

Indian Bank and Anr. Vs. Mahaveer Khariwal

Civil Appeal No. 2760 of 2010

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Full judgment text

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[Civil Appeal No. 2760 of 2010]

M. R. Shah, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 02.02.2009 passed by the Division Bench of the High Court of Delhi at New Delhi in Letters Patent Appeal No. 246 of 2007, by which the Division Bench has allowed the said appeal preferred by the respondent herein and has quashed and set aside the judgment and order passed by the learned Single Judge and has quashed and set aside communication dated 20.04.2004 of the bank rejecting the application for voluntary retirement and has directed the appellatntbank to release retiral dues of the respondent in accordance with the Pension Regulations, 1995 with simple interest at the rate of 9% per annum from the date of filing of writ petition, the employerbank has preferred the present appeal.

2. The facts leading to the present appeal in nutshell are as under: That the respondent herein - original writ petitioner - employee (hereinafter referred to as the 'employee') was working with the appellant bank - employer (hereinafter referred to as the 'employer'), who was promoted as Chief Manager SMGIV. In March, 1998, he was transferred and posted as Chief Manager, Colombo Branch, Colombo. Thereafter, by order dated 13.05.2013, he was transferred from Colombo overseas branch to the Defence Colony Branch, New Delhi as Chief Manager (BM). The employee applied for 30 days' leave to visit London as his son was admitted in the hospital.

Thereafter, the employee wrote to the employer seeking extension of leave. The application for leave as well as the application for extension of leave were refused by the employer and the employee was directed to report on duty at Defence Colony Branch, New Delhi. That on 21.01.2004, the employee submitted an application seeking voluntary retirement from the services of the employer in accordance with Circular No. 32/9798 dated 15th July, 1997 and the format given by the employer for submitting the notice of voluntary retirement.

In the application for voluntary retirement, the employee requested for waiver of three months' notice, as required under Regulation 29 of the Indian Bank Employees Pension Regulations, 1995 (hereinafter referred to as 'Pension Regulations, 1995') and requested/authorised the employer to deduct the salary of the notice period from out of the amount payable by the employer on retirement. The employer vide letter dated 20.04.2004, which was served on the employee on 23.04.2004, rejected the request of the employee for voluntary retirement on the ground that the employee was not eligible under Pension Regulations, 1995.

3. Being aggrieved by the rejection of the application for voluntary retirement, the employee preferred Writ Petition (C) No. 16972 of 2005. One another prayer was for a direction to the employer to reimburse the educational expenses for the son of the employee, who had been sent to Singapore for his education while he was posted at Colombo.

One another prayer was for grant of traveling allowance bills for the journey from Colombo to New Delhi, which was declined by the employer on account of delay in submitting the bills. The learned Single Judge by judgment and order dated 11.10.2006 dismissed the writ petition so far as challenge to the rejection of his voluntary retirement application vide communication dated 20.04.2004. However, granted the prayers for traveling allowance bills and educational expenses.

4. Feeling aggrieved and dissatisfied with the judgment and order passed by the learned Single Judge in dismissing the writ petition with respect to his prayer to quash the letter dated 20.04.2004 rejecting his request for voluntary retirement, the employee preferred Letters Patent Appeal before the Division Bench of the High Court. The Division Bench, by the impugned judgment and order, has allowed the said Letters Patent Appeal and has quashed and set aside the letter dated 20.04.2004 and has directed the employer to

release retiral dues of the employee in accordance with Pension Regulations, 1995.

5. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the Division Bench of the High Court, the employer has preferred the present appeal.

6. Shri Ravi Sikri, learned Senior Advocate has appeared on behalf of the employer and Shri Sanjeev Kumar, learned Advocate has appeared on behalf of the employee.

6.1 Shri Ravi Sikri, learned Senior Advocate appearing on behalf of the employer has made the following submissions, assailing the impugned judgment and order passed by the Division Bench:

- i) that the High Court has not properly appreciated Regulation 29 of the Pension Regulations, 1995 in its true perception;
- ii) that the High Court has not properly appreciated the fact that as per Regulation 29, a request for voluntary retirement by an employee requires permission/acceptance of the employer concerned;
- iii) that vide communication dated 20.04.2004, the application of the employee for voluntary retirement was rejected within three months from the date of submitting the voluntary retirement application and therefore there could not be a deemed acceptance of voluntary retirement; that what is relevant is taking the decision within three months and not the service of the decision on the application for voluntary retirement. It is submitted that in the present case, the decision was taken within a period of three months.
- iv) that the High Court has failed to appreciate that an employee who seeks voluntary retirement is to give three months' mandatory notice in writing to enable the employer to make necessary arrangements for an alternate hand in place of the employee seeking voluntary retirement. It is submitted that in the present case, three months' mandatory notice was not given and therefore his application for voluntary retirement was defective to that extent. It is submitted that therefore the employer rightly rejected his application for voluntary retirement which was not in consonance with the Pension Regulations, 1995;
- v) that the High Court has failed to appreciate that the employee's offer of surrendering three months salary in lieu of mandatory notice period could not be considered to be a valid application for waiver of the three months' notice requirement;
- vi) that the High Court has erred in holding that the employee was, in fact, transferred to the foreign branch and was not sent on deputation. It is submitted that as such the respondent was on deputation at the overseas branch at Colombo at the relevant point of time and therefore as per Regulation 29(1) of the Pension Regulations, 1995, the employee was not eligible to apply for voluntary retirement 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. It is submitted that therefore the employee did not fulfil the statutory requirement of serving for a period of one year after returning to India, as contemplated under Regulation 29(1);
- vii) It is submitted that as such after rejection of the application for voluntary retirement, the employer initiated departmental proceedings against the employee for his unauthorised absence from 26.11.2003 to 19.01.2004 and from 22.01.2004 and the disciplinary authority imposed the penalty of compulsory retirement on the employee. It is submitted that therefore the Division Bench of the High Court ought not to have allowed the appeal.

Making the above submissions, it is prayed to allow the present appeal and quash and set aside the impugned judgment and order passed by the Division Bench and restore the judgment and order passed by the learned Single Judge and restore the decision of the bank dated 20.04.2004 rejecting the application of the employee for voluntary retirement.

7. Shri Sanjeev Kumar, learned Advocate appearing on behalf of the employee has supported the impugned judgment and order passed by the Division Bench of the High Court. It is submitted that the Division Bench has rightly set aside the communication dated 20.04.2004 by which the application of the employee for voluntary retirement was rejected.

It is submitted that the Division Bench of the High Court has rightly interpreted Regulation 29 and has rightly considered that the bar under Regulation 29(1) shall not be applicable insofar as Regulation 29(1) is concerned, as the employee was not on deputation at Colombo Branch but was on transfer. It is submitted that the question is not when the decision was served upon the employee, but the question is whether the

rejection of the voluntary retirement application vide communication dated 20.04.2004 was legal, just and proper and was in consonance with Regulation 29 or not. It is submitted that on true interpretation of Regulation 29, the High Court has rightly allowed the appeal and has rightly quashed and set aside the communication dated 20.04.2004.

8. We have heard the learned counsel for the respective parties at length. It is not in dispute that in the present case the employee submitted the voluntary retirement application on 21.01.2004. In the application itself, the employee requested for waiver of three months' notice and requested to deduct the salary amount of the notice period from out of the amounts payable to him by the employer on retirement. It is not in dispute and it cannot be disputed that the notice of voluntary retirement requires acceptance by the appointing authority.

However, as per proviso to SubRegulation 2 of Regulation 29, in case the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in the notice, the retirement shall become effective from the date of expiry of the said notice period. In the present case, on the 90th day vide communication dated 20.04.2004 the application of the employee for voluntary retirement was rejected without assigning any specific reasons and by observing that the employee is not eligible for voluntary retirement under Pension Regulations, 1995.

The said communication was sent to the employee on the very date, i.e., 20.04.2004, however the same was received by the employee on 23.04.2004. The learned Single Judge dismissed the writ petition so far as challenge to the communication dated 20.04.2004 is concerned. However, on appeal, by the impugned judgment and order, the Division Bench has set aside the communication dated 20.04.2004 by which the request of the employee for voluntary retirement from the service of the employer came to be rejected.

Therefore, the short question which is posed for the consideration before this Court is, whether the rejection of the request of the employee for voluntary retirement vide communication dated 20.04.2004 was legal and in consonance with Regulation 29 of the Pension Regulations, 1995 or not.

9. While considering the aforesaid question, Regulation 29 is required to be referred to, which reads as under:

" 29. Pension on Voluntary Retirement: 1) On or after the first 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 subregulation shall not apply to an employee who is on deputation or on study leave on 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 subregulation 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 subregulation shall not apply to an employee who is deemed to have retired in accordance with clause (I) of regulation 2.

(2) The notice of Voluntary retirement given under subregulation (1) shall require acceptance by the appointing authority:

Provided that where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period.

(3)(a) An employee referred to in subregulation (1) may make a request in writing to the appointing authority to accept notice of Voluntary Retirement of less than three months giving reasons thereof; (b) On receipt of a request under clause (a), the appointing authority may, subject to the provisions of subregulation (2), consider such request for the curtailment of the period of the notice of three months on merits and if it is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, the appointing authority may relax the requirement of notice of three months on the condition that the employee shall not apply for Commutation of a part of the pension before the expiry of the notice of three months.

(4) An employee, who has elected to retire under this regulation and has given necessary notice to that effect to the appointing authority. shall be precluded from withdrawing his notice except with specific approval of such authority; Provided that the request for such withdrawal shall be made before the intended date of his retirement.

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

(6) The pension of an employee retiring under this regulation shall be based on the average emoluments as defined under clause (d) of regulation 2 of these regulations and the increase. not exceeding five years in his qualifying service. shall not entitle him to any notional fixation of pay for the purpose of calculating his pension."

10. On a fair reading of Regulation 29, it emerges that an employee is entitled to apply for voluntary retirement after he has completed 20 years of qualifying service. He can apply for voluntary retirement by giving notice of not less than three months in writing to the appointing authority (Regulation 29(1)). However, as per proviso to SubRegulation (1) of Regulation 29, SubRegulation (1) of Regulation 29 shall not apply to an employee who is on deputation or on study leave on 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.

The said proviso shall be dealt with and considered hereinbelow. It also appears that as per SubRegulation (2) of Regulation 29, the notice of voluntary retirement given under SubRegulation (1) shall require acceptance by the appointing authority. However, as per the proviso to Subregulation (2), the appointing authority has to take a decision before the expiry of the period specified in the notice. It provides that where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in the notice, there shall be deemed acceptance of the voluntary retirement application and the retirement shall become effective from the date of expiry of the period mentioned in the notice.

However, at the same time, as per SubRegulation 3(a), an employee may make a request in writing to the appointing authority for waiver of the three months' notice and may make a request to accept the notice of voluntary retirement of less than three months giving reasons thereof. SubRegulation 3(b) provides that on receipt of a request for waiver of three months' notice as per SubRegulation 3(a), the appointing authority may, subject to the provisions of Sub Regulation (2), consider such request for the curtailment of the period of notice of three months on merits and if it is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, the appointing authority may relax the requirement of notice of three months on the condition that the employee shall not apply for commutation of a part of the pension before the expiry of the notice of three months.

In the present case, the application of the employee submitting the voluntary retirement application with a request for curtailment of notice of three months was absolutely in consonance with Regulation 29. The request made by the employee for curtailment of the period of notice of three months was required to be considered by the appointing authority on merits and only in a case where it is found that the curtailment of the period of notice may cause any administrative inconvenience, the request for curtailment of the period of three months' notice can be rejected.

On considering the communication dated 20.04.2004 rejecting the application of the employee for voluntary retirement, it does not reflect any compliance of SubRegulation 3(b) of Regulation 29. As such, no reasons whatsoever have been assigned/given except stating that the request is not in accordance with Pension Regulations, 1995. Even otherwise, it is required to be noted that even the communication dated 20.04.2004 was on the last day of the third month, i.e., 90th day from the date of submitting the voluntary retirement application.

Therefore, there was no reason to reject the prayer of curtailment of the period of notice considering the grounds mention in SubRegulation 3(b) of Regulation 29. Be that as it may, the rejection of the application for voluntary retirement was not on the ground that notice of three months is not given. The request made by the employee for curtailment of notice of three months was also not considered on merits.

Therefore, as rightly held by the Division Bench of the High Court, the application for voluntary retirement was absolutely in consonance with Regulation 29 and that the rejection was bad in law and contrary to Regulation 29. The Division Bench of the High Court is absolutely justified in quashing and setting aside the communication dated 20.04.2004. We are in complete agreement with the view taken by the Division Bench.

11. Now so far as the submission on behalf of the employer that the employee was not eligible for voluntary retirement in view of proviso to SubRegulation (1) of Regulation 29 as after he returned to India from Colombo Branch he did not serve for a period of not less than one year is concerned, there is a specific finding given by the Division Bench that the said proviso shall not be applicable to the facts of the case on hand as in the present case the employee was on transfer to Colombo Branch and was not on deputation.

If we look at order dated 19.03.1998, it cannot be said that the employee was sent on deputation as Chief Manager, Colombo Branch. It says that he is posted as Chief Manager, Colombo Branch. Even when he was relieved from Colombo Branch to join at Defence Colony Branch, New Delhi, in the communication dated 25.08.2003 (Annexure P5), it speaks about the transfer order dated 13.05.2003. It is not the order of repatriation. Therefore, proviso to SubRegulation (1) to Regulation 29 shall not be applicable.

12. Now so far as the submission on behalf of the employer that the acceptance or nonacceptance of the voluntary retirement application is required to be taken before the expiry of the period specified in the notice, i.e., in the present case three months and the same was taken on the last date of the three months' period and date of receipt of the decision/communication is not material, it is true that in the present case the decision was taken before the expiry of the period specified in the notice, i.e., on or before three months (last day of the third month), however, as observed hereinabove, the rejection of the application for voluntary retirement itself is found to be illegal and bad in law.

Therefore, the aforesaid shall not affect the ultimate conclusion reached by the Division Bench of the High Court. As observed hereinabove, communication dated 20.04.2004 rejecting the voluntary retirement application was bad in law and contrary to Regulation 29. Therefore, the employee shall be entitled to all retiral benefits on the basis of his voluntary retirement. Once, it is held that he is voluntary retired as per his application dated 21.01.2004 and the rejection of the application of voluntary retirement is held to be bad in law, all other subsequent proceedings of departmental enquiry will be null and void and shall be non est, as after the voluntary retirement, there shall not be an employeremployee relationship.

13. In view of the above and for the reasons stated above, the appeal fails and the same deserves to be dismissed and is accordingly dismissed. However, there shall be no order as to costs.

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