

THE HONOURABLE SRI JUSTICE VILAS V. AFZULPURKAR

WRIT PETITION No.9069 of 2011

22.03.2012

Sreeram Ramamurthy.

Andhra Bank, rep. by its Chairman & Managing Director, Pattabhi Bhavan,
Saifabad, Hyderabad and three others.

Counsel for the Petitioner: MR. P.S. RAJASEKHAR

Counsel for the Respondents: DR. K. LAKSHMI NARASIMHA

ORDER:

Heard, Mr. P.S. Rajasekhar, learned counsel for the petitioner and Dr. K. Lakshmi Narasimha, learned counsel for the respondents.

2. The question involved in this writ petition is as to whether the petitioner, who was compulsorily retired from service of the respondent - bank, is entitled to opt for pension scheme of the bank in terms of circular of the bank dated 01.09.2010.

3. The brief facts are that the petitioner was appointed as Clerk-cum-Cashier in the respondent - bank on 25.05.1983 and reached the stage of Middle Management, Gr.II by June 2002. On the basis of the charge sheet dated 03.01.2008 alleging unauthorized absence for 242 days, petitioner suffered punishment of compulsory retirement under proceedings of the respondent – bank dated 18.03.2009. Petitioner states that under the Andhra Bank (Employees') Pension Regulations, 1995 vide Regulation 33, such employees, who are compulsorily retired from service on/after 01.11.1993, may be granted pension at no less than 2/3rd and not more than full pension admissible to them.

4. It is stated that long standing demands, between Indian Banks' Association on behalf of the Managements of various Banks and various associations of the employees of the banks, were negotiated and a Joint Note dated 29.10.1993 was signed introducing pension scheme in lieu of contributory provident fund in respect of those officers, who opted for the said pension scheme. However, such of the officers, who did not opt for the said pension scheme, were demanding to allow another option, which after prolonged negotiations, was, ultimately, accepted by the bank under the Joint Note dated 27.04.2010. It is the case of the petitioner that vide para 3(a) of the said Joint Note, he is eligible for giving option, even if he had not given option earlier. It is stated that the bank issued circular dated 01.09.2010 wherein another option for pension to contributory provident fund optees, both serving and retired, who had not opted for pension earlier, were provided opportunity subject to the terms and conditions of the said circular.

5. Petitioner states that first part of clause 2 under Eligibility criteria of the circular dated 01.09.2010 is same as clause 3-A of the Joint Note and the petitioner is eligible therein. Petitioner submitted his option dated 03.09.2010, which has been rejected under the impugned proceedings dated 13.09.2010 on the ground that the petitioner has neither retired voluntarily nor on superannuation during the period 29.09.1995 to 27.04.2010 and hence, not eligible to exercise option. The aforesaid order is questioned in this writ petition

with a consequential direction that petitioner's option be accepted for extending the pension scheme to him.

6. The respondent - bank has filed a counter affidavit stating that the punishment of compulsory retirement passed against the petitioner under proceedings dated 18.03.2009 has become final. Though the bank introduced the pension scheme in the year 1995, petitioner did not choose to opt. On imposition of penalty of compulsory retirement, the petitioner was paid all the terminal benefits including contribution to the provident fund and though under the joint note dated 27.04.2010 another option was provided subject to terms and conditions, petitioner being not in service on the date of the said joint note, he is stated to be not eligible for exercising the second option.

7. The rival contentions of both the learned counsel proceeded on the basis of the pleadings aforesaid.

8. Learned counsel for the petitioner states that the petitioner is entitled to exercise the second option under the scheme of the bank dated 01.09.2010, as he fulfils the first part of the eligibility of the said scheme apart from entitlement under Regulation 33 of the Regulations aforesaid.

9. Learned counsel for the respondent - bank, on the other hand, contends that the petitioner, admittedly, retired compulsorily on 18.03.2009 and on the date of the Joint Note dated 27.04.2010, he was not in the service of the bank. According to the learned counsel, therefore, the pension scheme and the option was available only to such of the officers, who had retired voluntarily or on reaching normal superannuation and neither the joint note dated 27.04.2010 nor the circular dated 01.09.2010 include such employees, who are retired compulsorily. Learned counsel, therefore, submits that the said omission to include the compulsory retirees clearly supports the stand of the bank that the petitioner is not entitled to exercise the option under the said scheme.

10. To appreciate these rival contentions, it is appropriate to extract relevant portions i.e. 2(a), 3(a), 4, 5, 6(i) and 8, of the Joint Note dated 27.04.2010, as under:

Another option for joining the existing Pension Scheme shall be extended to those Officers who: -

(2) (a) were in the service of the bank prior to 29th September 1995 in case of Nationalized Banks/26th March 1996 in case of Associate Banks of State Bank of India and continue in the service of the bank on the date of this Joint Note;

(3) (a) were in service of the bank prior to 29th September 1995 in case of Nationalized Banks/26th March 1996 in case of Associate Banks of State Bank of India and retired after that date and prior to the date of this Joint Note:

...

(4) The family of those officers who were in the service of the bank prior to 29th September 1995 in case of Nationalized Banks/26th March 1996 in case of Associate Banks of State Bank of India and retired after that date and had died will be eligible for family pension;

...

(5) The family of those officers who were in the service of the bank prior to 29th September 1995 in case of Nationalized Banks/26th March 1996 in case of Associate Banks of State Bank of India, but have died while in service of the bank after that date will be eligible for family pension;

...

(6) (i) The existing pension scheme will not be applicable to those who join the services of banks on or after 1st April 2010.

...

(8) Pension/Family Pension to those who opt to join the pension scheme complying with the terms of this Joint Note shall be payable with effect from 27th November 2009, provided that officers who retired after that date shall get pension from the respective dates of their retirement. All the Regulations of the Bank Employees' Pension Regulations, 1995/1996 shall be applicable to those who opt for the Pension Scheme in terms of this Joint Note except to the extent mentioned in the foregoing Clauses of this Joint Note.

11. The circular issued by the bank dated 01.09.2010 is based on the aforesaid joint note. Relevant portion of Clause 2 of the Eligibility criteria thereof provides as follows:

2) Officer/Workmen employees, those who were in service of the Bank prior to 29.09.1995 and retired after that date and prior to 27.04.2010. Officer/Workmen employees who opted for Voluntary Retirement under Special Voluntary Scheme after rendering a minimum of 15 years service, and the family of those Offices/Workmen who were in service of the Bank prior to 29.09.1995 retired after that date and died shall be eligible to exercise option to join the Pension Scheme subject to the terms and conditions applicable to the retirees.

12. We may also refer to Pension Regulations, which define retirement under Regulation 2(y) and Compulsory Retirement Pension under Regulation 33, as under:

2(y) "Retirement" means cessation from Bank's service: -

- (a) on attaining the age of superannuation specified in Service Regulation or 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 Settlements;

33. Compulsory Retirement Pension: -

(1) An employee compulsorily retired from service as a penalty on or after 1st day of November 1993 in terms of Andhra Bank Officer Employees' (Discipline and Appeal) Regulations, 1981 or awards/settlements may be granted by the authority higher than the authority competent to impose such penalty, pension at a rate not less than two-thirds and not more than full pension admissible to him on the date of his compulsory retirement if otherwise he was entitled to such pension on superannuation on that date.

(2) Whenever in the case of a bank employee the Competent Authority passes an order (whether original, appellate or in exercise of power of review) awarding a pension less than the full compensation pension admissible under these regulations, the Board of Directors shall be consulted before such order is passed.

(3) A pension granted or awarded under sub-regulation (1) or as the case may be, under sub-regulation (2), shall not be less than the amount of rupees three hundred and seventy five per mensem.

13. It would be noticed from the above that there are four different categories of employees, who are covered by the Joint Note and circular of the bank, which are broadly classified as:

(1) Those in the service of the bank prior to 29.09.1995 in case of Nationalized Banks/26.03.1996 in case of Associate Banks of State Bank of India and continue in the service of the bank on the date of this Joint Note;

(2) Those who were in service for the same period, as aforesaid, but retired after that date and prior to the date of this Joint Note:

(3) Family of such officers who were in the service of the bank on the aforesaid dates but retired after that date and had died will be eligible for family pension;

(4) Family of such officers who were in the service of the bank prior to the dates aforesaid, but have died while in service of the bank after that date will be eligible for family pension

14. The circular of the bank dated 01.09.2010 also refers to the same criteria under clauses 1 and 2 thereof. So far as the petitioner is concerned, the first part of clause 2 of the Eligibility criteria is relevant, which is extracted, as above, provides that the officers/workmen, who are in service prior to 29.09.1995 and retired after that date but prior to the date of Joint Note dated 27.04.2010 are eligible for pension. Since the petitioner retired compulsorily on 18.03.2009, on a plain reading of the Joint Note as well as the Circular, his case clearly falls within the first part of clause 2 of Eligibility criteria, which also satisfies para 3(a) of the Joint Note.

15. The impugned order, however, does not examine the option given by the petitioner from the aforesaid standpoint and proceeds to consider the case on the ground that the petitioner has not retired either voluntarily or on superannuation and thereby the right to give the option is denied. It is to be remembered that the retirees, who qualify within any of the four categories, as mentioned above, would be eligible to opt for pension. Clause 2 under the circular, therefore, covers three different categories but the respondents have apparently examined the petitioner's case, as if he must satisfy all condition of clause 2 whereas, in fact, it is sufficient if any retiree satisfies any one of the criteria under the said clause 2. The impugned order rejecting the petitioner's option on the said ground is, therefore, clearly erroneous on a plain reading of the circular dated 01.09.2010.

16. Dr. Lakshmi Narasimha, learned counsel for the respondent - bank, however, defended the action of the bank on the ground that such retirees, who have retired compulsorily, were not included in the scheme, as there is no reference to such retirees. I am, however, unable to appreciate the said contention in view of the fact that, firstly, the Joint Note as well as the circular refers to the retirees from the bank and the word retiree in generic term includes all categories of retirees. Restricting the meaning of the said word only to those, who retired voluntarily or on superannuation, is not only against the object and purpose of the agreement under the Joint Note and the circular but would also amount to reading something else therein. Secondly, the definition of retirement, as extracted above, covers all cases of cessation of service. Hence, the word 'retired' used in the Joint Note and circular has to be understood broadly, as per definition. I am, therefore, of the view that the Joint Note and the circular apply to all the retirees and if the contention of the learned standing counsel for the respondent - bank is accepted, it would amount to creating and classifying the retirees into two different classes viz. those, who retired on superannuation or voluntarily and the other category of those, who retired compulsorily, which would be violative of Article 14 of the Constitution of India.

17. In addition to the aforesaid, a clear indication of the intention of the bank is available from the fact that the first option under the pension scheme was available to all the retirees including those, who were compulsorily retired and that is why the counter affidavit states in

para 6 that the petitioner has not chosen to opt for the pension and preferred to continue as member of contributory provident fund. Further, para 9 states that Regulation 33 of the Regulations is not applicable to the petitioner, but it applies only to those, who were pension optees by the date of imposition of penalty of compulsory retirement. The averment, as above, itself would show that such of those, who suffered compulsory retirement but who opted for pension by the date of imposition of penalty, are eligible under the pension scheme. Evidently, the respondents cannot discriminate one such set of retirees on penalty of compulsory retirement from the other set of retirees. Moreover, the second option provided under the circular, based on the Joint Note, referred to above, was applicable to such category of retirees, who qualify within one of the four criteria. Petitioner being clearly falling within the said criteria, the impugned order rejecting his case is clearly unsustainable.

The writ petition is accordingly allowed setting aside the impugned order. The respondents shall reconsider the option exercised by the petitioner under the circular dated 01.09.2010 read with the Joint Note dated 27.04.2010, referred to above and pass appropriate orders in accordance with the said circular within a period of two (2) months from the date of receipt of a copy of this order.

In the circumstances, there shall be no order as to costs.

VILAS V. AFZULPURKAR, J

March 22, 2012

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JUDGEMENT IN WA No.905/2012 dated 08.08.2013 DELIVERED BY DIVISION BENCH OF HON'BLE HIGH COURT OF ANDHRA PRADESH.

Judgement Relating to CRS Category Bankers - Division Bench of Honorable High Court of AP - August 2013

This Writ Appeal is filed against the order dated 22.03.2012 in W.P.No.9069 of 2011, wherein the learned single Judge set aside the impugned order of rejection of option exercised by the respondent herein before the 4th appellant herein and the learned single Judge also directed the appellants herein to consider the option exercised by the respondent herein under the circular dated 01.09.2010 read with the Joint Note dated 27.04.2010 and pass appropriate orders in accordance with the said circular within a period of two (2) months from the date of receipt of a copy of the order.

Brief facts, which are necessary for disposal of the appeal, are as under:

The respondent was appointed as Clerk-cum-Cashier in the appellants-bank on 25.05.1983 and reached the stage of Middle Management, Gr.II by June, 2002. On the basis of the charge sheet dated 03.01.2008 alleging unauthorized absence for 242 days, punishment of compulsory retirement vide proceedings of the appellants-bank dated 18.03.2009 was imposed on the respondent herein. The respondent herein claims that under Regulation 33 of the Andhra Bank (Employees') Pension Regulations, 1995 (for short 'the Regulations'), such employees, who are compulsorily retired from service on/after 01.11.1993, may be granted pension at not less than 2/3rd and not more than full pension admissible to them. It is also the case of the respondent herein that there was negotiation between various associations of the employees of the bank and Joint Note dated 29.10.1993 was signed introducing pension scheme in lieu of contributory provident fund in respect of

those officers, who opted for the said pension scheme. However, such of the officers, who did not opt for the said pension scheme, were demanding to allow another option, which after prolonged negotiations, was, admittedly, accepted by the bank under the Joint Note dated 27.04.2010. It is the case of the respondent herein that as per para-3(a) of the said Joint Note, he is eligible for giving option, even if he had not given option earlier. It is also the case of the respondent herein that the bank issued circular dated 01.09.2010, wherein another option for pension to contributory provident fund optees, both serving and retired, who had not opted for pension earlier, were provided opportunity subject to the terms and conditions of the said circular. It is the further case of the respondent herein that first part of clause 2 under eligibility criteria of the circular dated 01.09.2010 is same as clause 3-A of the Joint Note and the respondent herein is eligible therein. The respondent herein submitted his option dated 03.09.2010, which has been rejected under the impugned proceedings dated 13.09.2010 on the ground that the respondent herein was neither retired voluntarily nor on superannuation during the period 29.09.1995 to 27.04.2010, hence not eligible to exercise option. The said rejection in proceedings dated 13.09.2010 was questioned by the respondent herein by filing the present writ petition.

The appellants-bank filed counter affidavit stating that the punishment of compulsory retirement imposed against the respondent herein under proceedings dated 18.03.2009 has become final; the respondent herein did not choose to opt though the bank introduced the pension scheme in the year 1995. It is also stated that on imposition of compulsory retirement, the respondent herein was paid all the terminal benefits including contribution to the provident fund and though under Joint Note dated 27.04.2010 another option was provided subject to terms and conditions, as the respondent herein was not in service on the date of the said joint note, he is stated to be not eligible for exercising the second option.

Learned single Judge after considering the relevant provisions and after elaborating discussion, allowed the writ petition by setting aside the impugned order in the writ petition and directed the appellants-bank to reconsider the option exercised by the respondent herein under circular dated 01.09.2010 read with the joint note dated 27.04.2010 and pass appropriate orders in accordance with the circular, within a period of two months from the date of receipt of a copy of the order. Challenging the same, the present writ appeal has been preferred by the bank.

Heard both sides.

Dr. K.Lakshminarasimha, learned Standing Counsel for the appellants-bank, contended that the respondent herein did not give his option under the Regulations and later he was inflicted with major penalty of compulsory retirement from the service of the bank by order dated 18.03.2009, and since the respondent herein was not a member of the Pension Scheme, he could not be paid the Compulsory Retirement Pension as envisaged in Regulation 33, as such he is not entitled to any pension. He also contended that though subsequently by letter dated 01.09.2010, the Board of the bank by resolution dated 31.08.2010 has approved to extend another option for Contributory Pension Scheme (CPS) optees both serving and retired who have not opted for pension earlier, on the terms and conditions mentioned. He further contended that the officers/workmen employees, those who are in service of the bank prior to 29.09.1995 and retired after that date and prior to 27.04.2010, are alone entitled to exercise option to join the Pension Scheme. He further contended that in the present case, the respondent herein was compulsorily retired on 18.03.2009 voluntarily from the bank's service. He further contended that as per the Regulations, it has treated retirement as meaning superannuation, voluntarily retirement in accordance with the provisions and premature retirement by the bank, and chapter 5 of the

Regulations deal with classes of Pension:-

Regulation 28 deal with Superannuation Pension;
Regulation 29 deal with Pension on voluntary Retirement;
Regulation 30 deal with Invalid Pension;
Regulation 31 deal with Compassionate Allowance;
Regulation 32 deal with Premature Retirement Pension;
Regulation 33 deal with Compulsory Retirement Pension – this is applicable only to such of those employees who have opted to come under this scheme as on the date of such punishment order being imposed. In the present case the punishment order was imposed on 18-3-09 and admittedly on that date the respondent was not an optee of the Pension Regulations and hence he could not have been paid the Compulsory Retirement Pension.

He further contended that since the respondent herein was compulsorily retired, he does not fall under the conditions wherein he can exercise the second option that is the reason his request for second option was rejected by the impugned proceedings, and as such the learned single Judge should not have allowed the writ petition directing to reconsider the option exercised by the respondent herein under circular dated 01.09.2010 r/w joint note dated 27.04.2010. He further contended that compulsory retirement does not come within the scheme frame by the bank.

On the other hand, the learned counsel for the respondent-writ petitioner submitted that the circular dated 01.09.2010 is prepared in pursuance to joint note dated 27.04.2010, while issuing the circular, the bank has not properly taken into account the joint note dated 27.04.2010, that is the reason the learned single Judge directed for reconsideration of the option under circular dated 01.09.2010 r/w joint note dated 27.04.2010. He also contended that the compulsory retirement cannot be treated on different footing than the retirement by superannuation, etc. It is further contended that the learned single Judge has considered all the relevant provisions and correctly came to conclusion and issued direction in this case for reconsideration of the option made by the respondent herein under circular dated 01.09.2010 r/w joint note dated 27.04.2010.

Relevant portion of clause 2 of the circular dated 01.09.2010 in the present case reads as follows:

" (2) Officer/Workmen employees, those who were in service of the Bank prior to 29.09.1995 and retired after that date and prior to 27.04.2010. Officer/Workmen employees who opted for Voluntary Retirement under Special voluntary Scheme after rendering a minimum of 15 years service, and the family of those Officers/Workmen who were in service of the Bank prior to 29.09.1995 retired after that date and died shall be eligible to exercise option to join the Pension Scheme subject to the terms and conditions applicable to the retirees."

We may also refer to Pension Regulations, which define retirement under Regulation 2(y) of the Compulsory Retirement Pension under Regulation 33, as under:

- "2(y) "Retirement" means cessation from Bank's service:-
- (a) on attaining the age of superannuation specified in Service Regulation or 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 Settlements;"

It is also relevant to extract portions i.e., 2(a), 3(a), 4, 5 6(i) and 8 of the Joint note dated 27.04.2010, which are as under:

"Another option for joining the existing Pension Scheme shall be extended to those Officers who: -

- (2) (a) were in the service of the bank prior to 29th September 1995 in case of Nationalized Banks/26th March 1996 in case of Associate Banks of State Bank of India and continue in the service of the bank on the date of this Joint Note;
- (3) (a) were in service of the bank prior to 29th September 1995 in case of Nationalized Banks/26th March 1996 in case of Associate Banks of State Bank of India and retired after that date and prior to the date of this Joint Note:
- (4) The family of those officers who were in the service of the bank prior to 29th September 1995 in case of Nationalized Banks/26th March 1996 in case of Associate Banks of State Bank of India and retired after that date and had died will be eligible for family pension;
- (5) The family of those officers who were in the service of the bank prior to 29th September 1995 in case of Nationalized Banks/26th March 1996 in case of Associate Banks of State Bank of India, but have died while in service of the bank after that date will be eligible for family pension;
- (6) (i) The existing pension scheme will not be applicable to those who join the services of banks on or after 1st April 2010.
- (8) Pension/Family Pension to those who opt to join the pension scheme complying with the terms of this Joint Note shall be payable with effect from 27th November 2009, provided that officers who retired after that date shall get pension from the respective dates of their retirement. All the Regulations of the Bank Employees' Pension Regulations, 1995/1996 shall be applicable to those who opt for the Pension Scheme in terms of this Joint Note except to the extent mentioned in the foregoing Clauses of this Joint Note."

After examining the above provisions, it is to be seen that as far as the case of the respondent herein is concerned, the first part of clause (2) of eligibility criteria is relevant, which provides that the officers/workmen who are in service of the Bank prior to 25.09.1995 and retired after the date and prior to the date of joint note dated 27.04.2010 are eligible for pension. Since the respondent herein was compulsorily retired on 18.03.2009, his case comes within the first part of clause (2) of the eligibility criteria, which also satisfies para-3 of the joint note.

While passing the impugned order, the appellants-bank have not kept the above factors into account, as such, the impugned order is erroneous. It is also to be seen that the joint note as well as the circular refers to retirees from the bank and word retiree in generic terms includes all categories of retirees. Restricting the meaning of the said word only to those, who retired voluntarily or on superannuation, is not only against the object and

purpose of the agreement under the joint note and the circular but would also amount to reading something else therein, which does not mean. The averment in the counter affidavit filed by the appellants-bank that who suffered compulsory retirement but who opted for pension by the date of imposition of penalty, are eligible under the pension scheme, which goes to show that the appellants-bank cannot discriminate one such set of retirees on penalty of compulsory retirement from the other set of retirees. The second option provided under the circular, based on the joint note, was applicable to such category of retirees, who qualified within one of the four criteria. The respondent herein is clearly falling within the said criteria.

In view of the above discussion, we are of the view that the rejection of the option exercised by the respondent herein is erroneous. It is to be seen that the learned single Judge has also referred to above provisions and came to the same conclusion and we agree with the same.

Accordingly, the writ appeal is dismissed while confirming the order of the learned single Judge dated 22.03.2012 in W.P.No.9069 of 2011. There shall be no order as to costs.

As a sequel, miscellaneous petitions, if any pending in this appeal, shall stand disposed of.

ASHUTOSH MOHUNTA, J.

A. RAJASHEKER REDDY, J.

08-08-2013

ITEM NO.44

COURT NO.5

SECTION XIIA

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 35389/2013

(Arising out of impugned final judgment and order dated 08/08/2013
in WA No. 905/2012 passed by the High Court of A.P. at Hyderabad)

ANDHRA BANK & ORS.

Petitioner(s)

VERSUS

Y. SHIVAJI

Respondent(s)

(with interim relief and office report)

WITH

SLP(C) No. 35449/2013

(With Interim Relief and Office Report)

Date : 05/09/2014 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SUDHANSU JYOTI MUKHOPADHAYA

HON'BLE MR. JUSTICE PRAFULLA CHANDRA PANT

For Petitioner(s) Mr. T. V. Ratnam, Adv.

For Respondent(s) Mr. Anil Kaushik, Adv.

Ms. Shilpa Singh, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The special leave petitions are dismissed.

(Rajni Mukhi)

Sr. P.A.

(Usha Sharma)

Court Master