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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 18th July, 2024*

\+ W.P.(C) 2576/2023

A.K. MALIK .....Petitioner

Through: Mr. Chandra Shekhar, Mr. Vivek Gupta, Mr. Manohar Lal Dhingra, Mr. Prashant Shekhar and Mr. Ankit Verma, Advocates

versus

STATE BANK OF INDIA & ORS. .....Respondents

Through: Mr. S.L. Gupta, Mr. S.L. Garg, Mr. Balmukand, Mr. Pawan Kumar Gupta, Mr. Arjun Gupta, Mr. Aditya Vikram Gupta and Ms. Tarunika Sharma, Advocates

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGMENT

JYOTI SINGH, J. (ORAL)

1. This writ petition has been preferred on behalf of the Petitioner under Article 226 of the Constitution of India seeking the following reliefs:-

> *"(a) Issue an appropriate writ or any other Direction / Order to quash the Decision/ Order dated 03.09.2022 passed by the Chief General Manager, State Bank of India, Parliament Street, New Delhi Impugned Order dated 03.09.2022 passed by the Chief General Manager, State Bank of India, Parliament Street, New Delhi received through Letter No. PPG/DEL/164 dated 05.09.2022;*
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> *(b) Issue an appropriate writ or any other Direction / Order to the respondents by directing to Release all the terminal benefits including pensionary benefits to the petitioner consequent to the Compulsory Retirement dated 27.05.2003 or;*
>
> *(b) Pass any other relief as this Hon'ble Court may deem fit under the circumstances of the case and in the interest of justice;"*

2. Petitioner essentially lays a challenge to the impugned order dated 05.09.2022, whereby his representation dated 18.07.2022 was rejected denying him pensionary benefits. Factual matrix to the extent relevant and emerging from the writ petition is that Petitioner joined State Bank of India ('SBI') on 13.06.1977 on the post of Clerk and was subsequently promoted to JMGS-I as an Officer. Charge-sheet was issued on 10.02.2001 against the Petitioner, alleging irregularities in performance of duties while posted as Officer-in-Charge, Goverdhan Extension Counter at Radha Kund, Mathura Branch of the Bank. On conclusion of disciplinary proceedings, penalty of 'Compulsory Retirement' from service was imposed on the Petitioner vide order dated 27.05.2003, in terms of Rule 67(h) of State Bank of India Officers' Service Rules, 1992 ('1992 Rules'). Appeal filed before the Appellate Authority was dismissed vide order dated 11.02.2004 and the review petition also suffered the same fate on 03.02.2005.

3. Subsequent thereto, Petitioner requested the Bank vide letter dated 10.05.2005 for grant of pension, which request was declined vide letter dated 30.05.2005 on the ground that as per State Bank of India Employees' Pension Fund Rules ('Pension Rules'), pension is payable to an employee only after completion of 25 years of pensionable service or 20 years of pensionable service and attainment of age of 50 years and since on the date of Compulsory Retirement, Petitioner's total service was only 24 years, 9 months and 3 days and his age was less than 50 years, he was not entitled to pension.

4. Challenging the said order, Petitioner filed a writ petition in this Court being W.P. (C) No. 10973/2006 praying for quashing of the charge-sheet dated 10.02.2001 and order dated 27.05.2003 imposing the penalty as well

as the orders of the Appellate and Reviewing Authorities. Petitioner also prayed for a direction to the Bank to allow him to continue in service till he reached the age of superannuation and grant all service benefits, etc. On 14.07.2006, Court issued notice to the Respondents limited to the question of retiral benefits in light of the penalty of Compulsory Retirement. Writ petition was finally disposed of vide order 06.07.2022 setting aside order dated 30.05.2005, whereby Petitioner's request for pension was rejected and permitting the Petitioner to file a fresh detailed representation to the Chief General Manager, SBI, Parliament Street, within two weeks and directing the Competent Authority of SBI to decide the representation in accordance with applicable rules and law, expeditiously, and preferably within three months. Petitioner preferred a representation dated 18.07.2022 which has been rejected by the impugned order dated 05.09.2022.

5. Learned counsel for the Petitioner argues that penalty of Compulsory Retirement imposed on the Petitioner was a harsh punishment when the charges were not proved as per the available record. Without prejudice, it is urged that under the Pension Rules, an employee is entitled to pensionary benefits even if he is compulsorily retired before completion of 25 years of pensionable service and the embargo to receive pension is only in cases of 'Removal from Service', resignation, etc. in terms of Circular dated 23.09.1986. It is further urged that Respondents have erroneously placed reliance on the unamended Pension Rules to deny pension to the Petitioner in violation of order dated 06.07.2022 passed by the Court wherein the Court observed that since the Petitioner was compulsorily retired in 2003, the amended Rules shall be applicable in his case. The argument is that if Rule 22(d) of the amended Pension Rules provides that the Authority may

accept the request of an officer for pension after having completed 20 years of pensionable service, irrespective of age and therefore, Petitioner on completion of 24 years 9 months and 3 days cannot be denied pension. The next argument is that as per Corporate Centre Circular dated 15.04.1987 issued by the Respondents, it is not open to them to inflict penalty of Compulsory Retirement unless the officer has completed required pensionable service in terms of Rule 22(i)(a) and 22(i)(d).

6. Relying on the impugned order and relevant provisions of the Pension Rules, learned counsel for the Respondents submits that pension is payable to an employee only after completion of 25 years of pensionable service or 20 years of pensionable service and attainment of age of 50 years. Petitioner does not fit into any of the two criteria since his service was not 25 years on the date of Compulsory Retirement nor he was 50 years of age. Provisions of Rule 22(d) of amended Pension Rules corresponds to Rule 22(i)(c) of unamended Pension Rules and provides that after completion of 20 years' pensionable service, a member shall be entitled to pension, irrespective of the age but only if the member has sought Voluntary Retirement in writing, which is accepted by the Competent Authority, which is not the case here.

7. It is urged that the plea of the Petitioner that no penalty of Compulsory Retirement could be inflicted unless an officer completes 25 years of pensionable service, is misconceived. Equally misconceived is the reliance on the Circulars dated 11.02.1985 and 23.09.1986, respectively for the said purpose as the same were issued only to clarify effects of amendment to Rule 19(1) of the State Bank of India Determination of Terms and Conditions of Service Rules, vide which 3rd Proviso was incorporated to Rule 19, which was subsequently replaced by 1992 Rules. In fact, the order

of Compulsory Retirement of the Petitioner was passed under Rule 67(h) of 1992 Rules which does not stipulate any restriction on the Disciplinary Authority to impose penalty of Compulsory Retirement. Moreover, Petitioner had challenged the penalty order as well as the Appellate and Reviewing Authorities' orders in the earlier round of litigation but the Court had issued notice limited to the pensionary benefits and did not interfere with the penalty of Compulsory Retirement and therefore, it is not open to the Petitioner to challenge the same indirectly. This order was never challenged by the Petitioner. Pension of the Petitioner is governed by Rule 22(i)(d) of Pension Rules going by Petitioner's case, for which he has to complete 25 years of pensionable service and there is no exception to the Rule. Pertinently, during the service period, Petitioner had availed 243 days of Extraordinary Leave on loss of pay, which cannot be counted towards pensionable service and this has resulted in the shortfall in pensionable service of 25 years.

8. Heard learned counsels for the parties and examined their contentions.

9. Petitioner was working as an Officer JMGS-I Grade with SBI from the year 1999 at Radha Kund Branch, Mathura and was In-charge of the Extension Counter. Charge-sheet was issued against the Petitioner on 22.03.2002 and the disciplinary proceedings culminated into a penalty of 'Compulsory Retirement' on 27.05.2003 under Rule 67(h) of 1992 Rules. The appeal and the review application preferred by the Petitioner against the penalty order were rejected. On the date of Compulsory Retirement, Petitioner had completed 24 years, 9 months and 3 days' service and his age was less than 50 years, facts which are undisputed.

10. Petitioner challenged the order imposing penalty of 'Compulsory Retirement' as well as the orders of the Appellate and the Reviewing Authorities, respectively before this Court in W.P. (C) No. 10973/2006 and also sought a direction to the SBI to allow the Petitioner to continue in service till he attained the age of superannuation and grant all service benefits. On 14.07.2006, when the writ petition came up for admission, Court issued notice on the limited question of retiral benefits upon Compulsory Retirement. Writ petition was disposed of vide order dated 06.07.2022 setting aside order dated 30.05.2005, whereby Petitioner's request for pensionary benefits was declined and directing the Petitioner to file a fresh detailed representation before the Chief General Manager, SBI, within two weeks and a direction to the SBI to decide the same within three months, as per applicable rules and law. There is thus merit in the contention of the SBI that despite a challenge to the disciplinary proceedings and the penalty of Compulsory Retirement, Court did not interfere and the same issue cannot be re-agitated indirectly in the present petition. This order was never assailed by the Petitioner. In this light, it is not open to the Petitioner to place reliance on the Corporate Centre Circular dated 15.04.1987 which provides that it will not be in order to inflict penalty of Compulsory Retirement unless an officer has completed required pensionable service i.e. 25 years in terms of Rule 22(i)(d) or 20 years with attainment of age of 50 years in terms of Rule 22(i)(a). Even otherwise, Respondents have rightly argued that the penalty of Compulsory Retirement of the Petitioner was imposed by the Disciplinary Authority under Rule 67 of 1992 Rules which provides for minor and major penalties and sub-Rule (h) deals with major penalty of Compulsory Retirement and this provision imposes no embargo

on imposing the penalty of Compulsory Retirement before completion of 25 years of pensionable service. The Circulars, heavily relied on by the Petitioner, were issued to clarify effects of amendment to Rule 19(1) of the State Bank of India Determination of Terms and Conditions of Service Rules vide which 3rd Proviso was incorporated in Rule 19 and cannot aid the Petitioner.

11. Coming to the main plank of the argument of the Petitioner that he is entitled to pension under Rule 22(i)(d) of the Pension Rules on completion of 20 years of pensionable service irrespective of the age, the same cannot be accepted. Petitioner is clearly not reading the entire Rule 22, which when read as a whole clearly provides that a member shall be entitled to pension on retiring from the Bank's service on completion of 20 years pensionable service, irrespective of the age, at his request in writing, if accepted by the Competent Authority. Therefore, this position is applicable in a case of voluntary retirement on completion of 20 years pensionable service and not in the case of Compulsory Retirement as a penalty, as in the present case. As rightly argued by the Respondents, Petitioner's case will be governed by the other provisions of Rule 22 and not Rule 22(i)(d). Petitioner would thus have to show that his case falls under any one of the two conditions i.e. (a) completed 20 years pensionable service with attainment of 50 years of age on the date of Compulsory Retirement; or (b) completed 25 years of pensionable service. From the undisputed facts, it is apparent that Petitioner falls into neither of the two categories and cannot be granted pension relying on a sub-Rule which deals with a case of voluntary retirement. For the sake of reference, Rule 22(i)(d) relied upon by the Petitioner is extracted hereunder:-

> *"22. A member of the State Bank of India Employees' Pension Fund shall be entitled for pension under Rule 22(i) while retiring from the Bank's service: -*
> *....*
> *(d)After having completed 20 years pensionable service, irrespective of the age he shall have attained at his request in writing if accepted by the Competent Authority with effect from 20th September 1986 vide Corporate Centre Circular No. PA/CIR/140 dated the 20th September 1986. ..."*

12. At this stage, learned counsel for the Petitioner submits that Petitioner had completed 24 years, 9 months and 3 days of actual physical service with the SBI and had he not taken EOL for 243 days on loss of pay, he would have had the requisite pensionable service and therefore, it is iniquitous to deny him pension with a shortfall of less than three months to complete pensionable service of 25 years. It is urged that being a hard case, direction be issued to SBI to consider waiver of the balance period of less than three months.

13. For all the aforesaid reasons, this Court is unable to find any infirmity in the impugned decision of SBI declining pensionary benefits to the Petitioner for want of pensionable service of 25 years and the writ petition being devoid of merit deserves to be dismissed. However, in the facts of this case, where Petitioner is short of less than three months in completing the pensionable service, it is open to the Petitioner to seek condonation of the balance period and if any such representation is made, Respondents shall consider the same in accordance with law.

14. Writ petition is accordingly dismissed.

JYOTI SINGH, J

JULY 18, 2024/kks/shivam