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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Decided on: 2nd February, 2023*

\+ W.P.(C) 2143/2012 & CM APPLs. 4634/2012, CM APPL. 49366-49367/2022

S.C.SAPRA ..... Petitioner

Through: Mr. Mohit Chaudhary, Mr. Kunal Sachdeva, Mr. S. Sen, Ms. Aastha Agarwal, Advocates (M:9810074159) along with petitioner in person

versus

PUNJAB NATIONAL BANK AND ORS ..... Respondents

Through: Mr. Rajat Arora, Advocate (M:9810176964)

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

[Physical Hearing/ Hybrid Hearing]

MINI PUSHKARNA, J. (ORAL):

1. The present writ petition has been filed with prayer for quashing the Enquiry Officer's Report dated 01.10.2010, Punishment Order dated 20.10.2010, order dated 11.02.2011 passed by the Appellate Authority dismissing the appeal of the petitioner and order dated 30.09.2011 passed by the reviewing authority dismissing the departmental review preferred by the petitioner.

2. The petitioner herein had been imposed with the punishment of compulsory retirement just two days before his retirement. Thus, the said punishment as imposed upon the petitioner is subject matter of

the present writ petition.

3. It is the case on behalf of the petitioner that 1/3rd of the pension of the petitioner is being deducted and that he is being released only 2/3rd pension. Ld. Counsel for petitioner submits that by virtue of their own circulars of the respondents, the petitioner is entitled to full pension and that no deduction in the pension of the petitioner can be made by the respondents.

4. Attention of this Court is drawn to the Circular dated 20.05.2014 as issued by the Punjab National Bank, PF & Pension Fund Department, wherein it is clearly stated that full pension be allowed to the employee in case no reference regarding reduction in the Terminal Dues by the Disciplinary Authority in the final order is made. The said circular reads as under:

> ***" PUNJAB NATIONAL BANK***
> ***PF & PENSION FUND DEPARTMENT***
> ***HO: RAJINDRA PLACE, NEW DELHI***
>
> *Date: 20.05.2014*
>
> ***PF & PENSION FUND DEPARTMENT CIRCULAR No. 09/2014***
>
> ***"REG: Payment of Gratuity in cases where services of the employees are terminated by way of punishment like CRS, Dismissal & Removal.***
>
> *In cases where the services of the employees are terminated by way of punishment such as CRS, Dismissal & Removal, there may or may not be any loss caused to the bank. In such cases at the time of settlement of gratuity, PF & Pension Fund department raises querry as to whether the aspect for forfeiture of gratuity has been looked into.*

In terms of HRD Cir No. 464 dated 03.06.2008 (1) Circle Head/Divisional Head/GM-HR, as the case may be, is competent to forfeit the gratuity payable to the concerned employee. (2) Chief Manager at Controlling Office/ HO Division is competent to sanction gratuity payable to the concerned employee.

FORFEITURE OF GRATUITY UNDER GRATUITY ACT, 1972

Section 4(6) of the gratuity Act, 1972 provides as under:

"Notwithstanding anything contained in sub-section (1)

a) the gratuity of an employee, whose services have been terminated for any act, willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused;

b) the gratuity payable to an employee shall be wholly forfeited :

i) If the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or
ii) "If the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment."

FORFEITURE OF GRATUITY UNDER AWARD/ SETTLEMENT

In terms of PO Cir. No.1565 regarding "Payment of Gratuity" there shall be no forfeiture of gratuity on dismissal 1 removal from service of any workman (award staff) on account of misconduct, except in cases where such misconduct causes financial loss to the bank and in that case to that extent only.

Moreover, the Board of Directors vide its Resolution No. 9 in meeting dated 25 & 26.07.2013 has also desired that ***"ordinarily full pension be allowed to the employee in case no reference regarding reduction in the Terminal Dues by Disciplinary Authority (DA) in the final order is made. However, where the Disciplinary Authority makes a reference in the final order to reduce pension, the matter be placed before the competent authority as per Pension Regulations"***
Settlement of gratuity is delayed because of querry raised and reply received by PF &Pension Fund Department. To avoid such delay in settlement of gratuity proposals it has been decided that in normal cases gratuity shall be sanctioned by Chief Manager at Controlling Office/ HO Division as per extent guidelines.

Whereas in the cases where services of the employees are terminated by way of punishment like CRS, Dismissal & Removal, the gratuity proposals be sanctioned for payment to the concerned employee, by the authority competent to forfeit the gratuity. ***In cases where the competent authority has decided to forfeit the gratuity, gratuity proposal duly sanctioned as well as forfeited be sent to PF & Pension Fund Department along with copy of speaking orders passed for the gratuity forfeiture****.* *(emphasis given)"*

5. This Court has perused the punishment as imposed upon the petitioner by the Disciplinary Authority vide order dated 20.10.2010. The relevant portion is reproduced as follows:

"……Since Sh. Sapra is to retire soon, the ends of justice would be met by punishment to impose major penalty of "Compulsory retirement" in terms of Regulation 4(h) of PNB Officer Employees (Discipline & Appeal) Regulations, 1977, upon Sh. S C Sapra with immediate effect."

6. Perusal of the aforesaid clearly shows that the Disciplinary Authority while giving punishment of Compulsory retirement to the petitioner had not made any reference with respect to any deduction from the pension of the petitioner. Thus, the case of the petitioner is squarely covered by the Circular dated 20.05.2014 issued by the respondent.

7. Attention of this court has also been drawn to the documents placed on record along with CM APPL. No. 49366/2022, in order to show that in similar circumstances where punishment of compulsory retirement was imposed over other employees, the said employees are being granted full pension. Ld. Counsel for petitioner has referred to the case of Mr. Baldev Raj Mahi and Mr. Selveraj K., in order to submit that the petitioner is also entitled for similar treatment.

8. Ld. Counsel for petitioner submits that if he receives full pension from the respondent, then he has instructions to submit that the petitioner does not wish to press the other reliefs as sought in the present writ petition.

9. Ld. Counsel for respondent does not dispute the Circular dated 20.05.2014.

10. In that view of the matter, it is directed that the petitioner herein shall be entitled to complete pension in terms of the Circular dated 20.05.2014 issued by the respondents.

11. Since the respondent has been deducting the pension of the petitioner to the extent of 1/3rd, it is directed that arrears of the pension which have been deducted by the respondent be paid to the petitioner.

The said arrears may be calculated and duly paid to the petitioner expeditiously, preferably within a period of 3 months from today.

12. In view thereof, the present petition is disposed of with the aforesaid directions for payment of full pension to the petitioner. All the pending applications are also disposed of.

MINI PUSHKARNA, J

FEBRUARY 2, 2023/au