
(2016) 04 AP CK 0039
In the Andhra Pradesh High Court
Case No : Writ Petition No. 32950 of 2010

Y. Shivaji	Vs	APPELLANT
Andhra Bank and others		RESPONDENT

Date of Decision : 18-04-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 4 ALT 226 : (2016) 4 AndhLD 640

Hon'ble Judges : A. Ramalingeswara Rao, J.

Bench : Single Bench

Advocate : Sri P.S. Rajasekhar, Advocate, for the Appellant; Dr. K. Lakshmi Narasimha, Standing Counsel for Andhra Bank, for the Respondent

Final Decision : Allowed

Judgement

A. Ramalingeswara Rao, J.— Heard the learned Counsel for the petitioner and the learned Counsel for the respondents.

2. The petitioner joined as a Clerk in Andhra Bank in the year 1964 on temporary basis and his services were regularised in the year 1966. He was promoted to the scale of Junior Management Grade I in 1974, to the scale of Middle Management Grade II in 1978 and to the scale of Middle Management Grade III in 1988. While so, he was convicted in C.C. No.1642 of 2000 by the learned II Additional Metropolitan Magistrate, Vijayawada, by imposing a sentence of imprisonment of one year and a fine of Rs.1,000/- by judgment dated 06.06.2001. Based on the same he was dismissed from service by order dated 10.04.2002. The petitioner preferred an appeal in Criminal Appeal No.67 of 2001 before the learned VIII Additional District and Sessions Judge, Vijayawada. Since the appeal was allowed by order dated 17.10.2003 acquitting the petitioner of all the charges, he was reinstated into service on 04.02.2004. He retired from service on attaining the age of superannuation on 30.04.2004. Two departmental enquiries were initiated against the petitioner by issuing charge sheets dated 03.10.2000 and 14.12.2000. An enquiry officer was appointed to conduct the two enquiries and

he submitted two enquiry reports. Though the petitioner retired from service on 30.04.2004, the bank continued the disciplinary proceedings against him after superannuation and imposed the punishment of compulsory retirement from service by order dated 19.10.2004. He had more than 240 days of "privilege leave" accumulated to his credit as on the date of retirement from service on 30.04.2004 and he submitted representations on 28.03.2005 and 28.04.2009 to the third respondent. The third respondent rejected the said request by order dated 07.12.2009 for encashment of "privilege leave" and challenging the same the present Writ Petition was filed.

3. A counter affidavit was filed on behalf of the respondents admitting the initial conviction in C.C.No.1642 of 2000 and subsequent setting aside of the same by the appellate Court. It was further stated that the petitioner was kept under suspension pending enquiry into the charges alleged against him in charge sheets dated 03.10.2000 and 14.12.2000. The petitioner was also informed that his suspension would continue till disposal of the disciplinary proceedings initiated against him in respect of the above charges. The service of the petitioner was extended for the limited purpose of completing the disciplinary proceedings under Regulation 20(3)(iii) of Andhra Bank (Officers?) Service Regulations, 1982 (for short, the Regulations). Though the major penalty of compulsory retirement was imposed on the petitioner, the petitioner neither preferred any appeal against the penalty imposed nor challenged the penalty in any Court or Forum and thus it has become final. All the terminal benefits for which the petitioner was eligible were settled and paid to him. But, with regard to the leave encasement, the petitioner was not entitled for the same under Regulation 38 of the Regulations, which debars the petitioner from claiming leave encasement. The exit of the petitioner from the service of the bank was by way of termination i.e., compulsory retirement and the leave standing at the credit of such an employee shall lapse on his termination from services. It was further stated that there should be difference between the employee who retired on superannuation and the employee who visited with the punishment of compulsory retirement. However, it was admitted that there was 240 days "privilege leave", computed at one day for every eleven days of service, available as on the date of his retirement from service.

4. The only point that arises for consideration in the present Writ Petition is whether the petitioner is entitled for encasement of "privilege leave" standing to his credit as on the date of superannuation in spite of the order of compulsory retirement passed on 19.10.2004 after attaining the age of superannuation on 30.04.2004.

5. Learned Counsel for the petitioner, by relying on Bank of Baroda v. S.K. Kool, (2014) 2 SCC 715, submitted that the petitioner is entitled to all terminal benefits including the leave encasement in spite of the order of compulsory retirement passed on 19.10.2004.

6. Learned Counsel for the respondents submitted that the imposition of

punishment of compulsory retirement from service is valid even after retirement from service as per the Regulations as held by the Supreme Court in Ramesh Chandra Sharma v. Punjab National Bank, (2007) 9 SCC 15 and UCO Bank v. Rajinder Lal Capoor, (2007) 6 SCC 694.

7. There is no dispute that the service conditions of the petitioner are governed by the Regulations. They have come into force with effect from 1st day of January, 1983. Chapter IV deals with appointment, probation, confirmation, promotion, seniority and termination, whereas "leaves" are dealt with in Chapter VII. Regulation 20(3)(iii) of the Regulations deals with termination of service. The regulations which are relevant for the purpose of the present case read as follows:

"20. Termination of Service:

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(3)(iii) The Officer against whom disciplinary proceedings have been initiated will cease to be in service on the date of Superannuation but the disciplinary proceedings will continue as if he was in service until the proceedings are concluded and final order is passed in respect thereof. The concerned Officer will not receive any pay and/or allowance after the date of superannuation.

He will also not be entitled for the payment of retirement benefits till the proceedings are completed and final order is passed thereon except his own contributions to CPF."

8. Regulation 33 deals with "privilege leave" and it reads as follows:

"33. Privilege Leave:

(1) An Officer shall be eligible for Privilege Leave computed at one day for every 11 days of service on duty provided that at the commencement of service no privilege leave may be availed of, before completion of 11 months of service on duty.

(2) An Officer on Privilege Leave shall be entitled to full emoluments for the period of Leave.

(3) The period of Privilege Leave to which the Officer is entitled at a time shall be the period which he has earned, less the period of leave availed off.

(4) On and from 1.1.90, Privilege Leave may be accumulated up to not more than 240 days except where leave has been applied for and it has been refused.

(5) An Officer desiring to avail Privilege leave shall ordinarily give not less than one month's notice of his intention to avail of such leave."

9. The lapse of leave is dealt with in Regulation 38 and it reads as follows:

"38. Lapse of Leave:

Save as provided below, all leave to the credit of an Officer, shall lapse on resignation, retirement, death, discharge, dismissal or termination;

Provided that where an Officer retires from the Bank's service, he shall be eligible to be paid a sum equivalent to the emoluments of any period not exceeding 240 days of Privilege Leave that he had accumulated.

Provided further that where an Officer dies while in service, there shall be payable to his legal representatives, a sum equivalent to the emoluments for the period, not exceeding 240 days of Privilege Leave to his credit as on the date of his death."

10. As could be seen from the above narration of events that the petitioner attained superannuation on 30.04.2004, but his services were continued for the limited purpose of continuing disciplinary enquiry which ultimately culminated in passing an order of compulsory retirement on 19.10.2004. In this connection it is necessary to consider the punishment imposed on the petitioner by the disciplinary authority on 05.05.2000 and the relevant portion reads as follows:

"I fully concur with the findings of the Enquiry Officer.

After examining the relevant material and facts of the case, it is observed that the Charged Officer during his tenure as Manager of Labbipet Branch, Vijayawada, resorted to indiscriminate lending, throwing the laid down guidelines to lighter winds, exposing the Bank to financial loss. As such, his acts are to be visited with stringent penalty. However, considering the long years of his service and the fact that he attained the age of superannuation, leniency is shown in the matter. A major penalty of "Compulsory Retirement" is imposed on him in terms of Regulation 4(h) of ABOE(D&A) Regulations. Further, the entire period of suspension is treated as "NOT ON DUTY" and as such he is not entitled for any difference of salary or other service benefits including increments, if any, that fell due during the period of suspension, except the subsistence allowance already paid to him. However, the entire period of suspension is treated as continuous service for the limited purpose of Pension, if the CO is a Pension op tee.

The CO, if he so desires, prefer an appeal to the General Manager (Personnel) & Appellate Authority, Head Office, within 45 days of receipt of this order."

On a representation filed by the petitioner on 28.04.2009 an order was passed by the bank on 07.12.2009 specifically stating that the Officer whose services were terminated or who is compulsorily retired as a measure of punishment, will not be entitled to leave encashment.

11. A perusal of the order of the disciplinary authority shows that there was no bar for payment of "privilege leave" accumulated and now we have to see whether the interpretation placed by the respondents that the compulsory retirement is similar to the order of termination is correct or not.

12. The nature of "privilege leave" is a "leave" earned by the Officer and it is

computed at one day for every eleven days of service on duty. Thus, it is not a gratias and does not depend on the discretion of the employer. The proviso to Regulation 38 of the Regulations provides for payment of a sum equivalent to the emoluments of any period not exceeding 240 days of "privilege leave" that had accumulated on an Officer retiring from the bank's service. Though the petitioner was superannuated on 30.04.2004, the punishment of compulsory retirement was imposed on the petitioner later. Such imposition of compulsory retirement cannot be equated with termination as was interpreted by the respondents in their letter dated 07.12.2009. The disciplinary authority was not short of words when he passed the order of punishment. He was acquainted with the service regulations and now it is not open to the respondents to explain/interpret the order of the disciplinary authority.

13. The decisions relied on by the learned Counsel for the respondent - Bank lay down that the departmental enquiry can be continued even after a person retires from service, if the rules of the bank provide for the same. This can be culled out from the Ramesh Chandra Sharma's case (supra). In Rajinder Lal Capoor's case (supra) it was held that the continuation of departmental proceedings after retirement is permissible only in cases where departmental enquiry commenced during service by issuing a charge sheet and not merely by issuing a show cause notice. In the instant case there is no quarrel with the said proposition nor the petitioner is disputing the same. The departmental proceedings were continued by virtue of the proceedings dated 15.04.2004, which stated that he would be in service for the limited purpose of continuation of disciplinary proceedings. The final orders were passed in the aforesaid disciplinary proceedings.

14. Learned Counsel for the bank could not point out any authority to deny the encasement of "privilege leave" to the petitioner. But, the learned Counsel for the petitioner, on the other hand, relied on the decision in S.K. Kool's case (supra). In the said case, the respondent was removed from service with superannuation benefits as would be due otherwise and without disqualification from future employment. He made a request for leave encasement which was declined by the bank on the ground that cessation of service takes place on account of employee's resignation or his dismissal/termination/compulsory retirement from the Bank's service and all leaves to his credit would lapse. The dispute was raised and the competent Government referred the dispute for adjudication by the Industrial Tribunal. The Tribunal framed the issue with regard to the justification of the action of the management of the Bank of Baroda in denying pension and encasement of leave to the respondents. An award was passed in favour of the employee holding that he is entitled to all termination benefits like pension, leave encasement, gratuity and commutation of pension. When the same was challenged before the High Court, the High Court dismissed the Writ Petition. The matter was carried to the Supreme Court. The Supreme Court considered the entitlement of the employee for superannuation benefits and held as follows:

"The Bipartite Settlement tends to provide a punishment which gives superannuation benefits otherwise due. The construction canvassed by the employer shall give nothing to the employees in any event. Will it not be a fraud Bipartite Settlement? Obviously it would be. From the conspectus of what we have observed we have no doubt that such of the employees who are otherwise eligible for superannuation benefit are removed from service in terms of clause 6(b) of the Bipartite Settlement shall be entitled to superannuation benefits. This is the only construction which would harmonise the two provisions. It is well settled rule of construction that in case of apparent conflict between the two provisions, they should be so interpreted that the effect is given to both. 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."

15. In the instant case also the disciplinary authority passed an order. In the order of the disciplinary authority dated 05.05.2000 it was held that the petitioner was entitled to the pension, if he is a pension op tee. What he was denied was only the difference of salary or other service benefits including increments, if any, that fell due during the period of suspension, which was treated as "not on duty". This Court is of the opinion that the "privilege leave" is a leave earned by the employee for the service rendered by him and the same cannot be denied by implication when the past service was not denied by the disciplinary authority. In case of denial of monetary benefits or other benefits, there should be a specific order and in the absence of the same, the respondents cannot deny the benefit by making their own interpretation.

16. In the circumstances, the Writ Petition is allowed with costs. The miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.