

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No. 187 of 2018

In

Civil Writ Jurisdiction Case No.15737 of 2011

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Ratnakar Mishra S/o Late Indrakant Mishra R/o C/o Sri R.C.P. Sinha, Punaichak, Near P.N.B., Post Office-Shastrinagar, Police Station-Shastrinagar Town and District-Patna. Appellant/s

Versus

1. Allahabad Bank through Chairman Cum Managing Director-2, Netaji Subhash Road, Kolkata-700001.
2. General Manager (Hr), Allahabad Bank Personnel Administrative Department, 2, Netaji Subhash Road, Kolkata-700001.
3. Assistant General Manager (Hr), Allahabad Bank Personnel Administrative Department, 14, India Exchange, 4th Floor, Kolkata-700001.
4. Chief Manager (Hr), Allahabad Bank Personnel Administrative Department 14, India Exchange Place 4th Floor, Kolkata-700001.
5. Deputy General Manager, Allahabad Bank Zonal Office, Gaya Patna Road, Near Kotwali Police Station, Patna-800001.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. K. D. Chatterjee, Sr. Adv.

: Mr. Ajatshatru, Advocate

For the Respondent/s: Mr. Shambu Nath, Adv.

: Mr. Binod Kumar Sinha, Adv.

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA

MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 29-04-2019

Heard learned senior counsel for the appellant, Mr. K.

D. Chatterjee and learned counsel for the respondent-Bank, Mr.

Shambu Nath.



2. The appellant is aggrieved by the dismissal of his writ petition where he had prayed to quash the communication dated 22nd June, 2011 issued by the Chief Manager, Allahabad Bank informing the petitioner that he was not eligible to receive his pension as per his option dated 11th October, 2010 under the Allahabad Bank (Employees) Pension Regulations, 1995 as well as the other provisions relating thereto. The amount which he was to receive was informed to him and being aggrieved he filed the writ petition.

3. The appellant joined the Allahabad Bank on 2nd of June, 1986 and he sought voluntary retirement from Bank which was accepted w.e.f. 31st of March, 2001 under the Voluntary Retirement Scheme of year 2000 that has been filed as Annexure 10 appended to the second supplementary affidavit in the writ petition filed by the appellant-petitioner. In para 5 of the said affidavit the appellant has admitted that he did not opt for pension under the 1995 Regulations and instead accepted the payment of Contributory Provident Fund and gratuity as applicable at the time of retirement.

4. It is relevant to mention Regulation 14, Regulation 18 and Regulation 28 as it stood when the appellant retired from service:-



“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 the date on which he is deemed to have retired shall qualify for pension.”

18. Broken period of service less than one year-

If the period of service of any employee includes broken period of service less than one year, then if such broken period is more than six months, it shall be treated as one year and if such broken period is six months or less it shall be ignored.

28. Superannuation Pension-

Superannuation pension shall be granted to an employee who has retired on his attaining the age of superannuation specified in the Service Regulations or Settlements.”

5. For the grant of pensionary benefits under the Voluntary Retirement Scheme, Clause 4 of the Eligibility Clause is extracted hereinunder:-

“4. ELIGIBILITY:

All permanent employees who have completed/completing 15 years of service or 40 years of age as on 31.12.2000.

This prescription of 15 years was existing as on the date of retirement of the appellant.



6. It is undisputed that the appellant had completed only 14 years and 10 months of service on the date of his retirement and, therefore, he was not entitled to pension which requires a minimum of 15 years of service. Nonetheless, admittedly the appellant had also not exercised his option for pension and he had sought voluntary retirement.

7. The Regulations came to be amended under the Circular and Regulation 18 introducing a proviso dated 20.05.2004 which is as follows:-

“Provided that provisions of this Regulation shall not apply for determining the minimum service required to make an employee eligible for pension.”

8. Thus, the definition of break in service according to the learned counsel for the Bank is not applicable in matters of computation of qualifying years of service for pension which remains a minimum of 15 years.

9. The appellant, however, contends that the benefit under the Voluntary Retirement Scheme also extended benefit of pension to those who have opted for it and the same also contains Clause 10 (g) which reads as follows:-

“Only completed years of service will be reckoned for arriving at the minimum eligible service. Subject to this, fraction of service of six months and above



will be reckoned as one year for the purpose of calculating the ex-gratia and fraction of service less than 6 months will be ignored for the purpose of calculating the exgratia.”

10. A new offer was introduced after a bipartite settlement between the Bank organizations and the Bank Employees' Association and the workmen of the Unions and the Officers' Organizations with the prior sanction of the Central Government which took the shape of a Joint Note dated 27.04.2010 circulated on 15th September, 2010.

11. We may straightaway come to the terms of the said Circular under Clauses 1.2.1 and 1.2.2 that are extracted hereinunder:-

“1.2. Another option for joining the existing Pension Scheme (under ABEPR-1995) shall be extended to those employees who:-

1.2.1 (a) were in the service of the Bank prior to 29th September 1995 and continue in the service of the Bank on the date of the Settlement/Joint Note;

(b) exercise an option in writing within 60 days from the date of offer, to become a member of the Pension Fund and

(c) authorise the Trust of Provident Fund of the Bank to transfer the entire contribution of the Bank along with interest accrued thereon to the credit of the Pension Fund.



1.2.2 (a) were in the service of the Bank prior to 29th September, 1995 and retired after that date and prior to the date of the Settlement/Joint Note;

(b) exercise an option in writing within 60 days from the date of offer, to become a member of the Pension Fund and

(c) refund within 30 days after expiry of the said period of 60 days, the entire amount of the Bank's contribution to the Provident Fund and interest accrued thereon received by the employee on retirement together with his/her share in contribution towards meeting 30% of Rs. 3115 crores (for the Banking Industry as a whole) which is estimated and reckoned as the funding gap for those eligible under Clause 2(II), 2(III) and 2(IV) of the Settlement and Clause (3), (4) and (5) of the Joint Note, as the case may be. On an individual basis, the payment over and above the Bank's contribution to Provident Fund and interest thereon has been worked out at 56% of the said amount of Bank's contribution to Provident Fund and interest thereon received by the employee on retirement."

12. The appellant contends that this was an extension of the option that was existing at the time of his retirement renewed on the terms contained therein and applicable to the appellant as per Clause 3.1 which is extracted hereinunder:-

"3. Salient Terms for offer of Another option:

The terms and conditions for offer of the option are set out below for information of all concerned:-



3.1 Option will be accepted only from those existing employees, employees retired on superannuation, employees voluntarily retired under the special voluntary retirement scheme (ABEVRS- 2000) and families of deceased employees/retirees who fulfill the eligibility criteria set out under Paragraph 1 above, received by the Bank between 20.09.2010 and 18.11.2010 (both days inclusive), in prescribed format at designated places indicated against each category of optees in the Table given below:-

<i>Categories of Optees</i>	<i>Format to be used</i>	<i>Place of submission</i>
<i>Employees who are in the service of the Bank</i>	<i>'Annexure-I'</i>	<i>Branch/Office where posted (in case of Head office, at Terminal Dues Section)</i>
<i>Employees who were in the service of the Bank prior to 29.09.1995 and retired on or after 27.04.2010.</i>	<i>'Annexure-IA'</i>	<i>Branch/Office where the amount equivalent to 2.8 times of revised 'pay' for the month of November,2007 has been deducted from arrear salary on account of wage revision (in case of Head Office, at Terminal Dues Section).</i>
<i>Employees who retired on or after 29.09.1995 but before 27.04.2010</i>	<i>'Annexure-II'</i>	<i>Branch from where terminal benefits, i.e., PF & Gratuity, have been received.</i>
<i>Eligible family members of employees who retired on or after 29.09.1995 but before 27.04.2010 and had died or died while in service after</i>	<i>'Annexure-III'</i>	<i>Branch from where terminal benefits, i.e., PF & Gratuity, have been received.</i>



29.09.1995 but before 27.04.2010		
Eligible family members of employees who retired after 27.04.2010 and had died or died while in service after 27.04.2010.	'Annexure-III A'	Branch/Office where the amount equivalent to 2.8 times of revised 'pay' for the month of November,2007 has been deducted from arrear salary of the deceased ex-employee on account of wage revision (in case of Head Office, at Terminal Dues Section).

13. Clauses 3.8 and 3.9 are also relevant which are extracted hereinunder:-

“3.8 Pension/Family Pension to those who opt to join the pension scheme complying with the terms of the Settlement/ Joint Note shall be payable with effect from 27th November 2009, provided, however, that employees/officers who retired after that date shall get pension from the date following the respective dates of their retirement. All the Regulations of Allahabd Bank (Employees’) Pension Regulations, 1995 shall be applicable to those who opt for the Pension Scheme in terms of the Settlement/Joint Note except to the extent mentioned in the eligibility clauses of the Settlement/Joint Note.

3.9 Employees/Officers, who opted for Voluntary Retirement under Special Voluntary Scheme (ABEVRS- 2000) after rendering a minimum of 15 years of service and did not exercise option of pension earlier or family of any such retiree who have died



after such retirement, shall be eligible to exercise option to join the pension scheme subject to terms and conditions set out in the Settlement/Joint Note dated 27.04.2010.”

14. This fresh exercise of option was extended to those employees who had retired under the Voluntary Retirement Scheme subject to the eligibility criteria set out therein. Clause 3.9 categorically mentions that it shall be applicable to the Employees, Officers who opted for the voluntary retirement after rendering “a minimum of 15 years of service” and had not exercised their option for option earlier subject to the other terms and conditions set out in the said Circular.

15. There is one factual aspect which deserves mention at this stage that the appellant applied for pension under the aforesaid Circular dated 15th September, 2010 as per Joint Note dated 27.04.2010. The application tendered by him while being fed in the computer inadvertently mentioned the date of appointment and entry of service as 06.02.1986 instead of 02.06.1986. Thus, by virtue of this inadvertent error in the computer data the appellant was presumed to have completed 15 years of service whereas admittedly he had completed only 14 years and 10 months of service.

16. The appellant’s request for exercise of this option was accepted and was intimated to him on 1st of December, 2010.



However, while accepting the said option of the appellant the letter categorically in the penultimate paragraph recited “It is, however, made clear that in case it is found at a later date that you are not eligible to exercise option in terms of the aforesaid Settlement/Joint Note dated 27.04.2010, the option exercised by you shall be treated as void and the amount deposited by you will be returned without any interest”. The Bank in its counter affidavit has stated this fact along with an additional disclosure that this was necessary inasmuch as about 4000 applications had been received and they had to be scrutinized within a very short span of time and therefore errors, if any, were subjected to rectification for which the aforesaid clause was included in every letter of acceptance including that of the appellant.

17. Admittedly, the appellant was extended the said benefit by releasing *ad hoc* pension in December, 2010 which was received by him till May, 2011. However, on the discovery of the aforesaid inadvertent error in the computer data the appellant was immediately informed on 22nd June of 2011 that he was ineligible to exercise this option and he was intimated of the correct status of accounts. Accordingly, the appellant represented against the same contending that keeping in view the definition of broken period of service as contained in Clause 18 and also as per the intention



disclosed in the Voluntary Retirement Scheme that a broken period shall be counted as a whole, his period of service should be treated as 15 years by way of fiction as contained in the unamended Regulation 18, as rights had accrued to him in view of the offer made by the Bank for exercising option which was by way of an extension of the very same benefits that existed when he retired.

18. Having failed to receive the desired result, the appellant filed the writ petition giving rise to this appeal. Mr. K.D. Chatterjee contends that in view of the law laid down in the case of **J.S. Yadav vs. State of Uttar Pradesh and Anr.** reported in **(2011) 6 SCC 570**, the existing right of an option to be exercised at a later point of time is in continuity with the same terms and conditions which existed at the time of his retirement where the fraction of the broken period of service was to be treated as a complete full year of service and therefore the period of 14 years and 10 months should be construed as 15 years of service. The Bank according to him had clearly intended to extend the pensionary benefits and the appellant had exercised his option which had been accepted in which there was no flaw. Mr. Chatterjee, however, could not dispute the factual foundation that was made the basis for declaring the appellant to be ineligible to



receive the benefits of pension namely the incorrect entry in the computer data.

19. Mr. Chatterjee, however, tried to draw an analogy on the basis of the effect of repeal of statutes to contend that if Regulation 18 came to be amended on 20th of May, 2004 and qualifying years of service was fixed at a minimum of 15 years, the said prescription would not apply to the appellant and, therefore, it was not necessary for the appellant to have challenged the said prescription which came subsequently and would apply prospectively to other employees. He submits that its application in the case of the appellant was otherwise was available to the appellant even after having completed 14 years and 10 months of service. He therefore submits that rights which had vested in the appellant and were extended to be exercised in the year 2010 would not be impeded in any way by the intervening Circulars and, therefore, the Bank had erroneously withdrawn the benefit on the ground of ineligibility of the appellant. He has also taken the Court through the pleadings on record to substantiate his submissions and to contend that denial of such benefits is contrary to the own scheme of respondent-Bank and is otherwise an exercise of power that cannot stand the scrutiny of Article 14 of the Constitution of India. He therefore prays that the impugned



judgment and the impugned communication by the Bank both be set aside with restoration of his pensionary benefits.

20. Responding to the said submissions, learned counsel for the Bank urges that the Clause relating to break in service does not relate to pensionary benefits which otherwise also would not be applicable for grant of pension where the minimum qualifying years of service was 15 years even when the petitioner had retired. The break in service clause was for a different purpose and not applicable. He, however, contends that even assuming for the sake of argument that the said fiction was available, the same was non-existent on the date when the fresh option was given in the year 2010 due to the amendment in 2004. The option was accepted on the basis of an inadvertent mistake in the computer data where the date of entry of the appellant in service had been wrongly recorded as 06.02.1986 which ought to have been 02.06.1986 which is not disputed by the appellant. He submits that there was no vested right and the question of retrospectivity does not arise inasmuch as the option offered in the year 2010 by referring to the word extension does not mean extension of extinguished rights. He submits that by virtue of the intervening amendments any confusion about the minimum qualifying years of service that have been stood removed and unless a person had



completed a minimum of 15 years of service he was not eligible for any such pensionary benefits.

21. The argument on the question of prospective repeal has been countered contending that the same is in relation to the principles of statutory interpretation and not in matters of service benefits extended through administrative orders.

22. In rejoinder, Mr. Chatterjee submits that pensionary benefits are not a bounty and, therefore, any provisions relating thereto have to be construed strictly being a beneficial piece of Regulation. He submits that the attempt of the Bank to deny it in the case of the appellant is an improper exercise of authority. He contends that judgment relied on by the respondent-Bank and filed along with the counter affidavit before the Writ Court are not applicable on the facts of the present case.

23. We have considered the submissions raised and we find that the appellant after completing 14 years and 10 months of service sought voluntary retirement without exercising any option for pension. This was therefore a golden handshake and severance of all rights and liabilities in future and thus there was no existing right to be exercised or a vested right to be claimed. As a matter of fact, the right of option which was given under the Voluntary Retirement Scheme of 2000 was an option to



exercise a right to receive pension. In the absence of any such contract having been concluded, there was neither any acceptance of the offer of option nor did he ever challenge the amendments which were brought about clarifying the applicability of a minimum of 15 years of service as the eligibility condition for grant of pension.

24. The argument that it was not necessary to challenge the offer made in the year 2010 as it was an extension of all earlier service benefits and its terms and conditions, is unacceptable for the simple reason that there was no such offer made making the said exercise of option contingent on any future offer. The word extension used in the Circular of the year 2010 is only a fresh offer in respect of the retired employees who had accepted the Voluntary Retirement Scheme under the bipartite settlement and the Joint Note issued in this regard. The said joint note in no uncertain terms categorically uses the words that the benefit would be available to such Employees/Officers who had retired and were eligible having completed a minimum of 15 years of service. This condition also has not been challenged rather it is being argued that the same should be construed to also include those employees who had completed 14 years and 10 months of service. There is no fiction in the new Circular of the year 2010.



We may clarify that a fiction only depicts an existing state of affairs which otherwise does not exist in reality. There is nothing in the Circular of the year 2010 to infer any such fiction and, therefore, the contention on behalf of the appellant deserves rejection.

25. Apart from this the minimum years of service have been treated to be final for grant of pension in a judgment that has been relied on by the learned counsel for the Bank in the case of **Regional Manager, Punjab National Bank and Anr. vs. Dharam Pal Singh** decided on 24th February, 2011 reported in **(2014) 13 SCC 484** and in the case of **Chairman & M.D., Allahabad Bank & Ors. vs. Prem Singh Inda (Civil Appeal No. 1378 of 2006)** decided on 10th March, 2011.

26. Consequently, for the foregoing reasons, we do not find any merit in the appeal which is, hereby, dismissed.

(Amreshwar Pratap Sahi, CJ)

Vikash/-

(Anjana Mishra, J)

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	29.04.2019
Transmission Date	NA

