(2005) 06 GAU CK 0040

In the Gauhati High Court

Case No : WP (C) No. 50 of 2004

Zanghinglova APPELLANT

Vs

State Bank of India and Others RESPONDENT

Date of Decision : 08-06-2005

Acts Referred:

Industrial Disputes Act, 1947 — Section 2
State Bank of India Employees Pension Fund Rules, 1955 — Rule 20, 22(1), 7, 9

Citation : (2005) 3 GLR 704 : (2006) GLT 130 Supp : (2006) 1 LLJ 805

Hon'ble Judges : B.P. Katakey, J

Bench : Single Bench

Advocate : George Raju and Ricky Gurung, for the Appellant; M.M. Ali, for the Respondent

Judgement

B.P. Katakey, J.—By the present writ petition the petitioner, who was serving in a Grade-IV post of Messenger in the State Bank of India, Kolasib Branch, has challenged the order dated 21.5.2004 passed by the respondent No. 2, namely, Asstt. General Manager, State Bank of India, Aizawl refusing to pay the pensional benefit under the provision of the State Bank of India Employees Pension Fund Rules, 1955 (hereinafter referred as ''Pension Rules'') and also the benefit of encashment of balance of Privilege Leave, upon opting for voluntary retirement under the voluntary retirement scheme of the State Bank of India.

2. Pacts leading to the filing of the present writ petition are that the petitioner was initially engaged on muster roll basis and thereafter appointed as Messenger in Aizawl branch on 10.10.1980 and confirmed with effect from 10.4.1981. After confirmation he was transferred to Kolasib branch. While the petitioner was serving as Messenger a Voluntary Retirement Scheme was floated by the Management of the bank. The petitioner who fulfills the requisite conditions under the said scheme opted for voluntary retirement and accordingly the voluntary retirement was given to the petitioner under the scheme with effect from 31.3.2001 vide order dated 23.3.2001. The petitioner after availing the said

benefit under the scheme has filed an application before the authority for payment of the pension under the pension rules and also the benefit of leave encashment of privilege leave for sixty one days. The said request was turned down by the authority vide order dated 7.8.2001, where after the petitioner filed two representations reiterating his request but as no further order was issued he approach this Court by filing WPC No. 19/2004, which was disposed of vide order dated 5.4.2004 by directing the State Bank authority to consider the representation of the petitioner and to pass a speaking order in accordance with law within two months from the date of furnishing the certificate copy of the order. The petitioner vide communication dated 15.4.2004 submitted certified copy of the order before the authority and the management of the bank after giving a personal hearing to the petitioner, vide order dated 21.5.2004 rejected the prayer by refusing to grant the pension under the pension rules and also the benefit of encashment of balance of Privilege Leave. Hence the present writ petition.

3. Mr. George Raju, learned Counsel for the petitioner has submitted that though it is not in dispute that from the date of confirmation of service he has not completed twenty years of qualifying service so as entitle him to get pension under the Pension Rules, keeping in view the post hold by the petitioner, i.e., Grade-IV post, the authority is required to consider the case of the petitioner for relaxation of the provisions of the Pension Rules by condoning the shortage of eleven days, so that he can get the pension under the pension rules. The further submission of the Mr. Raju, learned Counsel for the petitioner is that in any case his contribution towards pension fund under the Pension Rules, cannot withheld by the Management of the bank even though the petitioner is not entitle to pension under the pension rules. The further submission of Mr. Raju, learned Counsel is that though the authority has rejected the claim of the petitioner for encashment of balance of Privilege Leave on the ground that the same can be given only if an employee is retired from service after attaining age of superanuation, the authority has not been able to show anything before the court or before the committee, who has scrutinised the claim of the petitioner, to that effect. According to the learned Counsel, Clause 15 of Memorandum of Settlement dated 31.10.1979 having provided that an employee shall be entitle leave at the time of retirement, and the petitioner having retired from service after obtaining voluntary retirement, the authority cannot deprive the petitioner from that benefit on the ground that he has not retired from service on attaining normal age of superanuation. According to the learned Counsel voluntary retirement being also a retirement from service, the petitioner is entitle to the encashment of accumulated leave to his credit upon opted for voluntary retirement under the scheme.

4. Mr. M.M. Ali, learned Counsel appearing on behalf of the respondents has submitted that it is evident from voluntary retirement scheme that the employee opted for the voluntary retirement under the scheme shall be entitle to pensionary benefit subject to his entitlement under the pension rule. According

to the leaned counsel since the petitioner has not completed twenty years of pensionable service from the date of confirmation, he is not entitle to the pension under the pension rules, in view of provision contained in Rule 7(a) read with Rule 22(1)(c) of the said rule. Therefore, the petitioner is not entitle to pension though he has opted for voluntary retirement under the scheme and as such the authority has rightly held that the petitioner is not entitle to benefit of pension under the rules. Regarding the encashment of balance of -privilege leave in his credit on the date when petitioner''s request for voluntary retirement was accepted, the learned Counsel for the bank has submitted that the said benefit is available to an employee who retired from service on attaining the age of superanuation, i.e. 58 years but not to the person who opted for voluntary retirement under the scheme. Alternatively, the learned Counsel has submitted that as the petitioner is not having twenty years of pensionable service he is not entitle to the benefit of leave encashment also. Mr. Ali, learned Counsel in support of his contention has placed reliance on decisions of the Apex Court in Indian Banks'' Association, Bombay and Ors. v. Devkala Consultancy Service and Ors., reported in 2004 (5) SC 422 and Union of India and another Vs. Deoki Nandan Aggarwal, the decisions of the Delhi High Court in Civil Writ Petition No. 4355/2001 (Sh. Vipin Kalia v. State Bank of India and Ors.) and the decisions of the Uttaranchal High Court in Writ Petition No. 4127 of 2001 (Shri Surendra Mohan v. State Bank of India and Ors.) as well as in Writ Petition No. 360 of 2002 (Smt. Manjula Pujari v. State Bank of India and Ors.).

5. I have considered the submissions of the learned Counsel for the parties and also perused the pleadings and annexures appended thereto.

6. The facts are not in dispute in the present case. The petitioner was appointed as Messenger, which is a grade IV post, on 10.10.1980. He was confirmed in the said post on 11.4.1981. The petitioner opted for the voluntary retirement under the scheme and his request for voluntary retirement was accepted with effect from 31.3.2001. Under the voluntary retirement scheme of the State Bank of India it is evident that on voluntary retirement an employee, apart from the amount payable under the scheme is entitle to the following benefits as has been reflected in Clause 6 of the said scheme. For better appreciation Clause 6 of the voluntary retirement scheme is quoted below :

6. OTHER BENEFITS:

(A) Gratuity as payable under the extant instructions on the relevant date.

(B) Provident Fund contribution as per State Bank of India Employees'' Pension Fund Rules as on relevant date.

(C) Pension in terms of State Bank of India Employees'' Pension Fund Rules on the relevant date (including commuted value of pension).

(D) Encashment of balance of Privilege leave, as applicable, on the relevant date.

(E) Respective facilities extended to officer/others such as retention of accommodation telephone, car, continuation of housing loan etc. will be extended to officers/others retiring under SBIVRS as per present dispensations, at the discretion of competent Authority. However, in such cases of retention of physical facilities, 50% of the amount of ex-gratia payable will be released only after the employee surrenders the facility. No interest, however, will be paid for the amount so withheld. All other outstanding loans/advances will have to be repaid before date of retirement under SBIVRS, failing which the amount of ex-gratia and other terminal benefits payable to the employee will be appropriated towards the outstanding loans/ advances and the balance amount only will be payable to the employee.

7. The writ petitioner has stated in the petition that the amount payable under Clause 6(A) and (6)(B) above, i.e. Gratuity and Provident Fund has already been paid to him after he was allowed to go on voluntary retirement, but the petitioner''s grievance is about non-payment of the dues under Clause 6(C) and (D), i.e., the pension and encashment of balance of Privilege leave.

8. It is evident from the provisions contained in Clause 6(C) of the said voluntary retirement scheme that an employee will be entitled to pension only in accordance with the provisions of the pension rules. Rule 22(1)(c) of the pension rules provides that a member shall be entitled to pension under these rules on retiring from the bank''s service after completion of twenty years pensionable service, irrespective of the age he shall have attained, at his request in writing. Rule 7 of the rules provides that an employee in the service of the bank, who is entitle to pension benefit under the terms and conditions of his service, shall become a number of the fund from the date from which he is confirmed in the service. By reading both the provisions together, it is evident that the period of twenty years of service has to be rendered after confirmation for getting the benefit under the Pension Rules. In the instant case the petitioner having confirmed in service on 11.4.1981 and his request for voluntary retirement having been accepted from 31.3.2001, he has not completed 20 years of service so as to enable him to get the pension under the Pension Rules. Therefore, petitioner is not entitle to pension under the provision of Pension Rules.

9. It is evident from the provisions of the Pension Rules that every Member of the said fund is required to contribute to the said fund by virtue of Rule 9 of the said Rules. The employer is also required to make contribution towards the said fund in terms of the provisions of the Rules. Rule 9 of the Rules provides as follows :

9.(i) Subject as hereinafter provided every employee shall, as from the date of his admission to the fund, contribute to the fund, every month an amount equal to five per cent of his salary subject to a maximum contribution of Rs. 90 per mensem. In respect of any period in which the full salary of an employee is not payable to him, his contributions shall be calculated on his reduced salary, if any. The contributions shall be made by deduction from salary and shall cease when an employee cease to be in pensionable service in terms of Rule 20.

Provided that no contributions shall be collected from a member who is a "workmen" as defined u/s 2(s) of the Industrial Disputes Act, 1947 only so long as he continues to be entitled to a non-contributory pension in terms of any Award, or settlement.

(ii) The trustees shall have power at their discretion to suspend the operation of Sub-rule (1) or reduce the percentage of the members'' contributions at any time in the case of any class or category or employees and for such period as they shall think necessary and to reimpose the contributions should they consider it necessary but without retrospective effect.

(iii) Each employee''s contributions to the fund under Sub-rule (1) shall be credited in the books of the fund to an account in his name and a statement of the account shall be supplied to him half-yearly.

(iv) Interest on the balance of a member''s contributions at such rate as may be prescribed by the trustees from time to time shall accrue from day to day and shall be credited half yearly to each member''s account by debit to the general balance of the fund. Provided that interest on the balance of a member''s account shall cease to accrue from the date of h is leaving the service of the Bank otherwise than by retirement on pension and in any event from the date of his death.

(v) In the event of a member retiring from the Bank''s service, or in the event of a member dying, in each ease before such member has qualified for a pension there shall be payable to him or, in the event of his death, to the persons and in the manner named in Sub-rule (7) thereof, the amount of such member''s own contributions with interest accrued thereon.

(vi) In the event of a member dying after he shall have qualified for a pension but before the total amount of the pension payments he shall have received equal the amount of his contributions to the fund with Interest accrued thereon, the residue shall be payable to the persons and in the manner named in Sub-rule (7) hereof.

(vii) On the death of a member, the amount, if any, due to the member according to these rules shall be paid to his heirs, executors or administrators, or at the absolute discretions of the trustees the amount or pay part or parts thereof may be paid to the widow, child or children or his , her or their guardian or custodian or other nearest relative of a deceased member or any other person appearing to the trustees to be entitled to receive same without any representation to the estate of such deceased member or any succession certificate being obtained and such payment shall be a good discharge to the trustees against all claims whatsoever in respect of the fund by any one whomsoever claiming through the said deceased member or otherwise.

10. From a bare reading of Rule 9 of the said Rule it appears that an employee has to make monthly contribution towards the pension fund and the

management is bound to keep an account of such contribution in the names of the employee. It is also evident from Rule 9(V) of the Rules that when a member is retired from bank''s service, who is not qualified for pension under the pension rules, or in the event of the death of the such employee, the employee''s contribution towards the fund has to be returned to the employee with interest accrued thereon. Since the petitioner has contributed towards the pension fund under the Pension Rules, even though the petitioner is not entitle to pension under the said Rules, the management of the State Bank of India cannot withheld payment of the petitioner''s contribution towards the fund and such contributions together with interest has to be refunded to him by virtue of the provision contained in Rule 9(V) of the Pension Rules. Therefore, the petitioner is entitled to the contribution he has made towards pension fund, with interest.

11. In Deoki Nandan Aggarwal (supra) the Apex Court has held that to get the pension under the pension rules the eligibility conditions must be fulfilled. The Delhi High Court in Vipin Kalia case and the Uttaranchal High court in Surendra Mohan case has also held that unless the conditions stipulated in the pension rules are fulfilled, no employee is entitle any pensionary benefit under the rules. There is no dispute in the said legal proposition. I have already recorded the finding that the petitioner is not entitled to pension under the Pension Rules. He is entitled to get refund of his contribution towards the Pension fund with interest, by virtue of Rule 9(v) of the Pension Rule.

12. The learned Counsel for the respondent bank has placed reliance in Indian Bank association case on the point that when the law lays down any procedure, the authority is duty bound to exercise the power in the manner prescribed under the law and not otherwise. There is also no dispute to the said legal proposition. This Court has already recorded the finding that, the petitioner is not entitled to pension under the Pension Rules, but is entitled to his contribution with interest towards the fund.

13. Regarding the encashment of the Privilege leave in the credit of the petitioner, on the date of taking voluntary retirement, though the management relying upon the memorandum of settlement arrived at on 31.10.1979, has submitted that unless an employee retired from service on attaining the age of superanuation, i.e., 58 years he is not entitle to encashment of accumulated leave to his credit, the Management could not produce any document except the memorandum of settlement in support of the said contention. Clause 15 of the said memorandum of settlement as reflected in the affidavit-in-opposition filed by the respondent is quoted below :

15. Encashment of Privilege leave.

(iii) Parties agreed that workmen would be entitled to encash the accumulated leave to his credit at the time of retirement.

14. Clause 15 of Memorandum of Settlement dated 31.10.1979 has provided that the workmen shall be entitled to encashment of accumulated leave to his credit

at the time of retirement. It does not speak about the retirement on attainting the age of superanuation or the voluntary retirement. The retirement under the voluntary retirement scheme is also a retirement from service. Clause 6(D) of the voluntary scheme has also provided that an employee opted for voluntary retirement shall be eligible for encashment of balance of privilege leave and therefore, the contention of the learned Counsel for the respondents bank that such benefit shall be payable in respect of the person, retired from service on attaining the age of superanuation, cannot be accepted and hence rejected.

15. The further submission of the learned Counsel for the respondents, regarding the encashment of balance of privilege leave by the petitioner is that, unless the petitioner is entitle to pension under the provisions of the Pension Rules, he is not entitle to encashment of balance of privilege leave. The said contention also cannot be accepted because of the fact that respondents bank has not been able to produce any document in support of the said contention and the reliance placed by the respondents in paragraph 15 of the memorandum of settlement dated 31.10.1979, which has already been reproduced above, does not speak about the retirement on attaining age of superanuation only and not the voluntary retirement, more so when the scheme of voluntary retirement provides for encashment balance of privilege leave under Clause 6(D) of the said scheme. Therefore, the petitioner is entitled to the encashment of balance of privilege leave in terms of the provisions contained in Clause 6(D) of the voluntary retirement scheme, under which the petitioner has opted for voluntary retirement with effect from 31.3.2001.

16. In view of the above, I direct the respondents to grant the petitioner the encashment of the privilege leave to his credit as on 31.3.2001, i.e., the date when he went on voluntary retirement and also to pay his contribution towards the Pension fund under the Pension Rules together with interest payable under the said Rules. However, the claim of the petitioner for pension under the Pension Rule is rejected.

17. At this stage Mr. Raju, leaned counsel for the petitioner has submitted that an amount of Rs. 18,202 was initially paid to him towards the encashment of the balance, of privilege leave but pursuant to the letter No. 26/134 dated 7.8.2001 the same was recovered from the petitioner. The respondent bank is therefore, directed to refund the said amount of Rs. 18,202 with interest at the rate of 6% per annum from the date of recovery of the said amount till repayment. Accordingly the impugned order dated 7.8.2001 so far as it relates to refund of Rs. 18,202, is also set aside.

18. The writ petition is accordingly partly allowed. No cost.

