

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

ON THE 21st OF FEBRUARY, 2023

WRIT PETITION No. 6709 of 2021

BETWEEN:-

**VISHWAS S/O KANHAIYALAL SHARMA, AGED
ABOUT 58 YEARS, OCCUPATION: NIL, R/O R.
SECTOR 589, MAHALAXMI NAGAR, INDORE
(MADHYA PRADESH)**

.....PETITIONER

(BY SHRI PANKAJ KUMAR JAIN-ADVOCATE)

AND

**STATE BANK OF INDIA ASST. GENERAL
MANAGER PENSION BHAVISHYA NIDHI
EVAM UPADAN VIBHAG PRADHAN
1. KARYALAYA, THIRD FLOOR,
HOSHANGABAD ROAD, BHOPAL (MADHYA
PRADESH)**

**DEPUTY GENERAL MANAGER STATE BANK
2. OF INDIA 5, YASHWANT NIWAS ROAD
INDORE (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI RAMESH CHANDRA SINHAL-ADVOCATE/RESPONDENT)

***This petition coming on for orders this day, the court passed the
following:***

ORDER

The petitioner has filed a present petition through legal aid claiming the arrears of wages from 1999 with all consequential allowances, leave encashment, P.F. Gratuity, bank and employee

contribution and cancellation of the order dated 24.09.2019 whereby the petitioner has been denied the pension.

1. The petitioner was working as an Audit Assistant at the erstwhile State Bank of Indore. He was served with a charge-sheet that on 15.10.1997, he misbehaved with Head Cashier and one customer. He denied the charges hence Departmental enquiry was conducted against him and on the basis of the enquiry report, he was dismissed from the service. The petitioner raised a dispute before the Central Government Industrial Tribunal Cum Labour Court, Jabalpur (hereinafter referred to as the Tribunal). Vide award dated 30.01.2015, the learned Tribunal has held that the termination is not legal and justified and modified it to the punishment of compulsory retirement.

2. Being aggrieved by the aforesaid award, the respondent/bank, as well as petitioner, approached before this Court by way W.P. No.2625/2016 and W.P. No.1040/2016 respectively.

3. Vide order dated 24.04.2017 both the writ petitions were decided and the matter was remanded back to the Tribunal and remit the matter to Tribunal to consider as to which other punishment can be imposed so as to make him eligible the petitioner to get pensionary benefits. Parties through their counsel were directed to appear before the Tribunal on 19.06.2017.

4. Being aggrieved by the aforesaid order of the Division Bench of this High Court, the State Bank of India (as by that time State bank of Indore was merged in the SBI) approached the Apex Court by way of Civil Appeal Nos. 5876-5877 of 2019. Vide order dated 26.07.2019, the civil appeal was disposed of with the direction that the petitioner will be paid all the retiral benefits, as admissible and that he would be paid

pension if admissible, on the basis of the period served by him with the bank assuming he would superannuate after such a period of service. The needful be done within eight weeks from today.

5. After the aforesaid order, passed by Apex Court the respondent/bank has considered the case of the petitioner for grant of pension and vide order dated 24.09.2019 decided to give contributory provident fund amounting to Rs.30,014/- and Gratuity amounting to Rs.1,17,945/- but denied the pension under the provision State Bank of Indore (Employees') Pension Regulation 1995: on the ground that he did not attain the age of 60 years hence, not entitled for superannuation pension. To get the pension due to the voluntary retirement, since he did not complete 20 years of qualifying service and in terms of Regulation 33, he would not be entitled to a pension under this regulation as well. Hence, this petition before this Court.

6. The respondents have filed a reply by submitting that the Apex Court has directed to consider the case of the petitioner, if admissible to him but in view of Regulations 29,30 and 33, of *the State Bank of Indore (Employees') Pension Regulation, 1995* the pension is not admissible to him he is not entitled to the pension, Writ Petition be dismissed.

Learned counsel for the respondent/Bank contended that the Apex Court has directed for the grant of pension to the petitioner, if admissible since he is not entitled to a pension under the Regulation, therefore, the bank has rightly denied pension to the petitioner. So far as other dues are concerned, the same has been paid to the petitioner and there is no denial by filing a rejoinder.

Appreciations & Conclusion

7. The petitioner was terminated from service in the month of April, 1999. He raised the dispute which was referred to CGIT under Section 10 of I.D. Act. The terms of reference are reproduced below:

" Whether the action of the management of Asstt. General Manager-I State Bank of India, Indore in dismissing the services of Shri Vishwas Kumar Sharma w.e.f April, 99 is justified ? If not, what relief the work is entitled for?"

8. After appreciating the evidence that came on record, the learned Tribunal has found that the action of the management in dismissing the services of the petitioner is not legal and justified. Hence, the order of dismissal was modified to compulsory retirement. The petitioner and respondents both preferred Writ Petitions before this Court, the Division Bench considered that the petitioner had only completed 15 years of service and not attained the age of superannuation, therefore, on account of the imposition of the penalty of compulsory retirement, he would not be entitled to the pension. The petitioner argued that he had completed 10 years of qualifying service to get a pension in terms of Regulation 14 of the Regulations. Division Bench of this High Court was considering the issue as to how the petitioner would get the pension despite the punishment of voluntary retirement given to the petitioner, hence remanding the matter back to Tribunal.

9. The issue of pension was neither raised nor examined by the Tribunal, hence the High Court remitted the matter to the Tribunal to consider which other punishment can be imposed so as to make the workman eligible for pensionary benefits or such other punishment. The respondents were not satisfied with the aforesaid remand order, and hence approached the Apex Court by way of SLP. The Apex Court has

disposed of the Civil Appeal with direction to the bank that the petitioner will be paid all the retiral benefits as admissible and he would be paid pension if admissible on the basis of the period served by him with the bank assuming he would superannuate after such a period of service.

"Leave granted.

On hearing learned counsel for the parties, we are of the view that appeals can be disposed of with the following directions:

(a) The respondent -Vishwas Sharma will be paid all the retiral benefits, as admissible.

(b) The respondent would be paid pension, if admissible, on the basis of the period served by him with the bank assuming he would superannuate after such a period of service.

The needful be done within eight weeks from today.

The appeals stand disposed of leaving the question of law open."

10. CHAPTER V of State Bank of Indore (Employees') Pension Regulation, 1995 defines classes of pension, first is (i) Superannuation Pension which shall be granted to an employee who has retired on his attaining the age of superannuation second is (ii) Pension on Voluntary Retirement after 20 years of qualifying service. (iii) Invalid Pension which may be granted to an employee who has rendered minimum of 10 years of service and retired from service on account of illness and incapacitates him for the service. (iv) Compassionate Allowances for those employees who are dismissed or removed or terminated from service in the case is deserving of special consideration, sanction a compassionate allowance not exceeding two-thirds of the pension which would have been admissible to the employee on the basis of the

qualifying service rendered up to the date of his dismissal, removal or termination and Premature Retirement pension, compulsory retirement pension and Family pension.

11. According to the respondents since the petitioner did not attain the age of superannuation, therefore, he would not be entitled to pension, since he did not complete 20 years of service, therefore, he shall not be entitled to pension on voluntary retirement and he shall not be entitled to compulsory retirement pension because otherwise he was not entitled to such pension on superannuation on that date. The bank is only reading the word **if admissible** in the order passed by the Apex Court but after **if admissible**, the Apex Court has directed that the petitioner would be paid the pension on the basis of the period served by him with the bank assuming he would superannuate after such period of service, therefore, the Apex Court has directed that the bank should assume that after rendering the service, the period served by him, he would be assumed to attain the age of superannuation. The State Bank has wrongly given interpretation to Regulation 28. The Apex Court has directed for a grant of pension on the basis of the period served by him assuming he would superannuate after such period of service. He is liable to be treated as superannuated hence the pension shall be calculated on the basis of the period served by him. In these special circumstances, the petitioner should not be treated as superannuated on attaining the age of superannuation as specified in the service regulation of settlement because the Apex Court has treated him as superannuated.

12. The respondents had paid him other benefits before the order was passed by the Supreme Court of India. The respondents did not

consider for grant of other benefits after the order was passed by Apex Court. The amount paid to him on 28.08.2004 and 18.09.2004 has been treated as payment of all retiral dues. After the order passed by CGIT, High Court as well as Apex Court the respondents should have re-calculated all the amount payable to the petitioner.

In view of the above the writ Petition is allowed with a cost of Rs.25,000/- payable to the petitioner. Impugned order 24.09.2019 is hereby quashed. Respondents are directed to re-calculate all the retiral benefits payable to the petitioners which shall be paid within four weeks along with interest @ 9% pa. The petitioner shall be entitled to the pension as discussed above and be paid w.e.f. the date of leaving the service with interest @ 9% pa.

The compliance report be submitted before this court immediately after 4 weeks from today.

(VIVEK RUSIA)
J U D G E

praveen