

Allahabad High Court

Digvijay Singh Son Of Late Shri Ram ... vs U.P. Sahkari Sansthaagat Sewa ... on 30 November, 2005

Equivalent citations: 2006 (2) AWC 1501

Author: R Tiwari

Bench: R Tiwari

JUDGMENT Rakesh Tiwari, J.

1. Heard counsel for the parties and perused the record.
2. The petitioner was initially appointed as Temporary Clerk in Zila Sahkari Bank at Meerut on 9.6.1967. Though no contract has been filed along with the writ petition, yet averments have been made that the respondents society had entered into contract with the petitioner whereby he became entitled to be retained in service. The contract is said to have been entered into prior to the commencement of the U.P. Co-operative Societies Employees Service Regulations, 1975.
3. The petitioner moved an application dated 29.10.2003 stating that though he was entitled to be retained in service up to the age of 60 years, he on his own accord, wants to take voluntary retirement at the age of 58 years and which he will complete on 15.1.2004, as such necessary formalities may be completed for payment of his legal dues on the date of his retirement. The Bank vide letter dated 31.12.2003 informed the petitioner that his application for voluntary retirement/superannuation at the age of 58 years has been accepted by the Bank but he shall not be entitled to any benefits of two years remaining service and that he shall be paid all legal dues and benefits up to the date of retirement i.e. 31.1.2004. The petitioner on receipt of the letter dated 31.12.2003 raised a new claim that under the voluntary retirement no condition can be imposed and the imposition of conditions that the petitioner will not be entitled to any legal dues/benefits etc. of the two years service up to the age of 60 years are erroneous, vague, misconceived and unjust. It was stated that these benefits can not be curtailed in any manner whatsoever.
4. The counsel for the petitioner has urged that at the time when the contract was entered into between the Bank and the employee the age of superannuation was 60 years and that the U.P. Co-operative Societies Employees Service Regulations, 1975 were not in force at that time, hence the age of retirement of the petitioner would be governed by the contract and not by the U.P. Co-operative Societies Employees Service Regulations, 1975. Reference in the letter was also made to the judgment of Hon'ble Supreme Court passed in Civil Appeal No. 288 of 1978 Virendra Pal Singh and Ors. v. the District Assistant Registrar, Co-operative Societies, Etah and Anr. (1980) UPLBEC-202.
5. The Bank vide letter dated 14.1.2004 informed the petitioner that he had himself applied voluntarily for retirement at the age of 58 years which was accepted and that all legal dues and benefits etc. were paid to him in accordance with the relevant Rules. Thereafter No Dues Certificate etc. was issued to the petitioner and by letter dated 29th May, 2004 he had informed that he had received all the dues except gratuity. The petitioner was also informed by letter dated 23rd September, 2005 that there is no provision in the bank that if an employee opts for retirement at any time from the service of the bank he would be entitled for all the service benefits and pay

allowances etc. up to the age of superannuation and that the judgment of the Hon'ble Supreme Court cited by him is not applicable to the facts of the instant case as the petitioner had himself opted for voluntary retirement at the age of 58 years.

6. Sri K.N. Mishra, counsel appearing for the respondents-bank submits that before the U.P. Co-operative Societies Employees Service Regulations, 1975 came into force the terms and conditions of the employee of the respondents-bank were governed by the contract entered into between the employee and the bank. He further submits that in 1963 in order to bring uniformity in service of the employees of the Co-operative Bank an award was referred by the National Tribunal in 1971 which was popularly known as Joshi Award. In the Joshi award the age of superannuation of the employees in 41 Co-operative banks was fixed at 58 years. He further submits that in so far as the case of Virendra Singh (supra) is concerned, it does not apply to the facts and circumstances of this case.

7. A specific query was made to the counsel for the petitioner by the Court on voluntary retirement of an employee as to whether there is any provision, or rule or regulation by which he has legal right to claim service benefits up to attaining the age of 60 years in spite of putting up paper for premature retirement which was accepted by the employers. The counsel for the petitioner replied in negative.

8. From the admitted facts on record it appears that the petitioner had himself requested the bank to accept his voluntary retirement on attaining the age of 58 years and pay his retiral dues etc. It also appears from letter dated 23.9.2005 that the bank had informed the petitioner about the acceptance of the resignation/voluntary retirement and he will not be entitled for any service benefits for remaining period of two years' service. If an employee voluntarily puts all his papers for retirement from service after sometime he would not be entitled to any service benefits or pay allowance etc. till he attains the age of superannuation. The petitioner has brought his service to an end by his own act as provided in the rules. The retirement was neither thrust upon him by the bank nor was offered to him by the bank under any retirement scheme. Premature retirement sought by an employee on his own accord is a shape of resignation from service. His resignation was not conditional but unequivocal. There was no condition put by him in his application that he wants service benefits up to 60 years even though he is seeking premature retirement at the age of 58 years.

9. It is not disputed that the alleged contract of service/agreement with bank is not registered under the provisions of U.P. Industrial Disputes Act, 1947, hence it can not be enforced in law. There is no provision, rule or regulation applicable to the bank for payment of salary and service benefits after the employee has resigned from the service. The petitioner has only tried to get windfall gain from the clarification by the bank in its letter dated 31st December, 2003 while accepting his resignation.

10. In my opinion, the petitioner is not entitled to any service benefits after retirement which is not spelled out from the application of the petitioner for voluntary retirement or from any provisions, Rules or Regulations etc. applicable to him or governing the terms and conditions of employment in the service. The bank did not impose any condition for retirement of the petitioner as stated above. The petitioner has already accepted all his dues in pursuance of his decision for retirement at the

age of 58 years. Gratuity of the petitioner due to him be paid to the petitioner within 2 months from today.

11. For the reasons seated above, the writ petition is dismissed. No order as to costs.