(2007) 05 AHC CK 0106

In the Allahabad High Court

Mukund Lal Tripathi	APPELLANT
Vs	
Banda District Co-operative Bank Ltd. and General Manager, Banda District Co-operative Bank Ltd.	RESPONDENT

Date of Decision : 08-05-2007

Acts Referred:

Citation : (2007) 05 AHC CK 0106

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

Bench : Division Bench

Final Decision : Dismissed

Judgement

Anjani Kumar and Sudhir Agarwal, JJ.—The petitioner has approached this Court consequent upon receiving a caveat notice dated 28.5.2004 sent by respondent No. 1. He has further sought a writ of mandamus commanding the respondents to permit him to continue in service till 31.7.2006, i.e., till he attains the age of 60 years and to give all consequential benefits accruing thereon.

2. The facts in brief as stated in the writ petition are that the petitioner was working as Branch Manager in the Head office of Banda District Co-operative Bank, Banda. Initially, he was appointed as Clerk on temporary basis in District Cooperative Bank (hereinafter referred to as "the Bank"), Branch Office Karvi, District Banda on 25.1.1972 and was confirmed on 16.5.1973. He was promoted as Branch Manager on 2.6.2003. A dispute arose between the employees of various District Cooperative Banks before the Industrial Tribunal wherein a settlement/agreement was entered into on 22.2.1966 (Annexure-6 to the writ petition) which stipulated that the age of superannuation of the Bank''s employees would be 60 years. The grievance of the petitioner is that the respondents are erroneously retiring him on 31.7.2004 on attaining the age of 58 years which is in contravention of the settlement dated 22.2.1966. It is also said that settlement was implemented and acted upon in respect to the petitioner. However, in 1975 U.P. Cooperative Societies Societies Employees Service Regulations, 1975 (hereinafter referred to as "1975 Regulations) were

promulgated and the petitioner has been retired under Regulation 24, ignoring proviso thereof which provides that the employees having contract prior to enforcement of 1975 Regulations shall continue beyond 58 years as per contract.

3. The respondents have filed counter affidavit stating that there was a settlement dated 12.12.1965 providing age of retirement of the employees of the Bank as 58 years. Further there was an industrial dispute raised by the U.P. Bank Employees Union which was referred for adjudication to Industrial Tribunal III Allahabad in Adjudication Case No. 53 of 1963 wherein 50 Cooperative Banks were parties, which involved the dispute with respect to age of retirement as well. The Bank in question was party in the said adjudication case. The learned Tribunal gave its award on 25.6.1971 which was published by the State Government on 17.7.1971. The said award is commonly known as "Joshi Award" wherein also the age of retirement of employees was held to be 58 years. In para 13 of the counter affidavit it is denied that there was any settlement arrived at between the Bank and the employees on 22.2.1966 providing age of retirement other than 58 years.

4. Sri H.R. Mishra, learned Counsel for the petitioner contended that in view of the averments made in the writ petition and Joshi Award, the petitioner was entitled to continue till he attains the age of 60 years. He also placed reliance on Division Bench judgments in Allahabad District Cooperative Bank Ltd. v. Lalji Srivastava (1994) 3 UPLBEC 1701 ; Ram Swarup Srivastava Vs. Allahabad District Cooperative Bank Limited and Branch Manager, Allahabad District Cooperative Bank, and a Single Judge judgment in writ petition No. 16365 of 2004, Sri Dhyan Chand Gupta v. District Cooperative Bank Ltd. and Anr., decided on 25.5.2005.

5. We have heard Sri H.R. Mishra, learned Counsel for the petitioner and Sri K.N.Misra appearing for respondents and perused the record.

6. It is not disputed between the parties that if there existed any contract executed between the petitioner and the respondent Bank prior to enforcement of 1975 Regulations, whereunder the petitioner is entitled to continue beyond 58 years of age, he would be entitled to avail the same and Regulation 24 of 1975 Regulations would not curtail his age of superannuation. It is also not disputed between the parties that in case there is no such contract and the matter is governed by Regulation 24 of 1975 Regulations, then the petitioner would not be entitled to continue beyond 58 years.

7. The controversy, therefore, has been narrowed down in this case as to whether the petitioner would be governed by the proviso to Regulation 24 of the 1975 Regulations or by the main provision or in other words, whether there existed any contract between the petitioner and the Bank entitling him to continue for the period beyond 58 years. Though the petitioner has asserted in the writ petition that there existed a settlement between the Bank and the employees prescribing age of retirement as 60 years but he could not show

existence of any such contract which may attract the proviso to Regulation 24. Therefore, he has rightly been retired at the age of 58 years. Learned Counsel for the petitioner tried to cover his case by alleged settlement dated 22.2.1966 but no such document executed by the Bank has been placed on record. On the contrary, the respondents have placed on record the settlement arrived at between the Bank employees'' Union and the Bank executed on 12.12.1965 as Annexure CA-3,providing age of retirement as 58 years which reads as under:

"Retirement"

1. Every employee shall be retired at the age of 58 years. Extension may be granted upto two years only in every special cases.

8. The aforesaid settlement has been signed by Sri Bhishm Deo Dube, Director on behalf of the Bank and Sri P.N. Tiwari, President, U.P. Bank Employees'' Union representing the employees. Moreover in Joshi award also the age of retirement was provided as 58 years. The petitioner though has filed rejoinder affidavit but except of bare denial of averments made in the counter affidavit and reiterating the facts stated in the writ petition, no material has been placed to contradict the aforesaid settlement dated 12.12.1965 and Joshi Award. In the absence of any agreement executed between the Bank and the petitioner the proviso to Regulation 24 would not come to his rescue and therefore, he would not be entitled to continue beyond 58 years.

9. We have also found that the alleged settlement dated 22.2.1966 (Annexure 6 to the writ petition) was executed between Allahabad District Cooperative Bank Ltd., Allahabad and U.P. Bank Employees Union (Central Office) Lucknow. Banda District Cooperative Bank or its employees were not party to the said settlement; and despite repeated query made by us, learned Counsel for the petitioner could not show as to how the settlement of Allahabad District Cooperative Bank would help the petitioner who is admittedly an employee of Banda District Cooperative Bank which is an independent and separate cooperative society. Therefore, reliance placed on Annexure 6 to the writ petition is totally misplaced and misleading.

10. 1975 Regulations came up for consideration before the Apex Court in Virendra Pal Singh and Ors. v. The District Assistant Registrar, Cooperative Societies, Etah and Anr. 1980 UPLBEC 202 and with respect to the age of retirement qua Regulation 24 of 1975 Regulations, the Apex Court observed that if an employee before enforcement of 1975 Regulations had entered into any contract with the Society whereunder he is entitled to continue beyond 58 years, the Regulation 24, providing the age of retirement as 58 years shall not apply in his case and in the matter of age of retirement, he shall be governed by the contract. In para 14 of the judgment, the Apex Court held:

14. Another question which was raised was that though the age of retirement of employees of some of the Cooperative Societies was originally 60 years under the U.P. Cooperative Societies Employees Service Regulations, the age of

retirement has now been made 58 years. We are unable to see any force in this submission. Regulation 24(ii) itself provides that if before the coming into operation of the Regulations, the Society had entered into any contract with an employee on the date of his employment whereby he was entitled to continue beyond 58 years. The Rule of retirement at the age of 58 years shall not apply and the age of retirement shall be governed by the contract. Therefore, if in any case there is a contract between a Cooperative Society and an employee entered into before the Regulations came into force, stipulating the age of retirement as 60 years the Regulation now stipulating the age of retirement as 58 years will not apply to him. We make it clear that this principle does not apply to the members of the Centralised service....

11. Coming to the judgments relied by learned Counsel for the petitioner, we find that the facts of those cases were totally different and have no application to the facts of the case in hand. In Lalji Srivastava (supra) which was a case of Allahabad District Cooperative Bank, Allahabad, it was the admitted position that there was a settlement dated 22.2.1966 reached between the Bank and the employees Union which provided age of retirement as 60 years. This is evident from para 3 of the judgment:

3. respondent was appointed on 18.5.1960 as a clerk in the Bank. On 22.2.1966 a settlement was reached between the Bank and its employees union of which the respondent was a member. In this settlement age of retirement was fixed at 60 years.

12. In view thereof this Court held that the employees appointed prior to enforcement of 197 5 Regulations and those governed by the Settlement dated 22.2.1966 would be entitled to continue till the age of 60 years and shall not be retired on attaining the age of 58 years in view of proviso to Regulation 24 of 1975 Regulations. Ram Swarup Srivastava (supra) was also a case arising from Allahabad District Cooperative Bank where existed a similar agreement as involved in Lalji Srivastava (supra). It is also worthy to notice that in Ram Swarup Srivastava (supra) there was another connected matter, i.e., Hari Narain Ojha v. Allahabad District Co-operative Bank Ltd. Allahabad Special Appeal No. 66 of 2003 but in that case it was found that he was appointed subsequently and was not governed by the settlement dated 22.2.1966 and in view of Joshi Award was liable to retire on attainment of 58 years and his appeal was dismissed by the Division Bench.

13. Similarly, in Dhyan Chand Gupta (supra) of Hon''ble Single Judge, we find that there was a settlement dated 6.5.1965 executed by Meerut District Cooperative Bank Meerut, providing age of retirement as 60 years and pursuant thereto he was held entitled to continue till the age of 60 years. Therefore, none of the aforesaid judgments are applicable or lend any support to the petitioner for the reason that in the case in hand there is no contract executed between the parties, providing a higher age of retirement in order to attract proviso to Regulation 24 of 1975 Regulations. We, therefore, do not find any force in the

contention advanced on behalf of the learned Counsel for the petitioner that he was entitled to continue till he attains 60 years of age.

14. The writ petition lacks merit and is accordingly, dismissed. No order as to costs.

