
(1997) 01 BOM CK 0075
In the Bombay High Court
Case No : O.O.C.J. W.P. No. 620 of 1996

Madhav K. Kirtikar

APPELLANT

Vs

Bank Of India

RESPONDENT

Date of Decision : 07-01-1997

Acts Referred:

Citation : (1997) 2 BomCR 524 : (1997) 1 LLJ 1094 : (1997) 2 MhLj 559

Hon'ble Judges : A.P. Shah, J

Bench : Single Bench

Advocate : Ajit Kapadia, for the Appellant; C.U. Singh, instructed by M/s. Haresh Mehta and Co., for the Respondent

Judgement

1. This petition under Article 226 of the Constitution is filed by a retired Bank employee for the following reliefs :

(i) to declare that the petitioner is entitled to the benefit of pension in accordance with the pension scheme framed by the Bank of India;

(ii) to issue a writ of mandamus to strike down that part of the scheme which denies pensionary benefits to the employees who had retired voluntarily from service during the period August 1, 1986 to October 31, 1993, and

(iii) to issue a writ of mandamus directing the respondent to forthwith extend the pensionary benefits to the petitioner.

2. The facts of the case are simple and may be shortly stated. In or about 1946 the petitioner joined the respondent-Bank of India which was then a limited company. He retired from the service on August 1, 1987. Many developments had taken place in the intervening period. What was till then a private Bank, became a nationalized Bank under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 ("Act" for short). The petitioner had put in 41 years of service with the respondent when he opted for voluntary retirement from the services of the respondent in the year 1987. The petitioner had opted

for voluntary retirement in accordance with the rules contained in the Bank of India (Officers' Service) Regulations, 1979 ("Regulations" for short). The rules regarding voluntary retirement for officer employees, inter alia, provide that an officer employee retiring voluntarily shall be entitled to all the benefits under the normal retirement, as per the service regulations.

3. Originally employees of the respondent-Bank were not entitled to pension. But there was a scheme for payment of provident fund and gratuity under the rules. When there was a demand from the Bank employees for grant of pension to them, after discussions with the Union, the Bank proposed to introduce the pension scheme for all the employees and certain proposals were put forth while introducing the pension scheme for the officers. It seems that the draft scheme was circulated amongst the employees - both in service as well as retired. The Bank also called for options to be exercised from the officer employees who had retired between August 1, 1986 and October 31, 1993. It seems that the Bank wrote to the petitioner expecting his option for pension scheme and also directed him to undergo medical examination at his costs from the Bank's approved doctors for the purposes of commutation of pension. The petitioner vide his letter dated July 22, 1994 exercised his option to join the pension scheme. He also exercised his option to commute one-third of the pension. He also got himself medically examined by the respondent's doctor.

4. On September 29, 1995 the Bank of India (Employees') Pension Regulations, 1995 ("Regulations of 1995" for short) were brought into force. The Regulations were framed by the Board of the respondent-Bank in exercise of the powers conferred by Clause (f) of Sub-section (2) of Section 19 of the Act after consultation with the Reserve Bank of India and the previous sanction of the Central Government. By the Regulations of 1995 the pension scheme is made applicable to all the employees who have retired during the period January 1, 1986 to October 31, 1993. Under the old Regulations the employee had a right to retire voluntarily after completing 30 years of service. However, by the Regulations of 1995 the employee is given right to retire after 20 years' service under Regulation 29 and it is provided that such a retired employee shall be eligible for pension.

5. By letter dated February 3, 1996 the respondent Bank wrote to the petitioner that the Indian Bank's Association had clarified to the respondent that employees who had voluntarily retired during the period January 1, 1986 to October 31, 1993 would not be eligible for pension and voluntary retirement. The petitioner was informed that as he had sought and obtained voluntary retirement prior to November 1, 1993, pensionary benefits could not be extended to him. It appears that the Bank took a view that only those employees who have retired after November 1, 1993 would be eligible for pension as provided under Regulation 29. It is this decision of the Bank which is impugned in the present petition under Article 226 of the Constitution.

6. The petitioner has alleged that the stand taken by the Bank denying pension

to the petitioner solely on the ground that he has retired voluntarily prior to November 1, 1993 though after January 1, 1986 is manifestly illegal and unconstitutional. It is also alleged that under the pension regulations, officers who have retired from the Bank after reaching the age of superannuation on or after January 1, 1986 having been made eligible for pension, the petitioner who has retired on voluntary basis on or after January 1, 1986 cannot be discriminated. It is pointed out that the provisions which classified the retired employees into two classes artificially is arbitrary and not based on any rational and has no nexus to the object sought to be achieved by introducing the pension scheme but runs counter to the objective of providing pension scheme. It is, therefore, contended that the impugned action of the respondent-Bank is contrary to and violative of Article 14 of the Constitution.

7. Mr. Kapadia, learned Counsel for the petitioner contended that since the petitioner has retired voluntarily between January 1, 1986 and October 31, 1993, he cannot be denied pension on the ground that he has retired prior to 1993. The learned Counsel brought to my notice the provisions contained in the 1995 Regulations, especially Regulation 2(k) "date of retirement", 2(y) "retirement", and Regulation 3 which speaks of the applicability of the scheme to the employees. The learned counsel also referred me to Regulations 29(3), 32 and 34 contending that a combined reading of these regulations clearly shows that the petitioner is entitled to pension under the regulations. According to the learned counsel, regulation 3 of the regulations is made applicable to the employees who were in the service of the Bank after January 1, 1986 but have retired before November 1, 1993. The learned counsel pointed out that Regulation 29 speaks of pension of voluntary retirement. In that regulation, the cut-off date is November 1, 1993 for pension on voluntary retirement. But at the same time Regulation 34, according to the learned counsel, speaks of payment of pension or family pension in respect of employees who retired or died between January 1, 1986 to October 31, 1993 and as such the learned counsel pointed out that even under the regulations of the Bank as framed, the petitioner came under the scope of the regulation and is entitled to pension. The learned counsel brought to my notice the decision of the Supreme Court in D.S. Nakara and Others Vs. Union of India (UOI), . He also relied upon the subsequent decisions of the Supreme Court in Smt. Poonamal & Ors. v. Union of India & Ors. AIR 1985 SC 116. A.P. Srivastava (Dead by Lrs.) Vs. Union of India (UOI) and Others, , referring to these judgments, Mr. Kapadia pointed out that it is not permissible for the respondent to make distinction between the same class of employees who are retired. If it is done, it offends Article 14 of the Constitution. Mr. Kapadia argued that even assuming that it is permissible for the Bank to introduce a cut-off date by providing classification amongst the employees i.e., those retired before the cut-off date and those retired after the cut-off date, it is certainly not open to make a further classification amongst the employees who retired after the cut-off date. Such a construction, according to the learned counsel, if given to the regulations would be violative of Article 14. The learned counsel argued

that a plain reading of the Regulations itself clearly indicates that the petitioner is entitled to pension under the new pension scheme and if the Bank wants to make artificial differentiation amongst retired employees into classes, then the case attracts Article 14.

8. Mr. Singh, learned counsel for the Bank submitted that the provisions contained in the pension regulations clearly exclude the employees who have taken voluntary retirement during the period January 1, 1986 to October 31, 1993. Mr. Singh submitted that the interpretation suggested by Mr. Kapadia cannot be accepted in the face of clear and unambiguous provisions of the regulations. Mr. Singh took me through the various provisions of the regulations in order to show that there is no scope for applying the scheme to the employees who have retired voluntarily prior to October 31, 1993. On being questioned by the Court, Mr. Singh was unable to give any explanation as to why the employees retired voluntarily during the period January 1, 1986 to October 31, 1993 are excluded. Mr. Singh merely stated that when there was no pension scheme and when it was introduced for the first time, it is open to the Bank to make distinction amongst the retired employees as employees retired and employees who retired voluntarily and went away from the Bank after so obtaining benefits to which they were entitled. He contended that certain other categories of employees retired before October 31, 1993 are excluded. The learned counsel submitted that the pension scheme is applicable only to persons who sought voluntary retirement under regulation 29 of the Regulations and the scheme is not applicable to persons who voluntarily retired prior to October 31, 1993.

9. The principal controversy raised in this petition is whether the employees who have retired voluntarily during the period January 1, 1986 to October 31, 1993 are covered by the pension scheme of 1995. The employees of the Bank are governed by the Bank of India (Officers' Service) Regulations, 1979. The said Regulations contained rules regarding voluntary retirement for officer employees. The rules specifically provide that an Officer may be permitted by the competent authority to voluntarily retire from the Bank's Service any time after 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 unless the requirement is wholly or partly waived. It is also provided that an officer employee retiring voluntarily shall be entitled to all benefits under the normal retirement as per the Regulations. The petitioner opted for retirement under these rules and accordingly was allowed to retire with effect from January 1, 1987.

10. Now turning to the Regulations of 1995, Clause 2(k) of the Regulations of 1995 define "date of retirement" as follows :

"2(k) : "date of retirement" means the last date of the month in which an employee attains the age of superannuation or the date on which he is retired by the Bank or the date on which the employee voluntarily retires; or the date on which the officer is deemed to have retired".

Sub-clause (x) of Clause 2 defines "retired" to include deemed to have retired under Clause (1). Under Sub-clause (y) "retirement" is defined as follows :

"2(y) : "retirement" means cessation from Bank's service -

(a) on attaining the age of superannuation specified in Service Regulations or Settlements;

(b) on voluntary retirement in accordance with provisions contained in regulation 29 of these regulations;

(c) on premature retirement by the Bank before attaining the age of superannuation specified in Service Regulations or Settlement".

11. Chapter II of the Regulations deals with application and eligibility. Clause 3 reads as follows :

"These regulations shall apply to employees who, -

(1)(a) were in the service of the Bank on or after the 1st day of January, 1986 but had retired before November 1, 1993; and

(b)

(c)"

Clause 14, Chapter IV deals with qualifying service and it reads as follows : "Subject to the other conditions contained in these regulations, an employee who has rendered a minimum of ten years of service in the Bank on the date of his retirement or the date on which he is deemed to have retired shall qualify for pension".

12. Then Clause 29, Chapter V provides for pension on voluntary retirement. It says that on or after November 1, 1993 any employee who has completed twenty years may, by giving three months" notice in writing, retire from service. Clause 34 of Chapter V reads as follows :

"Payment of pension or family pension in respect of employees who retired or died between January 1, 1986 to October 31, 1993 :

(1) Employees who have retired from the service of the Bank between January 1, 1986 and October 31, 1993 shall be eligible for pension with respect from November 1, 1993.

(2) The family of a deceased employee governed by the provisions contained in Sub-regulation (7) of Regulation 3 shall be eligible for family pension with effect from November 1, 1993".

13. The concept of pension is now well known and has been clarified by the Supreme Court time and again. It is not a charity or bounty nor is it gratuitous payment solely dependent on the whim or sweet will of the employer. It is earned for rendering long service and is often described as deferred portion of

compensation for past service. It is in fact in the nature of a social security plan to provide for the December of life of a superannuated employee. Such social security plans are consistent with the socio-economic requirements of the Constitution when the employer is a State within the meaning of a Article 12 of the Constitution. In D. S. Nakara's case (supra) the Supreme Court held that classification in revised pension formula between the pensioners on the basis of date of retirement specified in the memoranda is arbitrary and violative of Article 14. In D. S. Nakara's case (supra) the scheme under consideration of the Supreme Court was not a new scheme but was only revision of the existing scheme. This distinction was noticed by the Constitutional Bench of the Supreme Court in Krishena Kumar and Others Vs. Union of India and others, . The Bench held that a pension scheme and a provident fund scheme being structurally different, those belonging to the latter scheme cannot claim to come over the former scheme as of right on the plea that the cut-off date fixed under the scheme violated Article 14 of the Constitution. This legal position was reiterated in A. I Reserve Bank Retired Officers Association v. Union of India, 1992 2 CLR 89, Ahmadi, J., as His Lordship then was, speaking for the Bench observed : "Whenever any rule or regulation having statutory flavour is made by an authority which is a State within the meaning of Art. 12, the choice of the cut-off date which has necessarily to be introduced to effectuate such benefits is open to scrutiny by the Court and must be supported on the touch-stone of Art. 14. If the choice of the date results in classification or division of members of a homogeneous group it would be open to the Court to insist that it be shown that the classification is based on an intelligible differentia and on rational consideration which bears a nexus to the purpose and object thereof. The differential treatment accorded to those who retired prior to the specified date and those who retired subsequent thereto must be justified on the touch-stone of Art. 14, for otherwise it would be offensive to the philosophy of equality enshrined in the Constitution".

14. Keeping in mind the law laid down by the Supreme Court, it cannot be disputed that when a new scheme is introduced, a choice of cut-off date may be permissible subject to the scrutiny by the Court in order to ascertain whether the choice of the date can be supported on the touch-stone by Article 14. In the case in hand the Bank has chosen to apply scheme to the employees who have retired after January 1, 1986. The benefit of the scheme therefore must be given to all the employees who have retired after January 1, 1986. It will be totally impermissible to make artificially a further classification amongst the employees retired after January 1, 1986 as it will be totally irrational, arbitrary and violative of Article 14. This is more so because under the scheme the employees who have retired voluntarily after November 1, 1993 are expressly covered by clause 29 of the scheme. In this regard reference may be made to the decision of the Supreme Court in A. P. Srivastava's case (supra). There the question which arose for consideration of the Supreme Court was whether an employee who was a temporary Government servant loses his right to receive pension when the

employer exercises his option and retires the employee after he attains the age of 55 years in accordance with Rule 56 (j)(ii) of the Fundamental Rules, even though the employee might have completed more than 20 years' service? The Supreme Court held that if a temporary Government servant who has rendered 20 years of service, is entitled to pension, if he voluntarily retires, there is no justification for denying the right to him when he is required to retire by the employer in the public interest as an order of compulsory retirement is not a punishment and pension is a right of the employee for service rendered. Therefore, a temporary Government servant would be entitled to pension after he has completed more than 20 years of service even if he is required to retire by the employer in exercise of power under Rule 56(j) of the Fundamental Rules.

15. With the assistance of the learned counsel for the parties, I have carefully gone through the pension scheme of 1995. I do not see any distinction in the scheme amongst retired employees. If a proper construction is given to the regulations, in my view, the Bank cannot make a distinction amongst employees who retire under the voluntary retirement scheme and employees who retire otherwise because the term "retirement" which occurs in the regulations enclose voluntary retirement. There is no reason to confine voluntary retirement only to regulation 29 of the regulations. If such a construction is given to regulation 29 it clearly violates Article 14. In *Tilkayat Shri Govindlalji Maharaj Vs. The State of Rajasthan and Others*, it was observed that if the impugned provisions of a statute are reasonably capable of a construction which does not involve the infringement of any fundamental rights, that construction must be preferred though it may reasonably be possible to adopt another construction which leads to the infringement of the said fundamental rights. This rule of interpretation was reiterated by the Supreme Court in *M.K. Balakrishnan Menon Vs. The Assistant Controller of Estate Duty-cum-Income Tax Officer, Ernakulam*, . The Supreme Court held the Court ought not to interpret statutory provisions, unless compelled by their language, in such a manner as would involve its constitutionality because the legislature is presumed to enact a law which does not contravene or violate the constitutional provisions. We have already noted that by Rule 3(1)(a) the scheme is made applicable to the employees retired after January 1, 1986. Rule 34 then provides that employees who have retired from service of the Bank between January 1, 1986 and October 31, 1993 shall be eligible for pension with effect from November 1, 1993. The combined reading of Rules 3 and 34 shows that the petitioner is entitled to get pensionary benefits which are extended by the Bank, even though it is for the first time. The regulations framed by the Bank is for giving pensionary benefits to all the employees of the Bank either retired on attaining the age of superannuation or retired under the scheme of voluntary retirement. It is therefore not permissible for the bank to fix artificially a further cut-off date as November 1, 1993 to give benefit of the pension scheme to the employees who have retired voluntarily only after November 1, 1993. When the Bank decides to extend the benefit of pension to its employees it cannot make any distinction between the employees who

have retired and employees who sought voluntary retirement and retired. I am also supported by an unreported judgment, single Judge of the Karnataka High Court dated September 30, 1996 in Writ Petition Nos. 3919 to 3994 of 1996. The Karnataka High Court has held that the employees of the respondent Bank who had voluntarily retired between January 1, 1986 and October 31, 1993 are eligible for pension.

16. In the result, petition succeeds. Rule is made absolute in terms of prayer clauses (a) and (c). The respondent Bank is directed to comply with the order of this Court within six weeks from today.

17. Certified copy expedited.