



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.04.2018

CORAM:

**THE HONOURABLE MS.INDIRA BANERJEE, CHIEF JUSTICE
AND**

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.A.[MD].No.1404 of 2017

P.Rajamani

: Appellant / Petitioner

Vs.

1.The Chairman and Managing Director,
MD's Secretariat,
Indian Bank, Head Office,
66, Rajaji Salai,
Chennai - 600 001.

2.The Chief Manager,
Indian Bank,
HRM Department,
Pension Cell, 66, Rajaji Salai,
Chennai - 600 001.

3.The General Manager (HRM),
Indian Bank, Head Office,
66, Rajaji Salai,
Chennai.

4.The Regional Manager,
Indian Bank,
Personal Department,
Regional Office,
Tirunelveli - 627 003.

5.The Manager,
Indian Bank, Meenakshipuram,
Nagercoil - 629 001.

: Respondents / Respondents

PRAYER: Writ Appeal is filed under clause 15 of letters patent against the order dated 13.02.2017, made in W.P.(MD)No.14356 of 2011.

Prayer in WP(MD). 14356/ 2011 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari Mandamus, calling for the records of the second respondent vide HRM:PEN:2464:2010-11 dated 02.02.2011 and the subsequent order dated HO:HRM:PEN:24645:2010-11 dated 11.03.2011,



quash the same consequently directing the respondents to provide pensionary benefits to the petitioner under the settlement dated 21.08.2010 vide HRM:92/2010-11.

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For Appellant : Mr.K.P.Narayanakumar
For Respondents : Mr.Pala Ramasamy

JUDGMENT

[Judgment of the Court was delivered by
The Hon'ble Chief Justice]

This appeal is against the judgment and order dated 13th February 2017, passed by the learned single Bench dismissing the writ petition filed by the appellant seeking pensionary benefits under the settlement dated 21st August 2010, between Indian Bank and its employees.

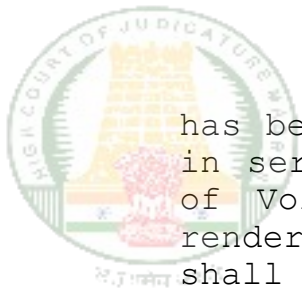
2. The appellant joined services of Indian Bank as Clerk on 12th March 1986. After completing almost 15 years of service (11 days short of 15 years), the appellant opted for Indian Bank Employees Voluntary Retirement Scheme, 2000 (hereinafter referred to as 'VRS'); the appellant's request was accepted and he was relieved from service with effect from 28th February 2001. On the date of which, he was relieved from service, the appellant had put in 14 years, 11 months and 19 days of service with Indian Bank.

3. Sometime in 2010, a settlement was entered into between the Indian Bank and its Employees Unions, pursuant to which, a Scheme was introduced by Indian Bank on 21st August 2008, in terms of which, the employees, who had retired after 29th September 1995, but, before the date of settlement, ie., 27th April, 2010, could apply for the pension scheme. Thereafter, on 21st January 2011, the appellant applied for the pension scheme. The application of the appellant was rejected by an order dated 2nd February, 2011. The order dated 2nd February, 2011 is a cryptic order, which reads,

"In terms of the settlement dated 27th April 2010, you did not fall under any of the eligible category to join pension scheme and hence, we express our inability to consider your request. (You have not completed minimum service requirement of 15 years in the Bank)".

4. The appellant made a representation dated 28th February 2011, to the Chairman and Managing Director of Indian Bank. Thereafter, the appellant received a letter dated 11th March, 2011. The contents of which, are set out herein below:

"With reference to the above, we have to state that in terms of the Settlement dated 27.04.2010, another option for joining the existing Pension Scheme



has been extended to those employees who ceased to be in service on or after 29th September 1995 on account of Voluntary Retirement under Special Scheme after rendering service for a minimum period of 15 years, shall be eligible to exercise an option to join the Pension Scheme subject to the terms and conditions mentioned for retiring employees opting for joining the Scheme.

And, according to Regulation 18 of Indian Bank (Employees') Pension Regulations, 1995, on broken period of service less than one year, it should be noted that it shall not apply for determining the minimum service required to make the retiree eligible for pension."

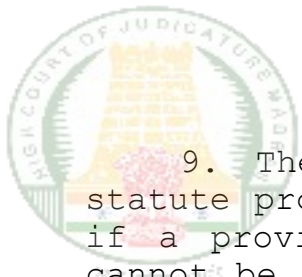
5. The pension of employees of Indian Bank is governed by the "Indian Bank (Employees') Pension Regulations, 1995". Regulation 14 of the said Regulations reads, "Subject to other conditions contained in these Regulations, an employee, who has rendered a minimum of 10 years of service in the Bank on the date of his retirement or the date on which he is deemed to have retired, shall qualify for pension".

6. Regulation 28 of the said Pension Rules reads, "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". The proviso to Regulation 28 reads, "provided that with effect from the first of September 2000, pension shall also be granted to an employee, who opts to retire before attaining the age of superannuation, but rendering services for a minimum period of 15 years in terms of any scheme that may be framed for such purpose by the Board with the approval of the Government".

7. The appellant submits that at the material time, when the appellant retired, Regulation 18 read as follows,

"Broken period of services 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, it shall be treated as one year and if such broken service is six months or less, it shall be ignored".

8. Learned Counsel appearing on behalf of the appellant has cited the judgment of the Supreme Court in *Indian Bank & another v. N.Venkatramani*, [(2007) 10 SCC 609], where the Supreme Court held that Regulation 18 is not controlled by the other provisions. It does not take any restrictive interpretation. It only provides for a role of measurement. The employee became entitled to pension, provided, he had completed the specified period of service. How such a period of service could be computed was a matter, which was governed by the Regulations.



9. The Supreme Court held "it is one thing to say that a statute provides for completion of 15 years of minimum service, but if a provision provides for measurement of the period, the same cannot be lost sight of". The Supreme Court opined that provisions of the Regulations, which are beneficial in nature should be construed liberally.

10. In *Indian Bank (supra)*, the Supreme Court, interpreting the very same Regulations now in issue, held thus:

"13. It may be true that various provisions of the Regulations as for example Regulations 16, 17, 19, 23, etc. provided for qualifying service. Regulation 18 is not controlled by any of the said provisions. It does not brook any restrictive interpretation. It only provides for a rule of measurement. An employee, as noticed hereinbefore, was entitled to pension provided he has completed the specified period of service. How such a period of service would be computed is a matter which is governed by the statute. It is one thing to say that a statute provides for completion of fifteen years of minimum service, but if a provision provides for measurement of the period, the same cannot be lost sight of. Provision of the Regulations which are beneficial in nature, in our opinion, should be construed liberally."

11. Regulation 18 was, however, amended on 17th July 2003, by adding "provided that provisions of this Regulation shall not apply for determining the minimum service required to make an employee eligible for pension".

12. It is well settled that while statutes can be amended with retrospective effect, rules and regulations which take away accrued right cannot be amended with retrospective effect. This proposition finds support from the judgments of the Honourable Supreme Court in (i) *Ex-Capt. K.C.Arora v. State of Haryana* reported in (1984) 3 Supreme Court Cases 281, (ii) *Union of India v. Tushar Ranjan Mohanty* reported in (1994) 5 Supreme Court Cases 450 and (iii) *A.Manoharan v. Union of India* reported in (2008) 3 Supreme Court Cases 641. In this case, however, the amendment has not even been made retrospective.

13. The appellant, who retired on 28th February 2001, would be governed by Regulation 18 of the Regulations, as it stood on that date. The appellant would, thus, get the benefit of exclusion of broken period of less than six months from consideration.

14. In *Indian Bank (supra)*, the Supreme Court upheld the right of an employee, whose services were short of 15 years by a few months to get pension. It is true that there has, subsequently, been an amendment, however, as observed above, the amendment came into effect after the appellant retired voluntarily, the amendment would not apply to the appellant. The appellant would be entitled to the benefit of the scheme introduced pursuant to the settlement in 2010.



15. The judgment and order under appeal cannot be sustained and the same is set aside. The writ appeal is, accordingly, allowed. The writ petition stands allowed. No costs.

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Sd/-
Assistant Registrar(Crl.Side)

Sub-Assistant Registrar

+1cc to Mr.K.P.Narayana Kumar, Advocate, SR.No.60113

+1cc to Mr.Pala Ramasamy, Advocate, SR.No.60354

RR/GK
RL/3C/5P/SKN/RSK/SAR1/20/4/2018

JUDGMENT MADE IN

W.A.[MD].No.1404 of 2017

05.04.2018