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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order Reserved on 23.10.2024	Order Pronounced on 20.11.2024

CORAM

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR
AND
THE HONOURABLE MR. JUSTICE P.B.BALAJI

W.A.No.346 of 2024
and C.M.P.No.2193 of 2024

SBI State Bank of India,
Asst. General Manager (PPG),
Local Head Office,
7th Floor, 16, College Lane,
Nungambakkam,
Chennai – 600 006. ..Appellant

Vs.

Jayanthi Srinivasan ..Respondent

PRAYER: The Writ Petition filed under Clause 15 of the Letters Patent, praying to set aside the order dated 06.11.2023 in W.P.No.26367 of 2021 and allow the appeal.

For Appellant : Mr.S.Raveendran
Senior Counsel
for Mr.S.Bazeerahamed

For Respondent : Mr.Anil Bajaj

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JUDGMENT

(Judgment of the Court was made by P.B.BALAJI, J.)

The State Bank of India/respondent in the W.P.No.26367 of 2021, aggrieved by the order in the said writ petition dated 06.11.2023, is the appellant herein.

2.We have heard Mr.S.Raveendran, learned Senior Counsel for Mr.S.Bazeerahamed, learned counsel for the appellant and Mr.Anil Bajaj, learned counsel for the respondent.

3.Mr.S.Raveendran, learned Senior Counsel would challenge the findings of the Writ Court directing sanction of pension to the writ petitioner and would submit that in terms of Rule 22 of the State Bank of India (SBI) Employees' Pension Fund Rules, only on completion of 20 years pensionable service, pension would be provided to the employee who has attained the age of 50 years. He would also place reliance on Rule 7 of the Pension Fund Rules states that an employee is entitled to become a member of the pension fund from the date on which his services in the Bank are confirmed or the date from which he may be required to become a member of the fund under the terms and conditions of his services. He would further place reliance on

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Rule 20 which says that save as provided in Rule 21, with effect from 01.11.1993, service rendered by an employee/member from the date of his admission to the fund up to the date of retirement in terms of Rule 22 infra from the Bank's service, shall be reckoned as service for pension.

4.The learned Senior Counsel would further submit that the combined reading of the above Rules would clearly indicate that unless the employee had completed 20 years of pensionable service and provided he had attained the age of 50 years, he would not become entitled to pension. The learned Senior Counsel would further contend that the term 'pensionable service' can only be counted from the date of confirmation of service in the Bank and the probationary period of service, if any, has to be excluded since the employee can become a member of the fund only from the date of confirmation of his service and contribution to pension fund by the employee to the Bank starts there from.

5.The learned Senior Counsel appearing for the petitioner would also refer to the decision of the Division Bench of this Court in the case of *S.Shanmugavel Vs. CGM, SBI in W.A.No.1483 of 2014* dated *10.02.2015*,

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where the Division Bench held that for the purpose of counting 20 years of pensionable service, the period of probation should also be reckoned or taken into account. However, he would submit that the bank challenged the said decision of the Division Bench in the said case, before the Hon'ble Supreme Court in *SLP.No.16478 of 2015*, wherein, the petitioner has specifically raised the following questions of law:

> *"a) Whether the period of probation is required to be counted towards qualifying service for grant of pension, in terms of SBI Employees Pension Fund Rules?*
> *b) Whether eligibility of an employee for pension is to be seen in the light of Rule 7, Rule 20 and Rule 22.*
> *c) Whether temporary service prior to the date of confirmation is to be reckoned as service for pension keeping in view Rule 7 r/w Rule 20 of the SBI Pension Fund Rules?*
> *d) Whether the Hon'ble High Court is justified in issuing directions contrary to the statutory SBI Employees Pension Fund Rules which have been framed in exercise of the powers confers by Section 50 of the SBI Act, 1955?*
> *e) Whether the High Court has correctly interpreted Rule 7 of the Pension Fund Rules?*
> *f) Whether the direction given by the Hon'ble High Court to pay pension to the respondent is valid and justified, the same being contrary to statutory rules?"*

6.The learned Senior Counsel would fairly submit that the said Special Leave Petition was dismissed by the Hon'ble Supreme Court even in the admission stage on 16.02.2015. However, he would take us to the order of

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the Hon'ble Supreme Court where liberty has been granted as in, leaving the questions of law raised by the Bank open. The learned Senior Counsel would therefore submit that since the issue has been left open and the question has specifically been raised by the appellant Bank before the Hon'ble Supreme Court, this Court has to consider whether the probationary period should be included for pensionable service.

7.The learned Senior Counsel would also submit that applying the ratio laid down by the Hon'ble Supreme Court in the decision of the *Assistant General Manager State Bank of India Vs. Radhey Shyam Pandey* reported in *2020 6 SCC 438*, the pensionable service of the writ petitioner would be 14 years and nine months, excluding six months service of probation. Since the writ petitioner did not qualify for the mandatory period of 15 years by order dated 12.02.2021, the appellant had rightly rejected the respondent's claim of pension. He would therefore pray for the writ appeal being allowed.

8.Per contra, Mr.Anil Bajaj, learned counsel for the writ petitioner/respondent would first and foremost submit that if the probationary period is included, the petitioner has admittedly completed 15 years and three

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months and but for the said probationary period of six months, the writ petitioner was clearly eligible for payment of pension.

9.He would also invite our attention to the decisions of the Hon'ble Supreme Court in *Assistant General Manager State Bank of India Vs. Radhey Shyam Pandey* reported in *2020 6 SCC 438,* Division Bench judgement of the Bombay High Court in *Mrs.Sameedha Suhas Deshpande Vs. Chairman, Shri Dinesh Kumar Khara and Others in W.P.No.1508 of 2021,* dated *23.08.2022* and *Nazir Mohamed Vs. J.Kamala and Others* reported in *AIR 2020 SC 4321* and the decision of the Division of the Bombay High Court in *Smt.Vandana w/o Eknath Bondwe Vs. State Bank of Bikaner and Jaipur* in *W.P.No.2348 of 2017* and the decision of the Hon'ble Supreme Court in *V.Vincent Velankanni Vs. The Union of India and Others in C.A.No.8617 of 2013* dated *30.09.2024.*

10.We have carefully considered the submissions advanced by the learned counsel on either side.

11.It is not in dispute that the writ petitioner was employee of the

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appellant Bank and after undergoing the initial probationary period of six months, her services were confirmed and if the probationary period of six months is included, then the petitioner has been in service for 15 years and three months. However, if the said period of six months is not included, then the service period is only 14 years and nine months and three months short of the requisite period of 15 years.

12.The Division Bench of the Bombay High Court in *Vandana's* case (referred herein supra) held that pension in the nature of property as contemplated under Article 300A of the Constitution of India cannot be taken away, without the authority of law. The Honourable Division Bench also held that, the right to pension would accrue as soon as an employee completes 10 years of service and the petitioner having rendered 14 years, 11 months and 3 days as Government employee, was also qualified to seek voluntary retirement from service under the applicable scheme, the petitioner would not be disqualified for getting pension under any of the statutory provisions. The Honourable Division Bench also relied on the *proviso* of the New Regulation 18 of the Pension Regulation notification dated 08.10.2014 which was relied on by the bank to contend that the petitioner would not be entitled to the

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benefit of rounding off of 14 years, 11 months and 3 days to 15 years to become qualified for pension. However, the division bench did not accept the said contention of the bank and held that the said proviso to regulation 18 would not only operate prospectively but also cannot be construed to take away the right of pension already accrued and proceeded to hold that the petitioner is entitled to count the round off service to calculate pension.

13.In the Division Bench judgement of the Bombay High Court in *Mrs.Sameedha Suhas Deshpande vs Chairman, Shri Dinesh Kumar Khara and Others in W.P.No.1508 of 2021, dated 23.08.2022,* which also involved the case of the very same appellant bank, held that, any reference to Rule 7(a) was only misplaced as it only points to the date on and from which a permanent employee of SBI can become a member of the pension fund and an indication cannot be missed that unless confirmed in service and without acquiring status of a permanent employee, any employee of SBI cannot become a member of the pension fund. The Honourable Division Bench further held that the date on which a permanent employee becomes the 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. The

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Honourable Division Bench further held that the rules governing terms and conditions of service between the employee and the bank did not indicate the period of probationary service required to be excluded. Applying the decision of the Supreme Court in *Radhey Shyam Pandey's case*, the Hon'ble Division bench held that the action of the bank in depriving the writ petitioner of pension was wholly illegal and thoroughly arbitrary.

14.The learned Senior Counsel Mr.Raveendran, would however submit that the said decision of the division bench of Bombay High Court, is under challenge before the Hon'ble Supreme Court and therefore the said ratio ought not to be followed in the present case.

15.We have carefully considered the rival submissions advanced by the learned counsel on either side. We have also carefully gone through the decisions of the Honourable Division Bench of the Bombay High Court as well as the Bombay High Court (Nagpur Bench) and the judgement of the Hon'ble Supreme Court in the *Radhey Shyam Pandey's* case. We have also gone through the notification of appellant bank dated 15.09.2014, namely regulation which is called as Employees Pension Fund Regulation, 2014. The

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Regulation 7 runs as follows:

> *"7.Eligibility.*
>
> *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."*

From the reading of the same, we are in complete agreement with the findings of the Hon'ble Division Bench of the Bombay High Court in *Mrs.Sameedha Suhas Deshpande's* case (referred herein supra) . The said regulation clearly entitles every permanent employee in the services of the bank, including a permanent part-time employee who is required by the bank to work for more than six hours a week to become the member of the fund from the date from which he is confirmed in the service of bank or the date to which he may be required to become approved member of a fund under the terms and conditions of the service. Therefore, the above regulation clearly postulates a situation the employee is already permanently employed in the

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services of the bank and for becoming a member of the fund alone two conditions are stipulated either of which are required to be satisfied. Therefore, this regulation cannot be invoked by the bank to contend that the period of qualifying service has to be reckoned only from the date of confirmation of service of membership of pension fund. The plain reading of the said regulation does not suggest the argument advanced by the learned Senior Counsel for the appellant.

16.In fact the very same argument put forth by the State Bank of India before the Hon’ble Division Bench of the Bombay High Court has also been rightly rejected by the Hon’ble Division Bench in the *Mrs.Sameedha Suhas Deshpande’s* case (referred herein supra). Therefore on this ground we are unable to accept the argument put forth by the learned senior counsel for the appellant that the respondent/writ petitioner is not entitled to be eligible for being considered for pension.

17.With regard to the next contention that the writ petitioner has not completed requisite period of 15 years, the Hon’ble Supreme Court in *AGM, State Bank of India Vs Radhey Shyam Pandey* in *Civil Appeal No.2463 of*

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2015, dated 02.03.2020, held that, pension cannot be dealt with arbitrarily and cannot be denied in an unfair manner. The Hon'ble Supreme Court held that employees who had completed 15 years service or more as on the cut off date were entitled to proportionate pension under the State Bank of India Voluntary Retirement Scheme and the Hon'ble Supreme Court further held that such benefit would stand extended to all employees without requiring them to even approach the court. The Hon'ble Supreme Court further held that the benefit shall be paid within three months, failing which it would carry an interest at 6% per annum.

18.However, it is the contention of the learned Senior Counsel Mr.Raveendran, that even applying the ratio of the Supreme Court in *Radhey Shyam Pandey's case* (referred herein supra) the respondent's service after excluding six month of probation was 14 years and 9 months and therefore viewing from this angle, the respondent/writ petitioner was not eligible for the payment of pension.

19.We are unable to countenance the said arguments of the learned Senior Counsel appearing for the appellant bank. Rule 22 of State Bank of India Employees Pension Fund Rules does not talk about exclusion of

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probationary period. Rule 7 of Pension Fund Rules can not be pressed into service for deciding the eligibility of pension to an employee as it only talks about the eligibility to become a member of the pension fund. We have already held that we are in agreement to the findings of the Hon'ble Division Bench of Bombay High Court in *Mrs.Sameedha Suhas Deshpande's* case (referred herein supra).

20.In fact, the very same Division Bench as well as the Division Bench of this Court have also held that the rules do not provide for a period of probationary service being excluded. In fact, the Hon'ble Division Bench of the Bombay High Court has also held that the question of a probationary period being included and excluded would ultimately depend on the provisions of the rule and there can be no straight jacket formula. We are in the agreement of the said findings of the Hon'ble Division Bench of the Bombay High Court that no straight jacket formula can be applied uniformly to all fields and with specific reference to the Pension Fund Rules, we are unable to see any rule or regulation excluding the period of probation when it comes to the calculation of pensionable service.

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21.The Honourable Division Bench of Punjab and Haryana at Chandigarh in *State Bank of India and Another vs Kuldeep Raj* in *Letters of Patent Appeal No.731 of 2012, dated 11.12.2014*, held that, when an employee had put in 20 years of pensionable service and works for 50 years of age he was entitled to pension and further held that any *ad hoc* / temporary service rendered would also have to be counted towards qualifying service for grant of pension. The Honourable Division Bench of Punjab and Haryana High Court also took a similar view with regard to interpretation of Rule 7 and Rule 22. We are in entire agreement with the decisions rendered by the Division Bench of the Bombay High Court as well as the Division Bench of Punjab and Haryana High Court and we see no reasons to differ.

22.The learned Senior Counsel Mr.Raveendran would also place reliance on our decision in *R.Shanmugam vs Union of India and Others* reported in *MANU/TN/44492/2023.* However, the said decision was pertaining to a case where the employee had rendered a service of 9 years, 5 months and 28 days and was falling short of the requisite period of 10 years and in the facts of the said case we held that services rendered in the capacity of Gramin Dak Sevak could not be considered and added to regular tenure in

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the postal department. Therefore the facts of the said case do not apply to the facts of the present case.

23.In the decision relied on by the learned senior counsel for the appellant in *The Deputy Commissioner, Kendriya Vidyalaya Sangatham and Others Vs. S.Alavandar and Others* reported in *MANU/TN/4727/2023,* the Division Bench of this Court in which one of us was a party, namely Mr.Justice D.Krishnakumar, where the employee had completed 9 years 6 months and 13 days of service and while dealing with the question as to whether *ad hoc* service could be counted for pension purpose, the Division Bench of this Court relying on the decision of *the Secretary, Animal Husbandry Department, Chennai and Others Vs. K.Thiruvanam Pillai* in *W.A.No.906 of 2013 dated 20.10.2014*, held that, in light of a regulation to count six months period and more period as one completed year service, the employee concerned also having a minimum pensionable service then he would be entitled to get pension. This court ultimately held that the employee was entitled to rounding off the service to 10 years. However, as rightly contended by Mr.Raveendran, the Central Civil Services (Pension) Rules, 1972 itself provided for such rounding off which is conspicuously absent in

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the case of the State Bank of India employees and therefore he would submit that the said ratio cannot be applied to the facts of the present case.

24.He would lastly rely on the decision of the Honourable Supreme Court in *V.Vincent Velankanni Vs. The Union of India and Others* reported in *(2024) 10 SCR 126,* where the Honourable Supreme Court held that when it came to issue of industrial seniority the services rendered during the probation period cannot be considered and that it was mandatory for an employee to undergo training and complete probation period satisfactorily before being appointed or promoted to skill grade. This decision was rendered in the backdrop of service promotions and therefore we are unable to see how the said decision would be applied to the facts of the present case which pertains to payment of pension and eligibility alone.

25.As already discussed, in the absence of Rule 7 or even Rule 22 of the Pension Fund Rules disentitling the respondent/writ petitioner from pension, we hold that the respondent/writ petitioner is entitled to pension and there can be no two opinions on this. As regards the shortfall of 3 months, the rules do not expressly prohibit inclusion or exclusion of the probationary period. Following the ratio of the Honourable Division Bench of the Bombay

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High Court and the Punjab and Haryana High Court, we hold that 6 months probationary period/ service rendered by the respondent / writ petitioner is also to be taken into account, in which event, the petitioner will have 15 years and 3 months of pensionable service, clearly entitling him to pension. Even otherwise applying the ratio of rounding off which is uniformly applied in Central Government Service, the respondent/writ petitioner herein having completed 14 years and 9 months, even if her probationary period of 6 months is excluded, she should be entitled to rounding off the said 14 years and 9 months to 15 years. Therefore, viewed from all angles, we do not find any infirmity in the order of the writ court allowing the writ petition as prayed for by the writ petitioner of warranting interference in the appeal.

26.For all the above reasons, the Writ Appeal is dismissed. There shall be no order as to costs. Connected Civil Miscellaneous Petition is closed.

(D.K.K,J.) & (P.B.B,J.)

20.11.2024

Index : Yes/No
Speaking Order/Non-Speaking Order
ata/rkp

D.KRISHNAKUMAR, J.

https://www.mhc.tn.gov.in/judis

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and
P.B.BALAJI, J.

ata/rkp

To

The Assistant General Manager (PPG),
State Bank of India,
Local Head Office,
7th Floor, 16, College Lane,
Nungambakkam, Chennai – 600 006.

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