IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:
The Hon'ble Justice Arindam Sinha
And
The Hon'ble Justice Suvra Ghosh

M.A.T. 408 of 2020
With
I.A. no. CAN 2/2020

State Bank of India & Ors.
Vs.
Deb Kumar Bhattacharjee

For appellants : Mr. Susanta Pal, Adv.
Mr. Sudeep Pal Choudhuri, Adv.
Ms. Saswati Sikder, Adv.

For respondent : Mr. Sanjib Dawn, Adv.
Mr. Ranabir Banerjee, Adv.
Ms. Sayani Chatterjee, Adv.

Heard on : 02.02.2021 and 22.02.2021.

Judgment on : 22.02.2021.

Arindam Sinha J.: This appeal of the bank is on it being aggrieved by order dated 16th January, 2020 allowing the writ petition.

On 21st August, 2003 the bank had given notice to respondent regarding voluntary vacation of service. It is thereafter on 10th October, 2003 respondent applied for voluntary retirement. Appellants by letter dated 10th December, 2003 declared that the application for voluntary retirement cannot be considered till decision taken in regard to unauthorised absence. On 16th April, 2004 the bank declared voluntary vacation of service by respondent, with effect from 19th August, 2002.

Mr. Pal, learned advocate appears on behalf of appellants and relies on Officers' Service Rules (OSR) 40(3). He submits, the rule was scrupulously followed by the bank in declaring the voluntary vacation of service. No prayer for quashing letter dated 16th April, 2004 was made in the writ petition. Mr. Dawn, learned advocate appears on behalf of respondent and submits, his client was eligible to and applied for voluntary retirement from service. He relies on fourth proviso in OSR 19(1). There were compelling reasons for his client to have done so and the bank wrongly did not consider his application. His client thereafter appealed, contents of which are annexure-'P-13' in the stay application. The appeal was by mail dated 24th January, 2007.

Sub-rule (1) in OSR 19 and sub-rule (3) in OSR 40 are both reproduced below:

> *"5.1.1.* ***Service Rules governing retirement OSR 19(1)***
> *An officer shall retire from the service of the Bank on attaining the age of sixty years (CDO/PM/CIR/10 Dt.29.05.1998) or upon the completion of thirty years' service or thirty years' pensionable service if he is a member of the Pension Fund, whichever occurs first.*
> *Provided that the Competent Authority may, for reason to be recorded in writing extend the period of service of an officer who has completed thirty years' service or thirty years' pensionable service, as the case may be, should such extension be deemed desirable in the interest of the Bank.*

Provided further that an officer who has attained the age of 60 years shall not be granted any further extension in service.
Provided that an officer may, for reason to be recorded in writing be retired from the Bank's service after he has attained 50 years of age or has completed 25 years' service or 25 years' pensionable service as the case may be, by giving him three months' notice in writing or pay in lieu thereof.
Provided further that an officer who has completed 20 years' service or 20 years' pensionable service, as the case may be, may be permitted by the Competent Authority to retire from the Bank's service, subject to his giving three months' notice in writing or pay in lieu thereof unless this requirement is wholly or partly waived.

OSR: 40(3)
2. Where an officer who has not submitted an application for leave, or where an officer having submitted his application was refused sanction of leave, absents himself for a period of 90 or more consecutive days or overstays the sanctioned leave by 90 or more consecutive days notwithstanding the provisions of sub-rule 40(2) of OSR, the Bank may, at any time thereafter, give a notice to the officer at his last known address available with the bank calling upon him to report for duty within 30 days of the notice. If the officer does not report for duty within the stipulated period, he may, by an order of the Appointing Authority, be deemed to have voluntarily vacated his employment on the expiry of the said period set out in the notice. In such cases, the officer shall also be liable to pay to the Bank such notice monies as are payable in case of resignation as if he has been permitted to pay the emoluments in lieu of notice. Provided, however, that an officer may appeal to the competent authority within a period of three years from the date of order recording voluntary vacation under the aforesaid rule. The competent authority shall consider such appeal to treat the said order as rescinded if it is satisfied that the officer was prevented by any sickness incapacitating him from reporting for duty within the prescribed time or for any other sufficient cause, and pass such orders as it may deem fit in the circumstances of the case."

There does not appear to be any dispute that respondent was entitled to apply for voluntary retirement as per fourth proviso in OSR 19(1). The question on the controversy arises in relation to sub-rule (3) in OSR 40. Notice dated 21st August, 2003 given by the bank was in terms of the sub-rule. Respondent has been seen to have applied for voluntary retirement by his letter dated 10th October, 2003, which was not considered since till then no decision was taken by the competent authority in regard to unauthorised absence.

Paragraphs 2 and 3 in letter dated 10th October, 2003 says as follows:

> *"2. Due to very personal reason, I would like to Voluntary retire from Bank's active service w.e.f. October 11, 2003.*
> *3. I am supposed to give you three months time for the above or pay three months salary to the Institution. Due to lack of time, I request you to realize this three months salary from my terminal benefits."*

Paragraph 1 makes it clear that the letter is in reference to notice dated 21st August, 2003. Paragraph 5 is also quoted below:

> *"5. I have sent you in original a medical certificate from the doctor of Canada who advised me bed rest. I requested you to grant me leave without pay till September 30 2003 knowing the condition of my father's illness. I being the only son was morally confined by his side. Eventually due to father's demise, I was mentally very upset and had to look after my old, paralytic & partially blind mother who gave me birth."*

This letter dated 10th October, 2003 could not have been disregarded as an application for voluntary retirement. It carried reasons for absence, to give which was notice dated 21st August, 2003. By letter dated 17th May, 2004 respondent stated about his failure to understand why he was not sanctioned leave despite his statement that his wife was sick and his father was in death bed. The bank focused on omission of respondent to report for work in disregarding his response to the notice. OSR 40(3) does not mandate report for duty as a precondition. In event the employee does not report for duty in the stipulated period, he **may** be deemed to have voluntarily vacated his service. Clearly the bank pursued a line with otherwise non-application of mind regarding respondent's situation. That did call for interference and we confirm the setting aside of order of the bank by said letter dated 16th April, 2004. To give respondent the relief, it was required to be set aside. No ground was taken in the memorandum, of the letter not having been impugned in the writ petition.

There will be order in terms of prayers (b) and (c) in the writ petition. So far as interest on provident fund is concerned, the bank will pay interest at current rate payable on savings bank account, from 19th August, 2002 till date of payment. Interest on gratuity is to be paid at statutory rate for the period applicable.

The bank will also pay respondent pension or inform him as to his ineligibility thereof. Here we record that the bank in mail dated 20th March, 2006, addressed to appellant said, inter alia, as follows:

> *"d) To become eligible for sanction of pension one should complete 20 years of pensionable service irrespective of the age provided his resignation for voluntarily leaving the services of the bank was accepted and approved by the competent authority. In the instant case, Kolkata LHOaC TMs letter says that you have voluntarily left the services of the bank. One is eligible for pension only on completion of 20 years of pensionable service without taking into account the period on loss of pay;"*

As aforesaid position taken by bank on its said letter dated 16th April, 2004 was voluntary vacation of service by respondent with effect from 19th August, 2002. We have taken this date as date of voluntary retirement of respondent since, consequent upon setting aside and quashing said decision of the bank, to thereafter take a future date, to be fixed by the bank, is not possible in the circumstances of respondent having already achieved age of superannuation. More so since respondent has accepted the date for his voluntary retirement. Hence, the direction to pay pension or inform regarding ineligibility thereto, taking date of voluntary retirement as on 19th August, 2002.

The appeal is dismissed by confirming impugned order on reasons and directions given above. Connected application (I.A. no. CAN 2 of 2020) is disposed of accordingly.

(Arindam Sinha, J.)

(Suvra Ghosh, J.)