(2005) 10 PAT CK 0065

In the Patna High Court

Case No : CWJC No. 6466 of 2003

Madhav Nath Tripathi and Others APPELLANT

Vs

Canara Bank and Others RESPONDENT

Date of Decision : 06-10-2005

Acts Referred:

Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 — Section 19

Citation : (2006) 2 PLJR 161

Hon'ble Judges : Mridula Mishra, J

Bench : Single Bench

Judgement

Mridula Mishra, J.—Petitioners in both these writ applications are Ex-employees of Canara Bank belonging to officer cadre. They have retired from the service of Canara Bank (hereinafter referred as bank) under Canara Bank (Employees) Special Voluntary Retirement Scheme, 2000 (hereinafter referred as SVRS, 2000). Petitioners have filed this application for quashing of last part of Circular No. 237/2000 dated 15.12.2000 (Annexure-1) and further to declare that petitioners are entitled for revision of pension by allowing the notional benefit of five years service as provided under Regulation 29 of Canara Bank (Employees) Pension Regulation, 1995, and thereafter sought for payment of arrears from the date of fixation of pension with interest, with costs and other consequential reliefs.

2. Petitioners have challenged the last part of circular No. 237/2000 dated 15.12.2000 on the ground that in the garb of amendment of Regulation 28 of Canara Bank (Employees) Pension Regulation, 1995, the notional weightage of five years service as provided under regulation 29 has been denied to the petitioners and others similarly situated employees, without amending Regulation 29 of Canara Bank (Employees) Pension Regulation, 1995.

3. Petitioners in both the writ applications were working in the respondent "Bank" on different posts, in different Branches of the Bank. All of them, have completed more than 20 years of their service. The "Bank" introduced SVRS, 2000 with the

approval of the Government and issued circular No. 235/2000 dated 11.12.2000 (Annexure-3) in this regard, which was circulated among the employees. This scheme contained in Annexure-lll was formulated by the Bank with the objective to have ideal manpower for the bank and to have optimum human resources in keeping the business strategies and meeting the latest requirement of the bank. This scheme was in operation for a period of one month from 1.1.2001 to 31.1.2001 which was subsequently extended up to 2.10.2001. The employees who were desirous for opting the scheme have to submit their application to the respective staff section through the office where they were working on or before 31.1.2001. Petitioners submitted their option for voluntary retirement under the scheme which was accepted by the competent authority of the bank and the petitioners were declared to have been relieved from the service on different dates from the posts held by them. Petitioners'' case is that while they were working in the respondent-bank, the Board of Director of bank in exercise of the powers conferred by clause 6 of sub-section 2 of Section 19 of Banking Companies (Acquisition & Transfer of Undertaking) Act, 1970 in consultation with Reserve Bank of India and with previous sanction of the Central Bank made a regulation known as Canara Bank (Employees) Pensions Regulation, 1995 which came into effect on 29.9.1995. This regulation was made applicable to all such employees who were in service of the bank on or before the 1st day of January, 1986. Pension Regulation, 1995 deals with classes of pension, Regulation 28 provides superannuation pension and Regulation 29 provides pension on voluntary retirement.

Regulation 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 regulation or settlement."

Regulation 29.-"Pension on Voluntary retirement (i) on or after the first day of November, 1993 at any time after an employee had completed 20 years of qualifying service he may, by giving notice of not less than 3 months in writing to the Appointing Authority, retire from service."

Clause 5.-Qualifying service of an employee retiring voluntarily under this Regulation shall be increased by not exceeding 5 years subject to the condition that the total qualifying service rendered by such employee shall not in any case exceed 33 years and it does not take him beyond the date of superannuation."

4. Canara Bank introduced a Special Voluntary retirement scheme for its employees, who have completed 15 years of actual service or 40 years of age. This scheme was introduced by issuing Circular No. 235/ 2000, dated 11.12.2000 and it was operational for one month from 1.1.2001 to 31.1.2001. Under clause 6:3-Provident Fund/Pension-has been defined as "Pension in terms of Canara Bank (Employees) Pension Regulation, 1995, in respect of those who have opted for pension and have put in 20 completed years of service in the Bank alongwith own contribution of provident fund." Being motivated by clause 6:3 of the Scheme, petitioners, opted for the S.V.R. Scheme, 2000 with an understanding

that they shall be allowed the benefit of additional 5 years of notional service to actual service rendered by them as provided under Regulation 29(5) of the Canara Bank Employees Pension Regulation, 1995. The option submitted by them was accepted by the General Manager, which clearly indicated that the competent authority after examining the case has accorded permission to accept the application for voluntary retirement of the petitioners, under Circular 235 of 2000, retirement scheme. Almost all the petitioners have submitted their options in the month of January, 2000 but prior to that, the personal management section of the bank came out with circular No. 237/ 2000 dated 15th of December, 2000. By this circular, a proposal was made to amend the existing provision of Regulation 28 of Canara Bank Employees Pension Regulations, 1995 by incorporating following provisions to such regulation "Provided that, pension shall also be granted to employee who opts to retire before attaining the age of superannuation but after having served for a minimum period of 15 years in terms of any scheme that may be framed for the purpose by the banks board with the concurrence of the Government. In the last paragraph of circular 237/2000, it has been mentioned consequently, the employees who are members of the pension fund and opts for a voluntary retirement under the scheme as per the Circular 235/2000 are eligible only for superannuation pension under Regulation 28 of the pension Regulations. The provisions of adding 5 years notional service of the actual service rendered in case of those who opts for voluntary retirement, under circular 29 of the Pension Regulation will not be available to those who opts for voluntary retirement under the Canara Bank Employees Special Voluntary Retirement Scheme.

5. Circular No. 237/2000 was not widely circulated among the employees, as such, petitioners, being unaware of the last paragraph of circular No. 237/2000, submitted their option for S.V.R.S, 2000. Petitioners did not have knowledge that in the garb of amending Regulation 28 of Canara Bank (Employees) Pension Regulation, 1995 the vested right conferred to the employees under Regulation 29 sub-section 5 of Canara Bank Employees special voluntary retirement scheme has been taken away by the bank. A statutory right which has accrued to the petitioners and similarly situated employees of the bank under Canara Bank (Employees) Pension Regulation, 1995 has been taken away through a circular which is illegal and cannot be allowed by any stretch of imagination. It has also been submitted by the petitioners'' counsel that circular No. 237/2000 was only a proposal pending amendment for informing the employees, which is evident from the circular itself. At page 2 of the circular, it has specifically been mentioned that pending amendment, this circular is being issued for information to all the employees. This amendment did not take place till the date when the petitioners submitted their option for voluntary retirement under circular No. 235/2000 and till the date when the competent authority accepted the application for voluntary retirement under circular 235/2000. In this circumstance, the proposal introduced by circular 237/2000 will have no application in the case of the petitioners. Petitioners are entitled for five years notional service to the actual

service rendered by them in case of their option for voluntary retirement under Regulation 29 (5) of Pension Regulation, 1995. The respondent bank cannot act arbitrarily by denying them additional 5 years notional service to the actual service rendered by them for the purposes of their pension and other pensionary benefits.,

6. Counter affidavit has been filed by the respondent bank under Canara Bank Employees Pension Regulation, 1995. In the counter-affidavit, it has been stated that under Canara Bank (Employees) Special Voluntary Retirement Scheme, all permanent employees of the bank, i.e. officers and workmen completing 15 years of service or 40 years of age on 1.1.2001, could have opted for voluntary retirement. The employees were eligible to voluntary retirement under the scheme before attaining the age of superannuation under this S.R.V.S., 2000. The Canara Bank (Employees) Pension Regulation, 1995, was there under which the officers and workmen (employees) of the bank had option either to be governed by the Pension Regulation, 1995 or to ought (sic-opt?) for contributory provident fund and gratuity. Employees who opted for pension were governed by the Pension Regulation, 1995. This regulation did not have provision enabling the payment of pension of employees who retired before the age of superannuation except Regulation 29 which dealt with voluntary retirement. Under Regulation 29, 20 years of service was essential for opting voluntary retirement. Under the SVRS, 2000, only on completion of 15 years of service, the employees were entitled for benefit of pension under Canara Bank (Employees) Pension Regulation 28. The voluntary retirement under SVRS, 2000 following under Regulation 28 is distinct and different from voluntary retirement under 29 pension regulation. It has also been stated that circular 235/2000 dated 11.12.2000 was already circulated among the employees with a view to bring to the notice of the employees that Regulation 28 of the Pension Regulation is proposed to be amended. Respondent bank again issued circular bearing No. 237/2000 dated 15.12.2000 which was also circulated among the employees. The employees were given notice of the proposed amendment vide Circular No. 237/2000, much before the SVRS, 2000 came into operation and was notified. In circular 237/ 2000 information of the proposed amendent being taken for amending Regulation 28 of the Canara, was widely circulated among the Bank Employees. In view of the proposed amendment of Regulation 28 of Pension Regulations, Clause 63(A) of SVRS, 2000 was modified. Circular 237/2000 shows that employees were informed that the following provision is going to be added to Regulation 28 of the Canara Bank Employees Pension Regulation, 1995. It is provided that pension shall also be granted to an employee who opted before attaining the superannuation having served for 15 years in terms of any scheme, that may be framed for the purpose of the bank with the concurrence of the Government. The above two circulars clarified that employees who opted for voluntary retirement under SVRS, 2000 will be entitled to pension only as per Regulation 28 of Canara Bank Employees Pension Regulation, 1995. Regulation 29 has no application to the employees who opted for retirement under SVRS,

2000. This was made clear in last paragraph of circular 237/2000 where it is specifically clarified in the said circular that if the employees opt for retirement under Canara Bank Employees Special Voluntary Retirement Scheme, 2000 they will not be getting the benefit of additional 5 years notional service to the actual service rendered. In the given circumstance, employees could have chosen to refrain to opt voluntary retirement under the scheme. There was no compulsion on any employee to opt for voluntary retirement scheme. If the petitioners wanted the benefit of additional 5 years notional service to the actual service rendered, they could have opted for voluntary retirement under Regulation 29 of Pension Regulation. Petitioners cannot take benefits both under Regulations 28 and 29 of the Pension Regulation. Several employees who earlier submitted application for voluntary retirement under SVRS, 2000, withdrew their application in consequence of circular No. 237/2000 as the conditions mentioned in the circular was not acceptable to them. If the pension payable under Regulation 28 was not acceptable to the petitioners considering the fact that they were aware before exercising option for voluntary retirement under Regulation 28, they ought to have taken decision not to get relief under the said scheme. It was open for them to withdraw their application. They have accepted the voluntary retirement under the said scheme with all benefits attached to it. Now, they cannot agitate before this court on one or other ground against the scheme.

7. Counsel for the petitioners have filed rejoinder to the counter-affidavit filed on behalf of the respondents No. 1 to 4. It has been submitted by the petitioners'' counsel that the respondent-bank in the garb of amendment of Regulation 28 of Canara Bank (Employees) Pension Regulation, 1995, has taken away the notional weightage of 5 years of service as provided under Regulation 29(5) without amending Regulation 29(5) of Canara Bank Employees Pension Regulation, 1995. This has been done by the bank unilaterally without any notice to the petitioners and the benefit of 5 years notional service have been denied without any opportunity to the persons like petitioners who were going to be adversely affected by such decision of the bank. This is against the principles of natural justice. The Board of Directors of Canara Bank in exercise of powers conferred by clause F of sub-section 2 of Section 19 of Banking Companies (Acquisition & Transfer of Undertaking) Act,1970 after consultation with the Reserve Bank of India and with the approval of Govt, sanctioned the benefits under Canara Bank (Employees) Pension Regulation, 1995 with effect from 29.9.95. This benefit cannot be withdrawn by bringing a Circular.

8. Under Canara Bank (Employees) Pension Regulation, 1995, there are different classes of pension, namely, superannuation pension, pension on voluntary retirement, invalid pension, compassionate allowance, compulsory retirement pension and family pension. Voluntary retirement is provided under Regulation 29 which is applicable to all persons including such persons who opted for package offered under Special Voluntary Retirement Scheme, 2000. The Special Voluntary Retirement Scheme, 2000 was a package scheme offered to the employees of the bank under the 1995 rules. Only regulation 29 governs the

payment of pension to all those who went on voluntary retirement. Regulation 29 can at best be said to be applicable to persons who have completed 20 years of service when they opted for voluntary retirement under S.R.V. Scheme, the Regulation 28 as amended has no application in the case of petitioners. The statement made in the counter-affidavit that Regulation 28 as amended is applicable to the petitioners is wholly misconceived and fit to be rejected.

9. Petitioners have also placed reliance on a decision of Madras High Court reported in Labour Law Journal, 2004(1) page 304, whereby in a similar case, it has been held that "pension payable to employees opting for voluntary retirement scheme, Regulation 29 of Indian Bank (Employees) Pension Regulation, 1995, would apply, under which benefit of five years'', weightage for pension was given.

10. Submissions made on behalf of the petitioners that Special Voluntary Retirement Scheme was also in terms of Canara Bank (Employees) Pension Regulation, 1995 and they cannot be denied benefit accruing under Regulation, 29(5), has been denied by the respondent-bank. It has been stated that S.V.R.S., 2000 formulated by the bank is an independent, exclusive, one time measure introduced by the bank to optimise its manpower strength to achieve maximum productivity. Regulation 29 is applicable only to voluntary retirement under Regulation in normal circumstances, and not to the Special Scheme of V.R.S.

11. Considering the submissions and going through the Regulation 29, the interpretation by the respondent-bank, cannot be approved. This court is of the view that Regulation 29 is applicable to all employees, including the employees who opted for Special Voluntary Retirement Scheme, 2000. This fact cannot be overlooked that S.V.R.S., 2000 was introduced as an incentive to the employees. Certain concessions were also given under this scheme and compensation was also allowed. Under this scheme, benefits which were allowed to the employees for which they could not have been entitled in normal circumstances. Several employees opted for this scheme, being tempted by the benefits allowed, hence one thing is very clear that schemes of package which were introduced would not have been altered unilaterally. The conditions which were there in Circular 235/ 2000, on the basis of which petitioners'' option for voluntary retirement scheme has been accepted, that circulation, there is nothing to show that Rule 29(5) of Employees Pension Regulation will not be applicable in case, employees accepts the offer under the scheme. This has been done unilaterally by issuing Circular No. 237/ 2000 without notifying objectives or giving opportunities to the beneficiaries, i.e. employees.

12. Further, the proposed amendment contained in Circular No. 237/2000 is to Regulation 28, which refers to superannuation pension. By this amendment, a proviso has been added to Regulation 28. It has rightly been pointed out that the proviso cannot control the main section and cannot go beyond the main section. Proviso to Regulation 28, at best can be made applicable to such employees who have superannuated. So far the petitioners are concerned, they have not

superannuated rather they have opted for voluntary retirement scheme. There is no provision for voluntary retirement under Rule 28. As such, amended proviso under Rule 28 has no application in the case of petitioners. In given situation, petitioners'' case will come under Regulation 29, which governs the cases of such employees who opted for voluntary retirement. Once Regulation 29 comes into claim, petitioners cannot be debarred from getting benefit under subsection 5 of Regulation 29. Accordingly, it is held that last para of Circular No. 237/2000 will not govern the case of the petitioners. Petitioners will be entitled for the benefit of weightage of 5 years service as provided under Regulation 29(5). Respondents will pay the entire arrears of difference of pension of petitioners with six per cent interest thereof.