(2012) 08 P&H CK 0045

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 716 of 2011 (O and M)

U.K. Walia APPELLANT

Vs

Punjab National Bank and Others RESPONDENT

Date of Decision : 16-08-2012

Acts Referred:

Punjab National Bank (Employees) Pension Regulations, 1995 — Clause 2(d), Clause 35

Citation : (2013) 1 SCT 338

Hon'ble Judges : Rajesh Bindal, J

Bench : Single Bench

Advocate : Rohit Ahuja, for the Appellant; Santosh Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Rajesh Bindal, J.—The petitioner, who retired as Chief Manager from the Punjab National Bank, has approached this court praying for

quashing of the orders dated 23.4.2010 and 7.8.2010, whereby his request for re-fixation of pension has been declined. Briefly the facts are that

the petitioner joined the Punjab National Bank as Clerk on 14.2.1973. During his career, he got due promotions. Lastly he was promoted as Chief

Manager (SMG Scale-IV) on 17.6.2006. He was transferred to Punjab Gramin Bank, Kapurthala and posted there as General Manager on

deputation with effect from 10.2.2006. It is further pleaded that General Managers of Regional Rural Banks were to be paid salary and allowances

of next higher grade for the period of deputation. It was also mentioned that on his reversion back to the parent cadre, his salary was to be re-fixed

in the substantive scale. The petitioner worked as General Manager in the Punjab Gramin Bank from 10.2.2006 to 4.1.2010. He retired on

attaining the age of superannuation on 31.1.2010. It is further pleaded that as per the pension payment order his pension was fixed at Rs. 12,380/-

per month by taking his last 10 months salary as he would have drawn in case in service with Punjab National Bank. The petitioner raised

objections to the same, but his representations were rejected vide impugned orders.

2. Learned counsel for the petitioner while referring to clauses 2 (d), (e), 35 and 38 of the Punjab National Bank (Employees'') Pension

Regulations, 1995 (for short, ''the Pension Regulations''), submitted that pension of an employee is to be calculated on the basis of average

emoluments drawn by him for a period of ten months prior to his retirement from service in the bank. In the present case, though the petitioner had

been drawing emoluments of Rs. 27,240/- per month, however, still his pension has been fixed by taking monthly emoluments for last months @

Rs. 24,760/-, which is in contravention of the aforesaid Pension Regulations. He further submitted that any instructions issued by the bank which

run contrary to the Pension Regulations cannot be relied upon for the purpose of determination of pension to be drawn by the petitioner. The

instructions cannot override the Pension Regulations. The Pension Regulations have been framed in exercise of powers conferred by the Banking

Companies (Acquisition and Transfer of Undertakings) Act, 1970 in consultation with the Reserve Bank of India and with the previous sanction of

the Central Government. In support of his arguments, he relied upon a judgment of Hon''ble the Supreme Court in Uday Pratap Singh and Others

Vs. State of Bihar and Others,

3. On the other hand, learned counsel for the respondent-bank submitted that the petitioner was sent on deputation to Punjab Gramin Bank where

as per the terms, he was to draw higher pay. It is so mentioned in the letter, Annexure P-1. It was a kind of incentive to the post to which the

petitioner was sent on deputation. It was not a cadre post. His substantive designation was of Chief Manager whereas he was sent on deputation

as General Manager with the Punjab Gramin Bank.

4. Learned counsel for the respondent-bank further submitted that the issue regarding calculation of pension for the employees of the bank who

were sent on deputation to the Regional Rural Banks was not clear in the Pension Regulations. The same was clarified vide communication dated

11.1.1999 clearly providing that the Government of India, Ministry of Finance (Banking Division) has advised that the pension is to be calculated

on the basis of substantive pay of an officer which he would have drawn in the parent cadre, but for his deputation. That shall be taken as pay for

calculation of ''average emoluments'' and not what is actually drawn by him in the higher scale in the loanee organisation or bank. In the present

case, the petitioner was sent on deputation to Punjab Gramin Bank in a higher scale to which he was not otherwise entitled to, had he been posted

in any Branch of the Punjab National Bank as per his substantive designation. There is no question of overriding the Pension Regulations as the

same being silent on the issue, it has been clarified by issuing the instructions. The same do not run contrary to the provisions of the Pension

Regulations. In support of his arguments, reliance was placed upon a judgment of Hon''ble the Supreme Court in The Joint Action Committee of

Airlines Pilots Associations of India and Others Vs. The Director General of Civil Aviation and Others,

5. Heard learned counsel for the parties and perused the paper-book.

6. The relevant clauses of the Pension Regulations are extracted below:-

2(d) ""average emoluments"" means the average of the pay drawn by an employee during the last ten months of his service in the Bank;

(e) ""Bank"" means Punjab National Bank mentioned under column 2 of THE FIRST SCHEDULE OF THE Act;

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35. Amount Of Pension

1) Basic pension and additional pension, wherever applicable, shall be updated as per the formulae given in Appendix-I.

2) In the case of an employee retiring in accordance with the provisions of the Service Regulations or Settlement after completing a qualifying

service of not less than thirty three years the amount of basic pension shall be calculated at fifty percent of the average emoluments.

3) a) Additional pension shall be fifty per cent of the average amount of the allowances drawn by an employee during the last ten months of his

service;

b) No dearness relief shall be paid on the amount of additional pension.

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38. Determination Of The Period Of Ten Months For Average Emoluments

1) The period of the preceding ten months for the purpose of average emoluments shall be reckoned from the date of retirement.

7. The letter dated 14.2.2006 (Annexure P-1) placed on record by the petitioner shows that he was to get salary in the Punjab Gramin Bank in a

grade higher than he was getting in the Punjab National Bank. It has been specifically mentioned therein that Chairman and General Managers of

Regional Rural Banks shall be paid salary and allowances of the next higher grade for the period of deputation. Such fixation shall not confer any

other benefit than the temporary monetary gain in the basic pay and DA for the specific period of deputation. The relevant part of the aforesaid

letter is extracted below:-

Incentive for RRB Deputation-Re-fixation of salary. It has been decided that Chairman & General Managers of RRBs shall be paid salary and

allowances of the next higher grade for the period of deputation. Their salary will be regulated in a manner as the salary is fixed when officer is

placed in the immediate higher grade. Such fixation shall not confer any other benefit than the temporary monetary gain in the basic pay and DA

and other attendant/consequential benefits for the specific period of deputation to RRBs. The officer shall not be entitled to any perquisites of the

higher scale and that on his reverting back to the parent organization his salary shall be re-fixed in his substantive scale.

8. A perusal of the aforesaid letter further shows that the petitioner had been sent on deputation. The Pension Regulations, as have been referred

to, provide that an employee retiring after completing a qualifying service of not less than thirty three years shall be entitled to pension calculated at

fifty percent of the average emoluments. The term ''average emoluments'' has been defined in Clause (d) of the Pension Regulations to mean the

average of the pay drawn by an employee during the last ten months of his service in the Bank. The Bank has also been defined as Punjab National

Bank. The parent bank of the petitioner is Punjab National Bank, who is his employer. The substantive post of the petitioner in the bank was Chief

Manager in terms of which he was drawing salary of Rs. 24,760/- with basic pay of Rs. 24,140/- + Rs. 620/- (fixed personal allowance). As the petitioner was sent on deputation to Punjab Gramin Bank, as an incentive he was designated as General Manager and was paid salary in a grade

higher than the grade in which he was getting salary in the Punjab National Bank. The petitioner had been drawing salary of Rs. 27,240/- with

basic pay of Rs. 26,620/- while serving with the Punjab Gramin Bank.

9. The contention of learned counsel for the petitioner is that his actual last drawn salary should be taken for the purpose of calculation of his

pension, whereas the stand of the respondents is that the petitioner had been sent on deputation to Punjab Gramin Bank where as an incentive, he

was paid higher scale of pay, is not entitled to draw any benefit therefor for calculating his retiral benefits as the same had been clarified to the

petitioner at the very initial stage.

10. From a perusal of the communication, Annexure P-1, which provides for incentives for postings in Regional Rural Banks it is evident that

payment of salary in a grade higher than the entitlement of an employee while serving in the bank was temporary. It was limited to the period of

deputation, specifically providing therein that it will not confer any right on him. Further clause 2 (d) of the Pension Regulations provides that

average emoluments are the average of the pay drawn by an employee during the last ten months in the bank. The bank has been defined to be

Punjab National Bank. In nine out of last ten months of his service before retirement, the petitioner was not serving in the Punjab National Bank.

He had been sent on deputation to Punjab Gramin Bank where as an incentive he was paid higher pay.

11. As the regulations were not clear on the issue regarding determination of pension in a case where an employee was getting higher pay while on

deputation, issue was clarified vide circular dated 11.1.1999. It is specifically mentioned in the aforesaid circular that the average emoluments in

such circumstances would mean the pay which an employee of the bank would have drawn in the parent bank but for his deputation. It has further

been mentioned in the aforesaid circular that the same has been issued in terms of the advise of the Government of India, Ministry of Finance

(Banking Division). In these circumstances, it cannot be said that the circular runs contrary to the provisions of the Pension Regulations rather it is

supplemental. It only clarifies a point which has not been dealt with in the

Pension Regulations. It is not in dispute in the present case that the

pension of the petitioner has been calculated in terms of the salary, the petitioner would have drawn in the parent bank namely Punjab National

Bank. The petitioner cannot be given any benefit of the higher grade given to him as incentive while on deputation with Punjab Gramin Bank.

For the reasons mentioned above, I do not find any merit in the present writ petition. Accordingly, the same is dismissed.

