
(2011) 07 MAD CK 0459
In the Madras High Court
Case No : Writ Petition No. 40885 of 2002

P. Shanmugam

APPELLANT

Vs

State Bank of India

RESPONDENT

Date of Decision : 26-07-2011

Acts Referred:

Constitution of India, 1950 — Article 12

State Bank of India Employees Pension Fund Rules, 1955 — Rule 22(1)

Citation : (2011) 07 MAD CK 0459

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Advocate : M. Ravi, for the Appellant; P. Sukumarin, for Respondents 1 to 3 in W.P. No. 5868/05 : Mr. K. Sankaran, for Respondent 3 in W.P. No. 40886 and 40887 of 2002 : No appearance, for the Respondent

Final Decision : Dismissed

Judgement

The Hon'ble Mr. Justice T. Raja

1. As the common question of law and facts are involved in all these writ petitions and the relief sought for also one and the same, common order is being passed.

2. There are four writ petitions filed by four petitioners seeking a common relief for issuance of writ of certiorarified mandamus to call for the records of the second respondent in CDO/PPG/GM/675 dated 24.9.2002 to issue a direction to the respondents herein to sanction and disburse to the petitioner pensionary benefits consequent on his retirement on the basis of State Bank of India's Voluntary Retirement Scheme dated 31.03.2001 with 18% interest p.a.

3. The petitioner P. Shanmugam who is an Ex-service man after serving the Indian Air Force for about 5 years till 01.01.1976 joined the service of the State Bank of India on 05.08.1982 as Clerk. Subsequently, in the year 2000, he was promoted as Senior Assistant with effect from 01.04.2000. From the date of

entry into service he has rendered unblemished service till his retirement on 31.03.2001 under "Voluntary Retirement Scheme".

4. While the petitioner was serving in the State Bank of India, the respondent Bank has floated "Voluntary Retirement Scheme" Dated 02.01.2001 specifically mentioning the eligibility criteria for getting the benefits of "V.R.S." The eligibility clause says that the scheme will be open to all permanent employees of the bank, except those mentioned specifically "ineligible" who have put in 15 years of service or have completed 40 years of age as on 31.12.2000. In the Circular No.Cir.D.O.VRS:1, dated 02.01.2001 it was also clearly mentioned the categories of employees who are ineligible under the scheme. Further, it was also mentioned in the said circular, what are the other benefits to which a person seeking the benefits of V.R.S. entitled to get are also categorized under five heads; viz., a, b, c, d, e. In addition to that, it was also mentioned the amount of ex-gratia benefits which is also payable to a person who opted to go on V.R.S. accepting the Circular dated 02.01.2001. All the four writ petitioners accepting the said Circular in to applied for "V.R.S." and finally, the respondent after accepting the request of all these four writ petitioners, allowed them to go on "V.R.S." on 31.03.2001.

5. At this juncture, the learned counsel for the petitioners placed the following three submissions:

In order to get the benefit of pension in terms of the State Bank of India's Employees Pension Fund Rules, when the respondent issued circular dated 02.01.2001 inviting the employees to go on V.R.S. stating that a person who is put in 15 years of service or completed 40 years of age as on 31.12.2000 is entitled to get the benefits mentioned in the Circular, all the petitioners applied for V.R.S. thinking that they are also entitled to get other benefits mentioned under paragraph 6 of the said circular. But after accepting the petitioners' applications, though the respondents have granted benefits like ex-gratia and other benefits mentioned under paragraph 6 of the circular, refused to grant the benefit of pension on the ground that the petitioners have not put in 20 years of service, since Rule 22(1) of the State Bank of India Employees Pension Fund Rules contemplates 20 years of service and 50 years of age. Aggrieved by the said order, the present writ petitions have been filed.

6. The learned counsel for the petitioners submitted that the approach of the respondent Bank in refusing to grant the benefit of pension to the petitioners is totally against on all canons of law, the reason being, the respondents even at the time of issuing first Circular dated 02.01.2001 calling upon the petitioners to apply for V.R.S. were not clear about clause (c) mentioned under paragraph 6 of the said Circular. Having realised that Clause (c) mentioned under paragraph 6 of the Circular is unclear, the respondents came forward by issuing yet another Circular dated 11.01.2001 clarifying the fact that payment of pension to the employees retiring under SBI V.R.S. would be governed by the State Bank of India Employees Pension Fund Rules on the relevant date including commuted

value of pension by making further clear that as per the existing rules, the employees who have not completed 20 years of pensionable service are not eligible for pension. Therefore, the petitioners, at the time of applying for V.R.S., were not aware of subsequent Circular dated 11.01.2001 issued by the respondent Bank, hence according to him, this Court should interpret the Scheme mentioned under the second Circular in favour of the petitioners and as against the respondent Bank. In support of his submission, he relied upon the judgment of the Apex Court for the proposition that by applying the principle of interpretation, this Court should liberally consider the terms of the first Circular and the benefit of interpretation should be put against the respondent Bank who subsequently, admittedly, issued second Circular dated 11.01.2001.

7. Further, the learned counsel for the petitioner also contended that as per Clause (c), the pension will be determined only in terms of the SBI Employees Pension Fund Rules as on relevant date. Therefore, they were under the impression that the pension would be calculated depending upon the number of years of service rendered by the petitioners in the respondent Bank. But, refusal of pension in to by applying Rule 22(1) on the ground that they have not put in 20 years of service is not legally justifiable. On these basis, the petitioners sought for setting aside the impugned proceedings.

8. Lengthening his submissions, he further submitted that the petitioners submitted their applications to consider the case of the petitioners for grant of pension, the said applications were not disposed of till date. Therefore, the question of delay cannot be put against the petitioners by approaching this Court in the year 2005. On all these grounds, the learned counsel for the petitioners sought to allow the writ petitions by setting aside the impugned proceedings.

9. Opposing the above said arguments, the learned counsel for the respondents Mr. K. Sankaran and Mr. Sukumar have placed the following submissions;

Firstly, it was submitted that as per the Circular dated 02.01.2001 issued by SBI Personnel & HRD., Chennai to all Officers/branches in Chennai circle, the respondents Bank informed the employees to exercise option of accepting the V.R.S. Immediately, thereafter, since some of the officers raised some queries and doubts with regard to Rule 22(1) of the SBI Employees Pension Fund Rules, the respondent thought fit to clarify all those doubts and accordingly, the second Circular dated 11.01.2001 was issued making things clear that the payment of pension to the employees retiring under SBI V.R.S. would be governed as per the existing SBI Employees Pension Fund Rules as on the relevant date. As per Rule 22(1), those employees who have not completed 20 years of service are not eligible for pension. When the second Circular was issued on 11.01.2001, the petitioners were well aware of not only the first Circular, but also the second Circular. Therefore, it is not open to the petitioners to state that they were unaware of the second Circular dated 11.01.2001 which finally settled the ambiguity left in the first Circular. Having received the second Circular well before the closing date for applying V.R.S, the petitioners cannot say that they were

unaware of the second Circular and had there been a proper notice about the second Circular to the petitioners, they would not have applied for V.R.S. to accept the benefits provided under the Circular dated 02.01.2001.

10. Further, he has also contended that unlike other nationalised banks, only in State Bank of India, three major benefits are given, they are P.F., gratuity and pension. Further, while meeting the arguments advanced by the learned counsel for the petitioners that when all other nationalised banks subsequently have given the benefit of pension to all those persons who have opted to go under V.R.S. even without completing 20 years of service, but the SBI alone has refused to extend the same benefit, he argued that any such decision taken by other Banks cannot be made applicable to the case of the SBI for the reason that what is applicable to the other nationalised banks per se need not be made applicable to the case of the SBI.

11. Furthering his reply, it was pleaded that though the petitioners made their applications seeking grant of pension, since there is no rule specifically enabling the respondents to dispose of such applications, the non disposal of such applications does not give raise to the petitioners to approach this Court admittedly after a period of five long years.

12. In support of his other submissions, he has also relied upon a few judgments of the Apex Court as well as Delhi High Court. Instead of referring all the judgments, it is relevant to mention herein only few of them; viz., Bank of India & another Vs K. Mohandas & others reported in (2009(2) CTC 759) for a proposition that principles of construction of contract will have to be ultimately accepted in the case of the petitioners. Since all these petitioners after accepting the first Circular dated 02.01.2001, had submitted their applications stating that they were prepared to accept the "V.R.S." and once the respondent allowed the petitioners to retire from service on 31.03.2001, in terms of the Circulars dated 02.01.2011 and 11.01.2001, the contract between the petitioners and respondents in terms of V.R.S has come to an end.

13. Heard the learned counsel appearing on either side and perused the materials available on record.

14. First of all, the pension benefit sought for by the petitioners in terms of Rule 22(1) of SBI Employees Pension Fund Rules cannot be accepted for the reason that Rule 22(1) contemplates two wider situations. Firstly, a person to get benefit of pension has to render 20 years of service. Secondly, he should have reached the age of 50 years at the time of his retirement. Since the petitioners have not complied with any one of the situations contemplated u/s 22(1) of the said Rules, the petitioners are not entitled to get the benefit of pension. Further, Rule 22(1) categorically and explicitly says that only persons who have completed 20 years of service alone are entitled to pension. Admittedly, the petitioners have put in less than 20 years of service. Therefore, terms and conditions mentioned in the first Circular dated 02.01.2001 is applicable to the petitioners and the same was

accepted by the petitioners. After retirement from the service of the respondent Bank on 31.03.2001, they cannot once again rack up the issue by filing the present writ petitions.

15. It is also pertinent to note that it is not the case of the petitioners that they were allowed to go on V.R.S. without any benefits being given to them. In terms of V.R.S., they were given ex-gratia benefit. Secondly, four more benefits provided under paragraph 6 of the Circular, were also given to the petitioners except pension which is normally given to those who have completed 20 years of service. Therefore, when the petitioners were provided with two benefits, viz., ex-gratia and other benefits mentioned under paragraph 6 of the Circular, the petitioners cannot complain that they were not provided with any other benefits.

16. Further, it is also relevant to note one more fact that the respondent Bank kept the scheme open from 15.01.2001 till 31.01.2001, inclusive of both days, with an option for the Bank to close early/extend the date without assigning any reason therefor. Again, it is also made clear that the applications, under the Scheme, will be accepted during the period the Scheme is open. Therefore, the aspirant, who wants to avail the VRS Scheme, can apply from 15.01.2001 till 31.01.2001. In the meanwhile, several queries and doubts were expressed by modules. In order to clarify certain doubts, the respondent Bank has issued second circular dated 11.01.2001, even before the scheme became operative. Therefore, the respondent Bank, through their second circular dated 11.01.2001, answered the present doubts raised in the present writ petitions stating clearly that the payment of pension to the employees retiring under SBIVRS would be governed by the State Bank of India Employees Pension Fund Rules on the relevant date. However, as per the existing rules, employees who have not completed 20 years of Pensionable Service, are not eligible for pension. When the second circular dated 11.01.2001 has put at rest once for all the doubts raised by several other persons, even on 11.01.2001, that is much before the VRS began to open for submitting application, the petitioners' claim for pension under Rule 22(1), is wholly unsustainable, for, to get the benefit of regular pension in terms of Rule 22(1), either one should have completed 20 years of pensionable service, or should have attained the age of 50 years in the respondent Bank. Therefore, in view of Rule 22(1), the petitioners' prayer cannot be legally accepted, since they have not completed 20 years of considerable service. Further, all these petitioners have retired from service in January, 2001, and in turn, the respondent Bank had also paid to the petitioners whatever was promised under the VRS Scheme in the year 2001 itself. Therefore, filing the writ petitions belatedly with a huge delay is liable to be dismissed on the ground of delay and laches alone.

17. In a similar circumstances, when an identical issue came up for consideration before the Apex Court in Bank of Baroda and Others Vs. Ganpat Singh Deora, , it has been held that an employee, who accepts an offer of VRS under the Scheme framed by the Bank, is entitled to get the benefit only under the VRS Scheme.

Admittedly, in the present case, as I mentioned earlier, all the benefits assured under the VRS were given to the petitioners. After receiving them, the petitioners cannot ask regular pension under Rule 22(1). As per Rule 22(1), a member shall be entitled to a pension, if he has put in 20 years of pensionable service, provided he has attained the age of 50 years. Since the petitioners, admittedly, have not been completed 20 years of service, they are disqualified to get the pension.

18. Further, when the similar second circular dated 11.01.2001 was questioned by the similarly placed persons before the Delhi High Court, in Civil W.P.No.4355 of 2001, the Delhi High Court, finding no merit in the writ petition, dismissed the same. The relevant passage there from is extracted as under:

The Voluntary Retirement Scheme is a package by itself. There is no compulsion on the employees of the respondent bank to accept the said scheme. It is open for them to continue to work with respondent bank and after completing the requisite years of service be entitled to pension. However, if an employee avails of the scheme and takes benefits under the scheme, it is not open to him to say that he should be entitled to certain benefits including the pension, for which he would not be eligible under the scheme, on the basis of such materials de hors the scheme.

In view of the aforesaid position, I see no reason why the employees of the respondent Bank who have availed the Voluntary Retirement Scheme should be entitled to the pension if they have not completed the requisite number of years of service. The employees were conscious of this fact in view of clarification issued vide letter dated 11.01.2001.

I find no merit in the petition.

Dismissed.

19. In yet another judgment, the Delhi High Court in Vipin Kalia and Others Vs. State Bank of India and Others (2007 III LLJ 425) has held thus:-

8. It is now well settled that a Voluntary Retirement Scheme can be a contractual or a statutory scheme. A contractual scheme is purely voluntary. An employee has option to accept or not apply under the scheme. An employee who opts under the scheme makes an offer, which upon acceptance, constitutes a binding contract. The provisions of Contract Act, 1872 are applicable. See in this regard observations of the Supreme Court in Bank of India and Others Vs. O.P. Swaranakar etc., . The appellants, therefore, cannot be allowed to wriggle out of the terms and conditions accepted and agreed upon by the two parties viz. the appellants and the respondent-bank. The appellants had entered into the said contract with open eyes and fully conscious and aware of what benefits they would be entitled to by opting under the Voluntary Retirement Scheme. They were conscious and aware and in fact specifically informed by way of clarification by the respondent that the employees who had not completed 20 years of

service, would not be eligible for pension under the relevant rules. The appellants by way of appeal are seeking modification of the terms of the concluded contract which in equity is not just and fair. Recently the Supreme Court in HEC Voluntary Retd. Emps. Welfare Soc. and Another Vs. Heavy Engineering Corporation Ltd. and Others, has held as under:

11. An offer for voluntary retirement in terms of a scheme, when accepted, leads to a concluded contract between the employer and the employee. Interm of such a scheme, an employee has an option either to accept or not to opt therefor. The scheme is purely voluntary, in terms whereof the tenure of service is curtailed, which is permissible in law. Such a scheme is ordinarily floated with a purpose of downsizing the employees. It is beneficial both to the employees as well as to the employer. Such a scheme is issued for effective functioning of the industrial undertakings. Although the Company is "State" within the meaning of Article 12 of the Constitution, the terms and conditions of service would be governed by the contract of employment. Thus, unless the terms and conditions of such a contract are governed by a statute or statutory rules, the provisions of the Contract Act would be applicable both at the formulation of the contract as also the determination thereof. By reason of such a scheme only is an invitation of offer floated. When pursuant to or in furtherance of such a Voluntary Retirement Scheme an employee opts therefor, he makes an offer which upon acceptance by the employer gives rise to a contract. Thus, as the matter relating to voluntary retirement is not governed by any statute, the provisions of the Contract Act, 1872, therefore, would be applicable too.

The above said observations squarely apply to the case of the petitioners, for the reason that the terms and conditions of the VRS having been made very clear by subsequent circular dated 11.01.2001, after entering into an agreement with open eyes and after receiving the benefit, they cannot go behind the concluded contract and claim further benefits, for, it must be remembered that a Voluntary Retirement Scheme is formulated and conceived in public interest and the interest of the Bank is also to be taken into consideration.

20. Therefore, in view of the aforesaid observations, I do not find any merit in the writ petitions and the same are dismissed. No Costs. Consequently, connected miscellaneous petitions are closed.