IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16752 of 2015

State Bank of India, Local Head Office, West Gandhi Maidan, Patna- 800 001 through its Chief General Manager

.... Petitioner

Versus

1. The Union of India through the Secretary, Ministry of Labour Government of India, New Delhi
2. Ram Prasad Saha, son of Late Ratan Saha, resident of village- Kuwari Dudhi, Bhita, P.O.- Kuwari Gola, P.s.- Dhandaha, District- Purnea

.... Respondents

Appearance :

For the Petitioner/s	:	Mr. Alok Kumar Sinha, Advocate
For Union of India	:	Mr. Nivedita Nirvikar, CGC
		Mr. Manoj Kumar, JC to CGC
For respondent no. 2	:	Mr. Raj Ballabh Yadav, Advocate

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 30-03-2017

Heard Mr. Alok Kumar Sinha, learned advocate for petitioner, State Bank of India, Mr. Raj Ballabh Yadav, learned advocate for respondent no. 2 Ram Prasad Saha and Mr. Manoj Kumar, learned assistant counsel to Mrs. Nivedita Nirvikar, learned Central Government Counsel for the Union of India.

2. This writ application has been filed by the petitioner for setting aside the award dated 20.03.2015 passed in Reference Case No. 02 (C) of 2011 by the Presiding Officer, Industrial Tribunal, Patna whereby the Tribunal has decided the

reference in favour of the workman (respondent no.2) by holding that his date of confirmation in service should be treated to be 20.11.1984 instead of 14.03.1988 and he would be entitled to be a member of State Bank of India Employees' Pension Fund Rules (for short 'Rules'). Accordingly, he should be given the pensionary benefits and all other benefits from the date of his retirement from service on 31.12.1997.

3. With the consent of the counsel appearing for the parties, the writ application itself is taken up for final disposal.

4. The facts of the case are not in dispute. The date of birth of the respondent no. 2 is 08.12.1937. He was appointed as a Security Guard in Birpur Branch of State Bank of India temporarily on 14.03.1984. He joined the said post on 20.03.1984. He was absorbed in permanent capacity as Guard-cum-Messenger on 14.09.1987 provided he completed six months of probation period satisfactorily. After completion of six months probation period, he was confirmed in permanent service from 14.03.1988. On attaining the age of 60 years, he retired from service on 31.12.1997. He was paid all his retirement benefits including gratuity. As he was not granted any pensionary benefits, he filed a writ application bearing CWJC No. 800 of 2007, which was disposed of vide order dated 23.01.2009 on the following terms :-

> "In my view, these questions can only be

> settled in a proceeding duly constituted in terms of Industrial Disputes Act, who may take appropriate action for quantification of his entitlement.
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> With this observation, the writ petition is disposed of."

5. After the aforesaid order dated 23.01.2009 passed by this Court, he raised a dispute on 15.04.2009 before the Assistant Labour Commissioner (Central)-cum- Conciliation Officer, Patna which was subsequently referred for adjudication by notification dated 27.01.2011 containing the following terms of reference :-

> "(i) Whether the action of the management of SBI, Patna in treating the date of confirmation as 14.03.1988 and instead of 20.11.1984 in respect of Shri Ram Prasad Saha, Ex-Security Guard who was retired on 31.12.1997 and denying him pensionary benefits, is legal and justified ?
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> (ii) If not, what relief the employee is entitled to ?"

6. On receipt of the above reference made under Section 10(1)(c) of the Industrial Disputes Act, 1947, the Tribunal registered the aforementioned Reference Case No. 2(C) of 2011 and after hearing the parties it decided the reference vide award dated 20.03.2015 by holding that the date of confirmation in service

of the workman should be treated to be 20.11.1984 instead of 14.03.1988 and accordingly he should be given pensionary benefits from the date of his retirement from service on 31.12.1997.

7. The order dated 20.03.2015 is under challenge in the present application filed under Articles 226 and 227 of the Constitution of India.

8. It is submitted by Mr. Alok Kumar Sinha, learned advocate for the petitioner that the Central Board of State Bank of India exercising power under clause O of sub-section (2) of Section 15 of the State Bank of India Act, 1955 framed its statutory rules known as State Bank of India Employees' Pension Fund Rules. He submitted that from a bare reading of Rules 7 and 8 of the Rules effective prior to 01.11.1993, it would be manifest that only such employee would be eligible to be a member of pension fund who as on the date of confirmation of his service was not above the age of 38 years. He submitted that there is no dispute to the fact that the workman was confirmed in permanent capacity on 14.03.1988 and on the date of confirmation he was aged 50 years, 3 months, 6 days and thus was not eligible to become a member of pension fund. He submitted that the Tribunal has grossly erred in shifting back the date of confirmation of the workman from 14.03.1988 to 20.11.1984. He submitted that the order impugned, being contrary to the Rules, is erroneous and perverse and thus it is

fit to be set aside.

9. On the other hand, Mr. Raj Ballabh Yadav, leaned advocate appearing for the workman submitted that there is no error in the order passed by the Tribunal. He submitted that the workman was an ex-service man and was in the panel of temporary employees of the bank. He was temporarily appointed as Security Guard in Birpur Branch of State Bank of India on 14.03.1984 in place of Mr. S. B. Limboo, a permanent Security Guard of the said branch who was on sick leave and whereupon the workman joined and started working. He submitted that after six months of satisfactory service as Guard-cum-Messenger with effect from the date of his joining, the workman had become eligible to be absorbed in permanent capacity and thus the Tribunal rightly shifted back his date of entry into the permanent capacity from 14.03.1988 to 20.11.1984. He submitted that the Rules of the bank was amended with effect from 01.11.1993 and in view of the amended Rule 8 which became effective on 01.11.1993, the upper age limit existing in Rule 8 was enhanced from 38 years to 48 years. Hence, once the date of confirmation of the workman was shifted from 14.03.1988 to 20.11.1984, he had become eligible to be a member of pension fund in view of the amended Rules.

10. Learned advocate appearing for the Union of India submitted that there is no error in the order passed by the

Tribunal. He submitted that the facts of the case cannot be re-appreciated and looked into in exercise of jurisdiction under Articles 226 and 227 of the Constitution of India.

11. In reply, Mr. Alok Kumar Sinha, learned advocate appearing for the petitioner submitted that the benefit of amendment in Rule 8 by which the upper age limit was enhanced to 48 years could not have been legally extended to the workman for the simple reason that the said amendment was applicable only to such employee who stood confirmed in service on or after 01.11.1993.

12. I have heard learned advocates for the parties and carefully perused the materials available on record.

13. In order to examine the rival contentions advanced on behalf of the parties, it would be apposite to refer to Rules 7 and 8 of Rules prevailing prior to 01.11.1993 which read as under :

> "**Rule-7.** Save as provided in rule 8, every permanent employee (including a permanent part-time employee who is required by the Bank to work for more than six hours a week) in the service of the Bank who is entitled to pension benefits under the terms and conditions of his service shall become a member of the Fund from-
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> (a) the date from which he is confirmed in the service of the Bank, or
>
> (b) the date from which he may be

required to become a member of the Fund under the terms and conditions of his service.

Rule-8. Save as provided in rule 25, no employee shall be eligible to become a member of the fund –

(a) if he is a member of the Imperial Bank of India Employees' Pension and Guarantee Fund or if he is engaged in any country outside India and appointed for service in such country;

(b) if he is below 21 years of age;

(c) if he is over 38 years of age; or

(d) Whose service is specially declared by the Bank to be non-pensionable."

14. At this stage, it would also be necessary to refer to the amended Rule 8 of the Rules which became effective from 01.11.1993 which read as under :-

"**Rule-8.** Save as provided in rule 25, no employee shall be eligible to become a member of the fund –

(a) if he is a member of the Imperial Bank of India Employees' Pension and Guarantee Fund or if he is engaged in any country outside India and appointed for service in such country;

(b) if he is below 21 years of age;

(c) if he is over 48 years of age; or

(d) Whose service is specially declared by the Bank to be non-pensionable."

15. Having noticed the relevant provisions of the

Rules and the admitted facts of the case, it is difficult to sustain the award passed by the Tribunal.

16. Indisputably, on 14.03.1988, the date on which the workman was confirmed in the bank, he was aged about 50 years, 3 months and 6 days which was much above the upper age limit of 38 years. Hence, he was not eligible to become a member of pension fund in view of requirement of Rule 8(c) of the Rules. His initial appointment made on 14.03.1984 as Security Guard was purely on temporary basis. Therefore, the same could not have been reckoned for the purpose of pension.

17. On a careful perusal of the award passed by the Tribunal, I am of the view that there is no cogent explanation for shifting back the date of confirmation of the workman in service from 14.03.1988 to 20.11.1984. Such shifting of date of confirmation in service is completely, arbitrary erroneous and perverse.

18. Moreover, even if, the date of confirmation of the workman is treated to be 20.11.1984 in stead of 14.03.1988, still the workman would not be eligible to become a member of pension fund entitling him to receive pensionary benefits as he was much above the upper age limit of 38 years and thus was not eligible to become a member of pension fund. Learned counsel for the petitioner has rightly submitted that the benefit of amendment

in Rule 8 which became effective from 01.11.1993, as noted above, by which the upper age limit to become a member of pension fund was enhanced to 48 years from 38 years could not have been legally extended to the workman for the simple reason that the said amendment was applicable only to such employee who was confirmed in service on or after 01.11.1993. It is an admitted case of the parties that the workman was confirmed in service much before 01.11.1993. Hence, in no case the workman could have been eligible to become a member of pension fund.

19. Furthermore, from the pleadings of the parties, it would be evident that having retired on 31.12.1997, the workman did not raise the issue of entitlement to receive pension for almost 10 years. For the first time, he raised the dispute regarding pensionary benefit by filing a writ application before this Court in the year 2007. The inordinate and unexplained delay of 10 years clearly shows that the workman had waived his right to claim pensionary benefits.

20. In view of discussions made above, I am of the considered opinion that the findings of the Tribunal are vitiated by apparent error of law and thus the entire adjudication process was vitiated.

21. For the forgoing reasons, award dated 20.03.2015 passed in Reference Case No. 02 (C) of 2011 by the

Presiding Officer, Industrial Tribunal, Patna is set aside.

22. Accordingly, the writ application stands allowed.

(Ashwani Kumar Singh, J.)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	06.04.2017
Transmission Date	NA