

SUPREME COURT OF INDIA

State of Bank of Patiala

Vs.

Pritam Singh Bedi

C.A.No.172 of 2010

(Sudhansu Jyoti Mukhopadhaya and V.Gopala Gowda JJ.)

07.07.2014

JUDGMENT

SUDHANSU JYOTI MUKHOPADHAYA, J.

1. All these appeals have been preferred by the State Bank of Patiala (hereinafter referred to as Bank) against different judgments and orders passed by Punjab and Haryana High Court at Chandigarh but since common issues were involved they were heard together and disposed of by the impugned common judgment.

2. A number of employees who were allowed to retire from the Bank pursuant to scheme called State Bank of Patiala Voluntary Retirement Scheme, 2000 (herein after referred to as the Scheme) introduced by Circular dated 20th January, 2001, and had completed more than 19 and ½ years of service, in whose favour pension was not released by the Bank in accordance with the State Bank of Patiala (Employees) Pension Regulations, 1995 (hereinafter referred to as the Regulations, 1995). They moved before the High Court for direction to the Bank and its authorities to release pension in their favour in accordance with the Scheme. By one of the judgments dated 22nd October, 2008, learned Single Judge of the High Court allowed the writ petitions preferred by some of the aggrieved employees (respondents) in C.A. No.172 of 2010 and directed to pay pension in their favour. Against the said order the Bank preferred LPA No.312 of 2008 before the Division Bench, which by the impugned judgment dated 9th January, 2009 dismissed the LPA and affirmed the order passed by the

learned Single Judge. The said impugned judgment dated 9th January, 2009 passed in LPA No.312 of 2008 is under challenge in C.A.No.172 of 2010. Some other similarly situated employees who had completed more than 19 and ½ years of service and retired persons to Voluntary Retirement Scheme also preferred similar writ petitions which were allowed. Against the respective judgments Bank filed different LPAs which were also dismissed by different orders in view of the judgment dated 9th January, 2009. Against the judgments which have followed the earlier decision, the rest of the civil appeals have been preferred by the Bank.

3. The High Court by the impugned judgment referring to earlier Division Bench decision of the High Court in Dharam Pal Singh v. Punjab National Bank, 2008 (1) PLR 745 held that the pension was payable under Regulation 28 and that Regulation 29 will not apply. The Division Bench of the High Court further held as follows:

12. A perusal of the Regulation 28 shows that on attaining the age of superannuation specified in Regulations or settlements pension is payable. The age of superannuation has been laid down in Service Regulations which is said to be 60 years now and earlier it was 58 years. But under the Voluntary Retirement Scheme, which according to the writ petitioners will be at par with Settlement, the requirement is 15 years of service or 40 years of age, which admittedly the writ petitioners had. Under Regulation 32 of the pension is payable on premature retirement on account of orders of the Bank if the employee was otherwise entitled to pension/superannuation on that day. Read with Regulations 14 and 28, the said age is 10 years and if read with the Scheme, it is 15 years of age or 40 years of service and in either case the employees were covered by the pension scheme. The Honble Supreme Court held that Regulation 29 relating to voluntary retirement was not applicable. Thus, contention on behalf of the Bank that Regulation 29 applied and therefore, pension payable only after 20 years service cannot be accepted.

The view taken by the learned Single Judge was affirmed by the Division Bench and the LPA was dismissed.

4. Learned counsel for the appellant-Bank referred to Regulations 13, 28,29, 32 and Clause 3 of State Bank of Patiala Voluntary Retirement Scheme and submitted as follows:

(a) Regulation 14 which refers to qualifying service is not applicable in view of the judgment of this Honble Court in the case of PNB vs. Dharam Pal;

(b) Clause 3 of the SBP VRS would not apply for pension, as it speaks of eligibility for applying under the Scheme, particularly, in view of the judgment of this Honble Court in the case of Bank of India (supra);

(c) Regulation 32 which relates to premature retirement would also not apply as the retirement of employee was not on the orders of the Bank in public interest, by way of punishment, further SBP VRS was not by way of a settlement.

(d) Thus it is only Regulation 29 pension on voluntary retirement which would be applicable for granting pension, in case of those applying under SBP VRS.

(e) In case it is held that SBP VRS is not a voluntary retirement in accordance with Regulation 29, then it would mean that the respondent employees have not retired, as per Regulation 2(y), not covered under Pension Regulations and hence not entitled for pension.

5. On the other hand, following submissions were made by the learned counsel for the respondents:

i) All the respondents have completed more than 19 and ½ years of service but less than 20 years in the Bank, therefore, they are entitled to treat the broken year as one year under Regulation 18. Therefore, in view of Regulation 18, the respondents should be treated to have completed 20 years of service.

ii) The respondents are entitled for pension under Regulation 32 otherwise also the respondents are entitled to pension even under Regulation 29.

6. Learned counsel for the appellant-Bank relied on the decisions of this Court in Bank of Baroda vs. Ganpat Singh Deora, 2009 (3) SCC 217 and Bank of India vs. K. Mohandas and others, 2009(5) SCC 313. On the other hand, according to the counsel for the respondents, the present case is different than the decisions in Bank of Baroda (supra) and Bank of India (supra) as the respondents are guided by Regulations 18, 28,

29 and 32 of the State Bank of Patiala (Employees) Pension Regulations, 1995 which varies from the provisions of the other Banks.

7. In the present case the question arises for consideration is whether under the State Bank of Patiala (Employees) Pension Regulations, 1995 the respondents are entitled for pension.

8. Similar question was considered by this Court in Bank of Baroda (supra). In the said case Bank of Baroda employees were retired pursuant to Bank of Baroda Employees Voluntary Retirement Scheme, 2001. However, they had not completed 20 years of service; therefore, they were denied the benefit of pension under their Pension Regulations, 1995. In the said case this Court noticed Regulation 28 of Bank of Baroda Pension Regulations as it stood prior to the amendment made on 2nd January, 2004 which was as follows:

28. Superannuation pension."Superannuation pension shall be granted to an employee who has retired on his attaining the age of superannuation specified in the Service Regulations or settlements.

9. This Court also noticed the amended Regulation 28 in Bank of Baroda (supra) which was published in the Gazette of India on 2nd January, 2004 and provides as follows:

28. Superannuation pension."Superannuation pension shall be granted to an employee who has retired on his attaining the age of superannuation specified in the Service Regulations or settlements:

Provided that, with effect from 1-9-2000 pension shall also be granted to an employee who opts to retire before attaining the age of superannuation, but after rendering service for a minimum period of 15 years in terms of any scheme that may be framed for such purpose by the Board with the approval of the Government.

10. Having noticed the aforesaid provisions and Regulation 29 of the Bank of Baroda Pension Regulation which is *peri materia*, similar one, this Court in view of the fact that the respondents of said Bank had not completed the required length of qualifying service as provided under Regulation 28 of Regulations, 1995, held that the

respondents were not eligible for pension under the Pension Regulation, 1995 of the Bank of Baroda.

11. Subsequently, similar provisions of different Bank fell for consideration before a Bench of this Court in Bank of India (supra), referring to the scheme and different provisions which are almost similar to the present one held as under:

33. What was, in respect of pension, the intention of the banks at the time of bringing out VRS 2000? Was it not made expressly clear therein that the employees seeking voluntary retirement will be eligible for pension as per the Pension Regulations? If the intention was not to give pension as provided in Regulation 29 and particularly sub-regulation (5) thereof, they could have said so in the Scheme itself. After all much thought had gone into the formulation of VRS 2000 and it came to be framed after great deliberations. The only provision that could have been in mind while providing for pension as per the Pension Regulations was Regulation 29. Obviously, the employees, too, had the benefit of Regulation 29(5) in mind when they offered for voluntary retirement as admittedly Regulation 28, as was existing at that time, was not applicable at all. None of Regulations 30 to 34 was attracted.

37. The amendment to Regulation 28 can, at best, be said to have been intended to cover the employees with 15 years of service or more but less than 20 years of service. This intention is reflected from the communication dated 5-9-2000 sent by the Government of India, Ministry of Finance, [pic]Department of Economic Affairs (Banking Division) to the Personnel Advisor, Indian Banks Association.

39. Two things immediately become noticeable from the said communication. One is that as per Regulation 29 of the Pension Regulations, 1995, an employee can take voluntary retirement after 20 years of qualifying service and become eligible for pension. The other thing is that the Scheme provides that the employees with 15 years of service or 40 years of age shall be eligible to take voluntary retirement under the Scheme and under Regulation 29, the employees having rendered 15 years of service or completed 40 years of age but not completed 20 years of service shall not be [pic]eligible for pensionary benefits on taking voluntary retirement under the Scheme.

40. The use of the words such employees in the communication is referable to employees having rendered 15 years of service but not completed 20 years of service and, therefore, it was decided to bring an amendment in the Regulations so that the employees having not completed 20 years service do not lose the benefit of pension. The amendment in Regulation 28, as is reflected from the afore referred communication, was intended to cover the employees who had rendered 15 years service but not completed 20 years service. It was not intended to cover the optees who had already completed 20 years service as the provisions contained in Regulation 29 met that contingency.

46. The precise effect of the Pension Regulations, for the purposes of pension, having been made part of the Scheme, is that the Pension Regulations, to the extent, these are applicable, must be read into the Scheme. It is pertinent to bear in mind that interpretation clause of VRS 2000 states that the words and expressions used in the Scheme but not defined and defined in the rules/regulations shall have the same meaning respectively assigned to them under the rules/regulations. The Scheme does not define the expression retirement or voluntary retirement. We have, therefore, to fall back on the definition of retirement given in Regulation 2(y) whereunder voluntary retirement under Regulation 29 is considered to be retirement. Regulation 29 uses the expression voluntary retirement under these Regulations. Obviously, for the purposes of the Scheme, it has to be understood to mean with necessary changes in points of details. Section 23 of the Contract Act has no application to the present fact situation.

48. It is true that validity and legality of Regulation 28 has not been put in issue. It was apparently not done because, according to the employees, amended Regulation 28 although made retrospective could not have affected the concluded contract. We have already indicated above as to how the amendment in Regulation 28 in the year 2002 with effect from 1-9-2000 could not have applied to the optees under the Scheme who had completed service of 20 years. Lack of challenge to Regulation 28 by the employees is, therefore, not very material. It is not correct to say that by taking recourse to Regulation 29, the amendment to Regulation 28 is rendered otiose.

50. It is true that VRS 2000 is a complete package in itself and contractual in nature. However, in that package, it has been provided that the optees, in addition to ex gratia payment, will also be eligible to other benefits inter alia pension under the Pension Regulations. The only provision in the Pension Regulations at the relevant time during the operation of VRS 2000 concerning voluntary retirement was Regulation 29 and sub- regulation (5) thereof provides for weightage of addition of five years to qualifying service for pension to those optees who had completed 20 years service. It, therefore, cannot be accepted that VRS 2000 did not envisage grant of pension benefits under Regulation 29(5) of the Pension Regulations, 1995, to the optees of 20 years service along with payment of ex gratia.

51. The whole idea in bringing out VRS 2000 was to right size workforce which the banks had not been able to achieve despite the fact that the statutory Regulations provided for voluntary retirement to the employees having completed 20 years service. It was for this reason that VRS 2000 was made more attractive. VRS 2000, accordingly, was an attractive package for the employees to go in for as they were getting special benefits in the form of ex gratia and in addition thereto, inter alia, pension under the Pension Regulations which also provided for weightage of five years of qualifying service for the purposes of pension to the employees who had completed 20 years service.

12. In the said case of Bank of India (supra), this Court noticed the observation made by this Court in the case of Bank of Baroda (supra) but distinguished the same with the following observation: 61. The observations made by this Court in Bank of Baroda, (2009) 3 SCC 217, 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.

62. The following observations in Bank of Baroda(supra) are significant: (SCC p. 221, para 21)

21. 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.

63. The decision of this Court in Bank of Barod(supra)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.

13. For determination of the issue, it is desirable to refer to the relevant provisions of the State Bank of Patiala Voluntary Retirement Scheme, 2001, the background of such Scheme and relevant provisions of State Bank of Patiala (Employees) Pension Regulations, 1995.

14. Pursuant to Government of India, Indian Banks Association advice different Banks introduced Voluntary Retirement Scheme including the State Bank of Patiala Voluntary Retirement Scheme, 2000 introduced by the Bank, by its Circular No. Per/VRS/48 dated 20th January, 2001. Clause 3 of the Scheme prescribed eligibility of voluntary retirement as follows:

Clause 3:

Eligibility

The scheme will be open to all permanent employees of the Bank, except those specifically mentioned as ineligible who have put in 15 years of service or have completed 40 years of age as on 31st December, 2000. Age will be reckoned on the basis of the date of birth as entered in service record.

While calculating the period of service, absence, which is reckoned as service, will be excluded.

If an officer, who has not completed mandatory rural or semi-urban assignment (either wholly or partly) submits an application for retirement under SBP VRS before approving his case, his promotions would stand withdrawn if

confirmation subsequent to promotion is subject to completing such mandatory service.

15. Apart from ex gratia which were offered under the Scheme, the following other benefits were prescribed therein: Clause 7:

Other benefits

i) Gratuity as payable under the extant instructions on the relevant date.

ii) Provident Fund contribution as per SBP Employees Provident Rules as on relevant date.

iii) Pension or Banks contribution to Provident Fund as the case may be as per rules applicable on the relevant date on the basis of actual years of service rendered. xxx xxx xxx xxx

16. The respondents who had completed more than 19 and ½ years of service applied for and were allowed to Voluntary Retirement Scheme aforesaid. They have been paid most of the benefits but pensionary benefits were not paid to them. Therefore, they had to move before the High Court.

17. State Bank of Patiala (Employees) Pension Regulations, 1995 are applicable to full time employees of the Bank. Regulation 2(w) defines qualifying service and 2(y) defines retirement, they are as follows: 2(w) 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;

2(y) retirement means cessation from Banks service:-

a) on attaining the age of superannuation specified in “Service Regulations of Settlements;

b) on voluntary retirement in accordance with provisions contained in regulation 29 of these regulations;

c) on premature retirement by the Bank before attaining the age of superannuation specified in Service Regulations or Settlement;

18. Chapter IV relates to qualifying service. Regulation 14 defines qualifying service 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 on the date on which he is deemed to have retired shall qualify for pension.

For the purpose of qualifying service, under the said Chapter IV Regulation 18 prescribes broken period of service of less than one year as under:

18. Broken period of service of less than one year- If the period of service of an employee includes broken period of service is 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. Chapter V relates to Classes of Pension (Classes of Pension). Regulation 28 deals with superannuation pension as under:

28. Superannuation Pension-

Superannuation pension shall be granted to an employee who has retired on his attaining the age of superannuation specified in the Service Regulations or settlements.

20. Regulation 29 relates to Pension on Voluntary Retirement, relevant portion of which reads as under:

29. Pension on Voluntary Retirement-

1) On or after the 1st day of November, 1993, at any time after an employee has

completed twenty years of qualifying service he may, by writing to the competent 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 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.

xxx xxx xxx xxx

(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 years and it does not take him beyond the date of superannuation.

21. For premature retirement pension one may refer to Regulation 32, which reads as under:

32. Premature Retirement Pension

Premature retirement Pension may be granted to an employee who, -

- a) has rendered minimum ten years of service;
- b) retires from service on account of orders of the Bank to retire prematurely in the public interest for any other reason specified in service regulations or

settlement, if otherwise he was entitled to such pension on superannuation on that date.

Regulation 33 deals with an employee compulsorily retired from service as a penalty and which is not applicable in the present case.

22. The respondents completed more than 10 years of service in the Bank on the date of retirement; therefore, they fulfill the requirement of qualifying service as per Regulation 14.

23. It has not been disputed by appellant-Bank that the respondents in all the appeals have completed much more than 19 years 6 months of service in the Bank. For example, respondent No.1-Prakash Chand in C.A. No.173 of 2010 had joined the Bank on 4th May, 1981 and relieved on 31st March, 2001. Thus, he had completed 19 years, 10 months and 28 days of qualifying service on the date of relieving from service.

24. Regulation 18 of the Pension Regulations, 1995 provides that if broken period is more than six months, it shall be treated as one year. Therefore, all the respondents-writ petitioners having completed more than 19 years and 6 months of service in the Bank, they are to be treated to have completed 20 years of service. The aforesaid question was neither raised nor decided in the case of ~Bank of Baroda or ~Bank of India.

25. In view of the aforesaid fact, the appellant-Bank cannot derive the benefit of the decision of this Court in Bank of Baroda as the employees who were parties before the Court in the said case had not completed 20 years of service. As per the decision of this Court in Bank of India, the respondents-writ petitioners having completed 20 years of service are entitled to the benefit of Regulation 29.

26. In view of the finding recorded above, the appeals do not have merit in reference with the impugned judgment, they are, accordingly, dismissed. No costs.