IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5634 of 2022

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Manju Devi, W/o Late Arya Nath Singh @ Arajnath Singh (A Deceased Employee of UCO Bank Chhapra Branch PFM No. 18110), Resident of Village and P.O.- Takkipur, Takipur, P.S.- Mahrajganj, District- Siwan, Bihar, Pin Code- 841244 (Bihar).

... ... Petitioner/s

Versus

1. UCO Bank through its Managing Director and Chief Executive Officer, having its Head Office at 3 and 4 DD Block, Saltlake, Sector- 1, Kolkata- 700064 (West Bengal).
2. Managing Director and Chief Executive Officer, UCO Bank, having its Head Office at 3 and 4 DD Block, Saltlake, Sector- 1, Kolkata- 700064 (West Bengal).
3. The Executive Director (HRD), HRM, PSD, Training and OL, UCO Bank, having its Head Office at 3 and 4 DD Block, Saltlake, Sector- 1, Kolkata- 700064 (West Bengal).
4. The Executive Director (HRD), HRM, PSD, Training and OL, UCO Bank, having its Head Office- II At 8th Floor, 10 B.T.M., Sarani, Kolkata- 700001.
5. The General Manager (HRD), HRM, PSD, UCO Bank, having its Head Office- II At 8th Floor, 10 B.T.M., Sarani, Kolkata- 700001.
6. The AGM and Zonal Head, UCO Bank, Zonal Office, Maurya Lok Complex, Block- A, 4th Floor, Dak Bangla Road, Patna- 800001 (Bihar).
7. The Branch Manager/ Branch Head UCO Bank, having its Office at Ganga Gopal Marketing Complex, Municipal Chauwk, Chapra, Dist.- Saran (Chapra), Bihar- 841301.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Jai Prakash Singh, Advocate
For the Respondent/s : Mr. Anjani Kumar Mishra, Advocate

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT
Date : 28-11-2024

Heard Mr. Jai Prakash Singh, learned counsel for the petitioner and Mr. Anjani Kumar Mishra, learned counsel for the respondents-Bank.

2. The petitioner, the widow of the deceased employee of UCO Bank, namely, Late Arya Nath Singh @ Arajnath Singh, has invoked the extraordinary writ jurisdiction of this Court under Article 226 of the Constitution, seeking a direction upon the respondents-Bank to consider the pension option application dated 10.06.2016 as well as the pension option application dated 31.08.2021 of the petitioner and ensure all the benefits of pension as well as leave encashment.

3. The short facts, which led to the filing of the present writ petition, are that the husband of the petitioner was initially appointed in Workman Cadre in the region of Orissa State in the service of the respondents-Bank as Godwon Keeper w.e.f. 15.12.1975. On a request, after the death of the brother of the husband of the petitioner, the husband of the petitioner was transferred to Patna and thereafter to Chapra Branch of the respondents-Bank, where he was selected as a Head Cashier Category ‘E’. While working at Charpra Branch, in course of internal audit inspection, a shortage of Rs. 78979.14 was found. This led to issuance of a memo of charge on 26.07.2006. The departmental proceeding commenced against the husband of the

petitioner, finally culminated into his dismissal vide order dated 11.01.2008. The afore-noted order of dismissal has further been upheld by the appellate authority on 31.10.2008.

4. The petitioner's husband being aggrieved with the order afore-noted, approached before the Industrial Tribunal. The learned Tribunal having persuaded to the contention of the petitioner's husband and on being found favour in his claim, set aside the order of dismissal vide order dated 20.07.2015.

5. The said order of the Industrial Tribunal was questioned before this Court in **C.W.J.C. No. 2367 of 2016 [UCO Bank v. The Union of India and Others]** and finally the order of Tribunal was set aside vide order dated 08.01.2018 by affirming the order of dismissal.

6. Learned counsel for the petitioner contended that during the pendency of the afore-noted writ petition, the husband of the petitioner filed an application on 10.06.2016 with a request to consider his option for pension and other retiral benefits. While the application of the husband of the petitioner was pending consideration, in the meanwhile, he died on 22.04.2020. Soon after the death of the erstwhile employee, the petitioner being his widow also filed an application for pension and other benefits on 31.08.2021 but the same did not

find favour, compelling her to approach before this Court.

7. Learned counsel for the petitioner while drawing the attention of this Court to the UCO Bank (Employees' Pension Regulation, 1995 (for short 'the Regulation, 1995') has taken this Court to Rule 22 of the Regulation, 1995 and submitted that the Bank has resisted the claim of the petitioner and not accorded the benefit of pension and leave encashment in terms of Rule 22 thereof, which stipulates 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;"

8. It is further contended that the service of the husband of the petitioner was being governed by the Bipartite Settlement between Indian Banks' Association (IBA) and AIBEA-NCBE-INBEF. The settlement, especially Clause-6 thereof, clearly deals with the consequences on account of an employee found guilty of gross misconduct.

9. Drawing the attention of this Court to the Regulation, 1995 and the Bipartite Settlement, learned counsel for the petitioner thus contended that the issue with regard to the

entitlement of pension and other benefits of a dismissed employee was under consideration before the Hon'ble Supreme Court in the case of **Bank of Baroda v. S.K. Kool (D) through LRS and Another [(2014) 2 SCC 715]**, wherein the Hon'ble Court held that the employee's heirs are entitled to superannuation benefits. In the light of the ruling afore-noted as also in view of the observation of the Hon'ble Supreme Court in the case of **Bank of Baroda v. G. Shukla [SLP No. 11443 of 2014]**; and as per the Bipartite Settlement dated 10.04.2002, amendment was made in clause 6(b)(c)(d) with stipulation that employees imposed with punishment of removal, compulsory retirement and discharge are to be considered with superannuation benefits i.e. pension and/or Provident Fund and Gratuity; vide Circular No. 755 dated 15.05.2015.

10. Reliance has also been placed on a judgment of the learned co-ordinate Bench of this Court in the case of **Sukhendra Dubey v. The Bank of India and Others [2009 (2) PLJR 463/C.W.J.C. No. 12747 of 2004]**, wherein this Court having taken note of the Regulation 1995 and the Bipartite Settlement, came to the conclusion that the denial of the benefit of pension to the dependent of the erstwhile employee, who inflicted with the punishment of dismissal, is against the

Bipartite Settlement and therefore the impugned order was quashed with a direction to the respondents-Bank to settle the pensionary dues of the writ-petitioner forthwith. The order of the learned Single Judge was questioned by the Bank before the learned Division Bench of this Court in **L.P.A. No. 241 of 2009 [The Bank of India and Others v. Sukhendra Dubey]**, which also came to be dismissed and the order of the learned Single Judge stood affirmed.

11. It is lastly contended that there is no provision in the regulation of the Bank withholding the leave encashment on the ground of having been penalized as dismissal. To support the contention, reliance has been placed on a judgment passed by this Court in **2016 SCCOnline Pat 1001/ C.W.J.C. No. 15264 of 2015 [Kaushal Kishore Thakur v. Indian Bank and Others]** vide order dated 22.02.2016 duly affirmed in **L.P.A. No. 580 of 2016** in the case of **Indian Bank and Others v. Kaushal Kishore Thakur**, wherein the learned Court having dealt with Regulation 38 of the Bank Officers Service Regulations 1979 had allowed the payment of leave encashment.

12. While countering the submissions of learned counsel for the petitioner, learned counsel for the respondents-

Bank has submitted that this is the admitted fact that the husband of the petitioner was found guilty of the charges of gross misconduct, which led to his dismissal. Rule 22 of Regulation, 1995 clearly speaks that in case of dismissal from the service of the Bank, it shall forfeit the entire past service and the delinquent dismissed employee shall not qualify for pensionary benefits. Moreover, there is no application filed on behalf of the husband of the petitioner pending till date is the contention of the learned counsel for the respondents-Bank.

13. Referring to the averments made in the counter affidavit, learned counsel for the respondents-Bank further contended that since the erstwhile employee has been dismissed from the Bank service without notice and further the period of his suspension has not been treated as on duty, the petitioner is not entitled to get any pensionary benefit. The Regulation, 1995 is not applicable in the instant case because the husband of the petitioner joined the service in the year 1975 and dismissed from his service in the year 2008. The prescription of Regulation 1995 shall apply to employee who, (a) where in the services of the Bank on or after the 1st day of January, 1986 but had retired before the 1st day of November, 1993. It is also contended that the judgment of the Hon'ble Apex Court is not

applicable to the facts of the instant case.

14. This Court has given anxious consideration to the submissions advanced on behalf of learned counsel for the respective parties and also perused the materials available on record.

15. Indisputably, the prescriptions, as provided under the Regulation, 1995, especially Rule 22 thereof and the provisions as stipulated in the Bipartite Settlement were under consideration in the case of **S.K. Kool (D)** (supra), wherein the learned Court in no uncertain terms having considered the rival submissions held that "*the Regulation in question is statutory in nature and the court should accept an interpretation which would not make any other provision redundant.*" Bearing in mind the aforesaid principle, the Hon'ble Court has come to a conclusion that removal of an employee shall entail forfeiture of his entire past service and consequently shall not qualify for pensionary benefits. If accepted, no employee removed from service in any event would be entitled for pensionary benefits. The consequence of this construction would be that the words "as would be due otherwise under the Rules or Regulations prevailing at the relevant time" shall become a dead letter. Such a construction has to be avoided.

16. This Court deems it proper to encapsulate the observation of the Hon'ble Apex Court rendered in the case of **S.K. Kool (D)** (supra), which reads as follows:

> "The Regulation does not entitle every employee to pensionary benefits. Its application and eligibility is provided under Chapter II of the Regulation 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 Article 14 of the Regulation. 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. 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.

Accordingly, we hold that the employee's heirs are entitled to superannuation benefits. The entire amount that the respondent is found entitled to along with interest at the rate of 6% per annum should be disbursed within 6 weeks from the date of receipt/communication of this order."

17. This Court also finds force in the submission of the petitioner that pursuant to the order passed by the Hon'ble Supreme Court in **S.K. Kool (D)** (supra), the matter was

brought to the knowledge of the Indian Banks' Association, wherein the Indian Banks' Association has recommended to implement the judgment of the Hon'ble Apex Court and requested to initiate a suitable amendment in Rule 22 of the Regulation, 1995 as far as Workman Employees are concerned.

18. The matter was finally examined and concluded that the punishment of removal, compulsory retirement on discharge as per Clause-6 (b) (c) and (d) of the settlement dated 10.04.2002 are to be considered with superannuation benefit i.e. pension and/or PF and Gratuity as would be due otherwise under the rules or regulations.

19. It is also worth noticing that the husband of the petitioner was inflicted with the punishment of dismissal with no remarks of any pecuniary loss and forfeiture of any retiral or terminal benefit, which was duly upheld by the appellate authority. In such circumstances, the law laid down by the Hon'ble Apex Court in **S.K. Kool (D)** (supra), as also the Bipartite Settlement leading to issuance of Circulars by the Indian Bank Association dated 30.06.2015 as also dated 23.12.2015, it squarely cover the case of the petitioner.

20. It would be relevant to remind that the Hon'ble Supreme Court having reiterated the principles laid down in the

case of **Deokinandan Prasad v. State of Bihar and Others [(1971) 2 SCC 330]**, **D.S. Nakara and Others v. Union of India [(1983) 1 SCC 305]**; and various other cases ruled in the **State of Jharkhand and Others v. Jitendra Kumar Srivastava and Another[(2013) 12 SCC 210]** that *"It is an accepted position that gratuity and pension are not bounties. An employee earns these benefits by dint of his long, continuous, faithful and unblemished service. It is thus a hard earned benefit which accrues to an employee and is in the nature of "property". This right to property cannot be taken away without the due process of law as per the provisions of Article 300-A of the Constitution of India. A person cannot be deprived of his pension without the authority of law, which is the constitutional mandate enshrined in Article 300-A of the Constitution. It follows that attempt of the appellant State Government to take away a part of pension or gratuity or even leave encashment without any statutory provision and under the umbrage of administrative instruction cannot be countenanced.*"

21. This Court also finds substance in the submission of learned counsel for the petitioner that in identical matter in the case of **Sukhendra Dubey** (supra), he was allowed pensionary benefit(s) and the action of the respondents-Bank

was deprecated, which order of the learned Single Judge also got affirmance from the learned Division Bench of this Court [L.P.A. No. 241 of 2009].

22. So far the issue of entitlement of leave encashment to a delinquent dismissed employee is concerned, the same has also been set at rest by the various decisions of the Hon'ble Apex Court that leave encashment is also part of retirement benefit and it ought not to be withheld even from a dismissed employee.

23. Moreover the contention of the respondents-Bank to the extent whereby it is submitted that no application is filed or pending for option of the pension, does not create any impediment in consideration of the case of the petitioner, as this Court, in view of the aforesaid discussions, hold that the petitioner is entitled to get the benefit(s) of pension, leave encashment and other benefits.

24. The respondents no.6 and 7 are hereby directed to consider the claim of the petitioner for the pensionary benefits as prayed for in the writ petition, in accordance with law as discussed hereinabove, and accord the same as admissible to her, preferably within a period of eight weeks from the date of receipt/production of a copy of this order.

25. The writ petition stands allowed.

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	11-12-2024
Transmission Date	