(1998) 07 DEL CK 0043

In the Delhi High Court

Case No : CW.No. 3209 of 1996

Narendra Kantilal Dave APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 24-07-1998

Acts Referred:

Citation : (1998) 6 AD 488 : (1998) 76 DLT 418 : (1998) 47 DRJ 644

Hon'ble Judges : K. Ramamoorthy, J

Bench : Single Bench

Advocate : Mr. Anil Mittal, for the Appellant; Ms. Barkha Babbar and Mr. Jagat Arora, for the Respondent

Judgement

K. Ramamoorthy, J.—The petitioner after having served for 26-1/2 years tendered the resignation on the 6th of July, 1992 and sought waiver of notice period. On the 5th of August, 1992 the resignation was accepted and w.e.f. that date there was a cessation of the jurial relationship ''master and servant'' between the Bank and the petitioner. In 1995, the respondent Bank framed Bank of India (Employees) Pension Regulations, 1995. Those regulations were given effect to from the 22nd of September, 1995. Regulation 14 of these regulations provides:-

"Qualifying Service:-

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.

2. Relying upon this, the petitioner had applied for payment of pension. According to him, his services came to an end on the 6th of July, 1992, i.e., after the first of January, 1986 and, Therefore, he is entitled to pension. What stands in the way of the petitioner is Regulation 22(1). Regulation 22(1) provides:-

"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 consequent shall not qualify for pensionary benefits;"

3. Mr.Anil Mittal, the learned counsel for the petitioner submitted that the word ''resignation'' found in this Regulation 22(1) has to be considered in the light of the other regulations relating to voluntary retirement, invalid pension and compensatory allowance, and he referred to Regulations 22, 29 and 31. The learned counsel for the petitioner, Mr.Anil Mittal, also referred to Regulation 14 which speaks of qualifying service of a minimum of ten years. The learned counsel for the petitioner challenges the employment of the word ''resignation'' in Regulation 22 as being discriminatory and unreasonable on the anvil of Articles 14 & 16 of the Constitution of India. The learned counsel submitted that the Bank is guilty of presenting discrimination between persons who voluntarily retire from service and who tender resignation, whereas in both the cases the employees go out of service and what is to be considered is the number of years of service rendered by the concerned employee. If in a given case an employee had rendered more than the qualifying service, whether there is voluntary retirement or resignation, that employee would be entitled to pension. Segregating from the ambit of the pension rules those employees who had tendered resignation after serving for a considerable length of time, serving more than qualifying service period, would be in violation, their rights under Article 14 of the Constitution of India. According to the learned counsel for the petitioner, Mr.Anil Mittal, the purpose of providing for pension is to reward for the past service rendered by the employee providing something in his old-age and that cannot be denied to an employee like the petitioner who had rendered 26-1/2 years of service.

4. The learned counsel for the petitioner, Mr.Anil Mittal, relied upon the judgment of this Court in "Sudarshan Kumar Vs. Delhi Transport Corporation & Another", 1994 (7) SLR 163.

5. That is a case with reference to an employee of Delhi Transport Corporation. The petitioner therein, who resigned from service, claimed pension. This Court noticed the important facts and provisions of the rules and regulations of the Delhi Transport Corporation. There was no provision for voluntary retirement. In paragraph 8 of the judgment, this Court noticed:-

"According to the petitioner there was no occasion for him to wait for an order of retirement being made because there was no such provision at the relevant time. The petitioner points out that in the case of the Government servant governed by Rules 48 and 48-A of the Rules he can always seek retirement on completion of 30 years qualifying service instead of resignation and thereafter have the benefit of the pension. When such a provision was not available in the year 1986 petitioner had no other option except to resign in view of his ill-health and in such a situation he cannot be treated differently from the persons who retired after tendering qualifying service. The denial of the benefit of the pension according to the petitioner is artificial and arbitrary since there cannot be any rational distinction between a person who resigned and a person who was retired after completing the qualifying service. In the absence of any assistance on the part of the respondent I assume that, in view of the Pension Scheme read with the letter Annexure 2 (dt.2.9.1993) S Rules governs the employees of the Respondent Corporation and if so, after the introduction of the scheme, an employee could be retired on completion of the qualifying years of service.

That makes all the difference.

6. Before regulations came into force in 1995, as per the rules and regulations of the Bank, a distinction was made between resignation and voluntary retirement. Resignation is an act of his own by an employee whereas voluntary retirement could be as per the regulations. Prior to the Regulations, 1995, Regulation 19 of the Bank provided that the employees who voluntary retire at the age of 55 or after putting 30 years of qualifying service are eligible for pension.

7. The petitioner resigned from service and it is common ground that the petitioner had not attained the age of 55 years, nor had he put in 30 years of service to come within the purview of voluntary retirement on the date of his resignation. The S Pension Rules have similar provision in Rule No.26 and that rule reads as under:-

"Forfeiture of Service on resignation

(1) Resignation from a service or a post, unless it is allowed to be withdrawn in the public interest by the appointing authority, entails forfeiture of past service.

(2) A resignation shall not entail forfeiture of past service if it has been submitted to take up, with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies.

(3) Interruption in service in a case falling under sub-rule (2), due to the two appointments being at different stations, not exceeding the joining time permissible under the rules of transfer, shall be covered by grant of leave of any kind due to the Government servant on the date of relief or by formal condensation to the extent in which the period is not covered by leave due to him.

(4) The appointing authority may permit a person to withdraw his resignation in the public interest on the following conditions, namely:-

(i) that the resignation was tendered by the Government servant for some compelling reasons which did not involve any reflection on his integrity, efficiency or conduct and the request for withdrawal of the resignation has been made as a result of a material change in the circumstances which originally compelled him to tender the resignation;

(ii) that during the period intervening between the date on which the resignation became effective and the date from which the request for withdrawal was made, the conduct of the person concerned was in no way improper;

(iii) that the period of absence from duty between the date on which the resignation became effective and the date on which the person is allowed to resume duty as a result of permission to withdraw the resignation is not more than ninety days;

(iv) that the post, which was vacated by the Government servant on the acceptance of his resignation or any other comparable post, is available.

(5) Request for withdrawal of a resignation shall not be accepted by the appointing authority where a Government servant resigns his service or post with a view to taking up an appointment in or under a private commercial company or in or under a corporation or company wholly or substantially owned or controlled by the Government or in or under a body controlled or financed by the Government.

(6) When an order is passed by the appointing authority allowing a person to withdraw his resignation and to resume duty, the order shall be deemed to include the condensation of interruption in service but the period of interruption shall not count as qualifying service.

(7) A resignation submitted for the purpose of Rule 37 shall not entail forfeiture of past service under the Government."

8. Rule 48 provides for retirement on completion of 30 years of qualifying service. Rule 48-A provides for retirement on completion of 20 years of qualifying service. Rule 48 B addition to qualifying service on voluntary retirement. Therefore, in service jurisprudence, the distinction between resignation and voluntary retirement, though brings about the same result, is recognised by the rules and regulations.

9. I am not able to accept the submission of Mr.Anil Mittal, the learned counsel for the petitioner, that the classification made by the bank is unreasonable. If after mentioning resignation further classification is made and distinction is maintained between several classes of persons coming within the purview of resignation, that one can understand. The class of persons who recognise is distinct and separate and such of those employees who of their own resign from service would not be entitled to pension. The grounds mentioned by Mr.Anil Mittal, the learned counsel for the petitioner, to challenge such a provision/ regulation appears to me not at all adequate to make the provision to come within the mischief of Article 14 of the Constitution.

10. In this view of the matter, I am of the view that the petitioner is not entitled to pension. Accordingly, the writ petition is dismissed.

11. There shall be no orders as to costs.

