

(2019) 02 DEL CK 0406

In the Delhi High Court

Case No : Letters Patent Appeal No. 769 Of 2011

Central Bank Of India

APPELLANT

Vs

S. Chandrashekhar

RESPONDENT

Date of Decision : 20-02-2019

Acts Referred:

Constitution of India, 1950 — Article 14, 217
Industrial Disputes (Central) Rules, 1957 — Rule 58
Industrial Disputes Act, 1947 — Section 2(p), 18(1)

Citation : (2019) 02 DEL CK 0406

Hon'ble Judges : Vipin Sanghi, J;A.K.Chawla, J

Bench : Division Bench

Advocate : R.S. Mathur, Hetu Arora, Siddharth Agarwal, Rahul Jain

Final Decision : Dismissed

Judgement

A.K.Chawla, J

1. The appellant - Central Bank of India in short 'the Bank', is aggrieved of the order dated 10.08.2011 passed by the learned Single Judge, whereby, in WP(C) 3833/2006 filed by the respondent, the Bank, inter alia, was directed to grant pension to the respondent under its Pension Regulations, 1995.

2. Concisely, the facts relevant to the appeal are that the respondent had joined the Bank as a Clerk on 03.08.1972 and earned promotions over a span of 22 years of his service to the Bank. It is a matter of record that in the year 1990, the Reserve Bank of India arrived at a settlement with its employees to extend them the pensionary benefits. On the similar demands made by the employees of the Public Sector Banks, the Indian Banks Association, in short, 'IBA', which represents the Public Sector Banks, arrived at a settlement with the Employees' Association and Trade Unions and a Memorandum of Settlement dated 29.10.1993 in short 'MoS', came to be arrived at amongst them. In terms of this MoS, the employees of such IBA members, who were in service as on 01.11.1993, became eligible for pension. It also emerges from the record that

IBA vide its communication dated 17.03.1994 asked the Public Sector Banks, which included the Bank, to, inter alia, inform its employees to exercise their option for pension by 30.09.1994. The Bank, so, informed its employees to exercise their option. Undisputedly, the respondent exercised his option for pension on 09.09.1994. Having exercised such option, the respondent, vide his communication dated 28.02.1995, requested the Bank for being relieved immediately and requested that the resignation so tendered, be accepted. The Bank conveyed its acceptance of such resignation tendered by the respondent vide its communication dated 29.03.1995. Vide its communication dated 04.06.1996, though, the Bank acknowledged the receipt of the option for pension, the sanction of pension to the respondent was not ever given effect to. On 29.09.1999, Central Bank of India (Employees') Pension Regulations, 1995 in short 'the Bank's Pension Regulations' came to be notified, after consultation with RBI. On this, the respondent made repeated representations and in response to his representation/letter dated 23.06.1998, vide its letter dated 22.09.1998, the Bank, informed the respondent that as per the existing provisions of the Pension Regulations i.e. Regulation 22, the respondent was not eligible for pension inasmuch as he had resigned from service. The respondent sought to reason his case making further representations, the last of which, as emerges from the record, was made on 02.11.2005. Getting no positive results, the respondent approached this Court by way of a writ petition in the year 2006, in which the impugned order has come to be passed. The Bank assails the impugned order, pertinently, on two counts. One, Regulation 22 of the Bank's Pension Regulations disqualifies its employees from pensionary benefits in the case of resignation and that, the case of the respondent was not of voluntary retirement and that, the resignation and voluntary retirement cannot be treated at par. Secondly, the respondent had approached the court after 11 years of his resignation from the service and therefore, the writ petition was hit by the principles of delays and laches. In support of such pleas, reliance is placed upon *UCO Bank & Ors. vs. Sanwar Mal*, (2004) SC 4112 and *Reserve Bank of India vs. Cecil Dennis Solomon & Anr.*, (2004) 9 SCC 461.

3. In the submissions of learned counsel for the Bank, the impugned order was not sustainable in law inasmuch as the respondent has resigned prior to coming into force of the Bank's Pension Regulations and that, Regulation 22, specifically, disentitles the pensionary benefits to an employee, who chooses to resign from service.

4. Learned counsel for the respondent on his part, however, contended that the case of the respondent was not a case of a resignation simplicitor and that, the respondent having continuously worked for over 20 years and having exercised the option of pensionary benefits within the time stipulated by the Bank, which was even acceded to by the Bank vide its communication dated 04.06.1996, it could not resile therefrom. It was also contended that the expression 'resignation' in his communication dated 28.02.1995 was not to be seen in its literal context inasmuch as, the constructive reading of the said communication

would show that this communication was in the nature of an application to seek voluntary retirement and thereby, in any case, governed by Regulation 29. In support of such submissions, reliance was placed on *Shashikala Devi vs. Central Bank of India & Ors.*, 2014(14) scale 288 and, *Asger Ibrahim Amin vs. Life Insurance Corporation of India*, (2016) 13 SCC 797.

5. Since the subject relates to pensionary benefits to an employee, who has rendered 22 years of continuous service to the bank, we may, at the threshold, only note that the Pension Scheme is a beneficial provision and has to be interpreted liberally to promote its underlying object. Be that as it may, when one adverts to the case in hand, it becomes imperative to see the nature of the communication, which, the respondent addressed to the Bank, terming his severance as a resignation. This communication dated 28.02.1995 reads, as under :

"Due to certain personal reasons I am not in a position to continue my service with the Bank any longer. I therefore tender my resignation and request you to kindly relieve me from the bank service immediately. Considering my accumulated ordinary leave of more than 6 months, I request you to please waive the notice period.

I once again request you to please accept my resignation and relieve me immediately.

Sd/-"

A perusal of this communication does show that, though, the respondent used the expression 'resignation' simpliciter, he, infact, did not leave or abandon his services with the Bank, immediately on submitting this letter. Not only that, this communication made by the respondent, by itself, also did not specify any date, on which the purported resignation so tendered, was to take effect. By such communication, the respondent only requested for being relieved from the Bank's service immediately, and, that too, seeking that the notice period to be waived, which, the Bank, accepted vide its communication dated 29.03.1995, which is, as under:

"This has reference to your resignation letter dated 28.02.1995. We also refer to your letter dated 29.03.1995 wherein you have informed that you have deposited two months' salary in lieu of two months notice.

Your resignation has been accepted as of today. We wish you all the best in your future assignment.

As regards your terminal dues, you may contact our office on any working day during office hours.

Sd/-"

The afore-going communication of the Bank thus leaves no doubt that both the respondent and the Bank acted voluntarily. It so happened, when, the

respondent had rendered the qualifying service for being entitled to the pensionary benefits. It is not in dispute that at the relevant time, the Bank had invited the respondent amongst others, to give option and such option was duly exercised by the respondent within the stipulated time. Here, it may only be noted that at the time when the respondent exercised his option, the MoS was arrived at under Section 2(p) and Section 18(1) of the Industrial Disputes Act, 1947 read with Rule 58 of the Industrial Disputes (Central) Rules, 1957 and it, inter alia, stipulated as under :

"5. Completed service of thirty three years will qualify for full pension. Employees voluntarily retiring after 20 years of completed service as per provisions to be incorporated in the scheme will get proportionate Pension.

The qualifying service of an employee voluntarily retiring on completion of 20 years of actual service shall be increased by a period not exceeding five years, so however, that the total qualifying service of such employee shall not in any case exceed thirty three years and also shall not take him beyond the date of superannuation.

.....

.....

11. Actual payment of pension in all cases shall commence from 1st November, 1993.

12. Provisions will be made by a scheme, to be negotiated and settled between the parties to this Settlement by 31st December, 1993 for applicability, qualifying service, amounts of pension, payment of pension, commutation of pension, family pension, updating the other general conditions, etc. on the line as are in force in Reserve Bank of India.

.....

.....

14. The terms and conditions hereof shall continue to govern and bind the parties until the settlement is terminated by either party giving to the other a - statutory notice as prescribed in law at the material time."

In pursuance of this MoS, while the respondent exercised his option to avail the pensionary benefits, in respect whereof, the provisions were to be negotiated and settled, ultimately took the form of the Bank's Pension Regulations, 1995. Further advertence on such factual conspectus, we consider, is not called for. Suffice to say, the Bank declined the pensionary benefits to the respondent for the reasons given in its communication/letter dated 11.02.1999, as under:

".....

You representation dated 23.8.1999 and dated 18.11.1998 sent to G.M. (PRS) were replied by us vide our letter No. CO/PRS/PEN/98-99/SH/2653 dated

22.9.1998 and CO/PRS/RP/AVK/98-99/3395 dated 25.11.1998 a copy of which is enclosed once again. Therefore, your allegation that Bank has not replied your letter is far from the truth.

With regards to your request for treating your resignation under Voluntary Retirement Scheme, we wish to inform you that in terms of Central Bank of India Employees' Pension Regulation 29, which deals on Voluntary Retirement reads as under :

"Regulation 29 'Pension on Voluntary Retirement'.

On or after the 1st day of Nov. 1993 at any time after an employee has completed 20 years of qualifying service he may be giving notice of not less than 3 months in writing to the appointing authority retire from service, is entitled for pension on voluntary retirement."

However, the Pension Scheme in Public Sector Bank came into operation w.e.f. 29.9.1995 on being notified in the Gazette of India. Some of the Officer employees who had in the year 1994 opted to be governed by the pension scheme had during the period 1.1.1993 to 29.9.1995 applied for Voluntary retirement under Pension Regulations but were not allowed to do so by the Banks due to the fact that Pension Regulations were not in force. As a consequence, there offer employees had either retired from the service or had to resign from the Bank's service.

The matter was examined by the Indian Banks Association in consultation of Government of India, accordingly banks including ours were advised to consider such cases at its discretion to treat under voluntary retirement subject to the condition that,

- i) The employee concerned had opted for Pension prior to his cessation of service and
- ii) He had applied for permission to voluntarily retire from the services in terms of the corresponding provisions in the Pension Scheme already circulated at that time and
- iii) The Bank had turned down his request due to reasons that Pension Regulations were yet to be adopted as a consequence of which the employee had either resigned or voluntarily retired in terms of the rules framed by the Bank for the purpose and
- iv) The employee had at the time of submitting his application for voluntary retirement conformed to the provisions of Regulations 29 of Pension Regulation 1995, from the letter of resignation dated 28.2.1995 submitted by you to the Zonal Manager, Zonal Office, New Delhi it is observed that you have tender resignation from the Bank's service for the personal reasons further stating that you are not in a position to continue your service with the Bank any longer accordingly you were relieved from Bank's service on 29.3.1995, accepting your

resignation. From the above it is very clear that you have neither submitted for voluntary retirement from the bank service nor bank had turned down your request. You have only resigned from the banks service. Thus the conditions laid down as enumerated above are not fulfilled.

We trust that we have clarified the position.

Sd/-"

6. Resignation per se is not defined in the Bank's Pension Regulations and the respondent, in effect, has been pressing that his communication dated 28.02.1995, which he termed to be resignation, should be treated as voluntary retirement and therefore, he should be extended the pensionary benefits under Regulation 29, more so, when he had given notice before seeking leave of the Bank to discontinue his service and was so granted. In somewhat similar case, as is the case of the respondent, the Supreme Court in Asger Ibrahim Amin's case (supra) has observed as under :

"16. What is unmistakably evident in the case at hand is that the appellant had worked continuously for over 20 years, that he sought to discontinue his services and requested waiver of three months' notice in writing, and that the said notice was accepted by the respondent Corporation and the appellant was thereby allowed to discontinue his services. If one would examine Rule 31 of the Pension Rules juxtaposed with the aforementioned facts, it would at once be obvious and perceptible that the essential components of that Rule stand substantially fulfilled in the present case. In Sheelkumar [Sheelkumar Jain v. New India Assurance Co. Ltd., (2011) 12 SCC 197], this Court was alive to the factum that each case calls for scrutiny on its own merits, but that such scrutiny should not be detached from the purpose and objective of the statute concerned. It thus observed: (SCC pp. 206-07, paras 30-31)

"30. The aforesaid authorities would show that the court will have to construe the statutory provisions in each case to find out whether the termination of service of an employee was a termination by way of resignation or a termination by way of voluntary retirement and while construing the statutory provisions, the court will have to keep in mind the purposes of the statutory provisions.

31. The general purpose of the 1995 Pension Scheme, read as a whole, is to grant pensionary benefits to employees, who had rendered service in the insurance companies and had retired after putting in the qualifying service in the insurance companies. Paras 22 and 30 of the 1995 Pension Scheme cannot be so construed so as to deprive of an employee of an insurance company, such as the appellant, who had put in the qualifying service for pension and who had voluntarily given up his service after serving 90 days' notice in accordance with sub-para (1) of Para 5 of the 1976 Scheme and after his notice was accepted by the appointing authority."

17. The appellant ought not to be deprived of pension benefits merely because

he styled his termination of services as "resignation" or because there was no provision to retire voluntarily at that time. The commendable objective of the Pension Rules is to extend benefits to a class of people to tide over the crisis and vicissitudes of old age, and if there are some inconsistencies between the statutory provisions and the avowed objective of the statute so as to discriminate between the beneficiaries within the class, the end of justice obligates us to palliate the differences between the two and reconcile them as far as possible. We would be failing in our duty, if we go by the letter and not by the laudatory spirit of statutory provisions and the fundamental rights guaranteed under Article 14 of the Constitution of India.

18. *RBI v. Cecil Dennis Solomon* [*RBI v. Cecil Dennis Solomon*, (2004) 9 SCC 461 : 2004 SCC (L&S) 737], relied upon by the respondent, although distinguishable on facts, has ventured to distinguish "voluntary retirement" from "resignation" in the following terms: (SCC pp. 467-68, para 10)

"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 prescribed period of qualifying service. Other 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 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. In *Punjab National Bank v. P.K. Mittal* [*Punjab National Bank v. P.K. Mittal*, 1989 Supp (2) SCC 175 : 1990 SCC (L&S) 143 : (1990) 12 ATC 683] on interpretation of Regulation 20(2) of the Punjab National Bank Regulations, it was held that resignation would automatically take effect from the date specified in the notice as there was no provision for any acceptance or rejection of the resignation by the employer. In *Union of India v. Gopal Chandra Misra* [*Union of India v. Gopal Chandra Misra*, (1978) 2 SCC 301 : 1978 SCC (L&S) 303] it was held in the case of a Judge of the High Court having regard to Article 217 of the Constitution that he has a unilateral right or privilege to resign his office and his resignation becomes effective from the date which he, of his own volition, chooses. But where there is a provision empowering the employer not to accept the resignation, on certain circumstances e.g. pendency of disciplinary proceedings, the employer can exercise the power"

19. The legal position deducible from the above observations further amplifies that the so-called resignation tendered by the appellant was after satisfactorily serving the period of 20 years ordinarily qualifying or enabling voluntary

retirement. Furthermore, while there was no compulsion to do so, a waiver of the three months' notice period was granted by the respondent Corporation. The State being a model employer should construe the provisions of a beneficial legislation in a way that extends the benefit to its employees, instead of curtailing it." (emphasis supplied)

7. The ratio of the judgment (*supra*) does come to the aid of the respondent. The facts and circumstances of the said case are quite akin to the case of the respondent. Not only that, in our considered view, the case of the respondent is further fortified by the fact that the option expressed by him was accepted to by the Bank even prior to his resignation and the notification of the Bank's Pension Regulations on 29.09.1999, without any conditions. This acceptance letter dated 04.06.1996, would show that it does not even indicate that such acceptance was subject to any regulations which may be notified later. Interestingly, it was issued much after the respondent has left the services of the Bank. Pertinently, though the pension Regulations were notified on 29.09.1999, they were given retrospective effect, as Regulation 29, in terms, states "on or after 1st day of Nov. 1993 at any time after an employee has completed 20 years of qualifying service.....". Thus, the respondent was covered by the pension scheme. Even the appellant was conscious of this position. That is why options were called for - even before notification of the scheme and options were accepted and acknowledged on the day the respondent tendered his resignation. Since the pension scheme had not been notified, he had no option, but to nomenclature his act of quitting the appellant bank as "resignation". But it was in the background of the Pension Scheme which was in the process of being notified - with the clear understanding amongst all concerned, that it would apply to all employees who may resign after 01.11.1993 after exercising their option to be covered by the pension scheme and who have the qualifying service.

8. Not only that, we consider, acceptance of the option exercised by the respondent without any conditions, also binds the Bank on the well established principle of promissory estoppel. It does not require any elaboration that the Bank is a Public Sector Bank and thereby, an instrumentality of the state and the respondent exercised his option for the pensionary benefits on the offer to exercise option as was extended to him. Resiling therefrom and that too, on a superficial reading of the regulation to deprive the benefit, in our considered view, is not tenable even on the principle of promissory estoppel.

9. In *Manuelsons Hotels Private Limited vs. State of Kerala & Ors.*, (2016) 6 SCC 766, as regards the doctrine of promissory estoppel, the Supreme Court has observed, as under:

"19. In fact, we must never forget that the doctrine of promissory estoppel is a doctrine whose foundation is that an unconscionable departure by one party from the subject-matter of an assumption which may be of fact or law, present or future, and which has been adopted by the other party as the basis of some course of conduct, act or omission, should not be allowed to pass muster. And

the relief to be given in cases involving the doctrine of promissory estoppels contains a degree of flexibility which would ultimately render justice to the aggrieved party. The entire basis of this doctrine has been well put in a judgment of the Australian High Court in *Commonwealth of Australia v. Verwayen* [Commonwealth of Australia v. Verwayen, (1990) 170 CLR 394 (Aust)], by Deane, J. in the following words:

"1. While the ordinary operation of estoppel by conduct is between parties to litigation, it is a doctrine of substantive law, the factual ingredients of which fall to be pleaded and resolved like other factual issues in a case. The persons who may be bound by or who may take the benefit of such an estoppel extend beyond the immediate parties to it, to their privies, whether by blood, by estate or by contract. That being so, an estoppel by conduct can be the origin of primary rights of property and of contract.

2. The central principle of the doctrine is that the law will not permit an unconscionable-or, more accurately, unconscientious-departure by one party from the subject-matter of an assumption which has been adopted by the other party as the basis of some relationship, course of conduct, act or omission which would operate to that other party's detriment if the assumption be not adhered to for the purposes of the litigation.

3. Since an estoppel will not arise unless the party claiming the benefit of it has adopted the assumption as the basis of action or inaction and thereby placed himself in a position of significant disadvantage if departure from the assumption be permitted, the resolution of an issue of estoppel by conduct will involve an examination of the relevant belief, actions and position of that party.

4. The question whether such a departure would be unconscionable relates to the conduct of the allegedly estopped party in all the circumstances. That party must have played such a part in the adoption of, or persistence in, the assumption that he would be guilty of unjust and oppressive conduct if he were now to depart from it. The cases indicate four main, but not exhaustive, categories in which an affirmative answer to that question may be justified, namely, where that party:

- (a) has induced the assumption by express or implied representation;
- (b) has entered into contractual or other material relations with the other party on the conventional basis of the assumption;
- (c) has exercised against the other party rights which would exist only if the assumption were correct;
- (d) knew that the other party laboured under the assumption and refrained from correcting him when it was his duty in conscience to do so.

Ultimately, however, the question whether departure from the assumption would be unconscionable must be resolved not by reference to some preconceived formula framed to serve as a universal yardstick but by reference to all the

circumstances of the case, including the reasonableness of the conduct of the other party in acting upon the assumption and the nature and extent of the detriment which he would sustain by acting upon the assumption if departure from the assumed state of affairs were permitted. In cases falling within Category (a), a critical consideration will commonly be that the allegedly estopped party knew or intended or clearly ought to have known that the other party would be induced by his conduct to adopt, and act on the basis of, the assumption. Particularly in cases falling within Category (b), actual belief in the correctness of the fact or state of affairs assumed may not be necessary. Obviously, the facts of a particular case may be such that it falls within more than one of the above categories.

5. The assumption may be of fact or law, present or future. That is to say, it may be about the present or future existence of a fact or state of affairs (including the state of the law or the existence of a legal right, interest or relationship or the content of future conduct).

6. The doctrine should be seen as a unified one which operates consistently in both law and equity. In that regard, "equitable estoppel" should not be seen as a separate or distinct doctrine which operates only in equity or as restricted to certain defined categories (e.g. acquiescence, encouragement, promissory estoppel or proprietary estoppel).

7. Estoppel by conduct does not of itself constitute an independent cause of action. The assumed fact or state of affairs (which one party is estopped from denying) may be relied upon defensively or it may be used aggressively as the factual foundation of an action arising under ordinary principles with the entitlement to ultimate relief being determined on the basis of the existence of that fact or state of affairs. In some cases, the estoppel may operate to fashion an assumed state of affairs which will found relief (under ordinary principles) which gives effect to the assumption itself (e.g. where the defendant in an action for a declaration of trust is estopped from denying the existence of the trust).

8. The recognition of estoppel by conduct as a doctrine operating consistently in law and equity and the prevalence of equity in a Judicature Act system combine to give the whole doctrine a degree of flexibility which it might lack if it were an exclusively common law doctrine. In particular, the prima facie entitlement to relief based upon the assumed state of affairs will be qualified in a case where such relief would exceed what could be justified by the requirements of good conscience and would be unjust to the estopped party. In such a case, relief framed on the basis of the assumed state of affairs represents the outer limits within which the relief appropriate to do justice between the parties should be framed."

10. In our considered view therefore, the Bank is equally bound by the doctrine of promissory estoppel. Here, it may only be noted that at the time the Bank invited the option for pensionary benefits and the respondent exercised his

option, the option exercised by the respondent was not subject to any contingency to the contrary by way of any regulation or otherwise.

11. UCO Bank's and Cecil Dennis case (supra) relied upon by the learned counsel for the appellant, were considered by the Supreme Court in Asger Ibrahim's case (supra) and in view of the ratio of the judgment in Asger Ibrahim's case, we do not find any merit in the appeal.

12. As regards the plea of the Bank that the writ petition, in which the impugned order has come to be passed, suffered from delays and laches, we observe that the MoS by itself provided that the provisions for pension were to be made on the regulations being notified. Regulations came to be notified on 29.09.1999, and the respondent approached the court having made repeated representations adverting to the various case laws in the year 2006 in relation to a claim for pensionary benefits, which are in the nature of recurring cause of action. We therefore, do not find any merit even in such plea.

13. Dismissed. No order as to costs.