(2002) 06 MAD CK 0092

In the Madras High Court

Case No : W.A. No. 1295 of 2001

P.N. Radhakrishnan, R. Radhakrishnan, P.M. Muthu, P.S. Duraivelu, J.W. James, A. Viswanatha Iyer, E.R. Narasimhan, N. Srinivas, T.R. Balakrishna Davey and K.R.G. Mudaliar	APPELLANT
Vs	
The Governor, Reserve Bank of India, Bombay, The Manager, Reserve Bank of India, Madras and The Union of India (UOI)	RESPONDENT

Date of Decision : 21-06-2002

Acts Referred:

Reserve Bank of India (Pension) Regulations, 1990 — Regulation 3
Reserve Bank of India (Staff) Regulations, 1948 — Regulation 26, 26(4)
Reserve Bank of India Act, 1934 — Section 58

Citation : (2002) 3 LLJ 538 : (2002) 3 LW 140 : (2002) 3 LW 104

Hon'ble Judges : B. Subhashan Reddy, C.J;Prabha Sridevan, J

Bench : Division Bench

Advocate : M. Venkatachalapathy for S.M. Loganathan, for the Appellant; Habibullah Basha for King and Partridge, for the Respondent

Final Decision : Dismissed

Judgement

B. Subhashan Reddy, C.J.—This writ appeal is directed against the order of the learned single Judge dated 4.1.2000, rendered in

W.P.No.9010 of 1992. Extension of Pensionary Benefits for the erstwhile employees of Reserve Bank of India is the question for consideration.

W.P. No.9010 of 1992 was filed questioning the constitutionality of sub-Rule (3) of Regulation 3 of Reserve Bank of India (Pension) Regulations,

1990, which bars the persons on leave preparatory to retirement from getting the benefit of Pension Scheme, introduced in 1990 but

retrospectively from 1.1.1986. Having failed before the learned single Judge, this Writ Appeal has been filed.

2. For the employees of Reserve Bank of India, there was no Pension Scheme.

They were covered by Contributory Provident Fund Scheme. In

exercise of the Rule-making power u/s 58 of the Reserve Bank of India Act, 1934, a Pension Scheme was introduced captioned ''Reserve Bank

of India (Pension) Regulations, 1990'', hereinafter to be referred to as Pension Regulations. The said Scheme comprises of three categories, viz.,

(i) employees appointed on and after 1.11.1990;

(ii) employees in service as on 1.11.1990; and

(iii) employees who had retired between 1.11.1986 and 1.11.1990.

In so far as the first category is concerned, the Pension Scheme is applicable per force. For the second category, an option was given to choose

either Contributory Provident Fund Scheme, which was hitherto in operation, or Pension Scheme under Pension Regulations, 1990. The third

category of personnel were given option to opt for pension under Pension Regulations, 1990, subject to their refunding the amount of contribution

made by the bank in Contributory Provident Fund Scheme with interest at 6% per annum from the date of withdrawal. The appellants herein claim

to be covered by the third category.

3. The appellants retired from service before 1.1.1986 but they went on leave preparatory to retirement and their leave periods expired after

1.1.1986. So far as the constitutional validity of the cut off date 1.1.1986 for entitlement to pension is concerned, the matter went to Supreme

Court and the Supreme Court in (i) All India Reserve Bank Retired Officers Association and others Vs. Union of India and others, upheld the

validity of the cut off date on the ground that there is a nexus to the object sought to be achieved and that the cut off date was not arbitrary. The

previous judgment of the Supreme Court in (ii) D.S. Nakara and Others Vs. Union of India (UOI), was distinguished on the ground that

NAKARA''s case (ii supra) has dealt with homogenous class of retired employees and the applicability of the liberalised Pension Scheme to an

already existing Scheme and drawn a distinction so far as the Reserve Bank of India employees are concerned as, in the case of the latter, there

was no pre-existing pension plan and the said Pension Scheme was newly framed under Regulations mentioned supra and as such, fixation of cut

off date is valid and reasonable. In this view of the matter, no argument is available to assail the cut off date 1.1.1986 for being entitled to claim pension, as the judgment of the Supreme Court in the decision in A.I. RESERVE BANK RETD. OFFICERS'' ASSN. (i supra) is the law holding

the field and that issue is no more res integra.

4. Mr. M. Venkatachalapathy, learned senior counsel appearing for the appellants, submits that he is not making any submissions contrary to the

dicta laid down by the Supreme Court in A.I. RESERVE BANK RETD. OFFICERS'' ASSCN. (i supra) and that the Supreme Court in that case

did not adjudicate the point raised in this case. What he submits is that treating the cut off date 1.1.1986 as valid, the appellants are entitled for

pension for the reason that even though their dates of superannuation fell before 1.1.1986, as they were on leave preparatory to retirement and the

said leave period having expired after 1.1.1986 and in view of clause (4) of Regulation 26 of Reserve Bank of India (Staff) Regulation, 1948,

hereinafter to be referred to as the Staff Regulation, the appellants will be deemed to have retired from service after 1.1.1986 and as such, are

automatically entitled for pension, for which, they opted to return the Contributory Provident Fund Scheme with interest at 6% as contemplated by

third category mentioned supra and the refusal on the part of the respondent bank is arbitrary and violative of equality clause enshrined in Article

14 of Indian Constitution.

5. Mr. Habibullah Badsha, learned senior counsel appearing for the respondents/ Reserve Bank of India, counters the above arguments and

submits that the Pension Scheme was newly framed in the year 1990, that as there was no existing Pension Scheme, the appellants cannot claim

the pension as of right, that the preparatory leave period cannot be construed as service qualifying for pension and such leave is a facility either to

encash the same or avail the same, that the deeming clause under Regulation 26 (4) cannot be pressed into service for claiming the pensionary

benefits, that Staff Regulations cannot be clubbed and interpreted and that they do not have any bearing on Pension Regulations. He submits that

the Staff Regulations have to be dealt with and interpreted in a different perspective to that of Pension Regulation and that claim for pension has to

be construed and considered only under Pension Regulations of 1990 and not otherwise.

6. Both Staff Regulation and Pension Regulation have been framed in exercise of

the Rule-making power u/s 58 of Reserve Bank of India Act but

they differ in context and perspective. When the Staff Regulations were framed in 1948, what was provided was only Contributory Provident Fund

Scheme and not the Pension Scheme. The Pension Scheme was a new concept for the employees of Reserve Bank of India introduced by Pension

Regulation in 1990. While it is true that Regulation 26 (4) of the Staff Regulation contains a deeming clause that employees going on leave

preparatory to retirement will be deemed to have retired after the expiry of the said leave period, it is only enabling the employees to avail of the

leave in spite of the age of superannuation and such facility has been given to avail leave in lieu of encashing the said leave period. It is needless to

mention that should the employee opt for encashing the said leave period, then the question of invoking the deeming clause does not arise at all. As

a retired employee cannot avail of leave after the date of superannuation, the said deeming clause has been incorporated only for the purpose of

enabling the availment of leave earned by an employee during his service and the said deeming clause has to be circumscribed, confined and limited

only in the context of availment of leave period and not beyond. If the Rule-making authority left it there at the stage of Regulation 26 (4) of the

Staff Regulation, may be an argument would have been advanced that there being a beneficial clause, the same has to be liberally construed so as

to encompass the benefit of pension also. But there is no scope for such interpretation. Pension Regulations of 1990, which are equally framed in

exercise of the Rule-making power u/s 58 of the Reserve Bank of India Act and which are specific to the Pension Scheme, specifically debar

employees on leave preparatory to retirement, from availing of the Pension Scheme and that is so clear and loud by clause (3) of Regulation (3) as

also Regulations 22 and 31. It is relevant to extract clause (3) of Regulation (3), which specifically excludes the employees, who are on leave

preparatory to retirement, from opting for pension under the third category. Regulation 3 of the Pension Regulations reads as follows:

3. Application

These Regulations shall apply to:-

(1)Employees who join the Bank''s service on or after 1st November, 1990.

(2)Employees who are in the service of the Bank as on 1st November, 1990 except those employees who, within the period prescribed by the

Bank, exercise an option in writing not to be governed by the Regulations.

(3)Employees who were in service as on 1st January 1986 (excluding those on leave preparatory to retirement) and had retired before 1st

November, 1990, provided they exercise option to be governed by these Regulations and refund, within such period as may be specified, the

bank''s contribution to Provident Fund, including interest received by them from the bank, together with simple interest at six per cent per annum,

from the date of withdrawal till the date of repayment. Pension shall be payable to them in accordance with Regulation 31"".

The above view of ours is fortified by judgments of Patna High Court in Rana Ramdeo Singh v. The Union Of India And Others (C.W.J.C.

No.3663 of 1992 dated 20.5.1994) and then Delhi High Court in H.L. Sethi v. Reserve Bank Of India And Others (C.W.P. No.875 of 1995,

dated 23.4.1996), both of which are Division Bench judgments.

7. Apart from the fact the employees on leave preparatory to retirement are deemed as a class, distinguished from the employees who are actually

working on 1.1.1986, there is another aspect of the matter and that is the prevalence of the specific law over the general law basing on the maxim,

''generalia specialibus non derogant''.

8. In view of what is stated above, we affirm the view taken by the learned single Judge and accordingly dismiss this Writ Appeal but without

costs.