(2019) 11 PAT CK 0146

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 507 Of 2018

Prabhu Nath Singh APPELLANT

Vs

Bank Of India Through And Ors RESPONDENT

Date of Decision : 28-11-2019

Acts Referred:
Bombay Municipal Corporation Act, 1888 — Section 83

Citation : (2019) 11 PAT CK 0146

Hon'ble Judges : Mohit Kumar Shah, J

Bench : Single Bench

Advocate : Dhruv Mukherjee, Arup Kr. Chongdar, Md. Nazir Ansari, Ganesh Singh, Rupak Kumar, Ajay Kr. Sinha

Final Decision : Dismissed

Judgement

1. The present writ petition has been filed for directing the respondents to accept the option for pension from the petitioner herein and to pay the entire arrears of pension w.e.f. 01.11.1993 till date, as per the provisions contained in the Bank of India Officer Employees' (Disciplinary and Appeal) Regulations, 1976.

2. The brief facts of the case are that the petitioner had joined the services of the Bank of India as Clerk-cum-Typist on 11.08.1969, whereafter he was promoted as "D" grade (Scale-I) Officer vide letter dated 01.12.1976 and then he was promoted to Middle Management Grade Scale-II w.e.f. 01.01.1985. Thereafter, the respondent-Bank had initiated a departmental proceeding against the petitioner herein and the petitioner was inflicted with a penalty order of removal from Bank's service vide order dated 15.05.1992, which was challenged by the petitioner before this Court by filing a writ petition bearing C.W.J.C. no. 5168 of 1992, however the same was dismissed by a co-ordinate Bench of this Court by a judgment dated 05.02.1998. Thus, the penalty order of removal of the petitioner from Bank's service dated 15.05.1992 had attained finality, inasmuch as the petitioner did not choose to challenge the aforesaid order passed by a co-ordinate Bench of this Court dated 05.02.1998.

3. The learned Senior counsel for the petitioner has referred to the Bank of India Officer Employees' (Disciplinary and Appeal) Regulations, 1976, to contend that Clause 4 thereof, describes the penalties and the penalty order in the case of the petitioner has been passed under Clause 4 (g) thereof, which pertains to compulsory retirement, hence the petitioner would be entitled to pension. The learned Senior counsel for the petitioner has further referred to the Pension Scheme introduced for the Officers and Staff of the Bank vide Circular dated 18.04.1994, wherein it has been stipulated that the pension scheme is also applicable to the ex-employees, who have retired on or after 01.01.1986, provided they surrender Employees' Provident Fund contribution together with interest and further deposit 6% per annum interest on this amount from the date of drawal to the date of refund, however the pension would be paid w.e.f. 01.11.1983. It is thus submitted that since the pension scheme is applicable to ex-employees, the petitioner is also entitled to be granted pension. Lastly, the learned Senior counsel for the petitioner has referred to the Bank Employees (Pension) Regulations, 1993 (hereinafter to be referred to as the "Regulation, 1993"), Clause 2 (j)(iv) whereof, has been relied upon to content that retirement means "cessation from Bank's service" in case of compulsory retirement/ dismissal/ termination of service, as the case may be, without prejudice to the entitlement for superannuation benefits as per the provisions of the Service Regulations/ Service Rules/ Settlement. The learned Senior counsel for the petitioner has also relied upon a judgment rendered by the Hon'ble Apex Court in Civil Appeal no. 10956 of 2013 dated 11.12.2013 in the case of Bank of Baroda v. S.K. Kool (D) through Lrs. and another to contend that the Hon'ble Apex Court has itself directed for grant of superannuation benefits to such employees who have been punished with the penalty of removal from service.

4. Per contra, the learned counsel for the respondent-Bank has submitted that the present writ petition itself is barred by the principles of delay and laches, inasmuch as the petitioner has approached this Court after a lapse of 27 years since he had stood removed from the service in the year 1992 itself. It is further submitted that as per the pension option given during the year 2010, the ex-employees who were removed from the Bank's services were not eligible for opting for the said pension scheme, hence there is no merit in the contentions being raised by the petitioner. It is also submitted that as per the Bank of India (Employees) Pension Regulation, 1995, in case of removal of an employee from the service of the Bank, he shall entail forfeiture of his entire past service and consequently, shall not qualify for pensionary benefits. It is also the contention of the learned counsel for the respondent-Bank that the Circular dated 24.08.2010 issued in terms of agreement entered into between the Indian Banks' Association and various Officer's Association/ Workmen Unions, wherein option was given to join the pension scheme to only those employees who were in the services of the Bank prior to 29.09.1995 and had continued in the services on the date of settlement i.e. 27.04.2010, hence the petitioner is not eligible to exercise option in terms of the Circular dated 24.08.2010 since he was not in the service of the

Bank on the date of settlement i.e. 27.04.2010. Moreover, the petitioner also does not fall under Clause-III of the aforesaid Circular dated 24.08.2010. The learned counsel for the Bank has also submitted that the judgment rendered by the Hon'ble Apex Court in the case of S.K. Kool (supra) is applicable only in cases of those employees who were dismissed/ removed from their services with superannuation benefits, however the petitioner has been removed from service without superannuation benefits and moreover, the said judgment pertains to a staff who was inflicted with penalty of removal from service with pensionary benefits whereas the petitioner is an officer, hence the aforesaid judgment rendered by the Hon'ble Apex Court in the case of S.K. Kool (supra) is clearly distinguishable in the facts and circumstances of the present case. Lastly, it is submitted that the pension scheme introduced vide Circular dated 18.04.1994 is also not applicable in the present case, inasmuch as the said scheme has been extended to employees who have joined on or after 01.11.1993 and who have given irrevocable option for joining the said scheme on or after 30.09.1994, hence the petitioner is not entitled to join the pension scheme since he ceased to be in service of Bank prior to 01.11.1993 and moreover, he is not a retiree on or after 01.01.1986.

5. I have heard the learned Senior counsel for the petitioner and the learned counsel appearing for the respondent-Bank. This Court finds that the argument of the learned counsel for the petitioner to the effect that since the pension scheme, introduced vide Circular dated 18.04.1994, is also applicable to ex-employees, the petitioner is entitled to pension, is not only mis-conceived but also de hors the provisions of the said scheme, inasmuch as the said scheme is applicable only to the retired employees who retired on or after 01.01.1986 whereas the petitioner is not a retired employee but has been removed from the Bank's service by way of penalty being inflicted upon him. The other contention of the learned Senior counsel for the petitioner to the effect that since Clause-4(g) of the Bank of India Officer Employees' (Disciplinary and Appeal) Regulations, 1976 pertains to compulsory retirement and while passing the order of removal, pertaining to the petitioner, clause 4(g) has been referred to, pension should be granted to the petitioner herein, is not only an incorrect submission but is required to be noted only for the purposes of being rejected, inasmuch as the penalty order dated 15.05.1992 clearly provides as follows :- " I hereby impose a consolidated penalty of removal from Bank's service on Sri Singh for all the charges proved against him." Hence, it is clear that the penalty of removal from service has been inflicted upon the petitioner, thus mere wrong quoting of the relevant provisions of the regulations would not change the nature of penalty, imposed upon the petitioner herein. As contended by the learned counsel for the Bank, which has been noted hereinabove in the preceding paragraphs, the Circular of the Bank dated 24.07.2010 is also not applicable to the petitioner herein, hence he is not eligible for grant of pension.

6. Now, coming to the Regulations, 1993, Clause 10 thereof, postulates that in case of dismissal, termination or resignation of an employee from the service etc.

where the service regulations/ service rules/ settlements do not dis-entitle such employees from receiving superannuation benefits, shall forfeit his entire past service and consequently, shall not qualify for pension payment. In this regard, this Court would like to rely upon the settled law, repeatedly enunciated by the Hon'ble Apex Court from time to time through catena of judgments, one of them being a judgment reported in (1992) 2 SCC 547 (Dr. Dattatraya Mahadev Nadkarni vs Municipal Corporation Of Greater Bombay), wherein it has been held that removal and dismissal from service stand on the same footing and both bring about a termination of service and the only difference in the punishment of dismissal and removal from service is that in case of dismissal, the employee is dis-qualified from future employment while in a case of removal, he is not debarred from getting future employment. In this regard, paragraphs no. 7 and 8 are reproduced hereinbelow :-

7. In S.R. Tewari v. District Board Agra and Anr. it has been observed: It is settled law that the form of the order under which the employment of a servant is determined is not conclusive of the true nature of the order. The form may be merely to camouflage an order of dismissal for misconduct, and it is always open to the court before which the order is challenged to go behind the form and ascertain the true character of the order. If the Court holds that the order though in the form merely of determination of employment is in reality a cloak for an order of dismissal as a matter of punishment, the Court would not be debarred merely because of the form of the order in giving effect to the rights conferred by statutory rules upon the employee.

8. The only difference in the punishment of dismissal and removal is that in case of dismissal the employee is disqualified from future employment while in case of removal he is not debarred from getting future employment. In the present case a perusal of Section 83 clearly shows that the punishment provided are: fine, reduction, suspension or dismissal from service. The appellant is right in his contention that Section 83 does not lay down any punishment of removal from service and it only provides for dismissal from service. The defendants themselves have come forward with a plea in the written statement that the rules framed by the Municipal Commissioner under Section 83 came into force only from December 1961 and were not applicable to the plaintiffs case. In this view of the matter the defendants cannot take help of any provisions of the rules providing punishment of removal from service apart from dismissal. That apart, it was never the case of the defendants in the written statement that they wanted to impose the punishment of removal with an intention not to disqualify the appellant from future employment. As already mentioned above even the show cause notice clearly mentioned that the disciplinary authority wanted to impose the punishment of dismissal. We have to go behind the form and ascertain the true character of the order. The disciplinary authority had clearly affirmed the findings of the Inquiry Officer and after holding the charges proved against the appellant, had imposed the punishment of removal from service. Thus, in the entire facts and circumstances of the case, we are clearly of the view that the

impugned order of punishment was an order of dismissal from service, though, the order may have used the term of removal from service. In this view of the matter the impugned order of dismissal from service was clearly wrong and illegal as the same was not approved by the Standing Committee and the Commissioner was not authorised to pass the order of dismissal without such approval.

7. Thus, it is apparent that penalty order of removal from service, inflicted upon the petitioner herein, is akin to dismissal from service, thus, applying Clause-10 of the aforesaid Regulations, 1993, the entire past service of the petitioner would stand forfeited and consequently, his services shall not qualify for payment of pension. Lastly, coming to the judgment referred to by the learned Senior counsel for the petitioner, rendered by the Hon'ble Apex Court in the case of S.K. Kool (supra), the same is not applicable in the facts and circumstances of the present case, inasmuch as the employee in the said case was a staff/ workman governed by the bi-partite settlement in question which is not applicable to the present case, inasmuch as the petitioner is an Officer and moreover, the Hon'ble Apex Court has observed that since the concerned employee was inflicted with the punishment of removal from service with superannuation benefits, he would be entitled to those superannuation benefits which such employees would otherwise, were entitled to, however in the present case, the petitioner has been inflicted with the punishment of removal from service, however the said penalty order nowhere, mentions that the said removal from service is with the superannuation benefits, hence this Court is of the opinion that the petitioner is not entitled to pension. The only question which remains to be answered is as to whether the petitioner would be entitled to pension since he has been paid the gratuity amount. The answer is in the negative and the petitioner would not be entitled to payment of pension, even if he has been paid gratuity, in view of the proviso to Clause 8 of the Bank of India Gratuity Funds Rules which reads as follows :- "provided further that there will be no forfeiture of gratuity for dismissal on account of misconduct except in cases where such misconduct causes financial loss to the Bank and in that case, to that extent only."

8. Thus, it is clear that since the disciplinary authority had not probably assessed the financial loss caused to the Bank, the petitioner was paid the gratuity amount and the same was not forfeited, hence the same has got no connection with payment/ non-payment of the pension amount.

9. Having regard to the facts and circumstances of the case and for the reasons mentioned hereinabove, this Court finds that the present writ petition is not only barred by the principles of delay and laches but even on merits, is grossly misconceived and devoid of any merit, hence is dismissed, however without any order as to costs.

