IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.A.No.891 of 2015
and
M.P.No.1 of 2015

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 Manger (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. ... Appellants

Versus

D.Kalaichelvan ... Respondent

Prayer: Writ Appeal filed filed under Clause 15 of the Letters Patent against the order dated 1.4.2015 passed in W.P.No.15766 of 2013 Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus Calling for the records from respondents 1 & 2 and quash the Staff Circular No.5690 dated 27.8.2010 of the 1st respondent in so far as Clause No.7 including compulsory retired person has not eligible for pension option and the order of the 2nd respondent dated 13.2.2013 baring DP:PENSON:159:13 and consequently direct the respondent to grant pension to the petitioner in terms of the Union Bank of India (Employees) Pension Regulation, 1995 from 27.11.2009 alongwith arrears and interest at the rate of 18% per annum on the file of this court

For appellant : Mr.V.Karthik, Standing Counsel for T.S.Gopalan & Co.

For Respondent : Mr.Balan Haridas

JUDGMENT

(Judgment of the court was made by HULUVADI G.RAMESH, J.)

Heard the learned counsel appearing for the parties for some time.

2. The writ appeal is filed challenging the order of the learned Single Judge directing the appellants to consider the option given by the writ petitioner to joint the pension scheme pursuant to the Circular No.5690 dated 27th August 2010, on merits and without reference to clause 7.

3. It appears that the respondent was compulsorily retired from service as a punishment for some misconduct and subsequently, the writ petitioner had opted for grant of Pension in terms of Union Bank of India (Employees) Pension Regulation, 1995 from 27.11.2009 alongwith arrears and interest. It also appears that originally, the writ petitioner had not opted for the Pension Scheme. In the meanwhile, it appears that the Bank had introduced Circular No.5690 dated 27.8.2010 disabiling the the persons who were compulsorily retired, from opting for Pension Scheme. The learned Single Judge quashed such clause and directed the appellants to consider the writ petitioner's case for Pension Scheme. Hence, the present appeal has been filed.

4. It appears that though the writ petitioner had attained the age of superannuation, his services were continued for the purpose of holding disciplinary proceedings and thereafter, he was made to retire from service compulsorily. Even though clause 7 of the Circular restricts the benefits of those who retired voluntarily in terms of Regulation 19, the fact remains that pension regulation has not been amended correspondingly. However, noticing that the Regulation has not been amended restricting the benefit to the extension of the Pension Scheme to the compulsorily retired persons and the Bank sought to curtail the right of option to be exercised by the writ petitioner which is as against the Regulation.

5. It is pertinent to note that the petitioner was retired

compulsorily by way of punishment and during the pendency of a writ petition challenging the said punishment, he had opted for Pension Scheme on 1.10.2010 pursuant to the circular issued by the Bank inviting the second option for pension. However, referring to clause 7 of the said circular, which has restricted the benefit of Pension to the persons who were compulsorily retired, it was denied to the writ petition. However, the same was set aside by the learned Single Judge.

6. What is sought to be contended by the learned counsel for the Bank is that once the employee was retired compulsorily, the option for pension scheme will not be available to such person, who suffered the order of punishment.

7. It appears that the pension payable to the petitioner itself is not a full pension and only 2/3 of the pension would be paid. Though the appellants have taken steps to impose punishment of compulsory retirement, without amending the Pension Regulations, sought to bring into effect the circular which cannot override the Regulations which is in vogue and without amending the Pension Regulations it cannot be done and it has been rightly held so by the learned Single Judge.

8. It is thus clarified that while extending the pension scheme to the petitioner it is to be kept in mind that he would not be paid more than 2/3 of the full pension, from the date of his exercising the option for Pension Scheme and that also would be subject to refund of the Provident Fund already withdrawn by the writ petitioner, with interest as permissible in law, With the above observation, the writ appeal is disposed of. No costs. The connected miscellaneous petition is closed.

ssk.

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Assistant Registrar

//True copy//

Sub Assistant Registrar

C.C. to M/S.T.S.GOPALAN & CO Advocate SR.NO.65917

W.A.No.891 of 2015

SVI (CO)

VS 29.12.2016