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W.P.No.13678 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.08.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.No.13678 of 2016

and

W.M.P.Nos. 11964 & 11965 of 2016

V.Indira Nawada (deceased)

- 1.H.Parameswara Nawada
- 2.Sanjana Hosadu Nawada
- 3.Suhas Hosadu Nawada

*(P1 to P3 substituted as LRs
vide order dated 07.07.2023
made in WMP No.16466 of 2023)*

.. Petitioners

VS

- 1.State Bank of India
Rep. By its Chairman,
State Bank Bhawan
Madam Cama Road,
Mumbai – 400 021.
- 2.Assistant General Manager (PPG),
State Bank of India
Local Head Office,
16, College Road,
Nungambakkam, Chennai – 06.
- 3.Deputy General Manager (B&O)
State Bank of India,
Network – 1, Chennai Zone II,
86, Rajaji Salai,
Chennai – 600 001.



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4.Chief Branch Manager / Regional Manager,
State Bank of India,
29, 30, Annai Indira Gandhi Salai,
Kancheepuram – 631 502.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records of the 2nd and 4th respondents in respect of the impugned letter bearing No Staff/Award dated 07.12.2011 issued by the 4th respondent accepting the petitioner's resignation and relieving her from service with retrospective effect by about 5 years and the impugned letter No LHO/CHE/PPG/dated 29.09.2015 issued by the 2nd respondent rejecting petitioner's claim for Pension benefit and quash the same and consequently direct the respondents to grant pensionary benefits to the petitioner along with arrears of pension with interest within a time frame.

For Petitioner : Mr.K.M.Ramesh,
Senior Counsel
for Mr.M.G.Martin

For Respondents : Mr.K.Chandrasekaran

ORDER

Writ petition had been filed in the nature of a certiorarified mandamus calling for the records of respondent nos. 2 and 4, Assistant General Manager (PPG), State Bank of India, Local Head Office at Chennai and the Chief Bank Manager / Regional Manager, State Bank of India at Kancheepuram, with respect to a letter which is impugned in the present writ petition bearing No. Staff/award dated 07.12.2011, which was issued by the fourth respondent,



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whereby, the fourth respondent had accepted the resignation of the petitioner and had relived her from service with retrospective effect after about five years and also letter No.LHO/CHE/PPG dated 29.09.2015, which is also impugned in the writ petition and was issued by the second respondent, Assistant General Manager (PPG), State Bank of India, Local Head Officer at Chennai, by which letter, the said second respondent rejected the claim of the petitioner for pension benefits and to quash both the aforementioned letters.

2. The writ petition had been filed by V.Indira Nawada, who had originally been appointed as Clerk cum Cashier on 11.07.1985 by the respondents / State Bank of India and had been posted at HAL, Bangalore Branch. She had subsequently worked in other branches at Thirukazhukunram, Kalpakkam and finally at Kancheepuram as Senior Assistant. In her affidavit, she claimed that she had worked till August, 2006. During the pendency of writ petition, unfortunately, she died and her legal heirs have been substituted to prosecute the writ petition further by an order in W.M.P.No.16466 of 2023 dated 07.07.2023. Reference to 'petitioner' in the course of this order would only be to the writ petition, V.Indira Nawada and not the impleaded petitioners.



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3. In the writ petition, it had been filed claimed by the petitioner that she had suffered acute hypothyroid and spondylitis from September, 2003 and had to undergo prolonged medical treatment. She stated that she had been taking medical treatment for the ailment. She was not able to attend to the banks duties on a regular basis. She claimed that she had attended duty till 22.08.2006 and had received salary till then. She also claimed that there were some leave credit in her account. Finally, she had given a notice of resignation on 06.01.2007.

4. Though she was absent on several occasions even before 2007, there are no records produced to indicate that the respondents had called upon her to submit herself for medical examination by a Medical Board.

5. Thereafter, in her affidavit, she claimed that the respondents themselves had advised her to apply for voluntary retirement rather than to resign from service and, accordingly, she had submitted an application for voluntary retirement from service in the prescribed format on 02.11.2007.



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6. According to the petitioner, this application given by her on 02.11.2007 was not acted upon by the respondents. The petitioner had enclosed a series of letters dated 28.12.2009, 01.08.2010, 25.10.2010, 08.11.2010, 06.06.2011 and 08.11.2011 addressed by her and according to her, there was no response from the respondents. The records produced before this Court also do not reflect replies given by the respondents. In all these letters, she had raised questions about the status of her application for voluntary retirement and, she had also sought that since subsequently her health had improved, to be given posting.

7. In the letter dated 28.12.2009, she had stated that she could be transferred to South Mumbai if her resignation had not been finalized. She reiterated the said request by letter dated 01.08.2010. She also complained that none of the letters had been responded by the respondents by letter dated 08.11.2010 and also by letters dated 06.06.2011 and 08.11.2011.

8. The respondents finally issued a reply on 30.11.2011. In the said letter, they stated that the resignation had been accepted with effect from 07.11.2011.



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9. This letter was in fact an internal correspondence between the Regional Manager, Local Head Office, Chennai and the Chief Manager, Kancheepuram Branch.

10. There is another letter enclosed which is impugned in the writ petition dated 07.12.2011 wherein, it is stated by the respondents that her resignation had been accepted with effect from 07.11.2007. This was in response to a letter of the petitioner dated 08.11.2011. This letter dated 07.12.2011 had been addressed to the petitioner and is impugned in the present writ petition.

11. The petitioner, after receiving that particular letter had given a further representation on 19.12.2011 and had stated that the gap period, namely, the period during which the respondents had not issued any reply should be included while determining her service period. She complained that inspite of repeated requests, the respondents had not intimated her about her place of posting.

12. The next correspondence was again an internal correspondence between the Regional Manager, Local Head Office, Chennai and Chief Manager, Kancheepuram Branch dated



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06.02.2012 wherein, it had been stated that the question of regular salary till December, 2011 cannot be paid as requested by the petitioner, since her resignation had been accepted as on 07.11.2007. This decision was also communicated to the petitioner by letter dated 08.02.2012.

13. Thereafter, the respondents / Chief Manager at Kancheepuram, with whom, the Regional Manager had engaged in correspondences had forwarded a set of pension settlement papers to the petitioner calling upon her to produce photographs of herself and her spouse and to mention the address and other details. This was by communication dated 21.02.2012.

14. The petitioner responded to that particular letter by communication dated 29.03.2012 by forwarding the necessary and requisite documents. She then sent a reminder on 20.01.2013. This was replied by letter dated 02.02.2013 by the Chief Manager at Kancheepuram Branch. The said officer stated that he had taken up the issue with the Regional Business Officer at Chengelpet for settlement of terminal benefits and that they had also sent reminder letters to their Controllers for early settlement.



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15. The petitioner had then given a further reminder on 15.04.2013 and again on 02.09.2013. A further application for settlement of terminal benefits was forwarded, again by the Chief Manager of Kancheepuram Branch on 25.10.2013 calling upon the petitioner to fill up the form without any blanks and also to send further photographs. The petitioner then addressed a further letter on 15.12.2013 stating that she had expressed in her earlier letters a desire to re-join the bank and that she was not given any posting. She also stated about the various illnesses which she had faced. She stated that had the terminal benefits been settled at the right time, it would have provided her with mental relief.

16. A further communication was then sent by the Deputy General Manager (Business & Operations) at Chennai, dated 07.01.2014, and the petitioner was advised to forward the necessary representations through the Branch where she had worked. She had then sent a further representation on 10.01.2014 stating that she had forwarded the necessary documents through the Branch.

17. Thereafter, the respondents had sent a further



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communication to her dated 01.07.2014 stating that her resignation had been accepted with effect from 07.11.2007 and also stating that she had been on unauthorized absence on various dates for a total of 1391 days from 01.09.2003 to 06.11.2007. It had been further stated that however they had regularized the unauthorized absence as a special case, though the petitioner had not sought for any such request. Therefore, the respondents stated that the issue of rejoining the bank would not arise. They also stated that the payment of terminal benefits are under process and it would be settled at the earliest. They then paid the gratuity to the petitioner herein. The petitioner then issued another letter to settle the Employees PF fund on 16.03.2015. The Provident Fund was also settled by a communication dated 07.04.2015 by the respondents. The petitioner then requested for sending the pension papers at the earliest by communication dated 20.04.2015. She again made a reminder on 11.05.2015.

18. The petitioner had also obtained various information under the Right to Information Act. Complaining that her pension had not been settled by the respondents, the writ petition had been filed seeking to interfere with the two letters stated above.



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19. The respondents had filed a counter affidavit, which was signed on 21.07.2023. It must be noted that the writ petition had been filed on 11.04.2016. In the counter affidavit, the respondents had taken a stand relating to the jurisdiction of this Court and stated that the petitioner should have raised a dispute under the Industrial Disputes Act, 1947.

20. They also stated in the counter affidavit that the petitioner had been under unauthorized absence from 01.09.2003 till 31.03.2004 for a period of 178 days and again from 01.04.2004 till 30.06.2004 and from 12.04.2004 till 20.07.2004 for a total number of 101 days. They stated that the petitioner was absent for a total number of 279 days when she was working at Thirukazhukundram and at Kalpakkam. In so far as her services at Kancheepuram was concerned, again details have been given by stating that on various spells from 02.08.2004 till 06.11.2007, she had been totally absent for a period of 1112 days.

21. It was therefore contended that she was totally absent for a period of 1391 days till the date which she had given her application for voluntary retirement. It had also been specifically stated in the counter affidavit that the petitioner had sought



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transfer from Chennai to Mumbai but since, the resignation had been accepted with effect from 07.11.2007, and was communicated to the petitioner on 07.12.2011, it was not possible for her to be given any posting at any other places.

22. It was also stated that her request for payment of terminal benefits had been considered. It was stated that the resignation letter was not in the standard format of the bank and therefore processing it caused delay. The reasons given for her absence were denied and it was stated that the reasons were false and concocted. It was stated that the respondents had adjusted the aforementioned 1391 days with the number of days which she attended office and after adjustment of those days, it was contended that she had not completed twenty years of service to be eligible for grant of pension. It had been stated that the total number of years which she had actually served after the adjustment of 1391 days would only be 18 years as on 07.11.2007, which was less than twenty years, which is required under Rule 3(a) of the State Bank of India Employee Pension Rules.

23. The Rules contemplate two levels of eligibility for grant of pension to be complied with, namely, service for a period of



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twenty years and completion of fifty years of age by any employee to be considered as being eligible for grant of pension. It was contended that since the petitioner had not completed the twenty years of service consequent to her absence of 1391 days, and therefore the petitioner was not eligible for grant of pension. It had therefore been stated that the writ petition should be dismissed.

24. Heard arguments advanced by Mr.K.M.Ramesh, learned Senior Counsel for the petitioner/s and Mr.K.Chandrasekaran, learned counsel for the respondents.

25. With respect to the first issue on the issue of jurisdiction, Mr.K.M.Ramesh, the learned Senior Counsel appearing on behalf of the petitioner stated that the writ petition had been taken up on record of this Court in the year 2016 and after seven years, in the counter affidavit, which had been filed in the previous hearing date, and signed on 21.07.2023, this particular stand had been taken. It had been taken after the petitioner had also died. It is also contended that an industrial dispute would primarily arise only, as defined in Section 2(k) of the Industrial Disputes Act, 1947, in the case of dismissal / retrenchment / termination of employee or condition of services and could be raised as a dispute under Section



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2A of the Act which would be forwarded to a conciliation officer and thereafter if conciliation is not arrived, then the dispute would be referred before the concerned jurisdictional Labour Court.

26. In this connection, the learned Senior Counsel, pointed out that the petitioner's resignation had been accepted by the respondents. As a matter of fact, the resignation which had been accepted was resignation as Voluntary Retirement. It is therefore contended that the stand of the respondents, taken after seven years from the date of filing of writ petition relating to jurisdiction should not be countenanced by this Court.

27. Mr.K.Chandrasekaran, the learned counsel for the respondents stated that the petitioner was only working as a staff of the bank and not in any supervisory capacity.

28. However, it should be noted that the respondents themselves had accepted the resignation of the petitioner herein on an application given by the petitioner. They had also disbursed the gratuity and her provident fund amounts. The issue is only with respect to whether her services under the Bank would qualify her to receive pension or not. Therefore, I hold that this would not be a



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dispute as defined as a dispute under Section 2(k) of Industrial Disputes Act, 1947. More over, the stand of the respondents having been taken a stand after the writ petition had been on the Board of this Court for a period of over seven years, does not withstand the scrutiny of this Court and I would override that particular objection taken by the respondents herein.

29. The only issue now is about the days of absence of the petitioner herein of 1391 days and whether it should be counted as service or whether it should not be counted as service, which would dis-entitle the petitioner from seeking pension.

30. The actual order, which the respondents have passed in this regard, is extracted below for better reference:-

*"Smt.V.Indira Nawada
C/o. Dr.H.P.Nawada
11A, Purnima Govt.Quarters,
Ridge Road,
Malabar Hills,
Mumbai – 400 006*

*DGM (B&O)/ZO II/HR 01.07.2014
Madam,
Resignation From Bank's Service*

*With reference to your letter dated
26.05.2014 on the captioned subject we advise
you as under.*

a. You submitted your application for



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*resignation from Banks' service on 02.11.2007.
b. Your resignation was accepted by the appropriate authority on 30.11.2011 w.e.f. 07.11.2007.
c. The acceptance was intimated to you on 07.12.2011.
d. It was acknowledged by you on 13.12.2011 (AD card)
e. You have sent letters dated 29.09.2012, 20.01.2013, 15.04.2013 and 02.09.2013 advising us for submission of terminal benefits papers and requesting us for settlement of terminal dues.*

02. The delay in settlement of your terminal benefits has happened only due to the process of regularization of your unauthorized absence of 1391 days from 01.09.2003 to 06.11.2007 on various days. Till date, we have not received any formal letter from you requesting us to regularize the unauthorized absence of 1391 days. However after due examination of your unauthorized absence the appropriate authority has decided to condone the same without initiating any disciplinary action as a special case even though no request received from your side for regularization.

03. In view of the above we advise that the question of re-joining in the State Bank of India does not arise at all.

04. Kindly treat the matter as closed. Please also note that your terminal benefits are under process and will be settled at the earliest.

Sd/-

Yours faithfully, "

31. A reading of the aforementioned letter shows that the petitioner had given an application for voluntary retirement on 02.11.2007. It had been stated that the respondents have accepted



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it on 30.11.2011 with effect from 07.11.2007. It had also been stated that this particular acceptance was intimated on 07.12.2012. It had also been stated that subsequently the petitioner had been addressing letters for receipt of terminal benefit papers and for settlement of terminal dues.

32. With respect to the settlement of terminal benefits, it had been stated that the petitioner was in unauthorized absence for a period of 1391 days from 01.09.2003 to 06.11.2007 on various dates. It had also been stated that the petitioner had not forwarded any letter requesting regularization of the unauthorized absence of 1391 days. However, it had been further stated that the respondents have taken upon themselves to condone the said absence without initiating any disciplinary action, as a special case, even though, no request was received from the petitioner for regularization.

33. A break down of the aforementioned letter would show that the petitioner was absent for a period of 1391 days, but in this particular letter communicating that particular fact, the days on which the petitioner was so absent had not been communicated to the petitioner herein.



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34. It was also stated that the respondents had not received any letter from the petitioner to regularize that particular absence. The respondents, within the Rules could have initiated and should have initiated disciplinary proceedings for unauthorized absence.

35. If a person is absent, then the right of the management to seek for explanation is inherent within the terms of employment, particularly when an employee is absent and according to the respondents, in this particular case, absented herself on various spells, which have not been stated in the said letter, but which totally amounted to 1391 days. If the respondents had taken the decision not to initiate disciplinary action, it is a clear case of dereliction of duty on the part of the respondents. They have sent a signal to the other employees that anybody can be absent for various spells, and the management would condone their absence even without any request. Justifying the decision as 'a special case', actually puts the respondents in very bad light. This is not good administration by the respondents and this Court can only condemn such decision taken by the respondents.

36. There is no reason given as to why the petitioner's case was treated as a special case and her absence was condoned.



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Having taken that particular decision, which was to the advantage of the petitioner herein, I wonder at the representation of the learned counsel for the petitioner who stated that this decision therefore implies that this particular number of days of absence, namely, 1391 days, cannot be counted for pension or for any other entitlement by the petitioner.

37. If a decision is taken, which in part is to the advantage of an employee and in another part is to the disadvantage of the employee so far as monetary benefits are concerned, or on any other aspect, then principles of natural justice require that the employee should be put on notice before any adverse order is taken against such employee. The respondents cannot dangle a carrot in one hand and hold it and state that the absence is condoned and at the same time withdraw the consequential benefit from the employee and deny the employee the experience of having a taste of such carrot.

38. The respondents cannot withhold the pension after having condoned the days of absence. They have a right to condone the absence, but when they want to reject counting the days for pension after condonation and do not want to take those days into



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consideration for pension, they must have put the petitioner on notice. At no point in any of the correspondences between 2007 and 2011 had the respondents issued at least one show-cause notice to the petitioner herein complaining as to why she was absent. At no point between 2003 and 2007 when the petitioner was apparently absent for a total of 1391 days in various spells has any record been produced before this Court that the petitioner had been issued with a memo or any notice seeking explanation as to why she was absent.

39. Having taken a stand so far as the petitioner is concerned, according to the respondents, 'as a special case', the respondents will have to fall on the folly of their own decision. They cannot treat the petitioner in a separate manner from how they would have treated any other employee and condone the absence of 1391 days, which was prior to 06.11.2007 the date of acceptance of voluntary retirement and then state that they would not take that period into consideration for purposes of pension. They should have either initiated disciplinary proceedings and proceeded against the petitioner and rejected all explanations of the petitioner. They cannot, on the one hand grant a particular benefit of condoning the absence without any request from the petitioner herein and without



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even examining the reasons for such absence and thereafter hide behind the screen and state that this condonation would not be included while calculating the days of service for pension.

40. The respondents ,having taken a decision, can never revisit the decision again. They will have to stand with their decision which they have taken. They have not put the petitioner on notice before they stated that they would condone the absence on the one hand but reject the days which had been condoned from being counted for pension. If they had wanted to take the second decision of rejecting those days from being counted for pension, the petitioner should have been put on notice.

41. As a matter of fact, in the counter affidavit, it had been very specifically stated that the reasons given for the absence are false and 'concocted'. If that be the stand of the respondents in the counter affidavit, then they should have taken that particular stand when the petitioner was in service and should have taken necessary action. Having failed to do so, I hold that the respondents having granted favouritism to the petitioner will have to fall on their own sword and on their own decision. This decision of the respondents to deny the days condoned from being counted for pension can never



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withstand the scrutiny of this Court.

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42. The learned counsel for the respondents placed reliance on the judgment of the Hon'ble Supreme Court in the case of *Rajasthan State Electricity Board and others v Brij Mohan Parihar* [(2009) 9 SCC 269]. Let me extract paragraphs 3 to 6 of the said judgment:-

"(3) The respondent was an employee of the Rajasthan State Electricity Board. He submitted his letter of resignation on 10/10/1983 in which it was mentioned that the resignation will be effective from 25/11/1983. The learned single Judge and the Division Bench, both have recorded a finding that the respondent offered himself for duty on 22/8/1987 through his letter of even date. It was then that the Board made an order dated 24/8/1987 accepting the letter of resignation with effect from 25/11/1983 and treating the respondent as relieved from the forenoon of 25/11/1983. The learned single Judge and the Division Bench of the High Court have further held that a formal letter accepting the resignation should have been issued and since it was not done, the respondent shall be deemed to have continued in service till 22/8/1987 when he reported to resume his duties.

(4) We are not inclined to subscribe to this view. The respondent tendered his resignation vide his letter dated 10/8/1983 in which it was mentioned clearly that the resignation would be effective from 25/11/1983. He absented himself from duty for four years. from that date and reported only on 22/8/1987. This conduct itself on the part of the respondent is sufficient to indicate that he treated himself to have



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resigned from the post which he was holding, with effect from 25/11/1983, particularly when he himself thereafter demanded payment of gratuity and other post-retirement benefits.

(5) Having regard to the circumstances of the case, the finding could not have been recorded by the learned single Judge or the Division Bench that the respondent shall be deemed to be continuing in service till 22/11/1987.

(6) That being so, we allow the appeal, set aside the judgments passed by the single Judge and the Division Bench. In the particular circumstances of the case, the respondent shall be treated to have resigned from the post in question with effect from 25/11/1983. All retirement benefits as admissible under the rules shall be paid to him by the appellant Board possibly within three months.

(7) There will be no order as to costs."

43. A perusal of the facts and reasoning shows that the respondent therein, an employee of Rajasthan State Electricity Board had submitted a letter of resignation on 10.10.1983, which he himself had stated would be effective from 25.11.1983. He then did not go to work. He then surfaced and offered himself for duty on 22.08.1987. Thereafter, the appellant / Rajasthan State Electricity Board had passed an order on 24.08.1987 accepting the letter of resignation with effect from 25.11.1983, the date which was specifically mentioned by the respondent. The Hon'ble Supreme Court had stated that since the respondent had tendered his



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resignation and had specified the date, that is the particular date from which it should be taken into consideration and no further date can be added or subtracted to the services of the respondent therein.

44. The facts in the present case are entirely different. There is no quarrel that the petitioner had forwarded a letter of voluntary resignation on 02.11.2007 and it had been accepted with effect from 07.11.2007 on 30.11.2011. But what is questioned in the present writ petition is not acceptance of that particular resignation letter, but denial of pension by stating that between 2003 – 2007 the petitioner was absent for 1391 days. If that absence is to be held against the petitioner herein then the resignation with effect from 07.11.2007 should never have been accepted. The petitioner should have been proceeded with departmentally seeking explanation for her absence. They have condoned the absence even without any request from the petitioner. They have granted her gratuity / provident fund and then they strangled her with respect to her pension by denying that particular number of days for being calculated towards pension. The ratio therefore in the aforementioned judgment holds so far as the acceptance date of the resignation of the petitioner is concerned but



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does not extend to the number of days for which she had been absent, which the respondents have held against her, though they condoned her absence.

45. The learned counsel for the respondents placed reliance on the State Bank of India Employees Pension Fund Rules wherein a specific reference was made to Rule 21(i)(ii). The first part of the said Rules states that no period of leave granted without leave salary, or of absence without leave, shall count as pensionable service.

46. But there are no documents to show that when the petitioner was absent her leave applications were rejected and the absence during the period between 2003 – 2007 in intermittent days were taken as an issue by the respondents in that particular period and the petitioner was put on notice seeking for explanation and that the explanation was rejected. Unless that process had been gone through, the respondents cannot, on the one hand condone the absence without any request from the petitioner and on the other hand deny that particular privilege of condonation from being counted towards pension. The respondents have taken a decision which stares an their own face.



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47. The learned Senior Counsel relied on Clause 21(i)(ii) wherein, it had been stated that if the employee rejoins the bank, then there could be continuity in service. Even that particular clause cannot come to the aid or advantage of either the petitioner or the respondents herein but the respondents have to fall on their own decision.

48. There are correspondences which have also been enclosed along with the documents produced by the petitioner and furnished to the petitioner under the Right to Information Act. These doubts shows that the petitioner was not informed and was not put on notice when the decision was taken to condone the delay with a rider that the number of days for which the petitioner was absent would not be taken into consideration for pension. The said letter had come to the knowledge of the petitioner only when she sought information under the RTI Act. The three signatories are the Manager (HR), Chief Manager (ADMN) and Regional Manager (RBO II), Zone II Chennai. None of these officials have thought of putting the petitioner on notice before taking an adverse decision against the petitioner herein.



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49. This Court wonders as to what played in their mind to condone the absence and at the same time refuse to extend such condonation towards the number of days for which the petitioner is entitled for calculation of pension.

50. The learned Senior Counsel for the petitioner also placed reliance on the Division Bench judgment of the Kerala High Court in the case of *Kunnath Chandrasekharan v State Bank of India, Rep. By its Chairman and Managing Director and ors* [W.A.No.2124 of 2018 dated 02.09.2019 reported in 2019 KER 54771].

50.1 That is an interesting case. The facts therein show that the appellant therein joined State Bank of India as Probationary Assistant in the year 1957. Thereafter, the war between India and Pakistan started. The appellant therein had volunteered to join the armed forces. He then underwent military training and was commissioned as Second Lieutenant and posted at the Sialkot Sector in 1964 at the war front. He continued to serve till 1967 and then he rejoined the bank as Accountant in Madurai Branch.



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50.2 The respondents did not count his military service while calculating his pension. The juniors of the appellant were promoted and he was then posted as Faculty member at Hyderabad and was sent to deputation to Tanzania where he continued till 1980. He then got disillusioned with the treatment meted out by the State Bank and resigned from service in the year 1980. In such circumstances, the Division Bench of the Kerala High had held as follows:-

"11. The only other question is as to whether, on equitable considerations, the Bank could be directed to consider the appellant's entitlement for pension. According to the appellant, he had worked with the Bank from, 1957 to 1980. The exact date on which the appellant had joined and had resigned from service is not stated. We refuse to accept the contention of the Bank that it is unable to trace out any record pertaining to the appellant's service. Such a contention put forth by the premier public sector Bank of the country cannot be countenanced. Hence, in the absence of any evidence to the contrary, we presume that the appellant had rendered more than 22 years of service, including his spell with the Indian Army. The fact that the appellant had been re-appointed by the Bank after his military service, definitely indicate that the Bank had treated the appellant to have been in service even during the period he had served as an officer of the Indian Army.

12. The State Bank of India Employees Pension Fund Rules, formulated in exercise of the powers conferred by Section 50 of the State Bank of India Act, 1955 provides for grant of pension to the employees of the Bank. Rule 22 of the Rules, which is contextually relevant,



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reads as follows:

"22.(i) A member shall be entitled to a pension under these rules on retiring from the Bank's service -

(a) After having completed twenty years' pensionable service provided that he has attained the age of fifty years or if he is in the service of the Bank on or after 1.11.93, after having completed ten years pensionable service provided that he has attained the age of fifty eight years or if he is in the service of the Bank on or after 22.05.1998, after having completed ten years pensionable service provided that he has attained the age of sixty years;

(b) After having completed twenty years' pensionable service, irrespective of the age he shall have attained, if he shall satisfy the authority competent to sanction his retirement by approved medical certificate or otherwise that he is incapacitated for further active service;

(c) After having completed twenty years pensionable service, irrespective of the age he shall have attained at his request in writing.

(d) After twenty five years' pensionable service.

(ii) A member who has attained the age of fifty-five years or who shall be proved to the satisfaction of the authority empowered to sanction his retirement to be permanently incapacitated by bodily or mental infirmity from further active service (such infirmity not being the result of irregular or intemperate habits) may, at the discretion of the trustees, be granted a proportionate pension.

(iii) A member who has been permitted to retire under clauses 1(c) above shall be entitled to proportionate pension."

13. The Rule shows that a member of the Fund



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retiring from the Bank's service, would be eligible for pension, if he had completed 20 years of pensionable service and had attained the age of 50 years. A person in the service of the Bank on or after 1.11.1993, having completed 10 years pensionable service and having attained the age of 58 years, as also a person in the service of the Bank on or after 22.5.1998, having completed 10 years pensionable service and having attained the age of 60 years is entitled for pension. The date of birth of the appellant, as revealed from his record of military service is 23.8.1936. Therefore, when the appellant resigned from the Bank in 1980, he would have attained 44 years of age. In such circumstances, the appellant would not be eligible for pension under Rule 22(i)(a). Rule 22(i)(b) would apply only in the case of an employee, who, after having completed 20 years pensionable service, irrespective of the age he shall have attained satisfies the authority competent to sanction his retirement, by approved medical certificate or otherwise, that he is incapacitated for further active service. The appellant has no case that he was relieved from service on medical grounds. Then, the question arises as to whether the appellant would be entitled for the benefit under Rule 22(i)(c), available to an employee, who, after having completed 20 years pensionable service, irrespective of the age he shall have attained, retires at his request in writing. As per Rule 15, the retirement of all officers of the Bank shall be subject to the sanction by the competent authority designated by the Executive Committee of the Central Board of the Bank from time to time. Therefore, for the purpose of voluntarily retiring from service, an employee has to make a request in writing which has to be sanctioned by the competent authority.

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16. The appellant had also rendered more than 20 years of pensionable service and had no other reason to resign, other than his disgruntlement due to the failure of the Bank to acknowledge his military service. Following the principles laid down by the Apex Court in the cases of *Sashikala Devi & Asger Ibrahim (supra)*, we would have directed the Bank to grant proportionate pension to the appellant. But, in the recent decision of the Apex Court in *Senior Divisional Manager, LIC of India and Others v. Shree Lal Meena [(2019)4 SCC 479]*, the distinction between retirement, including voluntary retirement and resignation and the in-applicability of the pension scheme to employees who had resigned from service was considered. The Apex Court took specific note of Rule 23 of the LIC of India (Employees) Pension Rules, 1955, which provided for forfeiture of the entire past service and qualification for pensionary benefits of an employee whose services stood terminated consequent to resignation or dismissal or removal or termination or compulsory retirement. It was also found that there was no provision for voluntary retirement at the time when the appellant therein had tendered resignation and that his claim based on the LIC of India (Employees) Pension Rules, 1955, which was promulgated five years after his resignation, was a misadventure."

50.3 Among the reasons stated therein, the Division Bench had stated that the respondent / Bank should have taken his services into consideration when he did his military service since it was promised that it would be taken into consideration.



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51. Even in the instant case , if the respondents had taken a stand that the petitioner was unauthorisedly absent, they could have followed it up in manner known to law. They had taken a decision to condone the absence. Having taken a decision to condone the absence they should have extended the further benefit of such condonation to the petitioner herein. They cannot put a rider on such decision and state that they would condone the absence, which would of be no assistance to the petitioner, since the period condoned was not taken into consideration for pensionary service. That decision does not take the respondents anywhere.

52. I hold that the denial of taking into consideration that particular days of service into pension has to be set aside by this Court. It is also seen that the respondents have not issued any notice prior to taking such decision. The three gentlemen who had signed the order, had acted to the detriment of the respondents themselves. Both the letters impugned in this writ petition are therefore set aside.

53. The writ Petition stands allowed.



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54. The respondents may work out the pensionary benefits for the petitioner herein in accordance with the Rules by taking into consideration the number of days which had been condoned by the respondents themselves and take those particular days into consideration as days to be counted towards pension of the deceased petitioner. Necessary proceedings will have to be issued within a period of sixteen weeks from the date of receipt of a copy of this order. No costs. Connected miscellaneous petitions are closed.

16.08.2023

Index:Yes
Neutral Citation:Yes
ssm

To

- 1.The Chairman,
State Bank of India
State Bank Bhawan
Madam Cama Road,
Mumbai – 400 021.
- 2.The Assistant General Manager (PPG),
State Bank of India
Local Head Office,
16, College Road,
Nungambakkam, Chennai – 06.
- 3.The Deputy General Manager (B&O)
State Bank of India,
Network – 1, Chennai Zone II,
86, Rajaji Salai,
Chennai – 600 001.



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4.The Chief Branch Manager / Regional Manager,
State Bank of India,
29, 30, Annai Indira Gandhi Salai,
Kancheepuram – 631 502.



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C.V.KARTHIKEYAN,J.

ssm

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16.08.2023