

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) Nos. 4400/1996 & 2398/2007**

% **29th August, 2013**

1. **W.P.(C) No. 4400/1996**

NARENDRA KUMAR PARWANDA Petitioner
Through: Mr. Sarvesh Bisaria, Advocate with
Mr. Parkash Chandra Sharma,
Advocate.

VERSUS

UNION OF INDIA AND ANR. Respondents
Through: Mr. Jagat Arora, Advocate with Mr.
Rajat Arora, Advocate.

2. **W.P.(C) No. 2398/2007**

NARENDRA KUMAR PARWANDA Petitioner
Through: Mr. Sarvesh Bisaria, Advocate with
Mr. Parkash Chandra Sharma,
Advocate.

VERSUS

SYNDICATE BANK Respondent
Through: Mr. Jagat Arora, Advocate with Mr.
Rajat Arora, Advocate.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? **Yes**

VALMIKI J. MEHTA, J (ORAL)

W.P.(C) No.2398/2007

1. Petitioner was given voluntary retirement by the respondent-bank w.e.f 25.9.1995. The period from 10.7.1993 to 25.9.1995-the date of grant of voluntary retirement was treated by the respondent-bank as a period of extraordinary leave granted to the petitioner. This period was treated as extraordinary leave because petitioner did not join the services of the bank from 10.4.1993 till voluntary retirement was given on 25.9.1995. Petitioner by this writ petition prays that any pay increases which became effective from 10.4.1993 to 25.9.1995 should be given to him when he was given voluntary retirement on 25.9.1995, and whatever are the pay increases from 10.4.1993 to 25.9.1995 should also have consequential effect for increasing the voluntary retirement benefits including the monthly pension amount payable to the petitioner. Accordingly, by this writ petition the petitioner questions the denial of pay increases for the period from 10.4.1993 to 25.9.1995.

2. The facts are that the petitioner initially applied for resignation from services on medical grounds in terms of the letter dated 10.4.1993. The respondent-bank did not act on this request, and in the meanwhile a pension scheme came into effect. Petitioner on 10.6.1994 thus requested the respondent-bank that instead of allowing the petitioner to resign, the bank

should accept his application as exercise of option of voluntary retirement on medical grounds and grant him invalid pension. The bank however by a letter dated 25.9.1995 for the first time informed the petitioner that since he did not join the services of the bank w.e.f 10.7.1993 (three months from 10.4.1993) hence the petitioner is deemed to have resigned w.e.f 10.7.1993. Petitioner challenged the action of the respondent-bank in claiming that he had resigned w.e.f 10.7.1993 by filing W.P.(C) No.766/1996 and in which case a judgment was delivered in favour of the petitioner by a learned Single Judge of this Court on 25.7.2006. It was held in this judgment dated 25.7.2006 that petitioner's resignation had not taken effect because he had withdrawn the same before the same was accepted by the respondent-bank. Respondent-bank therefore in terms of the judgment dated 25.7.2006 was asked to consider the application of the petitioner seeking voluntary retirement and granting all consequential benefits in accordance with the rules on acceptance of the application seeking voluntary retirement.

3. The respondent-bank accepted the request of the petitioner for voluntary retirement and granted voluntary retirement w.e.f 25.9.1995. The respondent-bank wrote its letter dated 22.11.1996 to the petitioner giving the break up of the qualifying service period of the petitioner taken for the purpose of calculating pension and voluntary retirement benefits. The period

of qualifying service was calculated by excluding the period for which the petitioner was not on duty from 10.7.1993 to 25.9.1995. Petitioner contends that the actions of the respondent-bank in excluding this period from 10.7.1993 to 25.9.1995 (period of two years two months and 15 days) from the qualifying service period for the purpose of calculation of pension and other voluntary retirement benefits is illegal. What the petitioner is really aggrieved is not in the respondent-bank treating the period from 10.7.1993 to 25.9.1995 as the period of extraordinary leave, but petitioner contends that even on this period being taken as a period of extraordinary leave granted to the petitioner, then whatever were the pay increases which became applicable in this period have to be considered for determining the petitioner's pay as on 25.9.1995 for giving benefits to the petitioner for the purpose of calculating voluntary retirement benefits and pension payments as on 25.9.1995.

4. Unfortunately in none of the pleadings of any of the parties i.e in the writ petition or the counter affidavit or the rejoinder affidavit any rules have been stated as to how is the period of qualifying service to be calculated, and, whether the period of extraordinary leave is or is not to be counted for the purpose of determining qualifying service period for arriving at the voluntary retirement benefits and pension payments. Counsel for the

parties however agree before me today that the parties are governed by the Bank (Employees') Pension Regulations, 1995. We will therefore have to consider of these 1995 Regulations in order to determine whether pay increases in a period of extraordinary leave should or should not be considered for determining the pay (average emoluments) as on the date of voluntary retirement of an employee. The relevant Regulations of the 1995 Regulations, in this regard, are Regulation 2(s) which defines pay, Regulation 2(y) which defines retirement, Regulation 14 which defines qualifying service, Regulation 15 which deals with commencement date of qualifying service, Regulation 17 which provides that extraordinary leave on loss of pay shall not be counted as qualifying service, Regulation 30 which defines invalid pension and finally Regulation 38 which provides for the period of 10 months pay which has to be taken for calculation of average emoluments. These Regulations read as under:-

“2(s) “Pay” includes,-(a) in relation to an employee who has either retired or died on or after the 1st day of January, 1986 but before the 1st day of November, 1993,-

- i) the basis pay including stagnation increments, if any, and
- ii) all allowances counted for the purposes of making contribution to the Provident Fund and for the payment of dearness allowance;

(b) in relation to an employee who retires or dies while in service on or after the 1st day of November, 1993,-

- i) the basic pay including stagnation increments, if any; and
- ii) all allowances counted for the purpose of making contribution to the Provident Fund and for the payment of dearness

allowance; and

- iii) increment component of Fixed Personal Allowance; and
- iv) dearness allowance calculated upto Index Number 1148 points in the All India Average Consumer Price Index for Industrial Workers in the series 1960=100

2(y) “Retirement” means cessation from Bank’s service,-

- a) on attaining the age of superannuation specified in Service Regulations or Settlements;
- b) on voluntary retirement in accordance with provisions contained in regulation 29 of these Regulations;
- c) on premature retirement by the Bank before attaining the age of superannuation specified in Service Regulations or Settlements;

14. Qualifying service

Subject to the other conditions contained in these regulations, an employee who has rendered a minimum of ten years of service in the bank on the date of his retirement or the date on which he is deemed to have retired shall qualify for pension.

15. Commencement of qualifying service

Subject to the provisions contained in these regulations qualifying service of an employee shall commence from the date he takes charge of the post to which he is first appointed on a permanent basis.

17. Counting of periods spent on leave

All leave during service in the Bank for which leave salary is payable shall count as qualifying service;

Provided that extraordinary leave on loss of pay shall not count as qualifying service except when the sanctioning authority has directed that such leave not exceeding twelve months during the entire service, may count as service for all purposes including pension.

30. Invalid Pension

(1) Invalid pension may be granted to an employee who :-

- (a) has rendered minimum ten years of service, and
- (b) retires from the service on or after the 1st day of November 1993, on account of any bodily or mental infirmity which permanently incapacitates him for the service.

(2) An employee applying for an invalid pension shall submit a medical certificate of incapacity from a medical officer approved by the Bank.

(3) Where the Medical Officer approved by the Bank has declared the employee fit for further service of less laborious character than that which he had been doing, he should, provided he is willing to be so employed, be employed on lower post and if there be no means of employing him even on a lower post, he may be admitted to invalid pension.

(4) No medical certificate of incapacity for services may be granted unless the applicant produces a letter to show that the Competent Authority is aware of the intention of the applicant to appear before the medical Officer approved by the Bank.

(5) The medical officer approved by the Bank shall also be supplied by the Competent Authority in which the applicant is employed with a statement of what appears from official records to be the age of the applicant.

38. Determination of the period of ten months for average emoluments

(1) The period of the preceding ten months for the purpose of average emoluments shall be reckoned from the date of retirement.

(2) In the case of voluntary retirement or premature retirement the period of the preceding ten months for the purpose of average emoluments shall be reckoned from the date on which the employee voluntarily retires or is prematurely retired by the Bank.

(3) In the case of dismissal or removal or compulsory retirement or termination of service the period of the preceding ten months for the purpose of average emoluments shall be reckoned from the date on which the employee is dismissed or removed or compulsorily retired or terminated by the Bank.

(4) If during the last ten months of the service an employee had been absent from duty on extraordinary leave on loss of pay or had been under suspension and the period whereof does not count as service, the aforesaid period of extraordinary leave or suspension shall not be taken into account in the calculation of the average emoluments and an equal period before the ten months shall be included.” (underlining added)

proviso to Regulation 17 and sub-Regulation 4 of Regulation 38. When these two Regulations are read; with other Regulations; it becomes clear that when last 10 months of service of an employee has to be calculated for determining the retirement benefits and pension payments, the period for which the employee had been absent from duty on extraordinary leave on loss of pay, this period shall not be taken into account in the calculation of the average emoluments, and, the equal period before the 10 months shall be looked into. Obviously, if the extraordinary leave on loss of pay is even prior to the 10 months period immediately prior to the 10 months period before the date of voluntary retirement and the extraordinary leave period continues to a yet prior/longer period, then, the last 10 months period of ordinary service/valid service of an employee with the bank will be considered for determining the last 10 months average emoluments. Putting it differently, the increases of pay granted during the period of extraordinary leave on loss of pay have not to be taken into account for calculation of average emoluments of the last ten month period. Thus, whatever are the pay increases during the period of extraordinary leave on loss of pay, the same are to be excluded for determining the emoluments of last 10 months on the basis of which retirement benefits and pension payments have to be made.

6. In the present case, the admitted position is that the period from 10.7.1993 to 25.9.1995 is a period of extraordinary leave without pay because petitioner did not perform his services in the bank and in fact had not joined the bank even earlier from 10.4.1993 inasmuch as petitioner had given his application to resign from the services of the bank. Therefore, since the undisputed position which emerges is that the period from 10.7.1993 to 25.9.1995 was a period of illegal leave i.e unsanctioned leave i.e extraordinary leave on loss of pay, whatever pay increases which have taken place in this period cannot be considered for determining the last 10 months of average emoluments on the basis of which retirement benefits and pension payments amount of an employee has to be calculated.

7. Counsel for the petitioner laid great stress on a circular of the respondent-bank dated 19.7.1995 to argue that whatever are the advance increments in a period have to be paid to an employee, however, I do not find anything in this circular which in any manner alters the language of Regulation 38(4) and proviso to Regulation 17 as per which whatever are the pay increases in the period of extraordinary leave on loss of pay are not to be included for calculating the last 10 months average emoluments for payment of voluntary retirement benefits and pension payments.

8. The upshot of the above discussion is that if in the period taken

as the period of the employee being on extraordinary leave with loss of pay certain pay increases have taken place then these pay increases are not to be taken into account for determining the last 10 months of average emoluments for calculating of retirement benefits and pension payments. Since in the present case the period of extraordinary leave from 10.7.1993 to 25.9.1995 is the period of extraordinary leave with loss of pay of the petitioner, respondent-bank is justified in not taking pay increases in such period into account for determining the last 10 months of average emoluments for calculating voluntary retirement benefits and the pension payments.

9. In view of the above, there is no merit in the petition which is accordingly dismissed, leaving the parties to bear their own costs.

+ W.P.(C) No.4400/1996

1. The only relief claimed in this writ petition is that the petitioner states that the respondent No.2-bank should charge him the rate of interest for the loans taken by him from the bank at the nominal rate charged to the employees till his voluntary retirement on 25.9.1995. I have already given the facts of the case while dealing with W.P.(C) No.2398/2007 and since it is not disputed that the cord of relationship of employer and employee between the petitioner and the respondents will stand snapped only on

25.9.1995, therefore till 25.9.1995 petitioner would be an employee of the respondent No.2-bank, and being an employee of the respondent No.2-bank he can only be charged that rate of interest on the loans taken by him (including housing loan) which is charged from other employees of the bank.

2. Accordingly, this writ petition is allowed and disposed of by directing that the respondent No.2 -bank should calculate the interest not at the commercial rate but only at the rate which the bank charges to its employees till the date of voluntary retirement of the petitioner on 25.9.1995. The loans are however to be set off, adjusted or paid before 25.9.1995, and which factual position has occurred because it is not disputed by the respondent No.2-bank that loans taken by the petitioner from the respondent No.2-bank were repaid by the year 1993. Whatever amounts the respondent No.2 bank has charged in excess because of charging commercial rate of interest, the same be now refunded to the petitioner alongwith interest @ 9% per annum simple from 25.9.1995 till the date of payment to the petitioner. Parties are left to bear their own costs.

AUGUST 29, 2013

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VALMIKI J. MEHTA, J.

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