(2021) 08 SHI CK 0009

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 3082 Of 2016

Chaman Singh APPELLANT

Vs

UCO Bank And Ors RESPONDENT

Date of Decision : 02-08-2021

Acts Referred:

UCO Bank (Employees') Pension Regulations, 1995 — Regulation 14, 16, 17, 18, 19, 23

Citation : (2021) 08 SHI CK 0009

Hon'ble Judges : Tarlok Singh Chauhan, J

Bench : Single Bench

Advocate : Suneel Awasthi, Sanjay Dalmia

Final Decision : Disposed Of

Judgement

Tarlok Singh Chauhan, J

1. The moot question in this petition is whether the period of 9 (nine) years, 10 (ten) months and 5 (five) days of services rendered by the petitioner

can be rounded off by 10 (ten) years, so as to enable him for grant of pension.

2. This petition was earlier allowed vide judgment dated 27.06.2018 on the basis of the regulations framed by the respondents i.e. UCO Bank

(Employeesâ??) Pension Regulations, 1995, more particularly, regulations 14 and 18.

3. However, later the bank filed a Review Petition No. 11 of 2019 before this Court on the ground that the respondents while filing reply had even

though placed copy of regulations but the same was not complete and on this account, the review petition was allowed and the petition was directed to

be restored to its original number.

4. The petitioner initially served in the Indian Army from 1973 to 1986 and was

discharged from service on compassionate grounds. Thereafter, the

petitioner was appointed as armed guard with the respondents at its branch at Kihar where he joined on 26.06.2006. The petitioner retired from the

service of the bank on 30.04.2016 after rendering 9 (nine) years, 10 (ten) months and 5 (five) days of service. The request made by the petitioner for

grant of pension was turned down by the respondents on the ground that he had not completed minimum 10 years of service in the bank, therefore, not

eligible for pension.

5. Now, adverting to the question posed in this petition, it would be necessary to notice that respondents had framed regulations, which are necessary

for the adjudication of this case are contained in regulations 14 and 18, which reads as under:-

â??14. Qualifying service-Subject to the other conditions contained in these regulations, an employee who has rendered a minimum of 10 years of

service in the Bank on the date of his retirement or the date on which he is deemed to have retired shall qualify for pension.

18. Broken period of service of less than one year. - If the period of service of an employee includes broken period of service less than one year, then

if such broken period is more than six months, it shall be treated as one year and if such broken period is six months or less it shall be ignored.

Provided that provisions of this regulation shall not apply for determining the minimum service required to make an employee eligible for pension.â??

6. A bare perusal of the provisions as extracted above, would indicate that in order to entitle an employee for pension, employee is required to render

10 (ten) years of service in the bank on the date of his retirement. However, the period of service of an employee include broken period of service

less than one year, then if such broken period is more than six months, it shall be treated as one year and if such broken period is six months or less it

shall be ignored. However, difficulty come in the way of the petitioner is contained in the proviso appended with this provision which states that

â??Provided that provisions of this regulation shall not apply for determining the minimum service required to make an employee eligible for

pension.â??

7. It is vehemently argued by Mr. Suneel Awasthi, learned counsel for the respondents that a proviso cannot take away the right conferred by the

main provision, as it is more than settled that proviso will not normally be construed as reducing the purview of enactment to a nullity or take away the

right conferred by enactment.

8. It is more than settled that the proviso cannot subsume the main provision to which it is an exception and thereby nullifying the main provision by

taking away completely the right conferred by the main provision.

9. Reference in this regard can conveniently be made to three-Judge Bench of the Honâ??ble Supreme Court in Director of Education (Secondary)

and another vs. Pushpendra Kumar and others etc. AIR 1998 SC 2230, wherein it was observed as under:-

8. The object underlying a provision for grant of compassionate employment is to enable the family of the deceased employee to tide over the sudden

crisis resulting due to death of the bread earner which has left the family in penury and without any means of livelihood. Out of pure humanitarian

consideration and having regard to the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a

provision is made for giving gainful appointment to one of the dependents of the deceased who may be eligible for such appointment. Such a provision

makes a departure from the general provisions providing for appointment on the post by following a particular procedure. Since such a provision

enables appointment being made without following the said procedure, it is in the nature of an exception to the general provisions. An exception cannot

subsume the main provision to which it is an exception and thereby nullify the main provision by taking away completely the right conferred by the

main provision. Care has, therefore, to be taken that a provision for grant of compassionate employment, which is in the nature of an exception to the

general provisions, does not unduly interfere with the right of other persons who are eligible for appointment to seek employment against the post

which would have been available to them, but for the provision enabling appointment being made on compassionate grounds of the dependent of a

deceased employee.

10. In such circumstances, the proviso is liable to be ignored in case the main provision contained in regulation 18 is read. It would reveal that in order

to entitle an employee for pension, he is required to render minimum ten years of service in bank on the date of his retirement. However, if the period of service of an employee includes broken period of service less than one year, then if such broken period is more than six months, it has to be treated

as one year and if such broken period is six months or less it has to be ignored.

11. Obviously, the petitioner has rendered more than six months i.e. ten months and five day of service, therefore, this period in terms of Regulation

No. 18 is required to be rounded and treated as one year, thus, making the petitioner eligible for pension.

12. As a matter of fact, the issue in hand is otherwise no longer res integra in view of the authoritative pronouncement of the Honâ??ble Supreme

Court in Indian Bank and another v. N. Venkatramani (2007) 10 SCC 609, wherein the qualifying service, as prescribed, was 15 years, whereas the

respondent therein had sought voluntary retirement after rendering fourteen years, nine months and seventeen days of service. Similar provision of

rounding off was contained in Regulation 18 of the Regulations, which is a pari materia with Regulation No. 18 of the instant case and while

construing the said provision, it was observed in paras 9 and 13 as follows:-

â??9. We may notice that although various provisions have been made providing for qualifying service to which our attention has been drawn by Mr.

Raju Ramchandran, the manner in which the period of service is to be measured is contained in Regulation 18 of the Regulation which reads as

under:-

â??18. Broken period of service of less than one year. - If the period of service of an employee includes broken period of service less than one year,

then if such broken period is more than six months, it shall be treated as one year and if such broken period is six months or less it shall be ignored.â??

13. It may be true that various provisions of the Regulations as for example Regulations 16, 17, 19, 23, etc. provided for qualifying service. Regulation

18 is not controlled by any of the said provisions. It does not brook any restrictive interpretation. It only provides for a rule of measurement. An

employee, as noticed hereinbefore, was entitled to pension provided he has completed the specified period of service. How such a period of service

would be computed is a matter which is governed by the statute. It is one thing to say that a statute provides for completion of fifteen years of

minimum service, but if a provision provides for measurement of the period, the same cannot be lost sight of. Provision of the Regulations which are beneficial in nature, in our opinion, should be construed liberally.

13. The learned counsel for the respondent is not in a position to cite any contrary judgment.

14. In view of the binding principles as quoted above, this Court has no alternate but to allow the petition. Accordingly, the petition is allowed and the

petitioner is held entitle to pension in terms of the Regulations. The respondents are directed to work out the pensionary dues of the petitioner and

release the same within a period of two months from the receipt of certified copy of this order, failing which the petitioner shall be entitled to interest

at the rate of 9% per annum from the date the amount fell due till the date the same is actually paid to him.

15. The petition is disposed of in the aforesaid terms, leaving the parties to bear their costs. Pending application, if any, also stands disposed of.