

(2012) 10 SC CK 0067

In the Supreme Court Of India

Case No : Civil Appeal No's. 7188-7191 of 2012 (Arising out of SLP (Civil) No's. 30983-30986 of 2008) , Civil Appeal No's. 7185-7186 of 2012 (Arising out of SLP (C) No's. 30975-30977 of 2008) , Civil Appeal No's. 7192-7193 of 2012 (Arising out of SLP (C) No's

M.R. Prabhakar and Others

APPELLANT

Vs

Canara Bank and Others

RESPONDENT

Date of Decision : 03-10-2012

Acts Referred:

Constitution of India, 1950 — Article 14
Industrial Disputes (Central) Rules, 1957 — Rule 58
Industrial Disputes Act, 1947 — Section 18(1), 2
Banking Companies (Acquisition and Transfer of Undertakings) Act, 1

Citation : (2013) 1 ABR 66 : (2013) 1 AWC 204 : (2012) 135 FLR 694 : (2012) 10 JT 178 : (2013) 1 MhLj 565 : (2012) 7 MLJ 384 : (2013) MPLJ 242 : (2012) 9 SCALE 727 : (2012) 9 SCC 671 : (2012) 3 SLJ 454

Hon'ble Judges : K.S. Panicker Radhakrishnan, J;Dipak Misra, J

Bench : Division Bench

Advocate : A.B. Dial, V.K. Rao, Raju Ramchandran, Naveen R. Nath, Lalit Mohini Bhat, Darpan K.M., Amita Sharma, Sanjay Sharawat, Ananya, Rajiv Nanda, Ayusha Kumar, Madhu Sikri, Rajesh Kumar, Yashraj Deora, Prashant Narang, Sarv Mitter, for Mitter and Mitter Co., Ram Lal Roy, R.N. Keshwani and O.P. Gaggar, for the Appellant;

Final Decision : Allowed

Judgement

K.S. Panicker Radhakrishnan, J.—Leave granted.

2. We may, for the disposal of these appeals, deal with the facts in Civil Appeals arising out of SLP (C) Nos. 30983-30986 of 2008, since common questions arise for consideration in all these appeals.

3. We are, in these appeals, concerned with the legality of the claim for pension in lieu of Contributory Provident Fund (for short 'CPF') of some officers of the Canara Bank who had resigned and stood relieved from their respective posts

prior to 3.6.1993, i.e. prior to signing of the Statutory Settlement dated 29.10.1993 under the Industrial Disputes Act, 1947, the Joint Note dated 29.10.1993, followed by the Canara Bank Pension Regulations, 1995 (for short 'Regulations 1995'), which was notified in the Gazette of India on 29.9.1995.

4. The learned single Judge of the High Court held in favour of the Appellants but the Division Bench of the High Court held otherwise. Hence, these appeals.

5. We may, as already indicated, refer to the facts of the case in civil appeals arising out of SLP (C) Nos. 30983-30986 of 2008. The Appellants' date of appointment and their resignation are as under:

The above mentioned Appellants had submitted their resignations between 24.7.1986 and 3.6.1993 prior to the signing of the Statutory Settlement dated 29.10.1993 under the Industrial Disputes Act, 1947 and the Joint Note dated 29.10.1993, with regard to the introduction of 'pension' as a second retiral benefit in lieu of CPF. Appellants, placing reliance on the various provisions of Regulations 1995, submitted that the pension Regulations were introduced as an additional benefit to the serving and retired employees. It was pointed out that an employee who had resigned from the bank was not disentitled to pension except by operation of Regulation 22. If this Regulation was held operative against the Appellants, it would result in absurd consequences since by forfeiture of entire past service, such employees would not be entitled to any pensionary benefits including gratuity and provident fund. Further, it was pointed out that Regulation 22 admittedly never existed when the Appellants had submitted their resignation letters and, therefore, the said Regulation could not operate to disentitle the Appellants from any pensionary benefits. Further, it was also pointed out when Appellants had submitted their letters of resignation prior to 1.1.1993 the concept of 'voluntary retirement' did not exist under the Bank Officers Regulations, 1979 (for short 'Regulations 1979'). Regulation 1979, it was pointed out, neither defined the expression 'resignation' legally nor the expression 'voluntary retirement'. In other words, the concept of 'voluntary retirement' was required to be defined only because of the introduction of pension as a retiral benefit with effect from 29.9.1995.

6. Learned Counsel appearing for the Appellants submitted that, in the absence of legal definition of 'voluntary retirement' or in the absence of any legally prescribed consequence of 'resignation', it may be understood in the sense of 'voluntary retirement' of service. Further, it was also urged that the conceptual difference between 'resignation' and 'voluntary retirement' comes in only if it is made by legal prescription and not in the ordinary sense as perceived in the realm of appointment. Learned Counsel also pointed out that pension Regulations must be read and interpreted keeping in mind its intended object and cannot be applied to deprive those employees who left services honourably either on the grounds of superannuation, resignation or even pre-mature retirement. Considerable reliance was placed on a recent judgment of this Court in Sheelkumar Jain Vs. The New India Assurance Company Ltd. and Others, and

submitted that the principle laid down in that judgment would squarely be applicable to the facts of the present case. Further, it was also pointed out that the beneficial construction placed by this Court in *Madan Singh Shekhawat v. Union of India and Ors.* (1996) 6 SCC 459 is also applicable by way of extending the pensionary benefits to the Appellants.

7. Learned senior Counsel appearing for the Respondents banks submitted that the High Court had rightly denied the claim of pension to the Appellants who had resigned from their respective service before the settlement reached between All India Bank Officers Federation and Indian Bank Association (for short 'IBA') and that Regulations 1995 would not apply to the Appellants. Further, it was pointed out that the Appellants had resigned prior to 1.1.1993 and were not covered by the Statutory Settlement or the Joint Note dated 29.10.1993 and the Regulations 1995. It was pointed out that the reliance placed by the Appellants either on Regulation 29 or Regulation 22 in support of their contentions was completely misplaced since the Appellants were not covered by the scheme of pension introduced by the respective banks with effect from 1.11.1993. Learned Counsel appearing for the banks submitted that the judgment of this Court in *UCO Bank and Others Vs. Sanwar Mal*, squarely applies to the facts of the present case. In that case, the very same Regulation came up for interpretation and the identical reliefs sought for, which were rejected by the Court. Further, it was also pointed out that *Sheelkumar Jain's case* (supra) was interpreting an insurance scheme which is, not comparable with the Regulations 1995 applicable to the banks.

8. The Appellants, in these two main appeals were officers of the Canara Bank, who had resigned and stood relieved from their respective service between 24.7.1986 and 3.6.1993. IBA, representing 58 banks and their workmen had entered into a Memorandum of Settlement on 29.10.1993 u/s 2(p) and Section 18(1) of the Industrial Disputes Act, 1947 read with Rule 58 of the Industrial Disputes (Central) Rules, 1957. During the course of negotiations of service conditions of the workmen employees in February 1990, IBA agreed to introduce a pension scheme in banks for the workmen employees in lieu of employers' contribution to the provident fund. The pension scheme agreed to by IBA was to be broadly based on Central Government/Reserve Bank of India pattern, details of the scheme were worked out later. A Joint Note was also made with regard to the introduction of pension as a second retiral benefit in lieu of CPF. Clause (4) of the Joint Note reads as follows:

(iv) The Pension Scheme will also be extended to retired Officers' who retired on or after 1.1.1986. They will be entitled for monthly pension as well as commutation facility as from 1.1.1993. Those officers who avail of the Pension Scheme will be required to refund Bank's contribution to the Provident Fund with interest thereon drawn by them together with simple interest at 6% from the date of withdrawal of the Provident Fund to the date of refund.

9. In furtherance of the Statutory Settlement and Joint Note dated 29.10.1993, draft of the Pension Regulations was negotiated and settled. Clause 17(1), so far

as it is relevant for the present purpose, is extracted hereunder:

17(1) Notwithstanding anything contained in the Service Regulations/Service Rules an employee may be permitted to voluntarily retire after he has completed 20 years of qualifying service, after given three months' notice in writing to the competent authority.

10. Later, in exercise of the powers conferred by Clause (f) of Sub-section (2) of Section 19 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, the Board of Directors of the Canara bank, after consultation with the RBI and with the previous sanction of the Central Government, made the Regulations called Canara Bank (Employees') Pension Regulations, 1995. The same were made applicable to the employees'/officers and were notified in the Gazette of India on 29.9.1995. Chapter II of the Regulations deals with the application and eligibility, the operative portion of Regulation 3(1)(a) to 3(1)(c) reads as under:

3. Application: 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 the 1st day of November, 1993; and

(b) exercise an option in writing within one hundred and twenty days from the notified date to become member of the Fund; and

(c) refund within sixty days after the expiry of the said period of one hundred and twenty days specified in Clause (b) the entire amount of the Bank's contribution to the Provident Fund including interest accrued thereon together with a further simple interest at the rate of six percent per annum on the said amount from the date of settlement of the Provident Fund account till the date of refund of the aforesaid amount to the Bank; or

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XXX XXX XXX

11. Regulation 22, which finds a place in Chapter IV of the Regulations, reads as follows:

22 Forfeiture of service -

(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;

(2) An interruption in the service of a Bank employee entails forfeiture of his past service, except in the following cases, namely:

(a) authorised leave of absence;

(b) suspension, where it is immediately followed by reinstatement, whether in

the same or a different post, or where the bank employee dies or is permitted to retire or is retired on attaining the age of compulsory retirement while under suspension;

(c) transfer to non-qualifying service in an establishment under the control of the Government or Bank if such transfer has been ordered by a competent authority in the public interest;

(d) joining time while on transfer from one post to another.

(3) Notwithstanding anything contained in Sub-Regulation (2), the appointing authority may, by order, commute retrospectively the periods of absence without leave as extraordinary leave.

(4) (a) In the absence of a specific indication to the contrary in the service record, an interruption between two spells of service rendered by a bank employee shall be treated as automatically condoned and the pre-interruption service treated as qualifying service;

(b) Nothing in Clause (a) shall apply to interruption caused by resignation, dismissal or Removal from the service or for participation in a strike:

Provided that before making an entry in the service record of the Bank employee regarding forfeiture of past service because of his participation in strike, an opportunity of representation may be given to such bank employees.

12. Classes of Pension are dealt with in Chapter V of the Regulations. Regulation 28 deals with superannuation pension and the same reads as follows:

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 Regulations or Settlement.

29 Pension on Voluntary Retirement -

(1) On or after the 1st day of November 1993, at any time after the an employee has completed twenty years of qualifying service he may, by giving notice of not less than three months in writing to the appointing authority, retire from service:

Provided that this sub - regulation shall not apply to an employee who is on deputation or on study leave abroad unless after having been transferred or having returned to India he has resumed charge of the post in India and has served for a period of not less than one year:

Provided further that this sub - regulation shall not apply to an employee who seeks retirement from service for being absorbed permanently in an autonomous body or public sector undertaking or company or institution or body, whether incorporated or not to which he is on deputation at the time of seeking voluntary retirement:

Provided that this sub - regulation shall not apply to an employee who is deemed

to have retired in accordance with Clause (1) of Regulation 2.

2. The notice of voluntary retirement given under sub - regulation (1) shall require acceptance by the appointing authority:

Provided that where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period.

3. (a) An employee referred to in sub Regulation (1) may make a request in writing to the writing to the appointing authority to accept notice of voluntary retirement of less than three months giving reasons therefore:

(b) On receipt of a request under Clause (a), the appointing authority may, subject to the provisions of sub - regulation (2), consider such request for the curtailment of the period of notice of three months on merits and if it is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, the appointing authority may relax the requirement of notice of three months on the condition that the employee shall not apply for commutation of a part of his pension before the expiry of the notice of three months.

4. An employee, who has elected to retire under this Regulation and has given necessary notice to that effect to the appointing authority, shall be precluded from withdrawing his notice except with the specific approval of such authority:

Provided that the request for such withdrawal shall be made before the intended date of his retirement.

5. The qualifying service of an employee retiring voluntarily under this Regulation shall be increased by a period not exceeding five years, subject to the condition that the total qualifying service rendered by such employee shall not in any case exceed thirty three years and it does not take him beyond the date of superannuation.

6. The pension of an employee retiring under this Regulation shall be based on the average emoluments as defined under Clause (d) of Regulation 2 of these Regulations and the increase not exceeding five years in his qualifying service, shall not entitle him any notional fixation of pay for the purpose of calculating his pension.

13. In order to appreciate the scope of the above mentioned Regulations, it is necessary to refer to some of the definition clauses. The word 'retire' is defined in Regulation 2(x) of the Regulations 1995, which reads as under:

2(x) "retired" includes deemed to have retired under Clause(I).

The word 'retirement' is defined under Regulation 2(y) of the Regulations 1995, which reads 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.

14. The Appellants, in our view, did not retire from the service, but resigned from the service. Appellants tried to build up a case that in the absence of a legal definition of 'voluntary retirement' or in the absence of legally prescribed consequences of 'resignation', it must be understood in the sense of voluntary relinquishment of service. It was pointed out that there can be no distinction between 'voluntary retirement' and 'resignation' and those expressions are to be understood in their ordinary literal sense.

15. We find it difficult to accept the contentions raised by the Appellants. There is no ambiguity in the definition clause under Regulation 2(y) which has statutorily brought in the 'voluntarily retirement' as 'retirement'. Though the concept of 'resignation' is well known in Service Jurisprudence, the same has not been brought within the definition of 'retirement' under Regulation 2(y). Further, the words 'retired' and 'retirement' have some resemblance in their meanings, but not 'resignation'. Regulation 3(1)(a) specifically used the expression 'retirement' and the expression 'resignation' has not been incorporated either in the definition clause or in Regulation 3(1) (a). We need not labour much on this issue, since the difference between these two concepts 'resignation' and 'retirement', in the context of the same Banking Regulations 1995, came up for consideration before this Court in *Sanwar Mal* (supra), wherein this Court has distinguished the words 'resignation' and 'retirement' and held as follows:

9. ... 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 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.....

(Emphasis added)

In the above mentioned judgment, this Court has also held that there are different yardsticks and criteria for submitting the resignation, vis-à-vis voluntary retirement and exceptions thereof. In that context, the scope of Regulation 22 of Regulations 1995 was also considered and the Court held as follows:

9. ... 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 and Another Vs. Cecil Dennis Solomon and Another, Before concluding we may state that Clause 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 criteria the scheme disentitles such category of employees out of it.

16. We may indicate that in Sanwar Mal (supra), the employee, who was working on Class III post, resigned from the service of UCO Bank on 25.2.1988 after giving one month's notice and also accepted his provident fund without protest. On coming into force of the Regulations 1995, Sanwar Mal opted for pension scheme. Since Sanwar Mal had resigned in the year 1988, UCO Bank declined its option for admitting him as a member of the fund.

17. This Court, as already indicated, after referring to the various provisions of the Regulations 1995 and after examining the meaning of the expressions 'resignation' and 'retirement', held that since Regulation 22 provided for disqualification of employees who had resigned, such employees could not claim membership of the fund.

18. Learned Counsel appearing for the Appellants have placed heavy reliance on Sheelkumar Jain (supra) and submitted that in the light of that judgment, the decision rendered in Sanwar Mal (supra) requires reconsideration. We find it difficult to accept the contention raised by the Learned Counsel appearing for the Appellants.

19. We may point out in Sheelkumar Jain (supra) that this Court was dealing with an insurance scheme and not the pension scheme, which is applicable in the banking sector. The provisions of both the scheme and the Regulation are not *pari materia*. In Sheelkumar Jain case (supra), while referring to Para 5, this Court came to the conclusion that the same does not make distinction between 'resignation' and 'voluntary retirement' and it only provides that an employee who wants to leave or discontinue his service amounts to 'resignation' or 'voluntary retirement'. Whereas, Regulation 20(2) of the Canara Bank (Officers) Service Regulations 1979 applicable to banks, had specifically referred to the words 'resignation', unlike Para 5 of the Insurance Rules. Further, it is also to be noted that, in that judgment, this Court in Para 30 held that the Court will have to construe the statutory provisions in each case to find out whether the termination of service of an employee was a termination by way of resignation or a termination by way of voluntary retirement.

20. The Appellants, when tendered their letters of resignation, were governed by the Regulations 1979. Regulation 20(2) of Regulations 1979 dealt with resignation from service and they tendered their resignation in the light of that provision. We are of the view that the Appellants have failed to show any pre-existing rights in their favour either in the Statutory Settlement/Joint Note dated 29.10.1993 or under the Regulations 1995. Appellants had resigned from service prior to 1.11.1993 and, therefore, were not covered by the statutory settlement, Joint Note dated 29.10.1993 and the Regulations 1995. They could not establish any pre-existing legal, statutory or fundamental rights in their favour to claim the benefit of Regulations 1995. Consequently, the reliance placed by the Appellants either on Regulation 29 or Regulation 22 in support of their contentions, cannot be accepted, since they are not covered by the scheme of pension introduced by the banks with effect from 1.11.1993.

21. We, therefore, find no merit in these appeals and the same are dismissed, with no order as to costs.