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In the High Court Of Himachal Pradesh

Case No : C.W.P. No''s. 525 and 606 of 2000

Gulel Ram and Another — APPELLANT

Vs

State Bank of India and Others — RESPONDENT

Date of Decision : 25-07-2005

Acts Referred:

State Bank of India Act, 1955 — Section 50
State Bank of India Employees Pension Fund Rules, 1955 — Rule 2, 20, 21, 22, 23

Citation : (2006) 108 FLR 462 : (2006) 2 LLJ 38 : (2005) 2 ShimLC 468

Hon'ble Judges : L.S. Panta, J

Bench : Single Bench

Advocate : J.R. Thakur and Bhuvnesh Sharma, for the Appellant; K.D. Sood, for the Respondent

Judgement

Lokeshwar Singh Panta, J.—In both these writ petitions common questions of facts and law are involved, they are decided by this single judgment. Both the petitioners have filed these writ petitions for the grant of pension the period during which they have served in the service of State Bank of India (for short "SBI") respondent.

CWP No. 525 of 2000

Gulel Ram petitioner joined Army service on September 27, 1953. He was discharged as Naib-Subedar on September 27, 1974. The petitioner was re-employed by respondent-SBI on June 27, 1984 as Guard and was confirmed as such on December 27, 1984 . He attained superannuation age of 58 years in March 1994 but was given extension of two years. He retired from the service of respondent-SBI on March 31, 1996. According to the petitioner, he had served in the service of SBI as Guard from June 27, 1984 to March 31, 1996, but the respondent-SBI has not granted him pension from the date of his re-employment till he was in its service on the ground that the petitioner is not eligible for pension as he has not completed ten years of pensionable service. On these premises the petitioner has claimed pension on the sole ground that he has completed ten years pensionable service.

2. In reply to the writ petition, the respondent-SBI has admitted that the petitioner had retired from the service on March 31, 1996 after he was given extension of two years, otherwise he was to retire in 1994 on attaining the superannuation age of 58 years. It is stated that the petitioner joined the service of the Bank on June 27, 1984 and he was confirmed on December 27, 1984 . He had completed the superannuation age of 58 years on March 27, 1994. He having not completed ten years of pensionable service with effect from the date of his confirmation till the date of superannuation age of 58 years and on March 27, 1994 he was not eligible for the grant of pension in terms of the State Bank of India Employees'' Pension Fund Rules, 1955. The petitioner has not completed the ten years pensionable service and the extended period of two years of service after superannuation age of 58 years cannot be counted for the purpose of making the petitioner eligible to the pension.

CWP No. 606 of 2000

3. Rajinder Singh petitioner was initially enrolled as Sepoy in Dogra regiment on October 11, 1958. He was discharged from Army on October 15, 1973. He was re-employed in the respondent-SBI as Guard on January 18, 1986 against the post reserved for ex-serviceman. He was sent on training by the SBI on March 15, 1986. The petitioner was confirmed on July 18, 1986 as Guard and after serving the SBI for about 11 years and 4 months, the petitioner was to be retired on superannuation age of 58 years on May 31, 1996 but his period of service was extended by two years. According to the petitioner, his entire period of service from 1986 ought to have been counted for the purpose of pension till his retirement on May 31, 1998, but the SBI has counted his service period for pensionable service from July 18, 1986 till May 31, 1996. On these premises the petitioner has claimed that he has completed more than 11 years of service, he is entitled for pension, as per the revised instructions of the SBI.

4. In reply to this writ petition, the respondent-SBI stated that the date of birth of the petitioner as per Bank record is May 6, 1938. He attained the age of 58 years on May 5, 1996 and the age of 60 years on May 5, 1998. The petitioner joined the Bank service on January 18, 1986 and was confirmed on July 18, 1986. The date from which the service of the petitioner was to be counted for pension is from July 18, 1986 as per State Bank of India Employees Pension Fund Rules. The length of pensionary service of the petitioner comes to 9 years 9 months and 18 days on attaining the age of 58 years, whereas to enable the petitioner to get pension he should have completed 10 years of pensionary service in the Bank when he had attained the age of 58 years and the date of his retirement on May 31, 1998 at the age of 60 years after getting extension of two years is not relevant for the purpose of pension. No rejoinder(s) has been filed by the petitioners to the reply-affidavits of the respondent-SBI. I have heard learned Counsel for the parties and perused the material on record.

5. The Central Board of the State Bank of India, after consultation, with the Reserve Bank of India and with the previous sanction of the Central Government, in exercise of the powers conferred by Section 50 of the State Bank of India Act (23 of 1955), has framed "State Bank of India Employees'' Pension Fund Rules, 1955", a copy whereof is placed on record as Annexure R-3 in CWP No. 606 of 2000.

6. Rule 7 provides that every permanent employee in the service of the Bank who is entitled to pension benefits under the terms and conditions of his service shall become a member of the Fund from-

(a) the date from which he is confirmed in the service of the Bank, or

(b) the date from which he may be required to become a member of the Fund under the terms and conditions of his service.

Rule 8 envisages that no employee shall be eligible to become a member of the fund-

(a) if he is a member of the Imperial Bank of India Employees'' Pension and Guarantee Fund or if he is engaged in any country outside India and appointed for service in such country;

(b) if he is below 21 years of age;

(c) if he is over 38 years of age; or

(d) whose service is specially declared by the Bank to be non-pensionable.

Rule 20 says that save as provided in Rule 21, service rendered by an employee before the date of his admission to the fund and after the date of completion by him of 58 years of age shall not be reckoned as service for pension provided that, if on the date of completion of the age of 58 years the employee has to his credit any ordinary or privilege leave the period of such leave shall be reckoned as service for pension to such extent of the leave as is availed of or to such extent of the leave for which service is rendered.

Rule 22(i) reads as under:

A member shall be entitled to a pension under these rules on retiring from the Bank''s service-

(a) After having completed twenty years'' pensionable'' service provided that he has attained the age of fifty years;

(b) After having completed twenty years'' pensionable service, irrespective of the age he shall have attained, if he shall satisfy the authority competent to sanction his retirement by approved medical certificate or otherwise that he is incapacitated for further active service;

(c) After having completed twenty years pensionable service, irrespective of the age he shall have attained at his request in writing;

(d) After twenty five years'' pensionable service.

It is not in dispute that both the petitioners were not entitled to a pension under the rules on retiring from the Bank''s service as they have not completed twenty years'' pensionable service. Under Rule 22(i) Sub-rules (a) to (d) extracted herein above.

7. The petitioners have relied upon Memorandum dated June 16, 1997 issued by PPG Department, State Bank of India, Local Head Office, Chandigarh to all Branches/offices in Chandigarh Circle in terms of Central Office Letter No. CDO/PM/CIR/8 dated May 21, 1997, copy whereof is placed on record as Annexure R-4. As per the said memorandum, the Central Board of the Bank, at its meeting held on January 30, 1997, has amended Rule Nos. 8, 20, 22 and 23 of the SBI Employees'' Pension Fund Rules. As per the amended rules, the retired employees (both officers and award staff, hereafter referred to as retired employees) who have completed a minimum of 10 years'' pensionable service at the time they attained the age of 58 years are held eligible for pension from November 1, 1993. The service for the purpose of pensionary benefits will be reckoned till the age of retirement, i.e. 58/60 years, as the case may be from November 1, 1993. The effect of the revised rules would be that as from November 1, 1993, the retired employees, would have completed a minimum of 10 years'' pensionable service at the time they attained the age of 58 years shall be eligible for pension and accordingly, the upper age limit for admission: to the Pension Fund has been increased from 38 years to 48 years under Clause (c) of Rule 8 w.e.f. November 1, 1993. Under Clause (b) of the revised rules, service for the purpose of pension will now be reckoned till the age of retirement, instead of upto 58 years as before, for those officer/employees who have retired after November 1, 1993 but before the receipt of the said Circular, they were requested to make contributions towards the pension fund from the date of eligibility till the dates of their retirement. The learned Counsel for the petitioner has contended that as per Sub-clause (b) of the revised rules, the service of the petitioner for the purpose of pension will be reckoned till the age of retirement at the age of 60 years instead of ceasing at 58 years of age. I am afraid to accept this contention.

8. As noticed above, under Rule 7 every permanent employee in the Service of the Bank who is entitled to pension benefits under the terms and conditions of his service shall become a member of the Fund from the date from which he is confirmed in the service of the Bank. As per amended Rule 22, a member shall be entitled to pension, if he is in the service of the Bank on or after November 1, 1993 after having completed 10 years'' pensionable service, provided that he has to, attain the age of 58 years. The superannuation'' age of both the petitioners admittedly was 58 years and not 60 years as claimed by them. If they were given two years extension by the Bank, that will not amount to increasing the superannuation age of 58 years to 60 years. As per Memorandum dated January

4, 2002 mark Annexure R-2 with CMP No. 816 of 2004 filed by the respondent-SBI in CWP No. 525 of 2000, the age of retirement in the Bank has been raised from 58 years to 60 years w. e.f. May 22, 1998. The increase in age has necessitated for admission to Pension Fund of 48 years, specified in Rule 8 of the SBI Employees'' Pension Fund Rules, and also in the age of retirement of 58 years, as provided in Rule 22(i)(a) of the Rules so that the employees who have retired on attaining age of 60 years after completing 10 years of pensionable service on or after May 22, 1998 are eligible for pension. As per the Memorandum dated June 16, 1997 mark Annexure R-4, the employees'' retired on attaining the age of 58 years on or after November 1, 1993 after completing 10 years'' of pensionable service were held eligible for pension and the upper age limit for admission to the Pension Fund were raised upto 48 years w.e.f. November 1, 1993. Admittedly, petitioner Gulel Ram was confirmed in the Bank service on December 27, 1984 and he had completed the age of 58 years on March 27, 1994. He has not completed 10 years of pensionable service in terms of Rule 7(a) of the Rules and revised Pension Fund Rules, as per Memorandum dated June 16, 1997 mark Annexure R-4 at the superannuation age of 58 years on March 27, 1994, as he had put in only nine years and three months service and therefore, he has not completed a minimum of 10 years'' pensionable service from December 27, 1984 when he was confirmed in the service of the SBI.

9. The petitioner Rajinder Singh was confirmed as Guard on July 18, 1986 and his service was counted for pension from the said date in terms of Rule 7(a) of the Rules. He attained the superannuation age of 58 years on May 5, 1996, on which date he had put in only nine years nine months and 18 days service and therefore, he has not completed a minimum of ten years'' pensionable service at the time he attained the age of 58 years from the date of his confirmation in the service of respondent-SBI. Both the petitioners cannot claim any benefits in terms of amended Rule 2(b) as per Memorandum dated June 16, 1997, copy mark Annexure R-4 as claimed by them.

10. Mr. Bhuvnesh Sharma, learned Counsel for the petitioner Rajinder Singh has placed reliance upon the decision of learned single Judge of Punjab and Haryana High Court in the State of Haryana and Anr. v. Siri Ram reported in 1999 (2) SLR 215, to contend that total service of the petitioner from the date of his initial appointment till he attained the superannuation age should be counted as qualifying service for pension as held by learned single Judge in the said case. I have gone through the said judgment and I find that the ratio of the said decision is of no help and assistance to the petitioner in the present case. In that case the plaintiff Siri Ram was appointed temporarily in 1950 by the State Government in Wild Life Department, his services were confirmed in the year 1956 and his pension has been calculated only from the date of his confirmation in service and the period of service rendered by him from May 22, 1950 to February 29, 1956 has not been counted for the purpose of calculating pension. The Civil Suit filed by the plaintiff was dismissed by the trial Court but on appeal

the learned Additional District Judge decreed the suit and directed that the entire service rendered by the plaintiff including temporary service be counted for the purpose of pension. The State Government filed second appeal before the learned single Judge against the impugned judgment and decree of the 1 st Appellate Court. The learned single Judge noticed that the service register Exhibit PW-2/A produced before the trial Court would show that the plaintiff was appointed on temporary basis and his service has been confirmed w. e.f. April 1, 1956. There was nothing on the record to show that the plaintiff had been paid salary out of contingent fund, therefore, there was no basis that the plaintiff was only a contingent employee prior I to 1956 and the service rendered by him from 1950 to 1956 could not be counted for the purpose of pension.

11. As noticed above, there is clear and categorical stipulation in Rule 7(a) of the Rules that every permanent employee in the service of the SBI who is entitled to pension benefits under the terms and conditions of his service shall become a member of the Fund from the date from which he is confirmed in the service of the Bank. In that view of the matter, the petitioners cannot be permitted to contend that their services prior to the dates of their respective confirmation shall be counted for the purpose of pensionable service.

12. No other point was urged by the learned Counsel for the parties.

13. Forthereasonsaforestated, both these writ petitions are devoid of merits and they are accordingly dismissed. Costs on the parties.

14. CMP No. 816 of 2004 filed in CWP No. 525 of 2000 stands allowed. Copy of the Memorandum dated January 4, 2002 mark 5 Annexure R-2 filed with the said application is taken on record.

