IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18508 of 2013

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Sunil Kumar Sinha son of Late Indra Deo Narayan O.P. Dr. Bharat Bhushan, G.C. Banerjee Road, Bhikanpur, Gumti No. 2, District - Bhagalpur, Pin - 812001

.... Petitioner/s

Versus

1. The Union Bank of India through its Chairman-Cum-Managing Director, Central Office, Nariman Point, 239, Vidhan Sabha Marg, Mumbai
2. The Branch Manager, Union Bank of India, Bhagalpur Branch, District-Gorakhpur (U.P.)
3. The Deputy General Manager, Nodal Regional Office, Union Bank of India, Patna
4. The General Manager (P), Central Office, Union Bank of India, Mumbai
5. The Incharge, Pension Cell, Central Office, Mumbai

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Narendra Kumar, Advocate
	:	Mr. Dr. Chandra Shekhar Azad, Advocate
	:	Mr. Satya Ranjan Sinha, Advocate
For the Respondent/s	:	Mr. Kumar Alok, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 14-07-2017

The present writ application has been filed for directing the respondents to grant the following reliefs:

(i) To accept the application for pension and allow the same to the petitioner who retired after taking voluntary retirement under the Voluntary Retirement Scheme 2000-2001.

(ii) To grant/pay the pension to the petitioner regularly.

(iii) To grant any other relief/reliefs which the petitioner may found entitled to in the facts and circumstances of the case.

2. The brief facts of the case are that the petitioner had joined the service of the Union Bank of India (for short 'the bank') on 14.11.1972 and took voluntary retirement from service under the Voluntary Retirement Scheme 2000-2001 on 20.04.2001. The bank had brought the scheme of voluntary retirement under Staff Circular No.4669 dated 07.11.2000 for the permanent employees who had completed fifteen years of service or had completed forty years of age. Having come to know that pension scheme has been granted to the employees who had voluntarily retired, the petitioner had applied for the same. The pension scheme was open from 01.09.2010 to 30.10.2010. The bank did not entertain the application of the petitioner under the pension scheme, as according to it, the application did not reach within the prescribed period. It is the case of the petitioner that though he had sent the application form in time, the same did not reach before the bank within the stipulated period. Being aggrieved by the decision of the bank whereby the application form of the petitioner had not been considered for the benefit of pension scheme, the petitioner had filed a writ petition before this court vide CWJC No.11748 of 2012 seeking direction to the respondents for the following reliefs:

> "(i) To accept the application of the pension scheme of the petitioner.
>
> (ii) To grant/pay the pension regularly after the date

of acceptance.

(iii) To grant any other relief/reliefs which the petitioner may found entitled in the facts and circumstances of the case."

3. The said writ petition bearing CWJC No.11748 of 2012 preferred by the petitioner was dismissed as withdrawn vide order dated 06.03.2013 by this Court.

4. It would be evident from the pleading of the parties that subsequently the bank came out with second option for pension to those employees who had taken retirement voluntarily on or after 29.09.1995 under Regulation 19(1) of the Officers' Service Regulations, 1979 (for short 'OSR, 1979') vide Staff Circular No.5943 dated 16.01.2013. Under this scheme, the last date of submission of the form was 21.03.2013. Thus, the petitioner applied once again for pension on 16.02.2013. The bank, however, did not allow pension to the petitioner under the second option for pension. The case of the respondent-bank is that the petitioner was not entitled for the benefit of pension under this scheme as he had taken voluntary retirement under the scheme of 2000-2001 and availed of the benefit of that scheme and now he cannot again claim second benefit which was made available to certain class of employees, who had taken voluntary retirement under Regulation 19(1) of the 'OSR, 1979'.

5. Learned counsel for the petitioner has submitted that the claim of the petitioner was earlier rejected on frivolous and unsustainable grounds that his application did not reach in time and his subsequent application after being processed at different level has been kept pending. He has submitted that the pension is a valuable right of an employee at the evening of his career and the same cannot be denied on trivial grounds. It is in the nature of property under Article 300-A of the Constitution of India and denial of the same amounts to denial of a valuable constitutional right of a citizen.

6. On the other hand, learned counsel for the bank has submitted that the instant application is barred on the principle of *res judicata* as the petitioner had earlier withdrawn the writ application filed in the same subject matter without seeking leave of the Court to institute a fresh petition on the same subject matter. He has submitted that even otherwise the writ application has got no merit as the petitioner had retired before completing thirty years of service or fifty five years of age and took voluntary retirement under the scheme of 2000-2001. He has submitted that as far as the scheme floated vide Staff Circular No.5943 dated 16.01.2013 is concerned, he is not eligible to claim pension under it.

7. I have heard learned counsel for the parties and perused the record.

8. I find substance in the arguments of the learned counsel for the petitioner.

9. His first objection is in respect of maintainability of the writ application on the principle of *res judicata*. In the leading case of **Daryao vs. State of U.P.** since reported in **AIR 1961 SC 1457** the Supreme Court has exhaustively dealt with question of applicability of the principle of *res judicata* in writ proceedings and laid down certain principles. One of the principles laid down by the Supreme Court in that case is that if the petitioner withdraws the writ petition without the leave of the Court to institute a fresh petition on the same subject matter, the fresh petition is not maintainable.

10. Since the petitioner had earlier approached this Court in CWJC No.11748 of 2012 and had prayed for acceptance of his application for pension in terms of the option of the pension invited under Staff Circular No.4669 dated 07.11.2000 and the writ petition was dismissed as withdrawn without leave of the Court to institute a fresh petition on the same subject matter, in view of the ratio laid down in **Daryao vs. State of U.P.** (supra), the petitioner cannot raise his claim for pension under the scheme of 2000. However, if a case is made out in terms of the subsequent option for pension introduced by the bank vide Staff Circular No.5943 dated 16.01.2013, the same would not be barred on the principle of *res judicata*.

11. Clause 6 of the aforesaid Staff Circular No.5943 dated 16.01.2013 as contained in annexure-A to the counter affidavit filed on behalf of respondent no.3 contains the salient features of the second option for pension extended to officers/family of deceased officers voluntarily retired under Regulation 19(1) of the 'OSR, 1979'. Regulation 19 of 'OSR, 1979' reads as under:

> "(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.

Explanation. An Officer employee will retire on the last day of the month in which he completes his age of retirement.

Provided that an Officer employee whose date of birth is on the first day of a month shall retire from service on the afternoon of the last day of preceding month on attaining the age of retirement.

(2) The Bank shall constitute a Special Committee/Special Committees consisting of not less than three members, to review, whether an Officer employee should be retired in accordance with the first proviso to this regulation. Such committee/committees shall from time to time review the case of each Officer employee, and no order of retirement shall be made unless the Special Committee/Special Committees recommends in writing to the Competent Authority the retirement of the Officer employee."

12. Thus, it would be evident that in order to exercise option under the scheme one of the essential requirements was that the Officer employee should have served for a minimum period of thirty years or should have completed fifty five years of age, whichever is earlier, and then sought retirement under Section 19(1) of the 'OSR, 1979'.

13. It is the admitted case of the petitioner that he had served the bank for a period less than twenty nine years. Thus, he did not have qualifying years of service or minimum age requirement in terms of Regulation 19(1) of the OSR, 1979. In that view of the matter, he cannot claim benefit of pension scheme under the provision of Regulation 19(1) of the OSR, 1979. Even otherwise, he is not entitled for the benefit of pension scheme which was launched vide Staff Circular No.5943 dated 16.01.2013 as he had taken retirement under the voluntary retirement scheme of 2000-2001 and had availed of the benefits of that scheme.

14. In that view of the matter, this application, being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
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