

(2009) 02 UK CK 0007

In the Uttarakhand High Court

Case No : Writ Petition (S/B) No. 69 of 2007

Sudhir Kumar

APPELLANT

Vs

Allahabad Bank

RESPONDENT

Date of Decision : 25-02-2009

Acts Referred:

Allahabad Bank (Officers) Service Regulations, 1979 — Regulation 46
Constitution of India, 1950 — Article 14, 226
Payment of Gratuity Act, 1972 — Section 7

Citation : (2011) 130 FLR 778

Hon'ble Judges : P.C. Pant, J;B.S. Verma, J

Bench : Division Bench

Final Decision : Allowed

Judgement

B.S. Verma, J.—By means of this writ petition, the petitioner has sought the following reliefs:

- a. Issue a writ, order or direction in the nature of mandamus directing the bank to review its Allahbad Bank Pension Scheme (Old) and to make it meet the basic characteristics of any scheme to be called a pension scheme, as detailed in the writ petition. The grounds for this prayer are stated at point III.
- b. Issue a writ, order or direction in the nature of mandamus directing the bank to restore to the petitioner his illegally curtailed right of pension option on the basis of void circular No. 3904 and subsequent infringement of Article 14 of the Constitution of India and to release the pension payable to the petitioner as per his fresh mandate from the date of his retirement. The grounds for this prayer are stated at point IV and V.
- c. Issue a writ, order or direction in the nature of certiorari to quash the validity of the earlier void options which are illegally enforced by the bank under its unlawful and void instruction circular No. 3904 dated 6.9.1994 under its arbitrary and injudicious discretion. The points for this prayer are stated at point IV and V.

d. Issue a writ, order or direction in the nature of certiorari to quash the effect of bank's instruction circular No. 6713 dated 5.3.2001 in cases of VRS optees as per instruction circular No. 6582 dated 28.10.2000. The grounds for this prayer are stated at point VI.

e. Issue a writ, order or direction in the nature of certiorari to quash Regulation 46 (1) of Allahabad Bank Officer's Service Regulations, 1979 and declare it ultra vires as it violates Article 14 of the Constitution of India. The grounds for this prayer are stated at point I and II.

f. Issue any writ, order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

g. Award the cost to the petitioner.

Brief facts giving rise to the present writ petition are that the petitioner was appointed as clerk in Nainital Branch of the Allahabad Bank on 21-2-1976 and continued as such till 23-4-1983. By that time, the services of the petitioner were governed by Industrial Disputes Act. The petitioner was promoted to JMG-Scale I Officer cadre w.e.f. 2-5-1983 and confirmed on the said post. After promotion, the terms and conditions of service of the petitioner were governed by the Allahabad Bank (Officers) Service Regulations, 1979 (for short 1979 Regulations). After enforcement of said Regulations, retirees were offered option of Gratuity under Regulation 46 or pension in lieu thereof.

2. On 6-9-1994, the Bank issued a Circular thereby formulating a new pension scheme named Allahabad Bank Employees (Pension) Regulations, 1993. A pension scheme named Allahabad Bank Employees Pension Scheme (Old) being in existence, the Government permitted that employees who retired between 01-01-1986 and 31-10-1993 and employees who are on bank's roll as on 31-10-1993 will also have the option to opt for pension as per old pension scheme plus C.P.F. benefits. The petitioner exercised his option and opted for Allahabad Bank Employees' Pension Scheme (Old). The Bank also issued a new Circular No. 4318 dated 16-11-1995 known as Allahabad Bank Employees (Pension) Regulations, 1995 in supersession of earlier Circular No. 3904 dated 6-9-1994 and asked its employees to submit their options by 27-01-1996, who had not exercised their option earlier. It was mentioned in that Circular that "however, in terms of clause 9 of Chapter II, earlier options received in reference to the settlement dated 29.10.1993 are also valid options under these regulations."

3. The Bank issued instruction Circular No. 6582 dated 28.10.2000 offering voluntary retirement to its employees and officers. Consequently, the petitioner applied for voluntary retirement, which was ultimately accepted by the competent authority and the petitioner stood relieved from service on 30.4.2001.

4. The Allahabad Bank issued yet another Circular on 5.3.2001 and thereby amendments were incorporated in Regulation 28 of the Allahabad Bank

Employees" Pension Regulations, 1995. So far as the employees who had submitted applications for retirement under VRS-2000, the Circular provided that "(1) those who have completed more than 15 years but less than 33 years of qualifying service will get pro-rata pension as envisaged under sub-section (6) of section 35 of ABEPR-"95. (2) Those who have completed more than 20 years of qualifying service will not get the benefit of sub-section (5) of Regulation 29 of ABEPR-"95 i.e. while calculating their pension, the benefit of notional addition in qualifying service by a period not exceeding 5 years will not be available as their cases will now be covered under Regulation 28."

5. According to the petitioner, the Circular dated 5.3.2001 was issued by the Bank deliberately and with mala fide intention and the same was received at a belated stage after he was relieved from bank service on 30-4-2001. As such recourse or opportunity had been denied to the VRS optees. The petitioner was offered incomplete payment of gratuity in violation of the provisions of section 7 of the Payment of Gratuity Act, 1972. The petitioner declined to accept the same and made a request for sanction of pension in lieu thereof to the competent authority on 9.10.2001. The request of the petitioner was rejected by the General Manager (Personnel Administration) by letter dated 13-10-2001 in view of provisions of Regulation 46 (1) of 1979 Regulations. It appears that the petitioner provisionally accepted the gratuity amount of Rs. 2,36,449/- offered by the Bank under protest. It also appears that the Bank released ex-gratia amount of Rs. 8,01,354.50 as well as another amount of Rs. 18,336/- arising out of erroneous calculation thereof to the petitioner.

6. The main grievance of the petitioner is that although he opted for irrevocable option of Pension under the Old Scheme in lieu of gratuity but the Bank had rejected his claim in view of Regulation 46 (1) of 1979 Regulations.

7. The respondents-Bank filed its counter affidavit stating therein that the service of the petitioner was governed by the 1979 Regulations and a copy thereof has been filed as Annexure CA-1 to the counter affidavit. It is also stated that exercise of option by the petitioner for old pension scheme was not maintainable. It is also stated that the Bank had issued circular offering Voluntary Retirement Scheme (VRS) to its employees and the petitioner's request for VRS was accepted and he was relieved from service on 30-4-2001. It is also stated that the Bank was fully competent to issue circular dated 5-3-2001.

8. A supplementary counter affidavit has been filed by the respondents stating therein that the petitioner was not legally entitled to Allahabad Bank Employees's Pension Scheme (Old) after he was promoted as an Officer on 2-5-1983. It is also stated that the petitioner had not completed 30 years of active service. It is also contended that the Old Pension Scheme was applicable to those Officers only who were recruited/promoted prior to 1-7-1979. Hence the petitioner was not considered for the same by the Bank.

9. The petitioner filed his rejoinder affidavit and supplementary rejoinder

affidavit and it has been admitted that the service conditions of the clerks on being promoted to Officer cadre are governed by 1979 Regulations.

10. We have heard the petitioner Sudhir Kumar Counsel in person and Sri K.K. Shah, Advocate, appearing on behalf of the respondents and have perused the record.

11. A preliminary objection was raised on behalf of the respondents that this Court has no jurisdiction to entertain the writ petition because the petitioner had retired from district Lakhimpur- Kheri, which falls in the State of Uttar Pradesh and the Head Office of the Allahabad Bank is situated in Kolkata. We are not inclined to accept the contention of the respondents-bank for the simple reason that the amount of gratuity u/s 7 of the Payment of Gratuity Act was paid to the petitioner through Nainital Branch of the Bank, therefore, part of cause of action has arisen to the petitioner at Nainital. Under sub-clause (2) of the Article 226 of the Constitution of India, the writ petition is maintainable in this Court.

12. The admitted facts of the case are that the petitioner was initially appointed as Clerk to the service of the respondent- Bank in the year 1976 and he was promoted to Officer cadre on 2.5.1983. It is also admitted that services of the petitioner were governed by Allahabad Bank (Officers) Service Regulations of 1979. Undisputedly the Bank introduced Allahabad Bank Employees' Voluntary Retirement Scheme-2000 and the petitioner applied for the same and was retired as such on 30-4-2001. It is not disputed that the petitioner had not completed 30 years of service at the time of his retirement. The short controversy to be resolved in this writ petition is whether the petitioner is entitled to pension under the Allahabad Bank Employees' Pension Scheme (Old) or whether he is entitled to gratuity as per Regulation 46 (2) of 1979 regulation.

13. Chapter-IX of the 1979 Regulation deals with Terminal Benefits to the retired Officers of the Bank. Regulation 45 thereof reads as under:-

45. PROVIDENT FUND AND PENSION:

(i) Every Officer shall become a member of the Provident Fund constituted by the bank, unless he is already a member of the fund and shall agree to be bound by the rules governing such fund.

(ii) The Provident Fund rules framed shall provide that on and from 1.11.1993,

(a) In case of an officer governed by the Pension Scheme, contribution to the Provident fund shall be made only by the officer at the rate of 10% of pay without any matching contribution on the part of the Bank:

Provided that on adjustment on account of Provident fund contributions already made for the period 01.07.1993 to 31.10.1993 shall be made.

(b) In case of an officer not governed by the Pension Scheme, contribution to Provident fund by the Officer and a matching contribution by the bank shall be made at the rate of 10% of pay:

Provided that no adjustment on account of Provident fund contributions already made for the period 01.07.1993 to 31.10.1993 shall be made.

(3) Officer joining the bank's service on or after 29.09.1995 shall be governed by the Pension Scheme:

Provided that the following categories of officers shall not be covered by the Pension Scheme:

(a) An Officer who was in service of the bank prior to 29.09.1995, unless he has specifically exercised an option to become member of the pension scheme in response to bank's notice to that effect.

(b) An Officer who is recruited on or after 29.09.1995 at the age of 35 years and above, and who has elected to forego his right to Pension in terms of the Pension Scheme.

Note:

"Pay" for the purpose of Provident fund shall mean basic pay including Stagnation increments, Officiating allowance, Professional Qualification allowance and increment component of Fixed Personal allowance.

14. Regulation 46 deals with Gratuity, which is reproduced hereunder:--

46. GRATUITY:

(1) Every Officer shall be eligible for Gratuity on:

(a) Retirement,

(b) Death,

(c) Disablement rendering him unfit for further service as certified by a medical officer approved by the Bank,

(d) Resignation after completing ten years of continuous service, or

(e) Termination of service in any other way except by way of punishment, after completion of 10 years of service:

Provided that in respect of Officers on the appointed date who have not opted for the pension scheme envisaged in the Allahabad Bank (Employees") Pension Regulations, 1995, the existing supplementary pension scheme otherwise called as Allahabad Bank Employees" Pension Scheme (Old) in lieu of Gratuity may continue.

(2) The amount of Gratuity payable to an officer shall be One Month's pay for every completed year of service, subject to maximum of 15 months pay:

Provided that where an officer had completed more than 30 years of Service, he shall be eligible by way of Gratuity for an additional amount at the rate of one-half of a month's pay for each completed year of service beyond Thirty years:

Provided further that pay for the purpose of Gratuity for an officer who ceased to be in service during the period 01.07.1993 to 30.10.1994 shall be with regard to scale of pay as specified in sub-regulation (1) of Regulation 4.

15. From a perusal of Regulation 46, it is crystal clear that every officer of the Bank shall be eligible for gratuity on retirement including voluntary retirement as provided under Regulation 46 (2) of 1979 Regulations. Allahabad Bank Employees Pension Scheme (Old) contains provision for eligibility to Full Pension as under-

Eligibility to Full Pension--An employee will be entitled to full pension on completion of 30 years of active service. However, officers who are recruited/promoted after 1.7.1979 i.e. on the date of implementation of New Service Regulations are not entitled for pension as per Allahabad Bank (Officers") Service Regulations, 1979.

16. The aforesaid provision as contained in the old Pension Scheme makes it clear that for grant of full pension 30 years of completed service is a condition precedent for an employee and the Officers who are recruited/promoted after 1-7-1979 are not entitled for pension. There is no dispute that the petitioner was promoted as an Officer after 1-7-1979 i.e. on 2-5-1983.

17. It is argued by the petitioner that Regulation 46 was not in existence on 1-7-1979 in the 1979 Regulations, therefore, the respondent-Bank cannot enforce the said Regulation 46. In support of his claim, the petitioner has relied upon the Division Bench judgment of the Allahabad High Court in the case of Kishan Swarup Sharma Vs. Allahabad Bank, . In that case, while allowing the writ petition, the following order dated 16-5-2007 was passed by the Allahabad High Court:--

13. In the result the writ petition is allowed. The impugned order dated 25.1.2002 is quashed. The competent authority is directed to re-consider the matter and the claim of the petitioner in the light of the circular dated 6.9.1994 and the observations made above as well as the relevant provisions applicable to the facts and circumstances of the case and pass a fresh but speaking order in accordance with law within three months from the date of production of certified copy of this order. We also make it clear that the amount, if any, found further payable to the petitioner pursuant to the decision taken by the competent authority as directed above, such amount shall be paid to the petitioner within a further period of two months. No order as to costs.

18. On the other hand, learned Counsel for the respondents-Bank submitted that the Bank filed Petition for Special Leave to Appeal (Civil) No. 11822 of 2007 Allahabad Bank and another v. Kishan Swaroop Sharma and another before the Apex Court. After the order was passed, the claim of the petitioner was rejected by the competent authority. The Apex Court passed the following order dated 30-7-2007:-

Heard Counsel for the parties. We have perused the order passed by the Division Bench.

Having regard to the facts and circumstances of the case, we observe that the authorities may decide the matter as per directions issued vide order dated 16.5.2007 of the High Court but the authorities will not be influenced by any observation made in the said order. With the above said observations, the SLP is disposed of.

19. So far as the argument of the petitioner pertaining to legality of Regulation 46 is concerned, we are not inclined to accept this contention for the simple reason because the scheme of terminal benefit was adopted by the Bank after 1-7-1979 and the Regulations have legal force because 1979 Regulations have been framed under the provisions of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970. The said regulations have been framed by the Board of Directors of Allahabad Bank in consultation with the Reserve Bank of India and with the previous sanction of the Central Government and it is also not disputed that the Bank adopted 1979 Regulations in the Board's meeting dated 23.1.1979 and the said regulations were made effective w.e.f. 1.7.1979. The other argument of the petitioner that Regulation 46 (1) discriminates arbitrarily between two clerks--one being promoted to the Officer cadre on or before the appointed date, i.e. 1-7-1979 and the other being promoted after 1-7-1979, is also not tenable.

20. For what has been stated above, we are of the considered view that the claim of the petitioner is governed by sub-clause (2) of Regulation 46 and he is only entitled to get the amount of gratuity as envisaged by sub-clause (2) of Regulation 46 of 1979 Regulations, which has been reproduced hereinabove, i.e. one month's pay for every completed year of service, subject to maximum of 15 months' pay. To this extent, the writ petition deserves to be partly allowed and rest of the reliefs sought for by the petitioner are not tenable.

21. Accordingly, the writ petition is partly allowed. The respondents are directed to pay gratuity to the petitioner as directed above, within a period of three months from the date of production of certified copy of this order. The amount of gratuity under the Payment of Gratuity Act already paid to the petitioner shall be adjusted and the difference of the said two amounts shall be paid to the petitioner within a period of three months from the date of production of certified copy of this order before the authority concerned. No order as to costs.