E.K. Antony and ors. Vs. Union of India (Uoi) and anr.

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Court : Kerala

Decided On : Jun-04-2007

Reported in : 2007(2)KLJ812; (2008)ILLJ605Ker

Judge : Thottathil B. Radhakrishnan, J.

Acts : Travancore Chitties Act; State Bank of India (Subsidiary Banks) Act, 1959 - Sections 38 and 63(2); Banking Regulations Act, 1949; State Bank of Travancore (Employees') Pension Regulations, 1995 - Regulations 3, 15 and 20; Cochin' Kuries Regulations

Appeal No. : O.P. No. 9503 of 1998(F)

Appellant : E.K. Antony and ors.

Respondent : Union of India (Uoi) and anr.

Advocate for Def. : M. Pathrose Mathai,; C.P. Sudhakara Prasad,; Elvin Peter

Advocate for Pet/Ap. : K.S. Babu and; N. Sudha, Advs.

Disposition : Petition dismissed

Judgement :

Thottathil B. Radhakrishnan, J.

1. The petitioners were employees of the Chaldean Syrian Bank Ltd., hereinafter 'Chaldean', for short, which then was carrying on certain activities referable to banking or Travancore Chitties Act or the Cochin' Kuries Regulation. In terms of Section 38 of the State Bank of India (Subsidiary Banks) Act, 1959, by Ext.Pl, the Government of India, Ministry of Finance (Department of Economic Affairs) accorded sanction to the State Bank of Travancore, hereinafter, 'Bank' for short, for acquisition of the business including assets and liabilities of Chaldean on the terms and conditions set out in Ext.P2. Pursuant to that, the petitioners entered into service of the Bank, having regard to the provisions contained in Clause 16 of Ext.P2 Scheme. With the passage of time, the State Bank of India issued the State Bank of Travancore (Employees') Pension Regulations 1995, hereinafter, the 'Pension Regulations', for short, in exercise of powers conferred under Sub-section 1 and Clause '0' of Sub-section 2 of Section 63 of the State Bank of India (Subsidiary Banks) Act, 1959, which, in terms of the law, is to be explicitly followed by the Bank. The petitioners, being in the service of the Bank, exercised the necessary option in terms of Regulation 3 of the Pension Regulations. It is also their contention that they had refunded to the Bank, its contribution towards Provident Fund with 6% interest in terms of Regulation 3. It is their further contention that they had also refunded to the Bank, the Provident Fund contribution made by the Chaldean, as the employer. On the basis of the aforesaid factual premise, petitioners contend that the legal effect of their entry and continuity in the service of the Bank entitles them to take along with and claim the previous service in the Chaldean for the purpose of determining the length of the qualifying service for fixation of the pension payable to them under the Pension Regulations.

2. Per contra, the Bank denies the claim of the petitioners for tagging along with service rendered by them with the Chaldean for the purpose of counting the qualifying service to determination of pension under the Pension Regulations.

3. The learned Counsel appearing for the petitioners argued, firstly, that the determination of the qualifying service of an employee of the erstwhile Chaldean, for the purpose of pension as per the Pension Regulations, has to be in terms of Regulation 20 of the Pension Regulations. It is further contended that Clause 16(a)

of Ext.P2 does not, in any manner, disentitle the petitioners from tagging along their service in Chaldean as contended by them.

4. Learned senior counsel appearing for the Bank argued that Regulation 20 of the Pension Regulations would apply only in the case of merger and amalgamation of the bank and not when an acquisition is made, as has been done following Exts.P 1 and P2.

5. Considering the rival contentions, the following provisions are relevant:

Clause 16(a) of Ext.P2:

The Sate Bank of Travancore will offer employment to such officers and employees of the Chaldean Syrian Bank Ltd., as the case may be found suitable and can be absorbed by the State Bank of Travancore in their absolute discretion on the footing that the terms and conditions upon which the State Bank of Travancore will engage them will be a matter for the State Bank of Travancore to decide. The officers and employees of the Chaldean Syrian Bank Ltd., who will be absorbed by the State Bank of Travancore will be taken over by the latter as new entrants.

(emphasis supplied)

Regulation 15 of the Pension Regulations (excluding the proviso thereto):

Commencement of qualifying service- Subject to the provisions contained in these regulations, qualifying service of an employee shall commence from the date he takes charge of the post to which he is first appointed on a permanent basis.Regulation 20 of the Pension Regulations:

Counting of past service in the erstwhile Bank- In the case of an employee who is permanently transferred to a service in the Bank from any other Bank on merger amalgamation of any other bank with the bank to which these regulations apply, the continuous service rendered by such an employee in any other Bank on permanent basis, if any, followed without interruption, by permanent appointment, or the continuous service rendered under the Bank in a permanent capacity, as the case may be, shall qualify.

(emphasis supplied)

6. In terms of Clause 16(a) of Ext.P2 Scheme of acquisition, the liability of the Bank to offer employment to the staff of Chaldean is left to the absolute discretion of the Bank and the terms and conditions of any such engagement are also matters left to the Bank to decide. It is the specific condition of Ext.P2 Scheme that the officers and employees of the Chaldean will be taken over by the Bank as 'new entrants'. Indisputably, Ext.P2 Scheme is one relating to acquisition by the Bank, of yet another business in the nature of banking. This is done in terms of the provisions of State Bank of India (Subsidiary Banks) Act, 1959 with the sanction of the Central Government. It is not a case of merger or amalgamation of banks which are governed by provisions of the Banking Regulations Act, 1949, Regulation 20 of the Pension Regulations deals with employees of a Bank which becomes subject to a merger or amalgamation and which is permanently transferred to a service in the Bank from the bank which is subjected to merger or amalgamation. The concept of being permanently transferred from the service of one employer to the service of another is jurisprudentially different from the concept of an institution acquiring a business and taking any personnel as 'new entrants' following a term in the nature of Clause 16(a) of Ext.P2. The situations in hand are not cases of transfer to a service, leave alone, being 'permanently transferred to a service' in the Bank, to which situations alone, would Regulation 20 of the Pension Regulations apply. In this view of the matter, the provisions in Regulations apply. In this view of the matter, the provisions in Regulation 20 of the Pension Regulations regarding continuity of service apply only to situation where there is a merger or amalgamation and not where the Bank, under a Scheme, acquires the assets and liabilities of business etc. of another banking institution.

7. Now, Regulation 20 excluding its proviso is relevant to further understand the rights of parties. Having regard to what is stated aforesaid, Regulation 20 of the Pension Regulations does not apply to the erstwhile employees of Chaldean. The said provision does not govern the determination of commencement of the qualifying service of the employees, taken into the service of the Bank in terms of

Clause 16(a) of Ext.P2 Scheme, for the purpose of pension under the Pension Regulations. Their qualifying service will have to be determined only in terms of Regulation 15 which provides a qualifying service from the date on which the incumbent takes charge of the post to which he is first appointed on a permanent basis. By reading of Clause 16(a) of Ext.P2, the date of the first appointment of each of the petitioners in the service of the Bank cannot be any day before the respective dates on which each of them book charge in the respective posts to which each of them was appointed as 'new entrants' on the basis of Clause 16(a) of Ext.P2.

8. In the light of what is stated above, the contention of the petitioners that they are entitled to tag along their respective service in the Chaldean on the basis of Regulation 20 of the Pension Regulations is repelled.

9. At this juncture, the learned Counsel for the petitioners pointed out that if advertence 'is made to Regulation 20 of the Pension Regulations, the petitioners may get the benefit of the enhancement of the retiral benefits by way of pension, by giving due weightage to their experience in Chaldean. This is not art issue raised in this writ petition, though it has been pointed out that such claims were raised before the Bank, on a case to case basis. Obviously, any consideration for entitlement in terms of Regulation 20 of the Pension Regulations, could be done only on a case to case basis. Though at this distance, time has run against the petitioners, being a matter of pension, it is directed that if the petitioners make separate individual request before the competent authority for any entitlement in terms of Regulation 20 of the Pension Regulations within a period of one month from now, the Bank will consider the same and take appropriate decision. Yet another issue that crops out on the basis of pleadings and arguments is that the petitioners have a definite contention that they have reimbursed to the Bank the contributions made by Chaldean towards Provident Fund and which amount was not liable to be paid back to the Bank while exercising the option in terms of Regulation 3 of the Pension Regulations. This is also a matter on which the Bank will take a decision, on case to case basis, if sought for, within the aforesaid time limit.

Subject to the limited directions in the foregoing paragraph, this writ petition is dismissed. No costs.