
(1994) 05 AHC CK 0018
In the Allahabad High Court
Case No : S.A. No. 732 of 1993

Allahabad District Co-operative Bank Ltd.	APPELLANT
Vs	
Lalji Srivastava	RESPONDENT

Date of Decision : 17-05-1994

Acts Referred:

Citation : (1995) 2 LLJ 859 : (1994) 3 UPLBEC 1701

Hon'ble Judges : S.S. Sodhi, C.J; R.A. Sharma, J

Bench : Division Bench

Advocate : Devendra Pratap Singh, for the Appellant; R.N. Singh and A.K. Yog, for the Respondent

Final Decision : Dismissed

Judgement

R.A. Sharma, J.—Respondent, Sri Lalji Srivastava, was appointed on May 18, 1960 as a clerk in Allahabad District Co-operative Bank Ltd. Allahabad (hereinafter referred to as the Bank), which is a co-operative society within the meaning of UP. Cooperative Societies Act (hereinafter referred to as the Act). By a notice dated November 12, 1992 issued by the General Manager of the Bank, the said respondent has been retired from service on completion of 58 years of age. He challenged the above notice by means of a writ petition before this Court, which has been allowed on September 28, 1993 and the notice of retirement has been quashed by the learned Single Judge on the ground that in view of the settlement dated February 22, 1966 respondent can only be retired at the age 60 years. Against the above judgment the Bank has filed this special appeal.

2. We have heard learned counsel for the parties.

3. Respondent was appointed on May 18, 1960 as a clerk in the Bank. On February 22, 1966 a settlement was reached between the Bank and its employees union of which the respondent was a member. In this settlement age of retirement was fixed at 60 years. In 1975 the U.P. Co-operative Societies

Employees Service Regulations, 1975 were framed u/s 122 of the Act for regulating the conditions of service of the employees of co-operative societies. Regulation 24(i) lays down the age of retirement of the employees at 58 years; but Clause (ii) of the same Regulation, which is reproduced below, provides that if the society has entered into a contract with an employee on the date of his employment, whereby he is entitled to continue beyond 58 years, the rule of retirement at the age of 58 years will not apply.

"24(ii) If before coming into operation of these regulations, the society had entered into any contract with an employee on the date of his employment whereby he is entitled to continue beyond 58 years, the rule of retirement at the age of 58 years as contained in Clause(i) shall not apply and the age of retirement shall be governed by the contract."

This regulation was amended in 1983. The amended regulation is as follows.

"24. Retirement - the date of superannuation from service of an employee of a co-operative society shall be;

(a) the date on which he attains the age of 58 years, if he is appointed to a post in category I, II or III. Provided that, where before commencement of the U.P.Co-operative Societies Employees' Service Regulations 1975, the Society had entered, with an employee, at the time of his appointment, into a contract whereby he is entitled to be retained in service after the date on which he attains the age of 58 years, the provision of this sub-clause shall not apply and the date of superannuation of such employee shall be determined in accordance with the terms of the said contract.

(b) the date on which he attains the age of 60 years, if he is appointed to a post in category IV."

Bank claims to have passed order of retirement of the respondent at the age of 58 years under Regulation 24 as amended in 1983 and its submission is that in view of the above regulation the settlement arrived at in 1966, whereby age of retirement was prescribed at 60 years, has ceased to be effective and is no more operative. This submission has been seriously disputed by the learned counsel for the respondent.

4. Bank is an industry and the respondent is a workman. Learned single Judge has recorded a categorical finding to the effect that the respondent is a workman and the settlement dated February 22, 1966 was a settlement within the meaning of Section 18 of the Industrial Disputes Act. Supreme Court in LIC of India v. D.J.Bahadur (1981 I LLJ I) has laid down that settlement arrived at between employer and the workmen under the Industrial Disputes Act continues to remain in force till it is altered by a fresh settlement, award of valid legislation. It was further laid down that vis-a-vis industrial disputes between the employer and his workmen the Industrial Disputes Act is a special statute and the LIC Act on the other hand is although a special legislation vis-a-vis

nationalization of Life Insurance; but it is a general statute regarding the industrial disputes between the employer and his workmen. It was accordingly held that a settlement arrived at under the Industrial Disputes Act will prevail over the regulations framed under the LIC Act. In the instant case the Act is a special statute vis-a-vis Co-operative, but as regards the industrial disputes and its settlement, it is a general law. Settlement dated February 22, 1966 has overriding effect over Regulation 24. It is not disputed that there is neither any fresh settlement nor any award nor any legislation altering the above settlement of 1966, with the result, the said settlement will continue to govern the conditions of service and the respondent is entitled to continue to work upto the age of 60 years. The impugned notice retiring him at the age of 58 years as such, cannot be sustained.

5. In view of the law laid down by the Supreme Court in the case of LIC of India v. D.J. Bahadur (supra) the settlement of 1966 arrived at between the bank and its employees has continued to remain in force and is still operative and will continue to govern the conditions of service of the workmen till it is replaced or altered by a fresh settlement, award or valid legislation. The respondent as such can only be retired on completion of age of 60 years and the impugned notice cannot be sustained.

6. The impugned notice of retirement cannot be sustained even under Regulation 24 in view of the provisions contained in Clause (ii) of the same regulation, according to which the rule of retirement at the age of 58 years is not to apply, if the society had entered into a contract with the employees on the date of his employment, whereby he is entitled to continue beyond 58 years. This provision came for consideration before the Supreme Court in Virendra Pal Singh v. District Assistant Registrar, Co-operative Societies 1980 UPLBEC 202, wherein it was laid down as under:

"Another question which was raised was that though the age of retirement of employees of some of the co-operative societies was originally 60 years under the U.P. Co-operative Societies Employees Service Regulations, the age of retirement has now been made 58 years. We are unable to see any force in this submission. Regulation 24(ii) itself provides that if before the coming into operation of the Regulation the Society had entered into any contract with an employee on the date of his employment whereby he was entitled to continue beyond 58 years, the rule of retirement at the age of 58 years shall not apply and the age of retirement shall be governed by the contract. Therefore, if in any case there is a contract between a Co-operative Society and an employee entered into before the Regulations came into force stipulating the age of retirement as 60 years the Regulation now stipulating the age of retirement as 58 years will not apply to him. We make it clear that this principle does not apply to the members of the centralized service. The above discussion covers all the points which were argued before us. In the result the Civil Appeal, the SLP and the Writ Petitions are dismissed with costs. "

7. Learned counsel for the respondent has, however, contended that Supreme Court in the above case considered Regulation 24 as it was before its amendment in 1983. It is true that the Regulation 24 as it was before its amendment came up for consideration before the Supreme Court; but on the point in issue, there is no substantial difference even after the amendment. Clause (ii) of Regulation 24 before amendment refers to a contract with the employee "on the date of his employment" after amendment contract referred to is "at the time of his appointment". On account of difference in language used in Regulation 24 before and after its amendment, learned counsel contends that unless the contract is at the time of the appointment of the respondent, his case cannot fall within the proviso and he cannot claim the right of retirement at the age of 60 years. This submission is devoid of merit and if it is accepted, it will lead to absurdity, because a person, who is appointed on February 23, 1966 will retire at the age of 60 years but a person who joined service on February 21, 1966 will retire at the age of 58 years, although conditions of service of both of them are governed by the same settlement dated February 22, 1966. Such an absurdity cannot be imputed to the legislature. If the literal interpretation of any provision of law leads to absurdity, it is to be avoided. For this reason the rule of literal interpretation cannot be applied in this case. That apart, there is no difference in substance between the two phrases, namely, "the date of employment" and "at the time of appointment" and the ratio laid down by the Supreme Court in the case of Virendra Pal Singh v. District Assistant Registrar, Co-operative Society (supra) will still be applicable, according to which if the contract was entered into before the Regulation came into force stipulating the age of retirement at 60 years, the employee can-not be retired at the age of 58 years.

8. For the reasons given above, this special appeal lacks merit and is dismissed.