(2016) 12 DEL CK 0110

In the Delhi High Court

Case No : Leters Patent Appeal No. 1041 of 2011

Canara Bank APPELLANT

Vs

Gulzari Lal Kwatra RESPONDENT

Date of Decision : 06-12-2016

Acts Referred:
Canara Bank (Employees) Pension Regulations, 1995 — Clause 33

Citation : (2017) 1 CLR 760 : (2017) 236 DLT 537 : (2017) 153 FLR 677

Hon'ble Judges : Mr. Sanjiv Khanna and Ms. Sunita Gupta, JJ.

Bench : Division Bench

Advocate : Mr. Naveen R. Nath, Advocate, for the Petitioner; Mr. Mukul Gupta, Sr. Advocate with Mr. Rajat Katyal and Mr. Sumit Kumar Mishra, Advocates, for the Respondent

Final Decision : Allowed

Judgement

Ms. Sunita Gupta, J. - The present intra-Court appeal impugns the order dated 1st September, 2011 passed in W.P. (C) No. 2438/1996, Gulzari Lal Kwatra v. Union of India & Anr.. The aforesaid writ petition filed by Gulzari Lal Kwatra, the respondent herein, stands allowed with the direction that the respondent, who had suffered punishment of compulsory retirement, would be entitled to pension under the Canara Bank (Employees) Pension Regulations, 1995, (Pension Regulations, for short). The order and judgment of the Single Judge follows the decision dated 30th May 1997, of the Karnataka High Court in Writ Appeal No. 8897 of 1996 titled Canara Bank v. B.M. Ramachandra. It has been observed that the said decision was affirmed by the Supreme Court in Bank of India v. Indu Rajagopalan, (2001) 9 SCC 318.

2. We would briefly refer to the facts relevant to the present appeal. The respondent was an employee of Laxmi Commercial Bank, and consequent to the amalgamation of the said bank with Canara Bank, was inducted into the service of the latter Bank as an accountant with effect from 24th August, 1985. The appellant-Canara Bank initiated disciplinary action against the respondent on

account of unauthorised absence from service and a charge-sheet was issued under the Canara Bank Officer Employees'' (Discipline and Appeal) Regulations, 1976, (1976 Regulations, for short). By order dated 26th August, 1991, the respondent was compulsorily retired from service under Regulation 4(h) of the 1976 Regulations. The appeal and revision filed by the respondent against the order of compulsory retirement were dismissed by the appellate and reviewing authority on 16th June, 1993 and 5th September, 1995, respectively.

3. The Pension Regulations were enacted and had come into effect from 29th September, 1995. Clause 33 of the said Regulations pertains to Compulsory Retirement Pension and reads as under:-

"33. Compulsory Retirement Pension:

(1) An employee compulsory retired from services as a penalty on or after 1st day of November 1993 in terms of Discipline and Appeal Regulations or settlement by the authority higher than the authority competent to impose such penalty may be granted pension at a rate not less than two thirds and not more than full pension admissible to him on the date of his compulsory retirement if otherwise he was entitled to such pension on superannuation on that date;"

A reading of the aforesaid clause would show that only those employees who had suffered the penalty of compulsory retirement on or after 1st November, 1993 could opt for pension under the Pension Regulations. As is evident from the facts stated above, the respondent had suffered penalty of compulsory retirement on 26th August, 1991, nearly four years prior to the enactment of the Pension Regulations and, therefore, could not have opted for pension in terms of Clause 33 quoted above.

4. The respondent had made a representation to the appellant-Bank praying that he should be covered under the Pension Regulations and accordingly be granted pensionary benefits accruing to him. The said application of the respondent was rejected by the appellant-Bank vide letter dated 13th December, 1995.

5. The respondent then filed W.P.(C) No. 2438/1996 challenging the aforesaid orders. The primary challenge in the writ petition was to the order of compulsory retirement dated 26th August, 1991. The prayer made in the writ petition was that the order of compulsory retirement be set aside and the respondent should be reinstated with continuity of service and consequential benefits including payment of back wages and emoluments. The respondent had also prayed for release of benefit of pension accruing to him during the pendency of the writ petition. The prayer and grounds for setting aside the punishment of compulsory retirement were not pressed before the Single Judge. Even before us counsel for the respondent has not pressed the aforesaid reliefs or argued that the matter should be remanded to the Single Judge. The constitutional validity of the Clause 33 Pension Regulations was not made the subject-matter of challenge in W.P. (C) No.2438/1996.

6. Thus, the cut-off date of 1st November, 1993 has not been questioned as being violative of Article 14 of the Constitution. We have to interpret Regulation 33 as it exists.

7. The counsel for the respondent, however, has relied upon an earlier order dated 11th December, 2007 passed in the W.P. (C) No.2438/1996. The said order reads as under:-

"Counsel for the respondent has obtained instructions from his client and submits that the respondent bank has not extended the benefit of the judgment, rendered by the Supreme Court reported as JT 2000 (10) SC 334 entitled Bank of India v. Indu Rajagopalan and Ors. to the employees who were compulsorily retired by way of penalty and hence no such benefits on the ground of parity can be claimed by the petitioner.

Counsel for the petitioner states that in view of the long passage of time, he seeks to confine the relief in the present writ petition to release the benefits of pension payable to the petitioner. List this matter in the category of ''regular matters'' in the week commencing from 25th February, 2008.

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Counsel for the petitioner states that at this stage, he does not wish to press this application. The same is, therefore, dismissed as withdrawn."

The order dated 11th December, 2007 would reveal that the appellant bank had taken the stand that the respondent cannot be granted benefit of the decision in the case of Indu Rajagopalan (supra). Counsel for the respondent at that time had stated that he would restrict the relief to the pensionary benefits only. This possibly is the reason why the respondent had not pressed his challenge to the punishment order before the Single Judge and before us as well. The order of compulsory retirement has attained finality.

8. The counsel for the respondent argues that the order dated 1st September, 2011 was a consent order and, therefore the relief claimed for cannot be withheld by the appellants. The order dated 11th December, 2007 does not reveal or indicate that the impugned order passed by the Single Judge dated 1st September, 2011 was a consent order. The order does not record such consent. Therefore, the contention of the respondent to the said effect must fail and has to be rejected.

9. The constitutional validity of Clause 33 of the Punjab National Bank (Employees) Pension Regulations, 1995, which is identical and pari materia to Clause/Regulation 33 of the appellant-Bank, was considered by a Division Bench of this Court in Kailash Nath Singhal v. Union of India & Ors. 97 (2002) DLT 602 (DB), and the said Regulation/Clause was upheld. This decision also refers to and distinguishes the judgment in the case of B.M. Ramachandra & Ors.(supra) passed by the Karnataka High Court and the decision of the Supreme Court in the case of Indu Rajagopalan (supra).

10. In the case of B.M. Ramachandra & Ors. (supra), the employees had taken voluntary retirement between 1st January, 1986 and 1st November, 1993. The pension scheme had not been made applicable to those employees, who had retired voluntarily on or after 1st November, 1993 and this cut-off date was challenged in the writ petition filed in the Karnataka High Court, for on this ground the pensionary benefits had been denied to them. The Single Judge held that the cut-off date of 1st November, 1993 fixed for the employees who had taken voluntary retirement was irrational. In Kailash Nath Singhal (supra) elucidating upon the judgment in the case of B.M. Ramachandra & Ors. (supra), it was held as under:-

"34. A careful reading of Ramachandra shows that there are several differences between that case and the present case.

a) The Respondents in Ramachandra had taken voluntary retirement under the existing Canara Bank (Officers) Service Regulations, 1979 which permitted an employee to take voluntary retirement, though without pension (pages 632 and 638 of the Report).

b) Pursuant to the Settlement dated 29th October, 1993 the Board of Directors of Canara Bank adopted draft pension regulations provided by the Indian Banks Association. Persons who had taken voluntary retirement between 1st January, 1986 and 1st November, 1993 were treated as eligible for pension under the draft regulations. Not only this, both the employees and Canara Bank had acted on these draft regulations on the basis that they were applicable to employees who had taken voluntary retirement between 1st January, 1986 and 1st November, 1993 (page 633 of the Report). It was only after the draft regulations were formally adopted by Canara Bank in 1995 that the employees were told that they were not entitled to any pension.

c) Although Canara Bank did say that the draft Regulations underwent some modifications before its final formulation, the Karnataka High Court found that:

"There is nothing on the record to show that the draft Regulations which held the retirees like the writ petitioners entitled to the grant of pension were changed or modified either by the Central Government or by the Reserve Bank of India." (Page 644 of the Report).

d) The Karnataka High Court also noticed that the financial liability on Canara Bank was not so huge, which if accepted would frustrate the pension scheme (page 643 of the Report).

35. Taking all these factors into consideration, it was held on page 646 of the Report:

"The appellants have not referred to the existence of any circumstances or conditions which can be considered to be a ground for the change of the conditions of the statutory settlement arrived at between the parties. The draft Regulations, as earlier noted, were rightly understood by the parties concerned to confer the benefit of the Pension Scheme to the retirees of the banks prior to 1-1-1993 as well. Any other and contrary interpretation of the Pension Regulations would amount to frustrate the statutory settlement arrived at on 29-10-1993..."

Thereafter, it was held:

"The distinction sought to be drawn by the appellants with respect to the retirees before 1-11-1993 and retirees thereafter appears only to be imaginary and not real. The draft Pension Regulations were held applicable to the persons like the writ petitioners and the same were enforced obviously without any amendment or alteration, w.e.f. 29-9-1995. The learned Single Judge was therefore right in holding that the Regulations were applicable to all the employees who had opted for voluntary retirement notwithstanding the cut-off date of 1-11-1993"

36. The Karnataka High Court also noted that pensionary benefits were granted in similar circumstances to employees of the Reserve Bank of India and the Life Insurance Corporation of India. On these bases, the Respondents in Ramachandra were held entitled to pensionary benefits."

11. Thus, the Division Bench in Kailash Nath Singhal (supra) had affirmatively distinguished B.M. Ramachandra & Ors. (supra) and held that the said decision cannot be treated as laying down the ratio as propounded by the respondent. This is not a case of voluntary retirement, albeit the respondent has been indicted and has suffered the penalty of compulsory retirement.

12. The Division Bench in Kailash Nath Singhal (supra) had referred to the decision of the Supreme Court in Indu Rajagopalan and Ors. (supra) and observed as under:

"38. We may mention that in Bank of India and Ors. v. Indu Rajagopalan and Ors., (2001) (VIII) SLT 95 = JT 2000 (10) SC 334, The Supreme Court declined to interfere with the directions given in Ramachandra. Apart from other things, what appears to have weighed with the Supreme Court in Indu Rajagopalan is that there was no significant financial or other burden on the appellant Banks.

39. Taking cue from what was said by the Supreme Court in Indu Rajagopalan, we did inquire from the learned Counsel for the parties about the financial impact that a decision in favour of the appellant would have. Neither Counsel was in a position to enlighten us on this, except to say that hardly 3 or 4 similar cases were pending in this Court. We, therefore, take it that the financial burden on the Bank is not considerable. Even then, we do not find it possible to decide in favour of the appellant and others like him. For one, we are of the view that the law is not in favour of the appellant. We cannot brush aside the legal position only because there is little or no financial burden on the Bank.

We do not have such a power. Nor can we be asked to compassionate view of the matter, as submitted by the learned Counsel for the appellant, because it is entirely within the domain of the Bank whether or not to view the case of the appellant and others like him with compassion."

We respectfully agree with the findings recorded by the Division Bench in Kailash Nath Singhal (supra).

13. In these circumstances, we are unable to accept the contention of the counsel for the respondent that the respondent would be entitled to pension under the pension regulations. The appellant should succeed in this appeal.

14. Accordingly, the impugned order and judgment dated 1st September, 2011 passed in W.P.(C) 2438/1996 is set aside. The writ petition will be treated as dismissed. In the facts of the present case, there will be no order as to costs.