

Court No. - 29

Case :- WRIT - A No. - 17819 of 2024

Petitioner :- Ashok Kumar Agarwal And 48 Others

Respondent :- Union Of India And Another

Counsel for Petitioner :- Chandra Dutt, Pradeep Verma

Counsel for Respondent :- Ashok Shankar

Bhatnagar, Anupama Parashar, C.S.C., Dharmendra Vaish

Hon'ble Ashwani Kumar Mishra, J.

Hon'ble Donadi Ramesh, J.

Petitioners are retired employees of Punjab National Bank. At the time of their superannuation, they availed of the benefit of commutation of part of their pension in terms of the applicable Service Regulations i.e. Punjab National Bank (Employee) Pension Regulation, 1995 (hereinafter referred to as the Regulations of 1995). The Pension Regulations clearly contemplated that in the event an employee avails benefit of commutation of pension, he would be entitled to lumpsum amount on the commutation of his giving up pension, upto 1/3rd of the pension. The Regulations of 1995 clearly contemplate that pension would be restored after a period of 15 years.

The petitioners contend that actual amount of deduction on account of 1/3rd reduction in the pension, due to commutation for a period of 10-11 years, would almost equalise the lumpsum amount paid on commutation, and therefore, the period of 15 years fixed for restoration of pension be reduced to 10 years. For such purposes, the petitioners lay challenge to Regulation 41(4) and 41(5) of the Regulations of 1995, which are reproduced hereinafter:

"(4) In the case of a pensioner eligible for superannuation pension or pension on voluntary retirement or premature retirement pension, no

medical examination shall be necessary, if the application for commutation is made within one year from the date of retirement. However, if such a pensioner applies for commutation of pension after one year from the date of his retirement, the same will be permitted subject to medical examination;

Provided that in the case of an applicant who is in receipt of a provisional pension as in Regulation 46 and for whom pension in whole or in part on the finalisation of the departmental or judicial proceedings has been authorised, the period of one year referred to in this sub-regulation shall reckon from the date of issue of the orders consequent upon the finalisation of the departmental or judicial proceedings.

(5) An applicant who -

(i) retires on invalid pension under regulation 30 of these regulations; or

(ii) is in receipt of compassionate allowance under regulation 31 of these regulations; or

(iii) is compulsory retired by the Bank and is eligible for compulsory retirement pension under regulation 33 shall be eligible to commute a fraction of his pension subject to the limit specified in sub-regulation (1) after he has been declared fit by a medical officer approved by the bank."

In the writ petition, the petitioners have furnished detail in respect of lumpsum amount paid to the petitioners, consequent upon commutation of pension, as also the actual deduction made on account of 1/3rd reduction in their pension to submit that in fact the benefit extended by the bank, on account of commutation, gets equalised on the expiry of 10-11 years itself and therefore, the Service Regulations providing for restoration of pension upon expiry of 15 years, ought to be interfered with, by this Court and reduced to 10 years.

This petition is opposed by learned counsel for the respondent-Bank, who states that statutory Regulations clearly extend an offer/option to the retiring bank employee to avail receipt of lumpsum amount in lieu of giving up specified percent of pension on account of its commutation. Argument is that once the petitioners accept such offer/option and avail the benefit of receipt of lumpsum amount, it would not be open for the petitioners to question the term after which alone the pension

gets restored.

We have heard Sri Pradeep Verma, learned counsel for the petitioners and Sri Ashok Bhatnagar, learned counsel for the respondent-Bank, and have perused the materials on record.

Clause 41 (1) to (3) of the statutory Regulations of 1995 are reproduced hereinafter:

"(1) An employee shall be entitled to commute for a lump sum payment of a fraction not exceeding one-third of his pension:

Provided that in respect of an employee who is governed by sub-regulation (5) of Regulation 3 of these regulations, the family of such employee shall also be entitled to commute for a lump sum payment a fraction not exceeding one-third of the pension admissible to the employee.

(2) An employee shall indicate the fraction of pension, which he desires to commute, and may either indicate the maximum limit of one-third pension or such lower limit, as he may desire to commute.

(3) if fraction of pension to be commuted results in fraction of rupee, such fraction of a rupee shall be ignored for the purpose of commutation."

Clause 41(4) contains reference to a table, which indicates the commutation amount as also the manner of its calculation. The table is followed with certain notes, which also highlight the manner in which the computation is to be carried out for the purposes of commutation. Clause 2 of the note is relevant and is reproduced hereinafter:

"(2) An employee who had commuted the admissible portion of pension is entitled to have the commuted portion of the pension restored after the expiry of a period of fifteen years from the date of commutation."

The provisions contained in the Regulations would clearly indicate that the retiring employee shall indicate a fraction of pension, which he desires to commute, and may indicate its maximum limit, which shall not be more than 1/3rd of the pension. In case, the fraction amount is in part of the rupee, such fraction of a rupee is to be ignored for the purposes of commutation. Note (2) is categorical and provides in specific

terms that employees who have commuted the admissible portion of pension, is entitled to have the commuted portion of the pension restored after the expiry of 15 years from the date of commutation. The statutory scheme is, therefore, abundantly clear that an option is extended to the retiring employee concern to avail of the benefit of computation and such computation is on specific terms that on expiry of 15 years of such commutation, the original pension is to be restored.

The petitioners' contention that period for resumption of full pension be reduced from 15 years to 10 years only because the bank actually recovers the lumpsum amount paid on expiry of 10 years, is a misconceived argument. The Policy contained in the Regulations of 1995 extends an offer to the retiring employee to avail the benefit of commutation on specific terms. These terms clearly provide for restoration of pension only on expiry of 15 years. The petitioners otherwise do not say that the terms of the policy is unconstitutional or unconscionable.

Having accepted such offer, a binding contract comes into existence between the employee and the employer as per which the original pension is to be restored after 15 years. Having acquiesced to the commutation policy with open eyes, it is not open for the retiring employee to contend later that the period of restoration of full pension be reduced from 15 years to 10 years. Whether or not the lumpsum amount gets equalised on expiry of 10 years or 11 year is not decisive or material. What is material is the nature of obligation which enures upon the parties when the retiring employee accepts the provision of commutation of pension. The employee with his open eyes having availed the policy, cannot subsequently turn around or seek modification in its terms. The argument that the table or the figures were not adequately disclosed, is also not

acceptable, inasmuch as the chart specifies the manner in which the commutation is to be fixed and the period after which the original pension is to be restored. In case, the employees had any misgivings about it, they could have sought appropriate clarification before accepting the offer. Once, the petitioners have acquiesced to the policy and accepted the offer, their subsequent attempt to resile or seek change in its computation would clearly be impermissible.

The writ petition lacks merit and is, accordingly, dismissed.

The view taken by us clearly finds support from the adjudication made by the Supreme Court in "**Common Cause**", **A Registered Society And Others Vs. Union of India, (1987) 1 Supreme Court Cases, 142**, **R. Gandhi Vs. Union of India And Others, (1999) 8 SCC 106** as well the judgment of Delhi High Court in **Forum Retired IPS Officers (FORIPSO) Vs. Union of India & Another, 2019 SCC Online Del 6610** and Punjab & Haryana High Court in **Shila Devi Vs. State of Punjab in CWP No. 9426 of 2023**.

Order Date :- 15.1.2025

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