

(2002) 02 BOM CK 0060

Bombay High Court (Nagpur Bench)

Case No: Writ Petition No's. 615 of 1996 and 2586 of 1997

Cecil Dennis Solomon and
Another

APPELLANT

Vs

Reserve Bank of India and
Another

RESPONDENT

Date of Decision: Feb. 28, 2002

Acts Referred:

- Reserve Bank of India (Pension) Regulations, 1990 - Regulation 18

Citation: (2002) 4 BomCR 508 : (2002) 3 BOMLR 910 : (2002) 95 FLR 129 : (2002) 3 LLJ 115 : (2002) 2 MhLj 956

Hon'ble Judges: V.M. Kanade, J; V.G. Palshikar, J

Bench: Division Bench

Advocate: R.R. Pillai, R.K. Deshpande and B.B. Mehadia, for the Appellant; G.G. Modak, for the Respondent

Final Decision: Allowed

Judgement

V. G. Palshikar, J.

Both these petitions raise identical questions of law for adjudication and, therefore, are disposed of by this common order. All the three petitioners in these two petitions are employees of the Reserve Bank of India and have resigned from their service after rendering service of more than twenty years. After resignation, they have claimed pensionary benefits which were rejected by the Reserve Bank of India by passing appropriate orders. This rejection is questioned in both these petitions.

2. In Writ Petition No. 615 of 1996 the petitioners have claimed a declaration that Regulation 18 of Pension Regulation, 1990 be declared unconstitutional as it is unreasonable, arbitrary and discriminatory whereas the petitioner in Writ Petition No. 2586 of 1997 has claimed that Regulation 26(3-A) of the Reserve Bank of India Staff Regulations, 1948 is not prospective in nature and, therefore, petitioner is

entitled to grant of benefit of pension as his resignation is equivalent to voluntary retirement. The petitioners have, therefore, challenged by these petitions the rejection of their claim for pensionary benefits.

3. The petitioner in Writ Petition No. 2586 of 1987 made two representations for grant of pensionary benefits. The first was made immediately after he resigned on 5-6-1990 and in response to his another representation dated 12-11-1990, it was informed to him by the respondent Bank that his request cannot be acceded in view of the provisions of Regulation 18 of the Reserve Bank of India Pension Regulations, 1990. It is this communication dated 15th December, 1990 which is also impugned in Writ Petition No. 2586 of 1997. After amendment to the Staff Regulations of 1948 and introduction of Regulation 26(3A), the petitioner again made representation dated 25th April, 1991 for grant of pensionary benefits claiming that his resignation be treated as equal to voluntary retirement. This representation was also rejected on the ground that regulation 26(3A) is made applicable from 2-6-1992 and the petitioner having resigned prior to that date, he is not entitled to the relief as claimed. This representation was also rejected.

4. In Writ Petition No. 615 of 1996 the petitioners have challenged the Constitutional validity of Regulation 18 of the Pension Regulations, 1990 on the ground that it is arbitrary. It is these challenges and claim for pensionary benefits which we have to consider in this petition.

5. The Reserve Bank of India has opposed the prayers contending that their Regulations are legal, valid and there is no room for any interpretation or grant of pensionary benefits to the petitioners - the cut-off date being the date on which the amendment was introduced to Regulations of 1948. Learned counsel for the Bank has relied upon several judgments of the Supreme Court to substantiate that the cut-off date for voluntary retirement is proper. It is not in dispute that the resignations of all the petitioners are prior to both the Regulations.

6. Certain facts which are not in dispute, are liable to be noted for adjudication of these petitions. The petitioners in Writ Petition No. 615 of 1996 stood relieved on their resignation from 1-5-1988. At the time when the petitioners had resigned the RBI service, Regulations of 1990 had not come into existence. Earlier, the service conditions of the RBI employees were governed by the Staff Regulations, 1948. Regulation 26 was not amended till the petitioners were in service to include sub-regulation (3A) and, therefore, there was no provision for voluntary retirement from service in existence in 1990. It was in these circumstances that the petitioners resigned the services on completion of more than 20 years of service.

7. The petitioner in Writ Petition No. 2586 of 1997 stood relieved on resignation from 5-6-1990 and, therefore, the position in respect of the Regulations, as narrated in the foregoing paragraph, applies *mutatis mutandis* to this petitioner also.

8. In our opinion, both these petitions are liable to be allowed for the simple reason that refusal to grant pensionary benefits by the Reserve Bank of India was on misinterpretation and misreading of Regulations - both of 1948 and 1990. There is no dispute that the dates of resignation of all the petitioners are prior to 1-11-1990 i.e. the date on which the Pension Regulations came into effect. There is nothing in this Regulations of 1990 that they are retrospective in operation. Regulation 18 finds place in Regulations of 1990 which provides that resignation or dismissal or termination of an employee from service shall entail forfeiture of his entire past service and consequently shall not qualify him for payment of pension. The date on which these Regulations came into operation and existence is a date subsequent to that of resignations of the petitioners and, therefore, they were out of service of the Reserve Bank of India as on the date on which this 1990 Regulations came to be promulgated. Recourse to forfeiture of their past service on the ground of applicability, of regulation 18 of the Regulations cannot be taken. This forfeiture of service did not exist any time prior to 1990 in any regulation and there is nothing in 1990 Regulations that they are retrospective in operation. Consequently, denial of pensionary benefits on the basis of this regulation 18 of Regulations, 1990 was legally incorrect. In the view that we are taking that these Regulations are prospective in nature, challenge to the Constitutional validity of regulation 18 need not be decided. In this behalf we would like to make reference to regulation 1 of the said Regulations of 1990 and it speaks that these Regulations may be called the Reserve Bank of India Pension Regulations, 1990 and they shall come into force on the 1st November, 1990. This expression rules out any possibility of retrospective operation as retrospective operation must be done by necessary implication or by Statute itself.

9. In view of the fact that regulation 18 of the Pension Regulations, 1990 was not attracted, the request of petitioners for pensionary benefits was liable to be granted. In the light of this, we need not go into the questions as to whether the amendment to regulation 26 as introduced by sub-regulation (3A) thereto was prospective or retrospective and whether the cut-off date mentioned therein was proper or not. Those questions need not be decided in this case as plain reading of Regulations of 1990 would reveal that they are not attracted in the case of petitioners on having resigned their services prior to the coming into force the said Regulation of 1990.

10. There cannot be any doubt that resignation from service is not equivalent to dismissal or termination both of which are the acts of management, but conversely, resignation is more akin to voluntary retirement. From the admitted position of facts, it is obvious that pensionary benefits were denied to petitioners because of regulation 18. As we have held that regulation 18 was not attracted, all other questions need not be gone into. On this ground alone, petitions are liable to be allowed.

11. In the result, petitions succeed and are allowed. The respondents are hereby directed to consider immediately the cases of petitioners for grant of pensionary benefits for the computation of which it may take recourse to 1990 Regulations. The petitioners are entitled to the pensionary benefits since the date of their demand and, therefore, it is also directed that the case of the petitioners for grant of pensionary benefits be decided as expeditiously as possible, preferably within three months. No order as to costs.