
(2003) 10 MAD CK 0092
In the Madras High Court
Case No : Writ Petition No. 11383 of 2001

K. Radhakrishnan

APPELLANT

Vs

Indian Bank

RESPONDENT

Date of Decision : 06-10-2003

Acts Referred:

Bank Employees Pension Regulations, 1995 — Regulation 28, 29

Citation : (2004) 1 LLJ 1144

Hon'ble Judges : A.K. Rajan, J

Bench : Single Bench

Advocate : R. Viduthalai, for the Appellant; Vijayan, for King and Patridge, for the Respondent

Final Decision : Allowed

Judgement

A.K. Rajan, J.—This Writ Petition has been filed for issuance of a writ of mandamus, to direct the respondents to pay monthly pension to the petitioner in accordance with Regulation 29 of the Indian Bank Employees Pension Regulations, 1995, at the rate which is on par with the rate of pension payable to the employees of the respondents, who retire under normal Voluntary Retirement Scheme.

2. The brief facts necessary for disposal of this Writ Petition are as follows :

The petitioner, who was employed in Indian Bank, joined as a Sub-staff on 09.02.1972 and he was later promoted as a Clerk-cum-Shroff. He continued in that post till the year 2000. A Special VRS Scheme was offered from 27.11.2000 to 26.12.2000. About 4, 000 employees of the Indian bank opted for that and retired from service voluntarily. The petitioner also opted for that; his offer was accepted and he was relieved from service on 30.12.2000.

3. According to the scheme or package that was offered, the provision with respect to pension was that Indian Bank (Employees'') Pension Regulations, 1995, hereinafter referred to as "the Pension Regulations", would apply to all

those who opted for the scheme.

4. As per the Pension Regulations, under regulation 29, a person going on voluntary retirement would be given an added service weightage of 5 years for the purpose of calculating pension, but that was not given to the petitioner and therefore, the present petition has been filed.

5. A counter affidavit has been filed by the respondents, wherein it is stated that regulation 29 of the Pension Regulations is not applicable to the persons, who retired under Special Voluntary Retirement Scheme. Regulation 29 is applicable to persons, who voluntarily retire from service; regulation 28 applies to the persons, who are superannuated; therefore, there was no pension regulation, specifically governing the cases of persons, who retire under "Special Voluntary Retirement Scheme 2000". Therefore, in order to provide pensionary benefits for this class of persons, an amendment was made on 29.06.2002; by which a clause was introduced, whereby the service weightage of 5 years for the purpose of calculation of pension was made not applicable to those persons, who retire voluntarily under Special VRS, 2000; therefore, they would be entitled only to the pension for the period of qualified years of service; they are not entitled to 5 years added service; all the other benefits have been given to them; the petitioner is not entitled to get 5 years weightage of service; hence, the Writ Petition is devoid of merit and the same is liable to be dismissed.

6. Mr. R.Viduthalai, learned counsel for the petitioner, submits that Special Voluntary Retirement Scheme, 2000 was a package scheme that was offered to the employees of Indian Bank. This is an invitation to offer; the petitioner was one of the persons, who accepted the invitation and opted to go on VRS; as per the VRS Rules, it was open for the authorities not to accept the offer given by the employee and to reject the same, but the petitioner's offer was accepted and he was allowed to retire under the Special Scheme; he was relieved from service with effect from 30.12.2000, according to the scheme offered. The salient features of the Indian Bank Employees' Voluntary Retirement Scheme 2000 include "pension (including commuted value of pension) as per Indian Bank (Employees') Pension Regulations, 1995.

7. Regulations 28 and 29 of the Indian Bank (Employees') Pension Regulations, 1995, read as follows :

"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 or Settlements.

29. Pension on Voluntary Retirement -

(1)

(2)

(3)

(4)

(5) The qualifying service of an employee retiring voluntarily under this regulation shall be increased by a period not exceeding five years, subject to the condition that the total qualifying service rendered by such employee shall not in any case exceed thirty-three years and it does not take him beyond the date of superannuation."

8. Under clause 5 of regulation 29, the qualifying service of an employee, retiring voluntarily, shall be increased by a period not exceeding 5 years. Therefore, there is a concluded contract of retirement from service. After retirement from service, provisions of the concluded contract cannot be altered unilaterally. Only by the order dated 30.12.2000, the petitioner was relieved from service. There is a provision in that letter to the effect that "pension eligibility shall be in terms of the Indian Bank (Employees") Pension Regulations, 1995 under regulation 28, subject to the proposed amendment". This was not the offer, to which the petitioner had opted. The condition unilaterally imposed is not binding on the petitioner and, therefore, the amendment, which was made subsequently, is not applicable in so far as the petitioner is concerned. Hence, the Writ Petition has to be allowed as prayed for.

9. Conversely, Mr. Vijayan, learned counsel for the respondents, submits that regulation 29 of Voluntary Retirement Scheme is not applicable to the Special Scheme offered in 2000; it was only a scheme, which was ordinarily available to all the persons; under normal Voluntary Retirement Scheme, no compensation was payable; but, in this case, the petitioner has received compensation of approximately Rs. 7.00 lakhs and, therefore, regulation 29 is not applicable to either the petitioner or any other persons, who retire voluntarily under the Special Scheme, 2000; regulation 28 refers to superannuation pension and therefore, there was no other provision, which enables the petitioner to get pension; that is why, amendment has been brought forth in the year 2002, thereby regulation 28 was amended and a special proviso was included; but for this proviso, the petitioner is not entitled to any pension at all; only in order to grant pension to such persons, this provision was included and hence, regulation 29 is not applicable to the petitioner and only the proviso to regulation 28 enables the petitioner to get pension.

10. The argument of the learned counsel for the respondent is not acceptable.

11. Under the Pension Regulations, in chapter 5, there are certain kinds of pensions, namely, (i) Superannuation Pension, (ii) Pension on Voluntary Retirement, (iii) Invalid Pension, (iv) Compassionate Allowance, (v) Premature Retirement Pension, (vi) Compulsory Retirement Pension and (vii) Family Pension.

12. From this, it is seen that voluntary retirement is provided for under regulation 29. The argument of the learned counsel for the respondents that

regulation 29 is applicable only to voluntary retirement under normal circumstances and not to the Special Scheme of VRS is not acceptable. A reading of regulation 29 does not allow such an interpretation. Therefore, regulation 29 is applicable to all the persons, including the petitioner, and such of those who opted for the said package, offered under Special Voluntary Retirement Scheme, 2000.

13. It cannot be lost sight of that it was an incentive given to those employees of the Indian Bank, in order to reduce the total strength of the staff. Therefore, concessions were given and compensation was also bestowed. Hence, this is a scheme, by which a person, who is not ordinarily eligible for the benefits, was given more benefits. Because of the incentive, many employees opted to go on VRS and hence, that scheme or package cannot be altered unilaterally. The condition that is found in the letter dated 30.12.2000, by which the petitioner was relieved to the effect that pension would be regulated by the proposed amendment, has no application, in so far as the petitioner and similarly placed persons are concerned. The offer was only to accept as per the terms given under the Indian Bank Employees' Voluntary Retirement Scheme, 2000 and the same cannot be altered unilaterally.

14. Further, the present amendment has been made to regulation 28, which refers to superannuation pension. To that regulation, a proviso has been added. The proviso is an exception or a qualification, which restricts or modifies the application of the main provision. Therefore, the proviso cannot control the main section and it cannot go beyond the main section. The proviso to regulation 28 can, at the most, be said to be applicable to persons, who are superannuated. Admittedly, the petitioner is not superannuated and he went on Voluntary Retirement Scheme. Therefore, regulation 28, as amended, has no application to those who retired voluntarily, such as the petitioner. Hence, the contention of the respondents that regulation 28, as amended, is applicable to the petitioner is not acceptable and the same is rejected.

15. Under the circumstances, only regulation 29 governs the payment of pension to those persons, who went on voluntary retirement. Under clause 5 of regulation 29, qualifying service of an employee, who retires voluntarily, shall be increased, not exceeding 5 years, subject to the condition that the total qualifying service rendered by such an employee shall not, in any case, exceed thirty-three years. That means, by addition of 5 years, the total number of service shall not exceed 33 years. Therefore, only up to 33 years, it can be increased. In the instant case, the petitioner has completed 29 years of service and hence, he is entitled for the addition of 5 years; but, by adding the 5 years, it shall not exceed 33 years.

15. Writ Petition is, therefore, allowed. No costs.