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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 3738/2017 & CM. No. 16463/2017**

G. RAJ KUMAR

..... Petitioner

Through: Mr.N.C.Gupta, Mr.Deepak Singh, Advs.

versus

PUNJAB NATIONAL BANK

..... Respondent

Through: Mr. R.K.Gautam, Mr.Anant Gautam,
Advs.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

% **02.05.2017**

CM. No. 16463/2017

Exemption allowed subject to all just exceptions.

Application is disposed of.

W.P.(C) 3738/2017

1. The present petition has been filed by the petitioner with the following prayers:-

“(i) Issue a writ of mandamus or any other appropriate writ/and or order or direction, to the respondent to consider the petitioner’s past service period rendered in Federal Bank Ltd. For the purpose of pension eligibility.

(ii) Issue the writ of mandamus or any other appropriate writ and/or order or direction, to the respondent to allow 5 years qualifying service period as admissible to specialist cadre and calculate the petition eligibility accordingly retrospectively.

(iii) Pass any other and further order (s) which may be deemed to be just, and proper in favour of the petitioner in the light of the facts and circumstances of the case.”

2. From the above, it is noted that the petitioner is seeking twofold

reliefs (i) for counting of his past service in Federal Bank Ltd. for the purpose of pension. (ii) that he may be allowed the benefit of 5 years qualifying service as admissible to specialist cadre for the purpose of pension.

3. The facts as noted from the writ petition are that the petitioner joined the Federal Bank on 5th March, 1976. He while working in Federal Bank, was appointed in Erstwhile Nedungadi Bank Ltd. (eNBL) as Assistant General Manager and joined the post on 6th November, 1995. It is the case of the petitioner that he was working in specialist cadre of foreign exchange. On 1st February, 2003, eNBL was merged with the respondent/Punjab National Bank. It is averred as per clause 8.1 of the scheme, all employees of eNBL were treated at par for all purposes except for seniority (for promotion). There is no dispute that on 29th September, 1995 PNB Employees Pension Regulation, 1995 were introduced. It is averred that the pension scheme was also introduced in eNBL on 2nd February, 1996. The petitioner superannuated from the respondent bank on 31st May, 2015. It is conceded position that the service put in by the petitioner in eNBL effective from 6th November, 1995 was counted for the purpose of pension.

4. It is the submission of Mr.N.C.Gupta, learned counsel for the petitioner that the Federal Bank being a recognized Bank by the Reserve Bank of India, the service put in by the petitioner in Federal Bank need to be counted. He states that the total years of service put in by the petitioner in RBI regulated, banks is around 39 years. He also state there is no Rule, Regulation which denies the benefit of

service put in by an officer in a private bank controlled by the RBI. In so far as the relief with respect to benefit of 5 years is concerned, it is his submission that the petitioner had a post graduate degree and was appointed as Assistant General Manager in Specialist Cadre of Foreign exchange. He also states, he was posted at Dubai, where he was working in foreign exchange department. He states the petitioner's case is covered under Regulation 26 of the Pension Regulations, which 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 port 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 qualifications 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.”

5. On the other hand, Mr.Rajesh Gautam, learned counsel for the respondent bank would submit that in so far as the relief (i) above is concerned, the petitioner is not entitled to get the service put in by him in Federal Bank counted for the purpose of pension as there is no stipulation in the pension rules which contemplate so. He would state the only situation contemplated under the pension regulations is counting of past service in a bank which gets merged or amalgamated with any other bank, which is not the case here; inasmuch as, Federal Bank was not amalgamated with PNB. He states, the benefit of service put in by the petitioner in eNBL bank has been accorded. That apart, it is his submission that the Federal Bank is a private bank and moreover, the petitioner had resigned from the Federal Bank for taking appointment in eNBL. The said service cannot be counted for any purpose.

6. Insofar as the plea of five years qualifying service is concerned, it is his submission that the case of the petitioner is not covered under Regulation 26. According to him, without going into the issue whether the petitioner possess specialised qualification, the petitioner has not placed anything on record to show that the recruitment rules governing the appointment of Asstt. General Manager in eNBL provided that the benefit of concession of five years shall be admissible to the petitioner. He also states, even the advertisement has not been placed in support of such a contention. That apart, it is his submission Regulation 26 states the benefit of 5 years qualifying service can be given if the recruitment rules are made with the approval of the Central Government, and the same stipulates such concession.

7. Having heard the learned counsel for the parties, in so far as the relief (i) is concerned, a perusal of appointment letter, issued to the petitioner when he was appointed in eNBL reveals that the same was a fresh appointment as Asstt. General Manager. There is no stipulation in the appointment letter that the service put in by the petitioner in Federal Bank shall be counted for all purposes in eNBL. The terms of appointment have been accepted without demur.

8. The plea of Mr.Gautam in the absence of Regulation / rules stipulating such benefit, the period of service in Federal Bank cannot be counted, is appealing. That apart, it is conceded position that the petitioner had resigned from the Federal Bank for seeking appointment in eNBL which entails forfeiture of past service.

9. In so far as the plea of Mr.Gupta seeking benefit of 5 years as

qualifying service is concerned, the Regulation 26, stipulates the benefit shall be given, if the RR's stipulates so, and the RR's have been framed with the approval of the Central Government. Further, the RR's of eNBL have not been placed on record nor any averment has been made in the writ petition in that regard. In the absence of any averment in the writ petition that the RR's to the post of Asstt. General Manager in eNBL provided for such concession and the same have been framed with the approval of the Central Government, I am afraid the plea as raised by Mr.Gupta cannot be accepted. I note for the benefit that this issue had come for consideration before this Court in WP(C) No.7775/2013 decided on 29th September, 2015, wherein this Court in para 15 has held as under:-

“15) Similar is the reasoning given by the High Court in the case of H.S.Sondhi (supra) with which reasoning I agree, wherein, the High Court has rightly held, the benefits of Regulation 26 can only be given if the recruitment rules in respect of any service or post carries the benefit of Regulation and made with the approval of the Central Government.”

11. The said judgment was taken in appeal before the Division Bench in LPA No.886/2015 decided on October 5, 2016 wherein in para 8, it has been held as under:-

“8) The aforesaid quotation refers to Regulation 26, which was extracted therein, interpreting the said Regulation and the requirements stipulated in the second proviso, it has been held that the concession shall be admissible only if the recruitment rules in respect of the said service or post contain specific provision that the service or post is one which carries the benefit of this regulation. It has been held that the said stipulation in the service or post is mandatory and must be satisfied. Accordingly, Regulation 26 would

only apply to employees inducted after pension regulations were enforced by the bank and when the service or post carries the benefit, and not when there is no specific stipulation. This is a necessary corollary as the second proviso definitively stipulates that the recruitment rules must make a provision for grant of the benefit of additional qualifying service, otherwise the benefit cannot be granted. Appointments made prior to the enforcement of the pension Regulations would not have a stipulation to the said effect, for then the service or posts were not pensionable. As recorded above, a similar view has been taken by the High Courts of Gujarat, Punjab and Haryana, and Karnataka.”

12. In view of the aforesaid position, I do not find any merit in the petition and the same is dismissed.

V. KAMESWAR RAO, J

MAY 02, 2017

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