In the High Court for the States of Punjab and Haryana at Chandigarh

…

LPA No. 1059 of 2014

Date of decision: August 11,2015

Vijay Sukhija ..Appellant

Versus

Chairman, State Bank of India and others ..Respondents

Coram: **Hon'ble Mr.Justice Satish Kumar Mittal**
Hon'ble Mr. Justice Mahavir S. Chauhan

Present: Mr. N.P.Bhardwaj, Advocate
for the appellant
Mr. I.P.S.Doabia, Advocate
for the respondents

******

1.Whether to be referred to Reporter?
2.Whether the judgment should be reported in the digest ?

<u>Mahavir S.Chauhan, J.</u>

Vijay Sukhija joined State Bank of India as a Clerk-cum-typist on 27.8.1984. Owing to certain unfavourable circumstances obtaining in his family, the appellant, vide letter dated 16.2.2007, made a prayer for premature retirement. Instead of taking any action on the said request, the respondent-bank initiated departmental proceedings against him. The departmental proceedings concluded on 18.6.2007. The appellant then submitted a reminder dated 26.7.2007 (Annexure P6) renewing his request for acceptance of his request for voluntary/premature retirement. However, vide letter dated 11.3.2008 (Annexure P7), respondent-bank informed the appellant that as per Rule 22 of the State Bank of India Employees Pension Payment Rules (hereinafter referred to as the Rules), to be entitled to pensionary benefits, one has to complete pensionable service of twenty years in addition to attaining age of fifty years on the date of retirement but the appellant though had completed pensionable service of twenty years but had not attained the age of fifty years and as such was not entitled to payment of pension.

To challenge order dated 11.3.2008 (Annexure P7), appellant preferred C.W.P. No. 17758 of 2012, which was disposed of by the learned Single Judge vide order dated 7.8.2013 in the following terms:-

> *"In the circumstances, this writ petition is disposed of with liberty to the petitioner to make a fresh application along with all supporting material (which existed on the date on which he sought voluntary retirement) within a period of four weeks from today and the competent authority is directed to take a decision thereon by passing a speaking order within a period of two months thereafter, with the clarification that in case the claim of the petitioner is accepted, the petitioner would be entitled for pension only from the date of the decision."*

In compliance of direction of the learned Single Judge as contained in order dated 7.8.2013, appellant submitted a fresh representation dated 2.9.2013 (Annexure P9) renewing his request for acceptance of his voluntary/premature retirement by adding that his wife was seriously ill. However, request of the appellant did not find favour with the respondent bank and was rejected vide order dated 13.2.2014 (Annexure P10) by stating that illness of wife of the appellant was not covered by Rule 22 of the Rules and as such, the appellant was not entitled to pensionary benefits.

To assail correctness of order dated 13.2.2014 (Annexure P10), appellant brought CWP No. 8156 of 2014, which, however, has been dismissed by the learned Single Judge vide order dated 1.5.2014 even without issuing notice to the respondent-bank.

Appellant has brought the instant intra-court appeal under Clause X of the Letters Patent to assail order dated 1.5.2014 passed by the learned Single Judge.

We have heard learned counsel for the parties.

It is argued on behalf of the appellant that in the month of October 2007, retiral benefits were paid to the appellant but pension was denied to him for no justifiable reason. According to him, his case is squarely covered by sub-clause (c) of Rule 22(i) of the Rules and according to this clause attainment of age of fifty years could not be insisted upon for grant of the pensionary benefits to him.

Learned counsel for the respondent-bank, on the other side, has argued that the appellant is not entitled to the pensionary benefits, firstly because he has not attained the age of fifty years as on the date of his retirement, secondly because he has not been able to satisfy the competent authority that he has been incapacitated for further active service and, instead has voluntarily vacated the post he was holding.

Nothing more has been urged on either side.

Before proceeding further, we deem it appropriate to notice the reasoning given by the learned Single Judge while dismissing the writ petition of the appellant. The learned Single Judge has observed as under:-

> *"In pursuance to the said order, representation moved by the petitioner was declined vide order dated 13.2.2014 (Annexure P-10). Case of the petitioner for grant of pension was rightly declined by the bank as although, petitioner has completed 20 years of service but had not attained the age of 50 years. So far as Rule 22 (1) (c) is concerned, the case of the petitioner did not fall within the purview of the said rule. No ground for interference by this Court is made out.*
>
> *Dismissed"*

The only ground adverted to by the learned Single Judge to dismiss the claim of the appellant is that on the date of his retirement, he had not attained the age of 50 years and Rule 22 (i)(c) was not applicable to his case. With respect, we are not agreeing to the reasoning given by the learned Single Judge. Rule 22 of the Rules reads as under:-

> *"22. (i) A member shall be entitled to a pension*

under these rules on retiring from the Bank's service –

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

(b) After having completed twenty years' pensionable service, irrespective of the age he shall have attained, if he shall satisfy the authority competent to sanction his retirement by approved medical certificate or otherwise that he is incapacitated for further active service;

(c) After having completed twenty years pensionable service, irrespective of the age he shall have attained at his request in writing.

(d) After twenty five years' pensionable service.

(ii) A member who has attained the age of fifty five years or who shall be proved to the satisfaction of the authority empowered to sanction his retirement to be permanently incapacitated by bodily or mental infirmity from further active service (such infirmity not being the result of irregular or intemperate habits) may, at the

discretion of the trustees, be granted a proportionate pension.

(iii) A member who has been permitted to retire under Clause 1(c) above shall be entitled to proportionate pension."

A perusal of the aforesaid rules reveals that it deals with five situations where a retiree is entitled to earn pensionary benefits. Clause (i) (a) deals with a situation where an employee of the bank retires in the ordinary course. In such situation, he is entitled to pensionary benefits only if he has to his credit twenty years' pensionable service and in addition has attained the age of fifty years. Clause (i) (b) pertains to a situation where an employee seeks voluntary/ premature retirement on medical grounds. In such situation, he can earn pensionary benefits provided he has completed twenty years' pensionable service and irrespective of the age he has attained, satisfies the competent authority by medical certificate or otherwise that he is incapacitated for further active service. Clause (i) (d) pertains to a retiree who retires after 25 years' of pensionable service and sub rule (ii) relates to an employee who has attained age of 55 years or is proved to the satisfaction of the competent authority to be permanently incapacitated by bodily or mental infirmity from further active service.

In our opinion, the case of the appellant falls under Clause (c) of Rule 22(i) which deals with a situation where an employee of the bank requests in writing for voluntary retirement. In that situation, he is entitled to pensionary benefits provided he has completed twenty years of pensionable service irrespective of the age attained by him. To put the things straight, an employee of the bank may put in his papers without indicating any reasons therefor and on so doing, if he has to his credit twenty years' pensionable service, he is entitled to the pensionary benefits whatever be his age on the date of his such retirement.

It has been admitted on behalf of the respondent-bank that on the date of submission of his request for voluntary/premature retirement, appellant had to his credit pensionable service of twenty years.

In this view of the situation, order dated 1.5.2014 passed by learned Single Judge cannot be allowed to sustain and is hereby set aside. Appeal is allowed with a direction to the respondent-bank to compute the pensionary benefits of the appellant and pay him the same along with accrued arrears within a period of three months from the date of receipt of this order or a certified copy thereof.

However, in the facts and circumstances of the case, the parties shall bear their own costs.

(SATISH KUMAR MITTAL) (MAHAVIR S.CHAUHAN)
JUDGE JUDGE

August 11,2015
nk