(2016) 07 OHC CK 0028

In the Orissa High Court

Case No : Writ Petition (Civil) No. 7108 of 2015

Purna Chandra Barik APPELLANT

Vs

The General Manager, UCO Bank, Kolkata RESPONDENT

Date of Decision : 26-07-2016

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2016) 122 CutLT 617 : (2016) 2 ILRCuttack 571 : (2016) LIC 4123

Hon'ble Judges : S.C. Parija, J.

Bench : Single Bench

Advocate : Shri S.N. Panda and P. Swain, Advocates, for the Petitioner; Shri C.N. Murty, Advocate, for the Opposite Parties

Final Decision : Allowed

Judgement

S.C. Parija, J.—This writ petition has been filed challenging the action of the opposite parties-Bank in rejecting the petitioner''s application opting for pension under its Circular dated 20.8.2010.

2. The brief facts of the case is that the petitioner was appointed as Asst. Cashier-cum-Godown Keeper on 31.3.1979 at Daspalla Branch of UCO Bank. Subsequently, he was promoted and posted as a Head Cashier at Puri Temple Branch of the Bank. In the year 2005, the petitioner suffered from acute back pain and was forced to avail sick leave w.e.f. 11.6.2008. The condition of the petitioner did not improve in spite of surgical intervention and he was confined to bed and needed constant medical attention. As it was not physically possible for him to attend to his official duties due to his poor health condition, the petitioner vide his letter dated 28.3.2009, requested the Bank for voluntary retirement from service on medical grounds, which reads as under:

"To

The Branch Manager,

UCO Bank,

Sri Jagannath Temple Puri.

Sub-Application for voluntary retirement.

Sir,

I have been suffering from back pain since 2005 for which I was on leave from 11.6.08. On the advice of doctors I underwent a spinal surgery in a private nursing home at Cuttack. This resulted in permanent loss of movement of my body below the waist. Since last 8 months I am virtually bedridden with no movement of lower limbs though I am getting myself treated by various doctors there has been little improvement in my condition. Any hope of recovery in near future is very remote.

Under these circumstances I am left with no other option than quiting my service. Hence I request you to recommend my request before the authorities so that I will be allowed by the bank to quit my job. Kindly forward my application to your authorities and apprise me of any development when it comes. Thanking you.

Permanent address

Purna Chandra Barik

At/Po-Nuasantha,

Via-Balanga

Dt.-Puri

D.28-3-2009"

Yours faithfully.

Sd/-

Mr. Purna Chandra Barik

P.F.No:-24465

3. On receipt of the letter of the petitioner seeking voluntary retirement on medical grounds, the Bank accepted the same and vide its letter dated 29.6.2009, released the Gratuity dues of the petitioner amounting to Rs. 3,50,000/-. Subsequently, the Bank vide its letter dated 09.7.2009 also released the petitioner''s contribution to Provident Fund amounting to Rs. 4,56,472.21, as well as the Bank''s contribution of Rs. 5,48,684.89.

4. While the matter stood thus, the Bank vide its Circular dated 20.8.2010, came out with a scheme providing one more option for pension to its employees who were in service of the Bank prior to 29th September, 1995 and could not opt for pension earlier. The gist of the Circular reads as under:

"GIST

* One more option for pension, in lieu of Contributory Provident Fund, is extended to Bank employees in consequence of industry level settlement/ understanding reached between IBA and various unions and associations.

* All those workmen/officer employees (hereinafter referred as employees) in service prior to 29th September 1995 but did not opt for pension earlier and are still in service are eligible to opt.

* Those who were in service prior to 29th September 1995 but did not opt for pension and retired subsequently.

* Eligible family members of those employees who were in service prior to 29th September 1995 and could not opt for pension and retired and subsequently expired can also opt for family pension.

* Eligible family members of those employees who were in service prior to 29th September 1995 and could not opt for pension and subsequently expired while in service can also opt for family pension.

* Employees who ceased to be in-service under VRS-2000 can also opt for pension as per the terms and conditions applicable to retirees.

* 30% of the additional cost of pension as codified in settlement/joint note to be borne by the new optees so willing to join the pension scheme now.

* Option closes on 18th October 2010 the 60th day from the date of this circular."

5. Pursuant to such Circular of the Bank providing one more option for pension to its employees who were in service prior to 29th September, 1995, the petitioner submitted his application in the prescribed form on 06.10.2010 for availing pension, as per the said Circular of the Bank. After repeated reminders, the Bank vide its letter dated 28.5.2014, intimated the petitioner that as per the Circular dated 20.8.2010, only those employees who were in service prior to 29th September, 1995, but did not opt for pension earlier and are still in service and those, who were in service prior to 29th September, 1995, but did not opt for pension and retired subsequently, are only eligible to opt for pension. As the petitioner had resigned from the Bank''s service and was not in service of the Bank on the date of the said Circular, his claim for pension cannot be considered.

6. Being aggrieved by the said letter of the Bank dated 28.5.2014, the petitioner submitted his representation before the Chairman & Managing Director, UCO Bank, dated 30.6.2014, bringing it to the notice of the authority that he had applied for voluntary retirement on medical grounds, as he was suffering from serious spinal problem and was unable to work. The Bank having accepted such voluntary retirement, the petitioner cannot be deprived of his right to opt for pension under the Circular dated 20.8.2010.

7. In response to the said representation of the petitioner, the Bank vide its letter

dated 08.7.2014, referring to Regulation 22 of UCO Bank (Employee''s) Pension Regulations, 1995, reiterated its stand that since the petitioner had resigned from Bank''s service and was not in service on the date of the Circular, his representation cannot be considered.

Regulation 22 of UCO Bank (Employee''s) Pension Regulations, 1995 provides that resignation or dismissal or removal or termination of an employee from the service of the Bank shall entail forfeiture of his entire past service and consequently shall not qualify for pensionary benefits.

8. Learned counsel for the petitioner submits that as the petitioner had sought for voluntary retirement on medical grounds, as would be evident from his letter dated 28.3.2009 detailed above, the action of the Bank in refusing to allow him to avail the benefit of pension under the Circular dated 20.8.2010, on the plea that the petitioner had resigned from the Bank''s service, is wholly improper and illegal. It is submitted that as the petitioner was unable to continue in Bank''s service due to his poor health condition and he had sought for voluntary retirement on medical grounds, the Bank was not justified in considering the same to be a resignation simpliciter and deny him the benefit of pension. In this regard, learned counsel for the petitioner has relied upon a decision of the apex Court in Shashikala Devi v. Central Bank of India & Ors., AIR 2015 Supreme Court 2434, in support of his contention that the petitioner having applied for voluntary retirement from the service of the Bank on medical grounds, the same could not have been treated as a resignation from the Bank, so as to deprive him of his right to opt for pension.

9. Learned counsel for the opposite parties-Bank with reference to the counter affidavit submits that the petitioner had submitted his application expressing his precarious health condition and desired to quit the job. Nowhere, he had mentioned that he intended to take voluntary retirement for which three months notice period is required. As the petitioner intended to quit the job, the inference is that he was intending to resign. Accordingly, the Bank accepted the resignation of the petitioner and settled the terminal benefits payable to him. It is further submitted that the Circular dated 20.8.2010 provided one more opportunity to opt for pension to only those employees who were in service prior to 29th September, 1995, and could not opt for pension earlier and have attained superannuation or have opted for voluntary retirement. The said Circular is not applicable to the petitioner, as he had resigned from the Bank''s service.

In the further affidavit filed by the Bank, while reiterating that the petitioner had resigned from Bank''s service and had not availed voluntary retirement, the letter of the Bank dated 26.5.2009, accepting the petitioner''s resignation has been annexed, to show that his resignation has been accepted by the Bank w.e.f. 28.5.2009.

10. Learned counsel for the Bank accordingly submits that as the petitioner had decided to quit his job and had resigned from Bank''s service, the 2nd option for

pension as per Circular dated 20.8.2010 is not applicable to him. It is further submitted that after acceptance of his resignation by the Bank, the terminal benefits of the petitioner like Gratuity and Provident Fund have already been paid to him.

11. The short question which falls for consideration in this case is whether the letter of the petitioner dated 28.3.2009, as detailed above, was in essence a letter seeking voluntary retirement from Bank''s service on medical grounds or the same was in fact a letter of resignation simpliciter.

12. Similar question came up for consideration before the apex Court in Sudhir Chandra Sarkar v. Tata Iron and Steel Company Ltd. and Ors., AIR 1984 SC 1064, where a permanent employee of the Company after serving for 29 years had tendered his resignation, which the employer Company had accepted unconditionally. The Company''s Retiring Gratuity Rules did not provide for payment of gratuity to employees who resigned from service. Hon''ble Court while reversing the view taken by the High Court, held that the termination of service by resignation tantamounts to retirement by resignation, entitling the employee to retiral benefits.

13. In Sheel Kumar Jain v. New India Assurance Company Limited and Ors., (2011) 12 SCC 197, the facts were somewhat similar to the case at hand. The appellant in that case was an employee of an Insurance Company governed by a Pension Scheme which provided as in the case at hand, forfeiture of the entire past service of an employee, should he resign from his employment. The appellant-employee submitted a letter of resignation which resulted in denial of his service benefits under the aforesaid Pension Scheme. Hon''ble Court, however, held that since the employee had completed the qualifying service and was entitled to seek voluntary retirement under the Scheme, he could not be said to have resigned so as to lose his pension.

14. In Shashikala Devi (supra), identical issue came up for consideration before the apex Court, as to whether the letter of the concerned employee tendering his resignation is in essence a letter seeking pre-mature retirement on medical grounds or is a resignation simpliciter. The Hon''ble Court, while referring to the Regulations of the Bank has come to find that the expression "resignation" is not conclusive. Whether or not a given communication is a letter of resignation simpliciter or can as well be treated to be a request for voluntary retirement, will always depend upon facts and circumstances of each case and the provisions of the Rules/Regulations applicable. Referring to its various earlier decisions on the point, Hon''ble Court has come to hold as under:

"15. It is, in our opinion, abundantly clear that the beneficial provisions of a Pension Scheme or Pension Regulations have been interpreted rather liberally so as to promote the object underlying the same rather than denying benefits due to beneficiaries under such provisions. In cases where an employee has the requisite years of qualifying service for grant of pension, and where he could under the service conditions applicable seek voluntary retirement, the benefit of pension has been allowed by treating the purported resignation to be a request for voluntary retirement. We see no compelling reasons for doing so even in the present case, which in our opinion is in essence a case of the deceased employee seeking voluntary retirement rather than resigning."

Accordingly, the Hon''ble Court has proceeded to hold that the concerned employee having completed 20 years of qualifying service and having given notice in writing to the appointing authority of his intension to leave the service on medical grounds and the appointing authority having accepted the same and relieved the employee of his service, the employee is entitled to the pension under the 1995 Pension Scheme, even though the employee had used the word "resign" in his said letter.

15. From the discussions made above, the legal position which emanates is that the words "resignation" and "retirement" convey different connotations in service jurisprudence. Resignation can be tendered by an employee at any point of time, irrespective of his length of service. Whereas, in the case of voluntary retirement, the employee has to complete the prescribed period of qualifying service for being eligible for pensionary benefits. Moreover, resignation brings about a complete cessation of master and servant relationship whereas, voluntary retirement maintains the relationship for the purposes of grant of retiral benefits like pension, in view of the past service. Therefore, if the resignation was not punitive and was voluntary and such employee had to his credit the requisite years of qualifying service for grant of pension and was otherwise eligible to seek voluntary retirement under the service conditions applicable, he cannot be denied the pensionary benefit.

16. There is no dispute that the petitioner had put in almost 30 years of qualifying service in the Bank, when he applied for voluntary retirement on medical grounds on 28.3.2009. The subject of his application was for voluntary retirement and not unilateral resignation from the service of the Bank, as would be evident from his application detailed above. Merely because the petitioner had used the expression "quit" in his said application, the same would not tantamount to a resignation simpliciter. This is more so, as the petitioner had sought for voluntary retirement on medical grounds, due to his physical incapacity to continue in the service of the Bank.

17. Applying the principles of law as discussed above to the facts of the present case, the conclusion is irresistible that the application of the petitioner was for voluntary retirement on medical grounds and not a resignation simpliciter and therefore, the petitioner is entitled to the benefit of pension as per the Circular of the Bank dated 20.8.2010.

18. Accordingly, the Bank is directed to extend the benefit of pension to the petitioner as per its Circular dated 20.8.2010, subject to the fulfilment of the conditions for exercising the option, as enumerated therein. The writ petition is

accordingly allowed.

