

(1998) 09 KAR CK 0074
In the Karnataka High Court
Case No : Writ Petition No. 17560 of 1992

Salian S.T.

APPELLANT

Vs

Syndicate Bank and Others

RESPONDENT

Date of Decision : 02-09-1998

Acts Referred:

Syndicate Bank Officers Service Regulations, 1979 — Regulation 20 (3) (c), 45, 46

Citation : (2000) 3 LLJ 1581

Hon'ble Judges : V. Gopala Gowda, J

Bench : Single Bench

Final Decision : Allowed

Judgement

V. Gopala Gowda, J.—The petitioner in this case is seeking for issuance of writ of certiorari to quash annexure-F dated January 29, 1992,

urging the various legal contentions.

The undisputed facts are that, the petitioner ought to have retired from service by attaining the age of superannuation with effect from July 31,

1989. The respondent-bank, Under Regulation 20(3)(c) of the Regulations, extended the service of the petitioner and the petitioner was not

permitted to retire on his attaining the age of superannuation and the services were retained until the enquiry against the petitioner in respect of

certain charges were concluded and on passing the final order in that regard. By order dated July 29, 1989, on the ground that the disciplinary

proceedings were completed against the petitioner subsequent to that order the disciplinary authority passed an order of suspension on July 29,

1989, suspending him from service for the reason that disciplinary proceedings were pending against him and the charge-sheet was issued on the

same day. Pursuant to issuance of the charge-sheet dated July 29, 1989, enquiry was conducted by the enquiry authority under the Syndicate

Bank Officer Employees" (Conduct) Regulations, 1976, and the Syndicate Bank Officer Employees" (Discipline and Appeal) Regulations, 1976

(in short "the Regulations").

2. After conclusion of the enquiry proceedings by the enquiry authority, the respondent-bank represented by its Executive Director passed an

order on January 28, 1992, which is to the following effect:

I find that at the time of reaching the date of superannuation, you were not permitted to retire on account of pendency of the above case and you

were placed under suspension, vide proceedings dated July 29, 1989. Taking into consideration the mental anguish, on being subjected to

suspension on the eve of your retirement, and the anxiety and agony of waiting for the outcome of disciplinary proceedings for the last two and half

years, I am of the view that it will not be justifiable to prolong the proceedings and to continue your suspension any further, as I feel that the ends of

justice have already been met by the process of such suspension and the protracted disciplinary proceedings.

Therefore, taking into account all the aspects of the case, it has been decided to drop further disciplinary proceedings against you in respect of the

above charge-sheet, with immediate effect.

Accordingly, the suspension order issued against you also stands revoked with immediate effect.

3. Subsequent to this order, the General Manager has passed the impugned order dated January 29, 1992, which reads as under:

This is further to our letter No. PO:PAS: 741:AGM:PN:89, dated July 29, 1989, informing you that you were retained in the service of the bank,

in terms of Regulation No. 20(3)(c) of the Syndicate Bank Officers" Service Regulations, 1979, in view of proceedings No. 93/PO: IRO/DA-6

dated July 29, 1989, of the disciplinary authority keeping you under suspension.

Now, that the disciplinary proceedings against you have been dropped and the order of suspension is revoked as per letter No. II/PO:IRD/DA-6,

dated January 28, 1992, we are pleased to inform you that you are deemed to have retired from our service on July 31, 1989. We have requested

the trustees of the Syndicate Bank Employees" Gratuity/Provident Fund to

release the eligible terminal benefits to you on retirement. Kindly pursue the matter with them.

4. The legality of the order is challenged by the petitioner contending that the impugned order is nullity in the eye of law as the management has stated that the petitioner was deemed to have retired from the service of the bank on July 31, 1989, and it would amount to giving effect to the retirement of the petitioner, retrospectively, which is not permissible in law and further, having regard to the fact that the respondent-employer exercised its power under Regulation 20(3)(c) and the services of the petitioner was retained until the enquiry was concluded and final order passed thereon. In support of his submission, learned counsel, Mr. Rajagopal P.S., appearing for the petitioner, has placed reliance on the judgment of the Apex Court in the case of The State of Mysore Vs. C.N. Vijendra Rao, of which reads thus (page 479):

It was contended by learned counsel for the appellant, the State of Mysore, that the repeal of Rule 95(b) must be deemed to have retrospective effect and we must proceed on the basis that the particular rule did not ever exist. In the first place, such an argument was not made in the High Court. But assuming that it raises a pure question of law and may, therefore, be permitted to be taken for the first time now, we find it impossible to read even the semblance of retrospectivity in the repeal of the Rule. It does not behove the appellant to say that though the respondent was continued in its service under its specific orders, the Court should hold that, fictionally, he ceased to be in service. Besides, whatever action was taken by the Government under Rule 95(b) while that rule was on the statute book, would continue to be valid. The physical fact of the respondent's 1 continuance in service, and lawful continuance at that, cannot be wiped out by imagining a putative state of affairs.

5. Therefore, learned counsel for the petitioner submits that the impugned order is liable to be quashed as the respondent-bank has no power to pass the order impugned herein stating that the petitioner's service was deemed to be retired with effect from July 31, 1989, as the rights accrued in favour of the petitioner for claiming salary and other benefits would be taken away.

6. Per contra, learned counsel appearing on behalf of the respondent-bank, Sri

S.S. Ramdas, is unable to meet the legal contentions raised by the other side and the law laid down by the Apex Court in the above referred case but, however, contends that, on the representation made by the petitioner from the date of passing the order of suspension dated July 29, 1989, till the proceedings were dropped, vide Annexure-D by the Executive Director and the subsistence allowance provided under the regulations are paid to the petitioner and further submits, the law laid down by the Supreme Court can be applied to the facts of this case and the petitioner would be entitled to get the salary for the period for which he was retained in the service of the bank for the reason that disciplinary proceedings" were contemplated against him. The liability would be payment of salary but not anything else. Learned counsel further places reliance on the judgment of the Supreme Court in *State of Mysore v. C.N. Vijendra Rao* (supra), paragraph 4, which reads thus (page 478):

Rule 95(b) of the Mysore Civil Services Rules, which was in operation at the relevant time, provided that "a Government servant under suspension on a charge of misconduct shall not be required or permitted to retire on reaching the date of compulsory retirement, but shall be retained in service till the enquiry into the charge is concluded and a final order is passed thereon by a competent authority. The period of such retention in service after the due date of compulsory retirement was not to count for pension. The respondent was placed under suspension on February 16, 1961, and though he was due to retire on January 24, 1962, he was continued in service by reason of Rule 95(b). That rule was repealed on March 2, 1966, and it would appear that the Government of Mysore came to pass the impugned order on the supposition that the repeal of the rule was enough to lend validity to the order.

7. Per contra, learned counsel for the petitioner submits that, Regulations 45 and 46 which deal with payment of provident fund and gratuity funds, in view of retention of service of the petitioner by the disciplinary authority in exercise of its power under Regulation 20(3)(c), the terminal benefits payable under regulation referred to above have not been paid. Learned counsel further elaborating his submission submits that, under Regulation 20(3)(c), it has not been stated by retaining the services of an officer or employee in exercise of its power under the said regulation would not be

entitled to get the terminal benefits during the extended period of service that must be read along with Regulations 45 and 46. Regulations 45 and 46 state that payment of terminal benefits ; under regulation referred to above which states that, provident fund shall be paid under the governing rules stated above. Regulation 45 states, bank shall contribute to provident fund in accordance with the rules governing the provident fund from time to time and such contribution shall be more than 8-1/3 per cent of the amount paid to an officer. The proviso to Regulation 46(2) regarding payment of gratuity to an officer states, when (sic) an officer has completed more than 30 years at the office he will be eligible to get gratuity at the rate of one and half month's pay for each completed year of service beyond 30 years. By reading the said regulation, it would clearly indicate that terminal benefit of payment of gratuity is payable to an employee for each completed year of service in the said establishment.

8. Having regard to the regulation, referred to above, prohibition under Regulation 20(3)(c) in the event of the employer exercising its powers under Regulation 20(3)(c) retaining the service of an officer during such a retention period such an officer is not entitled for the terminal benefits, is not mentioned.

9. Regulations 45 and 46 speak of payment of terminal benefits such as provident fund and gratuity. Rule 95-B of the Mysore Civil Service Rules was under consideration by the Apex Court in the case referred to above wherein there is a specific provision that during the period of retention and service after the due date of retirement shall not be counted for pension.

10. Having regard to the facts, if the management has construed that the retention period of service would not be taken into consideration for payment of terminal benefits there was no justification for the employer for not having paid provident fund and the gratuity under Regulations.

Therefore, by reading the regulation referred to above, it would make clear that the terminal benefits have to be paid for every completed year of service either during the regular service or during the period of retention of service of an officer by an employer. Therefore, it cannot be said that the employer was not liable to pay the terminal benefits such as provident fund under Regulations 45 and 46 for the period of retention of services of an officer by an employer.

11. Having regard to the facts of this case, the Regulation would not disentitle an officer whose service has been retained by the employer in

exercise of its power under Regulation 20(3)(c). Hence, the petitioner is also entitled for the terminal benefits payable under the regulations.

12. For the reasons stated above, the submission of learned counsel appearing for the respondent-bank is not accepted, as the said submission is not tenable in law.

13. For the reasons stated above, the petitioner must succeed. The writ petition is allowed. The impugned order at annexure-F is hereby quashed.

The respondent-bank is hereby directed to pay the salary and the terminal benefits for the period of retention from July 27, 1989, upto the period

of revocation, i.e., January 29, 1992, after deducting the amount paid towards subsistence allowance. No costs.