(1998) 01 KL CK 0036

In the High Court Of Kerala

Case No : O.P. No. 11107 of 1991

Rajendra Pai H. APPELLANT

Vs

Canara Bank and Another RESPONDENT

Date of Decision : 14-01-1998

Acts Referred:

Payment of Gratuity Act, 1972 — Section 4(6)

Citation : (1998) 1 LLJ 577

Hon'ble Judges : S. Sankarasubban, J

Bench : Single Bench

Advocate : H.B. Shenoy, for the Appellant; M.C. Sen, for the Respondent

Judgement

S. Sankarasubban, J.—The petitioner was an employee of the first respondent namely, Canara Bank. While working as Manager in the Kallekkad branch of the Bank, he was issued with charge sheet alleging certain misconduct. On the basis of the charge sheet and the enquiry conducted thereof, a punishment of removal from service which shall not be a disqualification for future employment was imposed on the petitioner by the Bank with effect from June 29, 1984. Eventhough the petitioner had challenged these orders he was unsuccessful. The petitioner was not paid the terminal benefits namely, the Gratuity and the Provident Fund due to him. The petitioner was paid an amount of Rs. 11,923.49 as gratuity on January 22, 1990. According to him, this amount paid is much lower than what he is legally entitled to. The petitioner submits that the payment of gratuity in the respondent bank is governed by the Canara Bank Employees Gratuity Fund Rules & Regulations. According to the calculation of the petitioner, he is entitled to a total gratuity amount of Rs. 28,875/- After considering the receipt of the amount of Rs. 11,923.49, a balance amount of Rs. 16,952 is due to the petitioner from the first respondent bank. Regarding provident fund, the petitioner was originally offered an amount of Rs. 26, 347.46. When the petitioner made a complaint against this, he was issued a statement. According to the statement, an amount of Rs. 51,351.20 was standing to the credit of petitioner''s Provident Fund Account, According tot he Bank, the petitioner had caused financial loss to the Bank on account of certain loan granted to him. The O.P. was filed to call for the records leading to Ext. P4 order and to quash the same and also for the issue of a writ of mandamus directing the 1st respondent bank to pay the petitioner the balance gratuity of Rs. 16,951.51.

2. Under Ext. P4 out of the total amount of Rs. 24,912.83, an amount of Rs. 21,104.25 was withheld. Only the balance amount of Rs. 3808.58 was liable to be paid to the petitioner.

3. A counter affidavit has been filed by the Bank. In the counter affidavit, it is stated that the petitioner was employed as an officer in the service of the Bank. In accordance with Rules 46(8) of the Canara Bank Officers'' Service Regulations, 1979, they are entitled to withdraw the amount which is due to them. Regarding the gratuity, it was stated that the gratuity has not been paid which comes to Rs. 27,349.03. According to the management, the financial loss caused to the Bank on account of illegal occupation by the petitioner was Rs. 20,144.64. After adjusting Rs. 15, 425.54 on accruing rent Rs. 4, 719.10 was due to the petitioner on account of payment of gratuity.

4. So far as the question of Provident Fund is concerned, I shall refer to Ext.P6. In Ext. P6, it is stated that consequent upon the punishment of dismissal the financial loss caused to the Bank has to the recovered out of the terminal benefits. The petitioner''s Provident Fund as Employees'' Contribution to P.F. was Rs. 25,003.83. With regard to Bank''s contribution, the Bank has reduced an amount of Rs. 21,104.25 as the loss caused to the Bank. Thus the Bank''s contribution comes to only Rs. 3, 899.58. The total amount under Ext.P6 comes to Rs. 30,247.04. This amount of Rs. 30,247.04 was paid to the petitioner on July 18, 1990. The petitioner is not able to prove that the financial loss sustained by the Bank is not correct. Hence I hold that the petitioner is not entitled to any more amount from the Bank as Provident Fund.

5. But with regard to gratuity the position is different. Ext. P6 itself states that under the Payment of Gratuity Act, the petitioner is entitled to gratuity of an amount of Rs. 27,349.03. From this, the Bank has deducted an amount of Rs. 15,425.54. Such loss caused by the bank on account of the rent for the quarters. So the balance of gratuity to be paid was Rs. 11, 923.49. The learned counsel for the petitioner submitted that the Bank is not entitled to reduce the above amount from the total amount of gratuity payable to him. The learned counsel for the petitioner contended that it was the Rules and Regulations of Canara Bank Employees Gratuity Fund (produced as Ext.P1) that was applicable to the petitioner. Under Rule 12 of the Rules when an employee has been dismissed for misconduct and such misconduct has caused financial loss to the Bank, he shall not be eligible to receive the gratuity to the extent of the financial loss caused to the Bank. Since the petitioner was not dismissed, Rule 12 does not apply to him, contends the counsel. The Bank contended that it was the Canara Bank Officers'' Service Regulations, 1979 that was applicable. The petitioner was discharged

from service on June 29, 1984. Under Clause 46 every officer shall be eligible for gratuity on his retirement. The Bank relies on Regulation 46(1)(e). But in paragraph 8 of the counter affidavit, the Bank itself admits that the petitioner is entitled to gratuity u/s 14 of the Payment of Gratuity Act.

6. Even under the Payment of Gratuity Act, the gratuity can be withheld only under the circumstances mentioned in Section 4(6) of the Act. It contemplates three circumstances mentioned in Section 4(6)(a) and Section 4(6)(b)(i) and (ii). u/s 4(6)(a), if the act or wilful omission for which the service of the employee is terminated has caused damage or loss, then the gratuity shall be forefeited to the extent of the damage or loss so caused. The other circumstances are when the services of the employee have been terminated for his riotous or disorderly conduct and if the services of the employee have been terminated for any moral turpitude. Clause (b) does not apply to the facts of the case. Under Clause (a) gratuity can be withheld if the act for which the services are terminated has resulted in loss to the Bank. Here the amount is withheld as damages for occupying the quarters of the Bank. This is not in any way connected with the conduct for which the petitioner''s services were terminated. Hence, that amount cannot be withheld from the gratuity of the petitioner. I am supported in my view by the decision taken in Permali Wallance Ltd. Vs. State of M.P. and Others, > 7. Hence, I direct the respondent-Bank-to pay the balance gratuity amount of Rs. 16, 951.51 with interest at 18% per annum from the date from which it was due till the amount is paid. In the nature of the case, I direct the respondent to pay the above amount with interest on or before February 15, 1998.

The Original Petition is disposed of as above.

