(2002) 04 KAR CK 0011

In the Karnataka High Court

Case No : Writ Petition No. 40754 of 2001

M.S. Srinivasan APPELLANT

Vs

State Bank of Mysore RESPONDENT

Date of Decision : 15-04-2002

Acts Referred:

Citation : (2003) 96 FLR 878 : (2002) ILR (Kar) 2862 : (2003) 4 KarLJ 520 : (2002) 3 KCCR 187 SN : (2002) 3 LLJ 217

Hon'ble Judges : H.L. Dattu, J

Bench : Single Bench

Advocate : Prasanna, for P.S. Rajagopal, for the Appellant; S.V. Narasimhan, for the Respondent

Final Decision : Partly Allowed

Judgement

H.L. Dattu, J.—Though the matter is listed for preliminary hearing in ''B'' Group, by consent of the learned Counsels appearing for the parties to the lis, it is taken up for final hearing.

2. Rule nisi.

3. Heard the learned Counsels appearing for the parties to the lis.

4. Petitioner was working as an officer in the Middle Management Grade Scale-II (MMGS-II) in the services of the respondent-State Bank of Mysore (''the Bank'', for short).

5. The Bank has introduced a beneficial scheme for its employee officers to exercise their option to retire from service voluntarily if they so desire. The scheme is known as "State Bank of Mysore Voluntary Retirement Scheme". Under the scheme, any employee officer could file an application before the Bank seeking permission to retire from the services of the Bank voluntarily. It is in the discretion of the Bank either to accept the request made by the officer concerned in the application or to reject the same.

6. Apart from others, the scheme provides for the eligibility criteria for filing the application, the period for which the scheme remains open, the withdrawal of the application under the scheme etc. The eligibility criteria provided under the scheme is as under:

"The scheme will be open to all permanent employees of the Bank, save those mentioned as "ineligible" specifically, who have put in a minimum of 15 years of service or have completed 40 years of age as on 31st January, 2001. Age will be reckoned on the basis of date of birth as entered in service record of the official".

7. The scheme also provides for certain categories of employees who are ineligible to opt for retirement from service voluntarily. The same reads as under:

"Ineligible employees under the scheme.--The following categories of employees are ineligible under the scheme:

(a) Staff members who have executed bonds and have not complied with the terms in full; staff members serving abroad under special arrangements/bonds;

(b) Employees against whom disciplinary proceedings are contemplated/pending or who are under suspension. This will also include employees against whom action has been initiated by Government agencies/other law enforcing agencies;

(c) Employees who are involved in false caste certificate cases, and against who proceedings are initiated/pending".

8. To take benefit under the aforesaid scheme, petitioner had filed an application before the Competent Authority of the respondent-Bank on 15-2-2001, inter alia requesting them to permit him to retire from the services of the Bank voluntarily under the scheme. This request of the petitioner is rejected by the respondent-Bank by their order dated 30-3-2001. The order made by the respondent-Bank reads as under:

"Your application for voluntary retirement under State Bank of Mysore Voluntary Retirement Scheme.--With reference to your application for voluntary retirement under ''State Bank of Mysore Voluntary Retirement Scheme'', we advise as un-de.

(a) Your request for retirement under the scheme has been rejected as you are ineligible as per the scheme vide para 02(B) of the annexure to Staff Circular No. 121 of 2000-01, dated 27-1-2001.

2. Please acknowledge".

9. At this stage it is relevant for me to notice certain other facts of the case also.

10. A charge-sheet had been issued against the petitioner for certain alleged omissions and commissions said to have been committed by him while discharging his functions as a Manager of the M.G. Road branch of the Bank for the period from 10-7-1996 to 3-7-1999. Explanation had been offered by the petitioner denying the allegations contained in the charge memo. The Disciplinary Authority of the respondent-Bank not being satisfied with the

defence and the explanation offered by the petitioner, had appointed an Enquiry Officer to enquire into the allegations contained in the charge memo. The Enquiry Officer after holding a detailed enquiry, has submitted his report and the findings thereon to the Disciplinary Authority on 27-3-2001. According to the Enquiry Officer, petitioner is not guilty of any one of the charges alleged against him in the charge memo. The date of the report of the Enquiry Officer has some relevance for deciding some of the issues canvassed by the petitioner in this petition.

11. The Disciplinary Authority of the respondent-Bank, for the reasons best known to him, has framed an order only on 26-7-2001 i.e., nearly after six months from the date of receipt of the report of the Enquiry Officer, concurring with the findings of the Enquiry Officer and in that, the Disciplinary Authority of the Bank has exonerated the petitioner of the charges alleged against him in the charge memo issued earlier and has dropped all further proceedings.

12. Petitioner, thereafter, has once again approached the Competent Authorities of the respondent-Bank, inter alia requesting them to reconsider his application dated 15-2-2001 which he had filed for permission to retire him from service voluntarily. The request so made is rejected by the authorities of the respondent-Bank by their order dated 8-8-2001. In that, they have stated as under:

"The order, in your case, has been passed by the Disciplinary Authority only on 26-7-2001. However, the State Bank of Mysore Voluntary Retirement Scheme closed on 31-3-2001 itself and you were not absolved of the charges before the scheme closed".

13. Aggrieved by the order made by the authorities of the respondent-Bank in rejecting the request made by the petitioner for permission to retire him from service voluntarily dated 30-3-2001 and the subsequent order made by the authorities of the respondent-Bank, dated 8-9-2001 in rejecting the request made by him for reconsideration of his application, petitioner is before this Court.

14. Sri Prasanna, learned Counsel appearing for the petitioner contends that since the Enquiry Officer in his report dated 27-3-2001 had exonerated the petitioner from the allegations made against him in the charge-sheet dated 22-9-2000, the respondent-Bank could not have rejected the request made by the petitioner in his application dated 15-2-2001 for permission to retire from service voluntarily under the scheme by their order dated 30-3-2001. Secondly, the learned Counsel would contend that the order made by the authorities of the respondent-Bank in rejecting the request made by the petitioner for reconsideration of his application for permission to retire from service voluntarily is not only improper but wholly arbitrary. Lastly, the learned Counsel would contend that the petitioner is entitled for the relief requested by him in his application dated 15-2-2001. Therefore, the learned Counsel requests this Court to issue appropriate directions to the authorities of the respondent-Bank.

15. Per contra, Sri S.V. Narasimhan, learned Counsel appearing for the

respondent-Bank has filed his detailed statement of objections resisting the relief sought for by the petitioner in this writ petition. The learned Counsel contends that since petitioner had initial disability, namely, since enquiry proceedings were pending against him, the authorities of the respondent-Bank were justified in rejecting the request of the petitioner for permission to retire him from service voluntarily. In support of that contention the learned Counsel invites my attention to the criteria prescribed by the Bank under the scheme dated 27-1-2001. Placing his fingers on Clause 2(b) of the scheme the learned Counsel would contend that since domestic enquiry proceedings were pending against the petitioner, the authorities of the respondent-Bank were justified and also right in rejecting the case of the petitioner for permission to retire him from service voluntarily under the scheme. The learned Counsel also invites my attention to the period of the scheme mentioned in the circular dated 27-1-2001. In the said circular it is stated that the scheme will remain open from 14-2-2001 to 28-2-2001 with an option to the Bank to close it early or to extend the same without issuing any reasons. It is further stated that the application for voluntary retirement from service under the scheme will be accepted during this period only.

16. Basing on the language employed in the aforesaid heading, the learned Counsel for the respondent-Bank would submit that since the scheme itself had come to an end on 28-2-2001, the authorities of the respondent-Bank are justified in rejecting the claim of the petitioner for reconsideration of his case for permission to retire from service voluntarily. The learned Counsel would contend that the order made by the Disciplinary Authority of the respondent-Bank would not date back to the date of filing of the application by the petitioner, namely, 15-2-2001. Therefore, the learned Counsel submits that the direction sought for by the petitioner to direct the authorities of the respondent-Bank to reconsider his application dated 15-2-2001 seeking permission to retire from service voluntarily requires to be rejected.

17. The issues that require to be considered and decided by this Court are:

I. Whether the authorities of the respondent-Bank were justified in rejecting the application filed by the petitioner for permission to retire him from service voluntarily under the scheme?

II. Whether the respondents were justified in rejecting the request of the petitioner for reconsideration of his application for permission to retire from service voluntarily?

18. Facts are not in dispute. Petitioner, an officer of the respondent-Bank, in order to take benefit under the scheme had filed his application dated 15-2-2001 before the respondent-Bank. On the date of filing of his application, there was a domestic enquiry proceeding pending against the petitioner by the authorities of the respondent-Bank by issuing an appropriate charge memo. The Enquiry Officer who was appointed by the Disciplinary Authority of the respondent-Bank

to enquire into the allegations contained in the charge memo had given his findings on 27-3-2001 itself stating that the petitioner is not guilty of any one of the charges alleged against him in the charge memo. The application filed by the petitioner for permission to retire from service voluntarily is rejected by the authorities of the respondent-Bank on 30-3-2001. Sri Prasanna, learned Counsel appearing for the petitioner contends that since the Enquiry Officer had exonerated the petitioner from the charges alleged against him in the charge memo on 27-3-2001, the authorities of the respondent-Bank could not have rejected the application filed by the petitioner for permission to retire him from service voluntarily on the ground that domestic enquiry proceedings are pending against him. In my opinion, this submission of the learned Counsel for petitioner has no merit whatsoever. The initiation of domestic enquiry proceedings would commence from the date of issuance of charge memo and its service on the delinquent officer. The same would come to an end only after appropriate orders are made by the Disciplinary Authority. In the instant case, the Disciplinary Authority has passed an order accepting the findings of the Enquiry Officer and exonerating the petitioner of the charges alleged against him in the charge memo only on 26-7-2001. The scheme provides for both eligibility and ineligibility criteria of employees, who can opt for retirement from service voluntarily under the scheme. The scheme is open to all the permanent employees of the Bank, who have put in a minimum of 15 years of service or have completed 40 years of age as on 31st January, 2001, except those employees, who fall under the categories of employees, who are ineligible under the scheme. One such category is such of those employees against whom the disciplinary proceedings are contemplated or pending. The request of the petitioner made in his application dated 15-2-2001 for permission to retire from service voluntarily under the scheme was considered and rejected by the authority of the Bank on 30-3-2001 i.e., when disciplinary proceedings was still pending against the petitioner. Therefore, as on the date of consideration of his application, petitioner was suffering from initial disability criteria prescribed under the scheme. However, learned Counsel for petitioner Sri Prasanna submits that since the Enquiry Officer had found petitioner not guilty of any of the offences alleged in the charge memo as early as 27-3-2001, the respondent authority could not have rejected the request made by the petitioner. There is fallacy in the submission made by the learned Counsel for petitioner. The disciplinary proceedings would only come to an end only when the Disciplinary Authority after considering the findings of the Enquiry Officer passes an order based on the findings of the Enquiry Officer one way or the other. Merely because the Enquiry Officer in his report had stated that the delinquent officer is not guilty of the charges, it does not mean, he is exonerated of the charges alleged in the charge memo, for the reason, it is not necessary for the Disciplinary Authority to accept the findings of the Enquiry Officer. He may differ with the findings if they are defective or if the procedure followed during the enquiry proceedings is in violation of statutory provisions or in violation of principles of natural justice. In such instances, he may order for fresh or de novo or further enquiry or he may even differ with the findings of the Enquiry Officer and may come to his own conclusion on the basis of evidence both oral and documentary evidence available on record, after due notice to the petitioner. Therefore, effective date of conclusion of the domestic enquiry proceedings would be the date when the Disciplinary Authority frames an order either exonerating or imposing a punishment on the delinquent officer or dropping the entire enquiry proceedings. In that view of the matter, I cannot take exception to the orders made by the authorities of the Bank in rejecting the petitioner''s request by their order dated 30-3-2001.

19. The other question that requires to be considered and decided by this Court is whether the authorities of the respondent-Bank were justified in rejecting the request of the petitioner for reconsideration of his application, for retirement from service voluntarily. Sri Narasimhan, learned Counsel for respondent-Bank would contend that in view of Clause 3 of the scheme providing for the period of the scheme, the authorities of the respondent-Bank are justified in rejecting the request of the petitioner for reconsideration of his application. According to the learned Counsel, if an officer is suffering from ineligibility criteria between the periods from 14-2-2001 to 28-2-2001, he is not entitled to the benefit under the scheme. In support of that statement, the learned Counsel invites my attention to the observations made by the Apex Court.

20. That was a case where the Apex Court had to consider and decide whether the eligibility and the qualification prescribed should be taken as on the last date of the application or is the qualification acquired at the time of commencement of selection and appointment process. The Supreme Court, after detailed analysis of the lis between the parties and the question of law involved, was pleased to declare that the qualification and the eligibility criteria requires to be taken note of as on the last date of filing of the application and not while considering the application for selection and appointment.

21. Keeping in view the aforesaid decision, Sri Narasimhan, learned Counsel appearing for the respondent-Bank submits that the last date that requires to be taken into consideration to find out whether petitioner is eligible for reconsideration of his application for permission to retire from service voluntarily is 28-2-2001. But, as I have already stated, the Disciplinary Authority of the respondent-Bank has exonerated the petitioner from the charges alleged against him in the charge memo by accepting the findings of the Enquiry Officer by his order dated 26-7-2001. On that day, petitioner did not have any disqualification for reconsideration of his application for permission to retire from service voluntarily. But, the question is ''whether he is entitled for reconsideration of his application under the scheme'' which, according to the learned Counsel Sri Narasimhan, has come to an end on 28-2-2001 itself.

22. To test the correctness or otherwise of the submission made by the learned Counsel for respondent-Bank, I posed a question to the learned Counsel whether, if an officer commits a grave irregularity amounting to misconduct after the last

date of filing of the application and before considering the same by the Competent Authority of the respondent-Bank, whether the Bank would permit him to retire from the services voluntarily. The learned Counsel has no proper answer for this query of the Court. In my opinion, if for some reason, an officer has committed misconduct after the last date of filing of the application and before the consideration of the application by the Competent Authority, the Competent Authority cannot permit the officer concerned to retire from service voluntarily. Otherwise, the officer who commits a grave irregularity which amounts to a misconduct after the last date for filing of the application and before consideration of the same by the Competent Authority of the respondent-Bank would go scot-free without even facing an enquiry. In that view of the matter, the submission made by the learned Counsel for respondent-Bank cannot be accepted by this Court.

23. In the instant case, the Disciplinary Authority of the respondent-Bank by his order dated 26-7-2001 has accepted the findings of the Enquiry Officer and has exonerated the petitioner of the allegations made against him in the charge memo. Thereafter, petitioner has filed an application for reconsideration of his case by the Competent Authorities of the respondent-Bank for permission to retire from service voluntarily. In my opinion, the Competent Authorities of the respondent-Bank should have considered that application instead of rejecting the same on the ground that the scheme has come to an end on 28-2-2001 itself. I would further add the scheme only says the last date for filing of the application but, it does not say the last date for consideration of such application. In view of that, the order made by the respondent-Bank dated 8-9-2001 requires to be annulled by this Court.

24. In the result, petition is allowed in part. Rule made absolute to that extent only. A direction is issued to the authorities of the respondent-Bank to reconsider the application filed by the petitioner dated 15-2-2001 for permission to retire from service voluntarily keeping in view the order made by the Disciplinary Authority of the respondent-Bank dated 26-7-2001 and also the clauses contained in the scheme, as expeditiously as possible at any rate within four months from the date of receipt of a copy of this Court''s order. In the facts and circumstances of the case, parties are directed to bear their own costs. Ordered accordingly.

