

(2012) 10 PAT CK 0050
In the Patna High Court
Case No : CWJC No. 13349 of 2012

Basant Kumar Singh

APPELLANT

Vs

The State Bank of India and Others

RESPONDENT

Date of Decision : 15-10-2012

Acts Referred:

Constitution of India, 1950 — Article 12, 136

Citation : (2013) 2 PLJR 257

Hon'ble Judges : Ramesh Kr. Datta, J

Bench : Single Bench

Advocate : Amit Prakash and Ms. Soni Shrivastava, for the Appellant; S.D. Sanjay for the SBI, for the Respondent

Final Decision : Allowed

Judgement

Ramesh Kr. Datta, J.—Learned counsel for the petitioner is permitted to delete the prayer No. 5 relating to arrears of salary on account of the wage revision since 1997 in the course of the day. Heard learned counsel for the petitioner and learned counsel for the respondent State Bank of India.

2. The petitioner had come up to this Court after having been compulsorily retired on the basis of two charges in a departmental proceeding on 31.7.2004 for payment of pension with effect from 1.8.2004, balance of gratuity amount as per the rules, interest for the delayed payment of the provident fund amount and leave encashment as per the Rules. During the pendency of the writ petition, however, the full amount of gratuity and leave encashment having been paid the petitioner confines the submission to other two reliefs prayed for by him.

3. The brief facts necessary for the adjudication of the present matter are that the petitioner joined the services of the respondent Bank as a Clerk-cum-Cashier on 4.10.1977. On 1.8.1986 he was promoted in Junior Management Grade Scale-I. The petitioner was subsequently proceeded against departmentally in which he was found guilty of the charges and directed to be compulsorily retired with

effect from 31.7.2004. The petitioner challenged the said order of compulsory retirement by filing CWJC No. 7070 of 2005 which was allowed by order dated 30.4.2007 and the decision of the disciplinary authority as also the appellate authority were quashed. Against the said order the respondent Bank filed LPA No. 500 of 2007 which was allowed by order dated 4.5.2010 with the following observations:--

We are of the view that in such a situation the order of compulsory retirement is surely not on the higher side. Mr. S.D. Sanjay on instruction submits that punishment of compulsory retirement in terms of Rule 67 of the Rules does not entail deprivation of the benefits of past service. In other words, the petitioner shall be entitled to his post retirement benefits.

4. The petitioner challenged the order of the Division Bench by filing an SLP which was also dismissed. Immediately thereafter the petitioner filed an application for receiving his post retirement dues including provident fund on 19.11.2010 and an amount of Rs. 5,67,678/- was paid to the petitioner by way of provident fund on 18.1.2012. The petitioner, however, having not been given the full pensionary dues as also statutory interest on the provident fund amount after 30.4.2004 has ultimately approached this Court.

5. In the counter affidavit filed on behalf of the respondent Bank it is stated that the petitioner was inflicted penalty of compulsory retirement from the Bank's service in terms of Rule 67(h) of the State Bank Officers Service Regulation with effect from 31.7.2004. It is further stated that while processing the proposal for sanction of pension to the petitioner it was found that total length of his service was 26 years 9 months and 27 days and the pensionable service of the petitioner was 24 years 4 months and 3 days only as he was on leave without pay for two years five months and twenty four days during his entire period of service. Thus, the petitioner did not fulfil the eligibility criteria for payment of pension as per Rule 22(i) of the State Bank of India Employees Pension Fund Rules. The said Rule has been explained in the Banks Codified Circular Instructions in the following terms:--

A member of the State Bank of India Employees Pension Fund shall be entitled for pension under Rule 22(i) while retiring from the Bank's service:--

(a) After having completed 20 years" pensionable service provided that he has attained the age of 50 years; or (b) If he is in the service of the Bank on or after 1.11.1993 after having completed 10 years pensionable service provided that he has attained the age of 58 years. Further, if he is in the service of the Bank on or after 22.5.1998, after having completed 10 years pensionable service provided that he has attained the age of 60 years vide Corporate Centre Memo No. CDO/PM/16/M/246 dated the 19th July, 2001 and Corporate Centre Circular No. CDO/PM/16/CIR/51 dated the 8th November, 2001.

(c) After having completed 20 years" pensionable service irrespective of the age he shall have attained, if he shall satisfy the Authority Competent to sanction his

retirement by approved medical certificate or otherwise that he is incapacitated for further active service.

(d) After having completed 20 years" pensionable service, irrespective of age he shall have attained at his request in writing if accepted by the Competent Authority with effect from 20th September, 1986 vide Corporate Centre Circular No. PA/CIR/140 dated the 20th September, 1986.

(e) After 25 years" pensionable service.

6. It is stated that the petitioner was less than 50 years of age when he was compulsorily retired and thus in order to get pension he required 25 years of pensionable service which he did not have and thus he was not entitled to payment of pension.

7. With regard to payment of provident fund the stand of the Bank is that in terms of Rule 33 of the SBI Employees Provident Fund Rules interest on Bank"s and Member"s contribution is payable by the Trustees up to the date a member ceases to be in the Bank"s service due to retirement, dismissal, voluntary retirement, compulsory retirement, or the day on which he dies, whichever occurs first. It is stated that the said rules are statutory in nature having been framed under the powers granted u/s 50(O) of the SBI Act, 1955 and in terms of the Provident Fund Act, 1925. It is thus submitted that as the rules are statutory in nature he would not be paid any interest after the date of compulsory retirement.

8. It is also submitted that the petitioner had applied for grant of PF dues on 19.11.2010 and the same was also not complete due to which the Bank has not granted the same and earlier also sent three notices on 22.12.2004, 14.2.2005 and 21.4.2005 on the recorded address of the petitioner by registered post and subsequently on rectification of the defects and shortcomings the payment was made on 18.1.2012. It is further submitted that since after his compulsory retirement the Bank had sent three notices to the petitioner by registered post for settlement of his terms and conditions but the petitioner did not respond to the same and thus the petitioner would not be entitled to interest on the provident fund dues.

9. Learned counsel for the petitioner submits that in the Note provided to Rule 67(h) of the SBI Officers Service Rules it is provided that in view of the Circular dated 15.4.1987 "it will not be in order to inflict the penalty of compulsory retirement unless an officer has completed required service, i.e., 25 years of service or 20 years pensionable service with attainment of age of 50 years as provided in the Pension Rules" and instructions contained therein may be meticulously followed while inflicting a stiff major penalty under Rule 67 of SBI Officers Service Rules. It is thus urged by learned counsel for the petitioner that the Bank having inflicted punishment of compulsory retirement despite the caveat contained in the Note to Rule 67(h) of the Rules it is not open to them and they are estopped from taking the plea that the petitioner is not entitled to

pension as he has not completed 25 years of pensionable service.

10. It is submitted that the rule of compulsory retirement itself mandating and the power having been invoked and defended before this Court in the writ proceedings on the ground that the punishment of compulsory retirement in terms of Rule 67 of the Rules shall entail the benefit of past service, the petitioner shall be entitled to his post retiral dues and it is not open to the Bank to take a contrary stand once the decision of this Court keeping in view the said submission has acquired finality.

11. It is also submitted by learned counsel that the respondents cannot be permitted to take advantage of their own fault as it was incumbent upon the respondents to exercise power under Rule 67(h) after verifying the fact as to whether the petitioner had the requisite years of pensionable service since the leave account was being maintained and under the custody of the respondent Bank.

12. It is further urged that having taken advantage of the provisions of Rule 67(h) in the earlier proceedings before this Court relying upon the principle of proportionality of the punishment inflicted by not forfeiting the benefit of past service, as otherwise this Court may not have interfered at the appellate stage, they are estopped from taking the plea that the service is not pensionable and the petitioner will not be entitled to any pension.

13. Learned counsel submits that if such stand is taken by the respondents at this belated stage then this Court must hold that they have played fraud upon the Court which needs to be rectified.

14. Learned counsel contends that the respondent being a banking institution, having retained the amount due and payable to the petitioner since the year 2004, then any delay in payment of the amount must incur interest on the same as retention of the money would be to the business advantage of the Bank.

15. Learned counsel also relies upon a decision of the Supreme Court in the case of *Sree Jain Swetambar Terapanthi Vid.(S) Vs. Phundan Singh and Others*, , in which it was held by the Supreme Court that the principle that emerges is that where the High Court has granted some relief by way of social justice or on equitable grounds without violating the rights of other parties, though in law such relief was not permissible, the Supreme Court would not interfere in its discretionary jurisdiction under Article 136 if the order under appeal advances the cause of justice and if it is just and equitable so to do.

16. In this regard learned counsel for the petitioner also relies upon the instructions issued by the Bank published in State Bank of India Codified Circular Instructions on Settlement of Terminal Benefits, Gratuity, Provident Fund and Pension & Family Pension, updated as on 31st August, 2009 by PPG Department, Corporate Centre (Mumbai), in which with respect to overdue interest, it is stated at page 112 of the book in the following terms:--

Overdue Interest

On completion of the disciplinary proceedings the officers may be penalized if the charges are proved. It will not be fair if this penalty is compounded by denying interest on their terminal benefits. The funds have also remained with the Bank during this period. It is decided that if disciplinary proceedings against an officer are continued after reaching the age of superannuation in terms of Rule 19(3) of the State Bank of India Officers Service Rules, he may be paid on completion of the said proceedings interest on the terminal benefits at the rate prevailing at the end of one month after retirement, payable to staff members on term deposit for the period for which the release of his terminal benefits were delayed.

17. He further relies upon the same instructions at page 112 under the heading "If no application is submitted by the employee for settlement of terminal benefits":--

(B) Punished Employee

On cessation of service by way of dismissal/compulsory retirement/removal from service, the terminal dues will have to be settled as soon as possible. Since the Bank has introduced standard application forms, it is expected that the employee will submit such applications immediately so that terminal dues are settled at the earliest. As the application may not be forthcoming from the employee who prefers to appeal against the decision, a registered letter should be sent on the employee's last known address on the lines given in ANNEXURE-32 or ANNEXURE-33 as the case may be vide Corporate Centre Circular No. CDO/ADM/SPL/1275 dated the 2nd June, 1997 and CDO/MP/14/SPL/4975 dated the 21st November, 1997.

All such cases should be settled expeditiously and the various steps to be followed in this regard are as under--

(i) On completion of the disciplinary proceedings against the employee, the concerned Branch/Office where the employee was last posted before cessation of service, should immediately take up the process even without the application from the employee and arrange for obtaining sanction of all eligible dues to the employee, irrespective of the fact whether he goes on appeal, review, legal remedy against the decision of the Disciplinary Authority. These cases should also be reported to the PPG Department for their information and guidance.

(ii) On receipt of sanction of various terminal benefits due to him/her, the concerned employee may be advised by a Registered AD letter to the last known address on record with the Bank, conveying the sanction of the dues to him/her and requesting him/her to make necessary arrangements including completion of requisite formalities, for taking delivery of the cheques relating to the terminal dues. If the employee does not come forward to take delivery of cheque, such facts should be kept on record.

Thereafter, the Bank may not be liable for payment of any overdue interest for

any further delay that may arise in encashing the terminal dues; as such delays are not attributable to the Bank. This will enable the Bank to place on record that the employee on account of his/her deeds delayed the settlement of the terminal dues. Periodical reminders by way of Registered AD letters may be sent to the ex-employee and still if there is no response to such communications, these should be kept on proper record in the usual manner. However, cases of abnormal delay may be referred to the PPG Department who in turn will guide the Office/Branch after consulting the Law Department.

(iii) In the event the employee is reinstated in the Bank's service under the order of the Reviewing/Appellate Authority or the Court, he may be readmitted to the Fund, or the matter be dealt with as directed by the appropriate authority who orders the reinstatement.

(iv) In case there is a Stay Order from the Court restraining the Bank from payment of the terminal dues, we may abide by the Court Order vide Corporate Centre Circular No. CDO/PPG/KPE/7971 dated 31st March, 1998.

18. It is submitted on the strength of the said instructions that the Bank itself recognized the fact that it would be unfair if the penalty is compounded by denying interest on the terminal benefits to the employee noting the fact that the funds remained in the Bank during the said period. It is also submitted by learned counsel that it is clearly provided in case of punished employee that the concerned Branch/Office where the employee was last posted was required to take up the process even without application from the employee and arrange for obtaining sanction of all eligible dues to the employee, irrespective of the fact whether he goes on appeal, review, legal remedy against the decision of the disciplinary authority. It is further provided that intimation should be sent to the employee by registered A/D to the last known address on record with the Bank, conveying the sanction of the dues to him/her and requesting him/her to make necessary arrangements including completion of requisite formalities, for taking delivery of the cheques relating to the terminal dues. It is submitted that none of the letters being relied upon by the respondents show that any such sanction had been made or conveyed to the petitioner stating that cheques are ready for delivery after completion and he should come forward to take delivery of the cheques after completion of the requisite formalities and thus no reliance can be placed by the respondents on the said letters.

19. Learned counsel for the State Bank of India, on the other hand, strongly places reliance upon Rule 33 of the Provident Fund Rules as also the Circulars of the Bank which requires the authorities of the Bank to intimate the concerned employee immediately after the decision of the disciplinary authority after sanction of the dues to him/her to complete necessary formalities in terms of the guidelines. It is submitted that three notices had immediately been sent after the compulsory retirement of the petitioner by registered post to which the petitioner did not respond.

20. In support of his stand that no interest is payable after date of compulsory retirement in terms of the statutory rules in operation, learned counsel for the Bank relies upon a decision of a Division Bench of the Madras High Court in W.A. No. 25 of 2006 (State Bank of India & Anr. vs. P. Sarathy) in which by an order dated 22.11.2006 the Court has upheld the validity of Rule 33 of Provident Fund Rules as follows:--

13. It is the duty of the Court to dispense justice in accordance with law. When the statutory provision is valid, it is not for the Court to issue a direction contrary to the said provision. In the case on hand, the learned Judge himself has not accepted the case of the petitioner that the Rule is opposed to public policy. While so, we are of the view that, having found that the Rule is valid, there cannot be any direction to the Bank, in violation of the provision thereof. As observed by the Hon"ble Supreme Court, without striking down the statute/provision, here Rule 33, the Court cannot issue a direction, which runs contra to the provision. We are satisfied that Rule 33 is valid in law and based on sound reasoning. The Bank is not bound or liable to pay interest to a member, who is no longer in employment. If the member has not chosen to receive his P.F. dues on his cessation of employment by making a demand as provided in the Rules and as agreed to by him before becoming a member of the Scheme, without an order/observation by the authority under Rules or judicial authority, he cannot claim any interest for the period subsequent to the cessation of his employment. We have already referred to the fact that the condition laid down in Rule 33 was made known to all employees, who are admitted to as members of the Fund after having agreed to those conditions stipulated by the Rules. We are of the view that the claim for interest contrary to the said Rule cannot be sustained. As per the Rule, interest should be paid to a member only during his tenure of employment and not thereafter, however, if it is established that the delay was not at the instance of the employee, he is entitled to interest till the amount is settled. The failure of the writ petitioner to apply for his settlement of P.F. dues because he was challenging the order of dismissal cannot be a ground to claim any benefit which is not provided for in the PF Rules. Inasmuch as the respondent/petitioner did not care to claim the PF amount after his removal from service. Any positive direction would go run contra to Rule 33 of the Rules. We further clarify that unless the employee claims the amount lying in the fund, no amount can be payable and having made a claim very belatedly, he cannot be allowed to claim interest. These relevant aspects have not been considered by the learned Judge while directing payment of interest on the P.F. amount. We accept the stand taken by the appellants/Bank.

Consequently, the order of the learned Judge, dated 12.9.2005, insofar as directing the SBI for payment of interest up to 27.6.2000 on the respondent/writ petitioner's P.F. amount is set aside. Writ appeal is allowed. No costs. Connected Miscellaneous Petitions are closed.

21. It is submitted by learned counsel that the decision of the Division Bench of

Madras High Court has clearly held that in view of the provisions of the statutory rules an employee cannot claim any interest contrary to the said rules that interest should be paid to a member only during his tenure of employment and not thereafter, however, if it is established that the delay was not at the instance of the employee, he is entitled to interest till the amount is settled. It is submitted that since the application was filed belatedly by the petitioner despite notices having been sent promptly by the Bank in the years 2004 and 2005 itself it is not a case that there is any delay at the instance of the Bank and the petitioner would not be entitled to any benefit of interest.

22. I have considered the submissions of learned counsel for the parties. To consider the issue of eligibility for pensionary benefits it is clear that under the Rules of the Bank a punishment of compulsory retirement does not amount to forfeiture of the benefits of past service. Being conscious of the said situation it has been provided in the note to Rule 67(h) of the SBI Officers Service Rules that no such punishment can be inflicted unless an officer has completed required service, i.e., 25 years of pensionable service or 20 years pensionable service with attainment of age of 50 years as provided in the pension rules. In the present matter the petitioner had completed service of 26 years 9 months and 27 days when the order of compulsory retirement was passed against him. Since he was less than 50 years of age at the relevant time therefore requirement was for completing 25 years of pensionable service. This Court is in complete agreement with the submission of learned counsel for the petitioner that the entire service record was available before the disciplinary authority before passing an order of compulsory retirement and it was incumbent upon him to check and cross-check as to whether the petitioner had completed 25 years of pensionable service or not before an order of compulsory retirement was passed and not act blindly in the matter without looking into the service record of the petitioner; the petitioner should not be deprived of his pensionary dues on account of passing of such order which would amount to an order of dismissal in the garb of passing of an order of compulsory retirement. Thus, it is not open to the Bank to take a plea after the order has been passed that the petitioner has not completed 25 years of pensionable service.

23. As a matter of fact, even before this Court the stand taken before the LPA Bench in the appeal filed against the order dated 30.4.2007 of the learned single Judge was that the punishment of compulsory retirement in terms of Rule 67 of the Rules does not entail deprivation of the benefit of past service and the petitioner shall be entitled to his post retirement benefits. The stand was taken on behalf of the respondent Bank after taking due instructions. The Division Bench accordingly allowed the appeal filed by the Bank by order dated 4.5.2010 in LPA No. 500 of 2007 in terms of the submission of learned counsel for the Bank on instruction that the punishment of compulsory retirement in terms of Rule 67 of the Rules does not entail deprivation of the benefit of past service and the petitioner shall be entitled to his post retirement benefits. Hence, the Bank cannot be permitted to turn around and say that the petitioner would not be

entitled to any part of pensionary benefit as he has not completed the requirement of pensionable service under Rule 67 of the Rules. The Bank, therefore, is estopped from taking the stand to the contrary and this Court in its equitable jurisdiction under writ proceedings would direct the Bank to treat the petitioner as having completed 25 years pensionable service.

24. It is thus held that the petitioner shall be entitled to the benefit of his pensionable dues treating him as having completed 25 years of pensionable service in terms of requirement of Rule 67(h) of the Service Rules. The petitioner would also be entitled to the benefit of interest on the pensionary dues in terms of the Circulars of the Bank at the rate stated therein.

25. Coming to the other question of grant of interest on the provident fund amount from 1.8.2004 till the date of payment, i.e., 18.1.2012, this Court is of the view that the instructions have been issued by the Bank itself from time to time with respect to payment of interest on the terminal benefits upon considerations of fairness and equity as the Bank is of the view that the penalty should not be compounded by denying interest on the terminal benefits also, keeping in view that the funds have remained with the Bank during the period.

26. So far as the reliance upon the Division Bench of Madras High Court in P. Sarathy's case (supra) by learned counsel for the respondent Bank is concerned, it must be noted that the same was decided purely on the interpretation of Rule 33 of the Provident Fund Rules but no reference is to be found in the said decision to the Bank's own instructions, Circulars and guidelines in the matter of payment of interest. In such cases the Bank having itself decided to act fairly in the matter and issued instructions not to deny interest on terminal benefits also taking into account the fact that the funds remained with the Bank during the period, it is not open to the Bank to take a plea to the contrary before this Court against such beneficial provisions in favour of the employee specially by an organization which is "State" under Article 12 of the Constitution and the authorities would be bound by their own circulars and guidelines in the matter which may be more beneficial to the employees than the statutory rules. It is not a case of executive instructions overriding the statutory rules to the detriment of a third person who can take a plea that such instructions cannot override the statutory rules but not the issuer of such instructions itself. Any such plea can thus be taken only by the employee in such a situation and not by the Bank which has to act in terms of the liberal intention expressed in the Circular to give more benefits in the matter of payment of interest than the statutory rules provide.

27. I am further of the view that the three letters dated 22.12.2004, 14.2.2005 and 21.4.2005 on which strong reliance has been placed by learned counsel for the Bank are not at all in accordance with what is required by the concerned instructions that on completion of the disciplinary proceedings against the employee, the concerned Branch/Office where the employee was last posted before cessation of service, should immediately take up the process even without

the application from the employee and arrange for obtaining sanction of all eligible dues to the employee. As a matter of fact no such steps were taken by the concerned authorities of the Bank to get the amount sanctioned from the competent authority and then send letters through registered post with A/D to the petitioner in that regard. Thus the plea of the Bank on this ground must fail.

28. It is, therefore, directed that the Bank is liable to pay interest on the provident fund dues of the petitioner from 1.8.2004 till 18.1.2012 when the amount was actually paid to the petitioner. In the light of the aforesaid discussions, the writ application is allowed in terms of the aforesaid observations and directions. Let all the remaining amounts including arrears of pension be paid to the petitioner within a period of three months from today.