
(2007) 05 AHC CK 0322
In the Allahabad High Court

Kishan Swarup Sharma

APPELLANT

Vs

Allahabad Bank

RESPONDENT

Date of Decision : 16-05-2007

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 18, 2

Citation : (2008) 6 AWC 5425 : (2007) 115 FLR 530 : (2008) 1 LLJ 765

Hon'ble Judges : Sudhir Agarwal, J;Anjani Kumar, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The petitioner, Kishan Swamp Sharma has filed this writ petition under Article 226 of the Constitution of India assailing the order dated 25.1.2002 issued by the Chief Manager (PA) Allahabad Bank, Calcutta rejecting his application for grant of pension under Allahabad Bank Employees Pension Scheme (Old). A further writ of mandamus has been sought commanding respondents to pay monthly pension to the petitioner w.e.f. 1.6.2001 on regular basis in accordance with old pension scheme or the Pension Regulations, 1995.

2. The facts in brief as stated in the writ petition are that the petitioner was appointed as clerk in Allahabad Bank on 15.11.1967 and was promoted in officers grade on 4.11.1985. After promotion his terms and conditions, in officers cadre, were governed by Allahabad Bank (Officers) Service Regulation, 1979 (hereinafter referred to as "1979 Regulation"). The Bank issued a circular dated 6.9.1994 pursuant to some settlement between All India Employees Association and Indian Banks Association wherein a new scheme sought to be introduced and an option was also allowed to the existing employees in respect to old pension scheme. The petitioner exercised his option for old pension scheme vide letter dated 31.11.1994. The said option was never declined or rejected by the competent authority. On 31.5.2001 the petitioner opted for voluntary retirement under the scheme and was allowed to retire accordingly. He when requested the

Bank to pay his pensionary benefits in accordance with the old pension scheme, by means of the impugned order the same has been rejected by the respondent No. 2.

3. The Bank has filed a counter affidavit stating that 1979 Regulations came into force on 1.7.1979 under Regulation 3(a) of 1979 Regulations. The provision of gratuity and retiral benefits under Regulation 46 were applicable to the existing employees and proviso thereto makes it clear that old pension scheme would not be applicable to the officers who are recruited/promoted after 1.7.1979. Since the petitioner was promoted in officers cadre on 4.11.1985 and therefore he was not entitled for pension under old scheme. The circular dated 6.9.1994 has to be read consistent with 1979 Regulation and no benefit can be allowed to the petitioner contrary to Regulation 46 of 1979 Regulation.

4. We have heard Sri Manoj Kumar, learned Counsel for the petitioner and Sri Mool Bihari Saxena, Advocate appearing for the Bank and have perused the record.

5. It is said that after resolution of various Banks including Allahabad Bank, the Government of India appointed "Pillai Committee" in 1973 which submitted its report dated 30.5.1974 and para 8.24 at page 117 thereof reads as under:

We recommend the following standardized pattern of terminal benefits:

(i) There should be a contributory provident fund scheme in all the banks. The rate of contribution should be 8-1/3 per cent of the pay; pay for this purpose being defined as basic pay plus officiating allowance, if any. This rate of contribution shall apply to all new incumbents to the posts of officers in Punjab National Bank also; but the present rates of contribution there may be allowed to continue in respect of existing officers.

Regarding entitlement of provident fund balances, the existing rules are found to be satisfactory and require no change.

(ii) The following provisions regarding gratuity may be made applicable to all the 14 banks; Gratuity should be paid at the rate of one month "s pay for each completed year of service subject to a maximum of 15 months pay, in the event of retirement or death in service, or disablement rendering further service impracticable or voluntary retirement or resignation after 10 years" continuous service. "Pay" for the purpose of calculating gratuity will be basic pay and officiating allowance, if any, paid during the 12 months preceding the above contingencies. In regard to Allahabad Bank, the supplementary pension scheme in lieu of gratuity may continue for the existing officers but all new incumbents to the posts of officers should be governed by the contributory provident fund-cum-gratuity scheme only.

An extra amount should be payable at the rate of half month's pay for each completed year of service beyond 30 years. Existing officers in Bank of Baroda may be given an option either to adopt this uniform pattern regarding extra

gratuity or to continue in the present system.

6. The Allahabad Bank had its own pension scheme and an employee was entitled to a minimum pension equivalent to the amount of gratuity admissible to him. The Bank adopted 1979 Regulations in the Board's meeting dated 23.1.1979 and the said regulations were made effective w.e.f. 1.7.1979. Regulation 46 and 53 which are relevant and have been relied by learned counsels for the parties are reproduced as under:

46. (1) Every officer shall be eligible for gratuity on:

(a) retirement

(b) death

(c) disablement rendering him unfit for further service as certified by a medical officer approved by the Bank, or

(d) resignation after completing ten years of continuous service.

Provided that in respect of the officers on the appointed date, the existing supplementary pension scheme in the bank in lieu of gratuity may continue,

(2) The amount of gratuity payable to an officer shall be one month "a pay for every completed year of service, subject to a maximum of 15 months" pay;

Provided that where an officer has completed more than 30 years of service, he shall be eligible by way of gratuity for an additional amount at the rate of one-half of a month "s pay for each completed year of service beyond thirty years."

53. Any rule, regulation, order, agreement, resolution or other instrument, or any usage, custom, convention or practice, governing any matter dealt with in any of these regulations including allowances, perquisites and facilities, shall, on the date when such regulation comes into force and unless the contrary is provided in these regulations, shall cease to have effect in regard to such matter:

Provided that these shall not affect the validity of anything done or any claim arising, prior to that date in pursuance of such agreement, rule, regulation, resolution, other provision or usage, custom convention or practice.

7. The copy of the entire set of 1979 Regulations has been placed on record as Annexure SCA-2 with the supplementary" counter affidavit dated 25.7.2006 filed by the Bank.

8. Admittedly from a perusal of Regulation 46 it is evident that the existing scheme of retiral benefits was changed. Regulation 46 provides for gratuity only but to the officers existing on the appointed date, the existing supplementary pension scheme in lieu of gratuity was allowed to continue meaning thereby the officers who were existing on 1.7.1979 were entitled to continue in the old scheme. Thus far there is no difficulty. Had there been no further advancement in the situation, the petitioner could not have been entitled to claim any retiral

benefits under the old pension scheme. However it appears that some dispute arose with respect to pension/retiral benefits and consequently a settlement arrived at between Indian Banks Association and All India Bank Employees Association u/s 2(e) and 18(1) of Industrial Disputes Act, 1947 read with Rule 58 of Industrial Dispute Central Rule, 1957. Para 2 of the settlement reads as under:

2. Pension as a second retiral benefit scheme in lieu of contributory provident fund shall be available to the following category of employees/retired employees from 1st November, 1993 or the date of retirement, whichever is later.

i) Employees who join service of the bank on or after 1st November, 1993;

ii) Employees in service of the bank as on 31st October, 1993 and who on or before 30th June, 1994 exercise an option in writing in response to bank's notice to this effect to be given not later than 31st December, 1993 to become members of the pension scheme and to cease to be members of the contributory provident fund scheme with effect from 1st November, 1993 and irrevocably authorise the bank or the trustees of the contributory provident fund to transfer the entire contribution of the bank along with entire interest accrued thereon to the credit of pension fund to be created for this purpose.

iii) Retired employees who were in service of the bank merged bank on or after 31st December, 1985 and retired on or after 1st January, 1986 but before 1st November, 1993 provided that such retired employees apply for it on their own on the format prescribed by each bank and refund within a period of six months reckoned from 1st November, 1993, the bank's entire contribution to the provident fund including interest received with further simple interest at the rate of 6 percent per annum from the date of withdrawal of the provident fund amount till the date of refund.

iv) Permanent part-time employees drawing scale wages.

Note: Wherever in any other bank the existing or agreed package of superannuation benefits comprising CPF/Pension/ Gratuity are superior to the package comprising of Pension and Gratuity under this Settlement, the Bank in concurrence with their Union may opt to continue with their existing or agreed package I of retiral benefits.

9. Pursuant to the said settlement it appears that a letter dated 7.3.1994 sent by Allahabad Bank to Government of India, Ministry of Finance stating that the employees and officers associations have requested to continue with the existing superannuation benefits/package of the Bank with some improvement which was found merited by the Bank and therefore, a revised package in terms of Clause-IV of the settlement dated 29.10.1993 was proposed by the Bank. Government of India with certain modification directed the Bank to implement pension scheme and allowed exemption from the purview of the settlement dated 29.10.1993, but as suggested in the Bank's letter dated 7.3.1994, vide its letter dated 4.8.1994 the Government directed the Bank to proceed as under:

I am directed to refer to your letter No. Admn/5/2354 dated 7th March, 1994 on the above subject and to say that after examination of the proposal made by the Bank, the Govt, is of the view that the bank should also fall in line with the industry and introduce pension scheme as agree to at the industry level for all the employees who joined the bank on or after 1.11.1993. The employees who were on the rolls of Bank as on 31.10. 1993 or retired between 1.1.1986 and 31. 10.1993 may be given an option either to avail benefits under the pension scheme agreed to at the industry level or enjoy the existing benefits like CPF and pension in its existing form. In the later case, all terms and conditions with regard to pension, except dearness relief shall stand frozen. The rates of dearness relief as here to for may change with the rise/fall in the price index.

10. In view of the aforesaid directions of the Government of India the Bank issued circular dated 6.9.1994 which is on record as Annexure SCA-3 to the supplementary counter affidavit-II filed by the Bank. The relevant extract of the said circular is as under:

Further, since the Bank has already in existence a pension scheme which has been named as Allahabad Bank Employees Pension Scheme (Old), the Government has permitted that employees who retired between 1.1.1986 and 31.10.1993 and employees who are on & Bank's roll as on 31.10.1993 will also have the option to opt for Pension as per Allahabad Bank Employees' Pension Scheme (Old) plus C.P.F. benefits. It is also informed that the matter regarding inclusion of special allowance for calculation of pension in Allahabad Bank Employees' Pension Scheme (Old) has been referred to Government and will be considered after receipt of their approval.

Keeping in view the provisions of the scheme, all employees who are required to exercise their options in terms of the scheme, may do so in the following manner:

Existing Employees

The existing employees in the service of the Bank as on 31.10.1993 shall submit their options as per Annexure-I/III in duplicate latest by 30.9.1994 as under:

1. Employees posted at Branches : Branch Manager 2. Employees posted at Administrative : Concerned regional Head/ Officers. Departmental Head. The Branch Managers shall send the option letters duly attested by "them to their Regional Heads. The Regional/Departmental Heads shall forward option letters in respect of all the employees including those posted at Regional Office/Zonal Officer/Head Office to Chief Manager (PA), Head Office, after due verification/attention. It should, however, be ensured that no employee on the roll as on 31.10.1993, who is required to submit option in terms of the scheme, is left out.

Those retirees/employees do not send their option form in the required format within the stipulated time shall be deemed to have opted in favour of CPF as per agreement of 29.10.1993.

11. It appears that pursuant to the aforesaid Circular dated 6.9.1994 the

petitioner submitted his option dated 31.11.1994 opting for old pension scheme but the same has been rejected by the Bank referring to proviso Regulation 46 of 1979 Regulation. In our view the decision of the Bank cannot be accepted for the reason that the circular dated 6.9.1994 clearly provides option to the employees who are on the Bank's roll on 31.10.1993 to opt for pension as per Allahabad Bank Employees Pension Scheme (Old) plus CPF benefits. It clearly gives opportunity to the existing employees as on 31.10.1993 to submit option for pension as per Allahabad Bank Employees Pension Scheme (Old) plus CPF benefits and. therefore it is evident that the benefit of the old pension scheme was extended by the Bank to all the existing employees as on 31.10.1993 provided they exercise option.

12. Learned Counsel for the Bank at this stage submitted that the option to be exercised by the existing employees was time bound and they were required to submit option by 30.9.1994 but in the present case the petitioner exercised his option admittedly on 30.11.1994 which is beyond the period prescribed in the said circular. In our view the submission cannot be accepted for the reason that it is not the case of the Bank that the circular dated 6.9.1994 which was issued at Calcutta, was brought to the notice to all employees well within time enabling them adequate opportunity to exercise option by the period prescribed i.e. 30.9.1994. Moreover, the claim of the petitioner has not been rejected by the competent authority on the ground that the same was received beyond the period prescribed in the circular dated 6.9.1994 and therefore, the respondents cannot be allowed to raise a new ground to justify the order impugned in the writ petition though the competent authority has not taken into account the said aspect of the matter for the purpose of rejecting claim of the petitioner. We are also of the view that considering the fact that the circular itself was issued on 6.9.1994 and it was addressed to various branches of the Bank unless it is circulated and brought to the notice of all the beneficiaries and give them adequate time to exercise option, the period mentioned therein cannot be adhered to. Any other view would make scheme under circular dated 6.9.1994 illusory and artificial. We are therefore of the view that the submission of the respondent's Bank that the option was exercised beyond time lacks merit and is liable to be rejected with further direction that the same shall be treated to be well within time.

13. In the result the writ petition is allowed. The impugned order dated 25.1.2002 is quashed. The competent authority is directed to reconsider the matter and the claim of the petitioner in the light of the circular dated 6.9.1994 and the observations made above as well as the relevant provisions applicable to the facts and circumstances of the case and pass a fresh but speaking order in accordance with law within three months from the date of production of certified copy of this order. We also make it clear that the amount, if any, found further payable to the petitioner pursuant to the decision taken by the competent authority as directed above, such amount shall be paid to the petitioner within a further period of two months. No order as to costs.