(2009) 10 MAD CK 0307

In the Madras High Court

Case No : W.A. No. 1372 of 2009 and M.P. No. 1 of 2009 in W.A. No. 1373 of 2009

K.G. Krishnan APPELLANT

Vs

Indian Overseas Bank RESPONDENT

Date of Decision : 26-10-2009

Acts Referred:

Constitution of India, 1950 — Article 14, 16
Overseas Bank (Employees) Pension Regulations, 1995 — Regulation 22(1)
Overseas Bank (Officers) Service Regulations, 1979 — Regulation 22

Citation : (2010) 2 LLJ 66 : (2010) 4 SLR 638

Hon'ble Judges : R. Banumathi, J;N. Paul Vasanthakumar, J

Bench : Division Bench

Advocate : C.R. Chandrasekaran, for the Appellant; N.G.R. Prasad, For RR.1 to 3 in W.A. 1372/2009 and RR. 1 and 2 in W.A. 1373/2009, for the Respondent

Final Decision : Dismissed

Judgement

N. Paul Vasanthakumar, J.—These writ appeals are directed against the common order passed by the learned single Judge in W.P. Nos. 5537 and 5538 of 1999 dated 19.6.2009, dismissing the writ petitions filed by the appellant.

2. The brief facts necessary for disposal of these writ appeals are as follows:

(a) The appellant was appointed as a Clerk in the erstwhile Sri Venkateswara Bank Limited on 4.1.1958 and he worked in the said private bank till 31.12.1967. From 1.1.1958 the appellant was appointed in the first respondent Bank. The appellant''s claim is that his services rendered in Sri Venkateswara Bank Limited ought to be counted by the first respondent Bank as the services rendered in the first respondent Bank.

(b) The appellant was promoted to the officer cadre on 28.5.1979 and while he was working as Deputy Manager in Appu Chetty Street branch at Salem, on 7.10.1991, he submitted a letter stating that due to his poor health condition he has to take bed-rest and he was not able to discharge his duties satisfactorily in the bank and so he has decided to resign from the service of the bank. After stating so, further request was made to accept his resignation as voluntarily retirement.

(c) On 6.11.1991 the respondent Bank sent a reply to the appellant stating that the appellant is not eligible for voluntary retirement as he neither completed the requisite 30 years of service nor attained 55 years of age and hence his request has been treated as letter of resignation by the Central office.

(d) Again the appellant submitted representation on 8.11.1991 and requested the bank to count his earlier services in Sri Venkateswara Bank Limited and relieve him as voluntarily retired. A reply was sent on 7.1.1992 referring the letter of the appellant dated 7.10.1991 stating that he was relieved from the bank services on 7.1.1992 as his request was accepted by the Central Office at Madras. The appellant was relieved from the said date and the terminal benefits were also sanctioned by the bank, which was also received by the appellant.

(e) On 24.3.1994 the appellant submitted a representation to the bank stating that he is eligible for pension under the Pension Scheme as he served in the bank for 34 years i.e., 24 years in Indian Overseas Bank and 10 years in the erstwhile Sri Venkateswara Bank Limited. The appellant also prayed for issuance of prescribed option letter for exercising his option for pension. On 23.12.1998 the appellant again sent a representation and prayed for expediting the matter and to sanction pension from the date of his voluntary retirement i.e., from 7.1.1992 and also expressed his willingness to refund the contribution to provident fund together with interest. The respondent bank sent a reply on 14.1.1999 stating that since he had submitted resignation, he is not eligible for pension. The said order was challenged in W.P. No. 5537 of 1999.

(f) The appellant also prayed for a declaration in W.P. No. 5538 of 1999 to declare that he voluntarily retired from service of the bank on 7.1.1992 complying with the terms as laid down in Regulation 19(1) of the Indian Overseas Bank Officer-Employees Service Regulations, 1976, and the words "on or after the 1st day of November, 1993" in Regulation 29(1) of the Indian Overseas Bank (Employees'') Pension regulations, 1995, published in the Gazette of India, Extraordinary in Part-III, Section 4, dated 29.9.1995, are illegal and violative of Articles 14 and 16 of the Constitution of India and consequently entitling him the pensionary benefits as any other pensioners as per Regulation 10B of the Regulations.

3. The Respondents have filed common counter affidavit stating that at the age of 52, the appellant filed an application for resignation with further request to treat the resignation as voluntary retirement. The Bank, taking note of the appellant''s ineligibility to go on voluntary retirement, accepted the resignation request and he was relieved from the Bank''s service. The appellant further requested to count his earlier services in Sri Venkateswara Bank Limited and the

same was rejected on 7.1.1992 and the said orders were not challenged by the appellant. The appellant also received the benefits arising out of his resignation. The Pension Scheme was introduced for the persons, who retired voluntarily from 31.3.1993 and subsequently as per the Supreme Court Judgment dated 4.4.2000, the Officers, who have voluntarily retired under the Indian Overseas Bank (Officers'') Service Regulations, 1979, during the period from 1.1.1986 to 31.3.1993 were also found eligible for pensionary benefits and the Bank has granted pensionary benefits to those voluntarily retired under Regulation 19(1) of the Service Regulations. It is further stated in the counter affidavit that the appellant wanted to resign on health grounds with further request to treat the same as voluntary retirement and the same was not accepted by the bank, whereas the appellant''s request for resignation was accepted. The Regulation 22 of the Indian Overseas Bank (Officers'') Service Regulations, 1979, disentitles a person to claim pension on resignation.

4. The learned Single Judge dismissed both the writ petitions taking note of the fact that the appellant''s request dated 7.10.1991 was not for voluntary retirement and found that he was ineligible to submit voluntary retirement application as he did possess the sufficient number of years of service. The learned Judge observed that the appellant''s request having been rejected and he having been relieved, nothing prevented the appellant to challenge the same but, filed the writ petitions in the year 1999, after about 7 years. The learned Judge also relied on Regulation 22 and held that the appellant having resigned and relieved from service, he is not entitled to get any relief in the writ petitions. As against the said common order passed by the learned single Judge, these writ appeals are filed by the appellant.

5. Mr. C.R. Chandrasekaran, learned Counsel appearing for the appellant submitted that the appellant having submitted the application of resignation with a request to treat the same as voluntary retirement, the rspondent bank is not justified in accepting the same as resignation, particularly when the appellant is eligible to go on voluntary retirement as he has completed 52 years of age and 33 years of total service. The learned Counsel also cited the decision of the Division Bench of this Court reported in (2007) 1 LLN 820 (M.S. Munivenkatappa v. State Bank of India) and argued that once an application for voluntary retirement is submitted, the bank can either accept or reject the same and treating the said application as resignation was found illegal by this Court and therefore the same principle has to be applied in this case also.

6. Mr. N.G.R. Prasad, learned Counsel appearing for the respondent Bank submitted that the application submitted by the appellant on 7.10.1991 contains two requests, one for resignation and another for treating the said resignation as voluntary retirement and as the appellant was not eligible to go on voluntary retirement, the Bank accepted the first prayer i.e, accepting the resignation and rejected the request made for treating the same as voluntary retirement. The learned Counsel argued that the appellant is not eligible to count his earlier

services in the private bank as the said bank was neither demerged nor amalgamated with the respondent bank, and the appellant was discharged by the erstwhile bank and thereafter he was appointed in the respondent bank, and that the appellant has not chosen to challenge the said orders viz., rejecting the request to treat the application for voluntary retirement and not allowing the petitioner to count the earlier services as the service rendered in the respondent Bank. According to the learned Counsel, the appellant is not entitled to file the writ petitions. The learned Counsel further submitted that the resigned employee will forfeit his entire service and similar issue was considered by the Supreme Court in UCO Bank and Others Vs. Sanwar Mal, . The learned Counsel also submitted that the decision cited by the learned Counsel for the appellant has no application to the facts of this case.

7. We have considered the rival submissions made by the learned Counsel for the appellant as well as respondent Bank.

8. The question to be decided in these writ appeals is, whether the appellant has submitted a mere voluntary retirement application or letter of resignation.

9. It is the admitted case of the appellant that the appellant submitted a letter of resignation and requested to accept the same as voluntary retirement, by letter dated 7.10.1991, which is extracted hereunder:

From K.G. KRISHNAN, Roll No. 3457 Deputy Manager Indian Overseas Bank Appu Chetty Street Branch Salem - 646002

To The Assistant General Manager Personnel Department, Indian Overseas Bank, Central Office, Madras.

Through: The Manager, Indian Overseas Bank, Appu Chetty Street Branch, Salem - 636 002.

Dear Sir,

Ref: Resignation of my job.

I have joined in the Bank as Shroff Godown Keeper in the year 1968 (23 years) and previously I have served in Sri Venkateswara Bank Ltd., from the year 1958 (10 years).

Now I am aged 52 years old. I am getting poor health condition and I have to take bed rest severely. Hence I am not able to discharge my duties satisfactorily in the Bank. So I have decided to resign from the Bank Services.

I humbly request ou to take notice and accept my resignation as voluntary retirement.

Please do the needful.

Thanking you.

Date: 7-10-91 Yours faithfully,

Sd/- xxxxxxxxx (K.G. KRISHNAN)

The Bank considered the Indian Overseas Bank (Officers'') Service Regulations, 1979, and rejected the request to treat the resignation as voluntary retirement and taking into consideration appellant''s unwillingness to continue in service due to his poor health condition, decided to accept his request of resignation. It is also an admitted fact that the appellant has not completed 30 years of service nor attained 55 years of age to submit an application for voluntary retirement, as required under the Indian Overseas Bank (Officers'') Service Regulations, 1979, Clause 1, which states as follows:

An Officer employee may be permitted by the Competent Authority to voluntarily retire from the Bank''s service at any time after the completion of 55 years of age or 30 years of total service as an officer employee or otherwise, whichever is earlier after giving the Bank 3 months notice in writing.

10. The application submitted by the appellant on 8.11.1991 to count his services rendered in Sri Venkateswara Bank Limited was also rejected. As rightly contended by the learned Counsel for the respondent, the said private bank was not demerged or amalgamated with the respondent bank and the appellant was discharged from the erstwhile bank and he was appointed afresh in the respondent bank. Therefore the continuity of service claimed by the appellant was rightly rejected by the respondent bank. The said rejection order was also not challenged and the appellant was satisfied with the order passed by the respondent bank and accepted the terminal benefits after acceptance of resignation. If the appellant is not eligible to go on voluntary retirement and the appellant having tendered his resignation on health grounds and the same having been accepted, which was not questioned, the appellant has no right to contend now that the decision taken by the bank without treating the request of resignation as voluntary retirement, is illegal. As stated above, two prayers were made in the representation of the appellant dated 7.10.1991, of which one was accepted and the other one was rejected.

11. The decision cited by the learned Counsel for the appellant is distinguishable as the application submitted by the appellant in the said writ appeal was one for voluntary retirement alone, which was treated as letter of resignation by the Bank unilaterally. In that context only this Court held that once an application for voluntary retirement is submitted, it is for the bank either to accept or reject the same. The same is not the case in these writ appeals and the prayer for resignation made by the appellant was accepted.

12. The effect of resignation and its consequences are stated in Regulation 22(1) of the Indian Overseas Bank (Employees'') Pension Regulations, 1995, which reads as follows:

22(1) Resignation or dismissal or removal or termination of an employee from the service of the Bank shall entail forfeiture of his entire past service and consequently shall not qualify for pensionary benefits.

13. Whether a person, who submitted resignation, is entitled to be treated as voluntarily retired person, was considered by the Supreme Court in the decision reported in UCO Bank and Others Vs. Sanwar Mal, . In paragraph 9 the Supreme Court held thus,

9. We find merit in these appeals. The words ''resignation'' and ''retirement'' carry different meanings in common parlance. An employee can resign at any point of time, even on the second day of his appointment but in the case of retirement he retires only after attaining the age of superannuation or in the case of voluntary retirement on completion of qualifying service. The effect of resignation and retirement to the extent that there is severance of employment (sic is the same) but in service jurisprudence both the expressions are understood differently. Under the Regulations, the expressions ''resignation'' and ''retirement'' have been employed for different purpose and carry different meanings. The Pension Scheme herein is based on actuarial calculation; it is a self-financing scheme, which does not depend upon budgetary support and consequently it constitutes a complete code by itself. The Scheme essentially covers retirees as the credit balance to their provident fund account is larger as compared to employees who resigned from service. Moreover, resignation brings about complete cessation of master-and-servant relationship whereas voluntary retirement maintains the relationship for the purposes of grant of retiral benefits, in view of the past service. Similarly, acceptance of resignation is dependent upon discretion of the employer whereas retirement is completion of service in terms of regulations/rules framed by the Bank. Resignation can be tendered irrespective of the length of service whereas in the case of voluntary retirement, the employee has to complete qualifying service for retiral benefits. Further, there are different yardsticks and criteria for submitting resignation vis-`-vis voluntary retirement and acceptance thereof. Since the Pension Regulations disqualify an employee, who has resigned, from claiming pension, the respondent cannot claim membership of the fund. In our view, Regulation 22 provides for disqualification of employees who have resigned from service and for those who have been dismissed or removed from service. Hence, we do not find any merit in the arguments advanced on behalf of the respondent that Regulation 22 makes an arbitrary and unreasonable classification repugnant to Article 14 of the Constitution by keeping out such class of employees. The view we have taken is supported by the judgment of this Court in the case of Reserve Bank of India v. Cecil Dennis Solomon. Before concluding we may state that Regulation 22 is not in the nature of penalty as alleged. It only disentitles an employee who has resigned from service from becoming a member of the fund. Such employees have received their retiral benefits earlier. The Pension Scheme, as stated above, only provides for a second retiral benefit. Hence there is no question of penalty being imposed on such employees as alleged. The Pension Scheme only provides for an avenue for investment to retirees. They are

provided avenue to put in their savings and as a term or condition which is more in the nature of an eligibility criterion, the Scheme disentitles such category of employees as are out of it.

In the said judgment, the Supreme Court considered the very same Banking Service Regulations and declined the request of a Bank Employee seeking pension after resigning his post. The said judgment squarely applies to the facts of this case.

14. The learned single Judge has considered the issue in the proper perspective and dismissed the writ petitions. There is no infirmity in the said decision, warranting interference. There are no merits in the writ appeals and the writ appeals stand dismissed. No costs. Connected miscellaneous petitions are closed.