



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. (MD) No.14356 of 2011

and M.P. (MD) No.1 of 2011

WEB COPY

P.Rajamani

... Petitioner

Vs.

1.The Chairman and Managing Director,
MD's Secretariat,
Indian Bank, Head Office,
66 Rajaji Salai, Chennai.

2.The Chief Manager,
Indian Bank,
HRM Department
Pension Cell,
66 Rajaji Salai
Chennai.

3.The General Manager (HRM)
Indian Bank, Head Office,
66 Rajaji Salai
Chennai.

4.The Regional Manager,
Indian Bank,
Personal Department
Regional office,
Tirunelveli.

5.The Manager,
Indian Bank,
Meenakshipuram
Nagercoil

... Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records of the 2nd respondent vide HRM:PEN:2464:2010-11 dated 02.02.2011 and the subsequent order dated HO:HRM:PEN:24645:2010-11 dated 11.03.2011 quash the same and consequently directing the respondents to provide pensionary benefits to the petitioner under the settlement dated 21.08.2010 vide HRM:92/2010-11.

For Petitioner :Ms.K.Malathi

For Respondents :Mr.Pala Ramasamy for R2,R5

No appearance for R1, R3 and R4

**ORDER**

The prayer in the writ petition is for a writ of Certiorari to call for the records of the 2nd respondent vide HRM:PEN:2464:2010-11 dated 02.02.2011 and the subsequent order dated HO:HRM:PEN:24645:2010-11 dated 11.03.2011 quash the same and consequently directing the respondents to provide pensionary benefits to the petitioner under the settlement dated 21.08.2010 vide HRM:92/2010-11.

2. The petitioner had joined in the respondent bank as Clerk on 12.03.1986. After nearly 15 years of service, the petitioner opted for Indian Bank Employees Voluntary Retirement Scheme 2000 (hereinafter referred to as IBEVR Scheme 2000). The petitioner's offer was accepted and the petitioner was relieved from service with effect from 28.02.2001. At that time of his relieving from service, pursuant to the Voluntary Retirement Scheme, the petitioner had put in 14 years 11 months and 19 days service to the respondent bank.

3. Subsequently, in the year 2010, some settlement entered into between the Employees Union and the respondent Bank, pursuant to which, a Scheme was introduced by the respondent Bank dated 21.08.2010. As per the said Scheme, the offer opens on 23.08.2010 and was closed on 21.10.2010. According to which, as per the second category of employees, the employee, who had worked till 1995 September 29 and retired after that date and prior to the date of settlement i.e., dated 27.04.2010 can apply for the Pension Scheme. Accordingly, the petitioner had also applied for Pension Scheme for grant of pension for the service rendered by him. The said request of the petitioner for grant of pension was rejected by the respondent Bank on 02.02.2011 by the 2nd respondent and against the same, the 2nd respondent had issued a consequential rejection order on 11.03.2011. Challenging both orders, the petitioner had approached this Court by filing the present writ petition.

4. Heard the learned counsel for the petitioner and the learned counsel for the respondent Bank.

5. The learned counsel for the petitioner would submit that the petitioner since had rendered 14 years, 11 months and 19 days service, which is 11 days short of the actual minimum required service of 15 years for the purpose of grant of pension under the Scheme, the said 11 days should be rounded off as 6 months and it should be treated as 15 full years. In this regard, the learned counsel for the petitioner would rely upon Indian Bank Employees Pension Regulation 1995, wherein, Regulation 18 reads thus:

"Regulation 18

Broken period of service of less than one year

- If the period of service of an employee includes broken period of service less than one year, then, if such broken period is more than six months, it shall be treated as one year and if such broken period is



six months or less it shall be ignored.

"Provided that provisions of this regulations shall not apply for determining the minimum service required to make an employee eligible for pension".

6. Per contra, the learned counsel for the respondent Bank would rely upon the very same regulation 18 as amended. The said amendment had been made on 17.07.2003. As per which, a proviso was inserted in Regulation 18. Accordingly, the rounding off of six months period shall not apply for determining the minimum service required to make an employee required for pension. Therefore, the learned counsel would submit that the rounding off would not be made available for the petitioner for rounding off the period of service ie., 11 days beyond 15 years eligible service to get pension by virtue of the said proviso to Rule 18 and therefore, the request of the petitioner, which was rejected is justifiable.

7. In order to substantiate the said submission on the part of the respondent, the learned counsel for the respondents would rely upon a Division Bench judgment of this Court dated 27.11.2006 made in W.P.Nos.13206 and 13207 of 2002. In the said case also, two such employees, who had some shortage of service for the minimum 15 years requirement had approached the respondent Bank for pension, which was negatived. Therefore, they approached this Court. This Court, having considered the facts of the case as well as the Regulation 18 along with its amendment, had accepted the case of the respondent bank. The relevant portion of the order of the Division Bench reads thus:

"3. In respect of the writ petitioner in W.P.No.13207 of 2002, viz., Rani Jerome, it was stated that she had undergone 1092 days of leave on loss of pay and the said period was deducted from service for the purpose of calculating her qualifying service which was arrived at 14 years, 11 months and 12 days, ie., admittedly less than 15 years, thereby making her ineligible for the pension under the Pension Scheme together with voluntary retirement benefits. In the same way, the qualifying service of the petitioner in W.P.No.13206 of 2002 was calculated on the basis of taking his date of relief as 16.12.2000 and it was arrived as if he had put in only 14 years, 11 months and 28 days thereby making him ineligible for pension.

...

6. However, the said case relates to the Indian Bank and the Indian Bank Employees' Pension Scheme and the qualifying service is provided under Regulation 14 which is as follows:

14. Qualifying Service - subject to the other conditions contained in these regulations, an employee who has rendered a minimum of ten years of service in the Bank on the date of his retirement or the date on which he is deemed to



WEB COPY

have retired shall qualify for pension.

Further, as to how a broken period of service can be calculated is also mentioned under Regulation 18 of the Regulations, which is as follows:

Broken period of service of less than one year - If the period of service of an employee includes broken period of service less than one year, then, if such broken period is more than six months, it shall be treated as one year and if such broken period is six months or less it shall be ignored.

....

9. The petitioners, before tendering their offer for opting to go on VRS, ought to have verified whether they are eligible for pension under the statutory pension scheme. Once they have given an option to go on VRS, they cannot turn back and say that they are eligible for pension whether they put in minimum qualifying service or not. If they had made such a discovery before offering their option to go on VRS, they would have had no grievance about the non payment of pension. The petitioners cannot have both ways.

10. In the light of the above, we do not find any merits in the submission made by the learned counsel for the petitioners. The writ petitions fail and the same shall stand dismissed. However, the parties are allowed to bear their own costs."

8. In view of the said judgment of the Division Bench, which, according to the learned counsel for the respondents, has become final, as no further appeal was filed against the said judgment, the issue now raised by the petitioner in this writ petition cannot be viewed from any different angle than the one discussed and decided by the Division Bench of this Court in the judgment cited supra.

9. However, the learned counsel for the petitioner would rely upon the judgment of the Hon'ble Apex Court exactly on the similar issue against the very same respondent Bank dated 31.08.2007 made in Civil Appeal No.3989/2007, wherein a direction given by the Division Bench of this Court, for a person, who had completed 14 years 9 months and 17 days of service to give pension had been questioned by the Bank before the Hon'ble Apex Court. The Hon'ble Supreme Court, after having considered the issue involved therein, though had ultimately dismissed the SLP filed by the Bank, however, had given the reasons in the following lines:

"14. It is equally well settled that in interpreting a statute, effort should be made to give effect to each and every word used by the Legislature. The Courts always presume that the Legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have



effect. A construction which attributes redundancy to the legislature will not be accepted except for compelling reasons such as obvious drafting errors...

15. It is well settled that literal interpretation should be given to a statute if the same does not lead to an absurdity.

16. In any event, it is not a case where we should exercise our discretionary jurisdiction under Article 136 of the Constitution of India.

In ONGC Ltd., v. Sendhabhai Vastram Patel and Ors. MANU/SC/0471/2005/JT2005(7)SC465, this Court held:

It is now well settled that the High Courts and the Supreme Court while exercising their equity jurisdiction under Articles 226 and 32 of the Constitution as also Article 136 thereof may not exercise the same in appropriate cases. While exercising such jurisdiction, the superior courts in India even may not strike down a wrong order only because it would be lawful to do so. A discretionary relief may be refused to be extended to the appellant in a given case although the Court may find the same to be justified in law.

18. For the reasons, aforementioned, no case has been made out for interference of the impugned judgment. The appeal is dismissed with costs. Counsel's fee assessed at Rs.25000/-."

10. This Court has considered the said rival submissions made by both sides.

11. Insofar as the present issue is concerned, the petitioner also had opted for Voluntary Retirement Scheme and he got relieved from the respondent Bank on 28.02.2001. At that time, admittedly, the petitioner had the qualifying service of only 14 years, 11 months and 19 days and according to the petitioner, he was short of only 11 days to complete the 15 years minimum service. Admittedly, the petitioner gave VRS and the same was accepted in 2001. Subsequently, the amendment to Regulation 18 came in on 17.07.2003. There is a Pension Settlement Scheme between the Employees Association and the Bank on 27.04.2010, pursuant to which, the Scheme was announced on 21.08.2010. According to which, the persons, like petitioner can apply for pension under the Scheme, provided, if he worked till 29.09.1995 and retired thereafter ie., before the date of the settlement ie., 27.04.2010. No doubt, the petitioner had retired only in 2001. Therefore, he worked on 29.09.1995. Therefore, he would be eligible to make an application. Accordingly, he applied. However, Clause IV of the said Scheme dated 21.08.2010, reads thus:

"(4) Employees, who ceased to be in service on or before 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."

12. Therefore, those who had retired on voluntary retirement basis after rendering service for a minimum period of 15 years alone shall be eligible to exercise the option to join the pension scheme. Here, in this case, the petitioner completed only 14 years 11 months and 19 days. Therefore, if at all the petitioner has to fulfill the requirement of 15 years service, he has to come only under Regulation 18 of the Regulations, which alone gives power to the Bank to calculate the broken period of service. However, since the subsequent proviso was inserted in 2003 itself, wherein, the calculation of broken service, as provided under Regulation 18, has been made applicable only to other broken service, except for an employee to make him eligible for pension. The judgment of the Division Bench, as rightly referred by the learned counsel for the respondent Bank cited supra ie., in W.P.Nos.13206 and 13207 of 2002 alone, would be applicable to the present facts of the case, as in the said judgment also, a person who gave Voluntary Retirement, having a service of 14 years 11 months and 28 days had been denied the benefit of pension, because of shortage of 2 days for the minimum required pensionable service of 15 years. For such rejection, justification given by the bank was accepted and the reasoning had been given at Paragraph 9 of the said judgment, which has already been extracted hereinabove.

13. In view of the said judgment of the Division Bench cited supra, since the petitioner is also exactly placed as that of the two petitioners in that case, the present relief sought for by the petitioner, in the opinion of this Court, cannot be granted. In view of the same, the writ petition is liable to be dismissed. Accordingly, the same is dismissed. No costs.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To

1.The Chairman and Managing Director,
MD's Secretariat,
Indian Bank, Head Office,
66 Rajaji Salai, Chennai.

2.The Chief Manager,
Indian Bank,
HRM Department
Pension Cell,
66 Rajaji Salai,
Chennai.



3.The General Manager (HRM)
Indian Bank, Head Office,
66 Rajaji Salai
Chennai.

4.The Regional Manager,
Indian Bank,
Personal Department
Regional office,
Tirunelveli.

5.The Manager,
Indian Bank,
Meenakshipuram,
Nagercoil.

+1cc to M/s. PALA RAMASAMY Advocate in SR. No.7788

+1cc to M/s.K.MALATHI Advocate in SR. No.8163

RR

JS/MR.KKR/SAR.4/24.7.2017/7P-8C

W.P. (MD) No.14356 of 2011
13.02.2017