

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE K.K. SASIDHARAN
and
THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALU

W.A. No. 1195 of 2012

and

M.P. No. 1 of 2012

The Indian Bank,
Rep. by its Assistant General Manager,
Human Resources Department,
No. 66, Rajaji Salai,
Chennai - 600 001.Appellant/First Respondent

-Vs-

1. C. SugumarFirst Respondent/Petitioner
2. Indian Banks' Association,
Rep. by its Secretary,
World Trade Centre,
6th Floor, Centre I Building,
Cuffee Parade,
Mumbai - 400 005.Second Respondent/First Respondent

PRAYER : Writ Appeal filed under Clause 15 of Letter Patent, praying to set aside the common judgment in W.P. No. 25336 of 2002 dated 12.03.2012.

W.P. No. 25336 of 2002:- Petition filed Under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the 1st respondent to file the revised pension payable to the petitioner from the date of retirement and further direct the 1st respondent to disburse the differential amount to the petitioner forthwith.

For Appellant : M/s. Rita Chandrasekar
for Aiyar & Dolia

For Respondents : Mr. K.M. Ramesh (for R1)

J U D G M E N T

(Judgment of the Court was delivered by P.D. AUDIKESAVALU, J.)

The intra-Court Appeal arises out of the order dated 12.03.2012 in W.P. No. 25536 of 2006 passed by the Learned Judge of this Court. The parties are hereinafter referred to as per their description in the Writ Petition for the sake of convenience.

2. The Petitioner, who is a retired employee of the First Respondent had filed W.P. No. 25536 of 2006 seeking a direction to the First Respondent to fix the revised pension payable to him from the date of his retirement and forthwith disburse the differential amount to him. It was brought to the notice of the Learned Judge, who heard the Writ Petition, that in respect of similarly placed retired employees of the First Respondent, this Court by order dated 14.10.2011 in W.P. Nos. 10836, 10837 of 2002, 13044 of 2006 and 3769 of 2007 had granted the relief as claimed and that though appeals had been preferred against that order, there was no order of interim stay during the pendency of the appeals. Hence, the Learned Judge proceeded to allow the Writ Petition by extending the same relief granted in the earlier order of this Court. Aggrieved thereby, the First Respondent has preferred this appeal.

3. We have heard Mrs. Rita Chandrasekar, Learned Counsel appearing on behalf of the First Respondent, Mr. K.M. Ramesh, Learned Counsel appearing for the Petitioner and perused the materials placed on record, apart from the pleadings of the parties.

4. It is accepted by the Learned Counsel for both sides that the issue raised has been subsequently decided by the Hon'ble Supreme Court of India in Bank of Baroda -vs- G. Palani (Judgment dated 13.02.2018 in C.A. No. 5525 of 2012) relating to pari materia provisions of the Employees Pension Regulations of Bank of Baroda, Canara Bank and Indian Overseas Bank and it has been held in para no. 33 therein as follows:-

"33. The only purpose of the addition of Explanation (c) to regulation 2(s), was to take away the actual computation of the pension on the basis of the salary, which was drawn in the preceding ten months. Thus, we have no hesitation to strike it down being arbitrary and repugnant to other provisions/Regulations namely 2

(d), 38(1)(2) and 35. The Explanation (c) to Regulation 2(s) is hereby struck down, as it could not have been enacted retrospectively to take away accrued rights. Even otherwise also it is held to be arbitrary and irrational. More so, in view of the fact that only by way of a temporary measure, that discrimination was created and the Explanation was deleted with effect from 01.05.2005."

Following the said decision, the Division Bench of this Court in T.R. Sankaran -vs- Bank of Baroda (Order dated 16.04.2018 in W.P.Nos. 970, 5916 and 19830 of 2002) has held as follows:-

"11. In Civil Appeal No.5525 of 2012, dated 13.02.2018 (Bank of Baroda and another -vs- G.Palani and others), the Supreme Court held that Explanation (c) to Regulation 2(s) was ultra vires, void and unenforceable. Pension has to be calculated on the basis of average pay of the employees during the preceding ten months of the date of retirement irrespective of the date of retirement.

12. The issues raised in these Writ Petitions are covered by the judgment of the Hon'ble Supreme Court in Civil Appeal No.5525 of 2012, dated 13.02.2018 (Bank of Baroda and another -vs- G.Palani and others) etc. batch.

13. The Respondents shall recompute the pension of the Petitioners on the basis of the average salary drawn by the Petitioners during the preceding ten months prior to the respective dates of their retirement. The balance due payable to the Petitioners shall be paid within four months from date along with 9% interest per annum calculated as per the reducing balance."

5. Since the Petitioner is similarly placed to those retired employees in the aforesaid cases decided by the Division Bench of this Court, he is entitled to the same relief. The First Respondent shall re-compute the pension of the Petitioner on the basis of the average salary drawn by him during the preceding ten months prior to the date of his retirement and the accumulated arrears of the differential amount due to him shall be paid with interest at the rate of 9% per annum along with a working-sheet and a report of compliance in that regard shall be filed before the Registrar (Judicial) of this Court by 30.06.2019. The pension of the Petitioner for future months shall be calculated and paid at the revised rate on the due dates.

6. The Writ Appeal is disposed on the aforesaid terms. No costs. Consequently, the connected Miscellaneous Petition is closed.

vjt

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

The Assistant General Manager,
Indian Bank,
Human Resources Department,
No. 66, Rajaji Salai,
Chennai - 600 001.

Copy to
The Registrar (Judicial),
Madras High Court,
Chennai.

+1cc to M/s.Aiyar & Dolia, Advocate, S.R.No.14912/19
+1cc to Mr.K.M.Ramesh, Advocate, S.R.No.14562/19

W.A. No. 1195 of 2012

kak(08/03/2019)

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