IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C. W. P.No. 20219 of 2014

Reserved On : July 10, 2015

Pronounced On : 16.07.2015

Aruna Garg .... Petitioner

vs.

State Bank of India and others .... Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

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To be referred to Reporters or not ?

Whether the judgment should be reported in the digest ?

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Present : Mr. Rajiv Atma Ram, Senior Advocate
with Mr. Arjun Pratap Atma Ram, Advocate
for the petitioner.

Mr. Vikas Chatrath, Advocate
for respondents no. 1 to 4.

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DEEPAK SIBAL, J. **:**

Through the present petition, the petitioner seeks a direction to the respondent State Bank of India (hereinafter referred to as – the Bank) to treat the petitioner to have retired from service as per the provisions of Rule 19(1) of the State Bank of India Officers Service Rules, 1992 (hereinafter referred to as – the Rules) and consequently, for releasing her retiral benefits along with interest.

Learned senior counsel appearing on behalf of the petitioner has primarily based his arguments while relying on Rules 19 and 20(2) of the Rules. Before proceeding further with the matter, it would be appropriate to refer to the above said Rules, which are as under :-

> ***"Retirement.***
>
> ***Rule 19(1) An officer shall retire from the service of the Bank on attaining the age of sixty years (CDO/PM/CIR/10 Dt. 29.05.1998) or upon the completion of thirty years' service or thirty years' pensionable service if he is a member of the Pension Fund, <u>whichever occurs first</u>.***
>
> ***Provided that the Competent Authority may, for reason to be recorded in writing extend the period of service of an officer who has completed thirty years service or thirty years' pensionable service, as the case may be, should such extension be deemed desirable in the interest of the Bank.***
>
> ***Provided further that an officer who has attained the age of 60 years shall not be***

granted any further extension in service.

Provided further that an officer may, for reason to be recorded in writing be retired from the Bank's service after he has attained 50 years of age or has completed 25 years' service or 25 years' pensionable service as the case may be, by giving him three months notice in writing or pay in lieu thereof.

Provided further that an officer who has completed 20 years' service or 20 years' pensionable service, as the case may be, may be permitted by the competent authority to retire from the Bank's service, subject to his giving three months' notice in writing or pay in lieu thereof unless this requirement is wholly or partly waived.

Rule 19(2) Notwithstanding anything to the contrary in the Service Rules, no officer who has ceased to be in the Bank's service by the operation of, or by virtue of, any provision shall be deemed to have retired from the Bank's service for the *purpose of the Imperial Bank of India Employees' Pension and Guarantee Fund Rules or the State Bank of India Employees' Pension Fund Rules unless such cessation of service has been sanctioned as retirement for the purpose of either of the said pension fund rules as may be applicable to him.*

Rule 19(3) In case disciplinary proceedings under the relevant rules of service have been initiated against an officer before he ceases to be in the Bank's service by the operation of, or by virtue of, any of the said rules or the provisions of these rules, the disciplinary proceedings may, at the discretion of the Managing Director, be continued and concluded by the authority by which the proceedings were initiated in the manner provided for in the said rules as if the officer continues to be in service, so however, that he shall be deemed to be in service only for the purpose of the continuance and

conclusion of such proceedings.

<u>Explanation</u> :

An officer shall retire from the service on the afternoon of the last day of the month in which he attains the age of sixty years provided that the officer whose date of birth is first day of month, shall retire from service on the afternoon of the last day of the preceding month on attaining the age of sixty years.

The clearance for disciplinary/vigilance cases pending/contemplated against the retiring official may be obtained only for the period between the date of last promotion and the date of retirement.

Rule 20(2)

> ***a) Not withstanding anything to the contrary contained in sub-rule (1), an officer against whom disciplinary proceedings are pending shall not leave/discontinue or resign from his service in the Bank without the prior approval in writing of the***

competent authority and any notice of resignation given by such an officer before or during the disciplinary proceedings shall not take effect unless it is accepted by the competent authority.

b) Disciplinary proceedings shall be deemed to be pending against an officer for the purpose of this rule if he has been placed under suspension or any notice has been issued to him to show cause why disciplinary proceedings should not be instituted against him or where any chargesheet has been issued against him and will be deemed to be pending until final orders are passed by the competent authority.

Explanation :

A show cause notice or order of suspension or chargesheet shall be deemed to have been issued prior to or during the period of notice, if it

> ***has been signed by the authority empowered in this behalf under the rules and put on a course of transmission prior to or during the said period whether or not it was actually received by the officer."***

Learned senior counsel appearing on behalf of the petitioner, while relying upon the above quoted provisions, submitted that an Officer of the Bank would retire from the service of the Bank on attaining the age of 60 years or upon the completion of 30 years of service or 30 years of pensionable service, which ever eventually would occur first. It was submitted that since the petitioner admittedly joined the service of the respondent Bank as a Clerk on 21.07.1983, she completed 30 years of service on 20.07.2013 and on completion of 30 years of service, as per Rule 19(1) of the Rules, she would be deemed to have retired from service w.e.f. 21.07.2013. Accordingly, it was prayed that the petitioner be treated to have retired from service w.e.f. 21.07.2013 and as a consequence, the respondent Bank be directed to release her retiral benefits with interest.

Per contra, learned counsel appearing on behalf of the respondent Bank submitted that since the petitioner was undisputedly a member of the Pension Fund of the respondent Bank, it is the third eventuality, as occurring in the Rule 19(1) of the Rules, which would apply in her case. Since the petitioner became a member of the Pension Fund on

12.01.1984, her date of retirement, as per the correct application of Rule 19 (1), would be 12.01.2014. It was submitted that since the respondent Bank, as per the provisions of Rule 19(2), had not passed any specific order permitting the petitioner to superannuate, she could not be deemed to have retired from service. It was further submitted that in the case of the petitioner, through order dated 29.11.2013, her services, as per the provisions of the first proviso to Rule 19(1) of the Rules, had been extended till 21.03.2022, and therefore, the prayer made by the petitioner was liable to be rejected. It was further submitted that disciplinary proceedings had been initiated against the petitioner, before the date of her superannuation and as per the provisions of Rules (20)(2)(a) and (b) of the Rules, she would be deemed to be in service till the culmination of said disciplinary proceedings.

After having minutely scrutinized the provisions of Rule 19(1) of the Rules, I am of the opinion that the date of superannuation of an Officer like the petitioner, who is a member of the Pension Fund, would not be after 30 years of service but would be after 30 years of pensionable service. Rule 19(1) of the Rules is clear that if the employee was a member of the Pension Fund, then he would superannuate only after 30 years of pensionable service. That being so, the date of superannuation in the case of the petitioner would not be 21.07.2013 but would be 12.01.2014.

Learned counsel appearing on behalf of the respondent Bank has submitted that the petitioner would not be deemed to have been retired even on 12.01.2014 as in her case, under the first proviso to Rule 19(1) of the Rules, vide order dated 29.11.2013, her service had been extended till 21.03.2022 He further submitted that disciplinary proceedings had also been initiated against the petitioner through show cause notice dated 16.11.2013 and thus, as per the provisions of Rule 20(a) and (b) of the Rules, during the pendency of the disciplinary proceedings, the petitioner would be deemed to be in service. Learned counsel further submitted that as no specific order, as required under Rule 19(2) of the Rules, had been passed by the Bank permitting the petitioner to superannuate, in the absence thereof, she would be deemed to have retired from service.

I intend to take up and deal with the above three pleas raised on behalf of the respondent Bank one by one.

(i) Whether the service of the petitioner had been validly extended beyond the date of her superannuation **?**

The relevant provision in the Rules is first proviso to Rule 19 (1). Rule 19(1) along with the first proviso is reproduced below :-

> ***"Rule 19(1)*** *An officer shall retire from the service of the Bank on attaining the age of sixty years (CDO/PM/CIR/10 Dt. 29.05.1998) or upon the completion of thirty years' service or thirty years' pensionable service if he is a member of the Pension Fund, whichever occurs first.*

> *Provided that the Competent Authority may, for reason to be recorded in writing extend the period of service of an officer who has completed thirty years service or thirty years' pensionable service, as the case may be, should such extension be deemed desirable in the interest of the Bank."*

A bare reading of the first proviso to Rule 19(1) shows that the period of service of an Officer beyond the date of superannuation can be extended by the competent authority for reasons to be recorded in writing, should such extension be deemed desirable in the interest of the Bank.

It has been urged on behalf of the respondent Bank that through order (Annexure R-4/26), the period of service of the petitioner was extended beyond the date of her superannuation. A perusal of Annexure R-4/26 shows that the same is a note prepared for and approved by the Deputy General Manager of the respondent Bank. A perusal thereof further shows that as required under the above quoted Rule, the competent authority has not given any reason whatsoever so as to why the service of the petitioner is being extended beyond the date of superannuation. It has also not been recorded by the competent authority how the extension in service of the petitioner beyond the date of superannuation would be in the interest of the Bank. There is also no date on the noting portion so as to when the competent authority has signed the same. The decision/note of the competent authority, in its entirety, is reproduced below :-

> ***"RECOMMENDATION :***
>
> *Extension in service may be granted to the officer from 21/01/2014 to 21/03/2022 (i.e. upto 58 years of age) subject to continued good health and satisfactory service."*

The above noting cannot, by any length of imagination, be construed to be an order. It is the admitted position that based on the above note, no order, extending the services of the petitioner, was passed and consequently none was ever conveyed to her. Thus, Annexure R-4/26, through which the extension in the service of the petitioner is sought for, being in violation of the first proviso to Rule 19(1), has to be ignored.

(ii) Whether the petitioner could be construed to be deemed to be in service, as under the provisions of Rule 20(2)(a) and (b) of the Rules ?

The relevant provisions of the Rules, which are Rule 20(2)(a) and (b) are reproduced below :-

> ***"Rule 20(2)(a)***
>
> ***a)*** *Not withstanding anything to the contrary contained in sub-rule (1), an officer against whom disciplinary proceedings are pending shall not leave/discontinue or resign*

from his service in the Bank without the prior approval in writing of the competent authority and any notice of resignation given by such an officer before or during the disciplinary proceedings shall not take effect unles it is accepted by the competent authority.

b) Disciplinary proceedings shall be deemed to be pending against an officer for the purpose of this rule if he has been placed under suspension or any notice has been issued to him to show cause why disciplinary proceedings should not be instituted against him or where any chargesheet has been issued against him and will be deemed to be pending until final orders are passed by the competent authority.

Explanation :

A show cause notice or order of suspension or chargesheet shall be

> *deemed to have been issued prior to or during the period of notice, if it has been signed by the authority empowered in this behalf under the rules and put on a course of transmission prior to or during the said period whether or not it was actually received by the officer.”*

As per the above quoted provisions, an Officer, against whom disciplinary proceedings are pending, would be deemed to continue in service till the pendency of the disciplinary proceedings and that disciplinary proceedings shall be deemed to be pending if the Officer is placed under suspension or any notice has been issued to him to show cause why disciplinary proceedings should not be instituted against him or wherein charge-sheet has been issued. The Explanation to the above quoted provisions of the Rules makes it abundantly clear that a show cause notice shall be deemed to have been issued only if it has been signed by the authority empowered in this behalf under the Rules.

It is the case of the respondent Bank that since a show cause notice dated 16.11.2013 (Annexure R-4/1) had been issued to the petitioner, requiring her to explain her position lest she should face disciplinary action, as per the above quoted provision of the Rules, she would be deemed to be in service till the culmination of the disciplinary proceedings. The show cause notice dated 16.11.2013 has been perused by me. It is admittedly signed by the Chief Manager. On a query posed by the Court to the learned counsel appearing on behalf of the Bank so as to who was the competent authority to initiate disciplinary proceedings against the petitioner, it was candidly replied that it would be the Deputy General Manager of the Bank and not the Chief Manager. Thus, as per Rule 20(2)(a) and (b) read with the Explanation thereto, the show cause notice dated 16.11.2013 cannot be construed to be a show cause notice by the competent authority and that being so, is also liable to be ignored.

(iii) Whether under the provisions of Rule 19(2) of the Rules, the petitioner would be deemed to continue in service, in the absence of a specific order by the respondent Bank permitting her to superannuate ?

To answer this question, it would be appropriate to firstly refer to Rule 19(2) of the Rules, which is as under :-

> ***"19(2)*** *Notwithstanding anything to the contrary in the Service Rules, no officer who has ceased to be in the Bank's service by the operation of, or by virtue of, any provision shall be deemed to have retired from the Bank's service for the purpose of the Imperial Bank of India Employees' Pension and Guarantee Fund Rules or the State Bank of India Employees' Pension*

Fund Rules unless such cessation of service has been sanctioned as retirement for the purpose of either of the said pension fund rules as may be applicable to him.”

A perusal of the above quoted Rule shows that it would not be attracted to the facts of the case in hand. It may be noticed that the provisions of Rule 19(2) of the Rules were not pressed into service by the respondent Bank – neither in their written statement nor in any subsequent affidavit filed on its behalf. In the absence of any pleading, the respondent Bank cannot be allowed to raise this issue. Even otherwise, the above provision applies only for the purpose of the Imperial Bank of India Employees' Pension and Guarantee Fund Rules or the State Bank of India Employees' Pension Fund Rules.

In view of the above, I have no hesitation to hold that the petitioner would be deemed to have retired from service w.e.f. 12.01.2014. Her retiral dues be released to her within a period of three months from the date of receipt of a certified copy of this order.

The petition stands allowed in the above terms.

No costs.

(DEEPAK SIBAL)
JUDGE

Pronounced On : 16.07.2015
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