

GAHC020003192019



**THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL
PRADESH)
KOHIMA BENCH**

Case No. : WP(C)/117/2019

P.P. SANI ALIAS SANI P.P
S/O LT. N.SANI,
R/O MOA GATE, P.O/P.S MOA, SENAPATI, MANIPUR

VERSUS

THE DEPUTY GENERAL MANAGER, SBI AND 5 ORS
STATE BANK OF INDIA, DIMAPUR, N/L

2) THE REGIONAL MANAGER,
STATE BANK OF INDIA, DIMAPUR, N/L

3) THE APPOINTING AUTHORITY,
STATE BANK OF INDIA, MOKOKCHUNG, N/L

4) THE CHIEF MANAGER,
STATE BANK OF INDIA, MOKOKCHUNG BRNCH, MOKOKCHUNG,
N/L.

5) THE BRANCH MANAGER,
STATE BANK OF INDIA, MOKOKCHUNG, N/L

6) THE BRANCH MANAGER,
STATE BANK OF INDIA, PHEK, N/L

Advocate for the Petitioner : R A RONGMEI

Advocate for the Respondent : Advocate-Y.P. GUPTA (R/1-5)

**BEFORE
HON'BLE MR. JUSTICE NELSON SAILO**

ORDER

Date : 27-03-2023

Heard Mr. R.A. Rongmei, learned counsel for the petitioner and Mr. Y.P. Gupta, learned Standing counsel, State Bank of India (SBI) appearing for respondent Nos. 1 to 5.

2. This is the third time the petitioner has come before this Court. The earlier 2 writ petitions i.e W.P.(C) 78(K)/2016 and W.P.(C) 26(K)/2018 were withdrawn by the writ petitioner by seeking liberty to file afresh. Liberty was granted and accordingly that is how the petitioner is again before this Court through this writ petition.

3. The case of the petitioner is that he was appointed in the Clerical Cadre of the State Bank of India(SBI) Mokokchung Branch vide letter dated 9/1/1991 and was confirmed in service vide letter dated 11/11/1991. Ever since his appointment according to the petitioner, he was serving the Bank diligently and to the best of his ability. However, he started developing eye problem as he experience blurring of vision in both his eyes. He accordingly approached the Bank's Medical Officer in the Regional Office, SBI Dimapur on 14/3/2007. The Bank Medical Officer referred him to go to Guwahati to seek for further treatment from the eye specialist. The petitioner then went to Guwahati and met the Doctor of the Bank who was stationed in the local Head Office in Guwahati. The Doctor advised him to consult the eye specialist in

Nem Care hospital Guwahati. The petitioner was then admitted at Nem Care hospital from 28/3/2007 to 31/3/2007. During his stay in the hospital he received conservative treatment and he was advised to come back for further treatment after 3(three) months. According to the petitioner, since he did not have the means to go for further treatment he approached the Office of the Medical Superintendent Naga Hospital Kohima for referring him for his treatment outside the State. However, the petitioner could not go for further medical treatment and in the meantime, he was served with communication dated 11/7/2009 from the Bank stating that he was deemed to have voluntarily retired from service of the Bank on 10/10/2006 i.e. from the date from which he was found to be absent from the Bank. Aggrieved with the same, the petitioner submitted his representation to the Regional Manager through the Branch Manager SBI Mokokchung Branch on 10/11/2004 for allowing him to avail the benefit of invalid pension on medical ground. Despite his application, the petitioner was not given any such benefit and therefore, he filed the earlier 2 writ petitions and now, the present writ petition as already stated herein above.

4. Mr. R.A. Rongmei, learned counsel submits that the petitioner is a resident of an interior village and does not know the process and procedure as to how the respondent authorities are to be approached. Besides this, the petitioner was in financial crisis coupled with his ill health and for which, he could not approach the authorities and also the hospital for his medical treatment. He therefore, submits that the respondent authorities may be directed to consider his case for grant of in-

valid pension as permissible under the CCS Pension Rules 1972 or any other provisions of law.

5. Mr. Y.P. Gupta, learned Standing counsel, SBI on the other hand submits that the petitioner never informed the Bank authorities about his ailment. He also did not submit any application for leave but simply abstained himself from duty since 10/10/2006. The learned counsel submits that the Bank authorities on account of the absence of the petitioner served him three Memorandums dated 3/11/2006, 4/12/2006 and 5/1/2007, asking him to report for duty within the specified period mentioned in the Memorandum. However, the petitioner willfully did not respond to the Memorandums and remained absent. The learned counsel further submits that against the last memorandum issued to him i.e.5/1/2007, the petitioner responded by stating that his unauthorized leave may be converted to leave of any kind and that he was still in medical rest. He submits that the petitioner however, failed to report back to duty despite his reply and therefore, the Bank had no other option but to accept his absence as voluntary retirement from service initiated by the petitioner himself. Accordingly, the communication dated 11/7/2009 was issued to him.

6. The learned counsel further submits that the petitioner pursuant to the issuance of the said communication submitted his application for release of gratuity and the Provident fund to the Bank on 29/3/2012 and 12/10/2011 respectively. Accordingly, the amount which was due to the petitioner has been since released to him and therefore, there is no question of granting invalid pension at this stage. Referring to

Regulation no.22 of the SBI Employees Pension Regulation, 2014, the learned counsel submits that in order to grant pension, the minimum service required by the employee concerned is 20 years. The employee concerned can also be considered for retirement subject to the satisfaction of the authority to sanction retirement on being permanently incapacitated by bodily or mental infirmity from further active service. It is only after such satisfaction that proportionate pension can be granted at the discretion of the trustee. Referring to the affidavit-in-opposition filed on 20/4/2021, the learned counsel submits that the petitioner joined service in a Clerical grade on 18/3/1991 and he voluntarily abstained himself from work w.e.f 10/10/2006. Also, the petitioner on account of misappropriation of fund was placed under suspension for 1498 days and he was also unauthorizedly absent for 124 days. However, the petitioner came to be reinstated back into service but it was directed that the period of suspension shall not be counted as duty for any purpose. Accordingly, the net service period which remain is 11 years 1 month and 14 days out of 15 years 6 months and 22 days. With such kind of service, the petitioner is not entitled to avail invalid pension. Under the circumstances, the learned counsel submits that the writ petition has no merit and should be dismissed.

7. I have considered the submissions made by the rival parties and I have perused the materials available on record.

8. There is no dispute to the fact that the petitioner had rendered his service since 18/3/1991 till he abstained him-

self from duty w.e.f. 10/10/2006. For the period he was placed under suspension he was reinstated in his service vide order dated 10/4/2002 which is annexed as Annexure-1 of the counter affidavit of the Bank. It is also seen that the petitioner had approached the Medical Officer of the Bank at Dimapur and also at Guwahati on account of his blurry vision. The petitioner had also been admitted to Nem Care hospital at Guwahati on account of his ailments but the petitioner did not bring this to the notice of the respondent Bank. The Bank had also issued Memorandum to the petitioner on 3/11/2006, 4/12/2006 and 5/1/2007 asking him to report back to duty. The petitioner, however did not report back for duty. The Bank then issued a communication dated 11/7/2009 to the petitioner stating that it was deemed that he has voluntarily retired from service as on 10/10/2006. This communication was made after more than 2 years after the last communication/memorandum issued to him on 5/1/2007.

9. According to the Bank, in order to keep pace with ever increasing customer expectations, technology initiative of the Bank and competition in the market place a need was felt to put in place a formal recruitment policy for the Bank. The recruitment policy was formulated and approved by the Bank in its meeting on 12/12/2003. The policy has been modified from time to time. Accordingly, hand book as updated on 30/6/2021 has been issued by the Human resources Department SBI Corporate, Mumbai. Clause 2.6(g) of the Handbook provides as follows:-

" If the employee is seeking voluntary retirement on health grounds before 55 years of age, he should be subjected to an examination by a Medical Board consisting of (a) a Civil Surgeon (b) a specialist relevant to the disease/ailment, and (c) the Bank's medical Officer at Local Head Office/Administrative Office. The Medical Board should be asked to unequivocally state whether or not the employee is permanently incapacitated and hence unfit to continue in service. If the Medical Board pronounces the employee to be permanently incapacitated he should be retired from the date of medical report provided no disciplinary action is pending/contemplated against him."

10. From the above abstract, it may be seen that voluntary retirement before attaining 55 years of age on health ground is permissible subject to employee concerned being examined by a medical Board consisting of (a) a Civil Surgeon (b) a specialist relevant to the disease/ailment, and (c) the Bank's medical Officer at Local Head Office/Administrative Office. The Medical Board is also required to state whether the employee concerned is permanently incapacitated and hence unfit to continue in service provided that no disciplinary action is pending or contemplated against the employee.

11. From the materials available on record it no where seen that the Bank authorities have initiated any disciplinary proceeding against the petitioner for having been absent since 10/10/2006. Although he was suspended from service at the relevant time but for that, a memorandum has been already drawn up on 10/4/2002 reinstating him back into service with certain observation.

12. Therefore, upon considering the steps taken by the authorities and having regard that the petitioner had served

the Bank, this Court is of the considered view that the petitioner should be considered for grant of invalid pension as may be permissible under the Rules. Accordingly, the respondent Bank is directed to constitute a Medical Board to examine the medical condition of the petitioner in terms of clause 2.6(g) of the manual within a period of one month from the date of receipt of a certified copy of this order. The petitioner will be at liberty to produce all relevant medical documents at his disposal before the Board for consideration of the Board. The Board should complete the examination within a period of 2(two) months from the date of its constitution. In the event the Board is of the opinion that the petitioner is and was medically unfit for service, the report be placed before the respondent No.2 i.e. the Regional Manager, SBI, Dimapur Nagaland for decision by the appropriate authority of the Bank as to whether the petitioner can be given invalid pension. Such consideration should be done by the Bank authorities expeditiously and preferably within a period of 2 (two) months from the date of receipt of medical report from the Board constituted. If the petitioner is found entitled for invalid pension, the same should be accorded to him without delay.

13. With the above observation and direction the writ petition is disposed of. No cost.

**Sd/-
JUDGE**

Comparing Assistant