

(2014) 07 PAT CK 0080
In the Patna High Court
Case No : CWJC No. 22009 of 2013

Tapan Kumar Bhowmick

APPELLANT

Vs

The Chairman and Managing Director and Others

RESPONDENT

Date of Decision : 25-07-2014

Acts Referred:

Citation : (2015) 1 PLJR 391

Hon'ble Judges : Ajay Kumar Tripathi, J

Bench : Single Bench

Advocate : Santosh Kumar, Advocates for the Appellant; Manoj Kumar, Advocates for the Respondent

Judgement

Ajay Kumar Tripathi, J.—Petitioner joined the respondent Allahabad Bank as a Clerk-cum-Cashier on 5.11.1975. After rendering service for almost 26 years, he tendered his resignation on the ground of poor health. Resignation letter is Annexure-1 to the writ application. The same was acted upon and accepted by the respondent authorities, which Will be certified from the decision communicated vide Annexure-2. Since the letter of resignation did not indicate as to the date from which it shall be effective, it was to take effect immediately and this is what Annexure-2 indicates. Petitioner was given his other emoluments and entitlements, which includes GPF and other dues of such kind. Matter was put to rest till the petitioner decided to file the present writ application after more than 12 years of that event or resignation demanding a direction upon the respondents to pay him pension. Many things have been urged in the writ application explaining the circumstances under which petitioner was compelled to resign. By taking a humanitarian view and keeping the long period of service he rendered, he expects pension to be given which, obviously, the bank is not willing to do.

2. One of the grounds urged on behalf of the petitioner is that the resignation letter itself indicated that a demand for pension was made. Therefore, the resignation to that effect was conditional or at least, petitioner did not give up his

right for pension. As the arguments progressed after much hard work put into issue, learned counsel representing the petitioner decides to press into service Regulation 30 of Allahabad Bank (Employees") Pension Regulations, 1995. Since this Regulation seems to be one of the sheet anchor to the argument of the learned counsel for the petitioner, the said Regulation is reproduced in toto:--

"30. Invalid Pension--

(1) Invalid pension may be granted to an employee who:

(a) has rendered minimum ten years of service; and

(b) retires from, the service on or after 1st day November, 1993 on account of any bodily or mental infirmity which permanently incapacitates him for the service.

(2) An employee applying for an invalid pension shall submit a medical certificate of incapacity from a Medical Officer approved by the Bank.

(3) Where the Medical Officer approved by the Bank has declared the employee fit for further service of less laborious character than that which he had been doing, he should, provided he is willing to be so employed, be employed on lower post and if there be no means of employing him even on a lower post, he may be admitted to invalid pension.

(4) No medical certificate of incapacity of service may be granted unless the applicant produces a letter to show that the Competent Authority is aware of the intention of the applicant to appear before the medical officer approved by the Bank.

(5) The medical officer approved by the Bank shall also be supplied by the Competent Authority in which the applicant is employed with a statement of what appears from official records to be the age of the applicant."

3. After going through the above Regulation, the stand of the counsel for the petitioner is that since the petitioner resigned and was allowed to resign on the ground of his medical position and health, Regulation 30 will cover his case.

4. The Court has read and re-read the provisions quoted above. No amount of violence committed with the language used therein can allow this Court to reach anywhere near the interpretation, which learned counsel wants this Court to give. There is neither any pleading nor any evidence on the record or the resignation letter that the resignation of the petitioner was because of his incapacity and on being declared incapable to continue in service. Plain reading of the resignation letter reveals that it was a voluntary act of the petitioner to give up his service as a bank employee. The reason for doing so has been indicated but it was on the ground of any of the conditions of Regulation 30.

5. Merely because a demand was made for pension in the said resignation letter, it cannot accrue to an employee as a matter of course. Such entitlement will

always be based on the service condition which governs such employee and the service jurisprudence which applies to such a situation.

6. Unfortunately, for the petitioner, the 1995 Regulations envisages a situation arising out of resignation from service. Even Regulation 22 is of significance in adjudication of the core issue, therefore, it is reproduced:--

"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;

(2) An interruption in the service of a Bank employee entails forfeiture of his past service, except in the following cases, namely:--

(a) authorized leave of absence;

(b) suspension, where it is immediately followed by reinstatement, whether in the same or a different post, or where the bank employee dies or is permitted to retire or is retired on attaining the age of compulsory retirement while under suspension;

(c) transfer to non-qualifying service in an establishment under the control of the Government or Bank if such transfer has been ordered by a competent authority in the public interest;

(d) joining time while on transfer from one post to another.

(3) Notwithstanding anything contained in sub-regulation (2), the appointing authority may, by order, commute retrospectively the periods of absence without leave as extraordinary leave.

(4)(a) In the absence of a specific indication to the contrary in the service record, an interruption between two spells of service rendered by a bank employee shall be treated as automatically condoned and the pre-interruption service treated as qualifying service;

(b) Nothing in clause (a) shall apply to interruption caused by resignation, dismissal or removal from service or for participation in a strike:

Provided that before making an entry in the service record of the Bank employee regarding forfeiture of past service because of his participation in strike, an opportunity of representation may be given to such bank employees."

7. This Regulation does not provide for any ifs and buts. The resignation simpliciter acted upon and accepted amounts to forfeiture of service. If that is what the Regulation talks about and the Regulation 30 has no application to the case of the petitioner, the answer is obvious that the petitioner cannot claim or is entitled to grant of pension.

8. Learned counsel for the Bank produces an order passed by this Bench in similar circumstance, which was the case of Chitranjan Jha and Another Vs. The

State of Bihar and Others, , decided on 9.4.2009. There also, two sons of the erstwhile employee filed a writ application before the Court seeking direction for grant of pension. After a detailed consideration of the rival submissions as well as provisions contained in the Bihar Pension Rules, especially Rule 101(a) which is *pari materia* to Regulation 22, the Court is tempted to quote para 12 of the said order which too shall render assistance to the present dispute:--

"12. The Court has carefully gone through the letter of resignation of the petitioner which is Annexure-5 to the writ application. The language and intent of the said letter is unambiguous and categorical. Even according to the pleadings and the facts narrated therein the intention of the petitioner was clear that he was willing to resign from the post rather than go and join his place of posting on transfer. His health could have been the reason why he did not want to leave the original place of posting but then it was a decision taken by the petitioner which was acted upon by the respondents and the matter came to rest in the year 1977. Merely because the petitioner had claimed he should be paid his pension and gratuity, it does not mean that the letter of resignation was conditional not voluntary and should be treated as a case of voluntary retirement. The interpretation which is sought to be given by the counsel for the petitioner cannot be accepted by the Court because that will be reading more into the letter of resignation than what it had stated. Since the object and intent of the petitioner was clear with regard to resignation and the same stands confirmed by the order accepting the resignation by the respondents immediately thereafter as per his request, the Court comes to a considered opinion that the matter with regard to claim of pension should be allowed to rest and no amount of legal jugglery or repeated filing of the writ applications can beget the petitioner pension which the Pension Rules do not provide for."

9. All the above arguments put together lead to only one conclusion that not only the objection of the Bank that such writ application should be thrown out at the threshold and be dismissed in limine, merits consideration but even otherwise, getting into the merit of the issue, petitioner fails to make out a case and overcome the rigors which have been imposed upon him by Regulation 22, which he himself has produced before this Court in support of his case.

10. Writ application, therefore, is not only a misplaced writ application, devoid of merit but is an effort to corner the benefit which is not available to the petitioner by any interpretation of law.

11. Writ application, therefore, is dismissed. It was a fit case where cost should have been imposed upon the petitioner because the Court is of the opinion that the writ was not a bona fide one but more by wagering. Taking into consideration the status of the petitioner, the Court is indulgent but the petitioner is cautioned from embarking on such kind of adventurism and wasting judicial time on frivolous litigation.