IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.07.2022

CORAM :

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.16535 of 2015
and
M.P.No.2 of 2015
and
W.M.P.No.10314 of 2022

S.Sundararajan ... Petitioner

Vs.

1.State Bank of India,
Rep. by its Chair Person,
State Bank Bhavan,
Madam Cama Road,
Opp. Mantralaya,
Mumbai – 400 020.

2.The Chief General Manager,
State Bank of India,
Local Head Office,
Circle Top House,
No.16, College Lane,
Chennai – 600 006.

3.The Assistant General Manager (PPG),
State Bank of India,
PPG Department,
No.16, College Lane,
Nungambakkam,
Chennai – 600 006.

4.The Deputy General Manager,
State Bank of India,
Commercial Branch,
1443, Trichy Road, Coimbatore – 641 018. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records on the file of the third respondent in (1) No.LHO/CHE/PRG/625 dated 28.03.2014, (2) No.LHO/CHE/PPG/10 dated 26.04.2014 and (3) No.HR.Law.354, dated 03.05.2014, to quash the same and issue consequential directions to the respondents to sanction pensionary benefits to the petitioner with effect from 29.06.2001 and disburse the monetary benefits thereof within a fixed time frame with interest at 12% (Compounded Annually).

For Petitioner : Mr.N.Seshadri

For Respondents [R1 to R4] : Mr.K.Sankaran

ORDER

The order of rejection, rejecting the claim of the writ petitioner for grant of pension is under challenge in the present writ petition.

2. The petitioner entered the services in the State Bank of India as Clerk Typist on 07.05.1981. He was promoted as Trainee Officer (Time Scale) with effect from 01.08.1987 in the Junior Management Scale; with effect from the year 1993 in the Middle Management Scale-II. The petitioner states that during the year 2000, he was posted as Manager (Credit Analyst) in the Industrial Finance Branch (Commercial Branch) at Coimbatore on promotion. His aged parents had been living alone with his wife and two minor sons at Chennai and there was nobody else to look

after his aged parents and minor children. Due to personal and domestic reasons, the petitioner submitted a letter on 25.05.2001, seeking Voluntary Retirement/Resignation from SBI services with effect from 25.06.2001. The said application was accepted and the petitioner was relieved from service in the year 2001.

3. The writ petitioner filed writ petition in W.P.No.22433 of 2004 along with two other petitioners for the same relief to grant pension and other retirement benefits with interim stay. The said writ petition has elaborately adjudicated, wherein, the very same learned counsel, who is appearing in the present writ petition appeared and elaborately placed the facts before the Court. This Court adjudicated the issues and passed the following orders:

> *"19.Second Petitioner joined in the service of the Bank as clerk/Typist on 07.05.1981 and he was confirmed in service on 07.11.1981 and resigned from service on 25.06.2001. The Second Petitioner also has not completed the required pensionable service.*
>
> *20.Third Petitioner joined in the service of the Bank as Clerk-cum-Cashier on 01.03.1986. Third petitioner retired from Bank's service under SBI-VRS on SBI-VRS on 31.03.2001. The Third Petitioner also do not fulfil the eligibility condition relating to completion of 20 years of pensionable service.*

21. The learned counsel for the Petitioners mainly contended that on the basis of specific Government directions to correspond to the CCS Rules, other PSBs have taken 15 years as the qualifying service for pension and while so, SBI had not chosen to amend its Pension Rules. The grievance of the Petitioners is that unamended R.7 and R.22 (c) of SBI continued in Rule Books only to deprive the employees of pensionary benefits by the wrongful rule of qualifying service as though it starts from the date from which the employee is confirmed in service. In short, the Petitioners claim pensionary benefits on par with other Nationalised Banks

22. SBI-EPE Rules are separate and distinct from that of Government of India Pension Scheme and P.S.Bs Pension Scheme. As rightly submitted by the learned Senior Counsel for Respondents 1 & 2 / Bank, SBI-VRS being Statutory is unique in its nature and it cannot be compared with Rules of other Nationalised Banks providing for pension.

23. The learned Senior Counsel Mr.N.Muthukumarasamy had taken pains to explain how SBI-VRS is different from other VRS Scheme. In case of SBI-VRS, three retirement benefits are payable, viz.,

(1) Pension Subject to eligibility, or

(2) Provident Fund with Bank's contribution;

(3) Gratuity.

In case of other organisations stated by the Petitioners only two retirement benefits are payable, viz., *(1) pension subject to eligibility or Provident Fund without employer's contribution.*

(2) Gratuity.

It was submitted that in respect of employees in service of the Nationalised Banks from 01.11.1993, pension is payable only if he exercises an option and authorises the refund of Banks contribution to the Trustees of the Fund. In other Nationalised Banks in respect of new entrants, pension alone is payable towards the contribution. Therefore, any comparison of Service Rules of Government and other Nationalised Banks will have no relevance for determining the validity of SBI-EPE Rules.

24.Admittedly, the Petitioners have received ex-gratia under SBI-VRS, Provident Fund alongwith Bank's contribution and Gratuity. When the Petitioners have availed the benefits under the Scheme by receiving the benefits under certain to certain heads, the petitioners are precluded from contending that they would be entitled to certain benefits for which they would not be eligible under the scheme.

25.As held by the Supreme Court in Bank of India V.O.P.Swarnakar, 2003 (2) SCC 721, VRS was not a proposal or an offer, but merely an invitation to treat and the application filed by the employee constitutes an offer. There was no compulsion on the employee of the Bank to accept SBI-VRS. As rightly held by the learned Senior Counsel for the respondents 1 & 2 / Bank, if the Petitioners opting under VRS were not finding the scheme to be *attractive they had an option to withdraw their Applications. There was no compulsion on the employees of the Respondents 1 & 2/ Bank to accept the Scheme.*

26. SBI-EPP Rules being statutory in nature cannot be compared with the other Rules providing for pension. Petitioners being "Award Staff", admittedly not having completed 20 years of pensionable service from the date from which their services were confirmed, they were not eligible for pension, when they availed VRS. The Petitioners cannot successfully challenge R.7 & R.22 (c) of SBI-VRS. The Petitioners are not entitled to the relief sought for in the Writ Petition.

27. In the result, the Writ Petition is dismissed. There is no order as to costs. Consequently, W.P.M.P.No.27156 / 2004 is closed."

4. The above judgment reached finality as far as the writ petitioner is concerned as the petitioner admittedly had not preferred any appeal against the said order.

5. Thus, the petitioner was not considered for grant of promotion by the authorities. After a lapse of several years, the petitioner again submitted a representation to the respondent-Bank, who in turn, reiterated the earlier reply and said that the petitioner is not eligible for pension and retirement benefits under the Voluntary Retirement Scheme as he resigned

the post. The said order is once again challenged in the present writ petition.

6. This Court, in view of the continuous persuasion of the petitioner, seen the letter submitted by the writ petitioner on 25.05.2001, which is enclosed in page number 19 of the typed set of papers filed along with the writ petition. The said letter signed by the writ petitioner reveals that he had resigned his job from the Bank as Manager (Credit Analyst). The petitioner, in clear terms, stated in his letter that he is "resigning his job". Thereafter, in proceedings dated 28.06.2001, which is enclosed in page number 22 of the typed set of papers, the Deputy General Manger of State Bank of India, issued an order, accepting the resignation. The said order also reveals that "With reference to your letter dated 25.05.2001 and 27.06.2001, your resignation from the Bank's service has been accepted by the appropriate authorities."

7. Thus, perusal of the letters given by the petitioner for resigning his job and the acceptance letter issued by the respondent Bank unambiguously portrays that the petitioner resigned his job and the said resignation was accepted in the year 2001 itself.

8. After the acceptance of resignation, the writ petitioner filed a writ petition in W.P.No.22433 of 2004, seeking pension and retirement and pensionary benefits and the issues were elaborately adjudicated and the writ petition was dismissed on 16.10.2008 and thereafter, the petitioner has not preferred any appeal against the said order. Contrarily, he sent further representations to the authorities. Thereafter, the authorities replied by stating that the petitioner is not eligible for pension. Taking advantage of the said reply, the petitioner has filed the writ petition in the year 2014 as the claim was rejected in order of the year 2014. It is only a reply in continuation of the original decision taken and the said letter now under challenged cannot be construed as a new cause of action for the purpose of considering the issues, which were already adjudicated by this Court during the year 2004.

9. The petitioner was relieved from the respondent-Bank in the year 2001 and in the year 2004, he filed a writ petition, which was dismissed in the year 2008 and again, he filed the present writ petition in the year 2015, after a lapse of about 14 years from the date of acceptance of his resignation.

10. This being the factum, the writ petition is liable to be rejected both on the ground of laches and on the ground of *res judicata*.

11. Accordingly, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

08.07.2022

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Index : Yes
Speaking order : Yes

To

1.The Chairperson,
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State Bank Bhavan,
Madam Cama Road,
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Mumbai – 400 020.

2.The Chief General Manager,
State Bank of India,
Local Head Office,
Circle Top House,
No.16, College Lane,
Chennai – 600 006.

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S.M. SUBRAMANIAM, J.

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