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

Decided on: 19.03.2025

\+ W.P.(C) 3395/2025, CM APPL. 16059/2025 & CM APPL. 16060/2025

AJAY KUMAR MALIK THROUGH S.P.A. HOLDER ADARSH MALIK .....Petitioner

Through: Mr. Pulkit Prakash, Mr. Arjun Mohan, Mr. Chirantan Krishna and Ms. Arushi Sharma, Advocates.

versus

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

Through: Mr. Rajiv Kapur, SC for SBI, Mr. Akshit Kapur and Ms. Riya Sood, Advocates.

CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN

<u>PRATEEK JALAN, J. (ORAL)</u>

1. The petitioner challenged an order dated 10.09.2024, by which the respondent – State Bank of India ["the Bank"] rejected his representation dated 03.09.2024, with regard to calculation of his period of service for the purpose of pension.

2. The petitioner was employed in the Bank as a Clerk on 13.06.1977, and was subsequently promoted to Junior Management Grade Scale – I as an Officer. Pursuant to disciplinary proceedings, a penalty of compulsory retirement was imposed upon him by order dated 27.05.2003. The Disciplinary Order was confirmed by the Appellate Authority on 11.02.2004, and the Reviewing Authority on 03.02.2005.

3. The petitioner's first writ petition, in this regard, was W.P.(C)

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10973/2006, in which he challenged the disciplinary proceedings, and also sought a direction permitting him to continue in service until the age of superannuation with all service benefits. By order dated 14.07.2006, notice was issued, limited to the question as to whether the petitioner was entitled to retiral benefits consequent upon the punishment of compulsory retirement. The writ petition was disposed of on 06.07.2022, setting aside an order dated 30.05.2005, by which the Bank had rejected his request for pension, and permitting him to file a detailed representation. His representation dated 18.07.2022 was rejected by order dated 05.09.2022.

4. Against the order dated 05.09.2022, the petitioner filed the second writ petition, being W.P.(C) 2576/2023, in which he also sought a direction for the release of terminal benefits.

5. The aforesaid writ petition was disposed of by a judgment dated 18.07.2024[1], upholding the decision of the Bank, declining pensionary benefits to the petitioner for want of pensionable service of 25 years. However, in view of the Court's conclusion that the petitioner was short by less than three months in completing the pensionable service, the petitioner was permitted to seek condonation of the balance period, which would be decided by the Bank in accordance with law.

6. Pursuant to this order, the petitioner submitted a further representation on 03.09.2024, which has been rejected by the impugned order dated 10.09.2024.

7. In the representation dated 03.09.2024, as also in the present writ petition, it is contended by the petitioner that the Bank's computation of his pensionable service, at less than 25 years, is incorrect, and that he has,

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in fact, put in more than 25 years of pensionable service.

8. I am of the view that this contention is no longer open to the petitioner, as the very same argument has been adjudicated in the judgment dated 18.07.2024, which has attained finality. The following observations in the said judgment are relevant in the present case:

> *"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.***
>
> *xxx xxx xxx*
>
> *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.***
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> *xxx xxx xxx*
>
> *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***

[1] *A.K. Malik v. State Bank of India & Ors.*, [W.P.(C) 2576/2023].

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> ***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."*[2]

9. The Court has thus recorded a clear finding that the petitioner had not completed 25 years of pensionable service, which was the minimum qualifying service for grant of pension in the case of compulsory retirement. In the absence of a challenge to the judgment dated 18.07.2024, the petitioner is bound by the finding rendered therein.

10. Mr. Arjun Mohan, learned counsel for the petitioner, submits that the aforesaid issue was not foreclosed by the judgment dated 18.07.2024, to the extent that the Court granted the petitioner an opportunity to seek condonation of the balance period before the Bank. I am unable to agree with this reading of the judgment. The petitioner's petition was conclusively dismissed, with a clear finding that the order of the Bank declining pensionary benefits, was in accordance with law. The petitioner's attempt to revisit these findings, as reflected in the representation and the writ petition is, in my view, wholly misconceived. The only relief granted to the petitioner, in view of the relatively small period of shortfall, was an opportunity to seek condonation of the same.

11. It may be noted that the disciplinary proceedings had also attained finality, as the order dated 06.07.2022 in W.P.(C)10973/2006 only re-opened the issue of pensionary benefits, and not the validity of the punishment imposed upon the petitioner.

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[2] Emphasis supplied.

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12. The only issue open for adjudication, therefore, is whether the petitioner was entitled to condonation of the period of shortfall in pensionable service. The impugned order dated 10.09.2024 records that the State Bank of India Employees' Pension Fund Rules ["Pension Rules"] do not provide for any such condonation, or for the grant of pension to an employee who is not qualified under Rule 22 of the Pension Rules. It is stated therein that the trustees of the Pension Fund are only empowered to disburse pension to employees qualified under the Pension Rules, and no other.

13. Mr. Mohan does not rely upon any provision of the Pension Rules to assail this finding. Instead, he draws my attention to Rule 69(5) of the State Bank of Inda Officers' Service Rules, 1992 ["Service Rules"], which provides as follows:

> *"69. (5) Save as otherwise expressly provided in the rules in this section, the authority competent thereunder may, for good and sufficient reasons or if sufficient cause is shown, extend the time specified thereunder for anything required to be done thereunder or condone any delay."*

14. The Service Rules are divided into various chapters, out of which Chapter XI, comprising Rules 50 to 70, deals with "*Conduct, Discipline and Appeal*". Section 1, entitled "*Conduct*", deals with the rules of conduct and various categories of misconduct attributable to an officer. Section 2, entitled "*Discipline and Appeal*", deals with the penalties which may be imposed, the initiation and procedure for disciplinary action, as well as provisions for suspension. Rule 69, entitled "*Appeal Against Punishment or Suspension, Review, Service of Order, Extension of Time Limit, etc*", is part of Section 2 of Chapter XI.

15. It is evident that Rule 69(5) has been incorporated in the context of

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the provisions for appeal and review. The suggestion that this Rule can empower the pension trustees to condone shortfall in period of pensionable service is utterly meritless. The Rule is clearly applicable only to time limits provided "in this section", i.e., in Section 2 of Chapter XI of the Service Rules, which deals with conduct, discipline and appeal. The Rule cannot be transposed into the Pension Rules, that too, not for the purpose of extension of time or for condonation of delay in procedural compliances, but for substantive condonation of a shortfall in the time spent in service.

16. Absent a power of condonation of shortfall in pensionable service, the impugned order of the Bank dated 10.09.2024 does not call for interference by the writ Court.

17. The writ petition, alongwith pending applications, is, therefore, dismissed.

18. At this stage, Mr. Mohan seeks liberty to challenge the judgment dated 18.07.2024 by way of appeal or review. No such liberty is required from this Court; suffice it to state that this judgment is not intended to foreclose any such remedy, if available to the petitioner. The question of whether the remedy can be availed of at this length of time, is one the concerned Court would have to adjudicate, and no observation with regard thereto, is called for at this stage.

PRATEEK JALAN, J

MARCH 19, 2025
SS/JM/

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