(2013) 09 P&H CK 0354

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 11554 of 2010 (O and M)

Om Parkash Joshi APPELLANT

Vs

Punjab National Bank and Others RESPONDENT

Date of Decision : 25-09-2013

Acts Referred:

Citation : (2014) 1 SCT 552

Hon'ble Judges : Ajay Tewari, J

Bench : Single Bench

Advocate : Sanjeev Sharma, for the Appellant; J.P. Rana, for the Respondent

Final Decision : Allowed

Judgement

Ajay Tewari, J.—C.M. No. 13796 of 2013 C.M. is allowed and replication is taken on record.

C.W.P. No. 11554 of 2010

The claim in the present writ petition is for grant of pension.

The petitioner joined the service of the bank on 12.12.1978 and sought voluntary retirement which was allowed w.e.f. 28.2.1999. His claim for pension was, however, declined on the ground that during his service he remained on leave without pay for 10 months and 13 days and, thus, he rendered 19 years 4 months and 4 days of qualifying service and consequently, he was not entitled to pension in view of Regulation 29(1) of the Punjab National Bank (Employees) Pension Regulations, 1995 (for short "the Regulations").

2. Regulation 29(1) of the Regulations is quoted herein below:-

29(1) On or after the Ist 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.

3. Counsel for the petitioner has relied upon regulations 14 and 17 of the

Regulations, which are to the following effect:-

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.

17. Counting of periods spent on leave.- All leave during service in the Bank for which leave salary is payable shall count as qualifying service;

Provided that extraordinary leave on loss of pay shall not count as qualifying service except when the sanctioning authority has directed that such leave not exceeding twelve months during the entire service, may count as service for all purposes including pension.

4. It is his contention that firstly under regulation 14, any person with 10 years service is entitled to pension. In the alternative, he has argued that under regulation 29(1), the petitioner could not have been permitted to retire voluntarily if he did not have 20 years of service and by giving him permission, it would be deemed that period for his leave without pay has been permitted to be counted for pension atleast to the extent that his service amounts to 20 years. As per him, if the respondent-bank had not intended to give the benefit of regulation 17 of the Regulations, his application for voluntary retirement could not have been allowed.

5. Counsel for the respondents has argued that the petitioner retired in the year 1999 and has approached this Court after a delay of 11 years.

6. Counsel for the petitioner has countered this by arguing that pension is a recurring right and, therefore, the claim of the petitioner cannot be denied only on the ground of delay and this Court can modulate the relief.

7. In my opinion, the arguments raised by counsel for the petitioner have to be accepted. If the petitioner did not have 20 years of service, he could not have retired voluntarily and consequently having permitted him to seek retirement voluntarily, it would be deemed that the respondent-bank has given the benefit of regulation 17 of the Regulations at-least to the extent of completing his service of 20 years. Once that is so, the petitioner would also be entitled to the benefits conferred by regulation 29(5) of the Regulations which is to the following effect:-

5) The qualifying service of an employee retiring voluntarily under this regulation shall be increased by a period not exceeding five years, subject to the condition that the total qualifying service rendered by such employee shall not in any case exceed thirty-three years and it does not take him beyond the date of superannuation.

In these circumstances, this writ petition is allowed and it is held that the petitioner is entitled to pension as well as benefit of regulation 29(5) of the

Regulations. Consequently, the respondents are directed to compute the pension and start paying the same to the petitioner within a period of three months from the date of receipt of a certified copy of this order. The petitioner is also entitled for arrears of 38 months prior to the filing of this writ petition. It is further directed that arrears be paid to the petitioner within the aforesaid period, failing which he would be entitled to recover the same with interest @ 8% pa from the date/s the amount/s fell due till the date of payment. The petitioner would also be entitled to costs of Rs. 10,000/-.