THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Writ Petition No.17854 of 2006

ORDER:

In this writ petition, under Article 226 of the Constitution of India, which is directed against the action of the respondents in denying and declining to add five years to the petitioner's qualifying service for payment of superannuation pension in accordance with Regulation 26 of the Syndicate Bank (Employees) Pension Regulations,1995, the petitioner seeks a consequential direction to the respondents to re-compute the qualifying length of service by duly adding five years to the actual/qualifying service rendered by him and revise and re-fix his pensionary benefits and to pay the arrears of the pensionary benefits, with interest at 12%per annum, after such revision and re-fixation of the pensionary benefits and award costs.

2. The case of the petitioner and the submissions made on his behalf, in brief, are as follows:

The petitioner is a Post Graduate in applied Economics. He was recruited as a Lecturer in Economics in V.S.M. College, Ramachandrapuram, East Godavari District, and his recruitment process as Lecturer in the said college was regulated by the State, which provides grant-in-aid to the said college. He served as a Lecturer in Economics in the said college between July, 1966 to June, 1972. His appointment was pursuant to a selection, which has been approved by the Andhra University, Visakhapatnam, as well as the State Government. The Syndicate Bank is a Nationalized Bank. It is a completely owned undertaking of the Government of India and is a State as defined in Article 12 of the Constitution of India. The said Bank has issued an employment notification, on 10.11.1971, inviting applications from suitable persons for employment as Officers in the (i) Personnel Department; (ii) Industrial Relations Department; and, (iii) Training Colleges. The prescribed age qualification for recruitment to the said posts as on 01.01.1972 is that the candidates should have completed 30 years and should not have completed 35 years of age. Apart from the academic qualification, a minimum of five years experience as a Teacher in a recognized University in the prescribed subjects is also one of the qualifications. The upper age limit for Direct Recruitment as on 01.01.1972 in the Syndicate Bank was standing at 25 years. The Syndicate Bank has allowed and permitted candidates beyond normally permissible upper age limit to be recruited in view of the fact that the recruitment drive notified in November, 1971, is for specialized departments of the Bank. The petitioner responded to the notification as he possessed both the academic qualification and experience of five years. Accordingly, the petitioner was recruited as a faculty member in the cadre of Assistant Senior Officer; and, the petitioner joined the services of the 1st respondent, on 10.07.1972, at the Training College, Manipal. He rendered continuous meritorious service in the Bank. And, while serving as a Chief Officer (Middle Management Grade Scale III) at the Regional Office of the 1st respondent Bank at Kadapa in Andhra Pradesh, he retired from service, on 31st October, 2000, on attaining the age of superannuation of 60 years. Accordingly, he was relieved from duties on 31st October, 2000 at Kadapa, and the Bank has placed on record it's appreciation of the services rendered by the petitioner over a period of 28 years continuously to it. The Syndicate Bank Employees Pension Regulations, 1995, (hereinafter, 'Pension Regulations') provide for payment of pension for the employees of the Bank. The said Pension Regulations came into force with effect from 29.09.1995. The same were framed after duly obtaining the previous sanction of the Central Government and after consultation with the Reserve Bank of India and after duly exercising the power available as per the provisions of the Banking Companies Acquisition and Process of Undertakings Act, 1970. As per the said regulations, all the existing employees of the Syndicate Bank were required to exercise their option for being covered by the

Pension Regulations. Accordingly, the petitioner opted for the pension scheme and his option for being covered by the Pension Regulations has been accepted by the 1st respondent Bank. Accordingly, the petitioner has been sanctioned the pensionary benefits in terms of the Pension Regulations by an order, dated 02.11.2000, of the Bank. He is being currently paid the revised pension in terms of the order of the Bank passed on 01.10.2005. He made a representation, dated 17.12.2005, bringing to the notice of the 1st respondent Bank that he is entitled for addition of five years to his qualifying service for arriving at the length of service for the purpose of calculation of pension entitlement. The said representation was considered and rejected on the ground that the case of the petitioner for addition of five years does not fall within the ambit of Regulation 26 of the Pension Regulations. The said rejection is unjust and contrary to the scheme of Pension Regulations. Payment of pension is no longer treated or considered an act of bounty by the employer. Under the Constitution of India, right to public assistance in old age has been recognized as one of the predominant State Policies as per Article 41 of the Constitution of India. As per the definitions of the expressions 'retirement', 'date of retirement', 'qualifying service', 'commencement of qualifying service' and the provision of Regulation 26 of the Pension Regulations, the petitioner is entitled to the benefit of addition of five years to his qualifying service. At the time of his recruitment in 1972, the Pension Regulations were not available at all. Hence, his case falls within the sweep of the main part of Regulation 26. Whereas the last two provisos contained therein deal with the prospects of candidates recruited after 29th September 1995, the date on which the Pension Regulations came into force in the 1st respondent Bank. Without appreciating the basic concept, the case and the claim of the petitioner were rejected arbitrarily, illegally and unjustly. Therefore, questioning the said action of the respondents, the present writ petition is filed.

3. The averments in the counter affidavit of the Deputy General Manager of the Bank, filed on behalf of the respondents 1 and 2, and the submissions made on behalf of the said respondents, in brief, are as follows:

The petitioner, while in service, has opted for pension and he is governed by Syndicate Bank Employees Pension Regulations, 1995 is true. The petitioner is being paid revised pension in terms of the order, dated 01.10.2005, is true. The petitioner is entitled for addition of five years to his qualifying service for the purpose of calculating pension entitlement is totally untenable and incorrect. The respondents never offered any additional weightage under Regulation 26 of the Pension Regulations to the petitioner at the time of his initial appointment order and at the times of subsequent promotions. The petitioner is not entitled to claim addition of additional service. The petitioner cannot assume that he is entitled to addition of five years to his qualifying service. The concession under Section 26 of the Pension Regulations will be applicable if the recruitment rules in respect of a particular post specify that the benefits under Regulation 26 will be applicable to the said post. Unless such a stipulation is there in respect of a particular post, the person appointed in a post cannot claim the benefits and concessions available under Regulation 26 of the Pension Regulations. Therefore, the rejection of the claim of the petitioner for extending the benefit under Regulation 26 of the Pension Regulations is correct and valid. The contra allegations in the affidavit of the petitioner filed in support of the petition are false. His contentions are irrelevant. There is no substance in the contentions that once he opts to be bound by the Pension Regulations, he is entitled to get the benefits of extended service. If only at the time of appointment, any provision is made in the appointment order, an employee can claim the concession under Regulation 26. The basis for the claim being untenable, the claim is liable for rejection.

4. The averments in the counter affidavit of the Deputy Secretary, Department of Financial Services, Ministry of Finance, filed on behalf of the 3rd respondent, in brief, are as follows:

As a part of the VI Bipartite Settlement between the management represented by Indian Banks Association and the Workmen/Unions/Officers Associations, pension scheme was introduced, on 29.10.1993, in Public Sector Banks (PSBs) including Syndicate Bank (excluding SBI). As a sequel to this, Pension Regulations were notified, on 29.09.1995, by the Board of Directors of the Public Sector Banks including Syndicate Bank (excluding SBI) in exercise of the powers conferred by clause (f) of sub-section (2) of Section 19 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, after consultation with RBI and with the previous sanction of the Central Government. On the advice of the Ministry of Law and in terms of the notified Regulations, serving employees and the employees retired from 01.01.1986 till the notified date of the pension regulations were required to exercise option in writing within 120 days from the notified date, i.e., 29.09.1995 to opt for the pension in lieu of Contributory Provident Fund (CPF). The petitioner had also exercised the option for pension within the frame work of the provisions of the Pension Regulations. Thus, the petitioner exercised option for pension and determination of pension in terms of Pension Regulations, 1995. The provisos appended to Regulation 26 of the Pension Regulations reflect that an employee shall be eligible for addition of five years service to his qualifying service under Regulation 26 subject to the provisos of the aforesaid Regulation. All the three requirements mandated in the provisos need to be satisfied as is evident from Regulation 26; and, if any one of those requirements is not fulfilled, the employee is not eligible for addition of any number of years to his qualifying service. It is evident from the above Regulation that in the case of the petitioner, the provision relating to 'the qualifying service not less than 10 years' is satisfied; but, the other two provisions; viz., one which states 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 and another provision that the recruitment rules in respect of any service or post which carries the benefit of this regulation should be made with the approval of the Central Government are not satisfied. Since the said two requirements are not satisfied, the petitioner is not eligible for addition of any years to his qualifying service as envisaged in Regulation 26 of the Pension Regulations, 1995. The contention of the petitioner that his case falls within the sweep of main part of Regulation 26 is untenable. The contention of the petitioner that the Regulation must be read in isolation from the provisos is bereft of any logical reasons and argument. The position was clarified in the Central Government of India letter No.4/8/16/98-IR, dated 14.10.1998, addressed to the Chief Executives of all the PSBs, which clearly states that such benefit does not extend to the existing officers recruited in old scheme/procedure. Hence, the writ petition is liable for dismissal.

5. From a careful consideration of the pleadings and submissions, the following aspects emerge for consideration:

5.1 The petitioner was duly selected and appointed as a Lecturer in Economics in V.S.M. Degree College, Ramachandrapuram. His appointment was pursuant to a selection, which has been approved by the Andhra University, Visakhapatnam, as well as the State Government. He had applied for suitable post in Syndicate Bank in response to the Notification, dated 10.11.1971, inviting applications from suitable persons for employment as officers in the (i) Personnel Department; (ii) Industrial Relations Department; and, (iii) Training Colleges. The prescribed age qualification for recruitment to the said posts as on 01.01.1972 is that the candidates should have completed 30 years and should not have completed 35 years of age. Apart from the academic qualification, a minimum of five years experience as a Teacher in a recognized University in the prescribed subjects is also one of the qualifications. The upper age limit for Direct Recruitment as on 01.01.1972 in the Syndicate Bank was standing at 25 years. The Syndicate Bank has allowed and permitted candidates beyond normally permissible upper age limit to be recruited in view of the fact that the recruitment drive notified in November, 1971, is for specialized departments of the Bank. The petitioner responded to the notification as he possessed both the academic qualification and experience of five years. Accordingly, the petitioner was recruited as a faculty member in the cadre of Assistant Senior Officer; and, the petitioner joined the services of the 1st respondent, on 10.07.1972, at the Training College, Manipal. He rendered continuous meritorious service in the Bank. And, while serving as a Chief Officer (Middle Management Grade Scale III) at the Regional Office of the 1st respondent Bank at Kadapa in Andhra Pradesh, he retired from service, on 31st October, 2000, on attaining the age of superannuation of 60 years. Accordingly, he was relieved from duties on 31st October, 2000 at Kadapa. Thus, he has rendered a service over a period of 28 years continuously. Syndicate Bank Employees Pension Regulations, 1995, (Pension Regulations) came into force with effect from 29.09.1995. As per the Pension Regulations, all the existing employees of the Syndicate Bank are required to exercise their option for being covered by the Pension Regulations. Accordingly, the petitioner opted for the pension scheme and his option for being covered by the pension Regulations has been accepted by the 1st respondent Bank. Accordingly, the petitioner has been sanctioned the pensionary benefits in terms of the Pension Regulations by order dated 02.11.2000 of the Bank. He is being currently paid the revised pension in terms of the order of the Bank passed on 01.10.2005. Be that as it may.

5.2 The petitioner made a representation, dated 17.12.2005, to the Bank stating that he is entitled for addition of five years to his qualifying service for the purpose of calculation of pension entitlement by the Bank. However, the said representation was considered and rejected.

5.3 The main contention of the petitioner is that his case falls within the sweep of the main part of Regulation 26 of the Pension Regulations. He further submits that, after he has completed 31 years of age, he was recruited into the service of the Bank, that is, to the post for which a post-graduate specialized qualification together with experience is essential and that he possessed both the qualifications viz., Post graduate Degree in Applied Economics and required years of teaching experience in the said subject and that he was recruited in the regular selection. He rendered 28 years service in the Bank. At the time of his recruitment in 1972, the Pension Regulations were not available at all and hence, his case falls within the sweep of the main part of the Regulations and the provisos appended to the said Regulations, which deal with prospects of candidates recruited after 29.09.1995, the date on which the Pension Regulations came into force, have no application.

5.4 Per contra, the case of the respondents is that the main part of the said Regulation cannot be read in isolation and that the entire Regulation has to be read harmoniously and that though the petitioner satisfied the requirements related to qualifying service of 'not less than 10 years', the other two requirements, namely, (i) the provision, which states that the 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; and, (ii) the further provision, which states 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, are not satisfied.

6. Therefore, the short question involved in this writ petition is with regard to the application of the provision of Regulation 26 of Pension Regulations to the case of the petitioner. Therefore, it is necessary to first refer to the said Regulation, which reads as under:

> "26. Addition to qualifying service in special circumstances:- An employee shall be eligible to add to his service qualifying or 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—
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> (a) For which post-graduate research, or specialists qualification or experience in scientific, technological or professional fields, is essential; and
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> (b) To which candidates of age exceeding the upper age limit specified for direct recruitment are normally recruited;
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> (c) To which the candidate was given age relaxation over and above the maximum age limit fixed by the Bank on account of his possessing higher qualifications or experience;
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> *Provided* that this concession shall not be admissible to any employee unless his actual qualifying service at the time he quits the service in the Bank is not less than ten years;
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> *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 benefits of this Regulation;
>
> *Provided* also that the recruitment rules in respect of any service or post which carried the benefit of this Regulation shall be made with the approval of the Central Government."

7. The petitioner's recruitment was in the year 1972. The Pension Regulations came into force with effect from 29.09.1995. Accordingly, the petitioner opted for the pension scheme and his option for being covered by the Pension Regulations has been accepted by the 1st respondent Bank.

Accordingly, the petitioner has been sanctioned the pensionary benefits in terms of the Pension Regulations by order, dated 02.11.2000, of the Bank. He is being currently paid the revised pension in terms of the order of the Bank passed on 01.10.2005. In the rejection order, it was stated that the Government of India, Ministry of Finance, vide Circular letter, dated 06.08.1996, clarified that none of the existing employees are eligible for taking benefit of Regulation No.26 and only such employees who will be recruited by the Bank in future subject to the approval of recruitment rules for the post by the Government of India shall only be eligible to avail the benefit of these provisions and that since the petitioner's recruitment does not fall under the said category, he is not eligible for any additional qualifying service other than the service rendered by him in the Bank. It is not stated in the rejection order that the recruitment of the petitioner is without the approval of the Central Government. Further, the Regulations were not in force by the year of recruitment of the petitioner. However, the Regulations were made applicable to all the employees who were in service on the notified date. When once the Regulations were made applicable to all the employees who were in service on the notified date and the option exercised by the petitioner for being covered by the Pension Regulations was accepted by the Bank, the contention that the petitioner's recruitment was made without the approval of the Central Government cannot be countenanced. The petitioner was retired from service and was relieved on 31st October 2000. The Regulation 26 provides for addition of qualifying service in certain special circumstances. Further, the petitioner was appointed after giving age relaxation over and above the maximum age limit of 25 years fixed by the Bank on account of his possessing higher qualifications and experience. Thus, in the case of the petitioner, the upper age limit for Direct Recruitment which was 25 years was relaxed. Hence, the petitioner claims that he is entitled for an addition of five years to his actual length of service since the petitioner was appointed after giving age relaxation on account of his possessing higher required qualifications and previous experience. Since the petitioner was appointed giving age relaxation, sub-clause(c) of Regulation 26, directly applies to the case of the petitioner. Be it also noted that a similar question came up before the High Court of Madras, in the case of Thirikooda Rajappan P. v. Chairman and Managing Director, Vijaya Bank, Head Office, Bangalore and others[1]. The facts and the findings of the said case, which are relevant and which need a brief mention are as follows: 'The upper age limit for Direct Recruitment as Junior Level Officer was 25. Only by relaxing the upper age limit, the petitioner therein was appointed since he has ten years of experience in some other commercial bank on the date of his selection. Therefore, he was appointed by giving age relaxation. Hence, it was held that sub-clause (C) of Regulation 26 directly applies to the petitioner therein. Therefore, the petitioner therein was held eligible for additional qualifying service as provided under Regulation 26.' Reverting to the facts of the case on hand, it is to be noted that prior to 1995, there were no rules providing for such pensionary benefits and when the petitioner entered into service, there was no pension scheme at all. Therefore, the provisos relied upon by the respondents would be redundant in so far as the employees who were in service on the date when the Pension Regulations came into force. At the most, the provisos would be applicable only to the employees who were subsequently employed. The Regulation 26 conferred the benefit for the first time in the year 1995; a maximum of five years of qualifying service is to be added for certain categories of persons. The benefit conferred by the main Regulation cannot be nullified by the proviso, in the well considered view of this Court, more particularly, in the case of the employees like the petitioner who were already in service by the time the Regulations came into force.

[1] 2005-1-LLJ 192

8. On the above analysis, this Court finds that there is acceptable merit in the contentions of the petitioner that he is entitled to the benefits conferred under the Regulation 26 of Pension Regulations and that the rejection order is not legally sustainable and that the Writ Petition deserves to be allowed.

9. Resultantly, the Writ Petition is allowed. Needless to state that the respondents shall re-compute the qualifying length of service of the petitioner by adding the necessary number of years to the actual service rendered by him and accordingly revise and re-fix the pensionary benefits payable to him and pay the arrears of pension with interest at 6% per annum simple from the date of the writ petition, i.e., 25.08.2006. The required exercise in this regard shall be completed by the respondents as expeditiously as possible and preferably within two months from the date of receipt of a copy of this order. There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

M. SEETHARAMA MURTI, J

06th April, 2017
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