

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1603 of 2014

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Shri Param Hans Singh Son of Balisht Singh, resident of 304, Rajhans Apartment,
Nandanpuri, Khajpura, P.S. Rajeev Nagar, District - Patna

.... Petitioner

Versus

1. The Allahabad Bank through its Chairman & Managing Director, 2, Netaji Subhash Road, Kolkata.
2. The General Manager (Human Resource), Allahabad Bank, Administration Department 2, Netaji Subhash Road, Kolkata
3. The Chief Manager (T.D.), Allahabad Bank, Head Office, Personnel & Administration Department, 14, India Exchange Place, Kolkata

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Tej Bahadur Singh, Sr. Advocate
Mr. Brisketu Sharan Singh, Advocate

For the Respondent/s : Mr. Naresh Kumar Malhotra, Sr. Advocate
Mr. Binod Kumar Sinha, Advocate
Mr. Manoj Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 24-04-2017

The prayers of the petitioner as set out in paragraph- 1
of the writ application are as under :-

“(i) For issuing the writ/writs, direction/
directions, order/orders including the writ of
certiorari and mandamus and thereby quashing the
order dated 06.11.2012 passed by respondent no. 3



whereby and whereunder the request of the petitioner regarding addition of five years qualifying service for payment of pension under Section 26 of Allahabad Bank (Employees) Pension Regulations 1995 has been rejected and the petitioner has been denied benefit of addition of five years tenure under the aforesaid regulation.

(ii) For issuing a writ of mandamus directing thereby the respondents to give benefit of regulation 26 of the Allahabad Bank Employees (Pension) Regulations 1995 to the petitioner by adding five years additional qualifying service for the purpose of calculation of pension for doing more than 20 years of past services in different organizations as per regulation 26 of Allahabad Bank Employees (Pension) Regulations 1995.

(iii) For issuing a writ mandamus directing thereby the respondents to pay officiating allowance @ Rs. 6 % of his basic pay w.e.f. 11.11.1991 to 05.01.2000 as per the provisions of Regulation 23(vi) of Allahabad Bank (Officers) Service Regulations 1979.

(iv) For directing the respondents to release mobile expenses @ Rs.1000/- P.M. w.e.f. 01.11.2007 to 31.07.2011 as per provision of Bank's Instructions Circular No. 9233/Premises/2006-07/01 dated 11.07.2006.

(v) For directing the respondent authorities to calculate the post retiral benefits of the petitioner afresh after adding the additional qualifying service of 5 years as per regulation 26 of the Allahabad



Bank Employees (Pension) Regulations 1995.”

2. At the outset, it is to be noted that Mr. Tej Bahadur Singh, learned Senior Advocate for the petitioner submitted that he would not be pressing the claims of the petitioner made in the aforesaid prayer nos. (iii) and (iv).

3. The facts of the case are not in dispute. The petitioner while working in Indian Tourism Development Corporation Limited offered his candidature for fresh appointment in the respondent Allahabad Bank. He was offered appointment in the Bank on the post of Personal Officer vide offer letter dated 10.06.1991. The offer letter *inter alia* provided that the appointment would be governed by the rules of service, conduct and discipline written and customary in force at the respondent Bank for the time being for officers. The offer letter provided that offer of appointment was contingent upon acceptance of appointment on the terms and conditions expressed therein, by the petitioner. The offer letter also provided that the appointment was initially on probation for a period of one year and that upon confirmation the petitioner would be eligible for membership of the Bank's Provident Fund.

4. The petitioner unconditionally accepted the



appointment offered to him on the terms and conditions mentioned therein and joined the service of the petitioner on 11.11.1991 after resigning with effect from 09.11.1991 from his service with Indian Tourism Development Corporation Limited.

5. At the time of appointment of the petitioner in the respondent Bank and till the introduction of Allahabad Bank (Employees') Pension Regulations, 1995 (in short 'ABEPR-95'), the provident fund amount paid to the retiring employee comprised the employee's contribution as well as Bank's contribution, popularly known as Contributory Provident Fund (in short 'CPF'). Pursuant to Tripartite Memorandum of Settlement (in short 'Tripartite Settlement') among the management, workers and officers of the various banks dated 29.10.1993, the respondent Bank formulated a draft/proposed Allahabad Bank Employees (Pension) Regulation 1993 (in short 'draft/proposed 1993 Regulations') vide Instruction Circular No. 3904 dated 06.09.1994. The draft/proposed 1993 Regulations provided the option to the employees, who were on the rolls of the Bank as on 31.10.1993, to opt for pension as per Old Pension Scheme plus CPF. Subsequently, on 29.09.1995, the respondent Bank formally adopted ABEPR-95. The ABEPR-95 superseded the draft/proposed



1993 Regulations vide Circular No. 4318 dated 16.11.1995 for further extending the benefit under the draft/proposed 1993 Regulations to the employees who were on the rolls of the Bank as on 29.09.1995 to opt for pension as per old Pension Scheme plus CPF. The ABEPR-95, in express terms, validated the earlier option exercised by the employees in accordance with the draft/proposed 1993 Regulations.

6. Thus, with the introduction of ABEPR, 1995, pension became payable in lieu of Bank's contribution to the Provident Fund, as per the provisions contained in ABEPR-95. Those who opted pension under ABEPR-95, their portion of Bank's contribution to Provident Fund i.e. 50 per cent of CPF amount was transferred to pension fund and they became entitled to pension under ABEPR-95 at the time of their retirement along with their own contribution to Provident Fund. However, those who did not opt for pension under ABEPR-95 continued to be members of CPF and were entitled for their contribution to Provident Fund as well as Bank's contribution to Provident Fund, at the time of their retirement.

7. The petitioner opted for pension under ABEPR-95 when the same was introduced and consequently the relevant



portion of the petitioner's provident fund i.e. 50 per cent Bank's contribution was transferred to pension fund.

8. Mr. Tej Bahadur Singh, learned Senior Advocate for the petitioner submitted that in terms of Regulation 26 of ABEPR-95, the respondent Bank ought to have added minimum five years to the qualifying service for pension treating it to be special circumstance owing to the appointment of the petitioner on the basis of special qualification upon grant of age relaxation and thereafter the Bank ought to have computed the pension as per ABEPR-95 and granted the petitioner current as well as arrear of pension accrued due to such relaxation. He submitted that as per advertisement dated 11.06.1988, the petitioner was granted age relaxation, as per the terms and conditions, which provided for minimum 7 years experience for appointment to the post of Personal Officer and maximum age after granting the age relaxation for such appointment was mentioned to be 40 years. He submitted that at the time of appointment, the petitioner was 39 years old and had 20 years experience in various organizations- Government and otherwise. The petitioner, having served the respondent Bank for over 20 years with utmost dedication, sincerity and honesty has been illegally denied the addition of 5 years



qualifying service for payment of pension after his retirement on 31.10.2012. He contended that the request of the petitioner was turned down vide impugned order dated 06.11.2012 passed by respondent 3 as contained in Annexure-1 to the present application citing the reason that the recruitment rules at the point of time when the appointment of the petitioner was made, did not have a clause in terms of regulation 26 of the ABEPR-95. He submitted that the rationale given by the respondent Bank suffers from illegality rather misunderstanding of circumstance for the reason that there could not have been any justifiable speculation in 1991 when ABEPR-95 regulation has to be framed and, therefore, uninterestingly such regulations were not mentioned in the appointment letter of the petitioner issued in 1991. He submitted that it is a pure case of illegally denying the benefit to the petitioner in the name of regulation 26 of the ABEPR-95, which came subsequently. The rationale and reason given by the respondent Bank denying the petitioner the benefit of the aforesaid Regulation 26 of ABEPR-95, in no circumstance, can be construed as legal and equitable rather the reason given by the respondent Bank in denying the petitioner the benefit of extension of pensionable service seeks to frustrate the very object of the ABEPR-95, which



in itself, is a beneficiary Regulation and through the same it has been aimed to extend the benefit to all such persons who retired subsequent to notification of ABEPR-95.

9. *Per contra*, Mr. N. K. Malhotra, learned Senior Advocate appearing for the respondent Bank submitted that there is no error in the order dated 06.11.2012 passed by the respondent no. 3 whereby the claim of the petitioner for providing 5 years qualifying service for payment of pension under Regulation 26 of the ABEPR-95 has been denied. He submitted that for none of the posts including the post of Personal Officer, the advertisement dated 11.06.1988, provided for any age relaxation of the upper age limit on account of possessing higher qualification or experience. The age relaxation provided in the said advertisement on account of candidates belonging to SC/ST, migrant and ex-serviceman category etc. is immaterial for the present purpose. He submitted that regulation 23(2) of the ABEPR-95 provide that an employee retiring in accordance with the provisions of the service regulations after completing qualifying service of not less than thirty three years shall be entitled to basic pension calculated at 50 per cent of average emolument. Further, regulation 35(6)(a) of ABEPR-95 provides that in case of an employee retiring before completing



qualifying service of 33 years, but after completing a qualifying service of 10 years, the amount of pension shall be proportionate to the amount of pension admissible under regulations 35(2) of ABEPR-95. He submitted that as per the regulations of ABEPR-95, the petitioner is presently receiving proportionate pension for the service of 20 years, 4 months and 20 days actually rendered by him in the respondent Bank.

10. I have carefully considered the rival submissions of Mr. Tej Bahadur Singh, learned Senior Advocate appearing for the petitioner and Mr. N. K. Malhotra, learned Senior Advocate appearing for the respondent Bank.

11. In my opinion, the petitioner is not entitled to benefit of addition of 5 years qualifying service for payment of pension as envisaged under regulation 26 of ABEPR-95.

12. The regulation 26 of ABEPR-95 which is the focal point of the present application reads as under :-

“ 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.”

13. From a reading of regulation 26 of ABEPR-95,



it would be evident that three clauses (a), (b) and (c) are inter-related and the benefit of additional qualifying service is admissible only if the provisos thereunder are satisfied. Further, Regulation 26 and three clauses and the three provisos incorporated in ABEPR-95 are inseparable and the benefits thereunder can be only availed by an employee if the recruitment rules of his service are in consonance with regulation 26 of ABEPR-95.

14. From a perusal of the advertisement dated 11.06.1988 as contained in Annexure-2 to the present application, it would be evident that the upper age limit for the post of Personal Officer was 40 years. It would further be evident that for none of the posts including the post of Personal Officer any relaxation of upper age limit on account of possessing higher qualification or experience was provided.

15. Learned Senior Advocate for the respondent Bank has rightly submitted that the age relaxation provided in the said advertisement is only on account of candidates belonging to SC/ST, migrant and ex-serviceman category etc., which is immaterial for the case of the petitioner.

16. Further, it is apparent from the record that the date of birth of the petitioner is 06.03.1952 and his age at the time



of joining the respondent Bank was 39 years. Hence, there is no difficulty in coming to the conclusion that the petitioner was not given any age relaxation over and above the maximum age limit fixed by the Bank, neither on account of his possession of higher qualification or experience nor others. Thus, neither clause (a) nor clause (b) of Regulation 26 of ABEPR-95 is applicable to the case of the petitioner. Thus, I find no merit in the contention of the petitioner that he was granted any sort of age relaxation for appointment to the post of Personal Officer in the respondent Bank.

17. I further find that the second proviso to the aforesaid regulation 26 is also not satisfied in the present case since the recruitment rules in respect of the appointment of the petitioner with the respondent Bank did not contain any such provision that the service or post is one which carried the benefit of regulation 26.

18. Furthermore, the third proviso to the aforesaid regulation 26 is also not satisfied in the present case since the same came into play only after satisfaction of second proviso, as such the benefit of addition of qualifying service, as envisaged in regulation 26 of ABEPR-95 cannot be extended in the case of the petitioner.

19. So far as the contention of the petitioner that the rationale given by the respondent Bank suffers from illegality, as



there could not have been any occasion for a clause in relation to the regulation which came much latter in 1995, in the letter of appointment of the petitioner issued way back in 1991 is concerned, in the opinion of this Court, the same is ill-founded.

20. As noted above, the ABEPR-95 was not forced upon any employee including the petitioner. It was on optional basis whereby the pension became payable in lieu of Bank's contribution to Provident Fund. Those, who opted pension under ABEPR-95, their portion of Bank's contribution to Provident Fund account was transferred to pension fund and they became entitled to pension under ABEPR-95 at the time of their retirement along with their own contribution to Provident Fund. But, those, who did not opt for pension under ABEPR-95 continued to be members of CPF and were entitled for their contribution to Provident Fund, as well as Bank's contribution to Provident Fund at the time of their retirement. The petitioner with open eyes opted for pension under ABEPR-95 when the same was introduced. Now, he cannot turn back and say that the relevant provisions of ABEPR-95 would not be applicable upon him, as he was appointed prior to 1995 for availing the benefit of addition of five years in qualifying the pensionable service.



21. In a society governed by rules of law when the intention of framer of the regulation is clear, the court cannot interpret any other meaning to the words used in the regulation 26 of the ABEPR-95 merely on sympathy for the petitioner. The validity of regulation 26 or its proviso is not in question in the present case and thus there cannot be any other interpretation to it than the words used in the regulation.

22. In view of the above discussions, the writ application fails and is, accordingly, dismissed.

23. Parties are directed to bear their own costs.

(Ashwani Kumar Singh, J.)

Kanchan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.04.2017
Transmission Date	NA

