(2006) 03 CAL CK 0001

In the Calcutta High Court

Case No : APOT 85 of 2004, W.P. No. 508 of 2003 and APO 58 of 2004

United Bank of India APPELLANT

Vs

Prasanta Kumar Roy RESPONDENT

Date of Decision : 03-03-2006

Acts Referred:

Provident Fund Rules — Rule 19
United Bank of India (Employees) Pension Regulations, 1995 — Regulation 14, 2, 29, 3, 32

Citation : (2006) 1 ILR (Cal) 350

Hon'ble Judges : V.S. Sirpurkar, C.J;Arun Kumar Mitra, J

Bench : Division Bench

Advocate : Maloy Kumar Basu and Subir Sanyal, for the Appellant; Shanti Das, for the Respondent

Final Decision : Dismissed

Judgement

V.S. Sirpurkar, C.J.—A judgment by the Learned Single Judge allowing the writ petition and thereby declaring that the Petitioner was entitled to opt for and come under Pension Regulations is in challenge in this appeal. Petitioner/ Respondent herein was a bank employee. Some disciplinary proceedings were initiated against him while he was in service, resulting his dismissal. His departmental appeal was also dismissed. He then filed a writ petition challenging the orders of the disciplinary authority and also the appellate authority. The writ petition was dismissed. He preferred an appeal, the Appeal was also dismissed. Thereafter, we Petitioner filed a review petition before bank authorities in accordance with the service conditions. The Reviewing Committee did not dispose of that application. Therefore, he approached this Court again seeking direction upon the view committee to dispose of the application. The Court accepted his contention and in terms thereof the review committee looked into he matter and came to the conclusion that there was no direct evidence against him of causing loss to the bank and accordingly converted the order of dismissal into an order of compulsory retirement, of course, by way of punishment. The

Petitioner secured his retrial benefits including contributory portion of the Provident Fund along with the interest thereupon. He was held to have been dismissed prematurely and compulsorily with effect from 11th September, 1987.

2. So far so good, there a scheme called United Bank of India (Employees'') Pension Regulations, 1995 came into existence. It was applicable to the employees retied between 1.1.1986 and the first day of November, 1993. Under the scheme there were in all eight categories of employees who have been held entitled to join the pension scheme. Regulation 3 provides for the applicability and the eligibility conditions for joining the pension scheme. In short it is a Regulation creating entitlement for pension.

3. The Petitioner''s option form was also sent to him for exercising the option. He accordingly sent that form, he was also asked to undertake a medical examination by a letter dated 31st December 1994/2nd January, 1995 and the Petitioner was accordingly medically examined also. The report of this medical examination was also submitted and thus he had completed all the necessary formalities.

However, to his dismay he received a letter dated 13.11.1995 whereby his request opting for pension scheme was rejected, relying on Regulation 33 of the United Bank of India (Employees") Pension Regulations, 1995 (hereinafter referred called ''Pension Regulations, 1995'' for short). Petitioner thereafter made representations and ultimately filed writ petition. His writ petition was initially dismissed but in an appeal he was given liberty to file a fresh writ petition challenging the validity of Regulation 33 of Bank Employees Pension Regulation 1995 in so far as it denied pension on compulsory retirement. This writ petition was allowed and now the bank has come up before us by way of the present appeal.

4. The learned Judge relying on a Karnataka High Court judgment which was no interfered with by the supreme Court came to the conclusion that the date mentioned in Regulation 33 as 1.11:1993 should be read as 1.1.1986. The said Karnataka High Court judgment was in respect of Regulation 29 concerning the employees who had voluntarily retired. Regulation 29 provided that hose who had voluntarily retired only after 1.11.1993 would be entitled to the pension. In the judgment of Karnataka High Court this was held to be discriminatory between two sets of retired employees and, therefore, those who had voluntarily retired prior to 1.11.1993 but after 1.1.1986 as per the scheme were held entitled to the pension. The learned Judge therefore, allowed the writ petition.

5. Mr. Molay Basu, the senior advocate appearing on behalf of the Appellant very earnestly urged that the learned Judge has taken completely erroneous view with regard to Regulation 33 and Regulation 29. According to the learned Counsel the two Regulations operated in entirely different circumstances and were hot comparable to each other. The learned Counsel further urged that learned Judge could not be at variance with the express and clear cut language of the

Regulation which provided that those employees who had compulsorily retired by way of punishment only after 1.11.1993 would be entitled for pension and since the Petitioner/Respondent herein had admittedly retired before 1.11.1993, he was not entitled to be included in pension scheme. Learned Counsel also urged that ordinarily the employee who had been compulsorily retired by way of punishment would not be entitled to the contributory provident fund and, therefore, it was obvious that such contributory provident fund by the bank which was to be exchanged for a pension was not available to such employee and thus such employee could not be included in the pension scheme. However, a special category was created via Regulation 33 to include even those employees but with a rider that such employees should have been compulsorily retired by way of punishment after 1.11.1993 and as such Regulation 33 was not only an entitling Regulation but was a complete code by itself. It could not be compared with the Regulation 29 and brought at par with Regulation 29 where the concerned voluntarily retired employees had the benefit of the Contributory Provident Fund which could be exchanged with pension and, therefore, the learned Judge was in error.

6. Learned Counsel for the Respondent argued that in case of the present Respondent however the bank and paid the whole Contributory Provident Fund while he was compulsorily retired and, therefore, there was no question of not exchanging the banks contribution with the pension scheme. At least in case of the present employee, the learned Counsel tried to urge vociferously, that the employee was not compulsorily retired by way of punishment. Lastly the learned Counsel says that even otherwise there can be no discrimination between the employees who had retired either by way of superannuation or voluntarily and on one hand the employees (writ Petitioner) compulsorily retired by way of punishment because in all the three cases the employees could be treated to be the ''retired'' employee. On this background it is for us to see as to whether the learned Judge was right in allowing the writ petition.

7. We shall first see the established facts. There can be no dispute that this employee was compulsorily retired by way of punishment. The earlier orders passed and more particularly the last order passed by the High Court clearly establishes this fact. Even otherwise the fact remains that his punishment of dismissal was ultimately reviewed by the Review Committee. We can see that position from the order of the learned Single Judge in CO. 9045 (W) of 1987 dated 6.2.1990 while disposing of the writ petition the learned Judge had clearly written the following words:

Having regard to the finding of the Review Authority, and regard being had to the fact that the Petitioner would have retired in due course in September, 1989 and the order of appellate authority was passed in September, 1988 which was modified by the Review Authority, in my view end of justice will be adequately met if punishment of compulsory retirement is made effective from the afternoon of 30th September, 1988.

7.1 Secondly, it is established that he was compulsorily retired before 1.11.1993. Thirdly, he had opted in favour of the pension scheme in lieu of the contributory provident fund given to him by the Bank. Fourthly, his offer was not accepted and fifthly, he had put in about 35 years'' of service.

8. The learned Judge has wholly relied on the judgment of Karnataka High Court which has been made available to us. There is other judgment also of Bombay High Court wherein the same. view is taken regarding Regulation 29 which pertains to the employee who had taken voluntarily retirement. The learned Judge has taken the same line of though in respect of Regulation 33 also and therefore it has become necessary for us to examine Regulation 33 on the back drop of the contentions raised before us by Shri Moloy basu, Regulation 33 is as under "33. Compulsory Retirement Pension -

(1) An employee compulsorily retired from service as a penalty on or after 1st day of November, 1993 in terms of Discipline and Appeal Regulations or settlement by the authority higher than the authority competent to impose such penalty may be granted pension at a rate not less than two-thirds and not more than full pension admissible to him on the date of his compulsory retirement if otherwise he was entitled to such pension on superannuation on that date.

(2) Whenever in the case of a bank employee the Competent Authority passes an order (whether original, appellate or in exercise of power of review) awarding a pension less than the full compensation pension admissible under these Regulations, the Board of Directors shall be consulted before such order is passed.

(3) A pension granted or awarded under sub-Regulation (1) or, as the case may be, under sub-Regulation (2), shall not be less than the amount of rupees three hundred and seventy five per menses.

9. Heavily relying on the language thereon the learned Counsel for the Appellant says that the compulsory retirement pension would be available only to those employees who were compulsorily retired as a penalty only on or after 1st November, 1993 and to no others. Before we take the task of interpreting Regulation 33 we must see a few definitions in this Regulations, Regulation 2 (x) where the term ''retired'' is defined is as under:

2(x)"retired includes deemed to have retired under clause(1)

10. We are not concerned with Clause 2(1) because that 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 or any public financial institution or State Bank of India. Such is not the case here. However, this definition is not an exhaustive definition. It is only in the nature of inclusive definition. Therefore, the word ''retired'', in our opinion, would have a ''broader meaning'' so as to include all the employees who have retired in any other manner, whether by superannuation or voluntarily or compulsorily or in public

interest. We have so held in the judgment dated 22nd December, 2005 in APO No. 625 of 1998 (Durga Prsad Mishra v. UCO Bank and Ors.) While we were considering the case of an employee who had voluntarily retired. Therein we held that a voluntarily retired employee can conveniently be treated to be a retired employee.

11. Regulation 3, to which we have made a reference in the earlier part of the judgment, comes in Chapter II styled as ''Application and Eligibility''. It is as under:

3. Application - These Regulations shall apply to employees who, -(1) (a) were in the service of the Bank on or after the 1st day of January, 1986 but had retired before the 1st day of November, 1993 ; and (b) exercise an option in writing within one hundred and twenty days from the notified date to become member of the Fund; and (c) refund within sixty days after the expiry of the said period of one hundred and twenty days specified in Clause (b) the entire amount of the Bank''s contribution to be Provident Fund including interest accrued thereon together with a further simple interest at the rat? of six per cent per annum on the said amount from the date of settlement of the Provident Fund Account till the date of refund of the aforesaid amount to the bank; or (2) (a) have retired on or after the 1st day of November, 1993 but before the notified date ; and (b) exercise an option in writing within one hundred and twenty days from the notified date to become member of the Fund; and (c) refund within sixty days after the expiry of the said period of one hundred and twenty days specified in Clause (b) the entire amount of the Bank''s contribution to the Provident Fund and interest accrued thereon together with a further simple interest at the rate of six percent per annum on the said amount from the date of settlement of the Provident Fund Account till the date of refund of the aforesaid amount to the Bank; or (3) (a) are in the service of the Bank before the notified date and continued to be in the service of the Bank on or after the notified date ; and (b) exercise an option in writing within one hundred and twenty days from the notified date to become member of the Fund; and (c) authorise the trust of the Provident Fund of the Bank to transfer the entire contribution of the Bank along with the interest accrued thereon to the credit of the Fund constituted for the purpose under Regulation 5; or (4) Join the service of the Bank on or after the notified date ; or (5) were in the service of the Bank during anytime on or after the 1st day of November, 1993 and had died after retirement but before the notified date, their family shall be entitled for the amount of pension payable to them from the date on which they would have been entitled to pension under these Regulations, had they been alive till the date on which they died, if the family of the deceased (a) exercise an option in writing within one hundred, and twenty days from the notified date to become member of the Fund ; and (b) refund within sixty days after the expiry of the said period of one hundred and twenty days specified in Clause (a) above the entire amount of the Bank''s contribution to the Provident and interest accrued thereon together with a farther simple interest at the rate of six percent?s-per annum from the date of

settlement of the Provident Fund Account till the date of refund of the aforesaid amount to the Bank, or (6) joined the service of the Bank on or after the 1st day of November, 1993, but who have died while in the service of the Bank before the notified date their family shall be entitled to the family pension under these Regulations;

Provided that the family of such a deceased employees refunds within one hundred and eighty days from the notified date the entire amount of the Bank''s contribution to the Provident Fund, If any and interest accrued thereon together with further simple interest at the rate of six percent per annum from the date of settlement of the Provident Fund Account till the date of refund of the aforesaid amount to the Bank ;

Provided further that the family of such a deceased employee shall apply in writing for grant of family pension; or (7) were in the service of the Bank during anytime on or after the 1st day of January, 1986 and had died while in service on or before the 31st day of October, 1993 or had retired on or before the 31st day of October, 1993 but died before the notified date in which case their family shall be entitled to the pension or the family pension as the case may be under these regulations, if the family of the deceased -(a) exercise an option in writing within one hundred and twenty days from the notified date to become member of the Fund; and (b) refund within sixty days of the expiry of the said period of one hundred and twenty days specified in Clause (a) above the entire amount of the Bank''s contribution to the Provident Fund and interest accrued thereon together with a further simple interest at the rate of six percent per annum from the date of settlement of the Provident Fund Account till the date of refund of the aforesaid amount to the Bank; or (8) Joined the service of the Bank on or before the 31st day of October, 1993 and who died while in service on or after +he 1st day of November, 1993 but before the notified date in which case their families shall be entitled to family pension under these regulations if the family of the deceased employee -(a) exercise an option in writing within one hundred and twenty days from the notified date to become a member of the fund; and (b) refund within sixty days of the expiry of the side period of one hundred and twenty days specified in Clause (a) above the entire amount of the Bank''s contribution to the Provident including interest accrued thereon together with a further simple interest at the rate of six percent per annum from the date of settlement of the Provident Fund Account of the employee till the date of refund of the aforesaid amount to the Bank;

(9) Notwithstanding anything contained in sub-regulations (1), (2), (3), (5) and (8) an option exercised before the notified date by an employee or the family of a deceased employee in pursuance of the settlement shall be deemed to be an option for the purpose of this Chapter if such an employee or the family of the deceased employee refunds within sixty days from the notified date the amount of the Bank''s contribution to the provident fund accrued thereon together with a further simple interest in accordance with the provisions of this Chapter and in

case employer''s contribution of Provident Fund has not been received from Provident Fund Trust, has authorised or authorizes within sixty days from the notified date the Trustees of the Provident Fund of the Bank to transfer the entire contributions of the Bank to the Provident Fund including interest accrued thereon in accordance with the provisions of this Chapter to the credit of the fund constituted for this purpose under Regulation 5,

12. Even cursory glance of Regulation 3 would suggest that thereunder the applicability or eligibility of the scheme is provided. Therefore, if an employee has retired within two dates as stated above and exercises an option and agrees to refund the contribution from the bank he would ordinarily be entitled to join pension scheme. In chapter IV which is styled as ''Qualifying Service''. Regulation 14 provides as under:

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.

13. It is, therefore, obvious that an employee contemplated in Regulation 14 should have rendered a minimum of 10 years'' of service in the bank on the date of his retirement or the date on which he is deemed to have retired. There can be no dispute that the Respondent herein had put in 10 years'' of service. When we read these three provisions namely Regulations 2(x), 3 and Regulation 14 it becomes clear that an employee who has put in minimum 10 years'' of service and who has retired between the two specified dates and who has given an option and is prepared to refund the Bank''s contribution would ordinarily become entitled to join the pension scheme.

14. However, the learned Counsel urges that Regulation 33 makes a departure from the general route and is a complete code by itself. It must be pointed out at this juncture that Regulation 33 is covered in Chapter V. which provides for classes of pension. The said chapter considers number of such classes therein namely, superannuation pension, on voluntary retirement, invalid pension, compassionate allowance, premature retirement pension, compulsory retirement pension, family pension, etc. Regulation 33 does not, in our opinion, suggest any "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 he would have ordinarily earned. For the entitlement of the pension, one has necessarily to fall back upon Regulations 3 and 14 which we have quoted above and if that is done, then it would be clear that in case of an employee who is compulsorily retired after 1st November 1993, the only discretion which is left in the authorities would be to reduce his pension upto two thirds. When the language of Regulation 33(1) is seen, it is clear that it does not create any new entitlement. The entitlement comes only via Regulation 3 read with Regulation 14. The thrust of this Regulation 14 is for providing the minimum length of service for entitling for pension in case of all the employees who are

superannuated or are retired by the bank or who voluntarily retired or who are deemed to be retired. The term "date of retirement" used in Clause 14 is defined in Regulation 2(k), which is as under:

(k)" date of retirement" means the last date of the month in which an employee attains the age of superannuation or the date on which he is 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;

(Emphasis supplied).

15. The clause which is highlighted by us would clearly include the persons like the Petitioner who has been compulsorily retired by way of punishment also, Thus Clause 14 which suggests the entitlement on account of a particular number of years of qualifying service, is applicable to the compulsorily retired employees also. If that be so, the entitlement comes predominantly by Regulation 3, of course, read with a condition that such person should have put in the minimum qualifying service provided in Clause 14. There is no cut of dates either in Regulation 3 or Regulation 14 which are entitling Regulations creating a right a pension. Therefore, there is no scope to hold that the employees who are compulsorily retired only on or after 1st November 1993, would be entitled to get the pension and not others. There is really no difference in such employee who are compulsorily retired before 1.11.1993 and after 1.11.1993 and after 1.11.1993. They are identically placed. Therefore, the only way the Regulation can be read is to hold that Regulation 33 merely creates discretion to reduce the pension in case of the employees who are compulsorily retired after 1.11.1993 and nothing more.

16. When this Regulation is compared with Regulation 32 dealing with prematurely retired employees, it is to be seen that under Regulation 32, there is no such cut oft date. After all, there would hardly be any difference inane employee who is prematurely retired in the public interest and an employee who is retired compulsorily by way of punishment.

17. It was tried to be suggested that under the Provident Fund Rules, such employees who are compulsorily retired by way of punishment are not entitled to get any pension. We have examined the applicable Provident Fund rules and more particularly, Rule 19 to search for any such provision. We have not been able to find any such provision in the whole rule. The learned Single Judge has reproduced the whole Rule 19 and the learned Judge has come to a correct conclusion that for the purposes of the payment of Provident Fund, the expression "retirement" used in the full includes all the retirements including compulsory retirement. The learned Judge has correctly relied on sub-rules (d) and (e) of Rule 19. The learned Judge was, therefore, right in holding that a compulsorily retired employee like the Petitioner, irrespective of the date of retirement, would be entitled to the Contributory Provident Fund. If that was so, then there is no reason why such Contributory Fund cannot be exchanged with

pension in terms of Regulation 3. We, therefore, agree with the learned Judge in this aspect also. -

18. In his judgment, the learned Single Judge has not chosen to interpret Regulation 33 in the manner that we have done by holding that Regulation 33 merely provides a discretion to the authorities to reduce the pension. If the Regulation is read as we have read, there would be no necessity of reading the '' date mention therein (01.01.1993) as 01.01. 1986 which is the date which is a starting date of retirement for employees to be entitled to get the pension. This interpretation by us would save the regulation from the vice of discrimination. We would, therefore, choose to read the regulation so as to save it on the statute book. We would, therefore, agree with the learned Single Judge though for the reasons given by us above.

19. In the view, we do not find any merits in the appeal and the appeal is directed to be dismissed.

20. Xerox certificate copy of this judgment be given to the parties on the usual undertakings.

Arun Kumar Mitra, J.

21. I agree

Later:

22. At this stage learned Counsel, Mr. Sanyal, prays for stay of the judgment/ Under the circumstances, we do not feel it necessary to grant stay of the judgment.

