(2011) 7 MLJ 1057

Madras High Court

Case No: W.A. No. 859 of 2009 and M.P. No. 1 of 2009

The State Bank of India	APPELLANT
Vs	
K.V. Balasubramanian	RESPONDENT

Date of Decision: July 29, 2011

Acts Referred:

- Banking Regulation Act, 1949 - Section 10(1)
- Penal Code, 1860 (IPC) - Section 407, 408, 467
- State Bank of India Employees Pension Fund Rules, 1955 - Rule 21(1), 72

Citation: (2011) 7 MLJ 1057

Hon'ble Judges: M. Venugopal, J; Elipe Dharma Rao, J

Bench: Division Bench

Advocate: S. Kanniah, for the Appellant; L. Chandra Kumar, for the Respondent

Final Decision: Allowed

Judgement

M. Venugopal, J.
The Appellants/Respondents (Bank) have preferred the instant Writ Appeal as against the order dated 23.01.2009 in W.P. No. 1511 of 2007 passed by the Learned Single Judge.

2. The Learned Single Judge, while passing the order in W.P. No. 1511 of 2007 dated 23.01.2009, has, among other things, observed that "the next question to be considered is period of dismissal viz., 31.12.1997 to 16.11.2000. Rule 21(i) does not contemplate consideration of dismissal and thereafter, reinstatement. Only on proved charges, the punishment of discharge from service was imposed. Again to treat this period of dismissal viz., 31.12.1997 to 16.11.2000 without back wages and break in service would amount to double punishment. It may be that the Petitioner may not be entitled to the salary during the period of dismissal, but when the Petitioner was ordered to be reinstated, the same cannot be treated as break in service. When the Petitioner was reinstated, Respondents Bank was not justified in excluding the period of dismissal from 31.12.1997 to 16.11.2000 for reckoning the pensionable service or treating it as break in service. In my considered

view, the period of dismissal from 31.12.1997 to 16.11.2000 has to be taken into account for continuity of service and as pensionable service'' and resultantly, allowed the Writ Petition in part and directed the Appellants Bank to take into account the period of dismissal from 31.12.1997 to 16.11.2000 as pensionable service of the Respondent/Petitioner for calculating the pension and further directed to refix the pension amount by including the dismissal period and in other respects, dismissed the Writ Petition without costs.

3. The Learned Counsel for the Appellants/Bank urges before this Court that the directions of the Learned Single Judge dated 23.01.2009 in W.P. No. 1511 of 2007, in directing the Appellants/Bank to take into account the period of dismissal from 31.12.1997 to 16.11.2000 as pensionable service for calculating the pension and also to refix the pension amount by including the dismissal period, are contrary to law, weight of evidence and probabilities of the case on hand.

4. The Learned Counsel for the Appellants/Bank submits that the Learned Single Judge has misconstrued and misinterpreted the Rule 21(i) of the State Bank of India Employees'' Pension Fund Rules, while granting the relief to the Respondent/Writ Petitioner (Employee).

5. It is the contention of the Learned Counsel for the Appellants/ Bank that the Learned Single Judge, after holding that the misconduct committed by the Respondent/Employee as a grave one, has committed an error in setting aside the punishment imposed on him by the Appellants/Bank.

6. Advancing his arguments, the Learned Counsel for the Appellants/Bank projects that the Respondent/Petitioner has not contributed anything towards pension funds as per Pension Rules during the period while he has been out of employment between 31.12.1977 to 16.11.2000 subject to the conditions imposed thereto, which he has accepted and rejoined duty.

7. Lastly, it is the submission of the Learned Counsel for the Appellants/Bank that the order of reinstatement, dated 16.11.2000 issued by the Appellants/Bank with conditions stipulated thereto, has become final and as such, the subsequent orders passed by the Bank are valid, in the eye of law. In any event, the Respondent/Employee is estopped from questioning the validity of the reinstatement order dated 16.11.2000 after a long period of time.

8. As against the Respondent/Employee, a show cause notice dated 13.07.1993 has been issued by the Appellants/Bank. In the said show cause notice, it has been alleged that the Respondent/Employee has received the monthly instalment of Rs. 200/-each for five months i.e. October 91, November 91, February 92, April 92 and May 92 from one Mariammal for credit of her F.D. A/c. No. 60/2121 amounting to Rs. 1000/-and they were not credited to the said account as and when the moneys were collected by him.

Similarly, the instalment of Rs. 200/-for the month of August 91, received by him on 01.08.1991, has been credited to the R.D. account by him only on 30.08.1991.

9. Also, the Respondent/Employee has repeatedly made a credit entry of Rs. 1000/-in June 92 in the R.D.A/c. of Mariammal and this entry has been scored off by him and had authenticated the cutting under his initials. Further, in the carry over portion, correct balance has been entered by him in his own handwriting and the initial column bears his initials.

10. Furthermore, the Respondent/Employee on 10.06.1992 has made an extraneous credit entry of Rs. 3,500/-without voucher in the S.O./ A/c. No. 5710 of said Mariammal and the balance has been authenticated by him and he has allowed a withdrawal of Rs. 5,000/-which has been posted by him in the ledger and passed by him. Moreover, on 01.01.1992 while the Respondent/Employee was officiating as an Officer JMG, he issued a token for a forged withdrawal slip for Rs. 22,000/-initialled therefor, put through the withdrawal and passed the voucher by acrolling it in cash acroll and collected the amount from the paying cashier.

11. It is the case of the Disciplinary Authority-Bank that the aforesaid actions of the Respondent/Employee can be construed as an acts prejudicial to his interest and the said acts are of gross misconduct as per paragraph 521 (4)(1)of the Sastry Award read with paragraph 18-28 of the Desai Award.

12. The Respondent/Employee was required to submit his written explanation for the aforesaid charges within 7 days from the date of receipt of the show cause letter dated 13.07.1993.

13. The Respondent/Employee has submitted his explanation dated 22.07.1993 for the show cause notice dated 13.07.1993 issued to him. The Respondent/Employee has been placed under suspension pending enquiry on 20.02.1993. The Appellants/Bank (Disciplinary Authority), by means of an order dated 31.12.1997, has dismissed the Respondent/Employee without notice from the Bank service with effect from the date of his conviction viz., 08.12.1997 as per Section 10(1)(b)(i) of the Banking Regulation Act.

14. It is not out of place for this Court to point out that in the dismissal order dated 16.11.2000, the Appellants/Bank has made a mention of the fact that the Respondent/Employee has been found reality as per Section 467, 407 and 408 of I.P.C. and sentenced to undergo 2 years Rigourous Imprisonment for each offence proved, besides a fine of Rs. 1000/-for each offence and that he has remitted total fine of Rs. 3000/-imposed by the Learned Judicial Magistrate No. I, Gobichettipalayam, by means of judgment dated 08.12.1997. In the dismissal order itself, it was made clear that the suspension period of the Respondent/Employee was treated as suspension only and also that the Appellants/Bank had reserved his right to resume the disciplinary proceedings against him, in the event of his success in the Appeal before the Higher Court.

15. However, the Appellants/Bank, by means of a Communication dated 16.11.2000, has ordered for the reinstatement of the Respondent/Employee by mentioning that he has been acquitted in Appeal by the Hon"ble High Court giving him the benefit of doubt and that as per Sastry Award read with Bipartite Settlement, he has not been paid any pay and allowances for the period he has been under dismissal and moreover, his period of absence from duty has not been treated as on duty/service and he was not eligible for any back wages or other benefits during the above said period.

16. The Appellants/Bank, by means of a Communication dated 23.11.2000 addressed to the Respondent/Employee, has informed that it has been decided to conduct an enquiry into the charges framed against him vide Letter DIS/CON/ No. 081 dated 13.07.1993 and S.Raghunathan, Chief Manager (C&I), Pallipalayam has been entrusted with the conduct of an enquiry etc.

17. On 26.04.2001, the Disciplinary Authority has passed an order discharging the Respondent/Employee from service with superannuation benefits as would be due otherwise at that stage and without disqualification from future employment. Also, the Appellants/ Bank has treated the earlier suspension period spent by the Respondent/Employee as suspension only and accordingly, imposed a punishment for the proved charges indicating clear malafide intention on the part of the Respondent/Employee besides breach of trust reposed by the Bank on him.

18. The Appellate Authority, by an order dated 06.08.2001, for the proved charges, has confirmed the punishment of discharge with superannuation benefits as would be due otherwise at that stage and without disqualification from future employment imposed on the Respondent/Employee by the Disciplinary Authority and further ordered that the period spent on suspension would be treated as suspension only.

19. The Respondent/Employee, through a representation dated 16.03.2005 addressed to the Appellants/Bank, has sought for revision of pension, by stating that his suspension period should be taken into account for calculation of pensionable service which has been inadvertently omitted.

20. The Appellants/Bank, by its Reply dated 26.09.2006 to the representation of the Respondent/Petitioner dated 16.03.2005, has, inter alia, stated that in the punishment order vide DIS/CON/062 dated 29.05.2001 passed by the Disciplinary Authority to the effect that the period of suspension was treated as suspension only and rejected the representation mentioning that his claim of pensionable service for 28 years 4 months and 24 days was incorrect.

21. The Learned Counsel for the Appellants/Bank submits that an acquittal in a criminal case does not automatically entitle the Respondent/Employee to get salary for the concerned period and further that the logic of No. work No. pay applies and to lend support to the said contention, he relies on the decision of the Hon"ble Supreme Court in

Baldev Singh v. Union of India AIR 2006 SC 531 at page 532 in paragraphs 7 and 9, has observed and held as follows:

7. As the factual position noted clearly indicates the Appellant was not in actual service for the period he was in custody. Merely because there has been an acquittal does not automatically entitle him to get salary for the concerned period. This is more so, on the logic of No. work No. pay. It is to be noted that the Appellant was terminated from service because of the conviction. Effect of the same does not get diluted because of subsequent acquittal for the purpose of counting service. The aforesaid position was clearly stated in Ranchhodji Chaturji Thakore v. Superintendent Engineer, Gujarat Electricity Board, Himmatnagar (Gujarat) and Anr. 1996 (11) SC 603.

9. Learned Counsel for the Appellant further pointed out that the authorities were awaiting Government sanction to grant the consequential relief. Reference is made in this connection to some documents, more particularly, letter of the Officiating Chief Record Officer for Commanding Officer dated 4.12.1996. A bare perusal of the letter shows that nowhere was it indicated that the Appellant was to be paid for the period he was absent from duty. It merely stated that the claims and dues admissible will be settled after the Government sanction is received. This only was an indication that only after the Government sanction for regularization is received the claim will be settled. Nowhere there was admission of the entitlement of the Appellant. In any event the Appellant having not rendered service, the question of inclusion of the period, does not arise and if the said period is excluded then the inevitable conclusion is that the Appellant has not rendered the requisite period i.e. service of 15 years in order to be entitled to pension.

22. The Learned Counsel for the Appellants/Bank contends that as per Rule 21(i) of The State Bank of India Employees" Pension Fund Rules, the period of suspension shall count as pensionable service only to such extent, as the authority who reinstates him declares it to be pensionable at the time of reinstatement or the authority who sanctions his retirement declares it to be so at the time of according the sanction and in the instant case, the Disciplinary Authority as well as the Appellate Authority had treated the period of suspension as suspension only in accordance with the aforesaid rule of SBI EPF Rules.

23. The Learned Counsel for the Respondent/Writ Petitioner relies on the decision of the Hon"ble Supreme Court in M.P. State Electricity Board v. Smt. Jarina Bee AIR 2003 SC 2657, whereby and whereunder, it is, among other things, held that "The High Court committed an error in holding that the award of full back wages was the natural consequence" and ordered the payment of back wages by reducing it to a sum of Rs. 85,000/- to meet the ends of justice."

24. He also cites the decision of the Hon"ble Supreme Court in U.P.S.R.T.C. Vs. Mitthu Singh, at page 181, wherein it is held thus:

The submission of the Appellant Corporation is well founded that such matters required to be disposed of on the doctrine of "preponderance of probability" and not proof "beyond reasonable doubt". When the Respondent workman was not in a position to show why the checking squad had falsely implicated him while there was No. enmity and that was believed by the Labour Court, then the Labour Court committed serious illegality as well as jurisdictional error in interfering with the finding of guilt recorded by the enquiry officer. Therefore, in the facts and circumstances of the present case, the Labour Court could not have interfered with the orders passed by the disciplinary authority and confirmed by the Appellate Authority.

25. He invites the attention of this Court to the decision of the Hon"ble Supreme Court in Chairman-cum-M.D., Coal India Limited and Ors. v. Ananta Saha and Ors. (2011) 5 MLJ 139 (SC) at page 140, wherein it is held as follows:

The issue of entitlement of back wages has been considered by this Court time and again and consistently held that even after punishment imposed upon the employee is quashed by the Court or Tribunal, the payment of back wages still remains discretionary. Power to grant back wages is to be exercised by the Court/Tribunal keeping in view the facts in their entirety as No. straitjacket formula can be evolved, nor a rule of universal application can be laid for such cases.

Even if the delinquent is re-instated, it would not automatically make him entitled for back wages as entitlement to get back wages is independent of re-instatement.

26. In law, an increment under the service rules is drawn on the basis of period spent on duty. The period spent on suspension is not a period spent on duty, unless it is so ordered by the competent authority and it has the effect of postponing the date of annual increment of a suspended employee.

27. At this juncture, we deem it appropriate and pertinently point out the following decisions:

(a) In Raji kumar v. Chief Commissioner for Income Tax (Administration) (2002) 2 ATJ 389, the Full Bench of the Tribunal answered that "a person is not entitled to draw increments during his suspension period".

(b)In the decision Umesh Chandra Misra v. Union of India and Ors. 1993 I LLJ 183, it is held that "the question of payment of subsistence allowance does not arise where the suspension is imposed as a measure of punishment and not pending disciplinary proceedings."

(c)Further, in the decision of the Hon"ble Supreme Court in State of U.P. Vs. Mukund Singh and Others, at page 192, it is, among other things held that "... The competent authority is bound to examine each case in terms of Regulations 21(1) and 21(2) and in case it comes to the conclusion that the employee concerned is not entitled to full salary

for the period of suspension then the authority has to pass a reasoned order after affording an opportunity to the employee concerned. In other words it is open to the competent authority to withhold payment of full salary for the suspension period on justifiable grounds. The employee concerned has to be given a show cause notice in respect of the proposed action and his reply taken into consideration before passing the final order."

(d)In the decision of the Hon''ble Supreme Court in The Management of Reserve Bank of India, New Delhi v. Bhopal Singh Panchal AIR 1994 SC 552, in para 5, it is held as follows:

Regulations 39, 46 and 47 read together, leave No. manner of doubt that in case of an employee who is arrested for an offence, as in the present case, his period of absence from duty is to be treated as not being beyond circumstances under his control. In such circumstances, when he is treated as being under suspension during the said period, he is entitled to subsistence allowance. However, the subsistence allowance paid to him is liable to be adjusted against his pay and allowances if at all he is held to be entitled to them by the competent authority. The competent authority while deciding whether an employee who is suspended in such circumstances is entitled to his pay and allowances or not and to what extent, if any, and whether the period is to be treated as on duty or on leave, has to take into consideration the circumstances of each case. It is only if such employee is acquitted of all blame and is treated by the competent authority as being on duty during the period of suspension that such employee is entitled to full pay and allowances for the said period. In other words, the Regulations vest the power exclusively in the Bank to treat the period of such suspension on duty or on leave or otherwise. The power thus vested cannot be validly challenged. During this period, the employee renders No. work. He is absent for reasons of his own involvement in the misconduct and the Bank is in No. way responsible for keeping him away from his duties. The Bank, therefore, cannot be saddled with the liability to pay him his salary and allowances for the period. That will be against the principle of "no work, No. pay" and positively inequitable to those who have to work and earn their pay. As it is, even during such period, the employee earns subsistence allowance by virtue of the Regulations. In the circumstances, the Bank''s power in that behalf is unassailable

(e)Moreover, in the decision Krishnakant Raghunath Bibhavnekar Vs. State of Maharashtra and others, at page 637, in paragraphs 4 and 5, the Hon''ble Supreme Court has laid down as follows:

Legal evidence may be insufficient to bring home the guilt beyond doubt. The act of reinstatement sends ripples among the people in the office/locality and sows wrong signals for degeneration of morality, integrity and rightful conduct and efficient performance of public duty. The constitutional animation of public faith and credit given to public acts, would be undermined. Every act or the conduct of a public servant should be to effectuate the public purpose and constitutional objective. Public servant renders

himself accountable to the public. If the alleged conduct is the foundation for prosecution grant of consequential benefits with all back wages etc. cannot be as a matter of course, even if the employee may have been acquitted on appreciation or lack of sufficient evidence. It would be deleterious to the maintenance of discipline if a person who was suspended on valid considerations is given full back wages as a matter of course, on his acquittal. The disciplinary authority has option either to enquire into the misconduct unless the selfsame conduct was subject-matter of the charge and on trial the acquittal was not based on benefit of doubt but on a positive finding that the accused did not commit the offence at all. The authority may also, on reinstatement, pass appropriate order including treating suspension period as not spent on duty, after following the principles of natural justice.

Rule 72 gives a discretion to the disciplinary authority. The Appellant is not entitled to consequential benefits on his reinstatement after acquittal. He is also not entitled to be treated as on duty from the date of suspension till the date of acquittal, for the purpose of computation of pensionary benefits, etc.

(f)In State of U.P. and Others Vs. Ajit Singh and Another, at page 349 in paras 5 & 6, the Hon"ble Supreme Court has, inter alia, observed and held as follows:

5. We have already noticed above that when the order was passed on 27-11-1970 revoking the order of dismissal it was specifically mentioned that the Respondent shall continue to be under suspension and this was reaffirmed in the order dated 31-10-1975 when he was reinstated in service stating that the order of reinstatement was being passed without affecting his case and that in that case separate order would be passed regarding imposition of punishment. In our view the High Court fell in error when it said that the orders of revocation and reinstatement did not contain decisions of the appointing authority to hold further inquiry either on the same allegations or some other additional charges. There is a clear direction that inquiry would continue on the allegations on which the Respondent was dismissed from service and the dismissal order has subsequently been set aside on any of the grounds mentioned in the above Rule. We, therefore, set aside the impugned order of the High Court insofar as it holds that since there was No. decision to hold further inquiry the Respondent would be entitled to full salary for the period from 14-9-1962 to 31-10-1975.

6. The Respondent has since superannuated on 29-2-1992. The Appellant, therefore, shall calculate his pensionary benefits keeping in view the punishment awarded to him by the disciplinary authority, operative portion of which has been set out above. All the pensionary benefits shall be paid to the Respondent expeditiously without any delay.

(g)Also, in the decision of the Hon"ble Supreme Court in State of U.P. and Others Vs. Ajit Singh and Another, , it is held as follows:

In the order revoking the order of dismissal it was specifically mentioned that the Respondent shall continue to be under suspension. This was reaffirmed in the order by which he was reinstated in service stating that the order of reinstatement was being passed without affecting his case and that in that case separate order would be passed regarding imposition of punishment. It could not therefore be said that the orders of revocation and reinstatement did not contain decisions of appointing authority to hold further inquiry either on the same allegations or some other additional charges. The claim for full salary during suspension period could not therefore be allowed.

28. The Respondent/Employee has not challenged the order dated 16.11.2000 of the Appellants/Bank specifically to the effect that his period of absence from duty would not be treated as on duty/ service and he was not eligible for any back wages or any other benefits during the above period. To this, the Learned Counsel for the Respondent/Employee submits that the Respondent/Employee has filed W.P. No. 1511 of 2009 praying for the issuance of a Writ of Certiorarified Mandamus, to quash the proceedings of the Second Respondent in proceedings No. LHO/PPG/1218 on the file of the Second Respondent dated 26.09.2006 and to direct the Respondents to refix the revised salary as per the Circular D. No. 37, dated 17.08.1998 and to revise the pension amount including the suspension period and the period under dismissal on the basis of last drawn salary of the Petitioner at the revised rate of salary as per law.

29. In the present case on hand, after the Appellate Authority of the Bank passing orders on 06.08.2001, the Respondent/Employee has submitted a representation dated 16.03.2005 seeking revision of pension. It is not known as to how the Respondent/Employee can project a representation dated 16.03.2005, after the Appellate Authority passed orders on 06.08.2001 in the Appeal filed by him. If at all, he can file Revision if there is a provision to that effect provided in the relevant rules.

30. On a careful consideration of respective contentions and on consideration of the facts and circumstances of the present case, we come to an inevitable conclusion that the period of dismissal from service in respect of the Respondent/Petitioner from 31.12.1997 to 16.11.2000 cannot be taken into account as pensionable service for the purpose of calculating the pension. Viewed in that angle, the following observations of the Learned Single Judge, in para 25 of the Order in W.P. No. 1151 of 2007 dated 23.01.2009, inter alia, to the effect that "... But the Petitioner was ordered to be reinstated in service, the same cannot be treated as break in service; When the Petitioner was reinstated, the Respondents Bank was not justified in excluding the period of dismissal from 31.12.1997 to 16.11.2000 for reckoning the pensionable service or treating it as break in service; and the consequent directions to the Respondents Bank to take into account the period of dismissal from 31.12.1997 to 16.11.2000 as pensionable service of the Petitioner for calculating the pension and to refix the pension amount by including the dismissal period", are not correct in law. Consequently, the Writ Appeal succeeds.

31. In the result, the Writ Appeal is allowed, leaving the parties to bear their own costs. The directions of the Learned Single Judge, in W.P. No. 1511 of 2007 dated 23.01.2009, are set aside by this Court for the reasons assigned in this Appeal. Consequently, connected Miscellaneous Petition is closed.