
(2009) 01 PAT CK 0117
In the Patna High Court
Case No : CWJC No. 12747 of 2004

Sukhendra Dubey

APPELLANT

Vs

The Bank of India and Others

RESPONDENT

Date of Decision : 04-01-2009

Acts Referred:

Industrial Disputes Act, 1947 — Section 18(1), 2(1)

Citation : (2009) 2 PLJR 463

Hon'ble Judges : Ajay Kr. Tripathi, J

Bench : Single Bench

Advocate : Abhay Kr. Singh and Suresh Chandra Giri, for the Appellant; Shivaji Pandey and Nalin Vilochan Tiwary, for the Respondent

Final Decision : Allowed

Judgement

A.K. Tripathi, J.—Vide order dated 31.8.2004 contained in Annexure-7 the respondent-Bank of India has rejected the claim for payment of pension to the petitioner on the ground that Regulation 22 of the Bank Employees Pension Regulation, 1995 does not allow pension to employees who are either dismissed or removed from service or whose services were terminated or forfeited. Petitioner challenges this order alongwith yet another letter dated 3.7.2004, contained in Annexure-5. where similar kind of decision refusing grant of pension had been communicated to the petitioner. Petitioner started his career under the respondent-Bank as Sub-Staff on 1.12.1969 and was posted at Dehri-on Sone Branch initially. Later on, he was transferred to Bhagwanpur Branch in the district of Muzaffarpur. He earned promotion on the post of Clerk-cum-Cashier and was transferred from one branch to other. He was last posted at Sasaram Branch of the Bank. According to him he had good service record from the year 1969 till 2002.

2. On 22.10.2002 a memorandum of charges which is Annexure-1 to the writ application came to be issued against him. Five set of charges were drawn up, the details of which are available on record alongwith the memorandum of

charge and an enquiry thereafter was held by the enquiry officer. The enquiry officer found all the charges to be proved except charge No. 3. Based on the enquiry report the disciplinary authority imposed punishment of various kinds but the highest punishment was removal from bank's service. The punishment order is Annexure-4 and has certain significance for the dispute which has been raised in the present writ application. The punishment and the wordings thereof is being reproduced herein below for ready reference and appreciation:-

Charge Status Punishment

I Proved Bringing down to lower stages in scale of pay by 2 stages.

II Proved Removed from Bank's service.

III Not No punishment.

IV Proved Censure.

V Proved Removal from Bank's service.

All the aforesaid punishment will run concurrently the consolidated effect of which would be Removal from Bank's service with superannuation benefits as would be due otherwise under the rules or regulations and without disqualification from future employment in terms of para 6(b) of the Memorandum of Settlement dated 10.4.2002.

Accordingly, I hereby order that Shri Sukhendra Dubey is hereby imposed a punishment of Removal from Bank's service with superannuation benefit in consonance with para 6(b) of the Memorandum of Settlement dated 10.4.2002. This will have immediate effect.

3. The contention of the petitioner based on reading of the punishment order is that though the petitioner was removed from Bank's service but it was with superannuation benefits and therefore the respondent-Bank cannot deny him superannuation benefits including pension as has been done in his case which would be evident from the communication contained in Annexures-5 and 7.

4. It is further urged that the wordings of the punishment order are quite clear and no amount of legal jugglery can be permitted to the respondent to deny the benefits which they themselves conferred upon the petitioner while passing the order of punishment.

5. Learned Senior Counsel representing the petitioner has drawn the attention of the Court to a memorandum of settlement dated 10th April, 2002 which was entered between Management of 52 Class-A Banks represented by Indian Banks' Association and their Workmen represented through their Unions. The memorandum of settlement was statutory in nature under the Industrial Disputes Act, 1947. By this settlement certain amendments have been brought about in the areas of disciplinary action and procedure thereof. The memorandum covers large area relating to misconduct and the kind of punishment which can be

imposed in the wisdom of the authority, based on the nature or the seriousness of the offence.

6. Clause-6 has relevance for the present case. It lays down the punishment which can be imposed upon an employee if found guilty of gross misconduct. Clause-6 is reproduced here-in-below for ready reference:-

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

(a) be dismissed without notice; or

(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

(c) be compulsorily retired 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

(d) be discharged 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

(e)

(f)

(g)

(h)

(i)

7. By virtue of the settlement dated 10th April, 2002 punishment envisaged under Clause-6(a), (b), (c) and (d) came to be introduced for the first time. If the management of the bank decided to amend the punishment which could be imposed on an employee by duly giving it the status of statutory settlement then the bank cannot be permitted to ignore the said settlement and fall on the interpretation of Regulation 22 to deny pension to the petitioner.

8. Regulation-22 is also reproduced hereinbelow because the case of the bank is based on interpretation of Regulation-22:-

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;

(2) All interruption in the service of a Bank employee entails forfeiture of his past service, except in the following cases, namely:-....

9. Learned Senior Counsel for the petitioner submits that by virtue of the memorandum of settlement entered in the year 2002. the 1995 Regulation to that extent stands diluted or modified in matter of imposition of punishment. No doubt Regulation 22(1) will occupy the field where punishment of dismissal or removal simpliciter are imposed but when the disciplinary authority after considering the entirety of the situation decides to impose punishment of removal with superannuation benefits including pension then Regulation 22(1) cannot be invoked to deny an employee the benefit which the disciplinary authority in his wisdom had decided not to take away despite the order of punishment of removal having been imposed in the given circumstances.

10. It is urged at the bar on behalf of the petitioner that even if a kind of grey area emerges due to Regulation 22(1) then the effect of the provisions contained in the settlement cannot be allowed to be ignored and efforts should be made to give prospective effect to the purport and the object to both the Regulation as well as the Memorandum of Settlement. Learned Senior Counsel relies on a decision rendered by the Hon''ble Supreme Court in the case of UCO Bank and Another Vs. Rajinder Lal Capoor, Reliance is on paragraphs 27 and 28 of the decision which are reproduced hereinbelow:-

27. In New India Assurance Co. Ltd. vs. Nusli Neville Wadia this Court held (SCC pp. 296-97, paras 51-54)

"51(50)With a view to read the provisions of the Act in a proper and effective manner, we are of the opinion that literal interpretation, if given, may give rise to an anomaly or absurdity which must be avoided. So as to enable a superior court to interpret a statute in a reasonable manner, the court must place itself in the chair of a reasonable legislator/author. So done, the rules purposive construction have to be restored to which would require the construction of the Act in such a manner so as to see that the object of the Act is fulfilled, which in turn would lead the beneficiary under the statutory scheme to fulfill its constitutional obligations as held by the court inter alia in Ashoka Marketing Ltd....

28. All the regulations must be given a harmonious interpretation. A court of law should not presume a casus omissus but if there is any, it shall not supply the same. If two or more provisions of a statute appear to carry different meanings, a construction which would give effect to all of them should be preferred (see Gujarat Urja Vikash Nigam Ltd vs. Essar Power Ltd.)

11. Learned Senior Counsel further relies on yet another decision of the Hon''ble Supreme Court rendered in the case of Keshevji Raviji & Co. & Ors. vs. Commissioner of Income Tax reported in (1990)2 SCC 231. Paragraph- 24 of the said decision has bearing to the present case and the same is also reproduced hereinbelow:-

24. But, if there is no such statutory departure the general principles operating in that branch of the law determine the nature of the legal relationship. Sir Francis Bennion in his statutory interpretation observes; (at pp. 350 and 354)

"Unless the contrary intention appears, an enactment by implication imports any principle or rule of law (whether statutory or non-statutory) which prevails in the territory to which the enactment extends and is relevant to its operation in that territory."

"Unless the contrary intention appears, an enactment by implication imports the principle of any legal maxim which prevails in the territory to which the enactment extends and is relevant to the operation of the enactment in that territory."

What follows is that, to the extent not prohibited by a statute, the incidents of the general law of partners are attracted to ascertain the legal nature and character of a transaction. This is quite apart from distinguishing the "substance" of the transaction from its "form". In *Sarga-*

"I appreciate that what I have to do is to construe the words used, and not to insert words which are not there, or to resort to a so-called "equitable construction" of a taxing statute. But even when I have given full weight to this consideration, I think that I am entitled to distinguish between the substance of a transaction and the machinery used to carry it through,.... "Substance" and "form" are words which must no doubt be applied with caution in the field of statutory construction. Nevertheless, where the technicalities of English conveyancing and land law are brought into juxtaposition with a United Kingdom taxing statute, I am encouraged to look at the realities at the expense of the technicalities."

In *CIT vs. Gillanders Arbuthnot & Co.* this Court said (SCC p. 854, para 25)

"...The taxing authority is entitled and is indeed bound to determine the true legal relation from a transaction. If the parties have chosen to conceal by a device the legal relation, it is open to the taxing authority to unravel the device and to determine the true character of the relationship. But the legal effect of a transaction cannot be displaced by probing into the "substance of the transaction"(emphasis supplied).

12. The sum and substance of the submission made on behalf of the petitioner is that since the memorandum of settlement has come into existence much after the Regulation 1995, the effect or consequence of the provisions of the settlement cannot be allowed to be ignored or an interpretation to Regulation 22(1) be given so as to take away the" benefits which an employee was otherwise entitled to in terms of Clause-6(b) of the Memorandum of Settlement.

13. The stand of the respondent Bank is that the order of punishment itself states that removal from Bank's service with superannuation benefits, as would be due otherwise (emphasis mine) under the Rules or Regulations. The stand of the Bank therefore is that the superannuation benefits would not accrue as a matter of course but would only accrue if it is due otherwise under the Rules or Regulations. Since the Regulation 22(1) in this case is unambiguous the

respondent did no wrong in refusing pension to the petitioner. That is the only interpretation which can be given to the punishment order which had been passed against the petitioner.

14. It is also submitted by learned counsel representing the Bank that there is distinction between service regulation and pension regulation. They operate in different field. This submission has been made on the basis of a decision of apex court in the case of Indian Bank & Another vs. G. Ramachandran & Ors. reported in (2008)1 SCC 711. Emphasis has been placed on paragraph 14 of the said decision.

15. The Court has now to consider as to the effect of Regulation 22(1) on the various provisions which has been incorporated by way of settlement, made after many a years of coming of Regulation 22(1).

16. The Settlement is a subsequent event and a conscious decision taken both by the Management of the various Banks and the Union of the Employees of the Bank. Since the Settlement is u/s 2(1) and Section 18(1) of the Industrial Disputes Act read with Rule, 58 of the Industrial Disputes (Central) Rules 1957 then in the opinion of the Court the provisions or the new kind of punishment which is envisaged under Clause-6(b) cannot be allowed to be diluted or ignored on a plain reading of Regulation 22(1). Since the Management of the Bank decided to impose punishment of removal with pensionary benefits as a measure of punishment then the Bank cannot be allowed to turn around and take a stand that part of the punishment order will stand hit by Regulation 22(1). The provisions of Settlement which has the statutory status cannot be allowed to be diluted or negated on an interpretation of Regulation 22(1) of 1995, which was very much available on the statute book when the Settlement making new provisions for imposition of punishment came to be incorporated under Clause-6 of the said Settlement in the year 2002. With kind of prolonged deliberations and hard bargaining which proceed such Settlement, it cannot be presumed that the Management of the various Banks or the employees were oblivious of Regulation 22(1).

17. The Court therefore comes to a considered opinion that the respondent-Bank has illegally denied the benefits of pension to the petitioner by misplaced interpretation to Regulation 22 by totally ignoring the Settlement contained in Annexure-2. Annexure-5 and Annexure-7 dated 3.7.2004 and 31.8.2004 respectively are therefore quashed. A direction is issued upon the respondent-Bank to settle the pensionary dues of the petitioner forthwith. This writ application is allowed.