(2007) 02 KAR CK 0060

In the Karnataka High Court

Case No : Writ Appeal No. 1321 of 2006

Sri K. Gopalakrishna Upadhya — APPELLANT

Vs

Syndicate Bank — RESPONDENT

Date of Decision : 15-02-2007

Acts Referred:

Syndicate Bank Employees Pension Regulations, 1993 — Regulation 29

Citation : (2008) 3 KCCR 1910

Hon'ble Judges : Cyriac Joseph, C.J;B.S. Patil, J

Bench : Division Bench

Advocate : K.S. Dixit and M.S. Srinivasamurthy, for the Appellant; Anandaverman K., for Sunderswamy, Ramdas and Anand, for the Respondent

Final Decision : Dismissed

Judgement

Cyriac Joseph, C.J.—This writ appeal is filed against the judgment dated 14.06.2006 in Writ Petition No. 46367 of 2001 which was dismissed by the learned Single Judge. The appellant is the petitioner in the writ petition.

2. The appellant was an Officer in the Syndicate Bank which is the respondent in the writ petition and the writ appeal. The Syndicate Bank Employees'' Pension Regulations, 1993 provided for seeking voluntary retirement on fulfillment of certain conditions mentioned under Regulation 29. According to Regulation 29, on or after the first day of November 1993, at any time after an employee has completed 25 years of qualifying service, he may by giving notice of not less than three months in writing to the appointing authority, retire from service. The notice of voluntary retirement given by the employee shall require acceptance by the appointing authority, provided that, where the appointing authority does not refuse to grant the permission for retirement before the expiry of the said period, an employee who has elected to retire under the Regulations and has given necessary notice to that effect to the appointing authority, shall be precluded from withdrawing his notice except with the specific approval of such authority considering that the request for such withdrawal shall be made before the

intended date of his retirement. The appellant submitted Annexure-B application dated 24.07.2000 to the General Manager of the respondent-Bank stating that he intended to get relieved from the services of the Bank under the Voluntary Retirement Scheme. He requested the Bank to consider his request for relieving him from the service of the Bank under the Voluntary Retirement Scheme and oblige. He clarified that it was an unconditional request for accepting his application under Voluntary Retirement Scheme. He confirmed that he had opted for pension and he was eligible to apply under Voluntary Retirement Scheme. He also stated that he was seeking retirement under Voluntary Retirement Scheme as he was suffering from diabetes for the last twenty years and was using insulin for the last six years. He further stated that he was having gall stones arid acidity. He also stated that he was not keeping good health. He specifically requested that he may be relieved from the services of the Bank after completion of the notice period of three months. As per Annexure-C letter dated 10.08.2000, the respondent acknowledged the receipt of the appellant''s application for voluntary retirement. However, the appellant submitted Annexure-D representation to the Deputy General Manager of the respondent-Bank stating that he intended to opt for the new Voluntary Retirement Scheme (Golden Handshake) introduced by the Government and hence he was withdrawing his earlier application dated 24.07.2000 seeking Voluntary Retirement under the Syndicate Bank Employees'' Pension Regulations, 1993. The respondent-Bank did not act upon Annexure-D representation of the appellant Therefore, the respondent sent Annexure-H Letter dated 10.10.2000 to the appellant informing him that the competent authority had rejected his request for withdrawal of notice for voluntary retirement. Pursuant to Annexure-F and Annexure-H, the appellant was relieved from the services of the Bank on 27.10.2000. According to the appellant, he made several representations to the respondent personally and also through the Syndicate Bank Officers'' Association requesting to permit him to continue in the service of the Bank, but the respondent-Bank did not give any specific response to such representations. Thereafter the appellant was paid all his retirement benefits like gratuity and he received the same without any demur. He was also drawing pension regularly under the Pension Regulations of the Bank. After over a year, the appellant filed Writ Petition No. 46367 of 2001 on 13.12.2001 praying to quash Annexure-H or to direct the respondent to allow the petitioner to retire under Voluntary Retirement Scheme 2000. The respondent contested the claim of the appellant by filing statement of objections. It was specifically pleaded by the respondent that the writ petitioner/appellant had acquiesced in his relief from service on 27.10.2000 and had accepted the same without any demur and therefore, his claim in the writ petition had become stale and hence it cannot be granted by the Court According to the respondent, the writ petitioner was guilty of delay and laches and on that ground alone, he was not entitled to any relief under Article 226 of Constitution of India. It was also contended by the respondent that an employee who submitted application for voluntary retirement under the Syndicate Bank Employees'' Pension Regulations, 1993 had no right to withdraw the application except with the specific approval of the competent authority. In the case of the petitioner, the request for approval to withdraw the application was refused and therefore, the petitioner was liable to be relieved from service on 27.10.2000. After considering the rival contentions of the parties, the learned Single Judge dismissed the writ petition holding that having accepted the retiral benefits without any protest, the petitioner cannot be permitted to approbate or reprobate, nor can he be permitted to resile from his earlier stand and that those who accepted the ex-gratia payment or any other benefit under the Scheme could not have resiled therefrom. Aggrieved by the dismissal of the writ petition, this writ appeal has been filed.

3. There is no dispute on the facts stated above. Hence the only question to be considered is whether the learned Single Judge was right and justified in dismissing the writ petition on the ground that the petitioner/appellant had received the retiral benefits without any protest and filed the writ petition long after the relief from service and from receipt of retiral benefits like gratuity.

4. In paragraph 114 of the judgment in Bank of India and Others Vs. O.P. Swaranakar etc., , the Hon''ble Supreme Court clearly held that those who accepted the ex-gratia payment or any other benefit under the Scheme could not have resiled therefrom. In the present case, the appellant did not dispute the averment in the statement of objections filed by the respondent that he had received the retiral benefits and gratuity before filing the writ petition. Learned Counsel for the respondent has given the details of the amounts paid by the respondent to the appellant and the dates of payment. As stated earlier, the appellant was relieved from service on 27.10.2000. An amount of Rs. 3,03,983/- was paid on 30.10.2000 as amount of gratuity. An amount of Rs. 2,54,904/- was paid on 11.11.2000 towards commuted value of pension. An amount of Rs. 32,374/- was paid on 15.02.2001 as arrears of gratuity. An amount of Rs. 80,769/-was paid on 09,02.2001 towards arrears of commuted value of pension. The appellant was being paid monthly pension regularly. The writ petition was filed only on 13.12.2001. In such circumstances, the decision in Bank of India and Ors. v. O.P. Swarnakar and Ors. squarely applies to the case of the writ petitioner and the learned Single Judge was right and justified in rejecting the writ petition.

5. Learned Counsel for the appellant submitted that merely because the amounts were received by the appellant, he could not have been denied the relief in the writ petition. Learned Counsel relied on the judgment of the Supreme Court in Punjab and Sind Bank and Ors. v. Mohinder Pal Singh and Ors. AIR 2005 SCC 6182. However, we find that in the case before the Supreme Court, the facts were entirely different and the decision of the Supreme Court was based on those peculiar facts. In Punjab and Sind Bank and Ors. v. Mohinder Pal Singh and Ors. the Supreme Court did not differ from the view taken by the Supreme Court in Bank of India and Ors. v. O.P. Swamakar and Ors. After noticing that in Bank of India''s case the Supreme Court had held that if the employees had accepted

the ex-gratia payment or any other benefit under the Scheme, they could not have resiled therefrom, the Court proceeded to consider whether in the given case, the said withdrawal of application for voluntary retirement had waived his right. In the case before the Supreme Court, no communication was ever made to the applicant conveying acceptance of request for voluntary retirement. The peculiar facts and circumstances were narrated in paragraphs 12 and 13 of the judgment. Hence those paragraphs are extracted hereunder:

12. The Applicant in the instant case not only withdrew his offer before the same was accepted, he even filed a writ petition when he came to know that the Bank had unilaterally accepted offers of certain employees despite the same having been withdrawn and terminated their services with immediate effect. As noticed hereinbefore, the judgment in O.P. Swamakar (supra) was delivered on 17th December, 2002. Immediately thereafter, he issued a notice that he be permitted to report for duty as he had not accepted the retiral benefits. His representation went unheeded. He thereafter sent legal notices on 22nd February, 2003 and 28th March, 2003. The stand of the Bank at all material times was and still is that a sum of Rs. 14,459.21 was paid to him by way of leave encashment of 31 days upon deduction of income tax therefor. But, it is accepted that at no point of time he had been told that the said amount had been deposited in his account as a part of benefit under the Scheme. Even, there had been no communication to the Applicant by the Bank that he is being paid out of the total leave encashment of Rs. 14,459.21, after deducting a huge sum of Rs. 13,037/-, a sum of Rs. 1,422.21. We fail to understand as to how out of the said amount of Rs. 14,459.21, a sum of more than Rs. 13,000/- could be deducted by way of income tax. Leave encashment benefit is one of the additional benefits. The main benefit of the Scheme indisputably was the ex-gratia payment. An employee even if continued in service would have been entitled to the additional benefits which are in the nature of terminal benefits.

13. It is also beyond anybody''s comprehension as to why despite expiry of about five years the main benefit of the Scheme or in any event the total benefit amounting to Rs. 10,50,000/- to which the Applicant was otherwise entitled to in terms of the Scheme had not been paid to him.

6. In the light of the above quoted facts and circumstances, the Supreme Court held that in the peculiar facts of the case, the Court was not in a position to accept that by reason of a deposit of a meagre sum of Rs. 1,422.21 in respect whereof the applicant had no knowledge, and in relation where to he had not been informed and only because he closed the account so as to prevent the Bank from depositing any further amount in his account cannot be said to have waived his right to continue in service. It is further seen from paragraph 19 of the judgment that the conduct of the applicant did not indicate any knowledge about the payment in his account or his willful appropriation thereof as to constitute a waiver. The applicant had contended that even the Bank had acted in a discriminatory manner as in the account of certain employees some deposits had

been made, but in respect of others no such deposit had been made. The said allegation also had not been denied. The facts and circumstances in this case are totally different from the facts and circumstances in the case of Punjab and Sind Bank and Ors. v. Mohinder Pal Singh and Ors. As observed by the Supreme Court in paragraph 117 of the judgment, waiver of a right implies his knowledge of the existing right. A person cannot be said to have waived his right unless it is established that his conduct was such, so as to enable the Court to arrive at a conclusion that he did so with the knowledge that he had a right, but despite the same acted in such manner it would imply that he had waived the same. In the present case, the conduct of the appellant clearly demonstrated waiver of his right on his part. Therefore, the appellant cannot seek any assistance from the decision of the Supreme Court in Punjab and Sind Bank and Ors. v. Mohinder Pal Singh and Ors.

7. Learned Counsel then invited our attention to the decision of the Supreme Court in Balram Gupta Vs. Union of India (UOI) and Anr, . We have carefully perused the judgment. In our view, the said judgment has absolutely no application to the issues involved in this case.

8. For the reasons stated above, we hold that there is no merit in the writ appeal and hence the writ appeal is dismissed.