
(2022) 05 GAU CK 0003
In the Gauhati High Court
Case No : Writ Appeal No. 243 OF 2018

Archana Bhattacharjee

APPELLANT

Vs

Bank Of Baroda

RESPONDENT

Date of Decision : 05-05-2022

Acts Referred:

Bank Of Baroda (Employees?) Pension, Regulations, 1995 — Regulation 14, 22, 22(1), 30

Citation : (2022) 05 GAU CK 0003

Hon'ble Judges : Sudhanshu Dhulia, J;Soumitra Saikia, J

Bench : Division Bench

Advocate : A. I. Uddin, A. K. Roy

Final Decision : Dismissed

Judgement

1. The writ petitioner had resigned from her service as an employee of the Bank of Baroda, Dimapur Branch. The Bank authorities did not release her pensionary and other retrial benefits. Aggrieved she filed the writ petition before this Court seeking directions for quashing of the orders issued by the Bank of Baroda rejecting her prayer for release/grant of pensionary benefits and a further direction to the respondent-Bank of Baroda authorities to finalize the pension and other benefits admissible under law from the date of her release from service and thereafter grant the same to the petitioner. The writ petition was dismissed by the learned Single Judge on the grounds and reasons mentioned in the impugned order. Being aggrieved, the present writ appeal has been filed assailing the Judgment and Order of the learned Single Judge dismissing the writ petition of the appellant/writ petition.

2. The writ petitioner was appointed as a Clerk-cum-Typist in the Bank of Baroda, Dimapur Branch vide order dated 21.10.1992. Petitioner joined her service on 27.10.1992. Sometime from the month of November, 2011, the petitioner suffered illness and accordingly prayed for Medical Leave. She was referred to a Medical Board, who granted her one month Medical Leave with effect from

12.11.2011. Thereafter, petitioner rejoined her duties, but she again fell ill and applied for Medical Leave. The prayer for Medical Leave was however not granted and instead the petitioner was advised to work in the cash department. Meanwhile, the health of the petitioner deteriorated making it difficult for her to attend to her duties in the cash counter. Her repeated requests for permitting her to carry on her duties anywhere except the cash counter was not acceded to. Under these circumstances, the petitioner submitted her application for resignation from the Bank on medical grounds on 12.01.2012, which was accepted by the Bank with effect from 28.03.2012. The petitioner was released from service with effect from 28.03.2012.

3. The petitioner having not been granted her pension in view of her resignation approached this Court by filing the writ petition. It was urged by the petitioner that she had rendered 19 years 6 months of service and therefore she should have been allowed an invalid pension as her resignation was on the medical grounds. In the alternative, it was submitted that for an employee to go on voluntary retirement, the qualifying service period is 20 (twenty) years. Therefore, the case of the petitioner ought to have been considered sympathetically as she was short of 6 (six) months of the qualifying service for voluntarily retirement along with pension under Regulation 30 of the Bank of Baroda (Employees') Pension, Regulations, 1995, (herein after referred to as Regulation of 1995). It was urged that under Regulation 14 of the 1995 Regulation, an employee who has rendered a minimum of 10 years of service in the Bank is eligible for pension. It is submitted that since under the Regulations the appellant was eligible for pension, her application ought to have been considered for grant of pension.

4. Learned counsel for the appellants submits that the circumstances under which the appellant submitted her resignation ought not to be taken as resignation per se. The attending circumstances which preceded her submission of the letter for resignation when taken into account, the only conclusion will be that it was in the nature of a voluntarily retirement.

5. The respondent/Bank disputed the contentions of the petitioner. It was submitted that Regulation 14 of the 1995 Regulation is not applicable as the resignation was submitted on the basis of Medical certificates, which were for the periods 13.12.1993 to 02.11.2009 although the petitioner submitted her resignation on 12.01.2012. There was no medical emergency because of which the petitioner had to resign.

6. It is also submitted that as per the Attendance Register, petitioner was shown absent from the time the petitioner's leave period ended till the time her resignation took effect, except on 11.02.2012. The representation of the petitioner seeking pension was rejected by the Bank as the petitioner had resigned from service. As per Regulation 22 (1), resignation entailed forfeiture of the entire past service and consequently, the employee is not eligible for pension.

7. Before proceeding further, it is necessary to extract the relevant provisions of 1995 Regulations, namely Regulation 14, Regulation 22 (1) and Rule 30 of the 1995 Regulations.

"14. Qualifying service.

Subject to the other conditions contained in these regulations, an employee who has rendered a minimum of ten years of service in the Bank on the date of his retirement or the date on which he is deemed to have retired shall qualify for pension.

22. Forfeiture of Service.

(1) Resignation or dismissal or removal or termination of an employee from the service of the Bank shall entail for forfeiture of his entire past service and consequently shall not qualify for pensionary benefits.

30. Invalid Pension.

(1) Invalid pension may be granted to an employee who,-

a) has rendered minimum ten years of service; and

(b) retires from the service on or after the 1st day of November 1993 on account of any bodily or mental infirmity, which permanently incapacitates him for the service.

(2) An employee applying for an invalid pension shall submit a medical certificate of incapacity from a medical officer approved by the Bank.

(3) Where the Medical Officer approved by the Bank has declared the employee fit for further service of less laborious character than that which he had been doing, he should, provided he is willing to be so employed, be employed on lower post and if there be no means of employing him even on a lower post, he may be admitted to invalid pension.

(4) No medical certificate of incapacity for service may be granted unless the applicant produces a letter to show that the Competent Authority is aware of the intention of the applicant to appear before the medical officer approved by the Bank.

(5) The medical officer approved by the Bank shall also be supplied by the Competent Authority in which the applicant is employed with a statement of what appears from official records to be the age of the applicant".

8. It is also necessary to extract the resignation letter of the petitioner dated 12.01.2012.

"Re:- Resignation from Banks service on Medical Ground.

With reference to the above undersigned would like to submit the following for your perusal and onward transmission for doing the needful.

You are aware that I am suffering from various ailment owing to chocolate cyst in my ovary and am not in a position to continue with my job at this state of health.

I therefore urge you to take up the matter with the appropriate authority for necessary formality and action.

Thanking you in anticipation."

9. Upon perusal of the Regulation of 1995, it is seen that under Regulation 14, the qualifying service prescribed for an employee is a minimum of 10 (ten) years of service in the Bank. Under Clause 29, of the Regulation of 1995, it is prescribed that any employee, who has completed 20 (twenty) years of qualifying service, may upon making a request by giving notice of not less than 3 (three) months in writing to the appointing authority, may retire from service. As per Regulation 22 of the Regulation of 1995, any resignation or dismissal or removal or termination of an employee from the service of the Bank entails forfeiture of the entire past service and consequently shall not qualify for pensionary benefits.

10. A reference has also been made to the Bank of Baroda (Officers') Service Regulations, 1979 and a Bipartite Settlement dated 10.04.2002 between the Bank and the staff regarding Disciplinary Action against Workman/Staff and Procedure thereof. It is submitted by referring to the clause 6 of the bipartite settlement that there are various punishments prescribed for an employee found guilty of gross misconduct. Under clause (a), it is provided that an employee can be dismissed from service without notice. But under Clauses (b), (c) and (d) there are punishments prescribed where an employee may be removed from service or be compulsorily retired or be discharged from service. Under all these Clauses, the employee, however, would be entitled to superannuation benefits i.e. Pension and/or Provident Fund and Gratuity as would be due otherwise under the Rules or Regulations prevailing at the relevant time and without disqualification from future employment.

11. It is submitted that where even in respect of an employee removed, compulsorily retired and discharged from service, superannuation benefits are available, it is wholly unjust to deny the present appellant of any superannuation benefits by simply relying on her application for retirement without taking into account the attending circumstances, more particularly, when the employee had already completed 19 years 6 months of service. The Judgment of the Apex Court rendered in Bank of Baroda Vs S. K. Kool (Dead) Through Legal Representatives and another reported in (2014) 2 SCC 715 is relied upon by the learned counsel for the appellant to support his contention that in the face of conflict between the Pension (Regulations), 1995 and any clause of the Bipartite Settlement, that the benefits conferred under the Bipartite Settlement ought to be conferred on the employees only in respect of those employees who are eligible and have put in a minimum number of years of service to qualify for pension.

12. In *Bses Yamuna Power Limited Vs Ghanshyam Chand Sharma* and another reported in (2020) 3 SCC 346, the question of retiral benefit pursuant to resignation came up for consideration. In the case before the High Court, it was submitted on behalf of the employee that he had completed 20 (twenty) years of service and therefore, he had "voluntarily retired" and had not "resigned" from service. The contentions were upheld by the High Court and the matter came up before the Apex Court. The questions addressed before the Apex Court were:-

i) that the employee had not completed 20 (twenty) years of service and therefore, he was ineligible for pension,

ii) in any case by resigning, he had forfeited his past service therefore, could not claim the pensionary benefits.

13. Before the High Court the Judgment of the Apex Court rendered in *Asger Ibrahim Amin Vs LIC*, reported in (2016) 13 SCC 797 was relied upon. The said Judgment of the Apex Court in *Asger Ibrahim Amin* was referred to a Larger Bench of Apex Court in *LIC Vs Shree Lal Meena*, reported in (2015) 17 SCC 43, the Larger Bench subsequently pronounced the Judgment which is reported in (2019) 4 SCC 479 (*LIC Vs Shree Lal Meena (2nd)*). In *LIC Vs Shree Lal Meena (2nd)*, ((2019) 4 SCC 479), the Apex Court had overruled the view taken earlier in *Asger Ibrahim Amin*. In *LIC Vs Shree Lal Meena (1st)*, reported in (2015) 17 SCC 43, the Apex Court took the view that the provisions in respect to pension on voluntarily retirement under Rule 31 was not applicable retrospectively because the relevant provision had not been enacted in retrospective effect. The relevant portion of the Judgment is extracted below:-

"9. The Court in *Shree Lal Meena (1)*⁵ took the view that the provision with respect to pension on voluntarily retirement (Rule 31) was not applicable retrospectively because the relevant provision had not been enacted with retrospective effect. Crucially, the Court noted that by making the provision on voluntary retirement applicable retrospectively, and making a determination in the facts of each case whether an employee had "resigned" or "voluntarily retired", the decision in *Asgar Ibrahim Amin*³ obliterated the distinction between resignation and retirement. The Court noted that there is a "real difference between resignation and retirement". They cannot be used interchangeably, and the court cannot substitute one for the other merely because the employee has completed the requisite number of years to qualify for voluntary retirement".

13.1. In *LIC Vs Shree Lal Meena (2nd)*, the Apex Court upheld the interpretation in *LIC Vs Shree Lal Meena (1st)*, (2015) 17 SCC 43 and noted that the retrospective application of the provision on voluntarily retirement in LIC Pension Rules would lead to an absurd result. While upholding in *LIC Vs Shree Lal Meena (2nd)*, reference was also made to *RBI Vs Cecil Dennis Solomon* reported in (2004) 9 SCC 461, wherein it was held:-

"10. In service jurisprudence, the expressions "superannuation", "voluntary retirement", "compulsory retirement" and "resignation" convey different

connotations. Voluntary retirement and resignation involve voluntary acts on the part of the employee to leave service. Though both involve voluntary acts, they operate differently. One of the basic distinctions is that in case of resignation it can be tendered at any time, but in the case of voluntary retirement, it can only be sought for after rendering the prescribed period of qualifying service. Another fundamental distinction is that in case of the former, normally retiral benefits are denied but in case of the latter, the same is not denied. In case of the former, permission or notice is not mandated, while in the case of the latter, permission of the employer concerned is a requisite condition. Though resignation is a bilateral concept, and becomes effective on acceptance by the competent authority, yet the general rule can be displaced by express provisions to the contrary."

14. The findings of the Apex Court in these judgments highlighted that there is a material distinction between the concept of "resignation" and "voluntarily retirement" and while holding that pension schemes do form beneficial legislation, it cannot run contrary to the express term of the provisions.

15. Upon consideration of the entire facts pleaded and also upon due consideration of the various judgments pronounced, it is held that, where an employee has resigned from service there arises no question of whether he has in fact, voluntarily retired or resigned. The decision to resign is materially distinct from a decision to seek voluntarily retirement. Decision to resign results in the legal consequence that flow from resignation under applicable provisions. These consequences are distinct from consequences flowing from voluntarily retirement at the two may not be substituted for each other based on a length of an employees' tenure.

16. In the facts of the present case, there is no denial that the employee had resigned and submitted her application for resignation on 12.01.2012, the said resignation was submitted on medical grounds which is apparent from the resignation letter itself. The said resignation letter was accepted on 28.03.2012. Although she represented before the authority seeking pension by representation dated 03.06.2012, which was replied by the Bank on 07.06.2012, and the writ petition was came to be filed only in the year 2017. The appellant sought to interpret the provisions of Regulation 22 (1) of the Pension Regulation, 1995. It was sought to be urged that the forfeiture of past services as prescribed under Regulation 22 will apply in cases of termination, removal or dismissal from service. But since she had resigned on medical grounds it cannot be treated to be a resignation simpliciter. That apart, she having completed 19 years 5 months 1 day which is short of only 6 months and 29 days from the qualifying period of 20 years necessary for voluntarily retirement, it cannot be concluded that she will opt for resignation without her service benefits.

Such interpretation in the face of the law laid down by the Apex Court cannot be accepted. That apart there is no explanation by the appellant as regards the delay of about 5 (five) years in filing the writ petition.

17. Under these circumstances, we do not find any infirmity in the views arrived at by the learned Single Judge. The Judgment of the learned Single Judge does not require any interference in intra Court Appeal. The appeal being devoid of any merit, the same is therefore dismissed.

18. No order as to cost.