
(2016) 09 BOM CK 0139
In the Bombay High Court
Case No : Writ Petition No. 11680 of 2015

Mr. Ambadas

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 23-09-2016

Acts Referred:

Bank Employees Pension Regulations, 1995 — Rule 48

Citation : (2017) 1 MhLJ 893

Hon'ble Judges : S.V. Gangapurwala and K.L. Wadane, JJ.

Bench : Division Bench

Advocate : Mr. B.V. Virdhe, AGP, for the Respondent-State; Mr. S.R. Deshpande, Advocate, for the Respondent No. 4; Mr. A.D. Aghav, Advocate, for the Petitioner

Final Decision : Disposed Off

Judgement

Wadane, J. - Heard the learned counsel for the parties.

2. Rule. Rule made returnable forthwith. With consent of parties, the petition is taken up for final disposal.

3. It is the case of the petitioner that he was working as Head Cashier with respondent No. 4 i.e. State Bank of Hyderabad and he retired from service in the month of December, 2010. Though the petitioner dismissed in the month of December, 2010, pension and other retiral benefits are not paid to him and therefore the petitioner has filed various applications/representations before the respondents/authorities of the Bank. Thereafter, finally in the year 2014, pension papers of the petitioner were forwarded to the Head Office at Hyderabad.

4. It is submitted that the petitioner came to be dismissed from service on 4th December, 2010 in view of the enquiry held against him. But the fact remains that the petitioner is entitled to receive pension, gratuity and provident fund from the Bank. The petitioner served with the respondents Bank for years together and at the fag end of his service, more particularly when he was on the verge of retirement, services of the petitioner came to be terminated by way of

dismissal. Therefore, considering these aspects of the matter, the petitioner is entitled for all retiral benefits. The respondents are not paying the amount of provident fund, gratuity, pension and other retiral benefits. Therefore, the petitioner is seeking directions against respondent Nos. 2 to 4 to pay all retiral benefits within stipulated time.

5. Respondent No. 4 filed his affidavit in reply and has stated that the petitioner has suppressed some material aspects i.e. about conduction of departmental enquiry. According to respondent Nos.4, enquiry was initiated against the petitioner and after following due process of law, it was concluded and the petitioner was dismissed from service by order dated 4th December, 2010. The enquiry officer has also ordered recovery of the amount from the petitioner. No appeal was preferred by the petitioner against the said order. Hence the order of the enquiry officer attained finality.

6. The subject matter of disciplinary proceeding was about misappropriation of the amount of the Bank to the tune of Rs. 21.74 lakhs, particulars of which are given in the enquiry report. Since the petitioner has not challenged the order passed by the enquiry officer/ disciplinary authority holding that the petitioner has committed misappropriation and caused loss to the Bank to the tune of Rs. 21.74 lakhs, the findings recorded by the enquiry officer attains finality. According to the respondents, the Bank is entitled to recover the amount which the petitioner has misappropriated.

7. By way of additional affidavit, respondent No. 4 has placed on record the subsequent events. It is stated in the said affidavit that the Competent Authority has considered the proposal of the petitioner sympathetically and has sanctioned compassionate allowance of Rs. 4,776/- plus applicable dearness allowance. The petitioner, therefore, is to receive an amount of Rs. 6,39,090/- towards arrears of compassionate allowance and Rs.1,68,498/- towards commutation. Thus, the petitioner is to get total amount of Rs. 8,07,588/-. It is stated that the amount of Rs. 8,07,588/- is adjusted by the respondents Bank towards the amount to be recovered from the petitioner pursuant to the order passed on 4th January,2010 by the disciplinary authority. It is further stated that the balance amount will be recovered from the monthly pension of the petitioner i.e. 7rd of admissible pension (Rs.1961/-) till the entire amount due from the petitioner is liquidated.

8. Considering the above aspects of the matter, it appears that the services of the petitioner were terminated by following due procedure. However, the respondent authority is not authorised to withhold the retiral benefit i.e. pension of the petitioner, otherwise the very object of the pension scheme will be frustrated. The pension became the property of the petitioner as he has served with the respondent Bank for a long period. In such circumstances, the retiral benefit/pension of the petitioner cannot be withheld.

9. The Petitioner has relied on the decision of the Supreme Court in the case of State of Jharkhand and others v. Jitendra Kumar Srivastava and another,

reported in AIR 2013 SC 3383, in which it is observed by the Apex Court that:

"the grant of pension does not depend upon an order being passed by the authorities to that effect. It may be that for the purpose of quantifying the amount having regard to the period of service and other allied matters, it may be necessary for the authorities to pass an orders to that effect, but the right to receive pension flows to an officer not because of the said order but by virtue of the rules the rules, we have already pointed out, clearly recognize the right of a persons like the petitioner to receive pension under the circumstances mentioned therein."

The Apex Court has further observed that:

"the pension granted to the public servant on his retirement is "property" within the meaning of Article 31(1) of the Constitution and he could not be deprived of the same only by an authority of law and that pension does not cease to be property on the mere denial or cancellation of it."

10. In view of the aforesaid observation of the Apex Court, it is crystal clear that the respondents have no authority/right to withhold pension of the petitioner. However, it appears from the record that the petitioner has misappropriated an amount of Rs. 21.74 lakhs. From the record, it appears that the respondent Bank authority has deducted and adjusted an amount of Rs.8,07,588/- from the amount payable to the petitioner towards retiral benefits, which, according to the petitioner, is illegal.

11. Learned counsel for the petitioner has relied upon the provisions of Rule 48 of the Bank Employees" Pension Regulations, 1995, which reads as follows:

"48. Recovery of Pecuniary loss caused to the Bank:- (1) The Competent Authority may withhold or withdraw a pension or a part thereof, whether permanently or for a specified period, and order recovery from pension of the whole or part of any pecuniary loss caused to the bank if in any departmental or judicial proceedings the pensioner is found guilty of grave misconduct or negligence or criminal breach of trust or forgery or acts done fraudulently during the period of his service; Provided that the Board shall be consulted before any final orders are passed; Provided further that departmental proceedings, if instituted while the employee was in service, shall, after the retirement of the employee, be deemed to be proceedings under these regulations and shall be continued and concluded by the authority by which they were commenced in the same manner as if the employee has continued in service; Provided also that no departmental or judicial proceedings, if not initiated while the employee was in service, shall be instituted in respect of a cause of action which arose or in respect of an event which took place more than four years before such institution.

(2) Where the Competent Authority orders recovery of pecuniary loss from the pension, the recovery shall not ordinarily be made at a rate exceeding one-third of the pension admissible on the date of retirement of the employee; Provided

that where a part of pension is withheld or withdrawn, the amount of pension drawn by a pensioner shall not be less than the minimum pension payable under these regulations."

12. On perusal of the provisions of the above Rule, it appears that in respect of recovery of pecuniary loss from the pension, the recovery shall not ordinarily be made at a rate exceeding one-third of the pension admissible on the date of retirement of the employee.

13. In view of the aforesaid provision, the amount of Rs. 8,07,588/- deducted and adjusted towards dues appears to be improper. The respondent Bank authorities are not authorised to deduct the amount more than one-third from the amount payable to the petitioner. Hence, the Bank authorities are entitled to recover only ? amount of Rs.8,07,588/-. In the result, we proceed to pass following order:

ORDER

- i. Respondent Nos. 2 to 4 are directed to refund ?rd amount of Rs. 8,07,588/- i. e. Rs.5,38,392/- to the petitioner.
- ii. Respondent Nos. 2 to 4 are entitled to recover their remaining amount from the petitioner by deducting ? amount from his monthly pension till the entire amount is recovered.
- iii. Respondent Nos.2 to 4 are directed to release the retrial benefits particularly the pension of the petitioner as stated above.
- iv. Rule is made absolute accordingly. There shall be no order as to costs.