
(2004) 03 SC CK 0035

In the Supreme Court Of India

Case No : Civil Appeal No's. 3192 of 1999 and 607 and 1506 of 2003

UCO Bank and Others

APPELLANT

Vs

Sanwar Mal

RESPONDENT

Date of Decision : 11-03-2004

Acts Referred:

Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 — Section 19(2)
Constitution of India, 1950 — Article 14
Industrial Disputes (Central) Rules, 1957 — Rule 58
Industrial Disputes Act, 1947

Citation : AIR 2004 SC 2135 : (2004) AIRSCW 2294 : (2004) 3 CTC 301 : (2004) 101 FLR 437 : (2004) 2 KLT 38 : (2004) 2 LLJ 490 : (2004) 4 MLJ 48 : (2004) 4 SCALE 280 : (2004) 4 SCC 412 : (2004) SCC(L&S) 699 : (2004) 3 SCR 1125 : (2005) 1 SLJ 1 : (2004) 3 Supreme 184

Hon'ble Judges : V. N. Khare, C.J.; S. H. Kapadia, J

Bench : Division Bench

Advocate : A.K. Raina and R.D. Upadhyay, in C.A. No. 3192/99, Jagat Arora, Rajat Arora, Ritu Arora and Suruchi Agarwal, in C.A. Nos. 607 and 1503/200 L. Nageswara Rao, Additional Solicitor General, V. Mohana and Sushma Suri, in C.A. Nos. 607 and 1506/200, for the Appellant;

Final Decision : Allowed

Judgement

V.N. Khare, C.J.—Since common question of law is involved in these appeals, one at the instance of UCO Bank; second, Oriental Bank of Commerce; and the third, Bank Of India, we propose to decide them by a common Judgment.

2. For the sake of convenience, we are noticing the facts asserted in Civil Appeal No. 3192 of 1999. The respondent - Sanwar Mal was appointed as a Class-IV employee in UCO Bank on 29.12.1959 and was promoted to class-III post in 1980. On 25.2.1988, he resigned after giving one month's notice. He accepted his provident fund without protest. On 29.10.1993, a settlement was arrived at u/s 2(p) and Section 18(1) of the Industrial Disputes Act, 1947 read with Rule 58

of the Industrial Disputes (Central) Rules, 1957 between Indian Banks' Association (hereinafter referred to as "IBA") representing the managements of banks on one hand and All India Bank Employees' Association representing the workmen. Pursuant to the said settlement, the IBA agreed to introduce pension scheme in banks in lieu of employees' contribution to the provident fund. As a consequence of the said settlement, UCO Bank (Employees') Pension Regulations, 1995 (hereinafter referred to as "the said regulations") were framed by the bank u/s 19(2)(f) of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 after consultation with the Reserve Bank of India. The said regulations were published with the prior sanction of the Central Government. The respondent herein opted for the pension scheme. However, since he had resigned in 1988, the appellant - bank declined to accept his option for admitting him as a member/beneficiary of the fund. Under such circumstances, he filed a suit in civil court for a declaration that he was entitled to pension as provided for under the regulations. He also prayed for mandatory injunction directing the appellant to make payment of arrears along with interest. The suit was decreed and the first appeal filed against the trial court judgment as also the second appeal filed by the appellant were dismissed. It is in this way that the appellant is in appeal before us by way of special leave.

3. Before coming to the arguments advanced before us, we would like to examine briefly the memorandum of settlement dated 29.10.1993 as well as the regulations. The recital to the said settlement shows that during negotiations of service conditions of workmen, the IBA agreed to introduce the pension scheme in banks for the workmen in lieu of employers' contribution to the provident fund. This was pursuant to the demand made by All India Bank Employees' Association representing the workmen, to introduce pension as a second retiral benefit in lieu of employers' contribution to contributory provident fund. As per the terms of the said settlement, the banks agreed to introduce pension as second retiral benefit in lieu of contributory provident fund w.e.f. 1.11.1993. Under the settlement, the pension scheme was inter alia made applicable to all retired employees who were in service of the bank on or after 31.12.1985 and who retired on or after 1.1.1986 but before 1.11.1993. Provided that such employees opt for the pension scheme and refund within six months from 1.11.1993 the banks contribution to the provident fund. As a consequence of the said settlement the appellant - Bank framed UCO Bank (Employees) Pension Regulations, 1995 (hereinafter referred to as "the said Regulations") in exercise of power conferred by Section 19(2)(f) of the Banking Companies (Acquisition and transfer of Undertakings) Act, 1970. The said regulations were framed after consultation with the Reserve Bank of India and were published With the previous sanction of the Central Government.

4. Now coming to the said regulations, it may be stated that Regulations 2(j) defines "contribution" to mean any sum credited by the bank on behalf of the employee to the Pension Fund. Under Clause (k) of Regulation (2), the "date of retirement" has been defined to mean the last date of the month in which an

employee attains the age of superannuation or the date on which he stood retired by the bank or the date on which the employee voluntarily retires or the date on which the officer is deemed to have retired. Regulation 2(q) defines the word "Fund" to mean UCO Bank (Employees) Pension Fund constituted under Regulation 5. Regulation 2 (s) defines "pay" to include the basic pay and all allowances counted for the purposes of contribution to the provident fund and for payment of clearness allowance, in relation to an employee who has either retired or died on or after 1.1.1986 but before 1.11.1993. Regulation 3(1) inter alia states that the said regulations shall apply to employees who were in service of the bank on or after 1.1.1986 but who retired prior to 1.11.1993 and who exercised option to join the pension scheme within 120 days from the notified date i.e. 29.9.1995. Suffice it to state that the entire Regulation 3 refers to retirees only and not to those who have resigned or dismissed/removed from the bank. Regulation 5 deals with the constitution of a pension fund. It states that the bank shall constitute a Fund under an irrevocable trust within the specified period to provide for payment of pension/family pension in accordance with regulations. It further provides that the bank shall be a contributor to the said fund to ensure that the trustees make due payments to the beneficiaries under these regulations. A bare reading of Regulation 5 indicates that the fund will be managed by the trustees and the beneficiaries are the employees covered by the regulations. Regulation 6 inter alia states that on constitution of the said fund, the Provident Fund Trust shall transfer to the pension fund the accumulated balance of the contribution of the bank to the Provident Fund along with the interest accrued thereon up to the date of transfer. Regulation 7 deals with composition of the pension fund. It states that pension shall consist of the contribution by the bank at the rate of 10% per month of the pay of the employee; the accumulated contributions of the bank to the Provident Fund along with interest accrued up to the date of transfer; the amount consisting of contributions of the bank along with interest refunded by the employees who retired before the notified date but who opt for pension in accordance with the regulations; the investment in annuities/securities purchased out of the moneys of the Fund; annual contribution by the bank and income from investments. Regulation 7, therefore, indicates that the scheme is self-financing scheme to be run on the basis of contributions from the employees and the bank. It further shows that it is a funded scheme, which is not dependent upon budgetary support. Regulation 14 inter alia states inter alia that an employee who has rendered a minimum of 10-years of service in the bank on the date of his retirement shall qualify for pension. Regulation 22 deals with forfeiture of service and it reads as follows:--

"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."

5. Chapter V refers to Classes of pension and it covers superannuation pension; pension on voluntary retirement; invalid pension; compassionate allowance, pre-mature retirement pension and compulsory retirement pension. Regulation 34 which also falls within chapter V deals with payment of pension/family pension in respect of employees who retired or died between 1.1.1986 to 31.10.1993. It states that such retirees shall be eligible for pension from 1.11.1993. Further, different formulas are laid down for computation of pension having co-relationship with the classes of pension. Accordingly, computation of pension on voluntary retirement is different from computation of pension in the case of invalid pension or pre-mature retirement pension or compulsory retirement pension.

6. To sum up, the pension scheme embodied in the regulation is a self-supporting scheme. It is a code by itself. The bank is a contributor to the pension fund. The bank ensures availability of funds with the trustees to make due payments to the beneficiaries under the regulations. The beneficiaries are employees covered by the Regulation 3. It is in this light that one has to construe Regulation 22 quoted above. Regulation 22 deals with forfeiture of service. Regulation 22(1) states that resignation, dismissal, 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. In other words, the pension scheme disqualifies such dismissed employees and employees who have resigned from membership of the fund. The reason is not far to seek. In a self-financing scheme, a separate fund is earmarked as the scheme is not based on budgetary support. It is essentially based on adequate contributions from the members of the fund. It is for this reason that under Regulation 11, every bank is required to cause an investigation to be made by an actuary into the financial condition of the fund from time to time and depending on the deficits, the bank is required to make annual contributions to the fund. Regulation 12 deals with investment of the fund whereas Regulation 13 deals with payment out of the fund. In the case of retirement, voluntary or on superannuation, there is a nexus between retirement and retiral benefits under the provident fund rules. Retirement is allowed only on completion of qualifying service which is not there in the case of resignation. When such a retiree opts for self-financing pension scheme, he brings in accumulated contribution earned by him after completing qualifying number of years of service under provident fund rules whereas a person who resigns may not have adequate credit balance to his provident fund account (i.e. banks contribution) and, therefore, the Regulation 3 does not cover employees who have resigned. Similarly, in the case of a dismissed employee, there may be forfeiture of his retiral benefits and consequently the framers of the scheme have kept out the retirees as well as dismissed employees vide Regulation 22. Further, the pension payable to the beneficiaries under the scheme would depend on income accruing on investments and unless there is adequate corpus, the scheme may not be workable and, therefore, Clause 22 prescribes a disqualification to dismissed employees and employees who have resigned. Lastly, as stated above, the scheme contemplated pension as the second retiral benefit in lieu of employers' contribution to contributory provident fund. Therefore, the said scheme was not a continuation of the earlier scheme of provident fund. As a new scheme, it was entitled to keep out dismissed employees and employees who have resigned.

7. In the light of our above analysis of the scheme, we now proceed to deal, with the arguments advanced by both the sides. It was inter alia urged on behalf of the appellant bank that under Regulation 22, category of employees who have resigned from the service and who have been dismissed or removed from the service are not entitled to pension, that the pension scheme constituted a separate fund to be regulated on self-financing principles, that prior to the introduction of the pension scheme, there was in existence a provident fund scheme and the present scheme conferred a second retiral benefit to certain classes of employees who were entitled to become the members/beneficiaries of the fund, that the membership of the fund was not dependent on the qualifying service under the pension scheme, that looking to the financial implications, the scheme framed mainly covered retirees because retirement presupposed larger number of years of service, that in the case of resignation, an employee can resign on the next day of his appointment whereas in the case of retirement, the

employee is required to put in certain number of years of service and consequently, the scheme was a separate code by itself, that the High Court has committed manifest error in decreeing the suit of the respondent inasmuch as it has not considered the relevant factors contemplated by the said scheme and that the pension scheme was introduced in terms of the settlement dated 29.10.1993 between the IBA and All India Bank Employees' Association, which settlement also categorically rules out employees who have resigned or who have been dismissed/removed from the service.

8. Shri R.P. Bhatt, learned senior counsel appearing on behalf of the respondent in Civil Appeal No. 1506 of 2003 inter alia urged that Regulation 22 to the extent it provides for forfeiture of service and disqualifying those who have resigned for pensionary benefits is an arbitrary and unreasonable classification and repugnant to Article 14 of the Constitution, that Regulation 22 was contrary to the objects of the pension scheme embodied in the regulations, that employees who have resigned after completing qualifying service contemplated by Regulation 14 were entitled to opt for pension as they were in a position to bring in their contribution of retiral benefits to their credit for having worked for a minimum service of 10-years in the bank and that the respondent had worked for more than 10-years after which he resigned and, therefore, he fulfilled the qualifying service contemplated by Regulation 14 and consequently, he was entitled to the benefit of the pension scheme.

9. We find merit in these appeals. The words "resignation" and "retirement" carry different meanings in common parlance. An employee can resign at any point of time, even on the second day of his appointment but in the case of retirement he retires only after attaining the age of superannuation or in the case of voluntary retirement on completion of qualifying service. The effect of resignation and retirement to the extent that there is severance of employment but in service jurisprudence both the expressions are understood differently. Under the Regulations, the expressions "resignation" and "retirement" have been employed for different purpose and carry different meanings. The pension scheme herein is based on actuarial calculation; it is a self-financing scheme, which does not depend upon budgetary support and consequently it constitutes a complete code by itself. The scheme essentially covers retirees as the credit balance to their provident fund account is larger as compared to employees who resigned from service. Moreover, resignation brings about complete cessation of master and servant relationship whereas voluntary retirement maintains the relationship for the purposes of grant of retiral benefits, in view of the past service. Similarly, acceptance of resignation is dependent upon discretion of the employer whereas retirement is completion of service in terms of regulations/rules framed by the bank. Resignation can be tendered irrespective of the length of service whereas in the case of voluntary retirement, the employee has to complete qualifying service for retiral benefits. Further, there are different yardsticks and criteria for submitting resignation vis-a-vis voluntary retirement and acceptance thereof. Since the pension regulations disqualify an employee, who has resigned, from

claiming pension the respondent cannot claim membership of the fund. In our view, Regulation 22 provides for disqualification of employees who have resigned from service and for those who have been dismissed or removed from service. Hence, we do not find any merit in the arguments advanced on behalf of the respondent that Regulation 22 makes an arbitrary and unreasonable classification repugnant to Article 14 of the Constitution by keeping out such class of employees. The view we have taken is supported by the judgment of this Court in the case of Reserve Bank of India and Another Vs. Cecil Dennis Solomon and Another, . Before concluding we may state that Clause 22 is not in the nature of penalty as alleged. It only disentitles an employee who has resigned from service from becoming a member of the Fund. Such employees have received their retiral benefits earlier. The pension scheme, as stated above, only provides for a second retiral benefit. Hence there is no question of penalty being imposed on such employees as alleged. The pension scheme only provides for an avenue for investment to retirees. They are provided avenue to put in their savings and as a term or condition which is more in the nature of an eligibility criteria the scheme disentitles such category of employees out of it.

10. For the aforestated reasons, these appeals are allowed and the impugned judgments and orders are set aside. There shall be no order as to costs

11. So far as Civil Appeal No. 607 of 2003 is concerned, learned counsel appearing on behalf of the appellant - bank states that whatever credit balance to the provident fund account of the employee which was transferred to the pension fund shall be refunded to the respondent employee with accrued interest, if any, if not already refunded.