BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.09.2024

CORAM:

THE HONOURABLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

W.P.(MD)No.6189 of 2022
and WMP (MD) No.4788 of 2022

C.Rajeswari : Petitioner

Vs.

1. The Deputy General Manager &
   C.D.O.,
   H.R. Department,
   State Bank of India,
   Local Head Office, Circle Top House,
   5th Floor, 16, College Lane,
   Numbgambakkam, Chennai 600 006..

2. The Regional Manager,,
   Regional Business Office,
   25, GKN Buildings, North Car Street,
   Nagercoil - 629 001.

3. The Branch Manager,
   State Bank of India,
   Kappirai, Kanniyakumari District. : Respondents

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order of the second Respondent dated 21.09.2020 in RM/RBO-V/HR/2020-21/3175 quash the same and consequently direct the Respondents to accept the pension proposal of the Petitioners husband namely G.Devaraj (Deceased), Messenger, PF No.1509349, D.O.R.31.03.2001, for the grant of family pension, based on the tentative eligibility list prepared by the first Respondent on 13.04.2020 by proceedings No, CHE/LHO/PPG/PEN/3 in Serial No.43, and grant family pension to the petitioner with all arrears of pay service and monetary benefits.

For Petitioner : M/s.T.Antony Arul Raj
for Mr.K.Pratap Sudarsan
For Respondents : Mr.V.P.Rajan for R2

O R D E R

This writ petition has been filed challenging the proceedings of the second respondent in RM/RBO-V/HR/2020-21/3175, dated 21.09.2020 and for a consequential direction to the respondents to accept the pension proposal of the husband of the petitioner, namely, G.Devaraj (Deceased), Messenger, PF No.1509349, D.O.R.31.03.2001, for the grant of family pension, based on the tentative eligibility list prepared by the first Respondent on 13.04.2020 by proceedings No, CHE/LHO/PPG/PEN/3 in Serial No.43 and grant family pension to the petitioner with all arrears of pay service and monetary benefits.

2. The case of the petitioner is that the husband of the petitioner viz., G.Devaraj was appointed as Messenger on 17.05.1979 in the respondent Bank at Kappiarai Branch and his service was confirmed and regularised on 17.11.1979.

2.1. Thereafter, in the year 2001, the respondent Bank had introduced a Voluntary Retirement Scheme for the employees who have put in 20 years of service. The said Scheme was challenged before the Hon'ble Supreme Court of India in C.A.No.2463 of 2015 dated 02.03.2020. After the judgment of the Hon'ble Supreme Court, the first respondent had prepared a tentative list and date required for processing of pension for the retirees who have served more than 15 service but less than 20 years.

2.2. The husband of the petitioner had also submitted an application under the Voluntary Retirement Scheme on 31.03.2001. The said application also accepted by the third respondent and as per the proceedings of the first respondent in CHE/LHO/PPG/PEN/3, dated 13.04.2020, her husband was included in the tentative eligibility list as Serial No.43. Thereafter, pending application, the husband of the petitioner died on harness on 25.01.2006

2.3. After the scrutiny of the pension proposal made by the husband of the petitioner, the same was returned by the second respondent vide proceedings in RM/RBO-V/HR/2020-21/3175, dated 21.09.2020, on the ground that the husband of the petitioner has completed only 14 years 06 months and 11 days of pensionable service.

3. Aggrieved over the same, the present writ petition has been filed by the petitioner.

4. The main contention of the learned counsel for the petitioner is that the respondents Bank while preparing the tentative eligibility list for the process of pension for SBI VRS: 2001 Scheme, the second respondent had not taken into account the service of the petitioner's husband from his date of appointment i.e., 17.05.1979 and the respondents Bank had calculated the total service without taking into account the probation period of 6 months rendered by the husband of the petitioner so as to grant service pension benefits.

5. A counter-affidavit has also submitted by the second respondent on 03.06.2022, wherein, it is stated as follows:-

> *"I submit that gratuity and other monetary benefits were disbursed duly to the petitioner's husband as per rules concerned after his retirement. It is to be noted that a communication dated 02.07.2001 served on petitioner through the branch that he was not eligible for pension as per Rule 21(i) of State Bank of India Employee's Pension Fund Rules and the same is follows:*
>
> ***No period of leave granted without leave salary or of absence without leave shall count as pensionable service. A period of suspension shall count as pensionable service only to such extent as the authority which reinstates him declares it to be pensionable at the time of reinstatement or the authority which sanction his retirement declares it to be so at the time of according the sanction.****"*
>
> *(emphasis supplied)*

6. The learned counsel appearing for the respondents Bank submitted that the Bank had introduced a voluntary retirement scheme

for the employees who completed 15 years of service as on 31.12.2000. The petitioner's husband had opted voluntary retirement scheme introduced by the Bank by submitting an application and the said application was considered and he was allowed to retire under voluntary retirement scheme with effect from 31.03.2001. The gratuity and other monetary benefits had been disbursed duly to the petitioner's husband as per the rules after his retirement. Learned counsel further submitted that as per Rule 21(1) of the State Bank of India Employees' Pension Fund Rules, the deceased Devaraj has not completed 15 years of service as on 31.12.2000 and thus, he is not eligible for pension. Further he argued that some employees who were denied pension as like the petitioner's husband, approached the Hon'ble Supreme Court of India by way of filing a Civil Appeal in ***Civil Appeal No.2463 of 2015 (Assistant General Manager and Ors. v. Radhey Shyam Pandey***) wherein, the Hon'ble Supreme Court held that those who have completed 15 years of service as on the cut of date i.e., 31.12.2000, are entitled for pension under voluntary retirement scheme and therefore, the Bank had prepared the eligible tentative list of employees under the Scheme and the same was issued vide circular dated 29.12.2000. The petitioner is also one among in the tentative list.

7. Learned counsel for the respondents Bank further submitted that the said tentative list was barely prepared subject to verification of the service records of the employees concerned. Thereafter, while verifying the service record, it was found that the petitioner's husband had rendered service only for 14 years 6 months and 11 days and therefore, the pension proposal of the petitioner's husband was rejected by the first respondent – Bank by its order dated 21.09.2020. Hence, merely rendering 15 years service including loss of pay and unauthorized absence cannot be taken into consideration for the pensionable service and the same would against the pension rule.

8. Heard the learned counsel for the petitioner as well as the learned counsel for the second respondent and perused the material available on record.

9. In the present case on hand, the petitioner was appointed on 17.05.1979 and the respondent Bank has calculated the total service without taking into account the probation period of six months rendered by the husband of the petitioner so as to grant service pension benefits. The employees who were denied pension similar to that of the

petitioner's husband approached the Hon'ble Supreme Court of India by way of filing the Civil Appeal in ***Civil Appeal No.2463 of 2015*** (***Radhey Shyam's*** case ***cited supra***) wherein, the Hon'ble Supreme Court held that those who had completed 15 years of service as on the cut of date (31.12.2000) are entitled for pension under voluntary retirement scheme. The petitioner's husband had also applied for voluntary retirement scheme introduced by the Bank and the said application was considered and he was allowed to retire under the voluntary retirement scheme with effect from 31.03.2001.

10. It is pertinent to extract the Rule 20 and Rule 22 of the State Bank of India Employees' Pension Fund Rules, here for better understanding:-

> "*Rule 20: Save as provided in rule 21, with effect from 1.11.93 service rendered by an employee/member from the date of his admission to the fund upto the date of retirement in terms of rule 22 infra from Bank's service shall be reckoned as service for pension.*
>
> *Rule 22:* ***Amended Rule***
>
> *"22(i) A member shall be entitled to a*

pension under these rules on retiring from the Bank's service

(a) After having completed twenty years' pensionable service provided that he has attained the age of fifty years or if he is in the service of the Bank on or after 01.11.93, after having completed 10 years, pensionable service provided that he has attained the age of fifty eight years or if he is in the service of the bank on or after 22.05.1998. After having completed ten years, pensionable service provided that he has attained the age of sixty years.

(b) After having completed twenty years' pensionable service, irrespective of the age he shall have attained if he shall satisfy the authority competent to sanction his retirement by approved medical certificate or otherwise that he is incapacitated for further active service;

(c) After having completed twenty years pensionable service, irrespective of the age he shall have attained at his request in writing;

(d) After twenty five years' pensionable service."

11. The Hon'ble Supreme Court in ***Radhey Shyam's*** case, has observed as under:-

> "*26. It is clear from Rule 22 that pension is admissible to an employee thus:*
>
> *1) After having completed 20 years' pensionable service provided that he has attained the age of 50 years; or*
>
> *2) If he is in the service of the Bank on or after 01.11.1993, after having completed 10 years pensionable service provided that he has attained the age of 50 years; or*
>
> *3) If he is in the service of the Bank on or after 22.05.1998, after having completed 10 years pensionable service provided that he has attained the age of 60 years*."

12. The main contention of the respondent Bank is that the deceased employee G.Devaraj did not complete 15 years of service as per the State Bank of India Employee's Pension Fund Rules as on 31.12.2000 and therefore, he was not eligible for pension. According to the

respondents, the petitioner has completed only 14 years and 6 months and 11 days of service and the probation period of six months cannot be included for computing his total service of 15 years. Therefore, he was not eligible for pension as per Clause 21(1) of the State Bank of India Employee's Pension Fund Rules. However, as per the Hon'ble Supreme Court of India, the respondent Bank accepted the application of the petitioner's husband for voluntary retirement scheme and he was allowed to retire with effect from 31.03.2001 and having accepted the application, now it is not fair and proper on the part of the respondent Bank to deny the pension to the petitioner's husband on the ground that the petitioner's husband has not completed 15 years of service.

13. It can also be seen from the records, more particularly in the tentative list which was prepared by the respondent Bank on 13.04.2015 pursuant to the order of the Hon'ble Supreme Court of India (***Radhey Shyam's*** case), wherein, the name of the petitioner's husband namely, G.Devaraj is mentioned in Serial No.43 and therefore, it is evident that even as per the respondent Bank's tentative list, he is eligible for pension.

14. For the foregoing reasons, the writ petition is allowed and the impugned order of the second respondent in RM/RBO-V/HR/2020-21/3175, dated 21.09.2020, is liable to be quashed and accordingly, the same is quashed. The respondents are directed to accept the pension proposal of the petitioner's husband/deceased employee, namely G.Devaraj, Messenger, PF No.1509349, D.O.R.31.03.2001, and grant family pension based on the tentative eligibility list prepared by the first respondent on 13.04.2020 by proceedings No.CHE/LHO/PPG/PEN/3 in Serial No.43, with all arrears of pay service and monetary benefits, within a period of eight weeks from the date of receipt of a copy of this order. Consequently, the connected miscellaneous petition is closed. No costs.

25.09.2024

Index : Yes / No
Internet : Yes / No

PKN

To

1. The Deputy General Manager &
   C.D.O.,
   H.R. Department,
   State Bank of India,
   Local Head Office, Circle Top House,
   5th Floor, 16, College Lane,
   Numbgambakkam, Chennai 600 006..

2. The Regional Manager,,
   Regional Business Office,
   25, GKN Buildings, North Car Street,
   Nagercoil - 629 001.

3. The Branch Manager,
   State Bank of India,
   Kappirai, Kanniyakumari District.

J.SATHYA NARAYANA PRASAD, J.

PKN

W.P.(MD) No.6189 of 2022

25.09.2024