IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7831 of 2017

==

Vijay Kumar S/o Late Shiv Shankar Prasad Singh, resident of House No-8, Road No-2 Vivekanand Park, Patliputra, Patna-800013.

... ... Petitioner/s

Versus

1. Central Bank of India through Chairman cum Managing Director, Chander Mukhi, Nariman Point, Mumbai.
2. Field General Manager, Central Bank of India, Zonal Office, MauryaLok Complex, Patna.
3. Deputy Zonal Manager, Central Bank of India, Maurya Lok Complex, Patna.

... ... Respondent/s

==

Appearance :

For the Petitioner/s	:	Mr. Prashant Singh, Advocate Mr. Vipin Kumar Singh, Advocate Mr. Rajeev Kumar Singh, Advocate Ms. Ruchi Mandal, Advocate
For the Respondent/s	:	Mr. Ajay Kumar Sinha, Senior Advocate Mr. Ajit Kumar Sinha, Advocate Ms. Minu Kumari, Advocate Ms. Dilkash Khan, Advocate Mr. Pravin Kumar, Advocate

==

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 22-04-2024

The petitioner has filed the above writ petition seeking three reliefs, first is to set aside the compulsory retirement order, second a challenge against Rule 20.3(iii) which enables the Bank to continue disciplinary proceedings even after superannuation and the third; disbursal of full retiral benefits.

2. We heard learned counsel Sri Prashat Singh appearing for the petitioner and Sri Ajay Kumar Sinha, learned Senior Counsel appearing for the respondent-Bank. The learned Senior Counsel for the bank relied on a judgment in ***Chairman-cum-Managing Director, Mahanadi Coalfields Limited v. Rabindra Choubey; (2020) 18 SCC 71*** wherein similar provision of continuance of disciplinary enquiry even after superannuation was upheld.

3. The learned counsel for the petitioner submitted that he would not press the relief insofar as the challenge against Rule 20.3(iii) and the order of compulsory retirement. The prayer now made by the petitioner is only for disbursement of his full retiral benefits.

4. The petitioner was working as a Chief Manager in the Regional Office at Saharsha of the Central Bank of India when he was issued with a charge memo on 29.09.2014. While the disciplinary proceedings were pending, the petitioner superannuated on 30.11.2014. The disciplinary proceedings were continued and an order of penalty was passed as is seen from Annexure-1/A. The

Disciplinary Authority imposed the punishment of reduction in rank and compulsory retirement for the different misconducts alleged with effect from 30.11.2014. i.e. the date of superannuation. The petitioner was permitted to draw two-third pension but however, the gratuity was withheld and so was the one-third of the pension payable to the petitioner.

5. Insofar as gratuity is concerned, the learned Senior Counsel for the Bank specifically relied on Annexure-R/1 produced along with the supplementary affidavit dated 30.03.2024 of the Bank; which is the Central Bank of India Employees Gratuity Fund Rules.

6. Rule 12 refers to 'Forfeiture of Gratuity' which is only in the case of termination of the service of the member on account of proven misconduct. It is also provided therein that the forfeiture of gratuity shall be only to the extent of financial loss. In the present case, there is no order passed forfeiting the gratuity despite the Disciplinary Authority having found huge loss caused to the Bank.

7. The learned Senior Counsel for the respondent-Bank prayed that leave may be granted to the

Bank to decide on the forfeiture.

8. The fact remains that the petitioner superannuated on 30.11.2014. Even the Payment of Gratuity Act requires forfeiture to be only on separate orders to be passed either finding damage, loss or the termination of the services of the petitioner being for a riotous or disorderly conduct or one involving moral turpitude.

9. We find from the penalty order that in every charge there is reference to the financial loss caused to the Bank. The Disciplinary Authority also holds that the loss would be Rs. 3.26/- crores approximately without any such computation having been made from the specific charges alleged.

10. In the totality of the circumstances, especially since no order forfeiting the gratuity has been passed in the past one decade, we are of the opinion that there could be no liberty left to the Bank to pass an order of forfeiture at this stage. We, hence, direct the Bank to disburse the entire gratuity with 5% per year interest to the petitioner within 3 months from today failing which the interest liability shall be increased to the rate of 8% per year

and the Bank would be entitled to recover the additional interest liability from the officer who caused delay in disbursement as directed by this Court.

11. Now, we come to the second issue raised of the forfeiture of one-third pension. The reference made by the learned counsel for the petitioner is to Annexure-P/30 produced along with I.A. No. 02/2023. Annexure-P/30 is the Central Bank of India (Employees') Pension Regulations, 1995. Specific reference is made to Regulation 33 which is extracted as under:-

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 Central Bank of India Officer Employees' (Discipline and Appeal) Regulations, 1976 or awards/settlements may be granted by the authority higher than the authority competent to impose such penalty, pension at a rate not less than two-third 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 date.

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 constituted before such order is passed.*

3. A pension granted or awarded under sub-regulation (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.

12. The learned counsel for the petitioner submits that there is no order passed withholding the pension as is required under sub-regulation (1) of Regulation 33 and there is also no concurrence obtained from the Board of Directors under sub-regulation (2). The learned Senior Counsel appearing for the respondent-Bank, however, points out that sub-regulation (1) is worded as an enabling provision to grant pension which shall either be the full pension admissible or reducing it to not less than two-third of the pension; which leads to the inference that unless such an order is passed there would be no question of grant of pension at all to the compulsorily retired employee.

13. Insofar as sub-regulation (2) is concerned it is the submission of the learned Senior Counsel that such a

consultation with the Board of Directors is required only if the pension is reduced from the minimum applicable as per sub-regulation (1).

14. We agree with the contentions raised by the Bank. Sub-regulation (1) as is worded hereinabove requires the authority higher than the authority competent to impose penalty of compulsory retirement to grant pension at a rate not less than two-third and not more than full pension admissible, to an employee on the date of his compulsory retirement. The only inference would be that on compulsory retirement an employee would not be entitled to a pension unless the authority higher to the competent authority, conferred with such specific powers grants him pension; which shall not be less than two-third of the full pension admissible. We also agree with the contention of the Bank that sub-regulation (2) would be applicable only if the award of pension is less than the full compensation pension admissible under these Regulations; which is the pension as granted by the authority higher than the authority competent to impose penalty, as per sub-regulation (1).

15. Based on the above interpretation of the

Regulations, we find that the petitioner has been granted two-third of the pension, though the Bank has not produced any specific order. Obviously the grant would be possible only if, there was an order passed by the authority higher to the authority competent to impose penalty, allowing pension to that extent. Without such an order, based on our interpretation, a compulsorily retired employee would not at all to be entitled to pension.

16. The writ petition would stand partly allowed directing full gratuity to be disbursed to the petitioner as directed herein. Insofar as the two-third pension granted, the same has to be continued especially since there cannot be any reduction below the two-third pension even as per the Regulations.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

aditya/-

AFR/NAFR	
CAV DATE	
Uploading Date	23.04.2023.
Transmission Date	