about the existence/pendency of the petitioner's appeal. For the mismanaged and faulty administration of the respondent bank in not being aware of the appeals pending before it, cannot hold the petitioner guilty for it and the petitioner cannot be denied benefits for no fault of his. The very fact that the 1st respondent has considered the petitioner's appeal and disposed it of after

the representation made to the National Commissioner for Scheduled castes is proof enough that the petitioner had preferred the appeal on time. The respondent bank cannot sit on the petitioner's appeal for six longs years and take advantage of their own wrong by denying the benefits to the petitioner. Therefore, the learned counsel for the petitioner would pray to allow this writ petition by granting the relief stated supra.

6. Learned counsel for the petitioner also relied on the judgments reported in (i) 2012 (5)Supreme Court Cases 242 (Vijay Singh vs. State of Uttar Pradesh and others) and CDJ 2014 MHC 1008 ( C.Ashok Kumar vs Canara Bank rep. By Deputy General Manager/Disciplinary Authority, Chennai

7. On the contrary, the learned counsel appearing for the respondents would submit that no proof has been filed to show that the appeal was filed on 20.04.2007 and there is also no proof to show that the petitioner sent representation dated 09.09.2011. Even as per the contention of the petitioner that he filed appeal in April, 2007, the alleged first representation was only in 2011 and there is no proof for having sent the same. The appeal was not filed

on time. The conduct of the petitioner in not being diligent in pursuing the appeal would also disentitle him to any relief. The respondent came to know about the alleged appeal preferred by the petitioner only after receiving a communication from the National Commission for SC/ST as stated in the counter affidavit. It is only thereafter the appeal preferred by the petitioner was taken up. There is no delay on the part of the respondent in disposing of the appeal. Learned counsel for the respondent would also content that the 1st respondent appellate authority, by invoking section 11-A of the Industrial Disputes Act, 1947 can modify the punishment which need not in the same form as enumerated in the Standing Orders or contract of employment. He would further submit that the regulations of the bank also do not prohibit the appellate authority from imposing or modifying a punishment from a prospective date. The order dated 07.09.2013 holding that the petitioner would be treated as having been compulsorily retired is in consonance with law and does not call for any interference by this Court. Therefore, he would pray to dismiss this writ petition.

8. This Court considered the submissions made on either side and

perused the materials available on record.

9. It is seen that the petitioner was placed under suspension by order dated 11.06.1996 and a charge memo was issued on 13.05.1997 for the allegation that the petitioner received Rs.2000/- from one Smt.Mumtaz for sanction of loan and a criminal proceedings were also initiated and during trial, the said Mumtaz deposed that she did not give any bribe and therefore, the petitioner was acquitted in the criminal case in C.C.No.16/1998 by order dated 28.11.2002. Subsequently, another charge memo was issued on 5.10.1999 alleging that the petitioner availed housing loan of Rs.34,800/- in November 1994 and did not deposit the Sale Deed obtained from the Housing Board and sold the flat without getting permission from the respondent Bank. It is also seen only after 9 years from the issuance of charge memos, a common enquiry was commenced on 15.06.2006 and without any legal evidence, the enquiry officer held that the charges have been proved on 14.11.2006. Thereafter, second show cause notice was issued 19.01.2007 and by order dated 14.03.2007, punishment was imposed by terminating the service of the petitioner by giving three months pay.

10. It is the contention of the petitioner that though the petitioner preferred an appeal on 20.04.2007, after repeated representation by the petitioner, only on 07.09.2013, the 1st respondent passed an order on the appeal by reducing the punishment of termination of service with three months pay to that of compulsory retirement and that the said order will be prospective and the petitioner is not entitled to receive any benefits for the intervening period. The respondent bank contends that there is no proof of the petitioner filing the appeal dated 20.04.2007 or sending the representation dated 09.09.2011 and the respondent also states in the counter affidavit that they came to know of the appeal only after the petitioner sends a representation to the National Commission for Scheduled cases. The said contentions of the respondent bank are self-contradictory. 11. Further, the respondent bank has considered the petitioner's appeal and disposed it of immediately after the petitioner made representation to the National Commission for Scheduled Case itself would show that the petitioner had preferred the appeal on time.

12. Moreover, in the decision relied on by the learned counsel for the

petitioner in ***2012 (5)Supreme Court Cases 242 (Vijay Singh vs. State of Uttar Pradesh and others)***, in paragraph No.11, it is held as follows:

> *11. Admittedly, the punishment imposed upon the appellant is not provided for under Rule 4 of Rules 1991. Integrity of a person can be withheld for sufficient reasons at the time of filling up the Annual Confidential Report. However, if the statutory rules so prescribe it can also be withheld as a punishment. The order passed by the Disciplinary Authority withholding the integrity certificate as a punishment for delinquency is without jurisdiction, not being provided under the Rules 1991, since the same could not be termed as punishment under the Rules. The rules do not empower the Disciplinary Authority to impose "any other" major or minor punishment. It is a settled proposition of law that punishment not prescribed under the Rules, as a result of disciplinary proceedings cannot be awarded.*

13. Further, in ***CDJ 2014 MHC 1008 ( C.Ashok Kumar vs Canara Bank rep. By Deputy General Manager/Disciplinary Authority, Chennai)***, at paragraph Nos.10 and 11, it has been held as follows:

> *"10. On the first issue, when we refer to the counter affidavit filed by the respondent Bank, it is seen that they have*

*not denied the fact that under the Service Code, among the punishments which are contemplated, one such punishment is of "bringing down to a lower stage in the scale of pay" and there is no denial to the fact that the words 'with cumulative effect' is not contemplated in the Service Code. In paragraph 12(c) of the counter affidavit, the respondent seeks to explain as to under what circumstances the words 'for a period of two years with cumulative effect' was inserted.*

*11.Thus, it appears that the respondent Bank seeks to justify their action by stating that the above mentioned expression making the punishment with cumulative effect for two years was inserted, so that the punishment would be specific. Admittedly, the power to issue an order of punishment is traceable to the Service Code and the respondent is not entitled to issue an order of punishment, which is not contemplated under the Rules."*

14. From the decisions cited above, it is seen that the punishment not prescribed under the Rules cannot be awarded. The 1st respondent has converted the punishment of termination to one of compulsory retirement with prospective effect. Though compulsory retirement may be a punishment

contemplated under the Bi Partite settlement, compulsory retirement with prospective effect is not a punishment contemplated under the Bi Partite settlement. Moreover, the contention of the respondent bank that the Appellate Authority, by invoking section 11A of the Industrial Disutes Act, 1947 can modify the punishment which need be in the same form as enumerated in the Standing Orders or contract of employment cannot be accepted as Section 11A of the Industrial Disputes Act will only apply to Courts and will not apply to the respondent Bank.

15. In view of the above discussion, this Court is of the opinion that the order passed the 1st respondent dated 07.09.2013 has to be set aside, and accordingly, the same is set aside insofar as holding that the order of compulsory retirement will be prospective and that the petitioner will not be entitled to receive any benefits during the intervening period. The respondents are directed to pay the arrears of pension from 14.03.2007 to 07.09.2013 to the petitioner and also the encashed value for 205 days of privilege leave along with interest at the rate of 9% per annum within a period of twelve weeks from the date of receipt of a copy of this order.

16. In the result, the Writ Petition is allowed to the extent indicated above. No costs.

09.01.2023

Index :Yes/No
Speaking/Non-speaking order
vsi

J.NISHA BANU, J.

(vsi)

<u>Pre-delivery order in</u>
<u>W.P.No.31837 of 2015</u>

09.01.2023