

(2015) 09 DEL CK 0224

In the Delhi High Court

Case No : W.P (C) No. 7775/2013 and CM No. 16544 of 2013

P.N. Shukla

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 29-09-2015

Acts Referred:

Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 — Section 12-A(4) (b), 19

Constitution of India, 1950 — Article 14

Citation : (2015) 09 DEL CK 0224

Hon'ble Judges : V. Kameswar Rao, J

Bench : Single Bench

Advocate : Tarun Gupta, for the Appellant; Amit Mahajan, CGSC and Nitya Sharma, Advocates for the Respondent

Final Decision : Dismissed

Judgement

V. Kameswar Rao, J—The present writ petition has been filed by the petitioner seeking the following reliefs:

"(a) Issue appropriate writ, order or direction especially in the nature of certiorari quashing the order dated 21.3.2013 issued by Canara Bank (Respondents No. 2&3 herein);

(b) Issue appropriate, writ, order or direction especially in the nature of certiorari quashing the letters dated 16.4.2013, 16.5.2013, 10.6.2013, 8.7.2013, 28.8.2013, 11.9.2013 and 3.10.2013 issued by Respondents No. 2 & 3;

(c) Issue appropriate, writ, order or direction especially in the nature of certiorari quashing the executive instructions/clarification dated 15th May, 2008 issued by the Ministry of Finance, Department of Financial Services (Respondent No. 1);

(d) issue any such further and other writ, order or direction, as this Hon'ble Court deems appropriate and fit in the facts and circumstances of the case; and

(e) award the costs of the present Writ Petition."

2. Some of the facts as noted from the writ petition are, the petitioner joined the respondent No. 2-bank as a Special Officer. Being a Special Officer, he was allowed relaxation upto to the age of 35 years at the time of his initial recruitment through the Banking Services Recruitment Board. On September 25, 1999 the Canara Bank (Employees) Pension Regulations, 1995 ("Pension Regulations, 1995", in short) were formulated. Regulation 3 of the same deals with application and eligibility for the Pension Regulations, 1995. The employees who have opted for pension in view of the Pension Regulations 1995 and exercised their option within the prescribed time were covered under the Pension Regulations, 1995. There is no dispute that the petitioner exercised the option under the said Regulations.

3. The petitioner retired on attaining the age of superannuation on March 31, 2008. It is the case of the petitioner that at the time of retirement, the petitioner was given benefit of Regulation 26 of the Pension Regulations, 1995 inasmuch as he was given benefit of additional qualifying service of five years and his pension was fixed accordingly. It is the case of the petitioner that five years after his retirement, the respondents arbitrarily and whimsically revised the pension of the petitioner and reduced the same from Rs. 13,448 to Rs. 11,129/- on the ground that the petitioner was not entitled to the benefit of additional qualifying service. It is his case that no prior notice much less, opportunity of hearing was ever given to the petitioner before reducing the pension. The representation of the petitioner to the higher authorities did not find favour inasmuch as in response to the said representation, it was the stand of the respondents that Regulation 26 of the Pension Regulations, 1995 is not applicable to the case of the petitioner and the benefit of the additional qualifying service was given to him by mistake.

4. The respondent Nos. 2 and 3, in their response before this Court has, on merit, taken a stand that the petitioner was wrongly extended the benefit of five years of additional qualifying service as per Regulation 26 of the Pension Regulations, 1995, inasmuch as, his eligibility was taken as 29 years instead of 24 years, without taking cognizance of the pre- conditions mentioned in the Pension Regulations, 1995. However, noticing the mistake, the respondents have rectified the same by proportionately reducing the pension payable to the petitioner and continue to pay him the pension as per his eligibility.

5. There is no dispute to the fact, the respondents have not effected any recovery of the excess pension paid to the petitioner on the strength of his eligibility being of 29 years.

6. Mr. Tarun Gupta, learned counsel appearing for the petitioner would submit that the issue, which arises for consideration in this writ petition, is, covered by the judgments of the High Court of Madras in W.P.(C) 14364/1997 P.Thirikooda Rajappan Vs. Chairman & Managing Director Vijaya Bank, Head Office, Bangalore & Ors. decided on July 7, 2004 and of the High Court of Judicature of Andhra

Pradesh at Hyderabad in T.V. Chalapathi Raod Vs. The Managing Director, State Bank of Hyderabad, Hyderabad and Anr. decided on February 10, 2010. He would further state that the benefit of Regulation 26 has been given to the similarly placed persons like the petitioner, who were recruited before the formulation of the Pension Regulations, 1995 and also with regard to those persons who were recruited after the Pension Regulations, 1995 were formulated, wherein, it has been principally decided that in the case of a Specialist Officer even, without amending the Recruitment Rules, seeking the approval of the Central Government, without there being a stipulation in the appointment letter, the benefit be given. That apart, it is his submission that the pension has been reduced without issuing a show cause notice and a decision having been effected, no purpose would be served on a post decisional hearing. He would also state, as on date, assuming the benefit of Regulation 26 is not applicable to the petitioner, still, the respondent Nos. 2 and 3 cannot reduce the pension of the petitioner in view of the judgment of the Supreme Court in the case reported as Union of India (UOI) and Another Vs. P.N. Natarajan and Others, (2010) 12 SCC 405 : (2011) 1 SCC(L&S) 221 . He would also rely upon the judgment of this Court in the case of Union of India Vs. M.L. Mehta, W.P.(C) 9903/2006 decided on August 8, 2008 to advance similar plea which he has advanced relying upon the case of P.N. Natarajan and Ors. (supra).

7. On the other hand, Mr. Naveen Nath, learned counsel for the respondent Nos. 2 and 3 would state, that the petitioner could not have been given benefit of the Regulation 26 of the Pension Regulations, 1995 inasmuch as the Regulations contemplate, the benefit, to be given if the Recruitment Rules stipulates such a benefit, and the Recruitment Rules which contemplates such a benefit, need to be made with the prior approval of the Central Government. According to him, there is no amendment to the Recruitment Rules till date, which requires the approval of the Central Government. In other words, it is his submission that the Regulation 26 pre-supposes, certain measures be taken before the benefit of the same can be given to an Officer. He, on instructions, would also state that the plea advanced by the learned counsel for the petitioner that such a benefit has been given to the persons similarly situated like the petitioner and also to the persons appointed after the Pensions Regulations, 1995 were formulated, is baseless and not correct. According to him, the Regulations have come up for interpretation before various Courts including the High Court of Karnataka at Bangalore in W.P.(C) 30323/1996, B.Vittal Pai Vs. Syndicate Bank, Manipal, decided on August 22, 1999, High Court of Gujarat at Ahmedabad in Special Civil Application Nos. 2650/1999 and 1794 and 1844 of 2002, Bank of Baroda Retired Officers' Association and Anr. Vs. Chairman and Managing Director, Bank of Baroda and Anr., decided on March 4, 2004, and High Court of Punjab and Haryana in Civil Writ Petition No. 10778/1998, H.S. Sodhi Vs. Oriental Bank of Commerce, decided on August 18, 2004, wherein, the vires of the regulation has been upheld.

8. Having heard the learned counsel for the parties, the issue which arises for

consideration is whether, a Specialist Officer, like the petitioner would be entitled to the benefit of Regulation 26 automatically, without, following the procedures as contemplated in the said Regulations.

9. Insofar as the judgment in *P.Thirikooda Rajappan* (supra) relied upon by the learned counsel for the petitioner is concerned, there, the facts were, the petitioner was directly recruited as an officer in South India Bank Ltd. After completing nearly ten years of service, he applied for the post of Officer in Vijaya Bank Ltd. The petitioner was appointed as Junior Level officer permanently on April 21, 1975. Vijaya Bank Ltd. was nationalized on 1980. After completing nearly 21 years and 4 months of service in Vijaya Bank, the petitioner reached the age of superannuation in December 1996 and hence, he was retired on December 31, 1996. On his retirement, he became eligible for pension as per the provisions of Vijaya Bank Employees' Pension Regulations, 1995. The petitioner opted to come under the Pension Regulations. The petitioner's request for giving the benefit of five years of additional qualifying service as per Regulation 26 of the Bank was rejected. The stand of the Bank in that case was that the petitioner does not satisfy the conditions laid down in Regulation 26, and therefore, he would not be eligible for additional five years of qualifying service for superannuation pension. It was held, Regulation 26(a) would be applicable only if the service or post is one for which certain special qualification or experience-scientific, technological or professional field is required; the post to which he was appointed, never required any special qualification or experience. It was also the stand of the respondent bank that the petitioner does not qualify to get the benefit of Regulation 26 and that, the second proviso to Regulation 26 would apply only if the recruitment rules contained specific provisions that the service or post is one which carried the benefit of this regulation. Neither the earlier rules, under which the petitioner was recruited, nor the present rules stipulate that the post of "Officer" shall carry the benefit of Regulation 26. The third proviso stipulates that the benefit would apply only if the recruitment rules in respect of service or post, which carried the benefit of the regulation, were made with the approval of the Central Government. The Madras High Court was of the view that a Proviso is an exception or additional requirement to the main rule, it carves out a field to which the main provision would not apply, the provision can only be subsidiary in nature and it cannot be contradictory to the main rule. In other words, it was held that the Proviso cannot be such as to directly oppose to the main provision. Thus, it was the conclusion of the Madras High Court that the Regulation confers the benefit for the first time in the year 1995; a maximum of five years of qualifying service is added for certain category of persons. That cannot be nullified by the proviso. That is, the main proviso gives the benefit to a class of persons and that benefit cannot be nullified by the third proviso inasmuch as the third proviso would nullify the benefit conferred under the main Regulation 26 insofar as it relates to the employees who are already in service, and thus, the Madras High Court granted relief to the petitioner in the said case.

10. In the case of *T.V. Chalapathi Raod* (supra), the High Court of Andhra

Pradesh even though dealing with the case of State Bank of Hyderabad, by placing reliance on the judgment of the Madras High Court in P.Thirikooda Rajappan's case (supra) by stating that the Regulations are, *pari-materia* the same, held, the petitioners would be entitled to the benefits of Regulation 26 of the Regulations.

11. Insofar as the judgments relied upon by Mr. Naveen Nath are concerned, in B.Vittal Pai's case (supra), the High Court of Karnataka has, on Regulation 26, held as under:

"As it can be seen from clause (a) of Regulation 26, an employee is entitled for the benefit of the extended service of five years, provided he was appointed to a post for which postgraduate research, or specialist qualification or experience in scientific, technological or professional fields, was required. The order of appointment of the petitioner in the respondent-Bank, a copy of which has been produced as Annexure-C, does not state that the petitioner was appointed on account of the postgraduate research, specialist qualification or experience in scientific, technological or professional fields. The said order simply states that the petitioner was appointed as an officer of the Bank. There is no material placed before me by the petitioner to show that the petitioner was appointed keeping in mind his specialist qualification or experience. Therefore, as observed by me earlier, I am of the view that the petitioner, on facts, is not entitled for the benefit of Regulation 26 of the Pension Regulations. Even otherwise, in my view, Regulation 26 is prospective in nature. As rightly contended by Sri Ramadas, while benefit of pension is made retrospective, the provisions contained in Regulation 26 are made prospective. This is clear from the provisos given to Regulation 26.

11. Now, the last question is as to whether the second and third provisos given to Regulation 26 of the Pension Regulations are required to be struck down as discriminatory in nature as contended by Sri Rajagopal. Even on this question, I am unable to accede to the submission of Sri Rajagopal. As noticed by me earlier, when the Pension Scheme is made operative retrospectively, Regulation 26 of the Pension Regulations, in my view, is prospective in operation. Further, payment of pension was not one of the conditions of service, which was applicable to the employees of the Bank till passing of the Pension Regulations. Therefore, merely because the benefit of Regulation 26 is not given to all the employees including the employees who have retired from service, it is not possible to take the view that the second and third provisos given to Regulation 26 are liable to be struck down as discriminatory in nature. The benefit of previous service is an additional concession given by the Pension Regulations; and that too limited number of posts which satisfy the requirements laid down in the said regulations. While framing the Pension Regulations, since new benefits are extended, in my view, it is open to the Bank to make it prospective in operation. It is not the case where the petitioner and other employees of the Bank were entitled for the benefit of the Pension Scheme and an additional

benefit under the scheme is sought to be given to the existing benefits. Therefore, Sri Rajagopal cannot derive any assistance from the decision of the Supreme Court in the case of D.S. Nakara, *supra*. As observed by me earlier, in the instant case, the benefit of the Pension Scheme was introduced for the first time after the retirement of the petitioner from service. In my view, while introducing the Pension Scheme for the first time, as it has been done in the instant case, while the scheme was made to come into operation with effect from 1986, it was open to the authorities to impose certain conditions to make the scheme applicable in respect of part of the additional benefit given under the scheme prospective in operation. In such cases, there is no question of discrimination or any scope for making a grievance that such provisions are violative of Article 14 of the Constitution of India. The provision in the scheme has to be understood in the backdrop of the timing and object of the introduction of the scheme. The two provisos impugned, which impose certain conditions for the benefit of additional service of five years, in my view, cannot be considered as either unreasonable or arbitrary."

12. In the case of Bank of Baroda Retired Officers' Association and Anr. (*supra*), the High Court of Gujarat has held as under:

"6. As is mentioned in the letter dated 10th December, 1996, the matter was referred to Indian Banks Association, which, in turn, had referred the matter to the Central Government. Finally, it was clarified that the employees, employed by the Bank prior to the implementation of the Pension Scheme, are not covered under pension regulation-26. The learned Advocate for the petitioners submitted that the regulations in question are made, as is mentioned in the Notification dated 29th September, 1995, in exercise of the powers conferred by Clause (f) of sub-section (2) of Section 19 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970), by the Board of Directors of Bank of Baroda, after consultation with the Reserve Bank of India and with the previous sanction of the Central Government. In that view of the matter, there was no reason for referring the matter to the Central Government on the question as to whether petitioner no. 2 and the officers similarly situated are entitled to get the benefits under regulation-26 or not. This submission of Mr. Jani does not find favour with this Court for the simple reason that the management of the Bank was never against its own officers, but then, as the question involved financial repercussions, the matter was required to be referred to the Central Government so as to ensure that the interpretation of the management is not incorrect. This act of referring the matter to the Central Government for guidance on the question of applicability of regulation-26, can never be said to be uncalled for, much less mala fide on the part of the Bank. On the contrary, it is clear from the record that if the Government had accepted the demand of petitioner no. 2 and other officers, the management would not and could not have denied the same.

13. Further, in H.S. Sodhi's case (*supra*), the High Court of Punjab and Haryana has held as under:

"15. True it is that as per sub-clause (c) above, an employee "shall be eligible" to add to his service qualifying for pension, a period of 5 years if the service or post to which he is appointed is one for which the candidate was given age relaxation over and above the maximum age limit fixed by the Bank on account of his possessing higher qualifications or experience. However, the aforementioned benefit is subject to three pre-conditions including the one incorporated in the third proviso that the recruitment rules in respect of any service or post which carries the benefits of this regulation "shall be made with the approval of the Central Govt." It has been asserted by Shri Arora, learned counsel for the Bank that clause 26 is prospective in nature and its benefit will be admissible to the serving employees of the Bank only if there exist a specific provision in the recruitment rules to the effect that the said service/post "is one which carries benefits of this regulation" and/or the recruitment rules in respect of such service/post are amended with the approval of the Central Govt. According to Shri Arora, none of these eventualities exists in the present Clause 26 itself, as in para 3 of its written statement, the Bank has specifically disputed the fact that the petitioner was recruited as Manager attaching any special consideration with regard to his age, etc.

16. In my view, Shri Arora is right in contending that the benefit provided in clause 26 of the Pension Regulations is pre-conditional and unless these conditions are satisfied, the benefit under this regulation cannot be claimed. Firstly, there is no material on record to suggest that the petitioner was recruited by granting the "age relaxation" only on account of his possessing higher qualifications or the experience. Secondly, no provision of recruitment rules, amended or enforced after the pension scheme of 1995 came into force, has been brought to my notice which prescribe the grant of such benefit to the members of the service and/or holder of a post. Thirdly, it is not the case of the petitioner that any amendment in the recruitment rules, conferring this benefit, has been brought into force with the approval of the Central Govt. In the absence of any such material on record, I am unable to accept the second contention of Shri Patwalia as well."

14. Having considered the judgments relied upon by the learned counsel for the parties, more specifically, with regard to the applicability of Regulation 26 of the Pension Regulations 1995, suffice to state, a proviso to a Regulation (in this case) is an exception to the main Regulation. It has been held by the Supreme Court in the case reported as *The Commissioner of Income Tax, Mysore, Travancore-cochin and Coorg, Bangalore Vs. The Indo Mercantile Bank Limited*, AIR 1959 SC 713 : (1959) 36 ITR 1 : (1959) 2 SCR 256 Supp ., that the proper function of a proviso is that it qualifies the generality of the main enactment by providing an exception and taking out as it were from the main enactment a portion which but for the proviso would fall within the main enactment. Ordinarily it is foreign to the proper function of a proviso to read it as providing something by way of an addendum or dealing with a subject which is foreign to the main enactment. It is also held by the Supreme Court in the case *Ram Narain Sons*

Ltd. Vs. Asst. Commissioner of Sales Tax and Others, AIR 1955 SC 765 : (1955) 2 SCR 483 : (1955) 6 STC 627 as under:-

"It is cardinal rule of interpretation that a proviso to a particular provision of a statute is only embraces the field which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other".

A proviso must be read with relation to the substantive provision to which it stand as a proviso. The substantive provision and the proviso need to be read harmoniously, otherwise, the very purpose of the proviso gets defeated. In fact, if the intent of the rule making authority was to give effect to the substantive provision only, there was no reason to incorporate the provisos. Having formulated/incorporated the provisos, the effect thereof must be given. In the case in hand, on a harmonious reading of Regulation 26 of the Regulations of 1995, there is no repugnancy. I note for benefit the following observation of the High Court of Gujarat in Bank of Baroda Retired Officers' Association and Anr. (supra), which is reproduced as under:

"This regulation is having three provisos. While determining the applicability of a regulation the provisos attached to it cannot be overlooked or brushed aside. Therefore, it is necessary to take into consideration the contents of these provisos....."

15. Similar is the reasoning given by the High Court in the case of H.S. Sondhi (supra) with which reasoning I agree, wherein, the High Court has rightly held, the benefits of Regulation 26 can only be given if the recruitment rules in respect of any service or post carries the benefit of Regulation and made with the approval of the Central Government.

16. That apart, I agree with the conclusion drawn by the High Court of Karnataka in B.Vittal Pai's case (supra), wherein, the High Court of Karnataka has held that the two provisos, which were impugned, imposed certain conditions for the benefit of additional service of five years which according to the Court, was not unreasonable and arbitrary. The conclusion must be drawn is, Regulation 26 would be effective only if recruitment rules contain specific provision that the service or post is one which carries benefit of the Regulation and the recruitment rules in respect of the service or post has been made with the approval of the Central Government, which is not the case here. Hence, the Regulation 26, has no applicability to the petitioner.

17. Having held so, the question, which arises is, whether the petitioner's pension need to be revised by upholding the action of the respondent Nos. 2 and 3. In the case of P.N. Natarajan and Ors. (supra) on which reliance was placed by Mr. Gupta, the Supreme Court has held as under:

"15. We have considered the respective submissions and carefully scrutinised the records. Although neither the learned Single Judge nor the Division Bench

considered the issue of violation of the rules of natural justice, having given serious thought to the entire matter, we are convinced that the retiral benefits payable to the respondents could not be revised to their disadvantage without giving them action-oriented notice and opportunity of hearing. By virtue of the option exercised by them under Section 12-A(4) (b) and consequential action taken by the competent authority to fix their pension, etc., the private respondents acquired a valuable right to accordingly receive the financial benefits and the same could not have been reduced without complying with one of the basic rules of natural justice that no one shall be condemned unheard. The rule of audi alteram partem has been treated as fundamental to the system established by rule of law and any action taken or order passed without complying with that rule is liable to be declared void-State of Orissa vs. Dr. Binapani Dei and Sayeedur Rehman vs. State of Bihar.

16. It is not in dispute that before directing revision of the pension, etc. payable to the private respondents, the Central Government did not give them action-oriented notice and opportunity of showing cause against the proposed action. Therefore, it must be held that the direction given by the Central Government to revise the retiral benefits including the pension payable to the respondents was nullity."

18. That the aforesaid judgment of the Supreme Court in P.N. Natarajan & Ors. (supra) was considered by the Supreme Court in its later opinion in the case reported Union of India (UOI) and Others Vs. Shri Bhanwar Lal Mundan, AIR 2014 SC 776 : (2013) 139 FLR 1003 : (2014) LabIC 1489 : (2013) 10 SCALE 646 : (2013) 12 SCC 433 : (2013) 4 SCT 503 : (2014) 1 SLJ 44 wherein the Supreme Court has held as under:-

"17. The aforesaid conclusion was arrived at as the Union of India as such could not have invoked the terms of the memorandum of settlement to justify the directives and retiral benefits payable to the respondents. The aforesaid decision has to be read in the context of its facts and not to be construed as a precedent for the proposition that if the pay has been erroneously fixed that cannot be revised even if the facts are absolutely clear and undisputed."

19. From the above, it is clear that the Supreme Court in Shri Bhanwar Lal Mundan's (supra) has held that its decision in P.N. Natarajan & Ors. (supra) has to be read in the context of its facts and not to be construed as a precedent for the proposition that if the pay has been erroneously fixed that cannot be revised even if the facts are absolutely clear and undisputed. In the present case, except the fact that the petitioner was not given a show cause notice before revising the pension, it is not in dispute that the petitioner was not entitled to the benefit of Regulation 26 of the Pension Regulations, 1995. Even if a direction is given to issue a show cause notice to the petitioner in compliance with the principles of natural justice, the same would be an empty formality inasmuch as in view of the conclusion of this Court that the petitioner was not entitled to the benefit of Regulation 26. The benefit having been given under a mistake, which is sought

to be rectified by the respondent Nos. 2 & 3, no fault can be imputed to such an action. It is a conceded case of the parties that the respondent Nos. 2 & 3 even though revised the pension but had not effected the recovery of the excess amount paid to the petitioner, which this Court is of the view rightly so when the petitioner was not at fault to get the higher pension on the basis of extra-qualifying service of 5 years added to his actual service.

20. In view of the above, I am of the view that the reliance placed by the petitioner in the case of M.L. Mehta's (supra) would also be of no benefit to the petitioner.

21. I note for benefit the following conclusion of the Supreme Court in Shri Bhanwar Lal Mundan's (supra) :-

"22. In the case at hand, as stated earlier, the respondent was getting higher scale of pay in the post while he was holding a particular post as a deputationist. After his repatriation to the parent cadre on selection to a higher post he was given higher scale of pay as it was fixed keeping in view the pay scale drawn by him while he was working in the ex-cadre post. Such fixation of pay, needless to say, was erroneous and, therefore, the authorities were within their domain to rectify the same. Thus analysed, the irresistible conclusion is that the tribunal and the High Court have fallen into error by opining that the respondent would be entitled to get the pension on the basis of the pay drawn by him before his retirement."

22. In view of the discussion above, I am of the view that the petitioner is not entitled to any relief as prayed for in the petition. The writ petition is dismissed. No costs.

CM No. 16544/2013

In view of the order passed in the writ petition, the present application is dismissed as infructuous.