

(2018) 05 GAU CK 0181
In the Gauhati High Court
Case No : WP(C) 6277 of 2012

MS Joshomayee Devi

APPELLANT

Vs

Indian Institute Of Bank Management And 2 Ors

RESPONDENT

Date of Decision : 25-05-2018

Acts Referred:

Indian Institute of Bank Management Staff Service Rules 1985 — Rule 29

Citation : (2018) 05 GAU CK 0181

Hon'ble Judges : MANOJIT BHUYAN, J

Bench : Single Bench

Advocate : K.N. Choudhury, K K Mahanta

Final Decision : Dismissed

Judgement

1. Heard Mr. K.N. Choudhury, learned Senior Counsel for the petitioner, assisted by Ms. R. S. Choudhury, Advocate as well as Mr. K.K. Mahanta,

learned Senior Counsel representing all the respondents, assisted by Mr. B. Deka, Advocate.

2. Question posed is whether the respondents could retire the petitioner from service with effect from 31.12.2012 on attaining the age of 60 years

despite the claim that she was entitled to be in service up to 31.12.2014 to the age of 62 years.

3. Petitioner joined as Faculty Research Associate at the North Eastern Institute of Bank Management (NEIBM) [now called the Indian Institute

of Bank Management (IIBM)] on 23.09.1985. The IIBM is located at Guwahati and is a Society registered under the Societies Registration Act,

1860. On the date of retirement the petitioner served as an Associate Professor. On 23.11.2012 she was served with the letter informing that she will

be retiring at the close of business of 31.12.2012 in terms of Rule 29 of the Staff

Service Rules of the IIBM. Aggrieved of the fact that she has been made to retire well before attaining the retirement age at 62 years falling on 31.12.2014, the present petition was instituted.

4. In support of the petitioner's case, Mr. K.N. Choudhury submits that the action of the respondents to retire the petitioner at the age of 60 years

is ex facie illegal and a product of non-application of mind. Mr. Choudhury submits that the Institute was set up in the line of the National Institute of

Bank Management, Pune (NIBM) and the Rules, Regulations and Procedures adopted by NIBM are followed by the Institute. As regards the age of

retirement of the Faculty Members of NIBM, the same was enhanced from 60 to 62 years following the Fifth and Sixth Pay Commission's

recommendations. To reinforce the argument that the Institute follows the NIBM model, not only in respect of pay scales but also with regard to other

conditions of service, reference is made to the Agenda Item No. 07 recorded in the 59th Governing Board meeting of IIBM dated 03.07.2009.

Reference is also made to the minutes of the 45th Governing Board meeting of IIBM dated 20.04.1998 where at Agenda Item No. 10.1 the Institute

proposed to implement the pay scale adopted for the employees at NIBM with effect from 01.01.1996 based on the recommendation of the 5th Pay

Commission, as soon as it is adopted by NIBM. From the said Minutes it is also shown that the Governing Board had approved the proposal for the

partial amendment of the Rules on House Furnishing Loan to the effect that if the facility is to be availed of, an employee must have at least 6 (six)

years to go in the service. This aspect is highlighted to connect the same to the House Furnishing loan availed by the petitioner, particulars of which

shows that the loan was sanctioned on 26.11.2009 with the repayment schedule commencing from December 2009 and ending in November 2014.

This is to show that the said loan was sanctioned with clear knowledge of the respondents that the petitioner will be in service until the loan is repaid

by November 2014. On the same issue with regard to House Furnishing loan, reference is made to the Staff Service Rules Circular No. 07/2009-10

dated 28.10.2009 of the Institute, wherein at Clause 2 (i) (b) it is provided that the said House Furnishing loan would be granted to an employee who

has at least 6 (six) years of service to go from the date of the first loan instalment due. The loan having been sanctioned in the year 2009, by

necessary implication and intendment of the aforesaid Circular dated 28.10.2009, it is contended that the petitioner could not have been retired from service in the year 2012. Lastly, it is contended that the retirement of the petitioner before attaining the age of 62 years was actually by way of punishment and the alleged misconduct on her part was made the foundation for the impugned action so taken. In this respect, reference is made to the document at Annexure-6 to the writ petition, which are discussion points made by respondent nos. 1 and 2 with the Deputy Governor of the Reserve Bank of India, charting the demerits of the petitioner to the extent that she is without any competency or aptitude to teach Banking related subjects, that she has a chronic problem of late attendance, penchant for non-observance of office code of conduct, has behavioural problems with colleagues, aggressive behaviour etc. On this, it is contended that the petitioner was made to retire on ground other than Rule 29 of the IIBM Staff Service Rules.

5. Arguments advanced on behalf of the petitioner have been rebutted by Mr. K.K. Mahanta, learned senior counsel for the respondents. With reference to the submissions made, this Court notices that IIBM is an independent entity, being a Society registered under the Societies Registration Act, 1860 and having its own Memorandum of Association and Rules. The management of the affairs of the Society are entrusted on the Governing Board, the constitution and tenure of which is provided in Clause 11 of the Memorandum of Association. The powers and functions of the Governing Board are also outlined, particularly at Clause 13 (d), which vests power on the Board to determine the duties and conduct, salaries and allowances and other conditions of service of officers and other employees of the Society. The conditions of service are governed and specified under the IIBM Staff Service Rules, 1985, as amended from time to time. Rule 29 thereof relating to retirement provides as follows:

â??29. An employee shall retire from the service of the Institute on attaining the age of sixty years or on completion of 33 (thirty three) years of service whichever is earlier unless he/she has been given an extension of service in accordance with the rules that may be prescribed in this regard by the Board of Governors from time to time.

Provided that no employee may be granted extension of service by the Institute

beyond sixty five years. Granting of extension of service beyond sixty five years will be at the absolute discretion of the Board of Governors and cannot be claimed as a matter of right by an employee. â??

The above Rule 29 remained as it is until November 2013. It was only from December 2014 that an amendment was brought about by deleting the sentence â??or on completion of 33 (thirty three) years of service whichever is earlierâ?. For the purpose of this case, the petitioner was governed under Rule 29 as it existed up to November 2013, which clearly provided the age of retirement on attaining the age of sixty years or on completion of 33 years of service, whichever was earlier. There is no dispute to the fact that the petitioner attained the age of sixty years on the date when she was made to retire in the year 2012. There is no issue on extension of service in the present case.

6. Having noticed the Memorandum of Association and the IIBM Staff Service Rules, 1985, it is seen that the petitioner was appointed at NEIBM (now IIBM) on 23.07.1985 as a Faculty Research Associate and the appointment letter so issued clearly stated that her appointment and service will be governed by NEIBM Staff Service Rules, copy of which was also enclosed to the appointment letter. As alluded to above, the IIBM prior to the year 2003 was known as the North East Institute of Bank Management (NEIBM). The offer of appointment was duly accepted and the petitioner joined Office on 23.09.1985. The retirement notice dated 23.11.2012 also clearly mentioned that the petitioner will be retiring at the close of business of 31st December 2012 in terms of Rule 29 of the Staff Service Rules of the Institute. The reference to Rule 29 and the age of retirement at 60 years have also been categorically stated in the affidavit-in-opposition filed by the respondents.

7. As regards the contention on House Furnishing loan, it is seen that the requirement of at least six years of service is also subject to relaxation in the case of employees who have less than six years of service if such employee gives an undertaking that the loan amount shall be refunded in full in equal monthly instalments within the service period available. This relaxation is clearly provided in Clause 2 (i) (b) of the aforesaid Staff Service Rules Circular dated 28.10.2009. In fact, for availing the House Furnishing loan, the petitioner had given an undertaking on 27.11.2009 that in the event of

her ceasing to be an employee of the Institute, the outstanding amount may be adjusted from her gratuity and provident fund benefits. As such, the

contention of the petitioner of the requirement of at least six years of service for availing House Furnishing loan is not a concluded, rigid or inflexible

requirement. On the Agenda Item No. 07 discussed in the 59th Governing Board meeting of the Institute dated 03.07.2009, it is seen that the same

relates to following the NIBM model only in respect of the revised pay scale for the members of the staff.

The said Agenda Item cannot be construed to indicate that the NIBM model is followed by IIBM even in respect of the other conditions of service. If

the proposition advanced by the petitioner is accepted, the only conclusion will be that the IIBM Staff Service Rules, 1985, as amended from time to

time, would be without any meaning or substance and would only remain as a piece of paper. This is too far-fetched a proposition. Lastly, the

document at Annexure- 6 of the writ petition, which are the discussion points for the meeting held with the Deputy Governor, this Court is in no way

convinced that the same takes the character of an official document and/or that it had any relation to the decision-making process of retiring the

petitioner on attaining the age of sixty years. To reiterate, the petitioner was retired from service in strict terms of Rule 29 of the aforesaid IIBM Staff

Service Rules, 1985, which finds due mention in the retirement notice itself.

8. For all the discussion and findings above, I find no merit in the writ petition. The Notice dated 23.11.2012 informing the petitioner that she would be

retiring at the close of business on 31.12.2012, followed by the Office Order No. 63 dated 18.01.2013 declaring her retirement from service on

attaining the age of sixty years at the close of business on 31st December 2012, are valid in the eye of law and does not call for any interference. In

the result, the writ petition stands dismissed, however, without any order as to cost.