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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 30th July, 2024

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W.P.(C) 9656/2018

RAJIV JAISWAL

.....Petitioner

Through: Mr. Sameer Kumar and Ms. Somi
Sharma, Advocates

versus

THE ORIENTAL INSURANCE COMPANY LTD.....Respondent

Through: Mr. K.K. Rai, Senior Advocate with
Mr. Rahul Ranjan Verma, Ms. Medha Tandon, Mr.
Anshul Rai and Ms. Sreoshi Chatterjee, 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 Articles 226 and 227 of the Constitution of India seeking the following reliefs:

"A. Direct the respondent to add 4 extra years of service of petitioner in his actual 28 years of service for calculation of pension as per the rule 26 of the Chapter IV of "General Insurance (Employees') Pension Scheme, 1995.

B. Direct the respondent to revise/enhance the pension of the petitioner by calculating 32 years of service of the petitioner as per the rule 26 of the Chapter IV of "General Insurance (Employees') Pension Scheme, 1995.

C. Direct the respondent to pay the entire arrear of pension and commutation value which is actual difference of the monthly pension amount and commutation value with interest @ 24 % p.a since the petitioner retired from his service 31-07-2015 till the revision/enhancement of the pension of the petitioner.



D. Pass any other or such further order or orders as this Hon'ble Court may deem fit in the facts and circumstances of the case in order to secure the ends of justice.

E. Award the costs of proceedings.”

2. As per the narrative of facts in the writ petition, an advertisement was published in Hindustan Times for recruitment of Investigators, Legal Officers and Engineers in the cadre of Assistant Administrative Officers by the Respondent on 26.08.1985. Being eligible for the post, Petitioner applied and being successful in the long procedure of recruitment, was selected and offered appointment by a letter dated 17.06.1987 to the post of Legal Officer and joined the same.

3. In 1995, Respondent introduced the General Insurance (Employees') Pension Scheme, 1995 (hereinafter referred to as the '1995 Scheme') and after going through the entire Scheme, Petitioner opted to be a part of the 1995 Scheme by filling the option form on 19.10.1995, which was duly accepted by the Respondent. Petitioner continued in service till he retired on 31.07.2015 and avers that he became eligible for pension as per paragraph 26 of the 1995 Scheme. Pension of the Petitioner was, however, fixed without adding 4 years in qualifying service as per Clause 26 of 1995 Scheme and therefore, according to the Petitioner, he has suffered a loss of nearly Rs.5,000/- per month in his pension, which will ultimately have a bearing on the family pension at the appropriate stage. Petitioner made several representations to add 4 years of service for the purpose of calculation of pension by granting benefit as per Clause 26, but to no avail.

4. Learned counsel for the Petitioner argues that benefit of Clause 26 of the Pension Scheme be granted to the Petitioner by adding 4 extra years to



the qualifying service for purpose of fixing his pension. It is urged that the decision of the Respondent to deny him this benefit on the ground that only actual service period rendered with the Respondent will be taken for fixing pension is wholly erroneous with no basis in law. Similar pension scheme of 1995 was applicable in the Nationalized Banks namely Bank Employees Pension Regulations, 1995 with a similar clause being Regulation 26 and many retired employees of the Banks on denial of similar benefit to them had approached the Court and finally the Supreme Court in ***V. Vijayan etc. v. Chairman and Managing Director of Bank of Baroda and Ors. etc., Civil Appeal No(s).9371-9374 of 2017*** on 20.07.2017, held that they were entitled to add the additional years of service for calculation of their pension. Reliance is also placed on the judgment of the Supreme Court in Civil Appeal No.17322/2017 in SLP(C) No.4260/2015 titled ***Vasudha Rambhadran v. Syndicate Bank***, where similar benefit was granted to the Petitioner. Learned counsel submits that basis the judgments of the Supreme Court, Indian Banks' Association issued a circular dated 01.02.2018 and All India Bank Pensioners' & Retirees' Confederation issued a circular dated 05.02.2018 granting benefits to their employees and denial of similar benefit to the Petitioner under a similar Clause 26 is violation of Article 14 of the Constitution of India.

5. Drawing the attention of the Court to Clause 26 of the 1995 Scheme, learned counsel for the Petitioner submits that Petitioner qualifies all the three pre-conditions mentioned therein inasmuch as Petitioner is a professional; the post to which he was appointed was one to which candidates of more than 28 years of age are normally recruited; and he was



appointed with deemed age relaxation and therefore, there is no denying him the benefit of added 4 years of service towards qualifying service for calculation of pensionary benefits.

6. Mr. K.K. Rai, learned Senior Counsel appearing on behalf of the Respondent, *per contra*, argues that the case of the Petitioner was not approved for adding 4 years of service towards qualifying service for the purpose of calculating the quantum of pension per month as he does not fulfill all the 03 conditions under Clause 26 of 1995 Scheme. According to Mr. Rai, sub-Clauses (a), (b) and (c) have to be read conjointly and not disjunctively and this interpretation flows from the use of the word “and” between (a), (b) and (c). It is submitted that as per the advertisement, pursuant to which the Petitioner was appointed, the cut-off date for determining the eligibility conditions including the age was 30.06.1985 and Petitioner’s age admittedly on the cut-off date was 30 years, which was the maximum permissible age and thus neither any age relaxation was sought nor given to the Petitioner and he does not fulfill the requirement of sub-Clause (c).

7. Heard learned counsel for the Petitioner and learned Senior Counsel for the Respondent.

8. Before proceeding to examine the rival submissions, it would be relevant to have a close look at some important facts. It is an admitted fact that Petitioner was a practicing lawyer at the time when he applied for the post of Legal Officer, for which the requisite qualification was “*Law Graduate with minimum 2 years’ experience of work in Tribunals/Courts etc. and preferably in Third Party Motor Claims*”. The age limit stipulated



in the Advertisement was between 21 to 30 years as on 30.06.1985. It is a settled law and needs no debate that age and other eligibility criteria have to be seen on the cut-off date stipulated in the Advertisement. Petitioner does not dispute that he was 30 years of age as on the cut-off date, i.e. 30.06.1985, which was the maximum age for eligibility and therefore, Petitioner neither sought nor was granted age relaxation, being within the maximum age limit. Therefore, as rightly contended by Mr. Rai, Petitioner does not qualify the condition under sub-Clause (c) of Clause 26 of the 1995 Scheme.

9. According to the Petitioner, sub-Clauses (a), (b) and (c) in Clause 26 have to be read disjunctively and not conjointly and therefore even if the Petitioner does not satisfy any one of the three conditions in sub-Clauses (a), (b) and (c), he will be entitled to the benefit of adding 4 years service to the existing service for pension and urges the Court to give this interpretation as this furthers the aims and objective of the beneficial provision.

10. On a plain reading of Clause 26 of 1995 Scheme, this Court is unable to accept this argument. Clause 26 is extracted hereunder for ready reference:

“26. Addition to qualifying service in special circumstances - An employee shall be eligible to add to his service qualifying for superannuation pension (but not for any other class of pension) the actual period not exceeding one-fourth of the length of his service or the actual period by which his age at the time of recruitment exceeded twenty-eight years, or a period of five years, whichever is less, if the service or post to which the employee is appointed is one –

(a) for which post-graduate research, or specialist qualification or experience in scientific, technological or professional fields, is essential; and

(b) to which candidates of more than twenty-eight years of age are normally recruited, and



(c) for which the candidate was given age relaxation over and above the maximum age limit fixed by the Corporation or the Company on account of his possessing higher qualification or experience:

Provided that this concession shall not be admissible to an employee unless his actual qualifying service at the time he quits the service in Corporation or a Company, as the case may be is not less than ten years:

Provided further that this concession shall be admissible only if the recruitment procedure in respect of the said service or post contains a specific provision that the service or post is one which carries the benefit of this paragraph.”

11. A holistic reading of Clause 26 makes it palpably clear that sub-Clauses (a), (b) and (c) cannot be read disjunctively and this interpretation flows from the use of the word “and” at the end of sub-Clauses (a) and (b). Therefore, in order to avail the benefit of additional years of service to the existing service towards qualifying service for the purpose of calculating the pension, an employee requires to fulfill the requisite conditions under all the three sub-Clauses read conjointly. The interpretation given by the Petitioner that even if an employee does not satisfy any one of the pre-conditions under the three sub-Clauses, benefit cannot be denied, cannot be accepted and runs contrary to the Scheme of Clause 26. There is no ambiguity in Clause 26 to be open to any other interpretation, save and except, the one that emerges from a plain reading of the sub-Clauses. Indisputably, Petitioner was 30 years of age when he applied under the Advertisement and was within the maximum permissible age limit and therefore, neither sought nor was granted any age relaxation and therefore, he does not fit into sub-Clause (c). Benefit of Clause 26 cannot be granted to him in these circumstances.

12. Insofar as the judgment of the Supreme Court in ***Vasudha Rambhadran (supra)*** is concerned, a bare reading of the judgment of the Division Bench of the Karnataka High Court, which was assailed before the



Supreme Court shows that there is a marked difference in the said case and the present case. First and foremost, Regulation 26 which was under consideration before the Court was different and from a bare reading, did not require fulfilment of all the pre-conditions in sub-Clauses (a), (b) and (c) by virtue of absence of the word “and” at the end of sub-Clause (b). Secondly and most importantly, in the said case, age relaxation was granted to the Petitioner. Thirdly, the issue under consideration was essentially based on the provisos to Regulation 26 of the Syndicate Bank Employees Pension Regulations, 1995, which is not the case here. Hence the Petitioner cannot seek the benefit of the said case.

13. In view of the aforesaid, no relief can be granted to the Petitioner and the writ petition is dismissed being devoid of merit.

JYOTI SINGH, J

JULY 30, 2024/kks