

CASE NO.:
Appeal (civil) 5503 of 2003

PETITIONER:
Union Bank of India

RESPONDENT:
Venkatesh Gopal Mahishi & Anr

DATE OF JUDGMENT: 12/01/2007

BENCH:
G. P. Mathur & Lokeshwar Singh Panta

JUDGMENT:
J U D G M E N T

Lokeshwar Singh Panta, J.

This appeal is directed against the judgment and order dated 02.04.2002 passed by the High Court of Judicature at Bombay in Writ Petition No.567 of 2002 whereby and whereunder Venkatesh Gopal Mahishi has been held entitled for pension under the Union Bank of India (Employees') Pension Regulations, 1995.

The facts, in brief, are that Venkatesh Gopal Mahishi, respondent No.1 herein, joined the services of the Union Bank of India (hereinafter referred to as 'the appellant-bank') as a Peon on 02.05.1960. On 19.02.1991, the respondent No.1 had submitted an application to the authority seeking retirement on medical grounds with further request to give employment to his dependent son on compassionate ground. The request of the respondent No.1 was accepted by the appellant-bank and he was retired as Daftary from the service w.e.f. 01.11.1993 and later on his son has been given employment.

The appellant-bank, in exercise of the powers conferred by clause (f) of sub-section (2) of Section 19 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970), after consultation with the Reserve Bank of India and with the previous sanction of the Central Government, framed regulations called Union Bank of India (Employees') Pension Regulations, 1995 (for short "Pension Regulations"), whereunder pension option was made available to the employees of the appellant-bank in lieu of the employer's contribution in the Provident Fund on the employees surrendering the same to the bank. The appellant-bank called for option to be exercised by the employees who had retired from service between 01.01.1986 and 31.10.1993. The respondent No.1 accordingly submitted an application on 28.06.1994 for pension under the Pension Regulations, but his claim was rejected by the competent authority on 12.11.1994 inter alia on the ground that the respondent No.1 was not eligible to the pension scheme as he was retired under different scheme prior to the date of enforcement of the Pension Regulations.

The respondent No.1, after about seven years from the date of the rejection of his claim for the grant of the benefits of the pension scheme to him, filed Civil Writ Petition No.567 of 2002 before the High Court of Judicature at Bombay seeking grant of pension. A Division Bench of the High Court allowed the writ petition primarily relying on an earlier decision of

learned Single Judge in the case of Madhav K. Kirtikar v. Bank of India [1997 (2) Bom. C. R. 524]. Now, the appellant-bank is before us in this appeal.

We have heard the learned counsel for the parties at length and have gone through the judgment of the Division Bench of the High Court and other material on record.

Mr. Raju Ramachandran, learned senior Advocate appearing on behalf of the appellant-bank, has broadly made threefold submissions: (i) that Pension Regulations do not apply to the respondent No.1 as he is an award staff; (ii) that the respondent No.1 has sought retirement on medical grounds covered by the non-statutory scheme, which is different scheme and on his request his son was appointed on compassionate grounds, thus, the respondent No.1 is not entitled to take two benefits under different schemes; and (3) that even if the respondent No.1 is held eligible for pension, the Pension Regulations will not be applicable to him as the respondent No.1 was retired on 01.11.1993 and the Pension Regulations are made applicable to those employees only who have voluntarily retired w.e.f. 01.01.1986 to 31.10.1993 under the statutory scheme/rules of retirement.

Per contra, Mr. Nitin S. Tambwekar, learned counsel appearing on behalf of respondent No.1, contended that the claim of the respondent No.1 for the grant of pension is fully covered by the Pension Regulations and the stand of the appellant-bank that the Pension Regulations are not applicable to the respondent No.1 as he had sought voluntary retirement on medical grounds, is not tenable and justified. According to the learned counsel, the appellant-bank cannot classify its employees into separate and different categories who have retired on medical grounds or sought voluntary retirement on any other ground as per the scheme/rules. The learned counsel also submitted that the claim of the respondent No.1 is covered by Regulation 29 of the Pension Regulations and the Chief Manager of the appellant-bank vide communication dated 20.09.1993, addressed to the respondent No.1, has categorically admitted that the respondent No.1 has been treated as voluntarily retiree from the services of the Bank w.e.f. 01.10.1993. The learned counsel lastly contended that this Court, in exercise of the jurisdiction under Article 136 of the Constitution of India, should not lightly interfere with the well-reasoned judgment and order of the Division Bench granting beneficial reliefs to the respondent No.1 - retiree of the appellant-bank.

We have duly considered the respective contentions of the learned counsel for the parties. It is not in dispute that the appellant-bank framed the above-said Pension Regulations for the grant of pension to its employees. Under Chapter III of the Pension Regulations, Bank shall constitute a Fund to be called the Union Bank of India (Employees') Pension Fund. The Provident Fund Trust shall, immediately after the constitution of the Fund, transfer to the Union Bank of India (Employees') Pension Fund the accumulated balance of the contribution of the Bank to the Provident Fund and interest accrued thereon upto the date of such transfer in respect of every employee.

Regulation 2 (k) defines 'date of retirement' to mean the last date of the month in which an employee attains the age of superannuation or the date on which he is retired by the Bank or the date on which the employee voluntarily retires; or the date on which the officer is deemed to have retired.

Under Clause (n) 'Employee' means any person employed in the service of the bank on full time work on permanent basis or on part-time work on permanent basis on scale wages and who opts and is governed by these regulations, but does

not include a person employed either on contract basis or daily-wage basis or on consolidated wages.

Clause (x) deals with the definition of 'retired' to include 'deemed to have retired' under Clause (1), whereas under Clause (l) 'deemed to have retired' means cessation from service of the Bank on appointment by Central Government as a whole-time Director or Managing Director or Chairman in the Bank or in any other Bank specified in column 2 of the First Schedule of the Act or Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970).

'Retirement' is defined in Clause (y), which reads as under:-

"(a) on attaining the age of superannuation specified in Service Regulations or Settlements;

(b) on voluntary retirement in accordance with provisions contained in Regulation 29 of these regulations; and

(c) on premature retirement by the Bank before attaining the age of superannuation specified in Service Regulations or Settlements."

Chapter II of the Pension Regulations deals with 'Application and Eligibility'. Regulation 3(1)(a) envisages that the Pension Regulations shall apply to employees who were in the service of the Bank on or after the 1st day of January, 1986 but had retired before the 1st day of November, 1993; (b) exercise an option in writing within one hundred and twenty days from the notified date to become member of the Fund; and (c) refund within sixty days after the expiry of the said period of one hundred and twenty days specified in clause (b) the entire amount of the Bank's contribution to the Provident Fund including interest accrued thereon together with a further simple interest at the rate of six per cent per annum on the said amount from the date of settlement of the Provident Fund account till the date of refund of the aforesaid amount to the Bank.

Chapter V deals with 'Classes of Pension'. Under Clause 28, an employee who has retired on his attaining the age of superannuation specified in the Service Regulations or Settlements, is entitled to the superannuation pension.

Clause 29 to the extent it is relevant and relied upon by the respondent No.1 reads as under:-

"Pension on Voluntary Retirement:- (1)
On or after the 1st day of November, 1993,
at any time after an employee has
completed twenty years of qualifying
service he may, by giving notice of not less
than three months in writing to the
appointing authority retire from service;

Provided

Provided further.....

Provided that this sub-regulation shall not
apply to an employee who is deemed to
have retired in accordance with clause (1)
of regulation 2."

An employee is entitled to Invalid Pension under
Regulation 30, Premature Retirement Pension under
Regulation 32 and Compulsory Retirement Pension under
Regulation 33 of the Pension Regulations.

The respondent No.1, admittedly, gave his option for the benefits of the Union Bank of India Employees' Pension Scheme 1993 on 28.05.1994. He undertook to refund the bank's contribution to the provident fund, amounting to Rs.46,464.33, including interest accrued thereon together with further simple interest at the rate of 6% p.a., paid to the respondent No.1 on his retirement. The request of the respondent No.1 was rejected by the competent authority of the appellant-bank on the ground that the respondent No.1 had sought voluntary retirement from the services of the appellant-bank as Daftary w.e.f. 01.11.1993 vide his application dated 19.02.1991 on medical grounds under a non-statutory scheme and with further request to give appointment to his son on compassionate grounds. The appellant-bank accepted the request of the respondent No.1 and he was paid all his legal dues including provident fund and gratuity, etc. on his retirement and his son was also taken into services of the bank as Clerk/Typist. The appellant-bank, in its counter affidavit filed in the High Court in opposition to the writ petition of the respondent No.1, has categorically stated that the claim of the respondent No.1 for the grant of pension under the Pension Regulations is not covered by the Pension Regulations as Pension Regulations came into force from the date of its publication in the Official Gazette, i.e. 29.09.1995, and were made applicable to the employees, who were in the service of the bank on or after the 1st day of January 1986, but had retired before 1st day of November, 1993 as per terms of Regulation 3(1). It has also been stated that one category of employees, who sought voluntary retirement from the services of the bank in terms of a scheme formulated by the bank under the provisions of Regulation 19(1) of the Union Bank of India Officers' Service Regulations, 1979 (hereinafter referred to as 'the Service Regulations') made a demand to consider the claims of those employees, who had retired under this scheme between the period 01.01.1986 and 01.11.1993 to be treated as pension optees as was done in the case of those who had retired on superannuation, voluntary retirement or premature retirement.

We find from the reading of the counter affidavit of the appellant-bank that several writ petitions were filed before the Karnataka High Court and Bombay High Court in regard to the benefits of the Pension Regulations. The matters were later on carried to this Court by the Indian Banks' Association and the concerned Banks in Special Leave Petitions. The Special Leave Petitions were finally decided by this Court by an order dated 05.04.2000 in favour of the voluntarily retired officers of the concerned Banks. The benefits of pension were granted to those officers of the Bank who had voluntarily retired between 01.01.1986 and 01.11.1993 as per the judgment of this Court. It appears that the appellant-bank thereafter received a number of representations from its employees, both officers as well as the award staff including the respondent No.1, claiming to be treated as pension optees and be given the benefits of pension having voluntarily retired between 01.01.1986 and 01.11.1993 under the non-statutory scheme.

The appellant-bank wrote a letter dated 09.11.2000 to the Under Secretary, Government of India, Ministry of Finance, Banking Division, seeking clarification of the claims of those officers who had voluntarily retired during the period between 01.01.1986 and 31.10.1993 on medical grounds and sought appointment of dependents on compassionate grounds as well, as per the Bank's own scheme. In response to the said communication, the Director (IR), Government of India, Ministry of Finance, Department of Economic Affairs, Banking

Division, IR Section, vide letter dated 17.05.2001 informed the appellant-bank that the officers, who had retired with simultaneous appointment of the dependents on compassionate grounds, will constitute a separate class and hence cannot be extended the benefit of exercising option for pension as has been granted to the incumbents who had voluntarily retired under the scheme formulated by the Bank under Regulation 19(1) of the Officers' Service Regulations.

The appellant-bank again sought clarification from the Indian Banks' Association on the subject in issue. The Indian Banks' Association vide its letter No.

PD/GSN/UNION/G2/814 dated 01.10.2001 advised the appellant-bank as under:-

"1. Voluntary retirement as a concept and as a form of retirement was not available to award staff under the Bipartite Settlement prior to the introduction of the Pension Scheme. Even after introduction of the Pension Scheme, it is only those who have opted for pension who can retire voluntarily, under Regulation 29 of Bank Employees' Pension Regulations, 1995.

2. The decision of the Government of India, as conveyed to the Bank in case of officer, will equally hold good in the case of workmen also."

As noticed earlier, the respondent No.1 submitted an application dated 19.02.1991 to the Chief Manager of the appellant-bank making request for voluntary retirement on medical grounds and appointment of his son on compassionate grounds. His application was dealt with and considered under non-statutory scheme, known as Scheme for 'Appointment of Dependents of Employees Retiring Voluntarily on Medical Grounds'.

Having gone through the judgment of the High Court impugned in this appeal, we find that the High Court has allowed the writ petition of the respondent No.1 simply relying upon the decision of the learned Single Judge in Madav Kirtikar (supra) in which the learned Single Judge found the officers of the bank who had voluntarily retired between 01.01.1986 and 31.10.1993 eligible for pension, irrespective of their retirement on attaining the age of superannuation or under the scheme of voluntary retirement. The High Court has not given any finding on the fundamental issue whether the claim of the respondent No.1 who, admittedly, was an award staff at the time of retirement on medical grounds in the year 1993, is covered under the Pension Regulations 1995 or not. In our view, the decision of the learned Single Judge in Madav Kirtikar (supra), as relied upon by the Division Bench in its impugned order, is not of any help or assistance either on facts or on law to the case of the respondent No.1. In that case, the employee of the bank was an officer who sought voluntary retirement under the provisions of the Officers' Service Regulation governing the terms and conditions of voluntary retirement under the scheme in the normal circumstances and not on medical ground. Secondly, in that case there was no question of appointment of dependent of the retiree on compassionate ground.

In the normal course, we could have remitted the case back to the High Court for recording decision on the fundamental issue raised by the appellant-bank in relation to the entitlement of pension to the respondent No.1, who had retired as an award staff, but looking to the time-gap between

the date of retirement of respondent No.1 w.e.f. 01.11.1993 and pendency of the writ petition in the High Court and Civil Appeal in this Court and with the consent of the learned counsel for the parties, we propose to deal with and decide this fundamental issue in this appeal.

The appellant-bank in its affidavit filed before the High Court has categorically stated and pleaded that as per the advise of the Director (IR), Government of India, Ministry of Finance, Department of Economic Affairs, Banking Division, IR Section, the benefit of exercising option for pension cannot be extended to the employees who had retired on medical grounds with simultaneous appointment of the dependents on compassionate grounds. The Indian Banks' Association also advised the appellant-bank that the concept of voluntary retirement for the purpose of receiving pension on voluntary retirement under Regulation 29 is not available to the award staff. The respondent No.1 has not denied his status as an award staff when he sought retirement on medical grounds. Thus, the respondent No.1 cannot take the benefit of the letter dated 20.09.1993 received by him from the Chief Manager of the appellant-bank, treating him as voluntarily retiree from the service of the bank w.e.f. 01.11.1993 under the Pension Regulations as nomenclature of the words 'voluntarily retired' used in the said letter will not change the status of the respondent No.1 from award staff to any other category of the employee of the appellant-bank. Thus, Regulation 29, upon which reliance is placed by the respondent No.1, is not attracted in his case and his claim for pension is not covered thereunder.

This Court in its order dated 03.12.2001 titled as Union of India v. B. M. Ramachandra Rao & Ors., observed as under:-
"Leaving the question of law open, inasmuch as connected appeals (C. A. Nos.6959 of 1997 and batch) have been dismissed, we see no reason to interfere.

The appeals are dismissed. No costs."

It becomes clear from the reading of the above extracted order that the question of law, i.e. imposition of the cut-off date for the grant of benefits of pension to the employees of the banks who have voluntarily retired between 01.01.1986 and 31.10.1993, was left open.

This Court in Bank of India v. Indu Rajagopalan & Ors. [(2001) 9 SCC 318] in Civil Appeal No. 6959 of 1997 and batch, which were the subject matter in Civil Appeal Nos.1177-1411 of 2000 before this Court in Union of India v. B.M. Ramachandra Rao & Ors., did not consider it necessary to go into the arbitrariness, validity or illegality of fixation of the cut-off date for the grant of pension to those employees who had retired between 01.01.1986 and 31.10.1993. In this case, this Court simply observed "the number of employees who have retired in this manner and financial implications being small, no interference was called for in the teeth of the Bank (Employees') Pension Regulations, 1995, Regulations 2(y), 29, 2(t), 2(u), 3 and 5."

As we have held that the respondent No.1, having retired as award staff, is not entitled to the grant of pension under the Pension Regulations 1995, we do not consider it necessary and expedient to go into the other above-mentioned points raised by the learned counsel for the parties.

In the result, for the afore-said reasons, the appeal is allowed to the extent indicated above. The impugned judgment dated 02.04.2002 of the Division Bench of the High Court of Judicature at Bombay allowing the Writ Petition No.567 of 2002 filed by the respondent No.1 cannot be

sustained and it is accordingly set aside and the Writ Petition shall stand dismissed.

The parties are left to bear their own costs.

JUDIS