
(2011) 04 SHI CK 0301
In the High Court Of Himachal Pradesh
Case No : C.W.P. 1591 of 2007

L.S. Thakur

APPELLANT

Vs

Punjab National Bank and Others

RESPONDENT

Date of Decision : 05-04-2011

Acts Referred:

Citation : (2011) 2 ShimLC 239

Hon'ble Judges : Deepak Gupta, J

Bench : Single Bench

Judgement

Deepak Gupta, J.—By means of this petition, the Petitioner has prayed that Respondent Punjab National Bank be directed to release the Pension, Gratuity and Provident Fund to him.

2. Briefly stated the facts of the case are that the Petitioner was serving in the Bank as Clerk-cum-Cashier on 17-9-1973. An inquiry was initiated against the Petitioner and he was removed from service vide order dated 26.12.1989. It is not necessary to give all the details but in CWP No. 556 of 1990, this Court vide its order dated 14.8.1997 directed the Bank to reconsider the case of the Petitioner only with regard to the penalty imposed against the Petitioner. Thereafter the statutory appeal of Petitioner was re-heard and order of removal was modified and changed to an order of compulsory retirement on 11.11.1997. The Petitioner challenged the order of compulsory retirement by filing CWP No. 804 of 1998. In that petition he also claimed retrial benefits etc. on account of his compulsory retirement. The said petition was dismissed on 2.12.1998 on merits. However, prayer of the Petitioner for grant of pensionary benefits was not adjudicated upon and liberty was given to him to again approach the Bank for relief. The Petitioner filed SLP in the Apex Court against the said judgment, which was rejected. Thereafter Petitioner has filed representation to the authorities but nothing was conveyed to him and he filed CWP No. 353 of 2000, which was decided on 10.11.2006 wherein this Court directed the Bank to either take decision or convey the decision already taken to the Petitioner. Thereafter on

8-12-2006, the Bank communicated the decision of rejection dated 21-3-2000.

3. The prayer of Petitioner for grant of pensionary and other retiral benefits on account of compulsory retirement was rejected on two grounds. Firstly, that the Petitioner had retired prior to the coming into force of the scheme and he could not be granted pensionary benefits and he had not exercised his option to be covered under the said scheme for pensionary benefits.

4. It is pertinent to mention that the Scheme was notified w.e.f. 1.11.1999. The stand of the Bank is that the Petitioner retired from service on 26.12.1989 and, therefore, is not covered by the Scheme. Shri P.P. Chauhan contended that the order of compulsory retirement was passed on 11.11.1997 after the Scheme came into force. This submission in my view cannot be accepted because though the order of compulsory retirement may have been passed on 11.11.1997 it will be effective from 26.12.1989 i.e. the day on which he was removed from service. The order of compulsory retirement only replaced the order of removal and therefore will have effect from the said date and it has to be effective from 26-12-1989.

5. In P.H. Kalyani Vs. Air France Calcutta, a Constitution Bench of the Apex Court held that when a Labor Court/ Industrial Tribunal finds that the domestic enquiry was defective and gives the party an opportunity to again lead evidence and thereafter another disciplinary order is passed and that order is held to be valid, then the subsequent order relates back to the date when the original order of dismissal was passed. Following the laid down by the Constitution Bench, the Apex Court in Punjab Dairy Development Corporation Limited and another, etc. Vs. Kala Singh, etc., also took the same view. Thus it is apparent that the order of compulsory retirement passed in the year 11-11-1997 would relate back to 26-12-1989 when the original order of dismissal was passed

6. However, the matter does not end here. Sh. P.P Chauhan, learned Counsel for the Petitioner submits that even if the order of compulsory retirement relates back to 1989, the Petitioner would be entitled to pension in terms of Clause 34 of the Punjab National Bank (Employees") Pension Regulations-1995 which reads as follows:

(1) Employees who have retired from the service of the Bank between the 1st day of January, 1986 and the 31st day of October, 1993 shall be eligible for pension with effect from the 1st day of November, 1993.

(2) The family of a deceased employee governed by the provisions contained in sub-regulation (7) of regulation 3 shall be eligible for family pension with effect from the 1st day of November, 1993.

7. This clause clearly shows that even the employees who retired between 1.1.1986 and 31-10-1993 are entitled for such pension. According to the Bank the option was to be exercised during the period prescribed in the Regulation. That may be true but at that time the Petitioner stood removed from service and

therefore could not have exercised the option.

8. Sh. Ajay Kumar learned Counsel for the Bank also submits that Clause 33 which deals with the Compulsory Retirement Pension, specifically provides that only an employee who has been retired from service as a penalty on or after 1st day of November, 1993 may be granted pension at a rate not less than two-thirds and not more than the full pension admissible to him on the date of his compulsory retirement if otherwise he was entitled to such pension on superannuation on that date. Clause 33 reads as follows:

(1) An Employee compulsorily retired from service as a penalty on or after 1st day of November, 1993 in terms of Discipline and Appeal Regulations or settlement by the authority higher than the authority competent to impose such penalty may be granted pension at a rate not less than two-thirds and not more than full pension admissible to him on the date of his compulsory retirement if otherwise he was entitled to such pension on superannuation on that date.

(2) Whenever in the case of Bank employee the competent authority passes an order (whether original, appellate or in exercise of power of review) awarding a pension less than the full compensation pension admissible under these regulations, the Board of Directors shall be consulted before such order is passed.

(3) A pension granted or awarded under sub-regulation (1) or, as the case may be, under sub-regulation (2) shall not be less than the amount of rupees three hundred and seventy five per mensem.

9. Sub clause(2) of Clause 33 clearly shows that when the competent authority passes an order of compulsory retirement awarding pension less than the full compensation pension admissible, the Board of Directors shall be consulted before such order is passed. The question that arises is whether Clause 34 which deals with payment of pension or family pension can be read into Clause 33 or not. Perusal of the scheme shows that it covers various types of pension and different classes of pension have been mentioned in Chapter 5 of the Regulation. Clause 28 deals with superannuation pension, Clause 29 deals with pension on voluntarily retirement which is also applicable after 1st day of November, 1993. Clause 30 deals with invalid pension, Clause 31 deals with compassionate allowance, Clause 32 deals with premature retirement pension and Clause 33 deals with compulsory retirement pension. Clause 34 is wide in scope and ambit and deals with pension and family pension. The word pension will cover all the pensions dealt with in Chapter 5 and will include compulsory retirement pension.

10. Therefore, in my view, the Petitioner is entitled to get compulsory retirement pension. Since, this aspect has not been considered by the Bank, the appellate authority shall decide at what rate of pension to be granted to the Petitioner in terms of Clause 33 and in case full pension in terms of sub Clause (2) is not to be granted, he shall consult the Board of Directors. The needful be done within 3 months from today. The Bank is directed to ensure that pension and other retrial benefits including the arrears of pension payable in terms of Clause 34, are

released to the Petitioner along with interest @ 6% per annum on or before 30th September 2011, failing which the Bank shall be liable to pay interest @ 12% per annum. The petition is disposed of in the aforesaid terms. No order as to costs.