

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) No.3521/2014**

% **5th May, 2015**

KAMLESH PRATAP SINGH Petitioner

Through: Mr.Harish Sharma with Mr.B.K.Saini,
Advocates.

versus

UNITED BANK OF INDIA Respondent

Through: Mr.S.S.Lingwal, Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. By this petition filed under Article 226 of the Constitution of India, petitioner, who was an employee of the respondent/United Bank of India, seeks the relief that respondent/Bank be directed to accept the option for pension which has been exercised in terms of the Pension Scheme of the respondent/Bank dated 16.8.2010.

2. It is not in issue that the petitioner had put in the minimum number of 15 years of service with the respondent/Bank so as to claim pension, however, the issue to be decided by this Court is whether the petitioner who has suffered the penalty of compulsory retirement, should or should not be allowed to exercise the option for pension in terms of the 2010 Pension

Scheme. The punishment which was imposed upon the petitioner by the Disciplinary Authority is by the order dated 23.12.2009, and which reads as under:-

“Compulsory Retirement with superannuation benefits i.e., Pension and/or Provident Fund and Gratuity as would be due otherwise under the Rules prevailing in the Bank and without disqualification from future employment.”

3. A reading of the aforesaid penalty imposed upon the petitioner shows that the petitioner, no doubt, was compulsorily retired, but, he was retired with superannuation benefits. In the 2010 Pension Scheme of the respondent/Bank, originally in the para which specifies the persons entitled to exercise the pension option, the expression ‘voluntary retirement’ was found, but subsequently the expression ‘voluntary’ was taken away and only the word ‘retirement’ remained i.e all persons who would have retired from the respondent/Bank on and after 29.9.1995 were to be entitled to exercise the pension option. The original clause and the substituted clause read as under:-

“Original Clause:

“RETIRED EMPLOYEES means those who were in service of the Bank on or after 29th September, 1995 and ceased to be in service of the Bank on account of retirement on Superannuation, Voluntary Retirement, Death or on account of VRS under Special Scheme prior to 27th April, 2010.”

Substituted Clause:

“RETIRED EMPLOYEES means those who were in service of the Bank on or after 29th September, 1995 and ceased to be in service of the Bank on account of retirement on Superannuation, Death or on account of VRS under Special Scheme prior to 27th April, 2010.” ”

4. The issue in the present case is fully covered in favour of the petitioner by the ratio of the judgment of the Supreme Court in the case of ***Bank of Baroda Vs. S.K. Kool (D) through LRs. & Anr. AIR 2014 SC 915***, wherein the Supreme Court dealing with a case of identical punishment imposed upon the employee in that case held that such an employee will be entitled to exercise pension option and the bank cannot say that in view of the disciplinary regulations, a person on whom punishment of compulsory retirement is imposed, cannot be allowed to exercise pension option. The relevant paras in ***S.K. Kool***’s case (*supra*) are paras 10 to 15, and which read as under:

“10. Having considered the rival submissions we do not have the slightest hesitation in accepting the broad submission of Mr. Gupta that the Regulation in question is statutory in nature and the court should accept an interpretation which would not make any other provision redundant. Bearing in mind the aforesaid principle, we proceed to consider the rival contentions. The terms and conditions of service of the employees are governed and modified by the Bipartite Settlement. Various punishments have been provided under the Bipartite Settlement which can be inflicted on the employee found guilty of gross misconduct. In 2002, a Bipartite Settlement was signed by the Indian Banks’ Association and the Banks’ workmen’s Union with regard to disciplinary action procedure. It is common ground that in the light of the said Bipartite Settlement, clause 6(b) was inserted as

one of the punishments which can be inflicted on an employee found guilty of gross misconduct and the same reads as follows:

“6. An employee found guilty of gross misconduct may:

(a)

(b) be removed from service with superannuation benefits i.e. Pension and/or Provident Fund and Gratuity as would be due otherwise under the Rules or Regulations prevailing at the relevant time and without disqualification from future employment, or

xxx xxx xxx”

11. The employee undisputedly has been visited with the aforesaid penalty in terms of the Bipartite Settlement.

12. Article 22 of the Regulation, which is relied on to deny the claim of the employee reads as follows:

“22. Forfeiture of service:

(1) Resignation or dismissal or removal or termination of an employee from the service of the Bank shall entail forfeiture of his entire past service and consequently shall not qualify for pensionary benefits.”

13. From a plain reading of the aforesaid Regulation, it is evident that removal of an employee shall entail forfeiture of his entire past service and consequently such an employee shall not qualify for pensionary benefits. If we accept this submission, no employee removed from service in any event would be entitled for pensionary benefits. But the fact of the matter is that the Bipartite Settlement provides for removal from service with pensionary benefits “as would be due otherwise under the Rules or Regulations prevailing at the relevant time”. The consequence of this construction would be that the words quoted above shall become a dead letter. Such a construction has to be avoided.

14. The Regulation does not entitle every employee to pensionary benefits. Its application and eligibility is provided under Chapter II of the Regulation whereas Chapter IV deals with qualifying service. An employee who has rendered a minimum of ten years of service and fulfils other conditions only can qualify for pension in terms of Article 14 of the

Regulation. Therefore, the expression “as would be due otherwise” would mean only such employees who are eligible and have put in minimum number of years of service to qualify for pension. However, such of the employees who are not eligible and have not put in required number of years of qualifying service shall not be entitled to the superannuation benefit though removed from service in terms of clause 6(b) of the Bipartite Settlement. Clause 6(b) came to be inserted as one of the punishments on account of the Bipartite Settlement. It provides for payment of superannuation benefits as would be due otherwise. The Bipartite Settlement tends to provide a punishment which gives superannuation benefits otherwise due. The construction canvassed by the employer shall give nothing to the employees in any event. Will it not be a fraud Bipartite Settlement? Obviously it would be. **From the conspectus of what we have observed we have no doubt that such of the employees who are otherwise eligible for superannuation benefit are removed from service in terms of clause 6(b) of the Bipartite Settlement shall be entitled to superannuation benefits.** This is the only construction which would harmonise the two provisions. It is well settled rule of construction that in case of apparent conflict between the two provisions, they should be so interpreted that the effect is given to both. Hence, we are of the opinion that such of the employees who are otherwise entitled to superannuation benefits under the Regulation if visited with the penalty of removal from service with superannuation benefits shall be entitled for those benefits and such of the employees though visited with the same penalty but are not eligible for superannuation benefits under the Regulation shall not be entitled to that.

15. Accordingly, we hold that the employee’s heirs are entitled to superannuation benefits. The entire amount that the respondent is found entitled to along with interest at the rate of 6% per annum should be disbursed within 6 weeks from the date of receipt/communication of this Order.”

(emphasis added)

5. A reading of the aforesaid ratio of the Supreme Court in *S.K. Kool’s* case (*supra*) makes it clear that a person who has been imposed the penalty of compulsory retirement, but with superannuation benefits, will be entitled to

exercise the pension option and the language in the clauses pertaining to disciplinary regulations and the pension scheme have to be read harmoniously in favour of the employee in view of the bipartite settlements/agreements which have been entered into from time to time by the banks with its employees.

6. Learned counsel for the respondent/Bank sought to place reliance upon para 14 of the 2010 Pension Scheme, however, it is to be pointed out that the same is misconceived inasmuch as this para has been substituted, as already noted above, and the word 'voluntary' before the expression 'retirement' stands removed.

7. I may also note that para 11 of the 2010 Pension Scheme clearly states that clauses/provisions of earlier bipartite settlement/agreement unless superseded by the new 2010 Pension Scheme, those clauses/provisions will stand, and therefore, the clauses/provisions of the bipartite settlement/agreement of 2002 between the banks and its employees will stand, and clause 6(b) of which has been reproduced by the Supreme Court in the judgment in the case of ***S.K. Kool (supra)***.

8. In view of the above, this writ petition is allowed and the respondent/Bank is directed to process the pension option exercised by the petitioner under the 2010 Pension Scheme within a period of 6 weeks from today, and dues shall be released to the petitioner positively within a period of

two months from today. Petitioner will also be liable to comply with all the terms of the 2010 Pension Scheme including refund of any CPF amount along with interest as per the Scheme and/or give all the necessary papers and comply with the formalities which the petitioner is expected to comply with under the 2010 Pension Scheme. Petitioner will do the needful within a period of two weeks from today, and in case, the respondent/Bank does not release the dues of the petitioner within a period of two months from today, then thereafter, on the arrears which are due to the petitioner, petitioner will be entitled to interest @ 7½% per annum simple.

9. The writ petition is allowed accordingly. No costs.

MAY 05, 2015
KA

VALMIKI J. MEHTA, J.