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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21/11/2019

C O R A M

THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.A.No.3789 of 2019
against
W.P.No.37764 of 2004

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

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

Vs.

R.Uma Maheswari ... Respondent

Appeal under Clause 15 of the Letters Patent against the order dated 28.08.2019 made in W.P.No.37764 of 2004.

Prayer in W.P.No.37764 of 2004:

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 Appellants : Ms.Rita Chandrasekar

For Respondent : Mr. A.R.Nixon

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J U D G M E N T

SUBRAMONIUM PRASAD,J.

This instant writ appeal is directed against the order dated 11.12.2014, passed by the learned Single Judge of this Court in WP.No.37764 of 2004.

2. Shorn of details, the facts leading to this appeal are as under:-

a) The writ petitioner joined the services of the bank on 21.03.1985. The writ petitioner was sanctioned study leave by a letter dated 03.01.1996 for two years. Clause - 9 of the said letter provided that the period of study leave will not be reckoned as service for the purpose of computation of terminal benefits in the eventuality of the failure of the petitioner to report for duty immediately after availing the sanctioned leave or to work for the bank for a minimum period of 5 years after rejoining.

b) The writ petitioner was to rejoin duty on 10.01.1998. However, she remained absent for a further period of 1 year 7 months 22 days.

c) The respondent/appellant Bank introduced Andhra Bank Employees' Voluntary Retirement Scheme-2000 (hereinafter called as VRS 2000). Clause - 5.1 of the VRS 2000, provides that all permanent full time employees of the Bank will be eligible under the scheme provided that they have completed a minimum of 15 years of service or 40 years of age as on 10.12.2000.

d) Regulation - 28 of the the Andhra Bank (Employees') Pension Regulations,1995 (hereinafter called Pension Regulation), provides that the superannuation shall be granted to an employee who has retired on his attaining the age of superannuation specified in the service regulations. Proviso to Regulation - 28 which was inserted on 25.11.2000 states that, pension will 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.

d) The writ petitioner opted to avail voluntary retirement under VRS 2000. The request of the writ petitioner was accepted. The writ petitioner thereafter requested for pension.

e) The request for pension was rejected by the Bank by letter dated 15.02.2003, stating that since she had not completed the 15 years service, she is not eligible for grant of pension. In a letter dated 15.02.2003, the details of the service are given which are:-

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"The details of your service are given below:

Date of joining	:	21.03.1985
Date of retirement	:	31.01.2001
Service rendered in the Bank	:	15 years 10 months 10 days
Less :		
EOL/UAA	:	3 years 7 months 22 days
Qualifying service	:	12 years 2 months 18 days
Eligible qualifying service	:	
for pension	:	15 years"

f) The denial of pension is the subject matter of challenge in the instant writ petition. In the writ petition, the writ petitioner contended that the petitioner is entitled to pro-rata pension under the Pension Regulation. According to the writ petitioner, she has the qualifying service for getting pension. Reliance is placed by the petitioner on Regulation 14 of the Pension Regulation, which provides that an employee who was rendered minimum 10 years service in the Bank on the date of the retirement or the date on which he has deemed to have retired shall qualify for pension.

g) According to the writ petitioner, she has put in minimum 10 years service and has taken voluntary retirement under the VRS 2000 and she would be entitled to pro-rata pension for 12 years 2 months and 18 days which is the period she had served with the Bank.

3. The respondents/appellant have filed a counter stating that an employee who opts for VRS 2000 has to put in a minimum period of 15 years for grant of pension which is provided for under the Pension Regulation.

4. The learned Single Judge by the impugned judgment relied on Regulations 14 of the Pension Regulation and has held that since the petitioner has put in 12 years 2 months 18 days, she had put in qualifying service entitling her to pension. The learned Single Judge stated that, proviso to Regulation 28 was introduced only on 25.11.2000 i.e., after the pension scheme was brought in and the proviso would not be applicable for those employees who have opted for VRS 2000.

5. The learned Single Judge held that there was no justification on the part of the Bank to introduce an amendment by way of circular to the pension scheme which did not form a part of the original scheme. The learned Single Judge held that the instructions or guidelines cannot over ride principle regulation. The learned Single Judge held that the circular in effect amends the objects of the pension scheme which is not permissible.

6. Heard Ms.Rita Chandrasekar, learned counsel for the appellants and Mr.A.R.Nixon, learned counsel for the respondent.

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7. Certain dates which are not in dispute are as under:-

23.01.1985	-	The Writ Petitioner joined the service
03.01.1996	-	Study leave for a period of 2 years was sanctioned with effect from 10.01.1996
10.01.1998	-	Writ Petitioner rejoin the service
29.11.2000	-	Andhra Bank introduced the Andhra Bank Employees' Voluntary Retirement Scheme 2000
10.01.2001	-	Last date for receiving application under the scheme
21.12.2000	-	Amendment to Regulation 28 of 1995 Pension Regulation by introducing a proviso that pension will be granted to employees who opt to retire before attaining the age of superannuation by had served for a minimum period of 15 years in terms of any scheme that may be framed by the Bank Board with the concurrence of the Government.

8. The writ petitioner's application for voluntary retirement was accepted. However the claim for pension was not accepted on the ground that the writ petitioner had not put in 15 years of service for the reason that she had over stayed for 1 year 7 months 22 days on study leave which could be counted for the purpose of pension. Clause - 9 of the letter dated 03.01.1996 reads as under:-

> "You may note that the period of study leave will not be reckoned as service for the purpose of computation of terminal benefits in the eventuality of your failure to report for duty immediately after availing the sanctioned leave or to work for the Bank for a minimum period of five years after rejoining."

9. The relevant clauses which are necessary to be perused under VRS 2000, read as under:-

> "Clause - 5.1. All permanent full time employees of the Bank will be eligible to seek voluntary retirement under the scheme provided they have completed a minimum of 15 years of service OR 40 years of age as on 10th December, 2000.
>
> Clause 6: Amount of Ex-Gratia: In addition to the normal retirement benefits as per his eligibility, an employee seeking voluntary retirement under the scheme will be entitled to receive the ex-gratia amount of
> (a) 60 days salary (pay plus stagnation increments plus special pay plus dear allowance) for each completed year of service;

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(b). Salary for the number of months service left, (a) or (b) whichever is less after deducting Income Tax at source as per Income Tax Act, 1961, wherever applicable.

Clause 7. Other Benefits: An employee seeking voluntary retirement under the scheme will be eligible for the following benefits in addition to the ex-gratia amount mentioned in para 6 above of this scheme:-

i) Gratuity as per payment of Gratuity Act 1972 or Gratuity payable under the service Rules as the case may be, as per existing rules;

ii) a) Individuals contribution to Provident Fund and Bank's Contribution towards Provident Fund, in the case of those employees who have opted for Contributory Provident Fund.

OR

b) Individuals contribution to Provident Fund and Pension, including commuted value of Pension, in terms of Andhra Bank (Employees') Pension Regulations, 1995 in the case of those employees who opted for pension and have put in 20 completed years of service in the Bank.

iii) Leave encashment of accumulated Privilege Leave upto a maximum of 240 days as per the rules of the Bank.

10. Regulation 14 of the Andhra Bank (Employees') Pension Regulations, 1995, 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. Circular bearing No.302 dated 21.12.2000, reads as under:-

"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

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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 hoard 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 Empoloyees' 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 the date, pending amendment to Regulation 28 of Andhra Bank (Employees') Pension Regulations, I995.

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

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scheme and to withdraw the same at its discretion without assigning any reason.

Please be guided accordingly."

11. An employee, who opts for voluntary retirement is entitled to the benefits given under Clauses 6 and 7 of VRS 2000. Clauses 6 and 7 enumerate the amounts that the employee is entitled to on his opting to avail the benefits of the VRS 2000. A perusal of Clauses 6 and 7 of VRS 2000, quoted supra, would show that an employee would get, in addition to his normal retirement benefits, as per his eligibility 60 days salary + stagnation increments + special pay plus dearness allowance for each completed year of service or his salary for the number of months service left, whichever is less after deducting Income Tax at source. Such an employee is also entitled to gratuity, as per the Payment of Gratuity Act, his contribution to Provident Fund and the Bank's contribution to Provident Fund, OR in the alternative his contribution to Provident Fund and Pension including commuted value of pension, in terms of Pension Regulation. This option is available to those employees, who opted for pension and have put in 20 completed years of service, in the Bank. An employee is also entitled to leave up to a maximum of 240 days. Regulation 14 of the Pension Regulation states that an employee has to render minimum of 10 years of service in the Bank, on the date of his retirement or on the date on which he is deemed to be eligible for pension.

12. Regulation 28 of the Pension Regulation, stipulates that Superannuation pension shall be granted to an employee, who has retired on his attaining the age of superannuation. The proviso inserted on 25.11.2000 states that an employee who opts to retire before attaining the age of superannuation under a scheme of the Bank would be entitled to pension only after the employee had served for a minimum period of fifteen years. Regulation 14, therefore, does not apply to a case, where a person opts for Voluntary Retirement Scheme. The amounts which are paid under the Voluntary Retirement Scheme are enumerated in Clauses 6 and 7. Such employees are not eligible for pension unless they fulfill the requirements of Regulation 28 of Pension Regulation. Regulation 14, cannot be said to apply in a case where a person opts to have a golden hand shake by opting for a Voluntary Retirement Scheme. A person who has put in fifteen years of service or attained the age of 40 years, on 10th December 2000, is entitled to avail the benefit of Voluntary Retirement Scheme, but it is not necessary that all such persons, who are eligible to avail the Voluntary Retirement Scheme must necessarily also be entitled to get pension, which is regulated by the Pension Regulation.

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13. The learned Single Judge failed to appreciate that Voluntary Retirement Scheme and the Pension Regulations operate in different areas and the fact that an employee is entitled to get the benefit of a Voluntary Retirement Scheme would not in all cases get the benefit of the Pension Scheme as well. In order to get pension, under the Pension Regulation, one has to fulfill the requirements, under the Pension Regulation. Proviso to Regulation 28 which had been brought in, on 22/12/2000, states that pension shall also be granted to an employee, who opts to retire prior to the age of superannuation, but he should have served for a minimum period of fifteen years. This Clause therefore, indicates that every employee, who opts for Voluntary Retirement Scheme is not automatically entitled to grant of pension. An employee who opts for voluntary retirement would get pension only if the employee has served for a minimum period of fifteen years in terms of any scheme.

14. The petitioner falls short of fifteen years, for the reason that she joined after a period of 1 year 7 months and 22 days. This period could not be counted for the purpose of pension, in terms of Clause 9 of the Letter, dated 3/1/1996 (quoted supra), by which study leave was granted to the petitioner.

15. The view of the learned Single Judge that any employee who opts for the scheme would be entitled to pension by applying Regulation 14 is therefore not sustainable. Regulation 28 of the Pension Regulation before the proviso was inserted states that the pension will be given to an employee on attaining age of superannuation in accordance with the Pension Regulation. There was no provision in the Pension Regulation which permitted pension to be given if a person left the service prior to attaining the age of superannuation. By virtue of the insertion of of the provision Regulation 28, a person who opted to retire before attaining the age of superannuation has now become eligible to get pension, provided the employee has served a minimum period of fifteen years. The judgment of the learned Single Judge who proceeds on the basis that Regulation 14 would be applicable even in those cases where an employee opts to retire before attaining the age of superannuation is erroneous.

16. Learned counsel for the appellant placed reliance on para 89 of the {(2003) 2 Supreme Court Cases - 721}, BANK OF INDIA AND OTHERS Vs. O.P.SWARNAKAR AND OTHERS, which reads as under:-

> "89 [Ed.: Para 89 corrected as per Official Corrigendum No. F.3/Ed. B/24/2003] . Furthermore, a large number of employees have withdrawn their offer only when a proviso was sought to be added to Regulation 28 aforementioned. In terms of the Scheme

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the employees, who expected to get benefits of sub-regulation (4) of Regulation 29 would be deprived therefrom. It is not in this dispute that the qualifying period for receiving pension was 20 years. Only upon completion of 20 years, in terms of the statutory regulation contained in Regulation 29, an employee could opt for voluntary retirement and in terms thereof, he would be entitled to the benefits specified therein. The said Regulations had specifically been mentioned for the purpose of computation which would include invocation of sub-regulation (4) of Regulation 29 providing for relaxation of 5 years towards the qualifying period. The employees must have proceeded on the basis that despite the fact that they have merely rendered 15 years of service which was not a qualifying service under the Regulations, they would be entitled to the pensionary benefits in terms of the Scheme. By introducing the proviso to Regulation 28 pension was sought to be made pro rata in place of full pension."

17. The learned counsel contended that the petitioner would be entitled to pro rata of pension after completing ten years of service in terms of Regulation 14. We are afraid that we cannot accept this contention. What paragraph 89 states is that an employee who opts to retire before attaining the age of superannuation would be given pro rata pension under Regulation 28, provided he completes 15 years of service.

18. The Pension Regulation has been amended by the Bank communication dated 21/12/2000 is not a mere Circular. It is an intimation to all the employees of Andhra bank informing about the amendment of the Regulation. The learned Single Judge, ought not to have treated this intimation as an administrative instruction. The amendment has extended its benefit of pension as provided under the Pension Regulation even to the persons who have opted to avail the Voluntary Retirement Scheme provided that they have served for a period of 15 years.

19. In the result, Writ Appeal is allowed and the order, dated 28/8/2019, passed in W.P.No.37764 of 2044, is set aside. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

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Sub Assistant Registrar

pkn/mvs.
To,
+1cc to Mr.Aiyar and Dolia , Advocate SR.No.97688
+3ccs to Mr.A.R.Nixon , Advocate SR.No.97353

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