

Court No. - 40

Case :- SPECIAL APPEAL No. - 1 of 2024

Appellant :- Bank Of India And 3 Others

Respondent :- Sahajanand Rai And Another

Counsel for Appellant :- Vatsala

Counsel for Respondent :- A.S.G.I., Sanjay Kumar Rai, Vijay Chandra

Hon'ble Ashwani Kumar Mishra, J.

Hon'ble Syed Qamar Hasan Rizvi, J.

(Per: Hon'ble Ashwani Kumar Mishra, J.)

1. This intra-court appeal arises out of an order passed by the learned Single Judge, dated 22nd March, 2023, in Writ-A No. 53237 of 2014 whereby the writ petition has been allowed and the respondent-petitioner is held entitled to retiral benefits in light of Clause 6(b) of Memorandum of Settlement, dated 10.4.2002 (hereinafter referred to as 'Settlement, 2002'), notwithstanding a contrary circular issued by the Bank. Reliance is placed upon the judgment of the Supreme Court in Bank of Baroda Vs. S.K. Kool (Dead) through Legal Representatives and another, (2014) 2 SCC 715, to allow the claim of respondent-petitioner.

2. Facts admitted on record are that the respondent-petitioner was employed as Cashier-cum-Clerk in the appellant Bank of India. He was proceeded with departmentally on various charges and ultimately an order of punishment came to be passed against him on 19.9.2002, directing his removal from the service in terms of Clause 6(b) of the Settlement, 2002. This order of punishment was unsuccessfully challenged by the respondent and ultimately his Special Leave to Appeal (Civil) No. 30627 of 2010 got dismissed on 15.11.2010.

3. Pensionary benefits to the employees of bank were governed by the provisions of Bank of India (Employees') Pension Regulations, 1995 (hereinafter referred to as 'Pension Regulations, 1995').

Regulation 2(t) of the Pension Regulations of 1995 defined 'pension' to include the basic pension and additional pension referred to in Chapter VI of the Pension Regulations, 1995. Pensioner meant an employee eligible for pension under the Pension Regulations, 1995. Qualifying service has been defined under Regulation 2(w) and together with Regulation 14 provides it to mean a minimum of 10 years of service in the Bank on the date of his retirement.

4. Regulation 22 of the Pension Regulations, 1995 provided that resignation or dismissal or removal or termination of an employee from the service of the Bank shall entail forfeiture of his entire past services and consequently shall not qualify for pensionary benefits. Regulation 2(y) defined retirement to mean cessation from Bank's service on (a) attaining the age of superannuation specified in Service Regulations or Settlements; (b) voluntary retirement in accordance with provisions contained in Regulation 29; (c) on premature retirement by the Bank before attaining the age of superannuation specified in Service Regulations or Settlement.

5. In terms of the provisions of Pension Regulations, 1995, an employee who is removed from service would have his entire past service forfeited under Pension Regulations, 1995 and shall not qualify for pensionary benefits.

6. It transpires that the Settlement, 2002, entered into between the bank and its employees however provided for a course distinct from the scheme contemplated in the Pension Regulations, 1995. Clause 6(b) of the Settlement, 2002, is relevant and is reproduced hereinafter:-

"6. An employee found guilty of gross misconduct may;

(a).....

(b) be removed from service with superannuation benefits i.e. Pension and /or Provident Fund and Gratuity as would be due otherwise under the Rules or Regulations prevailing at the relevant time and without disqualification from future employment, or."

7. Appellant was punished vide order dated 19.9.2002 in terms of Clause 6(b) of the Settlement, 2002, and, therefore, notwithstanding his removal from service the respondent became entitled to superannuation benefits i.e. Pension and/or Provident Fund and Gratuity as would otherwise be due under the Rules or Regulations prevailing at the relevant time and without disqualification from future employment.

8. At the time of removal of respondent from service in terms of Clause 6(b) of the Settlement, 2002, there existed a scheme of Contributory Provident Fund for the employees of the Bank. An earlier Memorandum of Settlement, dated 29th October, 1993 was arrived at, as per which, pension in lieu of Contributory Provident Fund was introduced, in respect of the employees who opted for the said pension scheme.

9. A representation was made by the united forum of Bank Unions for an option to be extended to those employees who were in the employment of Bank prior to 29th September, 1995 in case of Nationalized Banks and 26th March, 1996 in case of Associate Banks of State Bank of India. The talks between management and Union ultimately lead to a fresh settlement notified on 27th April, 2010 (hereinafter referred to as 'Settlement, 2010'). Settlement, 2010 gave another option to the employees of Bank to join existing pension scheme to the specified category of employees. Clause 2 and 4 of the terms of settlement are relevant and are reproduced hereinafter:-

"(2) Another option for joining the existing Pension Scheme shall be extended to those employees who:-

(I) (a) were in the service of the bank prior to 29 September 1995 in case of Nationalized Banks/26 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 Settlement;

(b) exercise an option in writing within 60 days from the date of offer, to become a member of the Pension Fund and

(c) authorise the Trust of the Provident Fund of the bank to transfer the entire contribution of the bank along with interest accrued thereon to the credit of the Pension Fund.

(II) (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 Settlement;

(b) exercise an option in writing within 60 days from the date of offer to become a member of the Pension Fund and

(c) refund within 30 days after expiry of the said period of 60 days, the entire amount of the banks contribution to the Provident Fund and interest accrued thereon received by the employee on retirement together with his share in contribution towards meeting 30% of Rs.3115 crores which is estimated and reckoned as the funding gap for those eligible under Clause 2(II), 2(III) and 2(IV) of this agreement. On an individual basis, the payment over and above the bank's contribution to Provident Fund and interest thereon has been worked out at 56% of the said amount of bank's contribution to Provident Fund and interest thereon received by the employee on retirement.

(III) The family of those employees 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 retired after that date and died will be eligible for family pension, provided-

(a) the family of the deceased employee exercises option in writing within 60 days of the offer to become a member of the Pension Fund and

(b) refund within 30 days after expiry of the said period of 60 days, the entire amount of the bank's contribution to the Provident Fund and interest accrued thereon received by the deceased employee on retirement together with his share in contribution towards meeting 30% of Rs.3115 crores which is estimated and reckoned as the funding gap for those eligible under Clause 2(II), 2 (III) and 2(IV) of this agreement. On an individual basis, the payment over and above the bank's contribution to Provident Fund and interest thereon has been worked out at 56% of the said amount of bank's contribution to Provident Fund and interest thereon received by the employee on retirement.

(IV) The family of those employees 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, provided -

(a) the family of the deceased employee exercises an option in writing within 60 days of the offer to become a member of the Pension Fund and

(b) refund within 30 days after expiry of the said period of 60 days mentioned above, the entire amount of the bank's contribution to the Provident Fund and interest accrued thereon received upon death of the employee together with his share in contribution towards meeting 30% of Rs.3115 crores which is estimated and reckoned as the funding gap for those eligible under Clause 2(II), 2(III) and 2(IV) of this agreement On an individual basis, the payment over and above the bank's contribution to Provident Fund and interest thereon has been worked out at 56% of the said amount of bank's contribution to Provident Fund and interest thereon received on death of the employee."

10. The petitioner invoked the provisions of the Settlement, 2010 and submitted an option to receive pension vide his letter dated 1.10.2010. He also claimed benefit of leave encashment. Such claim of the respondent-petitioner came to be rejected by the Bank of India vide its order dated 13.10.2010. Clause 3 of the Circular, dated 24.8.2010, has been relied upon by the Bank for rejection of the claim of respondent, which is reproduced hereinafter:-

"3. It also may be noted that the employees who have ceased to be in the service of Bank on account of Resignation / Voluntarily retired under officer's Service Regulation 19/ Incapacitation / on medical grounds/any other type of cessation on account of penalty proceedings are not eligible to opt for joining the Pension Scheme. Also existing Pension optees cannot revoke their option from Pension to CPF"

11. Aggrieved by the rejection of his claim to opt for pension scheme the respondent filed Writ Petition No.53237 of 2014. Orders passed by the authority rejecting petitioner's claim dated 13.10.2010, as affirmed by the Regional Deputy Manager on 11.8.2014, were challenged. Para 3 of the Circular, dated 24.8.2010 also was put to challenge. A prayer was made to direct the Bank to

release pension from 20th September, 2002 alongwith arrears within time to be specified by this Court.

12. A question arose as to whether pensionary benefits would be admissible to an employee of the Bank, who has put in 10 years qualifying service, if an order of removal has been passed against him in terms of Clause 6(b) of the Settlement, 2002. This was because Regulation 22 of the Pension Regulations, 1995 clearly disentitled an employee from pension whereas Clause 6(b) protected superannuation benefits i.e. Pension and/or Provident Fund. The issue was specifically examined in para 13 to 17 of the judgment of the Supreme Court in Bank of Baroda (supra). The Court examined the intent of the Bipartite Settlement and emphatically held that if Regulation 22 of the Pension Regulation, 1995, providing for forfeiture of service is to prevail then Clause 6(b) of the Settlement, 2002 would clearly be a fraud settlement. Para 13 to 17 of the judgment in Bank of Baroda (supra) are reproduced hereinafter:

"13. Regulation 22 of the Regulations, which is relied on to deny the claim of the employee reads as follows:

"22. Forfeiture of service.—(1) Resignation or dismissal or removal or termination of an employee from the service of the Bank shall entail for forfeiture of his entire past service and consequently shall not qualify for pensionary benefits."

From a plain reading of the aforesaid Regulation, it is evident that removal of an employee shall entail forfeiture of his entire past service and consequently such an employee shall not qualify for pensionary benefits. If we accept this submission, no employee removed from service in any event would be entitled for pensionary benefits. But the fact of the matter is that the Bipartite Settlement provides for removal from service with pensionary benefits "as would be due otherwise under the rules or regulations prevailing at the relevant time". The consequence of this construction would be that the words quoted above shall become a dead letter. Such a construction has to be avoided.

14. The Regulations do not entitle every employee to pensionary benefits. Its application and eligibility is provided under Chapter II of the Regulations whereas

Chapter IV deals with qualifying service. An employee who has rendered a minimum of ten years of service and fulfils other conditions only can qualify for pension in terms of Regulation 14 of the Regulations. Therefore, the expression "as would be due otherwise" would mean only such employees who are eligible and have put in minimum number of years of service to qualify for pension. However, such of the employees who are not eligible and have not put in required number of years of qualifying service shall not be entitled to the superannuation benefits though removed from service in terms of Clause 6(b) of the Bipartite Settlement. Clause 6(b) came to be inserted as one of the punishments on account of the Bipartite Settlement. It provides for payment of superannuation benefits as would be due otherwise.

15. The Bipartite Settlement tends to provide a punishment which gives superannuation benefits otherwise due. The construction canvassed by the employer shall give nothing to the employees in any event. Will it not be a fraud Bipartite Settlement? Obviously it would be. From the conspectus of what we have observed we have no doubt that such of the employees who are otherwise eligible for superannuation benefit are removed from service in terms of Clause 6(b) of the Bipartite Settlement shall be entitled to superannuation benefits. This is the only construction which would harmonise the two provisions. It is well-settled rule of construction that in case of apparent conflict between the two provisions, they should be so interpreted that the effect is given to both. Hence, we are of the opinion that such of the employees who are otherwise entitled to superannuation benefits under the Regulations if visited with the penalty of removal from service with superannuation benefits shall be entitled for those benefits and such of the employees though visited with the same penalty but are not eligible for superannuation benefits under the Regulations shall not be entitled to that.

16. Accordingly, we hold that the employee's heirs are entitled to superannuation benefits. The entire amount that the respondent is found entitled to along with interest @ 6% per annum should be disbursed within 6 weeks from the date of receipt/communication of this order.

17. In the result, we do not find any merit in this appeal and it is dismissed accordingly with costs of Rs 50,000 (Rupees fifty thousand) to be paid by the appellant to Respondent 1 along with other dues and

within the time stipulated above.”

13. In view of the law laid down by the Supreme Court in Bank of Baroda (supra), the superannuation benefits in the form of Contributory Provident Fund have been paid to the respondent. A supplementary affidavit has been filed by the Senior Manager of the Bank clearly acknowledging the payment made to respondent of contributory pension scheme.

14. From the facts brought on record it is, therefore, admitted to the appellant Bank that in terms of Clause 6(b) of the Settlement, 2002, as interpreted by the Supreme Court in Bank of Baroda (supra) the respondent was entitled to superannuation benefits and such benefits in terms of the earlier scheme i.e. contributory provident fund was actually paid to the respondent.

15. The short question that then arises in the facts of the case is as to whether the option extended in the Settlement, 2010, to opt for pension would be available to the respondent, or not?

16. Ms. Vatsala appearing for the Bank submits that the Settlement, 2010, restricts the benefit of scheme only to retired employees or to those who have voluntarily retired from service. The option to be exercised for pension was not available to an employee of the Bank who had been removed from service. Clause 3 of the Circular of the Bank is also relied upon, as per which, the benefit to opt for pension would only be available to those who have retired and not to those who have been terminated or removed from service by way of punishment.

17. Sri Ashok Khare, learned Senior Counsel, per contra, submits that Cause 6(b) of the Settlement, 2002, clearly extends superannuation benefits also to an employee who has been removed from service. It is, therefore, submitted that the status of a removed employee would be at par with any other retired employee who is entitled to superannuation benefits. It is urged that there is no

cogent reason to exclude an employee from the benefit of the Settlement of 2010 who has been removed from service under Clause 6(b) of the Settlement, 2002, when superannuation benefits have otherwise been extended to him under the Settlement.

18. Learned Senior Counsel submits that if the Settlement of 2010 is interpreted in the manner suggested by the appellant then an employee removed under Clause 6(b) would be dis-entitled to superannuation benefits like Pension/Provide Fund which are otherwise protected under the Settlement of 2002. Sri Khare, therefore, submits that the judgment of learned Single Judge suffers from no infirmity in law and the instant special appeal lacks merit.

19. We have heard learned counsel for the parties and have perused the provisions of the Pension Regulation, 1995; Settlement, 2002 as well as Settlement, 2010. Circular issued by the Bank on 24.8.2010 interpreting the Settlement of 2010 has also been perused by us.

20. It is undisputed that respondent was removed from service under Clause 6(b) of the Settlement, 2002. Clause 6(b) clearly provides that an employee found guilty of gross misconduct may be removed from service with superannuation benefits i.e. Pension and/or Provident Fund and Gratuity as would be due otherwise under the Rules or Regulations prevailing at the relevant time and without disqualification from future employment. Clause 6(b) is unique, inasmuch as, it empowers the employer to remove an employee without natural consequences of it allowed as per service jurisprudence i.e. forfeiture of past service. But for the Settlement, 2002, the Pension Regulations, 1995 would have applied and consequently on account of removal from service the respondent would have been denied superannuation benefits. However, in view of Clause 6(b) of the Settlement, 2002, the respondent has been held entitled to superannuation benefits. Such superannuation benefit in the form of contributory provident fund alone was payable

since the respondent had not opted for pension, etc. In the event he had opted for pension earlier he would have been entitled to it. The entitlement of respondent to superannuation benefits is thus admitted to the Bank.

21. It is in this context that we are to examine as to whether the right created in a bank employee to opt for pension could be denied to an employee who has been removed from service under clause 6(b) of the Settlement of 2002?

22. In Bank of Baroda (*supra*), the Supreme Court has clearly held that the employees who are otherwise eligible for superannuation benefit, if are removed from service in terms of Clause 6(b) of the Settlement of 2002, shall be entitled to superannuation benefits.

23. We have perused the Pension Regulations, 1995, which contemplates payment of pension to an employee who has retired from service. Retirement has been defined under Regulation 2(y) of the Pension Regulations, 1995 to mean cessation from Bank's service on attaining the age of superannuation specified in Service Regulations or Settlements; on voluntary retirement in accordance with provisions contained in Regulation 29 of the Regulation; on premature retirement by the Bank before attaining the age of superannuation. Under the Pension Regulations, 1995, no pension is payable to an employee, who is removed from service. The right to receive pension to an employee removed from service flows from the Settlement of 2002. The Settlement of 2002 will have an overriding effect, inasmuch as, the settlement mandatorily binds the employer and employee alike. The settlement of 2002 cannot be read in a manner so as to deny its benefit to an employee contrary to the express stipulations made therein.

24. Once the Settlement of 2002 allows superannuation benefits in the form of Pension and/or Provident Fund and Gratuity to an employee removed from service under Clause 6(b), it would not be open for the employer to contend that option to opt for pension can

be denied to someone who is otherwise entitled to superannuation benefits.

25. The Settlement of 2010 extends option to opt for pension scheme to the employees; (i) who were in employment on the cut-off date and were in service of the bank on the date of settlement; (ii) were in service of the bank on the cut-off date and retired after that date and prior to the date of settlement; (iii) to employees who were in service of the bank on the cut-off date and retired after that date and died would be entitled to family pension; (iv) employees in employment of Bank on the cut-off date but have died while in service of the Bank after that date are also entitled to family pension.

26. Clause 4 extended the benefit of pension to those who voluntarily retired under special scheme provided they had worked for 15 years. This clause apparently will not apply in the case of the respondent-petitioner since his period of working is less than 15 years and he has otherwise not retired voluntarily. Clause 2(ii) of the Settlement, 2010, however, would be applicable in the present case as the respondent had completed the requisite qualifying service and became entitled to superannuation benefits in terms of Settlement of 2002. The Settlement of 2010 is otherwise a beneficent provision introduced for the advancement of the cause of employees of the Bank and its provisions will have to be liberally construed. The option to opt for Pension Regulations under the Settlement of 2010 is seen to have been extended to all category of employees who are otherwise entitled to superannuation benefits. Denial of the option to the respondent to opt for pension virtually eliminates him from the category of persons who are entitled to superannuation benefits. This would be impermissible and arbitrary.

27. Once Clause 6(b) of the Settlement of 2002 allows superannuation benefits to an employee removed from service he will have to be treated at par with any other employee of the Bank

who is entitled to superannuation benefits. Any other construction would clearly go against the express terms and intent of the settlement arrived at between the Bank and its employees. Such construction would also go contrary to the spirit of the rights recognized in an employee removed from service under Clause 6(b) of the Settlement of 2002 by the Supreme Court in Bank of Baroda (supra).

28. Ms. Vatsala has placed reliance upon a judgment of the Supreme Court in UCO Bank and others Vs. Sanwar Mal, (2004) 4 SCC 412. This judgment although interpreted Regulation 22 but had not taken note of the settlement of 2002 which subsequently came to be arrived at between the employees and the Bank. Clause 6(b) of 2002 Settlement, with which we are concerned, did not fall for consideration in UCO Bank (supra). The ratio of law laid down by the Supreme Court in UCO Bank (supra) relying upon Clause 22 of the Pension Regulations, 1995, would thus not have any relevance in the present controversy.

29. Having examined the respective submissions advanced at the bar, we are of the considered view that the superannuation benefits including pension, etc., made admissible to an employee removed from service under Clause 6(b) of the Settlement of 2002 ought not to be interpreted in a narrow sense. It ought to be given a construction consisting with the nature of settlement i.e. beneficent for the employee. Any narrow construction would not subserve the objective of the Settlement of 2002. We, therefore, find ourselves to be in agreement with the view expressed by the learned Single Judge in extending offer to the respondent to opt for pension upon terms indicated in the Settlement of 2002. The appeal filed by the Bank, accordingly, fails.

30. We are inclined to take similar view in the matter of leave encashment also as under the applicable regulations and circular of the Bank leave encashment is admissible to an employee who is

entitled to superannuation benefits and pension. Once we hold that the respondent is entitled to opt for pension under the Settlement of 2010, and has otherwise been extended superannuation benefits in the form of Contributory Provident Fund, there would be no good ground to deny the benefit of leave encashment to the respondent. No applicable provision of law is shown which dis-entitles the respondent to payment of leave encashment notwithstanding the Settlement of 2002.

31. For the reasons and discussions held above, this appeal fails and is, consequently, dismissed. Costs made easy.

Order Date:- 5.2.2024
Ranjeet Sahu

(Syed Qamar Hasan Rizvi, J.)

(Ashwani Kumar Mishra, J.)