IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.437 of 2016

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1. Krishna Thakur Son of Late Jadu Thakur resident of - 47/Krishnayatan, Nagina Nagar, Khagaul Road, Phulwari Sarif (Near Thana Golumber), P.O. Phulwari Sarif, P.S. Phulwari Sarif, District - Patna 801505

.... Petitioner/s

Versus

1. Punjab National Bank through its Chairman and Managing Director, 7, Bhikhaiji Cama Place, New Delhi - 110607
2. Chairman and Managing Director, Punjab National Bank, 7, Bhikhaiji Cama Place, New Delhi - 110607
3. General Manager, P.F. & Pension Fund Division, Punjab Nation Bank, Rajendra Bhawan, 3rd Floor, Rajendra Place, New Delhi - 110008
4. Deputy General Manager/Chief Manager (Pension), Punjab National Bank, Rajendra Bhawan, 3rd Floor, Rajendra Place, New Delhi - 110008
5. Assistant General Manager (Personnel), (Sel & Trg) Division, H.O., Punjab National Nank, New Delhi
6. Assistant General Manager, P.F. & Pension Fund Division, Punjab National Bank, Rajendra Bhawan, 3rd Floor, Rajendra Place, New Delhi - 110008
7. First Appellate Authority/General Manager, Punjab National Bank, Management Audit & Review Division, 2nd Floor, Rajendra Bhawan, Rajendra Place, New Delhi - 110008
8. Central Public Information officer/Deputy General Manager, Punjab National Bank, Management Audit & Review Division, 2nd Floor, Rajendra Bhawan, Rajendra Place, New Delhi - 110008
9. Circle Head, Punjab National Bank, Circle office, 2nd Floor, Chanakya Tower, 'R' Block, Patna 800001

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Gautam Saha, Adv.

For the Respondent/s : Mr. Prashant Vedasen, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 06-04-2018

Heard Mr. Gautam Saha, learned counsel for the petitioner and Mr. Prashant Vedasen learned counsel for the Punjab National Bank.

A rather simple issue has been made complicated and the reasons are entirely attributable to the petitioner for even while claiming benefit of Regulation, 26 of the Bank Employees Pension Regulations, 1995 (hereinafter referred to as 'the Regulation) an unnecessary issue of counting of past service rendered by the petitioner with the Reserve Bank of India is introduced and which has given a reason for the respondent Bank to deviate from the main issue and to deny him the benefit.

Regulation 26 of 'the Regulations' reads 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 post 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."

A plain reading of the stipulations underlying Regulation 26 would confirm that it has got nothing to do with the past service rendered by an employee. The stipulations are self eloquent and an employee who is falling short on his qualifying service for superannuation pension has been given a benefit to add to his actual service, additional service in 3 forms, namely:

(a) The actual period not exceeding ¼ of the length of service; or

(b) The actual period by which his age at the time of recruitment exceeded the upper age limit prescribed by the Bank for direct recruitment; or

(c) A period of 5 years;

whichever is less.

It is a matter of record that the petitioner has served the respondent Bank for a period of 26 years approximately and thus 1/4th thereof would be more than 6 years as per the mode prescribed at Clause (a) above.

In so far as the provision at Clause (b) is concerned, it is informed that the petitioner was appointed at an age of 34 years while the maximum age limit for direct recruitment prescribed by the Bank is 28 years. Meaning thereby, his upper age limit exceeded the maximum age limit prescribed by 6 years.

Under Clause (c) a period of 5 years is stipulated.

As per Regulation 26, it is the minimum of the 3 stipulations present, which would be taken into consideration. Meaning thereby, since under Clause (a) & (b) the petitioner is entitled to addition of a qualifying period of 6 years or more, which exceeds Clause (c), the petitioner would be entitled to add a period of 5 years to his total length of service. Meaning thereby the superannuation pension of the petitioner is to be calculated on 26+5= 31 years of service.

Turning to the stand taken of the Bank at paragraph 9 of the counter affidavit it manifests that the reason for refusal for addition of this qualifying service is attributed to the prospective effect of the Regulations, 1995. According to the respondent Bank since the Pension Regulation has been enforced only on 29.9.1995 it is to be extended to those appointed after the said date of notification and since the petitioner was appointed prior thereto, he is not entitled to the benefit.

It is contesting the stand taken by the Bank that Mr. Gautam Saha has relied upon the judgment of the Supreme Court in **Civil**

Appeal No. 9371-9374 of 2017 (V. Vijayan Etc. versus Chairman and Managing Director Bank of Baroda and Ors. etc.) to submit that a similar objection raised by the said Bank before the Madras High Court was negated and though in appeal the Division Bench upheld the stand of the Bank but ultimately in the contest before the Supreme Court of India it is the opinion expressed by the learned Single Judge of the Madras High Court which has been upheld. According to Mr. Saha, all those who were in service on the date 'the Regulation' was enforced i.e even prior to the issuance of the notification, were entitled to the benefit.

Mr. Vedasen, has been very fair in informing this Court that the judgment of the Supreme Court relied upon by counsel for the petitioners, has been acted upon and the Punjab National Bank through its Circular No.4 of 2018 issued on 6.3.2018 has issued directions to all concerned to give the benefit of 'the Regulations' to even the retired employees.

In view of the circular dated 06.03.2018 of the Bank, a copy of which has been produced by Mr. Vedasen, the dispute ends in favour of the petitioner for there exists no impediment to the relief claimed by him under Regulation, 26.

The writ petition is allowed with the direction to the authorities concerned of the Bank to allow the benefit of the Regulation 26 as circulated vide Circular No. 4 of 2018 dated 6.3.2018 to the petitioner and which decision be taken within a period of 3 months from the date of receipt/production of a copy of this order.

(Jyoti Saran, J)

Bibhash

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	30.04.2018
Transmission Date	NA