

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/LETTERS PATENT APPEAL NO. 156 of 2023
In R/SPECIAL CIVIL APPLICATION NO. 21371 of 2017
With
CIVIL APPLICATION (FOR STAY) NO. 2 of 2022
In R/LETTERS PATENT APPEAL NO. 156 of 2023**

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CENTRAL BANK OF INDIA
Versus
KIRITKUMAR LALLUBHAI CHAUHAN

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Appearance:
MR UDAY M JOSHI(380) for the Appellant(s) No. 1
MR NAVALDAN R LANGA(2943) for the Respondent(s) No. 1

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**CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE HEMANT M.
PRACHHAK**

Date : 10/03/2023

**ORAL ORDER
(PER : HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)**

1. This is an appeal by the appellant-Bank, challenging the judgment and order passed by the learned Single Judge, Dated: 28.09.2022, in Special Civil Application No. 21371 of 2017, whereby, the learned Single Judge quashed and set aside the impugned communication dated 25.11.2010, issued by the appellant-Bank, denying the pensionary benefits to the opponent-employee.

2. The brief facts of the case, leading to the filing of the present appeal, reads thus;

The opponent-employee came to be appointed as a bank officer by the appellant-Bank on 10.04.1978 and after rendering services for about 31 years, the opponent-employee tendered his resignation on

17.07.2009.

2.1 Thereafter, the concerned Branch Manager made recommendations for acceptance of the resignation of the opponent-employee on 16.08.2009.

2.2 Pursuant to the above, Senior Manager (HR) of the appellant-Bank addressed a communication, Dated: 18.02.2010, to the Regional Manager, Baroda, wherein, it was mentioned that the appellant-Bank had accepted the resignation of the opponent-employee.

2.3 After completing the procedural formalities, the appellant-Bank accepted the resignation of the opponent-employee on 30.04.2010 and he was relieved from the services, accordingly.

2.3.1 It appears that, before the acceptance of the resignation of the opponent-employee on 30.04.2010, the Indian Banks Association had entered into a settlement with the employees' union on 27.04.2010 for providing another option of pension to the employees, who did not opt for Pension Scheme, when the same was introduced in the year 1995.

2.3.2 The All India Banks Association also had issued circulars to the banks for early implementation of the said Joint Note. It appears that the Board of Directors of the appellant-Bank also accorded approval to take steps, as per the aforesaid circular, in its meeting held on 28.08.2010. Not only that, the Board of Directors had also instructed the Bank to act upon the Joint Note vide its communication dated 10.08.2010.

2.4 In view of the signing of the Joint Note, the opponent-employee filled-up forms for opting for pension scheme. However, the appellant-

Bank denied the said benefit to the opponent-employee vide its communication dated 25.11.2010.

2.5 Being aggrieved with the same, the opponent-employee filed Special Civil Application No. 21371 of 2017, wherein, the learned Single Judge passed the impugned judgment and order dated 28.09.2022.

Hence, the present appeal.

3. Learned Advocate, Mr. Joshi, appearing for the appellant-Bank mainly submitted that the opponent-employee tendered his resignation on 17.07.2009 and he was to be relieved from the service, as mentioned in the communication issued by the appellant-Bank, from the date that may be intimated to the opponent-employee in the future. Accordingly, the opponent-employee was intimated vide communication dated 30.04.2010 that his resignation has been accepted and he is relieved from the service. It was, thereby, submitted that the present is the case of resignation by the opponent-employee.

3.1 In support of his submission, learned Advocate, Mr. Joshi, placed reliance on Regulation 22 of the Central Bank of India (Employees') Pension Regulations, 1995 ('Regulation of 1995' in brief), which provides that in case of resignation or dismissal or removal or termination of services of an employee, there shall be forfeiture of the entire past service and consequently, dis-entitlement to pension in case of such an employees.

3.1.1 Learned Advocate, Mr. Joshi, therefore, submitted that, since, the opponent-employee had tendered his resignation on 17.07.2009, he is not entitled to claim or get the benefit of the Joint Note, which was

signed on 27.04.2010.

3.2 Learned Advocate, Mr. Joshi, invited the attention of this Court to the order passed by the learned Single Judge of this Court in Special Civil Application No. 14293 of 2011, Dated: 12.03.2018, and placed reliance on the observations made in Paragraphs- 25 and 25.1, thereof, which reads as follows;

"25. For the said purpose it is necessary to keep in focus that (i) the petitioner, vide his letter dated 29.6.2009, tendered resignation and he severed his relation with the bank by means of resignation/ by submitting resignation; and that (ii) the bank accepted said resignation vide order dated 8.10.2009.

25.1 Thus, the petitioner's case is a case of "cessation of service" on account of "resignation" and not by way of "retirement on superannuation" or even "voluntary retirement before attaining age for superannuation."

3.2.1 Learned Advocate, Mr. Joshi, also placed reliance on the decision of the Hon'ble Apex Court, rendered in the case of '**POWER FINANCE CORPORATION LIMITED VS. PRAMOD KUMAR BHATIA**', reported in (1997) 4 SCC 280, more particularly, Paragraphs-11 to 15, thereof.

3.2.2 After referring to the aforesaid decision, learned Advocate, Mr. Joshi, submitted that in the aforesaid case, the Hon'ble Apex Court has clearly pointed out the difference between 'Retirement' and

'Resignation'.

3.3 Learned Advocate, Mr. Joshi, therefore, submitted that the impugned order passed by the learned Single Judge be quashed and set aside and the present appeal be allowed.

4. On the other hand, learned Advocate, Mr. Langa, submitted that the Joint Note was signed by the employer and the union of the employees on 27.04.2010, i.e. before the acceptance of the resignation of the opponent-employee.

4.1 It was submitted that the opponent-employee tendered his resignation on 17.07.2009 and the same was accepted on 30.04.2010, meaning thereby, the opponent-employee was in service, as on 27.04.2010, and therefore, he would be entitled to get the benefits of the pension scheme of the appellant-Bank.

4.2 Learned Advocate, Mr. Langa, hence, submitted that the learned Single Judge committed no error, while passing the order dated 28.09.2022 and therefore, the present appeal be dismissed.

5. We have heard the learned Advocates for the parties and we have also perused the material placed on record and the same would reveal that the opponent-employee joined services with the appellant-Bank in the year 1978 and he continued to serve with the appellant-Bank, till the date of acceptance of his resignation, i.e. upto 30.04.2010. Thus, the opponent-employee has put in about 31 years' service, whereas, for claiming or getting the benefit of pension, the qualifying service is 20 years, as per the aforesaid regulation.

5.1 Here, it is pertinent to note that the petitioner tendered his resignation, for personal reasons, on 17.07.2009. However, the appellant-Bank vide its communication dated 18.10.2010, intimated the opponent-employee that he shall be relieved from the service on the date that may be communicated to him in the future. Subsequently, the opponent-employee was intimated vide communication dated 30.04.2010 that his resignation was accepted and he is relieved from the service with effect from the date of communication, i.e. 30.04.2010.

5.2 From the record, it is revealed that before the resignation of the opponent-employee was accepted by the appellant-Bank on 30.04.2010, the appellant-Bank had signed Joint Note with the employees' union on 27.04.2010. As per the said Joint Note, another opportunity was to be given to the employees to join the pension scheme, who could not opt for pension scheme, earlier. Clauses-2 (a) and 2(b) of the said Joint Note, provides thus;

“(2)

(a) were in the service of the bank prior to 29th September 1995 in case of Nationalized Banks / 26th March 1996 in case of Associate Banks of State Bank of India and continue in the service of the bank on the date of this Joint Note;

(b) exercise an option in writing within 60 days from the date of offer, to become a member of the Pension Fund and

(c) authorize the Trust of the Provident Fund of the bank to transfer the entire contribution of the bank along with interest accrued thereon to the credit of

the Pension Fund.”

5.3 From the above it is clear that as on the date of the signing of the Joint Note, i.e. on 27.04.2010, the opponent-employee was in service of the appellant-Bank and therefore, the opponent-Bank had sent a communication dated 22.09.2010 to the opponent-employee, intimating him that, since, he is eligible for another option for pension, as per the Joint / Settlement Note dated 27.04.2010, he may fill-up the necessary form and send the same to the appellant-Bank on, or before, 08.11.2010. Not only that, the appellant-Bank also deducted an amount of Rs.90,440/- being the 2.8 times of the Revised Pay of the opponent employee, as on 7th November, from the arrears of Wage Revision on 30.06.2010 towards the contribution of the opponent-employee to the funding gap for another option for pension. A copy of the communication dated 22.09.2010 is produced at Page-30 of the compilation.

5.4 Upon the receipt of the letter dated 22.09.2010, the opponent-employee filled-up the requisite forms, exercising his option for pension scheme, and sent it to the appellant-Bank. However, the appellant-Bank vide impugned communication dated 25.11.2010 rejected the request of the opponent-employee to grant the benefit of pension scheme, intimating him that the same is available to certain category of employees only. Which clearly appears to be unjust and improper on the part of the appellant-Bank.

5.5 At this stage, it would be relevant to refer to the observations made by the Apex Court at Paragraph-7 in the case of '**POWER FINANCE CORPORATION LIMITED**' (Supra), which reads as under;

“It is now settled legal position that unless the employee is relieved of the duty, after acceptance of the offer of voluntary retirement or resignation, jural relationship of the employee and the employer does not come to an end. since the order accepting the voluntary retirement was a conditional one, the conditions ought to have been complied with. Before the conditions could be complied with, the appellant withdrew the scheme. consequently, the order accepting voluntary retirement did not become effective. Thereby no vested right has been created in favour of the respondent. The High court, therefore, was not right in holding that the respondent has acquired a vested right and, therefore, the appellant has no right to withdraw the scheme subsequently.”

5.5.1 From the aforesaid observations made by the Apex Court, it becomes clear that unless the employee is relieved of the duty, after acceptance of the offer of voluntary retirement or resignation, jural relationship of the employee and the employer does not come to an end.

5.6 In the case on hand, as observed herein above, the opponent-employee tendered his resignation on 17.07.2009, whereas, his resignation was accepted or he was relieved from the service with effect from 30.04.2010. Thus, as on the date of the signing of the Joint Note, i.e. on 27.04.2010, the opponent-employee was very much in service and therefore, the reliance placed on the Regulation 22 of the Regulation of 1995 by the learned Advocate, Mr. Joshi, is

misconceived.

5.7 It may also be noted that, since, the learned advocate appearing for the appellant-Bank was not remaining present before the learned Single Judge, the Court was compelled to proceed with the matter in the absence of the learned advocate for the appellant-Bank. Thus, the reliance placed on the decision of the Apex Court by the learned Advocate would render no assistance to the case of the appellant-Bank.

5.8 Similarly, the reliance placed on by the learned Advocate, Mr. Joshi, on the decision of the learned Single Judge of this Court in Special Civil Application No. 14293 of 2011, Dated: 12.03.2018, also does not help the case of the appellant-Bank.

6. In the result, the present appeal fails and is **DISMISSED**, accordingly. The judgment and order passed by the learned Single Judge, Dated: 28.09.2022, in Special Civil Application No. 21371 of 2017 is, hereby, confirmed.

(VIPUL M. PANCHOLI, J)

(HEMANT M. PRACHCHHAK, J)

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