(2015) 01 CAL CK 0011

In the Calcutta High Court

Case No : WP No. 517 of 2011

Jagadish Prosad Awasthi APPELLANT

Vs

Allahabad Bank and Others RESPONDENT

Date of Decision : 29-01-2015

Acts Referred:

Citation : (2015) LabIC 1398

Hon'ble Judges : I.P. Mukerji, J.

Bench : Single Bench

Advocate : Sutapa Sanyal and Anshuman Gupta, for the Appellant; Partha Bhattacharya, Advocates for the Respondent

Final Decision : Dismissed

Judgement

I.P. Mukerji, J.—The petitioner joined the services of Allahabad Bank as a clerk. It was way back on 3rd August 1957. He rose to become the Manager of the Tezpur Branch of the bank in 1981. As Manager he was in Scale II. Disciplinary proceedings were started against him. On 25th August 1987, an order for his compulsory retirement was passed by the Disciplinary Authority of the bank. On 6th July 1988, the Appellate Authority dismissed his appeal.

2. The writ petitioner wants to take the benefit of an alleged Memorandum of Settlement and Regulations dated 29th October 1993. It appears to have received the consent of the Officers'' Federation, All India Bank Officers'' Association, other associations and/or unions. According to the bank, it was a draft settlement. According to it the employees who retired between 1st January 1986, 31st October 1983 as well as the existing employees of the bank would have the option for pension.

3. What is in issue is this: What is to be taken as retirement? Retirement was defined in 2(j) of those regulations as follows:-

(j). ''Retirement'' means cessation from bank''s service, under any of the following circumstances:-

(i) On attaining the age of superannuation;

(ii) Premature retirement before the age of superannuation as per the provisions of the Service Regulations/Service Rules.

(iii) Voluntary retirement, before the age of superannuation, as per the provisions contained in these Regulations;

(iv) Compulsory retirement as per provisions of Service Regulations/Service Rules/Settlements.

4. There does not seem to be much doubt that these regulations were indeed draft. In the Supreme Court case of Sudhir Kumar Consul Vs. Allahabad Bank, it was said:

4. Pursuant to the tripartite memorandum of settlement (hereinafter referred to as "the tripartite settlement") among the management, workers and officers of the various banks dated 29-10-1993, the respondent formulated the draft/ proposed Allahabad Bank Employees (Pension) Regulations, 1993 (hereinafter referred to as "the draft/proposed 1993 Regulations") vide Instruction Circular No. 3904 dated 6-9-1994. The draft/proposed 1993 Regulations provided the option to the employees, who were on the rolls of the Bank as on 31-10-1993, to opt for pension as per the Old Pension Scheme plus contributory provident fund (hereinafter referred to as "CPF"). Accordingly, the appellant claimed pension under the Old Pension Scheme in terms of the draft/proposed 1993 Regulations on 30-11-1994.

5. Subsequently, on 29-9-1995, the respondent formally adopted the 1995 Regulations pursuant to the tripartite settlement. The 1995 Regulations superseded the draft/proposed 1993 Regulations vide Circular No. 4318 dated 16-11-1995 by further extending the benefit under the draft/proposed 1993 Regulations to the employees who were on the rolls of the Bank as on 29-9-1995 to opt for pension as per the Old Pension Scheme plus CPF. Further, the 1995 Regulations, in express terms, have validated the earlier options exercised by the employees in accordance with the draft/proposed 1993 Regulations.

5. Now, under the definition of retirement in the 1993 draft Regulations, compulsory retirement was covered. Therefore, if those regulations were in force the petitioner was entitled to pension provided, he exercised the option properly under the regulations.

6. It appears that these draft regulations at the time of their finalisation resulted in the Allahabad Bank Employees (Pension) Regulations 1995. It contained an alteration. "Retirement" was defined as the following under those Regulations:-

(a) on attaining the age of superannuation specified in service Regulations or Settlements;

(b) on voluntary retirement in accordance with provisions contained in regulation 29 of these regulations;

(c) on premature retirement by the Bank before attaining the age of superannuation specified in Service Regulations of Settlement.

7. Now, under the 1995 Regulations there was no scope of payment of pension to an employee who was compulsorily retired.

8. What happened after this is as follows. The writ petitioner allegedly exercised his option on 9th November 1994 under the draft ''Employees'' Pension Regulations 1993. In response to this the bank by its letter dated 26th October 1995 replied that to exercise this option the petitioner would have to refund a sum of Rs. 82,250.09 together with 6 per cent simple interest from 1st October 1995 to the date of the banker''s cheque/draft. Such refund was to be made by 27th November 1995 to make the petitioner eligible for payment of pension under the Allahabad Bank Employees (Pension) Regulations 1995.

9. A writ application preferred by the petitioner challenging the order of compulsory retirement was pending adjudication before this court (W.P. No. 13398 of 1988). The petitioner did not make the deposit, according to the letter dated 26th October 1995. He suggested in an application filed by him on 3rd December 1998, in that proceeding, that the said amount be deducted from the retiral benefits receivable by him.

10. It seems that it took the bank about four years to realise that their letter of 26th October 1995 was written by mistake. They denied that the petitioner was eligible to pension, by their letter dated 6th August 1989.

11. The petitioner founds his right, substantially on the basis of the said letter of the bank dated 26th October 1995. According to Mrs. Sutapa Sanyal appearing for the petitioner the 1993 Settlement was not a draft but a final agreement The bank had acted upon it by inviting the petitioner to refund the amount mentioned in the said letter and avail of the scheme to get pension.

12. I do not agree with Mrs. Sutapa Sanyal. Learned counsel for the bank was absolutely right when he submitted that the option to avail of pension was made available to the employees who retired except those who had been made to retire compulsorily. The 1993 Settlement was only a draft settlement. It was finalised in 1995. Employees who were made to retire compulsorily were kept out of the benefits of the Settlement.

13. The court has got nothing to do with this kind of a settlement. It is more a contract between the management of the bank, the Officers'' Federation its unions and so on. If in their wisdom, by agreement, they have left out a section of the employees from the benefit of the Settlement, the court cannot ordinarily grant the benefit to them.

14. In my opinion, the case of Sudhir Kumar Consul Vs. Allahabad Bank, has got application in this application because the Supreme Court was considering the validity of a cut off date for pension for Allahabad Bank employees. The Court held the determination of a cut off date as valid. What is involved in this case is a

class of retired employees who would have the option to apply for pension under the 1995 Regulations. If while defining a class, employees who are forced to retire compulsorily, have been excluded, I do not think that the classification is unreasonable or arbitrary. Under the rules compulsory retirement is a punishment order against delinquent employees. If benefits are denied to them, in my opinion, the action cannot be termed as discriminatory or arbitrary. Similarly, the decision of the Allahabad High Court in the case of Krishna Awtar Agarwal Vs. Allahabad Bank decided on 5th October 2005 and reported in Krishna Awtar Agarwal Vs. Allahabad Bank and General Manager (P.A.) Allahabad Bank, was concerned with the exercise of the employee''s option within time.

15. Furthermore, it appears from the letter of the bank dated 26th October 1995, the petitioner applied to opt for pension under the Allahabad Bank Employees (Pension) Regulations 1993-95. Moreover, in the demand for justice dated 6th December 2010, the petitioner referred to exercising an option under the 1995 Regulations. This goes to suggest that there was no lack of understanding on the part of the petitioner that he was exercising an option under the 1995 Regulations and that the 1993 Memorandum was just a draft settlement. In any event there is no doubt whatsoever in my mind that there was no confusion at any quarter whether the 1993 Settlement or Regulations were draft or final. In fact, in all the correspondence and other records of the bank and the petitioner relied on in this writ application, reference is made to the 1995 Regulations.

16. There is also no doubt in my mind that the letter of 26th October 1995 of the respondent bank was written under a misapprehension of true facts. At any rate the petitioner cannot be allowed to take advantage of this communication because, the petitioner did not refund the amount of Rs. 82,250.09 which the bank asked him to return before he could opt for the pension scheme. He stated, as recounted by me before that in the writ application of 1988 between himself and the bank which was pending before this Court, he had made an application that the said amount be deducted from his retiral benefits. There is no order to that effect. Neither is there any evidence that this amount was even deducted from his retiral benefits.

17. Furthermore, even if the petitioner had made the refund, there is a serious doubt in my mind whether the bank could have been compelled by the petitioner to act in terms of a mistakenly written letter dated 26th October 1995. Even in such a situation no equities would have been created.

18. In a case involving another employee of the bank Writ Petition No. 439 of 1998 Ram Pratap Singh Vs. Allahabad Bank and Ors., Mr. Justice Dipak Prakash Kundu of this court by his judgment and order dated 5th January 2000 ruled that a person who had compulsorily retired from Allahabad Bank was not eligible to get the benefit of the 1995 Scheme. In my opinion the facts of this case are quite identical to those before Justice Kundu. I am bound by this judgment.

19. The petitioner has to accept his fate. He cannot ask for something which was

consciously not given to him and similarly situated persons by the memorandum and regulations of the bank which were at their draft stage in 1993 and finalised in 1995.

20. This writ application has no merits. It is accordingly dismissed. No order as to costs.

21. Certified photocopy of this Judgment and order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

