HON'BLE HIGH COURT OF HIMACHAL PRADESH
AT SHIMLA

LPA No. 96/2021
Reserved on: 11.03.2024
Decided on: 20.03.2024

UCO Bank & Ors. ….Appellants

Versus

Chaman Singh ....Respondent

Coram

The Hon'ble Mr. Justice M.S. Ramachandra Rao,Chief Justice.
The Hon'ble Ms. Justice Jyotsna Rewal Dua, Judge.

Whether approved for reporting?[1]

For the appellants : Mr. Prem P. Chauhan, Advocate.

For the respondent : Mr. Suneel Awasthi, Advocate.

Jyotsna Rewal Dua, Judge

In the impugned judgment dated 02.08.2021, rendered in CWP No. 3082/2016, learned Single Judge held that the respondent (writ petitioner) had rendered 9 years 10 months and 5 days of service, which in accordance with Regulation No.18 of UCO Bank (Employees') Pension Regulations, 1995 has to be taken as 10 years. On that basis, the respondent was held to have satisfied the required 10 years of qualifying service to be eligible for pension laid down in

[1] *Whether reporters of the local papers may be allowed to see the judgment? yes*

Regulation No.14. The writ petition was accordingly allowed and employer-bank was directed to work out and release the pensionary dues payable to the respondent.

2. In this Letters Patent Appeal, the employer bank has taken exception to the aforesaid judgment.

3. Having heard learned counsel on both sides and on considering the material on record, we do not find any merit in the instant appeal. This is for the following reasons:-

3(i) Regulation No.14 of the UCO Bank (Employees') Pension Regulations, 1995 prescribes condition of rendering minimum 10 years of service for an employee to qualify for pension & reads as under:-

> *"14. Qualifying service- Subject to the other conditions contained in these regulations, an employee who has rendered a minimum of 10 years of service in the Bank on the date of his retirement or the date on which he is deemed to have retired shall qualify for pension.*

Regulation No.18 of the UCO Bank (Employees') Pension Regulations, 1995 provides as under with respect to computation of service of less than a year :-

> *"**18. Broken period of service of less than one year.** - If the period of service of an employee includes broken period of service less than one year, then if such broken period is more than six months,*

it shall be treated as one year and if such broken period is six months or less it shall be ignored.

Provided that provisions of this regulation shall not apply for determining the minimum service required to make an employee eligible for pension."

3(ii) The Hon'ble Apex Court in ***Indian Bank and Another Vs. N. Venkatramani***[2] had elaborated the meaning of word "Broken Period" as under:-

"9. We may notice that although various provisions have been made providing for qualifying service to which our attention has been drawn by Mr. Raju Ramchandran, the manner in which the period of service is to be measured is contained in Regulation 18 of the Regulations which reads as under:

"18. Broken period of service of less than one year:- If the period of service of an employee includes broken period of service less than one year, then if such broken period is more than six months, it shall be treated as one year and if such broken period is six months or less it shall be ignored.""

10. The term "broken lot" has been defined in Black's Law Dictionary, Sixth Edition, page 193, in the following terms:

"Broken lot. Odd lot; less than the usual unit of measurement or unit of sale; e.g. less than 100 shares of stock."

11. A person apart from being entitled to receive a superannuation pension, was also entitled to pro-rata pension if he completes a period of ten years of service."

[2](2007) 10 SCC 609

Regulation No.18 under consideration before the Hon'ble Apex Court was *pari materia* to the substantive provision of Regulation No.18 of the appellant-bank. 'Broken period' of service would include the service that is less than 1 year. As per Regulation No.18, if in a given case service rendered is more than 6 months, then that has to be treated as 1 complete year. In the instant case, the respondent had 10 months and 5 days of service, over and above 9 completed years. Therefore, 10 months and 5 days of service is required to be treated as 1 complete year. That being the position, the respondent gets to his credit 9+1= 10 completed years of service. This qualifies him for pension.

3(iii) We may also notice here that somewhat similar provision exists in Rule 49(3) of CCS (Pension) Rules which reads as under:-

> *"49. Amount of Pension*
>
> *"(1) In the case of a Government servant retiring in accordance with the provisions of these rules before completing qualifying service of ten years, the amount of service gratuity shall be calculated at the rate of half month's emoluments for every completed six monthly period of qualifying service.*
>
> *(1-A)……*
>
> *(2)……..*
>
> *(3) In calculating the length of qualifying service, fraction of a year equal to three months and above shall be treated as a completed one half-year and reckoned as qualifying service."*

Rule 49(3) was interpreted by a Full Bench of this Court in Letters Patent Appeal No.4011 of 2013 ***(State of Himachal Pradesh & Anr. vs. Bachittar Singh through his legal heirs.)*** decided on 13.05.2022. Relevant paragraphs of this judgment are as under:-

> *"13. A plain reading of the said Rule demonstrates that sub-rule (1) thereof stipulates that in the case of a Government servant retiring in accordance with the provisions of CCS (Pension) Rules, before completing qualifying service of ten years, the amount of gratuity payable to such Government servant, shall be calculated at the rate of half months emoluments for every completed six monthly period of qualifying service. Thus, the period of six monthly qualifying service is taken as one unit to calculate the service gratuity. It is in continuation thereof, that sub-rule (3) of Rule 49 provides that in calculating the length of of qualifying service, fraction of a year equal to three months and above shall be treated as completed one-half year and reckoned as qualifying service. If one has to correctly understand the import of Rule 49 (3), then one has to read it harmoniously with Rule 49 (1). Sub-rule (3) only clarifies as to how fraction of a year equal to three months and above has to be construed while reckoning the qualifying service for the purpose contemplated under Rule 49. It states that for the purposes of taking into consideration the service put in by an incumbent which does not amount to one full calendar year, how said period has to be calculated for determining the qualifying service. All that this sub-section provides is this that fraction of a year equal to three months and above shall be treated as completed*

one-half year and reckoned as qualifying service. To understand it better, the following four illustrations are given:-

> *"1. Candidate 'A' superannuates after putting in nine years two months and twenty nine days of service;*
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> *2. Candidate 'B' superannuates after putting in nine years three months of service;*
>
> *3. Candidate 'C' superannuates after putting in nine years eight months and twenty eight days of service; and*
>
> ***4. Candidate 'D' superannuates after putting in nine years and nine months of service."***

14 to 16……..

17. Now, when we come to the fourth incumbent, who has completed nine years and nine months of service, such a candidate will get nineteen six monthly units of qualifying service and in addition as he has put in three months of service thereafter, this fraction of a year of three months shall be treated as a completed one-half year and reckoned as a qualifying service so as to take the completed six monthly units of qualifying service of said incumbent to be twenty in numbers. As these six monthly period of qualifying service become twenty in numbers and each group comprises of six monthly period, then, but natural, the incumbent will be held entitled to receive pension as twenty complete six monthly period of qualifying service means ten years of service.

18. Therefore, it is evident that in terms of the provisions of Rule 49 (3) of the CCS (Pension) Rules, an incumbent can get the benefit of qualifying service for the fraction of a year equal to three months and above for pension provided such an incumbent has put in more than nine years and nine months of service.

19 to 20….

21. Thus, it is evident from what has been discussed hereinabove, that Rule 49 (1) of the CCS (Pension) Rules has to be construed harmoniously with Rule 49 (3) thereof and when one

reads the said provisions with the clarifications which have been given by the Department of Personnel, dated 13.10.1983, ***the only conclusion which can be drawn is that an incumbent who has not completed ten years of service and is thus not qualified for receiving pension, can be held to be entitled to the said benefit only if such an incumbent has put in more than nine years nine months of service in the respondent-Department.*** *Any view taken to the contrary will do injustice with the letter and spirit of the provisions of Rule 49 (1) and Rule 49 (3) of the CCS (Pension) Rules."*

In terms of Rule 49(3) of the CCS (Pension) Rules, an incumbent on completion of 9 years & 9 months of service was held entitled to pension.

3(iv) In view of above, there is no escape from the conclusion that in terms of substantive provision of Regulation No.18, service rendered by the respondent has to be reckoned as 10 years on the date of his retirement. The respondent, thus, becomes eligible for grant of pension under Regular No.14.

3(v) A contention advanced by learned counsel for the appellants is that the proviso to Rule 18 takes away the right of the employee for counting the broken period of service towards his total service required for pension; That proviso to Regulation No.18 debars counting such broken period of service for pension.

It is well settled that a proviso cannot override or supplant the substantive provision. The proviso cannot take away or nullify the right conferred by the substantive provision. In ***Rohitash Kumar & Ors Vs. Om Prakash Sharma & Ors.***[3], following its several previous decisions, Hon'ble Apex Court held that the normal function of a proviso is generally, to provide for an exception i.e. exception of something that is outside the ambit of the usual intention of the enactment, or to qualify something enacted therein, which, but for the proviso would be within the purview of such enactment. Thus, its purpose is to exclude something which would otherwise fall squarely within the general language of the main enactment. Usually, a proviso cannot be interpreted as a general rule that has been provided for. Nor it can be interpreted in a manner that would nullify the enactment, or take away in entirety, a right that has been conferred by the statute. In case, the language of the main enactment is clear and unambiguous, a proviso can have no repercussion on the interpretation of the main enactment, so as to exclude by implication, what clearly falls within its expressed terms. If, upon plain and fair construction, the main provision is clear, a proviso cannot expand or limit its ambit and scope. The proviso to a particular provision of a statute, only embraces

[3]2013 (11) SCC 451

the field which is covered by the main provision, by carving out an exception to the said main provision. In ***Prabha Tyagi Vs. Kamlesh Devi***[4]***,*** it was held that as a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment and ordinarily, a proviso is not interpreted as stating a general rule. Further, a proviso cannot be construed as nullifying the provision or as taking away completely a right conferred by the enactment.

In the instant case, substantive provision of Regulation No.18 of UCO Bank (Employees') Pension Regulations, provides a method for counting broken periods of service of an employee. In terms whereof service of less than a year but more than 6 months is to be rounded off as one completed year. This benefit of computation of service accorded to an employee under substantive provision of Regulation No.18 cannot be watered down by the proviso to Regulation No.18. In view of clear language & intent of substantive provision of Regulation No.18, appellant Bank cannot be permitted to take shelter behind proviso to this regulation to contend that such computation of service shall not be applied for determining eligibility for pension. A right/benefit vested/bestowed in the employee under substantive provision of Regulation cannot be taken away by its

[4](2022) 8 SCC 90

proviso. The respondent (writ petitioner) who admittedly has 9 years 10 months & 5 days of service to this credit certainly qualifies for pension as his total service in terms of substantive provision of Regulation No.18 becomes 9+1=10 years.

4. For the foregoing reasons, the present appeal being devoid of merit, is dismissed. Pending miscellaneous applications, if any, shall also stand disposed of.

(M.S. Ramachandra Rao)
Chief Justice

(Jyotsna Rewal Dua)
Judge

20th March 2024
(rohit)