(2015) 03 BOM CK 0290

In the Bombay High Court

Case No : Writ Petition No. 4639 of 2003 and Civil Application No. 1450 of 2010

Ranvijaysingh APPELLANT

Vs

The State of Maharashtra and Others RESPONDENT

Date of Decision : 12-03-2015

Acts Referred:

Citation : (2015) 03 BOM CK 0290

Hon'ble Judges : Anand Vasant Nirgude, J;V.K. Jadhav, J

Bench : Division Bench

Advocate : Kiran M. Nagarkar, for the Appellant; S.B. Pulkundwar, AGP, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Anand Vasant Nirgude, J—Heard learned counsel for the parties. Facts leading to this petition, in short, can be stated as under:-

2. The petitioner was appointed as a Clerk in the year 1961 in the office of respondent No. 4. In 1969 the petitioner''s service was terminated. The petitioner then started litigation for his reinstatement. He filed a civil suit for declaration that he is entitled to reinstatement and back-wages etc. This litigation went up to High Court and the petitioner succeeded. This Court while dismissing the second appeal filed by respondent No. 4 directed them to reinstate the petitioner and to pay him arrears of back-wages. On 01.11.1990 the petitioner thus started his work. In view of this the petitioner succeeded in establishing that he worked as a Clerk with respondent No. 4 without any interruption from 1969.

3. During those days the Government was considering to frame pension scheme for employees of respondent No. 4 under the provisions of the Maharashtra Agriculture Produce Market Regulation Act, 1963 and rules made thereunder. The rules for pension of such employees were made. These rules are called the Maharashtra Rajya Bazar Samiti Karmachari Seva Nivrutti Rules, 1988 and were

made effective from 01.07.1991. These rules were further deemed to have came into force on 01.01.1986. The rules further provided that for the purpose of pension to the employees of Market Committee a consolidated Central account would be established and the same would be managed by the authority to be nominated by Ad-hoc Committee. The amount of lump-sum contributions would be remitted by various Market Committees immediately after commencement of the scheme. The amount of monthly contribution would also be remitted by the Market Committees at certain rates of emolument of their employees. The scheme further provided the age of retirement of 58 years. The scheme also provided as to what would be qualifying service of an employee for the purpose of getting pension. The scheme further provided that in case of resignation from service or a post the same shall entail forfeiture of past service. The scheme then provided three kinds of pension viz. Superannuation Pension, Invalid Pension and third Family Pension.

4. The petitioner got reinstatement on 01.11.1990. Had he continued his work as a Clerk till the age of his superannuation, he would have been entitled to pension under the scheme. But the case of the petitioner is rather weird. On 08.12.1990, the petitioner submitted his resignation with one month notice. He made it clear in his letter of resignation that he was entitled to arrears of his salary from 1972 till October, 1990 and also earned leave salary and gratuity. Respondent No. 4 did not respond to this letter of resignation, but it is a fact that the petitioner did not work as a Clerk with respondent No. 4 after 08.12.1990. Thereafter, the petitioner''s miseries started. He started demanding the above mentioned amount, but in vain. He was required to resort to contempt proceedings before this Court pursuant to which respondent No. 4 paid him certain amount in various installments. The total amount paid to the petitioner thus was Rs.2,24,603/-. The learned Counsel for respondent No. 4 states that this amount represented back-wages only. It is thus clear that the petitioner is still not paid his earned leave salary, gratuity and provident fund.

5. The third entitlement of the petitioner was pension under the above mentioned pension scheme. We would now examine whether the petitioner is entitle to pension under the scheme. The petitioner submitted resignation and therefore it can be said that his past service of 29 years stood forfeited. The learned Counsel for respondent No. 4 asserted that this service should not be taken as qualifying service. He also asserted that since there is no provision of voluntary retirement scheme, there was no possibility of the petitioner''s getting pension on his submitting resignation even after completing qualifying service. The pension scheme did not take into account the possibility of an employee retiring voluntarily after putting in qualifying service for pension.

6. It is a common knowledge that employees all over tend to seek voluntary retirement after attaining pensionable service. It is also common knowledge that in service organizations voluntary retirements are encouraged by framing schemes etc. The pension rules applicable to the employees of the State of

Maharashtra also permit such beneficial arrangement. In other words an employee who has put in pensionable service would have a right to submit resignation without forfeiting his right of getting pension. If a scheme does not provide such possibility then an employee should not allow to suffer. We have to assume that when an employee submits resignation before the age of superannuation but after putting in pensionable service should be held entitled to proportionate pension. The judgment of Supreme Court in the case of Sheelkumar Jain Vs. The New India Assurance Company Ltd. and Others, AIR 2011 SC 2990 : (2011) 131 FLR 307 : (2011) 8 JT 179 : (2011) 8 SCALE 96 : (2011) 12 SCC 197 : (2011) 9 SCR 574 : (2012) 1 SLJ 211 : (2011) AIRSCW 4517 : (2011) 5 Supreme 728 can be used in support of this proposition. In the said case similar employee submitted resignation without mentioning in it that he would choose voluntary retirement. Since the employer also did not know as to whether the resignation simplicitor or resignation is under voluntary retirement scheme, the Supreme Court held that since the employee had completed qualifying service and had submitted his resignation, it should be held that he chose to take voluntary retirement for the purpose of pension. In the facts and circumstances of this case also we are inclined to hold that the petitioner on the date of his resignation did not intend to forfeit his pensionable service of 29 years. In the letter of resignation, as mentioned above, he demanded all pensionary benefits. On the day when he submitted resignation, pension scheme was not implemented though it was offering. Therefore, there was no possibility for him to make mention in his letter of resignation that he was also entitled to pension. His employer, however, was aware that a pension scheme was coming into force and indeed soon thereafter on 01.07.1991, the pension scheme was implemented w.e.f. 01.01.1986. It was the duty of the employer of the petitioner to inform him that such scheme had came into force and he was entitled to pension under the scheme. But as indicated above the petitioner and his employer were engaged in litigation. They had developed inimical terms. In the facts and circumstances of this case, it was duty of respondent No. 4 to offer benefit of this scheme to the petitioner. As said above, after the scheme was implemented respondent No. 4 must have sent amount of lump-sum as their initial contribution to the account of the pension scheme. We assume that such an amount is remitted. It is also possible to assume that respondent No. 4 sent contribution of the petitioner during his service days to the account of the scheme. In view of this, respondent No. 4 ought to have sent proposal of petitioner for payment of pension to the authorities of the scheme. This ought to have been done soon after the scheme came into force. As said above respondent No. 4 had developed dislike towards the petitioner and therefore they did not send such proposal. They did not even pay other pensionary benefits such as gratuity, provident fund and earned leave salary.

7. The petition should therefore succeed. Respondent No. 4 shall immediately pay gratuity, earned leave salary and provident fund along with the interest @ 6% p.a. from the date of his resignation till the amount is paid. Respondent No.

4 shall sent proposal as indicated in the judgment for petitioner''s pension to the concerned authority. Respondent No. 4 shall also pay a sum of Rs.1,00,000/- (Rs. One Lakh Only) as costs to the petitioner.

8. The writ petition is allowed in above terms. Rule made absolute accordingly. No costs.

9. In view of disposal of the writ petition, connected civil application does not survive and stands disposed of.