



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

% **Date of order: 24th August, 2023**

+ **W.P.(C) 9293/2018**

KALEWAR MUKHIYAR Petitioner

Through: **Mr. N.C. Gupta, Advocate.**

versus

PUNJAB NATIONAL BANK AND ORS. Respondents

Through: **Mr. Rajesh Kumar Gautam, Mr. Anant Gautam, Mr. Sumit Sharma, Mr. Anani Achumi, Mr. Dinesh Sharma and Ms. Shivani Sagar, Advocates.**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The present writ petition has been filed on behalf of the petitioner under Article 226 of the Constitution of India, praying as follows:

“i) Issue a Writ of Certiorari or any other appropriate writ, order or direction, thereby quashing the impugned orders dated 03/02/2012, paying thereby 2/3rd pension.

ii) Issue a Writ of Mandamus or any other appropriate writ, order or direction commanding the Respondents to pay full pension with effect from date of penalty orders/retirement i.e. 23/10/2010.

iii) Pass appropriate orders or direction commanding the Respondents to pay interest for delayed payment of Pension and on the arrears so arising in as a consequence of the present writ.



iv) Pass any other and further order (s) as deemed just and proper in favor of the Petitioner in the light of the facts and circumstances of the case.”

2. The petitioner joined the respondent No. 1 (‘respondent bank’ hereinafter) in the clerical cadre in 1977. In 2009, the respondent bank conducted disciplinary enquiry against the petitioner on the charges of irregularities and lapses committed by him while granting loans to the customers, and therefore, major penalty of compulsory retirement was imposed upon him leading to reduction of pension to 2/3rd of the original pension.
3. Aggrieved by the same, the petitioner sent a legal notice to the respondent Bank, and subsequently filed a Writ Petition No. 1635 of 2018. The Coordinate Bench of this Court disposed of the said Writ *vide* order dated 21st February, 2018, and directed the respondents to respond to the legal notice and to state reasons for deduction in the pension. Thereafter, the respondent Bank complied with the directions of the Court and provided reasons for such reductions *vide* order dated 28th March, 2018.
4. Aggrieved by the response provided by the respondent Bank, the petitioner has preferred the instant petition.
5. The learned counsel appearing on behalf of the petitioner submitted that both the penalties are different in nature and are under different Rules and Regulations, therefore, needs to be dealt with separately and distinctively.
6. It is submitted that the respondent Bank failed to appreciate that the reduction in pension by any fraction is bad in law as the Disciplinary Authority, Appellate Authority or any other Authority has not made any



reference regarding the reduction in pension in the penalty orders.

7. It is submitted that the respondents violated the principle of natural justice by not providing the petitioner any opportunity of being heard before reducing the pension.

8. It is submitted that the Sub-Clause 1 of Pension Regulation No. 33 clearly indicates that the discretion accorded to the authority is no longer *res integra* and rule of natural justice needs to be abided by the respondents.

9. Hence, in view of the above submissions, it is prayed by the petitioner that this Court may allow the petition and grant relief to the petitioner.

10. *Per Contra*, the learned Counsel appearing on behalf of the respondents vehemently opposed the petition and submitted to the effect that the petitioner has filed the Writ Petition after an inordinate delay of 8 years.

11. It is submitted that the 2/3rd pension was sanctioned to the petitioner and the petitioner had accepted the said decision without any protest, however, the petitioner preferred a Writ Petition No. 1635 of 2018 after about 8 years and without explaining the reasons for such delay.

12. It is submitted that the respondent Bank had passed a detailed order dated 28th March, 2018, thereby complying with the directions passed by this Court *vide* order dated 21st February, 2018 whereby the respondent Bank had provided reasons for reduction in the pension by the Board of Directors of the respondent Bank.

13. It is submitted that the petitioner has not challenged the order dated 10th October, 2010 passed by the Disciplinary Authority, the Regulation 33 of Pension Regulations 1995 and the order dated 28th March, 2018. Therefore, the petitioner cannot seek a relief which is not challenged in the



petition.

14. Hence, in view of the foregoing discussions, it is prayed on behalf of the respondents that this Court be pleased to dismiss the instant Writ Petition, being devoid of any merit.

15. Heard the learned counsel for the parties and perused the records.

16. It is the case of the petitioner that his pension has been unlawfully reduced by the respondents thereby giving him only 2/3rd of the pension he is actually eligible for.

17. As per material on record, there were disciplinary inquiries initiated against the petitioner on allegations of providing loans to the customers without due diligence. After conclusion of the enquiry, the respondent Bank held the petitioner guilty of the charges and imposed the penalty of compulsory retirement. Thereafter, the respondent sanctioned the pension amount and fixed the same to 2/3rd of the original amount which was duly accepted by the petitioner at that time, however, after 8 years, the petitioner preferred Writ Petition No. 1635 of 2018 against such reduction. In the said case, the Coordinate bench disposed of the matter and held as under:

“4. In the facts and circumstances of this case, it is deemed appropriate to dispose of this petition with direction to third respondent to positively respond to petitioner's legal notice (Annexure P-7), if not already done, within a period of six weeks from today and in case full pension is not to be granted to petitioner, then reasons for not doing so, be indicated in the response so given and petitioner be apprised of it within a week thereafter, so that petitioner may avail of his remedies as available in law, if need be.”

18. On perusal of the aforesaid order, it is evident that the respondent Bank was directed to reply to the notice sent by the petitioner and provide



detailed reasons for not granting full pension to the petitioner. The respondent Bank duly replied to the legal notice and also provided the reasons for said reduction in the pension *vide* order dated 28th March, 2018. In the said order the bank referred to Regulation 33 of the PNB Employees Pension Regulations, 1995, which provides for payment of pension in cases where a punishment of compulsory retirement is imposed upon the employees. The relevant part of the said provision is reproduced herein:

"33. Compulsory Retirement Pension

(1) An employee compulsorily retired from service as a penalty on or after 1st day of November, 1993 in terms of Punjab National Bank Officer Employees' (Discipline and Appeal)-Regulations, 1977 or awards/settlement 'may be granted by the authority higher than the authority competent to Impose such penalty, pension at a rate not less than two-thirds and not more than full pension admissible to him on the date of his compulsory retirement if otherwise he was entitled to such pension on superannuation on that

(2) Whenever in the case of a bank employee the Competent Authority passes an order (whether original, appellate or in exercise of power of review) awarding a pension less than the full compensation pension admissible under these regulations, the Board of Directors shall be consulted before such order-is passed.

(3) A pension granted or awarded under sub-regulations (1) or, as the case may be, under sub-regulation (2), shall not be less than the amount of rupees three hundred and seventy five per mensem."

19. On perusal of the aforesaid, the Regulation 33(1) envisages two situations, firstly, where an employee is compulsorily retired from service as a penalty on or after November 1993 in terms of the Discipline and Appeal Regulations. Secondly, when such compulsory retirement is brought about through a settlement by an authority "higher than the authority competent to



impose such penalty”. In such a case, the authority would be one higher than the competent authority. In either scenario, it is clear that the discretion is granted to impose a one-third deduction from the pension of the employee. Regulation 33 (1) uses the phrase ‘may be granted’ and not ‘shall be granted’ when referring to the applicability of the one-third deduction in the pension of an employee who has been compulsorily retired. In other words, the deduction of one-third of the employee's pension, if he is compulsorily retired, is not automatic and needs to be affirmed by the board of directors, and can be construed as a mandatory condition for reduction of the pension benefits.

20. Now coming to Regulation 33(2), it mandates that when the authority passes an order, imposing a one-third cut on the pension, then the board of directors shall be consulted before such an order is passed by the competent authority. In other words, the requirement under Regulation 33(2) of mandatory prior consultation with the Board of Directors is attracted only in the first scenario. Since the second scenario involves an authority higher than the competent authority, the requirement of prior consultation with the Board of Directors is required, therefore, the language of Regulation 33 (2) is clear and the requirement is mandatory.

21. As per material on record, the said decision of reduction in pension in the instant case has been sanctioned by the Board of Directors, therefore, fulfilling the condition necessary under the said regulation.

22. In light of the aforesaid discussion, it is crystal clear that the rules and regulations of the respondent Bank allows them to deduct the pension amount when an employee is compulsorily retired from the services as a penalty, provided such penalty is decided by the authority higher than the



authority competent to impose the penalty of compulsory retirement in the first place.

23. The reduction in pension as a penalty is not new and has been in place in most of the entities including the respondent Bank. The said rule has been challenged in various courts, however, the courts have upheld its validity in a catena of judgments.

24. In ***C. Jacob v. Director of Geology and Mining, (2008), 10 SCC 115***, the Hon'ble Supreme Court upheld the validity of deductions in the pension if the employee has been compulsorily retired as a penalty. The relevant paragraph is reproduced herein:

“21. Admittedly, the petitioner was not “superannuated”; nor was he absorbed in any corporation/company/body owned by the State/Central Government; nor did he retire on account of any infirmity which incapacitated him for service; nor was he discharged on abolition of his post. Nor is he claiming compassionate allowance (on being dismissed/removed after putting in service of an extent which would entitle him to pension but for the dismissal/removal). The only other categories of pension are compulsory retirement pension and the retiring pension. A government servant compulsorily retired from service as a penalty, may be granted by the authority competent to impose such penalty, pension at a rate not less than two-third admissible to him on the date of his compulsory retirement. If a government servant is not otherwise admissible to pension, he cannot obviously be granted pension on compulsory retirement. There is no such grant in this case. That leaves us with retiring pension.”

25. On perusal of the aforesaid paragraph, it is amply clear that the penalty of reduction in pension can be imposed provided that such penalty should not be less than two third of the pension admissible to the employee. In the instant case, the respondent Bank has also reduced the pension by



1/3rd thereby making it 2/3rd of the original pension. Therefore, such reduction cannot be termed illegal in any manner.

26. By an earlier order, the Coordinate Bench of this Court had directed the respondents to decide the issue of the petitioner and provide reasons for deductions in the pension, to which the respondent Bank duly complied with. The reasoned order passed by the respondent Bank has been in consonance with the Regulation 33 of the PNB Employees Pension Regulations, 1995. As discussed in the foregoing paragraphs, the validity of such rules has been upheld by the Hon'ble Supreme Court and the same prevail as the rule of law, therefore, does not warrant any interference of this Court.

27. In any case, the petitioner has only prayed for the quashing of the order dated 3rd February, 2012, and did not pray to set aside the retirement order dated 10th October, 2010, Regulation 33 of Pension Regulations 1995 and order dated 28th March, 2018 through which the said reduction in pension stems out and was affirmed later on. Therefore, it is imperative to refer to the settled position of law with regards to the said issue.

28. In ***Bachhaj Nahar v. Nilima Mandal***, (2008) 17 SCC 491, the Hon'ble Supreme Court had discussed the purpose of pleadings at length and held that allowing a particular relief without there being a prayer for the same would lead to miscarriage of justice. The relevant paragraph is reproduced herein:

“12. The object and purpose of pleadings and issues is to ensure that the litigants come to trial with all issues clearly defined and to prevent cases being expanded or grounds being shifted during trial. Its object is also to ensure that each side is fully alive to the questions that are likely to be raised or considered so that they



may have an opportunity of placing the relevant evidence appropriate to the issues before the court for its consideration. This Court has repeatedly held that the pleadings are meant to give to each side intimation of the case of the other so that it may be met, to enable courts to determine what is really at issue between the parties, and to prevent any deviation from the course which litigation on particular causes must take.

13. The object of issues is to identify from the pleadings the questions or points required to be decided by the courts so as to enable parties to let in evidence thereon. When the facts necessary to make out a particular claim, or to seek a particular relief, are not found in the plaint, the court cannot focus the attention of the parties, or its own attention on that claim or relief, by framing an appropriate issue. As a result the defendant does not get an opportunity to place the facts and contentions necessary to repudiate or challenge such a claim or relief. Therefore, the court cannot, on finding that the plaintiff has not made out the case put forth by him, grant some other relief. The question before a court is not whether there is some material on the basis of which some relief can be granted. The question is whether any relief can be granted, when the defendant had no opportunity to show that the relief proposed by the court could not be granted. When there is no prayer for a particular relief and no pleadings to support such a relief, and when the defendant has no opportunity to resist or oppose such a relief, if the court considers and grants such a relief, it will lead to miscarriage of justice. Thus it is said that no amount of evidence, on a plea that is not put forward in the pleadings, can be looked into to grant any relief.”

29. In ***Bharat Amratlal Kothari v. Dosukhan Samadkhan Sindhi***, (2010) 1 SCC 234, the Hon’ble Supreme Court discussed the scope of Writ Court and held that even though the courts have wide discretion in deciding the writs, they cannot grant a relief not prayed by the petitioner. The relevant paragraph is as follows:



“29. The approach of the High Court in granting relief not prayed for cannot be approved by this Court. Every petition under Article 226 of the Constitution must contain a relief clause. Whenever the petitioner is entitled to or is claiming more than one relief, he must pray for all the reliefs. Under the provisions of the Code of Civil Procedure, 1908, if the plaintiff omits, except with the leave of the court, to sue for any particular relief which he is entitled to get, he will not afterwards be allowed to sue in respect of the portion so omitted or relinquished.”

30. On perusal of the aforesaid judgments, it is evident that even though the Writ Court has very wide scope, the Court cannot ignore the principles governing grant of relief. It is a well settled principle of law that the courts should not delve into the aspects which are related to reliefs not prayed by the petitioner and it is fundamental that a relief can be granted in a case when it is prayed by the petitioner. Therefore, any relief, not prayed by the petitioners, cannot be granted by this Court under Article 226 of the Constitution.

31. At the end, it is imperative to discuss the issue of delay in filing the Writ Petition. As per contention of the respondent Bank, the petitioner had duly accepted the reduction, however, preferred to challenge the same in 2018 for the first time, therefore, leading to an inordinate delay of 8 years. Even though the Writ Petitions are not bound by the provisions of the limitation Act, the parties need to act like vigilant citizens and should exercise their rights in a timely manner. Such delay even though does not bar the right of the parties, however, create a negative impression regarding the authenticity and genuineness of the case.

32. Therefore, in light of the foregoing discussion, and application of the



principles already settled by the Hon'ble Supreme Court, this Court is not inclined to grant relief to the petitioner as the deduction in the pension is in consonance with the regulations laid down by the respondent Bank, and the said decision was also approved by the Board of Directors, a condition mandatory under Regulation 33 of the PNB Employees Pension Regulations, 1995.

33. The instant petition, being devoid of any merit, stands dismissed.
34. Pending applications, if any, also stands dismissed.
35. The order be uploaded on the website, forthwith.

CHANDRA DHARI SINGH, J

AUGUST 24, 2023

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Click here to check corrigendum, if any