

2025 LiveLaw (SC) 390

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

ABHAY S. OKA; J., UJJAL BHUYAN; J.

CIVIL APPEAL NO. 5922 OF 2024; APRIL 03, 2025

UCO BANK & ANR. *versus* VIJAY KUMAR HANDA

Service Law - UCO Bank Pension Regulations, 1995 - Industrial Disputes Act, 1947; Section 2(p) and 18(1) - Industrial Disputes (Central) Rules, 1957; Rule 58 - Bipartite Settlement, 1966 - An employee dismissed for misconduct after completing over ten years of service is entitled to pensionary benefits under the Bipartite Settlement. Regulation 22 which denies pension to removed employees, does not override Clause 6(b) of the Bipartite Settlement, which has statutory force under the Industrial Disputes Act. An employee meeting the minimum qualifying service requirement cannot be denied pension, regardless of misconduct, harmonizing the provisions to uphold the employee's superannuation benefits. Appeal dismissed. (Relied on: *Bank of Baroda v. S.K. Kool*, (2014) 2 SCC 715, Para 14, 17 & 22)

For Appellant(s): Mr. Kausar Raza Faridi, AOR

For Respondent(s): Mr. Tripurari Ray, Adv. Ms. Shilpa Singh, AOR Mr. Anirudh Ray, Adv.

J U D G M E N T

UJJAL BHUYAN, J.

Heard learned counsel for the parties.

2. This appeal by special leave is directed against the judgment and order dated 11.01.2017 passed by the High Court of Punjab and Haryana at Chandigarh (briefly 'the High Court' hereinafter) dismissing Letters Patent Appeal No. 1525 of 2016 preferred by the appellant.

2.1. Appellant herein is the United Commercial Bank (briefly 'the Bank' hereinafter).

3. By the judgment and order dated 11.01.2017, the letters patent appeal filed by the appellant Bank against the judgment and order of the learned Single Judge was dismissed by the Division Bench of the High Court. Learned Single Judge *vide* the judgment and order dated 14.03.2016 had allowed the writ petition filed by the respondent being Civil Writ Petition No. 2490 of 2014 by directing the appellant to process the case of the respondent for pension and to release the pensionary dues to him expeditiously.

4. Relevant facts may be briefly noted.

5. At the relevant point of time, respondent was serving as a Clerk in the appellant Bank. A charge memo dated 12.10.1998 issued by the disciplinary authority was served upon him, charging him with having indulged in acts of gross misconduct within the premises of the Gurmandi Branch, Jalandhar of the appellant Bank. As per the allegations, on 21.09.1998, at around 05:15 PM, respondent alongwith another employee of the same branch Shri R.N. Chopra had assaulted Shri J.B. Bansal, an officer of the appellant Bank posted at the Raipur-Rasulpur Branch, in the cabin of the senior manager of the Gurmandi Branch. Officials of the branch had to intervene to separate Shri Bansal from the respondent and Shri Chopra.

5.1. Before the respondent could file his response to the charge memo, the disciplinary authority decided to institute an enquiry. In this connection, Shri H.S. Saini, an officer in

Scale III, was appointed as the Enquiry Officer and Shri R.K. Kakkar, an officer in Scale II, was appointed as the Presiding Officer *vide* the notification dated 18.12.1998.

5.2. The Enquiry Officer conducted the enquiry and on conclusion of the same submitted his enquiry report to the disciplinary authority alongwith his covering letter dated 09.10.1999. In the enquiry proceedings, stand of the respondent was that no such incident of assault had taken place; instead, it was a conspiracy hatched at the instance of the rival union to falsely implicate the respondent and Shri Chopra. Enquiry Officer concluded that the charges against the respondent stood proved.

5.3. On going through the enquiry report, disciplinary authority passed an order dated 18.10.1999 holding that the charge against the respondent of indulging in riotous, disorderly and indecent behaviour within the premises of the Bank was proved. Therefore, as the disciplinary authority, he proposed to impose the penalty of dismissal from service. A copy of the enquiry report was forwarded to the respondent with the intimation that a personal hearing would be held on 29.10.1999 on the question of penalty.

5.4. It appears that respondent had appeared before the disciplinary authority for personal hearing and also filed a written submission. He reiterated that he was innocent and was falsely implicated. He submitted he had two small school going children besides his unemployed wife. Therefore, he pleaded that the penalty as proposed should not be imposed.

5.5. Disciplinary authority *vide* his order dated 14.12.1999 agreed with the findings of the Enquiry Officer and held that the charge levelled against the respondent for having indulged in riotous, disorderly and indecent behaviour within the premises of the appellant Bank was proved. Respondent thus committed an act of gross misconduct within the meaning of Clause 19.5(c) of the Bipartite Settlement dated 19.10.1966, as amended. He, therefore, imposed the penalty of dismissal from service on the respondent with immediate effect.

6. Respondent preferred an appeal against the aforesaid order of dismissal from service before the appellate authority. By order dated 16.02.2000, the appellate authority while concurring with the finding of the disciplinary authority *qua* the misconduct, however modified the penalty to one of removal from service. It was ordered that respondent be removed from the services of the Bank with immediate effect; however, he would be entitled to receive the terminal benefits for the period of service he had rendered. It was clarified that removal from service would not be a disqualification for the future employment of the respondent.

7. On an industrial dispute being raised at the instance of the respondent, the central government referred the same to the Central Government Industrial Tribunalcum-Labour Court, Jalandhar (for short 'Labour Court' hereinafter). The question referred was whether the action of the Bank in dismissing the respondent from service was legal and just. The supplementary question was as to what relief the concerned workman (respondent) would be entitled to and from which stage. Labour Court after hearing the matter passed an award dated 13.02.2004 opining that the penalty imposed was disproportionate to the gravity of the alleged misconduct by taking into consideration the involvement of the respondent in the alleged incident. Invoking the provisions of Section 11A of the Industrial Disputes Act, 1947 (briefly, 'the Industrial Disputes Act' hereinafter), the Labour Court substituted the penalty of dismissal/removal from service with the penalty of stoppage of four increments for one year. Respondent was directed to be reinstated in service with 75

percent back wages and other benefits. The reference was answered accordingly. The aforesaid award was notified by the central government on 07.03.2004.

8. Appellant assailed the aforesaid award dated 13.02.2004 before the High Court by filing CWP No. 11806 of 2004. A learned Single Judge of the High Court *vide* the judgment and order dated 25.03.2009 was of the view that the award passed by the Labour Court was totally unjustified and could not be sustained. Power under Section 11A of the Industrial Disputes Act ought not to have been invoked by the Labour Court. Punishment of removal from service with terminal benefits as imposed on the respondent by the appellate authority could not be said to be disproportionate. Therefore, the award dated 13.02.2004 was set aside.

9. Aggrieved by the aforesaid judgment and order of the learned Single Judge dated 25.03.2009, respondent preferred a letters patent appeal being LPA No. 928 of 2009 before the Division Bench of the High Court. *Vide* the judgment and order dated 24.02.2010, the Division Bench agreed with the view taken by the learned Single Judge that power under Section 11A of the Industrial Disputes Act ought not to have been invoked by the Labour Court. Consequently, the appeal was dismissed.

10. Respondent filed a petition under Article 226 of the Constitution of India before the High Court seeking a direction to the appellant to release his retiral benefits. The same was registered as Civil Writ Petition No. 2490 of 2014. A learned Single Judge of the High Court *vide* the judgment and order dated 14.03.2016 referred to the order of the appellate authority wherein the latter had held that the respondent would be entitled to receive the terminal benefits for the period of service he had rendered and thereafter allowed the said writ petition by directing the appellant Bank to process the case of the respondent for pension in pursuance of the option exercised by him and to release the pensionary benefits due to him expeditiously.

11. Appellant preferred LPA No. 1525 of 2016 before the Division Bench challenging the aforesaid decision of the learned Single Judge dated 14.03.2016. A Division Bench of the High Court *vide* the judgment and order dated 11.01.2017 placed reliance on a decision of this Court in *Bank of Baroda Vs. S.K. Kool*¹ and another decision of the High Court in *Hardial Singh Vs. Bank of Baroda*² and thereafter affirmed the view taken by the learned Single Judge. Consequently, the letters patent appeal of the appellant was dismissed.

12. Hence the present appeal.

13. This Court by order dated 03.07.2017 had issued notice and stayed the operation and implementation of the impugned judgment and order dated 11.01.2017. When the matter was heard on 23.04.2024, leave was granted.

14. Learned senior counsel for the appellant submits that respondent was not punished under Clause 6(b) of the Bipartite Settlement. Therefore, the High Court was not justified in applying the case of *S.K. Kool* (supra). That apart, the decision in *S.K. Kool* (supra) was rendered in a different factual context. The employee in the said case had opted for pension before the penalty of removal from service was imposed on him. In the present case, respondent never opted for pension. Therefore, *S.K. Kool* (supra) is clearly distinguishable in so far facts and circumstances of the present case is concerned.

¹ (2014) 2 SCC 715

² 2012 SCC Online P&H 8059

14.1. Learned senior counsel further submits that respondent was not entitled to pension in as much as he did not fulfil the requirements of pension in terms of the ninth Bipartite Settlement dated 27.04.2010. The said settlement did not include employees who had suffered the penalty of removal from service as being eligible for pension.

14.2. In any view of the matter, learned senior counsel submits that a delinquent employee who has been imposed the major penalty of removal from service is not entitled to pension or other retiral benefits. The charge against the respondent is very serious and that was proved in the duly constituted enquiry. Regulation 22 of the UCO Bank (Employees') Pension Regulations, 1995 (for short 'Regulations, 1995' hereinafter) also does not permit grant of pension to such delinquent employees.

14.3. In such circumstances, learned senior counsel submits that the High Court fell in error in directing the appellant to grant pension to the respondent. Therefore, the impugned order should be set aside.

15. *Per contra*, learned counsel for the respondent submits that both the learned Single Judge and the Division Bench of the High Court had correctly appreciated the facts and the law and thereafter upheld the claim of the respondent.

15.1. Learned counsel for the respondent heavily relied upon the decision of this Court in *S.K. Kool* (supra) and submits that respondent having completed the minimum pensionable years of service, he is entitled to the pensionary benefits.

15.2. It is further submitted that the appellate authority while maintaining the finding of the disciplinary authority in so far the finding of misconduct of the respondent is concerned, however held that the respondent would be entitled to receive the terminal benefits for the period of service he had rendered. Appellant did not challenge this decision. On the contrary, appellant had challenged the subsequent Labour Court award substituting the same with a lesser penalty and directing re-instatement in service. This challenge was sustained by the Single Judge as well as by the Division Bench of the High Court, thus restoring the appellate order. Therefore, the appellate order had attained finality. On the strength of the appellate order, respondent is entitled to pension and this is what the High Court in the subsequent round has held. Learned counsel, therefore, submits that there is no merit in the appeal and, as such, the appeal should be dismissed.

16. Submissions made by learned counsel for the parties have received the due consideration of the Court.

17. A Bipartite Settlement was arrived at between the Indian Banks' Association and the Banks' Workmen Union on 19.10.1966. This settlement was arrived at under Section 2(p) and Section 18(1) of the Industrial Disputes Act read with Rule 58 of the Industrial Disputes (Central) Rules, 1957. This settlement therefore has a statutory backing and is binding on the parties. Respondent was charged with committing an act of gross misconduct as defined in Clause 19.5(c) of the aforesaid Bipartite Settlement which was proved by the Enquiry Officer and accepted by the disciplinary authority. On 10.04.2002, a further settlement was arrived at between the Indian Banks' Association, representing the management on the one hand, and the workmen represented by the All India Bank Employees' Association, National Confederation of Bank employees and Indian National Bank Employees' Federation on the other hand. Pursuant thereto, Clause 6(b) was inserted in the said Bipartite Settlement providing for one of the penalties which may be imposed on a delinquent employee found guilty of gross misconduct. Clause 6(b) 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

17.1. Thus, as per the aforesaid clause, an employee who is found guilty of gross misconduct may be removed from service but would be provided with superannuation benefits which would otherwise be due to him. Further, the penalty of removal from service would be without disqualification from future employment.

18. In the instant case, the initial penalty imposed on the respondent by the appellant was dismissal from service with immediate effect after having been found guilty of gross misconduct as per Clause 19.5(c) of the Bipartite Settlement. Appellate authority *vide* the order dated 16.02.2000 modified the penalty order dated 14.12.1999 passed by the disciplinary authority by substituting the penalty of dismissal from service by removal from service with terminal benefits. The substituted penalty in terms of the appellate order dated 16.02.2000 reads as under:

Shri V.K. Handa (PFM No. 22488) is hereby removed from the bank's service with immediate effect. However, he will be entitled to receive the terminal benefits for the period of service he has rendered. Removal from service will not be a disqualification for his future employment.

19. We have already seen that respondent had raised an industrial dispute which culminated in an award dated 13.02.2004. As per this award, Labour Court had invoked the provisions of Section 11A of the Industrial Disputes Act and substituted the penalty of removal from service with terminal benefits by the penalty of stoppage of four increments for one year with further direction for reinstatement in service with 75 percent back wages. This award of the Labour Court failed to stand judicial scrutiny as learned Single Judge of the High Court set aside the same which decision was affirmed by the Division Bench in letters patent appeal. This sequence of events demonstrates that the modified penalty as imposed by the appellate authority attained finality as this appellate order was not questioned by the appellant.

20. Learned senior counsel for the appellant in the course of her submissions placed reliance on Regulation 22 of the Regulations, 1995. Regulation 22(1) of the aforesaid regulations reads thus:

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.

20.1. According to her, in view of Regulation 22, the respondent would not be entitled to pension.

21. Interplay of Clause 6(b) of the Bipartite Settlement and Regulation 22 of the Regulations, 1995 was examined by this Court in *S.K. Kool* (supra) and after due consideration answered the same in the following manner:

13.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.

14. The Regulations do not entitle every employee to pensionary benefits. Its application and eligibility is provided under Chapter II of the Regulations 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 Regulation 14 of the Regulations. 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 benefits 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.

15. 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 Regulations 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 Regulations shall not be entitled to that.

22. Both the learned Single Judge and the Division Bench had followed the aforesaid decision of this Court. Learned Single Judge noted that respondent had submitted his option for pension on 05.10.2010. Learned Single Judge also held that objection of the appellant to the claim of pension by the respondent was without any basis in as much as the appellate authority had specifically held that respondent would be entitled to receive terminal benefits for the period of service he had rendered. This order of the appellate authority has attained finality. Therefore, it was held that respondent was entitled to receive pension in view of the order passed by the appellate authority. This view of the learned Single Judge has been endorsed by the Division Bench in the impugned judgment. The decision in *S.K. Kool* (supra) is binding on us. Therefore, we do not find any compelling reason to interfere with the concurrent findings of the learned Single Judge and the Division Bench while exercising our jurisdiction under Article 136 of the Constitution of India.

23. Accordingly, the civil appeal is dismissed. However, there shall be no order as to cost.