IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.08.2018

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.A.No.1491 of 2018

Dr.T.Ramasamy ... Appellant/Petitioner

-vs-

1.The General Manager (Personnel),
Personnel Administrative Department,
Indian Overseas Bank, Central Office,
763, Anna Salai,
Chennai-600 002.

2.The Deputy General Manager,
Pension Cell, Personnel Administrative Department,
Indian Overseas Bank, Central Office,
No.763, Anna Salai,
Chennai - 600 002.

3.The Assistant General Manager,
Pension Cell, Personnel Administrative Department,
Indian Overseas Bank, Central Office,
No.763, Annasalai,
Chennai - 600 002.

4.The Chief Manager,
Personnel Administrative Department,
Indian Overseas Bank,
Retirees Grievances Cell, Central Office,
No.763, Annasalai
Chennai - 600 002. ... Respondents/Respondent

Prayer :Writ Appeal is filed under Clause 15 of Letters Patent, against the order passed by this Court in W.P.No.22901 of 2012 dated 04.06.2018.

Prayer in W.P.22901 of 2012: Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to Calling for the records pertaining to the orders passed by the 3rd respondent herein vide his proceedings No.Ref.CO/ Pension Cell/ 8565/2011-12 dated

29.9.2011 and the order passed by the 4th respondent herein vide his proceedings No.Ref.CO/ Pension Cell/ 586/2011-12 dated 12.3.2012 and quash them as illegal arbitrary unreasonable being violative of rules and principles of natural justice and thereby direct the respondent to extend the benefit of increase of five years in counting the period of qualifying service as per regulation 29(5) of the IOB (Employees) Pension Regulation 1995.

For Appellant :: Mr.K.J.Parthasarathy

For Respondents:: No appearance for R1, R3 & R4
Mr.K.Srinivasamoorthy for
M/s.Row & Reddy for R2

JUDGMENT
(Delivered by HULUVADI G.RAMESH, J.)

The facts of the case in brief, are as follows:

The appellant had joined the services of the respondents as a Probationary Officer on 07.12.1981 and sought for voluntary retirement, while serving as Deputy Chief Officer, Legal Service Department, Central office, under the Voluntary Retirement Scheme-2000 floated by the employer-Bank. The said request of Voluntary Retirement was accepted by the respondents on 30.06.2001. The appellant, on the date of his Voluntary Retirement, had rendered totally 19 years 6 months and 24 days of service. He was granted Ex-gratia under the Voluntary Retirement Scheme-2000, and also other benefits rounding up his aforesaid service to 20 years. So also, the appellant having rendered more than 15 years of service was also granted pension under the Indian Overseas Bank (Employees') Pension Regulations, 1995 ("Regulations" in short) in as much as the Regulations provide to grant pension to the employees who opt for Voluntary Retirement under the aforesaid scheme after rendering 15 years of service. Though under Regulation 29(5) of the Regulations, an employee seeking Voluntary Retirement after putting 20 years of service is entitled to weightage of 5 years of more service in calculating pension and the appellant's service, in this case, was rounded up to 20 years, still he was denied 5 years more service weightage for calculating the pensionary benefits. He made a representation in this regard and the same was rejected vide orders dated 29.09.2011 and 12.03.2012 by the respondents.

2.With the above background, the appellant filed a writ petition before this Court to quash the said orders as illegal, arbitrary and contrary to the provisions prescribed in the Regulations with a further prayer to direct the third respondent to extend the benefit of five years more of increased service as provided in Regulation 29(5) of the Regulations in calculation of his pension and release the monetary benefit thereof.

3.It was argued before the writ Court on behalf of the appellant that as per Regulation 18 of the Regulations, any fraction of service more than six months has to be taken as one year, and any fraction of service less than six months has to be ignored, and accordingly, the appellant's service was calculated to be 20 years and the appellant thereafter, has taken voluntary retirement under the scheme, and hence he cannot be deprived of the benefit of the beneficial provision of the Regulations, more so in view of the law laid down by the Apex Court in the case of State Bank of Patiala vs. Pritam Singh Bedi and others, reported in 2014 (13) SCC 474, so also the judgment of the Patna High Court in the case of Ranjan Vedasen Vs. Union of India and others, reported in 2016 (1) PLJR 255 as well as the decision of this Court in the case of Venkatramani N. Vs. Indian Bank, reported in (2005) 3 MLJ 614.

4.The respondent-Bank filed a counter affidavit before the writ Court contending that the appellant having not rendered 20 years of actual service before taking voluntary retirement under the scheme, even though he is entitled to pension in view of the proviso to Regulation 28 of the Regulations having rendered 15 years of service, he is not entitled to the benefit of Regulation 29(5) of the Regulations, and hence his representation was rejected. It has been averred that the contention of the appellant that since his service has been rounded up to 20 years in terms of Regulation 18 of the Regulations and he having been taken voluntary retirement thereafter, is entitled to five years more of service weightage, is devoid of merits in view of the fact that such rounding up was made in view of Section 4(2) of the Payment of Gratuity Act which prescribes that any period more than six months is taken as one year for calculation of the gratuity. Further, it has also been averred that since the appellant had not rendered 20 years of actual service in view of the proviso to Regulation 18 of the Regulations, such rounding up cannot enure to his benefit for purpose of calculation of 20 years of service making him eligible for voluntary retirement under Regulation 29 of the Regulations and, as such, he cannot be extended with the benefit of Regulation 29(5) of the Regulations.

5.The learned single Judge, after hearing the arguments advanced on either side, dismissed the writ petition by order dated 04.06.2018, observing as follows:

> "7.Admittedly, the petitioner had not reached the age of superannuation and as such in normal course, he could not have been eligible to get superannuation pension. So also he could not have got pension under

the voluntary retirement as he had not rendered 20 years of qualifying service on the date he took retirement under the scheme floated by the Bank to down size the staff by extending them lucrative benefit under the scheme which the petitioner undisputedly has already received. But subsequently, the Bank also decided to grant pension to such employees taking voluntary retirement under the scheme eventhough they have rendered 15 years of qualifying service as provided in the regulation of concerned Banks, the benefit of pension besides the benefits extended to them under the scheme if they had been allowed to take voluntary retirement under the scheme. However, when a person who was otherwise eligible to take voluntary retirement under Regulation 29 after rendering 20 years of service, took retirement under the scheme, besides the benefit under the scheme and also the pension inasmuch as he had already rendered the minimum period of service required to get pension for taking voluntary retirement under the regulation by the Bank, there being no apparent reason to deny him his right of five years of increased service subject to the limitation provided therein in calculation of his pension as provided in regulation 29(5), such employee are extended the benefit of regulation 29(5). As it appears regulation 18 which speaks of rounding up of service of fraction of a year if more than six months to one year, the persons who had rendered more than 19 years six months of service as such held to have 20 years of service for the purpose of pension, accordingly the benefit was granted to them of the regulation 29 (5), in the case of State Bank of Patiala (cited supra) by the Apex Court. So also applying the said principle, giving a liberal interpretation this Court in the case of N.Venkatramani directed to grant pension to an employee who had rendered more than 14 years 6 months of service, the benefit of pension besides the benefit which he had availed of under the voluntary retirement scheme of the bank concerned. But the regulation of the concerned banks in the aforesaid two cases appears to have do not contain a proviso ousting the applicability of the regulation in calculation of such fraction service by the said principle in case of pension. However, the Patna High Court in the case of Ranjan Vedasen (cited supra) in the Writ petition taking note of the decision of the State Bank of Patiala rendered by the Apex Court, extended the benefit of regulation 29 (5) of the Bank concerned (Canara Bank) containing the parimateria provision of five years more increase in service in calculation of pension even if the petitioner had not render 20 years of actual qualifying service entitling him to the benefit of regulation 29 meant for voluntary retirement applying the rounding up principle as provided in Regulation 18, notwithstanding the prohibition not to apply such rounding up principle for qualifying a person to pension in the proviso to the said regulation. But, the same was not approved in the writ appeal filed by the Canara Bank (cited supra), the contesting respondent in the writ petition, though in the peculiar facts and circumstances of the case, the order was not interfered with and confined the same to that case only. Therefore, said decision of the Patna High Court which has no precedent value, is of no assistance to the case of the petitioner, challenging the sustainability of the impugned orders in any manner. Sofaras the decision render by the Apex Court in the case of State Bank of Patiala and also a Division Bench of this Court in the case of N.Venkatramani (cited supra) by the petitioner to calculate his service by applying the rounding up principle provided in the regulation 18 which has been extended to him for other benefits, for the pension, respectfully I disagree with the applicability of the aforesaid ratio laid down by the Apex Court as well as this Court to extend such benefit to the petitioner in calculation of 20 years of service for pension as required under Regulation 29 and thereby the benefit of regulation 29 (5) of the regulation inasmuch as the Apex Court as well as this Court rendered such decisions, in the absence of any proviso ousting the applicability of such rounding up in the respective regulation of the Bank concerned. But here in this case, there is the proviso which specifically mandates not to take the same into consideration to calculate the qualifying service regarding pension. The same is moreso in view of the principle that there is predominance of the rules in such relation between the petitioner and his employer as held by the Apex Court in the case of Roshan Lal (AIR 1967 Supreme Court page 1889)."

6.Challenging the dismissal of the writ petition, the appellant has filed this appeal.

7.It is the specific submission of the learned counsel for the appellant before this Court that the case of the appellant was rejected only on the ground of application of proviso to Regulation 18 of the Regulations, which proviso has been introduced only on 01.03.2003, whereas the appellant got retired voluntarily on 30.06.2001, and hence, the said Proviso is not applicable to the case of the appellant.

8.The learned counsel for the second respondent has submitted that the learned single Judge has dealt with the matter in proper perspective and has passed the impugned order, which does not require any interference in the hands of this Court.

9.Heard the learned counsel one either side and perused the materials available on record carefully and meticulously.

10.The learned single Judge has gone into the matter in detail and after relying upon various judgments, has passed the impugned order on merits. It is seen that the case of the appellant was rejected on the main ground of application of proviso to Regulation 18 of the Regulations, which states that the provisions of this Regulation shall not apply for determining the minimum service required to make an employee eligible for pension. On a perusal of the said proviso, we could find that it has been introduced only on 01.03.2003 vide Government Gazette Notification No.9, whereas the appellant had already got retired voluntarily on 30.06.2001. Thus, as on the date of voluntary retirement of the appellant, this proviso was not in existence. The proviso which has been subsequently introduced, ie., on 01.03.2003 should not be made applicable, retrospectively. This aspect has not been taken note of by the learned single Judge.

11.In such view of the matter, the impugned order passed by the learned single Judge is set aside and the writ appeal is allowed. Consequently, the orders passed by the third respondent on 29.09.2011 in proceedings No.Ref.CO/Pension Cell/8565/2011-12 and the fourth respondent on 12.03.2012 in Proceedings No.Ref.CO/Pension Cell/586/2011-12 are also set aside and the third respondent is directed to extend the appellant the benefit of 5 years increase service in calculating the qualifying service for pension, as per Regulation 29(5) of the Indian Overseas Bank (Employees') Pension Regulations, 1995.

12.Consequently, the connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

KM

To

1.The General Manager (Personnel),
Personnel Administrative Department,
Indian Overseas Bank, Central Office,
763, Anna Salai,
Chennai-600 002.

2.The Deputy General Manager,
Pension Cell, Personnel Administrative Department,
Indian Overseas Bank, Central Office,
No.763, Anna Salai,
Chennai - 600 002.

3.The Assistant General Manager,
Pension Cell, Personnel Administrative Department,
Indian Overseas Bank, Central Office,
No.763, Annasalai,
Chennai - 600 002.

4.The Chief Manager,
Personnel Administrative Department,
Indian Overseas Bank,
Retirees Grievances Cell, Central Office,
No.763, Annasalai
Chennai - 600 002.

+1cc to Mr.N.G.R.Prasad, Advocate, S.R.No. 53449
+4cc to Mr.K.J.Parthasarathy Advocate, S.R.No.53320

W.A.No.1491 of 2018

(CO)
GN(12/09/2018)