(2003) 01 AP CK 0071

In the Andhra Pradesh High Court

Case No : Writ Petition No. 13851 of 1999

Dasu Subba Lakshmi		APPELLANT
	Vs	
Indian Bank and Others		RESPONDENT

Date of Decision : 03-01-2003

Acts Referred:

Bank Employees Pension Regulations, 1995 — Regulation 29
Constitution of India, 1950 — Article 162

Citation : (2003) 2 ALD 315 : (2003) 97 FLR 474 : (2003) 2 LLJ 459

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : M.S.R. Subrahmanyam, for the Appellant; P. Suresh, SC, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—The petitioner joined the 1st respondent-Bank as Probationery Officer on 25.4.1977. Ever since then she has been serving the bank at various places in one capacity or the other. The bank had introduced the Indian Bank Employees (Pension) Regulations, 1995 (hereinafter referred to as the "Pension Regulations") and the Pension Regulations came to be adopted by the bank u/s 19(1) of the Banking Companies Act, 1970 after having been accorded approval by the Reserve Bank of India and the Central Government.

2. The Pension Regulations provide for exercising of option by the employees for the Pension Scheme. Such options were to be exercised by submitting application/ declaration in Annexure - B on or before 26.1.1996. On such option being exercised, the Provident Fund Account of the employee stands transferred to the Pension Fund and the employee will become eligible to be paid pension on retirement. The Rules also contemplated voluntary retirement by such of the employees who complete 20 years of qualifying service. It is the case of the petitioner that consequent upon adoption of the Pension Regulations, she has submitted her application/option in Annexure-B on 18.12.1995. She also states

that her option letter, together with those of six other employees, were forwarded by the 4th respondent to the 2nd respondent with a covering letter. It is stated that the same has been sent through Courier and have been received by the concerned authority. When the acknowledgments were not received by the office of the 4th respondent, letters dated 8.2.1996 and 22.2.1997 were addressed by the 4th respondent.

3. Petitioner claims to have submitted an application on 3.10.1997 requesting the bank to extend her, the facility of voluntary retirement. The same was not considered by the bank on the ground that she has not exercised the option to come under the Pension Scheme. Several letters and much correspondence ensued in this regard and ultimately she was addressed a letter dated 24.7.1998 stating that the request for voluntary retirement cannot be entertained and no more correspondence will be undertaken in this regard. The petitioner states that having regard to the pressing family problems she was left with no other alternative but to submit her resignation on 10.11.1998 and the same was accepted on 7.12.1998. The petitioner states that she submitted her representations on 26.3.1999 and 23.4.1999 requesting that she be extended the facility of voluntary retirement duly adjusting the amounts paid to her on acceptance of resignation.

4. The respondents filed a common counter-affidavit. It is their case that the option said to have been exercised by the petitioner was not forwarded, much less received, by the 2nd respondent. According to them, it is only those persons who have ultimately exercised their option that are entitled to the benefit of voluntary retirement and inasmuch as the petitioner did not exercise the option, she was not extended the benefit of voluntary retirement. The other ground mentioned in the counter affidavit is that once the petitioner submitted her resignation, she was not entitled to claim any relief or benefit under the Scheme of voluntary retirement.

5. Sri M.S.R. Subrahmanyam, learned Counsel for the petitioner submits that the petitioner had submitted her option in the prescribed form on 18.12.1995 which is within the stipulated time and that the same was forwarded by the 4th respondent through a Courier to the 2nd respondent. He also places reliance upon the letters dated 8.2.1996 and 22.2.1997 addressed by the 4th respondent to the 2nd respondent in this regard. Learned Counsel submits that rejection of the application of the petitioner for voluntary retirement was without any basis and that the petitioner was compelled to submit her resignation on account of pressing family problems. He states that once the petitioner was entitled to be extended the facility of voluntary retirement, mere submission of resignation by her or acceptance thereof does not prejudicially affect her right to get pension under the relevant provisions of law.

6. Sri P. Suresh, learned Counsel for the respondents on the other hand submits that the option said to have been exercised by the petitioner was not received by the 2nd respondent. According to him, it was only when such options are

exercised within the stipulated time and acknowledgments are issued, that the concerned employee will be entitled for the benefit of the Pension Scheme as well as voluntary retirement. Placing reliance upon Regulation 22, learned Counsel submits that once the petitioner had submitted her resignation, the question of extending any benefit to her under the Voluntary Retirement Scheme does not arise.

7. The service particulars furnished in the affidavit are not in dispute. The Pension Regulations came to be adopted by the bank in the year 1995. The Pension Regulations are made applicable to such of the employees who continued to be in service of the bank on or after a notified date i.e., 29.9.1995. Inasmuch as the petitioner was very much in service as on that date, the Regulations apply to her. While forwarding the copy of the regulations, the bank had addressed letters dated 23.11.1995 to all the employees stating inter alia that the employees who intend to be governed by the Pension Regulations should exercise their option on or before 26.1.1996.

8. The Form in Annexure-B was enclosed along with the letter to be submitted by those employees who intend to exercise their option. Rules are silent as to exercise of such option. Regulation 29 provides for Pension on Voluntary Retirement. Such of the employees who have completed 20 years of qualifying service are entitled to avail the facility of giving notice of not less than three months in writing to the appointing authority.

9. Petitioner has submitted her option in the prescribed Form on 18.12.1995. The same was countersigned by the 4th respondent, who in turn forwarded the option form of the petitioner as well as those of six other employees through a covering letter dated 2.1.1996. The petitioner had categorically averred that the same was received by the office of the 2nd respondent, when it was sent through courier. The petitioner has also placed before this Court two letters dated 8.2.1996 and 22.2.1997 addressed by the 4th respondent. The letter dated 8.2.1996 reads as under:

"We have sent the pension option forms of staff members of our Branch (7 members) vide our letter dated 2.1.1996. We have not received the individual acknowledgments. Please inform whether the same are received. We are enclosing a copy of our letter dated 2.1.1996 for your perusal and necessary action."

The other letter is almost to the same effect.

10. The petitioner had also submitted application on 3.10.1997 seeking permission for Voluntary Retirement. The same was forwarded by the 4th respondent to the concerned authority. Thereafter, it was followed up by several representations and reminders. The respondents did not accept the request of the petitioner for Voluntary Retirement on the ground that she did not opt for Pension Scheme, 1995. There is some internal correspondence in this regard. The petitioner was not intimated of this. On 24.7.1998, the Personnel

Department of the Bank addressed the Zonal Office stating that the application of the petitioner cannot be accepted since she did not opt for Pension Scheme, 1995 and that no further correspondence will be entertained in this regard. It is thereafter the petitioner has submitted an application for resignation.

11. The entitlement of the petitioner to avail the benefit of Voluntary Retirement would depend on the fact as to whether the option exercised by her to be governed by the Pension Scheme was received by the 2nd respondent at all. Had it been a case where the petitioner submitted her application or Form, and was awaiting for acknowledgment, totally different consequences would have ensured. Here is a case, where option Form was counter signed by the 4th respondent. He had forwarded the same under a covering letter through courier. The office of the 2nd respondent acknowledged it. The 4th respondent sent two reminders complaining non-receipt of acknowledgments. The authenticity of these letters or their origin was not disputed by the respondent. The Senior Manager who forwarded the Option Form of the petitioner and who addressed reminders is respondent No. 4 in this writ petition. He does not dispute the factum of his acceptance of the option form and forwarding the same to the 2nd respondent as well as the subsequent reminders.

12. It should not be forgotten that the 4th respondent is none other than a responsible official of the bank and for all practical purposes he is an agent of the bank. The requirement as to submission of Option Form etc., is not provided for in the Pension Regulations. The basis for compliance of these requirements is a Circular issued by the bank. Even if there existed any lapse as regards compliance with the circular, that does not have the effect of denying the benefit to the employees under the Pension Regulations. Any circular cannot restrict the scope of the operation of Statutory Rules or Regulations. As long as the respondents did not dispute the factum of the 4th respondent receiving the application, countersigning it, forwarding the same and addressing reminders thereafter. Their plea that they have not received the Option from the petitioner cannot be accepted. Since the only ground for rejection of the application of the petitioner for Voluntary Retirement was non-receipt of the Option Form, the action of the respondents in that regard cannot be sustained. Therefore, it is held that the petitioner was entitled to be extended the benefit of Voluntary Retirement.

13. Placing reliance upon Regulation 22, learned Counsel for the respondents submits that once the petitioner has submitted resignation, the same shall entail forfeiture of her entire past service and consequently the petitioner does not qualify for pensionary benefits.

14. Learned Counsel would certainly have been correct had it been the case where the petitioner claimed pensionary benefits consequent upon her resignation. The relief claimed in the writ petition is that the petitioner is entitled to be extended the benefit of Voluntary Retirement.

15. It needs to be seen that the petitioner had resorted to resignation only when she was ultimately informed that her application for Voluntary Retirement cannot be accepted and that no correspondence will be entertained. The petitioner was virtually left with no other alternative except to submit resignation to get herself relieved of the services in the bank on account of her personal family problems. The Supreme Court held" that pension payable to an employee is not a gratis and has equated it to property. The same cannot be denied to the petitioner-except where she has been dismissed or removed from service, by way of punishment.

16. There is a valid submission of the Option Form as well as the application for Voluntary Retirement. The respondents cannot be permitted to take advantage of their own wrong. Further it is not as if the respondents have suffered any detriment by accepting the resignation of the petitioner. There does not exist any monetary loss to the respondents also. The relationship of the petitioner with them stood already severed. What all needs to be undertaken is to make certain monetary adjustments and extend the benefit of pension after taking into account the amounts already paid to the petitioner.

17. The Writ Petition is accordingly allowed holding that the petitioner is entitled to be extended the benefit of voluntary retirement. There shall be a direction to the respondents to treat the petitioner having been permitted to retire on voluntary basis with effect from the date on which her resignation was accepted. The petitioner shall be extended all the benefits under the Scheme duly taking into account the amount already paid by her. No costs.