(2002) 10 KAR CK 0021

In the Karnataka High Court

Case No : Writ Petition No. 21691 of 2000

R.S. Trikannad APPELLANT

Vs

Vijaya Bank RESPONDENT

Date of Decision : 21-10-2002

Acts Referred:

Vijaya Bank Officers Service Regulations, 1982 — Regulation 48, 56

Citation : (2004) 101 FLR 790 : (2004) ILR (Kar) 1482 : (2003) 2 KarLJ 626 : (2002) 4 KCCR 405 SN

Hon'ble Judges : R. Gururajan, J

Bench : Single Bench

Advocate : P.S. Rajgopal, for the Appellant; Sundaraswamy, Ramdas and Anand, for the Respondent

Judgement

R.S. Gururajan, J.—Petitioner is before me seeking for a writ of certiorari to quash an order dated 14-2-2000 with a further direction to pay to the petitioner pension and other benefits like payment of commutation etc., with effect from 1-11-1993 together with interest.

2. Petitioner joined the services of the Bank in the year 1944. The service condition of the petitioner was covered by Regulation 19 of the Vijaya Bank Officers'' Service Regulations, 1982. They came into force from 1-1-1983. The age of retirement of an officer of the Bank is as determined by the Board in accordance with the guidelines issued by the Government from time to time. The Government of India issued guidelines under which the age of retirement shall be 60 years of age for those officers who were recruited or promoted prior to 19-7-1969. The order of the Bank is filed at Annexure-A. Petitioner retired on 31-12-1985. Petitioner refers to the discussions between the workmen and officers of the industry with regard to introduction of pension as a retiral benefit for the Bank employees. Petitioner also refers to negotiations in the matter of service conditions between IBA and the trade unions. A memorandum of settlement came to be signed on 29-10-1993. According to the petitioner, an

option is available in the matter of pension. Petitioner''s option was rejected on the ground that he retired on 31-12-1985 and the pension is available to those who are in service on or after 1-1-1986. Petitioner in this petition is challenging the denial of benefits to him.

3. Respondents have entered appearance and they justify their stand. Their essential contention is that the petitioner retired from service on 31-12-1985 and he is not entitled for pension. They rely on a judgment of the Supreme Court in the case of Union of India and Others Vs. Dr. Vijayapurapu Subbayamma, .

4. After hearing the learned Counsels for the parties, I have carefully perused the material on record.

5. Petitioner challenges the endorsement, Annexure-E, issued by the respondent. Respondent states that in terms of Regulation 3(1), pension regulations are applicable to only those employees who were in service of the Bank on or after 1-1-1986. It further states that the option is to be in writing. They rejected the case of the petitioner on the ground that the petitioner retired on 31-12-1985. Regulation 3(1) reads as under:

"3. Application.--These regulations shall apply to employees who,--

(1)(a) were in the service of the Bank on or after the 1st day of January, 1986 but had retired before the 1st day of November, 1993;

(b) exercise an option in writing within one hundred and twenty days from the notified date to become member of the fund; and

(c) refund within sixty days after the expiry of the said period of one hundred and twenty days specified in Clause (b) the entire amount of the Bank''s contribution to the Provident Fund including interest accrued thereon together with a farther simple interest at the rate of six per cent per annum on the said amount from the date of settlement of the Provident Fund account till the date of refund of the aforesaid amount to the Bank".

6. Now we are concerned only with Regulation 3(1)(a). It imposes two conditions: (1) an employee is to be in service on or after 1-1-1986; and (2) he had to be retired before the first day of November, 1993. Petitioner has satisfied the second condition. Let me see as to whether he satisfies the first condition. In this regard it is pertinent to refer to Annexure-A. Annexure-A reads as under:

"This is to inform you that you are attaining the age of retirement on 13-12-1985. You will however stand retired from the service of the Bank on 31-12-1985 (Tuesday) as per the rules, and be relieved after the close of office hours. Further, you are required to close all the loans availed by you, if any, from the Bank on or before the said date. In case you desire to adjust your service benefits towards your liabilities, you may send as a specific authorisation letter as per the pro forma enclosed".

7. A reading of Annexure-A would show that the petitioner was to be relieved

from service after the close of office hours. In this connection, it is to be seen that according to the petitioner he was deemed to have retired on 1-1-1986. The words after closing of office hours'' are very relevant.

8. The Vijaya Bank Officers'' Service Regulations, 1982 in terms of Regulation 48 provides for availability of an officer for Bank duties at any time of the day. Regulation 56 provides that in case of doubt, in the matter of application of these regulations, regard may be had to the corresponding provisions of the Central Civil Services Rules, 1972 or the Central Civil Services (Commutation of Pension) Rules, 1981. The Central Civil Services Rules provides that a Government servant is a servant for 24 hours. It is also necessary in this regard to notice a judgment of this Court in the case of Canara Bank, Head Office, J.C. Road, Bangalore v. B.M. Ramachandra and Ors., 1999(4) Kar. L.J. 628 In the said judgment this Court noticed a similar contention with regard to the regulation being applicable to the employees who were in service of the Bank on or after 1-1-1986. After noticing this contention, this Court ruled as under:

"If the employees retiring before the commencement of the regulations but after 1-11-1993 can be held to be employees of the Bank for the purpose of grant of pension. There is no justification for holding the retirees from 1-1-1986 to 31-10-1993 being not entitled to grant of pension on the ground of non-existence of relationship of employer and employee".

9. This judgment is confirmed by the Supreme Court in the case of Bank of India v Indu Rajagopalan and Ors., 2000-1-LLJ-1617 (SC) It is also to be noticed at this stage that a Full Bench of the CAT in 449 of 1997 and connected matters was considering the question of effective date of retirement. The case involved consideration of the question as to whether a Government servant completing the age of his superannuation on 31-3-1995 and relinquishing charge of his office in the afternoon of that day is deemed to have retired from service on superannuation with effect from 31-3-1995 itself or with effect from 1-4-1995. The Tribunal notices the contention of retirement from service on the last date of the month. The Tribunal also notices the pension regulations. The Tribunal after noticing the facts ruled that the Government servants completing the age of superannuation on 31-3-1995 and relinquishing charge of his office in the afternoon of that day is deemed to have effectively retired from service with effect from 1-4-1995.

10. In the case on hand, the petitioner was relieved after the close of office hours which would mean that he had retired on 1-1-1986. Taking into consideration the object of liberalised pension, the history of pension, the Division Bench judgment confirmed in appeal by the Supreme Court and the order, the contention of the petitioner is well-founded and the same requires to be accepted.

11. However, the Counsel for the respondent would rely on a judgment of the Supreme Court in Dr. Vijayapurapu Subbayamma''s case, supra, to contend that

the petitioner is not entitled for pension in the light of his failure to have the qualified service, namely, the specified date. I have carefully perused the said judgment. The said judgment is clearly distinguishable on facts. That was not a case like the present one where issue of retirement after closing hours was involving and it was also not a case involving regulations. In these circumstances, this judgment stands distinguished on facts.

12. Taking into consideration all these aspects of the matter, I do not think that the benefits are to be denied to the petitioner. The impugned order is set aside. Petitioner is entitled for pension in terms of the pension regulation. The respondents are directed to pay pension on the basis that the petitioner retires on 1-1-1986. If any benefits are already given, the same is to be adjusted in terms of this order. Time for compliance is sixty days from the date of receipt of a copy of this order. No costs.