
(2008) 10 AHC CK 0106
In the Allahabad High Court

Oriental Bank of Commerce and Others	APPELLANT
Vs	
Shiv Nath Singh	RESPONDENT

Date of Decision : 17-10-2008

Acts Referred:

Citation : (2008) 3 UPLBEC 2635

Hon'ble Judges : Sudhir Agarwal, J;S. Rafat Alam, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

Sudhir Agarwal, J.—Oriental Bank of Commerce (hereinafter referred to as the "Bank") through its Managing Director and others has come up in this intra-Court appeal under Chapter VIII Rule 5 of the Rules of the Court aggrieved by the judgement dated 27.02.2007 of Hon"ble Single Judge whereby the Hon"ble Single Judge has allowed the Writ Petition No. 35798 of 2001 of petitioner-respondent (hereinafter referred to as the "petitioner") quashing the order dated 09.08.2001 impugned in the writ petition and has directed the appellants to pay pension alongwith arrears to the petitioner within a period of two months from date of submission of certified copy of the order.

2. The facts in brief giving rise to the present dispute are as under. The petitioner was working as Security Guard at Ukhralsi Branch, Murad Nagar, District Ghaziaabad. Prior to his employment in the Bank, he had worked in Indian Military and after completion of about 22 years of service retired on 01.11.1983. By letter of appointment dated 04.11.1986 issued by the Assistant General Manager, Oriental Bank of Commerce, Meerut the petitioner was appointed as Armed Guard in the pay scale of Rs. 430-790. A copy of the appointment letter is Annexure-2 to the writ petition. The petitioner was engaged initially on probation of six months. As per the regulations of the Bank the petitioner"s service rendered in Army was not liable to be counted as qualifying service. The rules also provide that if a persons has rendered military service before his appointment in Bank, he would continue to draw military pension, if any.

3. The Bank promulgated a scheme known as "Oriental Bank of Commerce Employees Voluntary Retirement Scheme, 2000" (hereinafter referred to as "VRS 2000") circulated vide Bank's letter dated 10.11.2000. The petitioner sought for voluntary retirement under the aforesaid scheme which was accepted and allowed vide letter dated 15.01.2001 (Annexure-5 to the writ petition). The petitioner was accordingly paid ex-gratia salary, gratuity and leave encashment but no amount of pension was paid on the ground that he was not entitled for pension having not completed minimum 15 years of service in the Bank. The representation of the petitioner claiming pension was rejected by the Deputy General Manager, Regional Office, Ghaziabad vide order dated 09.08.2001, as communicated vide his letter dated 11.08.2001 by the Branch Manager of the Bank where the petitioner was working. Aggrieved, the petitioner filed Writ Petition No. 35798 of 2001 which has been allowed by learned Single Judge. Hence this appeal.

4. It is contended on behalf of appellant that pension could have been admissible to the petitioner only if he would have been entitled therefore under Oriental Bank of Commerce (Employees) Pension Regulations, 1995 (hereinafter referred to as the "1995 Regulations") as amended up to 26.01.2002 whereby the petitioner could have been entitled for pension only if he would have served the Bank for a minimum period of 15 years which did not include service rendered in the Army. It is said that since the petitioner was appointed in the Bank vide appointment letter dated 04.11.1986 and he was allowed voluntary retirement w.e.f. 15.01.2001, therefore, having worked for less than 15 years in Bank the petitioner was not entitled for pension. It is contended that the Hon'ble Single Judge has not appreciated the provisions of VRS 2000 as well as the relevant regulations providing for pension and, therefore, the impugned judgement under appeal is liable to be set aside.

5. Per contra, on behalf of petitioner-respondent the judgement of Hon'ble Single Judge sought to be supported for the reasons given by Hon'ble Single Judge in the judgement and reliance is also placed on a Division Bench decision of this Court in Assistant General Manager v. Radhey Shyam Pandey and Ors. 2007(1) ESC 387 in order to contend that the law laid down therein squarely applied in the case of the petitioner also since the provisions involved in both the matters are *pari materia*.

6. We have heard Sri P.N. Saxena, learned Senior Advocate assisted by Sri Krishna Mohan for the appellants, Sri Ashok Khare, learned Senior Advocate assisted by Sri Chandan Kumar, for the respondent and perused the record.

7. It is not in dispute that retiral benefits in the Bank would have been applicable to the petitioner in accordance with 1995 Regulations. We are informed that the said Regulations underwent a major amendment on 26.01.2002 whereby Regulation 28 was substituted. We propose to consider the effect and impart thereof later on. Firstly, let us examine 1995 Regulations as to how and in what manner they provide for retiral benefits and what is the eligibility thereunder. The

term "employee" is defined under Regulation 2(n) and reads as under:

2(n) "employee" means any person employed in the service of the Bank, whether as a workman on full time work on permanent basis or on part-time work on permanent basis on scale wages or as an officer and who opts and is governed by these regulations, but does not include a person employed either on contract basis or daily wage basis or on consolidated wages;

8. It is not disputed that petitioner is an employee as per the aforesaid definition having opted to be governed by the said regulations. The terms "date of retirement", "pension", "pensioner", "qualifying service", "retired", "retirement" and "settlement" are defined under Regulations 2(k), (t), (u), (w), (x), (y), & (zb) of the 1995 Regulations and read as under:

(k) "date of retirement" means the last date of the month in which an employee attains the age of superannuation or the date on which he is retired by the Bank or the date on which the employee voluntarily retires; or the date on which the officer is deemed to have retired;

(t) "pension" includes the basis pension and additional pension referred to in Chapter-VI of these regulations;

(u) "pensioner" means an employee eligible for pension under these regulations;

(w) "qualifying service" means the service rendered while on duty or otherwise which shall be taken into account for the purpose of pension under these regulations;

(x) "retired" includes deemed to have retired under Clause (1);

(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;

(zb) "settlement" means memorandum of settlement agreed between the management of the Bank represented by the association authorised by them and workmen of such Bank represented by trade unions authorised by them;

9. Chapter IV provides for qualifying service running from Regulations 14 to 27. Regulation 14 provides that and employee who has rendered a minimum of 10 years of service in the Bank on the date of retirement or the deemed retirement shall qualify for pension. Regulation 14 quoted as under:

14. 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.

10. The qualifying service under Regulation 14 commences from the date the employee takes charge of the post to which he is appointed on a permanent basis as provided under Regulation 15. Regulation 24 provides that the employee who has rendered military service before appointment shall continue to draw military pension, if any, and the service rendered in military shall not count as qualifying service for pension. For ready reference Regulation 24 is also reproduced as under:

24. Military Service

An employee who has rendered military service before appointment in the Bank shall continue to draw the military pension, if any, and military service rendered by the employee shall not count as qualifying service for pension.

11. Chapter V deals with various classes of pension. It contemplates the following kinds of pension:

- (a) Superannuation Pension (Regulation 28)
- (b) Pension on Voluntary Retirement (Regulation 29)
- (c) Invalid Pension (Regulation 30)
- (d) Compassionate Allowance (Regulation 31)
- (e) Premature Retirement Pension (Regulation 32)
- (f) Compulsory Retirement Pension (Regulation 33)

12. Superannuation Pension is admissible to an employee who has retired on his attaining the age of superannuation specified in the service regulation or settlement. Pension on Voluntary Retirement is admissible to a person who has completed 20 years of qualifying service and seeks retirement after giving a notice of not less than three months to the appointing authority. Invalid Pension, Compassionate Allowance and Compulsory Retirement Pension admittedly have no application to the case in hand, therefore, need not be discussed. Premature Retirement Pension is granted to the employee who has rendered minimum 10 years of service and retired from Bank prematurely in public interest or for any reasons specified in regulation or settlement. Regulation 32 is quoted as under:

32. Premature Retirement Pension

Premature Retirement Pension may be granted to an employee who,:

- (a) has rendered minimum ten years of service;
- (b) retires from service on account of orders of the Bank to retire prematurely in

the public interest or for any other reason specified in service regulations or settlement, if otherwise he was entitled to such pension on superannuation on that date.

13. Regulation 28 was substituted by Oriental Bank of Commerce (Employees") Pension (Amendment) Regulations, 2002 which was notified in the gazette on 26.01.2002. Substituted Regulation 28 reads as under:

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 Settlements.

Provided that, with effect from 1st September, 2000 pension shall also be granted to an employee who opts to retire before attaining the age of superannuation, but after rendering service for a minimum period of 15 years in terms of any Scheme that may be framed for such purpose by the Board with the approval of the Government.

14. The explanatory memorandum appended to the said amendment notification dated 26.01.2002 reads as under:

Explanatory Memorandum

Indian Banks" Association, after taking a no objection from the Government of India, circulated a model Voluntary Retirement Scheme (VRS) to all the Public Sector Banks on 31.08.2000. The Scheme, inter alia, provided that employees who have rendered 15 years" service are eligible for the Scheme. According to the existing provisions in the pension regulations, it is only employees who opt for voluntary retirement after completing 20 years of qualifying service and after giving notice of not less than 3 months in writing to the appointing authority, are eligible for pensionary benefits. The eligibility criteria and the benefits flowing out of the above provisions in the Pension Regulations are distinct and separate from that envisaged under VRS circulated on 31.08.2000. There are no provisions available in the Pension Regulations extending pensionary benefits to a member employee who retires before attaining the age of superannuation under such specific schemes. It has been, therefore, decided to provide the benefit of pro-rata pensionary benefits to members of Pension Fund who opt for voluntary retirement under specified scheme(s).

It is, therefore, necessary that the amendment may be made effective from 1st September, 2000 so that all employees who are members of the Pension Fund and have taken voluntary retirement under the scheme after completion of 15 years of service can draw the benefit of pension.

15. A perusal of the aforesaid would show that though Regulation 28 amended in 2002 has been made effective from 1.9.2000 providing qualifying service of 15 years for admissibility of pension under the Pension Regulation, but that is only

one kind of pension and does not exclude the scope of other kinds of pensions as noted above, which are also prescribed under the aforesaid Regulations and are admissible to the Bank employees in accordance with the terms and conditions provided therefor. The submission of the Bank that since the petitioner had not rendered 15 years of service in the Bank, therefore, he was not qualified for pension under Regulation 28 as amended in 2002 may be correct, but that would not exclude the applicability of other kind of pensions under the Regulations, if the petitioner fulfils the requirement of qualifying service etc. thereunder. This aspect of the matter as to whether the petitioner would be covered by any other provision of the Pension Regulation neither has been considered by the authorities while passing the order dated 9.8.2001, impugned in this writ petition, nor the Hon''ble Single Judge had any occasion to consider the same. The matter appears to have been contested before the Hon''ble Single Judge by the Bank mainly on the reasoning that the petitioner since is already getting pension from Army, therefore, would not be entitled for second pension from the Bank and that his army service was not accountable for determining qualifying service under Regulation 28 of the pension Regulations, therefore, he was not eligible for pension having not served the Bank for 15 years as required by Regulation 28 as amended in 2002.

16. The learned Counsel for the petitioner-respondent has placed reliance on a Division Bench judgment of this Court in which one of us (Hon''ble Sudhir Agarwal, J.) was also a member, i.e., Writ Petition No. 20796 of 2002 Kishan Swarup Sharma v. Allahabad Bank and Ors. decided on 16.5.2007, but we find that the said judgment has no application to the issue involved in this appeal inasmuch there was a case of exercise of option which was held to be wrongly rejected by the Bank. Therefore, the said judgment having no application to the facts and issues involved in this case does not help the petitioner-respondent.

17. So far as the first aspect of the matter whether the petitioner can be paid two pensions, we are in respectful agreement with the Hon''ble Single Judge that there being no restriction in payment of more than one pension by different employers to a person, the petitioner cannot be non suited in respect of his demand for pension from the Bank only on the ground that he was already getting pension from the Government in view of his service rendered in the Army. So far as the second aspect is concerned, there also we have no hesitation in coming to the conclusion that the Military service rendered by the petitioner was not accountable for determining qualifying service under Pension Regulations in view of specific provision contained in Regulation 24. However, whether the petitioner would have been entitled for a pension under the Regulations having rendered less than 15 years of service, we find that since the qualifying service in general under Regulation 14 to attract pension is only 10 years, the petitioner can claim pension under the Pension Regulations after rendering more than 10 years of service though having not rendered qualifying service as prescribed under Regulation 28 pre-2002 and post-2002 amendment and therefore not covered by Regulation 28, yet his claim is liable to be considered for grant of

pension of other kinds as enumerated in the Regulations, if he fulfils the requirement and eligibility conditions thereunder. In this regard, it would be useful to refer a Division bench Judgment of this Court in Assistant General Manager v. Radhey Shyam Pandey and Ors. 2007 (1) ESC 387 (All.), wherein considering the nature of voluntary retirement under the Scheme, this Court in para 24 of the judgment held as under:

24. In our opinion, the voluntary retirement under the scheme should not be equated to a retirement pursuant to clause 15 of the Pension Fund Rules. It might be that Clause 22 (i) (c) was made to cover pension aspects for Clause 15 retirements and Clause 22 (i)(a) was made to cover normal retirements, but voluntary retirement was a special contract made available for a special purpose and that too for a very small period of time which was practically one moment or just one short fleeting period during an employee's service career. For this scheme and this contract the pension rules did not apply as rules. The rules apply only as words in the contract. Therefore, if a contracting party is entitled to take benefit of a permissive clause, then that cannot be denied to him on the basis of a purpose if construction of a statutory rule. This type of purposive construction is far less, if at all, applied to contracts. Contracts are, generally speaking, strictly interpreted on the basis of the language agreed upon by the parties. The Court does not make out the parties, contract, they make their own contract.

18. The Court after examining the relevant Regulations of another Bank, namely, Bank of India concluded that for entitling the pension in that case, Rule 22 (i) (a) of Pension Fund Rules would be attracted.

19. In the present case, since the authorities as well as the Hon''ble Single Judge have not considered the matter from this angle, we find it appropriate not to record any finding on this aspect as to which other provision of the Pension Regulations may be attracted in the present case entitling the petitioner for pension, if any, and leave it open to be considered by the Bank in the light of the discussions made above.

20. In the result, while confirming the reasoning given by the Hon''ble Single Judge in the judgment impugned in this appeal in view of the above discussions, we find it appropriate to modify the ultimate direction issued by the Hon''ble Single Judge and, accordingly, dispose of this appeal directing the Bank to consider the claim of the petitioner-respondent for his entitlement for pension under the Regulations in the light of the above observations and if it is found that the petitioner fulfils the requisite conditions with respect to entitlement of pension of any other kind provided in the Regulations, a reasoned order in this regard shall be passed by the Bank and shall be communicated to the petitioner within a period of two months from the date of production of certified copy of this order. In case, it is found that the petitioner is entitled for a pension under the Regulations, arrears thereof shall be determined within a further period of one month thereafter and shall be paid to the petitioner besides current pension as

and when it becomes due within further period of two months thereafter.

21. There shall be no order as to cost.