IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 20.08.2018

ORDER PRONOUNCED ON : 02.11.2018

CORAM:

THE HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

W.P.No.8492 of 2009

V.K.Naageswaran ... Petitioner

Vs.

1. Union of India rep. by its
   Secretary, Banking Division,
   Ministry of Finance,
   Government of India,
   New Delhi.

2. Bank of Baroda rep. by its
   the Chairman and Managing Director,
   Central Office,
   Baroda Corporate Centre,
   'G' Block, C-26, Bandra-Kurla Complex,
   Bandra (East),
   Mumbai - 400 051. ... Respondents

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India, for the issuance of Writ of Declaration, declaring that the impugned words "on or after the 1st day of November 1993" in Regulations 30(1)(b) of Bank of Baroda (Employees) Pension Regulations 1995 of the second respondent as unconstitutional and consequently declare that the petitioner is entitled to pension as provided for in Bank of Baroda (Employees) Pension Regulations 1995.

For Petitioner : Mr.R.Ramesh
For Respondents : Mr.J.Madhana Gopal Rao for R1 SCCG.
Mr. E.Senthil Kumar for R2 for M/s. Sampath Kumar and Associates.

O R D E R

The instant Writ Petition is for an appropriate Writ or direction declaring that the impugned words "on or after the 1st day of November 1993" in Regulations 30(1)(b) of Bank of Baroda (Employees) Pension Regulations 1995 of the second respondent as unconstitutional and consequently declare that the petitioner is entitled to pension as provided for in Bank of Baroda (Employees) Pension Regulations 1995.

2. The petitioner was working with the 2nd respondent Bank. He joined on 10th October, 1967. The petitioner had to leave the services of the Bank on 03.03.1986. At the time of resignation, he was a Management Grade Scale II officer. He resigned his job due to his illness. The resignation of the petitioner was accepted waiving the notice period. He was paid terminal benefits, viz., Provident Fund and Gratuity.

3. The Bank came up with the Pension Regulation on 29.09.1995. Under the Pension Regulations, a voluntary retirement scheme was introduced. Certain clauses of the Pension Regulations reads as under:-

> l)''deemed to have retired'' means cessation from service of the Bank on appointment by Central Government as a whole-time Director Managing Director or chairman in the Bank or in any other Bank specified in column 2 of the FIRST SCHEDULE of the Act or Banking companies (Acquisition and Transfer of undertakings) Act,1980(40 of 1980) or in any public financial institution or State Bank of India established under state Bank of India Act. 1955 (23 of 1955):
>
> n)''Employee'' means any person employed in the service of the Bank on full time work on permanent basis or on part time work on permanent basis on scale wages and who opts and is governed by these regulations, but does not include a person employed either on contract basis or daily wage basis or on consolidated wages:
>
> w) "Qualifying Service" means the service rendered while on duty or otherwise which shall be taken into account for the purpose of pension under these regulations;
>
> 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 have retired shall qualify for pension.

22.Forfeiture of Service:-

(1) Resignation or dismissal or removal or termination of an employee from the service of the Bank shall entail forfeiture of his entire past service and consequently shall not qualify for pensionary benefits;

(2) An interruption in the service of a Bank employee entails forfeiture of his past service, except in the following cases, namely:-

(a) authorised leave of absence;

(b) suspension, where it is immediately followed by reinstatement, whether in the same or a different post, or where the bank employee dies or is permitted to retire or is retired on attaining the age of compulsory retirement while under suspension;

(c) transfer to non-qualifying service in an establishment under the control of the Government or Bank if such transfer has been ordered by a competent authority in the public interest;

(d) joining time while on transfer from one post to another.

(3) Notwithstanding anything contained in sub-regulation (2), the appointing authority may, be order, commute retrospectively the periods of absence without leave as extraordinary leave.

(4) (a) in the absence of a specific indication to the contrary in the service record an interruption between two spells of service rendered by a bank employee shall be treated as automatically condoned and the pre-interruption service treated as qualifying service;

(b) Nothing in clause (a) shall apply to interruption caused by resignation, dismissal or removal from service or for participation in a strike;

provided that before making an entry in the service record of the Bank employee regarding forfeiture of past service because of his participation in strike, an opportunity of representation may be given to such bank employees.

30. Invalid Pension:-

(1) Invalid Pension may be granted to an employee who:-

(a) has rendered minimum ten years of service; and

(b) retires from the service, on or after the 1st day of November 1993, on account of any bodily or mental infirmity which permanently incapacitate him for the service.

(2) An employee applying for an invalid pension shall submit a medical certificate of incapacity from a medical officer approved by the bank.

(3) Where the Medical Officer approved by the Bank has declared an employee fit for further service of less laborious character than that which he had been doing, he should, provided he is willing to be so employed, be employed on lower post and if there be no means of employing him even on a lower post, he may be admitted to invalid pension.

(4) No medical certificate of incapacity for service may be granted unless the applicant produces a latter to show that the Competent Authority is aware of the applicant to appear before the medical officer approved by the Bank.

(5) The Medical Officer approved by the bank shall also be supplied by the Competent Authority in which the applicant is employed with a statement of what appears from official records to be the age of the applicant.

4. The Pension Regulations though was introduced on 29th September, 1995, it became effective from 01.01.1986. The petitioner, who had resigned from service, represented that the pension scheme must be extended to him. His representation was rejected on the ground that he would not be entitled to the benefit of the Pension Regulation in view of Regulation 22 cited supra of the Pension Regulation. The petitioner therefore approached this Court by filing the present Writ Petition with

the prayer for declaring that the impugned words "on or after the 1st day of November 1993" in Regulations 30(1)(b) of Bank of Baroda (Employees) Pension Regulations 1995 of the second respondent as unconstitutional and consequently declare that the petitioner is entitled to pension as provided for in Bank of Baroda (Employees) Pension Regulations 1995.

5. Heard the learned counsel appearing for both sides and perused the materials available on record.

6. The learned counsel appearing for the petitioner would claim that the petitioner had to tender his resignation due to his ill-health and not because he intended to join any other organization. Therefore, he submitted that since he did not join any other organization, the pensionary scheme should be extended to him also.

7. For buttressing his arguments, the learned counsel appearing for the petitioner relied on a judgment of the Division Bench of this Court in W.P.No.13048 of 2006 dated 17.11.200 in the case of D.Vijararangan Vs. Secretary, Sales Tax A T Madurai - 20. That case dealt with the retirement scheme introduced in the Government of Tamil Nadu. Rule 23 of the said scheme reads as under:-

> "5. Rule 23 of the Tamil Nadu Pension Rules relates to forfeiture of service on resignation except in certain cases, as quoted hereunder:-
>
> 23. Forfeiture of service on resignation. - (1) Resignation from service or post entails forfeiture of past service:
>
> Provided that a resignation shall not entail forfeiture of pase service if it has been submitted to take up with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies.
>
> (2) Interruption in service in a case falling under the proviso to Sub-rule (1), due to the two appointments being at different stations, not exceeding the joining time permissible under the rules of transfer, shall be concered by grant of leave or any kind due to the Government Servant on the date of relief or by formal condonation to the extent to which the period is not covered by leave due to the

Government Servant."

8. The said judgment does not apply to the facts of the case. Rule 23 which has been quoted above, shows that, forfeiture of the past service will take place only if the person has resigned his services to take up another appointment, temporary, permanent under a Government. In the present case Rule 23 stipulates that resignation of any kind would entail forfeiture of past services and thereby it is disentitling the person from being eligible for the pension scheme.

9. The petitioner also placed reliance on the judgment of the Hon'ble Supreme Court in the case of Bank of India and another Vs. K.Mohandas and others reported in (2009) 5 SCC 313. Here also the pension regulations are not like the present scheme, which is applicable in the instant case.

10. A perusal of the various clauses of the Pension Regulation Scheme, would indicate that the petitioner would not be entitled to the benefit of the pension scheme in view of Regulation 22.

11. There is no such provision in the scheme offered by the respondents herein. The judgment of the Hon'ble Supreme Court in Bank of India and another Vs. K.Mohandas and others would also not apply to the facts of this case in the light of Rule 23 of the Pension Regulation. Clause 23 is extremely clear that resignation or dismissal or removal or termination of an employee from the service of the Bank shall entail forfeiture of his entire past service and consequently shall not qualify for pensionary benefits.

12. The Voluntery Retirement Scheme is a policy decision. The petitioner has not given any reason and has not raised any ground for a declaration that the Regulation 30(1)(b) of Bank of Baroda (Employees) Pension Regulations 1995, should be declared as unconstitutional.

13. In view of the categorical provision in the Pension Regulation, the claim of the petitioner cannot be considered. Resultantly, the Writ Petition has to be dismissed and accordingly, the same is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary,Union of India,
   Banking Division,
   Ministry of Finance, Government of India,
   New Delhi.

2. The Chairman and Managing Director,
   Bank of Baroda
   Central Office, Baroda Corporate Centre,
   'G' Block, C-26, Bandra-Kurla Complex,
   Bandra (East), Mumbai - 400 051.

+1 cc to Mr.J.Madana Gopal Rao, Advocate Sr.No.76273
+1 cc to M/s.Sampath Kumar and Associates, Sr.No.76058

W.P.No.8492 of 2009

VGI(CO)
CSL/20.12.2018