

Naraindas Revachand Hamrajani Through Supreme Court Legal Aid Committee

Vs

Union of India and Another

Civil Appeal No. 4531 of 1989

(S. B. Majmudar. M. Jagannadha Rao JJ)

30.09.1997

ORDER

1. The appellant, a bank officer, was tried departmentally for his conduct for which he was charged and removed from the bank service on 6-3-1982. He challenged the order in appeal before the Appellate Board. The Appellate Board partly accepted the appeal and modified the order of removal by substituting it by an order of compulsory retirement with effect from 6-3-1982. The appellant challenged the said order in writ petition in the High Court. The order of compulsory retirement was upheld in the writ petition. On the question of payment of pension as per the Pension Rules the learned Single Judge in the light of the relevant rule, to which reference will be made a little later, held that the appellant was not entitled to any pension under the said rule. The appellant preferred an appeal before the Division Bench of the High Court. The appeal got summarily rejected and that is how this appeal is filed by obtaining special leave to appeal.

2. While issuing notice in this appeal, the notice was confined to the question of pension only as per the order of this Court dated 6-4-1987. Therefore, when the appeal reached for final hearing before us learned counsel for the appellant argued only the question of pension. The rule relevant for deciding the grievance of the appellant is Rule 22 of the Pension Rules, which reads as under :

"22. (1) A member shall be entitled to a pension under these rules on retiring from the Bank's service -

(a) after having completed twenty years' pensionable service provided that he has attained the age of fifty years."

3. We are not concerned with any other sub-rule. It is not in dispute that the appellant joined the bank service as a Clerk on 30-3-1960. He was confirmed as a Clerk on 30-9-1960. That would be the beginning of the period of pensionable service for him. The order of compulsory retirement took effect from 6-3-1982. Therefore, by that time he can be said to have completed 20 years of pensionable service. Further our attention was drawn by the learned counsel for the respondent to Rule 21 sub-rule (1) which reads as under :

"21. (1) No period of leave granted without leave salary or of absence without leave shall count as pensionable service. A period of suspension shall count as pensionable service only to such extent as the authority which reinstates him declares it to be pensionable at the time of reinstatement or the authority which sanctions his retirement declares it to be so at the time of according the sanction."

4. When we turn to the order of the Appellate Authority, we find that the said Authority was inclined to take a lenient view on the question of punishment by substituting the order of compulsory retirement for the earlier order of removal from service. It has been noted by the Appellate Authority that the appellant was 44 years of age. He had to look for some employment. Removal will carry a heavy stigma while, compulsory retirement may not. It was, therefore, felt by the Appellate Authority that punishment awarded to the appellant by the Disciplinary Authority could be reduced from removal of service to compulsory retirement. Accordingly, the appellant was ordered to be compulsorily retired under Rule 49(f) of the State Bank of India (Supervising Staff) Service Rules with effect from 8-3-1982, i.e., the date on which he received the order dated 6-3-1982 passed by the Disciplinary Authority.

5. The order of the Appellate Authority does not show as to how the suspension period is to be treated. Consequently, it can be visualised that no order under Rule 21 sub-rule (1) was passed by the sanctioning authority directing compulsory retirement of the appellant. In the absence of such order under Rule 21 sub-rule (1) it must be held that the appellant had completed 20 years of pensionable service. However, that is not the end of the matter. For applicability of Rule 22 sub-rule (1)(a) of the Rules, the appellant must fulfil two conditions : (i) at the time of retirement he should have completed 20 years of pensionable service; (ii) at the time of retirement he must have reached the age of 50 years. In the present case, though the first condition is satisfied, the second condition is admittedly not satisfied. He had not attained the age of 50 years when he was compulsorily retired.

He fell short of six years of service. For the purpose of the present discussion, we will assume in favour of the appellant that Rule 22 sub-rule (1)(a) will also cover the case of compulsory retirement. Even then the appellant cannot get benefit of the aforesaid rule as the second condition for its applicability is admittedly not satisfied.

6. Hence no fault could be found with the order of the Bank refusing to grant him pension though all other retiral benefits, as informed to us, were made available to the appellant. Consequently, no further relief for pension can be made available to the appellant on the facts and circumstances of the case. The appeal fails and is dismissed. No costs.