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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 11205 of 2015 (O/M)
Date of decision : 8.12.2016

Satish Chander Joshi .... Petitioner (s)

Versus

General Manager (P), Department of Personnel, Union Bank of India, 239, Vidhan Marg, Nirman Point, Mumbai-400021, and others
.... Respondent (s)

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Lalit Rishi, Advocate, for the petitioner.

Mr. K.K. Gutpa, Advocate, for respondents.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

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KULDIP SINGH J. (ORAL)

The petitioner Satish Chander Joshi, who was previously working as a Clerk-cum-Cashier in the Union Bank of India, has sought the quashing of the order dated 20.5.2014 (Annexure-P-11), passed by respondent No. 1 in pursuance to the order dated 29.1.2014 (Annexure-P-9), passed by this Court in CWP-8172-2011, vide which his request for availing second option for pension has been rejected.

The brief facts, which require to be noticed are that the petitioner was working as a Clerk-cum-Cashier in the Union Bank of India. After rendering about 11 years of service, his left eye was damaged and he lost complete vision of left eye. Thereafter, his right eye also developed some problem. His eye sight became weak and he was unable to work. Therefore, after obtaining the medical certificate dated 12.2.2005

(Annexure-P-2) that he is incapable of performing good visual functions like reading and writing, he applied for premature retirement on medical grounds on 25.2.2005, vide application Annexure-P-3. The request of the petitioner was accepted by the Bank and he was voluntarily retired, vide letter dated 11.6.2005 (Annexure-P-4) with effect from 31.5.2005. As per column No. 9 (a), the application for employees seeking premature retirement on medical grounds, he did not opt for pension at that time. It comes out that all retiral dues including the provident fund and gratuity were released to him. In addition to that, a sum of Rs. 3 lac was also given to him in terms of policy for employees seeking premature retirement on medical grounds as amended with effect from 25.7.2005. The matter rested there. Thereafter, it comes out that on August 27, 2010, the bank issued Staff Circular No. 5690, dated 27.8.2010 (Annexure-P-5), whereby another option, namely, **"Another option to join the Pension Scheme in terms of Bipartite Settlement with Workmen Unions and Joint Note with Officers' Organizations"** was given to join pension scheme to the employees under Sub Clause (1) of Clause 3 both serving and retirees, who did not opt for pension earlier, they could opt for such scheme. Under Sub Clause (4) of Clause 3 of the said Scheme, those officers/workmen employees, who opted for the voluntary retirement under the special voluntary scheme having rendered minimum 15 years of service were made eligible to exercise such option. Clause 5 and the other relevant clause of the said Scheme are reproduced as under :-

> "Clause 5. Employees who ceased to be in service on or after 29th September, 1995 on account of voluntary retirement under special scheme after rendering service for a minimum period of 15 years shall be eligible to exercise an option to join the

Pension Scheme subject to the terms and conditions mentioned for retiring employees opting for joining the scheme.

Clause 6. xxxxxx xxxxxx xxxxxx

Clause 7. NOT ELIGIBLE FOR PENSION OPTION :

Indian Banks' Association has clarified that Officers who retired voluntarily in terms of Regulation 19 of Officers' Service Regulation and Employees/Officers who resigned, dismissed, terminated and compulsorily retired, are not eligible for pension option."

Regulation 19 of (Officers') Service Regulations, 1979, refers to in Clause 7 of the Another option to join the Pension Scheme in terms of Bipartite Settlement with Workmen Unions and Joint Note with Officers' Organizations is reproduced as under :-

"19. **Age of retirement**

(1) The age of retirement of an Officer employee shall be as determined by the Board in accordance with the guidelines issued by the Government from time to time.

Provided that the Bank may, at its discretion on review by the Special Committee/Special Committees as provided hereinafter in Sub-Regulation (2) retire, if it is of the opinion that it is in the public interest, an Officer employee on or at any time after the completion of 55 years of age or on or at any time after the completion of 30 years of total service as an Officer employee or otherwise, whichever is earlier.

Provided further that before retiring an Officer employee, at least three months' notice in writing or an amount equivalent to three months' substantive salary/pay and allowances, shall be given to such Officer employee.

Provided also that nothing in this Regulation shall be deemed to preclude an Officer employee from retiring earlier pursuant to the option exercised by him in accordance with the rules in the Bank.

xxxxxxxxxxx xxxxxx xxxxxx"

The perusal of the said regulation shows that it is applicable to the employees, who retired on attaining the age of superannuation or who retired compulsorily after attaining the age of 55 years or at any time after completion of 30 years of service in the public interest. The proviso to the said regulation provided that the regulation did not preclude the employee from retiring earlier pursuant to the option exercised by him in accordance with the rules of the bank. It would mean that the employee himself could seek voluntary retirement in terms of the rules of the bank. The petitioner submitted the option under the scheme called "Another option to join the Pension Scheme in terms of Bipartite Settlement with Workmen Unions and Joint Note with Officers' Organizations", dated 27.8.2010 (Annexure-P-5), which was rejected by the bank. It comes out that subsequently, another Staff Circular No. 5943, dated 16.1.2013 (Annexure-P-10) was issued whereby the benefit of pension scheme was extended to those employees, who took voluntary retirement under Regulation 19 (1) of Officers' Service Regulations, 1979, or after 29.9.1995 and who had not earlier opted for the pension. The undisputed facts are also there that as per the Office Staff Regulation No. 30, there is a provision for invalid pension also. Regulation 30 is reproduced as under :-

"Regulation 30. INVALID PENSION -

1. Invalid pension may be granted to an employee who -

(a) has rendered minimum ten years of service ; and

(b) retires from the service, on or after the 1st day of November, 1993, on account of any bodily or mental infirmity which permanently incapacitates him for the service.

2. An employee applying for an invalid pension shall submit a medical certificate of incapacity from a medical officer approved by the Bank.

3. Where the Medical Officer approved by the Bank has declared the employee fit for further service of less laborious character than that which he had been doing, he should, provided he is willing to be so employed, be employed on lower post an if there be no means of employing him even on a lower post, he may be admitted to invalid pension.

4. No medical certificate of incapacity for service may be granted unless the applicant produces a letter to show that the competent Authority is aware of the intention of the applicant to appear before the medical officer approved by the Bank.

5. The medical officer approved by the Bank shall be supplied by the Competent Authority in which the applicant is employed with a statement of what appears from official records to be the age of the applicant.

xxxxxx xxxxxx xxxxxx xxxxxx'

The petitioner had admittedly 19 years, 10 months and 26 days of service when he was prematurely retired at his own request on medical grounds.

The stand of the respondents in the written statement as well as in the impugned order dated 20.5.2014 (Annexure-P-11) is that the petitioner was prematurely retired with effect from 31.5.2005 under the scheme, namely, "Scheme for Compassionate Appointment/Relief to dependent of Deceased Employees/Employees seeking premature retirement on medical grounds" dated 25.2.2005. The petitioner did not opt for the pension. He was paid a sum of Rs. 3 lac. Therefore, now, he is not entitled to exercise the fresh option to seek pension under Staff Circular No. 5690 dated 27.8.2010 or Staff Circular No. 5943 dated 16.1.2013 (Annexures-P-5 and P-10 respectively). The further stand of the respondents is that Regulation 19 of the Officers' Service Regulations, 1979, does not cover the abovenoted scheme for premature retirement on medical grounds.

I have heard the learned counsels for the parties and have also carefully gone through the file.

So far as Regulation 30 of Pension Regulations 1995 is concerned, that is not disputed. The only plea of respondents is that the petitioner retired on medical grounds. He was paid Rs. 3 lac and his case is not covered under Regulation 19 of the Officers' Service Regulations, 1979. The perusal of the said scheme for employees seeking retirement on medical grounds shows that in case of retirement on medical grounds, a fixed compensation, which in case of clerical cadre, ranged from Rs. 3 lac to Rs. 7 lac, is to be given to the employee, who retired on medical grounds. In the said scheme, there is no provision that if a person is retired under the said scheme, he is precluded from seeking the pension in future. The claim of pension, if permissible under the rules, is an independent right of an employee. It appears that under the said scheme, the compassionate assistance was given to the employee since during his service he developed medical problem and on account of the said medical problem, he was unable to perform his duties.

Now, reverting to Regulation 30 of Pension Regulations 1995, reproduced above, the regulation specifically provides that an employee, who has rendered minimum ten years of service and is retired from service after 1.11.1993 on account of bodily or mental infirmity which permanently incapacitates him for service, he is to be granted invalid pension. Therefore, on the strength of the said regulation, the petitioner was entitled to invalid pension.

Now, while examining the case from the second angle i.e. Staff Circular No. 5690 dated 27.8.2010 and Staff Circular No. 5943 dated 16.1.2013 (Annexure-P-5 and Annexure-P-10 respectively), it comes out that under Staff Circular (Annexure-P-5), the retirees were also entitled to exercise the option. It was specifically provided that the retirees, who did not opt for pension earlier, could submit such option. The petitioner is a retiree within the meaning of Regulation 30 of Pension Regulations 1995, reproduced above. It is not the case of respondents that he was compulsorily retired, dismissed or removed from service and, therefore, attract the provision of being debarred of such pension under Clause 7 of Staff Circular (Annexure-P-5). Under Regulation 19 of the Officers' Service Regulations, 1979, reproduced above, an employee, who seeks premature retirement, is covered. Though under Staff Circular (Annexure-P-5), the employees seeking retirement under Regulation 19 of the Officers' Service Regulations, 1979, were barred from pension option. However, vide Staff Circular (Annexure-P-10), they were made eligible to exercise the option. Therefore, the petitioner, though having not opted for pension at the time of seeking retirement on medical grounds, could avail the benefit of Staff Circular (Annexure-P-5) read with Staff Circular (Annexure-P-10) to exercise the option for pension. Nowhere in these regulations it is mentioned that the employees, who have been retired on medical grounds and given retirement on medical grounds, are debarred from exercising such option. The view taken by respondents in the impugned order is illegal and contrary to the rules and regulations and is liable to be quashed.

In view of the foregoing discussion, the impugned order dated 20.5.2014 (Annexure-P-11) is hereby quashed. It is held that the petitioner having been been retired on medical grounds is entitled to the benefit of invalid pension under Regulation 30 of Officers' Service Regulations, 1979, as well as he is entitled to the benefit of Staff Circulars (Annexure-P-5 and Annexure-P-10) to exercise option for pension. Therefore, the respondents are directed to accept such option and released the pension to the petitioner in accordance with rules, subject to his fulfilling Clause 6 (iii) of Staff Circular No. 5943, dated 16.1.2013 (Annexure-P-10) i.e. depositing of bank's contribution to provident fund with interest paid at the time of voluntary retirement, 56% of the above amount and any other requirement of the said circular. The petitioner shall also be entitled to interest on arrears at the rate of 9%, starting three months from the date he exercised the second option for pension. The arrears be released within three months from the date of receipt of certified copy of this judgment.

The present writ petition is accordingly allowed.

(KULDIP SINGH)
JUDGE

8.12.2016
sjks

Whether speaking / reasoned : Yes

Whether Reportable : Yes