

HIGH COURT OF GUJARAT

BHAVMAN PUSHKARRAI PANDYA

Versus

BANK OF INDIA

Date of Decision: 15 July 2022

Citation: 2022 LawSuit(Guj) 5908

Hon'ble Judges: [Nikhil S Kariel](#)

Case Type: Special Civil Application

Case No: 14456 of 2021

Subject: Constitution

Acts Referred:

[Constitution Of India Art 226](#), [Art 14](#)

Final Decision: Petition allowed

Advocates: [G M Joshi](#), [U T Mishra](#), [Keyur D Gandhi](#), [Nanavati Associates](#)

Nikhil S Kariel, J.

[1] Heard learned Sr. Advocate Mr. G.M.Joshi appearing with Mr. U.T.Mishra, learned advocate for the petitioner and Mr. Keyur D.Gandhi, appearing on behalf of respondent bank.

[2] Rule returnable forthwith. Mr. K.D.Gandhi appearing for the respondent bank waives the notice of Rule on behalf of respondent Bank. With the consent of the learned Advocates appearing for both the sides, the present petition is taken up for final hearing.

[3] By way of this petition filed under Article 226 of the Constitution of India, the petitioner prays for appropriate direction, quashing and setting aside the impugned letter dated 7.7.2021 issued by the respondent Bank and to direct the respondent Bank to immediately grant option for pension to the petitioner at par with the other similarly situated co-employees in pursuance to the settlement dated 27.4.2010 and further prays for direction to the respondent Bank to pay the arrears of pension and

other consequential benefits to the present petitioner along with interest at the rate of 12% p.a.

[4] The brief facts leading to the present petition are as under:-

4.1. That the present petitioner was appointed with the respondent Bank in the year 1972 as a Cashier/Clerk. The services of the petitioner came to be terminated by the respondent Bank on 11-7-1995 after holding a Departmental Inquiry. The said dismissal order dated 11-7-1995 was challenged by the petitioner by raising an industrial dispute, which was referred to the Tribunal for adjudication and the same was registered as Reference (CGIT) No.12/2015. The CGIT-Cum-Labour Court after adjudication, passed an Award dated 11-7-2018 by which the Reference was partly allowed and the CGIT-Cum-Labour Court passed an order holding the action of the respondents as illegal, but since the petitioner had crossed the age of superannuation, the order of reinstatement without back-wages with lump sum compensation of Rs.3,00,000/- in lieu of back-wages was passed. The learned Tribunal has further directed the bank to pay permissible retirement benefit as on the date of his superannuation with continuity of service.

4.2. Being aggrieved, the Bank had preferred Special Civil Application No.19908 of 2018 before this Court challenging the judgment and award dated 11.07.2018 passed by the CGIT-cum-Labour Court. The present petitioner had also preferred the Special Civil Application No. 392 of 2019 challenging the aforesaid award qua denial of back wages for intervening period. Both these writ petitions were disposed of by way of common order dated 12-2-2019, whereby both petitions were rejected.

4.3. Feeling aggrieved, the Bank had filed Letters Patent Appeal No. 810 of 2019, while the workman had preferred Letters Patent Appeal No.947 of 2019. The Division Bench of this Court, while dismissing of both the letters patent appeals vide common judgment and order dated 29.01.2021, had observed as under:

"8.1 We have also noticed that the Court has directed the appellant bank to consider the aspect of grant of pensionary benefits to the respondent employee. On account of pendency of this appeals the appellant bank has not so far considered however, within a reasonable time period it shall be considered in accordance with law since the directions issued by the authority which has been confirmed by the learned Single Judge and by this Court is of grant of consequential retiral benefits.

9. Noticing the fact that respondent workman since has been given the permissible retiral benefits as directed in the order of the learned Single Judge that the consideration for the pension be made within 10 weeks from the date of receipt of

copy of the order. The said consideration may not preclude the authorities from availing their remaining benefits to the respondent workman which shall be within 4 weeks from the date of receipt of copy of the order."

4.4. It is the case of the petitioner and it is also not in dispute that the services of the petitioner came to be illegally terminated in the year 1995 and after the date of the Award, the respondent bank had considered the case of the petitioner and granted the benefit of continuity of service by calculating gratuity amount from the date of dismissal till the date of his retirement in the year 2011 and accordingly the difference of gratuity an amount of Rs.7,35,507/- was paid to the petitioner. Thus, it is submitted that the respondent bank has granted the benefit of continuity of service and at the same time, while granting the benefit of continuity of service, the respondent bank has failed to grant the option to the petitioner and therefore, the impugned action of the respondent bank in not granting the option for GPF is illegal and unjustifiable. It is submitted that on one hand bank had granted continuity of service by counting the entire period of service while calculating and paying the retiral benefit like gratuity, and on the other hand, the respondent Bank refuses to grant option for GPF as per the direction of the learned Tribunal as well as this Hon'ble Court. Therefore, the present petition may be allowed and direction may be issued that the petitioner is entitled for option which is extended to other similarly situated employees.

[5] Mr. Joshi, learned Sr. Advocate appearing for the petitioner submits that according to the Circular issued by the respondent bank on 26-4-2018, the respondent bank is legally obliged to grant the option for obtaining pensionary benefits. Mr. Joshi further submits that as per the said Circular, the respondent bank has granted EPF/GPF option to all the retired employees/compulsorily retired employees with a view to grant regular pension to the employees of the respondent bank. Mr. Joshi further submits that the petitioner was appointed in the services of the respondent bank on 1-5-1972 as a Cashier-cum-Clerk and the services of the petitioner came to be illegally terminated and therefore, petitioner raised industrial dispute which was registered as Reference (CGIT) No.12/2015 and the Tribunal vide its Award dated 11-7-2018, set aside the dismissal order by directing the respondent bank to pass order of reinstatement without back-wages with a lump sum amount of Rs.3 lac in lieu of back-wages since the petitioner has crossed the age of superannuation. The aforesaid Award passed by Industrial Tribunal is confirmed up to Division Bench and the Division Bench vide its order dated 29-1-2021, rejected the Letters Patent Appeal filed by the respondent bank and directed the Bank to pay all retiral benefits and for extending the pensionary benefits within 10 weeks. Despite the aforesaid directions passed by the learned Division Bench, the petitioner has not been extended the pensionary benefits

and therefore, petitioner has filed the present petition. Mr. Joshi, learned Senior Advocate further submits that once the termination order is set aside by directing reinstatement, the petitioner is deemed to be in service for all purpose. Therefore, the petitioner is entitled to exercise option for pension, which has been given to other employees even after their retirement.

[6] Mr. K.D.Gandhi, learned Advocate appearing on behalf of respondent bank submits that the bank has paid all retiral benefits and settled the account of P.F. by paying a sum of Rs.1,60,138/- on 21-3-1997. Mr. Gandhi further submits that after the judgment and order passed by this Hon'ble Court, the bank has further paid all gratuity amount and thus, the petitioner is not entitled for any amount. It is further submitted that since the petitioner is CPF optee and his account is already settled on 21-3-1997 by paying P.F. amount of Rs.1,60,138/-, the petitioner is not entitled for further amount. Therefore, the petition may be dismissed.

[7] Having heard both the learned Advocates for the parties at length and having gone through the record, the aspect which is not in dispute between the parties is that the petitioner was appointed in the services of the respondent Bank on 1-5-1972 and thereafter the services of the petitioner came to be terminated. It is also clear that ultimately the Award was passed directing reinstatement with continuity of service restricting the amount of back wages to a lump sum compensation of Rs.3 lac. The Award is confirmed up to Division Bench. Therefore, the petitioner is required to be treated as having been in continuous service from the date of appointment till the date of retirement. It is also not in dispute that the respondent bank has subsequently granted the pension option to the retired employees/employees, who have opted for Voluntary Retirement Scheme. The Bank had entered into a Settlement with the Union operating in the respondent bank and ultimately the Circular was issued on 26-4-2018, whereby the respondent bank has granted option to the retired employees as well. Similarly, the petitioner is also entitled for the said option which has been extended to other retired employees as he would be deemed to be in service in view of continuity of service granted vide Award dated 11.7.2018 of the CGIT-cum-Labour Court. Therefore, the submission made by the learned Advocate Mr. Gandhi that the account of the petitioner is settled on 21.3.1997 by paying P.F. amount of Rs.1,60,138, is unsustainable. According to the Circular and the settlement signed between the Bank and the Union, the respondent Bank has to give option to the petitioner and according to the said option, the petitioner is entitled to opt for GPF and if the bank accepts the said option, the petitioner can be directed to refund the P.F. amount with interest, which the petitioner has received at the time of termination. Since the competent Court has set aside the termination order by directing reinstatement with continuity of service, the respondent Bank has to consider the case in light of the case of other

retired employees, who have been granted option subsequently after opting for VRS. On 26.4.2008 the present petitioner was not in employment and, therefore, he could not exercise the option. The respondent Bank ought to have given the option to the petitioner as has been done in case of other retired employees, more so when he has been granted the relief of continuity of service, which would entitle him to be offered the right to exercise option for pension. The Bank has failed to give opportunity to the petitioner for opting for pension scheme and, therefore, the action on the part of the Bank is clearly in violation of the Award of the CGIT-cum-Labour Court as well as in violation of Article 14 of the Constitution of India as the petitioner is also entitled for same treatment, which has been extended to other employees.

[8] Therefore, in view of the above discussion, the impugned order dated 7.7.2021 passed by the respondent Bank is required to be quashed and set aside and the same is accordingly quashed and set aside. The respondent bank is directed to consider the case of the petitioner in light of the Circular issued on 26.4.2018 and grant pension to the petitioner on the same terms and conditions, which have been applied to the other retired employees of the Bank. Furthermore, if the Bank accepts the option exercised by the petition, i.e. to opt for GPF, then the petitioner shall refund the entire amount of PF received by him with interest at the rate of 6% p.a., till the date of deposit. Upon the petitioner giving option for GPF, the Bank while directing refund of the amount of PF received by the petitioner shall at the same time process the case for grant of pension and other consequential benefits that may be available to the petitioner upon opting for GPF. The entire exercise shall be completed by the Bank within a period of 8 weeks from the date of receipt of the order and whereas the petitioner shall also ensure that upon opting for GPF the petitioner upon being directed by the Bank shall refund the entire amount of PF with interest at the rate of 6% per annum and if the petitioner is unable to pay such amount, the petitioner shall request the Bank in writing to set off the payable amount against the receivable amount and whereas in case such request is received, the Bank shall consider the same sympathetically and also practically.

[9] The petition is allowed accordingly. Rule is made absolute to the aforesaid extent with no order as to costs.