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(2015) 09 P&H CK 0158

In the Punjab And Haryana At Chandigarh

Case No : CWP No. 16233 of 2014 (O&M)

Umed Singh	APPELLANT
Vs	
Sarva Haryana Gramin Bank and Others	RESPONDENT

Date of Decision : 18-09-2015

Acts Referred:

Citation : (2015) 09 P&H CK 0158

Hon'ble Judges : P.B. Bajanthri, J

Bench : Single Bench

Advocate : Parveen Gupta, for the Appellant; P.K. Dutt, Advocates for the Respondent

Final Decision : Allowed

Judgement

P.B. Bajanthri, J—The petitioner has questioned the communication dated 11.7.2013 (Annexure P-2), by which his request to grant of leave encashment has been rejected. He has further sought for direction to the respondent to release leave encashment pursuant to legal notice dated 25.3.2014 read with judgment passed in CWP No. 6092 of 2009 titled as Jinder Singh v. Oriental Bank of Commerce, New Delhi and others and LPA No. 1147 of 2011 titled as Oriental Bank of Commerce v. Jinder Singh, vide Annexures P-3 and P-4, respectively.

2. The petitioner joined the respondent bank on 1.8.1984 as an Officer and he has earned promotion to the cadre of Manager on 17.5.2004.

3. The petitioner, while he was in service, was charge sheeted on 17.11.2008, in which he was punished with a penalty of compulsory retirement. Feeling aggrieved by the order of compulsory retirement, he had preferred an appeal before the Appellate Authority and the same was rejected on 4.9.2012. Consequently, retiral benefits of the petitioner, except leave encashment, were disbursed on 11.7.2013.

4. The petitioner aggrieved by the non-grant of leave encashment benefit requested the competent authority to release leave encashment benefit. The

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same was declined vide communication dated 11.7.2013 (Annexure P-2). Aggrieved by the aforesaid communication the present writ petition has been filed.

5. Learned counsel for the petitioner contended that it is true that petitioner has been retired compulsorily as a measure of penalty on 23.1.2012. However, the same would not come in the way of granting leave encashment benefit. He further contended that Section 67 of the Haryana Gramin Bank (Officers and Employees) Service Regulations, 2010, which has been quoted for denial of leave encashment, reads as follows:--

"67. Lapse of Leave.--All leave shall lapse on the death of an officer or employee or if he ceases to be in the service of the Bank:

- Provided that where an officer or employee dies in service, there shall be payable to his legal representatives, sums which would have been payable to the officer or employee as if he has availed of the privilege leave that he had accumulated at the time of his death subject to sub-regulation (4) of regulation 61:

- Provided further that where a staff retired from the service of the Bank, he shall be eligible to be paid a sum equivalent to the emoluments for the period of privilege leave he had accumulated subject to sub-regulation (4) of regulation 61:

- Provided also that in respect to the employee where his services are terminated owing to retrenchment, he shall be paid pay and allowances for the period of privilege leave at his credit."

6. Learned counsel for the petitioner submitted that the aforesaid provision nowhere states that if an employee of the bank/officer has been retired compulsorily as a measure of penalty, is not entitled to leave encashment. Therefore, there is no hurdle or prohibition to grant leave encashment benefit to an employee/officer, who has been retired compulsorily as a measure of penalty. Even the petitioner counsel quoted Rule 61 of the said Regulation, wherein there is no prohibition for grant of leave encashment if an employee/officer is retired compulsorily as a measure of penalty. Further the petitioner''s counsel relied on decision passed in CWP No. 6092 of 2009 titled as Jinder Singh v. Oriental Bank of Commerce, New Delhi and others vide Annexure P-3, wherein identical rule had been interpreted by this Court, relating to grant of leave encashment. He relied on order passed in LPA No. 1147 of 2011 titled as LPA No. 1147 of 2011 titled as Oriental Bank of Commerce v. Jinder Singh. It was submitted that in said decision the employees were compulsory retired and they were denied leave encashment. This Court has considered relevant Regulation and held that those employees who are retired compulsorily are entitled to leave encashment benefit. Thus the petitioner counsel contends that impugned communication is arbitrary and illegal.

7. On the other hand, the respondent''s counsel resisted the petition contending

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that if an employee/officer has been retired compulsorily as a measure of penalty, he is not entitled to leave encashment benefit. Therefore, there is no infirmity in the impugned communication dated 11.7.2013 (Annexure P-2) passed by the Regional Manager of the respondent - bank. It was further contended that Regulation 45 (4) and explanation of the Haryana Gramin Bank (Officers and Employees) Service Regulations 2010, provides for withholding of encashment of privilege leave and gratuity etc. An extract of Regulation 45 (4) and explanation is reproduced hereunder:--

"45. Disciplinary Proceedings after retirement- (1) An officer or employee who is under suspension on a charge of misconduct and who attains the age of superannuation, shall be deemed to be in service even after the age of superannuation for the specific purpose of continuation and conclusion of the disciplinary proceedings and issue of final orders thereon.

XXX XXX XXX

(4) The officer or employee against whom disciplinary proceedings has been initiated shall not receive any pay and/or allowances after the date of superannuation and also not be entitled for the payment of retirement benefits till the proceeding is completed and final order is passed thereon except his own contribution to Contributory Provident Fund (CPF).

Explanation: For the purposes of this regulation, the normal retirement benefits such as encashment of privilege leave and Gratuity may be withheld till the completion of the disciplinary proceeding and passing of final order by the Competent Authority and the release of benefits shall be as per the final order of the Competent Authority."

8. Thus, it was contended that in view of the aforesaid Regulation, the petitioner has not made out a case so as to interfere with impugned communication and to seek benefit of leave encashment.

9. Heard counsel for the parties.

10. Respondent rejected claim of the petitioner for grant of leave encashment on the sole contention that Regulation 67 of the Haryana Gramin Bank (Officers and Employees) Service Regulations, 2010, prohibits for grant of leave encashment to such employees who have been retired compulsorily as a measure of penalty and held that petitioner is not entitled for leave encashment. Perusal of Regulation 67 shows that there is no bar for denial of leave encashment benefit to those employees/officers who were retired compulsorily as a measure of penalty. Therefore, denial of leave encashment benefit with reference to Regulation 67 is rejected. Reliance on Regulation 45 (4) read with explanation of Haryana Gramin Bank (Officers and Employees) Service Regulations, 2010, do not assist the contention of the respondent to deny leave encashment benefit to the petitioner for the reasons that the said clause has to be taken note of by the competent authority where an officer/employee was subjected to disciplinary

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proceedings and he attained the age of superannuation and retired from service during pendency of the disciplinary proceedings. In the present case, the disciplinary proceedings ended in imposing compulsory retirement as a measure of penalty. Therefore, the aforesaid regulation is not relevant for the purpose of denial of leave encashment benefit where the disciplinary proceedings is concluded.

11. In the absence of specific provision that if an employee/officer is retired compulsorily as a measure of penalty, in such cases, employee/officer is not entitled to leave encashment, the benefit of leave encashment cannot be denied to the employee/officer. For all the aforesaid reasons, the impugned communication dated 11.7.2013 (Annexure P-2) issued by the Regional Manager of the respondent - bank, is set aside.

12. The respondents are directed to disburse leave encashment, which is due to the petitioner alongwith interest @ 9% per annum, within a period of four months from today.

13. The writ petition is allowed accordingly.

14. No order, as to costs.

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