
(2018) 03 GAU CK 0125
In the Gauhati High Court
Case No : WA 180 of 2016

UNITED BANK OF INDIA

APPELLANT

Vs

AMARESH NARAYAN CHOWDHURY

RESPONDENT

Date of Decision : 27-03-2018

Acts Referred:

Citation : (2018) 03 GAU CK 0125

Hon'ble Judges : MANOJIT BHUYAN C.J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Manojit Bhuyan, J.

1.The respondent/writ petitioner Sri Amaresh Narayan Choudhury was serving as the Branch Manager in the Bharalumukh Branch of United Bank of

India. He was proceeded against departmentally on charges of exposing the Bank to financial risks, which were held to be proved. On consideration

of the enquiry report, the disciplinary authority imposed penalty of removal from service vide order dated 12.10.1999. WP(C) 6350/2001 so filed

assailing the removal order was dismissed but on appeal in W.A. 113/2006, the said removal order was set aside vide order dated 30.01.2009. Matter

was remanded to the Bank authorities to take a fresh decision with further direction that following de novo decision in the matter, all consequential

reliefs as may reasonably flow to Sri Amaresh Narayan Choudhury, including protection of pension, should be afforded to him. Court observed that he

had retired from service in the year 2002. Bank passed de novo order dated 24.12.2009 imposing penalty of compulsory retirement with effect from

12.10.1999 with superannuation benefits i.e. Pension and/or Provident Fund and

Gratuity as would be due otherwise under the rules and regulations prevailing in the United Bank of India in substitution of the punishment of removal from service earlier imposed. This order of compulsory retirement, which was challenged in WP(C) 1531/2011, was partly allowed vide order dated 26.06.2012. Besides making a direction to the Bank to refund an amount of Rs.22,734/-, which the writ petitioner alleged that it had been wrongly deducted from his provident fund account, a direction was also made that as regards the claim for pension under the "One more option to Pension" scheme, which option the writ petitioner had already exercised, the Bank authorities will take a considered decision, keeping in mind the order of the Division Bench in the aforesaid W.A. 113/2006 for protection of his pension. Writ appeal preferred by the Bank through W.A. 21/2013 was dismissed by observing that the direction issued by the learned Single Judge was eminently fair. Bank's decision in terms of directions above was rendered vide order dated 12.03.2013 and the claim for grant of pension under the "One more option to Pension" scheme was rejected. Aggrieved, the related writ petition i.e. WP(C) 5144/2014 was instituted. The same having been allowed vide judgment and order dated 05.11.2015, the present appeal is laid by the Bank. Learned Single Judge made direction to the Bank to process the option submitted by the writ petitioner Sri Amaresh Narayan Choudhury for pension under the "One more option to Pension" scheme, subject to fulfillment of other eligibility criteria, within a time-bound period.

2. Apparently, the respondent/writ petitioner Sri Amaresh Narayan Choudhury was compulsorily retired by way of punishment (emphasis supplied). It is primarily in this context the Bank pleads that he is not entitled to the benefit of pension under the "another option for joining the existing Pension Scheme", which was introduced by the Memorandum of Settlement dated 27.04.2010 (in short the "MoS dated 27.04.2010") executed by and between the concerned stake-holders and incorporated in the United Bank of India (Employees) Pension Regulations, 1995 (in short the "Pension Regulations").

3. The above being the crux, it would be necessary to amplify on it. To start with, Clause 2(II)(a) of the MoS dated 27.04.2010 may be noticed, which reads as:

â??(2) Another option for joining the existing Pension Scheme shall be extended to those employees who:- -----

(II)(a) were in service of the bank prior to 29th September, 1995 in case of Nationalized Banks/26 th March, 1996 in case of Associate Banks of

State Bank of India and retired after the date and prior to the date of this Settlement;â??

4. Mr. S. Dutta, learned senior counsel for the appellant Bank, submits that although the cut-off dates in Clause 2(II)(a) do not pose any problem to

the respondent/writ petitioner, however, the expression â??retiredâ? employed therein, with all its legal connotations and meanings, itself acts as an

absolute embargo in extending any benefit of the said clause to the writ petitioner. Who can be termed as a â??retiredâ? employee? Mr. Dutta refers

to the provisions under the Pension Regulations, particularly Regulation 2(x) and 2(y), to say that â??retiredâ? includes deemed to have retired under

clause(I) thereof and â??retirementâ? means cessation from the Bankâ??s service only under three circumstances, that is, (i) normal retirement on

attaining the age of superannuation, (ii) on voluntary retirement as per Regulations 29 of the Pension Regulations and (iii) on premature retirement, as

specified in the first proviso to Regulations 19 of the United Bank of India (Officersâ??) Service Regulations, 1979 (in short â??Service

Regulationsâ?), which vests discretion on the Bank, by following the procedure prescribed and if it is so considered to be done in public interest, to

retire an officer employee on or at any time after the completion of 55 years of age or on or at any time after the completion of 30 years of total

service as an officer employee or otherwise, whichever is earlier. Mr. Dutta contends that the expression â??retiredâ? in Clause 2(II)(a) cannot be

read in isolation, divorced from the statutory meanings as given in Regulations 2(x) and 2(y). The three types of retirement envisaged under the

Pension Regulations and the Service Regulations does not include premature retirement by way of penalty and, therefore, the contention is on the

inapplicability of the benefit of Clause 2(II)(a) of the MoS dated 27.04.2010 in favour of the respondent/writ petitioner. Further contention of Mr.

Dutta is that Regulation 33 of the Pension Regulations provides for compulsory retirement pension of employees who have compulsorily retired from

service as a penalty on or after 01.11.1993, at such rate of pension as prescribed therein, if otherwise he was entitled to such pension on

superannuation on that date. However, in the case of the respondent/writ petitioner, he is also not covered under Regulation 33 as he did not exercise

his option in writing within the period prescribed to become a member of the United Bank of India (Employees) Pension Fund, as required under

Regulation 3(b) of the Pension Regulations.

5. Mr. Dutta refers to the Bank's Circular dated 16.08.2010, which is said to provide the salient features of the MoS dated 27.04.2010 with regard

to the "another option" as well as to what "retired employees" mean. As per the said Circular, it means those employees who were in service

of the Bank on or after 29th September, 1995 and ceased to be in service of the Bank on account of retirement on superannuation, voluntary

retirement, death or on account of VRS under special scheme prior to 27th April, 2010. According to Mr. Dutta, the term "retired employees"

apply only to those categories mentioned in the Circular and for the purpose of extending the benefit of the "another option" for pension, the

Circular does not take within its fold those employees who had compulsorily retired as a measure of penalty. According to Mr. Dutta, there is no

mention of this category in the Circular dated 16.08.2010.

6. Mr. Dutta have placed strong reliance in the Division Bench judgment dated 06.12.2016 of the High Court of Delhi in LPA No.403/2015 (United

Bank of India vs. Kamlesh Pratap Singh). Facts involved were same, in that, one Kamlesh Pratap Singh was imposed with the punishment of

compulsory retirement and he not being a pension optee was paid terminal/superannuation benefit, that is, his own as well as Bank's contribution

to the provident fund and gratuity. The question for determination was whether Kamlesh Pratap Singh was eligible and qualified to exercise option and

join the pension scheme as per the Circular dated 16.08.2010, as noticed above, which was partly modified by subsequent Circular dated 20.08.2010.

The High Court of Delhi observed that the aforesaid two Circulars did not postulate and cover such employees who were indicted in disciplinary

proceedings and penalised with compulsory retirement with superannuation benefit. It was held that the MoS dated 27.04.2010 was not incorporated in

the said Circulars. Violation of the settlement agreement would be a different

matter but in so far as the exercise of option under the Circulars was concerned, it was strictly limited to the retired employees as defined in Clause 2 thereof. Further, the Bank have interpreted the term "retired" by giving it a specific meaning in the Circulars. The non-optee employees who had suffered the penalty of compulsory retirement with superannuation benefits were excluded and made ineligible to vie for another chance to opt for the Pension Scheme. Kamlesh Pratap Singh, who suffered penalty of compulsory retirement, was held as not to be a retired employee within the meaning of Regulation 2(y) of the Pension Regulations. Relying on the ratio laid down by the High Court of Delhi, Mr. Dutta submits that only the retirees covered under Regulation 2(y) are eligible and entitled to exercise the "another option" and that the term "retired" in MoS dated 27.04.2010 must be read only in this context.

7. On the operative part of this Court's Division Bench judgment in W.A. 113/2006, Mr. Dutta submits that the portion relating to affording

protection of pension was merely an observation to take care of a contingency which might arise. As it cannot be construed as a positive direction,

thus, no legal right was created in favour of the respondent/writ petitioner to obtain retiral benefits. In this regard, reliance is placed in Ramesh

Chandra Sharma vs. Punjab National Bank & anr, (2007) 9 SCC 15 and in Maharashtra State Textile Corporation Limited vs. Official Liquidator &

Ors., (1978) 1 SCC 490. Reliance is also placed in Union of India vs. Arulmozhi Iniarasu & ors., (2011) 7 SCC 397, for the proposition that

observations of the courts must be read in the context in which they appear to have been stated and not to be read as Euclid's theorems or as

provisions of statute.

8. Lastly, Mr. Dutta submits that there is an inherent fallacy in the finding of the learned Single Judge when it observed that the expression

"retired" as employed in the MoS dated 27.04.2010 would have the same meaning as provided under the Pension Regulations, which would

include an employee whose services was terminated prematurely by way of penalty. According to Mr. Dutta, the words underscored above, if

allowed to stand, would amount to adding words into the Regulations, which are actually not there.

9. Per contra, Mr. P.K. Goswami, learned senior counsel for the respondent/writ

petitioner, makes submission that the benefit of Clause 2(II)(a) of the MoS dated 27.04.2010 cannot be legally denied, in as much as, Sri Amaresh Narayan Choudhury is a retired employee within the meaning of the Regulations. The MoS dated 27.04.2010, particularly Clause 2(II)(a) thereof, attained statutory force and got incorporated in the Pension Regulations by virtue of Clause 7 of the MoS dated 27.04.2010. Apparently, the purpose of Clause 2(II)(a) is to give another option for joining the Pension Scheme to those who retired in between the cut-off dates specified therein. The focus is only on the interpretation of the word "retired", which would squarely determine the eligibility/ineligibility of the respondent/writ petitioner to get benefit of the "another option" for joining the Pension Scheme.

In this context attention is drawn to Regulation 2(k) of the Pension Regulations which defines the expression "date of retirement". One of the meaning assigned is to the date on which the employee is retired by the Bank. On this Mr. Goswami submits when the definition of "retirement" under Regulation 2(y) is examined, it also takes within its fold the concept of cessation from bank service on premature retirement by the Bank before attaining the age of superannuation specified in Service Regulations on Settlements. As such, it is contended that an officer/employee compulsorily retired by way of punishment or in public interest, such cessation of employment would also fall well within the four corners of premature retirement.

As regards the applicability of Regulation 33 of the Pension Regulations, which deals with compulsory retirement pension, Mr. Goswami contends that its applicability is not fettered by Regulation 3(b), in as much as, Regulation 3(b) pertains to the exercise of first option that was required to be done within the period prescribed therein and does not, in any manner, have any relationship with the exercise of the "another option" introduced by MoS dated 27.04.2010 and incorporated in the Pension Regulations. Further contention of Mr. Goswami is that the word "retired" in Regulation 2(x) cannot be given a restrictive meaning but a broader and extensive meaning so as to include all employees who have retired in any other manner, whether by superannuation or voluntarily or compulsorily or in public interest. In support of the submissions above, reliance is placed in the judgment dated 03.03.2006 in WP No.508 of 2003 (United Bank of India vs. Prasanta Kumar Roy) of the Division Bench of the High Court of Calcutta; the

judgment dated 10.12.2009 of the Division Bench of the High Court of Madras in W.A. 2768 of 2002 (C.P. Krishnaswamy v. Union of India) and to

the Principles of Statutory Interpretation (14th Edition) by Justice G.P. Singh on â??Restrictive and extensive definitions.â??

10. Rival submissions are noticed. The primary question for consideration is whether the expression â??retiredâ? employed in Clause 2(II)(a) of the

MoS dated 27.04.2010 would also cover an employee who has been compulsorily retired from service by way of punishment. In this connection we

must bear in mind that Clause 2(II)(a) above is a statutory provision having attained statutory force on account of being incorporated in the Pension

Regulations by virtue of Clause 7 of the MoS dated 27.04.2010 itself. This we say to make ourselves clear that we do not take on board any meaning

or interpretation assigned to the expression â??retiredâ? in any of Bankâ??s Circulars dated 16.08.2010 (Annexure-B) or 20.08.2010. Meaning

assigned in an executive order cannot supplant that given in the statutory rules.

11. The definition of â??retiredâ? given in Regulation 2(x) of the Pension Regulations is not an exhaustive definition but in the nature of inclusive

definition. Regulation 2(x) defines â??retiredâ? as â??retired includes deemed to have retired under clause (I).â? Now clause (I) of Regulation 2

pertains to cessation from service of the Bank on appointment by Central Government as a whole-time Director or Managing Director or Chairman in

the Bank of any public financial institution or State Bank of India. Apparently, for the answer we seek, clause (I) is of no concern to the case in hand.

Therefore, the definition of the word â??retiredâ?, which is declared as â??includesâ?, must be given a broader and extensive meaning to include all

employees who have retired in any other manner, whether by superannuation [Regulation 2(y)(a)] or voluntarily [Regulation 2 (y)(b)] or compulsorily

by the Bank by way of premature retirement [Regulation 2 (y)(c)] or in public interest [Regulation 32(b)].

12. Regulation 14, which pertains to â??Qualifying Serviceâ?, assumes importance. It postulates that an employee, who has rendered a minimum of

ten years 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. This takes us to

the definition of â??date of retirementâ? in Regulation 2(k). It is defined to â??meanâ?, amongst others, the date on which he is retired by the Bank.

Therefore, there is also one category among the retirees, namely, an employee who is retired by the Bank. We now examine the definition of

“retirement” given in Regulation 2(y), it is seen that retirement is defined to mean cessation from Bank’s service either on attaining the age of

superannuation or on voluntary retirement in accordance with Regulation 29 or premature retirement by the Bank before attaining the age of

superannuation specified in the Service Regulations or Settlement. Besides, Regulation 32 also envisages the concept of premature retirement pension

and under clause (b) thereof it is made applicable to an employee who retires from service on account of orders of the Bank to retire prematurely in

the public interest or for any other reason specified in service regulations of settlement, if otherwise he was entitled to such pension on superannuation

on that date. Regulation 14 as aforesaid, would certainly be a relevant and determining factor as regards entitlement. While on Regulation 32, it

would be relevant to notice the provisions under the United Bank of India Officer Employees’ (Discipline and Appeal) Regulations, 1976 relating

to the penalties which may be imposed on an officer/employee for acts of misconduct or for any other good and sufficient reason. One of the major

penalties that can be imposed by the Bank authority on an officer/employee is compulsory retirement by way of punishment. If at all powers vests

with the Bank to compulsorily retire an officer/employee, it could be either under Regulation 19(1) of the Pension Regulations in public interest or by

invoking the relevant provisions under the Service Regulations or that of the Discipline and Appeal Regulations. When the provisions under the said

Regulations confers power on the Bank to compulsorily retire an officer/employee by way of punishment or in public interest, such cessation of

employment, namely compulsory retirement by way of punishment, would also fall well within the domain of premature retirement.

13. Regulation 33 of the Pension Regulations would also come into play, which specifically provides for “Compulsory Retirement Pension”, made

applicable to employees compulsorily retired from service as a measure of penalty on or after 1st day of November, 1993. In the case at hand, Sri

Amaresh Narayan Choudhury was compulsorily retired by way of penalty vide order dated 24.12.2009, with effect from 12.10.1999. Entitlement to

the benefit of reduced pension under Regulation 33 is not fettered by Regulation 3(b) of the Pension Regulations, as contended by Mr. Dutta, in as

much as, the present case is on the applicability/non-applicability of the second option for pension introduced by MoS dated 27.04.2010 and not with

the initial option that an employee is required to exercise within the notified date for becoming a member of the Pension Fund constituted under

Regulation 5 thereof. Besides, Regulation 33 does not suggest any new entitlement to pension. It merely deals with the discretion of the Bank to

reduce the pension to the minimum level of two-thirds of the pension which an employee would have ordinarily earned but for his compulsory

retirement from service as a penalty on or after 01.11.1993. Nothing more can be read into Regulation 33.

14. We hold that an officer/employee who is compulsorily retired by way of punishment would also fall within the four corners of premature

retirement. As a necessary corollary it cannot be said that such an employee would fall outside the Pension Regulations so as exclude him from being

eligible to claim pension under the said Pension Regulations, in particular Regulation 33(1) thereof. The expression "retired" employed in Clause

2(II)(a) of MoS dated 27.04.2010 has to be read entitling the benefit of "another option" to Sri Amaresh Narayan Choudhury for joining the

existing Pension Scheme. The word "retired" in Clause 2(II)(a) will include an employee who has been compulsorily retired from service by way

of punishment.

15. We do not wish to delve into details on the opinions of the High Courts rendered in the cases cited before us. We only wish to place on record that

we cannot be guided by the definition and interpretation assigned to the expression "retired" in the Bank Circulars dated 16.08.2010 and

20.08.2010, to the exclusion of the meaning of "retired" derived from the Regulations, as above.

16. For all the findings and reasons above, we find no infirmity in the judgment under appeal. The present appeal being devoid of merits stands

dismissed, however, without any order as to cost.