
(2003) 02 CAL CK 0029

Calcutta High Court

Case No: Writ Petition No. 490 of 2002

Pijush Kanti Nandy

APPELLANT

Vs

United Bank of India

RESPONDENT

Date of Decision: Feb. 20, 2003

Citation: 108 CWN 884

Hon'ble Judges: Barin Ghosh, J

Bench: Single Bench

Advocate: Arunava Ghosh and C.L. Singh, for the Appellant; Subir Sanyal, for the Respondent

Judgement

Barin Ghosh, J.

The petitioner was born on 10th May, 1934. On 14th July, 1971 he joined the services of the respondent bank. The conditions of service of the petitioner with the respondent bank which were controlled by the rules, made in exercise of statutory power, provided that if an employee has rendered 20 years service or has attained the age of 50 years, he should be entitled to apply for voluntary retirement. In 1989 although the petitioner was more than 50 years of age, he had not rendered 20 years of service, but still then he having had an opportunity to retire voluntarily in terms of the rules, he applied therefore and such application of the petitioner was accepted by the respondent bank and accordingly, the petitioner retired on 31st May, 1989. The age of the petitioner as on 31st May, 1989 was 55 years 21 days. If the petitioner had not been permitted to voluntarily retire, in accordance with the service rules, the petitioner could serve up to the age of 58 years. As on the date the petitioner voluntarily retired, he could serve for 2 years 11 months and 9 days more, if his voluntary retirement had not been accepted.

2. On 29th October, 1990 Pension Scheme was introduced in RBI with effect from 1st January, 1986. The Trade Unions of the officers of the banks including the respondent-bank as well as Canara Bank demanded similar Pension Scheme for the officers working in those banks. In the banking industry the service conditions are negotiated and settled between the trade unions representing bank officers and management of all banks which authorises one of the members of the bank viz. the

Indian Banks Association to negotiate and settle the service conditions on their behalf. Based on the agreed conclusions reached in such bipartite meetings statutory regulations are framed by the bank managements under the provisions of the relevant rules. As a result of negotiation between the unions of the workmen, the Officers' Association and the Indian Banks' Association, an Agreement was signed on 29th October, 1993 whereby it was agreed that a Pension Scheme in lieu of provident fund shall be introduced with retrospective effect from 1st January, 1986.

3. The agreement provided that the Pension Scheme shall be put into operation and would be applicable to the officers who had retired from service on or after 1st January, 1986. On the basis thereof on 19th October, 1995 the respondent-employer made the United Bank of India (Employees) Pension Regulations, 1995. The contents of the said regulations are identical to the regulations introduced by Canara Bank in the similar circumstances. The regulations provided that, the same shall be effective on and from 1st January, 1986. However, Clause 29 thereof was intended to apply with effect from 1st November, 1993. Clause 29 dealt with those employees who have retired voluntarily. The employees of Canara Bank who had voluntarily retired prior to 1st November, 1993, but after 1st January, 1986 challenged the legality of Clause 29 of the regulations made by Canara Bank in the Writ Jurisdiction of Karnataka High Court.

4. In such litigation a learned Single Judge of the said High Court held that discriminating employees on the basis of their retirement, i.e. upon attaining the age of superannuation and upon acceptance of voluntary retirement, is not permissible. The learned Judge, however, saved the said Regulation 29 by reading 1st January, 1986 instead of 1st November, 1993 in the said regulation. A Division Bench of the Karnataka High Court upheld the said decision of the learned Single Judge. The matter went before the Supreme Court and the Supreme Court expressed that the view taken by the learned Single Judge as well as by the Division Bench of the Karnataka High Court is fair and reasonable. The Supreme Court while dealing with the matter noticed that the number of employees who have retired voluntarily is also very small.

5. In the present writ petition the petitioner is claiming pension in terms, of Regulation 29 read in the manner as has been read by the Karnataka High Court and as confirmed by the Supreme Court i.e. with effect from 1st January, 1986. The relevant portion of the said Clause as read by the High Court of Karnataka is as follows:

"On or after 1st January, 1986 at any time after an employee has completed 20 years of qualifying service he may, by giving notice of not less than 3 months in writing to the appointing authority, retire from service.

6. The respondent-employer has refused to grant pension to the petitioner under Clause 29 on the ground that the petitioner did not complete 20 years of service at the time he retired. There is no dispute that at the time when the petitioner retired he had served only 17 years 10 months and 10 days. The learned counsel for the Petitioner has contended

that Sub-clause (5) of Clause 29 makes the petitioner eligible for pension under Clause 29 of the said regulations. Sub-clause (5) of Clause 29 of the said regulations is as follows:

The qualifying service of an employee retiring voluntarily under this regulation shall be increased by a period not exceeding 5 years, Subject to the condition that the total qualifying service rendered by such employee shall not in any case exceed 33 years and it does not take him beyond the date of superannuation."

7. The learned counsel for the petitioner has Submitted that the qualifying service of 20 years stands extended for a period not exceeding 5 years provided the same does not take the period of service beyond the date of superannuation. He Submitted that by reason of the said Sub-Clause the petitioner is entitled to additional qualifying service for 2 years 11 months and 9 days in addition to the actual service rendered by him of 17 years 10 months and 17 days aggregating to 20 years 9 months and 26 days. The learned counsel for the petitioner has also Submitted that the expression, "qualifying service" as used in Sub-clause (1) of Clause 29. as set out above, as well as in Sub-Clause(1) of Clause 29. as set out above, as well as in Sub-Clause (5) of Clause 29 has been used for a definite purpose, for, the expression "qualifying service" has been defined in the said regulations itself in the manner as follows:

"Qualifying service means the service rendered while on duty or otherwise which shall be taken into account for the purpose of pension under these regulations."

8. It was Submitted by the learned counsel for the petitioner that when the expression, "qualified service" is used, it was not intended that the same shall remain restricted to duty actually rendered but would also include those which have been specifically provided otherwise in the said regulations. He Submitted that the 5 years of qualifying service has been specifically provided for in Sub-clause (5) of Clause 29 and the same must be taken note of while considering qualifying service as mentioned in Clause (1) of Clause 29. The learned counsel for the respondent-employer has Submitted that application of Sub-clause (5) will be available only when the employee concerned has complied with the provision of Sub-clause). In other words, he Submitted that an employee must work first for 20 years to make him eligible for pension in terms of Sub-Clause (1) of Clause 29 and if he makes himself so eligible then he would be entitled to the benefit of Sub-Clause (5) of Clause 29.

9. If I have to accept the Submissions made by the counsel for the respondent-employer, then I would have to omit the word. "Qualifying in Sub-clause (1) of Clause 29. If I do not do so and if I read the word. qualifying" as appearing in Sub-clause (1) of Clause 29. then I have no other choice but to accept the Submissions made by the learned counsel for the petitioner. The Clause does not say that a person in order to get pension would be required to complete 20 years of service. The Clause does not also say that in order to obtain pension after voluntary retirement, the employee concerned must have rendered

20 years of service while on duty. But it says that the 20 years of service would include the duty actually rendered and also other period which should be taken into account as provided for in the regulations and. accordingly. the expression "qualifying service" has been consciously used in the Clause in question and not the expression "Service".

10. Having regard to the fact that taking into account the period of service rendered while on duty, being 17 years 10 months and 17 days and period to be taken note of as qualifying service as provided for in Sub-clause (5) of Clause 29 of the regulations, being 2 years 11 months and 9 days, the qualifying service as mentioned in Sub-clause (i) of Clause 29 of the said regulation amounts to 20 years 9 months and 26 days and, accordingly, it is declared that in terms of Clause 29 of the said regulations, the petitioner is entitled to pension for having had voluntarily retired on the date mentioned above.

11. In those circumstances the writ petition is allowed and the respondent-employer is directed to make available to the petitioner pension after permitting the petitioner to comply with his part of the obligations under the regulation. The respondent-employer shall invite the petitioner to do so" by issuing an appropriate notice to that effect as quickly as possible but not later than 1 month from today. The petitioner shall comply with such obligations forthwith thereafter but not later than 1 month therefrom and within 2 months therefrom the respondent-bank shall make available to the petitioner the pension to the extent he is entitled to in terms of the said regulations.

This disposes of the writ petition.

12. Before parting with this it is my duty to point out that the petitioner has contended in a supplementary affidavit that apart from the petitioner there is no one similarly situated to that of the petitioner, but the respondent-bank has contended that in addition to the petitioner, there are 4 other such persons. If those 4 persons are similarly situated and, for having had rendered actual service together with the period to be taken note of in terms of Sub-clause (5) of Clause 29, if those 4 persons also come within Sub-clause(1) of Clause 29, it would be proper for the respondent-bank to invite those 4 persons also to discharge their obligations in the similar situation, so that their pension can also be settled in accordance with law.

There shall be no order as to costs.

The learned counsel appearing for the respondents prays for stay of operation of this order. The prayer is considered and rejected. All parties concerned are to act on a xeroxed signed copy of this Dictated Order on the usual undertaking.