**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

Date of decision: 09.06.2016

**CWP No.6928 of 2001 (O&M)**

Ajaib Singh Jaswal ...Petitioner

Vs.

State Bank of Patiala & others ...Respondents

**CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA**

Present: Mr. D.K.Bhatti, Advocate, for the petitioner.

Mr. H.N.Mehtani, Advocate, for the respondents.

*1. To be referred to the Reporters or not?*
*2. Whether the judgment should be reported in the Digest?*

**RAJIV NARAIN RAINA, J.**

1. The challenge in the instant petition is to the orders dated 22.12.1999 (Annex P-7) and 13.11.2000 (Annex P-10), which deny pension and pensionary benefits to the petitioner citing Regulation 22(2) of the State Bank of Patiala (Employees) Pension Regulations – 1995 (for short 'the Bank Regulations') which provision of law prescribes with reference to the present context of surrender of rights to pension. The provision lays down that: '*any interruption in the service of a Bank employee entails forfeiture of [his] past service*'. This isolated part of the rule torn from the rest of the context has prevailed with the Bank which view taken has obliterated the past over two decades of working on the job before the petitioner sought voluntary retirement from service on contemplated re-location to Canada where his family seemed to have settled down in advance of his coming over.

2. The relevant facts leading to the filing of the petition, in fine, may be noticed. The petitioner joined service of the respondent – Bank in December, 1974. He had spent over 22 years of service with the Bank when he applied for ex-India leave to visit Canada, where his wife and family lived. The leave applied for was sanctioned by the competent authority from 09.09.1996 to 08.12.1996. However, during his stay at Canada, it is stated that his wife was undergoing medical treatment for Trigeminal Neuralgia, which presents system of severe neuropathic chronic pain disorder affecting the trigeminal or 5th cranial nerve, which is one of the most widely distributed nerves in the head. This condition is visited with severe pain. While in Canada, the petitioner applied for extension of leave from 08.12.1996 to 02.12.1998 citing medical condition of his wife, which involved prolonged treatment from a specialist doctor. The sanctioning authority granted leave, but limited it to the period from 09.12.1996 to 31.03.1997. The petitioner over-stayed sanctioned leave only to return on 02.12.1998 by reporting for duty at the Gurdaspur Branch of the respondent – Bank submitting his joining report on 03.12.1998. He spent two days on duty, when he was informed telephonically by the Assistant General Manager-III, State Bank of Patiala, Jalandhar to stop working and contact his office for further instructions. The petitioner obeyed and presented himself before the Jalandhar Branch on 05.12.1998 and continued to do so till 23.12.1998 requesting instructions and assigning duties to him. Ultimately, he was directed to join duties at Gurdaspur vide letter dated 24.12.1998 (Annex P-1), which joining was made subject to Bank's right to take disciplinary action for "overstaying in an unauthorized manner". It is the petitioner's case that in the compelling circumstances which he faced with his wife's condition deteriorating that he applied for voluntary retirement from service under Regulation 29(1) of the Bank Regulations. That request was made in writing

on 31.12.1998 and as per law he sought voluntary retirement w.e.f. 01.04.1999 being the stipulated three month period. He made a separate request for curtailment of three months notice period on 25.01.1999 in terms of Regulation 29(3) of the Bank Regulations and requested that he may be relieved from service with immediate effect. The request was not responded to. He again made a request in writing on 01.03.1999 enclosing a cheque in a sum of Rs.15,575/- towards salary for the month of March, 1999 in lieu of balance notice period. The petitioner's request was accepted by the respondent – Bank vide letter dated 01.04.1999 (Annex P-5), the contents of which read as follows:

> *"<u>NOTICE FOR VOLUNTARY RETIREMENT</u>*
>
> *Please refer to your notice for voluntary retirement from Bank's Service dated 31.12.1998.*
>
> *Please note that your above notice has been accepted by the competent authority and you have been allowed to retire from Bank's Service w.e.f. 01.04.1999 subject to effects of your unauthorised absence from the duties as intimated by our letter dated 20.03.1998 mailed to you."*

3. The petitioner returned to Canada from where he made a written request on 06.12.1999 (Annex P-6) for release of his provident fund accumulations, gratuity, commutation of pension etc. The Bank responded by the impugned order dated 27.12.1999 (Annex P-7) informing him that the period of absence from duty from 01.04.1997 to 23.12.1998 and from 01.03.1999 to 31.03.1999 has been treated as unauthorized absence from duty with consequential effects. The claim for pension was declined. Feeling aggrieved by the impugned order dated 27.12.1999, the petitioner made a representation to the Bank stating that Regulation 22(2) was not attracted to his case as the provision cannot be read alone and has to be read with Regulation

22(4), which provides that an interruption between two spells of service rendered by an employee shall be treated as automatically condoned and the pre-interruption service treated as qualifying service. He urged that in view of admitted position that he was made to rejoin duty on 03.12.1998 and had worked up to 28.02.1999 his case would fall in the beneficial period between two spells of service even if the period of overstay is treated as a break in service. This representation was made on 10.04.2000 (Annex P-8). He was informed by the Manager (Pension) vide letter dated 12.05.2000 that his absence from duty entails breaks and interruption in service. He made another representation in October, 2000, which has led to the passing of the second impugned order dated 13.11.2000 (Annex P-10) against which the petitioner has approached this Court for directions to the respondent – Bank to release his pension and pensionary benefits by setting aside the impugned orders as illegal and arbitrary and occasioned by misinterpretation and misreading the Bank's Regulations.

4. The grouse of the petitioner is that these two impugned orders forfeit his service of 22 years, 3 months and 10 days for no valid or justifiable reason. It is common ground and Mr. Mehtani admits candidly that the respondent – Bank has not initiated disciplinary proceedings against the petitioner either before acceptance of the request for voluntary retirement or thereafter till this day. It is evident that for 8 long years no action whatsoever has been taken by the Bank for the alleged misconduct despite the fact that the period of unauthorized absence could have been dealt with departmentally, even during the pendency of this petition, even if it were ex parte but summons served properly. Besides, the request for voluntary retirement need not have been accepted and the petitioner subjected to domestic trial to establish misconduct and for the petitioner to establish his innocence by furnishing

sufficient reason, if reasonable and adequate opportunity was granted to him to explain his absence. The fact that the request for voluntary retirement of the petitioner was accepted conditionally, but the condition precedent has not been translated into disciplinary action it means that the Bank has not taken the absence without leave seriously. In these circumstances, would the petitioner be entitled to his pension and ancillary benefits, is the only question which requires determination and answer. In short, the periods between 01.04.1997 to 23.12.1998 and from 01.03.1999 to 31.03.1999 have been treated by the respondent – Bank as unauthorized absence from duty with consequential effects and accordingly the petitioner has been held ineligible for pension.

5. Heard Mr. D.K.Bhatti and Mr. H.N.Mehtani, learned counsel for the parties at considerable length during vacations as per roster.

6. Mr. Bhatti appearing for the petitioner argues that the action of the respondent – Bank in declining pension etc. amounts to covert dismissal from service disentitling the petitioner for pension and other benefits associated with superannuation in a pensionable job. He submits that the respondent – Bank has limited its vision to Regulation 22(2) myopically. It is the petitioner's contention that Regulation 22 of the Bank Regulations specifies events which result in disqualification but his case does not fall in its negativities. There is a positive side to the regulations the benefit of which has not been given to him by a misreading or rather under-reading the integrated whole of Regulation 22 of the Bank Regulations which in *extenso* read as follows:

> *"Regulation No.22*
>
> *Event of disqualification - (1) Resignation or dismissal or removal or termination of an employee from the service of the Bank including that of an employee who is deemed to have voluntarily retired from the Bank's service in terms of the*

*provisions for voluntary cessation of employment contained in Bipartite Settlement shall entail forfeiture of his entire past service and consequently shall not qualify for pensionary benefits.*

*(2) <u>An interruption in service of a bank employee entails forfeiture of his past service, except in the following cases, namely</u>:-*

*(a) authorised leave of absence;*

*(b) suspension, where it is immediately followed by reinstatement, whether in the same or a different post, or where the bank employee dies or is permitted to retire or is retired on attaining the age of compulsory retirement while under suspension;*

*(c) transfer to non-qualifying service in an establishment under the control of the Government or Bank if such transfer has been ordered by a competent authority in the public interest;*

*(d) joining time while on transfer from one post to another;*

*(3) Notwithstanding anything contained in sub regulation (2), the competent authority may, by order, commute retrospectively the periods of absence without leave as extraordinary leave;*

*(4) (a) <u>In the absence of a specific indication to the contrary in the service record, an interruption between two spells of service rendered by an employee shall be treated as automatically condoned and the pre-interruption service treated as qualifying service</u>;*

*(b) Nothing in clause (a) shall apply to interruption caused by resignation, dismissal or removal from service or for participation in a strike.*

*Provided that before making an entry in the service record of the Bank employee regarding forfeiture of past* *service because of his participation in strike, an opportunity of representation may be given to such bank employee."*

7. Referring to the Bank Regulations, Mr. Bhatti submits that Regulation 22(2) cannot be read in seclusion and has to be harmoniously read with Regulation 22(4), which prescribes that an interruption between two spells of service rendered by an employee shall be treated as automatically condoned and the pre-interruption service treated as qualifying service for pension. The petitioner has not resigned from service. He was not dismissed or removed. Regulation 22(2)(b) also speaks in favour of the petitioner that when he was permitted to retire voluntarily, then the case would not fall in the exception (2) i.e. interruption in service entailing forfeiture of past service and if these provisions are read together then the reason for denial of pension rights in Annex P-7 made dependent of independent action for unauthorized leave suffers from substantial legal error occasioned by misreading Regulation 22(2) in stand-alone position. The respondent – Bank has taken the first few words of Regulation 22(2) suited to it and decided the fate of the petitioner without reading the Regulations any further. Moreover, accepting request for voluntary retirement would result in cessation of service bringing an end to the employer-employee relationship. The thread of employment was snapped. Disciplinary action became meaningless unless it was coupled with recovery of money or restitution of financial loss caused by acts of omission or commission on the part of the petitioner while in service, which is nobody's case.

8. The petitioner had sought and was granted voluntary retirement after having putting 22 years, 3 months and 10 days of service, which period was without interruption and therefore he would be entitled to pension even on a reading of Regulation 29 of the Bank Regulations, which deals specifically with pension on voluntary retirement. Regulation 29 permits pension on

completing 20 years of qualifying service before a request for voluntary retirement is made. The notice of voluntary retirement given under sub-regulation (1) of Regulation 29 of the Bank Regulations requires acceptance by the appointing authority which obligation is couched in mandatory form in view of the use of the word "shall" in the sub-regulation. The proviso to sub-regulation (2) of Regulation 29 mandates that where the appointing authorities do not refuse to grant the permission for retirement before the expiry of the period specified in the notice, the retirement shall become effective from the date of expiry of the prescribed period.

9. Still further, Mr. Bhatti refers to Regulation 14, which deals with qualifying service, which reads as follows:

> *"Regulation No.14 Qualifying Service*
>
> *Subject to the other conditions contained in these regulations, an employee who has rendered a minimum of ten years of service in the Bank, on the date of his retirement or on the date on which he is deemed to have retired shall qualify for pension."*

10. The admitted position is that 'ten years' of service has been amended to read 'twenty years' in the Regulations. Mr. Mehtani does not dispute this fact. Regulation 14 contemplates both 'retirement' and 'deemed retirement' and in either of the cases, an employee who has rendered 20 years of service in the Bank, the period will qualify for pension.

11. Learned counsel also draws attention of the Court to Regulation 17 which deals with 'counting of periods spent on leave'. The said Regulation prescribes that all leave availed during service in the Bank for which leave salary is payable shall count as qualifying service, but with a proviso that extraordinary leave on loss of pay shall not count as qualifying service except

when the sanctioning authority has directed that such leave not exceeding twelve months during the entire service, may count as service for all purposes including pension.

12. Within the framework of afore referred to Regulations, Mr. Bhatti submits on their combined reading that the respondent - Bank fell in grave error in treating the period of unauthorized leave, of which there is no doubt i.e. for the period from 01.04.1997 to 23.12.1998 and from 01.03.1999 to 31.03.1999, as an interruption in service entailing forfeiture of past service. The Bank did not take into account the provisions of Regulation 22(4), which obligate the Bank to factor that in the absence of specific indication to the contrary in the service record, an interruption between 'two spells' of service rendered by an employee shall be treated as automatically condoned and the pre-interruption service treated as qualifying service. There are indeed 'two spells' of service in this case. One uninterrupted from 21.12.1974 till the last date of sanctioned leave i.e. 31.03.1997 and rejoining service reckonable either w.e.f. 01.03.1997 or till 03/04.12.1998 would form two limbs of service and therefore unauthorized absence from duty for about 1½ years between 01.04.1997 till the date of actual joining of duty on 24.12.1998 would fall in the beneficial molars of Regulation 22(4) read with Regulation 22(2) and Regulation 22(2)(b) and the period in dispute would stand condoned in the absence of disciplinary action taken for unauthorized absence for the disputed period. It is one thing to punish a person for unauthorized absence, which is well within the managerial rights and functions, but it is quite another thing to use the period of unauthorized absence as a lever to throw out claim for pension and pensionary benefits altogether. There is substantial merit in the submissions of Mr. Bhatti which are worthy of acceptance both on merits and in the rule position that it would be wholly unfair, arbitrary and unlawful to

deprive the petitioner of his rights to pension and pensionary benefits which have been denied for the wrong reasons.

13. The Court cannot lose sight of the fact that the petitioner has put in over 22 years of service on the date when he made the request for voluntary retirement, and that the request was accepted on a condition which has not been put into motion. It is too late in the day to reopen the chapter of unauthorized absence for the purpose of denying pension. The petitioner, in any view of the matter, cannot be deprived of his right to pension which is a right in property protected and akin to rights protected by Article 300A of our Constitution. The mandates in Article 300A of the Constitution forbade that no person shall be deprived of his property save by authority of law.

14. Mr. Mehtani admits that no disciplinary proceedings have been initiated against the petitioner by issuing him a charge-sheet etc. for conducting inquiry proceedings to establish his guilt or otherwise. It is, therefore, not for the Court to make any roving comments on the nature and character of unauthorized leave without a finding of guilt recorded in writing. It is also not for the Court to either accept or reject the reason for unauthorized absence or the nature of the ailment of the wife of the petitioner. These facts have lost meaning by act and conduct of the respondent Bank. It is no longer efficacious or expedient in the interest of justice to breathe life into the defunct part of the impugned order accepting the request for voluntary retirement at this distance of time with the sword of effect of unauthorized absence still drawn.

15. As a result of the above discussion and for the reasons recorded above this petition is allowed. The orders at Annex P-7 and Annex P-10 are quashed. The petitioner is held entitled to pension and pensionary benefits as claimed by him. The principal amounts will carry 6% interest till payment. The

amounts be computed and paid to the petitioner within six weeks from the date of receipt of a certified copy of this order. In case the amounts are not released within the time allowed interest will accrue @ 12 % on the entire amount till realization from the date of default.

09.06.2016 [RAJIV NARAIN RAINA]
Vimal JUDGE