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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 04.02.2016

\+ LPA 505/2015

VIJAY KUMAR NARANG ..... Appellant

Through: Mr. Saket Sikri, Advocate alongwith Ms. Sumedha Dang, Advocate.

versus

UNION BANK OF INDIA AND ORS ..... Respondents

Through: Mr. O.P. Gaggar, Advocate.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MS. JUSTICE DEEPA SHARMA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. The appellant is aggrieved by the judgment and order of a learned Single Judge of this Court dated 25.05.2015 dismissing his writ petition. The appellant's grievance was against the respondent bank's letter dated

27.03.2001 whereby the bank treated the appellant as having abandoned his service, thus disentitling him to pension.

2. The brief facts are that the appellant joined the services of the bank some time in 1977. He was served a show-cause notice under Clause 17(c) of the Bipartite Settlement which bound the bank with its employees. This show-cause notice sought explanation as to why the appellant was absent for a period of more than 30 days in two spells i.e. 04.11.1996 to 01.07.1997 and 03.07.1997 to 20.01.1999. The show cause notice was issued on the later date i.e. 20.01.1999. The notice further warned that in the event he did not report for duties within 30 days of its receipt or within the period apply for authorised absence after reporting, he would be deemed to have voluntarily retired from service. It is a matter of record that the appellant did not furnish any explanation or response to the notice either before or after its receipt. On 23.04.1999, he was informed that under Clause 17 his case had been treated as voluntary cession from the services of the bank with immediate effect. Sh. Narang was further informed that his name has been struck off from the muster roll of the bank. The appellant was aggrieved by this order as well as the subsequent letter dated 27.03.2001 whereby the bank stated that he was ineligible for pension benefits under the Union Bank of India (Employees) Pension Regulation 1995 (hereinafter called " Pension Regulations").

3. The learned Single Judge by the impugned order dated 25.05.2015 rejected the appellant's plea as to the invalidity of the voluntary cession order and also rejected his claim for pension. The appellant had

contended that since the show cause notice-followed by the order of 23.04.1999, stated that since the consequence of either his explanation not being found satisfactory, or there being no explanation was voluntary retirement from service, he had to necessarily be given pensionary benefits in terms of the Union Bank of India (Employees') Pension Regulations, 1995.

4. Mr. Sikri, Advocate appearing for the appellant submitted that the present appeal is confined to the question of entitlement to pension. Characterising the impugned judgment as erroneous, learned counsel relied upon the decision of the Supreme Court in ***Syndicate Bank, Banglore vs. Satya Srinath,*** (2009) 16 SCC 422. He also relied upon the text of Clause 17(a) of the Bipartite Settlement and various provisions of the Pension Regulations, notably Clause 2(y) which defines the retirement and Regulation 29 which authorises pension in the case of voluntary retirement. Learned counsel also relied upon Regulation 32 which enables grant of pension to those retired prematurely from the bank services. It was submitted lastly that in the present case, the appellant had furnished an explanation sometime in July 1999 stating that he was absent on account of compelling medical circumstances and thus could not report for duties when called upon to do so on receipt of the show-cause notice. It is submitted that this explanation was never considered by the bank. It was therefore emphasised that the ruling in ***Syndicate Bank*** (supra) clearly applies to the present case. It was highlighted in this regard that regardless of the acceptance or otherwise of the explanation or non-furnishing of an explanation, the entitlement to

pension would flow in the event of invocation of Clause 17(a) by virtue of the ruling in ***Syndicate Bank*** (supra).

5. For a better appreciation of the controversy, it would be essential to set out the relevant provisions. First, Clause 17(a) of the Bipartite Settlement reads as follows:

> *"a) When an employee absent himself from work for a period of 90 or more consecutive days without submitting any application for leave or for its extension or without any leave sanctioned originally/subsequently or when there is a satisfactory evidence that he has taken up employment of India or when the management is reasonably satisfied that he has no intention of joining duties the management may at any time thereafter give a notice to the employee at his last known address calling upon him to report for duty within 30 days of the date of the notice, stating interalia the grounds for coming to the conclusion that the employee has no intention of joining duties and furnishing necessary evidence where available. Unless the employee reports for duty within 30 days of the notice or gives an explanation for his absence within the said period of 30 days satisfying the management that he has not taken up another employment or avocation and that he has no intention of not joining duties, the employee will be deemed to have voluntarily retired from the bank's service on the expiry of the said notice. In the event of the employee submitting a satisfactory reply, he shall be permitted to report for duty thereafter within 30 days from the date of the expiry of the aforesaid notice without prejudice to the bank's right to take any action under the law or rule of service."*

6. The relevant provisions of the Pension Regulations *inter alia* are as follows:-

The date of retirement is defined in Regulation 2(k) in the following terms:-

> *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 voluntary retires; or the date on which the officer is deemed to have retired"*

7. The expression "deemed to have retired" is defined as follows in Regulation 2(l):-

> *l. "deemed to have retired "means cessation from service of the Bank on appointment by central Government as a whole-time Director or managing Director or Chairman in the Bank or in any other Bank specified in column 2 of the FIRST SCHEDULE of the Act [or Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970)] or in any public financial institution or State Bank of India established under State Bank of India Act, 1955 (23 of 1955);*

8. Regulation 2(y) defines retirement as follows:-

> *y. "retirement" means cessation from Bank's service-*
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> *a. on attaining the age of superannuation specified in Service Regulations or Settlement;*
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> *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;*

9. Chapter IV of the Regulations deals with the different clauses of Pension and certain other contingencies dealing with forfeiture of services, treatment of period on deputation, addition of qualifying services etc.

10. Chapter V of the Regulations deals with the classes of pension.

11. Regulation 28 provides for superannuation pension. Regulation 29 and Regulation 32 deal with pension on voluntary retirement. Regulation 29 and 32 deals with voluntary retirement and premature retirement pension reads as follows:-

> ***"29.Pension on Voluntary Retirement-***
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> *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 appointing authority, retire from service;*
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> *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 :*
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> *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 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 (1) of regulation 2.

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 writing to the appointing authority to accept notice of voluntary retirement of less than three months giving reasons therefore :
(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 notice of three months 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 his pension before the expiry of the notice of three months.

4. An employee, who has elected to retire under this regulation and has given necessary notice to that effect to the appointing authority, shall be precluded from withdrawing his notice except with the specific approval of such authority :
Provided that the request for such withdrawal shall be made before the intended date of his retirement.

5. The qualifying service of an employee retiring voluntarily under this regulation shall be increased by a period not exceeding five years, subject to the condition that the total qualifying service rendered by such employee shall not in any case exceed thirty three years and it does not take him beyond the date of superannuation.

6. The pension of an employee retiring under this regulation shall be based on the average emoluments as defined under clause (d) of regulation 2 of these Regulations and the increase not exceeding five years in his qualifying service, shall not entitle him any notional fixation of pay for the purpose of calculating his pension."

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

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

(b) retires from service on account of orders of the Bank to retire prematurely in the public interest or for any other reason specified in Service Regulation or Settlement or settlement, if otherwise he was entitled to such pension or superannuation on that date.

12. Since the appellant has relied on ***Syndicate Bank*** (supra), it would be essential to deal with this judgment first. In that case, the employee was absent for about 8 months and was asked to report back or to submit an explanation within 30 days i.e. on or before 29.12.1992. She furnished her explanation on 10.12.1992 expressing that she was unwell and furnished necessary supporting documents. The bank, however, rejected the explanation. Later on 04.11.1995, the bank i.e. the Syndicate Bank had issued a general circular stating which category of

employees who were entitled to pension under its regulations. While so, it clarified that those deemed to have voluntary retired under Clause 5(c) of Bipartite Settlement were ineligible. This affected the employee who sought intervention of the High Court successfully. The bank's appeal to the Division Bench failed. In the course of these, in the bank's appeal by special leave, the Supreme Court noticed as follows:-

> *"10. Now, the question is whether the respondent was deemed to have voluntarily retired as per Vth Bipartite Settlement or she has been retired by the appellant-bank. There can be two class of persons; one who sought voluntary retirement or the other who was deemed to have voluntarily retired. It is not the case of the voluntary retirement but she was made to retire by the order of the management. Therefore, she does not fall in either of the two categories. The respondent(herein) remained absent because of her ill-health and she submitted her application for extension of leave on medical ground but the management instead of taking sympathetic view, retired the respondent from the services of the bank. As she does not fall either of the above two categories, this is the third category which is not contemplated in the regulations.*
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> *11. However, an attempt was made to bring her case in terms of the Clause 17(a) which says that if an employee absents himself from work for a period of 90 days or more consecutive days, without submitting leave application on his credit or beyond a period of leave sanctioned originally/subsequently and if the management is reasonably satisfied that the incumbent has no intention of joining duties, the management may at any time thereafter give notice to the employee and call him/her to report for duty and require the employee to furnish explanation within*

30 days of the date of notice. If the employee does not satisfy the management, he/she can be deemed to have retired on expiry of the notice. In the event, the employee satisfies the bank , he/she can report for duty thereafter within 30 days of the expiry of the notice without prejudice to the bank's rights to take action under the service rules.

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13. In the present case, the respondent(herein) submitted her explanation and sought extension of time on medical ground. But the management of the Bank instead of considering the matter sympathetically, ordered for premature retirement under the purported exercise of Clause 17(a) . It is not the case that she had voluntarily retired but it is a case where the bank has retired her as a measure of punishment because they were not satisfied by her explanation. Therefore, it is not a case which can be covered by the clarification issued by the Bank and it cannot be deemed that she has voluntarily retired. The contingency in the present case is not covered by the aforesaid Circular dated 4.11.1995. In the present case the respondent has put in almost 20 years' of service and has taken leave on medical ground which is being denied to her.

14. In Clause 17 (a) what is contemplated is that a person who deliberately does not join the office and leaves the office without any satisfactory explanation, then it is open for the management to resort to Clause 17(a). But in the present case, the facts are very glaring that incumbent has put in 20 years of service and unfortunately she fell sick and sought for extension of leave on medical ground, that was denied to her. Therefore, it is not the case of the abandoned service or she did not send any reply to the notice sent by the management. However, she has made a *humble reply to satisfy her authorities, that taking leave was beyond her control, i.e. ill health. But the authorities retired her prematurally and denied the pension of 20 years of service. Therefore, this kind of action is unfair, arbitrary which cannot be countenanced.*

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18. Our attention was also invited to the case of UCO Bank and Others Vs. Sanwar Mal reported in (2004) 4 SCC 412 wherein their Lordships made a distinction between "resignation and retirement", that it carries a different meaning and it was observed that an employee can resign any time but he retires only on superannuation or in case of voluntary retirement on completion of qualifying service. The expression 'resignation' and 'voluntary retirement' are deliberate abandonment of service. Each expression carries different connotation and each case has to be examined whether it was a case of voluntary retirement sought by the employee or he has been retired on account of superannuation or he has resigned or he has been retired compulsorily as a measure of punishment."

13. As between the facts of the present case and the ***Syndicate Bank*** (supra), there are significant differences. Neither upon the receipt of notice nor at any time even after the expiry of 30 days, did the appellant furnish an explanation for his absence. Furthermore, the total periods baring the two days that he did report in July 1997 aggregate to over 2½ years.

14. Furthermore, the Supreme Court did not have occasion to deal with the entitlement of pension on the volition of an employee to express his intention to seek voluntary retirement. Yet, certain glimpses of this are discernible in para 18 of the judgment where the Court held that the expression such as "resignation and voluntary retirement" amounts to deliberate abandonment of service and that "*each expression carries a different connotation and each case has to be examined whether it is a case of voluntary retirement sought by an employee or whether he has been retired by superannuation or has resigned or taken compulsory retirement*".

15. In the present case, the Regulations of the bank clearly distinguish between the volition of an employee who seeks premature or voluntary retirement after following the procedure prescribed in Regulation 29, and a kind of compulsory retirement termed as "premature retirement" under Regulation 32 where the order of the bank is to clearly spell out that the employee is retired "in the public interest".

16. So far as the attempt of the appellant to bring the case within the fold of voluntary retirement to state that this was deemed retirement and therefore falling within Regulation 2(y), this Court is of the opinion that the argument is unpersuasive. The concept of deemed retirement is confined by Regulation 2(l) to only Director level employees officers who relinquish their office upon coming into force of the Banking Companies' Acquisition and Transfer Act 1970 or operation of the State Bank of India Act, 1995. Clearly this is not such a case.

For the above reasons, it is held that the learned Single Judge did not fall into error in holding that the appellant was disentitled to pension.

The appeal is unmerited and accordingly dismissed.

S. RAVINDRA BHAT
(JUDGE)

DEEPA SHARMA
(JUDGE)

FEBRUARY 04, 2016
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