IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:
The Hon'ble Justice Debangsu Basak
And
The Hon'ble Justice Md. Shabbar Rashidi

M.A.T. 982 of 2024
With
CAN 1 of 2024
CAN 2 of 2024

Pankaj Kumar Das
VS.
Bank of Baroda & Ors.

For the Appellants : Mr. Victor Chatterjee

For the Respondent/Bank : Mr. Dipanjan Datta
Mr. Subhajit Chowdhury
Ms. Sukanya Datta

Heard on : August 14, 2024

Judgment on : August 14, 2024

DEBANGSU BASAK, J.:-

1. CAN 1 of 2024 is an application seeking condonation of delay of 218 days in making and filing the appeal.

2. Department reports a delay of 217 days.

3. Defects noted by the department were removed subsequent to the order dated June 27, 2024.

4. For the ends of justice, the causes shown in the application for condonation of delay are accepted as sufficient.

5. **CAN 1 of 2024** is **disposed of** by condoning the delay in making and filing the appeal.

6. By consent of the parties, the appeal is treated as on the day's list and taken up for final hearing.

7. Learned advocate appearing for the appellant submits that, the appellant was imposed a punishment of compulsory retirement subsequent to his superannuation. He submits that, since such punishment of compulsory retirement was imposed subsequent to superannuation, he is entitled to the full pensionary benefits which the bank is not granting. Bank is paying 2/3rd pensionary benefits receivable by the appellant.

8. Learned advocate appearing for the appellant submits that, the appellant is entitled to other pensionary benefits such as leave encashment. He contends that such additional benefits are not being paid by the bank.

9. Learned advocate appearing for the bank submits that, the appellant as the writ petitioner limited his prayer to leave encashment. He draws the attention of the Court to the order dated July 27, 2018. An appeal was carried against such order which was disposed of by an order dated April 9, 2019.

The Appeal Court after holding that the appeal was not maintainable granted liberty to the writ petitioner to pursue his remedy in accordance with the law before the appropriate forum. Appellant, thereafter, filed an application for review which he withdrew on July 5, 2019.

10. By the order impugned herein, learned Single Judge noted that since the appellant as the writ petitioner restricted his claim with regard to leave encashment as recorded in the order dated July 27, 2018, claim for additional retirement benefits cannot be granted. Moreover, learned Single Judge noted that competent authority passed the order of payment of pensionary benefits at 2/3rd level after seeking concurrence of the Board of Director.

11. Learned Single Judge also noted that such decision of the competent authority was also not challenged in the writ petition and, therefore, could not grant any relief to the appellant.

12. In respect t of the additional retirement benefits, we find that the appellant before us filed a previous writ petition being W.P.A. 28346 (W) of 2014, where he limited his claim to only leave encashment. An appeal was carried against the order dated July 27, 2018 which was dismissed by the order dated April 9, 2019. However, the Appeal Court granted leave to the appellant to pursue his remedy in accordance with law before the appropriate forum. Appellant, thereafter filed a review petition directed

against the order dated July 27, 2018 by way of R.V.W. 117 of 2019 which was dismissed as withdrawn on July 5, 2019.

13. In such circumstances, learned Single Judge correctly held that the claim of the appellant was limited to leave encashment. Learned Single Judge also correctly held that the other claims of the appellant were barred by *res judicata* and/or constructive *res judicata*.

14. So far as the claims of pensionary benefits are concerned, materials produced on record establish that the appellant is being paid 2/3rd of his pensionary benefits. Service rules to which the appellant is subjected to allow the employer to impose a penalty of either 2/3rd of the pensionary benefits or the full pensionary benefits, as the case may be, by an authority higher than the authority competent to impose a penalty under the disciplinary proceeding.

15. Learned Single Judge called for a report from the bank. Bank submitted a report where the bank disclosed a punishment of payment of 2/3rd pensionary benefits was imposed after taking concurrence of the Board of Directors of the bank.

16. It is the contention of the appellant that such decision of the employer was not communicated to the appellant. Be that as it may, it would be appropriate to direct the employer to communicate the decision of

imposition of penalty of 2/3rd of the pensionary benefits upon the appellant within a period of four weeks from date.

17. With such directions, **M.A.T. 982 of 2024** along with the connected application are **disposed of** without any order as to costs.

(Debangsu Basak, J.)

18. I agree

(**Md. Shabbar Rashidi, J.**)

S.D.