
(2013) 08 RAJ CK 0058

In the Rajasthan High Court

Case No : Civil Special Appeal (W) No. 218 of 2013

UCO Bank and Others

APPELLANT

Vs

Madanlal Swami

RESPONDENT

Date of Decision : 29-08-2013

Acts Referred:

UCO Bank Officer Employees (Discipline and Appeal) Regulations, 1976 — Regulation 15

Citation : (2014) 1 CDR 14 : (2014) LabIC 953 : (2014) 1 RLW 345 : (2013) 4 WLN 487

Hon'ble Judges : Dinesh Maheshwari, J;Arun Bhansali, J

Bench : Division Bench

Advocate : Jagdish Vyas, for the Appellant;

Final Decision : Dismissed

Judgement

Dinesh Maheshwari, J.—By way of this intra-court appeal, the appellants-employers, UCO Bank and its Officers, seek to question the order dated 06.12.2012 whereby, the learned Single Judge of this Court has allowed the writ petition (CWP No. 4020/2004) filed by a retired employee (the respondent herein) on his grievance that the period of suspension during the disciplinary proceedings was not being counted as a part of his active service. In brief, the relevant factual aspects leading to this appeal could be noticed in the following: The respondent herein was an employee of the appellant-Bank and, while working on the post of Assistant Manager (Cash) at the Branch Office Paota, Jodhpur, sought voluntary retirement under the UCO Bank Employees' Voluntary Retirement Scheme-2000. His prayer for voluntary retirement was accepted by the competent authority and the decision in that regard was conveyed under a letter dated 21.04.2001.

2. The case of the respondent-employee in the writ petition had been that after retirement, he was entitled for certain retiral benefits out of which, ex gratia payment was made on 02.06.2001 and gratuity amount was paid on 23.07.2001.

The respondent stated his grievance in the manner that on 07.09.2001, his pension was settled but upon going through the relevant documents, he found that while determining his length of service for the purpose of calculating retiral benefits, the employer had reduced the period of service by 2086 days, being the period he remained under suspension from the year 1991.

3. It may be noticed at this juncture with reference to the material placed on record that the respondent was placed under suspension by an order dated 05.03.1991 due to a departmental inquiry under the UCO Bank Officer Employees" (Discipline and Appeal) Regulations, 1976 ("the Regulations of 1976" hereinafter). The charges against the respondent had been that he did not perform the duties with honesty, devotion and diligence; that he unauthorisedly disbursed the loans to various parties and violated the Bank's rules and procedure while making such disbursements; and that he failed to maintain utmost integrity and honesty by taking payment of 3 LIC Policies which he had pledged to Bank as security. On 26.09.1995, the Disciplinary Authority passed the penalisation order (Annex.7) after finding that the charges against the delinquent stood proved. The operative portion of the order dated 26.09.1995, being the bone of contention in the present matter, could be noticed as under:--

Considering the nature of the charges, I am of the opinion that the appropriate punishment for each charge would be as given below, which I, in exercise of powers conferred upon me by UCO Bank Officer Employees (Discipline & Appeal) Regulations, 1976, hereby impose upon Shri Swami in terms of Regulation 4 of the said Regulations:--

Charge No. 1: Reduction of basic pay of Shri M.L. Swami to the lowest basic pay in the time scale (JMG Grade Scale I) applicable to him.

Charge No. 2: Withholding of future promotions.

Charge No. 3: Removal of Shri M.L. Swami from Bank's Service which shall not be a disqualification for future employment.

All the above penalties will run concurrently.

Shri Swami was placed under suspension vide order dated 05/03/91 of the competent authority. Shri Swami will not be entitled to pay and allowances, increments or any benefit whatsoever for the period of his suspension except the subsistence allowance already paid/payable to him.

4. The respondent-employee preferred an appeal against the order so passed by the Disciplinary Authority and in this appeal, the Appellate Authority, by the order dated 18.10.1996 (Annex.8), proceeded to modify the order passed by the Disciplinary Authority. The operative portion of the modification order of the Appellate Authority being also directly relevant for the present purpose, could be noticed as under:--

After carefully going through all the relevant papers relating to the case, I agree

with the views of the Disciplinary Authority holding all the charges as proved but considering the matter in its entirety, I am inclined to take a lenient view. I also feel that the nature and gravity of the allegations against Shri Swami do not call for his removal from service as has been awarded by the Disciplinary Authority.

Accordingly, I, in exercise of the powers conferred on me by Regulation 17 of UCO Bank Officer Employees" (Discipline & Appeal) Regulations, 1976, as amended, hereby modify the order of the Disciplinary Authority to the extent noted hereunder and award the following penalties:--

I also order that no payment should be made to Shri Swami as emoluments during the interim period i.e. from the date of the order of the Disciplinary Authority onwards.

The appeal of Shri M.L. Swami is hereby disposed of.

5. The respondent made a representation (Annex.9) on 06.05.2004 to the appellant-Bank with the submissions that the Appellate Authority having modified the order passed by the Disciplinary Authority, the period of suspension should have been reckoned as a part of his service period and not counting the same was unlawful and unjustified. Having failed to get the desired relief despite representation, the respondent preferred the writ petition leading to this appeal.

6. With reference to the above facts and factors, the contention on the part of the respondent-employee before the learned Single Judge had been that once the Appellate Authority modified the order of the Disciplinary Authority and substituted its own order of penalty, there was no question of reducing the period spent by him on suspension. It was submitted that the order of punishment dated 26.09.1995 (Annex.7) got merged into the order of the Appellate Authority dated 18.10.1996 (Annex.8) and, therefore, the period of suspension was required to be counted for the qualifying service because contra directions in the Disciplinary Authority's order were not approved by the Appellate Authority. In opposition, the submission on behalf of the present appellants before the learned Single Judge had been that all the charges levelled against the petitioner were found proved and the Appellate Authority did not interfere in such findings. According to the appellants, the Appellate Authority merely modified the order of punishment qua charge No. 3 and that was to the extent of modification of the punishment of removal and nothing else; and therefore, the other part of the order of the Disciplinary Authority, including that regarding treatment of the period of suspension remained intact. Regulation 15(3)(b) of the Regulations of 1976 was also referred to submit that thereunder, the period of absence from duty was not to be treated as the period spent on duty unless the competent authority specifically directed so. It was submitted that the Disciplinary Authority directed not to grant any benefit for the period of suspension and this part of the order was not interfered with by the Appellate Authority and hence, the employee was not entitled for the claimed benefits.

7. The learned Single Judge referred to the above orders and held that the order

of the Disciplinary Authority got merged into the order of the Appellate Authority; and the Appellate Authority, while substituting the penalty for charge No. 3 i.e., while imposing the penalty of reduction of basic pay to the lowest in the applicable time scale in place of the penalty of removal, did not issue any specific direction as regards the order concerning suspension period as to whether the same would remain in force or not. The learned Single Judge also examined Regulation 15 of the Regulations of 1976 and again referred to the fact that penalty was modified by the Appellate Authority but without speaking anything as regards the suspension period. The learned Single Judge proceeded to draw the inference against the appellants and hence, proceeded to allow the writ petition in the following:--

It is true that in Regulation 15 of the Regulations of 1976, there is power left with the competent authority to pass specific order for calculating suspension period and, in this case, at the time of inflicting the punishment of reduction the Disciplinary Authority passed an order while exercising power under Regulation 15(3)(b) that the employee shall not be entitled for any benefit for the period he remained under suspension. But, it is admitted position of the case that punishment for charge No. 3 was modified by the appellate authority and, in place of removal from service, the appellate authority passed order for reduction of basic pay to the lowest basic pay in the time scale (JMG-I) applicable to him; but, the order of appellate authority does not speak with regard to suspension period, therefore, obviously it can be presumed that in the event of passing order of removal the competent authority was having jurisdiction to pass order for the suspension period to deny the benefits; but, in the event of modification of the punishment order by the appellate authority no orders were required because the punishment of removal was set aside and other punishment for reduction of basic pay to the lowest basic pay in the time scale was imposed. Therefore, the respondents cannot refuse to calculate the service period in which the petitioner remained under suspension because the order of removal was set aside by the appellate authority. Therefore, the order of Disciplinary Authority was merged in the order passed by the appellate authority.

In view of above, this writ petition is allowed and the respondents are directed to calculate the service period in which the petitioner remained under suspension and, thereafter, re-calculate the pension and other retiral benefits within two months from the date of receiving certified copy of this order and pay dues to the petitioner within the aforesaid period.

8. Seeking to question the order so passed by the learned Single Judge, the learned counsel for the appellants has essentially relied on Regulation 15, particularly its sub-clause (3)(b), to submit that the period of absence from duty in the present case was not to be treated as the period spent on duty unless the competent authority specifically directed so, for any specific purpose and after recording the reasons in writing. The learned counsel also submitted that when the Appellate Authority did not say anything as regards suspension period, the

meaning and purport had been clear that other part of the order of the Disciplinary Authority was not disturbed because, if the order was sought to be set aside, the Appellate Authority would have said so in specific terms and with reasons. According to the learned counsel, contrary to the assumptions made by the learned Single Judge, the inference is that the Appellate Authority affirmed the entire of the order of Disciplinary Authority except that regarding penalty on charge No. 3; and this limited extent modification could not have been resulted in granting of relief contrary to the requirements of Regulation 15(3)(b).

9. Having given thoughtful consideration to the submissions made by the learned counsel for the appellants and having perused the material placed on record, we are of the view that even if for slightly different reasons, the relief as granted to the writ petitioner (the respondent herein) calls for no interference in intra-court appeal.

10. The crux of the submissions on behalf of the appellants centres around Regulation 15 of the Regulations of 1976, which could be noticed as under:--

15. Pay, allowances and treatment of service on termination of suspension:

(1) Where the competent authority holds that the officer employee has been fully exonerated or that the suspension was unjustifiable, the officer employee concerned shall be granted the full pay to which he would have been entitled, had he not been suspended, together with any allowance of which he was in receipt immediately prior to his suspension, or may have been sanctioned subsequently and made applicable to all officer employees.

(2) In all cases other than those referred to in sub-regulation (1), the officer employee shall be granted such promotion of pay and allowances as the Competent Authority may direct:

Provided that the payment of allowances under this sub-regulation shall be subject to all other conditions to which such allowances are admissible:

Provided further that the pay and allowances granted under this sub-regulation shall not be less than the subsistence and other allowances admissible under regulation 14.

(3)(a) In a case falling under sub-regulation (1), the period of absence from duty shall, for all purpose, be treated as a period spent on duty;

(b) In a case falling under sub-regulation (2), the period of absence from duty shall not be treated as a period spent on duty unless the Competent Authority specifically directs, for reasons to be recorded in writing, that it shall be so treated for any specific purpose.

11. A comprehension of the order dated 26.09.1995 (Annex.7) makes it clear that therein, the Disciplinary Authority found the three charges proved against the respondent-delinquent and imposed three major penalties i.e., of reduction of his basic pay to the lowest in the time scale applicable; withholding of his future

promotions; and his removal from the Bank's service. In this order, the Disciplinary Authority noticed that the delinquent was placed under suspension by the order issued by the competent authority on 05.03.1991; and proceeded to direct that the delinquent will not be entitled to pay and allowances, increments or any benefit for the period of suspension except subsistence allowance already paid. Read as a whole, it is clear that by virtue of this order, the respondent-delinquent was to be removed from service while being reduced to the lowest grade and with no promotion. Looking to the nature of order, denial of pay and allowances or increments and any benefit for the period of suspension, cannot be said to be unjustified; and rather appears to be in tandem with the penalties imposed.

12. The Appellate Authority was, however, inclined to take a lenient view with the observations that the nature of allegations did not call for the delinquent's removal from service. The Appellate Authority, therefore, imposed two penalties, namely: (i) reduction of basic pay to the lowest in the time scale applicable; and (ii) withholding of future promotions. The Appellate Authority in its penalisation order did not reiterate the proposition regarding treatment of suspension period as occurring in the Disciplinary Authority's order; and, instead, directed that no payment would be made to the delinquent towards emoluments from the date of the order of the Disciplinary Authority onwards.

13. The appellants seek to rely on sub-clause (3)(b) of Regulation 15 of the Regulations of 1976 to say that unless ordered, the period of absence from duty is not to be treated as period spent on duty and, therefore, irrespective of whether the Appellate Authority said anything or not, by virtue of the said clause, the period of suspension is not to be counted for any purpose. The appellants also seek to contend that when the Appellate Authority did not say anything as regards the last paragraph of the Disciplinary Authority's order, the same would be considered as having remained intact. We are not persuaded to accept any of these suggestions.

14. So far the last paragraph of the Disciplinary Authority's order, as regards treatment of suspension period, is concerned, the same cannot, in our view, be treated to have been approved by the Appellate Authority and the inference, if at all, could only be that the said part of the order was not having the approval of the Appellate Authority. It remains trite that when a matter is subject to appeal and the Appellate Authority proceeds to pass its final order, the order of the subordinate Authority merges in the order of the Appellate Authority. Moreover, when the Appellate Authority specifically proceeds to modify the order of the subordinate Authority, it is the modification order that would prevail and no part of the subordinate Authority's order could be considered prevailing unless provided so in the appellate order in explicit terms or deducible by necessary implication. As noticed, the Appellate Authority did not say in explicit terms anything as regards suspension period. However, the approach of the Appellate Authority has been clearly specified in the opening part of its operative order that

removal of the delinquent from service was not being approved and penalty order was being substituted. Significantly, the Appellate Authority, in all consciousness, ordered non-payment of emoluments during the period from the date of the order of Disciplinary Authority onwards. If the Appellate Authority at all intended to approve the part of the order of the Disciplinary Authority relating to suspension period, it would have said so. It did not. The deduction, as available from the reading of the order of the Appellate Authority as a whole, is only that the Appellate Authority was not inclined to put the delinquent to any disadvantage as regards the period of suspension.

15. Apart from the above, and even if it be assumed for the sake of arguments that the order of the Disciplinary Authority as regards the period of suspension has remained intact yet, the proposition therein cannot be construed in the manner that the entire of the period of suspension is not to be counted as the period of service of the delinquent even while counting his total reckonable service for the purpose of pension. The learned counsel for the appellants has strenuously argued that the appellants have rightly not counted this period while calculating retiral benefits as it is not a period spent on duty. In our view, not taking a particular period as spent on duty, cannot ipso facto mean that for this period, the employee be deemed to be not in employment at all. If the interpretation suggested by the appellants is accepted, it would practically mean that this period of 2086 days would be deemed to be a period during which, the ties of the employer and employee stood severed. Such an interpretation cannot be accepted because, ordinarily, an order of suspension does not put an end to the service of an employee; and he continues to be the member of service.

16. In the public employment, the real effect of a suspension order is that though the employee continues to be a member of the service, he is not permitted to work during the period of suspension but he is entitled to subsistence allowance. In any case, by virtue of order of suspension, the employee cannot be considered having ceased to be the member of the service. Apposite does it appear to refer to the dictum of the Hon^{ble} Supreme Court in this regard in the case of Khem Chand Vs. Union of India (UOI), as under:--

...The real effect of the order of suspension is that though he continued to be a member of the Government service he was not permitted to work, and further, during the period of his suspension he was paid only some allowance generally called, ""subsistence allowance" which is normally less than his salary instead of the pay and allowances he would have been entitled to if he had not been suspended. There is no doubt that the order of suspension affects a government servant injuriously. There is no basis for thinking however that because of the order of suspension he ceases to be a member of the service....

17. Therefore, even if Regulation 15(3)(b) could be said to be applicable in the case, and even if the directions of the Disciplinary Authority are taken into consideration, on a combined reading thereof, we are of the view that what could be denied thereunder to the delinquent is the monetary benefit as regards pay,

allowances, increments et.al. for the period in question. Not providing with "any benefit whatsoever" and not counting the period of suspension as "period spent on duty" as per the expression used in the order of the Disciplinary Authority and in the above referred Regulations, in our view, could only operate towards denying monetary benefit for the period of suspension and not beyond. It is very difficult to accept that such propositions could also operate as forfeiture of this period for all purposes and to the extent that it would not be counted even for the purpose of calculating the retiral benefits. Noteworthy it is too that the appellate authority's order was passed on 18.10.1996 (Annex.8). The respondent-employee, thereafter, continued to work with the appellants and, in fact, stood retired only in the month of April 2001.

18. Viewed from any angle, the suggestion of the appellants that the period during which the respondent remained under suspension will not be counted for the purpose of calculation of retiral benefits as a part of length of service, cannot be accepted.

19. In view of the above, even if for slightly different reasons, we find justified the final relief granted to the respondent-employee by the learned Single Judge and find no reason to consider interference in this intra-court appeal. Consequently, the appeal fails and is, therefore, dismissed.