(2018) 01 DEL CK 0438

In the Delhi High Court

Case No : Civil Writ Petition No. 549 Of 2018

Ashok Kumar Sawhney APPELLANT

Vs

Central Bank Of India And Anr RESPONDENT

Date of Decision : 19-01-2018

Acts Referred:

Central Bank of India Employees' Pension Regulations, 1995 — Regulation 33

Citation : (2018) 01 DEL CK 0438

Hon'ble Judges : Sunil Gaur, J

Bench : Single Bench

Advocate : Umesh Singh, R.S. Mathur

Final Decision : Disposed Of

Judgement

Sunil Gaur, J

1. Vide order of 15th December, 2003, petitioner, who was Chief General Manager, Zonal Office, New Delhi of respondent-Bank was compulsory retired consequent upon a departmental inquiry against him. Petitioner claims that he had made various Representations to the authorities concerned from the year 2004 till 2006 to seek release of pension and leave encashment but to no avail. Petitioner claims that after deducting 1/3 of the pension, remaining 2/3rd was released to him in December, 2006.

2. It is the case of petitioner that his wife had suffered heart attack in the year 2006 and was bed ridden and she needed constant assistance and due to prolonged heart ailment, she died in May, 2009. From the year 2009 till November, 2017, petitioner remained silent and had not agitated his claim about receiving lesser pension or about his leave encashment.

3. Learned counsel for petitioner draws the attention of this Court to Representation of 23rd November, 2017 (Annexure P-10 colly) to submit that petitioner was under the impression that he was being paid full pension as per regulations and only in November, 2017, he had come to know that he was

receiving less pension when the question of revision of pay was discussed with the union representatives. Learned counsel for petitioner submits that the delay from the year 2009 till 2015 does not cause any prejudice to the case of petitioner, for the reason that Indian Bank's Association had for the first time permitted encashment of privileged leave for compulsorily retired officers/ employees in May, 2015. Petitioner claims that in April, 2017, he had learnt about Indian Bank's Association Resolution (Annexure P-7) permitting leave encashment on compulsory retirement, even by way of penalty and thereafter, on 5th April, 2017, petitioner had sought release of leave encashment, which stands declined vide impugned Communication of 6th April, 2017 (Annexure P-4) on the ground that Indian Bank's Association's Resolution (Annexure P-7) has been given prospective effect from 30th April, 2015. Petitioner's Representation of 23rd November, 2017 (Annexure P-10) against deduction of his 1/3rd pension has been rejected vide order of 28th November, 2017 (Annexure P-11) by relying upon Regulation 33 of Central Bank of India Employees' Pension Regulations, 1995. Learned counsel for petitioner relies upon a Division Bench's decision of this Court in Deepak Sapra Vs. Punjab National Bank 2013 SCC OnLine Del 3724, wherein benefit of leave encashment was granted to employees who had been compulsorily retired prior to the year 2015. So, it is submitted that petitioner is entitled to benefit of leave encashment and full pension because when the penalty of compulsory retirement was imposed, it was not with a rider that petitioner's 1/3rd pension would be deducted. It is therefore submitted that petitioner is entitled to full pension and benefit of leave encashment.

4. The opposition to this petition by learned counsel for respondent-Bank is on the ground that this petition is hit by delay and laches. To submit so, reliance is placed upon Supreme Court's decision in State of Orissa & Anr. Vs. Mamata Mohanty (2011) 3 SCC 436. Learned counsel for respondent-Bank submits that by operation of Regulation 33 of Central Bank of India Employees' Regulation, 1995, the authorities concerned are required to deduct 1/3rd pension where compulsory retirement is by way of penalty. It is submitted on behalf of respondents that petitioner was not illiterate and was aware of his rights and so, on the ground of delay and laches, this petition deserves to be outrightly dismissed.

5. In rebuttal, learned counsel for petitioner submits that denial of full pension is a subsisting cause and so, petitioner's claim for full pension is not hit by delay and laches and delay in seeking leave encashment stands duly explained by petitioner in his Representation of 23rd November, 2017 (Annexure P-10 colly).

6. Upon hearing and on perusal of impugned orders of 6th April, 2017 (Annexure P-4) and 28th November, 2017 (Annexure P-11), I find that so far as deduction of 1/3rd pension is concerned, it is fully justified in view of Regulation 33 of Central Bank of India Employees' Regulation, 1995. As regards petitioner's claim for leave encashment is concerned, I find that in view of narration in preceding paragraphs, the delay stands boradly explained. Impugned order of 6th April,

2017 (Annexure P-4) declining petitioner's claim for leave encashment requires to be set aside for the reason that Indian Bank's Association may have resolved to grant leave encashment on compulsory retirement in May, 2015 but a Division Bench of this Court in Deepak Sapra (Supra) has already granted benefit of leave encashment to an employee, who was compulsorily retired by way of penalty, prior to the year 2015. It is pertinent to note that Special Leave Petition against this Court's decision in Deepak Sapra (Supra) has been dismissed. Meaning thereby, Division Bench decision of this Court in Deepak Sapra (Supra) has attained finality. Applying the dictum of Deepak Sapra (Supra) to the facts of instant case, impugned order 6th April, 2017 (Annexure P-4) is quashed with direction to respondent-Bank to grant benefit of leave encashment to petitioner within twelve weeks, failing which arrears of leave encashment shall carry interest @6% p.a. from January, 2015 till the date of payment. In the facts and circumstances of this case, it is deemed appropriate to deny interest on the arrears of leave encashment from the date of accrual. However, the interest on the arrears would be payable only for a period of three years prior to the institution of this petition.

7. With aforesaid directions, this petition is disposed of.

