(2010) 12 DEL CK 0286

In the Delhi High Court

Case No : Writ Petition (C) No. 5148 of 2008

Sh. N.D. Sharma APPELLANT

Vs

Central Bank of India and Others RESPONDENT

Date of Decision : 16-12-2010

Acts Referred:

Central Bank of India (Employees) Pension Regulations, 1995 — Regulation 48, 50, 50(2), 50(3), 50(4)
Constitution of India, 1950 — Article 226

Citation : (2011) 176 DLT 655 : (2012) 1 SLJ 264

Hon'ble Judges : Manmohan Singh, J

Bench : Single Bench

Advocate : Party in person, for the Appellant; R.S. Mathur, for the Respondent

Final Decision : Allowed

Judgement

Manmohan Singh, J.—The Petitioner has filed the present writ petition under Articles 226 of the Constitution of India praying for the writ quashing the show cause notice dated 25.05.2001 and subsequent enquiry proceedings and orders dated 02.11.2005 and 14.05.2008 passed against the Petitioner.

2. The facts of the case are that the Petitioner was working with the Respondent No. 1 since 1962. Initially he started working as a clerk and later on got several promotions. In June 1993 the Petitioner was given a special assignment for audit and inspection of three branches i.e. Shahdra, Delhi, Janpath and Press Area, New Delhi of the Respondent bank. As per the case of the Petitioner, during the inspection serious irregularities and fraud involving the higher authorities were discovered. Details of some such irregularities are reproduced below :

(i) A loan of Rs. 25 lakh was sanctioned to M/s Rajiv Alloy & Copper Industries Ltd. The Petitioner detected that a loan to this unit was already made by Civil Line Punjab National Bank. Despite the fact that at the time of inspection the unit was already closed, cheques of huge amounts were issued by the Shahadra branch.

(ii) At Janpath Branch a loan of Rs. 50 lakh which was issued in 1993 was outstanding in the account of Gupta Super Insuation. At the time of inspection in 1993 the unit was found missing.

(iii) Serious irregularities were discovered in the loan account file in Indana Industries Ltd.

3. The Petitioner admittedly reported the fraud. Later on he was removed from audit & operation. He submits that he was threatened by the Respondents that if he writes to the Ministry of Finance/Government of India about the fraud, disciplinary action would be initiated against him.

4. On 31.03.2000 the Petitioner retired from the service of Respondent No. 1. He received all his retirement benefits but form the very first month of the retirement, the Respondents withheld his three months commuted amount of pension.

5. A show cause notice dated 25.05.2001 was issued to the Petitioner by the Respondents. On 12.06.2001 the Petitioner sent his reply to the said show cause notice. The Respondents did not take any action and remained silent for about 18 months but did not release the commuted amount of pension. The Petitioner sent two letters of appeal dated 22.01.2003 and 30.10.2003 to the Hon''ble Prime Minister.

6. A memo dated 18.02.2003 and a chargesheet dated 06.10.2003 were issued to the Petitioner with similar charges as in the show cause notice dated 25.05.2001. The Petitioner did not reply to the memo nor participated in the departmental inquiry initiated against him.

7. The disciplinary authority vide order dated 02.11.2005 awarded consolidated penalty of "Withholding of 50% of pension for a period of 10 years" as per Central Bank of India Pension Regulations 1995 with respect to the chargesheet dated 06.10.2003.

8. The Petitioner filed an appeal before the Appellate Authority against the said order.

9. The Petitioner was exonerated for charges 1 to 3 of the chargesheet by the Appellate Authority and against Charge No. 4, the Petitioner was given a consolidated penalty of reduction of 25% of the pension for a period of five years by order dated 14.05.2008. The relevant portion of the order dated 14.05.2008 reads as follows :

The charge No. 4 is with regard to Appellant undertaking commercial employment without prior permission from the Bank as per Clause 50 & 50 (6) of the Central Bank of India (Employees'') Pension Regulations 1995. The Clause 50 of Central Bank of India (Employees'') Pension Regulations 1995 read as "any Officer employee wishes to accept any commercial employment before the expiry of two year from the date of his retirement, he shall obtain previous sanction of the Bank to such acceptance." The Appellant did not obtain any permission from the competent authority of the Bank before accepting commercial employment with Jamia Co-operative Bank Ltd. which he has admitted in his appeal also and has mentioned in the appeal that he has simply informed the Bank, while he was supposed to obtain previous sanction from the management, which he did not obtain. The Appellant has not brought out any evidence on record to refute this charge. As such, I hold the charge No. 4 as proved and award the penalty of

"Reduction of 25% of Pension for a period of five years as per Clause 50 (6) of the Central Bank of India (Employees'') Pension Regulations 1995".

10. Being aggrieved by the action of the Respondents the Petitioner has filed the present writ petition. In the counter affidavit filed by the Respondents it has been stated that since the Petitioner willfully did not participate in the departmental enquiry despite repeated notices he cannot challenge the same now.

11. According to the Petitioner under the compelled circumstances he undertook commercial employment and before accepting the employment he informed the management of the Respondent Bank by his letter dated 27.06.2000 regarding the same. In his letter dated 27.06.2000 he stated "I have accepted the employment with Jamia Co-operative Bank salary no drawn yet and further undertake that I will not accept D. A. from the said Bank during service."

12. The Petitioner waited for 60 days for the reply of the Respondents and only after that he joined the service presuming that the permission has been granted under the deeming provision i.e. Regulation 50 (4) Central Bank of India (Employees'') Pension Regulations 1995 because in the said Regulation it is clearly stated that if the Bank does not communicate the refusal to the applicant within a period of 60 days of the date of receipt of application. The bank shall be deemed to have granted permission.

13. However, the Respondents, after about 10 months asked the Petitioner to obtain proper permission to accept commercial employment by their letter No. BR/Misc/01-02/2817 dated. 11.04.2001.

14. I have heard the arguments of both the parties. The relevant Regulations 48 and 50 of Central Bank of India (Employees'') Pension Regulations 1995 read as under :

48. Recovery of Pecuniary loss caused to the Bank - (1) The Competent Authority may withhold or withdraw a pension or a part thereof, whether permanently or for a specified period, and order recovery from pension departmental or judicial proceedings the pensioner is found guilty of grave misconduct or negligence or criminal breach of trust or forgery or acts done fraudulently during the period of his service;

Provided that the Board shall be consulted before any final orders are passed;

Provided further that departmental proceedings, instituted while the employee was in service, shall, after the retirement of the employee, be deemed to be proceedings under these regulations and shall be continued and concluded by the authority by which they were commenced in the same manner as if the employee had continued in service;

Provided also that no departmental or judicial proceedings, if not initiated while the employee was in service, shall be instituted in respect of a cause of action which arose or in respect of an event which took place more than four years before such institution.

(2) Where the Competent Authority orders recovery of pecuniary loss from the pension, the recovery shall not ordinarily be made at a rate exceeding one-third of the pension admissible on the date of retirement of the employee;

Provided that where a part of pension is withheld or withdrawn, the amount of pension drawn by a pensioner shall not be less than the minimum pension payable under these regulations.

50. Commercial employment after retirement- (1) If a pensioner who immediately before his retirement was holding the post of an officer and wishes to accept any commercial employment before the expiry of two years from the date of his retirement, he shall obtain the previous sanction of the Bank to such acceptance;

(2) Subject to the provision of sub-regulation (3), the Bank may by order in writing, on the application by a pensioner, grant, subject to such conditions, if any, as it may deem necessary, permission, or refuse, for reasons to be recorded in the order permission to such pensioner to take up the commercial employment specified in the application.

(3) In granting or refusing permission under sub-regulation (2) to a pensioner for taking up any commercial employment, the Bank shall have regard to the following factors, namely :

(a) the nature of the employment proposed to be taken up and the antecedents of the employer;

(b) whether his duties in the employment which he proposes to take up might be such as to bring him into conflict with the Bank;

(c) whether the pensioner while in service had any such dealing with the employer under whom he proposes to seek employment as it might afford a reasonable basis for the suspicion that such pensioner had shown favours to such employer;

(d) whether the duties of the commercial employment proposed involve liaison or contact work with Bank;

(e) whether his commercial duties will be such that his previous official position or knowledge or experience under Bank could be used to give the proposed employer an unfair advantage;

(f) the emoluments offered by the proposed employer; and

(g) any other relevant factor.

(4) Where within a period of sixty days of the date of receipt of an application under sub-regulation (3), the Bank does not refuse to grant the permission applied for or does not communicate the refusal to the applicant, the Bank shall be deemed to have granted the permission applied for,

Provided that in any case where defective or insufficient information is furnished by applicant and it becomes necessary for the Bank to seek further clarifications or information from him, the period of sixty days shall be counted from the date on which the defects have been removed or complete information has been furnished by the applicant.

(5) Where the Bank grants the permission applied for subject to any conditions or refuses such permission, the applicant may within thirty days of the receipt of the order of the Bank to that effect, make a representation against any such condition or refusal and the Bank may make such orders thereon as it deems fit;

Provided that no order other than an order cancelling such condition or granting such permission without any conditions shall be made under this sub-regulation without giving the pensioner making the representation an opportunity to show cause against the order proposed to be made.

(6) If any pensioner takes up any commercial employment at any time before the expiry of two years from the date of his retirement without the prior permission of the Bank or commits a breach of any condition subject to such permission to take up any commercial employment has been granted to him under this regulation, it shall be competent for the Bank to declare by order in writing and for reasons to be recorded therein that he shall, not be entitled to the whole or such part of the pension and for such periods as may be specified in the order.

Provided that no such order shall be made without giving the pensioner concerned an opportunity of show cause against such declaration

Provided further that in making any order under this sub-regulation, the Bank shall have regard to the following factors,

(i) The financial circumstances of the pensioner concerned.

(ii) The nature of, and the emoluments from the commercial employment taken up by the pensioner concerned; and

(iii) Any other relevant factor.

(7) Every order passed by the Bank under this regulation shall be communicated to the pensioner concerned.

(8) In this regulation, the expression "commercial employment" means :

(i) an employment in any capacity including that of an agent, under a company (including a banking company), co-operative society, firm or individual engaged in trading, commercial, industrial, financial or professional business and includes also a directorship of such company (including a banking company) and partnership of such firm, but does not include employment under a body corporate, wholly or substantially owned or controlled by the Central Government or a State Government;

(ii) setting up practice, either independently or as a partner of a firm as adviser or consultant in matters in respect of which the pensioner :

(A) has no professional qualifications and the matters in respect of which the practice is to be set up or is carried on are relatable to his official knowledge or experience or

(B) has professional qualifications but the matters in respect of which such practice is to be set up are such as are likely to give his clients an unfair advantage by reason of his previous official position, or

(C) has to undertake work involving liaison or contact with the offices or officers of the Bank.

Explanation: For the purpose of this clause, the expression employment under a co-operative society includes the holding of any office, whether elective or otherwise such as that of President, Chairman, Manager Secretary, Treasurer and the like, by whatever name called in such society.

15. Admittedly, the Petitioner retired on 31.3.2000. It is not denied by the Respondents that in the year 1993 the Petitioner was given a special assignment for audit and inspection of three branches i.e. Shahdara, Delhi, Janpath and Press Area, New Delhi and while discharging his duties he had reported the alleged fraud and later on he was removed from the audit and operation. It is also not denied by the Respondents that on his retirement, the Respondent bank had issued the certificate to him of having served the organisation with sincerity, honesty and devotion. The certificate was also issued by the bank for completion of satisfactory service by the Petitioner.

16. It is submitted by the learned Counsel for the Respondents that a show cause notice was issued to the Petitioner on 25.5.2001 raising various allegations of irregularities and fraudulent acts by him while he was in service and disciplinary action was contemplated against him. The Petitioner sent the reply dated 12.6.2001 to the said notice denying all the allegations made by the Respondents in the same.

17. The chargesheet dated 6.10.2003 was issued to the Petitioner with the following charges :

Charge No. 1

He debited Profit & Loss Entertainment & Repairing of OFF without support vouchers/bills/receipts as detailed in Statement of Imputation. Further the TO Ds outstanding in savings a/cs were unauthorisedly liquidated by him by debiting the Profit & Loss a/c as detailed in Statement of Imputation. He also raised a debit entry of Rs. 27,893.64 by debiting CD inoperative a/c and credit of same was afforded by him unauthorisedly to different accounts in order to conceal other entries debited by him.

Charge No. 2

He allowed Temporary overdrafts to M/a. Pakt Consultants as also to other parties of the Bank unauthorisedly beyond his delegated powers. Further in the a/c of M/s. Pakt Consultants, in order to liquidate outstanding balance, made various entries against the Bank''s norms. He has allowed a Term Loan to Mr. Naresh Gairola, brother of ex-staff unauthorisedly and further debited this Term Loan a/c and credit of the same was given to Mr. R.C. Gairola, ex-staff of Bank and brother of Mr. Naresh Gairola.

Charge No. 3

He indulged in financial irregularities in regard to preferential rate of interest applicable to staff as well as transfer of MMDC in his savings a/cs while it was not in his name. Further, he misused the facility of Staff Welfare Scheme for medical check up as detailed in Statement of Imputation. He also allowed a Cash Credit limit of Rs. 5.00 lacs to M/s. Star Laser just four and a half months before his retirement under Centvyapari scheme for which he had no powers as detailed in Statement of Imputation.

Charge No. 4

Mr. Sharma took commercial employment after retirement without the permission of the Bank.

18. Subsequently, the Petitioner did not participate departmental enquiry and by order dated 2.11.2005 the consolidated punishment of withholding of 50% of the pension for a period of 10 years was awarded to the Petitioner with respect to the chargesheet dated 6.10.2003.

19. On filing an appeal, the Petitioner was exonerated from Charge Nos. 1 to 3 and the said penalty imposed on account of charge No. 4 was reduced to withholding of 25% of the pension for a period of five years. The said amount was deducted from the pension of the Petitioner. It is not denied by the Respondents that the Petitioner had in his letter dated 27.6.2000 given the information to the Respondent bank that he had accepted the employment with Jamia Cooperative Bank but had not drawn salary and had also undertaken not to accept the DA from the said bank during service. The reason of accepting the employment in the bank assigned by the Petitioner is that after the retirement i.e. 31.3.2000 the Respondents withheld his three months commuted amount of pension. Further as the bank did not issue any communication either to accept or

refuse the employment within 60 days from the date of knowledge under the provision, he joined the service after the expiry of the said period. The Respondents in its reply dated 11.4.2001 which was sent after about 10 months asked the Petitioner to obtain proper permission to accept the commercial employment.

20. The regulation 50(4) clearly mandates that the Respondent bank was to communicate the refusal to grant the permission applied for commercial employment by the applicant within the period of 60 days of receipt of application under sub-regulation (3). The contention of the bank is that no such permission was sought by the Petitioner nor any application was filed in accordance with Regulation 50(3) of the Central Bank of India (Employees) Pension Regulations, 1995, rather in causal manner, the Petitioner sent the communication in his letter dated 27.6.2000.

21. I am of the considered view that when the Respondent No. 1 had the specific knowledge about Petitioner''s employment with another bank although no salary was drawn at the initial stage and the Respondent did not send any response either to allow or to refuse the same within 60 days under Regulation 50(4) of the Central Bank of India (Employees) Pension Regulations, 1995 and therefore, the Petitioner accepted the commercial employment. Then after the expiry of the period prescribed under Regulation 50(4) the Respondent was debarred from raising the objection that Petitioner did not apply for the same in the prescribed manner by filing the application. The Respondent could have easily refused the permission under the said regulation. At least the Respondent could have written a letter stating that any employment of the Petitioner even without salary drawn is contrary to sub-regulations within the prescribed time of 60 days. Since there was no response, the submission of the Respondents cannot be accepted.

22. It is also pertinent to mention that the memo was issued on 18.2.2003 when the Respondent No. 1 had the knowledge about the employment of the Petitioner in the month of June 2000. The said memo was issued after almost two years and eight months and the chargesheet was issued after the expiry of three years.

23. The contention of the Petitioner is that he has been harassed by the Respondent bank with a motive as the Petitioner had given the details and evidence against the top official of bank about their corruption. The details are mentioned in para 27 of the petition which are as under :

1. Top Management of Central Bank of India involved in fraud of Rs. 10 crores. A loan of Rs. 10 crores was given to an individual against security of shares of Rs. 50,000/-.

2. Former CMD and Top Management in CBI dragnet loan of Rs. 5 crore given to some fictitious firm against forge documents. This is the biggest scam going on in the Nation. Petitioner has pointed out this scam in June 1993 at the cost of his health, wealth and career.

24. He argued that due to this reason from the very first month his pension was withheld. He referred para 39 of the petition which reads as under :

39. Respondent had started to harass the Petitioner with the motive to make him starved from the very first month of the retirement of the Petitioner i.e. 31.03.2000. 100% pension was withheld for three months from April, 2000 to 26.06.2000. 50% pension reduced for 10 years vide their order dated 02.11.2005. 25% pension reduced for 5 years vide their order dated 14.12.2008. Commuted amount of pension was withheld for 6 years from April 2000 to November 2005. The commuted amount was Rs. 2,04,950/- Appear of pension for Rs. 59,875/- was withheld from October 2000 to November, 2005 without any reason or cause with the motive to imbues the Petitioner with fear, worry and pessimism so that he can not have a cheerful look in his life and never to believe in the possibility of justice.

25. Without going into the merit of the allegations made by the Petitioner in paras 25 to 40 of the writ petition, I am of the view that the Regulation 50(4) is a deeming provision which creates the fiction for the protection of employees from the belated approvals or rejections by the directors so that the employee must be made certain about its continuity of employment. This creates an obligation upon the directors also to approve or reject the appointment at the earnest opportunity failing which the fiction of law will operate and the same shall be deemed approval.

26. There is no res integra to the proposition that when the provision enacts the fiction in the given circumstances and if the same are satisfied, the necessary consequences that flow from the said fiction must be given full effect as if the said things are real. It is, as noted above, a deeming provision. Such a provision creates a legal fiction. As was stated by James, L.J. in Levy, Re, ex p Walton 1881 (17) Ch.D 746 :

when a statute enacts that something shall be deemed to have been done, which in fact and in truth was not done, the court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction is to be resorted to. After ascertaining the purpose full effect must be given to the statutory fiction and it should be carried to its logical conclusion and to that end it would be proper and even necessary to assume all those facts on which alone the fiction can operate.

27. When a thing is to be "deemed" something else, it is to be treated as that something else with the attendant consequences, but it is not that something else per Cave, J. R. v. Norfolk County Court 1891 (60) LJ QB 379.

28. When a statute gives a definition and then adds that certain things shall be `deemed'' to be covered by the definition, it matters not whether without that addition the definition would have covered them or not.

29. Under these circumstances, the present writ petition is allowed and the

Petitioner is also exonerated for Charge No. 4. Consequently, the orders dated 14.5.2008 passed by the Appellate Authority of the Respondent bank imposing punishment of reduction of 25% pension for a period of five years is quashed. The Petitioner shall be entitled for due amount of pension after the retirement dated 31.3.2000. The said amount shall be paid by the Respondent bank to the Petitioner within four weeks from today. The Petitioner is also entitled for Rs. 20,000/- as cost.