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Court : Karnataka

Decided On : Apr-07-2003

Reported in : ILR2003KAR2605

Judge : S.R. Nayak and ;K. Ramanna, JJ.

Acts : Syndicate Bank (Employees) Pension Regulations, 1995 - Regulations 2, 3, 32 and 34; Constitution of India - Articles 14 and 16

Appeal No. : Writ Appeal No. 6017/99

Appellant : Smt. Satya Srinath

Respondent : Syndicate Bank, Rep. by Its Assistant General Manager

Advocate for Def. : Sundaraswamy, Ramdas and Anand

Advocate for Pet/Ap. : P.S. Rajagopal, Adv.

Disposition : Writ petition allowed

Judgement :

Nayak, J.

1. The writ petitioner is the writ appellant. The Appellant feeling aggrieved by the order dated 27.7.1999 passed by a learned Single Judge of this Court dismissing the Writ Petition and holding that the Appellant is not entitled for pension, has preferred this writ appeal.

2. The events leading to the passing of the impugned order were that the petitioner was an employee of Syndicate Bank, the Respondent herein on the ground that the Appellant remained absent unauthorisedly with effect from 11.03.1992 a notice dated 18.11.92 was issued to her calling upon her either to report back for duty or submit explanation for her absence within 30 days, i.e. on or before 21.12.92. The Appellant was also informed that if she failed to comply with the above direction, she would be deemed to have voluntarily retired from the service of the Bank on expiry of 30 days from the date of notice in terms of Clause 17(a) of the V Bipartite Settlement. The Appellant replied to the notice on 17.12.92. According to the Bank's management, as the explanation of the Appellant was not satisfactory, the Bank sent a letter dated 10.12.1992 informing the appellant that she was deemed to have voluntarily retired from service with effect from 23.12.92 in terms of Clause 17(a) of the V Bipartite Settlement and she had accordingly ceased to be in the service of the Bank with effect from that date. At this stage itself, it is pertinent to note that the Appellant in her explanation stated that due to illness, she was unable to report for duty immediately and sought extension of time to report for duty. It was also her case that she was forced to be away from the duties since 11.03.1992 due to her serious ill-health and she had been submitting leave applications supported by medical certificates promptly. Rejecting the above explanation submitted by the Appellant as not satisfactory and rejecting the prayer of the Appellant for extension of time for resuming duty, the Bank passed an order dated 30.12.1992. Feeling aggrieved, the Appellant filed W.P.No. 1259 of 1995 in this Court seeking a direction to the Respondent-Bank to reinstate her into service with all benefits. This Court by order dated 23.1.1995 dismissed the Writ Petition on the ground that there was inordinate delay in assailing the validity of the order dated 30.12.92. It is stated that that order was allowed to become final.

3. The Syndicate Bank (Employee's) Pension Regulations, 1995 (for short 'Regulations) came into force on 29.9.1995 on publication in the official gazettee.

The management of the Bank issued a Circular dated 4.11.1995 stating that the Regulations were applicable to the following categories of the employees:

'i) Those who were in the service of the Bank on or after 1.1.1986 but had retired before 29.9.1995.

ii) Those who are in the service of the Bank before 29.9.1995 and continue to be in the service of the Bank on or after 29.9.1995.

iii) Those who join the services of the Bank on or after 29.9.1995.

iv) to (viii) omitted as not relevant.

xxxxx xxxxxx xxxxx'It is clarified that the Ex-employees who have voluntarily retired in terms of Banks' Service Regulations Clause No. 19(1) or deemed to have voluntarily retired in terms of Bipartite settlement, between 1.1.1986 and 30.10.1993 are not eligible for pension under the pension Regulations 1995.

It may be noted that regulation 29 of Pension Regulations 1995 provided for voluntary retirement of the employees who have completed 20 years of qualifying service by giving notice of not less than 3 months, in writing, subject to the conditions laid down therein.'

4.The said Circular also provided that ex-employees who have not exercised their option for pension under the Regulations earlier, could exercise their option for pension under the scheme within 120 days from 29.9.1995. The Appellant on 28.12.1995 exercised her option under the pension scheme and the same was rejected by the Bank's management on 22.1.1996. The Appellant feeling aggrieved by the said action of the Bank, filed Writ Petition No. 1370 of 1987 in this Court. This Court by order dated 17.2.1989, allowed the Writ Petition and held that since the appellant retired from the service after 1.1.1986, she is eligible for pensionary benefits under the Regulations and so holding, the Court remanded the matter to the Bank for fresh consideration of the claim of the petitioner in accordance with law. The operative portion of the order of the learned Single Judge in W.P.No. 1370 of 1997 reads as follows:-

'For the reasons stated, petition is allowed Rule made absolute. The impugned communication made by the respondents to the petitioner dated 22.1.1996 is quashed for the reason that it is contrary to their own Circular dated 04.11.1995 and Regulation 31 of Regulations. The matter is remanded back to the respondents to reconsider the claim made by the petitioner in her application dated 28.12.1995 in accordance with law and in accordance with the pension regulations notified as on 28.09.1995 and their own Circular dated 04.11.1995 as expeditiously as possible at any rate within two months from the date of receipt of a copy of this Court's order.'

5. After remand of the proceedings, the Bank reconsidered the request of the petitioner and rejected her request by letter dated 26.6.1999 produced as Annexure-J. The relevant portion of the said letter reads:-

'We refer to your earlier representation dated 28.12.1995 and the additional representation dated 25.2.1999 requesting for sanction of pensionary benefits. We have duly considered the same in terms of the Court order dated 17.2.1999 and write to inform you as follows;-

You remained absent from duties continuously from 11.3.1992. Even after service of notice, since you did not join the duties nor submit any explanation for your absence, you were deemed to have voluntarily vacated/retired from the Bank's service with effect from 22.12.1992 in terms of Clause 17 of the fifth Bipartite Settlement.

Please note that such deemed retirement was not brought about by any positive action on the part of the Bank but is wholly on account of your own action. Your cessation in service became final as the Writ Petition filed by you challenging the Bank's order dated 30.12.1992 was dismissed by the Hon'ble High Court by its order dated 25.1.1995. It is, therefore, observed that you did not cease to be in the bank's service on reaching the age of superannuation nor did you seek and obtain voluntary retirement as per Regulation No. 29 of the Syndicate Bank (Employees) Pension Regulations 1995. It is also not a case of premature retirement as described in the Pension Regulations because there is no positive action on the part of the Bank. Your action in effect amounted to abandonment of service. It is

thus seen that you do not come within the scope of the Pension Regulations entitling you to receive pension. Further, the Bank's Circular No. 226/95/ BC/PD/61/SWD dated 4.11.95, it has been clarified that the ex-employees who have voluntarily retired in terms of the Bipartite Settlement, between 1.1.1986 and 31.10.1993 are not eligible for pension under the Pension Regulations, 1995. You cease to be in the services of the Bank w.e.f. 22.12.1992 and hence you are not entitled to pension. Even assuming without conceding that you had retired voluntarily from the services of the Bank as per the Pension Regulations, 1995, you would not be entitled to pension under the Pension Regulations, as you retired before 1.11.1993.'

6. Feeling aggrieved, the petitioner again filed Writ Petition No. 25322 of 1999, challenging the said order dated 26.6.1999. A learned Single Judge having opined that the case of the Appellant does not fall under any of the relevant regulations which provide for grant of pension dismissed the Writ Petition by Judgment and order dated 27th July, 1999. Hence this appeal by the aggrieved writ petitioner.

7. We have heard Sri P.S. Rajagopal, learned Counsel for the Appellant and Sri Ramdas, learned Senior Advocate for Respondent Bank.

8. Sri Rajagopal contended that Under Regulation 2(Y)(C) r/w Regulations 32, 34 and 3, the appellant is entitled for pension under the pension scheme. Sri Rajagopal also contended that in the light of the findings recorded by the learned Single Judge in his order dated 17.2.1999 passed in W.P.No. 1370 of 1997 holding that the Appellant is deemed to have retired on 22.12.1995, the Appellant is eligible for pension inasmuch as she retired only after 1.1.1996. Sri Rajagopal further contended that the denial of pension to the Appellant is not only contrary to the Regulations, but also contrary to the law laid down by the Supreme Court while interpreting pensionary Regulations and labour statutes - Learned Counsel also contended that the cessation of service under Clause 17(a) of the V Bipartite Settlement cannot be regarded as an act of resignation by the employee in as much as that cessation of the services was brought about by the Bank's management by its order dated 30.12.1993, in which the management rejected the explanation offered by the Appellant and refused to grant time to the Appellant to

resume duties and therefore, there was nothing voluntary in the retirement of the appellant. Learned Counsel also contested the correctness of the opinion of the learned Single Judge that the cessation of the services of the Appellant was resignation. Sri Rajagopal pointed out that the resignation is covered by a separate provision under the Shastri award under which in cases of resignation, the employee has to submit a notice of resignation and it comes into effect automatically after the expiry of the notice period.

9. Sri Ramdas, on the otherhand, at the threshold, would contend that the entitlement of the appellant for pension under the Regulations, should be traceable to one or the other provisions of the Regulations and if the case of the Appellant does not fall under any of the provisions of the Regulations which enables the employee to claim pension, the appellant is not entitled to pension. Sri Ramdas would draw our attention to the judgment of the learned Single Judge and point out that learned Single Judge has considered all the provisions of Chapter IV of the Regulations and found that the Appellant does not fall under any of the Clauses 28 to 33 and in that view of the matter no exception can be taken to the order of the learned Single Judge. Sri Ramdas also contended that by virtue of cessation of service brought about under Clause 17(c) of the Bipartite Settlement the Appellant cannot be said to have retired within the meaning of that word as defined under Clause (2)(x) of the Regulations and therefore, the payment of pension under the Regulations would not arise.

10. Having heard the learned Counsel for the parties, the basic question that arises for the decision of the Court is whether the appellant is said to have retired from the service of the Bank before 1.11.1993. There is no dispute that the Pension Regulations applied to all employees who were in services of the Bank on or after 1.1.1986 but had retired before 1.11.1993, subject to provisions of Sub-clauses (b)and (c) of Clause 3(1). The word 'Retirement' is defined in Clause 2(y) which reads thus:

'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 Regulations 29 of these Regulations;

c) On premature retirement by the Bank before attaining the age of superannuation specified in Service Regulations or Settlement;

11.The 'date of retirement' is defined in Regulation 2 (k) which reads as follows:-

'(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 office is deems to have retired'.

12. Chapter V of the Syndicate Bank(Employees') Pension Regulations 1995 refers to classes of pension. Clause 30 deals with Invalid Pension Clause 31 deals with Compassionate Allowance. Clause 32 deals with Premature Retirement Pension. Clause 33 deals with Compulsory Retirement Pension, Clause 34 deals with Payment of Pension or family pension in respect of employee who retired or died between 1.1.1986 and 31.10.1993. As rightly held by the learned Single Judge, it is true that having regard to the provisions of Clause 3(1) read with Clause 2{y) and Clauses 28 to 33, the appellant should fall in any of the Clauses 28 to 33. Learned Single Judge has held that the appellant does not fall in any of those clauses Regulations and, therefore, she is not entitled to pension under the Regulations. Therefore, the question for us to decide is whether the holding of the learned Single Judge is legal and justified in the facts and circumstances of this case.

13. Under Regulations 2(y), the word 'Retirement' is defined as cessation from Bank's service on attaining the age of superannuation specified in Service Regulations and on voluntary retirement in accordance with provisions contained in Regulations 29 or premature retirement by the bank before attaining the age of superannuation as specified in Service Regulations or Settlement. It is the contention of the appellant that she was prematurely retired by order dated 30.12.1992 passed by the Bank rejecting the explanation submitted by her. We find some force in the above contention of the Appellant. Under the Bipartite

settlement, every absence of 90 days or more does not result in automatic cessation of service. Even after such absence, the employee is entitled to continue in the employment. The employment is put an end to only where the employer issues a notice of its intention to declare that the employee, has retired voluntarily and in response to such a notice the employee either fails to submit explanation or the explanation submitted by the employee is held to be not satisfactory by the employer. Until the employer passes the final order, the employment continues. Therefore, it should be held that the cessation of the service of the appellant by order dated 30.12.1992 is a case of premature retirement of the appellant by an order passed by Bank and therefore, she is entitled for pension having regard to Regulations 2(y)(c), 32, 34 read with Regulations 3 of the Pension Regulations.

14. It is also relevant to note that this Court in its Order dated 17.2.1999 passed in W.P.No. 1307 of 1997 has clearly held that the appellant is deemed to have retired on 22.12.1995 and she is eligible for pension since she has retired only after 1.1.1986. We are told that the said judgment of the learned Single Judge was allowed to become final. Therefore, the management of the Syndicate Bank cannot be permitted to question the correctness of that finding either directly or indirectly. The impugned action of the Management of the Bank is not in consonance with the findings recorded by the learned Single Judge of this Court in W.P.No. 1703 of 1997.

15. In D.S. Nakara and Ors. v. UNION OF INDIA, : (1983)ILLJ104SC the Supreme Court held that discernible purpose underlying pension scheme or a statute introducing the pension scheme must receive liberal construction and Courts shall not interpret such statute or the scheme so as to render the same inane. The Supreme Court also held that interpretation of a pension scheme must be in consonance with the constitutional goal of setting up of a socialistic State and the assurance in the Directive Principles of State policy, especially of security in old age atleast to those who have rendered useful service during their active years of service.

16. In National textile workers' union v. P.r. Ramakrishnan, : (1983)ILLJ45SC the Supreme Court held that where statute does not expressly confer a right to the

workmen but does not indicate any negative intendment either, statute must be construed in favour of workmen. In this case, the Pension Regulations entitled the retiring employees to receive pension, except under certain excepted categories of employees. If the primary objective of the Pension Regulations is kept in mind, the provisions of the Regulations should be interpreted liberally in favour of the employees. In otherwords, in a case where two interpretation are possible or permissible, the Court should adopt the one which is beneficial or favourable to the employees.

17. The Regulations are remedial statute intended to benefit the retired employees of the Bank. It is well settled that remedial statutes also known as welfare, beneficient or social justice oriented legislations, should receive liberal construction and that in case of remedial statutes, any doubt arises in interpreting provisions of such statute, such doubt should be resolved in favour of class of persons for whose benefit the statute is enacted. In construing a remedial statute, the Courts ought to give to it the widest operation which its language will permit. The Courts have only to see that the particular case is within the mischief to be remedied and falls within the language of the enactment. The words of such a statute must be so construed as to give the most complete remedy which the phraseology will permit, so as to secure that the relief contemplated by the statute shall not be denied to the class intended to be relieved. In the field of labour and welfare legislations which have to be broadly and liberally construed, the Court ought to be more concerned with the content and the context of the statute rather than with its literal import; and it must have due regard to the Directive Principles of State Policy enshrined in Part IV of the Constitution. The Court must also be vigilant to see that the benefits conferred by a welfare legislation are not defeated by subtle devices.

18. It is the duty of the Court, in every case where ingenuity is expended to avoid welfare legislations, to get behind the smoke screen and discover the true state of affairs. In B. SHAH v. PRESIDING OFFICER, LABOUR COURT, : (1978)ILLJ29SC the Supreme Court applied the beneficient rule of construction in construing Section 5 of the Maternity Benefit Act, 1961, which makes the employer liable for the payment of maternity benefit to a woman worker at the rate of the

average daily wage for 'the period of her actual absence immediately preceding and including the day of her delivery and for the six weeks immediately following that day'. The question before the Supreme Court was whether in calculating the maternity benefit for the period covered by Section 5. Sundays being wageless holiday should be excluded. The Apex Court in holding that Sundays must also be included, applied the beneficial rule of construction in favour of the woman worker and observed that the benefit conferred by the Act read in the light of the Article 42 of the Constitution was intended to enable the woman worker not only to subsist but also to make of her dissipated energy, nurse her child, preserve her efficiency as a worker and maintain the level of her previous efficiency and output.

19. In Buckingham and Carnatic Company v. Venktaiah, AIR 1964 SC 1271 dealing with Section 73 of the Employees' State Insurance Act, 1948, the Supreme Court held that the words of the section, 'No employer shall dismiss, discharge, or reduce or otherwise punish an employee during the period the employee is in receipt of sickness benefit etc.' limited the prohibition of punitive action to the period during which the employee was ill and that the prohibition so imposed was further limited to such dismissal, discharge etc., which was the result of a decision of the employer embodied in an order passed by him and did not include within its fold automatic termination of employee's services resulting from a contract or from a Standing Order by virtue of the Employee's absence without leave for the specified period. Rejecting the argument in support of the extension of the prohibition so as to include even such termination of services, the Supreme Court observed thus-

'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, Court would be justified in preferring that construction to 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.'

To the similar effect is the observations of the Supreme Court in Regional Provident Funds Commissioner v. Shiba Metal Works, AIR 1965 SC 2108.

20. In the instant case, cessation of the service of the appellantwas brought about by Order dated 30.11.1992, which rejected notonly the explanation offered by the Appellant but also refused togrant more time to the Appellant to resume the duties and therefore,there was nothing voluntary in the retirement inasmuch as theAppellant never volunteered to retire but the management covertlyby its action dated 13.12.1992, declared the Appellant to havesuffered non-punitive retirement by calling it as deemed voluntaryretirement. Firstly, passing of the Order dated 30.12.1992 is admittedby the management. Secondly, it is well settled that there can bevoluntary retirement even without any acceptance by themanagement. In STATE OF HARYANA AND Ors. v. S.K.SINGHAL, : [1999]2SCR714 the Supreme Court noticing various types of voluntaryretirement rules in vogue in the country, held that under some rulesare voluntary retirement is automatic on the expiry of the period ofnotice and in some cases even after the expiry of the period specifiedin the notice, voluntary retirement is not automatic and an express grant of permission is required to be communicated.

21. Further, the cessation of service of the appellant brought about by the management by its Order dated 30.12.1992, cannot be regard as the resignation of the Appellant for the purpose of application of Pension Rules. Resignation of an employee is covered by separate provisions under the SHASTRI's award and in terms of the said award, in case of resignation, the employee concerned has to submit a notice of resignation to the management and it comes into effect automatically after the expiry of the notice period. In the case of J.K. Cotton Spinning and Weaving Mills Company Limited v. State of U.P., : (1991)ILLJ39SC the Supreme Court held that if an employee makes his intention to resign his job to the employer it is a case of resignation. Similar is the view of the Supreme Court in Moti Ram v. Param Dev & Anr., : (1993)IILLJ629SC wherein it was held that resignation means the spontaneous relinquishment of ones own right in relation to an office. Resignation connotes the act of giving up or relinquishing the office. It may be bilateral or unilateral depending upon whether the rule requires acceptance or not. The essence of resignation is that the initiative to resign should

come from the employee concerned and that initiative should be voluntary and out of free will. Unless these two conditions co-exist, mere cessation of service brought about by a method de hors the voluntary action of the employee could not be regarded as a resignation of the employee. In this case, it is nobody's case that the Appellant submitted any notice of resignation. On the otherhand, it is a matter of record that the Appellant in reply to the notice from the employer, sought for extension of time and made clear her intention to resume duties.

22. The management in its order dated 30.12.1992 has stated that it is deemed that the Appellant has voluntarily retired. A contract of employment can be determined under a number of circumstances such as death, impossibility, frustration, abandonment, voluntary retirement, superannuation, retrenchment, discharge under the contract, discharge or transfer or closure of the establishment, and dismissal or removal by way of punishment. Therefore, if it is proved that an employee voluntarily abandoned the job, then, the contract of employment between such employee and the management comes to an end. The contract of service comes to an end where the employee abandons his job. The term 'abandonment of service' has not been defined in the Rules. In RANDOM HOUSE DICTIONARY, the word 'abandonment' has been explained to mean 'to leave completely and finally; forsake utterly, to relinquish, to renounce, to give up all concern in something'. According to BLACK'S LAW DICTIONARY the word 'abandonment' when used in relation to an office means 'voluntary relinquishment'. In order to constitute 'abandonment', therefore, there must be total or complete giving up of duties so as to indicate an intention not to resume the same. Abandonment must be total and under the circumstances, it should clearly indicate relinquishment. Abandonment may be actual or can be imputed. Abandonment or relinquishment of service is a question of intention, and, normally such intention is not attributed to an employee in the absence of adequate and substantial evidence in that behalf. However, the intention may be inferred from the acts and conduct of the employee. The question whether an employer has abandoned the employment or not is a question of fact which is required to be resolved in the light of facts and circumstances of each case. There cannot be any straight-jacket formula in that regard. Temporary or short absence, perhaps, may not constitute an abandonment of an office. The length of absence and other attending facts and

circumstances of the case may lead to an inference that an employee has voluntarily abandoned the employment. Under Common Law, an inference that an employee has abandoned or relinquished his service is not easily drawn unless from the length of absence and from other surrounding circumstances an inference to that effect can be legitimately drawn and it can be assumed that the employee intended to abandon the service. Having regard to the well settled position in law, as noticed above and the established facts in this case, by no stretch of imagination, it could be said that the Appellant is deemed to have voluntarily retired. Necessary animus to constitute an intention on the part of the Appellant by virtue of which it could be said that she has voluntarily retired, is utterly lacking in this case and therefore, the management was not justified in invoking Clause 17(a) of V Bipartite Settlement and declaring that the Appellant deemed to have voluntarily retired.

23. In deciding the entitlement of an employee for pension and other pensionary benefits, the Court should necessarily bear in mind the well settled position in law that where an employee put in more than minimum qualifying service for pension under the relevant Regulations or the Rules, even in case of resignation after putting in the qualifying service, the employee would be entitled to pension and otherwise the rule denying the pension merely on the ground that the employee has resigned even though the employee has put in required service prescribed under the relevant Regulations or the Rules, will be violative of Article 14 postulates and the provision of Article 16 of the Constitution. In holding so, we may derive support from the judgments of the Apex Court in UNION OF INDIA v. D.R.R. SHASTRI, : (1997)IILLJ678SC and in UNION OF INDIA v. LT. COL T.S. BHARGHAVA., : [1997]1SCR130 Further, the pension Regulations nowhere exclude deemed voluntarily retires from entitlement to pension. The Supreme Court in the case of Commissioner of Income Tax v. Mysodet Private Limited, held that under a deemed clause unless exclusion is specific and categorical, no exclusion could be inferred or imposed or read into.

24. In conclusion, we state, with respect the order of the learned Single Judge cannot be sustained. In the result and for the foregoing reasons, we allow the writ appeal and set aside the order of the learned Single Judge and allow Writ Petition

No. 25322 of 1999 and quash the impugned order - Annexure J dated 26.6.1999 and direct the management of the Respondent - Bank to pay the pension to the Appellant from 1.11.1993 at the rates specified in the Syndicate Bank (Employees) Pension Regulations 1995 together with interest at 12% p.a. for the period 1.11.1993 till payment is made. In the facts and circumstances of the case, there will be no order as to costs.

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