

(2009) 08 CAL CK 0088
In the Calcutta High Court
Case No : Writ Petition No. 11143 (W) of 2002

Sri Jatindra Nath Pradhan

APPELLANT

Vs

Central Bank of India and Others

RESPONDENT

Date of Decision : 27-08-2009

Acts Referred:

Central Bank of India (Employees) Pension Regulations, 1995 — Regulation 19, 22, 3(3)

Constitution of India, 1950 — Article 14, 16, 21, 226

Citation : (2009) 08 CAL CK 0088

Hon'ble Judges : S.P. Talukdar, J

Bench : Single Bench

Advocate : Tapan Kumar Banerjee, Subhabrata Das and Mrinal Kanti Das, for the Appellant; M.R. Sarbadhikari, for the Respondent

Judgement

S.P. Talukdar, J.—The petitioner, Jatindra Nath Pradhan, by filing the instant application under Article 226 of the Constitution, sought for cancellation/quashing of the communication dated 14th June, 2000, being Annexure-"P-7" to the writ application. By such communication, the respondent bank authorities informed the petitioner that since he resigned from bank's service, he was not eligible for pension under the then existing CBI (Employees) Pension Regulations, 1995.

2. Grievances of the petitioner may briefly be stated as follows:

The petitioner joined the service under the Central Bank of India on 10th September, 1953. After serving in various capacities, on 24th June, 1992 he sought for voluntary retirement since he became seriously ill. But the said application for voluntary retirement was not accepted. He then retired on and from 1st July, 1992. After retirement, he came to know about his eligibility of receiving pension under the proposed Central Bank of India Employees' (Pension) Regulations, 1993. The said Regulation provided that the retirees between the period from 1.1.1986 and 31.10.1993 would be eligible to

commute pension after they were found medically fit by the bank's doctor/bank's approved doctor. Pursuant to the said arrangement, the petitioner exercised his option by his letter dated 27th May, 1994 and informed the Trustee of Central Bank of India Employees Provident Fund accordingly by his letter dated 28th November, 1994. Simultaneously, by filling up the option form dated 27.5.1994, the petitioner declared to undertake to refund the bank's contribution to provident fund together with accrued interest thereon till the date of such refund. There had been no response from the side of the authorities. The petitioner subsequently came to know that the employees, who voluntarily retired from service in between 1.1.1986 and 31.10.1993, were eligible for the benefit of the concerned Pension Regulations. The Central Bank of India (Employees) Pension Regulations, 1995 were applicable to the employees who were in the service of the bank on or after the 1st day of January, 1986 but had retired before 1st day of November, 1993.

3. The petitioner subsequently could also learn that Hon'ble Apex Court in Civil Appeal No. 6959 of 1997 held that the pensionary benefits were applicable uniformly to all bank employees including those who took voluntary retirement during the period from 1.1.1986 to 31.10.1993. Being emboldened with such decision of the Apex Court, the petitioner made an application before the concerned authority for grant of pension. He filled up the letter of option on 10.7.2000 for refund of bank's contribution to provident fund for opting for the bank's pension scheme. The petitioner, however, by communication dated 14th June, 2000 was informed that since he had resigned from bank's service on 24.6.1992, he was not eligible for pension under the existing CBI (Employees) Pension Regulations, 1995. He was further informed that the pensionary benefits were to be granted only to those employees who had voluntarily retired during the period from 1.1.1986 to 31.10.1993 in terms of specific scheme formulated by the bank's board pursuant to the proviso to Regulation 19 of the Officers' Service Regulations. Such stand on the part of the respondent authority is illegal and is violation of the principles of Article 14 and Article 16 of the Constitution of India.

4. In such circumstances, the petitioner being left with no option approached this Court for redressal of his grievances.

5. Respondent Nos. 1 to 4 by filing Affidavit-in-Opposition denied the materials allegations made by the petitioner. Highlighting the fact that such a writ application has been filed after inordinate delay since the writ petitioner admittedly left the service of the bank in 1992, it had been claimed that this by itself would justify non-entertainment of the application. The respondents further claimed that the grievance of the writ petitioner could very well be redressed before the Industrial Tribunal and in view of availability of such an efficacious alternative remedy, the writ application does not deserve to be entertained. Such respondents claimed that the writ petitioner resigned from the service of the bank on the ground of illness. At the time of petitioner's exercising option

regarding his pensionary benefit, such a scheme/pension regulation was not in existence and it was notified in the year 1995. The employees were required to give their option within 120 days of such date of notification i.e. 12.10.1995. Assuming that the writ petitioner is eligible for pensionary benefit, he could be entitled to exercise his option and that having not been done within time, he could not be said to be eligible for the same. The writ petitioner was a sub-staff and Officers' Service Regulations were not applicable to him. He had no locus standi to opt for the pensionary benefit in the year 1994 or on 27th May, 1994, as there was no Pension Regulations. He could not have had any scope for exercising subsequent option on 10.7.2000. The petitioner availed himself of the entire terminal benefit and his such demand, as made in the writ application at this stage, does not deserve to be entertained.

6. The petitioner is not entitled to any pensionary benefit and the present application as such, is liable to be dismissed.

7. By filing Supplementary Affidavit, the petitioner reiterated his claim that he retired from the service on and from 1st July, 1992 under the Voluntary Retirement Scheme. It had also been claimed that the petitioner filed the writ application in August 2002 after being informed by the concerned authority of the bank by letter dated 14.6.2000 that he had resigned from bank's service on 24th June, 1992 and as such, was not eligible for pension under the existing CBI (Employees) Pension Regulations, 1995.

8. Learned Counsel for the writ petitioner categorically submitted that the Supreme Court did not differentiate between Officers and the others staff of the bank in its decision in the case between Bank of India v. Rajagopalan and Ors., (2000) 1 LLJ 1617SC .

9. It was submitted that the communication being Annexure-"P-7" which is the memo dated 14.6.2000 cannot have any legs to stand upon in view of its inherent illegality. Annexure-"P-1" to the writ application at page 12 is copy of communication dated 1st July, 1992. Referring to the application dated 24th June, 1992, it shows that the request for voluntary retirement from bank's service was accepted by the concerned authority w.e.f. 1st July, 1992. Such claim of the petitioner that he took voluntary retirement on medical ground, finds support from the copy of the pensioner's profile annexed to the writ application. In response to the petitioner's application for commutation of pension, the concerned authority requested him to wait. Petitioner's application for commutation a fraction of his pension for a lump sum payment was processed as reflected from Annexure " P-2" at page 18. It appears that the petitioner's claim for pensionary benefit was turned down by communication dated 14th June, 2000 on the ground that the pensionary benefits were to be granted only to those who had voluntarily retired during the period from 1.1.1986 to 31.10.1993 and since the petitioner resigned from bank's service, he was not eligible for such pension.

10. Learned Counsel for the respondent bank laid particular emphasis to Annexure-"P-5" at page 22 in support of his claim that the petitioner himself in unambiguous language mentioned in his claim for pensionary benefit that he tendered resignation and was relieved w.e.f. 1.7.1992.

11. Deriving support and strength from the decision of the Apex Court in the case between Bank of India v. Rajagopalan and Ors., (2000) 1 LLJ 1617SC the General Secretary of the concerned association assured to take up the matter with the IBA so that all Officers/Award Staff who voluntarily retired under the bank's scheme or otherwise or compulsorily retired from service or under compassionate appointment schemes had retired were to be given the scope to opt for pension on their refunding the bank's contributions to the PF with interest thereon. This appears to have revitalized the entire issue thereby permitting the writ petitioner to approach the concerned authority for permitting him to opt for such pension scheme.

12. In the case between Jai Singh B. Chauhan Vs. Punjab National Bank and Others, the Apex Court did not entertain a scheme where the claimant fails to exercise option within the stipulated time. Mr. Sarbadhikari, appearing as learned Counsel for the respondent bank, submitted that the writ petition is not maintainable in view of availability of efficacious alternative remedy.

13. In Hindustan Steel Works Construction Ltd. and Another Vs. Hindustan Steel Works Construction Ltd., Employees Union, the Apex Court held that when the dispute relates to enforcement of a right or obligation under the statute and a specific remedy is, therefore, provided under the statute, the High Court should not deviate from the general view and interfere under Article 226 except when a very strong case is made out for making a departure.

14. After considering the factual backdrop of the present case and appreciating the same in the backdrop of the case as referred to, I find it difficult to shut the doors of the writ Court to the present petitioner. Here, the petitioner left the service of the bank, whether by resignation or under voluntary retirement scheme, long time back. Maintainability and entertainability are not synonymous. The remedy by way of approaching the industrial tribunal in the peculiar factual backdrop of the present case also cannot be said to be convenient. Moreover, any grievance relating to pension which is nothing but a deferred payment to be made by the employer to the employee for the service rendered is indistinguishably linked up with the right to life as laid down in Article 21 of the Constitution of India. It cannot be disputed that the Article 21 of the Constitution has been given expanded and extended meaning and it certainly includes the right to life with dignity. In these days of stagflation, any claim relating to service benefit cannot be de-linked from a person's right to life with dignity.

15. In view of the averments made in the writ application, it appears that the petitioner has sought to make out a case of violation of Article 14 and Article 16 of the Constitution as well. When a fundamental right of a citizen is a subject

matter of challenge in the writ application, this Court cannot afford to remain a passive onlooker and compel the aggrieved person to seek redress before another forum on the mere plea of availability of an alternative remedy.

16. In this context, reference may be made to the observation made by Professor T. B. Smith of Edinburgh University:

Why should a Court, which in the past clearly refused to be strictly bound by precedent (and has subsequently tied its own hands) not resume the earlier and more equitable practice? It is astonishing to observe the most eminent legal minds of the country reacting to the prison of precedents (of precedents which they recognize as unjust) like a child who has shut himself in a room and screams to be let out - presumably by the legislature.

17. Though much emphasis was laid by learned Counsel for the parties on "precedent", I would like to refer to the observation made by Lord Denning in this regard:

By previous decisions we have kept the common law on good course. All that I am against is its too strict application, a rigidity which insists that a bad precedent must necessarily be followed. I would treat it as you would a path through the woods. You must follow it certainly, so as to reach your end. But you must not let the path become too overgrown. You must cut out the dead wood and trim off the side branches, else you find yourself lost in the thickets and the brambles. My plea is simply to keep the path to justice clear of obstructions which impede it.

18. It was contended that the present writ application involves disputed questions of fact and as such, in exercise of its jurisdiction under Article 226 of the Constitution. Reference was made to the decision in the case between Sanjay Sitaram Khemka Vs. State of Maharashtra and Others,

19. On careful consideration of the facts and materials on record, I am inclined to hold that the controversy relating to the manner of exit of the writ petitioner from service could not be effectively resolved. Whether it was a case of voluntary retirement or resignation cannot be conclusively sorted out on the basis of the materials available on record. This by itself creates problems for this Court in entertaining the grievances, as ventilated on behalf of the writ petitioner. It may be mentioned in this context that the present case was referred to Lok Adalat but it had subsequently been referred back to this Court.

20. Then again, it cannot be disputed that the writ petitioner has been enjoying his retiral benefits in a particular fashion. Now, being emboldened with judicial pronouncement in another matter, he has sought for an option, which according to him would be more beneficial. But there too, he could not fill up the option form within the stipulated time. If this Court entertains such irresistible temptation of the writ petitioner, it might open the flood gate and lead to a functional disorder. The petitioner by filing this application has virtually sought to

undo what has already been done.

21. Learned Counsel for the respondent authority deriving support and strength from an unreported decision of the learned Single Bench of this Court in W.P. No. 16557 (W) of 2004, submitted that the present application does not have any sound rational basis and accordingly is liable to be dismissed. It was further mentioned that the appeal arising out of the said judgment dated 10th January, 2005, was also dismissed by the learned Division Bench of this Court and it was held that "even after the amendment of the Regulation 22 of the Pension Regulations, 1995 no right was conferred upon any employee by the Competent Authority of the Bank to exercise fresh option under the Regulation 3(3)(b) of the Pension Regulations, 1995."

22. Thus, to sum up, the present application involves a disputed question of fact as to the manner of exit of the writ petitioner from his service. He has admittedly opted for a particular scheme and has been enjoying the retiral benefits arising out of the same. At this belated stage, it would neither be just nor proper to entertain his claim for certain other benefits, which he could have claimed under certain Regulations, which came into effect subsequently. The legal battle, thus, cannot be permitted to be dragged on indefinitely. For all such reasons, the present application being W.P. No. 11143(W) of 2002 fails and be dismissed. Interim order, if any, stands vacated.

23. There is no order as to costs.

24. Xerox certified copy of the judgment be supplied to the parties, if applied for, as expeditiously as possible.