

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 1508 OF 2021

Mrs. Sameedha Suhas Deshpande }	Petitioner
Versus	
Chairman, Shri Dinesh Kumar }	
Khara and Ors. }	Respondents

Mr. Anil Bajaj for the petitioner.

Mr. Abhijeet A. Joshi for respondent nos. 1 to 4.

**CORAM: DIPANKAR DATTA, CJ. &
M. S. KARNIK, J.**

DATE: AUGUST 23, 2022

ORAL JUDGMENT (Per Chief Justice):

1. Whether or not the period of probationary service rendered by the petitioner would count for qualifying service to receive pension, is the question that has engaged our consideration while hearing this writ petition.

2. Filtering out unnecessary facts, we find that the petitioner was appointed by the Branch Manager, State Bank of India (SBI), respondent no. 4 as Cashier-cum-Clerk in the pay-scale of Rs. 520 - Rs. 1,660 on 23rd October 1985 subject to the 8 (eight) conditions mentioned therein. While condition no. (i) required the petitioner to be on probation for a period of 6 (six) months, which could be extended at the absolute discretion of the Bank by 3 (three) months, condition no. (v) stipulated that the petitioner would be considered for confirmation of service if, at the end of the probationary

period, she was found to the satisfaction of the Bank, to be deserving of such confirmation in service. After satisfactory discharge of service during the probationary period, the petitioner was confirmed by an order dated 23rd April 1986 of the respondent no.4.

3. The SBI Voluntary Retirement Scheme (SBIVRS) dated 30th December 2000 was introduced conveying to the eligible permanent employees of the bank that those who have put in 15 (fifteen) years of service or have completed 40 (forty) years of age as on 31st December 2000 would be eligible to apply for voluntary retirement thereunder. In pursuance of the SBIVRS, the petitioner put in an application dated 15th January 2001. In such application, she duly mentioned her dates of appointment and confirmation. Insofar as length of service as on 31st December 2001 is concerned, she indicated that she was in service for "15 years, 2 months". Together with such application for voluntary retirement, the petitioner, by separate writings (all dated 15th January 2001), *inter alia*, prayed that monthly pension be permitted to be drawn from SBI, Parel Branch Circle, Mumbai and to commute 1/3rd of pension as well as to pay her gratuity and to allow encashment of her privilege leave. These writings also indicated that the prayers are being made assuming that SBI would accede to her request for voluntary retirement.

4. SBI found the application of the petitioner to be in order. This resulted in issuance of an order dated 14th March 2001 of the respondent no.4 to the following effect: -

"Your request for retirement under the Scheme has been accepted and you will be relieved of your duties at the close of the business on 31st March 2001."

The petitioner, therefore, demitted office on 31st March 2001.

5. It is important to note that while applying for voluntary retirement the petitioner had included the period spent on probation within the aforesaid period of "15 years, 2 months", being her length of service. Had such period not been included, the period of service counted from the date of confirmation would have fallen short of 15 (fifteen) years and the petitioner would have been regarded ineligible for voluntary retirement. Once the application for voluntary retirement was granted, it stood to reason that the petitioner had qualified therefor and that SBI not having raised any objection to inclusion of the probationary period of service within the total length of service, it must be held to be estopped to raise any contra contention.

6. Be that as it may, the question as to whether the employees of SBI who had retired voluntarily were entitled to pension on rendering service in excess of 15 (fifteen) years as per the SBIVRS was looked into by the Supreme Court in **Assistant General Manager, State Bank of India and Ors. vs. Radhey Shyam Pandey**¹. The concluding paragraph of the decision reads as follows: -

"64. Resultantly, we are of the opinion that the employees who completed 15 years of service or more as on cut-off date were entitled to proportionate pension under SBI VRS to be computed as per SBI Pension Fund Rules. Let the benefits be extended to all such similar employees retired under VRS on completion of 15 years of service without requiring them to rush to the court. However, considering the facts and circumstances, it would not be appropriate to burden the bank with interest. Let order be complied

¹ (2020) 6 SCC 438

with and arrears be paid within three months, failing which amount to carry interest at the rate of 6 per cent per annum from the date of this order. The appeals are accordingly disposed of. No costs."

7. Having regard to the aforesaid decision of the Supreme Court, SBI on its own invited the retirees to apply for pensionary benefits. The petitioner applied on 28th April 2020 seeking pension. Such application was, however, returned by the competent authority of SBI with a comment that the petitioner is not eligible for pension as she had not completed 15 (fifteen) years of pensionable service. Faced with rejection of her application for pension, the petitioner approached the Chairman of SBI with a representation dated 5th August 2020. Reference was made to the decision in **Radhey Shyam Pandey** (supra). It was contended by the petitioner that she was entitled to pension having completed 15 years of service and that SBI was not justified in interpreting the order of the Supreme Court in its own way to deprive the petitioner of the benefits of such decision. Having submitted such representation, the petitioner was greeted with a communication that in counting 15 (fifteen) years of service, only the service rendered upon confirmation is regarded as eligible service for pension and that the petitioner's confirmed service being less than 15 (fifteen) years, she was ineligible for pension. A legal notice followed sent by the petitioner's solicitor, to which the bank responded by an email dated 10th February 2021 as follows: -

"We are in receipt of your mail dated 04.02.2021, Ms Sameedha Deshpande has not completed 15 years of confirmed service with the Bank. As per the Hon'ble Supreme Court order, (CIVIL APPEAL NO 2463 OF 2015

– ASSISTANT GENERAL MANAGER & ORS. VS. RADHEY SHYAM PANDEY), she is not entitled to Pension, since she has not completed 15 years of confirmed service.

Even though Hon'ble Supreme Court has not distinguished between Confirmed Service and Pensionable Service, the interpretation taken is 15 years Pensionable Service and not confirmed service.

Please also refer to our earlier mail sent to Ms Sameedha Deshpande on 21.08.2020 in this regard.

Hence, we have to advise that Ms Sameedha Deshpande is not entitled to pension, since she has not completed 15 years of confirmed service."

8. Aggrieved by the action of SBI in refusing her pension, basically by excluding the probationary period of service rendered by her, the petitioner invoked the writ jurisdiction of this Court on 5th April 2021 seeking relief as follows: -

- (A) The Hon'ble Court be pleased to issue a writ of mandamus, or any other appropriate writ, order or direction, quashing and setting aside the impugned decision dated 10-02-2021, at Annexure-A to the petition, of the respondent, and the respondent authority may be directed to sanction the proposal of pension to the petitioner;
- (B) Your Lordships be pleased to issue a writ of mandamus or any other appropriate writ, order or direction in the nature of mandamus commanding direction to the Respondent to sanction/release the pensionary benefits along with interest at the rate of 18% (Compounded Annually) on the belated payment and Order for Mesne profit to compensate for the years of injustice and suffering to the petitioner having taken voluntary retirement under "SBIVRS" in 2001."

9. Appearing in support of the writ petition, Mr. Bajaj, learned advocate contends that illegality and arbitrariness in the action of SBI in depriving the petitioner of pension in terms of the decision in **Radhey Shyam Pandey** (supra) is

writ large. According to him, the Supreme Court did not say that while calculating 15 (fifteen) years of qualifying service, the period spent on probation should be excluded. In such view of the matter, it was not open to SBI to interpret the order of the Supreme Court to the disadvantage of the petitioner.

10. Next, Mr. Bajaj places reliance on the decision of a coordinate Bench of this Court dated 5th October 2018 in **Rugmini Ganesh vs. State Bank of India**². In such decision, the Bench took into consideration the initial date of joining of the petitioner on 1st September 1980 and having regard to the fact that she had voluntarily retired from service from 31st March 2001, it was held that she had completed more than 20 (twenty) years of service and after excluding the period of leave, the petitioner would still fulfill the requirement of qualifying service of 20 (twenty) years. Accordingly, while allowing the writ petition, SBI was directed to pay pension to the petitioner calculated from the date of retirement, i.e., 31st March 2001. Arrears of pension within 12 weeks and current pension, month by month, as per Rules were directed to be paid.

11. Mr. Bajaj, thereafter, places reliance on the judgment and order dated 21st September 2018 passed by another coordinate Bench of this Court (Bench at Nagpur) in **Smt. Vandana w/o Eknath Bhondwe vs. State Bank of India and Anr.**³. It was urged that the Nagpur Bench too granted benefit of pension to the petitioner. The said writ petition

² Writ Petition No. 1873 of 2017

³ Writ Petition No. 2348 of 2017

arose out of refusal of the erstwhile State Bank of Bikaner and Jaipur to consider the petitioner as having completed 15 (fifteen) years of service towards eligibility for pension. After hearing the parties, the Court answered both the questions in favour of the petitioner and held that the petitioner would be entitled to pension under the relevant scheme.

12. Mr. Bajaj, accordingly, prays that relief as claimed by the petitioner may be granted by directing SBI to release sums due to the petitioner on account of arrears of pension as well as to pay current pension month by month, with interest.

13. The writ petition has been opposed by Mr. Joshi, learned advocate for SBI. He has drawn our attention to the State Bank of India Employees' Pension Fund Rules and more particularly to rule 7 reading as follows: -

"7. Save as provided in rule 8, every permanent employee (including a permanent part-time employee who is required by the Bank to work for more than six hours a week) in the service of the Bank who is entitled to pension benefits under the terms and conditions of his service shall become a member of the Fund from -

- (a) the date from which he is confirmed in the service of the Bank, or
- (b) the date from which he may be required to become a member of the Fund under the terms and conditions of his service."

14. It is Mr. Joshi's contention that in view of clause (a) of rule 7, period of qualifying service has to be reckoned from the date of confirmation of service of the member of the pension fund. According to him, by excluding the period of probationary service of the petitioner, SBI did not commit any illegality or arbitrariness as urged by Mr. Bajaj.

15. Insofar as the decision in **Rugmini Ganesh** (supra) is concerned, Mr. Joshi contends that the same has been carried in appeal to the Supreme Court in Special Leave Petition (C) No. 2003 of 2019 and that such petition is pending. He also submits that the petition for special leave to appeal (civil) against the decision in **Smt. Vandana** (supra) is pending too before the Supreme Court being Special Leave Petition (C) No. 1835 of 2019. In his usual fairness, however, Mr. Joshi has brought to our notice that in both the special leave petitions, prayers for interim relief were not pressed.

16. Relying on rule 7 of the Pension Fund Rules, Mr. Joshi submits that the petitioner has not been subjected to any legal wrong for which interference on this writ petition ought to be warranted.

17. We have heard Mr. Bajaj and Mr. Joshi, and considered the decisions cited at the bar.

18. Reliance placed by Mr. Joshi on rule 7(a) is misplaced. Rule 7(a) points to the date on and from which a permanent employee of SBI could become a member of the pension fund. The indication cannot be missed that unless confirmed in service and without acquiring the status of a permanent employee, any employee of SBI cannot become a member of the pension fund. It is, therefore, clear as crystal that the date on which a permanent employee becomes a member of the pension fund has no rational nexus with regard to eligibility for pension *qua* the length of service rendered by such employee for SBI, if he/she is entitled therefor in terms of his/her terms and conditions of service. We, thus, see no reason to accept Mr. Joshi's contention.

19. Further, the petitioner is right in contending that the Supreme Court in **Radhey Shyam Pandey** (supra) did not make any distinction that, for the purpose of entitlement to pension, the period of probationary service has to be excluded. In fact, we have searched in vain for any logic behind such exclusion. Having accepted the decision in **Radhey Shyam Pandey** (supra) and in the light of the fact aforementioned that the petitioner was allowed to retire on her completion of 15 (fifteen) years of service, which included the period of service spent on probation, SBI has failed to act fairly, reasonably and rationally.

20. We also consider it necessary to indicate the flaw in the decision-making process adopted by SBI in refusing pension to the petitioner. Law is well settled that the whole concept of probation is to judge the suitability of a candidate appointed to a particular post. Profitable reference can be made to the decision of the Supreme Court in **Sunaina Sharma and Ors. vs. State of Jammu and Kashmir and Ors.**⁴. We may also quote an enlightening passage from the decision in **Ajit Singh and Ors. vs. State of Punjab**⁵ on why an employee is placed under probation. The same reads as follows: -

“7. When the master-servant relation was governed by the archaic law of hire and fire, the concept of probation in service jurisprudence was practically absent. With the advent of security in public service when termination or removal became more and more difficult and order of termination or removal from service became a subject-matter of judicial review, the concept of probation came to acquire a certain connotation. If a servant could not be removed by way of punishment from service unless

⁴ (2018) 11 SCC 413

⁵ (1983) 2 SCC 217

he is given an opportunity to meet the allegations if any against him which necessitates his removal from service, rules of natural justice postulate an enquiry into the allegations and proof thereof. This developing master-servant relationship put the master on guard. In order that an incompetent or inefficient servant is not foisted upon him because the charge of incompetence or inefficiency is easy to make but difficult to prove, concept of probation was devised. To guard against errors of human judgment in selecting suitable personnel for service, the new recruit was put on test for a period before he is absorbed in service or gets a right to the post. Period of probation gave a sort of locus pententiae to the employer to observe the work, ability, efficiency, sincerity and competence of the servant and if he is found not suitable for the post, the master reserved a right to dispense with his service without anything more during or at the end of the prescribed period which is styled as period of probation. Viewed from this aspect, the courts held that termination of service of a probationer during or at the end of a period of probation will not ordinarily and by itself be a punishment because the servant so appointed has no right to continue to hold such a post any more than a servant employed on probation by a private employer is entitled to (see *Parshotam Lal Dhingra v. Union of India*, AIR 1958 SC 36). The period of probation therefore furnishes a valuable opportunity to the master to closely observe the work of the probationer and by the time the period of probation expires to make up his mind whether to retain the servant by absorbing him in regular service or dispense with his service. Period of probation may vary from post to post or master to master. And it is not obligatory on the master to prescribe a period of probation. It is always open to the employer to employ a person without putting him on probation. Power to put the employee on probation for watching his performance and the period during which the performance is to be observed is the prerogative of the employer.”

(emphasis ours)

21. Although it is true that a probationer is considered to be substantively appointed in service only upon confirmation and

thereby secures a status as well as a right to the post, for counting his length of service, all incidents of such status are immediately attracted. In determining seniority, the period of service rendered by the probationer will generally not be ignored as held in **S. D. Patwardhan vs. State of Maharashtra**⁶. In other fields, the question would ultimately depend on the provisions of the Rules. We have not been shown from any of the Rules governing the terms and conditions of service of the petitioner that either for the purpose of counting seniority or her length of service or for determination of qualifying service for entitlement to pension, the period of probationary service was required to be excluded.

22. Having regard to the same and also in view of the decision in **Radhey Shyam Pandey** (supra), we hold the action of SBI in depriving the petitioner of pension to be wholly illegal and thoroughly arbitrary. The impugned communications, by which the petitioner was informed of her disentitlement to pension, stand quashed.

23. We direct SBI and its officers who are respondents before us to make available requisite quantum of pension, both, arrears and current, in accordance with law as early as possible. The arrears shall be released not later than 12 (twelve) weeks of uploading of this order on the website of this Court. Needless to observe that current pension shall be paid to the petitioner month by month, the first instalment of which should reach the petitioner by 7th September 2022.

⁶ (1977) 3 SCC 399

24. Insofar as the arrears are concerned, the same shall be paid together with interest at the rate of 6% per annum.

25. Since the Supreme Court in **Radhey Shyam Pandey** (supra) intended that all other retirees ought not to rush to the Court and that SBI, as a model employer, ought to provide pensionary benefits to the employees, but the petitioner in the present case has been unnecessarily driven to the Court for securing her pensionary benefits, we saddle SBI with costs of Rs. 25,000/- (twenty-five thousand only). Such amount shall also be paid to the petitioner as early as possible, but within 12 (twelve) weeks as aforesaid.

26. The writ petition is allowed on the aforesaid terms.

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(M. S. KARNIK, J.)

(CHIEF JUSTICE)