(2015) 03 MAD CK 0076

In the Madras High Court

Case No : W.A. No. 279 of 2010

Chief Manager, Co-Personnel Department — APPELLANT

Vs

K. Usha and Others — RESPONDENT

Date of Decision : 06-03-2015

Acts Referred:
Industrial Disputes Act, 1947 — Section 18(1), 2(p)

Citation : (2015) 147 FLR 298 : (2015) 4 LLN 528

Hon'ble Judges : Sanjay Kishan Kaul, C.J.;M.M. Sundresh, J.

Bench : Division Bench

Advocate : R. Thiagarajan, Senior Counsel for V. Kalyanaraman for Aiyar and Dolia, for the Appellant

Final Decision : Dismissed

Judgement

M.M. Sundresh, J.

1. By a Scheme of Amalgamation dated 19.02.1990, Bank of Thanjavur was amalgamated with the appellant-Indian Bank. The second respondent''s father was an employee of erstwhile Bank of Thanjavur. He died on 25.03.1989, prior to the amalgamation.

2. As per Clause 10 of the Scheme of Amalgamation, all the employees of the transferor bank viz., Bank of Thanjavur, shall be continued to be in service and deemed to have been appointed by the transferee bank at the same remuneration and on the same terms and conditions of service as were applicable to such employees immediately before the closure of business on 19.08.1989.

3. The said clause 10 does not have any application to such of those employees of the transferor bank, who retired prior to 19.08.1989. The Supreme Court in Indian Bank Vs. K. Usha and Another, , while construing the said clause, held that the same has got no application to the deceased employees. The said judgment was rendered inter se parties before us.

4. A Memorandum of Settlement was entered into on 29.10.1993 between the Managements of 58 Banks as represented by the Indian Banks'' Association and their workmen as represented by the National Confederation of Bank Employees under Sections 2(p) and 18(1) of the Industrial Disputes Act, 1947, read with Rule 58 of the Industrial Disputes (Central) Rules, 1957. The said Scheme is made applicable to the retired employees, who were in service of the bank/ merged bank on or after 31.12.1985 and retired on or after 01.01.1986 but before 01.11.1993, subject the application to be made by such retired employees in the prescribed format within the prescribed time.

5. In pursuant to the said Memorandum of Settlement dated 29.10.1993, Indian Bank (Employees'') Pension Regulations, 1995, has been introduced. Clause 7 of Chapter II of the Pension Regulations provides for eligibility towards pension for the employees, who were in service of the Bank during any time on or after 1.1.1986 and had died while in service on or before 31.10.1993 or had retired on or before 31.10.1993. This clause speaks about the family pension.

6. The first respondent/ wife of the deceased employee made a claim for compassionate appointment. As her request was not acceded to, she approached this Court by filing W.P.No. 9757 of 1998 for appropriate relief.

7. In the judgment referred to supra, the Supreme Court was pleased to grant the relief based upon settlement arrived at between Bank of Tanjavur and its employees. Thereafter, a request was made by the first respondent seeking pensionary benefits for the 20 years of service rendered by her late husband in the transferor bank. The learned single Judge, after construing Indian Bank (Employees) Pension Regulations, 1995, being a welfare legislation in her favour and taking note of Clause 10 of the Scheme of Amalgamation, has allowed the writ petition. During the pendency of this appeal, the writ petitioner/ first respondent herein died and accordingly, her only daughter has been brought forth as a legal representative.

8. The learned Senior Counsel appearing for the appellant submitted that the applicability of Clause 10 of the Scheme of Amalgamation dated 19.02.1990 has been settled inter se parties against the respondent. Therefore, there cannot be any reliance upon the same for seeking the relief. Indian Bank (Employees) Pension Regulations, 1995, has got no application to the deceased employee of the transferor bank as he was not an employee of the transferee bank. The regulations are applicable only to the employees of the Indian Bank. There is no eligibility for the entitlement of the pension under the regulations. Even otherwise sub clause (iii) of Clause 2 of the Memorandum of Settlement does not have any application to the case on hand.

9. The learned counsel appearing for the second respondent submitted that the deceased employee must be deemed to be an employee of the appellant. Clause 3 of the pension regulations is required to be read in consonance with the settlement, as the deceased employee died only on 25.03.1989, much after the

cut-off date of 01.01.1986. While interpreting a beneficial statute, technicalities should not stand in the way. There cannot be any difference between an employee, who died while in service or continuing in service.

10. In the case on hand, admittedly, there was no deceased employee, whose case is akin to the case one hand. In other words, there is no case of an employee who died in the service of the transferor Bank after 1.1.1986 but before 1.1.1993. A perusal of the Memorandum of Settlement dated 29.10.1993 would show that it has got its application to the employees of the transferor Bank. Therefore, this case is only one of its kind. The first respondent has merely stepped into the shoes of her deceased husband. The death of the deceased husband of the writ petitioner could either be termed as an act of God or nature depending upon one''s own perspective. But for the death of the deceased employee, he would have continued and become an employee of the transferee Bank. There is no difficulty in holding that Clause 10 of the Scheme of Amalgamation has no application to the deceased employee as the issue stood concluded already. However, the Memorandum of Settlement and the Pension Regulations, 1995, stand on a different footing, dealing with the issue of pension alone. The cut off date is also different. Regulation No. 7 deals with both deceased and retired employees. Though the Memorandum of Settlement speaks only about retired employees, it did not exclude deceased employees. It is not in dispute that the Pension Regulations, 1995, have been introduced in consonance with the Memorandum of Settlement. When two views are possible, while interpreting a welfare measure, one, which is in favour of employee concerned will have to be given preference. We, therefore on the peculiar facts of the case, do not wish to allow the appeal.

Accordingly, the writ appeal stands dismissed. No costs. However, we make it clear that all the observations made in this appeal are to be understood in the factual context.

