

IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 10.02.2015

DATE OF DECISION : 16.02.2015

CORAM

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.A.No.1483 of 2014
and
M.P.Nos.1 and 2 of 2015

S.Shanmugavel ... Appellant

Vs.

- 1.The Chief General Manager,
State Bank of India,
Local Head Office,
Circle Top House,
No.16, College Lane,
Chennai-600 006.
- 2.The Deputy General Manager,
State Bank of India,
Region-IV,
Zonal Office,
No.86, Rajaji Salai,
Chennai-600 001.
- 3.The Chief Manager,
State Bank of India,
Meenambakkam Airport,
Chennai-600 027.

.. Respondents

This writ appeal is preferred under Clause 15 of the Letters Patent against the order of this court dated 16.6.2014 made in W.P.No.13425 of 2010.

Petition presented under Article 226 of the Constitution of India to issue an order of Writ of certiorarified mandamus Calling for the records connected with the order passed in Letter No.CHE/PPG/265 dated 7.6.2008 by the 1st respondent rejecting the petitioner Exit Option Claim for Pension quash the same and also direct the respondents to pay him retiral benefits and all other attendant benefits accepting option under Exit Option Scheme and pass such further orders.

For Appellant : Mr.R.Prem Narayan
for Mr.N.Naganathan

For Respondents: Mr.G.Senthilkumar
for Mr.S.Sethuraman

JUDGMENT

SATISH K. AGNIHOTRI, J.

The instant intra-court appeal arises from the order dated 16.6.2014 passed in W.P.No.13425 of 2010.

2. The indisputable facts are that the appellant/ writ petitioner, working in the respondent Bank, submitted his option on 7.3.2007 in pursuance of the Exit Option Scheme in Sl.No.298/2006-07, Circular No.CDO/P&HRD-IR/28/2006-07 dated 31.8.2006, in the prescribed format. The respondent Bank permitted the writ petitioner to retire from the Bank under the Exit Option Scheme by the close of business on 15.6.2007. It was also directed vide order dated 24.4.2007 that all terminal benefits be disbursed after ensuring that all dues of the bank are settled. The writ petitioner was, thereafter, intimated by communication dated 14.5.2007. Further, the petitioner was informed vide communication dated 20.9.2007 that he was eligible for ex-gratia for 12 months and accordingly, a sum of Rs.1,51,399/- was sanctioned.

3. After sometime, the petitioner made a representation on 2.2.2008 for pensionary benefits, stating therein that the petitioner had completed 20 years of pensionable service for entitlement of pension. His request for pension was rejected vide communication dated 7.6.2008, holding that under Rule 22 of the State Bank of India Employees' Pension Fund Rules (for short "SBI Rules"), a member shall be entitled to a pension under these rules on retiring from the Bank's service,

(i)After having completed twenty years' pensionable service provided that he has attained the age of fifty years; or

(ii)If he is in the service of the Bank on or after 01.11.93, after having completed 10 years pensionable service provided that he has attained the age of fifty years; or

(iii)If he is in the service of the Bank on or after 22.05.1998, after having completed ten years pensionable service provided that he has attained the age of sixty years"

Thus, he was informed that he had completed only 19 years and 9 months of service as on 15.6.2007 and therefore, he is not entitled to pension. Being aggrieved, the writ petitioner has come up with the writ petition, seeking for the aforestated direction.

4. Mr.R.Prem Narayan, learned counsel appearing for the appellant would submit that the writ petitioner was initially appointed on 23.2.1987 on probation for a period of six months, i.e., until 23.8.1987. Thereafter, on completion of probation, he was confirmed from 23.8.1987 vide communication, dated 2.9.1987. Thus, seniority of the petitioner is to be counted from the date of initial appointment, i.e., 23.2.1987. Counting seniority from 23.2.1987, the writ petitioner has completed more than 20 years as on 15.6.2007, the date of retirement.

5. Relying on a decision of the Constitution Bench of the Supreme Court in Direct Recruit Class II Engineering Officers' Association Vs. State of Maharashtra¹, the learned counsel for the appellant would submit that since the writ petitioner was appointed on probation in accordance with law through selection process and the probation was confirmed immediately on completion of his probation, the writ petitioner is entitled to seniority with effect from the initial date of appointment. It was further urged that it is not the case where the appointment of the petitioner was irregular or illegal and as such, the date for reckoning the seniority is the date of confirmation. The learned counsel further contended that the learned Single Judge had wrongly not calculated the period spent during probation for the purpose of counting seniority and held that the writ petitioner had not completed 20 years of service from the date of his confirmation till date of retirement and as such, under Rule 22(i) of the SBI Rules, the petitioner is entitled to pension and the order dated 7.6.2008 was wrongly upheld.

6. On the other hand, the learned counsel appearing for the respondent Bank would submit that under provisions of Rule 20 of SBI Rules, the writ petitioner has not completed 20 years of service, as required, entitling him for pensionary benefits. Relying Rule 7 of the SBI Rules, it was contended that the seniority has to be counted from the date of confirmation as he becomes the member of the fund only from the date of the confirmation. Thus, the order of the learned Single Judge is right, warranting no interference.

7. Heard the learned counsel for the parties, perused the pleadings and documents appended thereto.

1 (1990)2 SCC 715

8. The Central Board of the State Bank of India, in exercise of the power conferred by Section 50 of the State Bank of India Act, 1955 (23 of 1955), after consultation with the Reserve Bank of India and also with the previous sanction of the Central Government, framed the Employees' Pension Fund Rules. Rule 2 defines "member", as any person in the service of the bank, who has been admitted to the membership of the fund.

9. Rule 7 prescribes that save as provided in rule 8, every permanent employee (including a permanent part-time employee, who is required by the Bank to work for more than six hours a week) in the service of the Bank who is entitled to pension benefits under the terms and conditions of his service shall become a member of the fund from the date from which he is confirmed in the service of the Bank, or the date from which he may be required to become a member of the Fund under the terms and conditions of his service. Under Rule 8, no employee shall be eligible to become the member of the fund on or after 22.5.1998.

10. In the case on hand, the petitioner, on being confirmed, was admitted to provident fund from 23.8.1987, vide communication dated 2.9.1987. However, no document has been produced to indicate as to from which date the petitioner became the member of the Employees Pension Fund. A request of the writ petitioner for grant of pension was rejected on the ground that the writ petitioner has not completed 20 years pensionable service, after having attained the age of 55 years, as quoted in the impugned communication dated 7.6.2008. In the said communication, it is observed that under Rule 7, an employee became a member of the pension fund only from the date from which he was confirmed in the service of the bank.

11. Upon perusal of the aforestated provisions, as quoted by the authorities in the impugned communication, dated 7.6.2008, it is evident that an employee is entitled to pension only on having become a member of the pension fund. It is also crystal clear that an employee cannot be a member of the pension fund, who is not confirmed on the post. However, Rule 22(i) of the SBI Rules, which has been referred to in the communication dated 7.6.2008 prescribed 20 years pensionable service. At the first instance, it does not prescribe 20 years as member of pension fund. Thus, we have to read and understand both expressions in its proper context.

12. There is no dispute that the writ petitioner was appointed on 23.2.1987 on probation for a period of six months. Immediately on completion of probation, he was confirmed on the post. Thus, his seniority in the service starts from the date of initial appointment as held by the Constitution Bench of the

Supreme Court in Direct Recruit Class II Engineering Officers' Association Vs. State of Maharashtra¹, which dealt with the case, wherein the petitioner was appointed initially on temporary basis in accordance with the rules and thereafter, he was confirmed on probation and it reads as under:

47. To sum up, we hold that:

.(A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation.

The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority.

(B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted.

(C) When appointments are made from more than one source, it is permissible to fix the ratio for recruitment from the different sources, and if rules are framed in this regard they must ordinarily be followed strictly.

(D) If it becomes impossible to adhere to the existing quota rule, it should be substituted by an appropriate rule to meet the needs of the situation. In case, however, the quota rule is not followed continuously for a number of years because it was impossible to do so the inference is irresistible that the quota rule had broken down.

(E) Where the quota rule has broken down and the appointments are made from one source in excess of the quota, but are made after following the procedure prescribed by the rules for the appointment, the appointees should not be pushed down below the appointees from the other source inducted in the service at a later date.

(F) Where the rules permit the authorities to relax the provisions relating to the quota, ordinarily a presumption should be raised that there was such relaxation when there is a deviation from the quota

1 (1990)2 SCC 715

rule.

(G) The quota for recruitment from the different sources may be prescribed by executive instructions, if the rules are silent on the subject.

(H) If the quota rule is prescribed by an executive instruction, and is not followed continuously for a number of years, the inference is that the executive instruction has ceased to remain operative.

(I) The posts held by the permanent Deputy Engineers as well as the officiating Deputy Engineers under the State of Maharashtra belonged to the single cadre of Deputy Engineers.

(J) The decision dealing with important questions concerning a particular service given after careful consideration should be respected rather than scrutinised for finding out any possible error. It is not in the interest of Service to unsettle a settled position."

13. Direct Recruit Class II Engineering Officers' Association¹ (supra), was referred to with approval in L.Chandrakishore Singh Vs. State of Manipur², A.G.Sainath Reddy Vs. Govt. of A.P.³, Union of India Vs. Dharam Pal⁴ and others and lastly in Debabrata Das Vs. Jatindra Prasad Das⁵, wherein it was held as under :

41. A five-Judge Bench of this Court in Direct Recruit Class II Engg. Officers' Assn.³ was concerned with a question of seniority in service between the direct recruits and promotees amongst Deputy Engineers in the State of Maharashtra. This Court considered previous decisions of this Court, including S.B. Patwardhan v. State of Maharashtra⁷ and Baleshwar Dass v. State of U.P.⁸ and in para 47 of the Report summed up the legal position. Clauses (A), (B) and (C) of para 47 are relevant for the present purpose which read as follows: (Direct Recruit Class II Engg. Officers' Assn.³, SCC p. 745, para 47)

"(A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation.

The corollary of the above rule is that where the initial appointment is only ad hoc and not

1 (1990) 2 SCC 715

2 (1999) 8 SCC 287.

3 (2003) 4 SCC 65.

4 (2009) 4 SCC 170

5 (2013) 3 SCC 658

according to rules and made as a stopgap arrangement, the officiation in such post cannot be taken into account for considering the seniority.

(B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted.

(C) When appointments are made from more than one source, it is permissible to fix the ratio for recruitment from the different sources, and if rules are framed in this regard they must ordinarily be followed strictly."

The essence of direction in Clause (A) is that the seniority of an appointee has to be counted from the date of his appointment and not according to the date of his confirmation once a recruit is appointed to a post according to the rules. In other words, where initial appointment is only ad hoc and not according to the rules and made as a stopgap arrangement, the officiation in such post cannot be taken into account for considering the seniority. The writ petitioner's appointment as an ad hoc Additional District Judge is not traceable to the 1963 Rules. The simple reason leading to this consequence is that there was no vacancy available which was to be filled up by promotion on that date in the Superior Judicial Service (Senior Branch)."

14. Thus, pensionable service of the petitioner is to be reckoned from the date of his initial appointment on 23.2.1987. Computing the period from that day, the writ petitioner had completed more than 20 years pensionable service as required under Rule 22(i) of the SBI Rules, as on the day his request for Exit Option was accepted, i.e., on 15.6.2007.

15. For the reasons stated hereinabove, we are unable to agree with the view taken by the learned Single Judge that the writ petitioner had not completed 20 years of pensionable service, as required under the provisions of law. The impugned order of the learned Single Judge is, accordingly, set aside. The writ appeal is allowed. The writ petitioner/appellant shall be entitled to consequential benefits, payable within a period of three months

from the date of receipt of copy of this order. No order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

vvk

To

- 1.The Chief General Manager,
State Bank of India,
Local Head Office,
Circle Top House,
No.16, College Lane,
Chennai-600 006.
- 2.The Deputy General Manager,
State Bank of India,
Region-IV,
Zonal Office,
No.86, Rajaji Salai,
Chennai-600 001.
- 3.The Chief Manager,
State Bank of India,
Meenambakkam Airport,
Chennai-600 027.

1 cc to M/s. N. Naganathan, Advocate, Sr. 8007

W.A.No.1483 of 2014

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MP (CO)
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