



W.A(MD)No.60 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.02.2021

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CORAM:

**THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA
AND
THE HONOURABLE MRS.JUSTICE S.KANNAMMAL**

**W.A(MD)No.60 of 2012
Against
W.P(MD)No.12814 of 2011**

V.Pannerselvam

... Appellant/Petitioner

Vs.

1.The Chairman and Managing Director,
Indian Overseas Bank,
Central Office,
No.763, Anna Salai,
Chennai – 600 002.

2.The AGM (Personnel),
Indian Overseas Bank,
Central Office,
No.763, Anna Salai,
Chennai – 600 002.

3.The Principal Accountant General (A & E),
361, Anna Salai, Teynampet,
Chennai – 600 018.

... Respondents/Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent to set aside the order, dated 11.11.2011 made in W.P(MD)No.12814 of 2011 on the file of this Court.

Prayer in WP(MD).No.12814 of 2011:

Writ Petition filed under Articles 226 of the Constitution of



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India, praying this court to issue a Writ of Mandamus, directing the respondents to give pension to the petitioner in accordance with the 9th bipartite settlement dated 27.04.2010 and Indian Overseas Bank(Employees) Pension Regulations 1995.

For Appellant : Mr.N.Karthik Kanna

For RR 1 & 2 : Mr.M.P.Senthil

For R – 3 : Mr.P.Gunasekaran

JUDGMENT

**(Judgment of the Court was delivered by
PUSHPA SATHYANARAYANA,J.)**

This Writ Appeal is directed against the order, dated 11.11.2011 passed in W.P(MD)No.12814 of 2011.

2.In the said Writ Petition, the prayer was to issue a Writ of Mandamus, seeking a direction to the respondents to give pension to the appellant / writ petitioner in accordance with the 9th Bipartite Settlement, dated 27.04.2010 reached under the Indian Overseas Bank (Employees') Pension Regulations, 1995.

3.The learned Single Judge, vide order 11.11.2011, dismissed the said Writ Petition. Aggrieved over the same, the above Writ Appeal



is preferred by the appellant/writ petitioner.

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4.The appellant / writ petitioner was working with the Indian Overseas Bank from 1980 to 1995. He joined service on 20.11.1980 as a Messenger and absented himself unauthorisedly from 13.12.1994. Therefore, the second respondent had issued a letter, dated 06.11.1995 to the appellant / writ petitioner, which reads as follows:-

"We refer our notice of voluntary retirement dated 26.07.1995 advising that your absence from 13.12.1994 is treated as unauthorised absence and you should report for duty within 30 days. Even after issuance of this notice you had not reported for duty. But sent a letter on 21.08.1995 stating that you wanted sick leave for further time without mentioning the number of days leave requested by you. Considering your request we granted time upto 15.10.1995 vide our letter dated 20.09.1995 and advised you to report for duty on or before 15.10.1995, failing which it shall be deemed that you have voluntarily retired from our Bank's services on your own accord.

From the available records and conduct it is clear that you have no intention of joining duties and want to prolong the matter much to the dislocation of work.

In the circumstances, we decline your request and advise you that since you have not reported for duty within the stipulated time, you are deemed as voluntarily retired from our services with effect from 16.10.1995."



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5.The said facts are not in dispute. Now the claim of the appellant / writ petitioner is that he is entitled for pension in accordance with 9th Bipartite Settlement, dated 27.04.2010 reached under the Indian Overseas Bank (Employees') Pension Regulations, 1995. In this regard, attention was invited by the learned counsel for the appellant / writ petitioner to Clause No.14 in Chapter IV of the Indian Overseas Bank (Employees') Pension Regulations, 1995, which provides for Qualifying Service, which reads as follows:-

"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."

6.On the strength of the above Clause, the appellant / writ petitioner contended that having completed more than 10 years of service, he qualifies for the benefit of pension and he has to be extended the benefit. The very same regularization also provides for pension on voluntary retirement in Clause No.29 of Chapter V, which provides for Classes of pension. As per which, on or after first day of November 1993, at any time after an employee has completed 20 years of qualifying service he may, by giving notice of not less than three months in writing to the appointing authority retire from service.



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7. In this case, the appellant / writ petitioner had not invoked the above Clause for retirement. It is only the respondents, who had sent a communication on 06.11.1995, as referred supra, deeming him to have voluntary retirement from the Bank services with effect from 16.10.1995. Clause 33 deals with compulsory retirement pension, which reads as follows:-

"33(1) An employee compulsorily retired from service as a penalty on or after 1st day of November, 1993 in terms of Discipline and Appeal Regulations or settlement by the authority higher than the authority competent to impose such penalty may be granted pension at a rate not less than two-thirds and not more than full pension admissible to him on the date of his compulsory retirement if otherwise he was entitled to such pension on superannuation on that date."

8. Even as per the above provision, the appellant / writ petitioner may not be entitled to the pension, as he has not even completed 15 years of service.

9. It was argued by the learned counsel for the appellant / writ petitioner that since the appellant / writ petitioner's services were terminated, as held by the learned Single Judge, he was deemed to have voluntarily retired from service.



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10. Admittedly, the appellant / writ petitioner had not challenged the communication dated 16.10.1995 and he accepted the same. Though the learned counsel placed his reliance on the decision of the Hon'ble Supreme Court in ***Syndicate Bank, Bangalore Vs. Satya Srinath*** reported in ***2007 (II) LLJ page 258***, contending that the same is squarely applicable to the appellant / writ petitioner, it is basically distinguishable on facts as the appellant / writ petitioner has put in only less than 15 years of service, whereas in the said case, the employee had completed more than 20 years of service.

11. Even presuming that as per Clause 14, a minimum of 10 years of service is required, it will only apply to an employee retiring after normal services and not for those who are compulsorily retired. Clause 14 is also subject to the other conditions.

12. According to the learned counsel appearing for the respondents 1 & 2, there is a Forfeiture of Service, ie., if an employee resigns or gets dismissed or removed from service of the Bank, the Bank can forfeit his entire past service and consequently, shall not qualify for the pensionary benefits.



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13. Heard the learned counsel appearing on either side and perused the materials available on record.

14. In this case, admittedly, there was an unauthorised leave of absence. Based on which, the appellant / writ petitioner was compulsorily retired from service. Therefore, it would not be fair on the part of the appellant / writ petitioner to demand that he is entitled for pensionary benefits when the compulsory retirement is nothing short of termination. Even so far as the Bipartite Settlement referred to by the appellant / writ petitioner is concerned, to join the existing pension scheme, the employees, who were in the service of the Bank prior to 29th September, 1995 and continue in the service of the Bank on the date of the settlement, are entitled for the scheme. They also have to exercise an option in writing within 60 days from the date of offer to become a member of the pension fund. The said 9th Bipartite Settlement came into force on 27.04.2010. Admittedly, the appellant / writ petitioner had ceased to be an employee of the Bank as early as on 16.10.1995 and he was not in service on the date of the settlement. He had also not exercised his option for pension within the stipulated time. Therefore, he is not eligible for any scheme based on the said settlement also.



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15. In fine, there is no reason to interfere with the order passed by the learned Single Judge, dated 11.11.2011 made in W.P(MD) No.12814 of 2011 and the Writ Appeal stands dismissed. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1. The Chairman and Managing Director,
Indian Overseas Bank,
Central Office,
No.763, Anna Salai,
Chennai – 600 002.
2. The AGM (Personnel),
Indian Overseas Bank,
Central Office,
No.763, Anna Salai,
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3.The Principal Accountant General (A & E),
361, Anna Salai, Teynampet,
Chennai – 600 018.

+1 CC to Mr.M.P.SENTHIL, Advocate (SR-3156[F] dated 03/02/2021)

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