

CASE NO.:
Appeal (civil) 6721 of 2004

PETITIONER:
SYNDICATE BANK, BANGALORE

RESPONDENT:
SATYA SRINATH

DATE OF JUDGMENT: 17/04/2007

BENCH:
A.K.MATHUR & TARUN CHATTERJEE

JUDGMENT:
J U D G M E N T

A.K.MATHUR, J.

This appeal is directed against the order dated 7th April, 2003 passed by the Division of the Karnataka High Court whereby the Division Bench has set aside the order of the learned Single Judge and allowed the writ petition No. 25322 of 1999, quashed the impugned order dated 26th June, 1999 and directed the management of the appellant-Bank to pay the pension to the respondent from 1.11.1993.

The respondent was the employee of the Syndicate Bank. The respondent remained unauthorisedly absent w.e.f. 11.3.1992 and a notice dated 18.11.1992 was issued to her calling upon her either to report back for duty or submit explanation for her absence within 30 days i.e. on or before 21.12.1992. It was also stipulated that if she failed to comply with the directions she would be deemed to have voluntarily retired from the service of the bank on expiry of 30 days from the date of notice in terms of Clause 17(a) of the Vth Bipartite Settlement. The respondent (herein) sent her explanation but the Bank Management did not find the explanation satisfactory. Therefore, the appellant vide letter dated 10.12.1992 informed the respondent(herein) that she was deemed to have voluntarily retired from service w.e.f. 23.12.1992 in terms of Clause 17(a) of the Vth Bipartite Settlement and she was deemed to have ceased from the service of the bank from that date. The explanation sent by the respondent (herein) was that due to illness she was unable to report for duty immediately and sought extension of time to report for duty and submitted an application for extension of leave supported by a medical certificate. Aggrieved against the order passed by the appellant, the respondent filed the writ petition No. 1259/1995 in the High Court seeking a direction to the appellant bank to reinstate her into service with all benefits. Learned Single Judge vide order dated 23.1.1995 dismissed the writ petition on the ground that there was inordinate delay in assailing the validity of the order dated 30.12.1992. Meanwhile the Syndicate Bank (Employees') Pension Regulations, 1995 (hereinafter to be referred to as the Regulation) came into force on 29.9.1995 i.e. the date of publication of the Regulations in the Official Gazette. The appellant issued a circular dated 4.11.1995 stating the Regulations were applicable to the following categories of employees:

- i) Those who were in the service of the Bank on or after 1.1.1986 but had retired before 29.9.1995.
- ii) Those who were in the service of the Bank before 29.9.1995 and continued to be in the service of the Bank on or after 29.9.1995.
- iii) Those who joined the services of the Bank on or after 29.9.1995.
- iv) to (viii) omitted as are not relevant.

It was clarified that the ex-employees who had voluntarily retired

in terms of Bank's Service Regulations Clause No. 19(1) or deemed to have voluntarily retired in terms of Vth Bipartite Settlement, between 1.1.1986 and 31.10.1993 are not eligible for pension under the pension Regulations, 1995.

It was also mentioned that regulation 29 of Pension Regulations 1995 provided for voluntary retirement of the employees who had completed 20 years of qualifying service by giving notice of not less than 3 months, in writing, subject to the conditions laid down therein.

The said circular also provided that ex-employees who had not exercised their option for pension under the Regulations earlier could exercise their option under the scheme within 120 days from 29.9.1995. In pursuance of that circular the respondent applied for pension scheme on 28.12.1995 but the same was rejected by the management on 22.1.1996. Aggrieved against the order, the respondent(herein) filed a writ petition No. 1370 of 1987 before the High Court. Learned Single Judge allowed the writ petition by order dated 17.2.1989 and held that since the respondent retired from service after 1.1.86 she was eligible for pensionary benefits under the Regulations and the High Court remanded the matter to the Bank for fresh consideration of the claim of the respondent(herein). After the remand the appellant bank reconsidered the matter and rejected the same by communication dated 26.6.1999. The reasons given by the appellant-bank for the rejection read as under:

"You remained absent from duties continuously from 11.3.1992. Even after service of notice since you did not join the duties nor submit any explanation for your absence, you were deemed to have voluntarily vacated/retired from the Bank's service with effect from 22.12.1992 in terms of Clause 17 of the Vth Bipartite Settlement.

Please note that such deemed retirement was not brought about by any positive action on the part of the Bank but is wholly on account of your own action. Your cessation in service became final as the writ petition filed by you challenging the Bank's order dated 30.12.1992 was dismissed by the Hon'ble High Court by its order dated 25.1.1995. It is, therefore, observed that you did not cease to be in the bank's service on reaching the age of superannuation nor did you seek and obtain voluntary retirement as per Regulation No. 29 of the Syndicate Bank (Employees) Pension Regulations, 1995. It is also not a case of premature retirement as described in the Pension Regulations because there is no positive action on the part of the Bank. Your action in effect amounted to abandonment of service. It is thus seen that you do not come within the scope of the Pension Regulations entitling you to receive pension. Further the Bank's circular No. 226/95/BC/PD/61/SWD dated 4.11.1995, it has been clarified that the ex-employees who have voluntarily retired in terms of the Bipartite Settlement, between 1.1.1986 and 31.10.1993 are not eligible for pension under the Pension Regulations, 1995. You cease to be in the services of the Bank w.e.f. 22.12.1992 and hence you are not entitled to pension. Even assuming without conceding that you had retired voluntarily from the services of the Bank as per the Pension Regulations, 1995, you would not be entitled to pension under the Pension Regulations, as you retired before 1.11.1993."

Aggrieved against that order the respondent filed another writ petition before the High Court. This came to be registered vide writ petition No. 25322 of 1999. Learned Single Judge held that the respondent was not entitled to pension under the relevant regulations and dismissed the writ petition vide order dated

27.7.1999. Aggrieved against that order also, the matter was taken up by the respondent (herein) in appeal before the Division Bench and the Division Bench after considering the matter came to the conclusion that the respondent was entitled to pension as per Regulations. Hence, the present appeal.

It is a fact that the respondent(herein) was in the service of the Bank since 7th April, 1969 and she had retired from the bank service w.e.f. 22.12.1992 and as per the regulation, the employees of the Bank who opted for pension were in the service of the Bank on or after 1.1.1986 but was retired before 29.9.95. Therefore, this condition stands fulfilled. These two parameters are not in dispute. The only question that calls for determination is that as per the Regulation and the circular dated 4.11.1995 issued by the Bank whether the respondent is entitled to pension or not? As per the clarification issued by the bank that ex-employees who had voluntarily retired from the bank's service or deemed to have voluntarily retired between 1.1.1986 and 31.10.1993, would not be eligible for pension under the Pension Regulation.

Now, the question is whether the respondent was deemed to have voluntarily retired as per Vth Bipartite Settlement or she has been retired by the appellant-bank. There can be two class of persons; one who sought voluntary retirement or the other who was deemed to have voluntarily retired. It is not the case of the voluntary retirement but she was made to retire by the order of the management. Therefore, she does not fall in either of the two categories. The respondent(herein) remained absent because of her ill-health and she submitted her application for extension of leave on medical ground but the management instead of taking sympathetic view, retired the respondent from the services of the bank. As she does not fall either of the above two categories, this is the third category which is not contemplated in the regulations. However, an attempt was made to bring her case in terms of the Clause 17(a) which says that if an employee absents himself from work for a period of 90 days or more consecutive days, without submitting leave application on his credit or beyond a period of leave sanctioned originally/subsequently and if the management is reasonably satisfied that the incumbent has no intention of joining duties, the management may at any time thereafter give notice to the employee and call him/her to report for duty and require the employee to furnish explanation within 30 days of the date of notice. If the employee does not satisfy the management, he/she can be deemed to have retired on expiry of the notice. In the event, the employee satisfies the bank, he/she can report for duty thereafter within 30 days of the expiry of the notice without prejudice to the bank's rights to take action under the service rules. In this regard Clause 17(a) of the Vth Bipartite Settlement reads as under:

"(a) when an employee absents himself from work for a period of 90 days or more consecutive days, without submitting an application for leave on his credit or beyond period of leave sanctioned originally/subsequently or when there is satisfactory evidence that he has taken employment in India or when management is reasonably satisfied that he has no intention of joining duties, the management may at anytime thereafter give a notice to the employee at his last known address calling upon him to report for duty within 30 days of the date of notice, stating inter alia the grounds for coming to the conclusion that the employee had no intention of joining duties and furnishing necessary evidence, where available. Unless the employee reports for duty within 30 days of the notice or gives an explanation for absence within the said period of 30 days satisfying the management that he has not taken up another employment or a vocation and that he has no intention of not joining

duties, the employee will be deemed to have voluntarily retired from Bank's service on the expiry of the said notice. In the event of the employee submitting a satisfactory reply, he shall be permitted to report for duty thereafter within 30 days of the date of expiry of the aforesaid notice without prejudice to the bank's right to take action under the law or rules of service."

In the present case, the respondent(herein) submitted her explanation and sought extension of time on medical ground. But the management of the Bank instead of considering the matter sympathetically, ordered for premature retirement under the purported exercise of Clause 17(a). It is not the case that she had voluntarily retired but it is a case where the bank has retired her as a measure of punishment because they were not satisfied by her explanation. Therefore, it is not a case which can be covered by the clarification issued by the Bank and it cannot be deemed that she has voluntarily retired. The contingency in the present case is not covered by the aforesaid Circular dated 4.11.1995. In the present case the respondent has put in almost 20 years' of service and has taken leave on medical ground which is being denied to her. In Clause 17 (a) what is contemplated is that a person who deliberately does not join the office and leaves the office without any satisfactory explanation, then it is open for the management to resort to Clause 17(a). But in the present case, the facts are very glaring that incumbent has put in 20 years of service and unfortunately she fell sick and sought for extension of leave on medical ground, that was denied to her. Therefore, it is not the case of the abandoned service or she did not send any reply to the notice sent by the management. However, she has made a humble reply to satisfy her authorities, that taking leave was beyond her control, i.e. ill health. But the authorities retired her prematurely and denied the pension of 20 years of service. Therefore, this kind of action is unfair, arbitrary which cannot be countenanced. In fact the order passed by the bank clearly states it is not the case of premature retirement and it is not the case that she has sought voluntary retirement or premature retirement. It is the bank who has retired her and that kind of contingency is not covered in the clarification made by the bank. It is a case of deemed voluntary retirement forced on her. The said contingency is not covered under the aforesaid order of authorities. It was a forced retirement by the respondent-bank.

Learned counsel has tried to persuade us that the letter rejecting her representation for pension was because of her deemed retirement brought about by her, on account of her own action. This observation of the bank is not correct. In fact the retirement has been forced by the bank. It is not the case that she was not willing to join the service but was unable to join due to ill-health. The decision of management, "deemed to have been voluntarily retired" is totally misconceived.

Learned counsel has tried to place a strong reliance on the case of Punjab & Sind Bank and Others Vs. Sakattar Singh reported in (2001) 1 SCC 214 wherein no domestic inquiry was held and three letters were issued to the incumbent directing him to join the duty and seeking explanation for unauthorized absence. The respondent submitted the joining report that he was suffering from eye ailment that was not accepted by the authorities and the services were terminated. The High Court set aside the termination and the matter came up before this Court and this Court in the facts and circumstances of the case held that the rules of natural justice should be borne in mind in the relevant fact situation. But in the present case, as already mentioned above, the fact that she had submitted her explanation supported by a medical certificate was not accepted by the bank- management and she was forced to retire. This contingency is not covered under circular

dated 4.11.1995.

Our attention was also invited to the case of UCO Bank and Others Vs. Sanwar Mal reported in (2004) 4 SCC 412 wherein their Lordships made a distinction between "resignation and retirement", that it carries a different meaning and it was observed that an employee can resign any time but he retires only on superannuation or in case of voluntary retirement on completion of qualifying service. The expression 'resignation' and 'voluntary retirement' are deliberate abandonment of service. Each expression carries different connotation and each case has to be examined whether it was a case of voluntary retirement sought by the employee or he has been retired on account of superannuation or he has resigned or he has been retired compulsorily as a measure of punishment. But so far as the present controversy is concerned, the compulsory retirement/ the premature retirement has been imposed by the appellant, it is not voluntarily sought by the respondent. It is a clear case of compulsory retirement ordered by the Management and that contingency has not been contemplated in the circular issued on 4.11.1995. Therefore, in any case, we are of the opinion that she could not be denied the benefit of her 20 years' of service when she comes within the pension scheme that she was employed prior to 1986 and retired before 29.9.95. Therefore, she is entitled to pension. In this view of the matter, we are of the opinion that the view taken by the Division Bench of High Court is correct and there is no merit in this appeal filed by the Bank. Hence, the same is dismissed with no order as to costs.