IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Order 08.02.2018   Date of Pronouncing Order 04.06.2018

CORAM:

THE HONOURABLE MR. JUSTICE SATRUGHANA PUJAHARI

WP No.22901 of 2012

Dr.T.Ramasamy .. Petitioner

Vs.

1.The General Manager (Personnel),
Personnel Administrative Department,
Indian Overseas Bank, Central Office,
No.763, Annasalai,
Chennai-600 002.

2.The Deputy General Manager,
Pension Cell, Personnel Administrative Department,
Indian Overseas Bank, Central Office,
No.763, Annasalai,
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

Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call 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 29.09.2011 and the order passed by the 4th respondent herein vide his proceedings No.Ref.CO/Pension Cell/586/2011-12 dated 12.03.2012 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 petitioner : Mr.K.J.Parthasarathy

For Respondents: Mr.K.Srinivasamurthy

O R D E R

This writ petition has been filed by the petitioner seeking the relief of quashment of the orders of the third respondent passed on 29.09.2011 in proceedings No.Ref.CO/Pension Cell/8565/2011-12 and the Fourth respondent passed on 12.03.2012 in Proceedings No.Ref.CO/Pension Cell/586/2011-12 rejecting the representation of the petitioner to extend him 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 Regulation 1995 (herein after referred to as "the regulation") and direct the respondent no.3 to extend such benefit to him, exercising the power of writ jurisdiction under Article 226 of the Constitution of India.

2. It appears that the petitioner had joined in 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, which was accepted on 30.06.2001. The petitioner, on the date of his Voluntary Retirement, had rendered totally 19 years 6 months and 24 days of service. The petitioner was granted Ex-gratia under the Voluntary Retirement Scheme-2000, and also other benefit rounding up his aforesaid service to 20 years. So also, the petitioner having rendered more than 15 years of service was also granted pension under the Regulation inasmuch as the regulation provides to grant pension to the employees who opt for Voluntary Retirement under the aforesaid scheme after rendering 15 years of service. The grievance of the petitioner is that though under the Regulation 29(5) an employee seeking, the Voluntary Retirement after putting 20 years of service is entitled to weightage of 5 years of more service in calculating of his pension and petitioner's service, in this case, was rounded up to 20 years, still he was denied 5 years more service weightage in calculation of pension. The petitioner, however, made grievance in not extending him the benefit of five years

increased service in calculation of pension as provided in Regulation 29(5) of the Regulations. His such representation having been rejected vide the impugned order dated 29.09.2011 and also 12.03.2012 as stated above by the respondents, he has filed this writ petition to quash the same inasmuch as the same is illegal, arbitrary and contrary to the provisions prescribed in Regulation, so also the law laid down in this regard by the Apex Court with a further prayer to issue a writ of mandamus directing the respondents, more particularly the 3rd 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. The respondent has filed the counter affidavit indicating therein that the petitioner having not rendered 20 years of actual service before taking voluntary retirement under the scheme, even though he was entitled to pension in view of the proviso to Regulation 28 of the Regulations having rendered 15 years of service, he was not entitled to the benefit of Regulation 29(5) of the Regulations, therefore, his representation in this regard was rejected vide the impugned orders. The contention of the petitioner 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, he is entitled to five years more of service weightage devoid of merit 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. Furthermore, it has also been averred that since the petitioner had not rendered 20 years of actual service in view of the proviso to Section 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. In the aforesaid premises, it has been averred that the petitioner claim in this writ petition is devoid of merit and liable to be dismissed.

4. During course of hearing, it has been submitted by the learned counsel appearing for the petitioner that the Regulation of the Bank provides that any fraction of service more than six months has to be taken as one year and less than six months has to be ignored vide regulation 18, accordingly, basing on the same, the petitioner’s service was calculated to be 20 years and the petitioner as thereafter, has taken voluntary retirement under the scheme, he cannot be deprived of the benefit of 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 vrs. 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 Vrs. Union of India (Patna) and others, reported in 2016 (1) PLJR 255 as well as the decision of this Court in the case of Venkatramani N. Vrs. Indian Bank, reported in (2005) 3 MLJ 614. It is strenuously contended that when Patna High Court taking note of the parimateria provisions in the Regulation of the Bank concerned, had extended the benefit of such increased in service in a similar facts and situation, there was no apparent reasons on the part of the respondents to deny him such benefit under regulation 29(5). More so, in view of the law laid down by the Apex Court in the case of State Bank of Patiala and this Court in the case of Venkatramani N. (cited supra). Therefore, the impugned orders of the Bank in rejecting his representations, are liable to be quashed being contrary to the law laid down as aforesaid by the Apex Court as well as this Court, so also the Patna High Court and the respondents more particularly respondent no.3, be directed to extend the benefit of Regulation 29(5) to the petitioner, is the submission of the learned counsel for the petitioner.

5. In response, learned counsel appearing for the respondents, has submitted that though the Regulation 18 of the Regulation says about the principle of rounding up of fraction of service of a year by calculating more than six months of service as one year and ignore less than six months, to accord different benefits such as calculation of Gratuity and etc, but the same is not applicable for calculation of qualifying service of pension. The pension is given on the basis of actual qualifying service calculated as provided in the regulation. The proviso to regulation 18 specifically speaks not to allow rounding up such fraction of service of a year for the purpose of pension. For that reason, the petitioner could not have got the benefit of regulation 29 of Voluntary retirement and thereby the increased service of five years more in calculation of pension. Hence, the representations of the petitioner were rejected. Sofar as the decision of the Patna High Court cited in the case of Ranjan Vedasan (cited supra), no doubt though a parimateria proviso contained in the regulation of Canara Bank in regulation 18, the aforesaid benefit of regulation 29 (5) was extended but the same which otherwise has no precedent value but a persuasive one before this Court, is of no assistance to the petitioner as in the meanwhile, in an appeal carried against the said order vide Letter Patent Appeal No.418 of 2016 by the appellant Bank concerned (Canara Bank), the Patna High Court, while not interfering in the said order, have held that the same shall not be treated as a precedent. It appears that Patna High Court in the case of Ranjan Vedasan taken note of the case of

State Bank of Patiala (cited supra). Furthermore, in the case of State Bank of Patiala as well as the case of N.Venkatramani there being no such proviso in the respective regulation ousting the applicability of the regulation with regard to rounding up the fraction of service of a year rendered for calculation of qualifying service of pension, the ratio in the said decisions, is of hardly any assistance to the petitioner. Hence, the petitioner having not rendered 20 years of actual qualifying service entitling him to take voluntary retirement under regulation 29, he is not entitled to be benefit of regulation 29 (5). Therefore, the rejection of representations in this regard vide the impugned orders warrant no interference of this Court in exercise of writ jurisdiction and as such this writ petition filed challenging the same, is devoid of merit and hence, liable to be dismissed and accordingly, the same be dismissed, is the submission of the learned counsel for the respondents.

6. Before appreciating the contentions with regard to the sustainability of the impugned orders passed by the respondent nos.3 and 4, it would be apposite to mention that in service jurisprudence relating to public service there is dominance of rules governing the relationship. In the case of Roshanlal Vs. Union of India reported in AIR 1967 Supreme Court page 1889, a Constitutional Bench of the Supreme Court authoritatively laid down the proposition that although the origin of Government service is contractual - there being an offer and acceptance in every case- yet, once appointed his post or office, the Government servants acquires a status and his rights and obligations are no longer determined by consent of both parties but by statute or statutory rules which might be altered arbitrarily by the Government. The aforesaid principle is equally applicable to the employees of the respondent Bank which is a public sector undertaking and as their service is regulated with regard to pension by the aforesaid regulation. Therefore, it would be apposite to have a look to the regulations relevant in this regard for better appreciation of the contentions raised on sustainability of the impugned orders. The relevant regulations read as thus:

> 18. Broken period of service of less than one year:-
>
> If the period of service of an employee includes broken period of service less than one year, then if such broken period is more than six months, if shall be treated as one year and if such broken period is six months or less it shall be ignored:
>
> Provided that provisions of this regulation shall not apply for determining the minimum service required to make an employee eligible for pension. (GOVERNMENT GAZETTE Notification No.9 dated 1st March 2003)

28. Superannuation Pension:-

Superannuation Pension shall be granted to an employee who has retired on his attaining the age of superannuation specified in the service Regulations or Settlements.

Provided that, with effect from 1st day of September, 2000, pension shall also be granted to an employee who opts to retire before attaining the age of superannuation, but after rendering service for a minimum period of 15 years in terms of any Scheme that may be frameed for such purpose by the Board with the approval of the Government. (GOVERNMENT GAZETTE Notification No.16 dated 20th April 2002)

29. Pension on Voluntary Retirement:-

(1) On or after the first day of November 1993, at any time after an employee has completed twenty years of qualifying service he may, by giving notice of not less than three months in writing to the appointing authority retire from service;

Provided that this sub-regulation shall not apply to an employee who is on deputation or on study leave on abroad unless after having been transferred or having returned to India he has resumed charge of the post in India and has served for a period of not less than one year;

Provided further that this sub-regulation shall not apply to an employee who seeks retirement from service for being absorbed permanently in an autonomous body or a public sector undertaking or company or institution or body, whether incorporated or not to which he is on deputation at the time of seeking voluntary retirement:

Provided that this sub-regulation shall not apply to an employee who is deemed to have retired in accordance with clause (1) of regulation 2.

(2) The notice of Voluntary retirement given under sub-regulation (1) shall require acceptance by the appointing authority:

Provided that where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period.

(3) (a) An employee refereed to in sub-regulation (1) may make a request in writing to the appointing authority to accept notice of Voluntary Retirement of less than three months giving reasons therefor;

(b) On receipt of a request under clause (a), the appointing authority may, subject to the provisions of sub-regulation (2), consider such request for the curtailment of the period of notice of three months on merits and if it is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, the appointing authority may relax the requirement of notice of three months on the condition that the employee shall not apply for commutation of a part of his pension before the expiry of the notice of three months.

(4) An employee, who has elected to retire under this regulation and has given necessary notice to that effect to the appointing authority, shall be precluded from withdrawing his notice except with the specific approval of such authority;

Provided that the request for such withdrawal shall be made before the intended date of his retirement.

(5) The qualifying service of an employee retiring Voluntarily under this regulation shall be increased by a period not exceeding five years, subject to the condition that the total qualifying service rendered by such employee shall not in any case exceed thirty-three years and it does not take him beyond the date of superannuation.

(6) The pension of an employee retiring under this regulation shall be based on the average emoluments as defined under clause (d) of regulation 2 of these regulations and the increase, not exceeding five years in his qualifying service, shall not entitle him to any notional fixation to pay for the purpose of calculating his pension.

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 Ranjan Devasan (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 Roshanlal (cited supra).

8. Hence, for the aforesaid reasons, no fault can be found with the impugned orders passed by the third and fourth respondents inasmuch as the petitioner is not entitled to the relief sought for. Accordingly, this writ petition is devoid of merit and hence stands dismissed. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

1.The General Manager (Personnel),
Personnel Administrative Department,
Indian Overseas Bank, Central Office,
No.763, Annasalai,
Chennai-600 002.

2.The Deputy General Manager,
Pension Cell, Personnel Administrative Department,
Indian Overseas Bank, Central Office,
No.763, Annasalai,
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 Sr.34566
+4cc to Mr.K.J.Parthasarathy, Advocate Sr.34638

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srg 08/06/2018