

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

**WP(C) No. 953/2021
CM No.3057/2021**

Reserved on 08.08.2022.
Pronounced on 22 .08.2022.

Bashir Ahmad Wanipetitioner (s)

Through :- Mr. Shafqat Nazir Advocate

V/s

**Jammu and Kashmir Grameen Bank and
Another**Respondent(s)

Through :- Mr. Altaf Haqani Sr. Advocate
with Mr. Shakir Haqani, Advocate

Coram: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE

JUDGMENT

- 1 The petitioner in this petition prays for the following relief:
Mandamus commanding the respondents to sanction and release pensionary benefits in favour of the petitioner along with arrears thereof in accordance with the Regulations of 2018 (Annexure-II) and Circular No. 205 dated 07.01.2019.
- 2 The relief prayed for by the petitioner arises in the following factual matrix.
- 3 The petitioner while working as Manager (OJM-1) in the J&K Grameen Bank (respondent-Bank) was proceeded in a Departmental enquiry for various acts of omissions and commissions leading to fraud during his incumbency as Manager Accounts at Branch Office Drugmulla. The Disciplinary Authority of the respondent-Bank, upon an enquiry, found the petitioner having committed serious misconduct and breach of trust reposed in him as an officer of the Bank. The Disciplinary Authority, having regard to the

facts and circumstances of the case, took a lenient view in the matter and instead of his dismissal from service, the petitioner was removed from service vide order dated 02.09.2011.

4. It is relevant to note here that the order dated 02.09.2011 has not been placed on record by the petitioner with the petition. However, the same was passed on to the Court during the course of arguments and with the consent of learned counsel for the respondents, the same is taken on record. The order of penalty dated 02.09.2011 [‘removal order’] passed by the Chairman of the respondent-Bank reads thus:

“(i) That CSO as an officer of the Bank is removed from the services of the Bank with immediate effect under Regulation-39 (b)/iv of J&K Grameen Bank Officers & Employees Service Regulations, 2010; and,

(ii). CSO shall be paid up to 01.09.2011 all backlog/withheld wags, increments, arrears of wage revision and also terminal benefits if permissible under rules. However, Bank shall make appropriation from the said amount towards adjusting all liabilities or dues as owed by CSO to Bank”

5. The petitioner availed the remedy of appeal against his removal before the prescribed authority, but the same also failed. The petitioner accepted the punishment of removal. However, in the year 2018, when the Supreme Court of India passed a judgment on 25.04.2018 in a Special leave to Appeal (C) No. 39288/2012 titled ‘**Union of India vs Grameen Bank Pensioners Samiti and others**’ and pursuant thereto, the respondent-Bank framed J&K Grameen Bank (Employees) Pension Regulations, 2018 [“Pension Regulations of 2018”], the petitioner raked up the issue of pension by making a representation before the respondent-Bank on 19.02.2019. When nothing was heard from the respondent-Bank on the said representation, the petitioner filed

the instant petition in the year 2021 claiming the relief as is reproduced in the beginning of the judgment.

6 With a view to substantiate his claim to pension despite having been visited with penalty of removal from service, the petitioner places strong reliance upon a judgment of the Supreme Court in the case of **Bank of Baroda vs. S.K.Kool, (2014) 2 SCC 715**.

7 It is vehemently argued by Mr. Shafqat Nazir, learned counsel appearing for the petitioner that, in view of the judgment in **S.K.Kool's** case (supra), a person, who is removed from service is entitled to all post retrial benefits including the pension. He draws attention of this Court to the order of removal dated 02.09.2011 providing, *inter alia*, that the petitioner would be entitled to all the terminable benefits if permissible under rules. It is, thus, submitted that denial of pensionary benefits, which are permissible under the Pension Regulations of 2018 to the petitioner, is an act, which is totally illegal, arbitrary and *per se* discriminatory. The learned counsel argues that while all the employees, who are retired from the services of the Bank, are getting the pension, but the petitioner is deprived of the said benefit for no good discernible reasons, particularly, when there is no bar in the Pension Regulations of 2018 to deny pension to the petitioner on the ground of his removal from service. Much stress was laid by learned counsel on the order of removal providing for payment of all terminable benefits permissible under rules to the petitioner.

8. *Per contra*, respondents in their reply affidavit have submitted that, though, the petitioner was held entitled to terminable benefits in accordance with rules, yet, at the time of issuance of order of removal of the petitioner from service, the employees of the respondents-Bank were not

entitled to any pensionary benefits. The pensionary benefits came to be sanctioned and provided in favour of employees of the respondent-Bank only in terms of the Regulations of 2018. It is submitted that the petitioner having retired in the year 2011 was not entitled to pensionary benefits even if he had not been removed, but superannuated in the ordinary course.

9. Having heard learned counsel for the parties and perused the material on record, I am of the considered view that the petitioner, in the face of admitted factual and legal matrix, is not entitled to the benefit of pension envisaged under the Pension Regulations of 2018.

10. Admittedly, at the time of removal of the petitioner from service there were no norms, rules or regulations framed by the respondent-Bank providing for the benefit of pension to the employees of the respondent-Bank. Admittedly, in the year 2011, the employees of the respondent-Bank were governed by the J&K Grameen Bank (Officers and Employees) Service Regulations, 2010 [‘the Service Regulations of 2010’]. Regulation 39, which enumerates various minor and major penalties, that can be imposed on a delinquent employee, includes major penalty of ‘removal from service, which shall not be a disqualification for future employment’. As a matter of fact, Regulation-39 provides four types of major penalties, which are as under:

- (a). Reduction to a lower grade or post;
- (b). Compulsory retirement;
- (c). Dismissal which shall ordinarily be a disqualification for future employment; and,
- (d). **Removal from service which shall not be a disqualification for future employment.**

11. From a reading of entire Regulation 39 of Service Regulations of 2010, it is abundantly clear that it does not prescribe imposition of a penalty of removal with pensionary benefits. When the order of termination dated

02.09.2011 is read in light of the Service Regulations of 2010, it is evident that the petitioner was visited with the penalty of removal which penalty would not be a disqualification for future employment.

12. It is true that in the order of removal of the petitioner, the competent authority has held the petitioner entitled to all backlog/withheld wages, increments, arrears of wage revision as also terminable benefits if permissible under rules. Obviously, in the year 2011, the services of the respondent-Bank were not pensionable and, therefore, there was no provision made by the respondent-Bank for paying pension to its superannuating employees. The reference to the expression 'terminable benefits' in the removal order would obviously be a reference to the service benefits that are normally payable on retirement like EPF/GPF, Gratuity, Leave Encashment etc. The competent authority, in the year 2011, cannot be expected to have given the benefit of pension to the petitioner while removing him from service when such benefit was not envisaged in the Service Regulations of 2010, nor was otherwise payable to the employees superannuating in the ordinary course.

13. This brings me to the other contention of learned counsel for the petitioner that the petitioner was entitled to pensionary benefits under the Pension Regulations of 2018. Reference in this regard is invited to Regulation-32 which, for facility of reference, is reproduced hereunder:

“32.Payment of pension or family pension in respect of certain employees-

(1) An employee who was in service between 1st day of September, 1987 and 31st day of March 2010 and **retired from the service of the Bank before 31st day of March, 2018** shall, subject to the provisions of these regulations, be eligible for payment of pension from the effective date.

(2) The family of a deceased employee, who was in service between the 1st day of September, 1987 and 31st day of March 2010 and died before the 31st day of March, 2018 shall, subject to the provisions of these regulations, be eligible for payment of family pension from the effective date”.

14. It is, thus, argued that since the petitioner was in service of the respondent-Bank between 1st day of September 1987 and 31st day of March 2010 and was removed from the services of the respondent-bank on 02.09.2011 i.e much before 31st day of March 2018, as such, was eligible for payment of pension in terms of Regulation-32 of the Pension Regulations of 2018.

15 Before adverting to and appreciating the argument of learned counsel for the petitioner, it is necessary to take note of the fact that the services of the respondent-bank were not pensionable till 2018 as is evident from the Regulations of 2010.

16. The employees of the respondent-bank agitated the matter before a Single Bench of the Rajasthan High Court. The Single Bench allowed the writ petition of the employees of the respondent-bank and issued directions to the respondent-bank to formulate and implement the Pension Scheme for the employees of the Regional Rural Banks. The matter was taken to the Division Bench by the Union of India in the case of **Union of India vs. Grameen Bank Pensioners Samiti and others**, which was decided by the Division Bench of Rajasthan High Court on 23.08.2012 upholding the judgment of the Single Bench. The respondent-Bank filed a Special Leave Petition before the Supreme Court which was dismissed vide order dated 25.04.2018 and a direction was issued to the Union of India to implement the impugned judgment in respect of all the Regional Rural Banks expeditiously and at any rate within three months from the date of production of the judgment. In compliance to the judgment

passed by the Supreme Court dismissing the SLP and upholding the judgment of the Division Bench of Rajasthan High Court, the respondent-Bank promulgated the Pension Regulations of 2018. In terms of Regulation 32 reproduced above, the pension scheme has been made applicable to those employees who were in service between 1st day of September, 1987 and 31st day of March, 2010 and retired from the services of the Bank before 31st day of March, 2018. This eligibility to pension is, however, subject to the other provisions of the Pension Regulations of 2018 relating to the payment of pension from the effective date.

17. Indisputably, the petitioner was appointed in the respondent-bank between the cut off dates i.e Ist day of September, 1987 to 31st day of March, 2010 and was removed from service on 02.09.2011. Regulation 32, as it is, would obviously be not attracted to the case of the petitioner. The petitioner is not an employee of the respondent-bank who has retired on superannuation from the bank, but is an employee who was removed for misconduct on 02.09.2011. It is, thus, evident that the petitioner in view of clear language of Regulation- 32, is not eligible for pension. The Regulation applies to those employees who retired from the service of the Bank before 31.03.2018 and not the employees who were terminated for misconduct. Viewed thus, the order of removal of the petitioner dated 02.09.2011 holding the petitioner entitled to terminable benefits, cannot, by any stretch of reasoning, be construed to be an order of removal with the benefit of pension. The petitioner, neither, at the time of his removal from service, nor with the promulgation of Pension Regulations of 2018, is entitled to the benefit of pension.

18. That apart, Regulation 20 of Pension Regulations of 2018 specifically provides for forfeiture of service of the employees who is

dismissed, removed or terminated from the services of the Bank. Indisputably, the petitioner has been inflicted with penalty of removal of service and by operation of Regulation 20, he has forfeited his entire past service and that would render him otherwise disqualified for pension under the Regulations of 2018. The minimum qualifying service for becoming eligible for pension is 10 years service in the bank. For ready reference, Regulation 20 providing for forfeiture is also reproduced hereunder:

“20. Forfeiture of service-

(1) Resignation not amounting to voluntary retirement or dismissal or removal or termination of an employee from the service of the Bank shall entail for forfeiture of his entire past service and consequently shall not qualify for pension under these regulations.

(2) An interruption in the service of an employee entails forfeiture of his past service, except in the following cases, namely:

(a) authorised leave of absence;

(b) Suspension, where it is immediately followed by reinstatement, whether in the same or a different post, or where the employee dies or is permitted to retire or is retired under the provisions of the Service Regulations while under suspension”.

19. Viewed thus, the judgment of the Supreme Court in **S.K.Kool** will not come to the rescue of the petitioner. In the aforesaid matter, the precise case of the delinquent employee before the Supreme Court was that, Article 6 of Bank of Baroda (Employees) Pension Regulations, 1995 [‘the Regulations of Bank of Baroda’] inserted by Bipartite Settlement clearly provided ‘**penalty of removal from service with superannuation benefits**’ i.e pension as one of the penalties that could be imposed on a delinquent employee proved guilty in the disciplinary proceedings.

20. Interpreting Article 6 conjointly with Article 22 of the Regulations of Bank of Baroda, the Supreme Court opined that a person, who has put in

minimum of 10 years qualifying service, would be entitled to pension, notwithstanding the fact that he has been removed from service. This was so held by the Supreme Court in the context of Regulations of Bank of Baroda which provided punishment of 'removal from service with superannuation benefits'. Reading of paras 12 to 15 of the judgment makes the things abundantly clear.

21. In the instant case, as noticed above, the Regulations 2010 do not provide for punishment of removal with superannuation benefits like the pension as was provided in the Regulations of the Bank of Baroda, rather, one of the major punishments provided under the Service Regulations of 2010 is removal not disqualifying the employee from future employment. Similarly, the Pension Regulations of 2018 would apply only to those employees who have retired prior to 31.03.2018 (refer Regulation 32) and not those removed from service for misconduct. The petitioner never retired on superannuation but was removed from service on 02.09.2011 on account of proven misconduct.

22. Cornered by the settled legal position obtaining from the Regulations (supra) of the respondent-Bank, learned counsel for the petitioner relies upon Regulation 29 of Pension Regulations of 2018 to submit that in deserving cases, the respondent-Bank may, by way of special consideration, sanction compassionate allowance not exceeding $2/3^{\text{rd}}$ of the pension which would have been admissible to the employee dismissed, removed or terminated from service, on the basis of qualifying service rendered up to the date of his dismissal, removal or termination as the case may be.

23. To be fair to the learned counsel for the petitioner and to do justice to his submission, it is necessary to set out Regulation 29 of Pension Regulations of 2018 as well.

“29. Compassionate allowance-

(1) An employee, who is dismissed or removed or terminated from service, shall forfeit his pension:

Provided that the authority higher than the authority competent to dismiss or remove or terminate him from service may, if

(i) such dismissal, removal, or termination is on or after the effective date; and

(ii) the case is deserving of special consideration,

sanction a compassionate allowance not exceeding two-thirds of the pension which would have been admissible to him on the basis of the qualifying service rendered upto the date of his dismissal, removal, or termination.

(2) The compassionate allowance sanctioned under the proviso to sub-regulation (1) shall not be less than the amount of minimum pension payable under regulation 34”.

24. From a reading of Regulation 29 (supra), it is abundantly clear that the benefit of compassionate allowance not exceeding $2/3^{\text{rd}}$ of the pension is admissible to an employee who has been dismissed, removed or terminated on or after the effective date. The effective date as provided under Regulation 2(k) means 1st day of April, 2018. The petitioner having been removed from service on 02.09.2011 is not entitled to such benefit.

25. Viewed from any angle, I find no merit in this petition and the same is, accordingly, dismissed.

**(SANJEEV KUMAR)
JUDGE**

Srinagar
22 .08.2022
Sahil

Whether order is speaking: Yes
Whether order is reportable: Yes