(2022) 05 CAL CK 0015

In the Calcutta High Court

Case No : FMA No. 636 Of 2019

Milan Kumar Ghosh APPELLANT

Vs

Union Of India & Ors. RESPONDENT

Date of Decision : 06-05-2022

Acts Referred:

Andhra Pradesh Revised Pension Rules, 1980 — Section 52(c)
Payment of Gratuity Act, 1972 — Section 4, 4(6)
Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 — Section 19(2)(f)
Punjab National??Bank (Employees) Pension Regulations, 1995 — Regulation 46, 46(2)

Citation : (2022) 05 CAL CK 0015

Hon'ble Judges : I. P. Mukerji, J;Aniruddha Roy, J

Bench : Division Bench

Advocate : Lakshmi Kanta Pal, Bandhu Brata Bhula, Siddhartha Banerjee, Souradeep Banerjee

Final Decision : Disposed Of

Judgement

I. P. Mukerji, J

On 1st November, 1977, the appellant writ petitioner was appointed as Agriculture Officer in the respondent bank. He joined service and was posted at its Purulia branch. On 6th March, 1996 for alleged acts of misconduct he was placed under suspension. This suspension order was revoked on 28th January, 1997. In this intervening period disciplinary proceedings were started against him on the said charge of misconduct and continued till 2nd June, 1999 when the disciplinary authority imposed the punishment of reduction of his pay scale by three stages with cumulative effect.

In 2013 the appellant superannuated. On his retirement, out of the retirement financial benefits that he was entitled to, i.e. regular monthly pension, gratuity, own contribution to provident fund, leave encashment, additional retirement benefits, the appellant received all, except gratuity and additional retirement benefits. These were withheld by the bank. On 3rd November, 2013 they informed him that those amounts could not be released to him as a criminal case which was started by the Central Bureau of Investigation (CBI), was pending against him.

This withholding of gratuity and additional benefits by the bank was the subject matter of the writ application preferred by the appellant (WP No. 28123 (W) of 2014).

By a detailed judgment and order dated 11th January, 2019, the learned single judge was pleased to dismiss the writ application.

Hence, this appeal.

A point of some interest has arisen for consideration.

The Payment of Gratuity Act, 1972 applied to the service of the appellant.

Section 4 of the Act provides that on termination of employment after continuous service for not less than 5 years gratuity would be payable to an employee. Sub-section 6 of Section 4 provides the circumstances when gratuity is to be forfeited. It is in the following terms:-

"(6) Notwithstanding anything contained in sub-section (1),—

(a) the gratuity of an employee, whose services have been terminated for any act, wilful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer shall be forfeited to the extent of the damage or loss so caused;

(b) the gratuity payable to an employee 17 [may be wholly or partially forfeited] —

(i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or

(ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment."

Unquestionably, none of the grounds in sub-section 6 is attracted to the case of the appellant. The service of the appellant was never terminated for any of the acts mentioned in the sub-section. Pendency of the criminal case against him at the instance of the CBI is certainly not one of the grounds in sub-section 6, for withholding of his gratuity.

The bank has justified its action on the basis of its regulations of 1995. Regulation 46 of the banking regulations lay down the following:-

"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.

2. In such cases the gratuity shall not be paid to such an employee until the conclusion of the proceedings against him. The gratuity shall be paid to him on conclusion of the proceedings subject to the decision of the proceedings. Any recoveries to be made from an employee shall be adjusted against the amount of gratuity payable.

Explanation:- In this chapter.

a) The expression "serious crime" includes a crime involving an offence under Official Secrets Act, 1923 (19 of 1923):

b) The expression "grave misconduct" includes the communication or disclosure of any secret official code or password or any sketch, plan, model, article, note, documents or information, such as is mentioned in Section 5 of the Official Secrets Act, 1923 (19 of 1923) which was obtained while holding office in the Bank so as to prejudicially affect the interests of the general public or the security of the State.

c) The expression "fraudulently" shall have the meaning assigned to it under Section 25 of the Indian Penal Code, 1860 (45 of 1860),

d) The expression "criminal breach of trust" shall have the meaning assigned to it under Section 405 of the Indian Penal Code, 1860 (45 of 1860);

e) The expression "forgery" shall have the meaning assigned to it under Section 463 of the Indian Penal Code, 1860 (45 of 1860)."

It stipulates, inter alia, that if a judicial proceeding is pending, gratuity shall not be paid to an employee until the conclusion of the proceedings against him. The CBI case is a judicial proceeding and is pending against the appellant.

Mr. L. K Pal, learned Advocate for the appellant made a most pertinent submission. He submitted that the circumstances when gratuity could be withheld from an employee have been specified in sub-section 6 of Section 4 of the Payment of Gratuity Act, 1972. They do not apply to the appellant. The banking regulations contrary to or in conflict with those provisions should be disapplied.

Mr. Siddhartha Banerjee, learned Advocate for the Bank submitted that these regulations were made in exercise of powers under Section 19(2)(f) of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 and have statutory sanction. This has also been noted by the learned single judge.

VIEWS

These regulations are not under challenge by the appellant on the ground that they are inconsistent with Section 4 sub-section 6 of the Payment of Gratuity Act, 1972 and hence should be struck down or disapplied.

In R. Veerabhadram Vs. Government of A.P reported in (1999) 9 SCC 43, an identical provision in the AP Revised Pension Rules, 1980 fell for consideration before the court. It provided that during the pendency of any judicial proceeding the State would be permitted to withhold gratuity of the employee. The Supreme Court opined:

"7. The payment of gratuity was withheld, in the present case, since the criminal prosecution was pending against the appellant when he retired. Rule 52(c) of the A. P. Revised Pension Rules, 1980 expressly permits the State to withhold gratuity during the pendency of any judicial proceedings against the employee. In the present case, apart from Rule 52(c), there was also an express order of the Tribunal which was binding on the appellant and the respondent under which the Tribunal had directed that death-cum-retirement gratuity was not to be paid to the appellant till the judicial proceedings were concluded and final orders were passed thereon. In view of this order as well as in view of Rule 52(c), it cannot be said that there was any illegal withholding of gratuity by the respondent in the case of the appellant. We therefore, do not see any reason to order payment of any interest on the amount of gratuity so withheld."

The said ratio was upheld by the Supreme Court in Y K Singla Vs. Punjab National Bank & Ors. reported in (2013) 3 SCC 472. This case also concerned grant of interest for the delay in payment of gratuity. The Supreme Court was of the view that withholding of gratuity during pendency of the judicial proceedings against the employee was legitimate and that the employee would not be entitled to any interest for this period. It said:-

"11. It is apparent from a perusal of the reasoning recorded by the High Court, that the High Court relied upon Regulation 46 of the Punjab National Bank (Employees) Pension Regulations, 1995 (hereinafter referred to as, the 1995 Regulations). Regulation 46 is being extracted hereunder:-

"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.

(2) In such cases the gratuity shall not be paid to such an employee until the conclusion of the proceedings against him. The gratuity shall be paid to him on conclusion of the proceedings subject to the decision of the proceedings.

Any recoveries to be made from an employee shall be adjusted against the amount of gratuity payable." (emphasis is ours) Having perused Regulation 46(2), we are of the view, that the High Court was fully justified in concluding, that it was open to the PNB not to pay to the appellant gratuity, till the culmination of the proceedings pending against him. It is, therefore, apparent, that non-release of gratuity to the appellant after 31.10.1996 (when the appellant retired from his employment, with the PNB), till his acquittal by the Special Judge, CBI Court, Chandigarh, on 31.10.2009, cannot be faulted."

We are bound by these decisions.

Applying the ratio of the above Supreme Court decisions, in an employment governed by the Banking Regulations of 1995 or any similar enactments having statutory sanction, an employer can withhold the gratuity and additional retiral benefits of an employee against whom a judicial proceeding is pending, till its conclusion. This action seems to be justified even if no grounds exist under sub-section 6 of Section 4 of the Payment of Gratuity Act, 1972 to withhold his gratuity. The justification seems to be this. Suppose in a judicial proceeding a finding is entered that an employee has caused a quantified monetary damage to the employer which is recoverable from him. This amount can be recovered from the withheld gratuity and other retiral benefits.

Mr. Pal points out that even if the appellant is convicted in the pending judicial proceeding instituted by the CBI, there cannot be a remote possibility of any quantification of damage by the criminal court or recovery thereof from the withheld gratuity and additional retiral benefits. Learned counsel may be right but according to the dicta of the Supreme Court read with the regulations, one has to wait till the conclusion of the proceedings.

However, considering the fact that the CBI case is pending for a long time against the appellant and that he has retired from service nearly 10 years ago, we direct that the CBI court shall dispose of the case within 4 months of communication of this order. The respondent bank shall take a decision with regard to release of gratuity of the appellant/petitioner and additional retiral benefits in accordance with the said regulations and the above observations within 4 weeks of conclusion of the proceedings before the criminal court.

In principle, we affirm the impugned judgment and order dated 11th January, 2019 but we modify it, to the extent as above considering the special facts and circumstances arising from long pendency of this case.

The appeal is disposed of accordingly.

Urgent certified photo copy of this judgment and order, if applied for, be furnished to the appearing parties on priority basis upon compliance of necessary formalities.

I agree.

