(2018) 01 PAT CK 0106

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 15737 Of 2011

Ratnakar Mishra APPELLANT

Vs

Allahabad Bank Through Chairman And Ors RESPONDENT

Date of Decision : 08-01-2018

Acts Referred:

Allahabad Bank (Employees') Pension Regulations, 1995 — Regulation 18, 95
Banking Companies (Acquisition And Transfer Of Undertakings) Act, 1970 — Section 19(2)(f)

Citation : (2018) 2 PLJR 190

Hon'ble Judges : Rajeev Ranjan Prasad, J

Bench : Single Bench

Advocate : Abhimanyu Sharma, Sanjay Kumar

Final Decision : Dismissed

Judgement

1. Heard Mr. Abhimanyu Sharma, learned Advocate assisted by Mr. Sanjay Kumar, learned Advocate for the petitioner.

2. No one appears to represent the respondent Bank and its authorities.

3. The petitioner has moved this Court in its writ jurisdiction for issuance of a writ of certiorari to quash and cancel the order dated 22.06.2011 (Annexure-5 to the Writ Application) issued under signature of the Chief Manager, Allahabad Bank by which he communicated the petitioner that the petitioner was not eligible to receive pension pursuant to exercise of his option dated 11.10.2010 under Allahabad Bank (Employees") Pension Regulations, 1995 (hereinafter referred to as "the Pension Regulation"). The Chief Manager, further, informed the petitioner that upon his being found to be ineligible to receive pension, the net amount refundable to him is Rs. 1,65,000/- less ad hoc pension released for Rs. 36,256.32, i.e. Rs. 1,28,743.68, which will be credited to his A/c shortly.

4. The reason for holding the petitioner ineligible to receive pension has been indicated in Annexure-5 which is the communication dated 22.06.2011. The

relevant part, which contains reasons, is quoted hereunder for a ready reference:-

"While finalizing your pension, it has come to our notice that you have not completed 15 years of qualifying service to your credit to become eligible to get pension under ABEPR-95. Your date of appointment in Bank"s service and date of your voluntary retirement under ABEVRS-2000 being 02/06/1986 and 31/03/2001 respectively, you have 14 years 10 months qualifying service which is falling short of the minimum requisite service of 15 years as envisaged under Section 28 of ABEPR-95 to become eligible to get pro-rata pension. While feeding data to the computer, your date of appointment was taken as 06.02.1986 inadvertently instead of the correct date of 02.06.1986 and as a result, ad-hoc pension was released to you for 6 months from December 2010 to May 2011 as stated earlier."

5. Learned counsel for the petitioner challenged the communication as contained in Anneuxre-5 submitting that the petitioner had voluntarily retired from service of the Bank on 31.03.2001. According to him, the Allahabad Bank (Employees") Pension Regulations, 1995 was initially formulated keeping in view the terms of Agreement of Settlement dated 29.10.1993 and it was made for the workmen-employees and the Joint Note dated 29.10.1993 was signed for officers whereby this Pension Scheme was introduced in the Banking industry as a retiral benefit in lieu of Contributory Provident Fund. It is further pointed out by learned counsel for the petitioner that in exercise of powers conferred by clause (f) of sub-clause (2) of Section 19 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, the Board of Directors of the Bank with concurrence of the Reserve Bank of India and prior sanction of the Central Government approved the regulations and named it as Allahabad Bank (Employees") Pension Regulations, 1995 (in short, "the ABEPR-95") which was notified in the Official Gazette on 29.09.1995.

6. According the said Regulations, the employees / officers of the Bank were given options to claim pension in lieu of Provident Fund provided they opt for the said Pension Scheme within 120 days from the "Notified date" (i.e., 29.09.1995). Those employees / officers, who were in the service of the Bank before 29.09.1995 and continued to be in service of the Bank on or after the said date and did not exercise option to join the Pension Scheme, were eligible for the Contributory Provident Fund Scheme.

7. In the aforesaid background it is an admitted position that the petitioner did not submit his option and upon his taking voluntary retirement w.e.f. 31.03.2001 he was covered under the Contributory Provident Fund Scheme. He, accordingly, accepted the benefits under the Contributory Provident Fund Scheme and had absolutely no grievance with his employer.

8. The present dispute arose when the Indian Banks Association (in short, "IBA") acting on behalf of the management of participating banks signed a Bipartite

Settlement on 27.04.2010 with the Workmen Union and the Joint Note on 27.04.2010 with the Officers" Association on extending another option for pension to those who were in the service of the Banks prior to 29.09.1995 in case of Nationalized Banks and continued to be in service on or after the said date and did not opt for pension under the said regulations earlier. A copy of the instructions Circular No. 11143/PA/2010-11/27 dated 15.09.2010 issued by the Allahabad Bank and circulated to all branches and offices has been placed before me for perusal.

9. Under the Joint Note dated 27.04.2010, by virtue of Clause 1.2.2(a) the petitioner, who was in the service of the Bank prior to 29.09.1955 and retired after that date and prior to the date of settlement / Joint Note, was eligible to give his option for pension. The petitioner, therefore, applied by giving option and the management of the bank accepted the same taking as if the petitioner had rendered a minimum of 15 years of service. The petitioner deposited a sum of Rs. 1,65,000/- as required by way of refund of the Contributory Provident Fund amount, which he had earlier availed of, and thereafter the Bank released ad hoc pension in favour of the petitioner @ Rs 6042.72 from the month of December, 2010 to May, 2011. As stated above, in the month of June, 2011 Annexure-5 to the Writ Application came to be issued.

10. The basic contention of the learned counsel representing the petitioner is that when the petitioner retired from service, the terms and conditions of the Pension Regulations then in force clearly provided under Regulation 18 as under:-

"18. Broken period of service of less than one year-

If the period of service of an employee includes broken period of service less than one year, then if such broken period is more than six months, it shall be treated as one year and if such broken period is six months or less it shall be ignored."

11. Learned counsel has further referred the scheme of voluntary retirement dated 28.10.2000 which was circulated at the relevant time whereunder the petitioner applied and was granted voluntary retirement. It has been placed on record as Annexure-10 to the Supplementary Affidavit filed on behalf of the petitioner. The Voluntary Retirement Scheme provided an eligibility clause, according to which, "All permanent employees who have completed / completing 15 years of service or 40 years of age as on 31.12.2000 were eligible to apply to avail the benefits of the scheme." Clause 10 of the scheme provides the General Conditions. Sub-clause (g) of Clause 10 of the Scheme reads as under:

"(g) Only completed years of service will be reckoned for arriving at the minimum eligible service. Subject to this, fraction of service of six months and above will be reckoned as one year for the purpose of calculating the ex-gratia and fraction of service less than 6 months will be ignored for the purpose of calculating the ex gratia."

12. Based on the provisions of Voluntary Retirement Scheme and Pension Regulation which was in force as on 31.03.2001, the argument on behalf of the petitioner is that his service has to be taken as 15 completed years. Expanding the argument, learned counsel for the petitioner submits that once the respondent-Bank treated the service period of the petitioner under the Pension Regulation and the Voluntary Retirement Scheme which were in force as on 31.03.2001 as 15 years, by virtue of an amendment brought in the Pension Regulation in the year 2004 whereunder a proviso has been added to Regulation 18 saying that the provisions of this regulation shall not apply for determining the minimum service required to make an employee eligible for pension, the petitioner cannot be deprived of the beneficial scheme of pension which has been made available to him in the light of the Joint Note dated 27.04.2010.

13. It is the submission of the learned counsel for the petitioner that no doubt in the year 2004 the Pension Regulations-95 stood amended whereunder the provision of Regulation 18 could not apply for determining the minimum service required to make an employee eligible for pension but, according to him, such an amendment would be legally applicable only in respect of those employees, who had not been treated as having completed 15 years of service prior to coming into force of the amendment. In his submission, once the service period of the petitioner has been taken as

15 years by virtue of unamended Regulation 18 of the Pension Regulation and under the Voluntary Retirement Scheme 2000 and the petitioner has been given the benefits of the scheme taking his service as 15 years completed, he cannot be deprived of the benefit of pension only on the ground that he had two months short of completing 15 years when he took voluntary retirement on 31.03.2001.

14. Although no one has appeared on behalf of the respondent Bank and its authorities, a counter affidavit has been filed on their behalf, therefore, this Court has perused the same and considered for purpose of disposal of this case.

15. According to the respondents, the petitioner is not eligible for pension under the Pension Regulation-95 as existing on 27.04.2010 because he did not complete minimum 15 years of qualifying service to be eligible for pension under ABEPR-95. The counter affidavit admits that the petitioner joined the Bank"s service on 02.06.1986 and voluntarily retired from Bank"s service under the Voluntary Retirement Scheme, 2000 on 31.03.2001. Thus, the petitioner had rendered 14 years and 10 months of service which, according to the petitioner, fell short of minimum requisite service of 15 years as envisaged under Regulation 18 of ABEPR-95. Reliance has thus been placed on the amended provision of Regulation 18 as has already been noticed here-in-above.

16. It is further stated that at the time of feeding data into the computer system during processing of the option exercised by the petitioner for pension, inadvertently the petitioner"s date of appointment was recorded as "06.02.1986" instead of "02.06.1986" which is the correct date of his appointment.

17. Along with the counter affidavit, the Bank has brought on record two orders passed by the Hon"ble Supreme Court of India in Civil Appeal No. 1378 of 2006 (Chairman and Managing Director, Allahabad Bank and Ors. Vs. Prem Singh) and Civil Appeal No. 2132/2011 (Regional Manager, Punjab National Bank & Anr. Vs. Dharampal Singh) wherein this very issue is said to have arisen for consideration and the Hon"ble Supreme Court has held that an employee taking voluntary retirement under the Voluntary Retirement Scheme would be entitled to pension only in case he completed 15 years qualifying service in the Bank.

18. Having considered the submissions advanced on behalf of the petitioner and upon perusal of the records I am of the considered opinion that whatever benefits accrued to the eligible employees of the Bank by virtue of the Joint Note dated 27.04.2010 whereunder another option for pension was given to those who were in the service of the Bank prior to 29.09.1995 in case of Nationalized Banks and continued to be in service on or after the said date and did not opt for pension under the said regulation earlier, such benefits may accrue to an employee like the present petitioner who had taken retirement under the Voluntary Retirement Scheme, 2000 only when he qualifies for pension in terms of the Pension Regulation which was in force on 27.04.2010. The Pension Regulations framed by the Bank is having a force of law. It is not in dispute that Regulation 18 of the Pension Regulation (ABEPR-95) stood amended in 2004 by inserting a proviso to avoid any confusion in the matter of qualifying service for purpose of pension. The said proviso to Regulation 18 has already been taken note of here-in-above. The amendment to the regulation of ABEPR-95 was published in the Gazette of India on 09.03.2004 and thereafter the Bank has also come out with instruction / circular.

19. The submission of the learned counsel for the petitioner that once the petitioner has been treated to have completed 15 years of service for purpose of the benefits under the Voluntary Retirement Scheme he cannot be deprived of the beneficial scheme of the pension for which option has been given to him by virtue of the Joint Note dated 27.04.2010 though looks appealing and impressive but on the face of the fact that there exists a rule which has force of law after the amendment brought in the said Rule by inserting proviso to the same, the intention of the Bank has been made clear and ambiguity, if any, which was in existence before that amendment stood extinguished once the amendment was published in the Official Gazette. The Joint Note dated 27.04.2010 is the document by virtue of which the petitioner claims his eligibility to apply and opt for pension but the eligibility to confer benefit of pension may be found only under the Pension Regulation-95 as amended up-to-date which was in existence on 27.04.2010.

20. The orders of Hon"ble Supreme Court annexed as Annexure "A" and "A/1" to the counter affidavit of the Bank strengthen the stand taken by the respondents Bank and it"s authorities.

21. This Court would come to a conclusion that on the coming into force of the

Joint Note dated 27.04.2010, in respect of this petitioner, the relevant Regulation 18 of the Pension Regulation- 95 as amended in the year 2004 would apply and, therefore, the petitioner who had not completed 15 years qualifying service shall not be eligible to get pension. The respondent Bank has explained that inadvertently while feeding the data the date of appointment of the petitioner was wrongly entered which has caused inconvenience and led to the mistake committed by them. I am satisfied with the explanation furnished by the Bank and do not find any error in the rationale and reasoning provided in the communication as contained in Annexure-5 which is impugned in the present Writ Application.

22. The Court has been informed that in terms of Annexure-5 to the Writ Application the Bank has already refunded the amount which belongs to the petitioner.

23. The Writ Application has thus no merit. It is accordingly dismissed.

