
(2012) 08 AP CK 0013
In the Andhra Pradesh High Court
Case No : Writ Petition No. 23678 of 2001

Shaik Mohd. Ali

APPELLANT

Vs

Punjab and Sind Bank and Others

RESPONDENT

Date of Decision : 02-08-2012

Acts Referred:

Constitution of India, 1950 — Article 12

Citation : (2013) 2 ALD 760 : (2013) 4 ALT 16

Hon'ble Judges : P.V. Sanjay Kumar, J

Bench : Single Bench

Advocate : Kishore Rai, for the Appellant; Deepak Bhattacharjee, for the Respondent

Final Decision : Dismissed

Judgement

P.V. Sanjay Kumar, J.—The petitioner, a Gunman in the Punjab & Sind Bank, opted for voluntary retirement under the "Voluntary Retirement Scheme" (VRS) offered by the bank under Circular dated 28.10.2000. His complaint presently is that the bank is denying him pension and the commuted value of pension, calculated by adding 5 years of qualifying service in accordance with Regulation 29 of the Punjab and Sind Bank (Employees") Pension Regulations, 1995 (for brevity, "the Regulations"). The petitioner entered the service of the bank on 15.7.1986. Under the VRS offered by the bank vide Circular dated 28.10.2000, all permanent employees of the bank were eligible to seek voluntary retirement provided they met the eligibility criteria as on the date of the application. The eligibility criteria prescribed was that they should have completed either 15 years of service or 40 years of age. The petitioner, though he did not complete 15 years of service, was over 40 years of age and accordingly availed the benefit of the scheme. The petitioner's offer was accepted by the bank under its letter dated 29.1.2001. Paragraph (8) of the said letter made it clear that all other terms and conditions of the VRS, as specified in the Staff Circular dated 28.10.2000, shall apply.

2. It is the case of the petitioner that as per the said Circular, he would be entitled to pension. Reference is made to Condition (7) of Annexure-I to the Circular, which reads as follows:

Other Benefits

An employee seeking voluntary retirement under the scheme will be eligible for the following benefits in addition to the ex gratia amount mentioned in Para 6 above of this scheme:-

(i) Gratuity as per Payment of Gratuity Act, 1972 or Gratuity payable under the Service Rules as the case may be, as per existing rules:

(ii)(a) Pension (including commuted value of pension) as per PSB (Employees) Pension Regulations, 1995.

OR

(b) Bank's contribution towards PF as per existing rules.

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3. The petitioner further claims that in terms of Regulation 29(5) of the Regulations, he would be entitled to 5 years additional service for the purpose of reckoning his pensionary benefits.

4. The bank, on the other hand, denied the petitioner's entitlement to claim pension. Reliance was placed on Regulation 29(1) of the Regulations, which states to the effect that an employee, who has completed 20 years of qualifying service, would alone be entitled to the benefit of pension upon voluntary retirement. As the petitioner did not complete the requisite length of service, the bank contended that he was not entitled to seek pension upon availing voluntary retirement.

5. Sri Kishore Rai, learned Counsel for the petitioner, contended that as the bank had itself framed the VRS under Circular dated 28.10.2000, fixing the eligibility therefor to be completion of either 15 years of service or 40 years of age, it was not open to it to insist upon a minimum length of 20 years of service to enable an employee to avail the benefit of Regulation 29 of the Regulations. Learned Counsel relied upon Bank of India and Another Vs. K. Mohandas and Others, wherein the Supreme Court observed in Para 32 as under:

The fundamental position is that it is the banks who were responsible for formulation of the terms in the contractual scheme that the optees of voluntary retirement under that scheme will be eligible to pension under Pension Regulations, 1995, and, therefore, they bear the risk of lack of clarity, if any. It is a well-known principle of construction of contract that if the terms applied by one party are unclear, an interpretation against that party is preferred. [Verba chartarum fortius accipiuntur contra proferentum]

6. Learned Counsel would contend that if there was any lack of clarity in the

Circular dated 28.10.2000, the benefit thereof should be given to his client and that the bank cannot be permitted to take advantage of its own lapses in this regard.

7. Sri Deepak Bhattacharjee, learned Standing Counsel for the Punjab & Sind Bank, on the other hand, pointed out that the VRS formulated under Circular dated 28.10.2000 was in the nature of an invitation to offer and that it was for the petitioner to understand the impact and import thereof before offering to retire in terms thereof. Learned Standing Counsel stated that there is no ambiguity in the terms and conditions of the scheme as the entitlement to claim pension was explicitly pegged to the Regulations and Regulation 29(1) of the Regulations put it beyond doubt that pension on voluntary retirement would be extended only to those employees who had completed 20 years of service. He placed reliance on HEC Voluntary Retd. Emps. Welfare Soc. and Another Vs. Heavy Engineering Corporation Ltd. and Others, , in support of his contention.

8. It is no doubt true that Condition 2.2 of the Circular dated 28.10.2000 states that all permanent employees of the bank would be eligible to seek voluntary retirement under the scheme, provided they meet the following eligibility criteria on the date of application:

(a) They have completed 15 years of service

or

(b) 40 years of age.

9. Condition 4 of the Circular states to the effect that in addition to ex gratia, an employee seeking voluntary retirement under the scheme would be eligible for other retirement benefits to which he is entitled under the existing bank rules/regulations/Bipartite Settlement/Award. Annexure-I appended to the said Circular makes it clear that an employee seeking voluntary retirement would be eligible, in addition to the ex gratia amount, to the benefit of pension as per the regulations or to the bank's contribution towards Provident Fund as per the existing rules. Condition 7 (ii) of Annexure I explicitly states that pension (including commuted value of pension) could be claimed only as per the regulations.

10. Chapter V of the Regulations deals with Classes of Pension. Regulation 28 thereunder deals with Superannuation Pension while Regulation 29 deals with Pension on Voluntary Retirement. Regulation 29(1) states that on or after the 1st day of November, 1993, at any time after an employee has completed 20 years of qualifying service, he may, by giving notice of not less than three months in writing to the appointing authority retire from service. This forms the foundation for eligibility to claim pension upon voluntary retirement. Perhaps being aware of this eligibility criteria the bank, while formulating the VRS under Circular dated 28.10.2000, offered a choice between pension and Provident Fund contributions. Those who were ineligible to claim pension in terms of Regulation 29(1) therefore

had the choice of opting for the bank's contributions towards Provident Fund as per the existing rules.

11. The petitioner, having been put on notice of this option under Condition 7 of Annexure-1 to the Circular dated 28.10.2000, cannot now complain of ignorance of the required conditions of eligibility. No ambiguity was there in the Circular or Annexure I appended thereto, warranting application of the principle laid down in K. Mohan Das's case (supra). On the other hand, the observations made by the Supreme Court in HEC Voluntary Retd. Employees Welfare Society's case (supra), are apposite and practically clinch the issue:

An offer for voluntary retirement in terms of a scheme, when accepted, leads to a concluded contract between the employer and the employee. In terms of such a scheme, an employee has an option either to accept or not to opt therefor. The scheme is purely voluntary, in terms whereof the tenure of service is curtailed, which is permissible in law. Such a scheme is ordinarily floated with a purpose of downsizing the employees. It is beneficial both to the employees as well as to the employer. Such a scheme is issued for effective functioning of the industrial undertakings. Although the Company is "State" within the meaning of Article 12 of the Constitution, the terms and conditions of service would be governed by the contract of employment. Thus, unless the terms and conditions of such a contract are governed by a statute or statutory rules, the provisions of the Contract Act would be applicable both at the formulation of the contract as also the determination thereof. By reason of such a scheme only an invitation of offer is floated. When pursuant to or in furtherance of such a Voluntary Retirement Scheme an employee opts therefor, he makes an offer which upon acceptance by the employer gives rise to a contract. Thus, as the matter relating to voluntary retirement is not governed by any statute, the provisions of the Contract Act, 1872, therefore, would be applicable too. (See Bank of India and Others Vs. O.P. Swarnakar etc.,

12. It is therefore clear that the petitioner, at the point of time he responded to the invitation to offer in the Circular dated 28.10.2000, had the option to accept the terms thereof or turn his back on it. Having accepted those terms, he made his offer which was duly accepted by the bank. It is therefore too late in the day for the petitioner to turn around and seek benefits which he is not entitled to in terms of the conditions prescribed in the VRS.

13. The petitioner's claim that he should be extended 5 years of additional qualifying service under Regulation 29(5) of the Regulations, has no legs to stand upon as the said regulation would only apply to those employees who fulfil the eligibility prescribed in Regulation 29(1). Once the petitioner failed to fulfil the eligibility criteria prescribed in Regulation 29(1), he cannot seek the benefit of the later part of the regulation. As the petitioner did not fulfil the eligibility criteria of twenty years of service to seek pension under the said Regulation, his claim for pension and commuted pension is without legal basis. The writ petition is therefore bereft of merit and is accordingly dismissed. WPMP No. 29905 of

2001 shall stand dismissed in consequence. No order as to costs.