THE HON'BLE SRI JUSTICE DILIP B. BHOSALE
AND
THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT APPEAL No.253 of 2015

P.C: (Per Hon'ble Sri Justice A.Ramalingeswara Rao)

This Writ Appeal is directed against the order of the learned single Judge in W.P.No.13694 of 2002 dated 08.10.2014. The respondents in the Writ Petition are the appellants before us.

The respondents herein filed the Writ Petition challenging the proceedings in Ref.No.PER/PEN/PDO/2002-03/39, dated 12.04.2002 and also the action of the respondents therein in not providing a provision for return of banker's contribution towards Provident Fund in favour of employee.

The first respondent herein, who died during the pendency of the Writ Petition, was initially appointed as a clerk under the control of the appellants during July 1990 after having been selected by the Banking Service Recruitment Board (BSRB), Bhopal. Before joining the bank he worked as Junior Commissioned Officer in the Indian Army. The appellants introduced the pension scheme for the first time in the year 1993. At the time of introduction of the scheme, the employees were directed to exercise their option for pension subject to the condition that they should have minimum qualifying service of ten years for getting pension and the bank's contribution of Provident Fund would be transferred to pension fund and the bank will not contribute its share towards provident fund. The first respondent opted for pension scheme on 30.11.1994. When the voluntary retirement scheme was introduced by circular dated 16.11.2000, he opted for the same. He was relieved on 31.01.2001. His share of contribution of Provident Fund up to

31.03.1999 and gratuity was released to him on 03.11.2001 and 17.11.2001 respectively. When he represented for the bank's share of contribution of Provident Fund, it was informed to him by letter dated 15.12.2001 that when a reference was made to the Indian Banks' Association (IBA), it was clarified that the concerned employee would not be entitled for employer's contribution to Provident Fund, since he has not completed fifteen years of service. He submitted a representation on 16.03.2002 for release of the bank's contribution, and the same was rejected on 12.04.2002. Challenging the same, the above Writ Petition was filed. When the first respondent expired, respondent Nos.2 to 5 were brought on record as legal representatives of the deceased first respondent by order in W.P.M.P.No.36769 of 2009 dated 10.08.2010.

A counter affidavit was filed by the appellants herein before the learned single Judge contending that the first respondent opted for pension scheme under UCO Bank (Employees) Pension Regulations, 1995, and since the first respondent rendered less than fifteen years of service, he was not eligible for pension. Since he was not eligible for pension, he was also not eligible for bank's contribution of Provident Fund. The learned single Judge, after considering the voluntary retirement scheme introduced under circular dated 16.11.2000 and the case cited by the appellants in **Bank of Baroda v. Ganpat Singh Deora**[1], and **Allahabad Bank v. A.C.Aggarwal**[2] relied on by the learned Counsel for the respondents, allowed the Writ Petition with the following observations.

> "In the instant case, the claim of the petitioner is required to be examined in terms of para-7(ii)(a) of the Circular dated 16.11.2000. Para-7(ii)(a) of the said Circular enables the petitioner for pension in case he had put in 20 completed years of service. Clause-(b) alternatively provides for Bank's contribution towards provident fund as per the existing rules. Therefore, ineligibility of the petitioner to claim pension under the voluntary retirement scheme does not automatically disentitle him for claiming Bank's contribution towards provident fund.

The proceedings dated 12.04.2002 interpreting that since the petitioner is not entitled for pension under voluntary retirement scheme, he is also not entitled for Bank's contribution towards provident fund is wholly misconceived because it goes against the plain reading of para-7 of the Circular dated 16.11.2000.

As rightly contended by the petitioner, when once he was permitted to get retirement under the voluntary retirement scheme, having opted for pension during 1994, cannot be denied the Bank's contribution towards provident fund on the ground that his option for pension is irrevocable though he is not entitled for the same. The proceedings dated 12.04.2002 are therefore liable to be set aside. Consequently, the proceedings dated 12.04.2002 are set aside. The respondents are directed to pay the petitioner the Bank's contribution towards provident fund, within a period of 2 (two) months from the date of receipt of a copy of this order."

It is not in dispute that the first respondent opted for voluntary retirement scheme under circular dated 16.11.2000 and Annexure-I contains paragraph 7(ii)(a), which reads as follows:

"I) Gratuity as per the existing orders

(ii)(a) Pension (including commuted value of pension) as per Bank's Regulations, in case of those who have opted for pension and have put in 20 completed years of service.

OR

Bank contribution towards provident fund as per the existing rules."

A reading of the above paragraph shows that if the person who has opted for voluntary retirement scheme has not put in twenty years of completed service and was not eligible for pension, he has an alternative of receiving bank's contribution towards Provident Fund.

The only point raised before us by the learned Counsel for the appellants is that in view of the clarifying letters issued by the IBA dated 06.08.2001 and 19.10.2001, the first respondent was not made eligible either for pension or employer's contribution of Provident Fund. In the letter dated 06.08.2001 it was clarified that in respect of employees, who have taken voluntary retirement under the UCO Bank Employees' Voluntary Retirement Scheme, 2000, the pensionary benefits have to be determined in terms of the proviso to Regulation 28 subject to Regulation 2(w) and Regulation 17. That was a general clarification issued in respect of employees who took voluntary retirement but who have not completed fifteen years of service. After receipt of the said clarification, the bank again wrote to the IBA whether there was any scope of consideration for release of bank's contribution to Provident Fund in such cases though the said contribution has already stood credited to the pension fund and they had opted for pension irrevocably in the past. It was clarified by the IBA by letter dated 19.10.2001 that in such cases they would not be eligible for pension or employer's contribution to Provident Fund.

The liability to pay the employee's and employer's contribution to Provident Fund arises out of statutory provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. It is an admitted case that the employee's contribution was deducted from the first respondent's salary and in such case the employer's contribution should also be credited to the account of the first respondent. When the bank paid the employee's contribution consequent to the retirement of the first respondent under voluntary retirement scheme, it is imperative that the appellants should return the employer's contribution also. The Provident Fund of the members of the scheme should be maintained under the provisions of the above enactment and the amount at the credit of the member should be returned to him when a member leaves the organization. The denial of the employer's contribution after paying the employee's contribution is untenable, and the learned single Judge has rightly allowed the Writ Petition.

We do not see any merit in the Writ Appeal, and the same is accordingly dismissed at the admission stage. The miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

(DILIP B. BHOSALE, J)

(A.RAMALINGESWARA RAO, J)

24.03.2015

vs

[1] (2009) 3 SCC 217

[2] (2013) 4 SCC 141