

(2023) 01 PAT CK 0005

In the Patna High Court

Case No : Letters Patent Appeal No. 33 Of 2021 In Civil Writ Jurisdiction Case
No. 17150 Of 2017

Madhya Bihar Gramin Bank

APPELLANT

Vs

Atmesh Kumar Roy

RESPONDENT

Date of Decision : 02-01-2023

Acts Referred:

Citation : (2023) 01 PAT CK 0005

Hon'ble Judges : P. B. Bajanthri, J; Arun Kumar Jha, J

Bench : Division Bench

Advocate : Mahesh Narayan Prabat, Praveen Prabhakar, Rama Kant Singh

Final Decision : Dismissed

Judgement

1. In the instant L.P.A, appellant has assailed the order of the learned Single Judge dated 16.09.2020 passed in C.W.J.C No. 17150 of 2017. The respondent- Atmesh Kumar Roy in C.W.J.C No. 17150 of 2017 has prayed for the following relief:-

"That the petitioner in this writ application prays for issuance of a writ of mandamus directing the Respondent Bank to pay the amount due to the petitioner against Leave Encashment when he retired from service on 31.07.2013 with interest of the due amount."

2. The learned Single Judge allowed the C.W.J.C No. 17150 of 2017 in favour of respondent- Atmesh Kumar Roy hence, the present appeal by the Madhya Bihar Gramin Bank.

3. On 01.12.2022 the following order was passed.

"Learned counsel for the appellant is hereby directed to apprise this Court which are the relevant regulation number like procedure for imposition of major penalty/ minor penalty, action on the Inquiry Officer report by the disciplinary authority. Further, is there any provision under the disciplinary regulation, if an employee is

retired compulsorily as a measure of penalty in that event he is not entitled to which are the benefits. In the present case, respondent has been retired compulsorily as a measure of penalty, in such an event his retirement would be effective from the date of imposition of compulsorily retirement penalty, in such circumstances respondent employee is entitled to all monetary benefits as if he has retired on the date of imposition of penalty. The very object of imposition of penalty of compulsorily retirement as a measure of penalty is to weed out his services, however, he is entitled to all retiral benefits with reference to date of imposition of penalty. In other words, it amounts to pre-mature retirement in that event question of withholding or non entitlement of leave encashment is the subject matter.

Regulation 67 refers to retirement and there is no specific words like retirement compulsorily as a measure of penalty or in the normal course retirement after completion of age of superannuation. In this regard learned counsel for the appellant is hereby directed to get instruction.

Relist this matter on 15.12.2022."

4. Today learned counsel for the appellant vehemently contended that having regard to the imposition of penalty of compulsory retirement under Regulation No. 39 of Dakshin Bihar Gramin Bank (Officers and Employees) Service Regulations, 2010 (for short Regulations, 2010). Respondent is not entitled to relief sought in the writ petition.

5. Learned counsel for the appellant submitted that Regulation No. 2(a) deals with "Act" means the Regional Rural Banks Act, 1976 (21 of 1976). Further, he has pointed out Regulation No. 39(b) under explanation 2(i) proviso to contain that competent authority is empower to imposition of penalty. Further, he has pointed out Regulation No. 45.

6. Regulation No. 45 Reads as under:-

45. Disciplinary proceedings after retirement, - (1) An officer or employee who is under suspension on a charge of misconduct and who attains the age of superannuation, shall be deemed to be in service even after the age of superannuation for the specific purpose of continuation and conclusion of the disciplinary proceedings and issue of final orders thereon.

(2) The officer or employee who is under suspension shall not be eligible for any subsistence allowance for the period beyond the date of superannuation.

(3) The officer or employee against whom disciplinary proceeding has been initiated shall cease to be in service on the date of superannuation but the disciplinary shall continue as if he was in service until the proceedings are concluded and final order is passed in respect thereof.

(4) The officer or employee against whom disciplinary proceedings has been initiated shall not receive any pay and/or allowances after the date of

superannuation and also not be entitled for the payment of retirement benefits till the proceeding is completed and final order is passed thereon except his own contribution to Contributory Provident Fund (CPF).

Explanation; For the purposes of this regulation, the normal retirement benefits such as encashment of privilege leave and Gratuity may be withheld till the completion of the disciplinary proceeding and passing of final order by the Competent Authority and the release of benefits shall be as per the final order of the Competent Authority.

7. He relied on explanation to Regulation No. 45 to the extent that Leave Encashment of privilege leave and gratuity may be withheld till completion of disciplinary proceedings and passing of final order by the competent authority. Further, he relied on Regulation No. 67.

8. Regulation No. 67 reads as under:-

67. Lapse of leave,- All leave shall lapse on the death of an officer or employee or if he ceases to be in the service of the Bank:

Provided that where an officer or or employee dies in service, there shall be payable to his legal representatives, sums which which would have been payable to the officer or employee as if he has availed of the privilege leave that he had accumulated at the time of his death subject to sub-regulation (4) of regulation 61.

Provided further that where a staff retires from the service of the bank, he shall be eligible to be paid a sum equivalent to the emoluments for the period of privilege leave he had accumulated subject to sub-regulation (4) of regulation 61.

Provided also that in respect of the employee where his services are terminated owing to retrenchment, he shall be paid pay allowances for the period of privilege leave at his credit.

9. Learned counsel for the appellant vehemently relied on second proviso to Regulation No. 67. Second proviso is applicable to such of those retirees who in the ordinary course retires as and when they attain age of superannuation. The same is not attracted in so far as such an employee/officer who has been punished with the punishment of compulsory retirement as a measure of penalty under the Regulation No. 39(b) (iii). Regulation No. 67 of Regulations, 2010 does not distinguish between two types of retirement, one is normal retirement and another is compulsory retirement as a measure of penalty or premature retirement on account of inefficiency. Further, learned counsel for the appellant could not apprise this Court any of the provision of law that if an officer/employee who has been punished with the compulsory retirement under Regulation No. 39(b) (iii) is not entitled to have the benefit of Leave Encashment. It is to be noted that withholding of Leave Encashment is not one of the penalty identified under Regulation No. 39. If the appellant withheld Leave Encashment benefit of respondent, it amounts to imposition of dual penalty, one is

compulsory retirement and another is withholding of Leave Encashment. Later item is not included as a measure of penalty. In other words, if an employee or officer who has been retired as compulsory retirement as a measure of penalty, he is entitled to all retiral benefits as if he has retired on age of superannuation on particular date of penalty. In other words, it is premature retirement as a punishment with all service benefits including monetary benefits. Therefore, we find no infirmity in the order of the learned Single Judge and also we are unable to apprise the learned counsel for the appellant's contention that Regulation No. 67 second proviso would come in the way of granting Leave Encashment to such of those employees/officers who have been punished with the compulsory retirement penalty for the reasons that second proviso does not distinguish what type of retirement of staff of the appellant-Bank.

11. Accordingly, appellants have not made out a case so as to interfere with the order of the learned Single Judge dated 16.09.2020 passed in C.W.J.C No. 17150 of 2017.

12. Accordingly, present L.P.A stands dismissed.