IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 05.04.2019

Pronounced on : 28.08.2019

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH

W.P.No.37764 of 2004

R.Uma Maheswari ... Petitioner

Vs.

1.Andhra Bank
rep. by its
Chairman & Managing Director,
Head Office,
Saifabad, Hyderabad-500 004.

2.The Manager,
Andhra Bank,
Valasaravakkam Branch,
1/15, Arcot Road, Chennai. ... Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India, praying for a Writ of Declaration that the circular No.302 bearing Ref. No.3/62 dated 21.12.2000 insofar as fixing qualifying services as 15 years is contrary to Regulation 14 and 35(6)(a) of Andhra Bank (Employees) Pension Regulations, 1995 and the consequential order dated 01.09.2001 bearing Letter No.666/3/P/155 and the letter No.666/20/P/14105/454 dated 15.02.2003 issued on behalf of the first respondent as illegal and consequently direct the first respondent to grant the petitioner pro-rata pension in terms of the Andhra Bank (Employees) Pension Regulation, 1995 together with interest at 12% p.a. from 1st March 2001.

For Petitioner : Mr.A.R.Nixon

For Respondents: Mrs.Rita Chandrasekar

O R D E R

The petitioner herein, who had joined the services of Andhra Bank (hereinafter referred to as "Bank") in clerical cadre on 21.03.1985, had opted for voluntary retirement on

11.12.2000, which came to be accepted by the Bank with effect from 31.01.2001. Her subsequent request for grant of pension under the Andhra Bank Employees Voluntary Retirement Scheme 2000 (hereinafter referred to as 'ABEVRS-2000'), came to be rejected by a letter dated 01.09.2001 stating that the petitioner herein had not put in 15 years of "Qualifying Service" in terms of the Circular No.302 dated 21.12.2000. Challenging the rejection of the request for pension, the present Writ Petition has been filed.

2. Heard Mr.A.R.Nixon, learned counsel for the petitioner and Mrs.Rita Chandrasekar, learned Standing counsel appearing on behalf of the respondents.

3. The brief facts of the case are as follows:-

a) On 03.01.1996, the Bank had sanctioned leave to the petitioner to enable her to pursue MBA course in the University of Bridgeport, USA, for a period of two years. After the expiry of two years, she had remained absent without informing the Bank for a further period of 1 year, 7 months and 22 days and thereafter reported for duty in September 1999. The Bank had permitted her to rejoin duty and had subsequently granted annual increment with effect from 01.08.2000, as per settlement arrived at.

b) On 29.11.2000, "Andhra Bank Employees Voluntary Retirement Scheme 2000 (ABEVRS-2000)" was announced inviting application from employees under the scheme, on or before 10.01.2001. The petitioner had opted for Voluntary Retirement under the said scheme through an application received by the Bank on 11.12.2000. The Bank had accepted the petitioner's application and permitted her to voluntarily retire under the scheme with effect from 31.01.2001, since she had put in a total service of 15 years, 10 months and 10 days.

c) Subsequently, when the petitioner had made request seeking for superannuation for pension on the ground that she had completed 15 years of service in accordance with the Regulations, the Bank had rejected her request through a letter dated 01.09.2001, stating that she had not put in 15 years of "Qualifying Service" in terms of Circular No.302 dated 21.12.2000. Hence, the present Writ Petition.

4. The Circular No.302 dated 21.12.2000 relied upon by the Bank for the purpose of rejecting the petitioner's request for Pension reads as follows:

> "Re: Amendment to Regulation 28 of Andhra Bank (Employees') Pension Regulations, 1995.
>
> -Andhra Bank Employees' Voluntary Retirement Scheme-2000.

Attention of the Branches/Offices is invited to Regulation 28 of Andhra Bank (Employees') Pension Regulation, 1995 which reads as under:

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.

Now, Indian Banks' Association advised the member Banks that Government of India has conveyed its approval for amending the above said Regulation by incorporating the following proviso thereto.

Provided that, pension shall also be granted to an employee who opts to retire before attaining the age of superannuation, but after having served for a minimum period of 15 years in terms of any scheme that may be framed for the purpose by the Bank's Board with the concurrence of the Government.

Accordingly, the process of amending the above said Regulation is under progress.

In this connection, attention is invited to Circular No.279, Ref.No.3/58 dated 29.11.2000 wherein "Andhra Bank Employees' Voluntary Retirement Scheme-2000" was announced inviting applications from the employees under the Scheme. The last date for receiving applications under the scheme is 10th January, 2001.

This Scheme provides, inter-alia, the benefit of Individual's contribution to Provident Fund and Pension, including commuted value of Pension, in terms of Andhra Bank (Employees') Pension Regulation, 1995 in the case of those employees who opted for pension and have put in 20 completed years of service in the Bank, as per Para 7(ii)(b) of the Scheme.

Now, it is decided to extend the benefit of Pension, including commuted value of Pension in the case of those employees who have already opted for pension and have put in 15 completed years of qualifying service in the bank also, so that employees who retire as per Andhra Bank Employees' Voluntary Retirement Scheme-2000 after serving for a prescribed minimum period of 15 years would be eligible for PRORATA PENSION for the period of service rendered as if they are to retire on attaining the age of superannuation on that date, pending amendment to Regulation 28 of Andhra Bank (Employees') Pension Regulations, 1995.

All the Branches/Offices are advised to bring the contents of this circular to all the employees. It may be noted that the last date for receiving applications under Andhra Bank Employees' Voluntary Retirement Scheme-2000 remains unchanged i.e., 10.01.2001. However, the Bank reserves the right to alter and/or amend the terms and conditions of the scheme and to withdraw the same at its discretion without assigning any reason."

5. Regulation 28 of the Andhra Bank (Employees') Pension Regulations, 1995 [hereinafter referred to as "ABEPR-1995] came to be amended by introducing a proviso to the existing Regulation, which reads as follows:-

"2. In the Andhra Bank (Employees') Pension Regulations, 1995, for the Regulation 28, the following regulation shall be substituted, namely:-

"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 framed for such purpose by the Board with the approval of the Government."

The Amendment to Regulation 28 of the Andhra Bank (Employees') Pension Regulations came into force from 22.02.2003, the date on which it was published in the Official Gazette.

6. As per the above amendment, the employees, who had rendered services for a "minimum period" of 15 years in terms of any scheme and opts for retirement after 01.09.2000 would be eligible for pension. There is no dispute that, under the amended regulation, the petitioner will be eligible for pension. The term "Qualifying Service" alone is relied upon as a fetter to her eligibility.

7. The ABEVRS-2000 was in operation from 11.12.2000 to 10.01.2001. The impugned circular came into force on 21.12.2000

when the scheme was in force. Under ABEVRS-2000, all permanent full time employees of the Bank were eligible to seek for voluntary retirement, provided they have completed a minimum of 15 years of service or 40 years of age, as on 10.12.2000. When the petitioner claimed to have completed 15 years of service and applied for voluntary retirement, her application came to be accepted and she was allowed to retire by accepting that the petitioner had completed 15 years of "Qualifying Service" as per the scheme. However, her request for pension was rejected only on the ground that she has not completed 15 years of "Qualifying Service" since she was on extraordinary leave on loss of pay for a period of 3 years, 7 months and 22 days and by deducting this leave, out of her total service of 15 years, 10 months and 10 days, it was the Bank's contention that she had put in only 12 years, 2 months and 18 days of service. The basis for such a stand taken by the Bank was in view of Circular No.302 dated 21.12.2000.

8. The impugned Circular dated 21.12.2000 intends to extend the benefit of pension to those employees, who have already opted for pension and had put in 15 years of "Qualifying Service" in the Bank after serving a minimum period of 15 years. When the said circular was passed, the process of amending Regulation 28 of the ABEPR-1995 was under progress and the Circular dated 21.12.2000 was a stopgap arrangement, till the amendment. Subsequently, by a Gazette notification dated 22.03.2000, the amendment to Regulation 28 came into force.

9. The term "Qualifying Service" has been defined under the Regulation 14 of the ABEPR-1995, which reads as follows:

> "Subject to the other conditions contained in these regulations, an employee who has rendered a minimum of ten 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."

10. A simple reading of the term "Qualifying Service" would entitle the petitioner to have qualified for the benefit of pension, since even as per the version of the Bank, the petitioner had put in 12 years, 2 months and 18 days of service, after deducting the leave taken by the petitioner. Therefore without reference to the ABEVRS-2000, an employee would qualify for pension after 10 years of service.

11. As stated earlier, prior to the Amendment to Regulation 28, the proviso found therein was not available. The ABEVRS-2000 was approved by the Board of Directors of the Bank on 25.11.2000, pursuant to the advice of the Indian Bank Association that the Government of India had conveyed its

approval for amending Regulation 28 of the ABEPR-1995 on 05.09.2000. The approval of the Government of India was also conveyed to all the member Banks including Andhra Bank by the Indian Bank Association on 11.12.2000, including the proposed amendment to Regulation 28, by inclusion of the proviso. Till this point of time "Qualifying Service" was never found in the scheme. The impugned circular dated 21.12.2000 for the first time had introduced the eligibility condition for pension under the ABEVRS-2000 by stating that the employee, who had put in 15 completed years of service after serving for a prescribed minimum period of 15 years would be eligible for the "Pro-rata Pension" for the period of service rendered.

12. It was well within the knowledge of the Bank that the intended amendment to Regulation 28 did not include the terms "Qualifying Service" and "Pro-rata Pension". When the Banking Regulation did not provide for such "Qualifying Service" for employees opting for VRS, there is no justification on the part of the Bank to introduce a circular contrary to regulations or the scheme. It is a settled proposition that such circulars or instructions or guidelines cannot override the principal regulations. The circular in effect seems to amend the object of the scheme and the regulations, which is impermissible. The Hon'ble Supreme Court in the case of B.Rajagopala Naidu Vs. State Transport Appellate Tribunal reported in AIR 1964 SC 1573 had held that what the law and the provisions of law might legitimately can do, cannot be permitted to be done by administrative or executive orders. As such, when ABEVRS-2000 had prescribed the eligibility criteria as a minimum period of 15 years of service and the proposed regulation at the point when the impugned circular came to be passed also prescribed the eligibility criteria as "service for a minimum period of 15 years", the circular, over looking these aspects and bringing in a new criterion of "Qualifying Service" or "Pro-rata Pension" is not only unjustifiable, but also impermissible and liable to be struck down.

13. As observed earlier, the circular came to be issued when the process of amending Regulation 28 was under progress and the last date for receiving the applications under the ABEVRS-2000, was about to expire on 10.01.2001. When the impugned circular itself has taken note of the proposed amendment Regulation 28, in all fairness, the intention behind the proposed amendment to the eligibility condition ought to have been made as a criterion in the circular and not otherwise.

14. It is a well settled proposition of law that the circulars and administrative instructions are only to guide and regulate the statutory provisions and will not have a binding effect. In other words, these circulars will not have any force on the statutory provision of law or regulation as in the

present case. While that being so, a mere reference to the circular for the purpose of rendering the petitioner ineligible to qualify herself for the claim of pension is unjustified and illegal. Such circular cannot be used to deny the rights or to establish the negative.

15. Mrs.Rita Chandrasekar, learned Standing counsel for the Bank, had made earnest efforts to substantiate that "Qualifying Service" is the criteria for determining the eligibility for pension under the Regulations and in support of such a contention, the learned counsel relied upon the decision of the Hon'ble Apex Court in Indian Bank and another Vs. G. Ramachandran and others reported in 2008 (1) SCC 711, as well as the judgment of this Court in W.P.No.2113 of 2001 [Pramila David V. The General Manager, (Appellate Authority), Syndicate Bank, H.O. Manipal, P.B. No.1, Manipal 576 119, Karnataka State & two others] dated 16.06.2010, for the proposition that the Extraordinary Leave availed by the petitioner should be excluded from the qualifying service for the purpose of pension.

16. Now that, it is found that the term "Qualifying Service" itself is not the part of the Regulations for the petitioner to qualify for grant of pension, this decision cited by the learned Standing counsel may not be of any help, since in the facts of the present case, the issue revolves around Regulation 28 which prescribes eligibility conditions that a minimum period of service of 15 years and not "Qualifying Service", whereas in the case before the Hon'ble Supreme Court, the issue was not in connection with the pension scheme. When the Regulation itself in this Writ Petition does not provide for a "Qualifying Service" and specifically prescribes for a minimum service, the ratio laid down by the Hon'ble Apex Court cannot help the respondents.

17. The learned Standing counsel relied upon the decision of the Hon'ble Apex Court in Bank of Baroda and others V. Ganpat Singh Deora reported in 2009 (3) SCC 217 for a similar proposition. This decision will also be not applicable to the facts of the present case since Regulation 28 of the Bank of Baroda Regulations, prescribes for "Qualifying Service", whereas the Andhra Bank Regulations prescribes only for "Minimum Service".

18. For all the foregoing reasons, this Court is of the affirmed view that the impugned circular is not only unjustified and illegal but also not have a binding effect. Even assuming in the contrary, pursuant to the impugned circular dated 21.12.2000, the amended Regulation 28 had come into effect from 22.02.2003 making the employees, who had opted to retire after rendering service for a minimum period of 15 years in terms of any scheme with effect from 01.09.2000. Viewing from this angle

also, the impugned circular has become redundant after the introduction of the proviso by way of amendment to Regulation 28.

19. In the result, the impugned circular dated 21.12.2000, insofar as it restricts the petitioner's eligibility for pension to 15 completed years of qualifying service in the Bank and the prescription of pro-rata pension for the period of service rendered are set aside. Consequently, the rejection orders passed by the Bank dated 01.09.2001 and 15.02.2003 are quashed. As such, it is hereby declared that the petitioner is entitled for pension for having served a minimum period of 15 years in terms of the ABEVRS-2000. The respondents Bank shall endeavour to disburse the entire pension arrears, within a period of 30 days from the date of receipt of a copy of this order. The respondents Bank shall thereafter continue to pay the pension to the petitioner in accordance with ABEPR-1995. The Writ Petition stands allowed accordingly. No costs.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

DP
To

1.The Chairman & Managing Director,
Andhra Bank,
Head Office,
Saifabad, Hyderabad-500 004.

2.The Manager,
Andhra Bank,
Valasaravakkam Branch,
1/15, Arcot Road, Chennai.

+1cc to Mr.A.R.Nixon, Advocate SR.73846
+1cc to Mrs.Rita Chandrasekar, Advocate SR.74792

W.P.No.37764 of 2004

GP(CO)
CB(18/10/2019)