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W.A.No.724 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 21.06.2024

Delivered on: 10.09.2024

CORAM :

THE HON'BLE MRS. JUSTICE J.NISHA BANU

AND

THE HON'BLE MR. JUSTICE P.DHANABAL

W.A.No.724 of 2021

Indian Bank Employees Union
Rep. By its Deputy General Secretary
No.6, Moore Street,
Mannady Corner
Chennai-600 001

...Appellant/Petitioner

Vs

1.The Presiding Officer
Central Government Industrial
Tribunal-cum-Labour Court
Shastri Bhavan, Chennai-600 006
2.Deputy General Manager (HRM)
Indian Bank DO: HRM Department
264, Avvai Shanmugam Salai
Royapettah, Chennai-600 014

.... Respondents

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent as against the order dated 17.10.2019 in W.P.No.10069 of 2017.

For Appellant : Mr.K.M.Ramesh, Senior counsel
for Mr.V.Subramani

For Respondents : Mrs.Rita Chandrasekar for
Ms/Aiyar & Dolia for R2
R1- Court.



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JUDGMENT

Per J.NISHA BANU, J.

This Writ Appeal is filed by the appellant/employees union as against the order of the learned Single Judge dated 17.10.2019 in W.P.No.10069 of 2017, whereby, the claim of Mrs.Shanthi Radhakrishnan for grant of pensionary benefits was negated by this court and confirmed the impugned Award dated 11.05.2016.

2. Mrs.Shanthi Radhakrishnan joined the services of the 2nd respondent Bank as Clerk on 12.06.1982. On 08.01.2007, Extraordinary Leave Scheme was introduced. She applied for grant of extraordinary leave for 3 years. On 31.10.2007, leave was sanctioned.

3. On 27.04.2010, second option for pension to those who not have exercised option earlier, pursuant to pension scheme of the year 1995, was arrived.

4. Mrs.Shanthi opted for pension scheme and the said option was accepted by the Bank. On 25.10.2010, the employee applied for extension of



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leave for three months. On 27.12.2010, she applied for voluntary retirement from service. The extension of leave applied for by the employee was rejected.

5. On 25.06.2011, the Bank issued an order stating that the concerned employee had voluntarily left the services. An internal appeal was filed to treat the voluntary service of the employee as compulsorily retirement from service, enabling her to get the pensionary benefits.

6. Since the above said appeal was not considered, employees union raised an industrial dispute before the Assistant Labour Commissioner (Central), Chennai. The industrial dispute was referred for adjudication to the Tribunal. The tribunal rejected the dispute. As against the dismissal of ID, employees union filed Writ Petition. The learned Single Judge, confirmed the findings of the award by extracting paragraph No.10 that by notice, bank asked the employee to return for duty within 30 days in terms of Clause-33 of the Bipartite Settlement; she failed to join duty; one more notice dated 03.05.2011 was issued to her, again asking to join duty within 30 days; still she failed to comply; thereafter the Bank has issued order dated 25.06.2011 informing her that in terms of Clause-33 of 8th Bipartite Settlement she has voluntarily left the



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services of the Bank and vacated employment in the Bank from the date of the letter.

7. The learned Single Judge further observed the respondent counsel submission that an employee who is totally disinterested in continuing the employment, cannot be conferred with the pensionary benefits. Further, the learned Single Judge quoted decision of the Supreme Court that wherever the Rules provide resignation, amounts to forfeiture of the services, then, an employee, who resigned his job, which was accepted by the authority competent, cannot claim any pensionary benefits under the Rules.

8. Mr.K.M.Ramesh, learned Senior counsel for the appellant challenging the order of the learned Single Judge filed this appeal by raising a ground that the learned Single Judge failed to answer the very question of law as to whether non-acceptance of application for Voluntary Retirement and extension of leave application can be treated as desertion by the management to voluntarily terminate the services of the employee without even complying with principles of natural justice.



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9. The learned Senior counsel for the appellant would contend that the concerned employee could not report for duty and attend office on completion of sanctioned extraordinary leave only due to her ill-health and not otherwise which fact was not denied by the Respondent Bank and that the employee applied for extension of leave before the sanctioned extraordinary leave was subsisting and therefore, the Bank's act of termination of the employee from the services unilaterally is nothing but an vindictive act. He would further submit that similar requests for voluntary retirement of workmen who are similarly placed had been accepted by the Bank in the past and so, treating the employee in the case on hand differently would amount to denial of justice and unfair labour practice.

10. Mrs.Rita Chandrasekar, the learned counsel for the respondent Bank would submit that in view of the very Bipartite settlement, entered into by the Employees union and the respondent bank, the concerned employee would not be entitled to the benefit of pension having, voluntarily ceased to be in service.

11. Heard both sides and perused the records carefully.

12. Clause 22 of the Indian Bank (Employees') Pension Regulations,



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1995 speaks about “Resignation or dismissal or removal or termination of an employee from the service of the Bank shall entail forfeiture of his entire past service and consequently shall not qualify for pensionary benefits. “

13. In the case on hand, notice was issued to the employee on 24.03.2011, but the leave of the employee was expired on 30.10.2010. But it is an admitted fact that the employee applied for extension of leave and also applied for voluntary retirement. In such circumstances, the respondent Bank, without considering the extension of leave application and the voluntary retirement from service application, issued notice stating that she absented herself for 90 days or more without prior sanction, is not sustainable.

14. As per clause 22(2) of Indian Bank's Pension Regulations, an interruption in the service of the employee entails forfeiture of his past service except authorized leave etc. But in the case on hand, there is no interruption in the service of the employee, since there was no order passed by the Respondent Bank in respect of voluntary retirement application.

15. With reference to the Notice issued by the respondent Bank to the employee dated 24.03.2011, is concerned, it is a notice asking her to join duty



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and about initiation of disciplinary action. However, the said notice does not speak about the extension of leave application and voluntary retirement application submitted by the employee. Further, the Bank has not initiated any disciplinary proceedings against her. As per voluntary retirement application, it is a three months notice period. On expiry of three months, it is deemed to accept the voluntarily retirement. Even the employee informed the Bank to debit three months salary from her Account. Therefore, on expiry of three months of the date of application of voluntary retirement i.e. 27.12.2010, on 27.03.2011, it is deemed to be accepted. Once voluntary retirement application is submitted by the employee, question of joining to duty would not arise.

16. Further more, the applications submitted by the employee for voluntary retirement and extension of leave citing her health condition cannot be viewed as absence of duty without explanation or voluntarily left the services of the Bank. The surrounding circumstances, conduct of the employee and the reasons stated for for voluntary retirement all to be taken into consideration.

17. In the case on hand, without looking into the voluntary retirement application and without mentioning the said application, issuing notice to the employee to join duty, cannot be said to the terms of settlement as per Clause



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33 of Bipartite Settlement. There is no cessation of service arise in this case.

Therefore, for the purpose of grant of pensionary benefits, the provisions of the Rules need to be followed. The Labour Court as well as the learned Single Judge did not consider these aspects. Therefore, we are of the view that the orders impugned are liable to be set aside.

18. For the foregoing discussions, we hold that the action of the second respondent bank invoking Clause 33 of the Bipartite settlement in the case of employee concerned viz., Shanthi Radhakrishnan, is not warranted. The Respondent Bank is directed to treat the petitioner as retired voluntarily from service and release her pensionary benefits, within a period of three months from the date of receipt of a copy of this judgment. Accordingly, this writ appeal is allowed. The impugned award passed in ID.99 of 2015 dated 11.05.2016 and the impugned order dated 17.10.2019 passed in W.P.No.10069 of 2017 are set aside. No costs.

Internet:Yes/No
nvsri

(J.N.B.J.) (P.D.B.J)
10.09.2024

To



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and
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Pre-delivery Judgment in

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