(2018) 04 DEL CK 0330

In the Delhi High Court

Case No : Civil Writ Petition No. 10116 Of 2017

K N Aithal APPELLANT

Vs

Canara Bank And Anr RESPONDENT

Date of Decision : 05-04-2018

Acts Referred:

Constitution Of India, 1950 — Article 14, 16, 21
Central Civil Service (Leave) Rules, 1972 — Rule 39, 39(2)
Canara Bank (Officers') Service Regulations, 1979 — Regulation 38

Citation : (2018) 04 DEL CK 0330

Hon'ble Judges : Sunil Gaur, J

Bench : Single Bench

Advocate : Mohammad Sajid, Jasbir Bidhuri, Niyati Patwardhan

Final Decision : Dismissed

Judgement

Sunil Gaur, J

1. Quashing of Regulation 38 of Canara Bank (Officers') Service Regulations, 1979 is sought by petitioner on the ground that it contravenes Articles 14, 16 and 21 of the Constitution of India. A mandamus is sought by petitioner to respondents to release leave encashment benefit to petitioner. It is matter of record that petitioner was departmentally proceeded against and consequent upon a departmental inquiry, penalty of dismissal from service was inflicted upon petitioner in the year 2009 and there is no challenge to the penalty inflicted upon petitioner. What is sought in this petitioner is the encashment of leave of 240 days.

2. Petitioner's counsel relies upon Rule 39 of Central Civil Service (Leave) Rules, 1972 to submit that the leave encashment cannot be curtailed even in a case of dismissal, as it is a deferred salary and the leave encashment can be only curtailed if some amount is recoverable from an employee, who has been dismissed from service. Reliance is placed upon decisions in Canara Bank & Ors. Vs. Ranvir Singh 2011 (4) SCT 21; T.Veeravinothan Vs. Registrar of Cooperative

Societies, Kilpauk, Chennai & Ors. 2016(1) LLJ 730 and Ashwani Kumar Sharma Vs. Oriental Bank of Commerce 103(2003) DLT 738 (DB) in support of above submission.

3. On the contrary, learned counsel for respondent maintains that the Regulation 38 of Canara Bank (Officers') Service Regulations, 1979 is based on sound logic and principle and it cannot be negated by reference to Rule 39 of Central Civil Service (Leave) Rules, 1972 as the aforesaid Rule is not in conflict with the Regulation in question. While submitting that the decisions relied upon by petitioner's counsel have no application to the instant case, dismissal of this petition is sought by counsel for respondents.

4. Upon hearing and on perusing material on record and the decisions cited, I find that Regulation 38 of Canara Bank (Officers') Service Regulations, 1979 needs to be looked into. It reads as under:-

" 38.LAPSE OF LEAVE

Save as provided below, all leave to the credit of an Officer shall lapse on resignation, retirement, death, discharge, dismissal or termination for any reason.

Provided that where an Officer retires from the services of the Bank, he shall be eligible to be paid a sum equivalent to the emoluments of any period, not exceeding 240 days of privilege leave that he had accumulated.

Provided further that where an Officer dies while in service, there shall be payable to his legal representative, a sum equivalent to the emoluments for the period not exceeding 240 days of privilege leave to his credit as on the date of his death.

Provided also that where an Officer leaves or discontinues his services by resignation on or after the 1st April, 2001 after giving due notice under Sub Regulation (2) of Regulation 20, he may be paid a sum equivalent to the emoluments in respect of privilege leave to the extent of half of such leave to his credit on the date of cessation of service, subject to a maximum of 120 days."

5. Rule 39 of Central Civil Service (Leave) Rules, 1972 is reproduced as under:-

" 39. Leave/Cash payment in lieu of leave beyond the date of retirement, compulsory retirement or quitting of service:

(1) No leave shall be granted to a Government servant beyond-

(a) the date of his retirement, or

(b) the date of his final cessation of duties, or

(c) the date on which he retires by giving notice to Government or he is retired by Government by giving him notice or pay and allowances in lieu of such notice, in accordance with the terms and conditions of his service, or

(d) the date of his resignation from service.

(2) (a) Where a Government servant retires on attaining the normal age prescribed for retirement under the terms and conditions governing his service, the authority competent to grant leave shall suo motu, issue an order granting cash equivalent of leave salary for both earned leave and half pay leave, if any, at the credit of the Government servant on the date of his retirement subject to a maximum of 300 days;

(b) The cash equivalent of leave salary under clause (a) shall be calculated as follows and shall be payable in one lumpsum as a one-time settlement, -

(i) Cash Equivalent for earned leave

Pay admissible on the date of retirement plus Dearness Allowance admissible on that date

30 x

Number of days of unutilized earned leave at credit subject to the total of earned leave and half pay leave not exceeding 300 days

ii) Cash payment in lieu of half pay leave component

Half pay leave salary admissible on the date of retirement plus Dearness Allowance admissible on that date

Number of days of half pay leave at credit subject to the total of earned leave and half pay leave at credit not exceeding 300 days

Note. - The overall limit for encashment of leave including both earned leave and half pay leave shall not exceed 300 days.

(c) To make up the shortfall in earned leave, no commutation of half pay leave shall be permissible.]

(3) The authority competent to grant leave may withhold whole or part of cash equivalent of earned leave in the case of a Government servant who retires from service on attaining the age of retirement while under suspension or while disciplinary or criminal proceedings are pending against him, if in the view of such authority there is a possibility of some money becoming recoverable from him on conclusion of the proceedings against him. On conclusion of the proceedings, he will become eligible to the amount so withheld after adjustment of Government dues, if any.

(4)(a) Where the service of a Government servant has been extended, in the interest of public service beyond the date of his retirement, he may be granted-

(i) during the period of extension, any earned leave due in respect of the period of such extension plus the earned leave which was at his credit on the date of his retirement subject to a maximum of 180 days/ [300 days [* * *]] as the case may be, as prescribed in Rule 26.

[(ii) after expiry of the period of extension, cash equivalent in the manner provided in clause (b) of sub-rule (2) in respect of both earned leave and half pay leave at credit on the date of retirement, plus the earned leave and half pay leave earned during the period of extension reduced by the earned leave and half pay leave availed of during such period, subject to a maximum of 300 days.]

NOTE. - [Not printed.]

(b) The cash equivalent payable under sub-clause (ii) of Clause (a) of this sub-rule shall be calculated in the manner indicated in Clause (b) of sub-rule (2) above.

[(5) A Government servant who retires or is retired from service in the manner mentioned in clause (c) of sub-rule (1), may be granted suo motu, by the authority competent to grant leave cash equivalent of the leave salary in respect of both earned leave and half pay leave at his credit subject to a maximum of 300 days. The cash equivalent payable shall be the same as in sub-rule (2) of rule 39.]

(6)(a) [(i) where the services of a Government servant are terminated by notice or by payment of pay and allowances in lieu of notice or otherwise in accordance with the terms and conditions of his appointment, he may be granted, suo motu, by the authority competent to grant leave, cash equivalent in respect of both earned leave and half pay leave at his credit on the date on which he ceases to be in service subject to a maximum of 300 days and the cash equivalent payable shall be the same as in sub-rule (2) of rule 39.]

(ii) If a Government servant resigns or quits service, he may be granted, suo motu, by the authority competent to grant leave, cash equivalent in respect of earned leave at his credit on the date of cessation of service, to the extent of half of such leave at his credit, subject to a maximum of [150 days].

[(iii) a Government servant, who is re-employed after retirement may, on termination of his re-employment, be granted, suo motu, by an authority competent to grant leave, cash equivalent in respect of both earned leave and half pay leave at his credit on the date of termination of re-employment subject to a maximum of 300 days including the period for which encashment was allowed at the time of retirement and the cash equivalent payable shall be the same as in sub-rule (2) of rule 39.]

(b) The cash equivalent payable under Clause (a) shall be calculated in the manner indicated in Clause (b) of sub-rule

(2) and for the purpose of computation of cash equivalent under sub-clause (iii) of Clause (a), the pay on the date of the termination of re-employment shall be the pay fixed in the scale of post of re-employment before adjustment of pension and pension equivalent of other retirement benefits, and the Dearness Allowance

appropriate to that pay."

6. Upon a bare perusal of the aforesaid Rule and Regulation, this Court finds that there is no conflict between the aforesaid Rule and Regulation. In the considered opinion of this Court, there is a sound logic and rationale in denying the leave encashment to an employee who has been dismissed from service.

7. Reliance placed upon the decision of Punjab & Haryana High Court in Ranvir Singh (supra) and of this Court in Ashwani Kumar Sharma (supra) is of no avail as the said decisions pertain to resignation/voluntary retirement/compulsory retirement. Instant case is of dismissal from service. The decision in T.Veeravinothan (supra) cannot advance the case of petitioner as the subject matter of the said decision was bye-law No.8 which was peculiar to the said case. The decision of High Court of Madras in T.Veeravinothan (supra) fails to persuade this Court to conclude that in a case of dismissal, benefit of leave encashment ought to be granted. Relevantly, the Regulation in question was not the subject matter of consideration in the said decision.

8. Be that as it may. There is no justification whatsoever to treat a dismissed employee at par with an employee who has resigned, retired or had sought premature retirement. Denial of leave encashment to an employee who has been dismissed from service is justifiable. Impugned Regulation does not suffer from vice of arbitrariness, nor can be said to be discriminatory.

9. In view of the aforesaid, no case for quashing of the impugned Regulation is made out.

10. This petition is accordingly dismissed.

