IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

MONDAY, THE 21ST DAY OF DECEMBER 2015/30TH AGRAHAYANA, 1937

WA.No. 2671 of 2015 () IN WP(C).26339/2014

AGAINST THE ORDER/JUDGMENT IN WP(C) 26339/2014 of HIGH COURT OF KERALA
DATED 06-10-2015

APPELLANT/PETITIONER IN WPC:

C.N.VENUGOPALAN AGED 65 YEARS
S/O. K.R.NARAYANAN, RESIDING AT NANDANAM
KESARI JUNCTION, NORTH PARAVOOR, 683513.

BY ADVS.SRI.P.G.JAYASHANKAR
SMT.P.SREELAKSHMI
SRI.V.SREEJAYAN

RESPONDENTS/RESPONDENTS IN WPC:
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1. UNION BANK OF INDIA
CENTRAL OFFICE, UNION BANK BHAVAN, VIDHAN VEEDHI
NARIMAN POINT, MUMBAI-400021
REPRESENTED BY ITS CHAIRMAN AND MANAGING DIRECTOR.

2. DEPUTY GENERAL MANAGER
UNION BANK OF INDIA, NODAL REGIONAL OFFICE
UNION BANK BHAVAN, M.G.ROAD, ERNAKULAM-682031.

3. UNION OF INDIA
REPRESENTED BY ITS SECRETARY (FINANCIAL SECTOR)
MINISTRY OF FINANCE, GOVERNMENT OF INDIA
JEEVAN DEEP BUILDING, SANSAD MARG, NEW DELHI-110001.

4. THE CHAIRMAN
INDIAN BANK'S ASSOCIATION, 6TH FLOOR, CENTRE NO.1
WORLD TRADE CENTRE, CUFFE PARADE, MUMBAI-400005.

R3 BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL
BY SRI.SADCHITH.P.KURUP, SC, UBI
BY SRI.A.S.P.KURUP, SC, UBI

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 21-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ASHOK BHUSHAN, C.J.
&
A.M. SHAFFIQUE, J.

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W.A. No. 2671 of 2015

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Dated this, the 21st day of December, 2015

J U D G M E N T

<u>Shaffique, J.</u>

The appellant is the writ petitioner. The writ petition has been filed against the respondent Bank seeking for a direction to provide pension to the petitioner from 21st April, 2001 to 26th November, 2009 with interest and for other consequential reliefs.

2. The short facts involved in the writ petition would disclose that the petitioner after joining the service of the respondent Bank took voluntary retirement on 20/4/2001. While in service he had exercised option to be part of Contributory Provident Fund Scheme. However, he later withdrew the said option, and on retirement from the Bank, he had obtained the amounts under the fund. In the meantime, Bank came up with Ext.P9 scheme based on settlement between the employees and the management, Ext.P8. As per the said scheme, option was given to all erstwhile employees to join the Pension Scheme.

Petitioner exercised the said option in time in terms with Ext.P9 scheme and he was granted pension from the date on which the Scheme was made applicable. As per the Scheme, pension was payable from 27th November, 2009.

3. Petitioner did not have any grievance with reference to the payment of pension under the scheme, Exts.P8 and P9. But, his grievance is that he should have been granted pension with effect from the date of his actual retirement.

4. The learned Single Judge did not entertain the above writ petition and accordingly, the same came to be dismissed.

5. While impugning the judgment of the learned Single Judge, it is argued by the learned counsel for the appellant that as per the Union Bank of India (Employees') Pension Regulations, 1995, the petitioner had exercised the option for pension, which is produced as Ext.P1. There is no provision under the Regulations to revoke the said option during the period of service. Therefore, revocation of option by the petitioner was invalid and should not have taken into account by the Bank. Viewed in that angle, the petitioner is entitled to full pension from 2001 even going by the former Regulations. In fact, the petitioner had also challenged the

settlement in terms of Exts.P8 and P9. But the present request is only for grant of pension on the basis of the former rules.

6. Heard the learned counsel for the respondent Bank as well. It is argued that when an option has been exercised in terms of Exts.P8 and P9, which is a totally different scheme, it is not open for the petitioner to claim pension under the said Scheme or on the basis of the former rules from the actual date of retirement. It is also contended that whatever amounts was under the Contributory Provident Fund Scheme in the account of the petitioner was paid at the time of retirement and therefore, he cannot claim pension during the relevant time.

7. Learned counsel for the appellant would however submit that in addition to the fact that the revocation of option was invalid, Bank had while issuing Ext.P7 order fixing the pension on the basis of Exts.P8 and P9 Scheme, called upon the petitioner to remit back the entire contribution which he had received with interest to the Bank. By receiving such amounts, the Bank was under obligation to grant pension from the date of actual retirement.

8. Having heard the learned counsel on either side, we do

not think that there is any justification on the part of the appellant in demanding pension from the date of retirement. The option now exercised by the petitioner is based on Exts.P8 and P9. The very word "*option*" indicates that it is voluntary and once the option is exercised, the petitioner will have to comply with the terms and conditions under the Scheme, which is made applicable to the erstwhile employees. When there is clear indication under the Scheme that the pension will be payable from a particular date, once such option is exercised by the petitioner, he cannot claim pension from an anterior date. Probably, that is why the petitioner had gone to the extent of challenging Exts.P8 and P9. No challenge is maintainable to a bilateral settlement arrived at between the management and the employees in this writ proceedings.

9. In regard to the claim for pension from the date of retirement till the date on which the pension was paid under Ext.P9 Scheme, we do not think that the petitioner has made out a valid case to sustain such a claim. The fact that the petitioner had submitted an application to revoke from the Pension Scheme which was in force during the relevant time is not in dispute. After

having revoked from the Pension Scheme, he had also received the contribution that was available in the fund. That amount was available with the petitioner during this period while he was not getting pension. Suppose, it is an instance where Exts.P8 ad P9 were not in existence, he could not have exercised the option in terms with the said scheme. That apart, revocation was already accepted by the Bank and the petitioner had derived advantage based on it. Under such circumstances, it is not open for the petitioner at this stage to claim that the revocation made by him was bad.

Hence, we do not think that the learned Single Judge had committed any error in dismissing the writ petition. Accordingly, this writ appeal is dismissed.

Sd/-
ASHOK BHUSHAN, CHIEF JUSTICE

Sd/-
A.M. SHAFFIQUE, JUDGE

Rp21/12/2015

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PS to Judge