Santosh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 13424 OF 2017

Ulhas Pandharinath Joshi ...Petitioner

Versus

Janta Sahakari Bank Ltd. Pune ...Respondent

Mr. Nitin Arvind Kulkarni, for the Petitioner.

CORAM: N. J. JAMADAR, J.
DATED: 12th JULY, 2019

Oral Order :-

1. Heard Mr. Kulkarni, the learned Counsel for the Petitioner.

2. The Petitioner assails the order passed by the Co-operative Court No.1, Pune, in Dispute No.205 of 2007, whereby the dispute raised by the Petitioner calling in question the retirement of the Petitioner upon attaining the age of 55 years, came to be dismissed. The Appeal preferred against the said order passed by the Co-operative Court No.1, Pune, was also dismissed by the learned Member, Maharashtra State Co-operative Appellate Court (Mumbai), Bench at Pune, by judgment and order dated 2nd April, 2016. The Petitioner assails the order passed by the Appellate Court as well.

3. The Petitioner had raised the dispute before the Co-operative Court seeking declaration that the Petitioner's employer Janta Sahakari Bank Ltd's act for superannuating the Petitioner was illegal and *void-ab-initio* and that the Petitioner was still in service as on the date of filing of the dispute, with a further prayer that the Respondent – Bank be directed to pay the Petitioner all the consequential benefits.

4. The Petitioner was employed as a Branch Manager with the Respondent – Bank. The Petitioner's services came to be terminated by order dated 5th October, 2004, with effect from 30th October, 2004. The substance of the claim of the Petitioner is that the Petitioner, being an Officer, was not governed by the Certified Standing Orders and, therefore, the Petitioner's services could not have been terminated upon attaining the age of 55 years. Conversely, there were no conditions of service, by virtue of an award or otherwise, which regulated the date of retirement of the officers, who were not covered by Certified Standing Orders. In this backdrop, the Respondent – Bank could not have resorted to a resolution passed by the Managing Committee on 21st February, 2003, whereby it was resolved that the age of retirement would be 55 years for those who were not covered by the Standing Orders.

5. The learned Judge, Co-operative Court, was of the view that the said resolution governs the case of the Petitioner as well, whereby the age of retirement for the cadre of Junior Officers and above was fixed as 55 years. The learned Judge also adverted to the fact that the Petitioner had not challenged the said resolution nor the Petitioner raised the dispute instantaneously, post the order of superannuation. On the contrary, the Petitioner accepted all the retiral benefits and raised the dispute after about two years and 11 months. On this premise, the learned Judge, Co-operative Court, rejected the claim of the Petitioner.

6. The learned Member, Co-operative Appellate Court, also adverted to aforesaid aspects and specifically recorded that the order of superannuation was served upon the Petitioner on 5th October, 2004 itself; 25 days prior to the date of the retirement. In this view of the matter, the principle of estoppel, barred the dispute raised by the Petitioner, after 2 years 11 months and 12 days of the retirement.

7. The learned Counsel for the Petitioner would urge that the age of retirement ought to have been fixed in accordance with the contract between the Petitioner and Respondent or an award. In the absence of determination as to the age of retirement, the Respondent – Bank could not have passed resolution and thereby revised the age of retirement. I am not persuaded to agree with the aforesaid submissions.

8. It is not the case that the resolution adopted by the Respondent – Bank was Petitioner-specific. It can not be urged that in the absence of a statutory or contractual age of retirement, the employer is denuded of the power to prescribe an uniform age of retirement for its employees or class of employees.

9. In any event, the Petitioner had the opportunity to agitate the dispute about the age of retirement before the services came to be terminated. Had the Petitioner approached the Competent Court, before his services came to be terminated, the question could have been gone into at that stage. The attempt to salvage the position by urging that the Petitioner was justified in raising the dispute within the statutory period of limitation from the accrual of cause of action can not be countenanced. What was sought to be snapped was the jural relationship of employer – employee between the Petitioner and Respondent – Bank. In this context, the delay and in-action can not be said to be immaterial or inconsequential.

10. In this view of the matter, having regard to the concurrent findings recorded by the Co-operative Court and the Co-operative Appellate Court, in the peculiar facts of the case, no interference is warranted in exercise of extra-ordinary jurisdiction of this Court.

11. Hence, the petition stands dismissed.

[N. J. JAMADAR, J.]