(2004) 06 KAR CK 0044

In the Karnataka High Court

Case No : Writ Appeal No. 3430 of 2001

Canara Bank APPELLANT

Vs

Chandrakant A. Puranik RESPONDENT

Date of Decision : 01-06-2004

Acts Referred:

Penal Code, 1860 (IPC) — Section 120 (b), 420
Prevention of Corruption Act, 1947 — Section 5 (1) (b), 5 (2)

Citation : (2004) 4 KarLJ 384 : (2004) 3 KCCR 259 SN : (2004) 3 LLJ 636

Hon'ble Judges : S.R. Nayak, J;Ram Mohan Reddy, J

Bench : Division Bench

Advocate : B.S. Shankaranarayan, for the Appellant; P.S. Rajagopal, for the Respondent

Final Decision : Allowed

Judgement

Ram Mohan Reddy, J.—The Management of Canara Bank has preferred this intra-Court appeal being aggrieved by the order dated 17th April, 2001 of the learned Single Judge allowing W.P. No. 5284 of 1998, quashing the order of compulsory retirement Annexure-S; the order of dismissal of the statutory appeal Annexure-Y and further declaring the writ petitioner to have retired from service under the Voluntary Retirement Scheme (for short, ''the VRS''), entitling him to all consequential benefits.

2. Facts in brief, germane to the decision making are as under:

Respondent, hereinafter, for brevity is referred to as, ''Officer'', joined the services of the appellant-Bank on 19-2-1959 and in the year 1965, was promoted to the post of Divisional Manager in Senior Management (Grade Scale IV). The appellant by order dated 5-4-1993 transferred the Officer from Mumbai to work at the Welfare Office, Circle Office at Lucknow. The Officer did not report to duty, but, sought for leave of absence on medical grounds, which was sanctioned upto 15-1-1994. In the interregnum, on 4-1-1993, the Officer was relieved of his duties at Mumbai.

3. The Officer by letter dated 6-12-1993 Annexure-A addressed to the Chairman of the appellant requested for permission for voluntary retirement under Voluntary Retirement Scheme of the Bank and to commute the pension in terms of the settlement entered into between the Officers'' Association and the Bank. The Officer had requested the said letter to be treated as notice of retirement and to adjust the balance period of notice against unavailed leave standing to his credit. Although the Officer was directed to report at the transferred place of posting and to take medical treatment from the Bank''s designated medical practitioner at Lucknow, he failed to do so. On the contrary, by his letters at Annexures-C, D and E, he reiterated his request to consider the application for voluntary retirement. Since the Central Bureau of Investigation had launched prosecution against the Officer in the case registered as RC No. 18 of 1985 pending in the Court at Bangalore, the appellant by its letter dated 21-10-1994 at Annexure-F called upon the Officer to give his written consent for consideration of his application subject to his terminal benefits being withheld until the disposal of the CBJ case, though the condition stipulated in the Voluntary Retirement Scheme was, that the Officer concerned should not have any CBI case pending against him. The Officer by his reply dated 17-4-1995 at Annexure-K did not extend his willingness/consent for such a consideration, but, requested the Bank to keep the said application in abeyance until disposal of the CBI case against him, while at the same time sought for extension of leave.

4. The Officer having not secured prior permission or sanction of leave and having not reported at the place of transfer, the Bank instituted disciplinary proceedings against him on the aforesaid two counts i.e., unauthorised absence from 16-1-1994 onwards and failure to report to duty on 16-1-1994 at the transferred place of posting. The domestic enquiry was held and the Enquiry Officer submitted a report holding the charges against the Officer, proved. The said finding was accepted by the disciplinary authority who imposed the punishment of compulsory retirement by order dated 5-12-1996, at Annexure-S. The statutory appeal preferred by the Officer was dismissed by the Appellate Authority by his order dated 16-12-1997 at Annexure-Y.

5. The Officer, being aggrieved by the orders of the disciplinary authority at Annexure-S and the Appellate Authority at Annexure-Y, preferred the writ petition seeking quashing of the said orders and for a declaration that he stood voluntarily retired from the service of the Bank and for all consequential benefits.

6. The writ petition was opposed by the appellant by filing its statement of objections contending that the request for voluntary retirement under the VRS could not be considered as the Officer himself was not willing to have the said request considered by the Bank subject to his terminal benefits being withheld until disposal of the CBI case. It was also contended that one of the conditions, amongst others, governing the consideration of request for voluntary retirement under the VRS as found in Circular No. 422 of 1991, dated 16-2-1999, is that the Officer concerned should not have any CBI case pending against him. In addition,

it was contended that although the CBI case was pending, the management, taking sympathetic view, however, subject to the Bank withholding the terminal benefits until disposal off the CBI case, evinced interest in considering the request - for voluntary retirement but the Officer was not willing for such a consideration. It is further, contended that the charge of absence from duty without prior permission or sanction of leave and failure to report to duty at the transferred place of posting, were established in the domestic enquiry and the punishment of compulsory retirement imposed by the disciplinary authority was commensurate with the gravity of the misconduct held proved. The dismissal of the statutory appeal of the Officer it was contended to be justified and in accordance with law.

7. In the premise of the pleadings of the parties, the learned Single Judge construed the CBI case registered as RC No. 18 of 1985, had nothing to do with the conduct of the Officer and applying the provisions of sub- regulation (2) of Regulation 29 of the Canara Bank Employees'' (Pension) Regulations, 1995 (for short, the ''Regulations''), held that the request for voluntary retirement was deemed to have been accepted. As a consequence the learned Single Judge quashed the disciplinary proceedings. In addition, the learned Single Judge declared the parties to be governed by the terms of the settlement arrived at between the Trade Unions of the Officers and the Bank, being legally bound thereof

8. The appellant-Bank, being aggrieved by the reliefs granted by the learned Single Judge is before us.

9. We have heard Sri B.S. Shankaranarayan, learned Counsel for the appellant and Sri P.S. Rajagopal, learned Counsel for the respondent-Officer.

10. It is not disputed that by the letter dated 6-12-1993 at Annexure-A, the Officer sought for retirement under the VRS of the Bank which was followed by an application dated 2-1-1994 in the required format as at Annexure-R1 confirming that he was bound by the eligibility norms as laid down in Circular No. 422 of 1991, dated 16-12-1991. This Circular No. 422 of 1991, Annexure-R5 pertains to relaxation in ''eligibility criteria'' for Officers seeking voluntary retirement while retaining, unchanged, all other terms and conditions of the Scheme of Voluntary Retirement as found in Circular No. 160 of 1986, dated 26-4-1986. Circular No. 160 of 1986, Annexure-R4 provides for all the terms and conditions governing requests for voluntary retirement. Sub-clause (b) of Clause 4 of the said circular reads as under:

"(b) No charge-sheet/vigilance/CBI case etc., should be pending or contemplated against the Officer".

In view of the aforesaid condition, in order to consider a request for voluntary retirement under the Scheme envisaged under Circular No. 160 of 1986, it was imperative that there should be no CBI case pending against the Officer.

11. The fact of pendency of the prosecution initiated by the Criminal Bureau of Investigation in case RC No. 18 of 1985 in the Court at Bangalore against the Officer charge-sheeted u/s 120(b) read with Section 420 of the IPC and Section 5(2) and 5(1)(b) of the Prevention of Corruption Act, 1947, is not in dispute. In view of the contents of Annexure-K, the reply of the Officer specifically requesting the Bank not to consider his application for voluntary retirement until disposal of the CBI case in RC No. 18 of 1985, the Officer cannot be allowed to approbate or reprobate and retract from his earlier stand. The aforesaid undisputed facts, leave no doubt that the application Annexure-A of the Officer for permission to retire under the VRS was to be kept in abeyance, at the request of the Officer himself, until the disposal of the CBI case. The learned Single Judge fell in error in construing the case in RC No. 18 of 1985 as if there was no dispute that the charges against the Officer were not those of omission and commission on his part in the discharge of his duties as Bank Officer while at Shivajinagara Branch, Bangalore and that therefore the authorities had no reason at all for not considering the request for voluntary retirement of the Officer. We are of the considered view that the Bank was justified in not considering the request of the Officer for voluntary retirement under the Voluntary Retirement Scheme.

12. Sri B.S. Shankaranarayana would, per se not dispute the declaration by the learned Single Judge that the parties are governed by the settlement entered into between the representatives of the Officers'' union and the Bank, but drew our attention to the provisions of the Regulations to show that the settlement has no application to the request of the Officer for voluntary retirement under the VRS.

13. Per contra, Sri P.S. Rajagopal, the learned Counsel for the Officer would contend that Regulation 29 of the Regulations was applicable to all such Officers who were employed after 1-11-1993 and the applications of the Officer filed on 6-11-1993 ought to be considered to be one under Regulation 29.

14. It is an undisputed fact that the Indian Banks Association arrived at a settlement with the workers'' union and signed a Joint Note with the Officers'' organisation for the introduction of a Pension Scheme. In terms of the joint note, a draft Pension Regulation, was sought to be implemented after complying with the procedures prescribed u/s 19(1) of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970. The Pension Regulations were brought into force on 29-9-1995 and as a special dispensation, the Government of India by a conscious decision extended the Scheme to all the Bank employees and to the Officers'' cadre providing statutory provisions for voluntary retirement on or after 1-11-1993 upon completion of 20 years qualifying service. Chapter II deals with application and eligibility, under sub-regulation (3) of Regulation 3 all Officers in the service of the Bank before the notified date i.e., 29-9-1995 and continue to be in the service of the Bank on or after the notified date, are made eligible for pensionary benefits under the Regulations. Under sub-regulation (3)(b), such an

Officer is required to exercise his option in writing within 120 days from the notified date to become a member of the Fund. Under sub-regulation (3)(c), the Officer is required to authorise the trust of the Provident Fund of the Bank to transfer the entire contribution of the Bank along with the interest accrued thereon to the credit of the Fund constituted for the purpose under Regulation 5. Under sub-regulation (9) of Regulation 3, any option exercised before the notified date i.e., 29-9-1995 by an employee in pursuance of the settlement shall be deemed to be an option for the purpose of Chapter II provided such an employee refunds within 60 days from the notified date, the amount of Bank''s contribution to the Provident Fund including interest accrued thereon together with a further simple interest and such, other conditions as set out therein.

15. Chapter V deals with clauses of pension and Regulation 29 provides for pension on voluntary retirement. The said regulation prescribes 1-11-1993 as the cut off date for reckoning 20 years qualifying service as eligibility for seeking voluntary retirement and pension under the Regulations. It contemplates the issuance of a notice in writing of not less than 3 months to the appointing authority by the Officer seeking voluntary retirement from service. Such a notice could be issued only after the regulations had come into force i.e., 29-9-1995 and not at any time prior thereto.

16. There is considerable force in the contention of Sri B.S. Shankaranarayan, that there was no compliance of sub-regulation (3) of Regulation 3 by the Officer and therefore, he was not eligible, under the regulations, for grant of pension. Although sub-regulation (9) of Regulation 3 contemplates deemed option if so exercised before the notified date i.e., 29-9-1995, the same would not be complete unless and until the Officer concerned had effected refund, within 60 days from the notified date, the amount of Bank''s contribution to the Provident Fund including interest accrued etc.. The Officer having failed to comply with the provisions of sub-regulation (9) cannot be heard to say that his request for commuting his pension as per the settlement, as set out in Annexure-A, dated 6-12-1993 is a deemed option for pension under Regulation 3 of the Regulations. The contention of Sri P.S. Rajagopal that there was compliance of sub-regulation (9) of Regulation 3, by the letter at Annexure-A is not acceptable to us.

17. On and after the Regulations came into force i.e., on 29-9-1995, the Officer did not choose to make an application or issue notice in writing, as required under Regulation 29 of the Regulations, for permission to retire from service, voluntarily. The contention of Sri P.S. Rajagopal, that the notice Annexure-A, dated 6-12-1993 should be construed as due notice under the Regulations as it was made in terms of the settlement, is a specious plea. The regulations were brought into force on 29-9-1995, and the Regulations do not make any provision to consider a request for voluntary retirement made prior to 29-9-1995 and to deem the same as notice of retirement under Regulation 9.

18. Having held that the Bank was justified in not considering the request of the Officer for voluntary retirement under the Voluntary Retirement Scheme, due to

the Officer''s request to keep the same in abeyance, coupled with the fact that such a request made on 6-12-1993 cannot be construed as one made under Regulation 29 of the Regulations, it is not possible to sustain the findings of the learned Single Judge. The contention of Sri P.S. Rajagopal that Regulation 29 should be made applicable as if the Regulations were in force on 1-11-1993 in view of the settlement, cannot be countenanced, and is rejected.

19. The last contention urged by the learned Counsel for the appellant that the learned Single Judge was not justified in concluding that the charges of absence and that of non-reporting for duty by the Officer could not be considered as misconduct, deserves to be accepted. The records bear testimony to the defiant conduct of the Officer in refusing to report to duty at the transferred place of posting even as on 16-1-1993, which would tantamount to the Officer refusing to obey the legitimate orders of transfer by the Bank. His refusal to take medical treatment at Lucknow (place of posting) from the Bank''s designated medical practitioner, though the leave of absence was granted only upto 15-1-1993 and not thereafter is of serious concern. The Officer was holding the post of Divisional Manager in Grade Scale IV and ought to have set an example to his subordinates by complying with the orders of his superiors.

20. We have gone through the findings of the enquiry authority as well as the disciplinary authority which are well-founded and based on evidence marshalled in enquiry. The administrative authority has arrived at a conclusion after following the principles established by law and rules of natural justice and the Officer has received a fair treatment to meet the case against him and in that view of the matter, this Court cannot substitute its judgment for that of the administrative authority in respect of matters which fall squarely within the jurisdiction of the said authority.

21. It is well-established principle in law that the Court while exercising power of judicial review cannot normally substitute its own conclusion on the penalty and impose some other penalty, The Apex Court in the case of B.C. Chaturvedi Vs. Union of India and others, held that if the punishment imposed by the disciplinary authority or the Appellate Authority shocks the conscience of this Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary authority/Appellate Authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in the exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.

22. The facts of this case, it is not as if there was no evidence or that the decision making process could be found fault with, in order to substitute the finding arrived at by the enquiry authority or the disciplinary authority. We are of the considered view that the findings of the Enquiry Officer, disciplinary authority as well as that of the Appellate Authority require to be sustained.

In the result and for the reasons set out supra, we allow the writ appeal, set aside the order of the learned Single Judge dated 17th April, 2001 and dismiss

Writ Petition No. 5284 of 1998, however, with no order as to costs.

