(1998) 11 PAT CK 0036

In the Patna High Court

Case No : C.W.J.C. No. 6763 of 1996

Surendra Mishra APPELLANT

Vs

State Bank of India and Others RESPONDENT

Date of Decision : 06-11-1998

Acts Referred:

State Bank of India Employees Provident Fund Rules — Rule 13

Citation : (1999) 47 BLJR 365 : (2001) 3 LLJ 372

Hon'ble Judges : Radha Mohan Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Radha Mohan Prasad, J.—After the matter was fully heard in detail it was noticed by me from the order contained in Annexure 1 that earlier Mr. Basudeo Prasad, learned senior counsel had appeared on behalf of the Bank in the connected matter. Normally I do not hear matters in which Mr. Prasad is associated. Accordingly, I expressed my inability to hear this matter to the learned Counsel for the parties. However, Dr. Jha, learned senior counsel appearing for the petitioner and Mr. Sinha senior counsel appearing for the Bank submitted that they have absolutely no objection if the matter is heard by this Bench and decided on merits. Under such circumstances, on their persuation this matter has been heard by this Court on merits.

2. In this writ petition the grievance of the petitioner, who is an employee in the subordinate cadre of the State Bank of India, is that he has been denied of the other benefits resulting from his confirmation in service with effect from February 13, 1970 as a consequence of the award given by the Presiding Officer of the Central Government Industrial Tribunal No. I, Dhanbad in Reference No. 61 of 1983.

3. In short, the relevant facts of the case is that the petitioner was terminated from the service of the Bank against which Reference Case No. 3/1972 was made

to the Central Government Industrial Tribunal No. III for adjudication as to whether the action of the management of the Bank in terminating his service with effect from October 11, 1971 was justified and, further, as to what relief he was entitled? The Presiding Officer of the Tribunal gave his award on April 15, 1977 (Annexure 2), whereby the termination of the service of the petitioner was held to be not at all proper and the action of the Bank in doing so was not found justified. Accordingly, the petitioner was held to be entitled to reinstatement with full back wages within one month from the date of publication of the award.

4. Pursuant to the said award, the petitioner was reinstated but was not granted permanent absorption for which Reference No. 61 of 1983 was made to the Tribunal. The Tribunal vide its award dated April 27, 1989, held that the petitioner was entitled to be confirmed in service with effect from February 13, 1970 and not from February 3, 1970 after completion of nine months service. It was further held that he is entitled to other benefits resulting from his confirmation in service with effect from February 13, 1970.

5. Against the said award, a writ petition bearing C.W.J.C. No. 6091 of 1989 was filed on behalf of the Bank which was dismissed, vide order dated January 10, 1996, contained in Annexure 1. However, in the meanwhile, pursuant to the interim order, the order of confirmation of the petitioner in service with effect from February 13, 1970 was issued, vide Annexure 4. With respect to other benefits, the petitioner deposited his contribution towards provident fund and the Bank also deposited its contribution. However, since the interest over the contribution deposited by the Bank for the period while the petitioner was out of service on account of his termination was not deposited and, further, his case was not considered for promotion in accordance with Rules, he filed the present writ petition seeking for the said relief.

6. Mr. Sinha, learned senior counsel appearing for the Bank at the outset submitted that the Bank has already offered the petitioner to appear in the examination for the purpose of considering his case for promotion, but he has not accepted the offer so far. As such according to Mr. Sinha, the Bank is not at fault.

7. Dr. Jha, learned senior counsel appearing for the petitioner, on the other hand, '' submitted that there are two channels for promotion in the bank, namely, (i) from sub-ordinate service to the clerical cadre i.e., Clerk-cum-Cashier and (ii) from sub-ordinate service to the post of Record-Keeper-cum-Cashier. For the purpose of the earlier one, the minimum qualification is Matriculate and for the purpose of second one, the minimum qualification is that one must have passed Class VIII examination. The petitioner though has passed the Matriculation examination but in view of his age and other factors, he is prepared to take the test for the purpose of his promotion to the post of Record Keeper-cum-Cashier on the basis of the qualification required for the same. Mr. Sinha learned senior counsel appearing for the Bank submitted that in view of the industrial settlement, the Bank has not been able to allow the petitioner to appear at the

said test because he is qualified to take the test for promotion to the post of Clerk-cum-Cashier.

8. I am unable to appreciate the said submission of Mr. Sinha. Nothing has been brought on the record to show that under any Industrial settlement, there is complete bar from allowing a subordinate staff to opt for either of the two posts. The whole thing, in my opinion, will depend upon as to whether a candidate is eligible/qualified to take the test and opts for the same or not. In case the petitioner opts for taking the test for his promotion to the post of Record Keeper-cum-Cashier, which, I am informed, is inferior to the post of Clerk-cum-Cashier, I do not find what objection the Bank can have in permitting him to do so. It is not disputed that the petitioner is qualified to take the test also for considering his case for promotion to the post of Record Keeper-cum-Cashier.

9. With respect to the deposit of interest over the contribution of the Bank towards provident fund, Mr. Sinha, learned senior counsel appearing for the Bank referred to Rule 13 of the State Bank of India Employees Provident Fund Rules and submitted that until and unless an employee, and in the instant case, the petitioner, deposited his contribution, the Bank was not obliged to deposit its contribution. According to him, since the petitioner deposited his contribution only in the year 1995, the Bank also deposited its contribution soon thereafter and, as such, the petitioner cannot claim interest over the contribution made by the Bank.

10. Dr. Jha, learned senior counsel appearing for the petitioner submitted that for the contribution which the petitioner could not make earlier he cannot be held responsible as he was out of employment on account of his termination and not confirmed by the Bank despite the above mentioned award. Under such circumstances, the petitioner may not claim interest over the deposit which he could not make earlier but the amount which the Bank has deposited, the petitioner would certainly be entitled for interest since the date of contribution due to him from the Bank towards provident fund.

11. I find substance in the submission of: Dr. Jha. It is not that on account of any default on the part of the petitioner he could not deposit his contribution on account of which the Bank could deny interest on its contribution for the period while he was kept out of job on account of termination which was held to be illegal by the Tribunal and also upheld by this Court. In any view of the matter, as a consequence of the award declaring the termination of the petitioner from service illegal and, further, directing for grant of other benefits, resulting therefrom, in my opinion, for all purposes he will be deemed to be in the service of the Bank right from the date of his termination and, thus, entitled for contribution from the above date of confirmation i.e. February 13, 1970. Accordingly, the Bank would be deemed to be liable for depositing its contribution towards provident fund over which interest would have accrued during the said period. This was not done by the Bank not on account of any fault on the part of the petitioner. Moreover, the amount of contribution remained with the Bank and

it must have been utilised by them during the said period.

12. Under such circumstances, in my opinion, the Bank cannot deny interest to the petitioner over its contribution for the said period by relying upon the aforementioned Rule, which applies to a normal case. Learned counsel appearing for the Bank has not been able to point out in the said rule that even in case of setting aside of the order of termination from service, the employee can be denied of the interest over the contribution which the Bank was/is liable to deposit towards his provident fund.

13. Accordingly the respondent Bank is directed to allow the petitioner to appear at the test/special test for considering his case for promotion to the post of Record-Keeper-cum-Cashier with effect from the due date after giving him opportunity for training if the Rules permit for any such training. Further, the respondent Bank is directed to get the calculation of the above mentioned interest done and deposited in the provident fund account of the petitioner within three months.

14. In the result, the writ petition is allowed, but in the peculiar facts and circumstances, there shall no order as to costs.

