

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present:- Hon'ble Justice I. P. Mukerji
Hon'ble Justice Md. Nizamuddin

FMA No. 4412 of 2016

United Bank of India
Vs.
Sri Swapan Kumar Mullick & Ors.

For the Appellant : **Mr. R.N. Majumder,**
Mr. Saurav Chakraborty,
Mr. Supratim Bhattacharjee, Advs.

For the Respondents : **Mr. M. R. Sarbadhikari,**
Mr. Soupal Chatterjee, Advs.

Judgment on : **17.06.2020**

I. P. MUKERJI, J.-

This judgment was prepared and made ready prior to 23rd March, 2020. It could not be delivered because of suspension of court activity resulting from declaration of lockdown by the government, on account of the COVID Pandemic.

A legal point of great moment is involved in this matter. In public employment, very often an employee tenders his resignation after long service, not many years before retirement. Usually, the rules entitle an employee to pension on retirement after rendering qualifying service i.e. service for a stipulated period of time.

Now, if an employee resigns on the eve of his retirement after rendering qualifying service, citing mental depression as the cause, does he forfeit his right to pension on the ground that he has resigned and not retired? In such a case, if pension is payable on voluntary retirement, is such a

case to be treated as voluntary retirement? This point is involved in this case.

Now, let me come to the facts.

The respondent writ petitioner (the respondent) started service in the appellant bank ("the bank") on 23rd November, 1970 as a typist. He was appointed in the post of Machine Operator in 1978. Ultimately, he was Head Cashier at the Old Court House Street Branch of the bank.

On 21st August, 2006 after rendering qualifying service as provided in the applicable rules of employment he submitted his resignation. He cited mental depression as the cause.

The letter of resignation was terse. It was in four lines. It said that he could not continue in service as he was suffering from mental depression. It was accepted by the bank on 19th October, 2006.

A few words about the applicable United Bank of India (Employees') Pension Regulations, 1995 need to be said. These regulations were made under Section 19(2)(f) of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970. They governed the service of the respondent. Regulation 2(y) defines retirement as cessation of service on superannuation, voluntary retirement and premature retirement. Regulation 22 says that on resignation or dismissal or removal from or termination of service the entire past service of the employee would be forfeited and he would not qualify for pensionary benefits.

On 16th August, 2010 the appellant gave effect to a settlement which they arrived with the workmen's unions and officers' organization on 27th April, 2010, by publishing a circular. The employees who retired from the bank's service on superannuation or on voluntary retirement on or after 29th September, 1995 could avail of the scheme. Retired employees were defined as those who had ceased to be in the service of the bank on retirement, superannuation, voluntary retirement, death or VRS prior to

27th April, 2010. Thus if the respondent was treated to have retired from the service of the bank, he was entitled to opt for the pension scheme.

On 23rd August, 2010 the respondent exercised his option further to the circular of the bank dated 16th August, 2010. On 5th October, 2010 the bank informed him that his application exercising the option was rejected by it. The reason advanced was that this benefit was being given to the employees who had ceased to be in service on inter alia, retirement prior to 27th April, 2010 but those who were in service on or after 29th September, 1995. As the respondent had resigned from service, he was not entitled to this benefit.

What do the authorities say on this subject?

Mr. R.N. Majumdar, learned counsel for the bank in his typical persuasive style made most compelling arguments to support the decision taken by the bank. He cited **UCO Bank & Ors. Vs. Sanwar Mal** reported in **(2004) 4 SCC 412**. The case was somewhat similar to ours. The employee resigned on 25th February, 1988. To give effect to a settlement arrived at between the bankers and employees' associations on 29th October, 1993 UCO Bank (Employees') Pension Regulations, 1995 were framed by the bank. A pension scheme was made by the bank. The employee wanted to avail of the pension scheme on an identical ground as the one on which the respondent's application for pension was dismissed, the said employee's application was rejected by the bank. Resignation could not be treated as retirement. The Supreme Court upheld the decision of the bank advancing the following reasons:-

“9.....The words "resignation" and "retirement" carry different meanings in common parlance. An employee can resign at any point of time, even on the second day of his appointment but in the case of retirement he retires only after attaining the age of superannuation or in the case of voluntary retirement on completion of qualifying service.....Under the Regulations, the expressions

"resignation" and "retirement" have been employed for different purpose and carry different meanings..... The scheme essentially covers retirees as the credit balance to their provident fund account is larger as compared to employees who resigned from service.....Hence, we do not find any merit in the arguments advanced on behalf of the respondent that regulation 22 makes an arbitrary and unreasonable classification repugnant to Article 14 of the Constitution by keeping out such class of employees.....Before concluding we may state that Regulation 22 is not in the nature of penalty as alleged. It only disentitles an employee who has resigned from service from becoming a member of the fund. Such employees have received their retiral benefits earlier. The Pension Scheme, as stated above, only provides for a second retiral benefit....."

Another decision was referred to us by Mr. Majumder. It was **Senior Divisional Manager, Life Insurance Corporation of India & Ors. Vs. Shree Lal Meena** reported in **(2019) 4 SCC 479**. This decision affirmed the earlier decision in **UCO Bank & Ors. Vs. Sanwar Mal** reported in **(2004) 4 SCC 412**. Under a scheme which was identical to the one involved in this case for identical reasons as in the earlier decision, the Supreme Court differentiated between retirement and resignation and held that in the absence of a special stipulation pension payable to employees who had retired was not payable to those who had resigned. All these decisions were referred to and considered by the Supreme Court in **BSES Yamuna Power Ltd. Vs. Sh. Ghanshyam Chand Sharma and Anr.** reported in **AIR 2020 SC 76** where the court reiterated the basic principle that on resignation past service was forfeited and an employee was not entitled to pension by stating as under:

"15. On the issue of whether the first respondent has served twenty years, we are of the opinion that the question is of no legal consequence to the present dispute. Even if the first

respondent had served twenty years, under Rule 26 of the CCS Pension Rules his past service stands forfeited upon resignation. The first respondent is therefore not entitled to pensionary benefits.”

We are extremely grateful to the Supreme Court for giving us the benefit of applying its decision in **Shashikala Devi Vs. Central Bank of India & Ors.** reported in **(2014) 16 SCC 260** cited by Mr. Sarbadhikari. While we are bound by and scrupulously follow the principles laid down in **UCO Bank & Ors. Vs. Sanwar Mal** reported in **(2004) 4 SCC 412**, **Senior Divisional Manager, Life Insurance Corporation of India & Ors. Vs. Shree Lal Meena** reported in **(2019) 4 SCC 479** and **BSES Yamuna Power Ltd. Vs. Sh. Ghanshyam Chand Sharma and Anr.** reported in **AIR 2020 SC 76**, the judgment in **Shashikala Devi Vs. Central Bank of India & Ors.** reported in **(2014) 16 SCC 260** helps us to interpret and understand the meaning of the expression “voluntary retirement” and examine whether it applies to the facts and circumstances of this case. It also helps us to apply the other three decisions of the Supreme Court in their proper perspective.

In the **Shashikala Devi** case, the Supreme Court held that when an employee after rendering qualifying service resigned at a point when only a short time of service was left, the resignation was accepted by the bank, and the performance record of the employee had been blemishless, a presumption had to be drawn that the employee did not intend to surrender the valuable right of receiving pension. Such resignation had to be treated as voluntary retirement. In the circumstances, the employee would be entitled to the pensionary benefits under the scheme. In that case, the employee had only a short period of service left as in our case. Now, if one reads very carefully **UCO Bank & Ors. Vs. Sanwar Mal** reported in **(2004) 4 SCC 412**, the reasons why retirement has not been equated with resignation is that on resignation, before rendering

qualifying service an employee would stake a claim to pension. On rendering qualifying service, the employee contributes to the fund from which pension is paid. Resignation may be made before rendering qualifying service or without adequate contribution to the pension fund. I quote a passage from **UCO Bank & Ors. Vs. Sanwar Mal** reported in **(2004) 4 SCC 412**.

“6.....In a self-financing scheme, a separate fund is earmarked as the Scheme is not based on budgetary support. It is essentially based on adequate contributions from the members of the fund. It is for this reason that under Regulation 11, every bank is required to cause an investigation to be made by an actuary into the financial condition of the fund from time to time and depending on the deficits, the bank is required to make annual contributions to the fund. Regulation 12 deals with investment of the fund whereas Regulation 13 deals with payment out of the fund. In the case of retirement, voluntary or on superannuation, there is a nexus between retirement and retiral benefits under the Provident Fund Rules. Retirement is allowed only on completion of qualifying service which is not there in the case of resignation. When such a retiree opts for self-financing Pension Scheme, he brings in accumulated contribution earned by him after completing qualifying number of years of service under the Provident Fund Rules whereas a person who resigns may not have adequate credit balance to his provident fund account (i.e. bank's contribution) and, therefore, Regulation 3 does not cover employees who have resigned.....”

This case, if the necessary facts are established, in my opinion, clearly falls within the ratio laid down in **Shashikala Devi Vs. Central Bank of India & Ors.** reported in **(2014) 16 SCC 260**. In that case, the employee had 1½ years of service left. The evidence suggested that he had no other source of income other than the right to receive pensionary benefit. He

wanted premature release to undergo medical treatment. He had worked with 'commitment' earning him the appreciation of the management.

I find in the list of cases in the report that the **Shashikala** case was also cited before the Supreme Court in **Senior Divisional Manager, Life Insurance Corporation of India & Ors. Vs. Shree Lal Meena** reported in **(2019) 4 SCC 479**.

The right to receive pension had accrued to the respondent since he had rendered qualifying service. He resigned four years prior to the date of superannuation. There is no aspersion against him with regard to performance or his integrity. It is to be presumed that this right was such a valuable right that it could not be relinquished except in very special circumstances. There is nothing on record to show that the respondent expressly or impliedly relinquished or waived this right.

In his resignation letter the respondent stated that the reason for his resignation was his suffering from mental depression. This illness is serious and normally interferes with one's ability to perform in the work place. If for this reason the respondent resigned it was not one which could be overlooked. Furthermore, having come near the close of his service it has to be presumed that while resigning he did not intend to forfeit his right to pension. The service records of the respondent have also to be considered.

On an appreciation of the ratio in the **Shashikala** case if certain attending circumstances are present surrounding the resignation of an employee, such resignation is to be taken as voluntary retirement. Resignation by the respondent when four years of his service was left is a very vital consideration. Equally vital is the fact that in the records there is no complaint against him. In fact, his service record is very clean. He rendered much more than qualifying service. The reason for his retirement was weighty. He said he was suffering from mental depression. When all these reasons attended the resignation, it could not

be said that he intended to throw up his pensionary benefits. A presumption to this effect was in his favour. If these circumstances are accepted by the bank to have existed then under the ratio in the **Shashikala** case the resignation of the appellant was to be taken as an offer for voluntary retirement which was accepted by the bank.

These questions of fact had to be determined and must be determined now. The above observations are to be taken as only prima facie.

Unfortunately, the learned court below was not addressed in this light. Hence, there is no finding in that behalf.

Furthermore, a circular of the Indian Banks Association dated 30th June, 2015 is brought to our notice. This circular states that the managing committee of the association at its meeting on 26th June, 2015 suggested that banks who were parties to the bipartite settlement dated 10th April, 2002/27th May, 2002 might consider amendments to Regulation 22 of the Bank Employees (Pension Regulation), 1995 as far as workmen employees were concerned. The main thrust of this circular was that in case of employees who had rendered qualifying service, the operation of Regulation 22 would not divest them of past service and would entitle them to pension.

I dispose of this appeal with the following directions:-

- A) The judgment and order under appeal dated 1st April, 2016 is set aside.
- B) The Board of Directors of the United Bank of India shall consider amendment of Regulation 22 of the United Bank of India (Employees') Pension Regulations, 1995 according to the circular of the Indian Banks Association dated 30th June, 2015 with or without retrospective effect within 3 months of physical communication of this order.
- C) The appellant bank by constituting an authority shall determine by 21st October, 2020 upon giving an opportunity to the respondent to place facts and adduce evidence before it whether he could be treated as

having voluntarily retired from service, strictly following the judgment of the Supreme Court in **Shashikala** case reported in **(2014) 16 SCC 260** read with **UCO Bank & Ors. Vs. Sanwar Mal** reported in **(2004) 4 SCC 412** and **Senior Divisional Manager, Life Insurance Corporation of India & Ors. Vs. Shree Lal Meena** reported in **(2019) 4 SCC 479**, **BSES Yamuna Power Ltd. Vs. Sh. Ghanshyam Chand Sharma & Anr.** reported in **AIR 2020 SC 76** and the observation made in this judgment and order.

D) Depending on such determination the option form/application submitted by the respondent dated 23rd August, 2010 in the terms of the circular dated 16th August, 2010 for availing of the pension scheme shall be processed by the bank by 20th November, 2020.

The appeal (FMA 4412 of 2016) is disposed of by this judgment and order.

Certified photocopy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

I agree,

(MD. NIZAMUDDIN, J.)

(I. P. MUKERJI, J.)