

(2011) 06 MAD CK 0172
In the Madras High Court
Case No : Writ Petition No. 728 of 2011

Pramila Kiruba Augustus

APPELLANT

Vs

State Bank of India

RESPONDENT

Date of Decision : 07-06-2011

Acts Referred:

Employees Pension Fund Rules — Rule 22
State Bank of India Pension Fund Rules — Rule 22

Citation : (2011) 06 MAD CK 0172

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : S. Vaidyanathan, for the Appellant; K. Sankaran, for the Respondent

Judgement

K. Chandru, J.—The Petitioner has filed the present writ petition seeking for a declaration that the action of the Respondents in not

sanctioning pension after voluntary retirement from service by an order of the Bank, dated 31.3.1999 as illegal, contrary to the Bipartite Settlement

entered into between the Bank and Unions as well as Rule 22(d) of the SBI Pension Fund Rules and it is violative of Articles 14, 21 and 300A of

the Constitution and also for consequential direction to sanction and pay pension with effect from 31.3.1999 with interest at the rate of 12% per

annum.

2. When the matter came up on 12.1.2011, this Court directed private notices to be served on the Respondents. On such notice, the Respondents

have filed a counter affidavit, dated 17.2.2011. In the counter affidavit, the Respondents have also questioned the delay and laches in the Petitioner

moving this Court claiming pension after a period of 12 years from the date of her voluntary retirement. Even her request of pension was received

only in June, 2010 which is made only with a view to revive the stale cause of action. The Petitioner has filed a reply affidavit, dated 28.2.2011.

3. Heard the arguments of Mr. S. Vaidyanathan, learned Counsel appearing for the Petitioner and Mr. K. Sankaran, learned Counsel appearing for the Respondents State Bank of India.

4. The facts leading to filing of the case are as follows:

The State Bank of India was created by the Central Act 23/1955. u/s 50 of the Act, the Central Board after consultation with the Reserve Bank of

India and with the previous sanction of the Central Government had framed rules known as State Bank of India Employees Pension Fund Rules.

Rule 22(i) reads as follows:

22(i)A member shall be entitled to a pension under these rules on retiring from the Bank's service -

(a) After having completed twenty years pension able service provided that he has attained the age of fifty years or if he is in the service of the

Bank on or after 1.11.93, after having completed ten years pension able service provided that he has attained the age of fifty eight years or if he is

in service of the Bank on or after 22.5.1998 after having completed ten years pension able service provided that he has attained the age of sixty

years;

(b) After having completed twenty years pension able service, irrespective of the age he shall have attained, if he shall satisfy the authority

competent to sanction his retirement by approved medical certificate or otherwise that he is incapacitated for further active service;

(c) After having completed twenty years pension able service, irrespective of the age he shall have attained at his request in writing.

(d) After twenty five years pension able service.

5. The Petitioner's date of birth as per the records was 6.7.1954. The date when she had voluntarily retired, i.e., on 31.3.1999, she had

completed only 44 years and 8 months and had not obtained 50 years of age. Further, as she had sought for voluntary retirement, she was not

eligible to get pension as per rules. For voluntary retirement, it is a voluntary abandonment. The Petitioner remained absent for more than 90 days.

Therefore, a notice as per bipartite settlement was given to her to join duty. As she did not join duty, in terms of Clause 33 of bipartite settlement,

dated 21.6.2005, a notice was given. By this process, the Petitioner will be deemed to have voluntarily retired from her employment. The

Petitioner was confirmed in service as 1.11.1974 and that she can become the member of the Fund only from the said date. The Petitioner never

sought for voluntary retirement in terms of Rule 22(1)(c). Merely because her pension papers were forwarded will not enable her to get pension

unless she comes within the rule providing pension.

6. Mr. S. Vaidyanathan, learned Counsel appearing for the Petitioner placed reliance upon two judgments of the Supreme Court. The first related

to a judgment in Syndicate Bank, Bangalore v. Satya Srinath reported in (2009) 16 SCC 422. This is for the purpose of contending that in case of

fictional retirement under the bipartite settlement and it is retirement on ground of punishment, the Supreme Court had noted that the authorities in

that case was wrong in holding that the candidate had abandoned his service. When she sought for extension of medical leave, they ought to have

granted it. In that view of the matter, the Court held that it is a case of compulsory retirement and therefore, she is entitled for pension.

7. Thereafter, the learned Counsel relied upon a judgment of the Supreme Court in UCO Bank and Others Vs. Sanwar Mal, , wherein the

Supreme Court made a distinction between resignation and retirement. In paragraph 9, the Supreme Court had observed as follows:

9. We find merit in these appeals. The words "resignation" and "retirement" carry different meanings in common parlance. An employee can resign

at any point of time, even on the second day of his appointment but in the case of retirement he retires only after attaining the age of superannuation

or in the case of voluntary retirement on completion of qualifying service. The effect of resignation and retirement to the extent that there is

severance of employment (sic is the same) but in service jurisprudence both the expressions are understood differently. Under the Regulations, the

expressions "resignation" and "retirement" have been employed for different purpose and carry different meanings. The Pension Scheme herein is

based on actuarial calculation; it is a self-financing scheme, which does not depend upon budgetary support and consequently it constitutes a

complete code by itself. The Scheme essentially covers retirees as the credit balance to their provident fund account is larger as compared to

employees who resigned from service. Moreover, resignation brings about complete cessation of master-and servant relationship whereas

voluntary retirement maintains the relationship for the purposes of grant of retiral benefits, in view of the past service. Similarly, acceptance of

resignation is dependent upon discretion of the employer whereas retirement is completion of service in terms of regulations/rules framed by the

Bank. Resignation can be tendered irrespective of the length of service whereas in the case of voluntary retirement, the employee has to complete

qualifying service for retiral benefits. Further, there are different yardsticks and criteria for submitting resignation vis-à-vis voluntary retirement

and acceptance thereof. Since the Pension Regulations disqualify an employee, who has resigned, from claiming pension, the Respondent cannot

claim membership of the fund. In our view, Regulation 22 provides for disqualification of employees who have resigned from service and for those

who have been dismissed or removed from service. Hence, we do not find any merit in the arguments advanced on behalf of the Respondent that

Regulation 22 makes an arbitrary and unreasonable classification repugnant to Article 14 of the Constitution by keeping out such class of

employees. The view we have taken is supported by the judgment of this Court in the case of Reserve Bank of India v. Cecil Dennis Solomon¹.

Before concluding we may state that Regulation 22 is not in the nature of penalty as alleged. It only disentitles an employee who has resigned from

service from becoming a member of the fund. Such employees have received their retiral benefits earlier. The Pension Scheme, as stated above,

only provides for a second retiral benefit. Hence there is no question of penalty being imposed on such employees as alleged. The Pension Scheme

only provides for an avenue for investment to retirees. They are provided avenue to put in their savings and as a term or condition which is more in

the nature of an eligibility criterion, the Scheme disentitles such category of employees as are out of it." Relying upon the said passage, the

Petitioner contended that her termination should be considered as retirement as she is fully entitled for the benefit.

8. Mr. K. Sankaran, learned Counsel for the State Bank of India placed reliance upon a judgment of the Supreme Court in Himachal Pradesh

Horticultural Produce Marketing and Processing Corporation Ltd. Vs. Suman Behari Sharma, , wherein it was stated that in case of voluntary

retirement, an employee must seek for retirement and it must be accepted by the employer and that there cannot be an automatic retirement. In

paragraph 8, the Supreme Court had observed as follows:

8. Clause (2) of the bye-law inter alia provides for voluntary retirement from service of HPMC on completion of 25 years" service or on attaining

the age of 50 years whichever is earlier. The employee, however, has a right to make a request in that behalf and his request would become

effective only if he is "permitted" to retire. The words "may be permitted at his request" clearly indicate that the said clause does not confer on

the employee a right to retire on completion of either 25 years" service or on attaining the age of 50 years. It confers on the employee a right to

make a request to permit him to retire. Obviously, if request is not accepted and permission is not granted the employee will not be able to retire as

desired by him. Para (5) of the bye-law is in the nature of an exception to para (2) and permits the employee who has not completed 25 years"

service or has attained 50 years of age to seek retirement if he has completed 20 years" satisfactory service. He can do so by giving three months"

notice in writing. The contention of the learned Counsel for HPMC was that though para 5 of the bye-law relaxes the conditions prescribed by

para (2), the relaxation is only with respect to the period of service and attainment of age of 50 years and it cannot be read to mean that the

requirement of permission is dispensed with. On the other hand, the learned Counsel for the Respondent submitted that as para 5 opens with the

words "Notwithstanding the provision under para (2)" and the words "may be ... permitted at his request" are absent that would mean that the

employee has a right to retire after giving three months" notice and no acceptance of such a request is necessary. We cannot agree with the

interpretation canvassed by the learned Counsel for the Respondent. The bye-law has to be read as a whole. Para (2) thereof confers a right on

the employee to request for voluntary retirement on completion of 25 years" service or on attaining the age of 50 years, but his desire would

materialise only if he is permitted to retire and not otherwise. Ordinarily, in a matter like this an employee who has put in less number of years of

service would not be on a better footing than the employee who has put in longer service. It could not have been the intention of the rule-making

authority while framing para 5 of the bye-law to confer on such an employee a better and a larger right to retire after giving three months" notice in

writing. The words "seek retirement" in para 5 indicate that the right which is conferred by it is not the right to retire but a right to ask for

retirement. The word "seek" implies a request by the employee and corresponding acceptance or permission by HPMC. Therefore, there cannot

be automatic retirement or snapping of service relationship on expiry of three months" period.

9. He further placed reliance upon a judgment of this Court in N. Krishnaswamy v. Chairman, State Bank of India and Ors. reported in 1999 Lab.

I.C. 2002, wherein a similar view was reiterated after following the earlier Supreme Court judgment and in paragraph 7, it was observed as

follows:

7. ... In view of the above said decisions, it is clear that since Rule is contemplated for such permission, unless such permission is granted, it cannot

be said that the employee has retired from service automatically. In this case, admittedly, the Respondents have not accepted, in the order dated

2.5.1992, the application filed by the Petitioner seeking permission to retire voluntarily....

10. Per contra, the learned Counsel for the Petitioner placed reliance upon a judgment of the Punjab and Haryana High Court in State Bank of

India v. Ram Singh, dated 22.1.2010, wherein the Punjab and Haryana High Court held that the settlement in question has undergone change by

7th bipartite settlement and the power of the bank to voluntarily retire a person on grounds of cessation of employment stood deleted by the said

settlement with effect from 1.11.1997. Since the Petitioner had retired from 31.3.1999, she is entitled for the benefit of the judgment of the Punjab

and Haryana High Court.

11. Countering the same, Mr. K. Sankaran, learned Counsel for the State Bank of India contended that the said judgment was taken on appeal

before the Supreme Court in SLP (Civil) No. 13599 of 2010 and the Supreme Court by an order, dated 11.5.2010 had granted leave and also

stayed the operation of the judgment. The order of the Supreme Court reads as follows:

Issue notice.

In the meantime, there shall be interim stay of operation of the impugned judgment dated 22.1.2010 passed by the High Court of Punjab &

Haryana at Chandigarh in R.S.A. No. 1631 of 2007 and the Order dated 18.4.2007 passed by the Additional District Judge in C.A. No. 124 of 2006.

12. In the light of the above, this Court is unable to grant relief to the Petitioner at this stage. It is suffice that if the Supreme Court ultimately

upholds the judgment of the Punjab and Haryana High court, the Respondent State Bank of India must also grant the same relief to the Petitioner

without driving her to further litigation.

13. Since the Respondent State Bank of India itself is waiting for pronouncement by the Supreme Court on the issue, this Court is not inclined to

non suit the Petitioner on grounds of delay. The writ petition is disposed of with a direction that depending upon the outcome of SLP (Civil) No.

13599 of 2010, the Petitioner's pensionary right will be decided and an order will be passed within four weeks from the date of the decision of the

Supreme Court in Ram Singh's case. However, there will be no order as to costs.