(2007) 05 AHC CK 0275

In the Allahabad High Court

Awadhesh Kumar Tiwari — APPELLANT

Vs

Banda District Co-operative Bank Ltd. and General Manager, Banda District Co-operative Bank Ltd. — RESPONDENT

Date of Decision : 08-05-2007

Acts Referred:

Citation : (2007) 4 AWC 4212

Hon'ble Judges : Sudhir Agarwal, J;Anjani Kumar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Sudhir Agarwal, J.—The petitioner has approached this Court seeking a writ of mandamus commanding the respondents to permit him to continue in service till 31.7.2006, i.e., when he attains the age of 60 years and to give all consequential benefits accruing thereon.

2. The facts in brief as disclosed in the writ petition are that the petitioner was working as Senior Branch Manager in the office of Banda District Co-operative Bank, Banda. Initially, he was appointed as Clerk in District Cooperative Bank (hereinafter referred to as "the Bank"), Branch Office Karvi, District Banda on 6th October 1966, prior to the enforcement of U.P. Cooperative Societies Employees'' Service Regulations, 1975 (hereinafter referred to as "1975 Regulations"). A dispute arose between the employees of various District Cooperative Banks and the Bank wherein a settlement/agreement was entered into on 22.2.19966 which stipulated that the age of superannuation of the Bank''s employees would be 6 0 years. The grievance of the petitioner is that the respondents are erroneously retiring him on 31.7.2004 on attaining the age of 58 years which is in contravention of the settlement dated 22.2.1966.

3. The respondents have filed counter affidavit stating that in terms of the settlement dated 12.12.1965 (Annexure CA-3) the age of retirement of the employees of the Bank was 5 8 years. Further there was an industrial dispute

raised by the U.P. Bank Employees Union which was referred for adjudication to Industrial Tribunal III, Allahabad in Adjudication Case No. 53 of 1963 wherein 50 Cooperative Banks were parties, which involved dispute with respect to age of retirement as well. The Bank in question was party in the said adjudication case. The learned Tribunal gave its award on 25.6.1971 which was published by the State Government on 17.7.1971. The said award is commonly known as "Joshi Award" wherein also the age of retirement of employees was held to be 58 years. In para 7 of the counter affidavit it is denied that there was any settlement arrived between the Bank and the employees on 22.2.1966 providing age of retirement other than 58 years. On the contrary, the settlement executed by the Bank was dated 12.12.1965 wherein the age of retirement was 58 years and therefore, the petitioner has rightly been retired on attaining the age of 58 years.

4. Sri H.R. Mishra, learned Counsel for the petitioner contended that in view of the averments made in the writ petition and Joshi Award, the petitioner was entitled to continue till he attains the age of 60 years. He also placed reliance on Division Bench judgments in Allahabad District Co-operative Bank Ltd. Vs. Lalji Srivastava, Ram Swarup Srivastava Vs. Allahabad District Cooperative Bank Limited and Branch Manager, Allahabad District Cooperative Bank, and a Single Judge judgment in writ petition No. 16365 of 2004, Sri Dhyan Chand Gupta v. District Cooperative Bank Ltd. and Anr., decided on 25.5.2005.

5. We have heard Sri H.R. Misra, learned Counsel for the petitioner and Sri K.N.Misra appearing for respondents and perused the record.

6. It is not disputed between the parties that if there existed any contract executed between the petitioner and the respondent Bank prior to enforcement of 1975 Regulations, whereunder the petitioner is entitled to continue beyond 58 years of age, he would be entitled to avail the same and Regulation 24 of 1975 Regulations would not curtail his age of superannuation. It is also not disputed between the parties that in case the matter is governed by Regulation 24, then he would not be entitled to continue beyond 58 years.

7. The controversy, therefore, has been narrowed down in this case as to whether the case of the petitioner would be governed by the proviso to Regulation 24 of the 1975 Regulations or by the main provision or in other words, whether there existed any contract between the petitioner and the Bank entitling him to continue beyond 5 8 years. Though the petitioner has asserted in the writ petition that there existed a contract dated 22.2.1966 executed by the Bank with the employee, s prescribing age of retirement as 6 0 years, but he could not show existence of any such contract executed by the Bank. The respondents, on the contrary, have placed on record the settlement arrived at between the Bank employees'' Union and the Bank on 12.12.1965 (Annexure CA-3), providing age of retirement as 58 years which reads as under:

"Retirement"

1. Every employee shall be retired at the age of 58 years. Extension may be

granted upto two years only in every special cases.

8. The aforesaid settlement has been signed by Sri Bhishm Deo Dube, Director on behalf of the Bank and Sri P.N. Tiwari, President, U.P. Bank Employees'' Union representing the employees. Moreover in "Joshi award" also, the age of retirement was provided as 58 years. The petitioner though has filed rejoinder affidavit but except of bare denial of averments made in the counter affidavit and reiterating the facts stated in the writ petition, no material has been placed to contradict the aforesaid settlement dated 12.12.1965 and Joshi Award. In the absence of any agreement executed between the Bank and the petitioner, the proviso to Regulation 24 would not come to his rescue and therefore, he is not entitled to continue beyond 5 8 years.

9. We have also found that the alleged settlement dated 22.2.1966 (Annexure 2 to the writ petition) was executed between Allahabad District Cooperative Bank Ltd., Allahabad and U.P. Bank Employees Union (Central Office) Lucknow. Banda District Cooperative Bank or its employees have not been shown to be a party to the said settlement and despite repeated query made by us, learned Counsel for the petitioner could not show as to how the settlement of Allahabad District Cooperative Bank would help the petitioner who is admittedly an employee of Banda District Cooperative Bank which is an independent and separate cooperative society. Therefore, reliance placed on Annexure 2 to the writ petition is totally misplaced and misleading.

10. 1975 Regulations came up for consideration before the Apex Court in Virendra Pal Singh and Ors. v. The District Assistant Registrar, Cooperative Societies, Etah and Anr. 1980 UPLBEC 202 and construing Regulation 24 of 1975 Regulations, the Apex Court observed that if an employee before enforcement of 1975 Regulations had entered into any contract with the Society whereunder he is entitled to continue beyond 58 years, the Regulation 24, providing the age of retirement as 58 years shall not apply in his case and in the matter of age of retirement, he shall be governed by the contract. In para 14 of the judgment, the Apex Court held:

14. Another question which was raised was that though the age of retirement of employees of some of the Cooperative Societies was originally 60 years under the U.P. Cooperative 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 Regulations, 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 Cooperative 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 Centralised service....

11. Coming to the judgments relied upon by learned Counsel for the petitioner, we find that the facts of those cases were totally different and have no application to the facts of the case in hand. Lalji Srivastava (supra) was a case from Allahabad District Co-operative Bank and it was the admitted position that there was a settlement dated 22.2.1966 reached between the Bank and the employees of Union of India which provided age of retirement as 60 years. This is evident from para 3 of the judgment:

3. respondent was appointed on 18.5.1960 as a clerk in the Bank. On 22.2.1966 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.

12. In view thereof this Court held that employees appointed prior to enforcement of 1975 Regulations and those governed by Settlement dated 22.2.1966 would be entitled to continue till 60 years of age and shall not be retired on attaining the age of 58 years in view of proviso to Regulation 24 of 1975 Regulations. Ram Swarup Srivastava (supra) was also a case arising from Allahabad Cooperative Bank where existed a similar agreement as involved in Lalji Srivastava (supra). It is also worthy of notice that in Ram Swarup Srivastava (supra) there was another connected matter,i.e., Hari Narain Ojha v. Allahabad District Co-operative Bank Ltd. Allahabad Special Appeal No. 66 of 2003 but in that case it was found that he was appointed subsequently, was not governed by the settlement dated 22.2.1966 and in view of the Joshi Award was liable to retire on attainment of 58 years, hence, his appeal was dismissed by the Division Bench. Similarly, in Dhyan Chand Gupta (supra) we find that there was a settlement dated 6.5.19 65 executed by Meerut District Cooperative Bank Meerut, providing age of retirement as 60 years and pursuant thereto he was held entitled to continue till the age of 60 years. Therefore, none of the aforesaid judgments are applicable or lend any support to the petitioner for the reason that in the case in hand there is no contract executed between the partis, providing any higher age of retirement in order to attract proviso to Regulation 24 of 1975 Regulations. We, therefore, do not find any force in the contention advanced on behalf of the learned Counsel for the petitioner that he was entitled to continue till he attains 60 years of age.

13. The writ petition lacks merit and is accordingly, dismissed. No order as to costs.

