BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

WP(MD)No.22405 of 2019
and
WMP(MD)No.19194 of 2019

S.Arumugam ... Petitioner

VS

The Assistant General Manager,
Canara Bank,
Human Resources Management Section,
Circle Office, East Veli Street,
Madurai – 625 001. ... Respondent

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus to call for the records on the file of the respondent in connection with the impugned orders of rejection passed in his proceedings in Ref.MDUC/HRMS/13SK/2019, dated 18.01.2019 and Ref:HR:IRS:DLC:CF-109A:MS:963:2019 dated 11.03.2019 and to quash both and consequently direct the respondent to grant full pension to the petitioner with interest with effect from 13.10.2003 on the account of modification of punishment as well as sanction of the privilege leave encashment of 240 days within the time limit that may be stipulated by this Court.

For Petitioners : Mr.K.Guru Nathan
For Respondent : Mr.N.Dilip Kumar
Additional Government Pleader

ORDER

The petitioner an Officer of the respondent bank was imposed with a punishment of dismissal from service by order dated 10.10.2003 by the disciplinary authority in conclusion of the disciplinary proceedings initiated as against him for his misconduct. The punishment of dismissal from service was subsequently modified in the appeal by the appellate authority by order dated 13.08.2004. Therefore, by order dated 16.06.2005 the petitioner was provided with 2/3rd of pension with effect from 14.10.2003. Simultaneously, the petitioner was tried by the Special Court for CBI Cases, Madurai in CC.No.9 of 2003 for the criminal prosecution launched by the CBI for the very same set of charges and by judgment dated 12.12.2006 the petitioner was convicted with 3 years rigorous imprisonment and with a fine of Rs.1 lakh. Due to this conviction, as per the Regulation Nos.43 and 44 of the Canara Bank (Employees) Pension Regulation, 1995 the petitioner's pension was re-fixed by order dated 11.06.2007 by reducing 50% of the pension sanctioned to him on 16.06.2005. The petitioner challenging the order of conviction dated 12.12.2006 has filed an appeal in

Crl.A(MD)No.580 of 2006 before this Court and this Court by extending the benefit of doubt, has set aside the conviction and the sentence imposed on the petitioner and has allowed the criminal appeal by judgment dated 23.03.2018. Therefore the petitioner based on the judgment passed by this Court in the criminal appeal, vide his representation dated 13.06.2018 requested the respondent to revoke the withdrawal of 50% of the pension, the same was considered by the respondent and by order dated 18.01.2019 the pension was restored with effect from 13.06.2018. Further the petitioner has requested to restore the pension with effect from the date of on which it was reduced to 50% due to his conviction, ie., from 11.06.2007. It has been rejected by the respondent by order dated 11.03.2019 stating that the pension had already been restored from the date of information of his acquittal in the appeal. Therefore, challenging the same the petitioner has filed this writ petition.

2.The petitioner has also made a representation for payment of encashment of privilege leave under Regulation 38 of the Canara Bank (Employees') Pension Regulations and the same was rejected by order dated 18.01.2019 and therefore, this order dated 18.01.2019 is also challenged.

3.The learned Counsel for the petitioner submits that the petitioner is entitled for 2/3rdof pension as per the Regulations of the Bank and the same was sanctioned with effect from 14.10.2003. In view of conviction rendered by the Special Court for CBI Cases, the pension was reduced by 50% from 2/3rd of pension to 1/3rd of pension with effect from11.06.2007. However in the appeal the conviction rendered by the Special Court was set aside by this Court by judgment dated 23.03.2018. Therefore, the petitioner is entitled to get back the 2/3rd of pension, which was sanctioned on 16.06.2005, from the date on which it was reduced to 50%, ie. 11.06.2007.

4.In reply to the above, the learned Counsel for the respondent bank submits that the petitioner had involved in a serious fraud in the affairs of the bank and therefore, the disciplinary proceedings was initiated as against him and he was dismissed from service by order dated 10.10.2003. However the same was modified by the appellate authority as of the punishment of compulsory retirement by order dated 13.08.2004. The employee, who is allowed to go on compulsory retirement is eligible for 2/3rd of pension and therefore, the petitioner was provided 2/3rd of pension with effect from 14.10.2003. Subsequently the petitioner was convicted in the criminal case in CC.No.9 of 2003 by judgment dated 12.12.2006.

Therefore, as per Regulation Nos.43 and 44 of the Canara Bank (Employees') Pension Regulation, 1995, they have reduced 50% of the 2/3rd pension, which he was initially sanctioned by order dated 16.06.2005, with effect from 11.06.2007. While so based on the representation of the petitioner dated 13.06.2018, the petitioner's pension was revised as of the initial pension sanctioned on 16.06.2005, with effect from 13.06.2018, the date on which the petitioner's acquittal in the criminal appeal came to their notice. He further submits that the petitioner's claim for 2/3rd of pension with effect from 11.06.2007, based on the acquittal cannot be sustained in view of Regulation 43 of the Canra Bank Employees Pension Rules, 1995 and moreover, the petitioner was acquitted only on the ground of benefit of doubt.

5.With regard to the claim of encashment of privilege leave for the petitioner, the learned Counsel for the petitioner relied on the proviso to Regulation No.38 of the Canra Bank Service Regulation, 1979 and submits that when an officer retires from service, he is entitled for encashment of privilege leave of 240 days, but it has been denied to the petitioner.

6.In reply to the above, the learned Counsel for the respondent bank submits that this proviso to Regulation No.38 would be applicable only to the employees, who retire on attaining the age of superannuation and not to the employees, who retire otherwise, like punishment of compulsory retirement, dismissal, etc.., He has also relied on the decision of Division Bench of this Court in ***D.Jagadeesan Vs. 1.Bank of Baroda, No.26, G-Block Bandra Kurla Complex, Bandra (E), Mumbai reported in 2015 SCC OnLine Mad 123***. The learned Counsel further submits that this Court has considered this Regulation No.38 and held that this benefit of encashment of 240 days of privilege leave is not eligible for those who have suffered with the punishment of compulsory retirement.

7.This Court considered the rival submissions and perused the materials placed on record.

8.The petitioner an Officer of the respondent Bank was prosecuted with a criminal case and also disciplinary proceedings for the alleged delinquencies said to have been committed by this petitioner. In the departmental proceedings he was imposed with the major punishment of dismissal from service. The petitioner challenged this dismissal order before the appellate authority. The case of the petitioner was considered sympathetically by the appellate authority and the punishment of dismissal was modified to a compulsory retirement by order dated 13.08.2004. An employee allowed to go on compulsory retirement is entitled for $2/3^{rd}$ of pension and it was also sanctioned by order dated 16.06.2005 with effect from 14.10.2003. However the same was reduced to 50% by order dated 11.06.2007 pursuant to the order of conviction dated 12.12.2006 passed by the Special Court for CBI Cases, Madurai in CC.No.9 of 2003. It was challenged by the petitioner before this Court in CrlA(MD)No.580 of 2006 and the appeal was allowed by this Court by judgment dated 23.03.2018 by setting aside the order of conviction, dated 12.12.2006. Based on the judgment of this Court, the respondent has restored the pension, which was sanctioned on 16.06.2005, with effect from the date on which the respondent had received the request of the petitioner, ie., on 13.06.2018. This Court is unable to accept the stand of the respondent bank for restoring the pension with effect from the date of the receipt of the petitioner's representation dated 13.06.2018 bringing to their notice about his acquittal in the criminal appeal. The order of conviction was set aside by this Court by judgment dated 23.03.2018. Therefore, the petitioner is entitled for the revised pension with effect from 23.03.2018, the date on which the order of conviction was set aside. Therefore, the stand of the respondent bank that the petitioner is entitled for 2/3rd of pension from the date of information of the acquittal of the petitioner to the respondent bank is not acceptable. Therefore, the impugned order in Ref:HR:IRS:DLC:CF-109A:MS:963:2019 dated 11.03.2019, restoring the pension with effect from 13.06.2018 is set aside. The respondent bank shall restore the pension with effect from 23.03.2018 and shall settle the balance amount to the petitioner within a period of eight from the date of receipt of a copy of this order.

9.Insofar as the claim of the petitioner for encashment of the privilege leave of 240 days is concerned, it is relevant to refer to Regulation No.38 of the Canara Bank (Officers') Service Regulation, 1979, which reads as under:

> *“Regulation No.38: Lapse of Leave: Save as provided below, all leave to the credit of an officer shall lapse on resignation, retirement, death, discharge, dismissal or termination for any reason.*
>
> *Provided that where an officer retires from the services of the bank, he shall be eligible to be paid a sum equivalent to the emoluments of any period, not exceeding 240 days of privilege leave that he had accumulated.*
>
> *Provided further that where an officer dies while in service, there shall be payable to his legal representative, a*

sum equivalent to the emoluments for the period not exceeding 240 days of privilege leave to his credit as on the date of his death.

Provided also that where an officer leaves or discontinues his services by resignation on or after the 1st April 2001, after giving due notice under Sub Regulation (2) of Regulation 20, he may be paid a sum equivalent to the emoluments in respect of privilege leave to the extent of half of such leave to his credit on the date of cessation of service, subject to a maximum of 120 days."

10.A Division Bench of this court has already discussed this issue in ***D.Jagadeesan Vs. 1.Bank of Baroda, No.26, G-Block Bandra Kurla Complex, Bandra (E), Mumbai*** reported in ***2015 SCC OnLine Mad 123***, as under:

"*7. It is indisputable that the charges of misappropriation of the amount alleged against the appellant while he was working as a Senior Manager with the respondent bank, was found proved and the same was upheld by this Court in W.P. No.35916 of 2003. It is also not in dispute that the order of dismissal from service was converted to one of compulsory retirement, not on account of the fact that the said punishment of dismissal from service was disproportionate to the charges levelled against the* *appellant, but, keeping in view, the fact that the appellant, as well as his family, would not be in a position to lead a respectable life in the society with a taint of dismissal and as such, the punishment of dismissal from service was converted to one of compulsory retirement.*

8 Regulation 4 of the Regulations, 1976 deals with penalties. Both compulsory retirement and dismissal are under the ambit of major penalties. Regulation 13 provides in no uncertain terms that no leave shall be granted to an officer/employee under suspension. Regulation 15 provides that if an officer/employee is fully exonerated or suspension was found unjustifiable, the officer/employee concerned shall be granted full pay to which he would have been entitled, had he not been suspended and the period shall be treated as period spend on duty. In the case on hand, as aforestated, the appellant was neither exonerated from the punishment nor was his suspension found unjustifiable. Thus, the period spent by the appellant during suspension shall not be treated as period spent on duty.

9 Regulation 33 under Chapter VII of the Service Regulations, 1979 deals with Privilege Leave as under:

> *An officer shall be eligible for privilege leave computed at one day for every 11 days of service on duty provided that at the commencement of service, no*

privilege leave may be availed of, before completion of 11 months of service on duty.

An officer on privilege leave shall be entitled to full emoluments for the period of leave.

The period of privilege leave to which an officer is entitled at any time shall be the period which he had earned, less the period of the leave availed of.

On and from 1.1.1990, privilege leave may be accumulated up to not more than 240 days except where leave has been applied for and it has been refused.

An officer desiring to avail of privilege leave shall ordinarily give not less than 1 month's notice of his intention to avail of such leave.

10.Clause 8.1 of Regulation 38 deals with clarifications in respect of various types of leave like Casual Leave, Privilege Leave, Sick Leave, Additional Sick Leave, Maternity Leave and Extra Ordinary Leave. Clause 8.1.3 of Regulation 38 deals with clarification in respect of Privilege Leave as contemplated under Regulation 33. Sub-clause 12 of Clause 8.1.3 of the said Regulation provides that where an officer retires from the bank's service, he shall be paid a sum equivalent to the emoluments of any period of privilege leave that he

> *had accumulated and that adjustment/personal allowance will be included in emoluments for the purpose of encashment of accumulated privilege leave at the time of retirement in terms of Regulation 38 of the Officers' Service Regulations. Sub-clause 13 of Clause 8.1.3 of the said Regulation reads as follows:*
>
> *13. The above benefit is also extended to officers who opt for Voluntary Retirement either under Regulation 19(I) of Bank of Baroda Officers' Service Regulations, 1979 or under Regulation 29 of Bank of Baroda (Employees') Pension Regulations, 1995. However, this benefit is not available to officers whose services are terminated or who are compulsorily retired as punishment as per Regulation 4 of Bank of Baroda Officers Employees (Discipline and Appeal) Regulations, 1976. (Emphasis supplied) It clarifies that the benefit is not available to the officers whose services are terminated or who are compulsorily retired as punishment as per Regulation 4 of the Regulations, 1976.*

11. Thus, the contention of the learned counsel for the appellant that there is no express provision in Service Regulations qua grant of Privilege Leave in respect of a compulsorily retired person and as such, the Regulations, 1976 cannot override Service Regulations is rejected."

11.In view of the above decision of the Division Bench of this Court, the petitioner, who has been compulsorily retired, is not entitled for the encashment of privilege leave. Therefore this claim of the petitioner is rejected.

12.This writ petition is partly allowed in the above terms. No costs. Consequently connected miscellaneous petition is closed.

08.11.2024

Internet : Yes / No
Index : Yes / No

DSK

To

The Assistant General Manager,
Canara Bank,
Human Resources Management Section,
Circle Office, East Veli Street,
Madurai – 625 001.

B.PUGALENDHI.J.,

DSK

WP(MD)No.22405 of 2019

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