

SUPREME COURT OF INDIA

United Bank of India

Vs.

Pijush Kanti Nandy

(S.B. Sinha and Deepak Verma JJ.)

04.08.2009

JUDGEMENT

S.B. SINHA, J.

1. Leave granted.

2. The Service Conditions of the employees of United Bank of India are governed by United Bank of India (Officers) Service Regulations, 1979 (for short, 'the Regulations).

Regulation 19 of the Regulations reads as under:

"19.(1) The age of retirement of an officer employee shall be as determined by the Board in accordance with the guidelines issued by the Government from time to time-- Provided that the Bank may, at its discretion, on review by the Special Committee as provided hereinafter in sub-regulation (2) retire an officer employee on or at any time after the completion of 55 years of age or on or at any time after the completion of 30 years of total service as an officer employee or otherwise, whichever is earlier;

Provided further that before retiring an officer employee, at least three months' notice in writing or an amount equivalent to three months' substantive salary/pay and allowances, shall be given to such officer employee;

Provided also that nothing in this regulation shall be deemed to preclude an officer employee from

retiring earlier pursuant to the option exercised by him in accordance with the rules in the Bank.

Explanation :

An officer employee will retire on the last day of the month in which he completes his age of retirement.

(2) The Bank shall constitute a Special Committee, consisting of not less than three members, to review, whether an officer employee should be retired in accordance with the first proviso to this regulation. Such Committee shall, from time to time, review the case of each officer employee and no order of retirement shall be made unless the Special Committee recommends in writing to the Competent Authority the retirement of the officer employee."

3. The basic fact of the matter is not in dispute. Respondent No.1 herein joined his services in the appellant bank as MMG Scale-II. On or about 13.2.1989, he sought voluntary retirement in terms of Regulation 19 of the Regulations. The Bank accepted his offer vide its letter dated 8.5.1989.

Respondent No.1 was allowed to take voluntary retirement w.e.f. 31.5.1989.

4. On or about 1.11.1993, The United Bank of India (Employees) Pension Regulations, 1993 were introduced for employees of the appellant- Bank. Option from the employees retired between 1.1.1986 and 1.11.1993 was sought for by the appellant on or before 30.7.1994. However, the last date for receiving such option was extended till 30.9.1994 vide a circular dated 30.9.1994.

On or about 1.9.2001, the respondent No.1 filed an application for exercising his option for pension. The appellant, vide its letter dated 10.10.2001 informed him that he was not entitled to give any option for the said purpose.

Aggrieved by and dissatisfied with the said letter, the respondent filed a writ petition before the High Court of Judicature at Calcutta, which was marked as W.P. No.490 of 2002, praying therein for the following reliefs:

4 "a) A writ in the nature of mandamus commanding the respondents and each of them their men, servants, agents, and assigns to act in accordance with the law and allow Pension Benefits to the writ petitioner from the date of his retirement in terms of the United Bank of India (Employees) Pension Regulation 1995;

b) A writ in the nature of mandamus commanding the respondents and especially the respondent Nos1, 2 and 3 to forthwith cancel and/or rescind the letter dated 10th October, 2001 being Annexure 'P-9' hereto;

(c) Writ in the nature of Prohibition directing and commanding the respondents and each of them to desist from withholding the Pension Benefits to the petitioner;

(d) A writ in the nature of Certiorari directing and commanding the respondents and each of them to transmit and produce all the records relating to this case to the said Hon'ble Court after certifying the same to that conscionable justice may be rendered;

e) An order of injunction restraining the respondents and/or each of them their servants, men, agents & assigns from withholding and/or continuing to withhold the pensionary benefits of the writ petitioner;

f) Rule Nisi in terms of prayers above."

Counter affidavit as also a supplementary counter affidavit to the writ petition were filed by the appellant.

The said writ petition was allowed by a learned Single Judge of the High Court by his order dated 20.3.2003. The appellant-Bank preferred an intra court appeal thereagainst which was also dismissed by the Division Bench by reason of the impugned judgment.

5. The appellant is, thus, before us.

6. The respondent voluntarily retired from the services of the Bank as far back as on 31.5.1989 as has been noticed by us hereinbefore. He claimed the benefit of pension which was introduced by reason of a Regulation known as United Bank of India (Employees) Pension Regulations, 1995.

The Regulations were published in the Official Gazette on 29.9.1995 and in terms of clause (2) of regulation 1, they were to come into force on the said date.

7. A writ petition was filed before this Court. This Court in its decision in Bank of India v. Indu Rajagopalan & Ors. [JT 2000 (10) SC 334] held that the benefit of the said Regulations should be extended to those employees who have retired on or after 1.1.1986. It is also not in dispute that the respondent as on the date of his retirement completed 17 years 10 months and 17 days of actual service.

8. The core question which arises for consideration herein is as to whether having regard to the provisions contained in clause (5) of Regulation 29 of the Regulations, he would be entitled to the pensionary benefits.

Regulation 2(n) defines 'employee' to mean :

" 'employee' means any person employed in the service of the Bank on full time work on permanent basis or on part-time work or permanent basis on scale wages and who opts and is governed by these regulations, but does not include a person employed either on contract basis or daily wage basis or on consolidated wages."

Regulation 2(w) defines 'qualifying service' as under :

" 'qualifying service' means the service rendered while on duty or otherwise which shall be taken into account for the purpose of pension under these regulations."

9. The Regulations, as noticed hereinbefore, was to apply to the employees who were in service on or after the first day of January 1986 or who had retired before the first day of November 1993 and exercised the option in writing within the period prescribed therein.

7 Chapter IV of the Regulations provided for qualifying service. We may notice Regulations 14, 15, 17, 18, 19 and 21 of the said Regulations which read as under :

"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

15. Commencement of qualifying service - Subject to the provisions contained in these regulations, qualifying service of an employee shall commence from the date he takes charge of the post to which he is first appointed on a permanent basis.

16. ...

17. Counting of periods spent on leave - All leave during service in the Bank for which leave salary is payable shall count as qualifying service;

Provided that extraordinary leave on loss of pay shall not count as qualifying service except when the sanctioning authority has directed that such leave not exceeding twelve months during the entire service, may count as service for all purposes including pension.

Broken period of service of less than one year - If the period of service of an 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.

19. Counting of period spent on training - Period spent by an employee on training in the Bank immediately before his appointment shall count as qualifying service.

20. ...

21. Period of suspension - Period of suspension of an employee pending enquiry shall count for qualifying service where, on conclusion of such enquiry, he has been fully exonerated or the suspension is held to be wholly unjustified, and in other cases, the period of suspension shall not count as qualifying service unless the Competent Authority passing the orders under the Service Regulations or Discipline and Appeal regulations or Settlements governing such cases expressly declares at the time that it shall count to such extent as such authority may declare."

10. In the aforementioned backdrop, we may notice the provisions contained in Chapter of the Regulations titled 'Classes of Pension'.

Regulation 28 provides for superannuation pension. Pension on voluntary retirement is governed by Regulation 29; clause (1) whereof reads as under :

"Pension on Voluntary Retirement - (1) On or after 1st day of November, 1993, at any time after an employee has completed twenty years of qualifying service he may, by giving notice of not less than three months in writing to the appointing authority, retire from service;

Provided that this sub-regulation shall not apply to an employee who is on deputation or on study leave abroad unless after having been transferred or having returned to India he has resumed charge

of the post in India and has served for a period of not less than one year;

Provided further that this sub-regulation shall not apply to an employee who seeks retirement from service for being absorbed permanently in an autonomous body or a public sector undertaking or company or institution or body, whether incorporated or not to which he is on deputation at the time of seeking voluntary retirement;

Provided that this sub-regulation shall not apply to an employee who is deemed to have retired in accordance with clause (1) of regulation 2."

Clause (2) of Regulation 29 provides for acceptance of notice of voluntary retirement by the appointing authority. Other procedural provisions are contained in clauses (3) and (4). Clause (5) of Regulation 29 reads as under :

"(5) The qualifying service of an employee retiring voluntarily under this regulation shall be increased by a period not exceeding five years, subject to the condition that the total qualifying service rendered by such employee shall not in any case exceed thirty-three years and it does not take him beyond the date of superannuation."

11. The learned Single Judge as also the Division Bench of the High Court on construction of the provisions of clause (5) of Regulation 29 was of the opinion that the qualifying service could be extended by a period of five years having regard to the definition thereof which not only takes within its umbrage the service rendered while on duty but also service 'otherwise' rendered.

12. The meaning of the word 'otherwise' as given in 'Advanced Law Lexicon' (3rd Edn - 2005) is as under :

"By other like means; contrarily; different from that to which it relates; in a different manner; in another; in any other way; differently in other respects in different respects; in some other like capacity."

[See R & B Falcon (A) Pty. Ltd. v. Commissioner of Income Tax [2008 (8) SCALE 223].

As a general rule, 'otherwise', when following an enumeration, should receive an ejusdem generis interpretation (per CLEASBY, B. Monck v. Hilton 46 LJMC 167. The words 'or otherwise', in law, when used as a general phrase following an enumeration of particulars, are commonly interpreted in a restricted sense, as referring to such other matters as are kindred to the classes before mentioned, (Cent. Dict.)"

13. Contention of Mr. Mehta is that the said word only takes within its purview those classes of cases which are noticed in Chapter IV of the Regulations and not for the purpose of extending the period of qualifying service. We agree. Service may not be actually rendered but must be otherwise rendered. This presupposes that the relationship of employer and employee must continue at all relevant times.

14. Mr. Mukherjee relied upon a recent decision in Bank of Baroda & Ors. v. Ganpat Singh Deora [(2009) [1 SCALE 168](#)] wherein this Court was considering the provisions of the Pension of Regulations of Bank of Baroda providing for pay-ability of pension to an employee who as on

31.01.2001, would have completed a minimum of 15 years of service or who could be completing 40 years of age. The respondent therein at that point of time merely had completed 13 years of service. Despite that, his application for voluntary retirement was accepted. When, however, he had sought for the benefits applicable to him under the Pension Scheme in addition to other retirement benefits, the same was not acceded to. It was in the aforementioned factual matrix, the interpretation of Regulation 14, 28 and 29 came up for consideration. An argument was advanced therein that the terms and conditions of the voluntary retirement scheme were different from voluntary retirement contemplated under Regulation 29, as in such an event, Regulation 14 will apply containing the general conditions. That argument was rejected, stating :

"18. However, we are inclined to agree with Ms.

Bhati that Regulation 29 does not contemplate voluntary retirement under the Voluntary Retirement Scheme and applies only to such employees who themselves wish to retire de hors any Scheme of Voluntary Retirement, after having completed 15 years of qualifying service for the said purpose. There is a distinct difference between the two situations and Regulation 29 would not cover the case of an employee opting to retire on the basis of a Voluntary Retirement Scheme.

19. Furthermore, Regulation 2 of the Voluntary Retirement Scheme, 2001, of the appellant-Bank merely prescribes a period of qualifying service for an employee to be eligible to apply for voluntary retirement. On the other hand, Regulations 14 and 29 of the Pension Regulations, 1995, relate to the period of qualifying service for pension under the said Regulations, in two different situations. While Regulation 14 provides that in order to be eligible for pension an employee would have to render a minimum of 10 years service, Regulation 29 is applicable to the employees choosing to retire from service pre- maturely, and in their case the period of qualifying service would be 15 years." We are not concerned with such a case.

We must also notice that Mr. Mukherjee, learned counsel appearing on behalf of the respondent contended that if Regulation 29 applies, there is no reason as to why clause (5) thereof shall not apply.

13 15. However, in a subsequent decision of this Court in *Bank of India & Anr. v. K. Mohandas & Ors.* [2009 (4) SCALE 576]. In that case also Bank of India offered a voluntary retirement scheme a similar question had come up for consideration. Clause (5) of Regulation 29 came up for consideration therein although the case *stricto sensu* was concerned with the voluntary retirement scheme itself. The High Court, however, noticed that two different views expressed by the Kerala High Court in paragraph 19 of the judgment. Upon noticing the rival contentions of the parties, the following was formulated :

"The principal question that falls for our determination is: whether the employees (having completed 20 years of service) of these banks (Bank of India, Punjab National Bank, Punjab & Sind Bank, Union Bank of India and United Bank of India) who had opted for voluntary retirement under VRS 2000 are entitled to addition of five years of notional service in calculating the length of service for the purpose of the said Scheme as per Regulation 29(5) of Pension Regulations, 1995?"

The High Court rejected his submission that if the Regulations including clause (5) of Regulation 29 is applied for the purpose of voluntary retirement scheme, it would create an anomalous situation inasmuch as two different class of employees for the purpose of granting 14 pension would be created. The Court distinguished the Bank of Baroda's case (*supra*), opining that the same was

rendered in the facts thereof, stating:

"49. It is true that the controversy in the case of Bank of Baroda arose out of the same voluntary retirement scheme with which we are concerned in this group of appeals. However, there is vital factual difference in that case and this group of appeals. Pertinently that was a case where the employee had completed only 13 years of service (not even 15 years of service much less 20 years' service) although he completed 40 years of age at the time he offered for voluntary retirement. The employee's application therein for voluntary retirement was accepted by the Bank of Baroda and he was paid all retiral benefits. However, his request for grant of pension in addition to the other retiral benefits was not acceded to by the bank. It was so because he had not completed even 15 years of service. The employee pursued industrial adjudicatory process for redressal of his grievance in respect of non-grant of pension by the bank. The employee's claim was opposed by the Bank of Baroda contending that in terms of Regulations 14, 28 and 29 of the Pension Regulations, 1995, the employee was not entitled to pension. The observations made by this Court in Bank of Baroda which have been quoted above and relied upon by the banks in support of their contention have to be understood in the factual backdrop namely, that the employee had completed only 13 years of service and, was not eligible for the pension under the Pension Regulations, 1995 and for the benefit of addition of five years to qualifying service under Regulation 29(5), an employee must have completed 20 years of service. The question therein was not identical in form with the question here to be decided. The 15 following observations in paragraph 11 of the report in Bank of Baroda are significant:

...since both the Tribunal as well as the High Court appear not to have considered or taken note of the fact that the respondent was not eligible for pension as he had not completed 15 years of qualifying service....

50. The decision of this Court in Bank of Baroda is, thus, clearly distinguishable as the employee therein had not completed qualifying service much less 20 years of service for being eligible to the weightage under Regulation 29(5) and cannot be applied to the present controversy nor does that matter decide the question here to be decided in the present group of matters."

It was laid down :

"53. We hold, as it must be, that the employees who had completed 20 years of service and were pension optees and offered voluntary retirement under VRS 2000 and whose offers were accepted by the banks are entitled to addition of five years of notional service in calculating the length of service for the purposes of that Scheme as per Regulation 29(5) of the Pension Regulations, 1995.

The contrary view expressed by some of the High Courts do not lay down the correct legal position." We respectfully agree with the view expressed therein.

16. What is qualifying service has been explained in Union of India & Anr. v. Bashirbhai R. Khilji [(2007) 6 SCC 16], wherein this Court held that 16 the respondent being constable in the Central Reserve Police Force, the Central Civil Services (Pension) Rules, 1972 are applicable. Rule 49 stipulates that the minimum qualifying service of ten years is required for extending the pension benefit. It was stated that 'for grant of any kind of pension, one has to put in the minimum of ten years of qualifying service'.

In that case, Respondent was appointed as armed constable in central reserve police force. He suffered from pyrogenic meningitis and neurosensory deficits while on duty. He was invalidated from service after he was declared unfit for duty. Respondent request for invalid pension was rejected on the ground that he had not completed 10 years of service. The Division Bench of High Court held that the respondent was entitled to the invalid pension since his invalidity was 100% and the condition of ten years of qualifying service could not be invoked so as to deny the respondent invalid pension.

17. We may notice that this Court in *Indian Bank & Anr. v. N. Venkatramani* [(2007) 10 SCC 609], held :

"13. It may be true that various provisions of the Regulations as for example Regulations 16, 17, 19, 23, etc. provided for qualifying service. Regulation 18 is not controlled by any of the said provisions.

It does not brook any restrictive interpretation. It only provides for a rule of measurement. An 17 employee, as noticed hereinbefore, was entitled to pension provided he has completed the specified period of service. How such a period of service would be computed is a matter which is governed by the statute. It is one thing to say that a statute provides for completion of fifteen years of minimum service, but if a provision provides for measurement of the period, the same cannot be lost sight of. Provision of the Regulations which are beneficial in nature, in our opinion, should be construed liberally."

In that case, the question arose as to how the lack in period of service of less than one year shall be construed. This Court held that Regulation 18 was not controlled by Regulations 16, 17, 19, 23 etc. as it provided for a Rule of Measurement.

It, is however, trite that even a beneficial legislation should not be extended to such an extent whereby it would take into within its fold a situation which was not contemplated under the statute.

18. Could the period of service computed by including a period of five years as provided for in clause (5) of Regulation 29 is the question. In our opinion, it was not. Definition of 'qualifying service' is restrictive in nature.

It uses the word 'means' and not 'includes' or 'means and includes'. Thus, the construction of 'qualifying service' must ordinarily be kept confined to the service rendered while on duty. He may be in service even otherwise 18 although not rendering any duty. Those exigencies of situation are covered by the other types of cases which would come within the purview thereof. A person who is not in service cannot be said to be entitled to the benefit thereof. The term 'otherwise' should be read ejusdem generis. The term 'otherwise' in the context of the 'Regulations' should be construed so that it can become meaningful one. For the said purpose, the employee concerned was required to be in service. It is not possible to hold in absence of any express words that the eligibility criteria laid down in the Regulations for obtaining the benefit of pension, i.e., the qualifying service should be construed in such a manner that a person even not in service would be deemed to be in service. The statute does not raise a legal fiction. A strict construction of the term "qualifying service" therefor, in our opinion, would not be appropriate.

In *Siddeshwari Cotton Mills (P) Ltd. v. Union of India (UOI) & Anr.* [(1989) 2 SCC 458], the

Supreme Court while discussing the definition of 'manufacture' under section 2(f) of the Central Excise and Salt Act, 1944 whether the relevant process fall within 'any other process' thereby within the provision of section 2(f)(v) the Court looked at the meaning of 'the expression ejus-dem-generis...' which means of the same kind or nature'...signifies a principle of construction whereby words in a statute 19 which are otherwise wide but are associated in the text with more limited words are, by implication, given a restricted operation and are limited to matters of the same class or genus as preceding them. If a list or string or family of genus-describing terms is followed by wider or residuary or sweeping-up words, then the verbal context and the linguistic implications of the preceding words limit the scope of such words.

The Court also discussed various other texts while looking at the term.

In 'Statutory Interpretation' Rupert Cross says:

"...The draftsman must be taken to have inserted the general words in case something which ought to have been included among the specifically enumerated items had been omitted..."

The principle underlying this approach to statutory construction is that the subsequent general words were only intended to guard against some accidental omission in the objects of the kind mentioned earlier and were not intended to extend to objects of a wholly different kind. This is a presumption and operates unless there is some contrary indication. But the preceding words or expressions of restricted meaning must be susceptible of the import that they represent a class. If no class can be found, ejusdem 20 generis rule is not attracted and such broad construction as the subsequent words may admit will be favoured. As a learned author puts it:

"...if a class can be found, but the specific words exhaust the class, then rejection of the rule may be favoured because its adoption would make the general words unnecessary; if however, the specific words do not exhaust the class, then adoption of the rule may be favoured because its rejection would make the specific words unnecessary."

Cessation of contract of service may be of different types, i.e., by punishment or by end of contract. It, however, does not take within its purview an order of suspension as the same does not bring about a cessation.

19. In National Textile Corporation (M.P.) Limited v. M.R. Jadhav [(2008 (7) SCC 29], this Court held:

"Subject, of course, to the terms "invitation to treat" as also those of the offer as envisaged under the Contract Act, an offer has to be accepted.

Unless an offer is accepted, a binding contract does not come into being. A voluntary retirement scheme contemplates cessation of the relationship of master and servant. The rights and obligations of the parties thereto shall become enforceable only on completion of the contract. Unless such a stage is reached, no valid contract can be said to have come into force. Acceptance of an offer must, therefore, be communicated."

20. We, therefore, are of the opinion that in a case of this nature, clause (5) of Regulation 29 would

be attracted only in a case where the concerned employee has completed 20 years of qualifying service. Clause (5) of 29 would be applicable for the purpose of granting a higher monetary benefit in the matter of computation of pension. It does not provide for measurement of the period as was in the case of Indian Bank (supra).

21. For the reasons aforementioned, the impugned judgment cannot be sustained, it is set aside accordingly. The appeal is allowed. However, in the facts and circumstances of this case, there shall be no order as to costs.