

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

+ **W.P.(C) 7414/2014**

Date of decision: 31.10.2014

IN THE MATTER OF:

A.K.WADHWA

..... Petitioner

Through : Mr. Sewa Ram, Advocate

versus

CENTRAL BANK OF INDIA & ORS.

.... Respondents

Through : Mr. R.S.Mathur, Advocate
for R-1

Ms.Nishtha Sikroria, Advocate
for R-2

Mr. Jagat Arora and Mr. Rajat Arora,
Advocates for R-3

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HON'BLE MS.JUSTICE HIMA KOHLI

HIMA KOHLI, J. (Oral)

1. The present petition has been filed by the petitioner against the respondent No.1/Central Bank of India, respondent No.2/UOI and respondent No.3/Indian Banks' Association, praying *inter alia* for quashing/setting aside the respondent No.1/Bank's letter dated 10.2.2014 issued in reply to his legal notice dated 9.1.2014, demanding voluntary retirement pension, under Regulation 29 of the Central Bank of India (Employees) Pension Regulations, 1995.

2. With the consent of the learned counsels for the parties, the matter is taken up for final disposal at the stage of admission.

3. Briefly stated, the facts of the case are that on 11.5.1973, the petitioner had joined the respondent No.1/Central Bank of India (in short '**the Bank**') as a Clerk. In July 1994, the petitioner submitted his option to join the pension scheme and requested for transfer of the Bank's share in the PF to the pension fund, in terms of a Memorandum of Settlement dated 29.10.1993 executed between the Management of 58 Banks as represented by the respondent No.3 Indian Banks' Association and their workmen (Annexure P-3).

4. Subsequently on 7.9.1995, the petitioner tendered his resignation from the service of the Bank and asked for settlement of his dues at the earliest (Annexure P-5). At the end of the very same month of September 1995, the Central Bank of India Pension Regulations, 1995 (hereinafter referred to as '**the Regulations**') was notified. On 3.1.1996, the Bank communicated to the petitioner its irrevocable acceptance of his option to join the pension scheme and informed him that the Bank's share as an employer was transferred to the corpus fund of the pension scheme. On 11.9.1996, the Bank accepted the resignation tendered by the petitioner, retrospectively. After almost one year, in August 1997, the petitioner submitted a representation to the Bank seeking sanction of pension by treating his

resignation as a case of voluntary retirement in terms of Regulation 29 of the Regulations on the ground that he had served the Bank for over 22 years and therefore, met the criteria of "qualifying service of 20 years" for grant of pension and he offered to refund the Bank's share of CPF with interest. The said request made by the petitioner was however declined by the Bank. Subsequently, in the year 1999, the petitioner filed a civil suit in the trial court, registered as Suit No.25/2002, praying *inter alia* for declaration and mandatory injunction against the Bank to the effect that he was eligible for the benefit of receiving pension from 7.9.1995 and for mandatory injunction to the effect that the Bank be directed to release the pension in his favour with all consequential benefits.

5. Vide judgment dated 4.12.2002, the aforesaid civil suit was finally decided by the civil court. It was observed in the said judgment that at the time when the petitioner had tendered his resignation from service on 7.9.1995, there was no pension scheme in existence and further, as per the Regulation 22 of the Regulations which stipulates that a 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 him for pensionary benefits, the petitioner was not entitled to receive pension and further, that his resignation could not be treated as a

voluntary retirement. It is relevant to note that the petitioner did not file an appeal against the aforesaid judgment dated 4.12.2002 and consequently it has attained finality.

6. In the year 2003, the petitioner filed a writ petition in the High Court, registered as WP(C) No.1502/2003, challenging the validity of Regulation 22 of the Regulations and praying for release of pension in his favour. However, vide judgment dated 5.10.2010, the Division Bench dismissed the aforesaid writ petition in view of a decision of the Supreme Court in the case of UCO Bank and Ors. Vs. Sanwar Mal reported as **AIR 2004 SC 2135**, wherein the following observations were made:

"9. We find merit in these appeals. 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. **Further, there are different yardsticks and criteria for submitting resignation vis-a-vis voluntary retirement and acceptance thereof. Since the pension regulations disqualify an employee, who has resigned, from claiming pension the respondent cannot claim membership of the fund. 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 and Anr. vs. Cecil Dennis Solomon and Anr. reported as **(2004) 11 LLJ 782 SC**. 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.”

7. After taking note of the aforesaid decision of the Supreme Court, the Division Bench made the following observations in the concluding para of its order dated 05.10.2010:

“In view of the aforesaid, the challenge to constitutional validity does not arise any more. Mr. Munjal, learned counsel for the petitioner submitted that the respondent employer after issuing a communication/intimation to keep him in the pension scheme would not have accepted the resignation. It is worth noting that the petitioner had challenged the same in the civil suit as put forth in the petition. When a remedy has been taken recourse in the civil suit and the same faced a dismissal, we are of the considered opinion the said aspect need not require to be adverted to in this writ petition. That apart, there is nothing on record that the petitioner had withdrawn his letter of resignation.

Regard being had to the aforesaid fact situation, we are of the considered opinion there is no merit in this writ petition and accordingly the stands dismissed without any order as to costs.”

8. Pertinently, the petitioner did not challenge the aforesaid decision by preferring an appeal before the Supreme Court. After the passage of over three years from the date of the aforesaid decision, in January 2014, the petitioner issued a legal notice dated 09.01.2014 to the Bank seeking release of voluntary retirement pension. The sole

ground for making such a demand on the Bank, is stated to be a letter dated 4.1.1996 that was addressed by the respondent No.3/Association to the Department of Economic Affairs, Ministry of Finance clarifying the issue of "Voluntary Retirement under Bank (Employees) Pension Regulations". The aforesaid legal notice was duly replied to by the Bank, vide impugned letter dated 10.02.2014, stating *inter alia* that earlier hereto, the petitioner had filed a civil suit for the same relief which was dismissed on 04.12.2002, followed by a writ petition filed by him which was also dismissed by the Division bench vide order dated 5.10.2010 and therefore, he was not entitled to any relief.

9. In his legal notice, reliance was placed by the petitioner on the case of Sheel Kumar Jain Vs. New India Assurance Co. Ltd. reported as **AIR 2011 SC 2990**, wherein while deciding the entitlement of an employee serving in an Insurance Company, to pension and other pensionary benefits, it was held by the Supreme Court that even in the case of resignation after putting in the minimum qualifying service for pension under the relevant Regulations, pension ought not to be denied on the ground that the employee had resigned. In the reply to the legal notice, the Bank pointed out that the aforesaid judgment was distinguished by the Supreme Court in a subsequent decision in the case of M.R. Prabhakar & Ors. Vs. Canara Bank & Ors. reported as

(2012) 9 SCC 671, wherein the court had made the following observations that are reproduced hereinbelow for ready reference:-

“19. We may point out that in **Sheel Kumar Jain**, the Court was dealing with an insurance scheme and not the pension scheme, which is applicable in the banking sector. The provisions of both the scheme and the Regulations are not in pari material. In **Sheel Kumar Jain case**, while referring to Para 5, this Court came to the conclusion that the same does not make distinction between “resignation” and “voluntary retirement” and it only provides that an employee who wants to leave or discontinue his service amounts “resignation” or “voluntary retirement”. Whereas, Regulation 20(2) of the Canara Bank(Officers) Service Regulations, 1979 applicable to banks, had specifically referred to the words “resignation”, unlike Para 5 of the Insurance Rules. Further, it is also to be noted that in that judgment, this Court in para 30 held that the Court will have to construe the statutory provisions in each case to find out whether the termination of service of an employee was a termination by way of resignation or a termination by way of voluntary retirement.”

10. Aggrieved by the aforesaid stand taken by the Bank, the petitioner has filed the present petition for grant of pension by treating his resignation as a voluntary retirement.

11. The sole ground taken by learned counsel for the petitioner to seek the very same relief as was prayed for by his client earlier, is that the Bank had deliberately withheld the Circular dated 4.1.1996 issued by the respondent No.3/Association from the civil court as also the High Court, and had the said Circular been placed before

concerned courts, the fate of the suit instituted by him and the petition filed by him subsequently, would have been different.

12. Counsels for the respondents, who appear on service of advance copies of the paper book, oppose the maintainability of the present petition on the ground that it is hopelessly barred by limitation. It is urged that the admitted position is that the petitioner had resigned from the Bank as long back as on 7.9.1995 and if he really had a grievance with regard to the non-application of the Circular dated 4.1.1996 issued by the respondent No.3/Association, then he should have taken prompt steps to approach the Court for relief within a reasonable time from the date of issuance of the said Circular. It is contended that after such an inordinate delay of almost 20 years, the petitioner cannot be permitted to re-agitate the issue by seeking judicial review and placing reliance on the said Circular.

13. The next submission made by learned counsel for the respondents is that the present petition is barred by *res judicata* inasmuch as the issue raised by the petitioner in the present petition to the effect that the Bank ought to have treated his resignation as a voluntary retirement has already been adjudicated in the civil suit instituted by him in the year 1999 that was finally decided on 4.12.2002, wherein the aforesaid stand was turned down on the ground that there was no pension scheme in existence at the time of

his resignation and Regulation 22 of the Regulations has clarified that on resignation of an employee from the service of the Bank, his past service would stand forfeited and he would not be entitled for any pensionary benefits. Learned counsels submit that the said judgment was not challenged by the petitioner in appeal and has therefore attained finality.

14. Further, it is pointed out by the counsel for the respondents that as per the averments made in the writ petition, in the year 2003, the petitioner had filed a writ petition challenging *inter alia* the vires of Regulation 22 of the Regulations and seeking directions to the respondent to pay him the pension from the date of his resignation. As noted above, the aforesaid writ petition was also dismissed by the Division Bench, vide order dated 5.10.2010 and again, the said decision was not taken in appeal by the petitioner. It is therefore submitted that the present petition ought to be dismissed on the ground of delay and laches and on account of the fact that it is hit by the principles of *res judicata*.

15. Counsel for the petitioner refutes the aforesaid arguments and states that in the earlier two litigations initiated by the petitioner, the Bank had illegally withheld the Circular dated 4.1.1996 issued by the respondent No.3/Association and if the said document would have been placed before the concerned courts, it was most likely that the

petitioner would have succeeded in the suit/writ proceedings. He contends that the aforesaid act of the respondents in withholding the Circular in question amounts to playing a fraud on the court and therefore, any order passed by the concerned courts without having the benefit of the said Circular ought to be treated as a nullity and non-est. To buttress the said submission, he relies on the decision of the Supreme Court in the case of A.V. Papayya Sastry vs. Government of Andhra Pradesh, reported as **2007 (4) SCC 221**.

16. This Court has heard counsels for the parties and considered the arguments advanced by them in the light of the documents placed on record. It is quite apparent from the facts of the case that in the past, in the litigation that was initiated by the petitioner for seeking conversion of his resignation to voluntary retirement and for release of pension in his favour, the said plea had been turned down by the Civil Judge in the suit for declaration and mandatory injunction instituted by him in the year 1999. For reasons best known to the petitioner, he had elected not to file an appeal against the said judgment and as a result, the same has a binding effect on the parties. Further, the challenge laid by the petitioner to the validity and constitutionality of Regulation 22 of the Regulations was also turned down by the Division Bench, vide order dated 5.10.2010 passed in WP(C) No.1502/2003, wherein it was particularly noted that

similar Regulations invoked by many a Bank, including the respondent No.1/Bank, were considered by the Supreme Court in the case of Sanwar Mal (supra) and it was concluded that the Regulation 22 of the Regulations was neither arbitrary and nor did it carve out an unreasonable classification that was a requirement of Article 14 of the Constitution of India. The said Regulation only disentitles an employee who has resigned from service from becoming a member of the Fund as those employees have received their retirement benefits earlier. While dismissing the aforesaid petition, the Division Bench also took note of the fact that the petitioner had raised the said issue in the civil suit instituted by him but was unsuccessful therein.

17. After the passage of four years from the date of the aforesaid judgment passed in the writ petition, which has also attained finality, as the petitioner has not challenged the same in appeal, he has filed the present petition seeking to re-agitate the entire issue all over again by placing reliance on the Circular dated 4.1.1996 issued by the respondent No.3/Association.

18. Although the petitioner has failed to offer any satisfactory explanation for the delay and laches in producing the Circular dated 4.1.1996, in the interest of justice, the court has examined the said document on merits. The aforesaid Circular issued by the respondent No.3/Association deals with the "Voluntary Retirement under Bank

(Employees) Pension Regulations” and in the penultimate paragraph, it was noted as under :

“.....Therefore, we are of the view that wherever an employee/officer has sought voluntary retirement under Pension Regulation after 1.11.1993, and if such request has not been considered due to reasons that Pension Regulations are yet to be adopted, the Bank may consider such cases for granting voluntary retirement Pension provided that the employee concerned fulfill the requirements in terms of Regulation 29, Regulation 50 etc. Such cases have to be considered afresh by the Banks upon receipt of request from the employees with reference to the Pension Regulations, 1995.”

19. By virtue of the said Circular, the respondent No.3/Association made a recommendation to the Department of Economic Affairs, Ministry of Finance, that wherever an employee/officer had sought voluntary retirement under the Pension Regulation after 1.11.1993 and the said request was not considered due to reasons that Pension Regulations were yet to be adopted, the Bank may consider such cases for grant of voluntary retirement pension provided that the said employee fulfills the requirements in terms of Regulations 29, 50, etc.

20. Regulation 29 mentioned in the Circular deals with “Voluntary retirement pension” and not with “Pension upon resignation” and therefore, the petitioner cannot claim that any benefit would have flown in his favour on the basis of the aforecited Circular, which is only a clarification given to the Government of India that the banks

“may” consider cases of voluntary retirement for granting the employees benefit of the pension Regulations. In any event, the said Circular cannot override the Statute and the Regulations framed on this aspect.

21. In view of the aforesaid facts and circumstances, this Court is of the opinion that the present petition is nothing but an attempt to serve old wine in a new bottle. The petitioner cannot be permitted to re-agitate the issues that have been the subject matter of legal proceedings initiated by him earlier and have been settled after the pronouncement of judgment dated 4.12.2002 passed in the civil suit and the decision of the Division Bench rendered on 5.10.2010 in the writ petition. Further, the petitioner had elected to accept the said decisions and did not proceed to challenge them by exploring the avenue of filing appeals, a legal remedy that was available to him.

22. All the arguments advanced on behalf of the petitioner in the present proceedings have been tested and negated in the aforesaid litigations. The only unconsidered argument raised now is with regard to the application of the Circular dated 4.1.1996 issued by the respondent No.3/Association, which has also been duly examined by this Court and turned down. This court is therefore of the opinion that the petitioner cannot claim any benefit from the aforesaid Circular as it deals with voluntary retirement under the Regulations

and the petitioner's case is not one of "voluntary retirement", but of "resignation". Resultantly, the petitioner's claim that the respondent No.1/Bank has played a fraud on the court and the orders passed in the previous proceedings between the parties ought to be treated as a nullity, also falls to the ground.

23. In view of the aforesaid facts and circumstances, the present petition is dismissed in *limine* as it is barred by limitation, hit by the doctrine of *res judicata*, apart from being devoid of merits.

OCTOBER 31, 2014
mk/sk

(HIMA KOHLI)
JUDGE