R. Jyothi Vs. the General Manager, Dena Bank and ors.

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Court : Karnataka

Decided On : Aug-12-2002

Reported in : [2003(96)FLR325]; ILR2002KAR4585; 2002(6)KarLJ152; (2003)ILLJ971Kant

Judge : P. Vishwanatha Shetty, J.

Acts : Constitution of India - Article 226

Appeal No. : Writ Petition No. 34717 of 2001

Appellant : R. Jyothi

Respondent : The General Manager, Dena Bank and ors.

Advocate for Def. : R. Chandrashekaran, Adv.

Advocate for Pet/Ap. : L. Mahesh, Adv. for ;M.S. Anandaramu, Adv.

Disposition : Petition allowed

Judgement :
ORDER

P. Vishwanatha Shetty, J.

1. The petitioner in this petition is a widow. Her husband Sri G.S. Ramesh was working as a Computer Operator in the 1st respondent-Dena Bank (hereinafter

referred to as 'the Bank'). The respondent-Bank introduced the scheme known as 'Dena Bank Voluntary Retirement Scheme-2000'. The said scheme came into operation with effect from 15th January, 2001. Pursuant to the said scheme, the husband of the petitioner and several other employees of the Bank submitted the application seeking voluntary retirement from the Bank in terms of the scheme introduced. It is not in dispute that the husband of the petitioner gave his application on 15th January, 2001., that is, within the time prescribed. However, to the misfortune of the petitioner, her husband expired on 16th February, 2001. The Bank took up the applications, filed by the employees of the Bank seeking for voluntary retirement, on 20th February, 2001. It is the case of the Bank that since the petitioner had expired on 16th February, 2001, the application of the petitioner, and few others, who had expired before the date of the consideration of application was not considered for granting permission seeking voluntary retirement.

2. In this petition, the petitioner has sought for a direction to the Bank to consider the application of her husband G.S. Ramesh seeking voluntary retirement on the merits of the said application and extend the benefit of voluntary retirement to him as if he was alive on the date of the application of others came up for consideration, that is on 20th February, 2001.

3. Sri L. Mahesh, learned Counsel appearing for the petitioner submitted that since there is no serious dispute that the husband of the petitioner, as per the terms of the scheme introduced by the Bank was entitled to seek voluntary retirement and it could not have been denied to him, the death of the husband of the petitioner, prior to the consideration of the application filed seeking voluntary retirement, should not make any difference. Elaborating this submission, the learned Counsel pointed out that since the terms of the scheme provides that once the application filed is irrevocable and if the terms of the scheme enables an applicant to seek voluntary retirement, what is required to be done by the Bank is, only a formal decision, to accept the application made and permit the applicant to retire from the Bank.

4. Sri R. Chandrashekaran, learned Counsel appearing for the respondent submitted that since the husband of the petitioner had expired before the application filed by him came up for consideration, the Bank did not consider his application and also the applications of few others who had expired before their application came up for consideration. It is his submission that since the husband of the petitioner had expiredbefore the application was considered, the question of permitting him to retire from the service did not arise for consideration as he was no longer in service on account of his death. Therefore, he submits that the petitioner is not entitled to seek for any direction to consider the application of her husband for voluntary retirement.

5. In the light of the rival contentions advanced by the learned Counsels appearing for the parties, the only question that would arise for consideration in this petition is as to whether on account of the death of the husband of the petitioner G.S. Ramesh, whether the respondents are not required to give the benefit of voluntary retirement scheme introduced by the Bank to the petitioner?

6. The undisputed facts disclose that the husband of the petitioner had expired on 16th February, 2001 and the application of the employees of the Bank made seeking voluntary retirement was considered by the Bank only on 20th February, 2001. Sri R. Chandrashekaran, learned Counsel appearing for the respondent fairly submitted that if the husband of the petitioner were to be alive on 20th February, 2001, he would have been entitled to seek voluntary retirement in terms of the scheme introduced by the Bank. The only defence, as noticed by me earlier, is that the scheme was not available to the persons who were not alive on the date when their application came up for consideration. Though, the argument of the learned Counsel appearing for the respondent for the first blush appears attractive, on a deeper consideration of the said submission, I find it difficult to accept the said submission. The respondent-Bank is a Nationalised Bank and it is an instrumentality of the State. It is well-settled principle of law that the State and its instrumentalities, in all their actions must act in a fair and reasonable manner. The scheme has been introduced by the Bank with a view to enable its employees to seek voluntary retirement from the service of the Bank with all the benefits made available under the scheme. The husband of the petitioner admittedly, had

submitted the application seeking voluntary retirement after complying with the procedure prescribed and within the period prescribed. There was nothing remained to be done by him to get the benefit of the scheme when his application was required to be considered by the Bank. As noticed by me earlier, it is fairly admitted by the Counsel for the Bank that his application were to be considered on merits, the Bank could not have refused his request for voluntary retirement. No doubt, it is true that the relationship of master and servant between the Bank and the husband of petitioner came to an end before the application of husband of the petitioner came up for consideration seeking voluntary retirement on account of his death. The relationship of master and servant between the Bank and the husband of the petitioner did not come to an end on account of his volition. Under these circumstances, when it is not in dispute that if the husband of the petitioner were to be alive on 20th February, 2001, when the applications of all other employees were considered by the Bank, the question is as to whether the said benefit should be denied to the petitioner on the ground that her husband, had in the meanwhile, expired? If the object and purpose of the scheme is kept in mind, the intervening circumstances, namely, the death of the husband of the petitioner, on which no one has any control, should not deprive the benefit of the scheme to theformer employee of the Bank and his legal representatives. As rightly pointed out by the Counsel for the petitioner that when the application made by an employee seeking voluntary retirement is made irreversible, the only thing that is required to be considered by the Bank was whether the husband of the petitioner who was the employee of the respondent-Bank was entitled for the benefit of the scheme. When it is not in dispute that the husband of the petitioner was entitled for the benefit of the scheme, it is fair and reasonable to hold that the benefit of the said scheme should be given to the petitioner, notwithstanding the fact that on the date of the application of the husband of the petitioner came up for consideration, the husband of the petitioner had expired. I am unable to accept the submission of Sri R. Chandrashekaran, learned Counsel appearing for the respondent-Bank that since the language employed in Clause 10.8 of the Scheme framed by the Bank only enables the Bank to make the payment under the scheme in the event of death of an employee, only in cases where the request of such an employee was accepted by the Bank before his death, his legal heirs or the persons nominated to receive his dues are not entitled for the benefit of the scheme, if such an employee dies before his application for voluntary retirement under the scheme is accepted by the Bank. In this connection, it is useful to refer to Clause 10.8 of the Voluntary Retirement Scheme framed by the Bank which reads as follows:

'In the event of the death of an employee, whose request for voluntary retirement under the scheme has been accepted, the compensation, which would have become due and payable to the deceased employee will be paid to the person nominated to receive such dues'.

(emphasis supplied)

No doubt, the language employed in Clause 10.8 of the Scheme referred to above provides for payment of compensation payable to the employee of the Bank to the person nominated to receive such amount in the event of death of such an employee, if his request for voluntary retirement under the scheme has been accepted by the Bank. From the provision referred to above, it is not possible to infer that the Bank is prevented from considering the application of an employee, who after making an application for voluntary retirement and before it is considered expires, his request for retirement under the scheme cannot be considered. No doubt, retirement presupposes the existence of a person who can be retired from service. But, if the object of the scheme is kept in mind, as noticed by me earlier, the benefit of the scheme has to be extended to such of those employees who made a request for voluntary retirement under the scheme notwithstanding the fact that such an employee expires before his request for retirement under the scheme is taken up for consideration. The employee who makes an application for retirement under the scheme has no control with regard to the date on which his request would be considered by the Bank. But, the fact remains that by making an application for voluntary retirement under the scheme, he gives his option for retirement under the scheme. Further, it is also relevant to point out that there is no provision in the scheme whichprohibits the Bank from considering the application of an employee who expires before his application was considered by the Bank. Under these circumstances, if the application filed by the employee of the Bank seeking voluntary retirement cannot be rejected on merits, on consideration of such application by the Bank, in my view, as noticed by me earlier, the death of an employee should not make any difference so far as consideration of the application filed seeking voluntary retirement by such an employee. The legal heirs of such an employee should be held to be entitled for all the benefits that the deceased employee would be entitled in law, if his application were to be considered on merits. In my view, the words 'under the scheme has been accepted' employed in Clause 10.8 of the Scheme referred to earlier, has to be understood as one which is accepted and acceptable in cases where an employee who has made an application seeking voluntary retirement expires before his application comes up for consideration. Further, I am also unable to accept the submission of the learned Counsel appearing for the respondent-Bank that since the claim of several other employees who have expired prior to consideration of their application having been rejected by the Bank, the petitioner alone cannot be given benefit of the scheme. In such a situation, the Bank being an instrumentality of the State which has an obligation to act fairly and reasonably in all its decisions, obliges it to reconsider its earlier decision and extend the benefit of the scheme to the legal heirs/nominees of such of those employees also.

7. It is necessary to place on record the submission made by the learned Counsel appearing for the respondent-Bank that except the Provident Fund benefit, all other benefits available to the petitioner on account of the death of the husband of the petitioner, has been paid; and if the petitioner complies with the formalities required to pay the Provident Fund amount, the same also would be paid.

8. In the light of the discussion made above, I make the following: