BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 21.11.2019
CORAM
THE HONOURABLE MR.JUSTICE S.S.SUNDAR
W.P.(MD).No.17042 of 2013

D.Koilpitchai .. Petitioner

Vs

1.The Senior Manager,
Canara Bank,
Employees Pension Fund,
Human Resources Wing,
Naveen Complex,14, M.G.Road,
Bangalore-560001.

2.The Manager,
Human Resources Management Section
Canara Bank Circle Office,
(East Veli Street)
Madurai.

3.The Manager,
Canara Bank,
Ettiyapuram Branch,
Tuticorin District.

4.The Manager,
Canara Bank,
Chidambaram Nagar Branch,
Tuticorin,
Tuticorin District. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the 1st respondent on 03.09.2013 in Ref.No.CBEPF/PEN/34823/270/2013/YAH and quash the same and consequently, directing the respondents to give the notional inclusion of 5 years period of service to the petitioner along with other benefits.

For Petitioner : Mr.R.Sathish
For Respondents : Mr.C.Godwin

O R D E R

This writ petition has been filed for issuance of Writ of Certiorarified Mandamus to quash the order passed by the first respondent and consequently, to direct the respondents to give the notional inclusion of 5 years period of service to the petitioner along with other benefits.

2.The brief facts that are necessary for the purpose of disposing of this petition are as follows:

The petitioner joined in the respondent Bank on 12.06.1981 as Clerk. After completion of period of 19 years, 9 months and 20 days, the petitioner opted to go on VRS and was relived from service on 31.03.2001. As per Canara Bank (Employees') Pension Regulations 1995, the qualifying service of an employee retiring voluntarily under this regulation shall be increased by a period not exceeding five years, subject to the condition that the total qualifying service rendered by such employee shall not in any case exceed 33 years and it does not take him beyond the date of superannuation. It is also admitted that a person, who avail the voluntarily retirement scheme, should have completed 20 years of service. Relying upon Regulation 29(5), the petitioner claimed the benefit of notional inclusion of 5 years of service for the purpose of calculating his pension. Though the petitioner was permitted to go on voluntary retirement in the year 2001, the petitioner sent a representation to the second respondent on 01.08.2013 seeking notional inclusion of 5 years along with his actual service, as per Regulation 29(5). Further, by the impugned order the request for addition of 5 years of service to the actual period of service, was denied for the reason that the petitioner has completed only 19 years, 9 months and 20 days and that he is not entitled to get notional inclusion of 5 years. Challenging the said impugned order, the present writ petition is filed by the petitioner.

3.The learned counsel appearing for the writ petitioner relied upon Clause 18 of the Regulations, which reads as follows:

> *"18.Broken period of service of less than one year-*
>
> *If the period of service of an employee includes broken period of service is less than one year, then if such broken period is more than six months, it shall be treated as one year and if such broken period is six months or less it shall be ignored."*

4.Relying upon Clause 18 of the Regulations, the learned counsel would further submit that the petitioner, who had rendered service in the respondent Bank for a period of 19 years, 9 months and 20 days, is entitled to have the broken period as one year and therefore, the petitioner should be treated as an employee completing 20 years of service. Further, the learned counsel appearing for the petitioner also relied upon a judgment of the Hon'ble Supreme Court on the point.

5.The learned counsel appearing for the respondent submitted that a Circular No.235/2000, dated 11.12.2000, was issued wherein, the provision of adding 5 years notional service to the actual service rendered in case of those, who opt for Voluntary Retirement under Regulation 29 of Pension Regulations will not be available to those who opt for voluntarily Retirement under the "Canara Bank

Employees' Special Voluntary Retirement Scheme. The learned counsel also relied upon the judgment of the Hon'ble Supreme Court in the case of ***UNITED BANK OF INDIA V. PIJUSH KANTI NANDY AND OTHERS*** reported in ***(2009)8 Supreme Court Cases 605***, wherein it has been held as follows:

> *"31.We, therefore, are of the opinion that in a case of this nature, clause (5) of Regulation 29 would be attracted only in a case where the employee concerned has completed 20 years of qualifying service. Clause (5) of Regulation 29 would be applicable for the purpose of granting a higher monetary benefit in the matter of computation of pension. It does not provide for measurement of the period as was in Indian Bank."*

Therefore, pointing out that the benefit that was conferred on a person, who opt to retire under the Canara Bank (Employees') Special Voluntarily Retirement Scheme, cannot be given to the petitioner, who has not completed the qualifying service for the purpose of pension. Relying upon the subsequent circular issued by the Bank, it is further contended by the respondent by filing a counter affidavit that the petitioner is not entitled to the relief.

6.By the impugned order, the petitioner's representation for addition of 5 years to his qualifying service for the purpose of pension, as per Canara Bank (Employees') Pension Regulation, 1995, was negatived only on the ground that the petitioner had not completed 20 years of service and that his service for 19 years, 9 months and 20 days falls short of 20 years. Since a specific provision has been made in the Pension Regulations to round of by treating the broken period beyond six months as one year, the impugned order is contrary to the Pension Regulations, 1995. Clause 18 of the Pension Regulations clarifies the position and it is admitted that proviso to Clause 18 is not applicable.

7.The contention of the respondent is that Clause 5 of Regulation 29 would be attracted only in a case where the employee concerned has completed 20 years of actual qualifying service, is not sound. As a matter of fact, the question before the Hon'ble Supreme Court in the case of ***United Bank of India(cited supra)*** is whether a person, who has not even completed 20 years is entitled to get the benefit of the scheme or not. This position is also made clear by the Hon'ble Supreme Court in a subsequent judgment in the case of ***STATE OF BANK OF PATIALA V. PRITAM SINGH BEDI & ORS.***, in ***Civil Appeal No.172 of 2010, judgment dated 07.07.2014***, has held as follows:

> *"24.Regulation 18 of the Pension Regulation, 1995 provides that if broker period is more than six months, it shall be treated as one year. Therefore, all the respondents-writ petitioners having completed more than 19 years and 6 months of service in the Bank, they are to be treated to have completed 20 years of service. The aforesaid question was neither*

raised nor decided in the case of 'Bank of Baroda' or 'Bank of India'.

25.In view of the aforesaid fact, the appellant-Bank cannot derive the benefit of the decision of this Court in Bank of Baroda as the employees, who were parties before the Court in the said case had not completed 20 years of service. As per the decision of this Court in Bank of India, the respondents-writ petitioners having completed 20 years of service are entitled to the benefit of Regulation 29."

8.Regarding the circular relied upon by the respondent, it is to be pointed out that the circular refers to is incorporated in the communication, dated 15.12.2000 issued by the Personal Management Section wherein, it is indicated that the Board of Directors of the Bank have accorded permission to amend Regulation 28 of Canara Bank (Employees') Pension Regulations, 1995 and that necessary steps have been taken to amend the Regulations as per the provisions of law. The circular through the letter is subject to amendment and till such time, the amendment is carried out in the Regulation as per law, the respondent cannot rely upon the circular to defeat the right and benefits to an employee under the Canara Bank (Employees') Pension Regulations 1995. It is to be seen that the benefit conferred by regulation cannot be taken away without even giving an opportunity to the petitioner or similarly placed persons. As the option that may be exercised by the petitioner or similarly placed person would be based on certain benefits conferred under the Pension Regulations applicable to the people, who are seeking voluntarily retirement. The benefit under Regulation cannot be withdrawn unilaterally after many people have altered their position based on the regulations for getting certain benefits. No document is produced to show that the Regulation was amended, as it was contemplated.

9.The learned counsel appearing for the respondent submitted that there is a huge delay in filing the writ petition and therefore, the writ petition is liable to be dismissed on the ground of laches. It is true that the petitioner opted for voluntarily retirement in the year 2001. There is nothing on record to indicate that the petitioner has made a claim before 2013. The petitioner has not come with proper explanation for the same. However, this Court is not inclined to dismiss the writ petition on the ground of laches, for the reason that no prejudice would be caused to the respondent, on account of delay in implementing or enforcing the benefit conferred on the petitioner, as per the Pension Regulations. The respondent has given a circular indicating that the benefit under the Pension Regulations will be withdrawn by amendment. This would have been probably the reason for the petitioner and other people not asking for the benefit earlier. The facts are admitted and no prejudice has been caused to the respondents on account of delay.

10.Be that as it may, dismissing the writ petition on the ground of laches is not a rule in all cases. This Court may in certain cases used to dismiss the writ petition on the ground of delay for reason as pointed out earlier and the benefit conferred on the petitioner under the Pension Regulations has been denied to him for no valid reason.

11.As a result, this writ petition is allowed and the impugned order passed by the respondent, dated 03.09.2013 in Ref.No.CBEPF/PEN/34823/270/2013/YAH, is set aside. The first respondent is directed to give notional inclusion of 5 years period of service to the petitioner in terms of Regulation 29(5) of Canara Bank (Employees') Pension Regulations, 1995 and give monetary benefit within three months from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

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To
1.The Senior Manager,
Canara Bank,Employees Pension Fund,
Human Resources Wing,
Naveen Complex,14, M.G.Road,
Bangalore-560001.

2.The Manager,
Human Resources Management Section
Canara Bank Circle Office,
(East Veli Street,) Madurai.

3.The Manager,
Canara Bank,Ettiyapuram Branch,
Tuticorin District.

4.The Manager,
Canara Bank, Chidambaram Nagar Branch,
Tuticorin,
Tuticorin District.
+1 CC to M/s.C.GODWIN, Advocate (SR-100398[F] dated 22/11/2019)
+1CC toM/s.J.SENTHIL KUMARAIAH,Advocate(SR-100513[F]

W.P.(MD).No.17042 of 2013

21.11.2019

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