

IN THE HIGH COURT FOR THE STATE OF TELANGANA,
HYDERABAD

* * * *

WRIT PETITION No.22030 OF 2001

Between:

Smt. Sharmila Ravi Kumar

....Petitioner

And

Chairman and Managing Director
Andhra Bank, Sultan Bazar, Hyderabad
& 3 Others.

....Respondents

JUDGMENT PRONOUNCED ON: 28.02.2020

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? : Yes
2. Whether the copies of judgment may be
Marked to Law Reporters/Journals? : Yes
3. Whether His Lordship wishes to
see the fair copy of the Judgment? : No

T.AMARNATH GOUD, J

* **THE HON’BLE SRI JUSTICE T. AMRNATH GOUD**

+ **WRIT PETITION No.22030 OF 2001**

% 28.02.2020

Smt. Sharmila Ravi Kumar
VERSUS
Petitioner

\$ Chairman and Managing Director
Andhra Bank, Sultan Bazar, Hyderabad
& 3 Others.
Respondents

! Counsel for Petitioner : Sri P.S.Rajasekhar

^ Counsel for the respondents : Dr. K.Lakshmi Narasimha

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> HEAD NOTE:

? Cases referred

¹ (2009) 3 SCC 217

² (2009) 8 SCC 605

³ (2014) 13 SCC 474

⁴ (2008) 1 SCC 711

5 Andhra Bank vs. R. Uma Maheswari
{W.A.No.3789 of 2019 against W.P.No.37764 of 2004
dated 21.11.2019 of Madras High Court}

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD**WRIT PETITION No.22030 of 2001****ORDER:**

1 This Writ Petition is filed challenging the order of the second respondent in Lr.No.666/3/P/152, dated 01.09.2001, whereunder the second respondent rejected the request of the petitioner for grant of pension on the ground that she had not put in 15 years of 'qualified service'.

2 The brief facts of the case are as follows:

The petitioner joined service of the Respondent-Bank on 15.05.1985 in the Clerical cadre and was working as a Computer Operator in the said bank. She has put in unblemished record of service. She has two sons. Her second son Master Adarsh was afflicted with a problem of speech delay and behavioral disorder due to an unfortunate injury at his birth. Accordingly, he required medical attention and her personal care. He was admitted in various institutions for rectification of his disorders and the petitioner had applied for leave to lookafter him from time to time as per doctors' advice. Medical certificates were also produced to the respondents bank and, in consideration of the same, the respondents bank had sanctioned leave for a total period of 726 days, out of which, she availed only 666 days as Extra Ordinary Leave (EOL). During her service, as she did not

have that much leave to her credit, the said leave was sanctioned as loss of pay. This was during the period 1991.

Thereafter, her son showed a considerable improvement and he was admitted into a regular school also. Therefore, the petitioner was able to resume her work in the bank. During the year 1995, the respondents bank announced pension scheme for all its employees as a welfare measure and in terms of the scheme, she opted for pension. As per the scheme, the petitioner surrendered employer's share to Provident Fund to the bank. This option was accepted by the bank and the petitioner was entitled to pension as per rules from time to time. While so, on 29.11.2000, the bank announced a Voluntary Retirement Scheme for the employees of the bank titled as 'Andhra Bank Employees Voluntary Retirement Scheme, 2000 (for short "ABEVRS")'. Under the said scheme, it was announced that all the permanent full time employees of the bank will be eligible to seek voluntary retirement provided they have completed a minimum period of 15 years of service or 40 years of age as on 10.12.2000. A procedure was prescribed under the said scheme and it was specified that the scheme will remain open from 11.12.2000 to 10.01.2001.

As the petitioner was qualified for the Voluntary Retirement Scheme and as she was eligible for all the benefits thereunder including pension as per the Pension Rules of

1995, as amended by the ABEVRS, she filled necessary forms and submitted the same on 01.01.2001 and on 05.01.2001. On 24.01.2001, respondent No.3, on behalf of the bank, informed the petitioner that the competent authority has accepted her request for voluntary retirement under ABEVRS and that her date of relieving from service will be communicated in due course. On 31.01.2001, respondent No.4 informed the petitioner that with effect from closing hours of 31.01.2001, she will be relieved from the bank's service. On 23.02.2001, the bank, through respondent No.4, called upon the petitioner to submit her application for pensionary benefits together with commutation of pension and other relevant forms. On 05.03.2001, the bank enclosed a cheque for Rs.89,747/- towards her provident fund contributions. On 30.03.2001, the petitioner was issued certificate by respondent No.4 regarding employment with the bank and also that she is entitled to pension as per eligibility. On 06.06.2001, the petitioner was informed by respondent No.2 that her request for adding 5 years service as per the pension regulations was not agreed upon as per the scheme. As she had not received any pension upto 30.06.2001, she made an application for settling her pension amount at an early date. To her surprise, on 01.09.2001, after 9 months, she was informed by the bank that she was not eligible for pension since she had not put in 15 years of 'qualified

service'. Challenging the same, the petitioner filed the present Writ Petition.

3 Earlier, when this Writ Petition came up for hearing on 28.06.2016, none appeared on behalf of the respondents and hence, a learned single Judge of this Court made it clear that if on the next date of hearing the respondents are not represented, the matter will be decided in their absence and posted the matter to 05.07.2016. When the matter came up for hearing on 05.07.2016, again none appeared on behalf of the respondents and hence, the learned single Judge decided the Writ Petition on merits, by setting aside the impugned order dated 01.09.2001.

4 Challenging the order dated 05.07.2016, the respondent-Bank filed W.A.No.1389 of 2016 stating that the name of the counsel appearing for the respondent - Bank was wrongly shown in the cause list as Dr.K.Laxminarasimha instead of Dr.K.Lakshmi Narasimha and hence, the counsel for the bank could not represent the matter on 05.07.2016. Learned counsel for the petitioner also stated that the respondents bank was not given an opportunity of hearing before allowing of the writ petition by the learned single Judge and that he has no objection to the matter being remanded for consideration afresh upon hearing both sides.

5 Considering the above, a division Bench of this Court, by order dated 26.12.2018 allowed W.A.No.1389 of 2016

setting aside the order dated 01.09.2001 and remitted the present Writ Petition for consideration afresh.

6 Heard Sri P.S.Rajasekhar, learned counsel for the petitioner and Sri Dr.K.Lakshmi Narasimha, learned counsel for the respondents-Bank.

7 Learned counsel for the petitioner submits that as the petitioner joined service of the bank on 15.05.1995, she had completed 15 years 6 months and 25 days of service on 10.12.2000, thus she became eligible for opting for retirement under ABEVRS and also eligible for the benefits under the said scheme. Moreover, she was entitled to 60 days salary for each completed year of service or salary for the number of month's service left, whichever is less as ex-gratia. Apart from the same, she was also entitled to gratuity as per the Payment of Gratuity Act as per existing rules and individual contribution to Provident Fund and pension including commuted value of pension in terms of Andhra Bank (Employees') Pension Regulations, 1995 (for short, Pension Regulations of 1995) and leave encashment of accumulated privilege leave up to maximum 240 days as per the rules of the bank. This scheme was modified by a circular dated 21.12.2000, wherein the minimum period required for benefit of pension under the Pension Scheme, 1995 was reduced to 15 years for entitlement of pension. Even in the amended scheme, it was specified that this amendment extending the

benefit of pension to employees who have already opted for pension and who have put in 15 years of completed service shall be entitled to the pension. He further submits that the petitioner is entitled for pension as per the above scheme and the action of the respondents in denying the pensionary benefits to the petitioner on the ground that she had not put in 15 years of 'qualified service' is unjust and illegal. In support of his submissions, he relied upon the judgments of Hon'ble Supreme Court in **Bank of Baroda V. Ganpat Singh Deora**¹ and **United Bank of India V. Pijush Kanti Nandy**².

8 Learned counsel for the respondents-Bank submits that for being eligible for payment of pension in terms of the Pension Regulations of 1995, as applicable to the employees, who have opted for pension and who have retired from service of the bank under ABEVRS 2000, one has to put in a minimum of 15 years of qualifying service as on the date of voluntary retirement. He further submits that in the present case, though the petitioner had put in a total service of 15½ years of service, she did not put in the required qualifying service of 15 years for being eligible for payment of pension and therefore, respondent No.2 rightly rejected the request of the petitioner for grant of pension. In support of his submissions, he relied upon the judgments of Hon'ble

¹ (2009) 3 SCC 217

² (2009) 8 SCC 605

Supreme Court in **State Bank of Patiala V. Pritam Singh Bedi**³ and **Indian Bank V. G.Ramachandran**⁴.

9 To decide the issue, it is necessary to refer to the following regulations of the Pension Regulations of 1995.

“1. Short title and Commencement:-

(1) ...

(2) Save as otherwise expressly provided in these regulations, these regulations shall be deemed to have come into force on the date of their publication in the Official Gazette i.e: 29.09.95.

2. Definitions:- In these Regulations, unless the context otherwise requires,

(a) to (m) ...

(n) “employee” means any person employed in the services of the Bank, whether as a workman on full time work on permanent basis or on part-time work on permanent basis on scale wages or as an officer and who opts and is governed by these regulations, but does not include a person employed either on contract basis or daily wage basis or on consolidated wages;

(o) to (v) ...

(w) “Qualifying service” means the service rendered while on duty or otherwise which shall be taken into account for the purpose of pension under these regulations.

14. Qualifying Service:-

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.

17. Counting of periods spent on leave:-

All Leave during service in the Bank for which leave salary is payable shall count as qualifying service:

³ (2014) 13 SCC 474

⁴ (2008) 1 SCC 711

Provided that extraordinary leave on loss of pay shall not count as qualifying service except when the sanctioning authority has directed that such leave not exceeding twelve months during the entire service, may count as service for all purposes including pension.

22. Forfeiture of service:-

(1) ...

(2) An interruption in the service of a Bank employee entails forfeiture of his part service, except in the following cases, namely:-

(a) authorized leave of absence;

(b) suspension, where it is immediately followed by reinstatement, whether in the same or a different post, or where the Bank employee dies or is permitted to retire or is retired on attaining the age of compulsory retirement while under suspension;

(c) and (d) ...

(3) ...

(4) (a) In the absence of a specific indication to the contrary in the service record, an interruption between two spells of service rendered by a bank employee shall be treated as automatically condoned and the pre-interruption service treated as qualifying service;

(b) Nothing in clause(a) shall apply to interruption caused by resignation, dismissal or removal from service.

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.

29. Pension on Voluntary Retirement:-

(1) On or after the 1st day of November, 1993, at any time after an employee has completed twenty years of qualifying service he may, by giving notice of not less than three months in writing to the appointing authority retire from service:

Provided that this sub-regulation shall not apply to an employee who is on deputation or on study leave abroad unless after having been transferred or having returned to India he has resumed charge of the post in India and has served for a period of not less than one year;

Provided further that this sub-regulation shall not apply to an employee who seeks retirement from service for being absorbed permanently in an autonomous body or a public sector undertaking or company or institution or body, whether incorporated or not to which he is on deputation at the time of seeking voluntary retirement.

Provided that this sub-regulation shall not apply to an employee who is deemed to have retired in accordance with clause (1) of regulation 2.

(2) The notice of voluntary retirement given under sub-regulation (1) shall require acceptance by the appointing authority:

Provided that where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period.

(3) (a) An employee referred to in sub-regulation (1) may make a request in writing to the appointing authority to accept notice of voluntary retirement of less than three months giving reasons therefor;

(b) On receipt of a request under clause (a), the appointing authority may, subject to the provisions of sub-regulation (2), consider such request for the curtailment of the period of notice of three months on merits and if it is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, the appointing authority may relax the requirement of notice of three months on the condition that the employee shall not apply for commutation of a part of his pension before the expiry of the notice of three months.

(4) An employee, who has elected to retire under this regulation and has given necessary notice to that effect to the appointing authority, shall be precluded from withdrawing his notice except with the specific approval of such authority;

Provided that the request for such withdrawal shall be made before the intended date of his retirement.

(5) The qualifying service of an employee retiring voluntarily under this regulation shall be increased by a period not exceeding five year, subject to the condition that the total qualifying service rendered by such employee shall not in any case exceed thirty-three years and it does not take him beyond the date of superannuation.

(6) The pension of an employee retiring under this regulation shall be based on the average emoluments as defined under clause (d) of regulation 2 of these regulations and the increase, not exceeding five years in his qualifying service, shall not entitle him to any notional fixation of pay for the purpose of calculating his pension.

30. Invalid Pension :-

(1) Invalid pension may be granted to an employee who,-

(a) has rendered minimum ten years of service; and

(b) retires from the service on or after the 1st day of November, 1993 on account of any bodily or mental infirmity which permanently incapacitates him for the service.

(2) An employee applying for an invalid pension shall submit a medical certificate of incapacity from a medical officer approved by the Bank.

(3) Where the Medical Officer approved by the bank has declared the employee fit for further service of less laborious character than that which he had been doing, he should, provided he is willing to be so employed, be employed on lower post and if there be no means of employing him even on a lower post, he may be admitted to invalid pension.

(4) No medical certificate of incapacity for service may be granted unless the applicant produces a letter to show that the Competent Authority is

aware of the intention of the applicant to appear before the medical officer approved by the Bank.

(5) The medical officer approved by the Bank shall also be supplied by the Competent Authority in which the applicant is employed with a statement of what appears from official records to be the age of the applicant.

32. Premature Retirement Pension.-

Premature Retirement Pension may be granted to an employee who, -

(a) has rendered minimum ten years of service; and

(b) retires from service on account of orders of the Bank to retire prematurely in the public interest or for any other reason specified in Service regulations or Settlement, if otherwise he was entitled to such pension on superannuation on that date.”

10 Admittedly, the Andhra Bank (Employees) Pension Regulations, 1995 came into effect by way of publication in its Official Gazette on 29.9.1995. The petitioner went on EOL in the year 1991. In view of the same, the period during which the petitioner went on extraordinary leave had no occasion to consider its validity in the light of the Regulations 1995 as the same cannot have any retrospective effect. Even considering the said scheme for the purpose of deciding the pension, “qualifying service” as defined under Regulation 2 (w), which means the service rendered while on duty or otherwise which shall be taken into account for the purpose of pension under these regulations.

11 The respondent Bank allowed the petitioner to serve the Bank and also allowed the petitioner to opt for Voluntary Retirement Scheme by having golden hand shake. Nowhere

during the tenure of service, the petitioner, in relation to the extraordinary leave availed by her, faced any adverse remarks. In view of the same, her service cannot be termed as against 'qualifying service'. For the purpose of computing qualifying service, under Regulation 14, 'qualifying service' is 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.

12 Qualifying service is restrictive in nature. It uses the word 'means' and not 'includes' or 'means and includes'. Thus the construction of 'qualifying service' must ordinarily be kept confined to the service rendered while on duty. The employee may be in service even otherwise although not rendering any duty. In the present case the petitioner served more than 15 ½ years.

13 Regulation 17 deals with counting of periods spent on leave. All leave during service in the Bank for which leave salary is payable shall count as qualifying service. Provided that extraordinary leave on loss of pay shall not count as qualifying service except when sanctioning authority has directed that such leave not exceeding twelve months during the entire service, may count as service for all purposes including pension.

14 To examine the case on hand, the competent authority had no occasion to pass any order in the light of 1995 Regulations as the petitioner availed extraordinary leave prior to the above Regulations came into force. All extraordinary leave of the petitioner was approved and that the competent authority allowed the petitioner to go on leave and thereafter permitted the petitioner to join in service and again permitted the petitioner to retire by opting for voluntary retirement scheme. The respondent Bank has settled all her terminal benefits and paid the ex-gratia, gratuity and other allowances to which she is entitled, except the pension.

15 In **Bank of Baroda and Others vs. Ganpat Singh Deora (1 surpa)** the Hon'ble Apex Court held at para Nos.27, 28 and 30 as follows:

27. The conditions relating to completing 15 years of service for being eligible to apply for BOBEVRS-2001 are special to the Scheme as also to the case of those employees who wished to apply for voluntary retirement under the aforesaid Scheme, if they had completed or would be completing 40 years of age. The latter condition appears to have been incorporated in view of the provisions of Regulations 14 and 32 of the Pension Regulations, 1995, to enable employees who had completed 10 years of service to also become eligible to apply for premature retirement under the Pension Regulations, 1995.

28. However, we are inclined to agree with Ms. Bhati that Regulation 29 does not contemplate voluntary retirement under the Voluntary Retirement Scheme and applies only to such employees who themselves wish to retire de hors any Scheme of Voluntary Retirement, after having completed 15 years of qualifying service for the said purpose. There is a distinct difference between the two situations and Regulation 29 would not cover the case of an employee opting to retire on the basis of a Voluntary Retirement Scheme.

30 On the other hand, Regulations 14 and 29 of the Pension Regulations, 1995, relate to the period of qualifying service for pension under the said Regulations, in two different situations. While Regulation 14 provides that in order to be eligible for pension an employee would have to render a minimum of 10 years service, Regulation 29 is applicable to the employees choosing to retire from service prematurely, and in their case the period of qualifying service would be 15 years.

16 In **State Bank of Patiala vs. Pritam Singh Bedi (3 supra)** the Hon'ble Apex Court held at para Nos.22 and 24 as follows:

22. The respondents completed more than 10 years of service in the Bank on the date of retirement; therefore, they fulfill the requirement of qualifying service as per Regulation 14.

24. Regulation 18 of the Pension Regulations, 1995 provides that if broken 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' {(2009) 5 SCC 313}.

17 In **Indian Bank and another vs. G. Ramachandran and Others (4 supra)** the Hon'ble Apex Court held at Para Nos.3, 13, 14 and 15 as follows:

3. The short question involved in these appeals related to interpretation of Regulation 17 of the Indian Bank (Employees') Pension Regulations, 1995 (hereinafter referred to as "Pension Regulations"), vis-a-vis Regulation 37 of the Indian Bank Officers' Service Regulations, 1979, (hereinafter referred to as "Service Regulations").

13. The High Court has held that the "entries regarding service being qualifying or otherwise are required to be made simultaneously with the event, but in this case it is not done." We are afraid that such an inference could not have been drawn in the instant case. Service Regulations operate in the matter of grant of leave. It may be possible that the highest

authority had granted leave in favour of the respondents but the same would not mean that in all such events, the authority to grant leave in terms of Service Regulations i.e. the sanctioning authority under Regulation 17 would be one and the same. Construction of a statute should not be premised on surmises and conjectures.

14. The question of application of mind on the part of sanctioning authority in terms of proviso appended to Regulation 17 of the Pension Regulations would arise only at the end of the service of the employee concerned and not at the time when the leave is granted. Service Regulations and Pension Regulations, thus, operate in different fields. An employee of the Bank would be entitled to the benefit of the proviso appended to Regulation 17 of the Pension Regulations in the event a direction is issued by the sanctioning authority. If no such direction is issued, the question of granting leave by the competent authority for the purpose of pensionary benefits would not arise.

15. We, therefore, are of the opinion that the impugned judgment of the High Court cannot be sustained and it is set aside accordingly. The appeal is allowed. However, in the facts and circumstances of this case, there shall be no orders as to costs.

18 The learned counsel for the respondent Bank has relied on the judgment of the Hon'ble Madras High Court held between **Andhra Bank vs. R. Uma Maheswari {W.A.No.3789 of 2019 against W.P.No.37764 of 2004 dated 21.11.2019}**. In the case cited supra, the leave pertains to the period after 1995 i.e. the Regulations came into effect and the competent authority had occasion to examine the leave and communicated to the employee that the said leave will not be considered for extending the benefit of pension and his leave leads to disqualification for claiming pension. The facts of the above case are different to the facts of the case on hand and hence the said judgment is not applicable.

19 In the case on hand, the respondent Bank on 30.03.2001 had issued a certificate indicating that the petitioner has put in 15 ½ years of service as a clerk and is entitled to pension as per eligibility.

20 In view of the above discussion, this Court is of the view that the petitioner is entitled to pension and the impugned proceedings dated 01.09.2001 is liable to be set aside.

21 In the result, the Writ Petition is allowed setting aside the order of the second respondent in Lr.No.666/3/P/152, dated 01.09.2001 and accordingly *rule nisi* is made absolute. The respondents are directed to pay pension to the petitioner as per the procedure within a period of eight (8) weeks from the date of receipt of a copy of this order together with interest @ 6% p.a. from the due date. No order as to costs.

22 As a sequel, miscellaneous petitions, if any pending, shall stand closed.

T.AMARNATH GOUD, J.

Date: 28-02-2020

L.R. Copy be marked.

B/o **Kvsn**