
(2011) 11 DEL CK 0152
In the Delhi High Court
Case No : Writ Petition (C) 2261 of 2002

A.C. Aggarwal

APPELLANT

Vs

Allahabad Bank

RESPONDENT

Date of Decision : 15-11-2011

Acts Referred:

Citation : (2012) 188 DLT 310 : (2012) 127 DRJ 236 : (2012) 133 FLR 803

Hon'ble Judges : A.K. Sikri, Acting C.J.;Rajiv Sahai Endlaw, J

Bench : Division Bench

Advocate : Arun Birbal, for the Appellant; Rajesh Gautam Advocate, for the Respondent

Final Decision : Allowed

Judgement

Rajiv Sahai Endlaw, J.—The petition impugns the communication dated 24th November, 2001 of the respondent Bank directing the petitioner to inter alia refund the entire gratuity amount received by him as a pre-condition for release of pension to him. The petition also seeks mandamus to the respondent Bank to release the arrears of pensionary benefits with effect from the date from which the petitioner stood retired i.e. 30th April, 2001 along with interest @ 24% per annum and to continue to pay pension to the petitioner.

2. Notice of the petition was issued. The petition was thereafter directed to be listed before the Division Bench owing to pendency of LPA 585/2000 then stated to be pending before the Division Bench and entailing the same issue. Rule DB was issued on 21st July, 2004. Pleadings have been completed and counsels have been heard.

3. Undisputed facts are, that the petitioner joined the employment of the respondent Bank as a Clerk w.e.f. 1961; the respondent Bank, established in the year 1865 had granted pensionary benefits to its employees since the year 1890; with effect from 2nd March, 1912 the benefit of Contributory Provident Fund (CPF) was also extended to the employees of the respondent Bank; the

employees of the respondent Bank thus at the time when the petitioner joined the employment were enjoying the twin benefits of pension and CPF. The petitioner on 30th April, 2001 was relieved from the service of the respondent Bank, having availed of voluntary retirement and was in September/October, 2001 paid gratuity of Rs. 3.5 lacs and the proceeds of the CPF were also released to him. The petitioner claims that he was also entitled to pension but which was not released and the respondent Bank ultimately vide letter dated 24th November, 2001 impugned in this petition asked the petitioner to inter alia refund the amount received by him towards gratuity as a pre-condition for release of pension. The petitioner contends that he is entitled to pension in addition to gratuity and without being required to refund the gratuity amount received.

4. The respondent Bank contends that the petitioner is not entitled to both, gratuity and pension.

5. The counsel for the petitioner has today urged that the matter is no longer *res integra*, having been decided vide judgment of the Apex Court in *Allahabad Bank and Another Vs. All India Allahabad Bank Retired Emps. Assn.*, and awaiting which judgment the hearing in the present petition was adjourned from time to time, as is also borne out from the order sheet.

6. The claim, of the retired employees of the Bank in the judgment aforesaid, was for gratuity under the Payment of Gratuity Act, 1972. The stand of the respondent Bank in the said matter was, that under the Pension Scheme of the Bank the employees of the Bank were to exercise the option either for pension or for gratuity and the dual benefit was not available under the Scheme; since the retired employees in that case had exercised the option of availing the pension and were receiving the pension since their retirement, they were not entitled to gratuity. The Supreme Court in the judgment aforesaid noticed that the respondent Bank had not succeeded in its attempt to get itself exempted from the provisions of the Gratuity Act and held that there is no escape from payment of gratuity under the provisions of the Gratuity Act, unless the establishment is granted exemption by the appropriate Government from operation of the provisions of the Act. It was further held that pensionary benefits may include payment of pension as well as gratuity and one does not exclude the other; only in cases where the gratuity or pensionary benefits under an existing scheme are better in comparison to what an employee may get under the Payment of Gratuity Act, the Government may grant an exemption and relieve the employer from the statutory obligation of payment of gratuity. It was yet further held that no establishment can decide for itself that its employees were in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under the Gratuity Act. It was yet further held that the employees having exercised the option under the Pension Scheme for availing benefits of pension instead of gratuity were not estopped from claiming gratuity under the Gratuity Act in as much as there could be no estoppel against the statute. Accordingly the

retired employees were held entitled to payment of gratuity.

7. The counsel for the petitioner further contends and it is confirmed by the counsel for the respondent Bank also that the gratuity of Rs. 3.5 lacs paid to the petitioner was under the Gratuity Act and not under the scheme of the respondent Bank. The counsel for the petitioner further informs that the petitioner has w.e.f. 2009 availed of the option then given by the respondent Bank and has w.e.f. 2010 availed of pension by refunding to the respondent Bank the respondent Bank's share of CPF. He thus states that the dispute which survives is only of arrears of pension between the years 2001 and 2009 and which is squarely covered by the judgment aforesaid of the Supreme Court.

8. Per contra, the counsel for the respondent Bank has contended that the judgment of the Supreme Court was concerned with the claim for gratuity and not the claim for pension as in the present case and is thus not applicable. He further invites attention to para 46 of the judgment aforesaid whereby the judgment was expressly made applicable to only such of the employees who retired from the service of the respondent Bank between 1st January, 1986 and 31st October, 1992. It is stated that though it was subsequently vide order dated 29th January, 2010 clarified that "such of those officers of the bank working prior to 1st July, 1979 and have retired after coming into force of the said Act on 31st October, 1993 shall alone be entitled for the benefits" (and in which the petitioner herein would be covered) but the order was intended to convey that the employees who have retired till 31st October, 1993 only would be entitled to the benefit of the judgment. The same is sought to be demonstrated from the application seeking the clarification.

9. Though the counsel for the respondent Bank at one stage also sought to contend that the respondent Bank at no stage has had occasion to rebut whether the gratuity paid to the petitioner was under the Scheme or under the Gratuity Act and in response whereunto the counsel for the petitioner attempted to show that the gratuity under the Scheme would have been of approximately Rs. 10 lacs and gratuity of Rs. 3.5 lacs was paid to the petitioner in accordance with the Act and to which the counsel for the respondent Bank rejoined by contending that he was not sure whether the gratuity under the Scheme would have been higher than the gratuity under the Act but subsequently admitted that the gratuity of Rs. 3.5 lacs paid by the respondent Bank was under the Act only.

10. In the aforesaid scenario, we fail to see as to how the matter would not be covered by the judgment aforesaid of the Supreme Court the ratio whereof is that benefit of gratuity under the Gratuity Act cannot be deprived without obtaining exemption from the Government and which has not been granted to the respondent Bank. It was precisely for this reason that the Supreme Court upheld the claim of the retired employees in that case for gratuity in addition to the pension being received by them. Though the Supreme Court limited the judgment aforesaid to the employees of the Bank working prior to 1st July, 1979 and who had retired after coming into force of the said Act on 31st October, 1993

and in which the petitioner as aforesaid is covered but even if we were to consider the case of the petitioner as not covered by the said dates, the counsel for the respondent Bank is unable to show as to how the ratio aforesaid of the judgment would not apply to the petitioner. The petitioner is admitted to be entitled to pension under the Old Pension Scheme of the year 1890 of the respondent Bank. The said pension is sought to be denied to the petitioner only for the reason of the gratuity under the Gratuity Act having been paid to the petitioner but which gratuity the Supreme Court has held to be a statutory right not affected by the pension. We have also put it to the counsel for the respondent Bank as to whether the petitioner would not have been in the same position as the retired employees before the Supreme Court had he not been paid gratuity and had started availing of the pension and would have thereafter claimed the gratuity. No reply to the said proposition has been forthcoming.

11. The petition is accordingly allowed and the Rule made absolute. The communication dated 24th November, 2001 of the respondent Bank asking the petitioner to refund the gratuity amount received by him as a pre-condition or to furnish an undertaking in that regard as a pre-condition for release of pensionary benefits is quashed/set aside. The petitioner is held entitled to pension in addition to the gratuity amount received by him. The respondent Bank is accordingly directed to release the arrears of pension due to the petitioner within six weeks of today together with interest @6% per annum from the date when the pension for each month would have fallen due and till the date of payment. The said rate of interest has been granted having regard to the fact that the issue was pending adjudication before the Supreme Court and has been adjudicated recently only. For the same reason, we also refrain from awarding any cost against the respondent Bank.