

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :: **1.4.2015**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

W.P.No.15766 OF 2013

D.Kalaichelvan
versus

... Petitioner

1.Union Bank of India,
rep. By its General Manager (HR)
Department of Personnel,
Terminal Benefit Division, Pension Section
Union Bank Bhavan,
239, Vidhan Bhavan Marg,
Nariman Point,
Mumbai 400 021.

2.Assistant General Manager (HRM)
Union Bank of India,
Department of Personnel & Human Resources management,
Terminal Benefit Division, Pension Section
Central Office,
Union Bank Bhavan,
239, Vidhan Bhavan Marg,
Nariman Point,
Mumbai 400 021.

... Respondents

Writ Petition filed under Art.226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records from respondents 1 and 2 quash the staff circular No.5690 dated 27.8.2010 of the first respondent insofar as Clause 7 including compulsory retired person has not eligible for pension option and the order of the 2nd respondent dated 13.2.2013 bearing DP Pension 159 13 and consequently direct the respondent to grant pension to the petitioner in terms of Union Bank of India (Employees) Pension Regulation, 1995 from 27.11.2009 along with arrears and interest @ 18% p.a.

For petitioner

Mr.Balan Haridas

For respondent

Mr.P.Raghunathan,
for M/s.T.S.Gopalan & Co.

ORDER

The challenge in this Writ Petition is to Clause 7 of the Circular No.5690 dated 27 August 2010 issued by the first respondent and the related order dated 13 February 2013 rejecting the claim made by the petitioner for pension on the ground that clause 7 of the circular provides that employees compulsorily retired from service are not eligible for pension.

Facts in a nutshell :-

2. The petitioner was appointed as Agricultural Field Officer by Union Bank of India in 1977. He was promoted to the level of Scale IV Officer. The Bank initiated disciplinary proceedings against him by charge memo dated 31 January 2008. The Bank, by order dated 14 December 2009, imposed the punishment of compulsory retirement. The order was challenged in W.P.No.27311 of 2010. While confirming the order passed by the Disciplinary Authority, this Court made it clear that the petitioner is entitled to the statutory benefits like encashment of accumulated privilege leave and gratuity.

3. The Bank issued a circular dated 27 August 2010, giving another option to the employees to join the pension scheme. Clause 7 of the circular denied the benefits of making fresh option to those employees who have been dismissed or compulsorily retired. The petitioner, pursuant to the circular dated 27 August 2010, submitted his option. However, it was rejected by the Bank on the ground that compulsorily retired employees are not entitled to exercise the option. Feeling aggrieved, the petitioner is before this Court.

4. The Chief Manager, Union Bank of India, in his counter affidavit justified the impugned order dated 13 February 2013 and clause 7 of the circular. According to the Bank, compulsory retirement is initiated to snap once for all the relationship between the Bank and its employee. According to the Bank, pension regulations do not mandate grant of pension to those employees who have been compulsory retired. The petitioner received his Provident Fund due in full and therefore, it is not open to him to apply once again for pension.

Submissions :-

5. The learned counsel for the petitioner by placing reliance on the Union Bank of India (Employees) Pension Regulations, 1995, and more particularly, clause 33, submitted that the regulations provide for pension even to the employees compulsorily retired from service on or after 1 November 1993. According to the learned counsel, the impugned clause 7 of the circular is contrary to clause 33 of the pension regulations framed by the Bank. The learned counsel contended that under similar circumstances, Andhra Pradesh High Court has passed an order directing the Bank to pay pension to an employee who was compulsorily retired from service. The said order was upheld by the Division Bench. According to the learned counsel, the petitioner is entitled to the benefits, consequent to his compulsorily retirement, and as such, the Bank was not justified in restricting the pension scheme by not extending it to the employees retired compulsorily.

6. The learned counsel for the Bank submitted that the petitioner received the entire benefits and snapped his connection with the Bank. According to the learned counsel, the petitioner has not opted for pension initially. The Bank has given a fresh option to the employees to join the pension scheme. The Bank made it very clear that option is not given to those who are compulsorily retired from service. The learned counsel contended that employees dismissed from service or compulsorily retired are a class by themselves and as such, they cannot be treated along with others who are permitted to retire without any stigma.

Analysis :-

7. The Bank initiated disciplinary proceedings against the petitioner and ultimately, he was given the punishment of compulsory retirement. The petitioner filed Writ Petition in W.P.No.27311 of 2010, challenging the order of compulsory retirement. This Court refused to interfere with the order of compulsory retirement. However, the learned Judge made it very clear that the word “retirement” would include compulsory retirement and as such, the petitioner is entitled to the statutory benefits. The order dated 25 July 2010 in W.P.No.27311 of 2010 has become final.

8. The Union Bank of India, in exercise of powers conferred by Clause (f) of sub section (2) of Section 19 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, framed regulations which provides for

payment of pension. Chapter 5 deals with classes of pension. Clause 33 deals with compulsory retirement pension. It reads thus :

Compulsory Retirement Pension

1. An employee compulsorily retired from service as a penalty on or after 1st day of November 1993 in terms of Union Bank of India Officer Employees' (Discipline and Appeal) Regulations 1976 or awards/settlements may be granted by the authority higher than the authority competent to impose such penalty, pension at a rate not less than two thirds and not more than full pension admissible to him on the date of his compulsory retirement if otherwise he was entitled to such pension on superannuation on that date.

2. Whenever in the case of a Bank employee the Competent Authority passes an order (whether original, appellate or in exercise of power of review) awarding a pension less than the full compensation pension admissible under these regulations, the Board of Directors shall be consulted before such order is passed.

3. A pension granted or awarded under sub-regulation (1) or, as the case may be, under sub-regulation (2), shall not be less than the amount of rupees three hundred and seventy five per mensem.

9. It is not in dispute that the petitioner failed to apply for pension initially pursuant to the Pension Regulations, 1995.

10. Union Bank of India having found that Indian Banks' Association has

advised banks for implementation of the pension scheme to serving employees/ retirees, issued a circular no.5690 dated 27 August 2010, giving another option to join the pension scheme. Even though Pension Regulations, 1995, permits payment of compulsory retirement pension, by introducing Clause 7, in its circular No.5690 dated 27 August 2010, the Bank made it clear that those who retired voluntarily or compulsorily retired, would not be eligible for exercising pension option. It was only on the basis of the said regulation, the application submitted by the petitioner was rejected by the Bank.

11. The core issue is as to whether the Bank was correct in denying the benefits of pension to those who were compulsorily retired notwithstanding the employees pension regulations 1995, which provides for compulsory retirement pension.

12. The Bank introduced a pension scheme in 1995, in the name and style of Employees Pension Regulations, 1995. Some of the employees failed to submit their option within the cut off date. Subsequently, Indian Banks' Association, advised the banks for implementation of the settlements signed with the workmen in respect of extending another option to join the pension scheme to serving employees/ retirees. Based on the said decision, Union Bank of India issued circular no.5690 dated 27 August 2010. The Circular has to be read in the light of the Pension Regulations, 1995. The circular is only for the purpose of giving another option to join the scheme. The pension scheme remained the same

viz., is none other than Union Bank of India (Employees) Pension Regulations, 1995, which provides for compulsory retirement pension. Even though Clause 7 of the circular restricted the benefits of those who retired voluntarily in terms of regulation 19, the fact remains that pension regulation has not been amended correspondingly. Therefore, as on today, there is a valid regulation providing for pension to the compulsory retirees. In case the Bank is of the view that pension should be restricted to those who have retired voluntarily, they should make corresponding amendment to the pension regulations. The Pension Regulations, 1995, is statutory in nature. The circular was issued only pursuant to the said regulation. The circular cannot override the provisions of the regulations. It was only to give one more option to the employees, the circular was issued. The circular cannot therefore restrict the benefits of option to a set of employees notwithstanding existence of the regulation which provides for pension even to compulsorily retired employees.

13. The petitioner is entitled to certain service benefits on account of his compulsory retirement. In fact, in the earlier round of litigation, this Court made it very clear that the petitioner should not lose benefits which accrued to him for the service rendered by him, till the date of compulsory retirement. Such being the case, the Bank was not correct in incorporating Clause 7 for the purpose of denying benefits to compulsorily retired employees. I am therefore of the view that Clause 7 should be quashed insofar as it restricts option to join the pension scheme by compulsorily retired employees.

14. In the result, clause 7 of the circular no.5690 dated 27 August 2010 insofar as it denied the benefits to the compulsorily retired employees is quashed. Similarly, the order dated 13 February 2013, is also set aside.

15. The respondents are directed to consider the option given by the petitioner to join the pension scheme pursuant to the circular 5690 dated 27 August 2010 on merits and without reference to clause no.7. Such exercise shall be completed within a period of three months from the date of receipt of a copy of this order.

16. In the upshot, I allow the Writ Petition. No costs.

1.4.2015

Index: Yes/no
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To

1. The General Manager (HR)
Union Bank of India,
Department of Personnel,
Terminal Benefit Division, Pension Section
Union Bank Bhavan,
239, Vidhan Bhavan Marg,
Nariman Point,
Mumbai 400 021.

2. The Assistant General Manager (HRM)
Union Bank of India,
Department of Personnel & Human Resources management,
Terminal Benefit Division, Pension Section
Central Office,
Union Bank Bhavan,
239, Vidhan Bhavan Marg,
Nariman Point,
Mumbai 400 021.

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K.K.SASIDHARAN, J.

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