
(2008) 01 P&H CK 0119
In the Punjab And Haryana At Chandigarh

Dharam Pal Singh

APPELLANT

Vs

Punjab National Bank and Others

RESPONDENT

Date of Decision : 25-01-2008

Acts Referred:

Punjab National Bank (Employees) Pension Regulations, 1995 — Regulation 14, 29

Citation : (2008) 2 LLJ 814 : (2008) 149 PLR 745 : (2008) 1 RCR(Civil) 739

Hon'ble Judges : Mohinder Pal, J; Hemant Gupta, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Hemant Gupta, J.—The petitioner claims pension in terms of the Punjab National Bank (Employees") Pension Regulations, 1995 (hereinafter to be referred as "Pension Regulations").

2. The petitioner joined as Clerk-cum-Cashier with the Punjab National Bank on 13.10.1986. The respondent Bank framed a Scheme called PNB Employees Voluntary Retirement Scheme, 2000 (hereinafter to be referred as "the Scheme"). The said Scheme was to remain in operation from 1.11.2000 to 30.11.2000. All permanent full time employees of the Bank who have 15 years of service or 40 years of age were eligible to apply for voluntary retirement under the aforesaid Scheme. In terms of Rule 3.5 of the said Scheme, an employee seeking voluntary retirement under the Scheme was eligible for pension including commuted value of pension as per Scheme. The relevant clause reads as under:

3.5 Other Benefits

An employee seeking voluntary retirement under the Scheme will be eligible for the following benefits in addition to the ex-gratia amount mentioned in para 6 of the Scheme:

i) Gratuity as per Payment of Gratuity Act, 1972 or Gratuity payable under the Service Rules as the case may be, as per existing rules;

ii)a) Pension (including commuted value of pension) as per PNB (Employees) Pension Regulations, 1995

OR

b) Bank's contribution towards PF as per existing rules.

iii) Leave encashment as per existing rules.

3. The request of the petitioner to seek voluntary retirement was accepted on 30.12.2000. Prior to the said communication, the petitioner has sought to withdraw his offer to seek voluntary retirement on account of change in his family circumstances. Such request was declined by the respondent-Bank. Though the petitioner has challenged the acceptance of his request for voluntary retirement after its withdrawal but the said aspect has attained finality with the judgment of Hon'ble Supreme Court in Bank of India and Others Vs. O.P. Swaranakar etc., , as modified on 21.01.2004, Annexure P-3, reported as Punjab National Bank Vs. Virender Kumar Goel and Others, .

4. It is the claim of the petitioner that in terms of the Scheme, the petitioner is entitled to pension as per Pension Regulations. The qualifying service in terms of the said Regulations is 10 years of service in the Bank on the date of his retirement. Relying upon Clauses 14 and 28 of the Pension Regulations read with Clause 3.5 of the Scheme, it is contended by the petitioner that he is entitled to pension.

5. It is contended by the petitioner that a circular dated 19.12.2000, Annexure P-7, was issued by the respondent Bank on the basis of communication from the Indian Bank Association. The banks were advised to incorporate the amendment to Regulation 28 of the Pension Regulations. As per the amendment proposed, such pension would be payable after having service for a minimum period of 15 years. It is contended that such amendment was not carried out and, therefore, the rejection of the claim of the petitioner for pension for the reason that he has not completed 15 years of service is based upon non existent Rules.

6. The said claim of the petitioner for pension has been declined vide letter dated 23.04.2001, Annexure P-6, on the ground that the petitioner has not put in minimum period of service of 15 years which is pre-requisite for pension under the Scheme. In reply, the stand of the respondent Bank is that the claim of the petitioner for pension is based upon Regulation 28, which has been amended from time to time. It is pointed out that, as per Regulation 28, pension would be payable to a person who has put in minimum period of 15 years service. As the petitioner had put in 14 years 2 months and 19 days service, therefore, he is not eligible for pension. The relevant extract from Para No. 6 of the written statement reads as under:

6. That the contents of this para have wrongly been stated, therefore, denied. Reproduction of the regulation are admitted being a matter of record. However, it is submitted that the petitioner has been retired under the V.R.S. 2000 Scheme

and he is governed under the Regulation 28 and not any other regulation as being alleged by the petitioner in this paragraph. He would be eligible for pension only if he had put in more than 15 years of service....

Therefore, in order to confer pensionary benefit on such employees, provisions of Regulation 28 of Pension Regulations were amended. The petitioner having not fulfilled the stipulated condition of minimum service, his request was rightly declined by respondent bank vide letter dated 23.4.2001.

7. Some of the relevant provisions of Pension Regulations for consideration of the claim of the petitioner for pension are reproduced below:

2. Definitions:

In these regulations, unless the context otherwise requires:

(y) "retirement" means cessation from Bank's service,

a) on attaining the age of superannuation specified in Service Regulations or Settlements;

b) on voluntary retirement in accordance with provisions contained in regulations 29 of these regulations;

c) on premature retirement by the Bank before attaining the age of superannuation specified in Service Regulations or Settlement;

14. Qualifying Service:

Subject to the other conditions contained in these regulations, an employee who has rendered a minimum of ten 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.

28. Superannuation Pension

Superannuation pension shall be granted to an employee who has retired on his attaining the age of superannuation specified in the Service Regulations or Settlements

29. Pension On Voluntary Retirement:

(1) On or after the 1st day of November, 1993, at any time after an employee has completed twenty years of qualifying service he may, by giving notice of not less than three months in writing to the appointing authority retire from service.

xx xx xx xx xx (2) The notice of voluntary retirement given under Sub-regulation (1) shall require acceptance by the appointing authority:

xx xx xx xx xx (3) xx xx xx xx xx (4) An employee, who has elected to retire under this regulation and has given necessary notice to that effect to the appointing authority, he shall be precluded from withdrawing his notice except

with the specific approval of such authority:

Provided that the request for such withdrawal shall be made before the intended date of his retirement.

8. Learned Counsel for the respondent Bank has referred to circular dated 19.12.2000, Annexure P-7, wherein it has been decided to allow superannuation pension to those employees who are pension optees with minimum 15 years of service and their offer to seek voluntary retirement under the Scheme has been accepted. The said decision is pending amendment to Regulation 28 of the Pension Regulations in terms of the advise of the Government of India dated 11.12.2000. The relevant part of the circular reads as under:

3. ...Having regard to this, banks have been advised to incorporate the following amendment to Regulation 28 of the Pension Regulations:

Superannuation pension shall be granted to an employee who has retired on his attaining the age of superannuation specified in the Service Regulations of Settlement.

Provided that, pension shall also be granted to an employee who opts to retire before attaining the age of superannuation, but after having service for a minimum period of 15 years in terms of any Scheme that may be framed for the purpose by the Bank's Board with the concurrence of the Govt.

4. The Bank is taking steps amendment to Regulation 28 of PNB (Employees) Pension Regulation 1995 in terms of the provisions contained in Banking Companies (Acquisition & Transfer of Undertaking) Act, 1970 pending above amendment to Regulation 28 of Pension Regulation 1995, it has been decided to allow superannuation pension to those employees who are pension optees with minimum 15 years of service and their offer to seek voluntary retirement under PNBEVRS -2000 has been accepted.

5. Accordingly all incumbents Incharge are advised to ensure:

a) That the proposal for payment of pension in respect of the above employees (pension optees) are prepared and sent to Pension Fund Deptt. Through respective RO/ZO only under Regulation 28 pertaining to superannuation pension.

b) That the employees (pension optees) who are seeking voluntary retirement under PNBEVR-2000 irrespective of number of years of service they have put in are eligible for pension as per Regulation 28 read with the amendment referred to above and not under Regulation 29 of Pension Regulation 1995

9. Learned Counsel for the respondents argued before this Court that the claim of the petitioner for pension is governed by Regulation 29 of the Pension Regulation which deals with pension on voluntary retirement. Therefore, the claim of the petitioner has been rightly declined. However, learned Counsel for the respondent could not refer to any document in support of the stand in the written statement that the Pension Regulations were amended so as to permit

pension on completion of minimum period of 15 years of service.

10. Learned Counsel for the petitioner has submitted that the petitioner has offered for retirement in the month of October/November, 2000. On the said date, Regulation 28 of Pension Regulations was not amended. In fact, there was not even suggestion to amend such Regulation. The suggestion came after the offer for voluntary retirement was submitted by the petitioner. Still further, the decision which has been communicated vide circular 19.12.2000 is in contravention of the Pension Regulations and the Scheme notified. Therefore, the said decision is ineffective, invalid qua the rights of the petitioner which stands crystallised on the date he submitted his offer in pursuance of the Scheme. Since the petitioner fulfils the condition of qualifying service of 10 years, therefore, the grant of pension under Regulation 28 is implied condition of the Scheme. In terms of Regulation 14, the qualifying service is 10 years. In terms of Para 3.5 of the Scheme, the petitioner is entitled to pension in terms of the Pension Regulations. Thus, the petitioner is entitled to pension under Regulation 28 as it existed on 1st November, 2000, read with Regulation 14 of the Pension Regulations.

11. The arguments that the claim of the petitioner for pension is governed by Regulation 29 is wholly misconceived. Regulation 29 i.e. Pension on Voluntary Retirement, is complete code in itself. Under the said Regulation, pension is payable to an employee who has completed twenty years of qualifying service who has given notice of not less than three months in writing. Still further, the employee has a right to seek withdrawal of his offer for voluntary retirement before the retirement becomes effective.

12. Neither the petitioner has given three months notice nor the claim of the petitioner has been rejected on the ground that he has not completed 20 years of qualifying service. If Regulation 29 is to be extended to the petitioner then he had a right to seek withdrawal of his offer to seek voluntary retirement as well. Therefore, the respondent Bank has rightly not relied upon Regulation 29 in the reply filed.

13. Regulation 29 is a general Regulation which is applicable to all the employees of the Bank independent of the Scheme. If an employee of the Bank completes 20 years of qualifying service, he is entitled to voluntary retirement. Such is the retirement falling within the meaning of Section 2(y)(b) of the Regulations. The Scheme under which the petitioner has opted for retirement is not part of the Regulations. Pension Regulations became applicable to the petitioner in terms of Clause 3.5 of the Scheme. Therefore, Regulation 29 cannot be extended to in respect of the claim of the petitioner for pension.

14. As per Scheme, the eligibility to seek retirement is after 15 years of qualifying service or 40 years of age. The petitioner is over 40 years of age and has 10 years of qualifying service. Such service under Regulation 14 is the qualifying service for payment of dues on retirement. The petitioner fulfils the

said condition. Clause 3.5 of the Scheme extends benefit of pension under Pension Regulations. As per Regulation 14, 10 years is the period of qualifying service. Therefore, a co-joint reading of the eligibility condition and the benefits payable under the Scheme read with Regulation 14, the petitioner is entitled to pension.

15. The decision in Annexure P-7 cannot be made applicable to the petitioner for the reason that the same has been communicated after the petitioner opted for retirement under the Scheme. Still further, the said decision is in the nature of executive instructions and, therefore, cannot override the Scheme for voluntary retirement published and the Pension Regulations. Therefore, the provision of 15 years qualifying service for grant of pension is ineffective qua the rights of the petitioner for grant of pension under the Pension Regulations.

16. In view thereof, present petition is allowed. The petitioner is held entitled to pension under the Pension Regulations. The respondents shall take appropriate steps for payment of pension to the petitioner within three months from today.