
(2014) 02 RAJ CK 0022
In the Rajasthan High Court
Case No : Civil Writ Petition No. 291/2007

Jagan Prasad Gupta

APPELLANT

Vs

State Bank of India and Others

RESPONDENT

Date of Decision : 11-02-2014

Acts Referred:

Citation : (2014) 02 RAJ CK 0022

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Advocate : Pradeep Asthana, Advocates for the Appellant; V.S. Yadav, Advocates for the Respondent

Judgement

Mohammad Rafiq, J.—This writ petition was preferred by Jagan Prasad Gupta in the year 2007 inter alia with the prayer that the respondent-bank be directed to declare the mandatory period of two years of rural posting in the case of petitioner as complete and make payment of his retiral benefits viz. ex gratia, leave encashment or any other retiral benefit on the scale of pay which he has drawn on the last working day prior to voluntary retirement together with interest @ 18% per annum.

2. Shri Pradeep Asthana, learned counsel for the petitioner has argued that petitioner was appointed as Cashier with respondents in 1967. He was promoted as Officer, JMGS-I in the year 1977 and posted at Rural Branch called Kakira Branch in Himanchal Pradesh where he joined on 10.4.1978. On creation of Jaipur Zonal Office, he was promoted from the post of JMGS-I to MMGS-II with effect from 1.8.1990 by order dated 22.8.1990. The promotion on the post of MMGS-II required the mandatory posting of two years in the branch at rural areas. Petitioner was posted at Brahambad Branch of the bank and he joined his services on 15.2.1991. He was then transferred and relieved from Brahambad Branch on 1.6.1992. Petitioner was promoted as MMGS III and a appraisal form was prepared confirming the mandatory rule of posting in rural area two 2 years and in semi urban service of 2.1 years. As per the prevalent mode of calculation,

petitioner was subject to 25 months posting in rural area. The respondent bank in the year 2000 offered a scheme for voluntary retirement. The said scheme was modified by order dated 2.1.2001. In regard to rural posting, the respondent required the petitioner on 17.1.2001 to furnish the details of his posting. Petitioner accordingly submitted the same. The respondents satisfied therewith permitted the petitioner to retire voluntarily by order dated 9.3.2001. Petitioner has been throughout, from the date of his promotion on 1.8.1990 till the date of his retirement on 31.3.2001, discharging the duties of MMGS II and has also drawn his salary from that post. Petitioner was paid retiral benefits including ex-gratia payment and leave encashment at the lower rate than what he was actually drawing on the last date of his retirement on 31.3.2001. Petitioner submitted representation to the respondents for rectifying this mistake. The respondent authorities required him to furnish his date wise posting at rural branches and conveyed vide letter dated 26.6.2001 and held that petitioner's period of rural service was less than 24 months and on that basis declined to rectify this mistake. Petitioner submitted representations to the higher authorities on 6.7.2006 and thereafter on 28.9.2006, which was replied vide communication dated 28.9.2006 that he has not completed 24 months of requisite rural posting. Aggrieved thereby, he has filed the present writ petition.

3. Shri Pradeep Asthana, learned counsel for the petitioner has referred to the computation made in the Promotion Appraisal Form (Annexure-8) prepared by the petitioner wherein he has shown to have completed two years rural/semi urban assessment. It is argued that the respondents cannot dispute the correctness of the aforesaid assessment. Learned counsel in this respect also submitted that document Annexure-R/6, which the respondents submitted by the reply also corroborate the similar entries as made in the appraisal report. Learned counsel for the petitioner has relied on the judgment of Allahabad High Court in Dr. B.S. Goel Vs. Vice-Chancellor of Meerut University and Others, .

4. Shri V.S. Yadav, learned counsel for the respondent opposed the writ petition and argued that this petition suffers from delay and laches. Besides, the petitioner has withdrawn the ex-gratia amount and other retiral benefits from his account without any prejudice and thus he is estopped from challenging the same. It is one of the mandatory condition that all officers in JMGS-I scale are required to put in minimum two years service in a rural branch before they are considered for promotion to MMGS-II. Till such completion of two years service in rural branch, promotion of such officer is to be treated as ad hoc and in case such officer opts for voluntary retirement, such promotion may be withdrawn. Petitioner has not completed the mandatory requirement of two years rural service. Petitioner voluntarily applied under the SBIVRS with open eyes without any compulsion. Learned counsel argued that the Indian Bank's Association, a representative body of all public sector banks in the country advised the respondent bank regarding recommendations of the committee by their circular dated 31.8.2000 to review human resource and manpower planning. The Committee suggested to introduce Voluntary Retirement Scheme, which was

approved by the Government of India. The SBI Voluntary Retirement Scheme was introduced in the bank vide circular dated 29.12.2000. The said scheme was introduced in the Delhi Circle of the bank by special circular letter dated 30.12.2000. The Deputy Managing Director of the respondent bank was duly authorised by the Central Board to amend/clarify the scheme that if an officer does not complete the mandatory rural or semi urban assignment either wholly or partly submits an application for retirement under SBIVRS, his request would be subject to the provisions contained in circular dated 29.7.1999. Thus in case an officer from this category applies for retirement before approving his case, his promotion would stand withdrawn. The Chief General Manager of respondent bank vide letter dated 4.1.2001 communicated the aforesaid decision of the Deputy Managing Director contained in circular dated 2.1.2001 to all branches in Delhi Circle. The Deputy Managing Director of the respondent-bank was duly communicated by letter dated 10.1.2001 that the employee who has submitted an application under the said circular may be permitted to withdraw the application on or before 15.2.2001. Petitioner was thus aware of the risk involved in the voluntary retirement. He could have withdrawn his request, which he failed to do. Learned counsel has referred to the chart of the computation of period of rural service of the petitioner in para G of the reply, according to which total period of posting of the petitioner as Head Cashier, Kakirath was from 10.4.1978 to 20.11.1978 i.e. for 224 days and in Brahambad from 15.2.1991 to 1.6.1992 for 472 days. Thus in total he has completed 696 days which is short by 34 days. Learned counsel in support of his arguments relied on the judgment of Madras High Court in WP No. 18272/2001 decided on 26.4.2005 and judgment of Delhi High Court in Ashok Khosla v. UOI & Ors., LPA No. 2047/2006 decided on 31.10.2006.

5. I have given my anxious consideration to the rival submissions and perused the material on record.

6. Promotion appraisal form of the petitioner prepared by the officials of the respondents indicates that petitioner has completed rural service/semi urban assignment of two years. The details were furnished therein. What therefore appears is that in the appraisal report, the computation of period has been made on month to month basis for every completed month, but the respondents are making such computation on day to day basis, which give the differential day of every month. The period of rural service is also substantiated from the service sheet by the respondents produced at Annexure-R/6 with the reply. The fact that is not disputed is that the promotion appraisal form, was the basis for actual promotion of the petitioner on the post of JMGS-I to MMGS-II with effect from 1.8.1990 by order dated 22.8.1990. Petitioner then continued to serve such higher post till he was voluntarily retired on 31.3.2001.

7. In fact, learned counsel for the petitioner has argued that petitioner was always ready and willing to accept the rural assignment. He proceeded to join the rural postings whenever he was required. There is no case set up by the

respondents that whenever petitioner was shifted to rural or semi urban area branches to complete his assignment, he declined to proceed to such postings. It was within the control of the respondents to give rural posting and if the respondent wanted to give further rural posting to the petitioner, they could do so.

8. It was precisely for that purpose that before his promotion with effect from 1.8.1990 that he was required to complete the rural posting and accordingly was posted in rural branch. The authorities having concurred with the fact that rural assessment of the petitioner is complete, which is evident from the promotion appraisal form. He was granted promotion to the post of MMGS-II on that basis. It would be highly unjust and improper on the part of the respondents to now recall the promotion granted to the petitioner as far back as on 1.8.1990 only by adopting the method of day to day computation, rather than the computation made on month to month basis. Difference if at all of any of few days, can be made up by holidays in between. Action of the respondents in recalling order of promotion of the petitioner after his voluntary retirement is thus declared arbitrary and illegal.

9. In view of above discussion, the writ petition deserves to be allowed and is accordingly allowed. The respondents are directed to grant benefit of promotion to the petitioner by treating him to be voluntarily retired on the post of MMGS-II with all consequential benefits together with interest @ 9% per annum.

10. Compliance of the judgment be made within a period of three months from the date copy of this judgment is produced before the respondents.