IN THE HIGH COURT OF JUDICATURE AT MADRAS
Reserved on : 23.04.2019
Delivered on : 29.04.2019
CORAM
THE HONOURABLE Mr.JUSTICE V.PARTHIBAN
W.P.No.19907 of 2011 and
M.P.No.1 of 2013

T.D.Thomson ... Petitioner

Vs

1.Indian Overseas Bank,
Rep by its Chairman & Managing Director,
763, Mount Road,
Chennai 600 002.

2.The General Manager,
Indian Overseas Bank,
PAD Pension Cell, Central Office,
763, Mount Road, Chennai 600 002. ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Mandamus, directing the respondents to consider the option for pension submitted on 13.10.2010 by the petitioner and to include the petitioner in the pension scheme as evolved under IOB Employees Pension Regulations, 1995.

For Petitioner : Mr.Perumbulavil Radhakrishnan

For Respondents : Mr.K.Srinivasamurthy

O R D E R

Heard Mr.Perumbulavil Radhakrishnan, learned counsel for the petitioner and Mr.K.Srinivasamurthy, learned counsel appearing for the respondents.

2. The petitioner has approached this Court, seeking the following relief:-

> "To issue a writ of Mandamus, directing the respondents to consider the option for pension submitted on 13.10.2010 by the petitioner and to include the petitioner in the pension scheme as evolved under IOB Employees Pension Regulations, 1995."

3. The case of the petitioner is as follows:-

(i) The petitioner joined the respondent Bank on 01.06.1974 as a Clerk and later, he worked as Chief Cashier. On the basis of the disciplinary action initiated against him, the petitioner was dismissed from service on 09.08.1999. The dismissal from service was the subject matter of litigation before this Court in W.P.No.17336 of 2000, this Court disposed of the writ petition on 14.08.2003 by allowing the writ petition on technical grounds holding that certain defects were crept in, in the enquiry proceedings. Against which, an appeal has been filed in W.A.No.2575 of 2003. The Hon'ble Division Bench of this Court disposed of the appeal on 29.04.2005, on the basis of an agreement reached between the Bank and the petitioner herein. The agreement was to the effect that the order of dismissal would be converted into one of voluntary retirement and the petitioner herein would be settled Rs.13,00,000/- as full and final settlement of the amount due to him from the respondent Bank. In view of the compromise, the petitioner was deemed to have retired voluntarily from the date he was dismissed from service.

(ii) According to the petitioner, the respondent Bank evolved a pension scheme for grant of pension to its employees. As per the pension scheme, option had been called from the employees for payment of pension or provident fund in terms of bipartite settlement. On 30.08.2010, a circular was issued by the Central Office of the Bank, granting extension of another option to join the existing pension scheme in terms of the 9th bipartite settlement (Workmen Employees / Joint Note (Officers) dated 27.04.2010). The option was thrown open to the employees who were in service of the Bank prior to 29.09.1995 and continued to be in service on or after the said date and retired before the date of Joint Note dated 27.04.2010.

(iii) As per the Circular, the option had to be exercised within 60 days from the date of offer and the employee who opts for pension scheme had to return the entire provident fund contribution amount to the Bank with interest accrued within 30 days after the expiry of 60 days. In terms of the Circular dated 30.08.2010, the petitioner herein had exercised his option to join the pension fund and submitted his application to the effect on 13.10.2010 to the nearest branch of the respondent Bank. As there was no response from the pension cell, the petitioner sent a reminder on 26.11.2010. However, there was no action forthcoming from the respondent, the petitioner is before this Court seeking for issue of writ of mandamus to consider the option for pension submitted by the petitioner on 13.10.2010 and include the petitioner under pension scheme of the respondent Bank.

4. The learned counsel for the petitioner would submit that once the order of dismissal had been replaced by one of

voluntary retirement on the basis of the compromise reached by the petitioner and the Bank before the Hon'ble Division Bench of this Court and the order was passed to that effect by the Hon'ble Division Bench in W.A.No.2575 of 2003, dated 29.04.2005, the petitioner was entitled to exercise his option in terms of the Circular dated 30.08.2010 and in fact, he had exercised his option within the time stipulated in the Circular. Once the petitioner had submitted his option for his inclusion in the pension scheme, the respondent Bank ought to have accepted his application. Unfortunately, no action was forthcoming from the respondent neither including the petitioner in the pension scheme nor any decision communicated to him in this regard.

5. On behalf of the respondent Bank, a detailed counter affidavit has been filed. According to the counter affidavit, the petitioner was not entitled to second option for the reason that he was originally dismissed from service which was converted into voluntary retirement and the Bank paid him Rs.13,00,000/- in full and final settlement of all his claims. In view of the full and final settlement, the petitioner is not entitled to pay anything more. Further, the petitioner did not fall under any of the categories of employees for whom the benefit of second option was extended. Besides, the benefit of second option was extended to those Voluntarily retired employees under the special Voluntary Retirement scheme, 2000.

6. The above contention as contained in the counter affidavit has been reiterated by the learned counsel appearing for the Bank. He would therefore submit that the petitioner's case cannot be treated as a regular one, since he was dismissed from service on the basis of the disciplinary action initiated against him. Only by way of compromise, the order of dismissal was replaced by one of voluntary retirement and he was paid a lumpsum amount of Rs.13,00,000/- as full and final settlement. Therefore, the claim of the petitioner stood on a different footing and cannot be compared to other normal retirees of the respondent Bank including the special Voluntary Retirement Scheme retirees in 2000. The learned counsel would also draw the attention of this Court to the provisions of the Circular dated 30.08.2010 and impressed upon this Court that none of the provisions deal with normal Voluntary Retirement Scheme retirees. He would therefore urge this Court to dismiss the writ petition as being devoid of merits.

7. This Court has considered the submissions made on behalf of the petitioner as well as the respondent Bank. It is an admitted fact that though the petitioner was originally dismissed from service by order dated 09.08.1999, yet ultimately, the order of dismissal was converted into one of voluntary retirement on the basis of the agreement reached

between the Bank and the petitioner. The Hon'ble Division Bench of this Court in W.A.No.2575 of 2003 dated 29.04.2005 has passed orders on the basis of the agreement between the parties. Therefore, for all practical purposes, the petitioner stood retired voluntarily and the stigma of dismissal from service had been removed and cannot be quoted any further.

8. While reaching such conclusion as above, this Court has to examine whether by treating the cessation of service of the petitioner as one of voluntary retirement for the purpose of grant of pension in terms of the Circular dated 30.08.2010, could be considered favourably. The learned counsel for the respondent Bank has drawn the attention of this Court to the Circular, wherein, it provides for exercise of option in Clause II which reads as under:-

> "2. (i) were in the service of the Bank prior to 29th September 1995 and retired after that date and prior to the date of this Joint Note/Settlement.
>
> (ii) exercise an option in writing within 60 days from the date of the offer to become the member of the pension fund and
>
> (iii) refund within 30 days after expiry of the said period of 60 days the entire amount of the Bank's contribution to the provident fund and interest accrued thereon received by the employee on retirement together with his share in contribution towards meeting the funding gap. On an individual basis, the payment over and above the Bank's contribution to Provident Fund and Interest thereon has been worked out at 56% of the bank's contribution to the Provident Fund and Interest thereon received by the Employee/Officer on retirement."

9. The learned counsel would also draw the attention of this Court to Clause V, which is extracted hereunder:-

> "5. Officer/Workmen employees, who ceased to be in service on or after 29th September 1995 on account of voluntary retirement under Special Scheme [Voluntary Retirement Service-2000] after rendering service for a minimum period of 15 years, shall be eligible to exercise option to join the pension scheme subject to terms and conditions mentioned for retiring officers/workmen opting for joining the pension scheme."

10. The learned counsel although submitted that in both the clauses, it provides for exercise of option only for normal retirees and special Voluntary Retirement Scheme retirees and not about normal voluntary retirees, however, this Court is unable to comprehend as to how such distinction could be drawn as between the regular voluntary retirement as per Bank's

regulation and the retirement on attaining the age of superannuation. The retirement either by attaining the age of superannuation or on the basis of the voluntary offer is one and the same and any distinction to be drawn between voluntary retirement and the retirement on superannuation is only invidious and unreasonable and the same is unsustainable in law.

11. Once the petitioner's dismissal order was converted into one of voluntary retirement, although he was paid a lumpsum amount of Rs.13,00,000/- as full and final settlement, that lumpsum payment can be taken to mean only for quitting the service voluntarily and the same cannot be the basis for denying the pensionary benefits as applicable to all retirees. More so, when such exercise of option is available to even special voluntary retirees even though there was a golden hand shake as between the respondent Bank and the special Voluntary Retirement Scheme retirees. It cannot be gainsaid that the normal voluntary retirees can be denied the pensionary benefits.

12. In this case, admittedly, the petitioner has responded to the Circular dated 30.08.2010, within the time stipulated and unfortunately, no decision has been taken till date. At the risk of repetition, it is to be held that once the petitioner has been treated as a voluntary retiree from the service of the Bank, he should be placed on par with other retirees and whatever benefits particularly pensionary benefits applicable to other retirees shall be applicable to the petitioner as well. Any differential treatment to the petitioner in the matter of grant of pensionary benefits would be violative of Article 14 of the Constitution of India.

13. For the above said reasons, this Court is of the view that the petitioner has made out a clear case for grant of relief. Therefore, the writ petition stands allowed with the following directions:-

(i) The respondent Bank is directed to calculate the Provident Fund Contribution to be refunded to the Bank with reasonable interest, considering the status of the petitioner being a retired employee and communicate the same to the petitioner and grant sufficient time to the employee to refund the amount on the basis of the respondent Bank's calculation.

(ii) The option exercised by the petitioner by his application dated 13.10.2010 shall be accepted and the petitioner shall be included in the pension scheme of the respondent Bank.

(iii) The respondent Bank is directed to calculate the arrears of pension payable to the petitioner from the date it became payable to all similarly placed employees and if the arrears of pension is more than the amount to be refunded by the petitioner herein to the Bank, the same shall be deducted and the balance amount shall be paid to the petitioner without insisting on refund by the petitioner to the Bank before payment of the arrears of pension.

(iv) In any case, the respondent Bank is directed to intimate the petitioner about the actual provident fund with interest to be refunded to the Bank.

The respondent Bank is directed to initiate and complete the exercise within a period of three months from the date of receipt of a copy of this order.

14. With the above direction, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Chairman & Managing Director,
   Indian Overseas Bank,
   763, Mount Road,
   Chennai 600 002.

2.The General Manager,
   Indian Overseas Bank,
   PAD Pension Cell, Central Office,
   763, Mount Road, Chennai 600 002.

+2cc to Mr.Perumbulavil Radhakrishnan, Advocate sr.41544
+1cc to M/s.Row & Reddy, Advocate sr.39398
+1cc to M/s.N.G.R.Prasad, Advocate sr.41652

W.P.No.19907 of 2011

nr 09/07/2019