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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **LPA 886/2015**

Date of decision: 5th October, 2016

P N SHUKLA

..... Appellant

Through Ms. Garima Sachdeva, Advocate with
petitioner in person.

versus

UNION OF INDIA & ORS

..... Respondent

Through Ms. Hetu Arora Sethi, Advocates for
R-2 and 3.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MS. JUSTICE SUNITA GUPTA

SANJIV KHANNA, J. (ORAL)

P.N. Shukla, the appellant, impugns order dated 29th September, 2015 whereby the single Judge has dismissed Writ Petition (C) No.7775/2013, holding that he was not entitled to the benefit of additional qualifying service of 5 years under Regulation 26 of the Canara Bank (Employees') Pension Regulations, 1995 [Pension Regulations, for short].

2. The appellant had joined Canara Bank on 20th February, 1984 as a Specialist Officer and had superannuated on 31st March, 2008. Prior to joining Canara Bank, the appellant was an employee of the Government of

India for about 17 years and 10 months and had worked as a Senior Translator before his appointment as a Specialist Officer in Canara Bank.

3. The appellant is being paid pension by the Government of India and also by the Canara Bank as per the aforesaid Pension Regulations.

4. While computing the pension payable under the Pension Regulations, the appellant was given the benefit of including the five years of past service in the Government of India. Subsequently, vide order/letter dated 25th March, 2013, the appellant was informed that his pension has been reduced from Rs.13,448/- to Rs.11,129/- as the appellant was not entitled to and was wrongly granted the benefit of additional qualifying service of five years under Regulation 26.

5. Aggrieved, the appellant had filed the aforesaid writ petition, which has been dismissed by the impugned order by the learned single Judge.

6. The appellant is right and correct that the respondent bank should have issued a show cause notice before reducing his pension and holding that he was not entitled to the benefit of Regulation 26. The opportunity to file a reply and contest the stand of the respondent Bank was required and mandated. However, this ground would not justify allowing the present appeal and restoring or remanding the case to the respondent Bank for fresh

consideration. The reason is that Regulation 26 has been examined by the High Court of Karnataka in W.P.(C) 30323/1996, ***B.Vittal Pai Vs. Syndicate Bank, Manipal***, in the decision dated 22nd August, 1999, the High Court of Gujarat in Special Civil Application Nos. 2650/1999 and 1794 and 1844 of 2002, ***Bank of Baroda Retired Officers' Association and Anr. Vs. Chairman and Managing Director, Bank of Baroda and Anr.***, in the decision dated 4th March 2004, and the High Court of Punjab and Haryana in Civil Writ Petition No. 10778/1998, ***H.S. Sodhi Vs. Oriental Bank of Commerce*** in the decision dated 18th August 2004 and the said High Courts have unanimously held that Regulation 26 is prospective in nature and would apply only to newly inducted employees after the Pension Regulations were enforced by the respective banks. At this stage, we would only record that the Regulations of Canara Bank and other nationalised banks are identically worded and on this there is no dispute or lis between the parties.

7. The appellant has relied upon the decision dated 7th July, 2004 of a single Judge of the Madras High Court in W.P.(C) No. 14364/1997, titled ***P. Thirikooda Rajappan Vs. Chairman & Managing Director Vijaya Bank, Head Office, Bangalore & Ors.*** in support of his contention that benefit

under Regulation 26 would be applicable and apply to the employees like the appellant, who had joined prior to the enforcement of the Pension Regulations. However, we find that a Division Bench of the Madras High Court has reversed the said decision, while deciding several connected appeals in ***Bank of Baroda Vs. V. Vijayan***, 2014 SCC OnLine Mad 9258 in the following words:-

“7. Regulation 26 is extracted below:

“26 Addition to qualifying service in special circumstances:

An employee shall be eligible to add to his service qualifying for superannuation pension (but not for any other class of pension), the actual period not exceeding one fourth of the length of his service or the actual period by which his age at the time of recruitment exceeded the upper age limit specified by the Bank for direct recruitment or a period of five years, whichever is less, if the service or post to which the employee is appointed is one,

(a) For which post-graduate research or specialist qualification or experience in scientific, technological or professional fields, is essential; and

(b) to which candidates of age exceeding the upper age limit specified for direct recruitment are normally recruited;

(c) for which the candidate was given age relaxation over and above the maximum age limit fixed by the Bank on account of his possessing higher qualification or experience.

Provided that this concession shall not be admissible to an employee unless his actual qualifying service at the time he quits the service in the Bank is not less than ten years;

Provided further that this concession shall be admissible if the recruitment rules in respect of the said service or post contain specific provision that the service or post is one which carries benefit of this regulation;

Provided also that the recruitment rules in respect of any service or post which carries the benefit of this regulation shall be made with the approval of the Central Government.

8. There are three provisos appended to Regulation 26. In case, those provisos are taken as different in all respects, the respondents would qualify for counting their earlier service. The Writ Court earlier interpreted the said Regulation and observed that sub-clause (a) and (b) of the main provision would go together and sub-clause (c) would stand separate. The learned Single Judge, in the cited case, observed that there is some defect in the drafting of the Regulation and as such, it should be given a workable interpretation. The learned Single Judge held that sub-clause (a) and (b) forms one category and sub-clause (c) forms separate category. While deciding the issue raised by the respondents, the learned Single Judge heavily relied on the interpretation given by the Writ Court earlier in *P. Thirikooda Rajappan* cited supra.

9. The question, therefore, is as to whether the last proviso would form a separate category or as to whether all the provisos should be read together. The last proviso contains a clear indication that it is part of the two other provisos appended to sub-clause (c) of Regulation 26. This is evident by the phraseology used, viz., “provided also”. The word “also” would clearly indicate that the third proviso is part of the two earlier provisos and as such, it has to be read together. We are, therefore, not in a position to agree with the view taken by the learned Single Judge that sub-clause (a) and (b) forms one

category and sub-clause (c) forms separate category. In case, it is held that sub-clause (c) is part of other two provisos, the respondents are not eligible to count the earlier service for fixing the total service.

10. The Regulations were framed and notified in 1995. The Regulations would apply to an employee who retired or died while in service on or after 1 November 1993. The Regulations were made by exercising the power under Section 19 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970. The Government have not approved the pension regulations earlier and as such, the respondents failed to satisfy the last proviso to Regulation 26. In fact, the learned counsel for the respondents submitted that the Government have made it very clear by its communication dated 06.08.1996 that none of the existing employees would be eligible to count their earlier service in view of the last proviso to Regulation 26. In short, the Regulations would apply only to those who retired or died subsequent to 01.11.1993. The respondents have not fulfilled the essential conditions appended to Regulation 26 and as such, they are not eligible for counting their earlier service.

11. The learned Single Judge was, therefore, not correct in his finding that the respondents have made out a case for counting their past service for payment of full pension. We are, therefore, inclined to set aside the order passed by the learned Single Judge and the same is, accordingly, set aside.

8. The aforesaid quotation refers to Regulation 26, which was extracted therein. Interpreting the said Regulation and the requirements stipulated in the second proviso, it has been held that the concession shall be admissible only if the recruitment rules in respect of the said service or post contain

specific provision that the service or post is one which carries the benefit of this regulation. It has been held that the said stipulation in the service or post is mandatory and must be satisfied. Accordingly, Regulation 26 would only apply to employees inducted after pension regulations were enforced by the bank and when the service or post carries the benefit, and not when there is no specific stipulation. This is a necessary corollary as the second proviso definitively stipulates that the recruitment rules must make a provision for grant of the benefit of additional qualifying service, otherwise the benefit cannot be granted. Appointments made prior to the enforcement of the Pension Regulations would not have a stipulation to the said effect, for then the service or posts were not pensionable. As recorded above, a similar view has been taken by the High Courts of Gujarat, Punjab and Haryana, and Karnataka.

9. This being the position, we have no hesitation in dismissing the present appeal.

10. Learned counsel for the appellant has submitted that the present case is distinguishable for the reason that the appellant was granted the benefit of Regulation 26 and the respondent bank had subsequently withdrawn the said benefit. It is also submitted that in some cases, retired employees are still

getting the benefit of Regulation 26, even though they may have suffered adverse decisions of the Courts.

11. Regarding the second argument, we do not think that the payments made to retired bank employees, contrary to the interpretation given to Regulation 26, would confer a legal right on the appellant. Negative equality cannot be claimed. A fortiori, retired employees who have been wrongly given the benefit of Regulation 26 should be denied the benefit of additional qualifying service. Action is required to correct the wrong and not to perpetuate the said wrong by granting benefit to others.

12. Regarding the first contention, our attention was drawn to Regulation 56 of the Pension Regulations. The said Regulation, under the heading “Residuary provisions” stipulates that in case of a doubt in the matter of application of these regulations, regard may be had to the corresponding provisions of Central Civil Services Rules, 1972 or the Central Civil Services (Commutation of Pension) Rules, 1981 applicable for Central Government employees. Learned counsel for the appellant has submitted that as per Rule 70 of the Central Civil Services (Pension) Rules, 1972, pension cannot be revised to the detriment of the employee after a period of two years. The said Rule would not be applicable per se to the Pension

Regulation by invoking the “Residuary provisions”. The residuary provisions would be applicable only when there is doubt regarding the application of these Regulations. In the present case, there is no doubt regarding the application. The question relates to the interpretation of Regulation 26 and its effect. There is no equivalent of Regulation 26 in the Central Rules, which could clarify any doubt or debate on the interpretation of Regulation 26. The residuary provision does not make the Central Rules applicable. They do not apply *mutatis mutandis*, albeit when there is doubt or debate about any provision in the Pension Regulation, reference can be made to the Central Rules.

13. On a query being made, counsel for the respondent Bank states no arrears would be recovered. The pension already paid post the retirement of the appellant on 31st March, 2008 should not be recovered, notwithstanding that the pension was paid at an enhanced rate. If any recovery has been made by the respondent bank, the same should be refunded to the appellant within a period of four weeks from the date a copy of this order is made available to the respondent bank. We have directed and barred the respondents from recovering arrears for two reasons. Firstly, the respondents themselves have not claimed refund of arrears. Secondly, this would be as

per the mandate of the Supreme Court in (2015) 4 SCC 334, *State of Punjab and Ors. v. Rafiq Masih and Ors.*

The appeal is dismissed with the aforesaid directions.

SANJIV KHANNA, J.

SUNITA GUPTA, J.

OCTOBER 05, 2016
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