
(2003) 08 MAD CK 0164

In the Madras High Court

Case No : Writ Petition No"s. 6691 of 1996 and W.M.P. No"s. 3572, 10350, 18596 of 1996 and 18597 and 27476 of 1997

N. Eswaran

APPELLANT

Vs

State Bank of India

RESPONDENT

Date of Decision : 14-08-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 08 MAD CK 0164

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

Advocate : S. Viswanathan, for the Appellant; P. Sukumar, for Respondents 1-2, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Misra, J.—The petitioner joined service under State Bank of India, the respondent No.1, on 1.10.1962 and was confirmed in service with effect from 1.4.1963 and was promoted as a Record Keeper in 1980 and subsequently retired as such from services with effect from 31.1.1984. After his retirement, the petitioner made a query regarding pensionary benefit. By letter dated 12.10.1984, he was intimated that he was not eligible for admission into Bank's Pension Fund Scheme in terms of the provisions contained in the Pension Fund Rules." A similar communication was again on 7.5.1985. Undaunted by such communications, the petitioner went on making correspondence, culminating in filing representation in the grievance cell of the Minister of Finance, but in vain. Ultimately, the petitioner has filed the present writ petition for quashing the communications dated 12.10.1984 and 7.5.1985 and for a direction to the respondents to grant and pay the pension with effect from 1-2-1984.

2. It is the contention of the petitioner that even though he was not eligible to get the pension as per the rules at the time of his retirement, by virtue of subsequent amendment to the rules, the benefit is available to the petitioner and

denial of such benefit to the petitioner is discriminatory.

3. As per the relevant Rule relating to eligibility for pension, no employee was eligible to get pension if he was over the age of 35 at the time of his entry into service. Subsequently by an amendment made on 26.3.1987, the aforesaid age was increased to 38.

4. The petitioner has contended that though he was over 38 years at the time of his initial recruitment in the bank, the fixing of maximum age at 35 years which was subsequently enhanced to 38 years in 1987 has no reasonable nexus with the object to be achieved and since the petitioner has completed 20 years of service, he is entitled to get the pension notwithstanding the fact that he was more than 38 years at the time when he joined the service. It has been further contended by the petitioner that subsequently a Rule has been introduced relating to reimbursement of the medical expenses to the pensioners and the eligibility period has been reduced to 10 years of pensionable service. It has been submitted that the petitioner is also being deprived of getting the benefit of such reimbursement. The petitioner has further contended that the Bank's General Regulation 55(2)(e) provides that there is power to grant pension to officers and other employees leaving the service of the State Bank and such power should have been invoked in the case of the petitioner as it had been done in the case of many others including very high ranking officers who have left the services of the bank. It has been further submitted that subsequently by amendment dated 14.12.1997, the eligibility age in clause (c) of Rule 8 has been raised to 48 and the petitioner should be given the benefit of such amended provision.

5. A counter affidavit has been filed on behalf of the respondents wherein while not denying the basic allegations, it has been asserted that petitioner was not paid pension as he was paid gratuity which is payable to the employees who are not granted pension. It has been indicated that at the time when the petitioner retired from service he was not eligible to become a member of the Fund as at the time of recruitment admittedly the petitioner was more than 35 years. It has been further indicated that even after the subsequent amendment raising maximum age to 38, the petitioner was not eligible as he had joined the service at the age of 38 years and 9 months. The allegation relating to discriminatory treatment while exercising the power under General Regulation 55(2)(e) has been denied. The respondents have also raised the question of laches on the part of the petitioner.

6. Learned counsel appearing for the petitioner has submitted that in view of the latest amendment to the Rules enhancing the maximum age of entry into service to 48, the petitioner should have been held eligible to get pension, if not earlier, atleast from the date when the amendment took place. It has been submitted that in view of the decision of the Supreme court in 1983 SC 130 (D.S. NAKARA AND OTHERS v. UNION OF INDIA), the respondents cannot discriminate against the petitioner by not giving him the benefit of such amended provision.

7. The aforesaid contention of the petitioner even though attractive on the face of it, is not acceptable on deeper scrutiny in the light of the subsequent decision of the Supreme Court reported in *V. Kasturi Vs. Managing Director, State Bank of India, Bombay and Another*, . In the aforesaid decision of the Supreme Court, after considering all the relevant decisions, the following observations were made :-

" . . . 27. It is now time for us to take stock of the situation. From the aforesaid resume of relevant decisions of this Court spread over years to which our attention was invited by learned counsel for the respective parties, the following legal position clearly gets projected.

Category I

28. If the person retiring is eligible for pension at the time of his retirement and if he survives till the time by subsequent amendment of the relevant pension scheme, he would become eligible to get enhanced pension or would become eligible to get more pension as per the new formula of computation of pension subsequently brought into force, he would be entitled to get the benefit of the amended pension provision from the date of such order as he would be a member of the very same class of pensioners when the additional benefit is being conferred on all of them. In such a situation the additional benefit available to the same class of pensioners cannot be denied to him on the ground that he had retired prior to the date on which the aforesaid additional benefit was conferred on all the members of the same class of pensioners who had survived by the time the scheme granting additional benefit to these pensioners came into force. The line of decisions tracing their roots to the ratio of *Nakara's* case (supra) would cover this category of cases.

Category II:

29. However, if an employee at the time of his retirement is not eligible for earning pension and stands outside the class of pensioners, if subsequently by amendment of relevant pension Rules any beneficial umbrella of pension scheme is extended to cover a new class of pensioners and when such a subsequent scheme comes into force the erstwhile non-pensioner might have survived, then only if such extension of pension scheme to erstwhile non-pensioners is expressly made retrospective by the authorities promulgating such scheme; the erstwhile non-pensioner who has retired prior to the advent of such extended pension scheme can claim benefit of such a new extended pension scheme. If such new scheme is prospective only, old retirees non-pensioners cannot get the benefit of such a scheme even if they survive such new scheme. They will remain outside its sweep. The decisions of this Court covering such second category of cases are : *Commander, Head Quarter, Calcutta & Others V. Capt. Biplabendra Chanda*, JT 1996 SC 242 (supra) and *Government of Tamil Nadu and another Vs. K. Jayaraman*, and others to which we have made a reference earlier. If the claimant for pension benefits satisfactorily brings his case within the first

category of cases he would be entitled to get the additional benefits of pension computation even if he might have retired prior to enforcement of such additional beneficial provisions. But if on the other hand the case of a retired employee falls in the second category, the fact that he retired prior to the relevant date of coming into operation of the new scheme, would disentitle him from getting such a new benefit."

8. In the present case, at the time when the petitioner entered into service he was not eligible to become a member of the Pension fund as he was 38 years and 9 months, whereas as per the Rules a person entering into service before the age of 35 could become a member of the Fund. Subsequently, the relevant rule was liberalised in 1987 and the upper age limit was increased to 38. At that stage also the petitioner, who had already retired from service and had been paid gratuity as he was not eligible to get pension, was not entitled to be included as a member of the Fund as he was over the age of 38 by the time entered the service. It is no doubt true that with effect from 14.2.1997 SBI Pension Fund Rules was further amended and the upper age limit has been enhanced to 48 years. However, such provision has no retrospective effect and as such is not applicable to the persons who had already retired prior to the said date.

9. The case of the petitioner squarely comes within the category-II as indicated in the decision of the Supreme Court in Kasturi's case (*supra*). The petitioner who was not eligible to be a member of the Fund at the time of retirement, cannot claim the benefit of the subsequent amendment. The amendment introduced in 1997 is prospective in nature, and therefore, the petitioner is not entitled to the benefit of such amendment and his representations had been rightly rejected.

10. The contention of the respondents that the writ petition is also liable to be rejected on the ground of laches is also worthy of acceptance. The petitioner retired from service in January 1984. It was made known to him in the year 1985 that he was not eligible to receive pension. The writ petition has been filed more than a decade after the cause of action arose. The making of repeated representations by the petitioner is of no use. In the facts and circumstances, there is no escape from the conclusion that the writ petition is liable to be rejected on the ground of laches.

11. For the aforesaid reasons, I do not find any merit in this writ petition, which is accordingly dismissed.

No costs. Consequently, the connected miscellaneous petitions are closed.