

(2005) 07 CAL CK 0014
In the Calcutta High Court
Case No : C.W.J.W.P. No. 189 of 2000

Amit Chakraborty

APPELLANT

Vs

All Bank Finance Ltd. and Others

RESPONDENT

Date of Decision : 14-07-2005

Acts Referred:

Allahabad Bank Service Rules — Rule 38
Income Tax Act, 1961 — Section 10(10AA)

Citation : 108 CWN 713 : (2006) 109 FLR 398 : (2006) 1 LLJ 394

Hon'ble Judges : Sadhan Kumar Gupta, J; Ashim Kumar Banerjee, J

Bench : Division Bench

Advocate : Sidhartha Mitra and Pradyumna Sinha, for the Appellant; Manab Ranjan and Sarbadhikari Sudipta Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Sadhan Kumar Gupta, J.—The Petitioner while on employment of the Respondent No. 1 resigned on June 29, 1998. Despite repeated requests his resignation was not accepted contemporaneously. Ultimately he was relieved from service of the Respondent No. 1 with effect from June 30, 1998. The writ petitioner was duly paid his terminal benefit save and except the leave encashment amount for a sum of Rs. 50,250.00. Hence, this writ petition.

2. In terms of the letter of appointment appearing at pages 31-35 of the writ petition the writ petitioner was entitled to leave encashment once in every four years by surrendering his privilege leave not exceeding one month at a time. The letter of appointment, however, was silent as to when such amount would become payable to the Petitioner. It is significant to note that the Respondent No. 1 being a subsidiary of Allahabad Bank did not have any service rules at the relevant point of time.

3. According to the Respondent No. 1 since there was no prevalent service rules the relevant rules applicable to the employees of Allahabad Bank would become applicable. Since the bank rules did not provide for payment of leave encashment

prior to retirement, the same was not admissible to the Petitioner because of his resignation. Initially repeated letters were written by the Petitioner, not a single one was replied to by the Respondents. The bank, however, by a belated letter dated December 29, 1999 informed the Petitioner's advocate that the Petitioner was not entitled to leave encashment benefit under any provision of law of the land.

4. In Affidavit-in-Opposition the Respondents, however, contended that even in terms of the Rule 38 of the Allahabad Bank Service Regulations leave encashment was to be paid as a part of the retiral benefit. As such the Petitioner's claim for leave encashment on "resignation could not be acceded to.

5. Mr. Sidhartha Mitra, learned counsel appearing for the Petitioner, contended that the Respondent No. 1 was a corporate entity registered under the provisions of the Companies Act, 1956. They were guided by the accounting standard prescribed for the purpose of maintaining the accounts of such corporate entity. As per accounting standard being AS 15 provision was to be made for leave encashment benefit on retirement and retirement benefit scheme was defined in such accounting standard where an employee leaving service prematurely was also included under the scheme. Mr. Mitra drew my attention to the relevant provision of the Income Tax Act to show that leave encashment amount was to be taxed even the same was paid on resignation. Mr. Mitra in this regard relied on a decision of the Apex Court in the case of Bharat Earth Movers Vs. Commissioner of Income Tax, Karnataka, . There the Apex Court held that the provision made by the assessee company for meeting the liability on account of leave encashment proportionate with the entitlement earned by the concerned employees was entitled to deduction out of the gross receipts for the accounting year. The Apex Court also held that such liability was not a contingent liability. Another single Bench decision of the Madras High Court was also relied upon by Mr. Mitra reported in Commissioner of Income Tax Vs. R.J. Shahney, . Here the provision of Section 10(10-AA) of the Income Tax Act, 1961 was considered by His Lordship and His Lordship held that "leave encashment on superannuation or otherwise" meant that the leave encashment on resignation would also come within the mischief of Section 10(10-AA) of the Income Tax Act, 1961.

6. Relying on the aforesaid two decisions Mr. Mitra contended that the Respondent No. 1 being a corporate entity was obliged to make provision for leave encashment in their balance sheet which they did as would appear from the balance sheet annexed to the petition and as such the writ petitioner was entitled to payment from the said amount as provided for in the balance sheet.

7. In my view, both the Apex Court as well as Madras High Court considered this aspect from the revenue point of view. In both the cases the issue was with regard to the applicability of Section 10(10-AA) of Income Tax Act in case of leave encashment. Both the said decisions held that leave encashment was to be provided in the balance sheet of the company and it was not contingent liability and the leave encashment on resignation would also come within the mischief of

the said Section. Hence, in case a corporate entity provides for leave encashment for their employees they would have to make provision in their balance sheet as was done in the instant case and in case such corporate entity extends such benefit to an employee even on resignation the same would come within the purview of Section 10(10-AA) of the Income Tax Act, 1961. However, this has nothing to do with the present controversy.

8. The writ petitioner was entitled to leave encashment once in every four years. The company's rules did not permit payment of such sum on resignation. The holding company being Allahabad Bank also did not make any such provision for its employees. Whether the Petitioner would be governed by the bank regulation in absence of any independent service regulation of the company or not, in my view, is immaterial. The premises on which the Petitioner approached this Court is without any basis. I have perused the letter of appointment which did not provide for payment of leave encashment on resignation. The Petitioner resigned from his service long before his actual date of retirement. In absence of a clear and unambiguous term in the letter of appointment or in the service rules (in this case there was no service rule) it would be difficult for the writ Court to grant relief to the Petitioner on affidavit evidence.

9. Hence, writ petition fails and is hereby dismissed.

10. There would be no order as to costs.

11. The Petitioner would however, be entitled to approach civil forum for redressal of his grievance if he is so entitled to in law.

12. Urgent xerox certified copy would be given to the parties, if applied for.