

compass and may be stated as thus:-

The appellant joined the respondent bank as Probationary Officer (P.O.) on 17th December, 1975. In course of time, the appellant was promoted as Chief Manager SMG-IV. In March 1998, he was transferred and posted as Chief Manager, Colombo Branch, Colombo. By order dated 13th May, 2003, the appellant was transferred from Colombo overseas branch to the Defence Colony Branch, New Delhi as Chief Manager (BM). It appears that the appellant had applied for 30 days' leave to visit London as his son was admitted in the hospital. The appellant thereafter wrote to the bank seeking extension of leave. The application for leave as well as the application for extension of time were refused by the respondent bank and the appellant was directed to report on duty at the Defence Colony branch, New Delhi.

On 21st January, 2004, the appellant submitted an application seeking voluntary retirement from the services of the bank in accordance with the Circular No.32/97-98 dated 15th July, 1997 and the format given by the bank for submitting the notice of voluntary retirement. The appellant has also sent a letter of authority to the Trustees of PF and Gratuity for adjusting his liabilities, if any, out of

the terminal benefits. The relevant portion the letter dated 21st January, 2004 reads as follows:-

“I have decided to voluntarily retire from the services of the Bank for some personal and family reasons.
Please take notice of my voluntary retirement from today.
I am unable to serve 3 months notice as required under
Regulation 29 of Indian Bank Employees Pension
Regulations 1995 and hence hereby authorize the Bank
to deduct the salary amount of the notice period from out
of amounts payable to me by the Bank on retirement.
I also authorize the Bank to adjust all my liabilities due to the Bank from out of the amount payable to me by the Bank on retirement.” (emphasis supplied)

The respondent bank vide letter dated 21st April, 2006, which was served on the applicant on 23rd April, 2006 refused the request of the appellant for voluntary retirement on the ground that appellant was not eligible under Pension Regulations, 1995.

3. The appellant being aggrieved preferred W.P.(C) No.16972/2005. The first prayer in the writ petition was for quashing the letter dated 20th April, 2004. The second prayer of the appellant was for a direction to the respondent to reimburse the educational expenses for the son of the appellant, who had been sent to Singapore for his education while the applicant was posted at Colombo. The third prayer of the appellant was for grant of travelling allowance bills for the journey from Colombo to Delhi, which was

declined by the respondents on account of delay in submitting the bills. The prayers for travelling allowance bills and education expenses have been granted by the learned single Judge.

4. In so far as prayer for voluntary retirement is concerned, the learned single Judge held that the appellant had not given notice of three months and instead he had requested that three months' wages could be deducted from his retiral benefits. No such alternative is provided in the Pension Regulations, 1995 and thus the appellant had not fulfilled the requirements of the Regulation 29.

5. Learned counsel appearing for the appellant contended that as per regulation 29 an employee would be eligible to pension on voluntary retirement in case he has completed 20 years of qualifying service and the appellant has admittedly worked with the respondent bank for more than 27 years, hence appellant is eligible for voluntary retirement. Learned counsel further submitted that neither in the impugned order dated 20th April, 2004 nor in the counter affidavit, the respondent bank has alleged that due to administrative exigency the request was declined. He submitted that period of three months is for the benefit of the employee and not for the bank. In support of his contention he referred to the decision of the Supreme Court in **Shri**

Mohan Singh Malhi Vs. State of Punjab, 1976 (3) SCC page 21.

Learned counsel also submitted that the bank has failed to communicate the order of rejection within the statutory period of 3 months and therefore, the permission for voluntary retirement must be deemed to have been granted in view of the mandatory language of regulation 29. He relied upon the decision of the Supreme Court in **Tek Chand Vs. Dile Ram reported in 2001 (3) SCC page 290** to contend that rejection after the specified period is of no consequence and that the application for voluntary retirement must be deemed to be accepted.

6. On the other hand, Mr. V.K. Rao, counsel appearing for the bank submitted that purpose of giving the notice of three months to the bank is to allow the management of the bank sufficient time to make provision for an alternative hand. He submitted that the Pension Regulations, 1995 do provide an opportunity to give less than three months' notice, but it is left to the discretion of the respondent bank to accept any such prayer. He submitted that regulation 29(2) itself makes it very clear that the notice of voluntary retirement shall require acceptance by the appointing authority. Therefore, deeming provisions shall not come into play. Learned

counsel also submitted that as per first proviso to regulation 29 in case of deputation or study leave abroad, the employee has to serve in India on a resumed post for a period of one year before issuing notice of voluntary retirement. The appellant having not completed one year service after his transfer to Delhi was, therefore, not eligible to apply for voluntary retirement.

7. We have given our anxious thought to the rival contentions advanced at the Bar. In the present case the applicability of the regulation 29 is not disputed. The said regulation permits an employee to apply for voluntary retirement after completion of 20 years of service. Admittedly the appellant had rendered more than 27 years of service and thus he was eligible for applying voluntary retirement. Sub clauses 2 and 3 of regulation 29, which are material for our purpose read as follows:-

“(2) The notice of Voluntary retirement given under sub-regulation (1) shall require acceptance by the appointing authority;

Provided that where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period.

(3) (a) AN employee referred to in sub-regulation (1) may make a request in writing to the appointing authority to accept notice of Voluntary Retirement of less than three months giving reasons thereof.

(b) On receipt of a request under clause (a), the appointing authority may, subject to the provisions of sub-regulation (2), consider such request for the curtailment of the period of the notice of three month on merits and if it is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, the appointing authority may relax the requirement of notice of three months on the condition that the employee shall not apply for Commutation of a part of the pension before the expiry of the notice of three months.” (emphasis supplied)

8. A plain reading of above provisions make it clear that it is open for an employee to make a request for the waiver of the period of notice of three months. In fact the appellant had applied for waiver of three months’ notice period and to deduct wages of three months in lieu of three months’ notice. The rejection order does not state that due to administrative exigency the prayer of appellant for voluntary retirement could not be granted nor it was stated that application was rejected for want of three months’ notice. No such contention is raised even in the counter affidavit. It appears that the respondent bank has relied upon the first proviso of regulation 29 in order to contend that the appellant was not eligible to apply for voluntary retirement. The proviso is reproduced below:-

“Provided that this sub-regulation shall not apply to an employee who is on deputation or on study leave on abroad unless after having been transferred or having returned to India he was resumed charge of the post in

India and has served for a period of not less than one year.....”

9. In the first place, the appellant was not on deputation at the relevant point of time. He was merely posted at Colombo branch, which is clear from the letter of posting dated 19th March, 1998 (page 31 of the paper book). Thus, the proviso to regulation 29 is also not attracted in the present case.

10. In **Mohan Singh Vs. State of Punjab**, the Court was concerned with the provision of rule 5.32(c) of Punjab Civil Service Rules, which provided that a retiring pension shall also be granted to a government servant, who retires on or after attaining the age of 55 years by giving not less than three months’ notice of his intention to retire to the appointing authority. The Court observed that the object of the notice is to give sufficient time to the government servant, whom it is intended to retire from service, to find employment elsewhere and to prevent his being suddenly left in lurch without any means of livelihood. If that be the object of the notice, no prejudice can be said to be caused to the government servant if in lieu of three months’ notice, he is given three months’ salary and allowances. Although the regulation in question is differently worded, it is clear

that it does not require an employee to work for the three months' notice period. It is not even the case of the bank that the request for voluntary retirement was rejected on account of lack of notice for three months.

11. For the above reasons, it is not possible to sustain the order of learned single Judge. The impugned order is hereby set aside and appeal is allowed. Letter dated 21st January, 2004 is quashed. The bank is directed to release retiral dues of the appellant in accordance with the Pension Regulations, 1995 with simple interest of 9% per annum from the date of filing of writ petition within a period of 4 weeks from today.

All pending applications are also disposed of.

CHIEF JUSTICE

SANJIV KHANNA, J.

FEBRUARY 02, 2009
NA