
(2017) 01 CAL CK 0034
In the Calcutta High Court
Case No : W.P. No. 104 of 2015

Purnendu Kumar Bagchi

APPELLANT

Vs

Indian Overseas Bank

RESPONDENT

Date of Decision : 13-01-2017

Acts Referred:

Constitution of India, 1950 — Article 226
Overseas Bank Officer Employees (Discipline and Appeal) Regulations, 1976 —
Regulation 12, Regulation 13, Regulation 15

Citation : (2017) 1 CalLT 611 : (2017) 1 CLR 744 : (2017) LabLR 553 : (2017) LIC 1032

Hon'ble Judges : Arijit Banerjee, J.

Bench : Single Bench

Advocate : Mr. R.N. Majumder, Mr. S. Chakraborty and Mr. Supratim Bhattacharjee, Advocates, for the Respondents; Mr. Soumya Majumder and Mr. Victor Chatterjee, Advocates, for the Petitioner

Final Decision : Allowed

Judgement

Arijit Banerjee, J. - In this proceeding the writ petitioner prays for a writ of mandamus commanding the respondents to disburse the petitioner's differential salary along with interest for the period during which he was placed under suspension, annual increment for ten months along with interest thereon and interest on delayed payment of gratuity. The undisputed facts of this case forming the background of this writ petition are briefly as follows.

2. The petitioner joined the respondent Bank as a clerk in the year 1972. Ultimately he was promoted to the Officer Cadre. In the year 1994, the CBI initiated a case against the petitioner and some other officers of the Bank under Sections 420, 466, 467, 468 and 471 of the IPC and Sections 13(1)(d) and 13(2) of the Corruption of Prevention Act, 1988. The petitioner was placed under suspension by the then General Manager under Regulation 12(1)(b) of the Indian Overseas Bank Officer Employees' Discipline and Appeal Regulations, 1976 (in short the "1976 Regulations"). The petitioner filed CO No. 6205(W) of 1995 in

this Court challenging the order of suspension. By an order dated 6 June, 1995, this Court remanded the matter back to the concerned authority for considering the same afresh. By a departmental order dated 21 October, 1995, the suspension order was revoked. However, it was stated in the said revocation order that the period of the petitioner's suspension from the Bank's service will not be treated as being spent on duty for all purposes. The petitioner joined service immediately. By a representation dated 13 May, 1996, the petitioner requested the respondent Bank to release the full wages for the period of suspension. By a letter dated 13 July, 1996 the Bank declined to do so pending outcome of the criminal prosecution. The petitioner retired from service in due course on 31 May, 2009. By an order dated 27 September, 2010 the Special CBI Court acquitted the petitioner of the charges levelled against him. The gratuity amount was paid to the petitioner on 3 August, 2011. In the meantime, the petitioner had made several representations for release of the differential wage for the period of suspension as also increments. Alleging non-consideration of such representations the petitioner approached this Court by filing WP 24309(W) of 2012. By an order dated 14 July 2014, this Court directed the Chief Regional Manager of the Bank to dispose of the petitioner's representation within eight weeks. Pursuant to such direction the Chief Regional Manager, Regional Office, Calcutta passed a reasoned order dated 26 November, 2014 rejecting the demands of the petitioner. This order is under challenge in the present writ petition.

3. I have heard the learned Counsel for the parties at length. Three issues arise for determination in the present proceeding which are as follows:-

(a) Is the petitioner entitled to differential salary for the period of suspension, with or without interest?

(b) Is the petitioner entitled to annual increment for the ten months suspension period with or without interest thereon?

(c) Is the petitioner entitled to interest on delayed payment of gratuity?

4. Regarding the first two issues, learned Counsel for the respondent Bank relied on Regulations 12(1) and 15 of the 1976 Regulations. Regulation 12(1) inter alia provides that an Officer employee may be placed under suspension by the competent authority where a case against him in respect of any criminal offence is under investigation, enquiry or trial. Regulation 15 reads as follows:

"R. 15. Pay, Allowance and Treatment of Service on Termination of Suspension:

(1) Where the competent authority holds that the officer employee has been fully exonerated or that the suspension was unjustifiable, the officer employee concerned shall be granted the full pay to which he would have been entitled to had he not been suspended together with any allowance of which he was in receipt immediately prior to his suspension, or may have been sanctioned subsequently and made applicable to all officer employees.

(2) In all cases other than those referred to in sub-regulation (1), the officer employee shall be granted such proportion of pay and allowances as the competent authority may direct; Provided that the payment of allowances under this sub-regulation shall be subject to all other conditions to which such allowances are admissible; Provided further that the pay and allowances granted under the sub-regulation shall not be less than the subsistence and other allowances admissible under Regulation 14.

(3)(a) In a case falling under sub-regulation (1), the period of absence from duty shall, for all purposes be treated as a period spent on duty;

(b) In a case falling under sub-regulation (2) the period of absence from duty shall not be treated as a period spent on duty unless the Competent Authority specifically directs, for reasons, to be recorded in writing, that it shall be so treated for any specific purpose."

5. Learned Counsel submitted that in terms of Regulation 15(3)(b), the concerned employee becomes entitled to full salary and allowances for the period of suspension only if the period of absence from duty is specifically directed to be treated as period spent on duty by the Competent Authority. However, in the order revoking the suspension it is specifically mentioned that the period of suspension of the petitioner will not be treated as a period spent on duty for all practical purposes. Hence, the petitioner's claim on the first two grounds is not maintainable.

Per contra, learned Counsel for the petitioner submits that since the CBI Court has exonerated the petitioner, the Bank cannot invoke Regulation 15(3)(b). The Court has found the petitioner to be not guilty of the charges framed against him. The Competent Authority cannot hold otherwise. The petitioner's case comes under Regulation 15(1) and 15(3)(a) and as such full salary for the period of suspension as also the annual increment for that period is payable to the petitioner.

6. As regards the petitioner's third claim, i.e. interest on delayed payment of gratuity, learned Counsel for the petitioner relied on Sections 4 and 7 of the Payment of Gratuity Act, 1972. He submitted that as per the statutory mandate gratuity is payable within 30 days of retirement of an employee and in default interest is payable for the delay in releasing the gratuity amount. None of the grounds for withholding gratuity enumerated in Section 4(6) of the 1972 Act exists in the present case. He submitted that once the petitioner was acquitted in the criminal case, the liability to pay interest on gratuity related back to the date when gratuity should have been paid. Acquittal by the criminal court shows that there was no justifiable ground for withholding the petitioner's gratuity amount. In this connection, learned Counsel relied on the decision of the Hon'ble Apex Court in the case of *Y.K. Singla v. Punjab National Bank*, (2013) 3 SCC 472.

On the other hand, learned Sr. Counsel for the Bank relied on Regulation 46 of the Indian Overseas Bank Officers Service Regulations, 1970. He submitted that

the said Regulation 46 is in pari materia with Regulation 46 of the United Bank of India (Employees") Pension Regulations, 1995, the relevant portion whereof reads as follows:-

"R. 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."

7. Learned Counsel submitted that as per the said Regulation, gratuity was not payable to the petitioner till the judgment of the CBI Court was delivered acquitting the petitioner. Hence, there is no delay on the part of the Bank in releasing the gratuity amount in favour of the petitioner and consequently no interest is payable. Learned Counsel submitted that the 1970 Regulations were framed under Section 19 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970. As such they are statutory in nature and any provision made in the said Regulations shall have overriding effect in case of conflict with any other provisions or Act occupying the same field. Even though, the 1970 Regulations are prior in time compared to the Payment of Gratuity Act, 1972, the said Regulations constitute a special law and hence, would prevail over the Payment of Gratuity Act which is to be treated as a general law. In this connection he relied on a judgment of the Hon'ble Apex Court in the case of Ramesh Chandra Sharma v. Punjab National Bank, (2007) 9 SCC 14. Learned Counsel also relied on a Supreme Court decision in the case of P. Rajan Sandhi v. Union of India, (2010) 10 SCC 338. Reliance was also placed on an unreported judgment of a learned Single Judge of this Court in WP No. 15864(W) of 2014 (United bank of India v. Sri Pranab Kumar Bhuiyan) delivered on 16 July, 2014.

8. Learned Counsel for the respondents finally submitted that the acquittal of the petitioner in the criminal case was not an "honourable acquittal". Accordingly, he cannot contend that his gratuity amount was unjustifiably withheld. For the same reason he cannot claim the benefit of Regulations 15(1) and 15(3)(a) of the 1976 Regulations i.e. he cannot claim to have spent his time in service during the period of suspension and consequently cannot claim full salary or annual increment for the suspension period.

Court's View:-

9. As regards the issue of payment of full salary and annual increment during the period of suspension, Regulation 15 of the 1976 Regulations which has been extracted above, clearly provides that if the suspended officer employee is fully exonerated or his suspension is found to be unjustifiable, he would receive full pay to which he would have been entitled had he not been suspended together with any allowance which he was receiving immediately prior to his suspension. No doubt, the CBI instituted a criminal case against four persons including the petitioner who was the accused no. 2 under various Sections of the Indian Penal Code read with Section 13(2)(d) of the Prevention of Corruption Act, 1988. However, the said case being Special Trial No. 1 of 1995 was dismissed against the petitioner by a detailed judgment and order dated 19 September, 2010. The petitioner was acquitted of the charges framed against him. The operative portion of the said judgment and order reads as follows:-

"The charge of the prosecution regarding the role of accused No. 2 P.K. Bagchi about his acts to allow the accused no. 1 to open Savings Account No. 5111/1.O.B. in the name of CIPET with a sum of Rs. 32,29,300/- from maturity value of STDR transferred to IOB, Imphal from SBI, Imphal and allowing to operate the same by issuing instant Cheque Book by abusing his official power in collusion with his Deputy Manger accused K.M. Joseph and further allowing to withdraw an amount of Rs. 1,36,634/- through Withdrawal Slips in furtherance of conspiracy during his term, by wrongfully allowing accused No. 1 to avail of Demand Loans from RDPs of CIPET within a month for a sum of Rs. 1,27,500/- deriving a wrongful benefit of a sum of Rs. 20,000/- which he had sent it through Demand Draft to his brother Shri S. Sivamoorthy at Madras and then allowing the accused no. 1 to gain pecuniary benefit to the tune of Rs. 1,56,934/- out of total manipulated amount of Rs. 1,73,225/- by misusing his official position do not show any irregularity of the Bank rules and procedure as he had performed his duty as Bank Official towards his valuable customer. No criminal conspiracy with accused no. 1 and 3 is proved against accused no. 2 and he has not been involved in making any false or forged document and using them as genuine document. The prosecution side has also failed to prove abusing his official position to gain pecuniary benefit for himself or others."

10. Thus, undisputedly the petitioner was exonerated as the prosecution could not prove the charges brought against him. It is an elementary principle of the criminal law of our country that an accused is presumed to be innocent until proved guilty. The judgment of the criminal court leaves no doubt that the petitioner was fully exonerated and also that placing the petitioner under suspension was unjustified. The said judgment establishes the innocence of the petitioner and I have been given to understand that there is no appeal against the said judgment.

11. In that view of the matter I am of the considered view that Regulation 15(1) of the 1976 Regulations would apply to the petitioner's case and he would be

entitled to full salary for the period during which he was placed under suspension and also annual increment for that period.

12. Learned Counsel for the respondent argued that the petitioner was not honourably acquitted of the criminal charges and hence Regulation 15(1) has no application. I am unable to accept such contention. Firstly, the said Regulation does not speak of "honourable acquittal". It contemplates "full exoneration". It would be preposterous so say that a person against whom the criminal charges have been dismissed because of the prosecution's failure to prove the charges, has not been fully exonerated. The said Regulation has been framed for the benefit of an officer employee charged with a criminal offence who is subsequently found to be innocent. In my opinion, the said Regulation should be interpreted in so far possible, in favour of the concerned officer employee without of course doing violence to the language of the Regulation.

13. Learned Counsel for the respondent Bank also urged that in the departmental order dated 21 October, 1995 whereby the suspension was lifted, it was clearly stated that the period of suspension was not to be treated as one spent on duty for all purposes. The petitioner accepted such condition and re-joined service. Hence the petitioner cannot now claim full salary for the period of suspension. I do not find any merit in such contention. It is true that the petitioner rejoined service but he did not accept the aforesaid stand of the Bank. After re-joining service, the petitioner made several representations to the Management for releasing the full benefits for the period of suspension. In the circumstances of the case, the petitioner had little choice but to resume service and one cannot be oblivious of the unequal bargaining powers of a big organization like the respondent Bank and of one of its officer employees. Regulation 15(1) confers a valuable right on an officer employee who is placed under suspension because of having been charged with criminal offence but subsequently exonerated by the Competent Court and such right cannot be negated or abridged in the absence of very compelling reasons.

14. Further, Regulation 15(3)(a) of the 1976 Regulations clearly provides that where the officer employee has been fully exonerated or his suspension was unjustifiable, the period of absence from duty shall for all purposes be treated as a period spent on duty. The petitioner having been fully exonerated in the criminal case, Regulation 15(3)(a) would apply. The statement in the departmental order dated 21 October, 1995 that the period of petitioner's suspension will not be treated as spent on duty for all purposes cannot stand in the face of the aforesaid statutory Regulation.

15. As regards the issue of interest on delayed payment of gratuity, learned Counsel for the respondents relied on Regulation 46 of the Indian Overseas Bank Officers Service Regulations, 1970. He submitted that in view of Regulation 46(2), the respondent bank was justified in withholding the gratuity amount that was payable to the petitioner. He submitted that the said Regulation being a statutory Regulation, it shall have overriding effect if there is a conflict with any

other provisions of law occupying the same field including the Payment of Gratuity Act, 1972. In this connection, learned Counsel relied on two decisions of the Hon''ble Apex Court. In Ramesh Chandra Sharma (supra), the question was whether a departmental proceeding could continue despite the delinquent officer reaching the age of superannuation. The Hon''ble Apex Court held that the concerned Regulations of the Punjab National Bank envisaged continuation of a disciplinary proceeding despite the officer ceasing to be in service on the date of superannuation. For the said purpose a legal fiction has been created providing that the delinquent officer would be deemed to be in service until the proceedings are concluded and final order is passed thereon. The said Regulation being statutory in nature, should be given full effect. In P. Rajan Sandhi (supra), the Hon''ble Apex Court held that Section 5 of the Working Journalists and Other Newspaper Employees (Condition of Service) and Miscellaneous Provisions Act, 1955 was a special legislation and thus prevailed over the Payment of Gratuity Act, 1972 which is a general law. Under the said provision of 1955 Act, if the service of an employee covered by the Act is terminated by way of disciplinary action under the Act, he is not entitled to get gratuity. Learned Counsel also relied on a decision of a Learned Single Judge of this Court in WP No. 15864(W) of 2014 (United Bank of India v. Sri Pranab Kumar Bhuiyan) wherein the learned Judge held that the decision of the Controlling Authority and the Appellate Authority to the effect that the conditions of Payment of Gratuity Act would prevail over the Service Regulations of the United Bank of India was not correct. None of the said three decisions seek to lay down any absolute proposition of law that a statutory regulation will always override any other provision of law pertaining to the same field in case of a conflict.

16. Strictly speaking, I need not have adverted to the aforesaid decisions relied upon by Learned Counsel for the respondents since the issue is squarely covered by the decision of the Hon''ble Apex Court in Y.K. Singla's (supra) case. In that case, the Hon''ble Apex Court considered Regulation 46 of the Punjab National Bank (Employees) Pension Regulations, 1955 which is in pari materia with Regulation 46 of the Indian Overseas Bank Officers' Service Regulations, 1970. The Hon''ble Apex Court also dilated on Section 7 of the Payment of Gratuity Act. In paragraphs 14, 18 to 20 and 25 of the said judgment, the Hon''ble Court observed as follows:-

"14. The 1995, Regulations, are silent on the subject of an employee's rights whose gratuity has been withheld, even in circumstances where it has eventually been concluded, that he was not at fault. This is exactly the situation in the present controversy, inasmuch as, the appellant's retiral benefits including gratuity, were withheld on 31.10.1996 when he retired on attaining the age of superannuation. The aforesaid withholding, was on account of a pending criminal proceeding. The said withholding has appropriately been considered as valid, under Regulation 46(2) of the 1995, Regulation. But the appellant was acquitted from the criminal prosecution initiated against him on 31.10.2009. As such, it is inevitable to conclude, that his gratuity was withheld without the appellant being

at fault. It is in the aforesaid background, that we shall venture to determine the claim of the appellant for interest, despite the PNB having validly withheld his gratuity under Regulation 46(2) of the 1995, Regulations.

18. Sub-Section (3A) of Section 7 of the Gratuity Act is the most relevant provision for the determination of the present controversy. A perusal of the sub-Section (3A) leaves no room for any doubt, that in case gratuity is not released to an employee within 30 days from the date the same become payable under sub-Section (3) of Section 7, the employee in question would be entitled to "simple interest at such rate, not exceeding the rate notified by the Central Government from time to time for repayment of long term loans, as the Government may, by notification specify?" There is, however, one exception to the payment of interest envisaged under sub-Section (3) of Section 7 of the Gratuity Act. The aforesaid exception is provided for in the proviso under sub-Section (3A) of Section 7. A perusal of the said proviso reveals, that no interest would be payable "if the delay in the payment is due to the fault of the employee, and the employer has obtained permission in writing from the controlling authority for the delayed payment on this ground?" The exception contemplated in the proviso under sub-Section (3A) of Section 7 of the Gratuity Act, incorporates two ingredients. Where the two ingredients contemplated in the proviso under sub-Section (3A) are fulfilled, the concerned employee can be denied interest despite delayed payment of gratuity. Having carefully examined the proviso under sub-Section (3A) of Section 7 of the Gratuity Act, we are of the view, that:

(i) The first ingredient is, that payment of gratuity to the employee was delayed because of some fault of the employee himself.

(iii) The second ingredient is, that the controlling authority should have approved, such withholding of gratuity (of the concerned employee) on the basis of the alleged fault of the employee himself.

None of the other sub-sections of Section 7 of the Gratuity Act, would have the effect of negating the conclusion drawn hereinabove.

19. Insofar as the present controversy is concerned, the appellant was accused of having entered into a conspiracy with a bank employee superior to him, so as to extend unauthorized benefits to a member of the Indian Administrative Services belonging to the Haryana Cadre. Based on the aforesaid alleged fault of the appellant, the PNB, by an order dated 13.5.2000, informed the appellant, that the release of certain retiral benefits including gratuity was being withheld, because of pending of criminal proceedings against him. The appellant was also informed, through the aforesaid communication, that release of his retiral benefits including gratuity, would depend on the outcome of the pending criminal proceedings. It is, therefore apparent, that the second ingredient expressed in the proviso under sub-Section (3A) of Section 7 of the Gratuity Act was clearly satisfied, when the competent authority approved the action of withholding the

appellant's gratuity. The instant conclusion is inevitable, because it is not the case of the appellant, that the communication dated 13.5.2000, by which his gratuity was withheld, had not been issued at the instance of the concerned controlling authority. The only question which, therefore, arises for consideration is, whether the first ingredient (culled out above) for the applicability, of the proviso under sub-Section (3A) of Section 7 of the Gratuity Act, can be stated to have been satisfied, in the facts and circumstances of the instant case. If it can be concluded, that the aforesaid ingredient is also satisfied, the appellant would have no right to claim interest, despite delayed release of gratuity.

20. Our determination of the first ingredient is, as follows. We are of the considered view, that consequent upon the acquittal of the appellant by the Special Judge, CBI Court, Chandigarh, it would be erroneous to conclude, that the gratuity payable to the appellant on attaining the age of superannuation i.e., on 31.10.1996, was withheld on account of some fault of the appellant himself. We may hasten to add, if the appellant had been convicted by the Special Judge, CBI Court, Chandigarh, then the first ingredient would also be deemed to have been satisfied. Conversely, because the appellant has been acquitted, he cannot be held to be at fault. Accordingly it emerges, that the "fault" ingredient of the employee himself, for denial of gratuity when it became due, remains unsubstantiated. Since one of the two salient ingredients of the proviso under sub-Section (3A) of Section 7 of the Gratuity Act is clearly not satisfied in the present case, we are of the view, that the appellant cannot be denied interest under the proviso to section 7(3A) of the Gratuity Act. Accordingly, the appellant has to be awarded interest under section 7(3A) of the Gratuity Act. Therefore, if the provisions of the Gratuity Act are applicable to the appellant, he would most definitely be entitled to interest under sub-Section (3A) of Section 7 of the Gratuity Act, on account of delayed payment of gratuity.

25. We, therefore, have no hesitation in concluding, that even though the provisions of the 1995, Regulations, are silent on the issue of payment of interest, the least that the appellant would be entitled to, are terms equal to the benefits envisaged under the Gratuity Act. Under the Gratuity Act, the appellant would be entitled to interest, on account of delayed payment of gratuity (as has already been concluded above). We therefore hold, that the appellant herein is entitled to interest on account of delayed payment, in consonance with sub-Section (3A) of Section 7 of the Gratuity Act"

17. The facts of the present case are very similar to the facts in the case of Y.K. Singla (*supra*) and the decision of the Hon'ble Apex Court in Singla's case squarely covers the present case. The gratuity of the petitioner having been withheld for no fault on the part the petitioner, he is entitled to interest on the delayed payment of gratuity.

18. In view of the aforesaid, this writ petition succeeds. The respondents are directed to pay to the petitioner the differential salary for the period of suspension along with interest at the rate of 8 per cent per annum calculated on

and from the date the same became payable till the actual date of payment. The respondents shall also allow annual increment for ten months i.e. the period of suspension, to the petitioner along with interest at the rate of 8 per cent thereon from the date the petitioner would have become entitled to the same but for his suspension till the date of actual payment. The respondents shall also pay to the petitioner interest on the gratuity amount that has already been released in favour of the petitioner at the rate of 8 per cent per annum from the date following the date of superannuation of the petitioner till the date when the gratuity amount was disbursed to the petitioner. The benefits payable to the petitioner under this order shall be paid within 8 weeks from date.

19. WP No. 104 of 2015 is accordingly disposed of.

20. Urgent certified photocopy of this judgment and order, if applied for, be given to the parties upon compliance of necessary formalities.