

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 10956 OF 2013
(@SPECIAL LEAVE PETITION (CIVIL) NO. 17054 OF 2009)

BANK OF BARODA

... APPELLANT

Versus

S.K. KOOL (D) THROUGH LRS. AND ANR.

... RESPONDENTS

J U D G M E N TCHANDRAMAULI KR. PRASAD, J.

S.K. Kool, respondent no. 1 herein (since deceased), was working as a clerk with the petitioner, Bank of Baroda and while working as such after a departmental inquiry, as a measure of punishment, visited with the penalty of 'removal from service with superannuation benefits as would be due otherwise and without disqualification from future employment'.

S.K. Kool, hereinafter referred to as 'the employee', made a request for leave encashment, which was declined by the petitioner Bank of Baroda, hereinafter referred to as 'the employer', on the ground that 'where cessation of service takes place on account of employee's resignation or his dismissal/termination/compulsory retirement from the Bank's service, all leaves to his credit lapse.'

The employee laid claim for pensionary benefits but the same was also declined. However, the employer advised the employee to ask for sanction of compassionate allowance not exceeding two-thirds of the pension which would have been admissible to him otherwise. A dispute was raised and the competent Government referred the dispute for adjudication by the Industrial Tribunal. The dispute referred to the Industrial Tribunal, hereinafter referred to as 'the Tribunal', reads as follows:

"Whether the action of the management of Bank of Baroda in denying pension and encashment of leave to Shri S.K. Kool is legal and justified? If not, what relief the concerned workman is entitled to?"

The employee filed his statement of claim and so did the employer. The employee founded his claim by relying on the order of punishment itself which, according to him, entitles him the superannuation benefit. It was resisted by the employer on the ground that such employees who are removed from the service of the Bank are not entitled to pension. The Tribunal considered the rival plea, upheld the contention of the employee and passed an award in his favour, and while doing so, observed as follows:

"12. Therefore, in view of the facts and circumstances and settled legal position, the tribunal feels no hesitation in holding that the action of the opposite party bank in denying superannuation benefits to the workman is neither legal nor justified. Accordingly it is held that the workman is entitled for his superannuation benefits under

the final orders of the disciplinary authority passed on 19.09.03 and any other order passed by some other officer denying superannuation benefits stands set aside. Accordingly the workman is held entitled for all termination benefits like pension, leave encashment, gratuity and commutation of pension subject to adjustment of any amount paid under these heads to the workman."

The employer assailed the aforesaid award in a writ petition but the same has been dismissed by the High Court, inter alia, observing as follows:

"It is true that both the provisions have to be harmonized. What logically follows from bare reading of the aforesaid provisions is that the disciplinary authority has the competence to inflict punishment of removal from service with a condition that such removal from service shall not in any way result in forfeiture of pensionary benefits to which the workman concerned is otherwise eligible. Only simple reading of the words "AS WOULD BE DUE OTHERWISE" would mean that irrespective of the order of punishment of removal from service, workman would be entitled to superannuation benefits, if it is found due otherwise i.e. if the workman

concerned satisfies the other requirement of superannuation benefits under Regulations, 1995, namely, he has completed requisite number of years of working etc."

Petitioner assails the award and the order of the High Court in the present special leave petition.

Leave granted.

Mr. Jaideep Gupta, learned Senior Counsel appearing on behalf of the appellant Bank, submits that employees of the Bank of Baroda are governed by the Bank of Baroda (Employees) Pension Regulation, 1995, hereinafter referred to as 'the Regulation'. According to the learned Senior Counsel, the Regulation has been made in exercise of powers conferred by clause (f) of sub-section (ii) of Section 19 of the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970 after consultation with the Reserve Bank of India and the previous sanction of the Central Government. The Regulation, therefore, in his

submission is statutory in nature and in terms of Article 22(1) of the Regulation, removal of an employee from the service of the Bank would entail forfeiture of entire past service and consequently he shall not be entitled to pensionary benefits. According to him, such an employee at the most, would be entitled for compassionate allowance in terms of Article 31 of the Regulation. According to Mr. Gupta, though clause 6(b) of the Bipartite Settlement provides that an employee found guilty of gross misconduct may be removed from service with superannuation benefits i.e. pension and/or provident fund and gratuity as would be due otherwise under the Rules or Regulations prevailing at the relevant time and without disqualification from future employment, but this, in his submission, would not override or supersede Article 22(1) of the Regulation, which in no uncertain terms provides for forfeiture of entire past service on removal from service. Any interpretation other than what has been suggested

by him would obliterate Article 22(1) of the Regulation, contends Mr. Gupta.

Ms. Shilpa Singh, learned counsel appearing on behalf of the employee's heirs, however, submits that the order of the disciplinary authority inflicting the punishment itself entitled the employee to the superannuation benefits and that having attained finality, the same cannot be legally denied. She does not join issue that an interpretation which renders a provision redundant is to be avoided and, in fact, invokes the same in support of her contention. According to her, if the interpretation put by the employer is accepted, clause 6(b) of the Bipartite Settlement shall be rendered otiose.

Having considered the rival submissions we do not have the slightest hesitation in accepting the broad submission of Mr. Gupta that the Regulation in question is statutory in nature and the court should accept an interpretation which would not

make any other provision redundant. Bearing in mind the aforesaid principle, we proceed to consider the rival contentions. The terms and conditions of service of the employees are governed and modified by the Bipartite Settlement. Various punishments have been provided under the Bipartite Settlement which can be inflicted on the employee found guilty of gross misconduct. In 2002, a Bipartite Settlement was signed by the Indian Banks' Association and the Banks' workmen's Union with regard to disciplinary action procedure. It is common ground that in the light of the said Bipartite Settlement, clause 6(b) was inserted as one of the punishments which can be inflicted on an employee found guilty of gross misconduct and the same reads as follows:

"6. An employee found guilty of gross misconduct may;

(a)

(b) be removed from service with superannuation benefits i.e. Pension and/or Provident Fund and Gratuity as would

be due otherwise under the Rules or Regulations prevailing at the relevant time and without disqualification from future employment, or

xxx xxx xxx"

The employee undisputedly has been visited with the aforesaid penalty in terms of the Bipartite Settlement.

Article 22 of the Regulation, which is relied on to deny the claim of the employee reads as follows:

"22. Forfeiture of service:

(1) Resignation or dismissal or removal or termination of an employee from the service of the Bank shall entail forfeiture of his entire past service and consequently shall not qualify for pensionary benefits."

From a plain reading of the aforesaid Regulation, it is evident that removal of an employee shall entail forfeiture of his entire past

service and consequently such an employee shall not qualify for pensionary benefits. If we accept this submission, no employee removed from service in any event would be entitled for pensionary benefits. But the fact of the matter is that the Bipartite Settlement provides for removal from service with pensionary benefits "as would be due otherwise under the Rules or Regulations prevailing at the relevant time". The consequence of this construction would be that the words quoted above shall become a dead letter. Such a construction has to be avoided.

The Regulation does not entitle every employee to pensionary benefits. Its application and eligibility is provided under Chapter II of the Regulation whereas Chapter IV deals with qualifying service. An employee who has rendered a minimum of ten years of service and fulfils other conditions only can qualify for pension in terms of Article 14 of the Regulation. Therefore, the expression "as

would be due otherwise" would mean only such employees who are eligible and have put in minimum number of years of service to qualify for pension. However, such of the employees who are not eligible and have not put in required number of years of qualifying service shall not be entitled to the superannuation benefit though removed from service in terms of clause 6(b) of the Bipartite Settlement. Clause 6(b) came to be inserted as one of the punishments on account of the Bipartite Settlement. It provides for payment of superannuation benefits as would be due otherwise. 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.

Accordingly, we hold that the employee's heirs are entitled to superannuation benefits. The entire amount that the respondent is found entitled to along with interest at the rate of 6% per annum

should be disbursed within 6 weeks from the date of receipt/communication of this Order.

In the result, we do not find any merit in this appeal and it is dismissed accordingly with costs of Rs.50,000/- (rupees fifty thousand) to be paid by the appellant to the respondent No. 1 along with other dues and within the time stipulated above.

.....J.
(CHANDRAMAULI KR. PRASAD)

.....J.
(JAGDISH SINGH KHEHAR)

NEW DELHI,
December 11, 2013

JUDGMENT