

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) No. 2555/2012

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A.K.JAIN

24th July, 2013

.....Petitioner

**Through: Ms. Vandana Sharma, Mr.
A.S.Kushwaha and Mr. Samundra
Jain, Adv.**

VERSUS

PUNJAB NATIONAL BANK & ANR.

..... Respondents

Through: Mr. Jagat Arora, Adv.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. The petitioner Sh. A.K.Jain by means of this writ petition seeks the relief of grant of pension by the employer/respondent no.1/Punjab National Bank.

2. The facts of the present case are that the petitioner did not voluntarily retire because though he had initially applied for voluntary retirement, subsequently, as he had not completed 20 years of service and hence was not eligible for voluntary retirement, he resigned from the respondent no.1/bank in terms of the letter dated 14.6.1997. This letter reads as under:-

14th June, 97

“Senior Manager
Punjab National Bank
GAD
HO: NEW DELHI

Dear Sir,

In reference to my letter dated 7.5.97 for voluntary retirement and your reply dated 13.6.97 received on 14.6.97 in which you have stated that I am not eligible for voluntary retirement as I have not completed 20 years of service. If voluntary retirement is not applicable on me, please accept my resignation.

This may be treated as a Notice w.e.f. today.

Thanking you,

Yours faithfully,

(A.K.JAIN)
CLERK CUM GODOWN KEEPER”

3. The resignation of the petitioner was accepted by the respondent no.1 by its letter dated 12.7.1997 and which reads as under:-

“July 12,1997

Shri Ajay Kumar Jain,
165, New Loyalpur Colony,
Delhi

RESIGNATION.

This has reference to your Resignation Letter dated 14/6/97 giving one month's notice. The same has been accepted by the authorities. You are, therefore, relieved from bank's service w.e.f. July 12, 1997.

We are initiating steps for settlement of Terminal Dues as per Bank Rules.

Sd/-
SR. MANAGER:GAD”

4. The law is now well settled that resignation by an employee results in forfeiture of the service as a result of which no pension can be granted. Reference in this regard can usefully be made to the recent judgment of the Supreme Court in the case of ***M.R.Prabhakar and Others Vs. Canara Bank and Others (2012) 9 SCC 671***. Paras 11, 14 to 16 of this judgment are relevant, which read as under:-

“11. Regulation 22, which finds a place in Chapter IV of the Regulations, reads as follows:

“22 Forfeiture of service -(1). Resignation or dismissal or removal or termination of an employee from the service of the Bank shall entail forfeiture of his entire past service and consequently shall not qualify for pensionary benefits;

(2) An interruption in the service of a Bank employee entails forfeiture of his past service, except in the following cases, namely:

(a) authorised leave of absence;

(b) suspension, where it is immediately followed by reinstatement, whether in the same or a different post, or where the bank employee dies or is permitted to retire or is retired on attaining the age of compulsory retirement while under suspension;

(c) transfer to non-qualifying service in an establishment under the control of the Government or Bank if such transfer has been ordered by a competent authority in the public interest;

(d) joining time while on transfer from one post to another.

(3) Notwithstanding anything contained in Sub-Regulation (2), the appointing authority may, by order, commute retrospectively the periods of absence without leave as extraordinary leave.

(4) (a) In the absence of a specific indication to the contrary in the

service record, an interruption between two spells of service rendered by a bank employee shall be treated as automatically condoned and the pre-interruption service treated as qualifying service;

(b) Nothing in Clause (a) shall apply to interruption caused by resignation, dismissal or Removal from the service or for participation in a strike:

Provided that before making an entry in the service record of the Bank employee regarding forfeiture of past service because of his participation in strike, an opportunity of representation may be given to such bank employees.

14. The Appellants, in our view, did not retire from the service, but resigned from the service. Appellants tried to build up a case that in the absence of a legal definition of 'voluntary retirement' or in the absence of legally prescribed consequences of 'resignation', it must be understood in the sense of voluntary relinquishment of service. It was pointed out that there can be no distinction between 'voluntary retirement' and 'resignation' and those expressions are to be understood in their ordinary literal sense.

15. We find it difficult to accept the contentions raised by the Appellants. There is no ambiguity in the definition clause under Regulation 2(y) which has statutorily brought in the 'voluntarily retirement' as 'retirement'. Though the concept of 'resignation' is well known in Service Jurisprudence, the same has not been brought within the definition of 'retirement' under Regulation 2(y). Further, the words 'retired' and 'retirement' have some resemblance in their meanings, but not 'resignation'. Regulation 3(1)(a) specifically used the expression 'retirement' and the expression 'resignation' has not been incorporated either in the definition clause or in Regulation 3(1) (a). We need not labour much on this issue, since the difference between these two concepts 'resignation' and 'retirement', in the context of the same Banking Regulations 1995, came up for consideration before this Court in *Sanwar Mal* (supra), wherein this Court has distinguished the words 'resignation' and 'retirement' and held as follows:

“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. The effect of resignation and retirement to the extent that there is severance of employment but in service jurisprudence both the

expressions are understood differently. Under the Regulations, the expressions "resignation" and "retirement" have been employed for different purpose and carry different meanings. The pension scheme herein is based on actuarial calculation; it is a self-financing scheme, which does not depend upon budgetary support and consequently it constitutes a complete code by itself. The scheme essentially covers retirees as the credit balance to their provident fund account is larger as compared to employees who resigned from service. Moreover, resignation brings about complete cessation of master and servant relationship whereas voluntary retirement maintains the relationship for the purposes of grant of retiral benefits, in view of the past service- Similarly, acceptance of resignation is dependent upon discretion of the employer whereas retirement is completion of service in terms of Regulations/rules framed by the bank-Resignation can be tendered irrespective of the length of service whereas in the case of voluntary retirement, the employee has to complete qualifying service for retiral benefits.....(Emphasis added)

16. In the above mentioned judgment, this Court has also held that there are different yardsticks and criteria for submitting the resignation, vis-à-vis voluntary retirement and exceptions thereof. In that context, the scope of Regulation 22 of Regulations 1995 was also considered and the Court held as follows:

9. ... In our view, Regulation 22 provides for disqualification of employees who have resigned from service and for those who have been dismissed or removed 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. The view we have taken is supported by the judgment of this Court in the case of Reserve Bank of India v. Cecil Dennis Solomon : (2004) 9 SCC 461. Before concluding we may state that Clause 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. Hence there is no question of penalty being imposed on such employees as alleged. The pension scheme only provides for an avenue for investment to retirees. They are provided avenue to put in their savings and as a term or condition which is more in the nature of an eligibility criteria the scheme disentitles such category of employees out of it.”

5. In view of the facts that petitioner has resigned from service, petitioner cannot claim and is not entitled to any pension in view of the ratio of the Supreme Court in the case of *M.R.Prabhakar (supra)*. It be noted that the judgment in the case of *M.R.Prabhakar (supra)* was passed where the employer was a bank like the employer-respondent in the present case and the service regulations are also identical to the present case.

6. In view of the above, the writ petition is dismissed, leaving the parties to bear their own costs.

JULY 24, 2013
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VALMIKI J. MEHTA, J.