

(1997) 09 AP CK 0016

Andhra Pradesh High Court

Case No: Writ Petition No. 25916 of 1996

T. Ramesh Babu

APPELLANT

Vs

Union Bank of India
and Another

RESPONDENT

Date of Decision: Sept. 20, 1997

Acts Referred:

- Constitution of India, 1950 - Article 226
- Pension Regulations - Regulation 22

Citation: (1998) 4 ALD 451 : (1998) 2 ALT 618

Hon'ble Judges: T.N.C. Rangarajan, J

Bench: Single Bench

Advocate: Mr. A. Sitarama Rao, for the Appellant; Mr. C.R. Sridharan, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. This writ petition seeks direction to the respondents to grant pension in terms of the Pension Scheme as well as to pay the gratuity and arrears of wages due to the petitioner.

2. The petitioner states that he joined the service of the respondent-Bank in the year 1970 and initially worked in Hyderabad. While in the year 1994, he was working at Bombay, at that point of time, due to certain personal reasons he went on leave. During the period of leave he had written a letter on 9th November, 1993 seeking voluntary retirement and also stated in that letter that he wished to opt for the pension under the Pension Scheme which was being introduced. While some correspondence was going on, he wrote a letter on 8-2-1994, from Secunderabad, where he was living, stating that he was not being paid salary during his leave of absence and he decided to go in for private employment and therefore he was tendering his resignation which should be accepted and he should be released at the earliest for taking up the private assignment. He also stated that as and when

the Voluntary Retirement Pension Scheme is announced he should be considered for the same. According to the respondent-Bank the resignation was accepted on 16-6-1994. There is also subsequent correspondence to show that he has filled up certain forms for claiming pension, the scheme having been formed in September, 1995, However, inspite of repeated reminders his request for payment of pension, gratuity and arrears of wages were not considered and finally by a communication dated 28th May, 1996, he was informed that since he has resigned from the service, he was not entitled for the pension.

3. The learned Counsel for the petitioner submitted that this denial was untenable because there was a clarification by the Indian Banks Association dated 4th January, 1996 stating that the settlement regarding pension scheme having been signed on 29th October, 1993 providing for Introduction of the pension scheme with effect from 1st November, 1993, even those who had resigned from service or voluntarily retired subsequently would be entitled to have their claims considered if such request had been left out of consideration only on the ground that the pension scheme had not been finalised and adopted by the time the applications were made. The learned Counsel for the petitioner submitted that the petitioner's case was one such where his repeated applications were pending and since his initial application itself was of 9-11-1993 after the date of coming into force of the Pension Scheme, namely, dated 1-11-1993, he was entitled for the benefits.

4. The learned Counsel for the respondent Sri C.R. Sridharan submitted that the writ petition is not maintainable because no part of cause of action arose in Hyderabad. In support of this contention he relied on the decision of the Supreme Court in [Oil and Natural Gas Commission Vs. Utpal Kumar Basu and Others](#), .

5. The learned Counsel for the petitioner in support of his contention relied upon decisions in P.S. Rao v. Union of India, AIR 1974 Mysore 39, [Justice S.S. Sandhawalia \(Retd.\) Vs. Union of India and others](#), , Union of India and others v. Lt. Col. P.S. Bhargava 1997 (1) SC 274, an unreported judgment of this Court in Writ Petition No.4256 of 1997, dated 17-3-1997, as well as judgment of the Karnataka High Court in Writ Petition No.3994 of 1996 dated 24-9-1996. He points out that these un-reported judgments also relate to the claim of pension under the Pension Scheme in respect of the officers who were posted in different places, but yet approached the Karnataka High Court.

6. I find that the Supreme Court in Oil and Natural Gas Commission (supra), as a matter of fact, found that no part of cause of action in that case arose within the jurisdiction of the Calcutta High Court.

It was observed that:

"..... Therefore, merely because it read the advertisement at Calcutta and submitted the offer from Calcutta and made representation from Calcutta would not, in our opinion, constitute facts forming an integral part of the cause of action. So also the

mere fact that it sent fax messages from Calcutta and received a reply thereto at Calcutta would not constitute an integral part of the cause of action. Besides the fax message of 15-1-1993, cannot be construed as conveying rejection of the offer as that fact occurred on 27-1-1993. We are, therefore, of the opinion that even if the averments in the writ petition are taken as true, it cannot be said that a part of the cause of action arose within the jurisdiction of the Calcutta High Court."

But, the Supreme Court affirmed the principle by stating as follows :

"....that the expression "cause of action" means that bundle of facts which the petitioner must prove, if traversed, to entitle him to a judgment in his favour by the Court. In *Chand Kour v. Partab Singh* Lord Watson said :

".... the cause of action has no relation whatever to the defence which may be set up by the defendant, nor does it depend upon the character of the relief prayed for by the plaintiff. It refers entirely to the ground set forth in the plaint as the cause of action, or, in other words, to the media upon which the plaintiff asks the Court to arrive at a conclusion in his favour."

Therefore, in determining the objection of lack of territorial jurisdiction the Court must take all the facts pleaded in support of the cause of action into consideration albeit without embarking upon an enquiry as to the correctness or otherwise of the said facts, In other words the question whether a High Court has territorial jurisdiction to entertain a writ petition must be answered on the basis of the averments made in the petition, the truth or otherwise whereof being immaterial. To put it differently, the question of territorial jurisdiction must be decided on the facts pleaded in the petition."....,

7. On the basis of these principles we have to find out whether the averments in the petition refer to the vital facts, by which part of the cause of action could be recorded having arisen in Hyderabad, within the jurisdiction of the High Court of Andhra Pradesh. The fact is that the respondent-Bank has branches everywhere in India. The employees working in the Bank after retirement settle quite often in a place at which they were not posted. A person who has retired from service has to approach the Court for relief wherever some terminal benefits are denied and naturally he has to make correspondence with the Bank only from the place where he is living. In the present case, even at the time of service, he had taken leave and he was living in Hyderabad and that very application for benefits under Voluntary Retirement Scheme as well as application for resignation were written only from Hyderabad and letters of the respondents were addressed to him at his address at Hyderabad. It can therefore be said that part of the cause of action arose in Hyderabad only. Apart from this, a case such as this, where a retired employee seeks benefits from an all India organisation falls for consideration, the interests of justice require that his application should be considered by the Court having territorial jurisdiction over the place where he is residing because it will be against

the public policy to send him to another place where he last served or where the head office of the institution functions, because it will lead to a situation where the dominant litigant will be having an oppressive control over the remedies sought by the employee who is not able to get his dues in time. I am of the opinion that the decision of the Supreme Court in Oil and Natural Gas Commission (*supra*), relied upon by the learned Counsel for the respondents, is not applicable to the facts of the present case and is distinguishable from general rule, which as in the case of High Court of Karnataka which has entertained applications from several employees living in several places against the Canara Bank having its head office at Bangalore, has to be applied. The employees such as petitioners who have retired and settled in different places must be allowed to institute cases in the Courts having territorial jurisdiction where they are residing in respect of all India organisations which have branches at that place. Hence, I overrule the objections of the learned Counsel for the respondents relating to the jurisdiction of this Court and held that the writ petition is maintainable.

8. With regard to the denial of the pension on the ground that Regulation 22 of the Pension Regulations provides that the resignation of an employee from service before he fulfils the rest of the service shall not qualify for pensional benefits, I find that the clarification issued by the Indian Bank Association clearly overrides this regulations. Secondly in the un-reported decision of this Court, a similar claim by a person who resigned under and on the similar community has claimed for pension, and was accepted by Bapat, J. to have not given up his rights. In the present case also even though the petitioner intended only to retire voluntarily, because voluntary retirement was not being accepted and he wanted immediately to get private employment, he tendered the resignation with the condition reserving his right for pension. In other words, there was no intention on the part of the petitioner to give up the benefits of the pension which was available under the voluntary retirement scheme by giving a letter of resignation and that letter cannot be regarded as one coming within the scope of Regulation 22 of the Pension Regulations, but it must be regarded only as a voluntary retirement with an intention to have it accepted immediately without delay. In the circumstances, I overrule this objection of the respondents that the petitioner is not entitled to pension only on the ground of his having resigned from the service.

9. The respondents have not seriously disputed the fact that but for these two objections, the petitioner is certainly entitled to the benefits, namely, pension under the Pension Scheme and gratuity for the service rendered as well as arrears of wages for the period of service. It is certainly unjustified for the respondents to deny these benefits and also delay payment of amounts for more than two years. I, therefore, deem it fit to direct the respondents to pay all those amounts which are admissible to him. Accordingly, I direct the respondents to compute all the amounts due to the petitioner under Voluntary Pension Scheme as well as arrears of pay and gratuity and pay the same to the petitioner along with simple interest @ 1% per

month for the period of delay from 16-6-1994 till the date of payment.

10. With the above directions, the writ petition is allowed. No costs.