
(2013) 03 SC CK 0013
In the Supreme Court Of India
Case No : Civil Appeal No. 9024 of 2012

Allahabad Bank

APPELLANT

Vs

A.C. Aggarwal

RESPONDENT

Date of Decision : 13-03-2013

Acts Referred:

Allahabad Bank (Officers) Service Regulations, 1979 — Regulation 46
Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 — Section 12(2), 19
Constitution of India, 1950 — Article 14, 16, 21, 226

Citation : (2013) 4 AD 346 : (2013) 3 ALJ 274 : (2013) 137 FLR 498 : (2013) 3 JLJR 1 : (2013) 4 JT 128 : (2013) LabIC 2620 : (2013) 3 LLJ 1 : (2013) 2 LLN 273 : (2013) 3 SCALE 516 : (2013) 4 SCC 141 : (2013) 2 SCC(L&S) 168 : (2013) 2 SCT 665 : (2013) 2 SLJ 362 : (20

Hon'ble Judges : Gyan Sudha Misra, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : R.F. Nariman, SG, Yashraj Singh Deora, Rajesh Kumar, Anupama Dhurve, Prashant Narang and Sarv Mitter, for Mitter and Mitter Co, for the Appellant; Jitendra Sharma P.N. Jha and B.K. Pal, for the Respondent

Final Decision : Dismissed

Judgement

G.S. Singhvi, J.—The question which arises for consideration in this appeal filed against the order of the Delhi High Court is whether the Respondent, who had sought voluntary retirement from service and was paid gratuity by the Appellant under the Payment of Gratuity Act, 1972 (for short, 'the 1972 Act') along with Contributory Provident Fund is entitled to pension.

2. The Appellant's predecessor, i.e., Allahabad Bank Ltd. was established in 1865. Its employee's were given pensionary benefits w.e.f. 14.3.1890. After 22 years, the Board of Directors of the Appellant's predecessor passed Resolution dated 2.3.1912 vide which the benefit of Contributory Provident Fund was extended to the employee's. The Appellant's predecessor was nationalized in 1969 along with 13 other commercial banks through the Banking Companies (Acquisition and

Transfer of Undertakings) Ordinance, 1970, which was repealed by the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (for short, 'the 1970 Act'). Section 12(2) of that Act reads as under:

Save as otherwise provided in Sub-section (1), every officer or other employee of an existing bank shall become, on the commencement of this Act, an officer or other employee, as the case may be, of the corresponding new bank and shall hold his office or service in that bank on the same terms and conditions and with the same rights to pension, gratuity and other matters as would have been admissible to him if the undertaking of the existing bank had not been transferred to and vested in the corresponding new bank and continue to do so unless and until his employment in the corresponding new bank is terminated or until his remuneration, terms or conditions are duly altered by the corresponding new bank.

3. In 1974, the Appellant framed a scheme titled 'Allahabad Bank Employees' Pension Scheme (Old)' (for short, 'the Old Pension Scheme'). Thereafter, circular dated 10.3.1975 was issued and the employees/officers were given the choice to opt for payment of gratuity or pension under the Old Pension Scheme. After four years, the Appellant framed the Allahabad Bank (Officers') Service Regulations, 1979 (for short, 'the Regulations'). In terms of Clause 46 of the Regulations, the officers became entitled to gratuity equivalent to one month pay for every completed year of service subject to a maximum of 15 months. The proviso to Regulation 46 postulated payment of additional gratuity at the rate of half month's pay for each completed year of service to those who had completed more than 30 years service. After 20 years, the Appellant notified Allahabad Bank Employees' Pension Regulations, 1995.

4. The Respondent joined service as Clerk in 1961. He was promoted as an officer with effect from 10.08.1970 and was granted Middle Management Scale-III in September, 1993. After serving the Appellant for almost 40 years, the Respondent applied for voluntary retirement under the Voluntary Retirement Scheme, 2000. His application was accepted by the competent authority and he was relieved from service w.e.f. 30.04.2001. He was paid gratuity under the 1972 Act along with the amount of Contributory Provident Fund. The Respondent made representations dated 30.7.2001, 6.10.2001 and 20.10.2001 for grant of pension but the concerned authority of the Appellant did not give any response. However, in reply to the notice sent by the Respondent, the Appellant informed him vide letter dated 24.11.2001 that he can get benefit under the Old Pension Scheme subject to the condition of refund of the amount of gratuity already paid to him and submission of an irrevocable undertaking that he will be getting pension in lieu of the gratuity. The relevant portions of that letter are extracted below:

In response to your above notice of the 9th instant we have to advise that your client is entitled to old pension in lieu of Gratuity provided he fulfils the relevant criteria as required by the bank which are as under:

(1) Sri A.C. Aggarwal has to complete 30 years of active service and should have been recruited/promoted as an officer on or before 1.7.79.

(2) He has to refund the entire gratuity amount already released through the disbursing branch and remit the same by a CREDIT ADVICE (Ct 20A) alongwith the copy of Gratuity receipt duly discharged.

(3) He has to submit an irrevocable undertaking stating that he is interested to receive old Pension in lieu of Gratuity.

5. The Respondent challenged the aforesaid communication in Writ Petition No. 2261 of 2002 and prayed that the Appellant be directed to release the pensionary benefits with effect from 30.4.2001 along with interest at the rate of 24% per annum or, in the alternative, pay him pension under the New Pension Scheme. He pleaded that the decision of the Appellant to insist upon the refund of gratuity as a condition for payment of pensionary benefits is ultra vires the provisions of the 1972 Act and Articles 14, 16 and 21 of the Constitution. In para 25 of the writ petition, the Respondent averred that the State Bank of India was paying gratuity to its employees in addition to other retiral benefits and, therefore, there was no justification to discriminate the employees and officers of the Appellant. In support of his claim, the Appellant relied upon the judgment of this Court in Som Prakash Rekhi Vs. Union of India (UOI) and Another, He further pleaded that in terms of Resolution dated 2.3.1912 passed by the Board of Directors of the Appellant's predecessor, the employees were entitled to the benefit of pension as well as gratuity and, as such, there was no justification to ask him to refund the amount of gratuity as a condition for grant of pensionary benefits.

6. In the counter affidavit filed on behalf of the Appellant, reliance was placed on Chapter II of the Regulations and Section 19 of the 1970 Act and it was pleaded that the employees who are paid gratuity under the 1972 Act are not entitled to pension. The Appellant also relied upon the judgments of this Court in Ramesh Hiranand Kundanmal v. Municipal Corporation, Greater Bombay (1992) 2 SCC 472 and D.T.C. Retired Employees Association and Others Vs. Delhi Transport and Others etc. etc., and pleaded that the Respondent is not entitled to the benefit of pension because he had already been paid gratuity under the 1972 Act.

7. The Division Bench of the High Court relied upon the judgment of this Court in Allahabad Bank and Another Vs. All India Allahabad Bank Retired Emps. Assn., and held that the Respondent is entitled to pension in addition to gratuity already paid to him under the 1972 Act.

8. Shri R.F. Nariman, learned senior counsel for the Appellant argued that the impugned order is liable to be set aside because it is based on misreading of the judgment in Allahabad Bank and Anr. v. All India Allahabad Bank Retired Employees Association (supra). Learned senior counsel submitted that the only point raised, argued and considered in the Allahabad Bank and Anr. v. All India Allahabad Bank Retired Employees Association (supra) was whether the

employees, who had already availed benefit under the Old Pension Scheme, were estopped from claiming benefits under the 1972 Act and the answer given by this Court was limited to the entitlement of the employees to receive gratuity. Shri Nariman emphasized that in that case, the Court was not called upon to decide the question whether retired employees/officers of the Appellant are entitled to get double benefits, i.e., gratuity under the 1972 Act and pension under the Old Pension Scheme and, therefore, that judgment could not have been made basis by the High Court for declaring that the Respondent is entitled to pension in addition to gratuity already received by him. Shri Nariman relied upon some of the judgments on the interpretation of statutes and understanding of the ratio of the Courts' judgment and argued that the declaration granted by this Court that the retired employees are entitled to benefits under the 1972 Act cannot lead to an inference that the employees who have already received benefit under the 1972 Act can claim pension without refunding the amount of gratuity.

9. Shri Jitendra Sharma, learned senior counsel supported the impugned order and argued that the High Court did not commit any error by ordaining payment of pension to the Respondent because his case is squarely covered by the ratio of the judgment in Allahabad Bank and Anr. v. All India Allahabad Bank Retired Employees Association (supra) and order dated 29.1.2010 passed in IA No. 6 of 2009. Learned senior counsel argued that the Appellant is under a statutory obligation to pay gratuity under the 1972 Act and an employee who has been paid gratuity cannot be denied pension under the Old Pension Scheme by requiring him to refund the amount of gratuity. He submitted that there cannot be any estoppel against the statute and the Respondent cannot be deprived of the benefit of pension under the Old Pension Scheme merely because he has been paid gratuity under the 1972 Act.

10. We have considered the respective arguments. In Allahabad Bank and Anr. v. All India Allahabad Bank Retired Employees Association (supra), this Court considered the question whether the retired employees who have received pension are entitled to gratuity under the 1972 Act. The Association of retired employees had represented to the Appellant that its members be paid gratuity in accordance with the provisions of the 1972 Act. The Appellant rejected the claim of the Association and this was conveyed vide letter dated 10.1.1989 sent by the Chief Manager (PA) to the General Secretary of the Association, the relevant portion of which is extracted below:

Ref. No. Admn./5/0280

Dated: 10-1-1989

The General Secretary, All India Allahabad Bank Retired Employees Association,
Central Office, Ram Bhawan, C-1254B, Sector-A, Mahanagar, Lucknow.

Dear Sir,

Payment of Gratuity

This has reference to your letter Bank/14/8 dated 14-11-1988 and enclosures.

In this connection, we have to advise that Allahabad Bank has accepted Contributory Provident Fund Scheme, which is not available to government employees. Besides this, the Bank has a pension scheme in which an employee/officer may exercise option for pension or gratuity; but the dual benefits are not available under the scheme. Since the respective pensioners have exercised their option voluntarily for availing of pension in lieu of gratuity on their retirement from the Bank's service, they are not eligible for gratuity at all. They are receiving pension since their retirement and as such we are not in a position to accede to your request for payment of gratuity in addition to pension to the persons named in your letter under reference.

Yours faithfully, sd./- (R.K. Nath) Chief Manager (P.A.)

11. The Association challenged the decision of the Appellant bank by filing writ petition under Article 226 of the Constitution. It was the pleaded case of the Association that the consent or option given by the employees for Pension Scheme cannot be made basis for depriving them of their statutory right to gratuity under the 1972 Act. The Appellant contested the writ petition by relying upon the awards known as 'Shastri Award' and 'Desai Award' and the Settlements under which the employees were entitled either to the benefit of pension or of gratuity at one's own option but not the both. It was the specific case of the Appellant that the members of the Association had voluntarily opted for the pension scheme and, as such, they are not entitled to gratuity. According to the Appellant, all the employees were paid the amount of contributory provident fund and pension in terms of the option exercised by them and, therefore, they were estopped from claiming gratuity under the 1972 Act.

12. The High Court allowed the writ petition and directed the Appellant to pay gratuity to the employees who had opted for pension. On appeal by the bank, the two Judge Bench of this Court noted the background in which the 1972 Act was enacted by Parliament, referred to Section 5 thereof which empowers the appropriate Government to exempt any establishment, factory, mine, oil field, plantation, etc. and observed:

A plain reading of the provisions referred to hereinabove makes it abundantly clear that there is no escape from payment of gratuity under the provisions of the Act unless the establishment is granted exemption from the operation of the provisions of the Act by the appropriate Government.

The Bench then referred to the judgments in *Som Prakash Rekhi Vs. Union of India (UOI)* and *Another, , Sudhir Chandra Sarkar Vs. Tata Iron and Steel Co. Ltd. and Others*, and observed:

Gratuity payable to an employee on the termination of his employment after rendering continuous service for not less than 5 years and on superannuation or retirement or resignation, etc. being a statutory right cannot be taken away

except in accordance with the provisions of the Act whereunder an exemption from such payment may be granted only by the appropriate Government u/s 5 of the Act which itself is a conditional power. No exemption could be granted by any Government unless it is established that the employees are in receipt of gratuity or pension benefits which are more favourable than the benefits conferred under the Act.

In our considered opinion, pensionary benefits or the retirement benefits as the case may be whether governed by a scheme or rules may be a package consisting of payment of pension and as well as gratuity. Pensionary benefits may include payment of pension as well as gratuity. One does not exclude the other. Only in cases where the gratuity component in such pension schemes is in better terms in comparison to that of 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.

The Appellant's plea that under the Old Pension Scheme, an employee is entitled to only two terminal benefits, viz., Contributory Provident Fund and either gratuity or pension was negated by the Court in the following words:

It is not the case of the Bank that at the time of superannuation of the employees there was a scheme for payment of gratuity under which the employees were entitled to payment of gratuity and the said scheme in comparison to that of the provisions of the Act was more beneficial to the workmen. On the other hand, the scheme that was prevalent at the relevant time in clear and categorical terms provided that:

the gratuity will not be payable in case where a pension is granted by the Bank. But if a pensioned officer should die before receiving any pension payments an aggregate sum at least equal to the gratuity which he would otherwise have received then the Bank will pay the difference between such aggregate sum and gratuity to the officer's widow; if any, otherwise to his legal representative.

Be it noted that in the counter-affidavit filed in the High Court the Bank placed reliance on Shastri and Desai Awards which have taken the view that Allahabad Bank which had pension scheme of its own was more advantageous than the provisions of the gratuity to its employees. It is asserted that under the said Awards and the subsequent settlements an employee is entitled to receive either the benefit of pension or gratuity at his own option but not both. The contention was that such of those employees who had voluntarily opted for pension scheme were not entitled to receive gratuity as well. The respective comparative figures under pension and/or gratuity, in terms of Shastri/Desai Awards and/or Bipartite Settlement on one hand and the gratuity payable under the Act on the other were made available for the perusal of the Court to buttress the Bank's submission that what has been paid to the employees was better in terms and more favourable than the benefits conferred under the Act.

The submission is totally devoid of any merit for more than one reason, namely,

that it is for the appropriate Government to form the requisite opinion that the employees were in receipt of gratuity or pensionary benefits which were more favourable than the benefits conferred under the Act and therefore, the establishment must be exempted from the operation of the provisions of the Act. The Bank having failed to obtain exemption from the operation of the provisions of the Act cannot be permitted to raise this plea.

No establishment can decide for itself that employees in such establishments were in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under the Act. Sub-section (5) of Section 4 protects the rights of an employee to receive better terms of gratuity from its employer under any award or agreement or contract as the case may be. Admittedly, the Scheme under which the employees of the Bank received the pension was in lieu of gratuity. There is no question of comparing the said Scheme and arrive at any conclusion that what they have received was much better in terms than the benefits conferred under the Act. Reliance upon Sub-section (5) of Section 4 is therefore unsustainable.

In the present case the real question that arises for our consideration is whether the employees having exercised their option to avail the benefits under the pension scheme are estopped from claiming the benefit under the provisions of the Act?

The Appellant being an establishment is under the statutory obligation to pay gratuity as provided for u/s 4 of the Act which is required to be read along with Section 14 of the Act which says that the provisions of the Act shall have effect notwithstanding anything inconsistent therein contained in any enactment or in any instrument or contract having effect by virtue of any enactment other than this Act. The provisions of the Act prevail over all other enactments or instruments or contracts so far as the payment of gratuity is concerned. The right to receive gratuity under the provisions of the Act cannot be defeated by any instrument or contract.

The Court also referred to an interlocutory order passed on 22.3.2006 whereby the parties were directed to appear before the Controlling Authority and the latter was directed to decide whether the benefits admissible to the employees under the Old Pension Scheme were more beneficial than the gratuity payable under the 1972 Act, referred to the decision of the Controlling Authority and held:

Section 7 deals with procedure for determination of the amount of gratuity. Every person who is eligible for payment of gratuity under the Act is required to send a written application to the employer in the prescribed form for payment of such gratuity. Sub-section (2) of Section 7 provides that once the gratuity becomes payable, the employer shall, whether an application has been made or not, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the Controlling Authority specifying the amount of gratuity so determined and arrange to pay the amount of gratuity to

the person to whom the gratuity is payable.

The scheme envisaged u/s 7 of the Act is that in case of any dispute as to the amount of gratuity payable to an employee under the Act or as to the admissibility of any claim of, or in relation to, an employee payable to gratuity, etc. the employer is required to deposit with the Controlling Authority the admitted amount payable as gratuity. In case of any dispute the parties may make an application to the Controlling Authority for deciding the dispute who after due inquiry and after giving the parties to the dispute, a reasonable opportunity of being heard, determine the matter or matters in dispute and if, as a result of such inquiry any amount is found to be payable to the employee, the Controlling Authority shall direct the employer to pay such amount to the employee.

Sub-section (7) of Section 7 provides for an appeal against the order of the Controlling Authority. The Act nowhere confers any jurisdiction upon the Controlling Authority to deal with any issue under Sub-section (5) of Section 4 as to whether the terms of gratuity payable under any award or agreement or contract is more beneficial to employees than the one provided for payment of gratuity under the Act. This Court's order could not have conferred any such jurisdiction upon the Controlling Authority to decide any matter under Sub-section (5) of Section 4, since Parliament in its wisdom had chosen to confer such jurisdiction only upon the appropriate Government and that too for the purposes of considering to grant exemption from the operation of the provisions of the Act.

Even on merits the conclusions drawn by the Controlling Authority that the Pension Scheme (Old) offered by the Bank is more beneficial since the amount of money the pensioners got under the pension scheme is more than the amount that could have been received in the form of gratuity under the provisions of the Act is unsustainable. The Controlling Authority failed to appreciate that Sub-section (5) of Section 4 of the Act protects the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer than the benefits conferred under the Act. The comparison, if any, could be only between the terms of gratuity under any award or agreement or contract and payment of gratuity payable to an employee u/s 4 of the Act. There can be no comparison between a pension scheme which does not provide for payment of any gratuity and right of an employee to receive payment of gratuity under the provisions of the Act.

13. IA No. 6 of 2009 filed by the Association for clarification was disposed of by this Court vide order dated 29.1.2010, the relevant portion of which is extracted below:

We have heard learned Counsel for the Petitioner as well as learned Counsel appearing for the Bank.

Paragraph 28 of the judgment shall now read as under:

Judgment is, however, applicable to all the members of the Petitioner's Association/Pensioners in the Respondent-Bank governed by the Pension Regulations (old) 1890 of the Bank as well as those pensioners who retired during the period 1.1.1986 to 31.10.1993.

It is made clear that such of those officers of the Bank working prior to 1.7.1979 and have retired after coming into force of the said Act on 31st October, 1993, shall alone be entitled for the benefits.

I.A. is disposed of accordingly.

14. In the impugned order, the Division Bench of the High Court noticed the aforesaid judgment of this Court and observed:

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.

15. In our view, the High Court's interpretation/understanding of the judgment of this Court is correct and there is no merit in the argument of Shri Nariman that the Respondent, who had received gratuity under the 1972 Act, is not entitled to pension or that he must refund the amount of gratuity as a condition for payment of pension.

16. At this stage, we may mention that vide communication dated 14.7.1986 sent to the Central Government, the Appellant had sought exemption from the operation of the 1972 Act but its prayer was not entertained. It is also worth noticing that in pursuance of industry level settlement signed on 24.4.2010, the Appellant offered another option to those employees who could not exercise option for pension under the 1995 Scheme and the Respondent exercised such option vide letter dated 22.9.2010.

17. Reference may also be made to Section 14 of the 1972 Act, which reads as under:

Section 14. Act to override other enactments, etc. - The provisions of this Act or

any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument or contract having effect by virtue of any enactment other than this Act.

18. In view of the plain language of the above reproduced provision, which contains a non-obstante clause, every eligible employee is, notwithstanding anything inconsistent contained in any other enactment or instrument or contract is entitled to gratuity. Therefore, even if the Respondent had opted for pension, he could have legitimately claimed gratuity without being required to refund the amount of pension already received by him.

19. In the result, the appeal is dismissed. The Appellant is directed to implement the order of the High Court within a period of eight weeks from today.