IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6652 OF 2019

Krishna Vithalrao Kulkarni
Residing at 703, Orange County, Phase 4,
Near Balaji Temple, Pashan – Sus Road,
Pashan, Pune – 411 021. ..**Petitioner**

Versus

1. **Bank of India**
Having Head Office Star House, C/5
G – Block, Bandra – Kurla Complex,
Bandra (East), Mumbai – 400 051.

2. **The Managing Director & Chief Executive Officer**, **Bank of India**,
Having his office at Star House, C/5
G – Block, Bandra – Kurla Complex,
Bandra (East), Mumbai – 400 051. **..Respondents**

Mr. Ashok D. Shetty a/w. Ms. Rita K. Joshi & Mr. Swapnil P. Kamble for the Petitioner.
Mr. Lancy D'souza a/w. Ms. Deepika Agarwal i/by. Mr. V. M. Parkar, for the Respondents.

CORAM : A.S. CHANDURKAR &
JITENDRA JAIN, JJ.

Date on which the Arguments were heard : 19th March 2024
Date on which the Judgment is pronounced : 27th March 2024

Judgment (Per Jitendra Jain, J.) :-

1. By this Petition under Article 226 of the Constitution of India, the Petitioner seeks direction against the Respondents for reimbursement of legal expenses incurred by the Petitioner to defend his case and further seeks appropriate writ of mandamus against the Respondents for grant of retirement benefits.

<u>Brief facts are as under</u> :

2. The Petitioner was serving as Chief Manager of Respondent No.1-Branch at New Delhi.

3. In the year 1987, on the basis of accountability report, a departmental enquiry was initiated against the Petitioner in August 1998 on the allegation of irregularities in the operations of Respondent No.1-Bank. The departmental enquiry concluded on 21st November 1989, wherein the Petitioner was found guilty of accommodating M/s. Harison Tyre Company beyond his authority in highly irregular manner and jeopardizing banks interest and exposing the bank to serious financial loss. The Petitioner was dismissed from the service in accordance with Regulation 4(h) of the Bank of India Officer Employees (Discipline and Appeal) Regulation, 1976 with immediate effect and the said enquiry report further stated that by misconduct of the Petitioner, the Bank has suffered a loss of Rs.80 lakhs. The said order of departmental enquiry was challenged in appeal which came to be dismissed on 19th April 1990. The Petitioner challenged the aforesaid two orders before the Delhi High Court and on 13th August 2009, the Delhi High Court confirmed both these orders. The matter did not stop here, but the

Petitioner challenged the said order of the Delhi High Court by filing an Intra-Court Appeal and on 14th July 2015, the Appeal Bench of Delhi High Court confirmed all the three aforesaid orders. Consequently, the findings of the departmental enquiry reached finality since there was no further challenge to the said proceedings before the Supreme Court.

4. Meanwhile, on 14th February 1992 an FIR on a complaint by Respondent-Bank was registered by Central Bureau of Investigation (CBI) against the Petitioner for the aforesaid misconduct of the Petitioner. On 22nd July 1994, criminal case came to be instituted at a New Delhi pursuant to the aforesaid FIR. On 23rd September 2017, the Special Judge of Saket Court at New Delhi acquitted the Petitioner from charges under Section 5 of the Prevention of Corruption Act and Sections 420, 120-B, 468 and 471 of the Indian Penal Code, 1860.

5. Meanwhile, on 31st July 1995 the Petitioner retired on reaching superannuation age.

6. On 30th October 2017 and 10th January 2018, the Petitioner made representations to Respondent No.1 seeking reinstatement pursuant to his acquittal from criminal charges by the Delhi Special Court and also sought reimbursement of legal expenses and grant of retirement benefits. The Petitioner thereafter wrote various letters seeking reimbursement of legal fees and retirement benefits.

7. On 8th June 2018, the Respondent No.1 sanctioned reimbursement of legal expenses, but the same was withdrawn on 4th September 2018 on the ground that the acquittal from criminal charges was on the basis of “benefit of doubt” and not “honourable acquittal”.

8. On 5th December 2018, the Respondent No.1 issued a Circular introducing scheme for extending legal and financial support to serving / retired employees and officers, present and previous directors of the bank in cases arising out of bonofide execution of banks works during their service period / tenure. Prior to the said scheme, on 22nd March 2007, the Respondent No. 1 had issued a Circular introducing scheme to enable the eligible officials of the bank to initiate legal action in India against outsiders who with a malafide intention make baseless allegation, lodged false complaints etc. on matters arising out of bonafide execution of bank works.

9. It is on this backdrop that the Petitioner is before us seeking its eligibility to be adjudicated for reimbursement of legal expenses and further praying for grant of retirement benefits.

Submissions of the Petitioner:-

10. The Petitioner submits that under the 2018 scheme there is no provision wherein it is stated that reimbursement will not be made in case of acquittal on the basis of “benefit of doubt”. The Petitioner, therefore, submitted that letter withdrawing the reimbursement of expenses on this count is contrary to the 2018 scheme. The Petitioner further took us through various paragraphs of the judgment dated 23rd September 2017 passed by the learned Special Judge at New Delhi, wherein the Petitioner was acquitted from various charges under the Prevention of Corruption Act, 1988 and Indian Penal Code. It is the contention of the Petitioner that on a reading of various findings of the said judgment, it is clear that the acquittal was not on account of benefit of doubt, but was on merits and since in criminal proceedings charges have to be proved beyond reasonable doubt and the complainant having failed to do so, on account of the reasons mentioned in the said judgment, the Petitioner was acquitted from criminal charges. The Petitioner further relied upon in the case of ***Union of India vs. C. G. Ajay Babu***[1] in support of his prayer for grant of gratuity. The Petitioner, therefore, prayed that he be declared as eligible for the benefit of the scheme and further the Respondents be directed to grant retirement benefits.

Submissions of the Respondents:-

11. Per contra, the Respondents submitted that the Petitioner was dismissed pursuant to a departmental enquiry order in the year 1989 and the said order has been confirmed by Delhi High Court on 14th July 2015. The Respondents further submitted that the Petitioner cannot

1 (2018) SCC Online 962

take the benefit of 2018 Circular since he was dismissed from the employment and further the said Circular is post his acquittal. The Respondents further submitted that the Circular would be applicable only in case of bonafide execution of work of the bank and not to the facts of the Petitioner's case who has been found guilty in the departmental enquiry proceedings. The Respondents further stated that the Petitioner cannot even take the benefit of 2007 Circular since that Circular provides for reimbursement in case where employee of the Respondent want to initiate legal proceedings which is not case in the present petition. The Respondents further relied on paras 296 and 299 of the judgment of the Delhi Special Court to contend that departmental enquiry and criminal proceedings are separate proceedings. The Respondents further submitted that the questions of facts cannot be adjudicated in the proceedings under Article 226 of the Constitution of India and relied upon the decision in the case of ***Manisha Kamble vs. The State of Maharashtra & Ors.*** in Writ Petition No.56 of 2018 of the Nagpur Bench of this Court and the decision in the case of ***Jain Irrigation Systems Ltd. vs. Union of India & Anr.***[2] The Respondents further submitted that insofar as the payment of gratuity is concerned the Petitioner has to approach the appropriate authority and cannot invoke the writ jurisdiction of this Court.

2 (2022) SCC OnLine Bom 3154

Rejoinder of the Petitioner :-

12. In rejoinder, the Petitioner submitted that his only prayer is to decide the eligibility and not to quantify the monetary claim and therefore this Court would have jurisdiction to entertain the present petition. The Petitioner further stated that no show cause notice was issued for denying the gratuity and provident fund contributed by the Respondent No.1. The Petitioner, therefore, prayed that the petition be allowed.

Analysis & conclusions :-

13. The first issue which requires to be considered is the objection raised by the Respondents that since the claim of the Petitioner involves monetary claim, requiring this Court to go into the expenses incurred by the Petitioner for defending the legal cases same cannot be entertained under Article 226 of the Constitution of India. In our view and has rightly submitted by the Petitioner at the outset that he is only pressing before this Court for adjudication on his eligibilities. If he is found to be eligible, then insofar as the monetary claim is concerned, he will approach the Respondents. In that view of the matter, in our view, since we are only called upon to decide the eligibility of the Petitioner to claim the legal expenses, this Court can certainly entertain the present petition.

14. The claim of the Petitioner is based on Circular issued by the Respondents dated 5th December 2018, whereby, a scheme for extending legal and financial support to serving/retired employees and officers, present and previous Directors of the bank and their family members in cases arising out of bonafide execution of bank's work during their service period/tenure was introduced. The Scheme is annexed to the said Circular. Clause 2 of the Scheme deals with "Applicability and Coverage" and sub-clause III of the said clause provides that benefits and support under the policy will not be available to employees/officers, who have been removed/**dismissed**/compulsorily retired from bank's service. In the instant case before us, the Petitioner was dismissed by an order dated 21st November 1989 pursuant to the departmental inquiry. The said order was carried in appeal before the Appellate Authority and, thereafter, was also assailed before the Single Judge of Delhi High Court and finally in Intra Court Appeal of the said High Court. The order of departmental inquiry was confirmed by the Delhi High Court on 14th July 2015 and the said order has attend finality. Therefore, insofar as the Petitioner is concerned, his dismissal stands confirmed as of today and, therefore, under Clause 2(III) of the 2018 Scheme, the Petitioner cannot make his claim for reimbursement of legal expenses incurred in defending the legal proceedings.

15. Alternatively, prior to 2018 scheme, Respondents on 22nd March 2007 had introduced a Special Scheme for extending legal and financial support to the bank's officials against whom motivated false complaints have been made by people/agencies outside the bank. Clause 2(b) of the said scheme provides that same is to enable the eligible officials of the bank to initiate legal action in India against private parties/outsiders who with a malafide intention make baseless allegations, pass derogatory remarks, lodge motivated false complaint on matters arising out of bonafide execution of bank's work. It further provides that the said claim shall not be applicable in case of a complaint/allegation made by an employee of the Bank. In our view, the 2007 scheme would be applicable, if an employee wants to initiate a legal action against the outsiders and not in the case, where legal proceedings are initiated against the employee and by the Respondent-Bank against its own employee. In the present case before us, the criminal action against the Petitioner has been initiated by the Respondents and it is not the case, where the Petitioner has filed a case against outsider. Therefore, even on this count Petitioner cannot press his claim under the 2007 Scheme also.

16. In both the schemes that is 2007 and 2018, the pre-condition is the cases "arising out of bonafide execution of bank's work" during the service period. The phrase "bonafide execution of bank's work" has to be examined not by considering the proceedings and judgment passed by the Special Court at Delhi in criminal proceedings, but same has to be examined from the point of view of an employer. This is so because the level of proof required and the object for criminal action is totally different than the civil proceedings and moreso in case of internal departmental inquiry proceedings of an employer. In the instant case, in the departmental inquiry order dated 21st November 1989, various irregularities have been found to have been committed by the Petitioner in the course of his service tenure and the said order has attained finality by an appellate order being passed against the Petitioner by the Delhi High Court on 14th July 2015. Therefore, if one examines the phrase "bonafide execution of bank's work" from the point of view of the employer that is Respondent-Bank then certainly, the case of the Petitioner does not fall within the eligibility criteria provided either under 2007 scheme or 2018 Scheme. Therefore, even on this count, the Petitioner cannot be said to be eligible for the claim.

17. The Petitioner has relied upon letter dated 8th June 2018 issued by the Respondents, wherein it is stated that the Competent Authority after going through representation of the Petitioner has advised that the bank may reimburse all the legal expenses borne by the Petitioner to defend himself before the CBI Court, subject to submission of the relevant bills/receipts. The said letter was withdrawn on 4th

September 2018 by observing that the Special Court at Delhi has acquitted the Petitioner under "benefit of doubt" and it is not a case of "honourable acquittal". Firstly, the said withdrawal is prior to 2018 scheme and, therefore, the Petitioner is not justified in contending that since whether acquittal is under "benefit of doubt" or "honourable acquittal" being absent in 2018 Scheme he is eligible. Secondly, the letter of 8th June 2018 is advisory issued by the Competent Authority to the Respondents, copy of which is also addressed to the Petitioner and further the said letter states that Respondents "may" reimburse the legal expenses. In our view, if subsequently, the bank after receipt of this advisory and perusing the documents come to a conclusion not to reimburse the legal expenses, then certainly no fault can be found. These communications are contractual communications between the parties and, therefore, the principle that the claim has to be tested only on the basis of the rejection order would not be applicable moreso, when the recommendation of the Competent Authority was only advisory and directory. Even otherwise, we find that the Petitioner is not entitled for reimbursement of legal expenses in the present facts.

18. Insofar as the claim of the Petitioner with respect to employers contribution to provident fund and gratuity is concerned, Respondent No.1 vide communication dated 28th February 1991 had adjusted the said amount against the loss suffered by the Respondents of Rs.1.07

crore. We have not been shown, whether the said communication has been challenged by the Petitioner and if challenged, what is the fate. Therefore, we proceed on a footing that this communication was not challenged. The Petitioner having not challenged the 1991 communication cannot now in 2019 claim the same in the present petition. Even otherwise, the remedy of the Petitioner does not lie before this Court, but before the authorities under the respective acts that is, the Payment of Gratuity Act, 1972 and the Employees Provident Fund and Miscellaneous Provisions Act, 1952. Therefore, even on this count, the Petitioner's claim with respect to provident fund and gratuity cannot be considered in the present petition.

19. In view of above, the present writ petition is required to be dismissed. It is accordingly dismissed.

20. Rule is discharged. No order as to costs.

[JITENDRA JAIN, J.] **[A. S. CHANDURKAR, J.]**

Signed by: Sayyed Saeed Ali
Designation: PA To Honourable Judge
Date: 27/03/2024 14:05:29