IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2024

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THE HONOURABLE Ms.JUSTICE R.N.MANJULA

W.P. No.3318 of 2020

S.Lakshminarayanan ... Petitioner

/vs/

1. Union of India
   Represented by its Secretary,
   Department of Financial Services,
   Ministry of Finance,
   Government of India,
   New Delhi.

2. Indian Bank's Association,
   represented by its Chief Executive.
   World Trade Centre Complex,
   6th Floor Centre 1 Building,
   World Trade Centre Complex, Cuff
   Parade, Mumbai – 400 005.

3. Union Bank of India,
   Represented by its Managing Director & Chief
   Executive Officer,
   239, Vidhan Bhavan Marg,
   Nariman Point,
   Mumbai – 400 021. ... Respondents

Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of mandamus to direct the first Respondent to grant pension to the petitioner by considering the service period from the date of joining till the reliving date 14.02.2009 and reckon calculation of Pension in accordance with the Bank Staff Circular No. 5943 dated 16.01.2013 based on the representation dated 12.09.2019 and disburse rightful pension due to the Petitioner for the period commencing from 14.02.2009 without causing any further delay.

For Petitioner	...	Mrs.S.Yogalakshmi for Mr.K.Rajasekaran
For Respondents	...	Mr.S.Raghavan for Mr.T.S.Gopalan & Co for R3 No appearance for R1 & R2

ORDER

The petitioner who had retired voluntarily due to his incapacity to do work, has been given with the benefit of Bank Staff Circular No.5236 dated 29.12.2005 as *ex gratia* has filed this writ petition that his retirement would fall under Regulation 19 of Union Bank of India (Officer's) Service Regulations, 1979 and hence he should be considered as an optee for joining pension scheme contemplated under Bank Staff Circular No.5690 dated 27.08.2010 and Bank Staff Circular No.5943 dated 16.01.2013.

2. Mrs.S.Yogalakshmi, the learned counsel for the petitioner, submitted that the third respondent / Union Bank of India has issued the Circular No.5690 dated 27.08.2010 by giving an option to the employees to switch over to Pension Scheme from the erstwhile Contributory Pension Scheme; however in the said Circular, certain class of employees who have already been retired are stated to be not entitled to exercise the option in view of Paragraph No.7 of the said Circular. For the sake of convenience, Paragraph No.7 of the said Circular is extracted below:

> *" 7. NOT ELIGIBLE FOR PENSION OPTION:*
>
> *Indian Bank's Association has clarified that Officers who retired voluntarily; in terms of Regulation 19 of Officers' Service Regulations and Employees / Officers who resigned, dismissed, terminated and compulsorily retired, are not eligible for pension option."*

2.1. The Circular which was given on 16.01.2013 vide Staff Circular No.5943 has extended the option to join under the Pension Scheme for all those Officers / Family of deceased Officer who had taken voluntary retirement under Regulation 19(1) of Officers' Service Regulations, 1979 (hereinafter referred to as 'OSR, 1979') on or after 29.09.1995; the petitioner got retired on 14.02.2009 and hence, the petitioner comes well within the limitation of Staff Circular No.5943 dated 16.01.2013 and he has rightly exercised the option during the year 2013; the petitioner has also given a representation by stating that he would surrender the *ex gratia* of Rs.8,00,000/- sanctioned to him and he shall be permitted to exercise his option in accordance with the subsequent Staff Circular No. 5943 dated 16.01.2013; but the same was rejected through the order dated 02.09.2015 in HR:Pension:1189:15.

3. Mr.S.Raghavan, the learned counsel for the third respondent, submitted that the petitioner's retirement will not fall under Regulation 19 of OSR, 1979 and he is not entitled to exercise the option consequent to the Staff Circular No.5943 dated 16.01.2013. It is further submitted that the petitioner who got retired due to medical condition had already been given with *ex gratia* as per the earlier scheme which is in force and hence the petitioner will not fall under Regulation 19 of OSR, 1979; even by any chance, if his retirement is treated as voluntary retirement by any Officers in charge of the affairs, the same cannot be construed as voluntary retirement in the legal sense because the order of an Officer cannot have

any supremacy over the statutory provisions governing the scheme.

4. Attention of the Court was invited to the judgment of the Hon'ble Supreme Court in ***Union Bank of India Vs. Venkatesh Gopal Mahishi and Another*** reported in ***(2006) 12 SCC 20*** wherein it is held that pensionary benefit cannot be extended to the employees retired on medical grounds when simultaneous appointment of the dependants on compassionate ground is given. By citing the above judgment, it is submitted that the petitioner has not been appointed on compassionate ground, he has received Rs.8,00,000/- as *exgratia* in lieu of compassionate appointment and hence he will not come under the purview of Regulation 19 of OSR, 1979.

5. The subsequent circular which was issued on 16.01.2013 vide Staff Circular No.5943 would extend the benefit to all those persons who had retired on or after 29.09.1995. Admittedly, the petitioner had retired on 14.02.2009. But the Circular incorporates a stipulation that the benefit of exercising option will be available to those persons who got voluntarily

retired under Regulation 19(1) of OSR, 1979. For the sake of better appreciation Regulation 19(1) of OSR, 1979 is extracted hereunder:

> *" 19. Age of Retirement:*
>
> *(1) The age of retirement of an Officer employee shall be determined by the Board in accordance with the guidelines issued by the Government from time to time.*
>
> *Provided that the Bank may, at its discretion on review by the Special Committee / Special Committees as provided hereinafter in Sub-Regulation (2) retire, if it is of the opinion that it is in the public interest, an Officer employee on or at any time after the completion of 55 years of age or on or at any time after the completion of 30 years of total service as an Officer employee or otherwise, whichever is earlier.*
>
> *Provided further that before retiring an Officer employee, at least three months' notice ini writing or an amount equivalent to three months' substantive salary / pay and allowances, shall be given to such Officer employee.*
>
> *Provided also that nothing in this Regulation shall be deemed to preclude an Officer employee from retiring earlier pursuant to the opinion exercised by him in accordance with the rules in the Bank."*

6. The core contention of the learned counsel for the third respondent is that the petitioner's retirement will neither fall under voluntary retirement nor under any type of retirement contemplated under Regulation 19(1) of OSR, 1979 and hence the petitioner is not entitled to the benefit of pension scheme.

7. The Regulations does not speak about any other type of retirement like voluntary retirement or retirement under medical grounds. However, as per the third proviso to Regulation 19(1) of OSR, 1979, nothing in the Regulation shall be deemed to preclude an Officer employee from retiring earlier pursuant to the opinion exercised by him in accordance with the rules in the Bank. It is not the contention of the third respondent that the rules of the bank prohibits voluntary retirement or retirement on medical grounds. It is also pertinent to mention that the Regulation does not speak about the voluntary retirement or retirement on medical grounds specifically.

8. The Circulars issued from time to time shall not override the statutory provisions. Even though there are Circulars issued to the effect of granting *ex gratia* payment to the persons who retired on medical grounds, it cannot be presumed that those persons are exempted from exercising the option for pension as per the Staff Circular No.5943 dated 16.01.2013 & Staff Circular No.5690 dated 27.08.2010.

9. The petitioner had honestly come forward to surrender the *ex gratia* payment received by him. Because he thought it is just fair on his part to surrender the *ex gratia* payment in case he opts to come under the pension scheme. Without any demand, the petitioner himself had volunteered to surrender the above benefit received by him. In the absence of any '*explicit*' exclusions in the Rules more specifically Regulation 19(1) of OSR, 1979, to exclude all those persons who went on voluntary retirement or retired on medical grounds, it cannot be concluded that those persons do not come within the ambit of Staff Circular No.5943 dated 16.01.2013. In the absence of any specific regulation, the petitioner cannot be invited to point out the Regulation under which the type of retirement

he opted or he was allowed to retire would come under.

10. There cannot be any disagreement on the point that an employee who retired on medical grounds, cannot be treated by his superior as person went on voluntary retirement. But the fact remains that the third proviso under Regulation 19(1) of OSR, 1979 does not preclude the early retirement allowed for the petitioner. In the Staff Circular No.5943 dated 16.01.2013 there is no mention about the proviso to Regulation 19(1) of OSR, 1979, though Regulation 19(1) of OSR, 1979 alone is mentioned.

11. The learned counsel for the third respondent also pointed the delay on the part of the petitioner in challenging the Staff Circular No.5943 dated 16.01.2013. As he has exercised his option for early retirement as early as in the year 2013, the petitioner's intention to avail the pensionary benefit is not an after thought.

12. Since the benefit contemplated under the Circular or Regulation is a statutory benefit and the inability for the petitioner to receive such

benefit is only due to the mistake and understanding of the respondents in interpreting their own circulars or schemes, I feel the delay cannot be put against the petitioner.

13. It is admitted by the respondents that the petitioner had exercised his option on 16.01.2013 in response to the Circular dated 16.01.2013 in Staff Circular No.5943. So the respondents ought to have considered the petitioner's option as one covered under the said Circular. Since the representation of the petitioner was not properly considered in the true sense of the said Regulation, I feel that the first respondent should be directed to grant pension to the petitioner by considering his service period.

14. In the result, this Writ Petition is allowed and the respondents are directed to grant pension to the petitioner by considering his service period from the date of joining till the relieving date i.e. 14.02.2009 and reckon calculation of Pension in accordance with the Bank Staff Circular No. 5943 dated 16.01.2013 and disburse rightful pension due to the Petitioner

for the period commencing from 14.02.2009 as expeditiously as possible.

No costs.

10.01.2024

Index: Yes / No
Speaking order / Non-speaking order
Neutral Citation: Yes / No
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To:

1. The Secretary
   Union of India,
   Department of Financial Services,
   Ministry of Finance,
   Government of India,
   New Delhi.

2. The Chief Executive,
   Indian Bank's Association,
   World Trade Centre Complex,
   6th Floor Centre 1 Building,
   World Trade Centre Complex, Cuff
   Parade, Mumbai – 400 005.

3. The Managing Director & Chief
   Executive Officer,
   Union Bank of India,
   239, Vidhan Bhavan Marg,
   Nariman Point,
   Mumbai – 400 021.

R.N.MANJULA ,J.

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