IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10-06-2026

CORAM

THE HON'BLE MR JUSTICE S. M. SUBRAMANIAM

AND

THE HON'BLE MR.JUSTICE N.SENTHILKUMAR

WA No. 18 of 2023

1. The Deputy General Manager,
   State Bank of India, Chennai Zone II
   Chennai – 600001

2. The Regional Manager
   (Region - III), State Bank of India, RBO III,
   Tambaram, Chennai - 45

3. The Branch Manager
   State Bank Of India, Nandambakkam Branch,
   Chennai - 600089

..Appellant(s)

Vs

A.Karunakaran
Customer Asst. State Bank of India,
Nandambakkam Branch, Chennai - 600089
ResiK.K. Salai, Rajiv Gandhi Nagar, Alapakkam,
Chennai - 116

..Respondent(s)

Writ Appeal filed under Clause 15 of the Letters Patent to allow the writ appeal and set aside the order dated 28.07.2022 in WP No.17260 of 2018 and thus render Justice.

For Appellant(s):	Mr.S.Ravindran, Senior Counsel for Mr.K.Chandrasekaran
For Respondent(s):	No Appearance

JUDGMENT

(Judgment of the Court was delivered by S.M.Subramaniam J.)

Though a vakalat was filed on behalf of the respondent, for the past two hearings none appeared. After giving two opportunities, the matter is taken up for final hearing.

2. Under assail is the writ order dated 28.07.2022 passed in W.P.No.17260 of 2018.

3. State Bank of India (SBI) is the appellant and respondent in the writ proceedings. Respondent was holding the post of Customer Assistant in SBI, Nandabakkam Branch, Chennai. On account of the allegations of misappropriation of funds, the respondent was placed under suspension on 04.05.2016. A charge memorandum was issued on 13.10.2016 stating that on 04.05.2016, respondent failed to reconcile cash balance in his Single Window Operator (SWO) counter at the end of the day resulting in cash shortage of Rs.40,000/- that on the same day he credited two fictitious credits of Rs.20,000/- each into his SB Account No.11901442059 through Green Channel Counter (GCC) without physically depositing cash. Thus, misappropriating bank's money for his personal benefits, which is a major misconduct in terms of Paragraph 5(j) of the Memorandum of Settlement, dated 10.04.2002, namely "Doing any act prejudicial to the interest of the bank".

4. A domestic enquiry was conducted. Respondent participated in the domestic enquiry and defended his case. Documents were produced and witnesses were examined. The enquiry officer submitted his final report holding that the charges of mis-appropriation was held proved. The findings of the enquiry officer in his report was accepted by the Disciplinary authority, and after complying with the rules of natural justice by issuing a second show cause notice, final order of punishment was issued vide proceedings, dated 02.01.2018, imposing the penalty of "*Removal from service with superannuation benefits i.e., Pension and/ or Provident Fund and gratuity as would be due otherwise under the Rules or Regulations prevailing at the relevant time and without disqualification from future employment".*

5. Respondent preferred an appeal and the said appeal was rejected on 08.06.2018. Thus, the writ petition came to be instituted.

6. Mr.Ravindran, learned Senior Counsel appearing on behalf of the appellant/SBI would mainly contend that the Writ Court has misinterpreted the scope of the regulations as well as the nature of the punishment inflicted on the respondent, which resulted in grant of pensionary benefits, for which the respondent is ineligible. Thus, the bank has chosen to file the present writ appeal. Though the Writ Court confirmed the punishment of removal from service, granted the pensionary benefits by misconstruing the terms of

punishment order issued by the Disciplinary authority dated 02.01.2018. As per the rules in force, the punishment of removal from service with superannuation benefits was awarded to the respondent. However, whether the removed employee entitled for such superannuation benefits are to be ascertained in the context of Rules applicable.

7. In this regard, the learned Senior Counsel for appellant would rely on the State Bank of India Employees' Pension Fund Rules. Rule 21(i) and Rule 22 would show that an employee who has completed 20 years of qualifying pensionable service is eligible for pension. However, in the present case, the respondent though served 21 years of actual service, the period of suspension was not counted by the appellant/SBI. Therefore, the actual qualifying service is calculated as 18 years. Counting of suspension period is the discretion of the employer, and while imposing the punishment of removal from service, the period of suspension was not counted as qualifying service as part of the punishment. Therefore, total qualifying service is calculated as 18 years. Thus, the respondent is not eligible for superannuation benefits as per the punishment imposed and the writ order is to be set aside.

8. Memorandum of Settlement dated 10.04.2002 between the Management and employees provides that,

> *"…*
>
> *6. An employee found guilty of gross misconduct may:*

(a) be dismissed without notice; or

(b) be removed from service with superannuation benefits i.e., Pension and/ or Provident Fund and Gratuity as would be due otherwise under the Rules or Regulations prevailing at the relevant time and without disqualification from future employment"

9. In the present case, punishment contemplated under Clause 6(b) of Memorandum of Settlement was imposed on the respondent on the proven allegation of misappropriation of bank fund. The punishment was imposed vide Proceedings, dated 02.01.2018.

10. Now, let us consider the scope of the punishment as well as the entitlement of the respondent for superannuation benefits including pension. It is not in dispute that the respondent has served 21 years in SBI. Out of which, he was under suspension for about 2 years, during the pendency of the disciplinary proceedings. Admittedly, the disciplinary authority has not counted the period of suspension, but included the period of suspension as a punishment along with the punishment of removal from service. Deducting the period of suspension, the total qualifying services of the respondent would come around 18 years.

11. Pertinently, Employees' Pension Fund Rules, Rule 21(i) reads as under,

> *"21(i). No period of leave granted without leave salary or of absence without leave shall count as pensionable service:*
>
> *Provided that a period of suspension shall count as pensionable service only to such extent as the authority which reinstates him declares it to be pensionable at the time of reinstatement or the authority which sanctions his retirement declares it to be so at the time of according the sanction."*

12. Regarding the qualifying service of 20 years as the minimum service for pension contemplated under Rule 22(i)(a), which reads as follows:

> *"22(i)(a). after having completed twenty years' pensionable service provided that he has attained the age of fifty years or if he is in the service of the Bank on or after the 1st November, 1993, after having completed ten years pensionable service provided that he has attained the age of fifty eight years or if he is in the service of the Bank on or after the 22nd May, 1998, after having completed ten years pensionable service provided that he has attained the age of sixty years;"*

13. Conjoint reading of Rule 21 and 22 would show that a period of suspension shall count as pensionable service only to such extent as the authority which reinstates him declares it to be pensionable at the time of

reinstatement or the authority which sanctions his retirement declares it to be so at the time of according the sanction. Therefore, it is apparently clear that the disciplinary authority while passing final order in the departmental disciplinary proceeding must declare that the period of suspension is treated as qualifying service for the purpose of pensionary benefits. Even otherwise, an authority competent is empowered to declare such suspension period as a qualifying service by way of a separate order. In the present case, no such order has been passed either by way of a final order while removing the respondent from service or by any other separate order declaring the period of suspension as duty for reckoning the period of suspension as qualifying service for pensionary benefits. In the absence of such declaration by the competent authority under Rule 21(i) of the Pension Regulations, the period of suspension remains as a punishment, and cannot be reckoned as qualifying service for pensionary benefits.

14. For example, if the period of suspension is one year and is treated as punishment, and if an employee has served 22 years of service, then even in the absence of a declaration that the period of suspension is qualifying service, he would be entitled to pensionary benefits under the Pension Rules.

15. However, in the present case, the respondent has served 21 years of service, out of which he was under suspension for about two years and the period of suspension was not declared as qualifying service under the

Pension Rules. Therefore, he has not completed the minimum qualifying service for grant of pension under the Employee Pension Fund Rules.

16. Though the Writ Court has confirmed the punishment of removal from service, directed the appellant to grant pensionary benefits.

17. High Court, in exercise of the powers of judicial review under Article 226 of the Constitution of India, cannot modify the punishment or grant pensionary benefits in violation of the Rules, while confirming the order of removal from service. The period of suspension is also treated as punishment along with the removal from service by the employer. Therefore, modification of punishment, would fall beyond the realm of the powers of judicial review.

18. In the present case, the Writ Court, on the one hand, confirmed the order of removal from service, but granted the pensionary benefits by declaring the period of suspension as qualifying service. The power of declaration of treating the suspension period as duty vests with the authority under the Pension Rules. Therefore, this Court is of the considered view that the declaration made for the purpose of grant of pension in violation of the Employees Pension Rules is infirm.

19. Accordingly, the writ order dated 28.07.2022 in WP No.17260 of 2018 is set aside. Writ Appeal stands allowed. No costs. Consequently, connected miscellaneous petitions, if any, are closed

(S.M.S.,J.) (N.S.,J.)
10-06-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

GD

S.M.SUBRAMANIAM, J.
AND
N.SENTHILKUMAR, J.

GD

WA No. 18 of 2023

10-06-2026