THE HONOURABLE SRI JUSTICE
ASHUTOSH MOHUNTA
and
THE HONOURABLE SRI JUSTICE
A.RAJASHEKER REDDY

WRIT APPEAL No. 1899 of 2005

Judgment: (Per Hon'ble Sri Justice *A.RAJASHEKER REDDY)*

This Writ Appeal is filed against the order dated 22.08.2005 in W.P.No.12564 of 1998, wherein the learned single Judge disposed of the writ petition treating the 1st respondent herein-writ petitioner as resigned from service, is arbitrary and illegal, and held that it must be deemed that the 1st respondent herein-writ petitioner has been retired voluntarily and his application for payment of pension under the Regulations shall be considered after asking the 1st respondent herein-writ petitioner to fulfill the conditions and he shall be paid all the arrears thereagainst, within a period of three months from the date of receipt of a copy of the order.

The facts, which are necessary for disposal of the writ appeal, are as under:

The 1st respondent herein filed W.P.No.12564 of 1998 seeking a mandamus to declare the action of the appellants herein-respondents in the writ petition in treating the letter of the 1st respondent herein-writ petitioner and not extending the benefit of pension as per the Bank (Employees) Pension Regulations, 1985 (for short 'the Regulations') as arbitrary, capricious and violative of Articles 14 and 16 of the Constitution of India and consequently to direct the appellants to extend the benefits under the Pension Scheme.

During pendency of the appeal, the 1st respondent herein-writ petitioner died, and as such, his wife is added his legal representative, as 2nd respondent

in the writ appeal.

It is the case of the 1st respondent herein-writ petitioner that he joined the appellants-bank as Clerk in November, 1946 and promoted as Grade-III Officer in 1966 and further promoted to the post of Scale-IV Officer in February, 1986. While working as Scale-IV Officer, he made an application seeking permission for voluntary retirement on medical grounds. Thereafter, he was paid retirement benefits of Rs.1,02,142.80 ps. While so, the Government issued the Regulations, which came into force from 29.09.1995. As per the said Regulations, the employees, who are in the service of the Bank on or after 01.01.1986 and who have retired before 01.11.1993 and who exercised the option in writing within 120 days from the notified date become member of the fund. On 03.05.1994, he submitted an application to come under the Pension Scheme. Again, another application was made to the Zonal Office on 04.07.1994 exercising option for payment of pension as per the scheme contemplated under the Regulations. The Bank addressed a letter dated 02.08.1994 stating that his request for joining Bank's Pension Scheme is not acceptable, as he is not eligible for pension benefit, since his resignation was accepted by the Bank and was relieved on 30.06.1986. The case of the 1st respondent herein-writ petitioner is that he never submitted any resignation letter to the Bank and he submitted an application to permit him to retire voluntarily. He never intended to resign the post. He further stated that the appellants have no power or authority to treat the application for retirement as a resignation letter. Thereafter, the 1st respondent herein-writ petitioner addressed a letter dated 27.09.1994 bringing to the notice of the appellants that he never resigned from the service of the Bank and he only submitted an application to permit him to retire voluntarily. He submitted another application dated 09.01.1995 requesting the General Manager (Personnel) of the Bank to consider supply of application form for pension and other material to enable him to apply for pension. He approached the Office of the 1st appellant number of times personally, but there was no response from the appellants. Further, he submitted a letter dated 22.01.1996 bringing all the relevant facts to the notice of the Bank and requesting to consider for grant of pension. However, he received a letter dated 02.03.1996 stating that his exit from the Bank is

consequent upon his resignation and as per Clause 22, Chapter IV of Andhra Bank Employees Pension Regulations, 1995, resignation, dismissal or termination of an employee from service of the Bank shall entail forfeiture of his entire past service and consequently shall not be eligible for pensionary benefits. Assailing the same, the 1st respondent-writ petitioner filed Writ Petition.

The appellants-Bank filed counter affidavit contending that Regulation 19 of the Andhra Bank Officers Service Regulations does not contemplate voluntary retirement. The definition of 'retirement' under Regulation 2(y) of the Pension Regulations also does not contemplate inclusion of 'retired persons' between 01.01.1986 and 01.11.1993. Regulation 29 of the Regulation does not include the category of persons like the 1st respondent herein-writ petitioner for the purpose of grant of pension. It contemplates payment of pension only for those who retired voluntarily after completion of 20 years of qualifying service on or after 01.11.1993. Therefore, the 1st respondent herein-writ petitioner cannot be treated as a person voluntarily retired after 01.01.1986 and before 01.11.1993. In fact, Regulation 29 contemplates even for extending the pension benefits to those who have retired voluntarily only after 01.11.1993 and not before. There is no scheme of voluntary retirement under the Service Regulations of the Bank. Therefore, the question of accepting the application of the 1st respondent herein-writ petitioner to retire voluntarily does not arise. Assuming that the 1st respondent herein-writ petitioner has retired voluntarily on 30.06.1986 as per Regulation 29 for entitlement of the pension, that is applicable only for the employees, who have retired on or after 01.11.1993. The 1st respondent herein-writ petitioner cannot claim the pensionary benefits on par with the employees, who retired between 01.01.1986 and 01.11.1993 on attaining the age of superannuation and also claim the benefit of voluntary retirement available to the employees after 01.11.1993 and therefore, sought for dismissal of the Writ Petition.

The learned single Judge held that treating 1st respondent herein-writ petitioner as resigned from service is arbitrary and illegal and the 1st respondent herein-

writ petitioner is deemed to have retired voluntarily and his application for payment of pension under Regulations shall be considered subject to fulfillment of conditions and he shall be paid all the arrears thereagaisnt. Challenging the same, the appellants-Bank filed the present writ appeal.

Heard both sides.

The learned counsel for the appellants-Bank contended that there is distinction between 'resignation' and 'voluntary retirement' and they carry different meaning. He further contended that an employee can resign at any point of time, whereas the voluntary retirement is on completion of qualifying service. He further contended that the Regulations does not provide for pension in case of employees who have resigned, as such, the learned single Judge erroneously held that the resignation of the 1st respondent herein-writ petitioner to be treated as voluntary retirement. He also contended that there is no scheme for voluntary retirement under the Regulations of the Bank. He further contended that though the 1st respondent herein-writ petitioner applied for voluntary retirement, since there is no provision in the Bank Regulations, the same was treated as resignation, which was accepted by the 1st respondent herein-writ petitioner and now he cannot contend that he is entitled for pension. He also referred to Regulation 22 of the Regulations postulated that resignation, dismissal, removal or termination would entail forfeiture of past service and would disentitle to pension. He placed reliance on the judgments in ***UCO Bank and others v. Sanwar Mal***[1] and ***Syndicate Bank, Bangalore v. Satya Srinath***[2]. He further contended that unless the 1st respondent herein-writ petitioner falls within the framework of pensionary regulations, he cannot be granted pension.

On the other hand, the learned counsel for the respondents contended that in fact, the 1st respondent filed application seeking voluntary retirement and the same was treated as letter of resignation by the appellants-Bank on their own, which is erroneous and the learned single Judge based on facts and circumstances of the case, held that the application has to be treated as application for voluntary retirement. He also contended that the 1st respondent herein-writ petitioner was appointed as Clerk in the appellants-Bank in the month of November, 1946 and in view of his meritorious service, he reached the position of SMGS IV, and after working for such a long period, he submitted application for voluntary retirement on 30.04.1986 due to his ill-health after serving the Bank for about four decades and the appellants-Bank have paid the retirement benefits also, as such, it cannot be said that he resigned the post. He further contended that when once a person is having sufficient qualifying service, he earns a right to get pension and it does not make any difference whether he resigned or obtained voluntary retirement. He placed reliance on the judgment in ***M/s.J.K. Cotton Spg. & Wvg. Mills Company Limited, Kalpi Road, Kanpur vs. State Of U.P. And Ors***[3] and the judgment of the Supreme Court in Civil Appeal No.6013 of 2011 dated 28.07.2011.

In the present case, the 1st respondent herein-writ petitioner made an application on 03.05.1994 on coming to know about the pension scheme, that his case may be considered for the purpose of granting pension, since he had retired from service on 30.06.1986 i.e., between 01.01.1986 and 01.11.1993. In fact, he made an application only for voluntary retirement and not otherwise and his application was taken into consideration for this purpose, but his application was treated as resignation from service, which the 1st respondent herein-writ petitioner never intended. Treating of application for voluntary retirement as resignation, according to us, is erroneous. In fact, retrial benefits as on

30.06.1986 were calculated and paid to the 1st respondent herein-writ petitioner on the basis of the service rendered by him in the Bank. As such, the contention of the learned counsel for the appellants-Bank that as per Regulation 22 of the Regulations, the resignation or dismissal or termination of an employee from the service of the Bank shall entail forfeiture of his entire past service and consequently shall not be qualified for pensionary benefits cannot be agreed to. The appellants-Bank took into consideration the total service put up by the 1st respondent herein-writ petitioner for the purpose of payment of retital benefits, which shows that Regulation 22 of the Regulations is not applicable. It is also the fact that Pension Regulations are applicable for the persons who have retired from service in between 01.01.1986 and 01.11.1993. The definition of 'date of retirement' under Regulation 2(k), as noted above, also includes the date on which the employee voluntarily retires or is deemed to have retired or is retired by the appellants-Bank. This means, apart from retirement on attaining the age of superannuation, a person, who has been retired by the Bank, even as a result of disciplinary proceeding by way of compulsory retirement, is entitled for pension and a person, who is deemed to have retired from service, if he had absented or absconded from duty, is also entitled for pension as per the provisions of the service rules, but is difficult to accept that a person, who had honestly served the organization for more than 40 years and sought voluntary retirement, just at the verge of his superannuation, due to ill-health is entitled for pension.

Regulation 3(7) of the Regulations contemplates eligibility of person in respect of the persons, who were in service of the appellants-Bank during any time on or after 01.01.1986 and died while in service on or before 31.10.1993 or had retired on or before 31.10.1993 but died before the notified date in which case their family shall be entitled to pension or the family pension, as the case

may be. So, it cannot be said that, a person, who retired voluntarily due to his ill-health is not allowed pensionary benefits, whereas family pension is allowed in case of death of employee. Regulation 29 of the Regulations, which deals with pension on voluntary retirement, states that on or after 01.11.1993 at any time after an employee has completed 20 years of qualifying service may, by giving a notice of not less than three months in writing to the appointing authority, retire from service.

In fact, there is no provision, which positively denies pension to the persons, who have voluntarily retired from service between 01.01.1986 and 01.11.1993. In the present case, the 1st respondent herein-writ petitioner has made an application for sanction of pension in time and agreed to fulfill the conditions as laid down under the Regulations, but he was not permitted to do so. In fact, the Supreme Court in Civil Appeal No.6013 of 2011, held that general purpose of the Pension Scheme, 1995, read as a whole, is to grant pensionary benefits to employees, who had rendered service and had retired after putting in the qualifying service. In fact, the Supreme Court interpreted similar provisions like clause 22 of the Pension Scheme, 1995, as in the present case and held that even a person who has resigned, he was put in qualifying service, he earns a right to get pension, he should be granted pension. The Supreme Court also considered the judgment cited by the appellants-Bank in ***UCO Bank and others v. Sanwar Mal*** case (1 supra), which was followed by the learned single Judge of Karnataka High Court in W.P.No.7245 of 2011, wherein the learned single Judge also held that a person who has resigned from service and having number of qualifying years of service, he is also entitled for pension, by relying on several judgments of the Supreme Court.

No doubt, this difference between the resignation and the voluntary retirement, but in the present case, the 1st respondent herein-writ petitioner has

sought for voluntary retirement, but the appellants-Bank on their own treated the same as resignation without any valid reason. As such, the learned single Judge after considering the above facts held treating the application of 1st respondent herein-writ petitioner as one of resignation, is illegal and arbitrary and consequently held that the 1st respondent herein-writ petitioner is deemed to have retired voluntarily. In the facts and circumstances of the present case, the judgments relied upon by the learned counsel for the appellants-Bank cannot have any application to the facts of the present case, since the 1st respondent herein-writ petitioner himself asked for voluntary retirement.

We have perused the order of the learned single Judge. The learned single Judge considered the Regulations elaborately and came to the right conclusion. We are of the view that there is no error committed by the learned single Judge and as such we affirm the order of the learned single Judge.

Accordingly, the writ appeal is dismissed while confirming the order dated 22.08.2005 in W.P.No.12564 of 1998. There shall be no order as to costs.

As a sequel, miscellaneous petitions, if any pending in this appeal, shall stand disposed of.

ASHUTOSH MOHUNTA,J.

A.RAJASHEKER REDDY,J.

30-08-2013

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[1] (2004)4 SCC 412

[2] (2009)16 SCC 422

[3] 1990(5) SLR 642