

(2016) 09 CAL CK 0045

In the Calcutta High Court

Case No : Writ Petition No. 12965 (W) of 2011.

Subal Chandra Biswas - Petitioner @HASH Indian Overseas Bank and Others

Date of Decision : 02-09-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Payment of Gratuity Act, 1972 — Section 4(6)

Citation : (2016) 3 CLR 871 : (2016) 151 FLR 738

Hon'ble Judges : Debi Prosad Dey, J.

Bench : Single Bench

Advocate : Mr. Piyush Chturbedi, Mr. Bhagawat Chaudhuri, Mr. K.M. Mukhopadhyay and Mr. Asit Baran Ghosh, Advocates, for the Appellant/Petitioner; Mr. R.N. Majumder and Mr. S. Chakraborty, Advocates, for the Plaintiffs/Respondents

Final Decision : Dismissed

Judgement

Debi Prosad Dey, J. - The petitioner joined in the Indian Overseas Bank in the year 1973 and he was promoted to Scale II of Officer Grade on 4th November, 1987. During his tenure as Scale II Officer at Sonapatti branch he was show caused for committing some irregularities and accordingly petitioner replied to such letter of show cause by denying all the allegations of alleged irregularities as indicated in the said letter. The Deputy General manager/disciplinary authority vide his letter being no. DO: DGM(NR): 081/01:DA:96, issued an order of suspension against the petitioner. Thereafter the disciplinary authority issued a charge sheet against the petitioner. Enquiry was conducted by the enquiry officer and forwarded to the petitioner by the Deputy General Manager/Disciplinary Authority vide his letter being No.DO:DGM(NR);DA:63/01:98. The Deputy General Manager/Disciplinary Authority vide order No.DO:DGM(NR):081/01:DA:98 dated 26th September,1998 passed the order for compulsory retirement of the petitioner. The petitioner preferred an appeal before the General Manager, Appellate Authority challenging the order passed by the disciplinary authority dated 26th September, 1998 but the Appellate

Authority vide order being no.DO:GM(RS):AA:100:99 dated 7th April, 1999 dismissed the appeal of the petitioner.

2. In the meantime the Chief Officer, Pension Cell requested the petitioner to submit necessary documents for availing the pensionary benefits. The Chief Officer, Administration by his letter being no. RO(M)/PAD/177/2360/2003-04, dated 28th August, 2003 informed the petitioner that balance amount of Rs.5,410/- has been transferred to his account after adjustment of the loss incurred by the bank due to such irregularities committed by the petitioner.

3. The petitioner filed an application under Article 226 of the Constitution of India before this Hon''ble Court challenging the acts and actions for appropriating the gratuity amount and towards recovering the alleged loss as well as adjustment of the housing loan in writ petition no.10269(W) of 2004 and the said writ application was disposed of by the Hon''ble Justice Pinaki Chandra Ghose (as His Lordship then was) on 7th December, 2004. Liberty was given to the petitioner to place the necessary facts before the appropriate authority to review such claim of the authorities. Thereafter, the petitioner has again filed another writ application being writ petition no. 19190(W) of 2007 challenging the impugned order of compulsory retirement but the said writ application was withdrawn by the petitioner with liberty to file a fresh writ petition on the selfsame cause of action.

4. Thereafter the petitioner has filed this writ application challenging the findings of the enquiry officer as well as the decision of the authorities regarding awarding of punishment to the petitioner in the form of compulsory retirement.

5. On scrutiny of the prayer of the writ application, I do not find any prayer of the petitioner by which the petitioner has challenged the letter of the Chief Officer, Administration dated 28th August, 2003 whereby the financial loss of the company as well as house building loan of the petitioner, has been appropriated from the amount of gratuity of the petitioner.

6. At the time of hearing learned Advocate for the petitioner however did not press the prayers with regard to his compulsory retirement from service but learned Advocate for the petitioner has simply contended that the action of the authority in deducting any amount from the gratuity amount is contrary to the provisions of Section 4(6) of Payment Of Gratuity Act and accordingly such action on the part of the disciplinary authority/bank authorities ought to be declared null and void and the authorities be directed to refund the entire amount of gratuity to the petitioner.

7. All the respondents have jointly filed their affidavit in opposition stating inter-alia that the instant writ application is barred by the Principle Of Constructive Res-Judicata and the petitioner will be estopped from challenging such letter of Chief Administrative Officer since the petitioner has accepted the result of disciplinary proceeding as well as the decision of this Court in writ petition no. 10269(W) of 2004. The further case of the respondents is that the enquiry officer conducted

the enquiry after giving ample opportunity of hearing to the petitioner and the petitioner availed of all the fora but ultimately the petitioner was penalised with the major punishment in the form of compulsory retirement. The petitioner did not challenge such decision of the disciplinary authority instead the petitioner has simply filed a writ being no. 10269(W) of 2004 challenging the deduction of amount from his gratuity but the said writ application was disposed of in terms of the following order:-

"petitioner has come before this Court that submitted that a writ of Mandamus should be issued in the matter restraining the respondents from deducting any sum from the retrial benefits of the petitioner. I am afraid that at this stage, since a misconduct of the petitioner has already been given effect to by the authorities and the authorities came to the conclusion that the petitioner committed guilt and an order has also been passed to that effect on 26-09-1998 which was also upheld by the appellate authority, in my opinion, at this stage no further steps and/or order can be passed directing the authorities not to realise the said amounts from the dues of the petitioner."

8. That goes to show that the petitioner cannot be permitted to raise the selfsame issue in this writ petition since such prayer of the petitioner is barred by the Principle of Res-Judicata and the prayer for setting aside the decision of the disciplinary authority is also barred by the Principle of Constructive Res-Judicata.

9. Learned Advocate for the petitioner submitted that Disciplinary Authority has acted contrary to the provisions of Section 4(6) of the payment of gratuity, Act and such act of the authority, being unconstitutional, ought to be set aside by the writ Court.

10. In support of his contention, learned Advocate for the petitioner has relied on the following decisions:-

1. 2014(3) CHN (Cal)542 (Joydeb Ghatak v. Railway Protection Force, Eastern Railway), wherein it has been observed that termination of service of an employee on any ground other than that of moral turpitude does not entitle the authorities to withhold the gratuity of the employee.

2. AIR 1999 SC 1841 (Bhagirathi Jena v. Board of Directors O.S. F.C & Ors.) the apex Court observed that Disciplinary Proceeding lapsed on the superannuation of the employee and nothing could be deducted from the retiral benefits of the employee.

3. (2007) 1 SCC 663 (Jaswant Singh Gill v. Bharat Coking Coal Ltd. & Ors.) the apex Court observed that provisions of Section 4(6) of the payment of Gratuity Act will prevail over non-statutory rules framed by company.

11. It is further submitted that the petitioner was not terminated from his service and accordingly the Bank Authority cannot take advantage of Section 4(6) of the Payment of Gratuity Act. In fact, the petitioner was retired compulsorily by the authority concerned.

12. Learned Advocate for the respondents however contended that service Regulations of Indian Overseas Bank have statutory force and such service regulations, being special law enacted for bank, have to be given effect to in suppression of Section 4(6) of the Payment of Gratuity Act, being general law on the field of payment of gratuity.

13. Secondly, the service of the petitioner has been pre-maturely terminated since the petitioner was found guilty in a departmental proceeding. Pursuant to such decision of the Disciplinary Authority, the service of the petitioner was terminated by awarding punishment of compulsory retirement. On that score also, the petitioner is not protected by Section 4(6) of the Payment of Gratuity Act.

14. In support of his contention, learned Advocate for the respondents has relied on the following decisions and regulations of the Indian Overseas Bank.

1.(2007) 9 SCC 15 (Ramesh Chandra Sharma v. Punjab National Bank & Anr.) The apex Court has accepted that regulation of such Bank having statutory effect should be given full effect.

2. W.P. No. 15864(W) of 2014 (United Bank of India v. Shri Pranab Kumar Bhuiyan & Ors.) This Court has accepted that the regulation of Bank having statutory force shall prevail over Payment of Gratuity Act.

3. Indian Overseas Bank Officers Employees (Discipline and Appeal) Regulations 1976:

Regulation:- 4 penalties:-

15. The following are the penalties which may be imposed on an officer employee, for acts of misconduct or for any other good and sufficient reasons :-

Minor Penalties :

- a. Censure;
- b. Withholding of increments of pay with or without cumulative effect;
- c. Withholding of promotion;
- d. Recovery from pay or such other amount as may be due to him or the whole or part of any pecuniary loss caused to the bank by negligence or breach of orders;
- e. Reduction to a lower stage in the time-scale of pay for a period not exceeding 3 years, without cumulative effect and not adversely affecting the officer's pension.

Major Penalties :-

- f. Save as provided for in (e) above reduction to a lower stage in the timescale of pay for a specified period, with further directions as to whether or not the officer

will earn increments of pay during the period of such reduction and whether on the expiry of such period the reduction will or will not have the effect of postponing the future increment of his pay;

g. Reduction to a lower grade or post;

h. Compulsory retirement;

i. Removal from service which shall not be a disqualification for future employment;

j. Dismissal which shall ordinarily be a disqualification for future employment.

4. Indian Overseas Bank (Officers) service Regulations 1979. Regulation 46(1) Every officer shall be eligible for Gratuity on:-

(a) Retirement

(b) Death

(c) Disablement rendering him unfit for further service as certified by a Medical Officer approved by the Bank.

(d) Resignation after completing Ten years of continuous service or

(e) Termination of service in any other way except by way of punishment after completion of 10(ten) years of service. (Effective from 15.11.1984)

16. Admittedly, by way of punishment the service of the petitioner was terminated and he was awarded punishment of compulsory retirement.

17. Therefore, I cannot accept the contention of the petitioner that the service of the petitioner was not terminated.

Secondly, in view of the decisions referred to herein above, the regulation of Indian Overseas Bank have had statutory force and such regulations, being special law, will prevail over even the payment of gratuity Act.

Thirdly, the petitioner has vehemently challenged such notice of the Bank authorities in writ petition No. 10269(W) of 2004 and now, the petitioner will not be permitted to challenge the self-same matter.

18. The instant writ petition is thus barred by the Principles of Res-Judicata.

19. In the premises set forth above; the writ petition is devoid of merit and is accordingly dismissed.

20. No order as to costs.

21. Urgent photostat certified copy of this order, if applied for, be given to the parties as expeditiously as possible