IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

WRIT PETITION NO. 5957 OF 2014

Dinkar s/o Ramrao Narwadkar,
Age : 64 years, occup. Pensioner,
R/o C-4/8, Town Centre, CIDCO,N-1,
Aurangabad 0 431 003, deceased,
through his legal representative :

Shakuntala w/o Dinkarrao Narwadkar,
Age 64 years, Occu. H. H.,
R/o C/4/8, Town Centre, CIDCO, N-1
Aurangabad .. Petitioner

versus

1. Union of India,
Through its Secretary,
Finance Department, New Delhi

2. State Bank of India, through its
Dy. Managing Director (Associate
Banks), State Bank Bhawan,
Corporate Centre,
Madam Cama Road, Nariman Point,
Mumbai - 400 021

3. Dy. General Manager (Personnel/H.R.),
State Bank of India, State Bank Bhawan,
Corporate Centre, Madam Cama Road,
Nariman Point, Mumbai 400 021

4. Asst. General Manager
(Pension Provident Fund and Gratuity Dept.)
State Bank of India, Local Head Office,
Hoshangabad Road, Bhopal .. Respondents

Mr Sunil V. Kurundkar, Advocate for petitioner
Mr P.B.Paithankar, Advocate for respondents no.2 and 4

CORAM : SUNIL P. DESHMUKH, AND
R. G. AVACHAT, JJ.

DATE : 20th March, 2019

ORAL JUDGMENT (PER : SUNIL P. DESHMUKH, J.)

1. Rule. Rule made returnable forthwith. Heard learned counsel for appearing parties finally by consent.

2. Factual aspects which largely not disputed are, pursuant to advertisement dated 14-12-1976, in the recruitment process, petitioner came to be appointed as technical officer - (Agricultural). Age limit prescribed for said post had been 30 years having regard to peculiar nature of employment requiring experience.

3. Petitioner who already had been employed in zilla parishad, on this relevant side, had been considered eligible and was selected and appointed accordingly. Subsequently, in 1995, petitioner's bank - State Bank of Indore a member bank of State Bank of India group, had framed rules, titled '' State Bank of Indore (Employees) Pension Regulations, 1995 '' and have been in force since then.

4. In October, 2009, petitioner retired on superannuation, however, benefit of regulation 26 of aforesaid 1995 regulations had not come his way. His representation and demand for said benefit had been purported to be declined under communication dated 17-10-2013 and thus the petitioner is before us.

5. Regulation 26 of 1995 regulations reads as under :

> " ***26.*** *ADDITION TO QUALIFYING SERVICE IN SPECIAL CIRCUMSTANCES:*
>
> *An employee shall eligible to add to his service qualifying for superannuation pension (but not for any other class of pension), the actual period not exceeding one forth of the length of his service or the actual period by which his age at the time of recruitment exceeding 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 the 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. "

6. According to learned counsel for petitioner, going by aforesaid regulation, particularly main provision, ostensibly may appear to be rather clumsy, yet it would be seen that petitioner is entitled to have benefit thereunder. He submits, situation is that under said regulation 26, the benefits have accrued to petitioner and he is entitled to the same. However, those have been declined for proviso requiring an endorsement in this respect in appointment order. He submits that refusal to give benefits of regulation 26 to petitioner is erroneous, under a hyper technical approach.

7. In support of his submissions, learned counsel for the petitioner refers to and relies on decision of Madras high court dated 07-04-2004 in the case of *Thirikooda Rajappan P. Vs. Chairman and Managing Director, Vijaya Bank, Head Office, Bangalore, reported in 2004 -MLJ-4-313 : 2005-LLJ-1-442* wherein under paragraph no. 12 it has been observed, thus ;

" ***12.*** *ADMITTEDLY, Vijaya Bank was nationalised in the year 1980 and even on that date there was no pension regulation. Pension Regulations came into force only in the year 1995. Therefore, prior to 1995, there were no rules providing for such benefits. Therefore, this proviso would be redundant in so far the*

> *employees who were in service on the date when the Pension Regulations came into force. At the most, it would be applicable only to the employees who were subsequently employed. This regulation confers the benefit for the first time in the year 1995; a maximum of five years of qualifying service is added for certain categories of persons. That cannot be nullified by the proviso. That is, the main proviso gives the benefit to a class of persons, and that benefit cannot be nullified by the third proviso. In as much as third proviso would nullify the benefit conferred under the main Regulation 26 in so far it relates to the employees who are already in service when the petitioner entered into service there were no pension at all. Therefore, the petitioner is entitled to the benefit conferred under regulation 26.* "

8. Learned counsel for petitioner in addition to aforesaid, refers to and relies on yet another decision rendered in this respect by high court of Andhra Pradesh in writ petition bearing no. 22754 of 1999 [*T. V. Chalapathi Rao s/o Ramanaiah, State Bank of Hyderabad and others versus The Managing Director, State Bank of Hyderabad and another*]. Thereunder, regulation 26 referred to above was considered to be *pari materia* with rule 30 of the CCS (Pension) Rules. Andhra Pradesh high court as well referring to decision of Madras high court in the case of *Thirikooda Rajappan P.* (*supra*), had allowed the writ petition.

9. In present case, it is worthwhile to note that the petitioner had been appointed as technical officer (Agricultural) in 1976. Regulations of 1995 referred to above were not subsisting at that time and have been in force since

1995 for the employees of State Bank of India including employees of State Bank of Indore in which the petitioner had been appointed. The petitioner had been appointed looking at the criteria prescribed giving due consideration to the experience he had under earlier employment. In the circumstances, while he retired on superannuation as bank employee and while had been recruited when regulations had not been framed, provisos reading thus ;

> " *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* ",

being not in subsistence at the time of appointment of the petitioner for absence of requirements under provisos in the appointment order, the benefit which otherwise had come his way would seldom be declined to him for the reasons and on technical aspect, which had been not in control of any one and could not have been envisaged, by adopting pedantic or hyper technical approach. Citations referred to supra would bear that employees ante 1995 were considered eligible for benefits.

10. We are, therefore, of the view that the benefit of regulation would not be declined to petitioner for the technical lacuna as considered under impugned letter and while there is no other reason given for refusal of the benefit.

11. We, therefore, allow writ petition in terms of prayer clauses (B), (C) and (D).

12. Rule is made absolute accordingly.

13. Writ petition is disposed of.

14. Looking at that the petitioner is no more, we expect expeditious action at the end of the bank would sub-serve the cause of the surviving petitioner.

R. G. AVACHAT, JUDGE

SUNIL P. DESHMUKH JUDGE

pnd/-