

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

+ W.P.(C) No. 2357/2000

% **18th February, 2015**

DARSHAN KUMAR (SINCE DECEASED) THROUGH LRs

..... Petitioners

Through: Mr.R.K.Saini, Advocate.

versus

PUNJAB NATIONAL BANK & ANR.

..... Respondents

Through: Mr.Vaibav Kalra with Ms.Sumedha
Dang, Advocates.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M.No. /2015 (to be numbered and registered by the registry)

There is no opposition to this application and which is therefore
allowed and the legal heirs of the petitioner are brought on record.

Amended memo of parties be taken on record.

Application stands disposed of

W.P.(C) No.2357/2000

1. By this writ petition filed under Article 226 of the Constitution of
India, petitioner, the erstwhile employee of the respondent no.1/Punjab

National Bank seeks the relief of quashing the action of respondent no.1 in denying the petitioner the pensionary benefits.

2. The issue is whether a person who has resigned from services is or is not entitled to pension. The respondents contend that as per the applicable clause 22 of the relevant rules of the respondent no.1, a person who has resigned from services is not entitled to pension.

3. Counsel for the petitioner concedes that the issue in the present case is covered against the petitioner in view of the judgment of the Supreme Court in the case of ***M.R.Prabhakar and Ors. Vs. Canara Bank and Ors. (2012) 9 SCC 671*** which holds that a person who resigns from services is not entitled to pension. I have followed ***M.R.Prabhakar***'s case (*supra*) in the judgment in the case of ***Anand Parkashbatra Vs. Central Bank of India*** in W.P.(C) No.5698/1998 decided on 30.9.2013.

4. In the judgment in the case of ***Anand Parkash Batra (supra)***, I have expressed my angst, however, since I was bound by the ratio of the judgment of the Supreme Court in the case of ***M.R.Prabhakar (supra)***, I therefore dismissed the petition in the case of ***Anand Parkash Batra (supra)*** and the present petition will also have to be dismissed because the petitioner had resigned from the services of the respondent no.1/Punjab National Bank.

The judgment in the case of *Anand Parkash Batra (supra)*, including para nos. 5 and 6 wherein I have hoped that the Supreme Court may one day reconsider the judgment in *M.R.Prabhakar's* case (*supra*), reads as under:-

“1. The issue to be decided in the present writ petition is the claim of the petitioner to pensionary benefits in accordance with the 1995 Pension Scheme of the respondent-bank. Respondent denies entitlement of the petitioner to the 1995 Pension Scheme on the ground that the scheme will not apply as per para 22 of the 1995 Pension Scheme when a person has resigned from service as distinguished from having voluntarily retired.

2. Before this Court two judgments of the Supreme Court are cited. First is the judgment of Supreme Court in the case of *Sheel Kumar Jain Vs. New India Assurance Company Limited & Ors. (2011) 12 SCC 197* on behalf of the petitioner, and the second is the judgment in the case of *M.R.Prabhakar and ors VS. Canara Bank and ors (2012) 9 SCC 671* on behalf of the respondent-bank.

3. The ratio of the judgment in the case of *Sheel Kumar (supra)* shows that a Division Bench of two judges of the Supreme Court held that if an employee is not expected to know that in spite of serving a qualifying service period which would entitle grant of pension under a subsequent implemented pension scheme (which operates from a retrospective date) his resignation will lead to forfeiture of services, then, once an employee has otherwise completed the requisite period of qualifying service for grant of pension under the retrospectively operating pension scheme, the language of a resignation letter should not be treated as one seeking a resignation by the employee, but that letter should be treated as an application for voluntary retirement.

4. It is clear that in *Sheel Kumar's case (supra)* a Division Bench of the Supreme Court took an equitable view because a person is not expected to know the adverse consequences against him unless so provided by the relevant rules and especially when benefits of pension scheme is given retrospectively whereby qualifying service completes many years earlier/ prior to the introduction of the pension scheme (i.e in the retrospective period) and in which period there would be persons who had 'resigned' but who on the date of

resignation had otherwise completed the qualifying service period for grant of pension.

5. I must concede that my heart really is in accordance with the ratio in the case of *Sheel Kumar's case (supra)*. This is all the more so because in the counter-affidavit filed by the respondent-bank there is no reference to the earlier service rules of the respondent-bank that in such service rules prior to application of the 1995 Pension Scheme a distinction was in fact drawn between resignation and voluntary retirement. However, I am bound by the ratio in the case of *M.R.Prabhakar's case (supra)* which distinguishes the judgment in *Sheel Kumar's case (supra)* on the ground that the judgment in *Sheel Kumar's case (supra)* dealt with the pension schemes of insurance companies and not the pension schemes of the banks, and that as per para 22 of the 1995 Pension Scheme of the Banks if a person had resigned there results forfeiture of his services and such a person is not entitled to benefits of 1995 Pension Scheme.

6(i) I must state that it is a moot point for consideration at an appropriate time by the Supreme Court that if a scheme operates retrospectively i.e it commences at a date for its implementation many years prior to the same being introduced, then surely an adverse consequence of denial of benefits of such retrospectively operating scheme should not be denied to an employee whose services come to an end in the retrospective period unless such employee was made aware of the adverse consequences. In this regard it bears note that it is held by the Supreme Court in a catena of judgments that terminal benefits are not a bounty but are natural entitlements which become due to an employee for the services rendered by the employee with the employer-organization. Therefore, once the necessary qualifying service period has been completed by the employee, terminal benefits should be granted as a matter of course because they flow from the aspect of rendering continuous service with the bank for the qualifying period and they be not denied on the technical ground that the employee had 'resigned'.

(ii) A most important aspect for giving benefit of pension scheme is noted and stated by the Supreme Court in the case of *UCO Bank Vs. Sanuwar Mal (2004) 4 SCC 412*, as "The pension scheme herein is based on actuarial calculation; it is a self financing scheme, which does not depend 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." Thus, clearly there is a valid

reason to treat resignation as retirement qua those employees who have at the time of resignation rendered the requisite qualifying service for grant of pension and they ought to be treated differently for being entitled to grant of pension under the scheme than those persons who on resignation have not completed the period of qualifying service inasmuch as the employee who renders the qualifying service has that much credit to his provident fund by which no budgetary support is required for payment of pension.

7. Coming now to the facts of the present case, the admitted fact is that petitioner had resigned in terms of the letter dated 6.4.1989, and that resignation was accepted in terms of the letter dated 1.10.1993. Therefore, the ratio in the case of *M.R.Prabhakar (supra)* will apply whereby as per para 22 of the 1995 pension scheme of the respondent, persons who resigned from the bank will not be entitled to seek VRS benefits under the 1995 scheme. The relevant paras of the judgment of the Supreme Court in the case of *M.R.Prabhakar (supra)* are paras 11, 13 to 19 are relevant and they 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.

13. In order to appreciate the scope of the above mentioned Regulations, it is necessary to refer to some of the definition clauses. The word 'retire' is defined in Regulation 2(x) of the Regulations 1995, which reads as under:

“2(x) "retired" includes deemed to have retired under Clause(l)”.

The word 'retirement' is defined under Regulation 2(y) of the Regulations 1995, which reads as follows:

“2(y) "retirement" means cessation from bank's service,-

(a) On attaining the age of superannuation specified in Service Regulations or Settlements;

(b) On voluntary retirement in accordance with provisions contained in Regulation 29 of these Regulations;

(c) On premature retirement by the Bank before attaining the age of superannuation specified in Service Regulations or Settlement.”

(emphasis supplied)

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 [MANU/SC/0994/2003](#) : (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.”

17. We may indicate that in *Sanwar Mal (supra)*, the employee, who was working on Class III post, resigned from the service of UCO Bank on 25.2.1988 after giving one month's notice and also accepted his provident fund without protest. On coming into force of the Regulations 1995, Sanwar Mal opted for pension scheme. Since Sanwar Mal had resigned in the year 1988, UCO Bank declined its option for admitting him as a member of the fund. This Court, as already indicated, after referring to the various provisions of the Regulations 1995 and after examining the meaning of the expressions 'resignation' and 'retirement', held that since Regulation 22 provided for disqualification of employees who had resigned, such employees could not claim membership of the fund.

18. Learned Counsel appearing for the Appellants have placed heavy reliance on *Sheelkumar Jain (supra)* and submitted that in the light of that judgment, the decision rendered in *Sanwar Mal (supra)* requires reconsideration. We find it difficult to accept the contention raised by the Learned Counsel appearing for the Appellants.

19. We may point out in *Sheelkumar Jain (supra)* that this 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 Regulation are not *pari materia*. In *Sheelkumar Jain case (supra)*, 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 to '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.”

8. In view of the categorical ratio of the judgment in the case of *M.R.Prabhakar (supra)*, and with which I am bound, the writ petition is dismissed, leaving parties to bear their own costs.”

5. In view of the above, this petition is dismissed.

FEBRUARY 18, 2015
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VALMIKI J. MEHTA, J