

(2005) 07 MAD CK 0143
In the Madras High Court
Case No : Writ Petition No. 14744 of 2003

Venkatramani N.	Vs	APPELLANT
Indian Bank and Another		RESPONDENT

Date of Decision : 04-07-2005

Acts Referred:

Bank Voluntary Employees Pension Regulations, 1995 — Regulation 14, 18, 2, 28

Citation : (2005) 3 LLJ 703 : (2005) 3 MLJ 614 : (2005) WritLR 820

Hon'ble Judges : Markandey Katju, C.J;F.M. Ibrahim Kalifulla, J

Bench : Division Bench

Advocate : N.S. Rajan, for the Appellant; M. Vijayan for King and Patridge, for the Respondent

Final Decision : Allowed

Judgement

F.M. Ibrahim Kalifulla, J.—The petitioner seeks to challenge the order of the second respondent dated March 22, 2003 denying pension to the petitioner.

2. The petitioner joined the services of the first respondent bank on April 24, 1986 as a Clerk-cum-Shroff after his service in the Indian Air Force as a Warrant Officer for 24 years. When the petitioner was called upon to exercise his option for pension in lieu of Contributory Provident Fund, he is stated to have opted for pension which option was also acknowledged by the bank on February 15, 1996. Subsequently, he was promoted as Officer of the Bank in Junior Management Grade, Scale-I. The Bank introduced a Voluntary Retirement Scheme (in short, "VRS") in 2000 which scheme contained a provision that those who opt for VRS, their provident fund and pension would be determined as per Indian Bank Voluntary Employees' Pension Regulations, 1995 and Provident Fund Rules. The petitioner applied to go under the said scheme and he was relieved on February 10, 2001. Subsequently, the petitioner applied for pension and commutation on February 12, 2001. By proceedings dated September 10, 2001, the petitioner was informed that his application for pension and commutation cannot be considered since he had not completed 15 years of service. The petitioner made

a further representation and since the same was not disposed of on merits, he approached this Court by filing a Writ Petition in W.P. No. 11170 of 2002 which was disposed of on December 30, 2002 directing the respondent bank to dispose of the petitioner's representation within a period of three months. Pursuant to the said order, the impugned order came to be passed wherein, it is stated that the total period of qualifying service of the petitioner was only 14 years 9 months and 17 days and since as per the Pension Regulations, the petitioner should have put in a minimum service of 15 years, he was not eligible for pensionary benefits,

3. Challenging the same, the petitioner has come forward with the present Writ Petition.

4. Mr. N.S. Rajan, learned Counsel appearing for the petitioner, would contend that by virtue of Regulation 18 of the Indian Bank (Employees) Pension Regulations, 1995 (in short, "the Regulations"), the petitioner should be treated to have put in 15 years of qualifying service and therefore, he is eligible to get pension as per the amended Regulation 28.

5. On the other hand, Mr. M. Vijayan learned Counsel appearing for the respondent bank would contend that Regulation 18 will have no application inasmuch as the last spell of the petitioner's service which was only 9 months and 17 days cannot be treated as a broken period of service to fall under the said Regulations in order to make the petitioner eligible for pension.

6. Having heard the learned Counsel for either parties, we feel it appropriate to refer to certain provisions of the Regulations for proper appreciation of the controversy involved.

"Regulation 2(u) defines "Pensioners", to mean an employee eligible for pension under these regulations;"

"Regulation 2(w) defines "Qualifying service" to mean the service rendered while on duty or otherwise which shall be taken into account for the purpose of pension under these regulations."

7. "Qualifying service" has been dealt with in Chapter IV of the Regulations and Regulations 14 and 18 falling under the said Chapter are relevant for our present purpose, which are 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 on the date on which he is deemed to have retired shall qualify for pension."

"18. Broken period of service of less than one year- If the period of service of an employee includes broken period of service less than one year, then if much broken period is more than six months, it shall be treated as one year and if such broken period is six months or less it shall be ignored."

8. One other relevant document is the Explanatory Memorandum to the

proceedings of the respondent dated June 8, 2002 and para 2 of the said Memorandum is to the following effect:

"2. It is, therefore, necessary that the amendment may be made effective from September 1, 2000 so that all employees who are members of the Pension Fund and have taken voluntary retirement under the scheme after completion of 15 years of service can draw the benefit of pension."

9. Regulation 28 came to be amended by the proceedings of the respondent bank dated June 8, 2002 and the amended Regulation 28 falling under Chapter V reads as under:

"25. Superannuation Pension: Superannuation pension shall be granted to an employee who has retired on his attaining the age of superannuation specified in the Service Regulations or Settlements:

Provided that, with effect from 1st day of September, 2000 pension shall also be granted to an employee who opts to retire before attaining the age of superannuation, but after rendering service for a minimum period of 15 years in terms of any Scheme that may be framed for such purpose by the Board with the approval of the Government."

10. The petitioner having been allowed to go under Voluntary Retirement Scheme on and after February 10, 2001 as per Regulation 28, he would be eligible to claim pension if he had rendered 15 years of service.

11. A reading of the amended Regulation 28 and para 2 of the Explanatory Memorandum makes it explicit that an employee of the respondent bank who has taken voluntary retirement under the scheme and who had completed 15 years of service is eligible for superannuation pension as specified in the Regulations. The fact that the petitioner was in service between April 24, 1986 and February 10, 2001 and thereby his period of service was 14 years, 9 months and 17 days is not in dispute. Therefore, the sole question is, as to whether irrespective of the above period of service put in by the petitioner, could it be construed by virtue of Regulation 18 that the petitioner had put in 15 years of minimum service.

12. Therefore, the right of the petitioner to receive pension depends upon the interpretation of Regulation 18 vis-a-vis the amended Regulation 28, by which, the proviso came to be added with effect from September 1, 2000. As far as proviso to Regulation 28 is concerned, an employee of the bank if opts to retire before attaining the age of superannuation after rendering a minimum of 15 years of service under any scheme, would become eligible for payment of pension. The expression used in the said proviso is "after rendering service for a minimum period of 15 years". Therefore, if the period of service 14 years, 9 months and 17 days can be construed as 15 years by virtue of operation of Regulation 18, then the petitioner would be eligible for payment of pension.

13. As far as Regulation 18 is concerned, the said Regulation provides the manner as to how a broken period of service of less than one year can be

counted. Going by the expression "broken period of service", in the first blush, one may tend to think that the said Regulation would come into play only where there were more than one spell of service in the bank. We say so because it may appear, that those expressions can be applied only in cases where in between two spells if there is a break in service, then in what manner such broken service can be taken into account for the purpose of counting the period of service for ascertaining the eligibility of an employee either for the purpose of qualifying service or for the purpose of payment of pension. But on a close scrutiny of the said Regulation, we are of the opinion that the said Regulation need not be construed only in the abovesaid manner, but can also be applied to cases where the employee was in continuous service without any break in between from the date of initial appointment and that the said service ultimately breaks at the end without completing the full year. In our view, even in such cases, by virtue of application of Regulation 18, part of the last spell of a service can also be treated as one full year, as that would come within the mischief of "broken service" and thereby satisfy the stipulation contained in that Regulation. For instance if an employee had put in only 9 years 8 months and 10 days, it will have to be held that such an employee should be held to have put in 10 years of service inasmuch as in the last spell of his employment he had worked for more than 6 months, that period should also be construed as one full year as per Regulation 18. To put it precisely the service was broken at the end of the 10th year and since in the 10th year, he had put in more than 6 months of service, such period should also be construed as one full year. In our view a broken period of service need not necessarily mean a service which broke in between the period of employment but in all other circumstances as well. In this context when we look into the OXFORD DICTIONARY meaning of "break", it also means "disconnect", "make or become inoperative" "interrupt (a continuity, sequence, or course)". Therefore, a break in service need not always mean an "interruption in between", but can also mean a "break at the end". Regulation 18 can be, therefore, liberally interpreted in that manner and applied to the facts of this case, when so interpreted, the petitioner having put in 14 years, 9 months and 17 days can validly claim that the last spell of his service should be construed as one full year and thereby his service with the respondent bank can be held to be for a period of 15 years.

14. Our above referred to interpretation of Regulation 18 also finds support from the judgments of the Hon''ble Supreme Court reported in State of Karnataka Vs. Vishwabarathi House Building Coop. Society and Others, , Workmen of Messrs Binny Ltd. Vs. Management of Binny Ltd. and Another, , Regional Provident Fund Commissioner Vs. Shibu Metal Works, , Union of India (UOI) and Another Vs. Hansoli Devi and Others, and also 1930 ALL ER (REP) 503 (HL).

15. In the judgment reported in State of Karnataka v. Vishwabharathi House Building Co-op. Society and Ors. (supra), the Hon''ble Supreme Court while dealing with the constitutional validity of some of the provisions of Consumer Protection Act, noted that it is one of the beneficial pieces of legislation and held

in para 48 that the "provisions of the said Act are required to be interpreted as broadly as possible...."

16. In the judgment reported in *Workmen of Binny Ltd. v. Management of Binny Ltd. and Anr.* (supra), the Hon''ble Supreme Court while interpreting the provision of Payment of Bonus Act, has held as under *Workmen of Messrs Binny Ltd. Vs. Management of Binny Ltd. and Another*, at p. 567:

"9... It is trite law that in matters of welfare legislation, especially involving labour, the terms of contracts and the provisions of law should be liberally construed in favour of the weak...."

17. In the Judgment reported in *Regional Provident Funds Commissioner, Punjab v. Shibu Metal Works* (supra), the Hon''ble Supreme Court, while dealing with the provisions of Employees Provident Funds Act, observed as under in *Regional Provident Fund Commissioner Vs. Shibu Metal Works*, at pp. 477 & 478:

... The object which the Act purports to achieve is to require that appropriate provision should be made for the employees employed in the establishments to which the Act applies; and that means that in construing the material provisions of such an Act, if two views are reasonably possible, the Courts should prefer the view which helps the achievement of the object. If the words used in the entry are capable of a narrow or broad construction, each construction being reasonably possible, and it appears that the broad construction would help the furtherance of the object, then it would be necessary to prefer the said construction. This rule postulates that there is a competition between the two constructions, each one of which is reasonably possible. This rule does not justify the straining of the words or putting an unnatural or unreasonable meaning on them just for the purpose of introducing a broader construction."

18. In the judgment reported in *Union of India and Anr. v. Hansoli Devi and Ors.* (supra) the Constitutional Bench of the Hon''ble Supreme Court has this to say:

"... It is no doubt true that if on going through the plain meaning of the language of statutes, it leads to anomalies, injustices and absurdities, then the Court may look into the purpose for which the statute has been brought and would try to give a meaning, which would adhere to the purpose of the statute...."

19. It has been held by the Hon''ble Supreme Court as early as in the Judgment reported in *Deokinandan Prasad Vs. The State of Bihar and Others*, that "payment of pension is governed by the Rules and a government servant coming within the Rules, is entitled to claim pension". The said legal position has been affirmed in the subsequent decision of the Hon''ble Supreme Court reported in *Salabuddin Mohamed Yunus Vs. State of Andhra Pradesh*, . In the said judgment, in para 5, the Hon''ble Supreme Court has made it clear that:

"5. In that case, this Court held that the payment of pension does not depend upon the discretion of the State but is governed by the rules made in that behalf and a Government servant coming within such rules is entitled to claim pension.

It was further held that the grant of pension does not depend upon an order being passed by the authorities to that effect though for the purpose of quantifying the amount having regard to the period of service and other allied matters, it may be necessary for the authorities to pass an order to that effect, but the right to receive pension flows to an officer not because of the said order but by virtue of the rules...."

20. In the judgment reported in 1992 Supp (1) SCC 664 equivalent to All India Reserve Bank Retired Officers Association and others Vs. Union of India and others, , the Hon"ble Supreme Court has held that:

"the concept of pension is now well known, that it is not a charity and that it is in the nature of a social security plan to provide for the December of life of a superannuated employee".

21. Further, while dealing with the claim for pension based on the interpretation of the Regulations, it will have to be held that the construction of the Regulation which would achieve the object of the Regulation should be made. In other words, it is well known canon of construction that an interpretation of a provision in respect of a beneficial piece of legislation one should always construe it in a manner that would fulfil the object and purport of the legislation. In this context, it would be worthwhile to refer to the decision of the Privy Council reported in Sayad Mir Ujmuiddin Khan v. Ziaulnisa Begum (1879) ILR 3 Bom 422, wherein, the Hon"ble Justice Sir James Colville has stated as to how in construing a remedial statute, a Court ought to give to it "the widest operation which its language will permit. They have only to see that the particular case is within the mischief to be remedied and falls within the language of the enactment". Again in Cover's Re, Coal Enonomising Gas Co.) (1875) 1 Ch D 182 , it was held that "the words of such a statute must be so construed as "to give the most complete remedy which the phraseology will permit". The above principle was re-emphasized by Lord Atkin in AIR 1944 35 (Privy Council) by stating that the words of statute must be construed as "to secure that the relief contemplated by the statute shall not be denied to the class intended to be relieved". The said ratio was followed by the Hon"ble Supreme Court also in the judgment reported in M/s. International Ore and Fertilizers (India) Pvt. Ltd. Vs. Employees" State Insurance Corporation, by stating that "in the field of labour and welfare legislation, the provisions have to be broadly and liberally construed". Again in the judgment reported in Workmen of Binny Ltd. v. Management of Binny Ltd. and Anr. (supra) the Hon"ble Supreme Court held that "It is trite law that in the matter of welfare legislation, especially involving labour, the terms of contracts and the provisions of law should be liberally construed in favour of the weak." In the Judgment reported in The Buckingham and Carnatic Co.Ltd. Vs. Venkatiah and Another, , the Hon"ble Mr. Justice Gajendragadkar observed that at p. 644 of LLJ:

"... the liberal construction must ultimately flow from the words used in the section. If the words used in the section are capable of two constructions one of

which is shown patently to assist the achievement of the object of the Act, Courts would be justified in preferring that construction to the other which may not be able to further the object of the Act. But on the other hand, if the words in the section are reasonably capable of only one construction, the doctrine of liberal construction can be of no assistance."

22. When the above consistent ratio of the Hon''ble Supreme Court as well as that of the English cases are applied to the case on hand, we have no hesitation in holding that the interpretation made by us in the earlier paragraphs of the order would alone achieve the object and purport of the Regulation especially when the petitioner had put in as many as 14 years, 9 months and 17 days and by construing his last spell of employment of 9 months and 17 days as one full year, he would be well within his rights to claim pension as provided under the amended Regulation 28 of the Indian Bank Voluntary Employees' Pension Regulations, 1995. Therefore, the contrary stand of the respondent in the impugned order dated March 22, 2003 is liable to be set aside.

23. Accordingly, while setting aside the order impugned in the Writ Petition, we direct the respondent to grant pensionary benefits under IBVRS 2000 as per the above referred to Regulations. The arrears of pension payable to the petitioner are liable to be settled with interest. As far as payment of interest is concerned, inasmuch as the petitioner ought to have been paid pension on the date when he was relieved from the services i.e. on February 10, 2001 and since for no fault of the petitioner, he was deprived of the benefits of pension, we are of the view that the petitioner is entitled for interest on the arrears from the date of his superannuation till the date of its payment. Our above said view is also supported by the decision of the Hon''ble Supreme Court in the judgment reported in R.P. Kapur Vs. Union of India and Others, , wherein, the Hon''ble Supreme Court has held as under:

"32. The pension and family pension shall, therefore, be recomputed on the above basis and paid to the appellant with effect from November 25, 1992. The other retiral benefits will also be refixed on the above basis with effect from November 25, 1992 and paid to him. The computation of the family pension shall also be done on that basis. On the account of long delay and denial of pension and retiral benefits on a wrong interpretation of the Rules, we deem it fit to award 12% interest on all the arrears payable to him on the above basis in respect of pension and all benefits. The arrears have to be computed with effect from the date of retirement on November 25, 1992. The appeal is allowed as stated above, but there will be no order as to costs."

24. In the result, the Writ Petition stands allowed. The impugned order dated March 22, 2003 is set aside and the respondents are directed to pay the pensionary benefits to the petitioner from the date of his retirement, i.e. on February 10, 2001 and whatever arrears payable shall be paid with interest at the rate of 10% p.a. from February 10, 2001 till the date of such payment within two months from the date of receipt of this order. No costs.