
(2009) 04 AHC CK 0020

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 22499 of 2009

Bank of Baroda

APPELLANT

Vs

S.K. Kool and another

RESPONDENT

Date of Decision : 28-04-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2009) 123 FLR 16

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Advocate : Ashok Trivedi, for the Appellant; K.N. Mishra, Abhishek Mishra and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Arun Tandon, J.—Heard Sri Ashok Trivedi, learned Counsel for the petitioner, Sri K.N. Mishra, learned Counsel for respondent No. 1 and learned Standing Counsel for the State-respondent.

Bank of Baroda has filed this writ petition against the award of the Presiding Officer, Central Government Industrial Tribunal cum Labour Court, Kanpur dated 20th January, 2009 in Industrial Dispute No. 35 of 2005 (S.K. Kool v. General Manager, HRM & GA Bank of Baroda, Mumbai) as notified on 29th January, 2009 by the Government of India.

2. Facts relevant for deciding the present writ petition are as follows: respondent-workman, S.K. Kool, was employed with the petitioner-Bank as Clerk-cum-Cashier-cum-Godown Keeper. He was served with a charge-sheet dated 20th November, 2001. The Disciplinary Authority of the Bank, after conclusion of the departmental proceedings, in exercise of powers conferred by Paragraph-12 (e) of the "ALL INDIA BIPARTITE SETTLEMENTS and SUPPLEMENTED BY BANK LEVEL SETTLEMENTS" (hereinafter referred to as the "BIPARTITE SETTLEMENTS"), has proceeded to impose following punishment vide order dated 19th September,

2003:

REMOVAL FROM SERVICE WITH SUPERANNUATION BENEFITS AS WOULD BE DUE OTHERWISE and WITHOUT DISQUALIFICATION FROM FUTURE EMPLOYMENT.

Copy of the punishment order has been brought on record as Annexure-4 to the writ petition. The aforesaid order of punishment has become final between the parties, inasmuch as it was not subjected to challenge any further.

3. The workman made an application for payment of pensionary benefits in terms of the order of punishment and since the application of the petitioner was not considered by the employers, an industrial dispute was raised. The Central Government vide notification dated 19th September, 2005 referred the following dispute for adjudication to the Central Government Industrial Tribunal-cum-Labour Court:

Whether the action of the management of Bank of Baroda in denying pension and encashment of leave to Sri S.K. Kool is legal and justified? If not to what relief the concerned workman is entitled.

4. The reference was registered as Industrial Dispute No. 35 of 2005. The Central Government Industrial Tribunal-cum-Labour Court after affording opportunity of hearing to the parties, by means of the award dated 20th January, 2009 as notified on- 29th January, 2009 has proceeded to answer the reference in favour of the workman with a direction upon the petitioner-Bank to pay the terminal benefits on account of superannuation within three months from the date of publication of the award, failing which the workman has been held entitled for pendente lite compound interest at the market rate over the amount due to the workman. It is against this award that the present writ petition has been filed.

5. Sri Ashok Trivedi, learned Counsel for the petitioner-Bank submits that the punishment as imposed upon the workman-respondent has to be read with the provisions which regulate the payment of pension to the workmen of the Bank. He submits that the words "AS WOULD BE DUE OTHERWISE" as used in the order of punishment would necessarily mean that workman would be entitled to such terminal benefits only if he is found otherwise eligible under the Rules providing for such payment of pension etc. He clarifies that under the provisions of "Bank of Baroda (Employees) Pension Regulations, 1995 (hereinafter referred to as the "Regulations, 1995"), specifically clause-22, removal/termination/dismissal of workman from service of the Bank would entail forfeiture of his entire past service and consequently shall not qualify for pensionary benefits. He submits that provisions of BIPARTITE SETTLEMENT under which punishment has been imposed, have to be harmonized with the provisions of Clause-22 of the Regulations, 1995. The order of punishment cannot be read in isolation. He submits that once an employee has been removed from service because of his gross misconduct like the workman-respondent, the Bank is entitled to withhold or to refuse payment of pension. In support thereof he has placed reliance upon the following judgments of the Hon"ble Supreme Court of India:

(i) Life Insurance Corporation of India Vs. R. Dhandapani, ,

(ii) Kerala Solvent Extractions Ltd. v. A. Unnikrishnan and another (2006) 13 SCC 619,

(iii) Maj. (Retd.) Hari Chand Pahiua v. Union of India and another.³

6. Contentions raised on behalf of petitioner are opposed by Sri K.N. Mishra, learned Counsel for the workman and on his behalf it is contended that from the punishment inflicted upon the workman concerned, which is strictly in accordance with the BIPARTITE SETTLEMENTS in-force between the parties, it is apparently clear that despite the punishment of removal from service, the superannuary benefits due otherwise would be payable. He submits that the words "AS WOULD BE DUE OTHERWISE" would mean that if irrespective of removal from service, the workman would be paid terminal benefit, otherwise he satisfies the conditions for such payment. He, therefore, submits that the Tribunal has considered the impact of the punishment order and the Regulations, 1995, for arriving at a fair and just conclusion in the facts of the present case. The same does not warrant any interference.

7. I have considered the submissions made by the learned Counsel for the parties and have gone through the records of the present writ petition.

The exact language of the order of punishment has already been quoted above. Clause 6 (b) of the BIPARTITE SETTLEMENTS enforced between the parties as referred to by the learned Counsel for the petitioner reads as follows:

6. An employee found guilty of gross misconduct may;

(a).....

(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, or

(c).....

It is with reference to the aforesaid provision that the punishment has been inflicted upon the workman.

8. At this stage, it would not be out of place to record that the Hon''ble Supreme Court of India in the case of State Bank of India and others Vs. T.J. Paul, , has specially laid down that the punishment provided for under the Rules alone can be inflicted and no punishment in excess/ derogation thereof is permissible. It is in this legal background that the order of punishment has to be read in light of Clause-6 (b) of the BIPARTITE SETTLEMENTS.

9. It would be worthwhile to reproduce Regulation-22 of the Regulations, 1995, which is the bone of contention before this Court and reads as follows:

22. Forfeiture of service:

(1) Resignation or dismissal or removal or termination of an employee from the service of the Bank shall entail forfeiture of his entire past service and consequently shall not qualify for pensionary benefits.

10. From a simple reading of the aforesaid Regulation it is apparently clear that a workman, who has been dismissed or removed or terminated from service of the Bank shall forfeit his entire past service and consequently shall not qualify for pensionary benefits. This is the normal rule under Regulations, 1995. However, the BIPARTITE SETTLEMENTS, which permits imposition of punishment, carves out an exception in respect of the order of punishment referable to Clause 6 (b). Such clause permits imposition of punishment of removal from service with an stipulation that workman will not suffer for forfeiture of his pensionary benefits because of such removal. There being a power with the disciplinary authority under the BIPARTITE SETTLEMENTS to inflict such punishment and further since in the facts of the present case the disciplinary authority has chosen to inflict the punishment of removal from service without forfeiture of pensionary benefits, as is clear from the simple reading of the order of punishment, it would logically follow that Regulation-22 of the Regulations, 1995, which is general in nature will not be attracted. Regulation 22 of the Regulations, 1995 is general provision regulating the grant of pensionary benefits. The order of punishment inflicted is specific in nature and deals with specific situation, wherein even after inflicting of punishment of removal from service, the disciplinary authority has directed that the workman would not entail forfeiture of his pensionary benefits.

11. It is true that both the provisions have to be harmonized. What logically follows from bare reading of the aforesaid provisions is that the disciplinary authority has the competence to inflict punishment of removal from service with a condition that such removal from service shall not in any way result in forfeiture of pensionary benefits to which the workman concerned is otherwise eligible. Only simple reading of the words "AS WOULD BE DUE OTHERWISE" would mean that irrespective of the order of punishment of removal from service, workman would be entitled to superannuation benefits, if it is found due otherwise i.e. if the workman concerned satisfies the other requirement of superannuation benefits under Regulations, 1995, namely, he has completed requisite number of years of working etc.

12. In view of the aforesaid conclusion on simple reading of the aforesaid provisions by this Court, it is found that award made by the Tribunal is strictly in accordance with law and is based on true and correct interpretation of the provisions of the BIPARTITE SETTLEMENTS read with the Regulations, 1995. Such award of the Tribunal does not warrant any interference by this Court under Article 226 of the Constitution of India.

13. So far as the judgments of the Hon''ble Supreme Court of India relied upon by the learned Counsel for the Petitioner are concerned, suffice is to point out

that none of the said judgments deal with the interpretation of the punishment order inflicted in accordance with the BIPARTITE SETTLEMENTS, as is subject-matter of consideration in the reference giving rise to this writ petition. All the judgments deal with the situation where the order of punishment was a simple order of removal/dismissal from service with no condition attached thereto and the Tribunal/ the High Court had proceeded to grant pensionary benefits only because of compassion. The Hon"ble Supreme Court has held that a person who has been removed from service because of gross-misconduct, is not entitled to the pension. In the background of the dispute at hand, the judgments relied upon by the learned Counsel for the Petitioner have no application and are clearly distinguishable.

Consequently, the writ petition lacks merit and is accordingly dismissed.