(2002) 06 KAR CK 0065

In the Karnataka High Court

Case No : Writ Petition No. 6435 of 2000

K.S. Vasudeva Tatachar — APPELLANT

Vs

State Bank of Mysore and Another — RESPONDENT

Date of Decision : 13-06-2002

Acts Referred:

State Bank of Mysore Employees (Pension) Regulations, 1995 — Regulation 46

Citation : (2002) 5 KarLJ 437 : (2002) 3 KCCR 223 SN : (2002) 3 LLJ 1029

Hon'ble Judges : R. Gururajan, J

Bench : Single Bench

Advocate : P.S. Rajagopal, for the Appellant; S.V. Narasimhan, for the Respondent

Judgement

R. Gururajan, J.—The petitioner, a retired official of the State Bank of Mysore is before this Court seeking for the following prayers:

"(a) Quash the order dated 6-10-1999 under Annexure-C to the writ petition insofar as it directs recovery from the petitioner at the rate of 50% of the provisional pension by issue of a writ in the nature of certiorari and direct the respondents to pay full provisional pension to the petitioner and also refund to the petitioner the amounts illegally recovered pursuant to Annexure-C from the provisional pension payable to the petitioner together with interest at 18% per annum from the dates the respective pension amounts became due to the petitioner until dates of payment.

(b) Quash the order dated 5-11-1999 issued by the 1st respondent in No. Nil (under Annexure-E to the writ petition) and the order bearing No. P and S/SB, dated 5-11-1999 (under Annexure-F to the writ petition) by issue of a writ in the nature of certiorari and direct the respondents to pay a sum of Rs. 2,63,127-17 to the petitioner forthwith which is the employee''s contribution to provident fund together with interest thereon at 18% per annum from 1-7-1999 by issue of a writ in the nature of mandamus.

(c) Issue such other appropriate writ, order or direction as this Hon''ble Court deems fit to grant in the interest of justice and equity, including the award of costs of this writ petition".

2. Admitted facts are as under:

The petitioner joined his services of the Bank in the year 1962 as a Clerk. He was promoted from time to time. He retired from the service on 30-6-1999. Certain disciplinary proceedings were initiated against the petitioner in the matter. The petitioner reserves his right to challenge those proceedings.

The petitioner is governed by State Bank of Mysore Officers'' (Service) Regulations, 1979 (for short "Regulations") and the State Bank of Mysore Employees'' (Pension) Regulations, 1995 (for short "Pension Regulations"). The respondents issued an order in terms of a Regulation 19(2). The petitioner however says that he is entitled for his own contribution to provident fund and he is also entitled for emoluments for the period of accumulated privilege leave. He further states that he is not paid his contribution of provident fund/pension/ encashment of leave. He got a notice issued in this regard. Thereafter, Annexure-B is issued by the respondents. The respondents issued an order at Annexure-C ordering a provisional pension to the petitioner. The petitioner is also issued with two orders dated 5-11-1999 and order dated 5-11-1999 in terms of Annexures-E and F. The petitioner is challenging these orders. The petitioner has urged several grounds in support of his prayer.

3. Notice was issued and the respondents are represented. They support their action.

4. Respondents state in the affidavit that the amount of provisional pension is in accordance with law. They rely on Regulation 49. They also justify their stand with regard to their action in the light of regulations.

5. Heard the Counsels for the parties.

6. Perused the materials produced before this Court.

7. The petitioner is admittedly challenging Annexures-C, E and F. Annexure-C is an order with regard to pension calculation sheet. It is seen that the respondent has calculated the pension payable to the petitioner which works out to Rs. 25,092-78. They have however recovered 50% from the said pension. This is questioned by the petitioner. Parties are governed by regulations. Regulation 42 provides for pension subject to good conduct. Regulation 43 provides for withholding or withdrawal of pension. It provides for withholding or withdrawal only in those cases where pensioner is convicted of a serious crime. Regulation 46 with which we are concerned provides for provisional pension. It reads as under:

"46. Provisional Pension.--(1) An employee who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued, a provisional pension, equal to the maximum pension which would have been admissible to him, would be allowed subject to adjustment against final retirement benefits sanctioned to him, upon conclusion of the proceedings but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld etc., either permanently or for a specified period".

8. A reading of the said regulation would show that it would not provide for any deduction as sought to be done in the case on hand. Regulation 49 is not available to the respondent from a reading of Regulation 49 itself. Regulation 49 deals only with recovery from a commutation pension or family pension. Provisional pension under the regulation can be equated to a subsistence allowance. The said pension is paid to keep the body and soul together. In the circumstances and in the absence of any regulations or any other contract between the parties, no deduction is permissible from the provisional pension as has been done in this case by the Bank.

9. Insofar as Annexure-E is concerned, it is seen that the respondents have calculated the provident fund and gratuity and while so calculating, they have given a deduction of Rs. 1,00,296-00. They have deducted the liabilities towards P.F. Loan, Festival Advance, Consumer Loan, Vehicle Loan, Housing Loan, Society dues, Computer Loan, etc. The petitioner''s complaint is that these deductions are impermissible in law. No regulations are shown to me providing for such deduction in such circumstances. This Court in some of the identical circumstances in W.P. No. 15576 of 1989, dated 25-5-1998 has ruled as under:

"5. Gratuity, Provident Fund and Pension are recognised retiral benefits available as of right to an employee for his long, continuous and unblemished service in an organisation, whether such retirement, is the result of superannuation, retirement, resignation etc. Provisions for payment of Gratuity, Employees'' Provident Fund, Pension etc., are codified under Special Enactments and they are all piece of beneficial legislations made in the interest of employees in an organisation".

This Court has rendered the judgment after noticing the judgment of the Supreme Court in Union of India v. Jyoti Chit Fund and Finance and Ors. In the light of these two judgments and in absence of any regulations, it is not open to the respondents to deduct these amounts from the terminal benefits. In the circumstances, the said deduction is unsustainable in law.

10. Petitioner''s further complaint is that the respondent-Bank has not paid the gratuity and privilege leave. I deem it proper to order for payment of the same, if available to the petitioner and in accordance with law.

In the result, this petition is allowed. Annexures-C and E are set aside.

A direction is issued to the respondents to provide the entire provisional pension and also the provident fund in terms of this order in addition to cash equivalent towards privilege leave if available to the petitioner.

I make it clear that this order shall not come in the way of the respondents recovering the arrears in a manner known to law and in accordance with law.

Ordered accordingly. No costs.

