IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SMT. JUSTICE SUNITA YADAV

&

HON'BLE SHRI JUSTICE MILIND RAMESH PHADKE

WRIT APPEAL NO.1889 OF 2019

Vikram Sharma

Vs.

State Bank of India

Appearance:-

Shri K.N. Gupta – Senior Advocate with Shri R.B.S. Tomar - Advocate for the appellant.

Shri V.K. Bhardwaj – Senior Advocate with Shri Raju Sharma - Advocate for the respondent.

Reserved on	:	26/09/2024
Delivered on	:	25/10/2024

This appeal having been heard and reserved for orders, coming on for pronouncement this day, the ***Hon'ble Shri Justice Milind Ramesh Phadke*** *pronounced/passed the following:*

JUDGMENT

The present intra-Court appeal under Section 2(1) of Madhya Pradesh Uchcha Nyayalaya (Khandpeeth Ko Appeal) Adhiniyam, 2005 has been filed by the appellant assailing an order dated 25.07.2019 passed by learned Single Judge in Writ Petition No.5135 of 2019 whereby action on the part of respondent-Bank was put to challenge by

which terminal dues of the petitioner i.e. pension, gratuity and GPF and other superannuation benefits were not released despite of the fact that the petitioner was entitled to receive the same.

2. Assailing the aforesaid order, Shri K.N. Gupta – learned Senior Counsel alonwith Shri R.B.S. Tomar - Counsel for the appellant has argued that the petitioner was initially appointed on the post of Clerk/Cashier on 11.02.1985 in erstwhile State Bank of Indore and thereafter, he was promoted to the post of Computer Operator. While he was working as a Computer Operator in the Bank, he was placed under suspension and thereafter, a charge sheet was issued to him with an allegation of illegally advancing/sanctioning loan. In pursuance to the aforesaid charge sheet, an enquiry was conducted and a final order dated 01.04.2008 was passed whereby the appellant was removed from service with superannuation benefits i.e. pension and/or provident fund and gratuity as would be due otherwise under the rules or regulation prevailing at the relevant time and without disqualification from future employment, against which a statutory appeal was filed which was also dismissed vide order dated 05.09.2008.

3. It was further submitted that against both the orders, a Writ Petition No. 1096 of 2009(S) was filed by the appellant/petitioner before this Court assailing the disciplinary proceedings, vide order dated 30.03.2009, this Court while issuing notices to the respondent/s had admitted the said petition and as an interim measure, had directed that "as the order itself provides for payment of superannuation benefits i.e. pension and/or provident fund and gratuity, the respondents shall process the claim of the petitioner in accordance with law."

4. It was further submitted that after appearance was tendered on

behalf of the Bank, it was accepted that the petitioner would be given the superannuation benefits, but later on it was denied on the pretext that the appellant had not signed the relevant pension papers, therefore, the writ Court passed the following order:-

> "Without adverting to the controversy in respect of remaining terminal dues of the petitioner, it is directed that in case the petitioner signs the pension papers and the relevant documents by visiting the bank, the respondent shall release the terminal dues including the pension of the petitioner within a period of 30 days from the date, the petitioner signs the relevant documents. In case of any other outstanding terminal dues the petitioner shall be free to approach this Court by filing appropriate application in the matter."

5. It was further submitted that in compliance of the order passed by this Court, the petitioner approached the respondent/Bank but the authorities of the Bank asked the petitioner to put his signatures on blank papers/forms of gratuity and GPF but no any signature was asked to be affixed on the pension papers and though the appellant requested the authorities to fill up the said papers completely, but was continuously insisted to sign the blank papers. The petitioner knowing the intricacies of such appending of signatures refused, therefore the pension and other retiral dues of the petitioner were not released and later on, the said writ petition was finally decided vide order dated 10.11.2011 whereby the order of removal was quashed and the matter was remitted back with liberty to the Bank to conduct an enquiry from the stage, where it was found faulty.

6. It was further submitted that during the pendency of the writ petition, the State Bank of Indore was merged into the State Bank of India, therefore, all the liabilities of the State Bank of Indore were shifted on the State Bank of India and thereafter, the order passed by the writ Court was put to challenge in a Writ Appeal No.36 of 2012 by the respondent/State Bank of India which came to be decided vide order dated 19.07.2012 whereby order passed by the writ Court was set aside with a liberty to the appellant to raise an industrial dispute in accordance with the provisions of Industrial Dispute Act, 1947, with a further observation that findings recorded by this Court in that order, would not come in the way of adjudication of industrial dispute. Though the order passed by the Writ Appellate Court was challenged by the appellant before the Hon'ble Apex Court by way of filing SLP, it came to be dismissed and the order of removal dated 01.04.2008 was affirmed, which itself contained that the petitioner/appellant would be entitled for payment of terminal dues of the petitioner i.e. pension, gratuity and GPF and other superannuation benefits and only against his order of termination, he was at liberty to raise industrial dispute, which had attained finality, thus, it was incumbent upon the Bank to have settled the retiral dues of the appellant but learned Single Judge mis-interpreting the order passed in Writ Appeal No.36 of 2012, dated 19.07.2012 had directed the appellant to raise an industrial dispute with regard to the reliefs which have been claimed by him which is wholly perverse and illegal, thus, the order passed by learned Single Judge deserves to be quashed and directions are required to be issued to the Bank to release the pensionary dues.

7. On the other hand, Shri V.K. Bhardwaj – learned Senior Counsel

with Shri Raju Sharma – Counsel for the respondent had brought to the notice of this Court an interim order dated 16.12.2022 passed in this instant appeal wherein while referring to the matter of **Bank of Baroda vs. S. K. Kool** reported in **(2014) 2 SCC 715**, it was directed to the Bank to calculate the exact amount which is to be recovered from the appellant as outstanding/recovery as well as reconcile it with the pensionary amount paid to the appellant. In pursuance to the aforesaid directives, a compliance report dated 03.02.2023 had been submitted wherein details of the amount outstanding against the appellant towards loan and the amount payable as arrears of pension have been provided and as per the compliance report, till January, 2023, a sum of Rs.18,13.560.48/- was due to be paid to the petitioner towards arrears of pension and against which tentatively Rs.34,02,654.93/- was to be recovered from him and as the tentative amount of loan till date has not been repaid by the appellant to the Bank, there is no question of releasing the arrears of pension to the appellant.

8. Further, while supporting the impugned order, it has been argued that the learned writ Court has not committed any illegality in directing the appellant to raise industrial dispute as has been directed in the earlier round of litigation, as there were clear directions of the writ Appellate Court in Writ Appeal No.36 of 2012 vide order dated 10.11.2011 that it would be just and proper that the respondent employee be given an opportunity to raise an industrial dispute and the Industrial Tribunal can consider that whether the enquiry proceedings initiated against the respondent employee is in accordance with law or not and if the Tribunal finds that the enquiry proceedings are not proper, the Tribunal can quash the domestic enquiry proceedings

and also provide an opportunity to the management to prove the misconduct before the Industrial Tribunal, that would be just and proper course looking to the facts and circumstance of the case, thus when there were clear directions to the appellant to approach industrial tribunal raising his grievance, the present petition itself was misconceived and therefore, has rightly been dismissed which doesn't interfere with.

9. Heard counsel for the parties and perused the record.

10. Admittedly in the earlier round of litigation, challenge by the appellant was made to the disciplinary proceedings which had ended in imposition of punishment of "removal from service with superannuation benefit i.e. pension and/or provident fund and gratuity as would be due otherwise under the rules of regulation prevailing at the relevant time and without disqualification from future employment".

11. Even, the writ Appellate Court in paragraph 15 of the order dated 10.11.2011 passed in Writ Appeal No.36 of 2012 has held as under:

> *"From the aforesaid judgment, it is clear that the Hon'ble Supreme Court specifically held that let the in-house proceedings at least be conducted expeditiously and without any undue loss of time. In the present case, as stated above, in our opinion, the Enquiry Officer had given sufficient opportunities to the respondent employee, the respondent employee has not pointed out that what prejudice caused to him and there was delay in enquiry procedings, hence, the Enquiry Officer has rightly conducted the enquiry. In such circumstance, in our opinion, it would not be just and proper to quash the*

enquiry proceedings under the writ jurisdiction. In our opinion, it would be just and proper that the respondent employee be given an opportunity to raise an industrial dispute and the Industrial Tribunal can consider that whether the enquiry proceedings initiated against the respondent employee is in accordance with law or not. If the Tribunal finds that the enquiry proceedings are not proper, the Tribunal can quash the domestic enquiry proceedings and also provide an opportunity to the management to prove the misconduct before the Industrial Tribunal, that would be the just and proper course looking to the facts and circumstance of the case. (16) Consequently, the appeal filed by the appellants Bank is hereby allowed. The impugned order passed by the learned Single Judge is hereby quashed. It is hereby directed that the respondent employee is given a liberty to raise the Industrial dispute in accordance with the provisions of Industrial Dispute Act, 1947 and findings recorded by this Court in this order, would not come in the way of adjudication of industrial dispute."

12. The order dated 01.04.2008 under challenge in the said writ petition No.1096 of 2009(S) itself provided that the removal was with superannuation benefits which goes to show that the directions to avail the remedy before the industrial dispute was only with regard to removal of the appellant and there was no dispute with regard to entitlement of superannuation benefits. Relevant extract of aforesaid order of punishment which was under challenge in the earlier round

litigation is quoted herenbelow:

> *"Be removed from service with superannuation benefit i.e. Pension and/ or Provident fund and gratuity as would be due otherwise under the rules or Regulation prevailing at the relevant time and without disqualification from future employment."*

13. Thus, so far as entitlement of the appellant to receive the retiral benefits is not in dispute, neither any dispute has been raised by the learned counsel for the respondent with regard to entitlement of the appellant for receiving the same, therefore, in light of the said fact, this Court finds that the very observation made by learned writ Court for raising a dispute before industrial tribunal appears to be not correct.

14. Accordingly, the order passed by the learned Single Judge is hereby set aside to that extent.

15. Now, the question which is posed before this Court is whether the respondent/Bank is authorized to recover the amount which is alleged to be recoverable from the appellant on account of certain loans and other dues to the Bank is concerned, the learned writ Court has aptly observed as under:

> *"As far as recovery from the petitioner on the outstanding loans is concerned, the respondent/Bank is at liberty to take necessary action for recovery of the amount, if the law permits and the respondent bank should keep in mind the orders passed by the Hon'ble Supreme Court in case of High Court of* ***Punjab and Haryana vs. Jagdev Singh,*** *reported in* ***(2016) 14 SCC 267*** *and in the case of* ***State of Punjab & Ors. vs. Rafiq Masih,*** *reported in*

(2015) 4 SCC 334."

16. This Court finds the aforesaid observations made by the learned Single Judge to be proper in the circumstances, thus, to this extent, the order passed by the learned Single Judge is upheld. Respondent-Bank is directed to release the terminal dues of the petitioner if have not released till date keeping in mind the judgments passed by the Hon'ble Supreme Court in the matter of **Punjab and Haryana vs. Jagdev Singh,** reported in **(2016) 14 SCC 267** and in the case of **State of Punjab & Ors. vs. Rafiq Masih,** reported in **(2015) 4 SCC 334** and judgment passed by the Full Bench of this Court in the matter of **State of M.P. & Others vs. Jagdish Prasad Dubey** passed in **Writ Appeal No.815 of 2017, decided on 06.03.2024**.

17. If case any grievance still persists with the petitioner, he shall be at liberty to raise his grievance before appropriate forum.

18. For the aforesaid reasons, the present appeal is **partly allowed.**

(SUNIT YADAV)
JUDGE

(MILIND RAMESH PHADKE)
JUDGE

PAWAN KUMAR