In the High Court of Judicature at Madras

Dated: 13.04.2016

Coram:

The Honourable Mr. SANJAY KISHAN KAUL, Chief Justice
and
The Honourable Mr. Justice M.M. SUNDRESH

Writ Appeal No.549 of 2011

1.R.Rajasekaran (deceased)
2.Devi Malliga
3.R.Kamala .. Appellants/Petitioner
(Appellants 2 and 3 substituted as legal heirs of the deceased Sole Appellant vide Order 2.2.2015 in M.P.No.1 of 2015)

Vs.

1.The Presiding Officer,
Tribunal-cum-Labour Court,
Shastri Bhavan,
Chennai-600 006.

2.The Management of Indian Overseas Bank,
rep. by its General Manager,
763, Anna Salai,
Chennai-600 002. .. Respondents/Respondents

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent, against the order dated 08.02.2011 made in W.P.No.21825 of 2003 on the file of this Court.

WP.NO.21825/2003:- Writ of Certiorarified Mandamus calling for the records from the 1st Respondent relating to the award in I.D.NO.696/2001 Dated 10/02/2003 and direct the 2nd Respondent to reinstate the petitioner in service with continuity of service and backwages and attendant benefits.

For Appellants : Mr.S.Ayyathurai
M/s.N.G.R.Prasad for
For Respondent 2 : K.Srinivasamurthy for R2

For Respondent 1 : Court

J U D G M E N T

(Made by The Hon'ble The Chief Justice)

The entire dispute arises from an order of deemed voluntary retirement dated 20.02.1995 retiring the late appellant from service with the second respondent bank.

2. The late appellant is stated to have been a habitual defaulter from 1993 onwards and failed to join, despite notice issued to him dated 02.01.1995 advising to report for duty within 30 days, treating it as a case of voluntary retirement from bank service on his own accord.

3. We are informed by the second respondent-bank that the eligible terminal benefits were settled, which are as under:-

> "Gratuity of Rs.34,350/- (calculation sheet enclosed)
> (As per the Act the member is eligible for 16,448.35 for the total active service period of 10 Y 5 M & 5D - as per the Scheme 34,350/-) on 28.09.1995.
> Members contribution of PF of Rs.16,979.57
> Bank Contribution of PF of Rs.16,979.57
> Less PF loan/withdrawal of Rs. 9,481.45
> Rs.24,477.69 was settled to the petitioner himself."

4. The late appellant is stated to have not opted for pension and thus, no pension was given to him and it is stated that even if he had opted for pension, he would not have been eligible for the reason as under:-

> "During 1993, he was absence from duty for more than 100 days and in 1994, he was absent for 92 days i.e. Jan 94 - 1 day, Feb 94 - 9 days, Mar 94 - 8 days, Apr 94 - 4 days, May 94 - 31 days, June 94 - 31 days, July 94 - 31 days, Aug 94 - 31 days, Sep 94 - 16 days, Oct 94 - 31 days, Nov 94 - 30 days, Dec 94 - 31 days."

5. Thus, the second respondent-bank has taken a stand that the late appellant is stated to have completed 10 years, 5 months and 5 days of active service, which would not make him eligible for pension under the Indian Overseas Bank Pension Regulations, 1995.

6. In respect of the aforesaid, the learned counsel for the second respondent bank has drawn our attention to the fact that the Pension Regulations came into force on 29.09.1995 and though the late appellant had voluntarily retired prior to that date, he falls within the window between 01.11.1993 and the notified date 29.09.1995. Thus, Regulation 2 (a) would govern the late appellant. However, in this situation also, the late appellant was required to exercise his option in writing within 120 days from the notified date to become a member of the Funds and for refund within 60 days after the expiry of the said period, and the entire amount of the bank's contribution to the Provident Fund and the interest accrued thereon with further simple interest at the rate of 6% per annum. The learned counsel's submission is that those provisions would not come to the aid of the late appellant.

7. Regulation 29 governs pension in cases of voluntary retirement where such voluntary retirement was on or before 01.11.1993. But that also requires 20 years of qualifying service, which undisputedly the late appellant does not posses. Fortunately, for the legal heirs of the late appellant, Regulation 32 would come to their aid, which reads as under:-

> "32. Premature Retirement Pension:-
> Premature Retirement Pension may be granted to an employee who,-
> (a) has rendered minimum ten years of service;
> (b) retires from service on amount of orders of the Bank to retire prematurely in the public interest or for any other reason specified in service regulations or settlement, if otherwise, he was entitled to such pension or superannuation on that date."

8. The late appellant has certainly rendered 10 years of service. The actual service was almost 17 years plus, though towards the tail end of his service prior to the voluntary retirement, which was a consequence of his absence, he was a defaulter in attending the duties. He is no more and has left behind his widow wife and the aged mother. We are of the view that the ends of justice would be met in the peculiar facts and circumstances of the case, if the case of the late appellant is considered for grant of such pension favourably after adjustment of the amount paid as bank contribution. We thus direct that formal orders be passed by the second respondent-bank granting the legal heirs of the late appellant the pension in terms aforesaid and the arrears, if any, be also paid. Needful be done within a period of two months from today and the future pension would also be admissible to the legal heirs of the late appellant according to the Regulations.

9. The appeal is disposed of in terms aforesaid, leaving the parties to bear their own costs.

bbr Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1.The Presiding Officer,
Tribunal-cum-Labour Court,
Shastri Bhavan,
Chennai-600 006.

2. The General Manager,
The Management of Indian Overseas Bank,
763, Anna Salai, Chennai-600 002.

+ 1 cc to Mr.S.Ayyathurai, Advocate Sr 23568

+ 1 cc to M/s.N.G.R.Prasad, Advocate Sr 23749

KR/20/4/16

Writ Appeal No.549 of 2011