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W.P.No.15093 of 2021



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2024

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.No.15093 of 2021

Capt. Sunil Sapre,
(Employee No. 36244),
S/o. Late A.P.Sapre,
Flat No.1802, 18th Floor, E Building,
One North, Panchsheel Realty,
Near Gold Gym,
Pune - 411 013.

...

Petitioner

versus

The Chairman & Managing Director,
Indian Overseas Bank,
Central Office,
No. 763, Anna Salai,
Chennai - 600 002.

...

Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the respondent to treat the petitioner as retired on 18.08.2006 and grant him all consequential pensionary and other benefits.

For Petitioner : Mr.Menon

For Respondent : Mr.N.Somasundaar



ORDER

WEB COPY The petitioner has filed this petition seeking a writ of mandamus, directing the respondent to treat the petitioner as retired on 18.08.2006 and to grant him all consequential benefits.

2. Heard Mr.Menon, learned counsel for the petitioner and Mr.N.Somasundaar, learned counsel for the respondent and perused the materials available on record.

3. The petitioner is an ex-employee of Indian Overseas Bank. He served as the Commissioned Officer in the Indian Army for 5 years from 25.08.1984 to 27.07.1990. He joined as the Security Officer in the respondent's Bank in the year 1990. Due to his health condition, the petitioner could not report duty from 01.05.2006 and hence, he was terminated from service on 18.08.2006 for not reporting to duty. However, the petitioner had given representation on 27.08.2019 to consider his case for Voluntarily Retirement as on 18.08.2006 but the same has not been



considered so far. Aggrieved over the same, the petitioner has filed this writ petition.

4. Mr.Menon, learned counsel for the petitioner submitted that if the petitioner's services in the Indian Army had also been included in the services he rendered in the respondent Bank, he would get the eligible years of service for accepting his Voluntary Retirement.

5. Mr.N.Somasundar, learned counsel for the respondent submitted that the petitioner has been terminated from service from 18.08.2006 for having unauthorised absence from May 2006. Hence, the petitioner is not eligible for Voluntary Retirement because his past services will get forfeited. He further claims that the petitioner would fall under Rule 22(1) of the Indian Overseas Bank (Employees) Pension Regulations wherein it is stated as under:-

"22. Forfeiture of Service :-

(1) 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;

(2) An interruption in the service of a Bank employee



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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 bank employee dies or is permitted to retire or is retired on attaining the age of compulsory retirement while under suspension;

(c) transfer to non-qualifying service in an establishment under the control of the Government or Bank if such transfer has been ordered by a competent authority in the public interest;

(d) joining time while on transfer from one post to another.

(3) Notwithstanding anything contained in sub-regulation (2), the appointing authority may, by order, commute retrospectively the periods of absence without leave as extraordinary leave.

(4)(a) In the absence of a specific indication to the contrary in the service record an interruption between two spells of service rendered by a bank employee shall be treated as automatically condoned and the pre-interruption service treated as qualifying service;

(b) Nothing in clause (a) shall apply to interruption caused by resignation, dismissal or removal from service.”



6. In support of the above contention, reliance was also placed on the judgment of the Hon'ble Supreme Court held in ***Punjab National Bank Vs.M.L.Kalra*** reported in ***2008 AIR SCW 1102*** wherein it is observed as under:-

“11. Regulation 22 of Pension Regulations reads as under :-

22. Forfeiture of service:

(1) 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;

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

(a) authorized leave of absence;

(b) suspension, where it is immediately followed by reinstatement, whether in the same or a different post, or where the bank employee dies or is permitted to retire or is retired on attaining the age of compulsory retirement while under suspension;

(c) transfer to non-qualifying service in an establishment under the control of the Government or Bank if such transfer has been ordered by a competent authority in the public interest;

(d) joining time while on transfer from one post to another.



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(3) Notwithstanding anything contained in sub-regulation (2), the appointing authority may, by order, commute retrospectively the periods of absence without leave as extraordinary leave.

(4)(a) In the absence of a specific indication to the contrary in the service record, an interruption between two spells of service rendered by a bank employee shall be treated as automatically condoned and the pre-interruption service treated as qualifying service;

(b) Nothing in clause (a) shall apply to interruption caused by resignation, dismissal or removal from service or for participation in a strike:

Provided that before making an entry in the service record of the Bank employee regarding forfeiture of past service because of his participation in strike, an opportunity of representation may be given to such bank employee.

12. When an order of dismissal or removal is passed, clause (1) of Regulation 22 would apply. Clause (2) will have application only when an interruption in service takes place.”

7. Mr.N.Somasundar, learned counsel for the respondent drew an analogy of the facts of this case to a decision of the Hon'ble Supreme Court held in **BSES Yamuna Power Ltd. Vs. Ghanshyam Chand Sharma** reported in **2020 (1) CTC 335**. In the said case, an employee had sent a



request for Voluntary Retirement but his request was rejected. Without challenging the same, he gave a letter for resignation and that was accepted. For better appreciation, the relevant paragraphs of the above judgment are extracted as under:-

“12. In the present case, the First Respondent resigned on 7th July 1990 with effect from 10th July 1990. By resigning, the First Respondent submitted himself to the legal consequences that flow from a resignation under the provisions applicable to his service. Rule 26 of the Central Civil Service Pension Rules 1972, states that:

“26. Forfeiture of service on resignation.- (1) Resignation from a service or a post, unless it is allowed to be withdrawn in the public interest by the Appointing Authority, entails a forfeiture of past service...”

*Rule 26 states that upon resignation, an Employee forfeits past service. We have noted above that the approach adopted by the Court in **Asger Ibrahim Amin** has been held to be erroneous since it removes the important distinction between Resignation and Voluntary Retirement. Irrespective of whether the First Respondent had completed the requisite years of service to apply for Voluntary Retirement, his was a decision to resign and not a decision to seek Voluntary Retirement. If this Court were to re-classify his resignation as a case of Voluntary Retirement, this would obfuscate the distinction between the Concepts of*



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Resignation and Voluntary Retirement and render the operation of Rule 26 nugatory. Such an approach cannot be adopted.

Accordingly, the finding of the Single Judge that the First Respondent 'voluntarily retired' is set aside.

13. We now turn to the question of whether the First Respondent had completed twenty years in service. During the present proceedings, our attention was drawn to the fact that the First Respondent had applied for Voluntary Retirement on 14th February 1990. By a Letter, dated 25th May 1990 the Appellant denied the First Respondent's Application for Voluntary Retirement on the ground that the First Respondent had not completed twenty years of service. It was, thus, urged that the Appellant's decision to deny the First Respondent Voluntary Retirement was illegal as the First Respondent had completed twenty years of service.

14. This argument cannot be accepted. Even if he was denied Voluntary Retirement on 25th May 1990, the First Respondent did not challenge this decision but resigned, on 7th July 1990. The denial of Voluntary Retirement does not mitigate the legal consequences that flow from resignation. No evidence has been placed on the record to show that the First Respondent took issue with the denial of Voluntary Retirement between 25th May 1990 and 7th July 1990. To the contrary, in the Legal Notice, dated 1st December 1992 sent by the First Respondent to the Appellant, the First Respondent admitted to having resigned. The First



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Respondent's Writ Petition was instituted thirteen years after the denial of Voluntary Retirement and eventual resignation. In the light of these circumstances, the denial of Voluntary Retirement cannot be invoked before this Court to claim Pensionary benefits when the First Respondent has admittedly resigned.

15. On the issue of whether the First Respondent has served twenty years, we are of the opinion that the question is of no legal consequence to the present dispute. Even if the First Respondent had served twenty years, under Rule 26 of the CCS Pension Rules his past service stands forfeited upon resignation. The First Respondent is, therefore, not entitled to Pensionary benefits.”

8. However, the employee in that case requested to consider his past services to be included as qualifying service for the purpose of pension. But the Hon'ble Supreme Court has held that his earlier rejection of Voluntary Retirement will not get neutralised in view of his subsequent resignation. It was also observed that his past services cannot be counted and it stood forfeited in view of his resignation.

9. Rule 22 of the Indian Overseas Bank (Employees) Pension Regulations is applicable to the case of the petitioner. The petitioner who



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To
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The Chairman & Managing Director,
Indian Overseas Bank,
Central Office,
No. 763, Anna Salai,
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R.N.MANJULA, J.

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