

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**R/LETTERS PATENT APPEAL NO. 750 of 2022
In
R/SPECIAL CIVIL APPLICATION NO. 8768 of 2016
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2022
In R/LETTERS PATENT APPEAL NO. 750 of 2022**

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Bank OF BARODA

Versus

HARSHADGIRI CHANCHALGIRI GOSWAMI

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Appearance:

MR.VARUN K.PATEL(3802) for the Appellant(s) No. 1

MR NAVALDAN R LANGA(2943) for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE A.J.DESAI

and

HONOURABLE MRS. JUSTICE MAUNA M. BHATT

Date : 22/08/2022

ORAL ORDER

(PER : HONOURABLE MR. JUSTICE A.J.DESAI)

1. By way of present appeal under Clause 15 of Letters Patent, the appellant – Bank (original respondent) has challenged the oral order dated 18.2.2022 passed by learned Single Judge in captioned writ petition, by which, the petition filed by the present respondent (original petitioner) with the prayer for issuance of writ of mandamus directing the Bank to grant pension from the date of his voluntary retirement under the provisions of Dena Bank (Employees’) Pension Regulations, 1995 (hereinafter referred as “Pension Regulations”) came to be accepted.

2. The short facts are as under:

2.1. Petitioner was appointed as Part-Time Cleaner on 1.7.1990. By memorandum dated 5.11.1999, the Bank regularized his services as 1/3rd Part-Time Cleaner on scale wages w.e.f 1.7.1990. Thereafter he was made permanent as Full-Time Cleaner w.e.f. 26.2.2003 and continued till he voluntarily retired by submitting a communication dated 21.4.2011. His request for voluntary retirement was accepted by the Bank. Since the original petitioner was not paid pension, he made representation to the Bank on 22.8.2012 which was not dealt with and, therefore, the petition came to be filed with following prayers:

“7 (A) Your Lordships may be pleased to issue writ in the nature of Mandamus or any other appropriate writ, direction or order directing the respondent bank to act according to the established principles of law and grant the petitioner his lawful right to get the regular pension from the day he was voluntarily retired;

(B) Your Lordships may be pleased to grant such other relief or reliefs as may be deemed just

and proper in the circumstances and grounds narrated in this petition;

(C)Your Lordships may be pleased to award the cost of this petition to the petitioner.”

3. In response to the notice, an affidavit-in-reply was filed by the Bank opposing the grant of relief. Learned Single Judge after considering the rival submissions, accepted the petition and directed the Bank to calculate the pension of the petitioner as per the Pension Regulations.

Hence, this Appeal.

4. At the outset, we would like to discard the additional affidavit-in-reply filed by the appellant-Bank in the present proceedings, since the same was not produced before the learned Single Judge. The Bank has also not opted for filing any review application and, therefore, the appeal is taken up for hearing by examining only those documents on record which were produced by both the parties before the learned Single Judge.

5. Mr. K.M. Patel, learned senior counsel with Mr. Varun Patel, learned advocate the appellant-Bank has assailed the

judgment of learned Single Judge as far as interpretation of Regulations 17, 29 and 27(2) and Appendix – IV of the Pension Regulations is concerned. He would submit that learned Single Judge has committed an error in calculating the years of services as Part-Time Cleaner i.e. from 1990 to 2003 as he was a permanent employee. He was appointed on permanent post w.e.f. 26.2.2003. He would submit that it is an undisputed fact that the respondent was made permanent only in the year 2003 and he has voluntarily retired on 20.7.2011, therefore, he has not completed 20 years of qualifying service as per Clause 29 of Pension Regulations. He would submit that learned Single Judge has committed error in interpreting Clause 27(i) (2) of Pension Regulations. He would submit that learned Single Judge ought not to have considered sub-clause (2) of Regulation 27 only for calculating the amount of pension since the said clause also refers to the qualifying service of an employee referred in Regulation 27 (i) . He would submit that Appendix IV is also for deciding the qualifying services and therefore, for a period from 1990 to 2003 where the respondent was working as Part-Time Cleaner, it would come to around 4 years and 9 months and thereafter 12 years as permanent Cleaner and hence total service tenure of the respondent would be 16 years and 9 months and, therefore also, he cannot be treated as if he has completed the qualifying service when he submitted his voluntary retirement

in the year 2011. He, therefore, submits that appeal be allowed and order be quashed and set aside.

6. On the other hand, Mr. N.R. Langa, learned advocate appearing for the respondent – employee has supported the reasons rendered by learned Single Judge. He would submit that learned Single Judge has rightly interpreted the relevant clauses of Dena Bank (Employees') Pension Regulations, 1995. He would submit that as per the observation of learned Single Judge, services of respondent are treated for calculating the pension and accordingly his case falls under first clause of Appendix IV, it could be 1/3 of a year and therefore, his services between 1990 to 2003 shall be added for the period for which he has served as Full-Time Cleaner i.e. from 2003 to 2011 and accordingly, direction has rightly been issued by learned Single Judge. He, therefore, would submit that the appeal be dismissed.

7. We have heard learned advocates appearing for the respective parties. What we found from the record of the case is that by communication dated 5.11.1999, it is specifically stated that the respondent who is a Cleaner (Class-IV employee) has been regularized as 1/3rd Part-Time Cleaner on scale wages w.e.f. 1990. It is also made clear that about his monthly emoluments, he would be entitled for DA/HRA on the

basis of 1/3rd as applicable from time to time since 1990 onwards. It is also an undisputed fact that he was made Full-Time Cleaner (Class-IV employee) by communication dated 25.5.2003. The respondent by communication dated 21.4.2011 applied for voluntary retirement as provided under Pension Regulations which was accepted by the Bank. Since it is a question of qualifying service to have benefits of pension as an employee of appellant – Bank, the Pension Regulations are relevant. The definition of qualifying service under Rule 2 (w) reads as under:

“(w) “qualifying service” means the service rendered while on duty or otherwise which shall be taken into account for the purpose of pension under these regulations;”

As far as voluntary retirement is concerned, the same is defined under definition 2 (y) (b) and the same is reproduced herein below:

“2(y)(b) on voluntary retirement in accordance with provisions contained in regulation 29 of these regulations”

Now Chapter IV of same Regulation deals with qualifying

service. Regulations 14 and 15 are relevant for our consideration which are produced herein below”

“14. Qualifying service – Subject to the other conditions contained in these regulations, an employee who has rendered a minimum of ten 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.

15. Commencement of qualifying service – Subject to the provisions contained in these regulations, qualifying service of an employee shall commence from the date he takes charge of the post to which he is first appointed on a permanent basis.”

8. It is an undisputed fact that he was appointed on scale wages w.e.f. 1.7.1990 as Part-Time Cleaner and therefore his service for calculating qualifying service for that period cannot be discarded or only 1/3rd of each year shall be considered for consideration as submitted by learned Senior counsel Mr. Patel. Regulation 27 reads as under:

“27. Counting of service rendered on

permanent part-time basis - (i) In case of an employee who was employed on scale wages and on a permanent part-time basis in the service of Bank and was contributing to the Provident Fund, such service rendered by him on a permanent part-time basis from the date he became a member of the Provident Fund shall be counted as qualifying service.

(2) The length of qualifying service of the employee referred to in sub regulation (i) for the purpose of calculating the amount of pension shall be determined in accordance with Appendix IV.”

Appendix – IV is also reproduced herein below:

Appendix – IV

(see regulation 27)

Actual service on scale wages rendered on permanent part-time basic in one week (1)	Length of corresponding qualifying service for each year of service rendered on permanent part-time basis for calculating the amount of pension (2)
six hours or more but upto 13 hours;	one third of a year

more than 13 hours but upto 19 hours;	one half of a year
more than 19 hours but upto 29 hours;	three fourth of a year
more than 29 hours;	one year

9. The clause 1 specifically deals with permanent employees who were appointed on scale wages and on permanent basis which is the case herein on hand as stated herein above. Therefore, the submissions made on behalf of the appellant cannot be accepted that since the respondent has worked as Part-Time Cleaner between 1990-2003, 1/3rd of each year is to be calculated. The language of Regulation 27(2) is clear which suggests of calculating the amount of pension and not for calculating the qualifying service rendered by Part-Time employee. Therefore, it would be a total qualifying service of the respondent from 1990 to 2011 as provided and would be entitled for pension as per Regulation 29. However, calculation is to be made according to Appendix IV Regulation 27.

10. All these aspects have thoroughly dealt with by learned Single Judge in paragraphs 6 to 11 of the order which are reproduced herein below:

6. The facts, which are not in dispute, are that the petitioner was appointed on 27.09.1990 as

a part time employee in the respondent-Bank. Thereafter, on 05.11.1999, by the Memorandum issued by the Bank, he was regularized in service w.e.f. 01.07.1990. The petitioner was appointed as a part time cleaner in 1/3 scale wages from 27.09.1990 to 25.02.2003 and after he was regularized w.e.f. 01.07.1990, his pay was fixed and notional increments were also confirmed from 01.07.1990 and accordingly, he was also paid arrears. Thereafter, he has worked as a full time employee from 26.02.2003 to 20.07.2011 i.e. for 9 years and 5 months. The petitioner applied for voluntary retirement, which was approved by the respondentBank and was relieved from service on 20.07.2011.

7. The case of the petitioner hinges on the interpretation of the Regulation 27 of the Pension Regulations. The same reads as under:

“27. Counting of service rendered on permanent part-time basis - (I) In case of an employee who was employed on scale wages and on a permanent part-time basis in the service of Bank and was contributing to the Provident Fund, such service rendered by him on a permanent part-time basis from the date he became a member of the Provident Fund shall be counted as qualifying service.

(2) The length of qualifying service of the employee referred to in sub regulation (I) for

the purpose of calculating the amount of pension shall be determined in accordance with Appendix IV.”

8. In the present case, it is the case of the respondent authorities that the length of qualifying service of the petitioner is required to be calculated as per the Appendix-IV, as mentioned in the aforesaid Pension Regulations. The AppendixIV reads as under:

Appendix – IV

(see regulation 27)

Actual service on scale wages rendered on permanent part-time basis in one week (1)	Length of corresponding qualifying service for each year of service rendered on permanent part-time basis for calculating the amount of pension (2)
six hours or more but upto 13 hours;	one third of a year
more than 13 hours but upto 19 hours;	one half of a year
more than 19 hours but upto 29 hours;	three fourth of a year
more than 29 hours;	one year

9. The respondent-Bank, while adopting formula of 1/3 of the years of service as specified in the Appendix-IV of the Pension Regulations, has reduced the qualifying service of the petitioner rendered by him as a part time employee.

10. A combined reading of Clause-2 of Regulation 27 with the Appendix-IV of the Pension Regulations will clarify that the same does not in any manner refer to the calculation of qualifying service but for calculating the amount of pension, which is to be determined in accordance with Appendix-IV of the Pension Regulations. Both the regulations i.e. Regulation 27 and Appendix-IV refer to the mode of calculating the amount of pension and not calculating the qualifying service. By imposing calculation mentioned in Appendix-IV of the Pension Regulations, the respondent-Bank in fact has reduced the qualifying service of the petitioner, which is not directed in the Pension Regulations as it only refers to the calculation of the amount, which is to be paid on qualifying service rendered by an employee. Thus, the respondent-Bank has misinterpreted the Regulation 27(2) and Appendix-IV attached to the Pension Regulations by reducing the service of the petitioner as a part time employee from 1992-2003 as 4 years and 4 months.

11. It is pertinent to note that the petitioner was already regularized in service by the Memorandum dated 05.11.1999 w.e.f. 01.07.1990 and his pay was also fixed and accordingly increments were also done and arrears were also paid from 01.07.1990. Thus, once the petitioner is regularized w.e.f. 01.07.1990, he cannot be treated as part time

employee and such service, which is regularized from 01.07.1990, is required to be considered for the purpose of pension along with service rendered by him from 26.02.2003 to 20.07.2011. Thus, the petitioner is entitled to the pension by considering his 20 years of service.”

11. We are in agreement with the ration laid down by Hon'ble Apex Court in the case of *Ashok K. Jha and Ors. v. Garden Silk Mills Limited and Ors.* reported in *(2009) 10 SCC 584*. However, the facts of the aforesaid case is different and is not applicable in this case.

12. We are in complete agreement with the observations made by learned Single Judge. Hence, we do not find any reason to entertain this appeal. Hence dismissed.

13. The amount of pension shall be paid within a period of six weeks from today. If the amount is not paid within six weeks from today, the Bank shall pay interest @ of 6% from the date of filing of the petition till the amount is paid.

14. Learned Senior counsel Mr. Patel would submit that interest which has been ordered to be paid subsequent to period of six weeks from today shall be calculated from date of refund of provident fund received by the employee. On the other hand learned advocate Mr. N.R.Langa for the respondent

would submit that he has not received any provident fund.

15. It is hereby made clear that if any refund is paid by the bank to the respondent, the said amount shall be deducted from payment of pension.

16. If it is found in future that any amount is illegally deducted from the pension, the bank shall be liable to pay the interest at the rate of 12% from today.

17. Consequentially, no order in Civil Application (for stay).

(A.J.DESAI, J)

(MAUNA M. BHATT, J)

NAIR SMITA V.

THE HIGH COURT
OF GUJARAT

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