222

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

***

CWP-10436-2000 (O&M)
Date of Decision: 12.04.2023

Jagdish Chawla ..... Petitioner

Versus

State Bank of Patiala and others ..... Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Saksham Mahajan, Advocate,
for the petitioner.

Ms. Madhu Dayal, Advocate,
for the respondents.

****

<u>JASGURPREET SINGH PURI, J.</u> (ORAL)

<u>CM-15456-CWP-2021</u>

The present application has been filed under Order 22, Rule 3 read with Section 151 of the CPC for bringing on record the Legal Representatives of the petitioner, namely, Jagdish Chawla.

For the reasons mentioned in the application, the same is allowed, subject to all just exceptions. The legal representatives of the petitioner as mentioned in Para No.3 of the application, are impleaded as party.

Amended Memorandum of Parties is taken on record.

Application stands disposed of.

<u>CWP-10436-2000</u>

1. The present writ petition has been filed under Articles 226/227

of the Constitution of India for the issuance of a writ in the nature of *mandamus* seeking release of the pensionary benefits of the petitioner along with interest @ 18% per annum with a further prayer to grant pension for the period from 05.06.1995 to 26.08.1999 along with its consequential benefits with further prayer for quashing and modifying of the order dated 27.08.1999 and declaring that the petitioner is not guilty of any misconduct.

2. Mr. Saksham Mahajan, learned counsel appearing on behalf of the petitioner has at the outset stated that the he confines the scope of the present petition only to the extent of grant of pension and the pensionary benefits along with interest to the petitioner and does not press upon any relief pertaining to grant of pension for the period 05.06.1995 to 26.08.1999 or any other relief claimed in the present petition.

3. The brief facts of the present case are that the petitioner was appointed as Clerk in the respondent-State Bank of Patiala (as it was then) on 29.10.1974. Thereafter, a Scheme with the name of Employees' (Pension) Regulation, 1993 was circulated on 24.05.1994 and the petitioner under the aforesaid Scheme applied for voluntary retirement on account of completing 20 years of qualifying service on 06.03.1995. On 29.04.1995, the petitioner received a letter asking him to apply once the Scheme becomes operative. Thereafter, the petitioner had also filed a civil suit for seeking declaration for voluntary retirement in the year 1995 but the aforesaid civil suit was dismissed in default on 12.12.1996. Before that on 29.09.1995, the respondent-Bank had promulgated and issued Pension Regulations in the name of State Bank of Patiala (Employees) Pension Regulations, 1995 which came into operation w.e.f. 29.09.1995. Thereafter, the petitioner

however received two letters asking him to report for duty, failing which, he would be deemed to have voluntarily retired. The petitioner however replied to the Bank by stating that due to unavoidable circumstances, he can not join for duty and his pending application for grant of voluntary retirement may be accepted since he has already completed 20 years of service. However, instead of passing any order on the application of the voluntary retirement, the Bank proceeded in issuance of a charge-sheet against the petitioner in the year 1998 on the basis of different grounds. The petitioner, thereafter, filed a civil suit seeking permanent injunction against the departmental proceedings but the same was rendered infructuous as the proceedings stood completed. The Enquiry Officer in fact exonerated the petitioner on all the grounds as per the report. Thereafter, the Disciplinary Authority differed with the inquiry report and held that the petitioner is guilty only on one charge and partially on second charge.

4. However, on 27.08.1999 vide Annexure P-18, the Disciplinary Authority imposed the penalty of "discharge with superannuation benefits as would be due otherwise at that stage" on the petitioner. Consequent upon the aforesaid order (Annexure P-18) the respondent-Bank asked the petitioner to provide all the documents for grant of pensionary benefits which are required for further processing vide Annexure P-19 & P-20. In fact the Bank itself sent all the list of papers which were to be filled up by the petitioner to ensure that the pension could be paid within time and the petitioner gave all the requisite documents to the respondent-Bank. On 16.3.2000, the petitioner also received a letter informing him that a cheque of Rs.20,045.92/- has also been issued for his collection but in fact that cheque

was never delivered to him.

5. However, on 29.06.2000, vide Annexure P-22 the petitioner was informed that as per the instructions from the Head Office that the petitioner is not eligible for pension as he was discharged from service which is in the form of termination from service, and therefore, the petitioner was never granted any pension or pensionary benefits except for his own GPF and Grauity. In this way, the petitioner is aggrieved by the aforesaid order (Annexure P-22) which has been passed by which it has been so informed to the petitioner that he is not entitled for the grant of pension since his discharge is in the form of termination order and the present petition has been filed challenging the aforesaid order and seeking the direction to fix and release the pension and all the consequential benefits which otherwise have not been paid to the petitioner till date.

6. Mr. Saksham Mahajan, learned counsel for the petitioner has submitted that it is a case where the petitioner had joined the Bank on 29.10.1974 and his 20 years of service completed on 28.10.1994. He referred to the relevant Regulations of the Bank whereby when an employee completes 20 years of service, then he is entitled for pension on voluntarily retirement which are contained in Regulation No.17 of Employees (Pension) Regulations, 1993 which has been reproduced in Para No.9 of the present writ petition. He further submitted that in this way the petitioner was entitled for the grant of voluntary retirement at that point of time when he submitted his application for grant of voluntary retirement on completing of statutory period of 20 years. However, at that point of time, the Bank did not accept the voluntary retirement of the petitioner and no order was passed in that

regard. However, the petitioner admittedly remained absent from the year 1995 till the passing of the order (Annexure P-18) and during that time he faced the disciplinary proceedings in which an order of punishment (Annexure P-18) was passed, but he remained in service and there is no order of termination or any other such order against him except for the final order on the disciplinary proceedings which are annexed in the form of Annexure P-18.

7. Learned counsel for the petitioner further submitted that in fact such kind of difficulties had arisen pertaining to so many employees in different nationalized Bank in India and consequently in the year 1995 a Memorandum of Settlement was reached at between the Banks and various other nationalized banks which was 6th Bipartite Settlement regarding pay revision and changes in other service conditions which was settled by the Bank and the employees and was binding upon both the parties. He referred to the Clause 21 of the aforesaid Bipartite Settlement and a copy of the same has been supplied to the Court by both the learned counsel for the parties and the same is hereby taken on record.

8. The aforesaid Clause 21(iv) is reproduced as under:-

> *"(iv). In supersession of clause 19.6 of the Settlement dated 19.10.1966 between IBA and AIBEA, para 521 (5) of the Sastry Award and para 18.28 of the Desai Award, Clause 17.6 of the Settlement between IOB and AIOBEU dated 14.12.1966 and Clause 19.6 of the Settlement between BoB and AIBOBEF dated 23.12.1966 and Clause IX (3) of the settlement dated 31st October, 1979, an employee found guilty of gross misconduct may:-*
>
> *(a) be dismissed without notice; or*
>
> *(b) be compulsorily retired/ removed from service/*

discharged with superannuation benefits as would be due otherwise at that stage and without disqualification from future employment; or

(c) be brought down to lower stage in the scale of pay upto a maximum of two stages; or

(d) have his increment stopped; or

(e) have his special allowance withdrawn; or

(f) be warned or censured, or have an adverse remark against him; or

(g) be fined;

9. Learned counsel while referring to the aforesaid Clause 21(iv) of Regulation 21 submitted that it was in super-session any other earlier settlement and Clause (b) provided that an employee who is found guilty of gross misconduct may be compulsorily retired/removed from service/discharged with superannuation benefits as would be due otherwise at that stage and without disqualification from future employment.

10. In pursuance of the aforesaid Regulations which were binding upon both the parties including the Bank, the present order (Annexure P-18) dated 27.08.1999 was passed by implementing the aforesaid Bipartite Settlement which was in the nature of Regulations pertaining to the punishment as well. In the order (Annexure P-18), it has been so decided by the competent authority that the petitioner will be imposed penalty of "discharged with superannuation benefits" as would be due otherwise at that stage (instead of tentative penalty of removed from service as conveyed vide Show Cause Notice of 30.06.1999) in terms of Clause 21(iv) of 6th Bipartite Settlement read with the provisions of Sastri/Desai Award. It was further observed in the aforesaid order that the period of absence from duty from 01.03.1995 to till date, is considered as period not spent on duty. The

aforesaid order dated 27.08.1999 (Annexure P-18) is reproduced as under:-

> "*I have gone through the reply dated 21.07.1999 to Show Cause Notice dated 30.06.1999 served on Shri J.K.Chawla, Teller. In view of the above and in view of the submissions made by Shri Chawla at the time of personal hearing before the undersigned on 29.07.1999, I have decided to impose on Shri Chawla the penalty of "discharged with superannuation benefits as would be due otherwise at that stage (instead of the tentative penalty of 'Removed from service as conveyed vide Show Cause Notice dated 30.09.1999) in terms of clasue 21.IV(b) of 6th Bipartite Settlement read with the provision of Sastry/Desai Awards. The period of absence from duty from 1.3.1995 to date is considered as period not spent on duty. A copy of the orders be sent to the employee."*

11. The learned counsel for the petitioner, while referring to the aforesaid order, has submitted that way-back in the year 1999, the aforesaid order was passed whereby specifically in the light of the Bipartite Agreement which was binding upon all the Banks, has specifically imposed penalty on the petitioner only to the extent of 'discharged with superannuation benefits instead of removal from service', and therefore, by virtue of the order which has been passed by the Bank itself, the petitioner was entitled for the grant of all the superannuation benefits, but the same has not been done till date. He further submitted that even in pursuance of the aforesaid order dated 27.08.1999 (Annexure P-18) the Bank even called for various documents/forms so that the case of pensionary/superannuation benefits can be processed, but suddenly vide impugned order dated

29.06.2000 (Annexure P-22), two line cryptic information was received by him by stating that since the aforesaid order of discharge is in the nature of termination, he is not entitled for superannuation benefits and in this way, from the year 1999 when the order vide Annexure P-18 was passed, he did not receive the pension/pensionary benefits except for the GPF and Gratuity, which is otherwise admissible to him in accordance with law.

12. Learned counsel for the petitioner further submitted that this issue with regard to the nature and scope of the provisions of the Bipartite Settlement pertaining to the nature of punishment came into consideration before the Hon'ble Supreme Court in a case pertaining to "***Bank of Baroda Vs. S.K. Kool (Dead) Through Legal Representatives and another***", ***2014(2) SCC 715***. Learned counsel referred to Para Nos.12, 13, 14 & 15 of the aforesaid judgment and submitted that in fact the benefit of superannuation benefits which is so contained in the aforesaid Clause 21 was in *pari materia* with the other Bipartite Settlement which was the subject matter of the aforesaid judgment of the Supreme Court in which it was observed that the Bipartite Settlement has to be construed for grant of benefit to employee for his superannuation benefits otherwise it will be a fraud Bipartite Settlement. Learned counsel submitted that the case of the petitioner is rather covered by the aforesaid judgment. The relevant portion of the aforesaid judgment is reproduced as under:-

> "12. *In 2002, a Bipartite Settlement was signed by the Indian Banks' Association and the Banks' workmen's Union with regard to disciplinary action procedure. It is common ground that in the light of the said Bipartite*

Settlement, clause 6(b) was inserted as one of the punishments which can be inflicted on an employee found guilty of gross misconduct and the same reads as follows:

> *"6. An employee found guilty of gross misconduct may;*
>
> *(a) * * * **
>
> *b) be removed from service with superannuation benefits i.e. Pension and/or Provident Fund and Gratuity as would be due otherwise under the Rules or Regulations prevailing at the relevant time and without disqualification from future employment, or"*

The employee undisputedly has been visited with the aforesaid penalty in terms of the Bipartite Settlement.

13. Regulation 22 of the Regulations, which is relied on to deny the claim of the employee reads as follows:

> *"**22. Forfeiture of service**:- (1) Resignation or dismissal or removal or termination of an employee from the service of the Bank shall entail forfeiture of his entire past service and consequently shall not qualify for pensionary benefits."*

From a plain reading of the aforesaid Regulation, it is evident that removal of an employee shall entail forfeiture of his entire past service and consequently such an employee shall not qualify for pensionary benefits. If we accept this submission, no employee removed from service in any event would be entitled for pensionary benefits. But the fact of the matter is that the Bipartite Settlement provides for removal from service with pensionary benefits "as would be due otherwise *under the Rules or Regulations prevailing at the relevant time". The consequence of this construction would be that the words quoted above shall become a dead letter. Such a construction has to be avoided.*

14. *The Regulation do not entitle every employee to pensionary benefits. Its application and eligibility is provided under Chapter II of the Regulations whereas Chapter IV deals with qualifying service. An employee who has rendered a minimum of ten years of service and fulfils other conditions only can qualify for pension in terms of Regulation 14 of the Regulations. Therefore, the expression "as would be due otherwise" would mean only such employees who are eligible and have put in minimum number of years of service to qualify for pension. However, such of the employees who are not eligible and have not put in required number of years of qualifying service shall not be entitled to the superannuation benefit though removed from service in terms of clause 6(b) of the Bipartite Settlement. Clause 6(b) came to be inserted as one of the punishments on account of the Bipartite Settlement. It provides for payment of superannuation benefits as would be due otherwise.*

15. *The Bipartite Settlement tends to provide a punishment which gives superannuation benefits otherwise due. The construction canvassed by the employer shall give nothing to the employees in any event. Will it not be a fraud Bipartite Settlement? Obviously it would be. From the conspectus of what we have observed we have no doubt that such of the employees who are otherwise eligible for superannuation benefit are removed from service in terms of clause 6(b) of the Bipartite Settlement shall be*

> *entitled to superannuation benefits. This is the only construction which would harmonise the two provisions. It is well settled rule of construction that in case of apparent conflict between the two provisions, they should be so interpreted that the effect is given to both. Hence, we are of the opinion that such of the employees who are otherwise entitled to superannuation benefits under the Regulation if visited with the penalty of removal from service with superannuation benefits shall be entitled for those benefits and such of the employees though visited with the same penalty but are not eligible for superannuation benefits under the Regulation shall not be entitled to that."*

13. The learned counsel for the petitioner has also relied upon the judgment of the Gujarat High Court passed in "***Jayendra N. Shah Vs. Punjab National Bank and another***", ***2018 SCC OnLine Guj 379***.

14. On the other hand, Ms. Madhu Dayal, learned counsel appearing on behalf of the State Bank of India submitted that although it is correct that vide Annexure P-18 an order was passed in the light of the Bipartite Settlement which is binding upon the Bank as well but thereafter by way of Annexure P-22, it has been so conveyed that his discharge from service is in the nature of termination in view of the fact that earlier the petitioner had applied for voluntary retirement and notice was given to him vide Annexures P-4 & P-6 that in case he does not reply to the notice within a period of 30 days then he will be deemed to have been voluntary retired but he did not answer to the Show Cause Notice and thereafter, he filed reply to the same but he had stated that he will not join the duty and in this way right from the year 1995, he was absent from the duty, and therefore, he was

not entitled for the grant of superannuation benefits. She further submitted that the petitioner was also informed that so far his application for grant of voluntary retirement is concerned, the same was also not permissible under the law, and therefore, the petitioner was asked to join the duty, but he failed to join the duty for a long period of time, and therefore, he was not entitled for grant of superannuation benefits. She also submitted that even as per the judgment of the Hon'ble Supreme Court in ***Bank of Baroda Vs. S.K. Kool (Dead) Through Legal Representatives and another case (surpa)***, it has been so observed that the employee would be entitled for the superannuation benefits only which is otherwise eligible under the Regulation and since the petitioner was not eligible under the Regulations of 1995, therefore, the petitioner has been rightly denied. She further while referring to the reply filed by the State Bank of India submitted that when vide Annexure P-18 an order was passed whereby he was inflicted punishment of discharge with superannuation benefits was a mistake.

15. I have heard the learned counsel for the parties.

16. The present is case where the petitioner joined the Bank in the year 1974 and he completed period of 20 years on 28.10.1994. The petitioner thereafter was not presenting himself to duty and he had rather filed an application for voluntary retirement, regarding which no order was passed by any authority either accepting or rejecting in this regard. A reference to Annexure P-2 which has been made by the learned counsel for the respondent-Bank was not an order, but only an advise to the petitioner to apply afresh for voluntary retirement on completion of the formalities, but the fact remains that till date no order has been passed either for accepting or

rejecting for voluntary retirement in this regard. The petitioner remained absent from the bank from the year 1995. On the account of his absence, the petitioner was issued charge-sheet and in the charge-sheet the Inquiry Officer exonerated him, but the Disciplinary Authority disagreed with the Inquiry Officer and passed the punishment order. The punishment order which has been passed against the petitioner is Annexure P-18 which is passed in the year 1999.

17. The Regulations by which the services of the petitioner were governed provides that on completion of 20 years of service, an employee is entitled for grant of voluntary retirement. With regard to the application for voluntary retirement, no order was passed by any of the authority. When the aforesaid order (Annexure P-18) was passed, it was passed in the light of Bipartite Settlement between the Banks and the employees, which became basis of passing of the aforesaid order since some benefits have been conferred upon the employees with regard to the punishment orders which are required to be passed. The relevant Portion i.e. Clause 21(iv) of the Bipartite settlement has already been reproduced above.

18. On the basis of the aforesaid Clause 21(iv), the Disciplinary Authority/Competent Authority passed an order vide Annexure P-18 in the year 1999 by **inflicting a punishment of discharging the petitioner with all the superannuation benefits** instead of termination from the service. In another words, the petitioner was never terminated from the service and that was in the light of the Bipartite Agreement as reproduced above and instead of termination, he was discharged regarding which even clarification has been given in the order Annexure P-18 itself. Apart from giving a discharge

to the petitioner, it has also been so stated in the order of punishment that he will be entitled for the superannuation benefits. Therefore, from the date when the order was passed, the petitioner was entitled for all the superannuation benefits in accordance with the order which has been passed vide Annexure P-18. So far the period from 1995 till the passing of the order is concerned when the petitioner was absent from duty, it has been so observed in the order that it will be treated to be period of not on duty and regarding which the learned counsel for the petitioner has at the outset stated that he does not wish to claim or challenge the aforesaid period for the purpose of grant of any benefits or arrears regarding the same, but he is only pressing for grant of pension in pursuance of the order which has been passed vide Annexure P-18 along with interest. After the passing of the order vide Annexure P-18, the Bank itself had asked the petitioner to provide various documents and forms so that the case of pension of the petitioner can be processed, to which the petitioner had given all the documents. But suddenly vide Annexure P-22, the petitioner was conveyed that the discharge is in the nature of termination, and therefore, nothing is admissible to him.

19. During the course of arguments, a specific query was raised to the learned counsel for the respondent-Bank that as to whether the order Annexure P-18 was ever revoked or withdrawn or any notice was given to the petitioner to which she replied that no such withdrawal etc. has been done but Annexure P-22 had been passed by informing the petitioner that his discharge is in the nature of termination in terms of Clause 22 of Regulations of 1995 which provides that in case of termination or dismissal or removal from service or deemed to have been voluntary retired under the provisions

of voluntary succession of employment, the pensionary benefits can be forfeited.

20. However, another query was raised to the learned counsel for the respondent-Bank that as to whether the terms and conditions which have been so stated in the Bipartite Agreement as reproduced above, is binding upon the Bank or not, to which she stated that the same are binding upon the Bank as well.

21. The arguments which has been raised by the learned counsel for the respondent-Bank that vide Annexure P-22 when it was conveyed to the petitioner that the discharge would amount to termination of service is totally contrary to the law which has been laid down by the Hon'ble Supreme Court in the aforesaid judgment in ***Bank of Baroda Vs. S.K. Kool (Dead) Through Legal Representatives and another case (supra)***. In fact, a perusal of the aforesaid judgment would show that the scope of the aforesaid Clause pertaining to the modification of the Regulations by way of a Bipartite Settlement has been acknowledged by the Hon'ble Supreme Court. The rationale and the primary objective of giving the benefit of discharge with superannuation benefit etc. which is contained in Clause 21(iv) would be forfeited in case the argument raised by the learned counsel for the respondent-Bank is accepted.

22. Admittedly, the order Annexure P-18 which is in the nature of punishment order by which the petitioner has been imposed the penalty of discharge with all the superannuation benefits was never modified, withdrawn or cancelled by any competent authority, and therefore, it can not be said that instead of applying the terms and conditions of the Bipartite

Agreement, the Bank should revert back to the original Regulations and disentitle the petitioner for grant of pension. In fact, the case of the petitioner is squarely covered by the judgment of the Supreme Court in ***Bank of Baroda Vs. S.K. Kool (Dead) Through Legal Representatives and another case (supra)***.

23. During the course of arguments, learned counsel for the respondent-Bank further submitted that in fact the Regulations of 1995 which are the Pension Regulations they came into existence on 29.09.1995 and the petitioner was required to have exercised an option for becoming a member of the fund for which he was required to deposit the CP Fund so that the pension could have been given to him which was not done by the petitioner, therefore he was not entitled for grant of pensionary benefits.

24. The argument raised by the learned counsel for the respondent-Bank is not sustainable in view of the fact that the present order Annexure P-18 has been passed in the year 1999 by the competent authority and the pension was admissible to the petitioner on the date when the aforesaid order was passed, but the petitioner at that point of time in the year 1995, had already applied for voluntary retirement regarding which no order was passed by the respondent-Bank and now therefore, the Bank cannot turn around and say that the petitioner never exercised the option for the purpose of enrollment into the Pension Regulations. The Bank cannot be permitted to blow hot and cold and take a diagonally opposite plea and they can not be permitted to approbate and reprobate. Once order (Annexure P-18) has been passed by a competent authority granting benefit of superannuation, benefits from that stage, it would mean stage from when petitioner was absent from

duty and so mentioned as 01.03.1995 in the order (Annexure P-18) itself. Therefore, now petitioner cannot be denied benefit of pension only on the ground that he did not exercise option in 1995.

25. In fact the Bipartite settlement was based upon the various discussions and communications between the different Banks and different employee unions and ultimately the Bipartite settlement came into operation. and it was also based upon various awards, namely, Desai Award and Sastri Award and the objective of the Bipartite Agreement cannot be defeated by taking these hyper technical pleas whether at that point of time in the year 1995, the petitioner did not enroll himself under the Regulations of 1995 by not granting the option. In fact after the passing of the Bipartite Agreement, a right has been vested in the petitioner by way of the order which has been passed vide Annexure P-18 to which the Bank was bound to honour the same and instead of honouring the same the Bank has tried to take up the hypertechnical objections. Apart from above, even the aforesaid order Annexure P-18 has till date not been modified or withdrawn or revoked. Another argument which was raised by the learned counsel by the respondent-Bank was that even as per the order vide Annexure P-18, the benefits would be due otherwise at that stage to mean that the stage of the year 1995, which is in consonance with the judgment of the Hon'ble Supreme Court in ***Bank of Baroda Vs. S.K. Kool (Dead) Through Legal Representatives and another case (supra)***. Even if the argument raised by the learned counsel for the respondent-Bank to that extent is accepted still the stage would be of the year 1995, and therefore, it can not be said that there was any delay etc. because the stage was of the year 1995 and still the

petitioner can be granted permission to exercise the option by depositing the CP Fund.

26. The learned counsel for the petitioner at this stage has submitted that he has instructions to say that the LRs of the petitioner will deposit the entire CP Fund with the Bank along with interest @ 9% per annum and on the deposit of the same, the pension and the other benefits be released to the petitioner in consonance with order vide Annexure P-18. Therefore, the argument which has been raised by the learned counsel for the respondent-Bank is not sustainable.

27. In view of the aforesaid peculiar facts and circumstances of the present case, the present petition is allowed and the communication (Annexure P-22) is hereby set aside. The petitioner is entitled for grant of superannuation benefits as per order (Annexure P-18). All the benefits to which the petitioner is entitled including the pension shall be worked out, calculated and arrears of the same shall be paid to the LRs. of the petitioner along with the interest @ 6% per annum within a period of 3 months. In case, the aforesaid benefits are not paid to the petitioner within a period of 3 months from today, then the petitioner shall be entitled for future interest @ 9% per annum instead of 6% per annum.

12.04.2023 **(JASGURPREET SINGH PURI)**
Bhumika **JUDGE**

1. Whether speaking/reasoned: Yes/No
2. Whether reportable: Yes/No