

*Before Mahesh Grover, J.*

**GEJO,—Petitioner**

*versus*

**STATE BANK OF PATIALA AND OTHERS,—Respondents**

**C.W.P No. 3310 of 2005**

13th October, 2010

*Constitution of India, 1950—Art.226—State Bank of Patiala (Employees) Pension Regulations, 1995—Petitioner rendering about 35 years service on a fixed salary—Minimum qualifying service of 10 years to claim pensionary benefits—Whether entitled for pension—Held, yes—Service rendered as work charged employee is also to be considered for grant of pension—Petition allowed, petitioner held entitled to grant of pensionary benefits.*

*Held* that having regard to the settled law where service of even a work-charged employee can be considered for grant of pension, the denial of such benefit to the petitioner simply on the ground that she did not complete 10 years qualifying service even though she had been working with the respondents for the last 35 years, can be said to be arbitrary and consequently, the prayer of the petitioner deserves to be accepted.

(Para 9)

G.P.S. Bal, Advocate, *for the petitioner.*

H.N. Mehtani, Advocate, *for the respondents.*

**MAHESH GROVER, J.**

(1) The petitioner has filed the instant petition for issuance of a writ of mandamus directing the respondents to release the payment of balance amount of gratuity, medical allowance, leave encashment and all other admissible retiral benefits to her. A further prayer has been made to direct the respondents to release the pension and its arrears to the petitioner along with interest at the rate of 18% per annum.

(Mahesh Grover, J.)

(2) The pleaded case of the petitioner is that she was employed with the respondents as Kahar on 13th May, 1968 and retired therefrom in February, 2004. She, thus, contends that having worked with the respondents on a fixed salary and having served them for a period of 35 years, she was entitled to pension and other retiral benefits.

(3) The respondents have not denied the factum of service rendered by the petitioner to their organisation. They have, however, pleaded that she is not entitled to pension and her case was not covered under the State Bank of Patiala (Employees) Pension Regulations, 1995 (for short, 'the Regulations').

(4) The representation submitted by the petitioner for grant of pension was also negated by the respondents by way of Annexure P7 which is also the primary reasoning adopted by the counsel for the respondents to deny her claim to which she had made an objection. The representation has been decided by observing as follows :—

“Smt. Gejo was appointed as a part time Kahar on 1st September, 1996 on 1/3rd scale wages payable to Subordinate Staff by the Bank and subsequently upgraded to 1/2 scale wages with effect from 1st October, 2003. She was retired from Bank's service on 29th February, 2004 thereby she put in total service of 7 years and 10 months. After her retirement, she was paid an amount of Rs. 11,234/- as Gratuity on 15th March, 2004, Rs. 6,062/- towards leave encashment on 26th May, 2004, Rs. 1931/- as Bonus on 10th July, 2004, and Rs. 6,609/- as Provident Fund out of which a sum of Rs. 1461.92 and Rs. 600/- recoverable from her towards demand loan and Festival Loan were recovered and balance of Rs. 4547.08 was paid on 23rd March, 2004. She was also paid Rs. 1200/- towards Fixed Medical Allowance and Rs. 550/- as Medical Bill. All the aforementioned sums were credited into her S.B. A/C No. 011900627. As she has put in 7 years and 10 months service and not the minimum qualified service of 10 years under State Bank of Paitala (Employees) Pension Regulations, 1995, as such not entitled for pensionary benefits.”

(5) It was, thus, pleaded that since the petitioner put in 7 years and 10 months service and did not complete the minimum qualifying service of 10 years under the Regulations, she was not entitled to pensionary benefits.

(6) I have heard the learned counsel for the parties and have gone through the file.

(7) The facts not being in dispute, the only controversy which has been raised herein is that whether the petitioner is entitled to pension having worked with the respondents for 35 years or whether the contention raised by the counsel for the respondent is to be held to be correct to say that she did not deserve pension as her total service came to 7 years and 10 months and she did not complete qualifying service of 10 years.

(8) After considering the matter in detail, I am of the opinion that the petitioner is entitled to get pensionary benefits on the parity of the reasoning which has been given in the judgment rendered by a Full Bench of this Court in **Kesar Chand versus State of Punjab and others, (1)**. In that case, the Full Bench considered a similar controversy where the service rendered by a work-charged employee was not being considered for grant of pension. For reference purposes, paragraphs 9, 10, 11 and relevant part of paragraph 19 of the above judgement are extracted below :

9. What is pension. Is it a right to property or a bounty ? The question came up for consideration before this Court in **Bhagwant Singh versus Union of India, AIR 1962 Punjab 503**. It was held that such a right constitutes 'property' and any interference will be a breach of Article 31(1) of the Constitution. The decision given by the learned Single Judge was approved by the Letters Patent Bench in **Union of India versus Bhagwant Singh**, reported as H.R (1965) (2) Punjab 1. The Letters Patent Bench held that the pension granted to a public servant on his retirement is 'property' within the meaning of Article 31(1) of Constitution and he could not be deprived of the same, save by authority of law.

10. This matter again came up for hearing before a Full Bench of this Court in **K. R. Erry versus State of Punjab**, reported as H.R (1967) Vol. 1 Punjab and Haryana 278. The majority quoted with approval the principle laid down in the earlier two decisions of the Court referred to above and held that the pension is not to be treated as a bounty payable on the sweet-will and pleasure of the Government and that the right of

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(1) 1988 (5) S.L.R. 27 (P&H)

superannuation pension, including its amount, is a valuable right vesting in a Government servant. The Full Bench decision was approved by their Lordships of the Supreme Court in **Deokinandan Prasad versus The State of Bihar**, reported as AIR 1971 S.C. 1409, with the following observations : —

“We are of the opinion that the right of the petitioner to receive pension is property under Article 31(1) and by a mere executive order the State had no power to withhold the same. Similarly, the said claim is also property under Article 19(1)(f) and it is not saved by sub-article (5) of Article 19. Therefore, it follows that the order dated 12th June, 1968, denying the petitioner right to receive pension affects the fundamental right of the petitioner under Article 19(1)(f) and 31(1) of the Constitution, and as such the writ petition under Article 32 is maintainable.”

11. This view was re-affirmed in **State of Punjab versus Iqbal Singh** reported as AIR 1976 SC 667 where their Lordships of the Supreme Court were pleased to observe as under : —

“It has been urged by the appellant that the Full Bench decision of the High Court of Punjab and Haryana in K. R. Erry's case (AIR 1967 Punjab 279) is not in accordance with law as superannuation pension is a bounty and is given as an act of grace. That ground is no longer available to the appellants in view of the decision of this Court in **Deokinandan Prasad versus State of Bihar** (AIR 1971 SC 1409) where it was held that pension is not a bounty payable on the sweetwill and pleasure of the Government and the right of a Government servant to receive it is property under Article 31(1) of the Constitution and the State cannot withhold the same by a mere executive order. It was further held in that case that the claim to pension was also property under Article 19(1) of the Constitution and was not saved by clause (v) thereof.”

In view of this, the pension is a right to property and a Government servant cannot be deprived of this right, save by legislation which, too, has to satisfy the test of Article 14 of the Constitution.

19. ....

..... Equal protection of laws must mean the protection of equal laws for all persons similarly situated. Article 14 strikes at arbitrariness because a provision which is arbitrary involves the negation of equality. Even the temporary or officiating service under the State Government has to be reckoned for determining the qualifying service. It looks to be illogical that the period of service spent by an employee in a work-charged establishment before his regularisation has not been taken into consideration for determining his qualifying service. The classification which is sought to be made among Government servants who are eligible for pension and those who started as work-charged employees and their services regularised subsequently, and the others is not based on any intelligible criteria and, therefore, is not sustainable at law. After the services of a work-charged employee have been regularised, he is a public servant like any other servant. To deprive him of the pension is not only unjust and inequitable but is hit by the vice of arbitrariness, and for these reasons the provisions of sub-rule (ii) of rule 3.17 of the Rules have to be struck down being violative of Article 14 of the Constitution.”

(9) Having regard to the aforesaid law where service of even a work-charged employee can be considered for grant of pension, the denial of such benefit to the petitioner herein simply on the ground that she did not complete 10 years qualifying service even though she had been working with the respondents for the last 35 years, can be said to be arbitrary and consequently, the prayer of the petitioner deserves to be accepted.

(10) Accordingly, the writ petition is allowed and the respondents are directed to calculate the pension payable to the petitioner and release all admissible pensionary benefits to her within three months of the receipt of a copy of this order. The petitioner shall be entitled to receive such benefits along with interest at the rate of 9% per annum from the date when she retired till the date of actual payment.