(2016) 04 AHC CK 0003

In the Allahabad High Court

Case No : Writ Petition No. 2200 of 2003 (S/S).

Ram Chandra Singh APPELLANT

Vs

State Bank of India and Others RESPONDENT

Date of Decision : 29-04-2016

Acts Referred:

Constitution of India, 1950 — Article 226
State Bank of India Employees Pension Fund Rules, 1955 — Rule 22, 50

Citation : (2016) 6 AllLJ 654 : (2016) 2 CLR 452

Hon'ble Judges : Devendra Kumar Arora, J.

Bench : Single Bench

Advocate : H.G.S. Parihar, Senior Advocate assisted by Rakesh Kumar Singh, Advocate, for the Appellant; Gopal Kumar Srivastava, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Devendra Kumar Arora, J. - Heard Sri H.G.S. Parihar, Senior Advocate assisted by Mr. Rakesh Kumar Singh for the petitioner and Sri Gopal Kumar Srivastava, appearing for the respondents Bank.

2. Ram chandra Singh-Petitioner has filed instant writ petition inter-alia for quashing the order dated 29.5.2001 [contained in Annexure-7 to the writ petition] whereby petitioner was informed that according to the instructions received from the controlling authority since the petitioner had not completed the prescribed period of service under the Pension and Provident Fund Rules, he was not eligible for pension. The petitioner has also assailed the order dated 18.4.2002 passed on the representation of the petitioner whereby it was informed that in terms of the instructions contained in O.M. No.28/24/94-P and PW(B) dated 30.5.1995, the petitioner was not entitled for reckoning the period of service rendered by him in the Armed Forces towards pensionable service.

3. Brief facts of the case as culled out from the pleadings of writ petition, are that the petitioner-Ram Chandra Singh is a retired ex-servicemen and upon

retirement from Armed Forces, he was re-employed in State Bank Of India at its M.G. Marg, Kanpur Branch as a temporary Guard from 31st December 1974, where he worked for 3 years 2 months and 29 days upto 31/8/1978. Thereafter, the petitioner was selected and appointed as a permanent Watchman with combined designation vide Memorandum dated 14/8/1978 initially on probation for a period of six months. After completion of probation, the petitioner was made confirmed and thereafter he was transferred to Zonal Office,Lucknow/. By passage of time, the petitioner was promoted to the post of Head Messenger on which the petitioner continued till his retirement under the State Bank Of India Voluntary Retirement Scheme (hereinafter referred to as "SBIVRS"). According to the petitioner, he had completed total period of 24 years 11 months and 29 days as against the total qualifying period of 10 years of eligibility for pension in terms of the provisions contained in Annexure-1 and Annexure-2 to the writ petition.

4. It has been contended by the petitioner that he had completed more than 53 years of age and apparently the documents that is Annexures 1 and 2 to the writ petition, does not reveal any distinction among normal retirees and/or the retirees under SBIVRS, so the petitioner had opted for voluntary retirement and submitted his application for retirement in response to the Circular dated 30/12/2000 contained in Annexure-1. Therefore, the decision of not giving pension to the petitioner is bad in the eye of law because ever since the petitioner had opted for SBIVRS on 15/01/2002, he was never told that he will not be entitled for pension after retirement, had he been so advised, the petitioner would have withdrawn his option. However,after accepting the petitioner''s application for retirement respondent no-4 vide his letter no R-IV/138, dated 29/05/2001 contained in Annexure-7, impugned in the present writ petition, informed the petitioner that according to the instructions received from the Controlling Authority he would not be entitled for pension since the petitioner had not completed prescribed period of service under the Pension and Provident Fund Rules and cancellation of his retirement was also not possible.

5. Learned Counsel for the petitioner has contended that denial of pension to the petitioner, who has duly been admitted to the Bank''s Pension Fund and a certain percentage of his Basic Salary and identified allowances having been credited to the Trust created for the purpose on month-to-month basis, is wholly unjustified and it amounts to breach of trust.

6. It has been also contended that the petitioner has been discriminated against other SBIVRS optees and the action of the respondents in denying the pension to the petitioner is hit by article 14 and Article 16 of the Constitution Of India.

7. Lastly, it has been urged that denial of pension to the petitioner in the old age has put him and his family in great financial stringency making it practically impossible for the petitioner to arrange morsel of food for the family.

8. Rebutting the assertions of the petitioner, Counsel for the Bank has submitted that the Central Board of Directors in its meeting held on 27/12/2000 had

accorded approval for adopting and implementing the VRS for the employees of the State Bank Of India. Paragraph-7 of the Scheme lays down that the Bank intended to control the outflow according to its requirement, reserved its right and also retained the discretion to limit the number of employees allowed to retire in each category of staff; viz the Bank also held its discretion to the acceptance or the rejection of the request for retirement under SBIVRS depending upon the requirement of the Bank. It was also declared that in case of any dispute as to the interpretation of any of the terms and conditions of the scheme the decision of the Bank shall be final and binding on all parties. The Bank had also reserved the right to modify, amend or cancel any or all clauses and to give effect thereto from any day it may deem fit.

9. It has been pointed out that in Lucknow L.H.O staff/circular letter no CDO/87 of 2000-2001 dated 15/01/2001, has provided in clause-3 that as per existing Rule, an employee who has not completed 20 years of pensionable service is not eligible for pension whereas petitioner had completed period of 19 years 3 months and 3 days i.e less than 20 years.

10. Clarifying the position, it has been argued that the claim of petitioner of having completed 24 years service is totally misconceived as total period of service with probation of six months was 22 years 7 months 18 days and he had taken extra ordinary leave without pay of 1045 days. The period of probation and leave without pay is not included in the total service as per Rule. In clause ''0''of sub Rule-2 of Rule 50 of the State Bank of India Employees Pension Fund Rules it has been provided that an employee is entitled to pension benefit under the terms and conditions of his service from the date on which he is confirmed in the service of the Bank in case of employee who joined the Bank as clerical and subordinate employee. It has further been laid down that no period of absence without leave shall be counted as pensionable service. It has been pointed out that although the petitioner had completed 10 years of service but he did not attain 60 years age at the time of his retirement, which is necessary in terms of amended Rule 22(1) of Pension Fund Rules, hence he was not found eligible for pension. It has also been mentioned in Staff Circular letter no. 71 of 1985 of the Bank that, if a person who has opted for VRS and if, he is ineligible to draw pension shall not be entitled to receive leave encashment also. These instructions are applicable to all the optees of SBIVRS. In these circumstances, the petitioner was not found eligible either for leave encashment or for pension.

11. To strengthen his aforesaid assertions, learned Counsel for the Bank has placed reliance on Arikaravula sanyasi Raju v. Branch Manager,State Bank of India, Visakhapatnam (A.P) and others,(1997)1 SCC 256; Bank Of Baroda and others v. Ganpat Singh Deora (2009) 3 SCC 217; V. Katuri v. Managing Director ,State Bank of India,Bombay and another (1998) 8 SCC 30; United Bank of India v. Pijush Kanti Nandy and others (2009) SCC 605.

12. There is no doubt on the point that an employee is governed by the Rules and Regulations of an Institution in which he is employed. After careful scrutiny

of record, it comes out that there is no quarrel to the fact that the petitioner was 51 years 7 months and 20 days of age at the time when he took retirement under State Bank of India Voluntary Retirement Scheme on 31/3/2001.

13. At this juncture, it would be useful to refer that the State Bank of India Employees Pension Fund Rules [in short referred to as ''Pension Rules''] were framed by the Central Board in exercise of the powers conferred by Section 50 of the State Bank of India Act. Rule 22 of the Pension Rules prescribes as under :-

(i) that a member shall be entitled to a pension under these rules on retiring from the bank''s service on following condition-

(a) after having completed twenty years pensionable service provided that he has attained the age of 50 years;

14. Under the heading ''Pension'', the eligibility with regard to entitlement for pension has been dealt with and clause(a) provides:-

"every permanent employee of the Bank who is entitled to pension benefits under the terms and conditions of his service shall became a member of the Pension Fund Rules on the date on which he is confirmed in the service of the Bank in case of employees who joined the Banks in clerical cadre."

15. Under the heading ''Pensionable Service'', it has been laid down that no period of leave granted without leave salary shall be counted as pensionable service. Clause-a, which is relevant is reproduce hereunder:-

"no period of leave granted without leave salary on absence without leave shall count as pensionable service."

16. Thus in view of the aforesaid Rules, the petitioner though completed ten years of service but did not attain 60 years age at the time of his retirement, which is necessary in terms of amended Rule 22(1) of the Pension Rules. In other words, the petitioner had neither completed twenty years pensionable service nor had attained the age of 60 years at the time of his retirement. The detail of petitioner''s service has been given in paragraph 11 of the counter affidavit.

17. It may be noted that Voluntary retirement Scheme is a package by itself. There is no compulsion on the employees of the Bank to accept the said scheme. It is open for them to continue to work with Bank and after completing the requisite years of service be entitled to pension. However, if an employee chooses to opt for the Scheme and takes benefits under the Scheme then it is not open to him to claim certain benefits like pension, for which he is not entitled as per Pension Fund Rules.

18. With regard to entitlement of pension in respect of bank employee, the Apex Court in Arikarvula Sanyasi Raju v. Branch Manager, State Bank Of India, Visakhapatnam (A.P.) and others, (1997) 1 SCC 256 held in para 5 as under :-

"Clause 22(i)(c) envisages only that after completing 20 years of pensionable service, if an incumbent retired at his request in writing and was permitted to retire, he would be entitled to pension. In other words, for voluntary retirement, on completion of 20 years of pensionable service, clause (c) of Rule 22(1) gets attracted. It does not apply to an officer who was removed from service for misconduct. Under these circumstances, the High Court has not committed any error of law warranting interference. Merely because, on a wrong advice, another employee was given pension after removal from service, the same cannot be made a ground under Article 14 to perpetuate the same mistake. So, Article 14 does not apply and no discrimination arises."

19. Similarly, in the case of Bank of Baroda and others v. Ganpat Singh Deora (2009)3 SCC 217, it was held in para 33 by the Apex Court that:-

"we are,therefore, of the view that not having completed the required length of qualifying service as provided under Regulation 28 of the 1995 Regulations,the respondent was not eligible for pension under the Pension Regulations, 1995 of the appellant Bank."

20. For the reasons aforesaid, this Court holds that there is no infirmity in the impugned orders issued by the respondent-Bank as the petitioner having not completed 20 years, is not entitled for pension and the period of temporary service cannot be taken into account for grant of pension. An employee, as noticed hereinbefore, was entitled to pension provided he has completed the specified period of service. How such a period of service would be computed is a matter which is governed by the statute and authorities cannot act in violation of statutory provisions.

21. For the reasons aforesaid, the writ petition being devoid of merits is hereby dismissed. Costs easy.

