IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.46 of 2021
In
Civil Writ Jurisdiction Case No.12921 of 2019

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1. Dakshin Bihar Gramin Bank through its Chairman Having its Office at Shri Vishnu Commercial Complex, NH-30 New Bypass Near BP HighwayServices Petrol Pump, Asochak, Patna-800016
2. Board of Directors Dakshin Bihar Gramin Bank through its Chairman having its Office at Shri Vishnu Commercial Complex, NH-30 New Bypass Near BP Highway Services Petrol Pump Asochak, Patna-800016
3. The Chairman, Dakshin Bihar Gramin Bank (DBGB) having its Office at Shri Vishnu Commercial Complex, NH-30 New Bypass Near BP HighwayServices Petrol Pump Asochak, Patna-800016
4. The General Manager(HRD/Pension) Dakshin Bihar Gramin Bank having its Office at Shri Vishnu Commercial Complex,NH-30 New Bypass NearBP Highway Services Petrol Pump Asochak, Patna-800016
5. Chief Manager Pension Cell, Dakshin Bihar Gramin Bank having its Office at Shri Vishnu Commercial Complex, NH-30 New Bypass Near BP Highway Services Petrol Pump Asochak, Patna-800016

... ... Appellant/s

Versus

1. Shrinath Upadhyay S/o Late Janardan Upadhyay, Resident of Sasaram, RauzaCanal Road, Gramin Bank Colony, Sasaram, Sasaram, Rohtas, P.S. Sasaram,Dist. Rohtas-821115
2. Union of India through its Secretary Ministry of Finance, Department of Financial Service, RRB Section, Banking Division, Jeevan Deep Building,3rd Floor, Parliament Street, New Delhi-110001
3. National Bank for Agriculture and Rural Development (NABARD) through its Chief Central Manager Having its Head Office At-Plot C-24,G Block, Bandra Kurla Complex, BKC Road, Bandra East, Mumbai,Maharashtra-400051
4. Punjab National Bank (PNB) through its CMD Having its Head Office At Plot No.04,Sector 10, Dwarka New Delhi-110075

... ... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. M.N. Parbat, Sr. Advocate
		Mr. Praveen Kumar, Advocate
For the Respondent/s	:	Mr. Harendra Singh, Advocate
		Mr. Jai Prakash Singh, Advocate
For NABARD	:	Mr. Chitaranjan Sinha, Sr. Advocate
		Mr. Siddharth Prasad, Advocate

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and

HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 09-01-2024

Learned counsel for the respective parties submitted that three other Letters Patent Appeal, i.e., LPA No. 119 of 2021, LPA No. 140 of 2021 and LPA No. 175 of 2021 listed today for hearing together be heard independently. Therefore, it has been separated and order has been passed independently. Registry is also hereby directed to de-link LPA No. 119 of 2021, LPA No. 140 of 2021 and LPA No. 175 of 2021 from the present Letters Patent Appeal No. 46 of 2021.

2. The appellant-Dakshin Bihar Gramin Bank has assailed the order of the learned Single Judge dated 05.10.2020 passed in CWJC No. 12921 of 2019.

3. Respondent-Shrinath Upadhyay is stated to have been retired compulsorily on 16.01.2018 as a measure of penalty in a departmental/domestic inquiry.

4. Learned counsel for the appellant submitted that learned Single Judge has committed error in not appreciating definition in Madhya Bihar Gramin Bank (Employees) Pension Regulation, 2018 (for short 'Pension Regulation, 2018) like Regulation No. 2 (k) "**effective date**" means the 1st day of April,

2018; (l) "**eligible employee**" means an employee who is eligible for pension under these regulation(s); (g) "**notified date**" means the date on which these regulations are published in the official gazette; (x) "**retirement**" means from cessation Bank's service- (i) on attaining the age of superannuation as specified in the service regulations; (ii) on voluntary retirement in accordance with provisions contained in regulation 2018; (iii) on premature retirement by the Bank before attaining the age of superannuation in accordance with provisions contained in regulation 30; read with regulation 20-**Forfeiture of Service**. Regulation 20-**Forfeiture of Service** reads as under:-

"20. Forfeiture of service-

(1) Resignation not amounting to voluntary retirement or dismissal or removal or termination of an employee from the service of the Bank shall entail for forfeiture of his entire past service and consequently shall not qualify for pension under these regulations.

(2) An interruption in the service of an employee entails forfeiture of his past service, except in the following cases, namely;-

(a) authorised leave of absence;

(b) suspension, where it is immediately followed by reinstatement, whether in the same or a different post, or where the employee dies or is permitted to retire or is retired under the

provisions of the Service Regulations while under suspension."

5. It is submitted that if the aforementioned provision are taken into consideration respondent-Shrinath Upadhyay is not entitled to have the benefit of pensionary benefit in terms of Regulation 31. It is also submitted that these Regulations cannot be given effect to in the light of provisos of Section 17 of the Regional Rural Bank Act, 1976. Section 17 reads as under:-

"17. Staff of Regional Rural Banks.-

(1) A Regional Rural Bank may appoint such number of officers and other employees as it may consider necessary or desirable [19] [in such manner as may be prescribed] for the efficient performance of its functions and may determine the terms and conditions of their appointment and service:

Provided that it shall be lawful for a Sponsor Bank, if requested so to do by a Regional Rural Bank sponsored by it, to send, [***] such number of officers or other employees on deputation to the Regional Rural Bank as may be necessary or desirable for the efficient performance of its functions:

Provided further that the remuneration of officers and other employees appointed by a Regional Rural Bank shall be such as may be determined by the Central Government, and, in determining such remuneration, the Central Government shall have due regard to the salary structure of the employees of the State Government and the local authorities of comparable level and status in the notified area.

> *(2) Notwithstanding anything contained in the Industrial Disputes Act, 1947, or any other law for the time being in force, no award, judgment, decree, decision or order of any industrial tribunal, court or other authority, made before the commencement of this Act, shall apply to the terms and conditions in relation to the persons appointed by a Regional Rural Bank.*
>
> *(3) The officers and other employees of a Regional Rural Bank shall exercise such powers and perform such duties as may be entrusted or delegated to them by the Board."*

6. *Per contra*, learned counsel for the respondent-Shrinath Upadhyay resisted the aforesaid contention and submitted that there is no error in the order passed by the learned Single Judge. It is submitted that it is undisputed that respondent-Shrinath Upadhyay was appointed on 09.06.1979 and he has been retired compulsorily as a measure of penalty on 16.01.2018 whereas Pension Regulation, 2018 was notified on 2nd November, 2018 even though amendment to the Madhya Bihar Gramin Bank (Officers and Employees) Service Regulations, 2010 has been given effect to the extent that they shall come into force on the date of their publication in the official gazette under Regulation No. 1(2) notified on 2nd November, 2018, having regard to the language employed under Regulation 3(1) whatever the service rendered by employees/officers of the appellant organization he is

entitled to payment of pension or family pension to such of those employees/officers joined service during the period from 1st September, 1987 and 31st March, 2010 and attained age of superannuation and retired from service before 31.03.2018. These regulations, be eligible for payment of pension from the effective date. Therefore, the contention of the appellant is liable to be rejected while upholding the order of the learned Single Judge.

7. Heard learned counsels for the respective parties.

8. Core issue involved in the present *lis* is whether respondent-Shrinath Upadhyay who was appointed with the appellant bank on 09.06.1979 and the fact that he has been retired compulsorily as a measure of penalty on 16.01.2018, is he entitled to benefit of pension under Regulation 31 read with 32 or not and is there any error in the order of the learned Single Judge or not? It is necessary to reproduce Regulation 30, 31 and 32 of Pension Regulation, 2018 and they read as under:-

> ***"30. Premature retirement pension.*** *-*
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> *Premature retirement pension may be granted to an employee who, -*
>
> *(a) has rendered minimum ten years of service; and*
>
> *(b) retires from service on account of orders of the Bank to retire prematurely in the public interest or for any other reason to be recorded in writing, if otherwise he was*

entitled to such pension on superannuation, on that date.

31. Compulsory retirement pension. *-*

An employee compulsorily retired from service as a penalty, on or after the effective date, in terms of the Service Regulations, may be granted by the authority higher than the authority competent to impose such penalty, 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:

Provided that where the pension awarded under this regulation is less than the full pension admissible under these regulations, the Board of Directors shall be consulted before such order is passed.

32. Payment of pension or family pension in respect of certain employees. *-*

(1) An employee who was in service between 1st day of September, 1987 and 31st day of March 2010 and retired from the service of the Bank before 31st day of March, 2018 shall, subject to the provisions of these regulations, be eligible for payment of pension from the effective date.

(2) The family of a deceased employee, who was in service between the 1st day of September, 1987 and 31st day of March 2010 and died before the 31st day of March, 2018 shall, subject to the provisions of these regulations, be eligible for payment of family pension from the effective date."

9. Having regard to the language employed in each of the Pension Regulation, 2018 cited supra it is evident that such of employee or officer who has been retired compulsorily as a measure of penalty, he or she is entitled to pensionary benefits as on the date of compulsory retirement, i.e., 16.01.2018. In the present case, the respondent-Shrinath Upadhyay was retired compulsorily as a measure of penalty on 16.01.2018. Therefore, he is entitled to have the benefit of pension in terms of Regulation 31 read with 32. The definition in the Regulation cited on behalf of the appellant which has been quoted supra have no relevancy for the purpose of considering eligibility of the respondent in the light of Chapter-II-Application and Eligibility. Regulation No. 3 reads as under:-

"Chapter II

Application and Eligibility

> ***3. Application.*** *- (1) These regulations shall apply to any employee who -*
>
> *(a) was in the service of the Bank on or after the 1st day of September, 1987 but had retired on or before 31 March, 2010 who exercise an option in writing within one hundred and twenty days from the notified date, to become a member of the Fund and refund within sixty days after the expiry of the said period of one hundred and twenty days, the entire final amounts received by him (the corpus comprising of Bank's contribution to provident*

fund under the Employees' Pension Scheme, 1995 and interest accrued thereon till the date of receipt by him of the amount) but without requiring to pay interest on such final amounts from the date of receipt of such final amounts to the date of refund; or

(b) was in the service of the Bank on or after the 1st day of September, 1987 who continue to be in the service of the Bank on or after the notified date and exercise an option in writing within one hundred and twenty days from the notified date, to become member of the Fund and cause to transfer the entire contribution of the Bank along with the interest accrued thereon, to the credit of the Fund constituted under regulation 4; or

(c) was in the service of the Bank between the 1st day of September, 1987 and 31st March 2010 and continued in service on or after effective date but retired before the notified date, if he exercises an option in writing within one hundred and twenty days from the notified date, to become member of the Fund and refund within sixty days of the expiry of the said period of one hundred and twenty days the entire final amounts received by him (the corpus comprising of Bank's contribution to provident fund under the Employees' Pension Scheme, 1995 and interest accrued thereon till the date of receipt by him of the amount) but without requiring to pay interest on such final amounts from the date of receipt of such final amounts to the date of refund: Provided that the family of the employee who -

(i) was in the service of the Bank on or after the 1st day of September, 1987 but died on or before 31st March, 2010; or

(ii) joined the service between 1st September, 1987 and 31 March, 2010 and died before the effective date; or

(iii) joined the service of the Bank between 1st September 1987 and 31 March 2010 and continued in service on or after the effective date but had died before one hundred twenty days after the notified date without the employee exercising an option in writing to become member of the Fund, shall be entitled to family pension under these regulations, if the family of such deceased employee exercises an option in writing within one hundred and twenty days from the date of the death of the employee or the expiry of one hundred and twenty days from the notified date, whichever is later, to become member of the Fund and refund within sixty days of the expiry of the said period of one hundred and twenty days the entire final amounts received by the family (the corpus comprising of Bank's contribution to provident fund under the Employees' Pension Scheme, 1995 and interest accrued thereon till the date of receipt of the amount by the family) but without requiring to pay interest on such final amounts from the date of receipt of such final amounts to the date of refund.

(2) An employee or family of the deceased employee not exercising the option under sub-regulation (1) or who, after exercising the option, not refunding the amount shall be

deemed not interested in becoming a member of the Fund and shall continue to be governed under the Employees' Pension Scheme, 1995.
(3) Notwithstanding anything contained in this regulation, any employee who joined the service of the Bank on or after the 1st April, 2010 shall have an option either to be covered by the National Pension System or to continue to be governed under the Employees' Pension Scheme, 1995.

(4) Notwithstanding anything contained in this regulation, any employee who join the service of the Bank on or after the 1st April, 2018 shall be covered by the National Pension System."

10. In terms of sub-clause (c) of Regulation 3 it clearly stipulates the cut off date for the purpose of eligibility to claim pension namely to such of those persons who have joined service between 1^{st} September, 1987 and 31.03.2010 and continued in service on or before effective date but retired before the notified date. Taking note of language employed in the applicability of the Regulation, the respondent-Shrinath Upadhyay service condition would fit into the applicability clause read with Regulation Nos. 30 and 31. Therefore, there is no infirmity in the order of the learned Single Judge.

11. Section 17(3) of Act, 1976 has no application to the case in hand in view of the fact that Regulation, 2018 was notified on 2^{nd} November, 2018 while invoking powers conferred by

Section 30 read with sub-section (1) of Section 17 of the Regional Rural Bank Act, 1976 (21 of 1976). In other words, while notifying the Pension Regulation, 2018 Section 17 of the Act, 1976 has been taken note of. In fact, the same has been notified for the purpose of issuing Pension Regulation, 2018 (Amended). Therefore, the aforementioned contention of the appellant for the purpose of Pension Regulation, 2018 may not assist the Appellant in view of sub-section (1) of Section 17 of the Act, 1976.

12. Accordingly, the present Letters Patent Appeal No. 46 of 2021 stands dismissed while affirming the order of the learned Single Judge dated 05.10.2020 passed in CWJC No. 12921 of 2019.

(P. B. Bajanthri, J)

(Ramesh Chand Malviya, J)

Vikash/-

AFR/NAFR	
CAV DATE	N/A
Uploading Date	
Transmission Date	N/A