(2007) 05 GAU CK 0037

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 9612 of 2003

Ganesh Ch.Konwar APPELLANT

Vs

United Bank of India RESPONDENT

Date of Decision : 15-05-2007

Acts Referred:

United Bank of India (Employees) Pension Regulations, 1995 — Rule 28, 28

Citation : (2008) 5 GLR 108

Hon'ble Judges : H.N.Sarma, J

Bench : Single Bench

Advocate : S.R.Borthakur, S.Dutta, B.D.Goswami, Advocates appearing for Parties

Judgement

1. The petitioner was appointed as Arm Guard in the UBI, Narayanpur Branch vide order dated 21.7.1988 issued by the Regional Manager of UBI and accordingly he joined on 5.8.1988 as Arm Guard. In due course of time, the petitioner was promoted to the rank of Cashier in the year 1991 by the competent authority of the Bank.

2. While the petitioner was serving in the aforesaid capacity as Cashier under the respondent Bank in the same branch and was posted in the Hatilung Branch in North Lakhimpur, the Bank floated a voluntary retirement scheme for Officers and other staffs, with a view to streamline the functioning of the Bank by increasing market competition and customer''s expectation for initiating Bank''s optimum productivity and profitability. The said scheme was titled as ''United Bank of India''s Employees Voluntary Retirement Scheme, 2000''.

3. The relevant eligibility criteria for seeking benefit under the said scheme by an employee as provided under clause 4, 5 and 6 are quoted below :

"4 Eligibility. (i) All permanent full time employees of the Bank will be eligible for seeking voluntary retirement under the Scheme provided they met the following eligibility criteria on the date of application :

(a) They have completed 15 years of service, or

(b) Attained 40 years of age.

(ii) However, the employees falling in the following categories are not eligible to seek voluntary retirement under the Scheme

(a) Specialist officers

(b) Employees who have executed service bonds and have not completed it.

(c) Employees serving abroad under special arrangements/bonds.

(d) Employees against whom disciplinary proceedings are contemplated/pending or who are under suspension.

(e) Employees appointed on contract basis.

(f) Highly skilled and qualified employees who have attended specialized training.

(g) Any other category of employees as may be specified by the Board.

5. Amount of Exgratia. An employee seeking voluntary retirement under the Scheme be entitled to the Exgratia amount mentioned below in para (a) of (b), whichever is less.

(a) Two months'' salary (pay plus stagnation increment plus; special pay plus dearness relief) for each completed year of service, or

(b) Salary (pay plus stagnation increment plus ; special dearness relief) for the number of months service left.

6. Other benefits. An employee seeking voluntary retirement under the Scheme will be eligible for the following benefits in addition to the exgratia amount mentioned in para No. 5 of the Scheme

(i) Gratuity as per Gratuity ct/Service gratuity as the case may be,

(ii) (a) Pension(including commuted value of pension) as per United Bank of India (Employees) Pension Regulations, 1995, or

(b) Bank''s contribution towards Staff Provident Fund as per existing rules, as the case may be.

(iii) Leave encashment as per rules."

4. The petitioner having fallen within the eligibility criteria by attaining 40 years of age became eligible to opt for voluntary retirement under the said scheme made such an offer. The respondents after scrutiny of the application of the petitioner, duly accepted the same and this acceptance was intimated to, him vide letter dated 14.3.2001 issued by the Manager of the Bank.

5. After passing of the aforesaid order, vide letter dated 5.6.2001, the petitioner changed his mind and expressed his willingness for withdrawal from the Scheme

and accordingly he wrote to the authority to the effect but the said request was turned down by the respondents vide letter dated 12.10.2001. The petitioner again indicated that his dues regarding leave encashment and SPF has been settled and he was prepared to refund the same, if he is allowed to withdraw the voluntary retirement scheme. The Bank vide letter dated 16.7.2003 intimated the petitioner that since the petitioner has not completed 15 years of service at the time of retirement under VRS2000 which is the eligibility criteria for getting pensionary benefits under amended Regulation 28 of United Bank of India (Employees'') Pension Regulations, 1995, the petitioner is not eligible to get such pensionary benefits.

6. Pleading in the aforesaid manner, the petitioner approach this court by filing this writ petition, challenging the decision of the Bank not to provide the pensionary benefits as well as PF and Gratuity to him. A counter affidavit has been filed on behalf of the respondents denying the claim of pension to the petitioner on the basis of the amended Regulation 2002. In the counter affidavit the claim for entitlement of leave encashment benefit as well as gratuity were also denied.

7. I have heard B.D Goswami and Mr. S.R. Borthakur for the petitioner and also Mr. S. Dutta, learned counsel appearing for the respondents.

8. Pleadings of the parties disclose that there was no dispute to the fact regarding floating of the Scheme for voluntary retirement in the year 2000 and as per the said scheme the petitioner having completed 40 years of service was entitled to apply for getting benefits under the said scheme. It is also not in dispute that the prayer of the petitioner for voluntary retirement was accepted by the authority vide letter dated 14.3.2001 and during the relevant time, i.e., at the time of floating the said Scheme as well acceptance of the prayer of the petitioner of UBI (Employees'') Pension Regulation, 1995 was in operation. After acceptance of the prayer of the petitioner the said Regulation was amended vide Notification No. GSR 1/2003, dated 14.8.2003. As per the said amendment a proviso was added under clause 28 of the Regulation.

9. For our ready reference the amended provision of regulation 28 is quoted herein below :

"28. Superannuation Pension. Superannuation Pension shall be granted to an employee who has retired on his attaining the age of superannuation specified in the Service Regulations of Settlements :

Provided that, with effect from 1st September, 2000 pension shall also be granted to an employee who opts to retire before attaining the age of superannuation, but after rendering service for a minimum period of 15 years in terms of any Scheme that may be framed fro such purpose by the Board with the approval of the Government."

10. The learned counsel for the respondents during the course of argument, has

fairly submitted that, although the Bank has taken the stand that the petitioner is not entitled to get gratuity and pensionary benefits, the said stand of the Bank is not in consonance with law and as on date, the petitioner would be entitled to get PF as well as gratuity and leave encashment amount as per Rules.

11. Situated thus, the entitlement of the petitioner as to the pensionary benefits is now left to be decided by this court.

12. As stated hereinabove the prayer for voluntary retirement was accepted by the Bank on 14.3.2001 and since then he retired from the service of Bank.

At that time the unamended UBI (Employees'') Pensions Regulations, 1995 was not force. Clause 14 of the said Regulation provides that subject to other conditions contained in the Regulations, an employee who had rendered a minimum of 10 years of service in the Bank on the date of his retirement, shall qualify for pension.

Clause 28 provides for entitlement of superannuation pension to an employee who has retired on attaining this age of superannuation.

Clause 29 provides for entitlement of pension on voluntary retirement after completion of 20 years of qualifying service providing thereof the methodology of regulation on the basis of ''average emoluments'' as defined in clause 2(d) of Regulations.

13. By virtue of the amendment affected as per Notification dated 14.8.2003, the qualifying service for getting pension by an employee who retired before attaining age of superannuation after rendering minimum period of 15 years of service in terms of any scheme which is required to be framed for such employee was brought into force w.e.f. 1.9.2000, i.e., with retrospective effect.

14. Mr. Dutta contends that in the Voluntary Retirement Scheme there is no provision for pension and in order to provide certain benefits to such employees who accept voluntary retirement, an amendment of the Regulation was effected on 14.8.2003 with retrospective effect from 1.9.2000 and this was done in order to provide benefits to a section of employees including the petitioner to which otherwise they are not entitled under the scheme and the petitioner not having completed 15 years of service at the time of voluntary retirement is not entitled for pensionary benefits under the scheme.

15. Meticulous scrutiny of the relevant provisions of the Scheme and the Pension Regulation disclose that it is one of the eligibility criteria for allowing to go on voluntary retirement under the scheme is attainment of 40 years of age. The petitioner Having attained 40 years of age though not completed 15 years of service in the Bank was naturally entitled to opt for the scheme and in fact he opted for the same and this was duly accepted by the Bank. Clause 6 of the Scheme provides for payment of gratuity as per the Gratuity Act and Pension as per Pension and Regulation Act, 1995. It is also provided for giving the benefit of leave encashment as per Rules. Now turning to the Pension Regulation, it is seen

that clause 14 of the Regulation prescribes minimum qualifying service of 10 years on the date of retirement in order to qualify for pension by an employee. Clause 14 do not restrict the term ''retirement'' to ''superannuation'' only. Clauses 28 and 29 provides for pension and superannuation and voluntary retirement after completion of 20 years as per the existing Service Regulations or Settlements. These provisions apparently do not cover the entitlement otherwise of pension by an employee who retires under as per the Scheme of Voluntary Retirement. The Scheme having provided that an employee would be entitled for pension as per Regulation, 1995, naturally the said Employee is entitled to claim pension on rendering his qualifying service of 10 years as provided in clause 14 of the Regulation. In fact although the proviso to clause 27 was amended with retrospective effect, there is no amendment to clause 14 or 29 of the Pension Regulation. Though reference of pension Regulation noted in the scheme, this apparently mean for calculation of such pension in terms of clause 29(B) of the Regulation. That apart the petitioner having been allowed to retire from service w.e.f. 14.3.2001, his case would be guided under the unamended Regulation. Whatever right that had been accrued under the unamended Regulation prevalent at the time of his retirement cannot be taken by amending the same with retrospective effect inasmuch as an accrued right cannot be taken away with retrospective effect.

16. Situated in the aforesaid position, if the relevant provision referred to above is analyzed, it is evident that the petitioner''s entitlement for pension can be traced to clause 14 of the Pension Regulation and the provision of clause 28 would not be applicable, so far, the case of the petitioner is concerned. Clause 28 of the Regulation speaks of superannuation pension on attaining the age of superannuation and the same is not applicable in the case of the petitioner clause 29(6) would be applicable in so far as for calculating the amount of pension to an employee retired in terms of clause 28.

17. Accordingly, it is found that the decision of the respondent authorities not to allow pensionary, benefits to the petitioner on the basis of amended regulation 28 cannot be said to be supported under the law. The said decision has adversely affected the vested right of the petitioner to which he is entitled under the scheme.

18. In view of the above discussion, the impugned decision not to pay the pensionary benefits to the petitioner stands set aside and, quashed and the authorities are directed to calculate and pay the pension of the petitioner, as per his entitlement, in terms of clause 14 Regulation forthwith. The amount regarding PF and Gratuity and leave encashment, payment of which the Bank has not defuted shall also be paid to the petitioner. The decision of the authority not to pay PF to the petitioner as per decision of the Indian Bank Association also does not hold good, and in fact, the learned counsel for the Bank has fairly accepted the said position. It is further observed that the authority would be entitled to recover and adjust and unrecovered amount payable by the petitioner

to Bank after making calculation as indicated above and the balance amount shall be paid forthwith. The whole exercise shall be completed within a period of 45 days from the date of receipt of the certified copy of this order.

19. With the aforesaid directions and observations this writ petition stands allowed.

No costs.

