

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CWP No.8188-1996 (O&M)  
Date of decision: 14.02.2017

Sohan Lal (Died) through its LR Bimla Devi

.....Petitioner

versus

State Bank of India and others

.....Respondents

**CORAM: Hon'ble Mr. Justice Kuldip Singh**

Present: Mr. Gurcharan Dass, Advocate for the petitioner  
None for the respondents

- 1. Whether Reporters of Local Newspapers may be allowed to see the judgment ? **yes***
- 2. To be referred to the Reporters or not ? **yes***
- 3. Whether the judgment should be reported in the Digest? **yes***

**Kuldip Singh, J.**

Petitioner Sohan Lal Puggal, now deceased and represented by his legal heirs, joined military service on 25.11.1947 and served there upto 25.11.1970. Thereafter, he was appointed on daily wages in the respondent State Bank of India, Thistle Branch, Ferozepur Cantt as a temporary guard/messenger and worked there from August 1970 to August 1971 i.e. for 163 days on daily wages. Thereafter, the petitioner again worked from August 1971 to 8.12.1972 (for 359 days) as such, in State Bank of India, Guruhar Sahai Branch, District Ferozepur. Thereafter, the petitioner was appointed on regular basis as Guard on 9.12.1972 in the State Bank of India, Guruhar Sahai Branch and was confirmed on 9.6.1973. He was allotted membership number of Provident Fund on 9.6.1973 and allotted Index No.1563793 and

was also admitted to pension fund on 9.6.1973 against the said allotted index number. Petitioner worked at Guruhar Sahai Branch from 9.12.1972 to 15.6.1988 as a bank guard. His pension was deducted @ Rs.11.60 from November 1973 onwards and @ Rs.70.50 per month from November 1976 onwards and then @ Rs.73/- from June 1988 and then @ Rs.162/- from December 1990 as per certificate issued by the State Bank of India, Arniwala Annexure P5. Similar certificate Annexure P6 was issued by the State Bank of India, Jhoke Morhe, District Ferozepur Branch shows that pension fund was deduced from the salary of the petitioner @ Rs.162/- per month from January 1991 onwards and @ Rs.180/- from the month of November 1992 onwards. Petitioner retired from service on 30.11.1992. After his retirement the amount of Rs.58,182/- was refunded on account of the provident fund. Petitioner applied for grant of pension. Petitioner served the department from 9.12.1972 to 30.11.1992 on regular basis i.e. for 19 years 11 months and 22 days. He also served the respondent Bank on temporary basis for one year 5 months and 7 days. His period of service on temporary basis has not been counted by the respondent and pension to him has been declined vide impugned order dated 15.2.1996 (Annexure P9).

In the written statement, the respondents have admitted that the petitioner worked as daily wager from August 1970 to August 1971 for 163 days and from August 1971 to December 1972 for 359 days. It was also stated that the said period cannot be computed as qualifying period for the pensioner. Service of 20 years is required under State Bank of India Employees Pension Fund Rules (for short, 'the Rules'). It was stated that only permanent confirmed service qualify for the pension service under Rule 7 of the Rules. It is further stated that the petitioner was confirmed

after attaining the age of 38 years and was not even eligible to become member of the Fund in view of Rule 8 of the Rules. In case of pension fund, there is in fact no contribution made by the employee as in case of provident fund but the employer under the scheme of the pension fund makes a notional credit accounting entry of 8.33% of the basic pay towards salary and debit is made to the salary account by showing a corresponding notional credit entry to the consolidated pension fund under the scheme. It was under these notional entries whereby the debit, as claimed by the petitioner have been shown debited to the salary account of the petitioner which was done inadvertently as the petitioner was not eligible to be member of pension fund when he joined the permanent service of the bank. It was further claimed that as per Rule 20, service beyond 58 years is not to be reckoned as service for pension. Therefore, the petitioner who was confirmed in the Bank's service on 9.6.1973, had only about 18 years of qualifying service. Whereas, as per Rule 22 a member shall be entitled to pension on retirement only after having completed 20 years of pensionable service provided that he has attained the age of 58 years.

I have heard learned counsel for the parties and have also carefully gone through the file.

The admitted position is that the petitioner had served on daily wages continuously from August 1970 to 8.12.1972 i.e. for one year 5 months and 7 days. The respondents are not computing the said period as qualifying for pension. It was stated that the said notional credit entry as claimed in the written statement was wrongly made. The respondents have relied upon pension fund rules to deny the pension. It is necessary to reproduce Rule 7, 8 and 20 of the Rules as under:-

*7. Save as provided in regulation 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-*

*(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.*

*8. Save as provided in regulation 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 specifically declared by the Bank to be non-pensionable.*

*20. Save as provided in rule 21, service rendered by an employee before the date of his admission to the fund and after the date of completion by him of 58 years of age shall not be reckoned as service for pension provided that if on the date of completion of the age of 58 years the employee has to his credit any ordinary or privilege leave the period of such leave shall be reckoned as service for pension to such extent of the leave as is availed of or to such extent of the leave for which service is rendered.*

I am of the view that it is established by long history of case law that temporary or work charge service followed by a regular service is to be computed as qualifying service for pension. Therefore, service of one

year 5 months and 7 days rendered by the petitioner as a daily wager as a guard is to be computed as a qualifying service for grant of pension. Once, the petitioner joined service and there is a pension scheme and he was in fact allotted a number and the pension was regularly deducted from his salary, then, now the respondents cannot back track to take the shelter of Rule 7, 8 and 20 to say that the pension was wrongly deducted. While interpreting Rule 7, this Court is of the view that the temporary service followed by regular service is to be qualified for pension and Rule 7 is to be accordingly ignored being contrary to Article 14 of the Constitution of India. Rule 8 prescribing that nobody can become member of the pension fund if he is over 38 years is also found to be illegal and accordingly clause C imposing such condition is hereby quashed being contrary to Article 14 of the Constitution of India. The pension was regularly deducted from the salary of the petitioner. Rule 20 shows that it is an arbitrary Rule, whereby for the purpose of pension service upto age of 58 years is to be computed. In case of class IV employee, the age of retirement is 60 years and therefore, Rule 20 so far as it imposes the condition that for the purpose of pension, service upto the age of 58 years is to be computed, is also found to be illegal and is quashed being contrary to Article 14 of the Constitution of India and it is held that the service upto the date of retirement is to be computed. Rule 22 of the said Rules provide that a qualifying period of 20 years is required to qualify for pension. Here the qualifying service of the petitioner is from August 1970 to 30.11.1992, which comes to more than 20 years.

Consequently, the impugned order dated 15.2.1996 (Annexure P9), whereby the pension was denied to petitioner, is hereby quashed and it is held that the petitioner, now represented by his legal heirs, is entitled to

pension from the date of his retirement. The arrears are payable along with interest @ 9% per annum from the date of retirement till date of payment. Consequential benefits shall also follow. The petition is accordingly allowed.

14.02.2017  
gk

(Kuldip Singh)  
Judge

Whether speaking/ reasoned:  
Whether Reportable:

Yes  
Yes