

CASE NO.:
Appeal (civil) 5238-5242 of 2007

PETITIONER:
MANAGEMENT OF INDIAN BANK AND ANR

RESPONDENT:
G. RAMACHANDRAN AND ORS

DATE OF JUDGMENT: 02/11/2007

BENCH:
S.B. SINHA & P.P. NAOLEKAR

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NOS. 5238-5242 OF 2007
[Arising out of SLP(C) Nos.24710-24714/2005]

S.B. Sinha, J.

Leave granted.

This appeal is directed against the judgment and order dated 13.9.2005 passed by a Division Bench of the Madras High Court in civil writ petitions filed by the respondents herein.

The short question involved in these appeals related to interpretation of Regulation 17 of the Indian Bank (Employees') Pension Regulations, 1995 (hereinafter referred to as "Pension Regulations"), vis-a-vis Regulation 37 of the Indian Bank Officers' Service Regulations, 1979, (hereinafter referred to as "Service Regulations").

Respondents have joined the service of the appellant-Bank on diverse dates. They, indisputably, have served the Bank for more than 10 years. They opted for the Pension Regulation as and when the same was framed and sought for voluntary retirement from services in 2001. The said offer of retirement has been accepted.

The representation of the respondents that their entire period of service, including the period of leave availed by them on loss of pay, should be taken into consideration for the purpose of computing the pensionary benefits, having been rejected by the Bank by its order dated 16.8.2001 and 17.8.2001, several writ applications came to be filed by the respondents. The High Court by an order dated 23.9.2002 directed the appellant-Bank to give a personal hearing to them. The said order was complied with. However, by an order dated 11.10.2002 passed by the Bank, the representations of the respondents were rejected.

Respondent Nos.1, 3, 4 & 5 herein again filed writ applications in November 2002 challenging the aforesaid order dated 11.10.2002; whereas respondent No.2 filed a writ petition before the High Court in March 2003, questioning the validity or otherwise of the order dated 3.8.2001. By reason of the impugned judgment a Division Bench of the High Court allowed the said writ applications filed by the respondents herein. Appellants are, thus, before us.

Before embarking on the rival contentions advanced by the learned counsel for the parties, we may notice that Chapter VII of the Service Regulations provide for different kinds of leave, namely, casual leave, privilege leave, sick leave, special sick leave, maternity leave, extraordinary leave on loss of pay and special casual leave and special leave.

The fact that the concerned respondents had obtained leave on medical ground,

without pay is not in dispute.

Extraordinary leave is granted in terms of Regulation 37 of the Service Regulations which reads thus:

"An officer shall be eligible for extraordinary leave on loss of pay for not more than 360 days during the entire period of service. Such leave may not be availed of except for sufficient reasons on more than 90 days at a time provided that in very special circumstances the Board may grant extraordinary leave on loss of pay to an officer upto a total period of 720 days."

Whereas grant of leave is governed by the Service Regulations, grant of pension and/or determination of the quantum thereof is governed by the Pension Regulations. Regulation 14 of the Pension Regulations provides for qualifying service in the following terms:

"Subject to the other conditions contained in these regulations, an employee who has rendered a minimum of ten years of service in the Bank on the date of his retirement or the date on which he is deemed to have retired shall qualify for pension."

Regulation 17 provides that all leave during service in the Bank for which leave salary is payable shall count as qualifying service. The proviso appended to Regulation 17, however, categorically states that extraordinary leave on loss of pay shall not count as qualifying service except when the sanctioning authority has directed that such leave, not exceeding twelve months during the entire service, may count as service for all purposes including pension. The High Court in its impugned judgment opined that while granting extraordinary leave, the sanctioning authority must be held to have sanctioned leave in terms of Regulation 17 of the Pension Regulations as well. For the said proposition, reliance has been placed on Rule 21 of the Central Civil Services Pension Rules. With a view to complete the narration of facts, we may take note of Regulation 21 also.

"Counting of period spent on leave. All leave during service for which leave salary is payable and all extraordinary leave granted on medical certificate shall count as qualifying service.

Provided that in the case of extraordinary leave other than extraordinary leave granted on medical certificate, the appointing authority may, at the time of granting such leave, allow the period of that leave to count as qualifying service if such leave is granted to a Government servant -

- i) Omitted.
- ii) Due to his inability to join or rejoin duty on account of civil commotion or;
- iii) For prosecuting higher scientific and technical studies."

We, at the outset, must express our reservation in regard to the approach of the High Court in so far as reference has been made to a regulation which is not applicable to the case of the respondents herein. Regulation 21 itself clearly suggests that only in a case where leave has been granted on medical ground, the appointing authority at the time of granting such leave may allow the period thereof to be counted as qualifying service if such leave is granted to a Government servant. The limited area in which Regulation 21 operates is evidently centres round grant of medical leave which is not the case here. Pension Regulations framed by the appellants do not postulate such a contingency. It is now a trite law that for the purpose of construing a statute, reference to another statute is not permissible and, thus, Regulation 21 of the Civil Services Pension Rules contemplates a different situation, the same will have no application in the instant case. The High Court, therefore, committed an error in relying on the said provision.

The High Court has held that the "entries regarding service being qualifying or otherwise are required to be made simultaneously with the event, but in this case it is

not done." We are afraid that such an inference could not have been drawn in the instant case. Service Regulations operate in the matter of grant of leave. It may be possible that the highest authority had granted leave in favour of the respondents but the same would not mean that in all such events, the authority to grant leave in terms of Service Regulations i.e. the sanctioning authority under Regulation 17 would be one and the same. Construction of a statute should not be premised on surmises and conjectures.

The question of application of mind on the part of sanctioning authority in terms of proviso appended to Regulation 17 of the Pension Regulations would arise only at the end of the service of the employee concerned and not at the time when the leave is granted. Service Regulations and Pension Regulations, thus, operate in different fields. An employee of the Bank would be entitled to the benefit of the proviso appended to Regulation 17 of the Pension Regulations in the event a direction is issued by the sanctioning authority. If no such direction is issued, the question of granting leave by the competent authority for the purpose of pensionary benefits would not arise.

We, therefore, are of the opinion that the impugned judgment of the High Court cannot be sustained and it is set aside accordingly. The appeal is allowed. However, in the facts and circumstances of this case, there shall be no orders as to costs.