IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

MONDAY, THE 2ND DAY OF FEBRUARY 2015/13TH MAGHA, 1936

WP(C).No. 20291 of 2011 (J)

PETITIONER(S):

V.T.RADHAKRISHNAN, S/O.LATE VELAYUDEN
NAIR, CLERK, CODE NO.5823,
VIJAYA BANK, PONNANI (NOW RETIRED), RESIDING AT
THEMPALATH HOUSE, TRIKANDIYOOR P.O., TIRUR-4
PIN-666104, MALAPPURAM DISTRICT, KERALA DISTRICT.

BY ADVS.SRI.M.V.THAMBAN
SRI.R.REJI
SMT.THARA THAMBAN
SRI.B.BIPIN
SMT.REVATHY P.NAIR

RESPONDENT(S):

1. THE GENERAL MANAGER (PERSONAL),
VIJAYA BANK, (HEAD OFFICE), 41/2,
M.G.ROAD, BANGALORE-560001.

2. THE VIJAYA BANK, REPRESENTED BY THE
GENERAL MANAGER (PERSONAL), VIJAYA BANK, (HEAD OFFICE)
41/2, M.G.ROAD, BANGALORE-560001.

3. THE DEPUTY GENERAL MANAGER,
PERSONAL DEPARTMENT (PA&PD), VIJAYA BANK,
(HEAD OFFICE), 41/2, M.G.ROAD
BANGALORE-560 001.

4. THE BRANCH MANAGER, VIJAYA BANK,
PONNANI BRANCH, PONNANI, MALAPPURAM DISTRICT-
679577.

R,R1 & 3 BY ADV. SRI.K.ANAND (A.201)
R,R1 & 3 BY ADV. SMT.LATHA KRISHNAN
R BY SMT.LATHA KRISHNAN,SC, VIJAYA BANK

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 02-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC NO.20291/2011

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE MEDICAL CERTIFICATE DATED 8/12/2010 ISSUED BY ONE DR.S.MOHAN SUDHARAM, A CONSULTANT IN PSYCHIATRY OF THE MANOHAR HOSPITAL, CALICUT.
EXT.P2: COPY OF THE LETTER DATED 30/4/2010.
EXT.P3: COPY OF THE LETTER NO.PER:HRD;RCT;4117:2010 DATED 28/5/2010.
EXT.P4: COPY OF THE RECEIPT GIVEN BY THE PETITIOENR DATED 7/7/2010.
EXT.P5: COPY OF THE CIRCULAR OF THE 1ST RESPONDENT NO.10191 DATED 7/9/2010.
EXT.P6: COPY OF THE OPTION DATED 13/9/2010 AND FORWARDED BY THE BRANCH MANAGER, PONNANI BRANCH.
EXT.P7: COPY OF THE LETTER NO.PER/PA & PD :PENS:3061:200 DATED 3/11/2010.
EXT.P8: COPY OF THE REPRESENTATION DATED 14/02/2011
EXT.P9: COPY OF THE JUDGMENT DATED 07/03/2011 IN W.P.(C0 NO.6992/2011 (Y)
EXT.P10: COPY OF THE HARING NOTE BEFORE THE 1ST RESPONDENT ON 17/5/2010.
EXT.P11: COPY OF THE REPRESENTATION BY ORDER DATED 25/5/2011.

RESPONDENTS EXHIBITS: NIL

/TRUE COPY/

PS TO JUDGE.

A.MUHAMED MUSTAQUE, J.

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W.P.(C) .No. 20291 OF 2011

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Dated this the 2nd day of February, 2015

JUDGMENT

The petitioner was an ex-employee of the respondent-Vijaya Bank. Petitioner approached this Court challenging Exts.P7 & P11 by which the petitioner's request to join pension scheme floated by the bank based on Bipartite settlement dated 27/4/2010 is stand rejected.

2. Ext.P5 is the circular issued by the Bank granting option to eligible employees/retired employees to join the pension scheme. Ext.P5 is dated 7/9/2010. The eligibility to join the pension scheme is also available to the employees who were in the service of the Bank prior to 29/9/1995 and continue to be in the service of the Bank as on 27/4/2010. The petitioner joined as an employee of the bank in the year 1/9/1975. He was also in the service of the Bank as on 27/4/2010. The dispute is essentially with regard to the

petitioner's request to resign from the service, which was made on 30/4/2010, and accepted by the Bank with effect from 31/5/2010. The stand of the bank is that only employees, who have voluntarily retired, are covered by the pension scheme. The employees, like the petitioners who have resigned from the service cannot obtain the benefit of the scheme.

3. The learned counsel appearing for the petitioner Sri.M.V.Thamban submits that the restriction in Ext.P5 scheme, that the benefit of the scheme is not extended to those who ceased to be in the service of the bank in any manner other than the other categories of retirement mentioned in Ext.P5 has been struck down by the Karnataka High Court in W.P.(C) Nos.24158/2011 & connected cases and affirmed by the Division Bench. The Hon'ble Supreme Court also did not entertain the SLP. Therefore, there is no point in denying the petitioner the benefit of the scheme. It is further submitted that the petitioner has sufficient qualifying service to retire as an employee of the bank. Merely his wording in his letter that 'he is resigning from the service' cannot be construed to understand

that he has resigned from the service. It is further submitted that he has made a request before the Bank authority to correct his request made in Ext.P2 as a request for voluntary retirement from the service. Ext.P8 is the request.

4. Learned senior counsel appearing for the Bank Sri.Anand submits that the Supreme Court, while dismissing the SLP, ordered that the question of law arises in the context of challenge with reference to clause A(7) of the scheme is left open. Essentially the question of law that argued by the senior counsel is that there is a distinction between the term resignation and voluntary retirement. It is further submitted that in terms of Vijaya Bank (Employees) Pension Regulations 1995, an employee who resigned from the service of the Bank shall entail forfeiture of his entire past service and consequently shall not qualify for pensionary benefit. Therefore, it is submitted that an employee was well aware of the forfeiture of his past service to become ineligible for pension and he cannot avail the benefit of the pension scheme. There is a clear distinction between resignation and voluntary retirement. It is further submitted

that only employees who were voluntarily retired and who were in service as on 27/4/2010 are alone eligible for joining the pension scheme.

5. In fact, in the writ petition filed before the Karnataka High Court, the issue was at the instances of the employees who were resigned from Vijaya Bank. The Karnataka High Court after referring to the decision of the Hon'ble Supreme Court in Sheelkumar Jain v. New India Assurance Co. Ltd. (AIR 2011 Sc 2990) , held that an employee who completed sufficient number of qualifying service cannot be denied pension. Therefore, the learned counsel for the petitioner would submit that the resignation should be understood in the normal sense as retirement as nobody would think of forfeiting his past service except under compelling circumstances of facing any disciplinary proceedings. It is to be noted that the petitioner sought to resign from the service citing ailment. No doubt, in the light of regulation, he would not have thought of forfeiting his past service . The learned senior counsel relying on the judgment of the Supreme Court in M.R.Prabhakar & Others v. Canara Bank &

Others (2012 (9) SCC 671) particularly paragraphs 14 and 15 of that judgment, submits that concept of resignation is different from retirement and an employee can consciously exercise his mind to take a decision regarding resignment at any stage and it cannot be termed as retirement. No doubt, as rightly pointed out by the learned senior counsel, there is a distinction between resignation and retirement. But ,distinction is to be drawn with reference to the factual situation of each cases. Here, in this case as per the Regulation itself, the past service has to be forfeited if employee choses to resign. No employee after putting more than 35 years of service, will be interested to forfeit his past service. The employee concerned also made a request before the authorities by Ext.P8 to treat his resignation as a voluntary retirement. It was open for the authority to review the earlier decision and take an appropriate decision on the basis of the request made by the petitioner treating the same as retirement. However, construing it as a devise to obtain the benefit of pension scheme, the authorities have rejected the same.

6. In a normal circumstance, benefit of the pension scheme should be extended to all the employees who are similarly situated. Persons having qualified service are eligible for the benefit of pension scheme and there is no reason why the petitioner should be denied the benefit of the pension scheme. The bank does not want to review the decision of accepting his resignation. Therefore, it has to be understood that the Bank has no objection in considering it as voluntary retirement of the petitioner from the service. In such circumstance, I am of the view that the impugned orders are liable to be set aside. Accordingly, the writ petition is allowed with the following directions:

i). The petitioner shall refund the entire amount as contemplated under Ext.P5 to the Bank within six weeks.

ii). On receipt of the entire amount, the Bank shall admit the petitioner as a member of the Pension scheme and disburse consequential benefits to the petitioner as a member with effect from 27/4/2010.

iii). The entire arrears shall be paid within six weeks from the date on which petitioner is admitted to the Pension Scheme.

Sd/-

A.MUHAMED MUSTAQUE,
Judge.

dpk **/true copy/ PS to Judge.**