(2017) 01 P&H CK 0204

In the Punjab And Haryana At Chandigarh

Case No : LPA No.1525 of 2016

UCO Bank APPELLANT

Vs

Vijay Kumar Handa RESPONDENT

Date of Decision : 11-01-2017

Acts Referred:

Citation : (2017) 2 CLR 507

Hon'ble Judges : Mr. Surya Kant and Mr. Sudip Ahluwalia, JJ.

Bench : Division Bench

Advocate : Mr. Vipin Mahajan, Advocate, for the Appellant

Final Decision : Dismissed

Judgement

Sudip Ahluwalia, J.—This Intra-Court Appeal is directed against the decision of the Ld. Single Judge dated 14.3.2016 in CWP No.2490 of 2014.

2. The Respondent No.1 was originally a Clerk in the Appellant/Bank. He along with co-employee R.N.Chopra had allegedly assaulted another Bank Employee. The disciplinary proceedings against the two assailants were drawn up and the respondent was dismissed from service vide Order dated 14.12.1999 by the Disciplinary Authority. In the appeal filed by him, the Appellate Authority vide its Order dated 16.2.2000 converted the punishment of dismissal into ''removal from service with terminal benefits for the period of service he had rendered'' and it was further ordered that such removal would not be a disqualification for his future employment. The respondent raised an Industrial dispute and the Labour Court vide its Order dated 13.2.2004 substituted the punishment awarded by the Appellate Authority, by way of directing stoppage of four increments for one year, but reinstated him in service with 75% back wages. The Writ Petition filed by Respondent No.1 against the award was dismissed and the LPA preferred against such decision was also dismissed by the Division Bench. Thereby the punishment imposed by the Labour Court again became operational.

3. The respondent No.I thereafter submitted his request for release of his retiral

benefits. On 25.10.2012, the contribution made by him towards Provident Fund was released in his favour. However, the other pensionary benefits were not released.

4. It was contended before Ld. Single Judge on behalf of Bank that the employee (Respondent No.1) was not covered under the Circular being Annexure P-19 for the purpose of grant of pension, since ''he had not retired but had been removed from service''. The Ld. Single Judge however, was not impressed with this submission and therefore, allowed the Writ Petition in favour of the employee/ respondent. In coming to this decision, the Ld. Single Judge had placed reliance on the decision of the Apex Court in Civil Appeal No.10956 of 2013 titled ''Bank of Baroda v. S.K.Kool (D) through LRs and another'' and of this Court in CWP No.7636 of 2011 titled ''Hardial Singh v. Bank of Baroda''.

5. In the first decision quoted above, the Apex Court had observed -

"From a plain reading of the aforesaid Regulation, it is evident that removal of an employee shall entail forfeiture of his entire past service and consequently such an employee shall not qualify for pensionary benefits. If we accept this submission, no employee removed from service in any event would be entitled for pensionary benefits. But the fact of the matter is that the Bipartite Settlement provides for removal from service with pensionary benefits "as would be due otherwise under the Rules or Regulations prevailing at the relevant time". The consequence of this construction would be that the words quoted above shall become a dead letter. Such a construction has to be avoided.

Xxx Xxx Xxx Xxx

Hence, we are of the opinion that such of the employees who are otherwise entitled to superannuation benefits under the Regulation if visited with the penalty of removal from service with superannuation benefits shall be entitled for those benefits and such of the employees though visited with the same penalty but are not eligible for superannuation benefits under the Regulation shall not be entitled to that." (Emphasis added)

6. Clearly in view of such observations of the Apex Court, the Ld. Single Judge was not in error in holding that in terms of Regulations, the scope for forfeiture of service to dis-entitle the employee from pensionary benefits on account of his removal did not exist since in the Bipartite Settlement governing the Bank and its Employees'' Association(s) did specifically provide for removal from service with retiral benefits as otherwise due, which exactly was the actual punishment imposed by the Appellate Authority on the first respondent.

7. In the other decision of Hardial Singh (Supra), it had been held -

"The issue of whether the petitioner''s entitlement could be denied must be seen in the context of how when the labour Court was affirming the decision of removal of service of the petitioner by the order passed by the disciplinary authority on 16.08.2001, which had removed him from service with superannuation benefits. The learned counsel for respondents would contend that the superannuation benefit, which was approved at the time of removal of service was such benefit other than the pensionary benefits, namely, gratuity, provident fund etc. I would reject this contention and hold that removal of service effected with superannuation benefit must be understood as including the pensionary benefit by the only fact that pension is an important component of a superannuation benefit and unless excluded specifically by an order, it shall not be taken as unavailable to an employee. The writ petition is, therefore, allowed directing the respondents to calculate the pension payable and release the same with interest 7.5% per annum from the date of termination of service till the date of payment. The amount shall be calculated and released to the petitioner within a period of 12 weeks from the date of receipt of copy of the order." (Emphasis added)

8. The Ld. counsel for the Appellant has been unable to counter the position and interpretation expounded in the aforesaid decisions to the effect that a removal from service with retiral benefits must have to include the pensionary benefits unless specifically barred by any order.

9. We, therefore, find no irregularity or infirmity in the impugned decision of the Ld. Single Judge. This Letters Patent Appeal is accordingly dismissed. No order as to costs.