(2013) 07 DEL CK 0525

In the Delhi High Court

Case No : Writ Petition (C) No. 5282 of 2012

R.K. Jain — APPELLANT

Vs

Punjab National Bank — RESPONDENT

Date of Decision : 02-07-2013

Acts Referred:

Citation : (2014) 3 SCT 297

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : K.G. Mishra, for the Appellant; Rajesh Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—This writ petition is filed by Sh. R.K. Jain who was an employee of the respondent-bank. The writ petition seeks the relief of release of leave encashment of 240 days in terms of Regulation 38 of Punjab National Bank (Officers'') Service Regulations, 1979. It is not disputed that the petitioner was visited with the penalty of compulsory retirement as per the departmental proceedings conducted against him. Counsel for the petitioner in support of the argument has placed reliance upon two judgments. First is the judgment of Division Bench of Punjab and Haryana High Court dated 1.2.2010 in LPA No. 191/2006 titled as UCO Bank and Others Vs. Ashwani Kumar Sharma and the second is the judgment of a learned Single Judge of the Himachal Pradesh High Court in CWP No. 133/2001 titled as Arun Kumar Sood Vs. The Chairman & M.D. UCO Bank & Ors. decided on 21.10.2010. The judgment of learned Single Judge of Himachal Pradesh High Court simply reiterates the Division Bench judgment of Punjab and Haryana High Court in case of UCO Bank (supra).

2. Counsel for the respondent-bank in defence places reliance upon the judgment of the Division Bench of the Calcutta High Court in the case of Punjab National Bank Vs. Jyotirmay Roy in APO No. 284/2012 with W.P. No. 1562/2010 decided on 17.12.2012. This Division Bench judgment took different view than the view

taken in the judgment of the Punjab and Haryana High Court in case of UCO Bank (supra) and the Division Bench of Calcutta High Court holds that leave encashment is not permissible under Regulation 38 when the retirement is a compulsory retirement and hence fall under the head of termination of services by the employer.

3. In order to appreciate the respective contentions, Regulation 38 needs to be referred to and the same reads as under:-

38. Save as provided below, all leave to the credit of an officer shall lapse on resignation, retirement, death, dismissal or termination for any reason.

Provided that where an officer retires from bank''s service, he shall be eligible to be paid a sum equivalent to the emoluments of any period, not exceeding 240 days of privilege leave that he had accumulated. Provided that where an officer dies while in service, there shall be payable to his legal representative, a sum equivalent to the emoluments for the period not exceeding 240 days of privilege leave to his credit as on the date of his death.

Provided also that where an officer resigns from service on or after 1st April, 2001 after giving due notice as in Sub-Regulations (2) of Regulation 20 he may be paid a sum equivalent to the emoluments in respect of privilege leave to the extent of half of such leave to his credit on the date of cessation of service, subject to maximum of 120 days.

4. It is also relevant in this regard to refer to clarification which is issued by the respondent-bank dated 18.1.2001 whereby the bank has interpreted and clarified Regulation 38 to mean that leave encashment would not be payable whenever an employee is compulsorily retired. This Circular No. 4 dated 18.1.2001 reads as under:-

Punjab National Bank

Human Resources Development Division

Head Office: New Delhi

January 18, 2001

To All Branches

Hrd Division Circular No. 4

Reg: Eligibility For Leave Encashment and Travelling Allowance As Per Regulation 38 and 43 of PNB Officers'' Service Regulations

It is provided under Regulation 38 of PNB Officers'' Service Regulations that where an officer retires from bank''s service, he shall be eligible to be paid a sum equivalent to the emoluments of any period, not exceeding 240 days, of Privilege Leaves he had accumulated and also, when an officer dies while in service, a sum equivalent for the period not exceeding 240 days of Privilege Leaves is payable to his legal representatives. In terms of Regulation 43 of PNB Officers'' Service Regulations, on retirement, an officer will be eligible to claim travelling allowance, baggage and other expenses for himself and his family as on transfer from the last station at which he is posted to the place where he proposes to settle down on retirement.

Benefits provided under aforesaid Regulation 43 have also been extended to the officers opting voluntary retirement under Regulation 19(1) of PNB Officers'' Service Regulations and also under Regulation 29 of PNB (Employees'') Pension Regulations, 1995.

The eligibility of benefits of leave encashment and travelling allowance to officers who have been imposed penalty under Regulation 4 of Officer Employees''(Discipline & Appeal) Regulations was examined by the Personal Committee of Indian Bank Association and it has been advised that officers whose services are terminated or compulsory retired as a punishment will not be entitled to the above benefits. However, such officers who are retired under the circumstances mentioned in Regulation 19 of PNB Officers'' Service Regulation would be entitled to encash the accumulated Privilege Leaves and for the facility of travelling allowance on retirement.

Sd/-

CHIEF HRD

5. No doubt an ordinary reading of Regulation 38 seems to show some amount of ambiguity in the main part and proviso of the regulation inasmuch as whereas in the main/first part it is stated that the leave encashment would not be available on the retirement of a person however the first proviso allows leave encashment of 240 days on the retirement of a person. The question is that whether there should be a literal interpretation of the proviso of Regulation 38 or there should be purposive and/or contextual interpretation taken alongwith clarification given by the respondent-bank under Circular 4 of the 2001 and which clarification was given in fact on the advice of the Indian Bank Association and the recommendations of which body are accepted across the board by all the banks.

6. In my opinion, the interpretation given by the respondent with respect to Regulation 38 in terms of clarification by Circular 4 of 2001 must prevail. This is for the reason that the first part of Regulation 38 basically deals with denial of leave encashment whenever there is actually termination of services of an employee or his death. The subjects which falls under the first part of Regulation 38 are actually resignation or dismissal or termination for any reason (of course noting that death is also included alongwith retirement). So far as death of the employee is concerned, there is a specific second proviso which allows leave encashment for 240 days. The first proviso allows leave encashment for 240 days for retirement however this retirement will naturally have to be natural retirement in the ordinary course of events and not compulsory retirement which is in fact a termination of services by the employer. The object of Regulation 38

is to deny benefit of leave encashment and lapsing of the leaves in case there is a termination of the services of an employee. This becomes clear from the main part of Regulation 38. Once the intention of Regulation 38 is to deny benefit of leave encashment when there is termination of services of an employee then there is no reason why leave encashment should be granted to a person who is compulsorily retired from services because compulsory retirement is a termination from services. Whereas in the main part of Regulation 38 leave encashment lapses in case of retirement and death, however in these cases the first two provisos of Regulation 38 make it clear that with respect to ordinary retirement and death, leave encashment of 240 days is permissible. Quite clearly there has to be an instructive, contextual and purposive construction of the entire Regulation 38 viz. the main part of the regulation alongwith both first and second proviso and which if so done can leave no manner of doubt that for compulsory retirement leave encashment is not permissible.

7. I am inclined to follow the reasoning given by the Division Bench of the Calcutta High Court in the case of Jyotirmay Roy (supra) of the respondent-bank itself being relied on behalf of the respondent and the relevant portion of which reads as under:-

Learned counsel for the Appellant has submitted that in the case of the Petitioner he was compulsorily retired and not terminated in service. He took us to Paragraph 7 of the Judgment (see page 200) in which the learned Trial Judge has held that cessation of service on account of compulsory retirement has not been separately categorised to disentitle a delinquent officer from getting Leave Encashment benefits and therefore, inn such a case and unless provided in Service Regulations, the Bank wrongly applied the provision relating to Clause 38 referred to above thereby depriving the Petitioner from the benefits of Leave Encashment. We are of the view that the aforesaid interpretation of the learned Single Judge is not proper. Any wilful act of the employer by which the services of an employee is made redundant and/or comes to an end as a measure of punishment must always be considered to be an order of termination and therefore an order of compulsory retirement cannot be made an exception to the aforesaid principle.

Thus, in our considered opinion, by making a compulsory retirement to mean ordinary retirement thereby brining him within the eligibility clause of Circular No. 4 dated 18.1.2001 was not proper at all and we therefore are of the considered view that such a finding is erroneous. Considering the aforesaid facts and circumstances we are of the view that the order of the learned Trial Judge cannot be sustained. We would however, like to point out that under the Regulations (see Page 155 of the Paper Book) it has been clearly explained that Gratuity may be paid in case of termination of service but subject to the condition that the Officer has put in at least ten years of service in the Bank and provided that the termination is not way of dismissal or removal from service as punishment. The said explanation reads as follows:

Explanation: We have to clarify that gratuity may be paid in case of termination of service, subject to the condition that the officer has put in at least 10 years of service with the bank and provided that the termination is not by way of dismissal or removal from service as punishment.

Under the circumstances, we are of the view that the order of the learned Single Judge cannot be sustained. Accordingly, this appeal is allowed and the said impugned Judgment/Order dated 3.4.2012 passed in WP No. 1562 of 2010 is hereby set aside. There shall be no order as to costs.

8. I would respectfully follow the reasoning of the Division Bench of the Calcutta High Court more so for the reason that surely the respondent bank was entitled to issue a clarificatory circular dated 18.1.2001 because the circular is clarificatory in nature and not an amendment of the Regulation 38. If there is an ambiguity in the language surely there can be issued a clarificatory circular and for such clarification there is no requirement for any amendment of Regulation 38 as is sought to be suggested on behalf of the petitioner. The judgment of the Punjab and Haryana High Court gives only the following cryptic reason and with which I respectfully cannot agree:

8. A perusal of above shows that Clause (e) of Regulation 46 above which has been relied upon by learned counsel for the appellants cannot apply to the case of compulsory retirement. Similarly, First Proviso to Regulation 38 clearly shows that on retirement, an officer is entitled to leave encashment. There is no provision for withholding gratuity and leave encashment in the case of compulsory retirement.

9. Therefore I hold that Regulation 38 cannot be interpreted to allow benefit of leave encashment to an employee who is terminated from services by an order of compulsory retirement. In view of the above, the writ petition cannot succeed and is accordingly dismissed, leaving the parties to bear their own costs.