

Government of India  
Ministry of Labour & Employment,  
Central Government Industrial Tribunal-Cum-Labour Court-II, New Delhi.

Present:

Smt. Pranita Mohanty,  
Presiding Officer, C.G.I.T.-Cum-Labour  
Court-II, New Delhi.

**MISC NO. 04/2015**

**Date of Passing Award- 10<sup>th</sup> January, 2023.**

Between:

Shri Manmohan Sharma  
Through (Legal Heirs )  
Shri Vivek Mohan & Ms. Vasudha Mohan  
R/o:- House No.54, Ground Floor,  
National Park Lajpat Nagar,  
New Delhi-110024.

Workman

Versus

Dy. General Manager,  
State Bank of India,  
52, Rajpur Road, Dehradun-248001.

Management

Appearances:-

None for the claimant,  
(Advocate)  
Ms. Kittu Bajaj,  
(Advocate)

For the Workman

For the Management

**A W A R D**

This is an application filed by the claimant Manmohan Sharma (since dead and substituted by the LRs Vivek Mohan and Vasudha Mohan) invoking the provisions of section 33C(2) of the Id Act claiming entitlement of his pension from the date of his superannuation.

Being noticed the management SBI appeared and filed written statement.

The facts leading to the present application in short is that the claimant was appointed as a Godown Keeper of the Bank on 10.08.1970

at Dehradun Branch. He was transferred to Meerut in 1975 and again got transferred to Dehradun Main Branch in the year 1978 as a clerk. The claimant was involved in the Union activities of the employees and often participating and organizing strikes challenging the illegal action of the Bank management. This had caused dissatisfaction against him in the management and the later in a vindictive action passed an order voluntarily retiring him w.e.f 03.11.1990 on account of his absence from duty without leave. The claimant challenged the said arbitrary action before the CGIT by filing Id No. 106/1992 and the tribunal passed an award dated 08.07.2004 holding the action of the management illegal and directing to reinstate the claimant with full back wages within one month from the date of publication of the award. The management Bank filed writ petition no. 15774 of 2004 before the Hon'ble High Court and the single bench of the Hon'ble High Court reversed the award of the CGIT by order dated 13.12.2000. Being aggrieved the claimant filed LPA No. 77 of 2008 and the Division Bench of the Hon'ble High Court by order dated 29.03.2012 passed the order setting aside the judgment passed by the single judge and directed the management to pay Rs. 17.5 Lakh to the claimant as a lumpsum in view of the compromise effected between the parties and since the age of superannuation already attained by the claimant w.e.f 03.11.1990. In the said order the Hon'ble Division Bench kept the issue relating to the pension of the claimant open and further directed that the claimants shall file a representation to the bank management and the later shall dispose the same by a speaking order. Though, the bank management paid 17.05 Lakh, rejected the representation with regard to the pension. The representation against the order passed by the Regional Manager in this regard was also rejected by the Deputy General Manager in his order dated 05.12.2013. Thus, the claimant has filed this petition stating that he had served the Bank management from 10.08.1970 till the date of his superannuation i.e 22.10.2011. The order of the CGIT directing his reinstatement into service was upheld by the Hon'ble High Court in LPA No. 77 of 2008 by the order dated 29.03.2012. Since, he had attained the superannuation before this order dated 29.03.2012 the Hon'ble High Court instead of directing reinstatement directed for payment of Rs. 17.05Lakh as a lumpsum towards his back wages. If 22.10.2011 would be treated as the last day of his service he is entitled to pension as per the bipartite

agreement and Shashtri Award. The claimant has also stated that a correspondence was issued by the SBI Mohabewala Branch Dehradun regarding payment of gratuity to him which establishes that he had completed 20 years of service on 03.11.1990 making him entitled to gratuity.

In reply the management stated that the claimant had joined the service of the bank on 10.08.1970 and retired on 03.11.1990 on account of unauthorized absence from duty. The Division Bench of the High Court of Delhi had disposed of LPA No. 77 of 2008 in terms of the compromise arrived between the claimant and the respondent bank and directed the bank to pay a lumpsum amount of 17.05 lakh in lieu of all his claims except his entitlement for pension. As directed the claimant had made a representation for pension. But he was not found eligible for pension under the SBI Pension Fund Rule and accordingly the same was rejected. Hence, his claim as advanced before this tribunal is baseless and liable to be rejected. It has further been stated that as per the powers conferred under section 50(2)(O) of SBI Act 1955 the State Bank of India has established a pension fund having the name **SBI Employees Pension Fund Rules** and as per rule 7 the employee will become a member of the said fund on the date of confirmation of his service in the Bank. The claimant was confirmed in the service of the Bank on 10.02.1971. Rule 8 provides that no employee shall be eligible to be a member of the fund if he is below 21 years of age. The claimant though confirmed in the service on 10.02.1971 became a member of the fund on 22.10.1972 after attaining the age of 21 years. A persons eligibility is calculated from the date of admission to the pension fund and upto the date of his retirement. Thus, the claimant fell short of the eligibility since, on the date of his retirement on 03.11.1990 his pensionable service was less than 20 years. Thus, the claimants claim is untenable. By filing a copy of the said pension rule the management has stated that the Hon'ble Division Bench of the High Court while disposing LPA No. 77 of 2008 nowhere observed that the claimants shall be deemed to be in service till the date of his superannuation. The said order was passed in terms of the compromise arrived between the parties for the financial entitlements. There was no illegality in the order passed by the Bank management in rejecting the prayer of the claimant for grant of pension.

On these rival pleadings the following issues were framed for adjudication.

### **ISSUES**

1. Whether the workman is entitled to pension and its benefits in view of the rule stipulating that the workman is entitled to pension after rendering 20 years of service. If so, its effect.
2. Whether the management i.e SBI can withheld the gratuity under the Gratuity Act 1972? If so, its effect?
3. Whether the management can withhold the GPF of the applicant contributed by him and equity with the management.
4. Whether the dispute between the parties constitute an industrial dispute within section 2(K) of the ID Act.
5. Whether the workman is entitled to pension as per SBI Employees pension Fund Rules? If so, its effect.
6. Whether the CGIT has power to deal with the present dispute? If so its effect?
7. To what relief the workman is entitled to and from which date.

The claimant examined himself as WW1 and was cross examined by the management. Though, several opportunities were granted to the management for adducing evidence, on 09.05.2022 the management expressed the intention of not adducing the evidence and argument was heard.

At the outset of the argument the management Bank while drawing attention of this tribunal to the representations filed by the claimant for grant of pension and the provisions of Pension Rule submitted that under Rule 12.1.2 of the Rules a member of the SBI Pension Fund shall be entitled for Pension under Rule 22(I) while retiring from Bank service after having completed 20 years Pensionable service provided that he has attained the age of 50 years. The claimant was admittedly inducted as a member of the pension fund on 22.10.1972 on attaining the age of 21 years. His service came to an end as a mode of voluntarily retirement on 03.11.1990. The period from the date of induction and till the date of deemed retirement was less than 20 years and as such the Bank had rightly and justifiably rejected his application. The counter argument advanced by the claimant is that the Bank took a vindictive action and the

period of leave taken by him was treated as unauthorized absence and passed an order deeming the date of absence as the date of voluntarily retirement. The said decision of the management Bank was challenged before the CGIT who directed for reinstatement with back wages. The said order of the CGIT was confirmed by the Hon'ble Division Bench of Delhi High Court in LPA NO. 77/2008. The final order in the LPA was passed on 29.03.2012. But unfortunately the claimant had already attained the age of superannuation before passing of the judgment. Hence, the Hon'ble High Court passed the order directing a lumpsum payment of 17.05 Lakh instead of reinstatement but kept the claim for pension open. But the management arbitrarily passed the order rejecting the said claim.

On behalf of the management a calculation has been given in the written statement indicating that the claimant had rendered pensionable service for the period of less than 20 years and in the judgment passed by the Hon'ble division Bench in LPA No. 77/2008, there is no observation that the claimants deemed voluntarily retirement is illegal. The said judgment was passed by the Hon'ble High court on compromise arrived and in respect of all the financial entitlement except the pension. The Bank was directed to pay 17.05 Lakhs. That amount having been paid to the claimant his claim for gratuity and PF are untenable and the entitlement for pension is also not tenable as the date of superannuation from 22.10.2011 is imaginary.

The claimant in his evidence has fully supported the stand in the claim Petition. During cross examination he has admitted that he was inducted to the pension fund of the Bank on 22.10.1972 and his service came to an end on 03.11.1990 when his age was 39 years only. He has further admitted that on 03.11.1990 he had not completed 20 years of service as required under Rule 22(2)© of the Pension Rule. In view of the said admission the moot point which need to be decided is if the claimant by the order of Hon'ble High Court in LPA NO. 77/2008 shall be deemed to have retired from service on 22.10.2011 or 03.11.1990. On a plain reading of the order passed by the Hon'ble High Court in LPA NO 77/2008 shows that the said order was passed on account of a settlement arrived between the parties. Considering the offer made by the Bank to pay 15 lakh to the claimant the court directed that an additional amount of 2.05 lakh shall be paid by the Bank over and above the 15Lakh offered

towards the interest and litigation expenses in lieu of the appellant withdrawing his challenge to the impugned judgment and the claim for reinstatement with back wages in accordance with the award of the industrial adjudicator. But the claim for pension was kept open for a decision by the management. Since, the Bank Employees Pension Rule clearly stipulates that a person becomes entitled to pension on completion of 20 years of service from the date of induction and the claimant has not completed 20 years of service and there being no observation by the Hon'ble High Court to treat the intervening period between deemed voluntarily retirement and superannuation as continuous period of service, the claim of the claimant for pension seems not justified and no illegality is found in the order of the Bank management in refusing the said claim. When pursuant to the compromise the claimant had withdrawn the claim advanced before the Industrial Adjudicator. Hence, ordered.

### **ORDER**

The claim be and the same is rejected as without merit. Send a copy of this award to the appropriate government for notification as required under section 17 of the ID act 1947.

Dictated & Corrected by me.

Presiding Officer.  
CGIT-Cum-Labour Court.  
10<sup>th</sup> January, 2023

Presiding Officer.  
CGIT-cum-Labour Court.  
10<sup>th</sup> January, 2023