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(2005) 09 GUJ CK 0004

In the Gujarat High Court

Case No : Special Civil Application No. 9324 of 2001

Jayant Nichhabhai Desai APPELLANT

Vs

UCO Bank and Others RESPONDENT

Date of Decision : 07-09-2005

Acts Referred:

Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 — Section 19, 19(4)
UCO Bank (Employees) Pension Regulations, 1995 — Regulation 10, 17

Citation : (2005) 09 GUJ CK 0004

Hon'ble Judges : R.M. Doshit, J

Bench : Single Bench

Advocate : Mahesh Thakar, for the Appellant; Darshan M. Parikh, for Respondent 1, for the Respondent

Final Decision : Dismissed

Judgement

R.M. Doshit, J.—The petitioner, a former employee of the UCO Bank, the respondent herein [hereinafter referred to as, the Bank], claims a right to receive pension under the UCO Bank [Employees] Pension Regulations, 1995 [hereinafter referred to as, the Pension Regulations]. It is the claim of the petitioner that on 16th March, 1994, he retired from service of the Bank after putting in thirty four years of service. Under the Pension Regulations the entire service of the petitioner was pensionable service. Nevertheless, the Bank has refused to pay pension to the petitioner. Feeling aggrieved, the petitioner has preferred the present petition.

2. Dr. Thakar has relied upon the application for voluntary retirement made by the petitioner on 16th March, 1994. He has submitted that at the relevant time, the Pension Regulations of 1993 were in force. Relying upon the said Pension Regulations, the petitioner applied for voluntary retirement on 16th March, 1994 with immediate effect. Dr. Thakar has submitted that on reaching the age of superannuation, the petitioner would have retired from service in the month of

November, 1995. However, as the petitioner had recently lost his wife and he had arranged marriage of his daughter, the petitioner took voluntary retirement on 16th March, 1994. The petitioner also filled in option form opting for the Pension Scheme. The said option was accepted by the Bank. Under communication dated 1st December, 1994, the Bank had informed the petitioner that the option exercised by him was irrevocable. Hence, the petitioner was entitled to receive pension on the principle of legitimate expectation and also of promissory estoppel. He has submitted that the Bank had given wide publicity to its Pension Regulations of 1993. Relying on the provisions contained in the Pension Regulations of 1993, the petitioner had opted for voluntary retirement. Had the petitioner been not assured of the pension, he would not have opted for voluntary retirement from service and would have continued until he reached the age of superannuation. He has further submitted that the Bank is a nationalized bank, an instrumentality of the State. The Bank is expected to be an ideal employer and be fair in its dealings with its employees. The petitioner having taken voluntary retirement, induced by the Pension Regulations of 1993, should not now be refused the benefit of pension. He has submitted that the recalcitrant attitude of the Bank has resulted into a great financial loss to the petitioner in december of his life. He has submitted that in refusing pension to the petitioner, the Bank has relied upon the contents of the application for voluntary retirement made by the petitioner, rather than the intention of the petitioner. He has submitted that at the relevant time the petitioner was experiencing hard times. If under anxiety or duress suffered by the petitioner, the petitioner had used the words ''resignation'' instead of ''retirement'' in his application, the petitioner cannot be said to have resigned from service. He has submitted that in his application dated 16th March, 1994 the petitioner had categorically stated that, SI would also like to submit that the benefits of pension and other voluntary retirement benefits may also be extended to me as per the Rule. Thus, the intention of the petitioner to take voluntary retirement was explicit in the said application. The petitioner, therefore, should be treated to have taken voluntary retirement and be paid the retirement benefits accordingly. In support of his arguments, Dr. Thakar has relied upon the judgments of the Hon''ble Supreme Court in the matters of AIR 1997 565 (SC) ; of Bank of India v. Rajagopalan and Ors., (2000) 1 LLJ 1617SC ; of V. Kasturi Vs. Managing Director, State Bank of India, Bombay and Another, ; of R. Subramaniam Vs. Chief Personnel Officer, Central Railway, Ministry of Railways, ; and of Subrata Sen and Others Vs. Union of India and Others, . He has relied upon the judgment of the Karnataka High Court in the matter of Y.R. Shenoy and Others Vs. Syndicate Bank and Others, and of this Court in the matter of Gujarat State Khadi Gramodyog Board Pensioners Association v. Gujarat State Khadi Gramodyog Board 2004 (1) GLH 18 and the order dated 3rd August, 2004 made in the matter of Ms. Annie Verghese v. UCO Bank [Special Civil Application No. 3558 of 2003 :: Coram- K.S Jhaveri, J.]. Dr. Thakar has submitted that the judgments of the Hon''ble Supreme Court in the matter of Reserve Bank of India and Anr. v. Cecil Dennis Solomon and Anr. AIR 2004 SCW 1402 and of Jai Singh B Chauhan v. Punjab National Bank and

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Ors. AIR 2005 SCW 3664 are distinguishable.

3. The petition is contested by Mr. Parikh. He has submitted that the Pension Regulations were brought into operation on 29th September, 1995. He has denied that the petitioner had voluntarily retired from service. He has submitted that at the relevant time, the employees of the Bank were governed by the Contributory Provident Fund Scheme. On 16th March, 1994, the petitioner had resigned from service. On his resignation from service he had been paid the terminal benefits under the Contributory Provident Fund Scheme including the amount of contribution by the Bank. He has further submitted that the Pension Regulations, particularly Regulation 10 thereof provides for Forfeiture of service. It provides that, Dismissal, termination of or resignation by an employee from the service except where the Service Regulations/Service Rules/Settlements do not dis-entitle such employee from receiving superannuation benefits shall forfeit his entire past service and consequently shall not qualify for pension payment. Regulation 17 of the Pension Regulations provides for Pension on Voluntary Retirement. Sub-regulation [i] thereof empowers an employee of the Bank to seek voluntary retirement after he has completed twenty years of qualifying service; after giving three months'' notice in writing to the competent authority. Sub-regulation [ii] thereof provides that notice of voluntary retirement given under sub-regulation [i] shall not be effective unless it is accepted by the competent authority. In the submission of Mr. Parikh the said Regulation envisages giving of three months'' notice by the employee and the acceptance of such notice by the competent authority. He has submitted that in the present case, the petitioner had submitted resignation on 16th March, 1994. The application made by the petitioner was captioned : Resignation from Bank''s Service. In the body of his application also, the petitioner did mention, S..I hereby, therefore, tender my resignation w.e.f today i.e. 16th March, 1994 and request you to recover one month''s salary from my Savings Bank Account No. 51155 with Nariman Point Branch, in lieu of the required notice period. Mr. Parikh has submitted that considering the text of the application made by the petitioner, it is evident that the petitioner had intended to resign from service with immediate effect. As he had not given one months'' notice as required under the prevalent conditions of service, he offered to pay salary for the notice period. The petitioner''s resignation was accepted by the Bank. The said acceptance was communicated to the petitioner on 6th February, 1995. On acceptance of his resignation, the petitioner was offered retirement benefits under the prevalent CPF Scheme which too the petitioner accepted without protest. The petitioner had applied for encashment of privilege leave which the Bank denied under its communication dated 13th February, 1995. The denial to allow encashment of privilege leave on the ground that the petitioner had resigned from service was also accepted by the petitioner. Thus, the petitioner was aware that he had resigned from service and that the Bank had accepted him as having resigned from service. The petitioner''s claim for pension under the Pension Regulations was refused by the Bank under communication dated 29th September, 1997.

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Nevertheless, the petitioner did not raise the claim for pension until 17th August, 2001. Thus, the claim for pension under the Pension Regulations made by the petitioner is clearly an afterthought and is not tenable. The said claim also requires to be rejected on the ground of delay, laches and acquiescence. In support of his submissions Mr. Parikh has relied upon the judgments of the Hon''ble Supreme Court in the matters of UCO Bank and Others Vs. Sanwar Mal, ; and of O.N.G.C. Ltd. Vs. G.S. Chugani and Another, . He has also relied upon the judgment of this Court in the matter of Jatunbibi w/o. Gulam Mahiyodin Sheikh and Ors. v. State of Gujarat and Anr. 2001 GLH 461 and the order of the Division Bench [Coram :- GS Singhvi & Anant S. Dave, JJ.] in the matter of Jitendra Shantilal Shukla v. Bank of Baroda and Ors. {Letters Patent Appeal No. 1206 of 2004 in Special Civil Application No. 12341 of 2002 :: Decided on 25th April, 2005].

4. As recorded hereinabove, Regulation 10 of the Pension Regulations provides for forfeiture of past service in case of an employee who resigns from service. It is indisputable that but for the resignation tendered by him, the petitioner on his retirement from service would have been entitled to pension under the Pension Regulations. The question, therefore, boils down whether the petitioner had resigned from service or had taken voluntary retirement, and; in case the petitioner is held to have resigned from service, is he entitled to pension under the Pension Regulations on the principles of promissory estoppel and legitimate expectation.

5. The application dated 16th March, 1994 was made by the petitioner under the heading, Resignation from Bank''s Service. Further, the petitioner did say that he was tendering resignation with effect from that day i.e. 16th March, 1994 and also offered to pay one month''s salary in lieu of the notice. Further, though the petitioner did mention that he be extended benefit of pension and other voluntary retirement benefits, he did not give required notice for voluntary retirement nor did he wait for acceptance by the competent authority as envisaged in the Pension Regulations. Besides, in several communications addressed by the Bank, the petitioner was referred to have resigned from the service of the Bank. Nevertheless, at no point of time, the petitioner objected to his being treated as having resigned from service nor did he assert that he had taken voluntary retirement from service. Hence, in my view, the petitioner at this belated stage cannot be permitted to assert that he had taken voluntary retirement from service and that he had not intended to resign from service. The option referred to by the petitioner was the one required to be given by the employees of the Bank who had retired during the period from 1st January, 1986 to 1st November, 1993. Admittedly, the petitioner was in service upto 16th March, 1994. The said option form, therefore, was not meant for the petitioner. The petitioner''s filling the said option form or the Bank''s response to the said option were of no consequence.

6. It appears that under Circular dated 27th May, 1994, the Bank had circulated

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draft Pension Regulations of 1993. Paragraph 2 of the said Circular categorically mentioned that certain formalities were yet to be completed. Section 19 of the Banking Companies [Acquisition & Transfer of Undertakings] Act, 1970 empowers a bank to make regulations. Sub-section [4] thereof provides that, ..Every regulation shall be forwarded to the Central Government and that Government shall cause a copy of the same to be laid before each House of Parliament, while it was in session, for a total period of thirty days which may be comprised-in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the regulation or both Houses agree that the regulation should not be made, the regulation shall thereafter shall have effect only in such modified form or be or no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously, done under that regulation. Thus, the draft regulations of 1993 were subject to the formalities referred to in the aforesaid Sub-section [4] of Section 19 of the Act of 1970. It is further evident that after the completion of the said formalities, what emerged was the Pension Regulations of 1995. It is not the case of either of the parties that at any time prior to the Pension Regulations of 1995, draft regulations of 1993 were acted upon. Further, Regulation 17 of the Draft Regulations of 1993 also provided that, ..an employee resigning from service irrespective of number of years of service put in by him/her is not eligible for pension. In my view, therefore, the petitioner''s claim for pension under the principles of legitimate expectation or promissory estoppel is not tenable. The petitioner having resigned from service, he is not entitled to pension under the Pension Regulations.

7. The question whether the resignation has the same connotation as retirement for the purpose of Pension Regulations is no more res integra. The Hon''ble Supreme Court has, in the matters of UCO Bank and Ors. [Supra] and of Reserve Bank of India [Supra] distinguished ''resignation'' from ''retirement'' and has held that for the purpose of relevant Pension Regulations, the resignation does not have the same connotation as ''retirement''. This Court has also in the matter of Premji Khanji Masani v. Regional Manager 2000 (1) GLH 1999 held that, resignation from service cannot be treated as voluntary retirement from service.

8. In the Pension Regulations, the words resignation and retirement have been employed for different purpose and carry different meanings. Hence, in my view, the petitioner''s claim that he had retired from service and that he is entitled to pension under the Pension Regulations is misconceived and requires to be rejected.

9. In view of the above discussion, the petition is dismissed. Rule is discharged. The parties shall bear their own cost.

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