
(2016) 08 DEL CK 0051
In the Delhi High Court
Case No : L.P.A. No.40 of 2015

A.K. Wadhwa

APPELLANT

Vs

Central Bank of India

RESPONDENT

Date of Decision : 04-08-2016

Acts Referred:

Citation : (2016) 8 ADDelhi 205 : (2016) 3 CLR 468

Hon'ble Judges : Mr. Sanjiv Khanna and Ms. Sunita Gupta, JJ.

Bench : Division Bench

Advocate : Mr. Sanjay Suri, Advocate, for the Appellant; Mr. R.S. Mathur, Advocate, for the Respondents; Mr. Rajeev Garg, Law Officer of Bank, for the Respondent No.1

Final Decision : Dismissed

Judgement

Mr. Sanjiv Khanna, J. (Oral)—Appellant-A.K. Wadhwa has filed the present intra-Court appeal under Clause 10 of the Letters Patent Act impugning the order dated 31.10.2014, whereby, W.P. (C) No.7414/2014 has been dismissed on the ground of res judicata, as the appellant had earlier filed Civil Suit No.25/2002 on the same cause of action and suffered a decree of dismissal vide judgment dated 04.12.2002. The said writ petition has also been dismissed on the ground of limitation.

2. Having heard the counsel for the appellant, we are inclined to dismiss the present appeal by applying the principle of res judicata.

3. The appellant had joined the respondent bank-Central Bank of India, as a clerk on 11.05.1973 and was promoted as an officer on 12.03.1984. After about 22 years of service, the appellant submitted his resignation dated 07.09.1995 which was accepted by the respondent bank on 11.09.1996.

4. The appellant had filed a Civil Suit No 25/2002 against the respondent bank and Deputy General Manager, Central Bank of India claiming that he was entitled to pension as per and in terms of the Central Bank of India (Employees) Pension

Regulations, 1995, (Pension Regulations), notified in September 1995, since these regulations were given retrospective effect from 01.11.1993. The appellant, in July 1994, before his resignation, had opted for the pension scheme and was eligible under Regulation 29 as he had rendered more than 20 years of qualifying service. The Chief Officer of the respondent bank, vide letter dated 03.01.1996, had acknowledged the receipt of the application and finding the same to be in order, had communicated their irrevocable acceptance of the appellant's option to join the pension scheme. This letter dated 03.01.1996 had also stated that the bank's share in the contributory Provident Fund would be transferred to the Pension Fund set up for the scheme. The resignation of the appellant dated 07.09.1995 was accepted by the respondent bank on 11.09.1996, i.e. post the letter dated 03.01.1996. In August 1997, the appellant had submitted a representation to the respondent bank seeking sanction of pension by treating the resignation as a request for voluntary retirement in terms of regulation 29 of the Pension Regulations. The request of the appellant was denied by the respondent bank on various grounds, including the contention that past service stands forfeited on resignation. Consequently, the appellant had filed the civil suit No.25/2002.

5. The defendant bank had contested the said suit on several grounds. It was stated that the appellant had absented himself from the duty from 24.12.1994 till 08.05.1995 and thereafter, on rejoining his duty on 12.05.1995, the appellant had again absented himself with effect from 10.07.1995. The case of the respondent bank was that the appellant had tendered his resignation to avoid the proposed action by the bank. The appellant had failed to serve three months' notice and had offered that his salary be deducted in lieu of notice period. This was the cause for delay in acceptance of the appellant's resignation by the respondent bank. Having resigned, the appellant was not entitled to pension.

6. The Trial Court had framed as many as five issues including, whether the appellant was entitled to a decree of declaration that he was entitled to the pension, and the respondent should be mandated to pay the pension and consequential relief.

7. The Trial Court, in judgment dated 04.12.2002, had observed and held that there was no pension scheme in existence at the time the appellant had tendered his resignation. The Court held that the appellant would not be entitled to pension in terms of Regulation 22 of the Pension Regulations. The suit was dismissed and the appellant's prayer that he was entitled to pension was rejected.

8. The appellant did not challenge or question the Judgment of and decree dated 04.12.2002. The said decision is on merits and has attained finality. It is binding inter se the parties.

9. After the said judgment, the appellant had filed W.P.(C) No.1502/2003 titled "A.K. Wadhwa v. Central Bank of India & Ors." challenging the validity of

Regulation 22 of the Pension Regulations. The writ petition was dismissed vide order dated 05.10.2010. We would like to refer to the relevant paragraphs of the aforesaid decision. "Be it noted that the petitioner was Assistant Cashier-cum-Godown Keeper and thereafter he was promoted to the post of an officer. On 07.09.1995, as the date of events would show, he resigned from service. The employer Bank on 26.10.1995 issued the Regulations. As pleaded, the Bank incorporated the name of the petitioner amongst the employees for the purpose of Joint pension Fund. Thereafter the petitioner made an oral demand for payment of pension and when the same was not given, a legal notice was served. As no fruitful result ensued, the appellant filed civil suit for declaration and mandatory injunction forming the subject matter of Suit No.25/2002. On 04.12.2002, the suit was dismissed."

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In view of the aforesaid, the challenge to constitutional validity does not arise any more. Mr. Munjal, learned Counsel for the petitioner submitted that the respondent employer after issuing a communication/intimation to keep him in the pension scheme would not have accepted the resignation. It is worth nothing that the petitioner had challenged the same in the civil suit as put forth in the petition. When a remedy has been taken recourse in the civil suit and the same faced a dismissal, we are of the considered opinion the said aspect need not require to be adverted to in this writ petition. That apart there is nothing on record that the petitioner had withdrawn his letter of resignation."

10. The primary challenge in W.P.(C) No.1502/2003 was to the constitutional validity of Regulation 22 of the Pension Regulations which had stipulated that there would be forfeiture of service in case of dismissal/removal/termination of employment and resignation. The Division Bench of this Court referred to the decision of the Supreme Court in *UCO Bank & Ors. v. Sanwar Mal*, JT 2004 (Supp 2) SC 487 and had upheld the validity of Regulation 22, and dismissed the writ petition. The Division Bench had referred to the fact that the appellant had filed Civil Suit No.25/2002 for a mandatory and permanent injunction which was dismissed by the judgment dated 04.12.2002 and the said judgment had attained finality.

11. We do not think that the appellant can, by way of the second writ petition, raise the plea again as his claims and prayers were rejected when the civil suit filed by him was dismissed vide the judgment and decree dated 04.12.2002. This decision on merits in the Civil Suit dated 04.12.2002 would operate as res judicata. The decision dated 04.12.2002 is binding and forecloses the right of the appellant to agitate the same cause of action. We would not examine and consider the correctness or merits of the said judgment in these proceedings arising in an appeal on the dismissal of W.P.(C) No.7414/2014. As noticed above, the appellant had filed W.P.(C) No.1502/2003, after the judgment dated 04.12.2002, which was dismissed for several reasons including the dismissal of the civil suit.

12. The judgment of the Supreme Court in the case of Union of India and Ors. v. Tarsem Singh, (2008) 8 SCC 648 deals with and distinguishes continuing wrong from successive wrongs giving rise to a distinct cause of action. This decision would not apply to the facts and circumstances of the present case for what has been decided in the Civil Suit vide judgment dated 04.12.2002 was the question as to whether the appellant was entitled to pension. The issue having been decided in the negative, would be an impediment barring us from re-examination of the question of grant of pension.

13. There is no merit in the present appeal the same is accordingly dismissed. No orders as to costs.