IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP NO. 16469 of 1999(O&M)
Date of Decision: 30.10.2019

Kanwar Kesri Singh

... Petitioner

versus

Punjab National Bank & Ors.

... Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Kanwaljit Singh, Sr. Advocate with
Mr. Gautam Sehgal, Advocate
for the petitioner.

Mr. Sourav Verma, Advocate
for respondent Bank.

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ARUN MONGA, J.

1. *Inter alia* issuance of a writ in the nature of *mandamus* has been sought by the petitioner commanding the respondents to release his retiral benefits including gratuity, provident fund, leave encashment, sick leave salary and arrears of increments, as stated in his representation dated 14.11.1991(Annexure P-4).

2. Having heard learned Senior counsel Mr. Kanwaljit Singh assisted by Mr. Gautam Sehgal, Advocate for the petitioner and Mr. Sourav Verma, learned counsel for respondent Bank, I am convinced that so far as relief of pension is concerned, the case of the petitioner is adversely covered by Apex Court judgment rendered in **Senior Divisional Manager, Life**

Insurance Corporation of India & Ors. Vs. Shree Lal Meena, reported as 2019(2) SCT 274 read with **Uco Bank & Ors. Vs. Sanwar Mal, 2004(4) SCC 412**.

3. Before proceeding further, it would be apposite to briefly state that petitioner joined the services of the respondent Bank in the year 1963 and due to personal reasons, after rendering 25 years of service, he submitted his resignation on 05.01.1988, which was accepted belatedly by the bank on 14.10.1991 with effect from 05.02.1988. During the period of interregnum, the petitioner never withdrew his resignation letter, therefore, the Bank accepted the same, without there being any protest by the petitioner.

4. The claim of the petitioner has been resisted by the Bank in view of Regulation 22(1) of the Punjab National Bank(Employees')Pension Regulations, 1995. For ready reference, the same is reproduced hereinebelow:-

> *"22. Forfeiture of service-(1) Resignation or dismissal or removal or termination of an employee from service of the Bank shall entail forfeiture of his entire past service and consequently shall not qualify for pensionary benefits."*

5. It is the aforesaid clause which was subject matter of interpretation in Sanwar Mal's case (supra), wherein it was held thus:-

> *"6. To sum up, the Pension Scheme embodied in the regulation is a self-supporting scheme. It is a code by itself. The Bank is a contributor to the pension fund. The Bank ensures availability of funds with the trustees to make due payments to the beneficiaries under the Regulations. The beneficiaries are employees covered by Regulation 3. It is in this light that one has to construe Regulation 22 quoted above. Regulation 22 deals with forfeiture of service. Regulation 22(1) states that*

resignation, dismissal, 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. In other words, the Pension Scheme disqualifies such dismissed employees and employees who have resigned from membership of the fund. The reason is not far to seek. In a self-financing scheme, a separate fund is earmarked as the Scheme is not based on budgetary support. It is essentially based on adequate contributions from the members of the fund. It is for this reason that under Regulation 11, every bank is required to cause an investigation to be made by an actuary into the financial condition of the fund from time to time and depending on the deficits, the Bank is required to make annual contributions to the fund. Regulation 12 deals with investment of the fund whereas Regulation 13 deals with payment out of the fund. In the case of retirement, voluntary or on superannuation, there is a nexus between retirement and retiral benefits under the Provident Fund Rules. Retirement is allowed only on completion of qualifying service which is not there in the case of resignation. When such a retiree opts for selffinancing Pension Scheme, he brings in accumulated contribution earned by him after completing qualifying number of years of service under the Provident Fund Rules whereas a person who resigns may not have adequate credit balance to his provident fund account (i.e. bank's contribution) and, therefore, Regulation 3 does not cover employees who have resigned. Similarly, in the case of a dismissed employee, there may be forfeiture of his retiral benefits and consequently the framers of the Scheme have kept out the retirees (sic resigned) as well as dismissed employees vide Regulation 22. Further, the pension payable to the beneficiaries under the Scheme would depend on income accruing on investments and unless there is adequate corpus, the Scheme may not be workable and, therefore, Regulation 22 prescribes a disqualification to dismissed employees and employees who have resigned. Lastly, *as stated above, the Scheme contemplated pension as the second retiral benefit in lieu of employers' contribution to contributory provident fund. Therefore, the said Scheme was not a continuation of the earlier scheme of provident fund. As a new scheme, it was entitled to keep out dismissed employees and employees who have resigned.*

7. In the light of our above analysis of the scheme, we now proceed to deal with the arguments advanced by both the sides. It was inter alia urged on behalf of the appellant bank that under Regulation 22, category of employees who have resigned from the service and who have been dismissed or removed from the service are not entitled to pension, that the pension scheme constituted a separate fund to be regulated on self financing principles, that prior to the introduction of the pension scheme, there was in existence a provident fund scheme and the present scheme conferred a second retiral benefit to certain classes of employees who were entitled to become the members/beneficiaries of the fund, that the membership of the fund was not dependent on the qualifying service under the pension scheme, that looking to the financial implications, the scheme framed mainly covered retirees because retirement presupposed larger number of years of service, that in the case of resignation, an employee can resign on the next day of his appointment whereas in the case of retirement, the employee is required to put in a certain number of years of service and consequently, the scheme was a separate code by itself, that the High Court has committed manifest error in decreeing the suit of the respondent inasmuch as it has not considered the relevant factors contemplated by the said scheme and that the pension scheme was introduced in terms of the settlement dated 29.10.1993 between the IBA and All-India Bank Employees' Association, which settlement also categorically rules out employees who have resigned or who have been dismissed/removed from the service."

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"9. We find merit in these appeals. The words "resignation" and "retirement" carry different meanings in common parlance. An employee can resign at any point of time, even on the second day of his appointment but in the case of retirement he retires only after attaining 17 the age of superannuation or in the case of voluntary retirement on completion of qualifying service. The effect of resignation and retirement to the extent that there is severance of employment (sic is the same) but in service jurisprudence both the expressions are understood differently. Under the Regulations, the expressions "resignation" and "retirement" have been employed for different purpose and carry different meanings. The Pension Scheme herein is based on actuarial calculation; it is a self-financing scheme, which does not depend upon budgetary support and consequently it constitutes a complete code by itself. The Scheme essentially covers retirees as the credit balance to their provident fund account is larger as compared to employees who resigned from service. Moreover, resignation brings about complete cessation of master-and-servant relationship whereas voluntary retirement maintains the relationship for the purposes of grant of retiral benefits, in view of the past service. Similarly, acceptance of resignation is dependent upon discretion of the employer whereas retirement is completion of service in terms of regulations/rules framed by the Bank. Resignation can be tendered irrespective of the length of service whereas in the case of voluntary retirement, the employee has to complete qualifying service for retiral benefits. Further, there are different yardsticks and criteria for submitting resignation vis-à-vis voluntary retirement and acceptance thereof. Since the Pension Regulations disqualify an employee, who has resigned, from claiming pension, the respondent cannot claim membership of the fund. In our view, Regulation 22 provides for disqualification of employees who have resigned from service and for those who have been dismissed or removed from service. Hence, we do not find any

> *merit in the arguments advanced on behalf of the respondent that Regulation 22 makes an arbitrary and unreasonable classification repugnant to Article 14 of the Constitution by keeping out such class of employees. The view we have taken is supported by the judgment of this Court in the case of Reserve Bank of India v. Cecil Dennis Solomon & Anr. (supra). Before concluding we may state that Regulation 22 is not in the nature of penalty as alleged. It only disentitles an employee who has resigned from service from becoming a member of the fund. Such employees have received their retiral benefits earlier. The Pension Scheme, as stated above, only provides for a second retiral benefit. Hence, there is no question of penalty being imposed on such employees as alleged. The Pension Scheme only provides for an avenue for investment to retirees. They are provided avenue to put in their savings and as a term 18 or condition which is more in the nature of an eligibility criterion, the Scheme disentitles such category of employees as are out of it."*

6. The above ratio was later followed in Shree Lal Meena's case (supra), wherein Hon'ble Supreme Court observed thus:-

> *"19. What is most material is that the employee in this case had resigned. When the Pension Rules are applicable, and an employee resigns, the consequences are forfeiture of service, under Rule 23 of the Pension Rules. In our view, attempting to apply the Pension Rules to the respondent would be a self-defeating argument. As, suppose, the Pension Rules were applicable and the employee like the respondent was in service and sought to resign, the entire past service would be forfeited, and consequently, he would not qualify for pensionary benefits. To hold otherwise would imply that an employee resigning during the currency of the Rules would be deprived of pensionary benefits, while an employee who resigns when these Rules were not even in existence, would be given the benefit of these Rules.*

20. Now turning to the discussion on the judicial pronouncements in this behalf, we are of the view that any judgment has to be read for the law it lays down, by reference given to a factual matrix. Lines or sentences here and there should not be read in absolute terms, de hors the factual matrix in the context of which those observations were made."

21. XXXXX

22. In our view, the aforesaid principles squarely apply in the facts of the present case and the relevant legal principles is that voluntary retirement is a concept read into a condition of service, which has to be created by a statutory provision, while resignation is the unilateral determination of an employer-employee relationship, whereby an employee cannot be a bonded labour."

7. A conjoint reading of the ratio rendered by Hon'ble the Apex Court along with Regulation 21, *ibid,* leaves no manner of doubt that the petitioner has self invited the forfeiture of pension by his own conduct and, therefore, no interference is called for by this Court to that extent.

8. However, as regards the other claims of the petitioner, the same have been withheld by the respondent Bank without any plausible explanation, merely because the petitioner was also seeking pension along with other retiral benefits.

9. Learned counsel for the respondent Bank, during the course of arguments, submits that apart from pendency of the claim of the petitioner qua pension, the respondent Bank was also contemplating taking certain departmental action in view of his unauthorized absence, besides certain allegations of having indulged in financial irregularities qua disbursement of loans.

10. Be that as it may, conceded position that emerges from the

conjoint perusal of pleadings is that no departmental action was ever taken against the petitioner and, therefore, the action of the Bank in withholding the retiral benefits, other than pension, is not sustainable in the eyes of law.

11. In the premise, writ petition is disposed of with a direction to respondent Bank to make the requisite calculations and give benefits of all the retiral benefits except pension, as permissible and entitled to the petitioner by reckoning his date of resignation as 14.10.1991 i.e. the date from which the resignation of the petitioner was accepted by the respondent Bank. The petitioner shall also be entitled to interest @ 8% per annum on the amount, which is found due and payable to him.

21. Let the necessary calculations be made within three months from the date of receipt of certified copy of this order. It is made clear that in case the petitioner is found entitled to incremental benefits, the same be accorded to him within the stipulated time. In case any of the retiral benefits, other than pension, have already been disbursed to the petitioner, as contended by learned counsel for the respondent, the same shall be adjusted from the amount found due towards the petitioner.

13. Disposed of in above terms.

14. No order as to costs.

(ARUN MONGA)
JUDGE

October 30, 2019
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1. Whether speaking/ reasoned: Yes/ No

2. Whether reportable: Yes/ No