
(2025) 05 GAU CK 0328
In the Gauhati High Court
Case No : WP(C) Of 5939 Of 2014

Sailendra Nath Kakati

APPELLANT

Vs

The Uco Bank And 2 Ors

RESPONDENT

Date of Decision : 01-05-2025

Acts Referred:

Citation : (2025) 05 GAU CK 0328

Hon'ble Judges : Suman Shyam, J

Bench : Single Bench

Advocate : P Chetia, K Das, P Neog, B D Konwar, R Kalita, S Newar, M K Brown, A Thakurr, J R Thakur, H Medhi

Final Decision : Disposed Of

Judgement

Suman Shyam, J

1. Heard Mr. B. D. Konwar, learned senior counsel assisted by Ms. B. Soren, learned counsel appearing for the writ petitioner. Also heard Mr. M. Sharma, learned Standing Counsel for the UCO Bank appearing in this case for all the respondents.

2. In this writ petition, a prayer has been made by the writ petitioner for issuance of a writ of mandamus upon the respondent bank for releasing his retiral (terminal) benefits pursuant to removal from service by the order dated 04.03.2008 issued by the Bank. The facts of the case, in a nutshell, are that the writ petitioner herein was initially appointed as a Clerk in the UCO Bank on 16.05.1978. Thereafter, he was promoted to the rank of Junior Management Grade Scale-I and then to the Middle Management Grade Scale-II officer rank. While discharging his services as above, the authorities had initiated a departmental proceeding against the petitioner which had culminated in the order dated 04.03.2008 whereby, an order of "removal from service which shall not be a disqualification for future employment" was issued to him. That apart, punishment of reduction to lower Grade i.e. from Scale -II to Scale-I at a basic

pay of Rs.13820/- for a period of 3 years was also imposed upon the writ petitioner. Aggrieved by the order of penalty dated 04.03.2008, the petitioner had instituted WP(C) No.1723/2009 before this Court which was dismissed by the judgment and order dated 06.08.2013 passed by the learned Single Judge. The said order has attained finality in the eyes of law.

3. According to the writ petitioner, after the dismissal of WP(C) No.1723/2009 he was entitled to receive pensionary benefits such as gratuity, leave encashment and other terminal benefits which were not paid to him by the Bank despite repeated representations submitted by the petitioner. Situated thus, the petitioner was compelled to approach this Court once again by filing the present writ petition.

4. By referring to the documents available on record, Mr. Konwar, learned senior counsel for the writ petitioner has argued that it is the undisputed position of fact that the writ petitioner had made his contribution provident fund. Therefore, the writ petitioner was entitled not only to receive the provident fund dues but also his gratuity and leave encashment which have not been paid to him by the Bank till date for no valid reason.

5. By referring to the decision of the Supreme Court rendered in the case of Bank of Baroda vs. S. K. Kool (Dead) through Legal Representatives and Another reported in (2014) 2 SCC 715 as well as the subsequent decision of the Supreme Court in the case of UCO Bank and Another Vs. Vijay Kumar Handa reported in 2025 SCC OnLine SC 714 Mr. Konwar has argued that by interpreting Clause-22 of the Bipartite Settlement of the UCO Bank the Hon'ble Supreme Court has conclusively held that a mere order of removal from service would not disentitle the employee from pension if he is otherwise eligible under the Rules to receive the same. Since, the petitioner is entitled to receive pension under the Rules, hence, submits Mr. Konwar, a writ of mandamus be issued directing the respondent Bank to release the amount of pension and other terminal benefits to the petitioner with interest at the rate of 9% per annum so as to redress the grievance of his client.

6. Responding to the above submission, Mr. Sharma, learned counsel for the respondent Bank has argued that Clause-22 of the Bipartite Settlement signed by the Indian Banks' Association and the Banks' Workmens' Union does not permit payment of pension to an employee who has been served with an order of removal from service. According to Mr. Sharma, that is the reason why no pension has been paid to the petitioner. In so far as the claim for payment of gratuity, leave encashment and other terminal benefits payable to the petitioner is concerned, Mr. Sharma has argued that since there was delay on the part of the writ petitioner to furnish the necessary documents, hence, the Bank could not process the same. On such ground Mr. Sharma has opposed the prayer for grant of interest on the amount due and payable to the petitioner.

7. I have considered the submissions made at the Bar and have also gone

through the materials available on record.

8. It is not in dispute that as per Clause-6(b) of the Bipartite Settlement, an employee can be removed from service with superannuation benefits. Clause-6(b) is reproduced herein below for ready reference :-

"6. An employee found guilty of gross misconduct may :

(a)

(b) be removed from service with superannuation benefits i.e.

pension and/or provident fund and gratuity as would be due otherwise under the rules or regulations prevailing at the relevant time and without disqualification from future employment; or"

9. Clause-22 of the Bipartite Settlement, however, projects a contrary position which disentitle an employee removed from service from pensionary benefits. By examining the Clause-22 of the Regulations in the light of Clause-6(b) as quoted above, the Hon'ble Supreme Court in the case of S. K. Kool (supra) has made the following observations:-

"13. Regulation 22 of the Regulations, which is relied on to deny the claim of the employee reads as follows:

"22. Forfeiture of service: --(1)Resignation or dismissal or removal or termination of an employee from the service of the Bank shall entail forfeiture of his entire past service and consequently shall not qualify for pensionary benefits."

From a plain reading of the aforesaid Regulation, it is evident that removal of an employee shall entail forfeiture of his entire past service and consequently such an employee shall not qualify for pensionary benefits. If we accept this submission, no employee removed from service in any event would be entitled for pensionary benefits. But the fact of the matter is that the Bipartite Settlement provides for removal from service with pensionary benefits "as would be due otherwise under the Rules or Regulations prevailing at the relevant time". The consequence of this construction would be that the words quoted above shall become a dead letter. Such a construction has to be avoided.

14. The Regulation does not entitle every employee to pensionary benefits. Its application and eligibility is provided under Chapter II of the Regulation whereas Chapter IV deals with qualifying service. An employee who has rendered a minimum of ten years of service and fulfils other conditions only can qualify for pension in terms of Regulation 14 of the Regulations. Therefore, the expression "as would be due otherwise" would mean only such employees who are eligible and have put in minimum number of years of service to qualify for pension. However, such of the employees who are not eligible and have not put in required number of years of qualifying service shall not be entitled to the superannuation benefit though removed from service in terms of clause 6(b) of the Bipartite Settlement. Clause 6(b) came to be inserted as one of the

punishments on account of the Bipartite Settlement. It provides for payment of superannuation benefits as would be due otherwise.

15. The Bipartite Settlement tends to provide a punishment which gives superannuation benefits otherwise due. The construction canvassed by the employer shall give nothing to the employees in any event. Will it not be a fraud Bipartite Settlement? Obviously it would be. From the conspectus of what we have observed we have no doubt that such of the employees who are otherwise eligible for superannuation benefit are removed from service in terms of clause 6(b) of the Bipartite Settlement shall be entitled to superannuation benefits. This is the only construction which would harmonise the two provisions. It is well settled rule of construction that in case of apparent conflict between the two provisions, they should be so interpreted that the effect is given to both. Hence, we are of the opinion that such of the employees who are otherwise entitled to superannuation benefits under the Regulation if visited with the penalty of removal from service with superannuation benefits shall be entitled for those benefits and such of the employees though visited with the same penalty but are not eligible for superannuation benefits under the Regulation shall not be entitled to that."

10. The law laid down in the case of S. K. Kool (supra) has been followed in another recent decision of the Supreme Court rendered in the case of Vijay Kumar Handa (supra) thereby expressing a similar view in the matter.

11. There is no wrangle at the Bar that the law laid down in the case of S. K. Kool (supra) and Vijay Kumar Handa (supra) would be squarely applicable in the case of the petitioner. If that be so, this Court is of the unhesitant opinion that there is no scope for this Court to accept the objection raised by Mr. Sharma placing reliance on Clause-22 of the Regulations. On the contrary, in view of the decision of the Hon'ble Supreme Court in the case of S. K. Kool (supra), as affirmed in Vijay Kumar Handa (supra), this Court is of the opinion that the writ petitioner, who has rendered more than 29 years of continuous service in the Bank and being otherwise eligible to receive pension under the rules, cannot be denied the benefit of pension merely by relying upon Clause-22 of the Regulation.

12. For the reasons stated herein above, this writ petition succeeds and is hereby allowed. The respondent Bank is directed to compute the pension as well as other terminal benefits payable to the petitioner in the light of the observations made herein above and release the amount as expeditiously as possible, but not later than 3(three) months from the date of receipt of a certified copy of this order.

13. Also considered the prayer made by the petitioner's counsel for grant of interest. It may be correct that there was some delay on the part of the writ petitioner in furnishing some documents to the Bank so as to process the release of his retiral benefits. However, there is nothing on record to justify the delay of more than 17 years on the part of the Bank in releasing the terminal benefits or

at least the admitted dues of the petitioner. In these crucial 17 years the writ petitioner has undoubtedly been deprived of the benefits of his retiral/terminal dues which was payable to him by the Bank under the rules. On the contrary, by failing to pay the amount to the petitioner the Bank has made monetary gains in the form of interest accruing on an amount which amount did not belong to the Bank. Therefore, having regard to the peculiar facts and circumstances of the case and by balancing the equities, it is hereby provided that the amount found due and payable to the petitioner under the order of this Court shall carry interest at the rate of 6% per annum, after deducting the period of six months from the date on which the same became due, till realization. It is further made clear that if the amount payable to the petitioner is not released in full within 3(three) months from today, the outstanding dues would carry interest at the rate of 12% per annum with effect from 04.03.2008, till realization.

With the above observation, the writ petition stands disposed of.

Parties to bear their own costs.