

(2016) 04 CAL CK 0021
In the Calcutta High Court
Case No : W.P. No. 22228 (W) of 2013

Swapan Kumar Mallick

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 01-04-2016

Acts Referred:

Citation : (2016) 04 CAL CK 0021

Hon'ble Judges : Sudip Ahluwalia, J.

Bench : Single Bench

Advocate : Motibur Rahaman and Sankar Paul, for the Appellant; R.N. Majumdar and Supratim Bhattacharjee, for the Respondent

Final Decision : Allowed

Judgement

Sudip Ahluwalia, J.—1. The writ petitioner joined service in the respondent Bank initially as a typist on 23rd of November, 1970. During his service tenure he was promoted from time to time and ultimately reached the post of Head Cashier at the Old Court House Street Branch of the Bank/Respondent No. 1. He put in about 36 years of service in the Bank and submitted a letter/application seeking resignation on the 21st August, 2006 on the ground of his "mental depression". His application was accepted by the petitioner on 19th October, 2006 and he was relieved from service. His contention is that he had put in service far in excess of 20 years which made him qualified for pension in terms of the relevant regulations. But no pension was granted to him by the respondent. After the petitioner had already been released from service, a memorandum of understanding was signed between the Indian Banks' Association and the negotiating Trade Unions to extend an option for pension to those employees who had not opted under the regulations of the year 1995. A settlement in this regard was signed between those parties on 27th April, 2010 consequent to which the Respondent Bank through the respondent No. 2 issued a circular bearing No. SP/OPTION/2/M/-0293/10-11 dated 16th August 2010, inviting non opting retired employees to submit their option form in exercising the option for

pension within 60 days. The petitioner accordingly submitted his application form on 23.08.2010. He was however informed on behalf of the respondent bank by letter dated 05.10.2010 (Annexure "P-4" to the writ petition) that he was not eligible for such pension.

2. The petitioner thereafter submitted a representation to the respondents through his letter dated 24.09.2012 (Annexure- 5) in which he contended that he was entitled to get the benefit of second option of pension as he had resigned only after having crossed the qualifying length of service. But no action taken on that representation, on account of which he has approached this Court.

3. The writ petition has been contested on behalf of the respondents. Their assertion is that the petitioner is not entitled to pension since he had not "retired" but "resigned" from service which renders him ineligible to seek the pension facility in view of the relevant "United Bank of India (Employees) Pension Regulations, 1995. The relevant extracts as applicable to the present case from the aforesaid regulations are set out as under:

"United Bank of India (Employees") Pension Regulations, 1995" -

"2. Definitions -

(w) "qualifying service" means the service rendered while on duty or otherwise which shall be taken into account for the purpose of pension under these regulations;

14. Qualifying Service - Subject to the other conditions contained in these regulations, an employee who has rendered a minimum of ten years of service in the Bank on the date of his retirement or the date on which he is deemed to have retired shall qualify for pension.

22. Forfeiture of service - (1) Resignation or dismissal or removal or termination of an employee from the service of the Bank shall entail forfeiture of his entire past service and consequently shall not qualify for pensionary benefits;

29. Pension on Voluntary Retirement - (1) On or after the 1st day of November, 1993, at any time after an employee has completed twenty years of qualifying service he may, by giving notice of not less than three months in writing to the appointing authority, retire from service;"

4. This Court is now to consider whether the petitioner's claim for pension becomes barred simply because he had submitted his "resignation" from service instead of seeking "retirement". His contention in this regard is that having crossed the qualifying length of service as prescribed under the regulations, he automatically became entitled to pension since no departmental proceedings were pending against him when he was released, nor any other penalty of such nature as would have resulted in debarring him from pensionary benefit was ever imposed upon him during his long service career of 36 years. A number of decisions in this regard have been cited by the petitioner in order to assert that

even a "resignation letter" submitted by an employee who has qualified the criteria enabling him to pensionary benefits is liable to be treated as "retirement from service", thereby enabling him to get the said benefit.

5. In "Bank of Baroda v. S.K. Kool (dead) Through Legal Representatives and another" reported in , (2014) 2 SCC 715, it was observed by the Supreme Court -

"15. The Bipartite Settlement tends to provide a punishment which gives superannuation benefits otherwise due. The construction canvassed by the employer shall give nothing to the employees in any event. Will it not be a fraud Bipartite Settlement? Obviously it would be. From the conspectus of what we have observed we have no doubt that such of the employees who are otherwise eligible for superannuation benefit are removed from service in terms of Clause 6(b) of the Bipartite Settlement shall be entitled to superannuation benefits. This is the only construction which would harmonise the two provisions. It is well settled rule of construction that in case of apparent conflict between the two provisions, they should be so interpreted that the effect is given to both. Hence, we are of the opinion that such of the employees who are otherwise entitled to superannuation benefits under the Regulations if visited with the penalty of removal from service with superannuation benefits shall be entitled for those benefits and such of the employees though visited with the same penalty but are not eligible for superannuation benefits under the Regulations shall not be entitled to that."

6. In "Shashikala Devi v. Central Bank of India & Ors." reported in , 2015 (1) CLJ (SC), it was held -

"6. From a reading of the above, it is evident that an employee who has completed twenty years of qualifying service is entitled to seek voluntary retirement from service of the bank provided he gives a notice of not less than three months in writing to the appointing authority in that regard. What is important is that in terms of proviso to Regulation 29(2), if the appointing authority does not refuse to grant permission for retirement before the expiry of the period specified in the said notice, the retirement becomes effective from the date of the expiry of the said period. It is also noteworthy that in terms of Regulation 29(3)(a) the appointing authority is competent to curtail the period of notice of three months in appropriate cases subject to the condition that the employee shall not apply for commutation of his pension before the expiry of the notice period.

6. In the case at hand, Mauzi Ram the deceased employee had rendered nearly 34 years of service in the respondent bank. He was, therefore, qualified to receive pension in terms of the Regulations applicable to him. It is also evident from a reading of Regulation 29 that the deceased employee was entitled to seek voluntary retirement in terms of Regulation 29 for he had completed more than twenty years of service by the 8th October, 2007. As on 8th October, 2007 the deceased employee was entitled either to resign from service or to seek

premature retirement in terms of Regulation 29 (supra). The question in that backdrop is whether letter dated 8th October, 2007 was a letter of resignation simpliciter or could as well be treated to be a letter seeking voluntary retirement. The High Court, as seen earlier, has taken the view that the letter was one of resignation that resulted in the forfeiture of past service under Regulation 22 of the Regulations. The High Court appears to have been impressed by the use of the word "resignation" in the employee's letter dated 8th October, 2007. The use of the expression "resignation", however, is not, in our opinion, conclusive. That is, in our opinion, so even when this Court has always maintained a clear distinction between "resignation" and "voluntary retirement". Whether or not a given communication is a letter of resignation simpliciter or can as well be treated to be a request for voluntary retirement will always depend upon the facts and circumstances of each case and the provisions of the Rules applicable. The distinction between the expressions "resignation" and "voluntary retirement" was elaborately discussed by this Court in *UCO Bank and Ors. v. Sanwar Mal*, , (2004) 4 SCC 412 where this Court was examining the provisions of UCO Bank (Employees") Pension Regulations, 1995 applicable to a bank employee who had resigned from service after giving an advance notice to the appointing authority. So also in *Reserve Bank of India and Anr. v. CECIL Dennis Solomon and Anr.*, , (2004) 9 SCC 461 this Court was considering the provisions of the Reserve Bank of India Pension Regulations, 1990 while it made a distinction between what is resignation on the one hand and voluntary retirement on the other. At the same time a long line of decisions have recognised that pension is neither a bounty nor a matter of grace but is a payment for past services rendered by the employee. Decisions of this Court in *D.S. Nakara and Ors. v. Union of India*, , (1983) 1 SCC 305, and *Chairman Railway Board and Ors. v. C.R. Rangadhamaiah and Ors.*, , (1997) 6 SCC 623, are clear pronouncements on the subject. Reference may also be made to *Sudhir Chandra Sarkar v. Tata Iron and Steel Co. Ltd. and Ors.*, , (1984) 3 SCC 369 where this Court observed:

"18. For Centuries the Courts swung in favour of the view that pension is either a bounty or a gratuitous payment for loyal service rendered depending upon the sweet will or grace of the employer not claimable as a right and therefore, no right to pension can be enforced through Court. This view held that filed and a suit to recover pension was held not maintainable. With the modern notions of social justice and social security, concept of pension underwent a radical change and it is now well-settled that pension is a right and payment of it does not depend upon the discretion of the employer, nor can it be denied at the sweet will or fancy of the employer. *Deokinandan Prasad v. State of Bihar*, , (1971) 2 SCC 330, *State of Punjab v. Iqbal Singh*, , (1976) 2 SCC 1 and *D.S. Nakara v. Union of India*, , (1983) 1 SCC 305. If pension which is the retiral benefit as a measure of social security can be recovered through civil suit, we see no justification in treating gratuity on a different footing. Pension and gratuity in the matter of retiral benefits and for recovering the same must be put on par."

8. It is also well settled by several decisions of this Court that while interpreting

a statute the Court ought to keep the legislative intent in mind and eschew an interpretation which tends to restrict, narrow down or defeat its beneficial provisions....

15. It is, in our opinion, abundantly clear that the beneficial provisions of a Pension Scheme or Pension Regulations have been interpreted rather liberally so as to promote the object underlying the same rather than denying benefits due to beneficiaries under such provisions. In cases where an employee has the requisite years of qualifying service for grant of pension, and where he could under the service conditions applicable seek voluntary retirement, the benefit of pension has been allowed by treating the purported resignation to be a request for voluntary retirement. We see no compelling reasons for doing so even in the present case, which in our opinion is in essence a case of the deceased employee seeking voluntary retirement rather than resigning.

16. We may at this stage refer to a few decisions of this Court in which somewhat similar questions have been examined and answered by this Court. In *Sudhir Chandra Sarkar v. Tata Iron and Steel Company Ltd. and Ors.*, (supra), a permanent uncovenanted employee of the company had served for 29 years whereafter he tendered his resignation which the employer accepted unconditionally. the Company's Retiring Gratuity Rules did not provide for payment of gratuity to employees who resigned from service. This Court while reversing the view taken by the High Court held that termination of service by resignation was tantamount to retirement by resignation entitling the employee to retiral benefits. The following passage is apposite in this regard.

"7. The contention of the respondent is that the plaintiff did not retire from service but he left the service of the Company by resigning his post. This aspect to some extent agitated the mind of the High Court. It may be dealt with first. It is not only in dispute, but is in fact conceded that the plaintiff did render continuous service from December 31, 1929 till August 31, 1959. On exact computation, the plaintiff rendered service for 29 years and 8 months. Rule 69a) which prescribed the eligibility criterion for payment of gratuity provides that every permanent unconvenanted employee of the Company whether paid on monthly, weekly or daily basis will be eligible for retiring gratuity which shall be equal to half a month's salary or wages for every completed year of continuous service subject to a maximum of 20 years"" salary or wages in all provided that when an employee dies, retires or is discharged under Rule 1192)(ii) and (iii) before he has served the Company for a continuous period of 15 years he shall be paid a gratuity at the rate therein mentioned. The expression "retirement" has been defined in Rule 1 (g) to mean "the termination of service by reason of any cause other than removal by discharge due to misconduct". It is admitted that the plaintiff was a permanent uncovenanted employee of the Company paid on monthly basis and he rendered service for over 29 years and his service came to an end by reason of his tendering resignation which was unconditionally accepted. It is not suggested that he was removed by discharge due to

misconduct. Unquestionable, therefore, the plaintiff retired from service because by the letter Annexure "B" dated August 26, 1959, the resignation tendered by the plaintiff as per his letter dated July 27, 1959 was accepted and he was released from his service with effect from September 1, 1959. The termination of service was thus on account of resignation of the plaintiff being accepted by the respondent. The plaintiff has, within the meaning of the expression, thus retired from service of the respondent and he is qualified for payment of gratuity in terms of Rule 6."

18. In *Sheel Kumar Jain v. New India Assurance Company Limited and Ors.*, (2011) 12 SCC 197, the facts were somewhat similar to the case at hand. The appellant in that case was an employee of an Insurance Company governed by a Pension Scheme which provided, as in the case at hand, forfeiture of the entire service of an employee should he resign from his employment. The appellant submitted a letter of resignation which resulted in denial of his service benefits under the scheme aforementioned. This Court, however, held that since the employee had completed the qualifying service and was entitled to seek voluntary retirement under the scheme he could not be said to have resigned so as to lose his pension. This Court said:

"25. Para 22 of the 1995 Pension Scheme states that the resignation of an employee from the service of the corporation or a company shall entail forfeiture of his entire past service and consequently he shall not qualify for pensionary benefits, but does not define the term "resignation". Under sub-para (1) of Para 30 of the 1995 Pension Scheme, an employee, who has completed 20 years of qualifying service, may by giving notice of not less than 90 days in writing to the appointing authority retire from service and under sub-para (2) of Para 30 of the 1995 Pension Scheme, the notice of voluntary retirement shall require acceptance by the appointing authority. Since "voluntary retirement" unlike "resignation" does not entail forfeiture of past services and instead qualifies for pension, an employee to whom Para 30 of the 1995 Pension Scheme applies cannot be said to have "resigned" from service.

26. In the facts of the present case, we find that the appellant had completed 20 years of qualifying service and had given notice of not less than 90 days in writing to the appointing authority of his intention to leave the service and the appointing authority had accepted notice of the appellant and relieved him from service. Hence, Para 30 of the 1995 Pension Scheme applied to the appellant even though in his letter dated 16.9.1991 to the General Manager of Respondent 1 Company he had used the word "resign".

In the result this appeal succeeds and is hereby allowed. The impugned order passed by the High Court is, hereby, set aside and the writ petition filed by the deceased-employee allowed with a direction to the respondent bank to treat letter dated 8th October, 2007 as a notice for voluntary retirement of the employee and for curtailment of three months notice period. Depending upon the view the competent authority may take on the question of curtailment of the

notice period and/or deduction of three months salary from out of the retiral benefits of the deceased employee, the deceased-employee's claim for payment of retiral benefits due under the relevant rules including pension shall be processed and released in favour of the appellant-widow as expeditiously as possible but not later than six months from the date a copy of this order is served upon the bank. In the event of the bank's failure to comply with the directions within six months as indicated above, the amount payable to the employee and after his death his widow, shall start earning interest @ 10% p.a. from the date the period of six months expires. The parties are left to bear their own costs."

7. The ratio of the aforesaid decisions clearly covers the petitioner's case beyond any doubt. It is undisputed that he had put in 36 years of service, which is far in excess of the qualifying period of 20 years. It is again undisputed that no departmental proceedings against him were pending when he was released, nor any such penalty had been imposed upon him, as might have debarred him from claiming the pensionary benefit. On the other hand the petitioner's own letter tendering his "resignation" itself mentioned that he was unable to continue in service on account of "mental depression". The letter was accepted on behalf of the respondent bank. In the given circumstances considering that the petitioner was admittedly in a state of "mental depression", he should not be penalized for simply having used the word "resignation" instead of "retirement" in his letter seeking his release from the service, as undoubtedly he was otherwise entitled to get the all the admissible benefits of retirement, including Pension.

8. The Writ Petition is therefore allowed, and the Respondents/Bank authorities are accordingly directed to extend the benefit of pension to the petitioner and pay him his admissible dues within six months from the date of communication of this order, after adjusting any payments having been made otherwise in lieu of the regular pension. No order as to costs.