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(2013) 3 CALLT 608 : (2014) 2 CHN 424 : (2013) LabIC 4558

Calcutta High Court

Case No: F.M.A. No"s. 1118 and 1119 of 2012

State Bank of India and Others		APPELLANT
	Vs	
Bimalendu Chattopadhyay Bimalendu Chattopadhyay Vs State Bank of India and Others		RESPONDENT

Date of Decision: June 28, 2013

Citation: (2013) 3 CALLT 608 : (2014) 2 CHN 424 : (2013) LabIC 4558

Hon'ble Judges: Arun Mishra, C.J; Joymalya Bagchi, J

Bench: Division Bench

Advocate: L.K. Gupta, Mr. Ashim Kr. Routh, Mr. Sudeep Pal Choudhuri, Mr. Indrajit Bhattacharjee in F.M.A. 1118/2012 and Mr. Lakshmi Kanta Pal in F.M.A. 1119/2012, for the Appellant;L.K. Gupta, Shri Ashim Kr. Routh, Shri Sudeep Pal Choudhuri, Shri Indrajit Bhattacharjee in F.M.A. 1119/2012 and Shri Lakshmi Kanta Pal in F.M.A. 1118/2012, for the Respondent

Judgement

Arun Mishra, C.J.

Both the appeals, being F.M.A. 1118 of 2012 and F.M.A. 1119 of 2012, are arising out of the common judgment and order dated 24.11.2011 passed by the Single Bench in W.P. No. 436(W) of 2004. The writ petition was filed by an employee of the State Bank of India for a direction upon his employer to make payment of interest on delayed payment of his salary and certain other emoluments for the period during which he was kept under suspension. It appears that he was under suspension with effect from 12th March, 1992 to 7th May, 1997. Departmental enquiry was initiated and punishment was inflicted upon him. After the disciplinary enquiry, the authority found 19 charges were proved against the petitioner and out of them three were found partly proved. He was imposed with punishment of reduction of middle management cadre scale-II and was placed at the

initial stage of time scale. It was also decided by the disciplinary authority that no salary and allowance, increments etc., other than the subsisting allowance already released to him, would be paid to him during the period of his suspension. However, the appeal preferred by the petitioner was dismissed by the Appellate Authority. A review petition was filed before the Review Committee of the Bank. The Reviewing Authority did not interfere with the finding of the guilt recorded by Disciplinary Authority and the Appellate Authority but, at the same time, reduced the punishment of the petitioner and directed reduction of pay by four stages with cumulative effect in the time scale in middle management grade scale-Ill. The Reviewing Authority also directed that the period of suspension may also be treated as on-duty. The order was passed for payment of the salary and allowances from 12th March, 1992 to 7th May, 1997 after reduction of subsistence allowance already paid to him. The order was communicated to the petitioner on 31st December, 2001. The petitioner retired from his service on 31st March, 2002. He filed a writ petition on 19.6.2004 claiming interest of his salary, allowances and other emoluments payable during the period 12.3.1992 to 7.5.1997. The Bank contested the claim. The Single Bench allowed the writ application and ordered the payment of interest on equitable grounds relying upon the decision in Anil Kumar Saha Vs. Board of Councilors of Nabadwip Municipality and Others . Other decisions have also been referred by the Single Bench. It has been observed that the petitioner had been deprived of his legitimate dues during the period he remained under suspension in terms of full salary and allowance, for which he ought to be compensated with for delayed payment of such salary and allowance by way of interest. The interest at the rate of 8.5% per annum has been ordered to be paid uptil the date he was paid arrear salary and other dues in terms of the direction of the Review Committee.

2. The legality of the aforesaid order has been questioned by the State Bank of India and others by preferring an appeal, being F.M.A. 1118 of 2012; whereas the employee preferred an appeal, being F.M.A. 1119 of 2012, for enhancement of the rate of interest from 8.5% per annum to 18% per annum.

3. Shri Gupta, learned Senior Counsel appearing for the Bank, has submitted that it is the case where the petitioner has not been exonerated. He was found guilty. He was under suspension. Only punishment was reduced and guilt also remained. The Review Committee has taken a decision on 31st December, 2001. Thus, till then, there was no right available to the petitioner to claim that amount. No equitable consideration is available to the petitioner. On the other hand, once he had been found guilty, it would be against equitable consideration to grant interest as ordered by the Single Bench. The decision in Anil Kumar Saha''s case (Supra) is completely distinguishable. The petitioner should consider himself lucky to have been awarded the full salary and benefit of increments for the aforesaid period by the Review Committee.

4. Shri Pal, learned Counsel appearing on behalf of the respondent, has supported the decision of the Single Bench and submitted that when there is an order passed treating the petitioner as on-duty for the aforesaid period from 1992 to 1997, the interest is being

claimed on equitable ground only. Thus, no case for interference is made out in the discretionary order passed by the Single Bench whereas the interest he prayed for, ought to have been awarded as per prevailing 18% per annum not 8.5% per annum.

5. After hearing the learned Counsel appearing for the parties, we are of the considered opinion that there was no equitable consideration available to the petitioner. He had been found guilty on various charges and major punishment has been inflicted upon him. Thus, the suspension cannot be said to be wholly unjustified. The petitioner should consider himself lucky as the Review Committee, just three months before his superannuation, had decided to make payment of salary and to release increments, to which he was not normally entitled. As a matter of fact, once having been found guilty by the departmental enquiry, authority was required to take a decision whether the petitioner would be entitled for the entire emoluments or increments or not. In our considered opinion, when the petitioner was found guilty in the enquiry and punishment was imposed, he should consider himself lucky that he had been awarded salary and increments by the Review Committee to which he was not prima facie entitled. No equitable consideration could arise in his favour for the payment of interest over the aforesaid amount, which was paid to him pursuant to the decision taken by the Review Committee in December, 2001. The amount was not illegally withheld so grant of interest would be against the equitable principles. In such a case when the petitioner has been found guilty, interest could not ordered to be paid. The petitioner was not entitled for the interest at all in the facts and circumstances of the case. The decision of Anil Kumar Saha''s case (supra), which has been relied upon by the Single Bench, is wholly distinguishable. In the aforesaid case, the order of dismissal had been set aside. The employee was exonerated. The equitable consideration could arise for award of the interest. The decision of Anil Kumar Saha''s case (supra), which has been relied upon by the Single Bench, is wholly distinguishable.

6. Thus, we find that the decision of the Single Bench for payment of interest is impermissible. In the facts and circumstances of the case, the same is set aside. The Appeal filed by the State Bank of India, being F.M.A. 1118 of 2012, is hereby allowed and the appeal filed by the employee, being F.M.A. 1119 of 2012, is dismissed. There will, however, be no order as to costs.

Urgent photostat certified copy of this order, be given to the appearing parties upon compliance of necessary formalities.

Joymalya Bagchi, J.

I agree.