(1999) 08 DEL CK 0117

In the Delhi High Court

Case No : CW. No. 3830 of 1998

Kailash Nath Singhal — APPELLANT

Vs

Union of India and Others — RESPONDENT

Date of Decision : 30-08-1999

Acts Referred:
Constitution of India, 1950 — Article 14, 226

Citation : (2000) 1 AD 796

Hon'ble Judges : N.G. Nandi, J

Bench : Single Bench

Advocate : Sunil Kumar, for the Appellant; Ravi Sikri, for the Respondent

Judgement

N.G. Nandi, J.—By way of present writ petition, the petitioner has been challenging Regulation 33(1) of the Punjab National Bank (Employees) Pension Regula- tions, 1955 (hereinafter referred to as the "said Regulations") as arbi- trary, discriminatory, illegal, under Article 226 of the Constitution of India.

2. It has been the say of the petitioner that the petitioner was appoint- ed as a clerk in the Punjab National Bank in 1960 and while he was working as Assistant Manager in Regional Collection Centre of the Bank in November, 1998 he was charge-sheeted and as a result whereof the petitioner was immediately suspended; that the Disciplinary, Authority, considering the representation, reinstated the petitioner in May 1990 on the same posts of Assistant Manager without affecting salary and emoluments, on the finding that the charges leveled against the petitioner were very minor; that on 21.2.1991 surprisingly the petitioner was compulsorily retired from the service without any further charges; that the petitioner was denied any proportionate pension on the grounds explained by the respondent-bank authorities as per Regulation 33(1) of the said Regulations, framed in exercise of the powers conferred by clause (f) of sub- section (2) of Sec- corporation 19 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 ; that Regulation 33(1) arbitrarily provides a cut-off date 1.11.1993 without any rationale; that the petitioner retired from

service keeping in view Regulation 19(1) of Service Regulations, 1979; that since the petitioner was retired from service, keeping in view above provision, he is covered by section 3(1)(a) of the Regulations, 1995 and, Therefore, entitled for the pension; that the management of the respondent-bank framed Rule 33(1) under said Regulations, 1995 denying pension benefits to those employees who were compulsorily retired from service as a penalty on or before 1.11.1993 which is in contradiction with the settlement and Rule 53 of the Service Regulations, 1979.

3. It is submitted by Mr. Sunil Kumar, learned counsel for the petitioner that compulsory retirement does not amount to dismissal or removal within the meaning of Article 311 of the Constitution nor it is a punishment and the same does not entail loss of retiral benefits and that the petitioner would be entitled to retiral benefits as he was compulsorily retired; that the petitioner is not bound by the settlement by which the cut-off date of 1.11.1993 has been fixed, disentitling the petitioner to the pension; that the petitioner served for more than 30 years with the respondent-bank and that the cut-off date 1.11.1993 is arbitrary, and unjust; that Regulation 33(1)(c), which provides for cut-off date as 1.11.1993 is vocative of Article 14 of the Constitution.

It is submitted by Mr. Ravi Sikri, learned counsel for the respondent No. 2 and 3 that those employees, who were compulsorily retired by way of penalty before 1.11.1993 would not be entitled to the pension and those employees who were compulsorily retired after 1.11.1993 would get the pension as per Regulation 33(1); that providing cut-off date of 1.11.1993 is legal and valid; that the petitioner would not be entitled to pension as he was compulsorily retired by way of major penalty on 18.2.91 tht the petitioner has not challenged the compulsory retirement by way of punish- ment; that the petitioner would not be entitled to the relief on account of delay and latches also and that the pension scheme came into effect from 1.11.1993; that the factum of petitioner having been compulsorily retired by way of penalty has been suppressed in the petition and that petitioner was never reinstated in service.

4. Thus, it will be seen from the above that the petitioner has been challenging the legality of Regulation 33(1) of the said Regulations con- tending that the cut-off date of 1.11.1993 could not have been provided so as to disentitle the petitioner to the pension, as it is vocative of Article 14 of the Constitution.

5. The proposition that the compulsorily retirement does not amount to dismissal or removal within Article 311 of the Constitution nor is it a punishment nor does it entail loss of retiral benefits nor it is stigmatic and the object of compulsory retirement is public interest, is a well accepted principle enunciated in the case of K. Kandaswamy Vs. Union of India, . In the instant case the disentitlement to the pension is not because of the compulsory retirement of the petitioner but the same. In the submission of the respondent-bank, is on account of the petitioner having been compulsorily retired by way of penalty on 18.12.91 as Regulation 33(1) provides for cut-off date of 1.11.1993.

6. It is not in dispute that the petitioner was compulsorily retired by way of major penalty from service of the respondent-bank before 1.11.1993, to be precise on 18.12.91, consequent upon the departmental proceedings concluding against the petitioner. The departmental proceedings including the punishment of compulsory retirement had not been challenged by the petitioner at the relevant time and the petitioner stood compulsorily retired with effect from 18.2.1991 and the same has been accepted by the petitioner. The present petition appears to have been filed because the employees compulsorily retired by way of penalty after 1.11.1993 are given the benefit of pension pursuant to Regulation 33(1). Regulation 33(1) of Punjab National Bak (Employees) Pension Regulations, 1995 reads:-

"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."

In the submission of the petitioner the above regulation is arbitrary inasmuch as it provides a cut off date 1.11.1993 without any rationale.

In the case of State of Rajasthan and anothers etc. Vs. Amrit Lal Gandhi and others etc., considering the facts that pursuant to the recommendations made in 1996 by a Committee, appointed by the University Grants Commission the Syndicate and Senate of the University forwarding their recommendations for introducing a pension scheme but not specifying a date for that purpose, and State Government approving on 16.1.1991 the introduction of the said scheme w.e.f. 1.1.1990 and subsequent thereto cabinet of the University also giving its approval and thereafter Pension Regulations, 1990 framed and teachers, who were in service on or after 1.1.1990 given option for being covered by the Pension Scheme, fixation of cut-out date for introducing a pension scheme has been held not arbitrary or without any reason".

In the case of All India Reserve Bank Retired Officers Association and others Vs. Union of India and others, the Supreme Court, following the principle laid down in D.S. Nakara and Others Vs. Union of India (UOI), held the fixation of cut-off date to the valid and not arbitrary taking into consideration the date of applicability of similar scheme for Central Government Employees on the recommendations of IVth Central Pay Commission and because of the difficulty in calculating the pension payable to old employees for want of old record". The Supreme Court also observed that "the employees of the Reserve Bank who had retired prior to 1.1.1990 were admittedly governed by CPF Scheme. They had received the benefit of employees contribution under that scheme and on superannua- corporation the amount to their account was disbursed to them and they had put it to use also. There can, Therefore, be no doubt that the retiral benefits admissible to them under the extant rules of the Bank had been paid to them. That was the social security plan available to them at the date of their retirement. Therefore, if the CPF retires were not admitted to this new scheme they could not make any grievance in that behalf they had no right to claim coverage under the new pension scheme since they had already retired and had collected their retiral benefits from the employer."

7. It cannot be disputed even for a moment that the fixation of cut-off date for applicability of pension scheme has to be tested on the touch stone of Article 14. In the instant case, the pension scheme was made applicable pursuant to the understanding arrived at between various Employ- ees'' Unions and the I.B.A. and the final regulation was approved and made applicable w.e.f. 29.9.1995 in the respondent-bank through gazette notifi- cation and under the Regulation all Employees who were in service of the bank on or after 1.1.1986 and had retired on or after 1.1.1986 were eligi- ble for pension in terms of Pension Regulations finally adopted by the respondent-bank. The employees, who were compulsorily retired from the service by way of penalty have been made eligible for pension provided they were compulsorily retired by way of penalty on or after 1.11.1993 as specified in Regulation 33(1) of Pension Regulations 1995, were given the bene- fit by making the said provision prospective in effect as the settlement/ understanding was signed/arrived on 29.10.1993 (emphasis sup- plied). So the rationale behind fixing the cut-off date 1.11.1993 is the signing of settlement/ understanding on 29.10.1993.

Thus, fixing of cut off date of 1.11.1993 following the principle laid down in the case of All India Reserve Bank Retired Officers Association & Others Vs. Union of India & Another (supra), being a reasonable classifica- corporation is justified since there is intelligible difference between two sets of classifications and the classification has a nexus with the object, sought to be achieved.

It is pertinent to note that the assertion in paragraph 3.6 of the counter, to the effect that the petitioner has no right to claim coverage under the new pension scheme since he had already been compulsorily retired on 18.2.1991 by way of punishment and had collected retiral benefits from the respondent bank, have not been refuted/denied in the rejoinder by the petitioner and for that reason also the principle laid down in the case of All India Reserve Bank Retired Officers Association & Others Vs. Union of India & Another (supra) would attract application.

8. In the above view of the matter, the fixing of the cut-off date of 1.11.1993 cannot be regarded as arbitrary, without any rational, discriminatory and unjust. The petitioner having compulsorily retired by way of penalty before 1.11.1993 and having collected his retiral benefits from the respondent-bank (non-tranversed), the petitioner would not be entitled to the benefit of pension as the classification is reasonable and permissible.

9. In the result, the petition being devoid of merits fails.

