(2010) 12 AHC CK 0142

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 49595 of 2003

Uma Shanker Pandey APPELLANT

Vs

State Bank of India & Ors. RESPONDENT

Date of Decision : 22-12-2010

Acts Referred:
State Bank of India Act, 1955 — Section 43

Citation : (2010) 12 AHC CK 0142

Hon'ble Judges : S.P.Mehrotra, J and Pankaj Mithal, J

Final Decision : Dismissed

Judgement

Pankaj Mithal, J.—Affidavits have been exchanged between the parties in the present Writ Petition. Therefore, we are proceeding to dispose of the Writ Petition at this stage with the consent of the learned counsel for the parties.

2. The present Writ Petition has been filed by the petitioner under Article 226 of the Constitution of India making the following prayers:

"(i) to issue writ of mandamus commanding the respondent No.1 to pay Rs. 4,386/ + 6,294/ = 10,680/ with 12% interest which has been deducted by the respondent bank.

(ii) to issue writ of mandamus commanding the respondent No.1 to pay Rs. 1,12,916.49 the interest on Rs. 3,63,606/ @ 12% interest from 2.2.1998 to 24.7.2000 and also future interest on the aforesaid amount.

(iii) to issue writ of mandamus commanding the respondent bank to release the STDR dated 24.7.2000 contained in Annexure10 with interest.

(iv) to award reasonable compensation.

(v) the cost of the petition may also be awarded to petitioner."

3. It appears that the petitioner was working on the post of Assistant Manager in State Bank of India. By the order dated 23.12.1997 (Annexure9 to the Writ

Petition), he was removed from service with effect from 2.2.1998, i.e., the date of service of the said order dated 23.12.1997. It was further directed in the said order dated 23.12.1997 that the period spent by the petitioner under suspension in M.L.N.R. Engineering College Branch fraud case would be treated as on duty and full salary and allowance, as admissible under Rules, would be paid to him for such period.

4. Thereafter, it appears that the amount of Provident Fund of the petitioner was directed to be released by the order dated 13.1.1999 (Annexure1 to the Writ Petition).

5. As the amount of the Provident Fund of the petitioner was not paid after the said order dated 13.1.1999, the petitioner approached this Court by filing a Writ Petition being Civil Misc. Writ Petition No.12852 of 2000, which was disposed of by this Court by its order dated 5.5.2000 (Annexure2 to the Writ Petition). The said order dated 5.5.2000 is reproduced below:

"Heard. The petitioner is a retired Bank Employee and has prayed for provident fund with interest. In this connection he may make a representation to the authority concerned who will decide the same preferably within two months from the date of production of a certified copy of this order in accordance with law.

The petition is disposed of."

6. Pursuant to the said order dated 5.5.2000, the petitioner made a representation dated 21.5.2000 before the respondent no.4, copy whereof has been filed as Annexure3 to the Writ petition.

7. By the order dated 9.6.2000, the respondent no.3 (Assistant General Manager, State Bank of India, Main Branch, Moradabad) (Competent Authority) decided the said representation submitted by the petitioner. Copy of the said order dated 9.6.2000 has been filed as Annexure 4 to the Writ Petition.

8. A perusal of the said order dated 9.6.2000 shows that an amount of Rs. 93,782/ as on 31.3.1999 was being demanded by the State Bank of India Supervising Staff Salary Earners Cooperative Society Limited, Kanpur (in short ''the Society''), which was stated to be due to the said Society from the petitioner.

9. It was further noted in the said order dated 9.6.2000 that the petitioner was repeatedly advised to liquidate the said outstanding of the Society and obtain a NoDues Certificate from the Society so that the Provident Fund of the petitioner could be released. However, the claim of the petitioner was that all the dues had already been paid by the petitioner to the said Society and no amount was presently outstanding from the petitioner to the said Society. The said order dated 9.6.2000 further noted that the said Society by its letter dated 31.1.2000 had reiterated that an amount of Rs. 93,782/ was due from the petitioner till March, 1999.

10. After dealing with the points raised by the petitioner in his representation,

the said order dated 9.6.2000 concluded as under:

"...................We, therefore, call upon you to kindly liquidate all your outstandings with the said Society immediately and produce the no due certificate in order to enable us to pay your Provident Fund dues, failing which the bank shall be left with no option but to adjust the said dues of the Society against your Provident Fund amount. Please also note that Bank shall not pay any interest on the Balance of Provident Fund amount as the delay is on your part for not producing No Dues Certificate from Society."

11. It further transpires from a perusal of the counter affidavit filed on behalf of the respondents that after the said order dated 9.6.2000, the petitioner gave a letter dated 24.7.2000 to the respondentBank to retain Rs. 1,30,000/ towards the dues of the Society and a sum of Rs. 75,000/ in respect of fraud case while he was posted in MLNR Engineering College Branch. Reference in this regard may be made to the averments made in paragraph 9 of the counter affidavit.

12. After the said letter dated 24.7.2000 was given by the petitioner, the respondentBank paid to the petitioner Rs. 1,47,926/ by Bankers Cheque and made provisions of Rs. 1,30,000/ in STDR against the dues of the Society and Rs. 75,000/ in STDR against the fraud case. Thus, an amount of Rs. 3,52,926/ was paid to the petitioner. Reference in this regard made be made to paragraph 13 of the counter affidavit filed on behalf of the respondents and paragraph 17 of the supplementary affidavit, sworn on 22.11.2010, filed on behalf of the petitioner.

13. Total amount of Provident Fund to be paid to the petitioner was Rs. 3,63,606/, while Rs. 3,52,926/ was paid to the petitioner, and thus, an amount of Rs. 10,680/ was retained by the respondentBank.

14. As regards the said amount of Rs. 10,680/ retained by the respondentBank, the position, as transpires from the record, is that an amount of Rs. 6,294/ was credited in the Provident Fund Account towards interest for the period with effect from 3.2.1998 to 31.3.1998, while the petitioner had already been removed from service with effect from 2.2.1998. Thus, the said amount of interest was wrongly credited in the Provident Fund Account of the petitioner. Further, an amount of Rs. 4,386/ was deducted towards Bank charges. Thus, an amount of Rs. 6,294/ + Rs. 4,386/, i.e., Rs. 10,680/ was retained by the Bank. Reference in this regard may be made to paragraphs 10 and 11 of the counter affidavit and Annexure7 to the Writ Petition.

15. As noted above, the petitioner has filed the present Writ Petition, interalia, praying for payment of interest on Rs. 3,63,606/ @ 12% with effect from 2.2.1998 to 24.7.2000 and also future interest on the aforesaid amount, and further for payment of Rs. 4,386/ + 6,294/ = 10,680/ with 12% interest.

16. We have heard Shri Kuldeep Saxena, learned counsel for the petitioner and Shri Avinash Swaroop, learned counsel for the respondents, and perused the

record.

17. It is submittd by Shri Kuldeep Saxena, learned counsel for the petitioner that as regards the dues of the Society, a Bond had been executed by the petitioner whereby the respondentBank was authorized to deduct the amount due to the said Society from the Provident Fund etc. payable to the petitioner in case of his retirement or removal from service. Thus, the submission proceeds, there was no occasion for the respondentBank to ask the petitioner to obtain NoDues Certificate from the Society, and the amount claimed by the Society could be deducted by the respondentBank from the Provident Fund payable to the petitioner without insisting on obtaining NoDues Certificate from the Society. It is submitted that in the circumstances, the respondentBank withheld the amount of Provident Fund payable to the petitioner without any justification, and the interest was payable to the petitioner.

18. Shri Avinash Swaroop, learned counsel appearing for the respondents submits that the petitioner was disputing the amount, which was being claimed by the Society as due from the petitioner. It is submitted that the stand of the petitioner was that no amount was payable by the petitioner to the Society. In the circumstances, the respondentBank rightly required the petitioner to get NoDues Certificate from the Society so that the Provident Fund could be released. It is further submitted that on 24.7.2000, the petitioner gave in writing that Rs. 1,30,000/ be retained by the respondentBank to be adjusted towards outstanding dues of the Society, while an amount of Rs. 75,000/ be retained in respect of fraud case Account, and after the receipt of the said letter, the Provident Fund was immediately paid to the petitioner in the manner, mentioned above. The delay in payment of the Provident Fund, the submission proceeds, was caused by the petitioner himself, and not by the respondentBank, and therefore, no interest was payable by the respondentBank to the petitioner.

19. We have considered the submissions made by the learned counsel for the parties.

20. As noted above, the petitioner earlier approached this Court by filing a Writ Petition, which was disposed of by this Court by its order dated 5.5.2000. Pursuant to the said order dated 5.5.2000, the petitioner made a representation before the respondent no.4, and the said representation was decided by the concerned authority (respondent no.3) by the order dated 9.6.2000 explaining the reasons as to why the payment of the Provident Fund could not be made to the petitioner. It was pointedout in the said order dated 9.6.2000 that as the petitioner himself was raising a dispute in regard to the claim made by the Society in respect of the outstanding due from the petitioner, the respondentBank required the petitioner to obtain NoDues Certificate from the Society. While it is true that under the Bond executed by the petitioner, the respondentBank was entitled to deduct the amount due to the Society from the Provident Fund payable to the petitioner, but, in the circumstances when the petitioner himself was raising dispute regarding the factum of outstanding due

from him to the Society, no fault can be attributed to the respondentBank for insisting that the petitioner should obtain NoDues Certificate from the Society before the Provident Fund could be released to the petitioner. The petitioner himself was responsible for causing delay in the payment of the Provident Fund. In such circumstances, the delay in payment of the Provident Fund to the petitioner cannot be said to have been caused by the respondentBank so as to make it liable for payment of interest on account of such delay.

21. In the order dated 9.6.2000, the concerned authority has observed that the respondentBank was not liable to pay any interest on the balance of Provident Fund amount as the delay was on the part of the petitioner in not producing the NoDues Certificate from the Society.

22. We do not find any infirmity or illegality in the said conclusion mentioned in the order dated 9.6.2000.

23. In view of the above, we are of the opinion that the claim of the petitioner for interest in respect of the amount of Rs. 3,63,606/ is misconceived, and the same is liable to be rejected.

24. As regards the amount of Rs. 10,680/ with interest claimed by the petitioner, it is evident that the said amount of Rs. 10,680/ consisted of Rs. 4,386/ in respect of Bank charges and Rs. 6,294/ in respect of interest credited to the Provident Fund Account of the petitioner for the period with effect from 3.2.1998 to 31.3.1998. As the petitioner had already been removed from service on 2.2.1998, no interest could be credited in his Provident Fund Account thereafter, and, therefore, the amount of Rs. 6,294/ was rightly retained by the respondents while making payment of the Provident Fund. Nothing has been brought to the notice of the Court that the petitioner was entitled to the credit of interest in his Provident Fund Account even after the date of his removal from service, namely, 2.2.1998. Again, the amount of Rs. 4,386/ has been deducted in respect of Bank charges, and no exception can be taken in respect of the deduction of the said amount.

25. In consequence of the above discussion, we are of the opinion that the Writ Petition lacks merits, and the same is liable to be dismissed.

26. The Writ Petition is accordingly dismissed.

27. However, on the facts and in the circumstances of the case, there will be no order as to costs.