

BANK OF BARODA & ORS.

v.

GANPAT SINGH DEORA
(Civil Appeal No. 7417 of 2008)

DECEMBER 18, 2008

[ALTAMAS KABIR AND MARKANDEY KATJU, JJ.]

Service Law – Pension – Entitlement to – For employees opting for voluntary retirement under a scheme – Respondent bank employee – Applied for voluntary retirement under the 2001 Scheme – Application was accepted and respondent was paid all retiral benefits under the Scheme – But his request for grant of pension in addition to other retiral benefits not acceded to by the Bank – Held: Regulation 28 of the Pension Regulations, 1995, after amendment made provision for situations similar to the one in the instant case – Respondent not entitled to pension as he did not complete required length of qualifying service as provided under reg.28 – Bank of Baroda (Employees Pension) Regulations, 1995 – Regulation 28 (as amended on 2nd January, 2004) – Bank of Baroda Employees Voluntary Retirement Scheme, 2001.

Respondent, an employee in appellant bank, applied for voluntary retirement under the Bank of Baroda Employees Voluntary Retirement Scheme, 2001 (BOBEVRS-2001). At the relevant time, respondent was 40 years of age and had completed only 13 years of service. His application for voluntary retirement was accepted by the Bank and he was paid all retiral benefits applicable to him under the Scheme, but his request for grant of pension in addition to the other retiral benefits was not acceded to by the Bank.

The question which arose for consideration in the present appeal was whether respondent was entitled to pension.

Allowing the appeal, the Court

A HELD:1.1. Regulation 2 of the Voluntary Retirement Scheme, 2001, of the appellant-Bank prescribes a period of qualifying service for an employee to be eligible to apply for voluntary retirement. On the other hand, Regulations 14 and 29 of the Pension Regulations, 1995, relate to the period of qualifying service for pension under the said Regulations, in two different situations. While Regulation 14 provides that in order to be eligible for pension an employee would have to render a minimum of 10 years service, Regulation 29 is applicable to the employees choosing to retire from service prematurely, and in their case the period of qualifying service would be 15 years. The facts of this case, however, do not attract the provisions of Regulation 29 since the respondent accepted the offer of voluntary retirement under the Scheme framed by the Bank and not on his own volition de hors any Scheme of Voluntary Retirement. In such a case, Regulation 14 read with Regulation 32 providing for premature retirement would not also apply to the case of the respondent. [Para 19] [1159-E-G]

E 1.2. While Regulation 2 of the BOBEVRS-2001 speaks of eligibility for applying under the Scheme, Regulation 14 of the Pension Regulations, 1995, contemplates a situation whereunder an employee would be eligible for premature pension. The two provisions are for two different purposes and for two different situations. [Para 19] [1159-H; 1160-A]

G 2. Regulation 28 of the Pension Regulations, 1995, after amendment made provision for situations similar to the one in the instant case. In the absence of any particular provision for payment of pension to those who opted for BOBEVRS-2001 other than Regulation 11(ii) of the Scheme, one has to fall back on the Pension Regulations, 1995, and the amended provisions of Regulation 28 which brings within the scope of Superannuation Pension, employees who opted for the Voluntary Retirement Scheme, which will be clear from

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Explanatory Memorandum. However, the period of qualifying service has been retained as 15 years for those opting for BOBEVRS-2001 and is treated differently from premature retirement where the minimum period of qualifying service has been fixed at 10 years in keeping with Regulation 14 of the Pension Regulations, 1995. Respondent was not eligible for pension as he had not completed the required length of qualifying service as provided under Regulation 28 of the 1995 Regulations. [Paras 19 and 20] [1160-A-E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7417 of 2008.

From the Judgment and Order dated 20.12.2006 of the High Court of Rajasthan at Jodhpur in S.B. Civil Writ Petition No. 5766 of 2004 & D.B. Civil Special Appeal (Writ) No. 481 of 2005.

Pramod B. Agarwala and Praveena Gautam for the Appellants.

Aishwarya Bhati, Rekha Giri, Sweta and K.S. Bhati for the Respondent.

The Judgment of the Court was delivered by

ALTAMAS KABIR, J. 1. Leave granted.

2. The respondent herein was an employee of the Bank of Baroda, the appellant herein. On 14th December, 2000, the Bank introduced the 'Bank of Baroda Employees Voluntary Retirement Scheme-2001' (hereinafter referred to as "BOBEVRS-2001"). Under the said Scheme, along with terminal benefits pension in terms of the Bank of Baroda (Employees Pension) Regulations, 1995, (hereinafter referred to as "the Pension Regulations, 1995") was to be provided to employees who opted for the VRS Scheme. The said Scheme provided that in order to be eligible to opt for the Scheme all permanent employees of the Bank working in India or India-based Officers working abroad, who as on 31.3.2001 would have completed/would be completing minimum 15 years of service OR who would have completed/would be completing 40 years of age would be eligible to apply for voluntary

A retirement under the BOBEVRS-2001.

3. Claiming to be eligible under the Scheme, having completed 40 years of age, the respondent applied for voluntary retirement under the said Scheme. At the relevant point of time the respondent had completed only 13 years of service in the appellant Bank. However, the respondent's application for voluntary retirement was accepted by the Bank and he was paid all retiral benefits applicable to him under the Scheme, but his request for grant of pension in addition to the other retiral benefits was not acceded to by the Bank. After retiring from service on the acceptance of his application for voluntary retirement, the respondent filed an application before the Central Labour Commissioner, Ajmer, on 24.10.2001 claiming pension with effect from 1.4.2001. The appellant Bank opposed the claim of pension contending that in terms of Regulations 14, 28 and 29 of the Pension Regulations, 1995, the respondent was not entitled to pension. As the reconciliation process failed, the dispute as to whether the refusal of the Bank to provide pensionary benefits to the respondent after voluntary retirement, was legal and justified, was referred to the Industrial Disputes Tribunal, Jodhpur.

4. On 21.10.2003 when the matter was fixed before the Tribunal, the Bank went unrepresented and subsequently the Tribunal by its Award dated 23.10.2003 allowed the respondent's claim and directed the appellant to pay the respondent pension according to the Pension Regulations, 1995, with effect from 1.4.2001.

5. It appears that before the Tribunal passed its award on 23rd October, 2003, the Government of India made certain amendments to Regulation 28 of the Pension Regulations, 1995, which were adopted by the Board of Directors of the appellant-Bank in its meeting held on 17th March, 2003. The said amended Regulation 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 1st day of September, 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."

Regulation 28 as it stood prior to the aforesaid amendment is 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."

6. Aggrieved by the Award of the Tribunal, the appellant-Bank filed a Writ Petition before the High Court on 24th January, 2004, and the same was registered as S.B.C.W. No.5766 of 2004. The respondent-employee also filed a Writ Petition before the High Court in 2005 for implementation of the Award passed by the Industrial Tribunal and the same was registered as C.W.P. No.6525 of 2005. The Writ Petition filed by the respondent was dismissed by the learned Single Judge of the High Court on 7th November, 2005, on the ground that the Industrial Disputes Act is a Code by itself and contains provisions for enforcement of the Award and the respondent-employee was, therefore, required to pursue his remedy accordingly. Aggrieved by the order of the learned Single Judge, the respondent-workman filed Special Appeal, being No. 481 of 2005. The Division Bench of the High Court took up both the Writ Appeal and the Writ Petition filed by the appellant-Bank for hearing and by a common judgment dated 20th December, 2006, dismissed the writ petition filed by the appellant-Bank and allowed the Writ Appeal filed by the respondent-workman and directed release of pensionary benefits to the respondent within a period of two months along with interest @8% on arrears of pensionary benefits from the date of making of the Award. The said decision of the Division Bench of the Rajasthan High Court at Jodhpur is the subject matter of challenge in the present appeal.

7. Mr. Pramod B. Agarwala, learned counsel appearing for

- A the appellant-Bank, submitted that under Regulation 29 of the BOBEVRS-2001, which provides for pension on voluntary retirement, the petitioner was not eligible to be considered for availing of the Voluntary Retirement Scheme. Under the said Regulation only an employee who had completed 20 years of service on or after the first day of November, 1993, or by giving notice of not less than three months in writing to the Appointing Authority, could retire from service. Mr. Agarwala, however, also pointed out that by the amendment of Regulation 28 referred to hereinabove, the position was altered and it was provided that with effect from 1st September, 2000, pension would also be granted to an employee who opted 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. In other words, once the Voluntary Retirement Scheme was introduced, an employee having rendered service for a minimum period of 15 years would also be entitled to apply for Superannuation pension.

8. However, Mr. Agarwala submitted that there was no dispute with regard to the fact that on 31st March, 2001, which was indicated as the cut-off date in the Voluntary Retirement Scheme of the Bank, the respondent had completed about 13 years and 3 months of service. Mr. Agarwala submitted that while applying for voluntary retirement, the respondent also claimed the benefit of the Pension Regulations, 1995, paragraph 14 whereof deals with qualifying service for receiving pension. Paragraph 14 provides that subject to the other conditions contained in the Regulations an employee who had rendered minimum of 10 years of service in the Bank on the date of his retirement or the date on which he is deemed to have retired, would qualify for pension. Mr. Agarwala submitted that apart from Regulation 14 which deals with qualifying service for pension simplicitor, Paragraph 29 is a specific provision providing for pension on voluntary retirement, which was applicable to the case of the respondent. Mr. Agarwala submitted that Regulation 29, as mentioned hereinabove, after amendment of Regulation 28, empowers an

employee, who had completed 15 years of qualifying service, to retire from service by giving notice of not less than 3 months in writing to the Appointing Authority. Mr. Agarwala reiterated that the important aspect of the aforesaid Regulation is that an employee must have completed 15 years of service on or after 1st of November, 1993, in order to qualify for such pension.

9. Mr. Agarwala submitted that by no stretch of imagination would the general condition set out in paragraph 14 of the Pension Regulations, 1995, apply in a case of voluntary retirement, when a specific provision had been made in the Regulations for the same.

10. In support of his aforesaid submissions that the cut-off date indicated in the voluntary retirement scheme was final, Mr. Agarwala relied on the decision of this Court in *Vice Chairman & Managing Director A.P. SIDC Ltd. vs. R. Varaprasad and others*, [2003 (XI) SCC 572], where in a similar case involving voluntary retirement, this Court held that when the employees opted for VRS on their own without any compulsion knowing fully well about the Scheme, guidelines and circulars governing the same, it was not open to them to make any claim contrary to the terms accepted. It was also observed that the Voluntary Retirement Scheme is a matter of contract between the Corporation and the employees and it was not for the Court to rewrite the terms of the contract which had been arrived at by the contracting parties.

11. Mr. Agarwala submitted that this case was a fit case for interference by this Court 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 and it was not open either to the Tribunal or the High Court to apply a different standard for the writ petitioners, and to treat them as employees coming under the general provisions as contained in paragraph 14 of the Pension Regulations, 1995.

12. Mr. Agarwala's submissions were strongly opposed by Ms. Aishwarya Bhati, learned advocate appearing for the respondent. She emphatically contended that in a case involving

- A voluntary retirement Regulation 29 would not apply and that, in fact, Regulation 14 would be relevant. Ms. Bhati urged that Regulation 29 of the Pension Regulations dealt not with voluntary retirement under a Scheme but with cases of premature retirement which would be quite clear from the wording thereof. Ms. Bhati urged that Sub-regulation (1) of Regulation 29 provides for a situation where an employee wishes to retire from service even in the absence of a Voluntary Retirement Scheme. The Regulation contemplates that in such a case the employee is not only required to complete 15 years of service but is also required to give notice of not less than 3 months in writing to the Appointing Authority, and, thereafter, retire from service.

13. Ms. Bhati also urged that the terms and conditions of the Voluntary Retirement Scheme were quite different from the voluntary retirement contemplated under Regulation 29. Learned counsel urged that the impugned judgment of the High Court had been passed on a correct interpretation of the Regulations and did not warrant any interference.

14. Having carefully considered the submissions made on behalf of the respective parties, it appears to us that Ms. Bhati's submissions have substance.

15. The only question which is required to be determined in the instant case is whether Regulation 29 of the Pension Regulations, 1995, could have been applied in the case of the respondent or whether Regulation 14 has been rightly applied both by the Tribunal and the High Court.

16. The BOBEVRS-2001 itself does not give any indication, other than what has been stated in paragraph 2, as to which of the employees of the appellant-Bank would be entitled to opt for voluntary retirement. It only mentions that all permanent employees of the Bank, who as on 31st March, 2001, would have completed/would be completing minimum 15 years of service or those who have completed/would be completing 40 years of age, would be eligible to apply for voluntary retirement under the BOBEVRS-2001.

17. The conditions relating to completing 15 years of

service for being eligible to apply for BOBEVRS-2001 are special to the Scheme as also to the case of those employees who wished to apply for voluntary retirement under the aforesaid Scheme, if they had completed or would be completing 40 years of age. The latter condition appears to have been incorporated in view of the provisions of Regulations 14 and 32 of the Pension Regulations, 1995, to enable employees who had completed 10 years of service to also become eligible to apply for premature retirement under the Pension Regulations, 1995.

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

19. Furthermore, Regulation 2 of the Voluntary Retirement Scheme, 2001, of the appellant-Bank merely prescribes a period of qualifying service for an employee to be eligible to apply for voluntary retirement. On the other hand, Regulations 14 and 29 of the Pension Regulations, 1995, relate to the period of qualifying service for pension under the said Regulations, in two different situations. While Regulation 14 provides that in order to be eligible for pension an employee would have to render a minimum of 10 years service, Regulation 29 is applicable to the employees choosing to retire from service pre-maturely, and in their case the period of qualifying service would be 15 years. The facts of this case, however, do not attract the provisions of Regulation 29 since the respondent accepted the offer of voluntary retirement under the Scheme framed by the Bank and not on his own volition de hors any Scheme of Voluntary Retirement. In such a case, Regulation 14 read with Regulation 32 providing for premature retirement would not also apply to the case of the respondent. While Regulation 2 of the BOBEVRS-2001 speaks of eligibility

- A for applying under the Scheme, Regulation 14 of the Pension Regulations, 1995, contemplates a situation whereunder an employee would be eligible for premature pension. The two provisions are for two different purposes and for two different situations. However, Regulation 28 of the Pension Regulations, 1995, after amendment made provision for situations similar to the one in the instant case. In the absence of any particular provision for payment of pension to those who opted for BOBEVRS-2001 other than Regulation 11(ii) of the Scheme, we are once again left to fall back on the Pension Regulations, 1995, and the amended provisions of Regulation 28 which brings within the scope of Superannuation Pension employees who opted for the Voluntary Retirement Scheme, which will be clear from the Explanatory Memorandum. However, the period of qualifying service has been retained as 15 years for those opting for BOBEVRS-2001 and is treated differently from premature retirement where the minimum period of qualifying service has been fixed at 10 years in keeping with Regulation 14 of the Pension Regulations, 1995.

- E 20. We are, therefore, of the view that not having completed the required length of qualifying service as provided under Regulation 28 of the 1995 Regulations, the respondent was not eligible for pension under the Pension Regulations, 1995, of the appellant Bank.

- F 21. In the facts of the case and the terms of the BOBEVRS-2001 and the Pension Regulations, 1995, We are unable to agree with the interpretation of the BOBEVRS-2001 Scheme and the Pension Regulations, 1995, as has been done by the learned Single Judge and the Division Bench of the High Court, and We, therefore, allow the appeal without costs. Consequently, the orders passed by the Division Bench of the High Court and impugned in this appeal, in D.B. Special Appeal (W) No.481 of 2005 filed by the respondent against the dismissal of his Writ Petition CWP No.6525 of 2005, are set aside. Similarly, the Writ Petition filed by the appellant-Bank is allowed along with this Appeal.

H B.B.B.

Appeal allowed.