

(2010) 12 DEL CK 0333

In the Delhi High Court

Case No : Writ Petition (C) 8105 of 2010

Harvinder Jit Singh Arora

APPELLANT

Vs

Punjab and Sind Bank and Another

RESPONDENT

Date of Decision : 03-12-2010

Acts Referred:

Constitution of India, 1950 — Article 14
Punjab and Sind Bank (Employees) Pension Regulations, 1995 — Regulation 22(1), 33(1)

Citation : (2010) 12 DEL CK 0333

Hon'ble Judges : Sudershan Kumar Misra, J

Bench : Single Bench

Advocate : Harish Sharma, for the Appellant; Jagat Arora and Mohit Akhtar, for the Respondent

Final Decision : Dismissed

Judgement

Sudershan Kumar Misra, J.—On 2nd July, 2004, a punishment of compulsory retirement was imposed on the Petitioner. This penalty is admittedly a major penalty contemplated under the Punjab & Sind Bank Officers Employees' (Discipline and Appeal) Regulations, 1981. The Petitioner's appeal against this punishment was rejected, and the matter rested there.

2. More than six years after the Petitioner's service had been brought to an end in this manner, on 1st September, 2010, the first Respondent issued a circular inviting applications calling upon both serving and retired employees to opt for pension in case they so desire. This circular covered all categories of employees who were entitled to opt for pension under the earlier Punjab & Sind Bank (Employees') pension Regulations, 1995, who had been unable to exercise their option at that time.

3. On 26th October, 2010, the Petitioner applied for pension under the said circular. However, despite repeated follow-ups, and also a legal notice, he has received no response to that application.

4. The Petitioner contends that under the Scheme mentioned in the said circular, once any employee, including the Petitioner, applies, the first Respondent is obliged to calculate and inform the applicant of the amount to be deposited by him in terms of the Scheme, and thereafter, on such deposit being made, to admit him to the benefits of pension with effect from November, 2009. Since this has not been done by the Respondent in his case, the Petitioner, therefore, seeks appropriate directions to the Respondents to inform the Petitioner of the amounts payable by him in terms of the said Scheme and to thereafter accept that amount from him and release his pension in terms of the said Scheme with effect from November, 2009.

5. Counsel for the Petitioner further contends that the Petitioner remained entitled to pension because even Regulation 22(1) of Punjab and Sind Bank (Employees") Pension Regulations, 1995 also does not debar those who were compulsorily retired, from receiving pension. That Regulation reads as under:

22. Forfeiture of Service:

(1) Resignation or dismissal or removal or termination of an employee from the service of the Bank shall entail forfeiture of his entire service and consequently shall not qualify for pensionary benefits.

According to him, the above Regulation says that only in an event of resignation, dismissal, termination or removal of an employee from service will render him disqualified from pensionary benefits and being compulsorily retired is not contemplated by this. Therefore, the Petitioner is not debarred from pensionary benefits.

6. Regulation 22 (1) of the aforesaid pension regulations contemplates a situation where there is a separation, and the relationship of employer and employee is brought to an end. Four instances of this separation are mentioned. Of these, two instances namely, dismissal or removal, clearly have a punitive element in that both dismissal or removal may be a punishment. The third instance of, "termination", may or may not amount to a punishment, whilst the fourth circumstance under which an employee may forfeit his service is, resignation. The latter is certainly not a punishment. It is, therefore, obvious that forfeiture of service disentitling the employee to pension can occur under varied circumstances, ranging from the imposition of a penalty by way of punishment at one end of the spectrum, to a simple resignation at the other. To my mind, the most important element across the spectrum is the fact of the separation having occurred, and not the reason for the same. In this case, the separation came about because of the imposition of a major penalty by way of punishment of compulsory retirement on the Petitioner. Although regulation 22 (1) does not specifically mention compulsory retirement as such, nevertheless, since separation, even by a simple resignation, results in forfeiture of service, thereby disentitling the employee to pension, it could not have been intended by the rules that the separation from service by the imposition of a major penalty of

compulsory retirement, would place the employee in a better position vis-a-vis a simple resignation while determining his entitlement to pension. It is therefore obvious that the words, "removal", and, "termination", have been used in the general sense to include all major penalties imposed on an employee that, in effect, amount to either the employee's removal or his termination from service, bringing about the separation referred to above, and putting an end to the relationship between the two. In the present case also, the punishment of compulsory retirement has resulted in a separation by way of removal or termination of service. Under the circumstances, and for all these reasons, in my view, compulsory retirement must be viewed as a species of removal or termination of the Petitioner's service with the Bank entailing forfeiture of his entire service, thus rendering him ineligible for pension in terms of the aforesaid Regulation 22(1) of the Punjab and Sind Bank (Employees") Pension Regulations, 1995.

7. Anr. aspect raised by counsel for the Petitioner is that some other similarly placed employees were also compulsorily retired by way of punishment but they have been granted pensionary benefits under the same Regulations. However, counsel for the Petitioner was not able to show this plea in the petition. In any case, it is a well established principle that there can be no equality in illegality. If something has been given to someone which is ex facie illegal and impermissible under the relevant Rules and Regulations that cannot form the basis of a claim before the Court. For the court to grant relief in such circumstances, would amount to perpetuating an illegality. In service law, the employer cannot be estopped from correctly applying service Rules and Regulations merely because they have been incorrectly applied in Anr. instance. It has been held in *Union of India and Others Vs. Rakesh Kumar etc.*, as follows:

Therefore, by erroneous interpretation of the Rules if pensionary benefits are granted to someone it would not mean that the said mistake should be perpetuated by direction of the Court. It would be unjustifiable to submit that by appropriate writ, the Court should direct something which is contrary to the statutory rules. IN such cases, there is no question of application of Article 14 of the Constitution. No person can claim any right on the basis of decision which is de hors the statutory rules nor can there be any estoppel.

Siddharth Singhal v. Guru Govind Singh Indraprastha Univ. and Anr., decided by this Court on 30th April, 2008 in WP(C) No. 3356/2008, is also on the same lines.

8. Counsel for the Petitioner finally relies on Regulation 33(1) of Punjab and Sind Bank (Employees") Pension Regulations, 1995, which states as follows:

33. Compulsory Retirement Pension:

(1) An employee compulsorily retired from service as a penalty on or after 1st day of November 1993 in terms of Discipline and Appeal Regulations or settlement by the authority higher than the authority competent to impose such penalty may be granted pension at a rate not less than two-thirds and not more

than full pension admissible to him on the date of his compulsory retirement if otherwise he was entitled to such pension on superannuation on that date.

He contends that by virtue of the above Regulation, the Petitioner is entitled to pension at the rate not less than two-third under the aforesaid circumstances. This contention cannot also be accepted. Whilst it is correct that the punishment of compulsory retirement was imposed in terms of the Punjab and Sind Bank Officer Employees" (Discipline and Appeal) Regulation, 1981, however, for the benefit of this regulation to be available for the Petitioner, it is also necessary that the penalty ought to have been imposed upon him, "by an authority higher than the authority competent to impose such penalty..." as enshrined in Regulation 33(1) of Punjab and Sind Bank (Employees") Pension Regulations, 1995. In the present case, the penalty has been imposed by the Disciplinary Authority itself and not by any higher authority.

9. There is also a question of laches as the penalty of compulsory retirement was, admittedly imposed in the year 2004; the Petitioner has sought to raise his grievance after a gap of six years. For that reason also, and looking to the factual matrix, I do not consider it appropriate for the writ court to exercise jurisdiction keeping in mind the maxim, *vigilantibus et non dormientibus jura subveniunt* - the vigilant, and not the sleepy are assisted by laws.

10. The petition is, therefore, dismissed in limine.