

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 9371-9374 of 2017
(Arising out of SLP(C)NO(s).5378-5381 of 2015)

V.VIJAYAN ETC.

Appellant(s)

VERSUS

CHAIRMAN AND MANAGING DIRECTOR
BANK OF BARODA AND ORS. ETC.

Respondent(s)

WITH

CIVIL APPEAL NO(S). 9370 of 2017
(Arising out of SLP(C)NO(s).38764 of 2016)

ALLAHABAD BANK & ORS.

Appellant(s)

VERSUS

ANAND PAL SAXENA & ORS.

Respondent(s)

O R D E R

Leave granted.

We have heard learned counsel for the parties.

The issue involved in these cases is whether five years of additional notional service has to be added for the purpose of total period of service for payment of full pension.

The original writ petitioners were recruited to the bank service but on reaching the age of superannuation, they did not have the period of service which is required for full pension. They, however, claimed full pension relying upon Regulation 26(C) of the Bank of Baroda (Employees') Pension Regulation, 1995 (Which

applicable in first appeal while there are corresponding provisions in other banks to the same effect). The said claim having not been accepted by the Bank, they approached the High

Court (Madras High Court in appeal arising out of SLP(C) No(s).5378-5381 of 2015). Learned Single Judge upheld that claim as follows:

"7. A mere reading of regulation 26 clearly shows that an employee shall be eligible to add to his service qualifying of superannuation pension (but not for any other class of pension) the actual period not exceeding one fourth of the length of his service or the actual period not exceeding on fourth of the length of his service or the actual period by which his age at the time of recruitment exceeded the upper age limit specified by the Bank for direct recruitment or a period of five years, whichever is less, if the service or post to which post-graduate research or specialist qualification or experience in scientific, technological, or professional fields is essential. The above said Regulation 26 contains certain provisos. The third proviso clearly and unambiguously speaks that recruitment rules in respect of any service or post which carries the benefit of regularization shall be made with the approval of the Central Government. While interpreting the above said Regulation 26, this Court paragraph-9 of the judgment in Thirikooda Rajappan" case (cited supra), by considering the effect of clauses 'a', 'b' and 'c', held that all these clauses cannot be read together, because clauses 'a' and 'b' form one category and clause 'c' forms a separate category. When the judgment of this Court holds clearly that clause 'c' would stand separate, the same applies to all the petitioners, therefore, they would be eligible for additional qualifying service provided under Regulation 26,

since they were appointed in specialized category by granting age relaxation, as exceptional cases. Admittedly, as highlighted above, at the time of joining the service, the petitioners were all Agricultural officers, therefore, they were considered as officers having experience in the scientific field. Having accepted their service by relaxing their age limit, the respondents cannot deny the benefit of Regulation 26. Indeed, when an objection was raised before this Court by the respondent-Bank, in Thirikooda Rajappan's case, contending that the Bank of Baroda (Employees') Pension Regulation came into force only in the year 1995 much after the appointment of the petitioners were made in the respondent-Bank and it would be applicable only to the employees who were subsequently employed and not for the employees who came into service before the Pension Regulations came into force, this Court, in paragraph-12, while repelling the said argument, vividly held that in as much as the third proviso would nullify the benefit conferred under the main Regulation 26 insofar it relates to the employees who are already in service, the petitioner therein was entitled to the benefits conferred under Regulation 26. Therefore, in the present case, a similar contention made by the respondent-Bank cannot be espoused, as this Court is also bound by the ratio laid down by this Court in the aforesaid judgment. It may be mentioned here that now the respondent-Bank was also given pension for the services rendered by the petitioners, as Mr. V. Vijayan, the first petitioner, who has put in 29 years, 11 months and 9 days, was given the pensionary benefits as per

the rules without extending the benefit conferred under Regulation 26. Similarly, the three other petitioners, namely, Mr. M. Shenbagaraj, Mr. S. Kandasamy and Mr. R. Nallamuthu, who have put in 30 years, 3 months & 7 days, 31 years, 4 months & 18 days and 22 years & 19 days respectively, have also been given pensionary benefits without extending the benefit conferred under Regulation 26. Therefore, this Court, by giving a direction to the respondents, is of the considered view that no prejudice would be caused to them, as the petitioners are going to get full pension by adding five years of national service in terms of Regulation 26 (c) of the Bank of Baroda (Employees') Pension Regulation, 1995."

The said view has been reversed by the Division Bench. We may also mention that the High Court of Judicature at Allahabad, Lucknow Bench, in W.P.No.1160 of 2012 has also taken the same view as taken by learned Single Judge of the Madras High Court.

We find that once the Regulation was framed and the same was acted upon the plea of absence of prior approval cannot be pressed into service by the Bank as the Bank itself has not moved for such prior approval. In these circumstances, we are in agreement with the view taken by the High Court of Judicature at Allahabad, Lucknow Bench and the learned Single Judge of the Madras High Court.

Accordingly appeal arising out of SLP(C) No(s).38764 of 2016 is dismissed and appeals arising out of SLP(C) No(s).5378-5381 of 2015 are allowed. No costs.

Pending applications, if any, shall also stand disposed of.

.....J.
(ADARSH KUMAR GOEL)

.....J.
(UDAY UMESH LALIT)

New Delhi,
July 20, 2017.

ITEM NO.1

COURT NO.12

SECTION XII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 5378-5381/2015

(Arising out of impugned final judgment and order dated 17-10-2014 in WA No. 1237/2014 17-10-2014 in WA No. 1238/2014 17-10-2014 in WA No. 1239/2014 17-10-2014 in WA No. 1240/2014 passed by the High Court Of Madras)

V.VIJAYAN ETC.

Appellant(s)

VERSUS

CHAIRMAN AND MANAGING DIRECTOR
BANK OF BARODA AND ORS. ETC.

Respondent(s)

WITH SLP(C) No. 38764/2016 (XI)

(With appln(s) for permission to file addl. Documents)

Date : 20-07-2017 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE UDAY UMESH LALIT

For Petitioner(s) Mr. Vijay Hansaria, Sr. Adv.
(SLP 5378-81/2015) Mr. Rajiv K. Garg, Adv.
Mr. Ashish Garg, Adv.
Mr. T. L. Garg, AOR

(SLP 38764/2016) Mr. Dhruv Mehta, Sr. Adv.
Mr. Rajesh Kumar, Adv.
Mr. Gaurav Kumar Singh, Adv.
Mr. Rakesh Chaurasiya, Adv.
Mr. Anant Gautam, Adv.
For M/s Mitter & Mitter Co.

For Respondent(s) Mr. Sukumar Pattjoshi, Sr. Adv.
Mr. Bhupendra Singh Chauhan, Adv.
Ms. Isha Aggarwal, Adv.
Dr. Kailash Chand, AOR

Mr. A.N.S. Nadkarni, ASG
Mr. K. Radhakrishnan, Adv.
Ms. Sadhna Sandhu, Adv.
Ms. Gargi Khanna, Adv.
Ms. Shikha, Adv.

Ms. Nivedita, Adv.

Mr. Anurag Kishore, AOR

Mr. Mordhwaj Singh, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

In terms of the signed order, appeal arising out of SLP(C)
No(s).38764 of 2016 is dismissed and appeals arising out of
SLP(C) No(s).5378-5381 of 2015 are allowed

(MAHABIR SINGH)
COURT MASTER

(SNEH LATA SHARMA)
COURT MASTER

(Signed order is placed on the file)