IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4168 OF 2001

Bappa s/o Bhaguji Shinde,
Age-59 yrs., Occu. - Retd.,
R/o. Ambikanagar, Pangri Road,
Beed, Dist. Beed ...Petitioner

versus

1. The Branch Manager,
State Bank of Hyderabad,
Opp. Ashok Talkies,
Beed Main Branch,
Bashirgunj, Beed.

2. The Regional Manager,
State Bank of Hyderabad,
Regional Office, Cidco,
Aurangabad.

3. The Chief Manager,
Pension, P.F. & Gratuity Department,
State Bank of Hyderabad,
Head Office, Gunfoundry,
Hyderabad.

4. The State Bank of Hyderabad
Head Office, Gunfoundry,
Hyderabad. 500 177 ...Respondents

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Mr. S. D. Joshi, Advocate with Mr. Ajeet M. Gholap for the petitioner
Mr. A. R. Joshi, Advocate for respondents.

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**CORAM : A. V. NIRGUDE AND
V. K. JADHAV, JJ.**

DATED : 7TH JANUARY, 2015

ORAL JUDGMENT (PER A. V. NIRGUDE, J.) :-

1. The facts leading to this petition are as under :

2. The petitioner joined Indian Army in the year 1961 and after performing almost 18 years service in Military, he sought discharge in the year 1978. He received all service benefits and pension. Thereafter, in 1983, the petitioner joined service of respondent as watchman. He was appointed as watchman at Beed Branch of the respondent Bank. He could not have completed 20 years of service before he could reach the age of superannuation. His date of retirement on superannuation was sometime in 2001. Before that, on 4th of November, 1999, he submitted an application for premature retirement on the ground of ill health. This application was submitted to the Regional Manager at Beed. A copy of this application was also sent to the Chief Manager. In this letter, the petitioner gave three months' time to his employer to consider his application. The Bank did not react to this application. On 31st December, 1999, i.e. after about two months of the letter dated 04th November, 1999 the petitioner submitted his resignation but the contents of this application are almost similar to the earlier application. The petitioner reiterated about his ill health and domestic difficulties. He requested the employer that his resignation should be accepted prior to 31st January, 2000. Again on 11.02.2000, the petitioner moved an application to the Regional Manager at Beed requesting the change in his earlier letter. He now requested the Bank Manager to allow his application for retirement on or before 29.02.2000. On 15.02.2000,

the General Manager, State Bank of Hyderabad, Aurangabad Zonal Office, Aurangabad, sent a letter to the Assistant General Manager, Region II, Beed, informing him that resignation of the petitioner is accepted and he should be relieved. The petitioner, thereafter realized, in view of the events that are mentioned above, he would not be entitled to any pensionary benefits. Therefore, this petition is filed for getting pensionary benefits.

3. The Bank opposed the petition saying that the petitioner did not qualify for monthly pension because he retired prematurely before reaching the age of superannuation and therefore, 18 years service rendered by him stood forfeited. The learned counsel for the Bank also contended that assuming that the petitioner had moved an application for premature retirement, unless the Bank granted it, the petitioner would not get any pensionary benefits.

4. We heard the submissions made by the learned counsel for respective parties. We also went through the Pension Regulations of the Bank, carefully. The salient features of the Pension Regulations to the extent they are relevant to the present case are as under :

> *"2(k) "date of retirement" means 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;

2(y) "retirement" means cessation from Bank's service, -

(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;

(c) on premature retirement by the Bank before attaining the age of superannuation specified in Service Regulations or Settlement;

14 Qualifying Service - Subject to the other conditions contained in these regulations, an employee who has rendered a minimum of ten years of service in the Bank, on the date of his retirement or on the date on which he is deemed to have retired shall qualify for pension.

22 Event of disqualification - (1) Resignation or dismissal or removal or termination of an employee from the service of the Bank including that of an employee who is deemed to have voluntarily retired from the Bank's service in terms of the provisions for voluntary cessation of employment continued in Bipartite Settlement shall entail forfeiture of his entire past service and consequently shall not qualify for pensionary benefits;

29 *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 competent authority retire from service;*

Provided that this sub-regulation shall not apply to an employee who is on deputation or on study leave abroad unless after having been transferred or having returned to India he has resumed charge of the post in India and has served for a period of not less than one year:

Provided further that this sub-regulation shall not apply to an employee who seeks retirement from service for being absorbed permanently in an autonomous body or a public sector undertaking or company or institution or body, whether incorporated or not to which he is on deputation at the time of seeking voluntary retirement:

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

30 *Invalid Pension - (1) Invalid pension may be granted to an employee who, -*

(a) has rendered minimum ten years of service; and

(b) retires from the service, on or after the 1st day of

November, 1993, on account of any bodily or mental infirmity which permanently incapacitates him for the service.

(2) An employee applying for an invalid pension shall submit a medical certificate of incapacity from a medical officer approved by the Bank.

(3) Where the Medical Officer approved by the Bank has declared the employee fit for further service of less laborious character than that which he had been doing, he should, provided he is willing to be so employed, be employed on lower post and if there be no means of employing him even on a lower post, he may be admitted to invalid pension.

(4) No medical certificate of incapacity for service may be accepted unless the applicant obtains the medical certificate on production of a letter to show that the Competent Authority is aware of the intention of the applicant to appear before the medical officer approved by the Bank.

(5) The medical officer approved by the Bank shall also be supplied by the Competent Authority under whom the applicant is employed with a statement of what appears from official record to be the age of the applicant.

31 Compassionate Allowance - (1) An employee, who is dismissed or removed or terminated from service, shall *forfeit his pension:*

Provided that the authority higher than the authority competent to dismiss or remove or terminate him from service may, if -

(i) Such dismissal, removal, or termination is on or after the 1st day of November, 1993; and

(ii) the case is deserving of special consideration, sanction a compassionate allowance not exceeding two-thirds of the pension which would have been admissible to him on the basis of the qualifying service rendered up to the date of his dismissal, removal, or termination.

(2) The Compassionate Allowance sanctioned under the proviso to sub-regulation (1) shall not be less than the amount of minimum pension payable under regulation 36 of these regulations.

32 Premature Retirement Pension - Premature Retirement Pension may be granted to an employee who, -

(a) has rendered minimum ten years of service;"

5. It is now apparent that few months prior to reaching the age of superannuation, the petitioner suffered from some kind of illness and apparently, he started writing letters to his employer indicating that

he should step down and his employer should pay him pension. Such a situation, in view of the Regulations, is covered only by Regulation 2 (y) (c). In other words, the petitioner wanted to take premature retirement. Premature retirement is possible in certain events. Regulation 32 is the relevant provision and it is quoted above.

6. The case of the petitioner would have fallen in this provision. As said above, a few months prior to reaching the age of superannuation, the petitioner was exhibiting a disorder by which he was repeatedly asking his employer to relieve him. When he sent such letters to his employer, his employer ought to have considered his case as to whether the petitioner should be allowed to retire from service in public interest or for any other reason. If the petitioner was not keeping good health and if he was showing symptoms of ill health, it was necessary for his employer to get him examined medically to find out as to whether the petitioner is rendered invalid or useless for the job he was given. We must also not forget that the petitioner was serving as a watchman, which requires attention, mental alertness as well as physical fitness. If a watchman shows inability in any of the areas mentioned above, it would be detrimental to the safety of the place where he is performing his duty. So, when the petitioner, who was working as watchman, was repeatedly

requesting his employer that he should be permitted to go home and he should also be permitted to have pensionary benefits, it was the duty of his employer to get him examined throughly. The employer, after collecting information about so called ill health of the petitioner, would have taken a decision as to whether his application should be allowed or not. Had there been no cause for seeking premature retirement, the employer could have informed the petitioner that his application deserved to be dismissed and he must perform his duties till he reached the age of superannuation. In any event, such decision ought to have been taken and communicated to the petitioner. This is admittedly not done in this case. The superior officer of the petitioner simply kept piling the petitioner's applications. Lastly, in February, 2000, as if they were doing favour to the petitioner, his case was considered rather inhumanly and mechanically and his so called resignation was accepted.

7. Having gone through the facts of the case, we are of the view that there was, in fact, no question of submitting resignation and accepting the same. Before submitting resignation on 4th November, 1999, the petitioner had moved a clear application seeking premature retirement and seeking premature retirement pension also. The employer, as said above, was under statutory obligation to either allow the application or reject it in clear words. In absence of such

action, the employer could not have accepted the resignation which was submitted subsequently and apparently out of disgust.

8. Since the respondent Bank did not consider the application of the petitioner seeking premature retirement and seeking premature retirement pension as per Regulations, we hold that the application stood allowed and it must be declared that the petitioner retired from service in the public interest.

9. The learned counsel for the respondent Bank placed reliance on the following judgments

1. ***UCO Bank and others vs. Sanwar Mal*** reported in ***AIR 2004 SC 2135***. The law laid down in this judgment is, no doubt, binding on us but the same is really not applicable to the facts of the case which are discussed in detail above.

2. ***M.R. Prabhakar and others vs. Canara Bank and others*** reported in ***2012 (9) SCC 671***. This Judgment is also not applicable to the facts of this case.

10. On the other hand, the learned counsel for the petitioner placed reliance on certain judgments but we found them not quite relevant to the facts of the case.

11. We have clarified above that this is not a case of voluntary retirement as contemplated by Regulation 29. It is apparently a case of premature retirement as per Clause 2 (y) (c) and Regulation 32.

12. In view of this, the petition stands allowed in terms of prayer clause “C”. Rule is made absolute in the above terms.

(V. K. JADHAV, J.) **(A. V. NIRGUDE, J.)**

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