
(2012) 01 BOM CK 0145
In the Bombay High Court
Case No : Writ Petition No. 604 of 2011

Shapoor M. Mehta

APPELLANT

Vs

Allahabad Bank

RESPONDENT

Date of Decision : 19-01-2012

Acts Referred:

Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 — Section 12(2)
Constitution of India, 1950 — Article 14, 226
Payment of Gratuity Act, 1972 — Section 19, 19(1), 19(2), 19(3)

Citation : (2012) 2 ALLMR 775 : (2013) 1 BomCR 176 : (2012) 114 BOMLR 1210 : (2012) 4 LLJ 429 : (2012) 3 MhLj 126

Hon'ble Judges : D.Y. Chandrachud, J;A.A. Sayed, J

Bench : Division Bench

Advocate : K.J. Presswala with Mr. Sandeep Goyal instructed by Mulla and Mulla and Craigie Blunt and Caroe, for the Appellant; Ashish Mehta with Mr. Prasad Das instructed by M/s. Goenka Law Associates, for the Respondent

Final Decision : Allowed

Judgement

Dr. D.Y.Chandrachud, J.—By consent, the Petition is taken up for hearing and final disposal.

2. The Petitioner is an eighty seven year old senior citizen. On 30 May 1986 he retired from the Allahabad Bank, the First Respondent, as a Special Assistant after thirty nine years of service. The Petitioner, it is undisputed, belongs to the category of award staff. In the Allahabad Bank as it was prior to nationalisation, there was a pension scheme, governed by Pension Rules which stipulated that special assistants, clerks (including typists) and cash clerks would be entitled to pension at the rate of 35% of the full monthly basic pay drawn during the twelve months immediately preceding the date of retirement with a minimum pension of Rs.50/per month. The Petitioner continued to receive pension under the Pension Rules even after the nationalisation of the bank.

3. The Retired Employees Association of the " bank had moved the High Court of Allahabad in assertion of the statutory right of the retired employees to receive gratuity under the Payment of Gratuity Act, 1972. The High Court held that the retired employees of the bank were entitled to the benefit of gratuity under the Act. The judgment of the High Court was carried in appeal to the Supreme Court. On 15 December 2009, in Allahabad Bank and Another Vs. All India Allahabad Bank Retired Emps. Assn., the Supreme Court dismissed the appeal filed by the bank. The Supreme Court held that the payment of gratuity under the Act was a statutory right unless an exemption was granted by the appropriate government under the Act. The Supreme Court noted that pensionary benefits or retirement benefits, whether governed by a scheme or rules, constitute a package and pensionary benefits may include the payment of pension as well as gratuity. Upon the dismissal of the appeal filed by the bank, a circular was issued on 30 October 2010 stating that it had been decided to discontinue the scheme for payment of pension in lieu of gratuity pending amendment to the Officers Service Regulations. The Petitioner was in receipt of a princely sum of Rs.5,660/per month towards pension which came to be stopped with effect from 1 October 2010. Aggrieved, the Petitioner is before this Court in proceedings under Article 226.

4. Counsel appearing on behalf of the Petitioner submitted that -

(i) The payment of pension as a retiral benefit is not a largesse, but constitutes a valuable right in property; (ii) The sudden stoppage of pension to a retired employee aged eighty seven years is patently in violation of the principles of natural justice and even otherwise unlawful; (iii) Payment of pension was governed by the Pension Rules which were in force even prior to nationalisation; (iv) u/s 12(2) of the Banking Companies (Acquisition and Transfer of Undertakings) Act 1969 the services of every employee in an existing bank were to continue on the same terms and conditions in the corresponding new bank inter alia with the same right to pension, gratuity and other matters until his employment in the new bank was terminated or until his remuneration terms and conditions were duly altered. Under Regulation 19, a power has been conferred upon the Board of Directors to frame regulations inter alia in regard to the establishment and maintenance of pension funds; (v) The conduct of the First Respondent in withdrawing the payment of pension by an administrative circular is completely arbitrary and violative of the fundamental rights of the Petitioner inter alia under Article 14 of the Constitution. Besides, as a member of the award staff, the rights of the Petitioner could not have been divested ostensibly pending an amendment to the regulations governing the officers.

5. On the other hand, counsel appearing on behalf of the First Respondent urged two submissions: (i) The Petitioner has not moved this Court with clean hands since in paragraph 3 of the Petition he has stated the he was never given an option to forego his gratuity under the Payment of Gratuity Act and opt for pension in lieu thereof whereas at his retirement, the Petitioner was given an

option and had opted for pension on retirement; (ii) The issue before the Supreme Court in the decision noted earlier in the case of the Allahabad Bank v. All India Allahabad Bank Retired Employees Association related to the payment of statutory gratuity under the Payment of Gratuity Act 1972 only. Since the bank is required to pay gratuity under the Payment of Gratuity Act 1972, it was within its right to withdraw pension particularly since clause (9) of the pension scheme empowers the bank to amend, vary, rescind or modify the rules.

6. There is no merit in the submission which has been urged that the Petitioner has suppressed facts from this Court. The affidavit in reply would show that on 14 January 1986 an option was given to the Petitioner to opt for pension or gratuity and that on 6 March 1986 he had opted for pension on retirement. As the Supreme Court noted, it was not the case of the bank that at the time of superannuation of the employees, there was a scheme for payment of gratuity which was more beneficial in comparison to the provisions of the Payment of Gratuity Act 1972. In any event, even the bank does not dispute the fact that the Petitioner was entitled to the payment of the pension under the old pension scheme and that he was in receipt of pension until it was unilaterally stopped with effect from October 2010.

7. On the state of the law as it stands, as a matter of first principle, retiral benefits including pension and gratuity constitute a valuable right in property. Retiral benefits are paid in recognition of long service rendered by employees to the organisation of the employer. Where the employer is a public employer, those rights are constitutionally protected and their deprivation has to answer the mandate of the right to fair treatment guaranteed under the equality provisions of Article 14. An employer cannot grant or withhold retiral benefits at his whim and caprice. The Petitioner was in receipt of pension under the Pension Rules which were in existence in the bank even prior to nationalisation. The Petitioner was an employee of the erstwhile Allahabad Bank prior to its nationalisation and retired on 30 May 1986 after thirty nine years of service. The Petitioner was paid pension under the old Pension Rules. The issue which was raised initially before the Allahabad High Court and thereafter in appeal before the Supreme Court in Allahabad Bank v. All India Allahabad Bank Retired Employees Association was whether the retired employees were entitled to gratuity which is a statutory entitlement under the Payment of Gratuity Act 1972. The Supreme Court upheld the judgment of the Allahabad High Court and came to the conclusion that a statutory right to the payment of gratuity could not be divested unless an exemption was granted by the appropriate government under the provisions of the Act. The Supreme Court held that pension and gratuity are separate retiral benefits and hence the statutory right to the payment of gratuity could not be withheld on the ground that the employees were in receipt of pension under a pension scheme or rules.

In paragraphs 22 and 23 of the judgment, the Supreme Court observed as follows : In our considered opinion, pensionary " benefits or the retirement

benefits as the case may be whether governed by a scheme or rules may be a package consisting of payment of pension and as well as gratuity. Pensionary benefits may include payment of pension as well as gratuity. One does not exclude the other. Only in cases where the gratuity component in such pension schemes is in better terms in comparison to that of what an employee may get under the Payment of Gratuity Act the Government may grant an exemption and relieve the employer from the statutory obligation of payment of gratuity.

In the result, we find merit in the submissions made by the learned Senior Counsel, Shri P.P. Rao appearing for the Association that pension and gratuity are separate retiral benefits and right to gratuity is a statutory right.

8. The judgment of the Supreme Court upholding the right of retired employees to the payment of gratuity under the payment of Gratuity Act 1972 has been met with a reprisal by depriving the employees of the right to the payment of pension. Nothing more arbitrary can be conceived of. The manner in which the payment of pension has been unilaterally stopped by an executive act is arbitrary. The judgment of the Supreme Court held that the employees were entitled to gratuity in addition to pension since the payment of gratuity was a statutory right. The bank had no basis whatsoever to deprive the Petitioner of his pension to which he was entitled under the Pension Rules.

9. Section 12(2) of the Banking Companies (Acquisition and Transfer of Undertakings) Act 1969 provides that every officer or other employee of an existing bank shall become on the commencement of the Act an officer or employee of the corresponding new bank and shall hold his office or service in that bank on the same terms and conditions and with the same rights inter alia to pension, gratuity and other matters as would have been admissible if the undertaking of the existing bank had not been transferred to and vested in the corresponding new bank and would continue to do so unless the terms of employment are duly altered. The power to frame regulations is contained in Section 19. Under clause (f) of sub section (2) of Section 19 the power to frame regulations includes the subject of establishing and maintaining superannuation, pension, provident or other funds. Subsection (3) stipulates that until any regulation is made under subsection (1) every regulation, rule, byelaw or an order made by an existing bank shall be deemed to be a regulation made under subsection (1). Though the old Pension Rules, when they were framed in 1890, contained a power in clause (9) to amend, vary, rescind or modify those rules, the power cannot be exercised arbitrarily. The status of the First Respondent in any event went through a metamorphosis once the First Respondent became a nationalised bank. All powers by an authority of the State have to be exercised reasonably and fairly. Even if the conditions of service could be altered, they have to be altered in accordance with law. Pensionary payments constitute an important source of wherewithal for senior citizens to live the years of twilight in dignity. Depriving employees who have put in long years of service of a right which has accrued and vested in them to receive pension cannot be regarded as

fair conduct. The deprivation in the present case has taken place patently in violation of law and is violative of the guarantee of equal protection under Article 14 of the Constitution.

10. In these circumstances, we allow the Petition by quashing and setting aside the action of the bank, the First Respondent, in stopping the payment of pension to the Petitioner. The deposit which has been made by the bank in this Court in pursuance of the interim order passed by the Division Bench on 23 November 2011 is permitted to be withdrawn by the Petitioner and the payment of pension to the Petitioner shall stand restored forthwith. Rule is made absolute in these terms. The First Respondent shall pay costs to the Petitioner quantified at Rs.15,000/