IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

244 CWP-20948-2020
Date of Decision : 12.07.2023

R.D.Sagar .... Petitioner

Versus

State Band of India and another .... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr.K.L.Arora, Advocate
for the petitioner.

Mr. Kapil Kakkar, Advocate
for the respondents.

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JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of Constitution of India is seeking setting aside of order dated 08.03.2020 (Annexure P-4) and directions to respondents- authorities to grant pension and pensionary benefits at par with Amar Nath Sharma. The petitioner is further seeking interest on gratuity, provident fund and leave encashment which was due in 1985 whereas actually released on 06.09.2017.

2. The petitioner joined respondent-bank in 1966 as a Godown Keeper and thereafter he was promotted from time to time. While working as a Branch Manager, he was subjected to two disciplinary proceedings which were initiated on 20.09.1983 and 04.01.1984. The disciplinary proceedings culminated into dismissal of petitioner from service on 10.06.1985. The petitioner unsuccessfully assailed dismissal order. The petitioner preferred civil suit which came to be allowed vide order dated

25.05.1990. Order of disciplinary authority as well as Appellate Authority was declared illegal. The respondent-bank preferred an appeal against the order dated 25.05.1990 passed by trial Court. The Appellate Court vide order dated 04.03.1992 affirmed order of trial Court. The respondent filed RSA No.1102 of 1992 before this Court which came to be disposed of vide order dated 06.08.2008. This Court set aside order of dismissal dated 10.06.1985 and remanded the matter back to disciplinary authority to pass afresh order. The operative portion of the order is read as :

> *"The present appeal is, therefore, partly allowed. Order dated 10.06.1985 passed by the Punishing Authority is quashed and the matter is remanded back to the Punishing Authority to pass a fresh order after giving opportunity to the plaintiff to make a representation on the penalty proposed to be imposed".*

3. The respondent-bank filed SLP before Hon'ble Supreme Court which came to be disposed of vide order dated 25.11.2013. Hon'ble Supreme Court dismissed SLP, however, directed the disciplinary authority to take decision pursuant to orders of High Court as expeditiously as possible and at any rate within two months. The respondent-bank pursuant to orders of this Court passed afresh order dated 30.01.2014 whereby penalty of dismissal from service under Rule 67(j) of State Bank of India Officers' Service Rules came to be imposed. The petitioner preferred CWP No.81 of 2015 before this Court assailing penalty order dated 30.01.2014. This Court vide order dated 16.11.2016 allowed the writ petition and directed the respondent-bank to extend retiral benefits admissible in accordance with law. The bank was further directed to calculate subsistence allowance for the period from 10.06.1985 to 05.11.2003 and disburse the

same within three months from the date of order. In the order, it was further clarified that no interest on subsistence allowance shall be payable. The relevant extracts of the order dated 16.11.2016 read as :

> *"12. In the case of **Managing Director Ecil vs B. Karunakar reported in 1994 SCC, Supl. (2) 391** held that if the penalty is set aside and matter is remanded to the disciplinary authority or appellate authority on technicalities in such circumstances the intervening period is required to be treated as an employee is deemed to be under suspension. Having regard to the principle laid down in the aforesaid decision, in the present case, the petitioner's service is to be treated as deemed to be under suspension from 10.06.1985 to 05.11.2003 the date on which he attained age of supernnuation and retired from service. Therefore, the petitioner is entitled for subsistance allowance for the interevening period from 10.06.1985 to 05.11.2003.*
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> *13. In view of the above facts and circumstances, Annexure P11 dated 30.1.2014 is set aside. However, reserving liberty to the disciplinary authority to pass fresh order if it is permissible under the statutory regulation while taking into consideration that the petitioner has already attained age of superannuation and retired from service on 05.11.2003. At the best the respondents bank can impose the penalty if any against the retired Bank officer. If such provision is available to the respondent Bank they can exercise same and pass fresh order within a period of 4 months from today and regulate the suspension period in accordance with law. Further they are directed to extend the retiral benefits admissible in accordance with law. Such exercise shall be undertaken by them within the period of 6 months from today. The respondents-Bank are directed to*

> *calculate the subsistance allowance for the period from 10.06.1985 to 05.11.2003 and disburse the same within a period of 3 months from today. However, it is made clear that the petitioner is not entitled for any interest on the subsistance allowance to be paid by the respondents-Bank for the period from 10.06.1985 to 05.11.2003."*

4. Mr. K.L.Arora, Advocate *inter alia* contends that this Court while disposing of CWP No.81 of 2015 has held that the petitioner shall be deemed to retire as serving employee/officer, thus, respondent was bound to calculate retiral benefits considering the petitioner in service on 05.11.2003 i.e. date of retirement of the petitioner. The petitioner was initially granted pension @ Rs.7,000/- per month which has been extended to Rs.10,000/- per month whereas another employee namely Amar Nath Sharma who had retired at the same point of time has been granted pension @ Rs.30,721/- per month. The discrimination is stark. The act of the respondent is contrary to findings of this Court. He further submits that the respondent has paid gratuity, leave encashment and provident fund on 06.09.2017 whereas all the benefits accrued on 10.06.1985, thus, the petitioner is entitled to interest on the delayed payment of aforesaid benefits.

5. Mr. Kapil Kakkar, Advocate pointing out para Nos. 12 and 13 of the judgment passed by this Court in CWP No.81 of 2015 submits that findings of the Court are very clear and respondent-bank has already paid subsistence allowance as well as further retiral benefits. He expressed his inability to controvert claim of the petitioner qua interest on gratuity, provident fund and leave encashment.

6. I have heard arguments of learned counsel for the parties and with their able assistance perused the record.

7. The conceded position emerging from the record is that the petitioner joined service of respondent-bank in 1966. The petitioner was dismissed from service on 10.06.1985. This Court vide order dated 06.08.2008 set aside termination order, however, matter was remanded back to adjudicating authority to pass afresh order. The fresh order came to be passed on 30.01.2014 whereby petitioner was dismissed from service with retrospective effect. This Court vide order dated 16.11.2016 set aside order dated 30.01.2014 on the ground that there is no statutory provision which permits the respondent-bank to terminate service of an employee with retrospective effect who has already retired. The respondent was directed to pay subsistence allowance for the period from 10.06.1985 to 05.11.2003 within three months from the date of order. No interest was awarded on subsistence allowance.

8. The claim of the petitioner is that as per findings recorded by this Court in CWP No.81 of 2015, the petitioner has retired as a serving employee/officer, thus, his pension and other benefits are required to be calculated considering him in service from 1985 to 2003 i.e. date of dismissal to date of retirement. From the perusal of para 11 of the order dated 16.11.2016 passed by this Court and para 12 and 13, it is quite evident that this Court has directed respondent-bank to calculate subsistence allowance for the period from 10.06.1985 to 05.11.2003. It is further evident from the perusal of para 12 that this Court relying upon judgment of Hon'ble Supreme Court in ***Managing Director Ecil vs B. Karunakar reported in 1994 SCC, Supl. (2) 391*** has concluded that the petitioner's service is to be treated as deemed to be under suspension from 10.06.1985 to 05.11.2003. There is no scope of doubt in the order passed by this Court

and the petitioner is trying to take advantage of one line mentioned in para 11 of the aforesaid order. Para 12 and 13 of the order are quite lucid and there is no scope of doubt. The claim of the petitioner is not sustainable. The petitioner has already been granted subsistence allowance. There is no doubt in the aforesaid order, thus, there is no question to consider the petitioner as working employee on the date of retirement i.e. 05.11.2003.

9. This Court finds substance in the claim of the petitioner qua interest on delayed payment of provident fund, gratuity and leave encashment. He is entitled to interest on gratuity, provident fund and leave encashment. This Court while passing order dated 16.11.2016 has rejected claim of the petitioner qua interest on subsistence allowance, however, there is no direction qua interest on other benefits. The petitioner is entitled to interest @ 9% per annum on delayed paid provident fund, gratuity and leave encashment. The interest on these benefits shall be calculated from 11.06.1985 to 05.09.2017 and paid to petitioner within three month from today.

10. Disposed of.

(JAGMOHAN BANSAL)
JUDGE

12.07.2023
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Whether speaking/reasoned	Yes/No
Whether Reportable	*Yes/No*