
(2013) 09 DEL CK 0471
In the Delhi High Court
Case No : LPA 693 of 2013

Deepak Sapra

APPELLANT

Vs

Punjab National Bank

RESPONDENT

Date of Decision : 18-09-2013

Acts Referred:

Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 — Section 19, 19(1)
Constitution of India, 1950 — Article 309

Citation : (2013) 09 DEL CK 0471

Hon'ble Judges : S. Ravindra Bhat, J;Najmi Waziri, J

Bench : Division Bench

Advocate : K.G. Mishra, for the Appellant; Rajat Arora, for the Respondent

Final Decision : Allowed

Judgement

S. Ravindra Bhat, J.—Issue notice. Sh. Rajat Arora, Advocate accepts notice. With consent, the appeal is heard finally. The petitioner claims to be aggrieved by an order of the learned Single Judge dated 18.07.2013 by which his claim for leave encashment benefit upon his compulsory retirement - imposed by the respondent bank as a penalty was directed to be withheld/forfeited. Both the parties had relied upon Regulation 38 of the Punjab National Bank Officers' Service Regulations, 1979, [hereafter referred to as "the 1979 Regulations"], framed in terms of Section 19(1) of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 [hereafter referred to as "the 1970 Act"]. The bank had contended, by placing reliance upon the latter part of Regulation 38 that the compulsory retirement imposed as a penalty would disqualify an officer from leave encashment benefits.

2. Learned Single Judge interpreted Regulation 38 of the 1979 Regulations in the light of a circular issued by the respondent Punjab National Bank (PNB) on 18.01.2001, in accordance with the decision/resolution of the Indian Banks' Association (IBA). Neither the circular nor the resolution/decision of IBA have

any statutory force. On the other hand, Regulation 38 of the 1979 Regulations is statutory, having been framed after prior consultation and approval of the Central Government, u/s 19 of the 1970 Act. Learned Single Judge was confronted with two conflicting views - one by the Punjab and Haryana High Court in *UCO Bank and Ors. v. Ashwani Kumar Sharma* [LPA 191/2006, decided on 01.02.2010] in which the High Court held that the class of employees imposed with the penalty of compulsory retirement would nevertheless be entitled to leave encashment benefits in terms of the bank's regulations. UCO Bank's regulations are in pari materia with the PNB. The other view which found favour with the learned Single Judge was that of *Punjab National Bank v. Jyotirmay Roy* [APO No. 284/2012, decided on 17.12.2012]. In that, the Calcutta High Court held as follows:

8. I am inclined to follow the reasoning given by the Division Bench of the Calcutta High Court in the case of *Jyotirmay Roy* (supra) of the respondent-bank itself being relied on behalf of the respondent and the relevant portion of which reads as under:-

Learned counsel for the Appellant has submitted that in the case of the Petitioner he was compulsorily retired and not terminated in service. He took us to Paragraph 7 of the Judgment (see page 200) in which the learned Trial Judge has held that cessation of service on account of compulsory retirement has not been separately categorised to disentitle a delinquent officer from getting Leave Encashment benefits and therefore, in such a case and unless provided in Service Regulations, the Bank wrongly applied the provision relating to Clause 38 referred to above thereby depriving the Petitioner from the benefits of Leave Encashment. We are of the view that the aforesaid interpretation of the learned Single Judge is not proper. Any wilful act of the employer by which the services of an employee is made redundant and/or comes to an end as a measure of punishment must always be considered to be an order of termination and therefore an order of compulsory retirement cannot be made an exception to the aforesaid principle.

Thus, in our considered opinion, by making a compulsory retirement to mean ordinary retirement thereby bringing him within the eligibility clause of Circular No. 4 dated 18.1.2001 was not proper at all and we therefore are of the considered view that such a finding is erroneous. Considering the aforesaid facts and circumstances we are of the view that the order of the learned Trial Judge cannot be sustained. We would, however, like to point out that under the Regulations (see page 155 of the Paper Book) it has been clearly explained that Gratuity may be paid in case of termination of service but subject to the condition that the Officer has put in at least ten years of service in the Bank and provided that the termination is not way of dismissal or removal from service as punishment. The said explanation reads as follows:

Explanation: We have to clarify that gratuity may be paid in case of termination of service, subject to the condition that the officer has put in at least 10 years of

service with the bank and provided that the termination is not by way of dismissal or removal from service as punishment.

Under the circumstances, we are of the view that the order of the learned Single Judge cannot be sustained. Accordingly, this appeal is allowed and the said impugned Judgment/Order dated 3.4.2012 passed in W.P. No. 1562 of 2010 is hereby set aside. There shall be no order as to costs.

3. Learned counsel for the appellant urges that the learned Single Judge fell into error in not noticing that the PNB's circular of 18.01.01 issued by the bank was not statutory and could not prevail over the regulations which were framed u/s 19(1) of the 1970 Act. It was submitted that the plain language of Regulation 38 of the 1979 Regulations made no distinction between the retiring or retired officers from one another. It was emphasized that the first proviso which enacted that if an officer retired from bank service he would be entitled to be paid leave encashment in terms of what is provided, cannot be distinguished, especially if the officer imposed with the penalty of compulsory retirement is otherwise entitled to all pensionary and terminal benefits such as gratuity, contributory provident fund, if any, and pension as applicable etc. In these circumstances, it was argued by the learned counsel for the appellant that the reasoning of the Full Bench of the Punjab and Haryana High Court ought to have been adopted. He also relied upon the recent ruling of the Supreme Court dated 14.08.2013 in State of Jharkhand and Ors. v. Jitendra Kumar Srivastava and Anr. [Civil Appeal No. 6770/2013]. It was held pertinently therein that the right to receive leave encashment is a vested one which cannot be taken away without authority of law of specific rules.

4. Learned counsel for the respondent bank argued that the impugned judgment is unexceptionable. He sought to distinguish the judgment of the Supreme Court in Jitendra Kumar Srivastava (supra), to say that the Court there was concerned with the rules framed under proviso to Article 309 of the Constitution of India and that the Court had no occasion to deal with or interpret Regulation 38 of the 1979 Regulations. It was further argued that the view preferred by the learned Single Judge is correct since the Regulation 38 of the 1979 Regulations itself in the main part provides that all leaves would lapse upon his resignation, retirement, death, discharge, dismissal or termination. Having regard to the intent and purport of the terms, argued learned counsel, the expression "retirement" had to be interpreted as one accruing as a result of rules, either by exercise of choice by the employee to voluntarily retire from the service with all attendant benefits or upon his superannuation and that any other class of retirement, such as compulsory retirement as a consequence of imposition of penalty should be treated as termination.

5. This Court has carefully considered the submissions as well as the documents on record. Regulation 38 of the 1979 Regulations reads as follows:

Lapse of leave

Save as provided below, all leave to the credit of an officer shall lapse on resignation, retirement, death, discharge, dismissal or termination for any reason.

Provided that where an officer retires from the Bank's service, he shall be eligible to be paid a sum equivalent to the emoluments of any period not exceeding 240 days of privilege leave that he had accumulated;

Provided further that where an officer dies while in service, there shall be payable to his legal representatives, a sum equivalent to the emoluments for the period not exceeding 240 days of privilege leave to his credit as on the date of his death.

Provided also that where an officer resigns from service on or after 1st April 2001 after giving due notice as in sub-regulation (2) of Regulation 20, he may be paid a sum equivalent to the emoluments in respect of privilege leave to the extent of half of such leave to his credit on the date of cessation of service, subject to maximum of 120 days.

6. As noted previously, the Calcutta High Court was much influenced by the enacting part of Regulation 38 of the 1979 Regulations. What requires to be noticed, however, is that the regulation opens with the expression "Save as provided below". This in turn means that in the eventualities specifically enumerated, i.e. resignation, retirement, death, discharge, dismissal or any other kind of termination, the leave standing to the credit of an officer is to lapse. This rule is further controlled by three provisos. The most important - and to this Court's mind, relevant proviso-is the first one. It states that, "Provided that where an officer retires from the Bank's service", he would be eligible to be paid the extent of accumulated privileged leave. The second proviso preserves the right of legal representative of a deceased officer to receive such benefit. The third proviso provides for a specific contingency of resignation of employee after 01.04.2001 and his entitlement to secure proportionate emoluments in lieu of privileged leave.

7. Thus, in respect of all categories of retirees, the first proviso states that such employees would be eligible to payment of leave encashment benefits. Advisedly, the regulation which was framed after prior consultation with and approval of the Central Government made no distinction between one class of retirees and another. Indeed there is no dispute about the fact that the cessation of service as a result of retirement can be on the occurrence of three contingencies-attainment of superannuation; option by the employee to voluntarily retire from the service, and the third, retirement of an employee upon imposition of a penalty or exercise by the employer upon imposition of a penalty or exercise by the employer of an option to compulsorily retire the employee on this attaining a certain age or having served for a certain number of years, in public interest. The first proviso makes no distinction between one class of retirees and another. In other words, each one of them, in terms of Regulation 38 of the 1979 Regulations is entitled to leave encashment benefit. In the case of those imposed

with penalty of compulsory retirement, there is no dispute that pension - as applicable and other terminal benefits are given. In these circumstances, to single-out one class of retirees, i.e. those imposed with compulsory retirement and deny them the benefit of leave encashment would be contrary to plain intent of Regulation 38 of the 1979 Regulations. This Court is clear that the first part of the learned Single Judge's reasoning that he preferred and relied upon the bank's circular of 18.01.2001 is clearly erroneous. That circular flies in the face of the first proviso to Regulation 38 of 1979 Regulations and could not have added words as it sought to, in the present instance. Another reason which persuades us to hold as we do, i.e. to say that compulsory retirees would be entitled to leave encashment benefits is that singling-out such class of employees for denial for one specific type of retirement benefit is also arbitrary and furthers no rationale, having regard to the express terms of Regulation 38 of the 1979 Regulations.

8. This Court is, therefore, of the opinion that the reasoning embodied in the Full Bench judgment of the Punjab and Haryana High Court in *UCO Bank and Ors. v. Anju Mathur* [LPA 566/2012, decided on 07.03.2013], which specifically dealt with Regulation 38, is the correct one. The effect and purport of the decision in *Jitendra Kumar Srivastava* (supra) is the same with one superadded reason that leave encashment benefits are property, being vested rights, which cannot be deprived of without authority of law. The conclusion that this Court is reaching is identical to that reached by the Supreme Court, i.e. that in the absence of specific regulation, depriving one class of retirees (such as those imposed with penalty of compulsory retirement) leave encashment benefits is unwarranted and unsupported in law. In the light of the above discussion, the appeal has to succeed and is accordingly allowed. The impugned judgment and order of the learned Single Judge is set aside. The respondent is directed to release leave encashment benefits to the appellant within four weeks from today.