
(2012) 12 DEL CK 0026
In the Delhi High Court
Case No : Writ Petition (C) 12993 of 2009

K.L. Chandna

APPELLANT

Vs

Punjab National Bank

RESPONDENT

Date of Decision : 05-12-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 2 LLJ 275

Hon'ble Judges : Siddharth Mridul, J

Bench : Single Bench

Advocate : K.G. Mishra, for the Appellant; Jagat Arora, for the Respondent

Final Decision : Dismissed

Judgement

Siddharth Mridul, J.—The present writ petition has been preferred under Article 226 of the Constitution of India for seeking following reliefs:-

(a) Issue appropriate writ or order or direction to the respondent bank to fix the pension payable to the petitioner on the basis of wages/salary payable to the petitioner in terms of respondent bank letter dated 3rd March, 2009.

(b) Direct respondent bank to pay the difference of arrear of enhanced pension mentioned as above less the pension already paid along with interest @ 18% per annum from the date of payment till actual date of payment.

(c) Direct respondent bank to pay the commutation amount on the basis of enhanced pension less the commutation amount already paid along with interest @ 18% from the date of superannuation/compulsory retirement till the date of actual payment.

This matter had a chequered history. Infact this is the third round of litigation between the parties.

2. The brief facts as are necessary for adjudication of the present petition are as follows:-

(i) On 1st August, 1957, the petitioner joined the erstwhile New Bank of India, now merged with the respondent bank, on the post of Clerk.

(ii) Thereafter the petitioner was promoted as Assistant General Manager on 16th January, 1989.

(iii) Vide order dated 15th July, 1990, the petitioner was placed under suspension and subsequently a charge sheet dated 31st July, 1990 was served upon him.

(iv) On the 11th August, 1992, a punishment of compulsory retirement was imposed upon the petitioner under Regulation 4(1) of New Bank of India Officers' (Disciplinary and Appeal) Regulations, 1982 (hereinafter referred to as the said Regulations). The Disciplinary Authority further ordered that the petitioner would not be entitled to any benefits for the period of suspension except subsistence allowance paid/payable to him.

(v) An appeal preferred by the petitioner against the said order dated 11th August, 1992 came to be dismissed by the Appellate Authority vide order dated 9th February, 1993.

(vi) The New Bank of India merged into the Punjab National Bank (respondent herein) vide notification dated 4th September, 1993.

(vii) Aggrieved by the order dated 11th August, 1992 passed by the Disciplinary Authority as also the order dated 9th February, 1993 passed by the Appellate Authority, the petitioner instituted writ petition being Writ Petition (Civil) No. 5436/1998 before this Court.

(viii) This Court vide judgment dated 19th September, 2001 relying upon the decision of the Supreme Court in Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, , set aside the penalty of compulsory retirement imposed upon the petitioner, holding that the Disciplinary Authority while imposing the said penalty violated the principles of natural justice, as no personal hearing was afforded to the petitioner by the Disciplinary Authority. The direction of this Court to the extent relevant reads as under:-

17. Under these circumstances I am of the considered opinion that the impugned order of the punishment is required to be set aside, which I hereby do and remit the matter back to the Disciplinary Authority to proceed from the stage of giving opportunity of hearing to the petitioner in the light of the decision of Kunj Behari Mishra's case (supra). The reasons recorded by the Disciplinary Authority for disagreeing with the findings shall be taken as the tentative opinion and the same shall be communicated to the petitioner directing him to show-cause why the Disciplinary Authority should not disagree with the findings of the Enquiry Officer, in the light of the decision given by the Supreme Court in Kunj Behari Mishra's case (supra). The petitioner is accordingly directed to be reinstated in service but would continue to be under suspension till an effective order is passed by the respondent.

18. This brings me to the next aspect as to whether the petitioner should be directed to be paid arrears of salary/subsistence allowance. Since the petitioner would continue to be under suspension he is only entitled to payment of subsistence allowance. But the petitioner did not approach this court for several years and Therefore, I consider it fit and proper to order that the petitioner shall not be entitled to any subsistence allowance for the period from the date of order of compulsory retirement till the date of filing of the writ petition. The petitioner shall be entitled to payment of subsistence allowance from 20.7.1998 and the same shall be paid to him at the appropriate rate in accordance with law till a final order is passed by the Disciplinary Authority in that regard. The petition stands allowed with the aforesaid observations and directions but without any costs.

(ix) From a reading of the judgment of this Court dated 19th September, 2001 it is clear that although the petitioner was reinstated in service he would continue to be placed under suspension till a final order was passed by the Disciplinary Authority. This Court further directed that since the petitioner had approached the Court only on 20th July, 1978, approximately six years after the imposition of penalty of compulsory retirement on the petitioner, therefore, he would be entitled to suspension allowance only from the date of filing the writ petition, which was 20th July, 1998..

(x) However, it is pertinent to note that during the pendency of the writ petition, the petitioner attained superannuation on the 30th April, 1998.

(xi) Pursuant to the judgment of this Court dated 19th September, 2001, the matter was remitted back to the Disciplinary Authority and personal hearing was afforded to the petitioner before the Disciplinary Authority on the 12th February, 2001.

(xii) The Disciplinary Authority by virtue of its order dated 29th April, 2002 once again inflicted the punishment of compulsory retirement on the petitioner w.e.f. 30th April, 1998, that is the date of petitioner's superannuation keeping in mind the peculiar facts and circumstances of the case of the petitioner.

(xiii) The petitioner was paid pension by virtue of the pension order dated 21st March, 2003.

(xiv) Subsequently, the petitioner instituted a Civil Writ Petition before this Court being W.P.(C) 3630/2005 seeking payment of wages, gratuity, leave encashment, medical expenses and difference of suspension period wages as per his purported entitlement as on 30th April, 1998 along with overdue interest @ 12%.

(xv) It is noteworthy that the stand of the petitioner in the said Writ Petition (Civil) No. 3630/2005 was that he ought to be paid gratuity, leave encashment etc. according to the order dated 29th April, 2004 which in effect compulsory retired the petitioner from the date of superannuation i.e. 30th April, 1998 and not according to the earlier order of compulsory retirement on 11th August, 1992

which had been overruled by this Court by virtue of the said judgment dated 19th September, 2001. It was submitted by the petitioner that his retiral dues had been paid to him according to his pay on 15th July, 1990 as he had been previously compulsorily retired vide order dated 11th August, 1992, but since the order dated 11th August, 1992 stood set aside, he ought to be paid treating his date of retirement as 30th April, 1998. In other words, it was the petitioner's contention that the period between the earlier order of compulsory retirement dated 11th August, 2002 and subsequent order of compulsory retirement dated 29th April, 2004 which retires the petitioner w.e.f. 30th April, 1998 has to be taken into account for the purpose of computing gratuity, leave encashment etc.

(xvi) The said Writ Petition (Civil) No. 3630/2005 came to be disposed of by this Court by its judgment dated 27th July, 2006. This Court held that with respect to the gratuity, the date of retirement of the petitioner should be taken to be 30th April, 1998 and the gratuity ought to be calculated based upon the number of years of service up to 30th April, 1998. The relevant portion of the said judgment dated 27th July, 2006 is extracted below:-

5. So far as the gratuity is concerned, the number of years spent in service is also a relevant factor. Since the date of retirement has now become 30.04.1998, gratuity will have to be made by calculating the number of years of service up to 30.04.1998. The payment of gratuity has to be made under the Payment of Gratuity Act, to which no objection has been raised by the petitioner. Accordingly, the gratuity up to 30.04.1998 be paid as per the rates provided by the Payment of Gratuity Act. The respondent shall make all the payments due to the petitioner as per the above observations with a period of two months. The petitioner shall be entitled to interest @ 6% on the late payment of the arrears of gratuity. No further interest is payable on any other dues.

(xvii) An appeal preferred on behalf of the respondent bank assailing the judgment dated 27th July, 2006 before the Division Bench as well as the decision of the Division Bench rejecting the appeal which was carried in appeal to the Supreme Court was dismissed.

(xviii) Consequently, the petitioner was paid gratuity and leave encashment on the basis of the revised basic salary payable to the petitioner as on 30th April, 1998, by taking into account 41 years of service tendered by the petitioner, by means of letter dated 19th February, 2009 issued by the respondent bank.

(xix) Subsequently, on an enquiry by the petitioner to the respondent bank as to the quantum of basic pay for the purpose calculating gratuity the bank responded vide letter dated 3rd March, 2009. The contents of the said letter dated 3rd March, 2009 are relevant and are reproduced hereinbelow:-

PUNJAB NATIONAL BANK

Human Resources Development Division

Head Office: New Delhi

Ref: HRD/MISC

Date: 3rd March, 2009

Shri K.L. Chandra

L-165, Model Town

Sonepat.

Without Prejudice

Reg: Settlement of Balance Amount of Gratuity & Interest thereon, and leave encashment-Orders of Hon''ble Delhi High Court.

Please refer your letter dated 24.02.2009 in connection with the above. For your immediate information, we are giving hereunder the details of Basic Pay and Salary payable to you on notional basis as on 30.04.2008; and the same has been taken into consideration while calculating the balance amount of gratuity and interest thereon, as well as PL encashment

The above is for your kind information please

Thanking you,

Yours faithfully

Sd/-

CHIEF MANAGER

(xx) On the strength of the letter dated 3rd March, 2009, the petitioner represented before the respondent bank by means of a letter dated 13th March, 2009 seeking re-fixation of his pension as per the revised basic pay, payable to him as on 30th April, 1998

(xxi) The respondent bank replied to the said representation by its letter dated 25th May, 2009, thereby informing the petitioner that pension was payable to the petitioner on the basis of salary payable to him as on 15th July, 1990, that being the effective date of his retirement.

(xxii) Being dissatisfied by the response of the respondent bank, the petitioner has approached this Court by way of the present writ petition seeking re-fixation of his pension in accordance with the letter dated 3rd March, 2009 issued by the respondent bank.

3. It was argued on behalf of the petitioner that the claim of the petitioner hinges upon the fact that for gratuity and leave encashment, the basic pay taken into account by the respondent bank is notional pay fixed as would be payable to the petitioner as on 30th April 1998, whereas the pension of the petitioner has been fixed according to the scale drawn by the petitioner as on 15th July, 1990.

4. In this premise, learned counsel for the petitioner submits that there cannot

be two sets of pay scale in case of a single person. It is urged that in the present case the respondent bank is not correct in taking different pay scales for gratuity and fixation of pension.

5. It is further contended by counsel that the practice adopted by the respondent bank in treating suspension period as spent on duty for calculating gratuity and not for fixing pension is manifestly erroneous in view of Rule 38(4) of the Punjab National Bank Employees Pension Regulation, 1995 (hereinafter referred to as the said Regulation of 1995). It is, therefore, urged by counsel that as the gratuity was paid at a notional higher rate of pay, therefore pension should also be re-fixed accordingly.

6. Per contra, the counsel for the respondent contended that the action of the respondent bank in fixing pension of the petitioner as per his last drawn pay on 15th July, 1990 is within the Rules as applicable to the employees of Punjab National Bank. The learned counsel emphatically placed reliance on Rule 21 of the said Regulation of 1995 in order to canvass the point that once the departmental inquiry against an employee culminates in imposition of a major penalty, the period during which an employee remains under suspension, shall not be counted as period in service for the purpose of calculating pension. Therefore, the petitioner is not entitled to any enhanced

7. In order to appreciate the contentions advanced on behalf of the counsel for the respondent it would be appropriate to extract Rule 21 of the said Regulation of 1995. The said Regulation of 1995 reads as under:-

Period of suspension

Period of suspension of an employee pending enquiry shall count for qualifying service where, on the conclusion of such enquiry, he has been fully exonerated or the suspension is held to be wholly unjustified, and in other cases, the period of suspension shall not count as qualifying service unless the Service Regulations or Discipline and Appeal Regulations or settlements governing such cases expressly declares at the time it shall count to such extent as such authority may declare.

8. Counsel appearing on behalf of the respondent next urged that under Rule 38 (4) of the said Regulation of 1995, if an employee has been absent from duty or had been suspended during the last 10 months of service, the aforesaid period would not be taken into consideration for the calculation of pension benefits. The relevant Rule 38(4) is reproduced hereinbelow:-

38. Determination of the period of ten months for average emoluments

...

4) if during the last ten months of the service an employee had been absent from duty on extraordinary leave on loss of pay or had been under suspension and the period whereof does not count as service, the aforesaid period of extraordinary leave or suspension shall not be taken into account in the calculation of the

average emoluments and an equal period before the ten months shall be included.

9. It was lastly contended by counsel for the respondent bank that the letter dated 3rd March, 2009 which formed the basis of the claim in this writ petition was issued to the petitioner for settlement of gratuity dues as per the orders of the High Court passed in W.P.(C) No. 3630/2005 dated 27th July, 2006 and that the said letter would have no role for fixing the pension of the petitioner.

10. It was urged by the learned counsel that pension and gratuity are separate entities being governed by different laws and regulations. In the present case it is observed that the petitioner was originally suspended on the 15th July, 1990 and thereafter he faced disciplinary proceedings by his erstwhile employer namely New Bank of India. The Disciplinary Authority had passed an order of punishment dated 11th August, 1992 compulsorily retiring the petitioner from service. The petitioner had filed a writ petition being W.P.(C) 5436/1998 challenging this punishment order dated 11th August, 1992. The said writ petition had been disposed of on 19th September, 2001 by this Court whereby the punishment order was set aside and the matter was remitted back to the Disciplinary Authority to give opportunity of hearing to the petitioner. It was, however, clearly observed that the petitioner would continue under suspension and that the petitioner would not be entitled for subsistence allowance from the date of the order of compulsory retirement i.e. 11th August, 1992 till the date of filing of the writ petition on 20th July, 1998.

11. It is further observed in the present case that the petitioner thereafter remained under suspension and was compulsorily retired once again by the order of the Disciplinary Authority on 29th April, 2002 from the due date of petitioner's superannuation on 30th April, 1998.

12. Although in the compulsory retirement order dated 29th April, 2004 there was no specific mention with regard to the suspension period and its treatment, it is observed that the period of suspension of an employee pending enquiry can count for qualifying service only where upon the conclusion of such enquiry he has been fully exonerated; and in other case, the period of suspension will not count as qualifying service unless the service regulations or discipline and appeal regulations or settlements governing such cases expressly declare at that time that it shall count to such extent as such authority may declare. Therefore, till such time that the Disciplinary Authority came to the conclusion that the period of suspension would be counted for calculating the period of qualifying service for pension, the employee upon whom a penalty had been inflicted after enquiry was not entitled to count the period of suspension towards qualifying service.

13. Therefore, there is no merit in the submission of the petitioner that because the period under suspension was counted for the purpose of payment of gratuity notionally, it should also be so counted and reckoned for the purpose of calculating pension. As noticed above, the gratuity, leave encashment etc. had

been calculated by counting the number of years spent in service up to 30th April, 1998 upon the specific directions of this Court in W.P.(C) 3630/2005 and in compliance thereof. However, the pension the petitioner was entitled to was reckoned on the basis of the said Regulations of 1995, specifically Regulation 21 and 38 (4) thereof which provides that if during the last 10 months of service an employee had been under suspension and the period thereof does not count as service, the aforesaid period of suspension shall not be taken into account in the calculation of the average emoluments and an equal period before the ten months shall be included. In this behalf it is noticed that the petitioner had continued on suspension from 15th July, 1990 to 30th April, 1998, the due date of petitioner's superannuation (from which he was compulsorily retired), and that, in that view of the matter no fault can be found with the respondents' action in calculating the petitioner's pension on the basis of pay as on 15th July, 1990, and paying his dues accordingly.

14. In the circumstances, in my opinion the present petition is devoid of merit and is hereby dismissed. No costs.