
(2000) 10 PAT CK 0018
In the Patna High Court
Case No : L.P.A. No. 227 of 1998

Chief Manager, Allahabad Bank and Another	APPELLANT
Vs	
Ms. Swarnalata Narayan	RESPONDENT

Date of Decision : 10-10-2000

Acts Referred:

Allahabad Bank Employees (Pension) Regulations, 1995 — Regulation 2, 29, 3(7), 34(2)
Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 — Section 12(2), 19

Citation : (2001) 88 FLR 468 : (2001) 1 LLJ 901

Hon'ble Judges : R.S. Dhavan, C.J.; Aftab Alam, J

Bench : Division Bench

Judgement

Aftab Alam, J.—The short question that arises for consideration in this Letters Patent appeal is whether or not the expression "employees who retired" used in Sub-clause 7 of Clause 3 (the applicability Clause) of the Allahabad Bank (Employees) Pension Regulations, 1995 also includes such employees who took voluntary retirement prior to the first day of November, 1993. The answer to the question, as it would be seen later in this judgment, hinges on the meaning assigned to the word "retired" in the Pension Regulations, 1995. A learned Judge of this Court, sitting singly, answered the question in the affirmative and accordingly allowed the Writ petition filed by the sole respondent, set aside the decision of the Bank, the appellant, holding that she was not entitled to pensionary benefits and directed the Bank to extend to her the benefits of the scheme under the Pension Regulations, 1995.

2. The facts of the case are brief and without any controversy. The husband of the Writ petitioner (the sole respondent in this appeal) was an employee of the Allahabad Bank. He joined the service of the Bank on May 3, 1959 and after working for slightly over 30 years he sought voluntary retirement. His request for voluntary retirement was allowed by letter dated May 28, 1990 and he was released from the Bank's service from that date. A few months later he died on

December 22, 1990.

3. In the year 1990 when the husband of the Writ petitioner took voluntary retirement from the service of the Bank the Pension Regulations, 1995 were yet to come into existence and at that time the grant of voluntary retirement and payment of terminal benefits were governed by the provisions of the Allahabad Bank Officers Service Regulations, 1979. The husband of the writ petitioner was granted voluntary retirement under Clause 19 (1) of the Service Regulations, 1979 and on his retirement he was entitled to receive Provident Fund (under Clause 45) and gratuity under Clause 46 of the Service Regulations, 1979. In the Service Regulations, 1979, there was no provision for payment of pension.

4. It is not in dispute that the Writ petitioner/her deceased husband were paid all dues under the Service Regulations, 1979 then in force following her husband's voluntary retirement from the service of the Bank.

5. Later, the Board of Directors of the Bank framed the Allahabad Bank (Employees) Pension Regulations, 1995 as provided u/s 19 read with Section 12(2) of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (Act 5/1970). These Regulations came into force w.e.f. September 29, 1995, the date of their publication in the official gazette. Clause 3 enumerated the categories of employees to whom those Regulations would apply and Sub-clause 7 included within the applicability of the Regulations, such employees who were in the service of the Bank on or after the first day of January 1986 and had retired on or before the thirty first day of October 1993. Clause 3(7) was so worded that if seen in isolation it was possible to read it to mean that the scheme of pension envisaged under those Regulations would also apply to employees who were in the service of the Bank on or after the first day of January 1986 and had retired on or before the thirty first day of October 1993.

6. It was presumably in the light of Clause 3 (7) of the Pension Regulations, 1995 that the Writ petitioner made an application before the Bank stating that she would opt for the pension scheme and was willing to refund the amount of Bank's contribution to the Provident Fund with interest stipulated thereon. Getting a favourable response from the Bank to her request she repaid a sum of Rs. 14,401/- which was earlier received by her as the employer's contribution to the Provident Fund and the repayment made by her was credited to the account of the Bank's Head Office. Accepting the refund, the Bank granted to her an ad hoc monthly amount as family pension under the provisions of the Pension Regulations, 1995 and was duly intimated in that regard by letter dated August 5, 1996 issued by the Senior Manager (P & A).

7. Later on it was found that the Writ petitioner was not entitled to receive any family pension under the Pension Regulations, 1995 and the Senior Manager (P & A) by his letter dated December 28, 1996 advised the Chief Manager, Patna Branch to stop payment of "new pension" to the Writ petitioner from the month of December, 1996 and to take steps to recover the monthly pension paid to her

upto November, 1996. Following the aforesaid letter from the Senior Manager (P & A), the Chief Manager, Patna Branch wrote to the Writ petitioner intimating that no further pension would be paid to her and the amount paid to her as monthly pension would also be recovered.

8. She then filed C.W.J.C. No. 3556/1996 challenging the Bank's decision denying her the benefit of family pension under the Pension Regulations, 1995 and seeking appropriate directions in this regard from this Court to the Bank and its officials. The Writ petition was allowed by judgment and order dated January 20, 1998 passed by a learned Judge of this Court, sitting singly.

9. The Bank has brought this appeal under Clause 10 of the Letters Patent of this Court against the judgment passed by the learned single Judge.

10. This appeal was admitted for hearing on June 29, 1998 when a Bench of this Court, refusing to allow interim stay of the judgment under appeal, passed the following order:

"This appeal is admitted only on the short ground which I envisage:

Whether retirement includes voluntary retirement and compulsory retirement as well, and if an incumbent has retired voluntarily on May 28, 1990 whether benefit of Regulation 34 of the Pension Regulations which envisages payment of pension or family pension in respect of employees who on superannuation retired or died between January 1, 1986 and October 30, 1993, shall accrue to such employee or his family members after his death.

We, however, make it clear that no ground for stay is made out. Since this law point is involved whereby the fate of several employees will be governed, that is why we have admitted this case."

11. Coming now to examine the judgment under appeal it is to be noted that the learned single Judge has noticed three Clauses of the Pension Regulations, 1995; these are Clause 3(7), Clause 29 and Clause 34. Clause 3(7) identifies a certain category of employees as also being covered by the Pension Scheme under the Regulations ; it reads as follows:

"3. Application- These Regulations shall apply to employees who,-

(7) were in the service of the Bank during any time on or after the 1st day of January 1986 and had died while in service on or before the 31st day of October 1993 or had retired on or before the 31st day of October 1993 but died before the notified date in which case their family shall be entitled to the pension or the family pension as the case may be under these Regulations, if the family of the deceased,

(a) exercise an option in writing within one hundred and twenty days from the notified date to become member of the Fund; and

(b) refund within sixty days of the expiry of the said period of one hundred and

twenty days specified in Clause (a) above the entire amount of the Bank's contribution to the Provident Fund and interest accrued thereon together with a further simple interest at the rate of six per cent per annum from the date of settlement of the Provident Fund Account till the date of refund of the aforesaid amount to the Bank."

12. Clause 29 deals with payment of pension on voluntary retirement and it is as follows:

"29. Pension on Voluntary Retirement-

(1) On or after the 1st day of November 1993, at any time after an employee has completed twenty years of qualifying service he may, by giving notice of not less than three months in writing to the appointing authority retire from service;

Provided that the sub-regulation shall not apply to an employee who is on deputation or on study leave abroad unless after having been transferred or having returned to India he has resumed charge of the post in India and has served for a period of not less than one year;

Provided further that this sub-regulation shall not apply to an employee who seeks retirement from service for being absorbed permanently in an autonomous body or a public sector undertaking or company or institution or body, whether incorporated or not to which he is on deputation at the time of seeking voluntary retirement;

Provided that this sub-regulation shall not apply to an employee who is deemed to have retired in accordance with Clause (1) of Regulation 2.

(2) The notice of voluntary retirement given under Sub-regulation (1) shall require acceptance by the appointing authority;

Provided that where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period.

(3) (a) An employee referred to in Sub-regulation (1) may make a request in writing to the appointing authority to accept notice of voluntary retirement of less than three months giving reasons therefor;

(b) On receipt of a request under Clause (a), the appointing authority may, subject to the provisions of Sub-regulation (2), consider such request for the curtailment of the period of notice of three months on merits and if it is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, the appointment authority may relax the requirement of notice of three months on the condition that the employee shall not apply for commutation of a part of his pension before the expiry of the notice of three months.

(4) An employee, who has elected to retire under this Regulation and has given

necessary notice to that effect to the appointing authority shall be precluded from withdrawing his notice except with the specific approval of such authority;

Provided that the request for such withdrawal shall be made before the intended date of his retirement.

(5) The qualifying service of an employee retiring voluntarily under this Regulation, shall be increased by a period not exceeding five years subject to the condition that the total qualifying service rendered by such employee shall not in any case exceed thirty-three years and it does not take him, beyond the date of superannuation.

(6) The pension of an employee, retiring under this Regulation shall be based on the average emoluments as defined under Clause (d) of Regulation 2 of these Regulations and the increase, not exceeding five years in his qualifying service, shall not entitle him to any notional fixation of pay for the purpose of calculation of his pension."

13. Clause 34 deals with payment of pension or family pension and it is as follows:

"34. Payment of pension or family pension in respect of employees who retired or died between January 1, 1986 to October 31, 1993"-

(1) Employees who have retired from the service of the Bank between the 1st day of October 1993, shall be eligible for pension with effect from the 1st day of November 1993.

(2) The family of a deceased employee governed by the provisions contained in Sub-regulation (7) of Regulation 3 shall be eligible for family pension with effect from the 1st day of November 1993."

14. The submissions made on behalf of the Writ petitioner which found favour with the Writ Court was based on Clause 3(7) and Clause 34 (2) of the Pension Regulations, 1995. It was submitted that the case of the deceased husband of the Writ petitioner was fully covered by Clause 3(7). He was in the service of the Bank after the 1st day of January 1986; he retired from service on May 28, 1990 (i.e. before the 31st day of October 1993); and he died on December 22, 1990 (i.e. before September 29, 1995, the notified date). It was further contended that the deceased employee being covered by Clause 3(7), his widowed wife was entitled to family pension w.e.f. 1st day of November 1993 as provided in Clause 34(2) of the Regulations.

15. The Writ Court accepted this submission as correct.

16. When it was submitted on behalf of the Bank that the expression "retired" used in Clause 3(7) and Clause 34(2) of the Regulations meant retirement on reaching the age of superannuation and not retirement on the volition of the employee, the Writ Court negated the submission making the following observations in paragraph 14 of the judgment:

"14. From a reading of the aforesaid provisions, it is clear that the scheme is applicable in the case of the husband of the petitioner, who retired in between the said period. However according to the Respondent-Bank, the retirement has been defined under Pension Regulations, 1995 and as the case of voluntary retirement prior to 1995 is not included within the definition of "retirement", the petitioner is not entitled to get the benefit of provision of Regulation 34 of the Pension Regulations, 1995. In my view, this submission is wholly devoid of any substance. Regulation 34 of the Pension Regulations, 1995, has been used in a very wide term and it will include the case of voluntary retirement also. To give a narrow interpretation of the word "retire" in Regulation 34 of the Pension Regulations, 1995, will not serve the object of the beneficial legislation. The case of the petitioner is not a compulsory retirement by way of punishment, on the other hand, as stated above, he voluntarily retired and there is no dispute that he was entitled to the retiral benefits under the Regulations, which was earlier in force. Regulation 29 of the Pension Regulations, 1995, is not attracted in the case of the petitioner. It contains a provision with regard to pension on voluntary retirement of an employee, who completed twenty years of qualifying service on or after the 1st day of November 1993, but it does not cover the case of the petitioner's husband, who had retired prior to the 1st day of September 1993. The case of an employee retiring prior to that is covered by Regulation 34 of the Pension Regulations, 1995, and the same is applicable in the case of the petitioner as stated above."

17. On a consideration of the materials on record, I am constrained to take a different view and to me it appears that the decision of the Writ Court is quite untenable. It further appears to me that the Writ Court got itself misled as certain very relevant provisions in the Pension Regulations, 1995 were not brought to its notice. The Writ Court did not notice the fact that the expression "retirement" was a defined expression and it was therefore not amenable to an interpretation by the Court as done in paragraph 14 of the judgment, reproduced above. The expression "retirement" was precisely defined in the Regulations and therefore, the word "retired" used in Clause 3 (7) and Clause 34 carried a definite meaning which could not be changed or altered by the Court. But, before advertng to the definition of "retirement" it would also be worthwhile to note that Chapter V of the Pension Regulations, 1995 dealt with different types of pension depending upon the nature of retirement. Clauses 28 to 34 in Chapter V of the Regulations, classified atleast five different kinds of retirement, e.g. retirement on superannuation, voluntary retirement, premature retirement and compulsory retirement and made different provisions for pension in each of these cases of retirement. It is, therefore, plain and clear that the Pension Regulations, 1995 treated retirement on attaining the age of superannuation and, voluntary retirement as belonging to two different categories and made different provisions for the two cases. Clause 29 dealt with the issue of pension on voluntary retirement exhaustively and exclusively while superannuation pension was dealt with in Clause 28.

18. Coming now to the meaning of "retirement" it is to be noticed that Clause 2 of the Regulations contained the definitions and Sub-clause (y) defines "retirement" as follows:

"(y) "retirement" means cessation from Bank's service:

(a) on attaining the age of superannuation specified in Service Regulations or Settlements;

(b) on voluntary retirement in accordance with the provisions contained in Regulation 29 of these Regulations;

(c) on premature retirement by the Bank before attaining the age of superannuation specified in Service Regulations or Settlement."

19. It is thus obvious that the word "retired" used in Clause 3 (7) and Clause 34(2) carries the same meaning as given to it in Clause 2(y) quoted above.

20. Seen in this light, it becomes clear that the case of the petitioner's husband is not covered by any of the three heads (a), (b) and (c) of Clause 2(y). Head (a) relates to retirement on attaining the age of superannuation and head (c) relates to premature retirement by the Bank; voluntary retirement is mentioned in head (b) which refers to Regulation 29 and Regulation 29 takes into consideration only cases of voluntary retirement after the 1st day of November 1993. It is thus clear that the husband of the petitioner was not covered by the definition of Clause 2(y) of the Regulations and hence, there can be no question of his being covered by Clause 3 (7). Clause 3(7) plainly deals with such employees who were in the service of the Bank after the 1st day of January 1986 and (i) who had died, while in service on or before October 31, 1993, or (ii) who had retired on attaining the age of superannuation and then died on or before September 29, 1995. Clause 3(7) does not cover the case of employee's who took voluntary retirement before October 31, 1993.

21. I thus come to the conclusion that the stand taken by the Bank was quite correct and the Writ Court committed an error in holding otherwise. In taking this view I also find support from a decision of the Supreme Court in *V. Kasturi Vs. Managing Director, State Bank of India, Bombay and Another*, .

22. The next question that arises for consideration is what order is to be passed in this appeal. On this question, I feel quite disinclined to disturb the existing position (notwithstanding the legal position as explained above). This is for the following reasons; the Writ petitioner is the wife of a deceased employee of the Bank who died shortly after taking voluntary retirement in the year 1990. On the Pension Regulations, 1995 coming into force the Bank allowed the petitioner's request for grant of family pension on the condition that she should make refund of the amount of the Bank's contributions to the Provident Fund, with interest stipulated thereon. The Writ petitioner refunded the amount which was duly accepted by the Bank and an ad hoc monthly pension was granted to her by letter dated August 5. 1996. In these developments one may possibly find some

ingredients of estoppel against the Bank.

23. The Bank later sought to cancel the family pension allowed to the Writ petitioner. The Writ Court by judgment and order dated January 20, 1998 quashed the Bank's decision and gave direction to give the benefit of the scheme to the petitioner. The appeal Court declined to stay the operation of the order passed by the Writ Court and admitted the I appeal merely for decision on a point of law rather than on a lis between the parties. The point of law has been decided as seen above, in favour of the Bank but the Writ petitioner a widowed woman continues to receive her family pension now for more than four years and I feel it will be unduly harsh to deprive her of the family pension which she is receiving from the Bank.

24. In these circumstances even though deciding the legal issues in favour of the Bank, I would refrain from disturbing the operative portion of the order under appeal. This Letters Patent Appeal is disposed of accordingly.