IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA No.92 of 2022 (O&M)
Date of Decision :09.05.2023

State Bank of India and others

......Appellants

Versus

B.R.Saini

...... Respondent

CORAM: HON'BLE MR.JUSTICE RAVI SHANKER JHA, CHIEF JUSTICE
HON'BLE MR.JUSTICE ARUN PALLI, JUDGE

Present : Mr. Anupam Gupta, Sr. Advocate with
Mr. Akshay Jain, Advocate and
Mr. Shekhran Singh Virk, Advocate for the appellants-Bank.

Mr. Pritam Singh Saini, Advocate with
Mr. Abhishek Goel, Advocate for the respondent.

RAVI SHANKER JHA, CHIEF JUSTICE (Oral):

This appeal has been filed by the appellants-bank being aggrieved by the order dated 26.11.2021, passed by the learned Single Judge of this Court in CWP No.25693 of 2018, whereby the petition filed by the petitioner assailing the order dated 10.07.2018 (Annexure P-7) denying him pension has been allowed.

The brief facts leading to filing of the present case are that the respondent-petitioner joined the service of bank on 19.04.1974 on the post of Clerk-cum-Cashier and was subsequently promoted as an officer on 01.11.1990 and posted as Branch Manager in District Shimla. The petitioner was thereafter served with a charge sheet on 14.09.1998 in respect of the allegations of serious misconduct, omission and commission on his part while posted at Bharari Branch (Shimla) and was placed under suspension on 19.07.1997 (Annexure P-1). The petitioner having been found guilty of charges levelled against him in the departmental inquiry, a punishment of removal from service was imposed upon him vide order dated 22.01.2000 (Annexure P-2). Departmental statutory appeals filed by the petitioner were dismissed and thereafter he had filed a writ petition before this Court which is registered as CWP No.18940 of 2001, which was allowed vide order dated 22.03.2012 (Annexure P-3). The Letter Patents Appeal No.692 of 2012, filed by the Bank was also dismissed, vide order dated 14.05.2012 (Annexure P-4), whereafter the Bank filed an SLP before the Apex Court which was allowed vide order dated 15.12.2017 (Annexure P-5), affirming the order imposing punishment of removal from service upon the respondent-petitioner. The petitioner thereafter filed an application seeking release of pension and provident fund. Though the provident fund and gratuity were released to the petitioner but he was denied pension and leave encashment. Being aggrieved by which, he filed the writ petition before the learned Single Bench for quashing the impugned order dated 10.07.2018 (P-7).

On being noticed, the respondent-bank filed a reply stating that the petitioner did not qualify for grant of pension on account of the fact that neither he had completed 50 years of age nor completed the pensionable service of 25 years, as his total service with the respondent bank was 22 years and 9 months. The said assertion was made by the bank by excluding the period between 19.07.1997 and 22.01.2000, which is the period the petitioner remained under suspension during the pendency of the departmental inquiry.

It is an undisputed fact that the petitioner has, in fact, rendered 25 years, 3 months and 3 days service with the appellants-bank and during this period, he was under suspension for a period of 2 years, 6 months and 4 days and if the period of suspension is deducted from the period of his total service, his total service with the respondent-bank comes down to 22 years 09 months which is less than the prescribed qualifying period of service for being eligible for pension i.e. 25 years.

Learned Single Judge has held that the period of suspension has to be counted as a period of service and therefore, the petitioner having completed 25 years, 3 months and 3 days of service with the appellants-bank is entitled to pension. The learned Single Judge on the basis of said findings has quashed the order dated 10.07.2018 (ibid) and directed the appellants-bank to pay pension to the petitioner along with interest @ 9% per annum from the date when dues became due till the date of realization of the amount.

Learned Senior counsel appearing for the appellants submits that the order of disciplinary authority dated 22.01.2000, clearly states that the period of suspension of the petitioner would be treated as such and that the official shall not be entitled to any other allowances except what has already been paid or become payable by way of subsistence allowance. Further the official shall not earn any increment for the period he remained under suspension. Learned Senior counsel submits that reading this part of the order along with the provisions of Rule 68 (A) (8) (ii) of the State Bank of India Officers' Service Rules 1992, makes it abundantly clear that in all cases where the removal of an official from service is affirmed and upheld, the period during which he remained under suspension during the pendency of the disciplinary proceeding, the treatment of such period of suspension is solely within the prerogative of the disciplinary authority to decide and the pay and allowance of such an officer during such period of suspension would be dealt with strictly in accordance with the decision of the disciplinary authority in this regard. Learned Senior counsel submits that in such circumstances, when the order passed by the disciplinary authority imposing punishment and directing treatment of the period of suspension as such is read along with the provisions of Rule 68 (A) (8) (ii), it means that the petitioner who was under suspension should be treated to be out of service for that period and as no benefit for that period has been granted to the petitioner, the authorities have rightly interpreted the provisions of the Rule as well as the order of punishment and deducted the period of 2 years, 6 months and 4 days which is the period of suspension from the service of the petitioner for the purposes of computing his eligibility for grant of pension under the pension rules. He submits that in such circumstances, as the petitioner has rendered only 22 years and 9 months of service with the appellants-bank after deducing the period of suspension therefore, he is not entitled to the pension. He submits that since the order of the disciplinary authority imposing a punishment as well as the directions issued regarding treatment of period of suspension have been affirmed by the Supreme

Court, therefore, no fault can be found with the order passed by the authorities dated 10.07.2018 (ibid), denying pension to the petitioner. Learned Senior counsel submits that learned Single Judge having failed to take this aspect into consideration has committed an illegality, warranting interference by this Court in the present case.

Learned counsel for the respondent, per contra, submits that the petitioner has been removed from service and not dismissed from service. He submits that the provisions of Rule 67 of the State Bank of India Officers Service Rules, 1992 clearly prescribed the penalties that can be imposed upon the delinquent official. He submits that the major penalties prescribed under the rules provide 'removal from service' and 'dismissal from service', as two distinct punishments. He submits that when the provision of the Rule including Rule 68 (A) and the Codified Circular Instructions on Pension, Provident Fund and Gratuity (Annexure P-8) issued by the respondents-authorities are read together it is abundantly clear that unlike cases of dismissal, when a punishment of removal is imposed upon an employee, he is still entitled to pension except in those circumstances which have been carved out under Rule 68-A (8) (ii). He submits that the petitioner was under suspension during disciplinary proceedings for a period of 2 years, 6 months and 4 days but was not out of service during this period. The act of the authorities in deducting the said period from the total period of service of the petitioner is arbitrary and illegal. He submits that as removal does not incur forfeiture of pension as the petitioner was in the service of the appellants-bank till the date of his removal from service i.e. 22.01.2000, therefore, his entire period of service after that day i.e. 25 years, 3 months and 3 days has to be taken into consideration by the authorities for the purpose of determining his eligibility for grant of pension under the pension rules. He submits that learned Single Judge after taking these aspects into consideration has rightly observed that the petitioner was in service of the appellants-bank even during the period of suspension and therefore, the said period cannot be deducted while computing his total period of service for the purpose of granting pension.

We have heard learned counsel for the parties at length and have carefully perused the order passed by the learned Single Judge.

As observed by the learned Single Judge the short question that is required to be answered by this Court is: whether in cases of removal from service the period during which an employee remained under suspension can be deducted from the period of service for the purpose of computing the qualifying service for grant of pension?

At the outset, in spite of the fact that this Court made a specific query to that effect, no rule or provision has been placed before this Court which provides for deduction of the period of suspension from the total period of service in cases of removal for the purposes of computing qualifying service for grant of pension. It is settled law laid down by the Supreme Court in the **case of Khem Chand Vs. Union of India, 1963 AIR (Supreme Court) 687** and needs no elaboration by this Court that an employee under suspension continues to remain in service and an employee of the employer till an order of removal or dismissal from service is passed and it is for this reason he is paid suspension allowance and other benefits during the period of suspension. It is also evident from the perusal of the Rule of the appellants-bank itself that in cases where an employee is reinstated in service after having remained suspended and is exonerated from the charges levelled against him, the period of suspension is treated to be period spent on duty for all purposes, as is evident from perusal of Rule 68 (A) (8) (i). In the circumstances, in the absence of any rule and in view of the aforesaid provision of the Rule, we find no illegality or perversity in the findings recorded by the learned Single Judge to the effect that the petitioner has to be treated as a person in service of the appellants-bank even during the period of suspension i.e. 2 years, 6 months and 4 days. Having held as such, when the said period is counted towards his total service, it comes out to be to 25 years, 3 months and 3 days and makes him eligible for grant of pension as that is more than the qualifying service of 25 years prescribed under the rules. We are also of the considered opinion that the stipulation contained in the order imposing punishment dated 22.01.2000 wherein it has been observed that the period of suspension shall be treated as such would apparently mean that the period of suspension would be treated as period of suspension which as we have observed in the preceding paragraph, does not severe the relationship of employer and employee and also envisages continuance of service with the employer. It is evident from the order imposing punishment that during this period of 2 years, 6 months and 4 days, the petitioner was paid suspension allowance, which has also been affirmed by the disciplinary authority. As his suspension allowance was paid, which can be paid only to a person who is in service though under suspension, therefore, by no stretch of imagination can it be said or held that a person under suspension is not in the service of the employer or that the period of suspension cannot be counted for the purposes of determining the qualifying service for grant of pension.

In the circumstances, we find no illegality or infirmity in the order passed by the learned Single Judge warranting any interference. The appeal being devoid of merit is accordingly dismissed.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

09.05.2023
Manoj Bhutani

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No