(2016) 03 KL CK 0140

In the High Court Of Kerala

Case No : W.A. No. 1928 of 2010 in WP(C) No. 37198/2001

The Canara Bank and Others APPELLANT

Vs

M.C. Ratnakaran RESPONDENT

Date of Decision : 22-03-2016

Acts Referred:

Constitution of India, 1950 — Article 14, Article 16, Article 19, Article 21

Citation : (2016) 03 KL CK 0140

Hon'ble Judges : Ashok Bhushan, C.J. and A.M. Shaffique, J.

Bench : Division Bench

Advocate : M.C. Sen, Sr. Adv. and Shahna Karthikeyan, Advocate, for the Appellant; P. Narayanan, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Ashok Bhushan, C.J.

1. Heard learned counsel for the appellants and the learned counsel appearing for the writ petitioner.

2. This writ appeal has been filed by Canara Bank and another against the judgment dated 31.8.2010 in O.P No. 37198 of 2001. The first respondent to the writ appeal was the writ petitioner. The parties shall be referred to as they are in the original petition.

3. Petitioner was working as an officer in the Canara Bank at Thiruvananthapuram. The officers of the bank were governed by Canara Bank (Employees'') Pension Regulations, 1995. The pay revision and other benefits are extended to the employees of the Bank from time to time on the basis of settlement entered with the representatives of the public sector banks and Indian Banking Association (IBA). With regard to revision of the pay scale and other benefits, a settlement was entered between the officers of the public sector banks and IBA on 14.12.1999 on which, a joint note was prepared. As per joint note, the pay revision was to be effected w.e.f 1.4.1998. However, with regard to

extension of other benefits, different dates were specified in the joint note. The joint note further stated that statutory regulation regulating the service conditions of the officers and the Bank may be amended by respective banks in accordance with the statutory procedure. However, as per the joint note, ad hoc payments be made to the officers and the employees.

4. Petitioner applied for voluntary retirement which was granted w.e.f 14.8.2001. The joint note having already been enforced, petitioner had the benefit of receiving salary in the revised pay scale w.e.f 1.4.1998. But the Bank made the payment of pension of Rs. 2,75,120/- and credited to the petitioner''s bank account on 16.11.2001. Certain arrears of pension amounting to Rs. 13,077/- was further credited. Petitioner filed O.P No. 37198 of 2001 dated 6.11.2001 praying for the following reliefs:

"i) To issue a Writ of Mandamus commanding the respondents to immediately disburse to the petitioner all amounts of pension and commutation benefits also due to him with interest at 18% per annum from the date on which it is payable till the date of actual payment.

ii) To declare that the denial of pension and commutation benefits to the petitioner is violative of Article 14, 16, 19 and 21 of the Constitution of India and therefore, void."

5. Petitioner further was permitted to amend the writ petition by I.A No. 8712 of 2003 by adding one more prayer- "declare that the petitioner is entitled to pensionary benefits as per the Pension regulations which were in force and prevailing on the date of his retirement i.e. on 14-08-2001."

6. A counter affidavit has been filed by the bank wherein it was stated that after the acceptance of voluntary retirement, all benefits were paid. Referring to the salary revision of the officers 1999-2000, the agreement with regard to definition of pay to be taken for officers who retired on or after 1.4.1998 was mentioned. It is stated that the petitioner''s voluntary retirement benefits, including pension were calculated and pension papers were forwarded on 14.8.2001 and thereafter, after some correspondence, it was sanctioned on 10.11.2001. It was stated that as per the joint note dated 14.12.1999 which was resolved in the joint meeting, the regulations were amended by the Canara Bank Employees'' Pension Amendment Regulation, 2002 which was published in the Gazette of India November 30, 2002. The amendment of the regulations were in accordance with the decision which was already taken by joint note dated 14.12.1999 and the definition of pay as defined in Section 2 of the Regulation was amended by the amendment with regard to an employee who retires after 1.4.1998 in the following manner:

"(iii) for sub-regulation (s) the following sub-regulation shall be substituted namely:--

"(s) "Pay" includes -

"(a) in relation to a workman who had earlier retired or died on or after the 1st day of January, 1988 but before the 1st day of November, 1992; and in relation to an officer who had earlier retired or died on or after the 1st day of January, 1986 but before the 1st day of July, 1993 -

i) the basis pay including stagnation increments, if any, and

ii) all allowances counted for the purpose of making contribution to the Provident Fund and for the payment of dearness allowance:

(b) in relation to a workman who retired or died while in service on or after the 1st day of November, 1992; and in relation to an officer who retired or died while in service on or after the 1st day of July, 1993 -

i) the basic pay including stagnation increments, if any; and

ii) all allowances counted for the purpose of making contribution to the Provident Fund and for the payment of dearness allowance: and

iii) increment component of Fixed Personal Allowance;

(c) in relation to an employee who retired or died while in service on or after the 1st day of April, 1998 -

(i) the basic pay including stagnation increments, if any; and

(ii) all other components of pay counted for the purpose of payment of making contributions to the Provident Fund and for the payment of dearness allowance; and

(iii) increment component of Fixed Personal Allowance; and

(iv) dearness allowance thereon on the above calculated upto Index Number 1616 points in the All India Average Consumer price Index for Industrial Workers in the series 1960=100.

Explanation:

For the purpose of this clause, basic pay, other components of pay and Fixed Personal Allowance would mean the basic pay, other components of pay and Fixed Personal Allowance drawn by the employees in terms of the scales of pay as applicable and the rates at which the other components of pay were payable prior to 01.11.1997 (in the case of workmen) and prior to 01.04.1998 (in the case of officers);"

7. It is stated that there was no error in calculating the pension of the petitioner which was duly paid and the petitioner was not entitled for any further benefits towards the pension.

8. Learned Single Judge after hearing the parties relying on Division Bench judgment of this Court in Syndicate Bank v. Celine Thomas (, 2005 KHC 1841) and the judgment of the Supreme Court in Chairman, Railway Board and others

v. C.R. Rangadhamaiah and others [, 1997 (6) SCC 623], held that regulations were amended only on 30.11.2002 and which amendment was not made even retrospective. Hence, on the retirement, the petitioner was entitled for the balance retirement benefits on the basis of the Rules in force as on the date of petitioner''s retirement viz., 14.8.2001. The original petition was consequently allowed and direction was issued to pay the arrears of retirement benefit due to him. The Bank aggrieved by the said judgment has come up in the appeal.

9. Learned counsel for the Bank challenging the judgment of learned Single Judge contends that the payment of pension was made to the petitioner as per the settlement entered between the officers of the public sector bank and IBA dated 14.12.1999 where it was resolved that pay revision and other benefits be extended as per the joint decision and necessary amendments in the regulations may be undertaken. However, decision was taken to make all payments as per the decision and consequently, in implementation of the said decision, the retirement benefits were computed including the pension of the petitioner.

10. It is true that the regulations were amended by amendment of 2002 which was published in the Gazette on 30.11.2002. But, the amendment itself provides different definition for "pay" with regard to employees and officers who retired on or after July, 1993 and those who retired after 1.4.1998. The petitioner''s pension was calculated taking into consideration the definition of pay as amended by Regulation, 2002. It is contended that the regulation itself provides a criteria for defining pay which was to be taken for all purposes, including the pension for employees who retired after 1.4.1998. The petitioner, who retired on 14.8.2001 was duly covered by the said amendment and the amendment was fully applicable to the petitioner.

11. It was further contended that the Full Bench judgment of this Court in P.V. Issac v. Canara Bank in O.P No. 20427 of 1997 vide its judgment dated 3.3.2016 has decided similar issues and in view of which judgment, the Division Bench judgment relied on by the learned Single Judge in Celine Thomas''s case (cited supra) has been overruled. It is further contended that the Full Bench of this Court covered the issued and in view of the Full Bench judgment, the judgment of the learned Single Judge deserves to be set aside.

12. The learned counsel for the petitioner refuting the submission of the counsel for the Bank contends that in the present case, the learned Single Judge has rightly directed for payment of balance amount of pension on the basis of statutory regulation as was existing on 14.8.2001. It is contended that amendments in Regulation, 2002 having been published on 30.11.2002, their operation was prospective, they could not have applied on the petitioner who has already retired on 14.8.2001. It is further contended that the amendment of the regulation was wholly irrelevant for the petitioner. The learned counsel for the petitioner further contends that the judgment of the Full Bench in P.V. Issac''s case (cited supra) is clearly distinguishable since in those cases, the officers who had filed the original petition had retired on 30.8.1993 whereas the date for

payment of dearness allowance and gratuity was fixed as 1.11.1994. In the present case, the petitioner has retired on 14.8.2001 and he had no relationship of master and servant with the bank at the time of his retirement.

13. We have considered the submissions of learned counsel for the parties and perused the records.

14. There is no dispute regarding the date of retirement of the petitioner as well as extending the benefit of pay revision as per the settlement dated 14.12.1999 and calculation of pension. As per the joint note, the amendments in the regulations were published on 30.11.2002. The learned Single Judge has observed in the judgment that regulation which was amended on 30.11.2002 was not retrospective in nature. Hence, it had no effect on the rights of the petitioner. Therefore, the petitioner was entitled for computation of his pension on 14.8.2001. In paragraph (4) of the judgment, the learned Single Judge has made following observations:

"Admittedly as on the date of the retirement of the petitioner namely, 14.8.2001 the amendment rules were only in contemplation. Rules were amended only on 30.11.2002 That amendment was not even made retrospective."

15. Perusal of the amendment of the regulations indicate that the regulations were published on 30.11.2002 and Regulation 1(2) provides as follows:

"1.(2) Save as otherwise expressly provided in these regulations, they shall come into force on the date of their publication in the Official Gazette."

16. The use of the words in Regulation 1, sub-regulation (2) to the effect; save as otherwise expressly provided in these regulations, the regulations shall be in force from 30.11.2002. This regulation itself contemplates a circumstances where regulation could be applicable from any other date as expressly provided in the regulation. The definition clause 2(s) has been amended by Regulation 2 and as noted above, Regulation 2 (s) sub clause (c) expressly provides definition of pay "in relation to an employee who retired or died while in service on or after 1st day of April, 1998". Thus, even though regulations were published on 30.11.2002, their applicability was made with effect to employees who retired or died after 1.4.1998. The petitioner who retired was thus fully covered by the definition of amended Regulation 2(s) and the regulations very much applied to the petitioner and to the above extent, the regulations have retrospective operation while computing the pay of the petitioner. The learned Single Judge thus was in error in observing that regulations having been published on 30.11.2002 had no retrospective operation.

17. The computation of pay for the purposes of payment of pension to the petitioner was in accordance with Regulation 2 which was made applicable for the definition of pay w.e.f 1.4.1998 and the payment of the pension made to the petitioner thus is backed by statute and hence, it cannot be said to be arbitrary or illegal. As noted above, the joint settlement was entered on 14.12.1999 and

the decision to make payment and to compute all benefits to officers regarding pay revision, payment of gratuity, pension were accordingly made and the settlement further mentioned that payment should be made as per the decision and necessarily the amendment in the regulation may be made. Regulations were amended as above subsequently which have saved and protected the payment of pension to the petitioner.

18. It is further to be noticed that the Full Bench judgment in P.V. Issac''s case (cited supra) has expressly overruled the judgment of the Division Bench in Celine Thomas''s case (cited supra). The fixation of different date for payment of pay revision and gratuity was upheld and it was already held by the Full Bench that it was open for fixing different dates for extending different retirement benefits to the officers and employees. There can be different dates for extending the pay revision and payment of gratuity and pension. In the Full Bench judgment, the benefit of pay revision was extended to all the employees who retired w.e.f 1st July, 1993. But, the benefit of gratuity was extended on 1.11.1994 which was held discriminatory and arbitrary. The fixation of different date for payment of gratuity was upheld overruling the judgment of the Division Bench in Celine Thomas''s case (cited supra). The learned Single Judge has relied on the judgment of the Division Bench in Celine Thomas''s case (cited supra) which has already been overruled. Thus, the submission made by has no application to the petitioner''s case and is distinguishable also does not appear to be correct. The ratio of the judgment is that it is open for fixing different dates for payment of different benefits, including the pay revision, payment of pension and gratuity.

19. It is submitted by the learned counsel for the petitioner that the petitioner had a right to receive pension on the date of retirement as per the regulations then existing. But, it is also relevant to note that even before the said date, there was already a settlement entered where all the benefits of pay revision was extended which was also availed by the petitioner. But, decision was taken to amend the definition of pay which was applicable to the employees who retired after 1.4.1998 and their pension was to be calculated according to the said definition and the statutory amendments were made which was made retrospective to be in tune with the decision already taken in the joint note. Thus, all the decision taken in the joint note is statutorily protected by the amendment of the regulations. Hence, we are of the view that the ratio of the judgment of the Full Bench would clearly attract in the present case. In the judgment of the learned Single Judge, the judgment of the Supreme Court in C.R. Rangadhamaiah''s case (cited supra) has been referred to, which has already been noticed in detail in the judgment of Full Bench of this Court, which needs no repetition.

20. In view of the foregoing discussions, we are of the view that the judgment of the learned Single Judge deserves to be set aside.

In the result, the writ appeal is allowed. The judgment of the learned Single

Judge dated 31.08.2010 is set aside and the original petition is dismissed.

