

Reserve Bank Of India & Anr vs Cecil Dennis Solomon & Anr on 4 December, 2003

Equivalent citations: AIR 2004 SUPREME COURT 3196, 2004 (9) SCC 461, 2004 AIR SCW 1402, 2003 LAB. I. C. 4034, 2004 (2) SERVLJ 129 SC, 2003 (7) SLT 605, 2004 (1) SRJ 152, (2004) 14 ALLINDCAS 65 (SC), (2004) 2 SERVLJ 129, 2004 (14) ALLINDCAS 65, 2004 (1) UJ (SC) 608, 2003 (10) SCALE 449, 2004 SCC (L&S) 737, (2003) 10 SCALE 449, (2004) 104 FJR 411, (2004) 100 FACLR 441, (2004) 1 LABLJ 782, (2004) 1 LAB LN 503, (2004) 1 SCT 326, (2004) 1 SERVLR 431, (2004) 2 SUPREME 371, (2004) 2 ESC 317, (2004) 2 GCD 1319 (SC), (2004) 13 INDLD 851, (2004) 1 CURLR 312

Author: Arijit Pasayat

Bench: Doraiswamy Raju, Arijit Pasayat

CASE NO.:

Appeal (civil) 9547 of 2003

Appeal (civil) 9549 of 2003

PETITIONER:

Reserve Bank of India & Anr.

RESPONDENT:

Cecil Dennis Solomon & Anr.

DATE OF JUDGMENT: 04/12/2003

BENCH:

DORAISWAMY RAJU & ARIJIT PASAYAT

JUDGMENT:

J U D G M E N T (Arising out of SLP(C) No. 12159 of 2002) (Arising out of SLP (C) No. 12160/2002)] ARIJIT PASAYAT, J.

Leave granted in both the special leave petitions.

Division Bench of the High Court of Bombay at Nagpur Bench has held by the impugned judgment that the respondents (hereinafter referred to as 'the employees') were entitled to pension in terms of the Reserve Bank of India Pension Regulations, 1990 (in short the 'Pension Regulations'). The Reserve Bank of India (hereinafter referred to as the 'employer') has questioned the correctness of the judgment.

Factual position is almost undisputed, and brief reference thereto would suffice.

Respondents were working in various capacities in the employer organization. The employees tendered resignation sometimes in 1988. Subsequent to their resignation, the Pension Regulations came to be operative. The said Regulation was made in exercise of powers conferred by clause (j) of sub-section (2) of Section 58 of the Reserve Bank of India Act, 1934 (for short the 'Act'). The Central Board of the employer-bank with the previous sanction of the Central Government made the Regulations. The Reserve Bank of India Staff Regulations, 1948 (in short 'Staff Regulations') which were subsequently amended w.e.f. 7.2.1992 were in operation at the relevant time governing the service conditions. Regulation 26 of the 1948 Regulations dealt with the age of retirement. Sub-rule (3) thereof which has some relevance to the present disputes provides that an employee who has attained the age of 50 years may voluntarily retire after giving to the Competent Authority three months' notice in writing. Though several other provisions were incorporated in the Regulation w.e.f. 7.2.1992, this provision in sub- rule (3) continued unamended. By Pension Regulations prescriptions were made for granting pension to certain categories of employees. Regulations 2(12) and 18 thereof read as follows:

"2(12): 'Retirement' means retirement in terms of Staff Regulation 26 and other instructions issued by the Bank under Settlements/Awards;

18. Forfeiture of service on resignation or dismissal or termination: Resignation or dismissal or termination of an employee from the service shall entail forfeiture of his entire past service and consequently shall not qualify for pension payment."

Some of the provisions of Staff Regulations need to be noted. They read as follows:

"Regulation 26. (Unamended- prior to 7.2.1992)-

(1) an employee, other than an employee in Class IV shall retire at 58 years of age and an employee in Class IV at 60 years of age;

Provided that in the case of an employee in Class IV who has reached the age of 55 years the Bank may, in its discretion, retire him after giving two months' notice in writing if in the opinion of the competent authority his efficiency is found to have been impaired.

Provided further that the Bank may, in its discretion, retire an employee, other than an employee in Class IV, at any time after completion of 50 years of age;

Provided further in the case of an employee, other than an employee in Class IV, who has attained the age of 55 years,, his continuance in service up to the age of 58 years shall be subject to his being found suitable to be retained in service.

(2) The power conferred by the provisos to sub-regulation (1) shall be exercised by the Governor, with the prior approval of the Central Board in the case of officers and by the Manager, subject to

such general or special instructions as may be issued by the Governor, in the case of other employees.

(3) An employee who has attained the age of 50 years may voluntarily retire after giving to the competent authority three months' notice in writing.

Regulation 26 (Amended with effect from 7.2.1992): (1) An employee shall retire at 60 years of age but no extension shall be given to any employee beyond 60 years of age;

Provided that an employee who attains the age of superannuation on any day other than the first during a calendar month, shall retire on the last day of that month;

Provided further that in the case of an employee in Class IV who has reached the age of 55 years the Bank may, in its discretion, retire him after giving two months' notice in writing if in the opinion of the competent authority his efficiency is found to have been impaired;

Provided further that the Bank may, in its discretion, retire in public interest an employee, other than an employee in Class IV, at any time after completion of 50 years of age;

Provided further in the case of an employee in Class III and Class I, who has attained the age of 55 years, his continuance in service upto the age of 60 years shall be subject to his being found suitable to be retained in service.

(2) The power conferred by the provisions to sub-regulation (1) shall be exercised by the Governor, with the prior approval of the Central Board in the case of officers and by the Manager, subject to such general or special instructions as may be issued by the Governor, in the case of other employees.

(3) An employee who has attained the age of 50 years may voluntarily retire after giving to the competent authority three months' notice in writing.

(3A) Without prejudice to sub-Regulation (3), an employee may voluntarily retire after giving to the competent authority three months notice in writing provided he has completed 20 years of service if he is not governed by the Reserve Bank of India Pension Regulations, 1990 and 20 years of qualifying service as defined in the Reserve Bank of India Pension Regulations, 1990, if he is governed by the Reserve Bank of India Pension Regulations, 1990.

Provided that this sub-Regulation shall not apply to an employee who is on deputation or study leave abroad, unless, after having been transferred or having returned to India he has resumed the charge of the post in India and served for a period of not less than one year. The requirement of this proviso may, however, be waived at the discretion of the Governor.

Provided further that this sub-Regulation shall not apply to an employee who seeks retirement from service for being absorbed permanently in an autonomous body or a public sector undertaking to

which he is on deputation at the time of seeking voluntary retirement.

(3B) The notice of voluntary retirement given under sub-Regulation (3A) shall not be valid unless it is accepted by the Competent Authority;

Provided that where the Competent Authority does not communicate its decision not to accept such notice before the expiry of period specified in the notice, the retirement shall become effective from the date of expiry of such period.

(3C) The Competent Authority may, if so requested by the employee retiring pursuant to sub-Regulation (3) or (3A), waive the notice of voluntary retirement with respect to its full period or part thereof if the Competent Authority is satisfied that such waiver will not cause any administrative inconvenience.

(3D) An employee who has elected to voluntarily retire pursuant to sub-Regulation (3A) and has given notice shall not be entitled to withdraw the notice except with the permission of the Competent Authority, provided that the request for such withdrawal shall be made before the intended date of his retirement".

Since the respondents-employees had tendered resignation, making them ineligible writ applications were filed before the High Court questioning legality of Regulation 18. The High Court by the impugned judgment held that Regulation did not have any retrospective operation and, therefore, the employer was legally bound to grant pension.

Mr. R.N. Trivedi, learned Additional Solicitor General submitted that the entire approach of the High Court was erroneous. On one hand it came to hold that Regulations were not retrospective in operation, yet ultimate direction was to work out the pension by taking recourse to 1990 Pension Regulations. It also recorded a finding that there cannot be any doubt that resignation from service being not equivalent to dismissal or termination which are the acts of the management, is more akin to voluntary retirement. It held that as Regulation 18 of the Pension Regulations was not attracted, the claim for pension was to be allowed. The Pension Regulations clearly ruled out payment of pension for those employees who go out by tendering resignation. There was no question of the respondents-employees taking voluntary retirement as they had not attained the age of 50 years in terms of sub-Regulation (3) of Regulation 26 of the Staff Regulation of 1948. The respondents-employees have not stated as to under which statute or Regulation they were claiming pension. From the tenure of the pleadings in the writ petition and the arguments it appears that they wanted only to get advantage of Pension Regulations. But at the same time they contended that it did not have retrospective operation.

Per contra, learned counsel for the respondents-employees submitted, only 37 employees were to be benefited and only 3 had approached the Court. That being the position, this is not a fit case where the jurisdiction under Article 136 of the Constitution of India, 1950 (for short the 'Constitution') has to be exercised. Further, by administrative decisions, the Central Board had decided to extend the benefit to the employees like the respondents. That being so, on the fortuitous ground that the

Central Government had declined to accept the recommendations, the benefits could not have been denied. Staff Regulations were in the nature of administrative decisions and the government decision was inconsequential. Once the Board had decided to grant the benefit and even had suggested amendments to Staff Regulations, there was no question of any government approval thereof.

In Reserve Bank and Another v. S. Jayarajan (1995 supp(4) SCC 584) the view expressed in V.T. Khanzode and Ors. v. Reserve Bank of India and Anr. (1982 (2) SCC 7) was reiterated that the Staff Regulations are administrative in nature. The Central Board is authorized to take such administrative decisions and Central Government's approval/decision is not necessary. Therefore, if changes were to be introduced in the Staff Regulations and the Central Board takes a decision, there would not be any necessity for taking approval of the Central Government. But the position is different so far as the Pension Regulations are concerned. The said Regulations were framed with the sanction of the Central Government and are framed in exercise of the powers conferred by clause

(j) of sub-section (2) of Section 58. If the Central Board recommended for changes in the Pension Regulations, sanction of the Central Government is mandatory. This aspect seems to have been lost sight by the High Court and the respondents cannot derive any advantage from the mere recommendations made by the Central Board suggesting changes to the Regulations. The Central Government has specifically dealt with the recommendations and has turned them down. Unless the recommendations for the amendment are approved, they have no binding force or application to make any claim thereon. Further, the respondents who claim that they were not claiming the benefit under the Pension Regulations could not point out any other source to which their claims could be linked. The respondents-employees were getting superannuation benefits accruing to them under the contributory provisions and gratuity schemes. The High Court was also in error in equating the case of resignation to voluntary retirement. The two are conceptually different in the service jurisprudence and different consequences would flow depending upon one or the other of the courses.

Under Regulation 26 of the Staff Regulations, four types of retirements were contemplated as on 1st November, 1990 i.e. (a) Retirement on Superannuation, (b) Compulsory Retirement on Invalidation,

(c) Compulsory Retirement and (d) Voluntary Retirement. Resignation does not fit into any one of the said categories.

In service jurisprudence, the expressions superannuation, voluntary retirement, compulsory retirement and resignation convey different connotations. Voluntary retirement and resignation involve voluntary acts on the part of the employee to leave service. Though both involve voluntary acts, they operate differently. One of the basic distinctions is that in case of resignation it can be tendered at any time; but in the case of voluntary retirement, it can only be sought for after rendering prescribed period of qualifying service. Other fundamental distinction is that in case of the former, normally retiral benefits are denied but in case of the latter, same is not denied. In case of the former, permission or notice is not mandated, while in case of the latter, permission of the

concerned employer is a requisite condition. Though resignation is a bilateral concept, and becomes effective on acceptance by the competent authority, yet the general rule can be displaced by express provisions to the contrary. In *Punjab National Bank v. P.K. Mittal* (AIR 1989 SC 1083), on interpretation of Regulation 20(2) of the Punjab National Bank Regulations, it was held that resignation would automatically take effect from the date specified in the notice as there was no provision for any acceptance or rejection of the resignation by the employer. In *Union of India v. Gopal Chandra Misra* (1978 (2) SCC 301), it was held in the case of a Judge of the High Court having regard to Article 217 of the Constitution that he has an unilateral right or privilege to resign his office and his resignation becomes effective from the date which he, of his own volition, chooses. But where there is a provision empowering the employer not to accept the resignation, on certain circumstances e.g. pendency of disciplinary proceedings, the employer can exercise the power. On the contrary, as noted by this Court in *Dinesh Chandra Sangma v. State of Assam* (AIR 1978 SC 17), while the Government reserves its right to compulsorily retire a Government servant, even against his wish, there is a corresponding right of the Government servant to voluntarily retire from service. Voluntary retirement is a condition of service created by statutory provision whereas resignation is an implied term of any employer-employee relationship.

Looking from any angle the High Court judgment is indefensible and is set aside and the writ petitions filed by the respondents-employees stand dismissed. Appeals are allowed. There shall be no orders as to costs.