

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30-10-2009

Coram

The Honourable Mrs.Justice R.BANUMATHI
and
The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

W.A.Nos.1462 of 2009
M.P.No.1 of 2009

Indian Overseas Bank,
rep.by its Chairman,
Central Office, 763 Anna Salai,
Madras - 600 002.

... Appellant/2nd Respondent

Vs.

1. N.N.Veerappan
2. Union of India,
rep.by its secretary,
Department of Banking Affairs,
New Delhi.
3. Reserve Bank of India,
rep.by its Secretary,
Shaheed Bhagat Singh Road,
Post Box No.10007nk,
Mumbai - 400 001.
4. Indian Banks Association,
rep.by its Secretary,
Stadium House, Veer Nariman Road,
Mumbai - 400 020.

... Respondents/Petitioner
& Respondents 1,3 & 4

This writ appeal is filed under Clause 15 of the Letters Patent against the order of the learned single Judge dated 25.7.2009 made in W.P.No.20470 of 1998. Presented under Article 226 of the Constitution of India to issue a writ of declaration declaring the non-payment of pension to the petitioner on the ground that he voluntarily retired Prior to 1.11.1993 based on the impugned Regulation 2 (y) read with Regulations 28 and 29 of the Indian Overseas Bank (Employee's) Pension Regulations 1995 as illegal and void and direct the Respondents herein to pay pension to the petitioner with effect from the date of his retirement in accordance with the pension scheme within such date as may be stipulated by this Honourable Court.

For Appellant

:Mr.N.G.R.Prasad

For 1st Respondent
(Caveator)

:Mr.V.Prakash,
Senior Counsel
for Mr.K.Sudalaikannu

J U D G M E N T

N. PAUL VASANTHAKUMAR, J.

By consent of the appellant as well as the contesting respondent, the writ appeal is taken up for final disposal even at the admission stage.

2. This writ appeal is directed against the order dated 25.7.2009 made in W.P.No.20470 of 1998, wherein the learned single Judge allowed the writ petition filed by the first respondent herein and declared that the first respondent is entitled for Premature Retirement Pension under Clause 32 of the Pension Regulations, 1995, from 15.2.1989 provided the first respondent refunds the entire amount of bank contribution of Provident Fund and the interest accrued thereon together with further simple interest at the rate of 6% per annum on the said amount from the date of settlement till the date of remittance.

3. The case of the first respondent before the learned single Judge was that he joined as Messenger in the appellant bank in the year 1960 and later on he was promoted as Clerk in the year 1986 and he was assigned the duties of Special Assistant in clerical cadre. On 19.9.1988 the first respondent submitted an application for voluntary retirement from the services of the bank due to his ill-health and hyper tension. The first respondent having not received any reply for the said letter, on 14.2.1989 he met the Assistant General Manager (Personnel) at the Central Office, Chennai, who in turn informed the first respondent that he should submit an application along with an amount equivalent to one month pay and allowance in lieu of notice period in accordance with the service regulations. Accordingly, on 23.3.1989 he applied for voluntary retirement by remitting the amount of one month salary and allowances. Thereafter the said request of the first respondent was accepted and he was voluntarily retired from service with effect from 15.2.1989. According to the first respondent, he completed 28 years of unblemished service and at the time of retirement he was working as Special Assistant at Velampalayam Branch and after his retirement he was paid gratuity and provident fund.

4. When the Pension Scheme was introduced for the persons, who retired from the bank on or after 1.1.1986, the first respondent submitted an application on 30.11.1993 before the Assistant General Manager (Personnel) and prayed for sanction of

pension. On 20.12.1993 the first respondent was informed that the details of the pension scheme was not received and as soon as they receive the details, he would be advised in this regard. On 17.7.1988 the first respondent sent representation to the appellant herein for which a reply was given on 5.8.1998 stating that those employees, who have voluntarily retired from the bank service during the period from 1.1.1986 to 31.10.1993 are not eligible for pension under Regulation 29. The said order was challenged before the learned single Judge contending that the restriction of pensionary benefits to the employees retired prior to 1.11.1993 is illegal and the first respondent's application for voluntary retirement was under para 522(2) and 522(3) of the Shastri award and the award staff is entitled to get pension on their voluntary retirement or premature retirement.

5. The writ petition was resisted by the appellant Bank by filing counter affidavit contending that the first respondent left the services of the bank on 15.2.1989 and at that time there was no pension scheme and only provident fund and gratuity were payable. The Pension Scheme came to be introduced on 29.10.1993 under section 18(1) of the Industrial Disputes Act, 1947, and as per Clause 11, the pension payment has to commence from 1.11.1993. The Scheme was made applicable to persons who retired from the bank on superannuation or died on or after 1.1.1986, provided they exercised their option and returned the Employer's share of provident fund contribution together with 6% interest per annum. In this case, the first respondent left the services of the Bank on health grounds and hence he is not entitled to any pension and he was paid provident fund and gratuity on his voluntary retirement. It is stated in the counter affidavit that the records pertaining to the first respondent's application and its acceptance are not available due to lapse of time.

6. The learned single Judge allowed the writ petition and ordered that the first respondent is entitled to get pension relying upon the proviso to Clause 29 of the Pension Regulations, which enables the employee, who has completed 25 years of qualifying service to go on voluntary retirement by giving notice of not less than three months in writing and Clause 32 of the Pension Regulations, which enables the persons who have retired prematurely and who have completed ten years of service.

7. The said order of the learned single Judge is challenged by the appellant Bank in this writ appeal by contending that the first respondent cannot at all be treated as prematurely retired person under Clause 32 of the Pension Regulations, which defines premature retirement and states that 'premature retirement can be made by the Bank either as per the service regulations or as per Settlement' and as per the Service Regulations a person to claim Premature Retirement Pension must satisfy two conditions i.e., (1) he should have rendered minimum of ten years of qualifying service, and (2) he retired from service by an order of the bank or retired prematurely in the Public interest or for any other reasons specified in the service regulations of settlement.

8. The learned counsel appearing for the appellant argued that in this case, the first respondent submitted application for retirement on his own due to health grounds and no order emanated from the bank to retire him prematurely on public interest or for any other reasons. The learned counsel also relied on clause 22 of the Regulations, which states that if a person resigns, his entire service will be forfeited and merely leaving bank cannot at all be treated as premature retirement under regulation 32(2). The learned counsel also cited the judgments of the Supreme Court reported in (2004) 4 SCC 412 (UCO Bank v. Sanwar Mal) and 2007 (2) LLN 77 (Union of India v. Venkatesh Gopal Mahishi and Another) in support of his contentions.

9. The learned Senior Counsel appearing for the first respondent submitted that payment of pension being a social security scheme, Pension Regulations should be liberally construed and the first respondent having served for 28 years, though he has submitted application for retirement on health grounds, the same shall be treated as premature retirement on public interest. The learned Senior Counsel also submitted that the interpretation given by the learned single Judge in treating the first respondent as prematurely retired for the purpose of sanction of pension is justified and no interference is required by this Court.

10. We have considered the rival submissions made by the learned counsel for the appellant as well as learned Senior Counsel appearing for the first respondent.

11. The question to be decided in this writ appeal is as to whether the first respondent can be treated as prematurely retired person or he left his service with effect from 15.2.1989.

12. In the affidavit filed in support of the writ petition it is stated that the first respondent submitted application for voluntary retirement along with an amount equivalent to one month pay and allowance in lieu of notice period in accordance with service conditions governing employees of the bank. On 23.3.1989 he again applied for voluntary retirement by remitting the amount equivalent to one month pay and allowance and he was retired from service with effect from 15.2.1989. He was working as Special Assistant at the Velampalayam branch of the bank at the time of retirement and he was paid gratuity and provident fund by the Bank.

13. The first respondent is governed under the Sastry Award and therefore he is treated as Award staff. Paragraphs 522 (2) and 522(3) of the Sastry Award read as follows:

"522(2) A permanent employee desirous of leaving the service of the bank shall give one month's notice in writing to the Manager. A probationer desirous of leaving the service shall give 14 days' notice in writing to the Manager. A permanent employee or a

probationer shall, when he leaves service, be given an order of relief signed by the Manager.

522(3) If any permanent employee leaves the service of the bank without giving notice, he shall be liable to pay the bank one month's pay and allowances. A probationer, if he leaves the service without giving such notice, he shall be liable for a week's pay (including all allowances)."

Admittedly the first respondent left the services of the bank on health grounds, in terms of the said clause contained in Shastry Award, on 15.2.1989 and he cannot go on voluntary retirement.

14. The learned single Judge, while allowing the writ petition failed to consider the submission of the Bank that premature retirement can be ordered only under Clause 32 of the Pension Regulations, 1995, which clearly states that the bank may retire prematurely an employee on public interest or for any other reasons specified in the Service Regulations. As rightly contended by the learned counsel for the appellant, for invoking the said clause, the premature retirement shall emanate from the Bank and not at the instance of the Employee/respondent. When that being the Pension Regulation, the finding given by the learned Judge that retirement before attaining the age of superannuation is always a premature retirement and it makes no difference as to whether the initiative came from the employee or from the bank. The first respondent also admittedly received the provident fund and gratuity. If the first respondent is not entitled to be treated as prematurely retired under clause 32(2), he should be treated as a person left the bank service on his own. Regulation 22 of the Pension regulations clearly states that if an employee resigns, the entire service would be forfeited.

15. In the decision reported in (2006) 12 SCC 20 : 2007 (2) LLN 77 (Union of India v. Venkatesh Gopal Mahishi and Another) the Supreme Court considered similar right of an Award Staff. In paragraphs 22 to 24, the Supreme Court held thus,

"22. The High Court has not given any finding on the fundamental issue whether the claim of Respondent 1 who, admittedly, was an award staff at the time of retirement on medical grounds in the year 1993, is covered under the Pension Regulations, 1995 or not. In our view, the decision of the learned Single Judge in Madav Kirtikar as relied upon by the Division Bench in its impugned order, is not of any help or assistance either on facts or on law to the case of Respondent 1. In that case, the employee of the bank was an officer who sought voluntary retirement under the

provisions of the Officers' Service Regulations governing the terms and conditions of voluntary retirement under the scheme in the normal circumstances and not on medical grounds. Secondly, in that case there was no question of appointment of dependant of the retiree on compassionate grounds.

23. In the normal course, we could have remitted the case back to the High Court for recording decision on the fundamental issue raised by the appellant Bank in relation to the entitlement of pension to Respondent 1, who had retired as an award staff, but looking to the time gap between the date of retirement of Respondent 1 w.e.f. 1-11-1993 and pendency of the writ petition in the High Court and civil appeal in this Court and with the consent of the learned counsel for the parties, we propose to deal with and decide this fundamental issue in this appeal.

24. The appellant Bank in its affidavit filed before the High Court has categorically stated and pleaded that as per the advice of the Director (IR), Government of India, Ministry of Finance, Department of Economic Affairs, Banking Division, IR Section, the benefit of exercising option for pension cannot be extended to the employees who had retired on medical grounds with simultaneous appointment of the dependants on compassionate grounds. The Indian Banks' Association also advised the appellant Bank that the concept of voluntary retirement for the purpose of receiving pension on voluntary retirement under Regulation 29 is not available to the award staff. Respondent 1 has not denied his status as an award staff when he sought retirement on medical grounds. Thus, Respondent 1 cannot take the benefit of the letter dated 20-9-1993 received by him from the Chief Manager of the appellant Bank, treating him as voluntary retiree from the service of the Bank w.e.f. 1-11-1993 under the Pension Regulations as nomenclature of the words "voluntarily retired" used in the said letter will not change the status of Respondent 1 from award staff to any other category of the employees of the appellant Bank. Thus, Regulation 29, upon which

reliance is placed by Respondent 1, is not attracted in his case and his claim for pension is not covered thereunder."

(Emphasis Supplied)

16. The words 'resignation' and 'retirement' came up for consideration before the Supreme Court in the decision reported in (2004) 4 SCC 412 (UCO Bank v. Sanwar Mal) and in paragraph 9 it is held thus,

"9. We find merit in these appeals. The words "resignation" and "retirement" carry different meanings in common parlance. An employee can resign at any point of time, even on the second day of his appointment but in the case of retirement he retires only after attaining the age of superannuation or in the case of voluntary retirement on completion of qualifying service. The effect of resignation and retirement to the extent that there is severance of employment (sic is the same) but in service jurisprudence both the expressions are understood differently. Under the Regulations, the expressions "resignation" and "retirement" have been employed for different purpose and carry different meanings. The Pension Scheme herein is based on actuarial calculation; it is a self-financing scheme, which does not depend upon budgetary support and consequently it constitutes a complete code by itself. The Scheme essentially covers retirees as the credit balance to their provident fund account is larger as compared to employees who resigned from service. Moreover, resignation brings about complete cessation of master-and-servant relationship whereas voluntary retirement maintains the relationship for the purposes of grant of retiral benefits, in view of the past service. Similarly, acceptance of resignation is dependent upon discretion of the employer whereas retirement is completion of service in terms of regulations/rules framed by the Bank. Resignation can be tendered irrespective of the length of service whereas in the case of voluntary retirement, the employee has to complete qualifying service for retiral benefits. Further, there are different yardsticks and criteria for submitting resignation vis-à-vis voluntary retirement and acceptance thereof. Since the Pension Regulations disqualify an employee, who has resigned, from claiming pension, the

respondent cannot claim membership of the fund. In our view, Regulation 22 provides for disqualification of employees who have resigned from service and for those who have been dismissed or removed from service. Hence, we do not find any merit in the arguments advanced on behalf of the respondent that Regulation 22 makes an arbitrary and unreasonable classification repugnant to Article 14 of the Constitution by keeping out such class of employees. The view we have taken is supported by the judgment of this Court in the case of Reserve Bank of India v. Cecil Dennis Solomon. Before concluding we may state that Regulation 22 is not in the nature of penalty as alleged. It only disentitles an employee who has resigned from service from becoming a member of the fund. Such employees have received their retiral benefits earlier. The Pension Scheme, as stated above, only provides for a second retiral benefit. Hence there is no question of penalty being imposed on such employees as alleged. The Pension Scheme only provides for an avenue for investment to retirees. They are provided avenue to put in their savings and as a term or condition which is more in the nature of an eligibility criterion, the Scheme disentitles such category of employees as are out of it."

17. Applying the above decisions to the facts of this case and having regard to the admitted position that the first respondent was not prematurely retired at the instance of the bank as per Regulation 32(2) and that the first respondent is not entitled to go on voluntary retirement, we are of the firm view that the order passed by the learned single Judge treating the first respondent as prematurely retired from 15.2.1989 and the consequent direction to pay him Premature Retirement Pension, are unsustainable.

The writ appeal is allowed and the order of the learned single Judge dated 25.7.2009 in W.P.No.20470 of 1998 is set aside. No costs. Connected miscellaneous petition is closed.

vr

Sd/-
Asst.Registrar

/True Copy/

Sub.Asst.Registrar

To

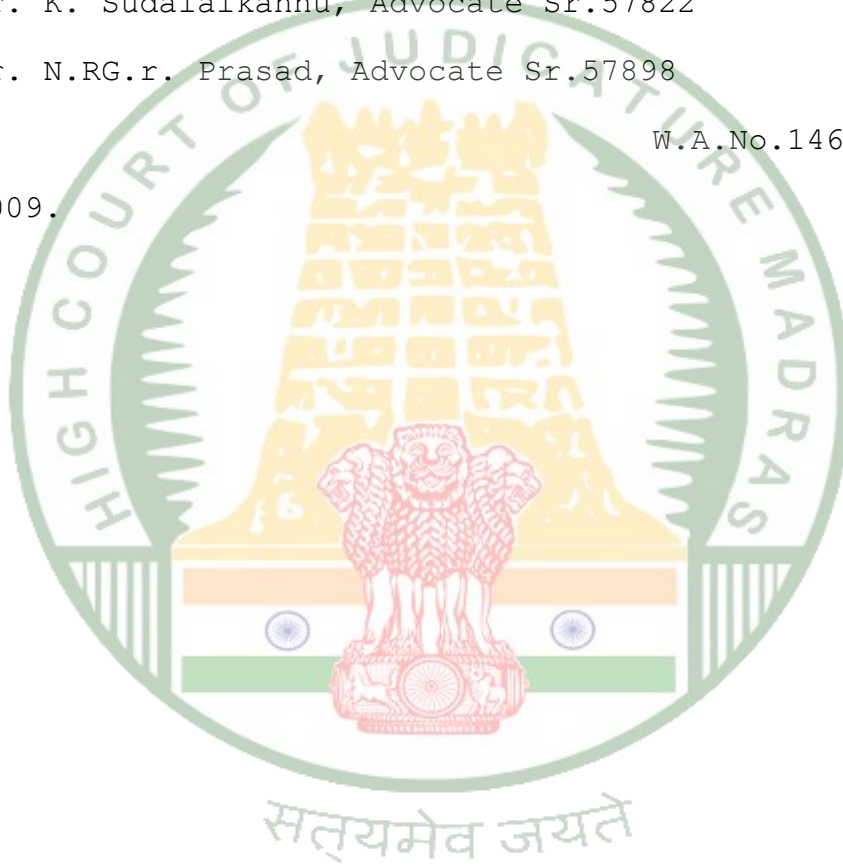
1. The secretary, Department of Banking Affairs,
Union of India, New Delhi.
2. The Secretary, Reserve Bank of India,
Shaheed Bhagat Singh Road, Post Box No.10007nk,
Mumbai - 400 001.

1 cc to Mr. K. Sudalaikannu, Advocate Sr.57822

1 cc to Mr. N.RG.r. Prasad, Advocate Sr.57898

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NG(CO)
EU 9.11.2009.



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