IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 09.02.2021
CORAM

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.30305 of 2011

T.Govindarajan ... Petitioner

-Vs-

General Manager
Indian Bank Head Office
HRM Department Pension Cell
66, Rajaji Salai
Chennai 600 001. ... Respondent

Prayer : Writ Petition under Article 226 of the Constitution of India praying for a Writ of Mandamus directing the respondent to revise the petitioner pension order dated 30.06.2010 in I.D.No.514570 as per his representation by including the 12 months service rendered by him in calculating the qualifying service to fix his pension.

For Petitioner : Mr.R.Selvamani for
Mr.A.Panneer Selvam

For Respondents : Mr.T.Sundar Rajan
Standing Counsel for the respondent

O R D E R

The prayer sought for herein is to direct the respondent to revise the petitioner pension order dated 30.06.2010 in I.D.No.514570 as per his representation by including the 12 months service rendered by him in calculating the qualifying service to fix his pension.

2. That the petitioner was appointed temporarily at the erstwhile bank called Bank of Thanjavur Limited some time in the year 1979 and he was sent for training for three months period. Thereafter, he was appointed on 22.09.1979 and after a brief period he was ousted and re-appointed on 22.02.1980. Like that, for a brief period of either 30 days or 90 days, appointments have been given temporarily to the petitioner on the following dates.

Sl.No	*Date*	*Description*
1.	*22.09.1979*	*Temporary Appointment*
2.	*22.02.1980*	*Temporary Appointment*
3.	*09.05.1980*	*Temporary Appointment*
4.	*12.05.1980*	*Temporary Appointment*
5.	*12.09.1980*	*Temporary Appointment*

3. Thereafter, ultimately on 10.12.1980, an order of appointment was given by the said Bank of Thanjavur Limited to the petitioner on permanent basis, where he has been put under probationary period for six months and after successful completion of probationary period, he was absorbed as a permanent employee at the said bank viz., Bank of Thanjavur Limited from 10.12.1980 and had been working there for several years.

4. Subsequently, the said Bank of Thanjavur Limited stood merged with the present respondent viz., Indian Bank and therefore all those employees who worked under the Bank of Thanjavur Limited became the employees of the present Bank. The petitioner also became the employee of Indian Bank and ultimately he retired from service on 31.05.2010.

5. After retiring from service in the year 2010, pension order was passed by the respondent on 30.06.2010, where the pensionable service was calculated from the date of appointment as permanent employee ie., from 10.12.1980 and accordingly the pensionary benefits were paid to the petitioner.

6. However, not satisfied with the calculation of pensionable service, wherein the respondent has considered the period as 29 years instead of 30 years and 5 months, by not considering the period the petitioner was engaged as temporary employee from 1979 and 1980, the petitioner has given a representation on 21.07.2010 to the respondent to take the said temporary period of nearly about 12 months ie., one year as eligible period as continuous service period for the purpose of calculating total pensionable service. The said representation since was not considered and no orders were passed in this regard, the petitioner has approached this Court by way of the present writ petition with the aforesaid prayer.

7. Heard Mr.Selvamani, learned counsel for the petitioner who would submit that, by an order dated 10.03.1979, the petitioner was put under training for three months. Subsequently, he was appointed in the erstwhile bank on temporary basis for a brief period of either 30 days or 90 days between 1979 and 1980. Ultimately, by an order dated 10.12.1980, the petitioner was put in permanent employment by placing him under probationary period and thereafter he was made permanent.

8. In this context, the learned counsel for the petitioner would submit that, as per Pension Regulation No.2(W) and 18, the period of temporary appointment also has to be taken into

account for the purpose of calculating the pensionable service. Therefore, the said period of one year where he worked temporarily with the erstwhile bank has to be considered, he contended.

9. Per contra, Mr.Sunderrajan learned Standing counsel for the respondent Bank, relying upon the relevant Rules of the Indian Bank (Employees) Pension Regulations, 1995, would submit that, as per Clause 20 of the said Regulations, in case of an employee who is permanently transferred to a service in the Bank from any other Bank on merger, the continuous service rendered by such an employee in any other Bank on permanent basis, if any, followed without interruption by permanent appointment, shall qualify. He further submitted that, as per the proviso to the said Clause 20, the said regulations shall not apply to any such employee who is appointed on contract basis or on daily wage basis or on consolidated wages. Relying on the said proviso, learned counsel for the respondent Bank would submit that, the petitioner was engaged from the period 1979 to 1980 on a consolidated basis as a temporary employee and hence it cannot be taken as continuous services for the purpose of counting the past service for pensionary benefits.

10. In this context, the learned Standing Counsel relied upon the proviso to Clause 20 of the Indian Bank (Employees) Pension Regulations, 1995, which reads as follows,

> " *20. Counting of past service in the erstwhile Bank :*
>
> *In the case of an employee who is permanently transferred to a service in the Bank from any other Bank on merger, amalgamation of any other Bank with the Bank to which these regulations apply, the continuous service rendered by such an employee in any other Bank on permanent basis, if any, followed without interruption, by permanent appointment, or the continuous service rendered under that Bank in a permanent capacity, as the case may be, shall qualify :*
>
> *Provided that nothing contained in this regulation shall apply to any such employee who is appointed on contract basis or on daily wage basis or on consolidated wages."*

11. Therefore, learned counsel for the respondent would submit that, only by an order dated 10.12.1980, the erstwhile Bank gave an appointment order on permanent basis, where the

petitioner, after having successfully completed the probationary period, was absorbed permanently only from 10.12.1980 and that was the regular appointment made in respect of the petitioner. Therefore, as per the Pension Rules, the services rendered by the petitioner from that date before his superannuation, was taken into account and accordingly the pensionary benefits were calculated and paid. Therefore, there is nothing wrong in the said order dated 30.06.2010 and it is not liable to be reviewed or revised as sought for by the petitioner, he contended.

12. I have considered the rival submissions made by the learned counsel for the petitioner as well as the respondent and also perused the materials placed on record.

13. As has been rightly pointed out by the learned counsel for the respondent the Pension Rules of the respondent Bank very clearly establishes that, whatever services rendered on consolidated basis or contract basis or daily wage basis cannot be taken into account for the purpose of counting the past services for pensionary benefits.

14. Here in the case on hand, even though the petitioner was appointed on 10.03.1979 and was sent for training subsequently, at least five times between September 1979 and September 1980, he had been re-appointed after artificial break and the said period of service rendered by the petitioner for about 12 months with intermittent break cannot be counted for the purpose of pensionary benefits as permanent employee. In that case, the permanent employment given to him by the order dated 10.12.1980 would be made as otiose, which exercise cannot be expected to be done without any valid Rule in this regard. Therefore, this Court feels that, as per the proviso to Clause 20 of the Indian Bank (Employees) Pension Regulations, 1995, the petitioner is not entitled to get the service which he temporarily rendered with intermittent break between 1979 and 1980, counted as qualifying service for the purpose of pensionary benefits.

15. Therefore, the pension order dated 30.06.2010 is sustainable, which requires no interference by this Court. Accordingly, this writ petition fails and it is dismissed. No costs.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

The General Manager
Indian Bank Head Office
HRM Department Pension Cell
66, Rajaji Salai
Chennai 600 001.

+1cc to Mr.T.Sundar Rajan, Advocate SR.NO.7253

AKM/26.02.21/ 5P-3C/

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