IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 6TH DAY OF OCTOBER 2015/14TH ASWINA, 1937

W.P.(C).No.26339 of 2014 (N)

PETITIONER(S):

C.N. VENUGOPALAN, AGED 63 YEARS, S/O.LATE SHRI K.R. NARAYANAN,
" NANDANAM", KESARI JUNCTION , NORTH PARAVOOR POST,
ERNAKULAM DIST., KERALA - 683 513.

BY SRI. C.N. VENUGOPALAN (PARTY IN PERSON).

RESPONDENT(S):-

1. UNION BANK OF INDIA,
   CENTRAL OFFICE, UNION BANK BHAVAN, VIDHAN VEEDHI,
   NARIMAN POINT, MUMBAI 400 021,
   REPRESENTED BY THE CHAIRMAN & MANAGING DIRECTOR.

2. DEPUTY GENERAL MANAGER,
   UNION BANK OF INDIA, NODAL REGIONAL OFFICE,
   UNION BANK BHAVAN, M.G.ROAD, ERNAKULAM - 682 031.

3. UNION OF INDIA,
   REPRESENTED BY THE SECRETARY (FINANCIAL SECTOR),
   MINISTRY OF FINANCE, GOVERNMENT OF INDIA,
   JEEVAN DEEP BUILDING, SANSAD MARG, NEW DELHI - 110 001.

4. THE CHAIRMAN,
   INDIAN BANK'S ASSOCIATION, 6TH FLOOR, CENTRE NO.1,
   WORLD TRADE CDENTRE, CUFFE PARADE, MUMBAI - 400 005

R1 & R2 BY STANDING COUNSEL SRI.A.S.P.KURUP.
R3 BY ASSISTANT SOCILICITOR GENERAL OF INDIA SRI.N.NAGARESH.
R4 BY ADV. SRI.SADCHITH.P.KURUP.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No.26339 of 2014 (N)

APPENDIX

PETITIONER(S)' EXHIBITS:-

EXT.P1. TRUE COPY OF THE LETTER OF THE OPTION DATED 30/9/1994 SUBMITTED TO THE BANK BY THE PETITIONER.

EXT.P2. TRUE COPY OF THE EXTRACT OF THE STAFF CIRCULAR NO.4229 DATED 26/10/1995.

EXT.P3. TRUE COPY OF THE EXTRACT OF THE REGULATION 22(4)(b) OF THE PENSION REGULATIONS.

EXT.P4. TRUE COPY OF THE STAFF CIRCULAR NO.4249 DATED 29/12/1995 ISSUED BY THE BANK.

EXT.P5. TRUE COPY OF THE EXTRACT OF THE PENSION REGULATIONS CONTAINING REGULATIONS 5(1), 5(2) AND 6.

EXT.P6. TRUE COPY OF THE STAFF CIRCULAR NO.4904 DATED 8/10/2002 CONTAINING THE DETAILS OF THE AMENDED TO REGULATION 22(4)(b).

EXT.P7. TRUE COPY OF THE PENSION PAYMENT ORDER NO.090451103 DATED 1ST MARCH 2011.

EXT.P8. TRUE COPY OF THE JOINTS NOTES ON PENSION DATED 27TH APRIL 2010.

EXT.P9. TRUE COPY OF THE STAFF CIRCULAR NO.5690 DATED 27TH AUGUST 2010.

EXT.P10. TRUE COPY OF THE EXTRACT OF THE EXTANT REGULATIONS 2(j), 5(3), 7 AND 11 OF THE PENSION REGULATIONS.

EXT.P11. TRUE COPY OF THE ACT CONTAINING SECTION 10 (7) AND SEC.19(1) AND (4) RELATING TO AMENDMENT TO A REGULATION.

EXT.P12. TRUE COPY OF THE LETTER BEARING F.NO.15/480/2014-IR DATED 29TH AUGUST 2014, OF MINISTRY OF FINANCE.

EXT.P13. TRUE COPY OF THE EXTRACT OF THE RELEVANT PORTION OF THE COMMUNICATION F NO.16/1/58/2008-IR DATED 23RD OCTOBER 2009 ISSUED BY THE 3RD RESPONDENT.

EXT.P14. TRUE COPY OF THE LETTER NO.140108 DATED 8TH JANUARY, 2014 ADDRESSED TO THE CHAIRMAN AND MANAGING DIRECTOR OF THE BANK.

EXT.P15. TRUE COPY OF THE LETTER NO.140219 DATED 19TH FEBRUARY, 2014 ADDRESSED TO THE HONOURABLE MINISTER FOR FINANCE, GOVERNMENT OF INDIA.

EXT.P16. TRUE COPY OF THE LETTER NO.1103140335 DATED 11TH MARCH, 2014 OF RASTRAPATI BHAVAN.

EXT.P17. TRUE COPY OF THE LETTER NO.14027 DATED 27TH FEBRUARY, 2014 TO H.E. THE PRESIDENT OF INDIA.

EXT.P18. TRUE COPY OF THE RTI INFORMATION IN RELATION TO THE LETTER CONTAINED IN LETTER NO.OCPIO/CO/291/628/2014 DATED 22ND AUGUST, 2014 OF THE BANK.

EXT.P19. TRUE COPY OF THE LETTER NO.140714 DATED 14TH JULY,2014 TO THE CMD OF THE BANK.

EXT.P20. TRUE COPY OF THE INFORMATION AVAILABLE IN THE GRIEVANCE PORTAL OF THE GOVERNMENT OF INDIA.

EXT.P21. TRUE COPY OF THE LETTER NO.DP.TBD 130 : 2014 DATED 30TH MAY 2014 OF THE 1ST RESPONDENT.

EXT.P22. TRUE COPY OF THE LAWYER NOTICE DATED 25TH MARCH, 2014 ISSUED TO THE RESPONDENTS 1, 3 & 4.

EXT.P23 TRUE COPY OF THE PENSION PAYMENT ORDER SENT TO THE PETITIONER ON 21.10.2015.

EXT.P24 TRUE COPY OF LETTER NO.OCPIO/CO/547/1236 DATED 13.3.2015 OF THE BANK.

EXT.P25 TRUE COPY OF ORDER DATED 1ST APRIL, 2015 OF THE HON'BLE HIGH COURT OF MADRAS.

EXT.P26 TRUE COPY OF STAFF CIRCULAR NO.4669 DATED 7.11.2000 OF THE BANK ON VRS.

EXT.P27 TRUE COPY OF THE ORDER NO.48(77)01-ALC-Chn DATED 25.02.2002 OF THE ALC (Kochi).

EXT.P28 TRUE COPY OF THE LETTER NO.OCPIO.CO/329/771/2014 DATED 07.10.2014.

EXT.P29 TRUE COPY OF THE OFFICE MEMORANDUM DATED 27.08.2014 ISSUED BY MINISTRY OF LAW & JUSTICE TO THIRD RESPONDENT.

EXT.P30 TRUE COPY OF LETTER DATED 6.7.2015 ALONG WITH THE DETAILS OF PENSION FUND OF THE BANK ISSUED BY THE 1ST RESPONDENT.

RESPONDENT(S)' EXHIBITS:-
--- NIL.

Vku/- [true copy]

K. Vinod Chandran, J

W.P.(C).No.26339 of 2014-N

Dated this the 06th day of October, 2015

<u>JUDGMENT</u>

The petitioner is aggrieved with the fact that the petitioner has not been granted pension under the Union Bank of India (Employees') Pension Regulations, 1995 [for brevity “Pension Regulations”]. The petitioner's contention is that, he had exercised an option as per Exhibit P1, which, even according to the Regulations, is irrevocable. Alternatively it is contended that in bringing out Exhibit P9, the condition in Exhibit P8, being the Scheme of Pension to be forwarded to the Government by the Indian Banks Association for their approval and further action in terms of Section 19 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 for amendment of the Pension Regulations, has not been complied with. The petitioner relies on Exhibit P12 to contend that the condition under Section 19, of laying it before the Parliament, has also not been complied with.

2. This Court is of the opinion that there has been no amendment made to the Pension Regulations by Exhibit P9 and the compliance of Exhibit P8 would not be mandatory on the facts placed before this Court, by the learned Standing Counsel appearing for the respondent-Bank. Exhibit P9 is by virtue of a decision taken by the Bank in terms of the Bi-partite Settlement with the Union of Workmen and the Joint Note with Officers' Organizations to give a further option to the retired personnel to opt for the Pension Scheme. This could be done only under the terms of Exhibit P9 and the benefit so conferred cannot be taken as an amendment. The petitioner too was paid pension, as provided in Exhibit P8 and having obtained such benefit, cannot turn round and challenge the same. The payment of pension on an option exercised under Exhibit P9 can only be on its terms and cannot be extended retrospectively.

3. The petitioner, admittedly, had exercised an option as per Exhibit P1 on 30.09.1994. However, the difficulty was insofar as, at that point of time there was no Pension Regulations in force. Bank had invited option only in

anticipation that a Pension Scheme would be implemented immediately. Pension Regulations of 1995 [hereinafter referred to as “the Regulations”] was introduced on 26.10.1995 by Staff Circular No.4229. In such circumstances, taking into consideration the fact that, many of the employees had exercised an option even prior to the Regulations coming into force, the Bank indicated in the Circular itself that any employee could make an option to become a member of the Pension Fund, in the prescribed form, on or before 26.01.1996. It was also indicated in the said Circular that any person who had opted for pension in terms of Staff Circular No.4085 dated 28.5.1994 need not opt again. The option once exercised was also final and irrevocable, as per Regulation 4(2) of the Regulations. The Circular was necessitated only to ensure that no procedural irregularity be alleged on the ground of an option exercised even prior to the coming into force of the Regulation.

4. A further Circular, Exhibit P4, numbered as 4249 dated 29.12.1995, was brought out. Therein, an option was granted for persons who had opted prior to the Scheme

to withdraw the option exercised for any reason. It was made clear that the option exercised on or after 29.09.1995 in terms of Regulation 3 of Union Bank of India (Employees') Pension Regulations, 1995 will be final and cannot be revoked. The petitioner admittedly withdrew the option exercised by Exhibit P1 dated 30.09.1994, obviously apprehending that he may stand to lose by way of Regulation 22; regarding forfeiture of service. The clause regarding forfeiture of service was with respect to any interruption in service caused by resignation, dismissal or removal from service or for participation in a strike, which would not be counted as qualifying service. The petitioner admits in his writ petition that, threatened by such clause he withdrew the option; as per Exhibit P4 circular. The specific statement made by the petitioner in the writ petition is extracted hereunder:

> “Frightened with the fear of losing life time savings of CPF due to the extraneous, draconian and unilateral strike clause introduced in the Pension Regulations, which was contrary

to the Pension Settlement dated 29.10.1993, the petitioner gave a revocation letter for his option, responding to the unlawful circular issued by the Bank on the unlawful advice of IBA".

5. The petitioner did not challenge the said clause then, but voluntarily withdrew the consent already given for continuing in the pension scheme. In such circumstance, he cannot contend that the revocation could not have been acted upon by the respondents. The option becomes irrevocable only if it is after the Regulation came into force. What was intended by Exhibit P4 is to give a further chance to persons who opted prior to the Regulation to withdraw, if the terms, according to them, were offensive. This was also intended to avoid subsequent challenge on the ground that option was exercised even before the Regulations and the offending clauses in the Regulations, especially like the ones imposing a liability of forfeiture of qualifying service, cannot be made operative to such persons. The petitioner obviously found the above extracted clause offensive and withdrew the option.

6. Further, it is to be noted that after the revocation, he continued in service till 20.04.2001 when he opted to retire on Voluntary Retirement Scheme [for brevity "VRS"]. The petitioner applied under VRS and voluntarily retired from the service. The petitioner was paid the entire dues as per the VRS as also the other superannuation benefits due to him. The superannuation benefits so computed included the Contributory Provident Fund; for reason of the petitioner not having applied under the Pension Scheme.

7. After retirement of the petitioner, i.e., almost ten years thereafter, the Bank came out with a further Staff Circular at Exhibit P9, bearing No.5690 dated 27.08.2010. The respondent-Bank, by the said Circular, issued on the basis of the Bipartite Settlement with Union of Workmen and the Officers' Organizations, granted a further opportunity to join the Pension Scheme in terms of the Regulations. Even retired employees and officers who retired prior to 27.04.2010 could apply under the same; but on the specific condition that an option has to be exercised in writing within 60 days and

refund made of the entire amount of the Bank's contribution to the Provident Fund and interest accrued thereon, received by the employee/officer on retirement together with his share in contribution; within 30 days after the expiry of the said period of 60 days.

8. The specific condition on which a re-option was granted, for disbursing pension to the already retired officers, who did not earlier opt for pension for whatever reason, was that such pension shall be payable only with effect from 27.11.2009. The petitioner admittedly applied under the said scheme and also remitted the amounts which he was to refund to the Bank. The petitioner was granted pension and had been paid pension from 27.11.2009 onwards. Such pension was received by the petitioner in the year 2010 itself, immediately after completing the formalities, complying with Exhibit P9. Later, the petitioner by the writ petition of 2014 claims that the revocation voluntarily submitted by him in the year 1995 could not have been accepted by the Bank.

9. The petitioner prays that he may be paid pension from the date of his retirement till 2010. The

petitioner had voluntarily withdrawn from the option, as per a Circular of the Bank, allegedly not being satisfied with the terms of the Pension Regulations. The same was a voluntary action taken by the petitioner, with full knowledge of the fact that he would not be entitled to pension on superannuation. The same was done in the year 1995. He continued in service for another six years. The petitioner retired from service, again on a voluntary request made, on 20.04.2001. The petitioner took the entire retirement benefits, including Contributory Provident Fund on retirement.

10. When a further opportunity was granted for pension, the petitioner opted to it, under Exhibit P9. The petitioner also received the pension in the year 2010 as per Exhibit P9. Long after, in 2014 the petitioner seeks to rake up the issue of grant of pension between 2001 and 2010, which the petitioner was disentitled to, for reason of his having revoked his option at the earlier instance. The option was given before the Pension Regulations came in. He had voluntarily resiled from that option based on a Circular issued by the Bank; admittedly not being satisfied with the terms of

the Scheme. The petitioner cannot turn around and contend that his revocation ought not to have been accepted.

11. The irrevocable nature of the option exercised was under Regulation 4(2) of the Pension Regulations, but the option exercised prior to 29.09.1995, was not as per the Regulations. When the Regulations were brought in, admittedly many including the petitioner were piqued by the clause regarding forfeiture of service. The opportunity to revoke was necessitated only for that reason. The petitioner having acted under Exhibit P4 circular to revoke the option, exercised by him, before the Regulations came into force cannot challenge it as being without authority. The alleged offensive clause, which prompted the petitioner to make the revocation, was also removed by the Government of India on 27.02.1999, when the petitioner was in service.

12. The petitioner contends that the Bank informed the deletion only by Exhibit P6 Circular. However, the Circular itself noticed that the revision and the deletion of the said clause was published in the Gazette of India dated 27.02.1999. The petitioner never took up the matter at any

time before voluntary retirement or thereafter. When a fresh opportunity was granted as per Exhibit P9, the petitioner availed of the same and challenged the restrictions imposed therein, after four years. The petitioner cannot blow hot and cold and has to either remain contend with the benefit conferred under Exhibit P9 on the terms provided therein ; or ought not to have accepted it in toto. The petitioner cannot also claim the benefit of the deeming clause after all these years; as has been clearly ruled in ***Rajasthan Agriculture University, Bikaner v. State of Rajasthan*** **[JT 2013 (11) SC 550],** which was on almost identical facts.

For all the above reasons, the writ petition is found to be devoid of merit and the same is accordingly dismissed. No costs.

Sd/-
K.Vinod Chandran
Judge.

vku/-

[true copy]