
(2016) 08 CAL CK 0068

In the Calcutta High Court

Case No : F.M.A. 3685 of 2014 with C.A.N. 3667 of 2014

Virendar Kumar Suri

APPELLANT

Vs

UCO Bank

RESPONDENT

Date of Decision : 31-08-2016

Acts Referred:

UCO Bank (Employees) Pension Regulations, 1995 — Regulation 33

Citation : (2016) 3 CLR 876 : (2016) LIC 4228 : (2016) 4 LLJ 115 : (2016) 6 WBLR 38

Hon'ble Judges : Nishita Mhatre and Tapabrata Chakraborty, JJ.

Bench : Division Bench

Advocate : Mr. R.N. Majumder, Mr. Ayan Kumar Boral, Advocates, for the Appellant; Mr. Ashim Kumar Routh, Mr. S. Pal Choudhuri Ms. Tandra Das, Advocates, for the Respondents

Final Decision : Allowed

Judgement

Nishita Mhatre, J.—The issue involved in the present appeal is whether an employee who has been compulsorily retired by way of punishment is entitled to pension.

2. A charge sheet was issued to the appellant on 22nd December, 2006 for certain acts of misconduct and an enquiry was held against him and he was found guilty of the charges levelled. By an Order dated 28th January, 2008 the appellant was awarded the punishment of compulsory retirement.

3. After the order of punishment was passed, the appellant requested the respondent Bank to pay him the Bank's contribution of provident fund. The appellant was intimated by the Bank by a communication dated 17th November, 2008 that the trustees of the Provident Fund had decided not to release the Bank's contribution of the Provident Fund to the appellant as he had been punished.

4. While the appellant was in service, a scheme for pension had been floated by

the Bank. However, several employees who were in service had not opted for this pension scheme for various reasons. The Bank therefore, by a communication dated 20th August, 2010 informed its employees, both present and past, about the understanding arrived at between the Associations and Unions representing the Bank employees and the Indian Banks Association, regarding extension of the period for the employees to opt for the pension scheme. Workmen/Officer employees in service prior to 29th September, 1995 and who had not opted for the scheme earlier, were permitted to opt for the same, although they had retired prior to 27th April, 2010 which was the date of the Settlement/ Joint Note between the Employees' Unions and Associations and the Indian Banks Association. Accordingly, the appellant sought pension under the aforesaid scheme by exercising his option. He applied for the same in the prescribed form on 10th September, 2010. As there was no response from the Bank, the appellant applied again. However, there was complete silence on the part of the Bank regarding the request of the appellant. The appellant therefore was constrained to file W.P. No.22508(W) of 2013 demanding their employer's contribution of Provident Fund, his leave salary and pension. By an Order dated 5th August, 2013, the learned Single Judge directed the General Manager (Personnel) to decide the appellant's claim in accordance with law, after affording the appellant a personal hearing. The Bank rejected the claim of the appellant by an Order dated 21st November, 2013. As regards payment of pension, the Bank mentioned in its order that in view of the Bank's circular dated 1st January, 2013, only those Officers who were in service prior to 29th September, 1995 and who had retired on or before 27th April, 2010 either on superannuation or voluntarily, were eligible to opt for pension; as the appellant had been compulsorily retired from the Bank's service as a result of a disciplinary proceeding, he was not eligible for pension. With respect to payment of leave encashment, the Bank denied him the same on account of the punishment that was imposed on him. Similarly, his case for interest on gratuity, travelling allowance, dearness allowance and the Bank's contribution of Provident Fund were rejected.

5. Being aggrieved by the Order dated 21st November, 2013 passed by the General Manager (Personnel) Services, the appellant preferred another writ petition being W.P. No.2541(W) of 2013. He prayed for the release of his pension, leave encashment and the Bank's contribution of Provident Fund.

6. By the impugned Order dated 10th February, 2014, the learned Single Judge dismissed the writ petition by accepting the Bank's contention that since the appellant had neither voluntarily retired nor retired on attaining the age of superannuation, he was not entitled to pension.

7. This appeal is directed against the aforesaid order of the learned Single Judge dated 10th February, 2014.

8. Mr. Majumder, the learned Counsel appearing for the appellant has invited our attention to Regulation 33 of the UCO Bank (Employees') Pension Regulations,

1995 (hereinafter referred to as the Pension Regulations) and has submitted that the appellant cannot be denied pension only because he had been compulsorily retired. The learned Counsel also submitted that the Bank cannot unilaterally issue circulars which were contrary to the Pension Regulations as the latter had a statutory force of law.

9. The learned Counsel appearing for the Bank urged that in the impugned order, the learned Single Judge has correctly appreciated the Pension Regulations and therefore, there was no need to interfere with that order. He submitted that an employee who had been compulsorily retired by way of punishment cannot be paid pension as that benefit was available only to those who had served the Bank with integrity and honesty.

10. Before considering the submissions made at the Bar, it is necessary for us to refer to certain provisions of the Pension Regulations as well as the UCO Bank Officer Employees' (Conduct) Regulations, 1976 (hereinafter referred to as the Conduct Regulations).

11. The appellant was found guilty of violating Regulation 3(1), 3(3) and 20(1) of the Conduct Regulations. He was therefore compulsorily retired from service with immediate effect on 28th January, 2008. Conduct Regulation 3 reads as follows :-

"3. (1) Every officer employee shall at all times take all possible steps to ensure and protect the interests of the bank and discharge his duties with utmost integrity, honesty, devotion and diligence and do nothing which is unbecoming of a bank officer.

(2) ??????

(3) No officer employee shall, in the performance of his official duties or in the exercise of powers conferred on him, act otherwise than in his best judgement except when he is acting under the direction of his official superior.

(4) ??????."

12. Conduct Regulation 20(1) is with respect to submission of a return by an Officer employee of his assets and liabilities every year.

13. It would be appropriate to consider some of the relevant provisions of the Pension Regulations at this stage. Regulation 2(y) defines 'Retirement' as follows :-

2.(y) "retirement" means cessation from Bank's service -

(a) on attaining the age of superannuation specified in Service Regulations or Settlements;

(b) on voluntary retirement in accordance with provisions contained in regulation 29 of these regulations;

(c) on premature retirement by the Bank before attaining the age of

superannuation specified in Service Regulations or Settlement;"

14. Chapter 2 of these Regulations specify the application of the regulations and the eligibility of the employees to avail of the Pension Regulations. Chapter 4 deals with Qualifying Service. Under Regulation 22 of this chapter, pension can be forfeited under certain terms and conditions. Regulation 22(1) reads as follows :-

"22. 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."

15. Regulation 32 grants pension to a person who has been prematurely retired while Regulation 33 speaks about pension being paid to a person who has been compulsorily retired. The aforesaid Regulations read as under.

"32. Premature Retirement Pension.- Premature Retirement Pension may be granted to an employee who

(a) has rendered minimum ten years of service; and

(b) 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 or settlement, if otherwise he was entitled to such pension on superannuation on that date.

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 UCO Bank Officer Employees' (Discipline and Appeal) Regulations, 1976 or awards/settlements may be granted by the authority higher than the authority competent to impose such penalty, 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 mensem."

16. Regulation 48 stipulates that any pecuniary loss caused to the Bank could entitle the competent authority to withhold or withdraw pension or a part thereof, either permanently or for a specified period in the event, the pensioner is found guilty of grave misconduct or negligence or criminal breach of trust or forgery or acts done fraudulently during the period of his service. Before such orders for recovery are passed, the Board has to be consulted.

17. The contention of the Bank is two fold: 1) that the appellant had not opted for the pension scheme while he was in service and 2) that even assuming that he had opted for the same, the appellant would not be entitled to pension because he had been compulsorily retired.

18. Let us now consider the first contention of the Bank, namely, that the appellant was not eligible for pension because he had not opted for the scheme for pension. We have perused the Pension Regulations and the circular issued on 20th August, 2010 by the Bank. This circular was issued as a consequence of the understanding arrived at between the Unions and Associations of the Employees of the Banking Industry on the one hand and the Indian Banks Association on the other. Several categories of employees were permitted to opt for the Pension Regulations. Category 2 consisted of employees who were in service before 29th September, 1995 and had not opted for the pension in response to the earlier offer or had revoked the pension option and had retired before the settlement dated 27th April, 2010. The appellant, in our opinion, falls within this category of employees and was therefore eligible to opt for the scheme. There is no dispute that he was in service prior to 29th September, 1995 and that he had not opted for the pension scheme while he was in service up to the date he was compulsorily retired i.e. till 28th January, 2008. Therefore, in our opinion, the appellant would certainly be eligible to opt for the pension scheme. The option can be exercised by a person who retired before 27th April, 2010. It does not restrict such option only to those persons who had retired either by way of superannuation or voluntarily. Therefore, even a person who was compulsorily retired before 27th April, 2010 was eligible to opt for the pension scheme and the appellant thus falls within this bracket.

19. As mentioned earlier, Retirement means a cessation of employment with the Bank. This cessation can be either on attaining the age of superannuation or on voluntary retirement or on premature retirement. The submission of the learned Counsel for the Bank is that since retirement as defined in Regulation 2(y) does not include compulsory retirement, the appellant is not entitled to pension as pension is payable only on retirement. He has drawn our attention to Regulation 32 under which pension may be granted to an employee who prematurely retires provided he has rendered 10 years of service and is retired on account of orders of the Bank to retire prematurely in public interest or on the basis of reasons specified in the Service Regulations or Settlement, if the employee was entitled to such pension on superannuation. The learned Counsel urged that considering the provisions of Regulation 32 and Regulation 2(y) it is clear that a person who is compulsorily retired cannot avail of pension.

20. The submission of the learned Counsel for the Bank, in our opinion is unacceptable. A person who is retired prematurely in public interest is normally compulsorily retired. The cessation of work in such a case is only on account of orders of the Bank directing the compulsory retirement of an employee. Such compulsory retirement may not be after a disciplinary enquiry and the decision

may be taken by the Bank on an assessment of the output of the employee and in order to rid the Bank of 'dead wood'. Therefore, the argument that no case of compulsory retirement can be considered as premature retirement is devoid of substance.

21. Regulation 33 speaks about pension being payable on compulsory retirement of an employee by way of penalty. According to the learned Counsel for the Bank, the Regulation leaves it to the discretion of the authority to pay pension if the employee is compulsorily retired by way of penalty. He submitted that since the punishment order did not specify that the appellant was being compulsorily retired with pension, it must be presumed and assumed that the appellant was not entitled to such pension.

22. We are afraid that this submission of the learned Counsel also does not appeal to us. Regulation 33 speaks about the rate of pension which is to be granted to an employee who is compulsorily retired by way of penalty. It does not in any manner leave it to the discretion of the Bank to deny pension completely to such an employee. An authority higher than the disciplinary authority may direct that the pension which would be payable to an employee who is punished by way of compulsory retirement should be paid at a rate which is not less than 'rds and not more than full pension, if otherwise he was entitled to such pension on superannuation on that date. The regulation further provides that when the competent authority passes an order awarding pension which is less than the full pension admissible, the Board of Directors has to be consulted before such an order is passed. Sub-regulation 3 of Regulation 33 ensures that the pension payable under Sub-regulations 1 and 2 shall not be less than Rs.375/- per month. A bare perusal of Regulation 33 leaves no doubt in our mind that even on retirement compulsorily by way of penalty, the employee is entitled to pension. However, the rate may differ. The competent authority would have to specify whether it is of the opinion that the employee should not get full pension. An order would have to be passed in that regard. We have not been pointed out any such order passed by the competent authority. The 'competent authority' has been defined under 3(h) to mean authority appointed by the Board for the purpose of the Pension Regulations. The only order on which the Bank relies on is the order passed by the disciplinary authority punishing the employee after holding a disciplinary enquiry by way of compulsory retirement.

23. Furthermore, pension can be forfeited only under Pension Regulation 22 reproduced above. A specific order is required to be passed denying pension to an employee on his resignation, removal, dismissal or termination from service.

24. Therefore, in our opinion, it was incumbent on the Bank to pay pension to the employee. The argument on behalf of the Bank that because the employee had not opted for the pension scheme prior to 2008 i.e. the year in which he was compulsorily retired is also without merit. The Bank after an agreement with the Associations and Unions representing the employees had decided to extend the period for opting for the scheme. The appellant had opted for the same within

this period and therefore obviously, he was entitled to the pension.

25. The denial by the Bank of pension on compulsory retirement is, in our opinion, violative of the Pension Regulations. The Bank has only the option to reduce the rate of pension, depending on the order of the competent authority under Regulation 33 which specifies that the minimum pension of Rs.375/- per month has to be paid on compulsory retirement by way of penalty, without any exception. This shows that Regulation 33 does not confer upon the Banks discretionary powers to deny pension to the employee who has been compulsorily retired. Unless the Pension Regulations are amended to deny pension to employees who have compulsorily retired, the Bank cannot act contrary to those regulations as they have a statutory force of law.

26. In our opinion, therefore, the learned Single Judge was not right in dismissing the writ petition. The impugned order is, therefore, set aside. The Bank will pay full pension to the appellant in accordance with the Pension Regulations. All arrears of pension shall be disbursed within 8 weeks from today, failing which the Bank will be liable to pay interest at the rate of 9% per annum. The appeal is allowed accordingly.

27. Urgent certified photocopies of this judgment, if applied for, be given to the learned Advocates for the parties upon compliance of all formalities.