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

+   W.P.(C) No.2146/2001

%   **11th March, 2015**

SH. N.JAGANNATHAN ..... Petitioner

Through: None.

versus

PUNJAB NATIONAL BANK ..... Respondent

Through: Mr.Jagat Arora, Advocate.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition filed under Article 226 of the Constituion of India, the petitioner, an erstwhile employee of the Punjab National Bank/Respondent, seeks the relief of granting to him the pension by the respondent/Bank under the P.N.B. (Employees') Pension Regulations, 1995 (hereinafter referred to as 'the 1995 Pension Regulations). The petitioner also prays for quashing of the communications dated 19.9.2000 and 10.2.2001 of the respondent/Bank denying pension to the petitioner.

2. The case of the petitioner is that he resigned from the services of the respondent/Bank in terms of his letter dated 15.3.1995 due to personal and family circumstances, and which letter of resignation was accepted by the

respondent/Bank vide its letter dated 05.6.1995. These communications dated 15.3.1995 and 05.6.1995 read as under:-

"**LETTER DATED 15.3.1995**

15th March, 1995

N.Jagannathan
Manager
B.O. Rafiganj
Dt. Aurangabad (BIHAR)

To

The General Manager (Personnel)
Punjab National Bank
Head Office
Bhikaji Cama Place
New Delhi

THROUGH PROPER CHANNEL

Dear Sir,

Owning to my personal and family circumstances I am no longer in a position to continue in the services of the bank and have decided to part company. Since I have more than four months leave to my credit my resignation may please be accepted with immediate effect.

I further declare that I owe to the bank the following:
a) Housing Loan amounting to Rs.1,35,000/- approx. inclusive of interest.
b) PF Loan Rs.5000/- approx.
c) Festival loan Rs.2800/- two installments has already been paid back.

These may be adjusted out of the dues payable to me.

I would like to express my sincere thanks to my superiors for the confidence reposed in me and to my peers and subordinates for the cooperation extended to me during my career spanning for over two decades. I would always cherish my career in the Industry in General where I had worked for the best part of my life and to the institution in particular which I had the privilege to belong.

Thanking you,

Yours faithfully,
Sd/

(N.JAGANNATHAN)

LETTER DATED 5.6.1995

Ref.: RNGB:STF:M:21:1995 Date 05-06-95
Shri N.Jagannathan,
58-C, Pocket 'B'
Mayur Vihar,
Phase-II
Delhi-110091

Reg: Your Resignation from Bank's services.

This has reference to your letter dated 15-3-95 vide which you have submitted your resignation from the services of the Bank.

While accepting your resignation, the competent Authority has stipulated to get the outstanding dues (in your various loan a/cs) adjusted before relieving you.

You are advised to get your loan accounts adjusted in full so as to enable us to relieve you from the services of the Bank.

Sd/-
Regional Manager"

3. Petitioner claims that after his resignation was accepted on 05.6.1995, he vide letter dated 01.7.1995 requested the respondent/Bank that his resignation be treated as voluntary retirement and since he had completed 20

years of service in the Bank, on the resignation being considered as voluntary retirement, he be granted pension. Petitioner was relieved from the Bank on 01.8.1995 when he completed 21 years, 11 months and 15 days approx. of service with the respondent/Bank. Petitioner in paras 11 and 16 of the writ petition relies upon the circular of Indian Banks Association (IBA) of April, 1997 and the circular of the respondent/Bank dated 14.5.2000, as per which, if a person had applied for voluntary retirement, but he had to resign because his request of voluntary retirement was not accepted (and this was during the period from 01.11.1993 onwards till when the 1995 Pension Regulations became effective), such a person can seek conversion of his resignation to voluntary retirement, and therefore it is argued that since the petitioner had opted for voluntary retirement, but was forced to resign, hence the petitioner be granted pension in terms of the 1995 Pension Regulations.

4. On behalf of the respondent, it is vehemently denied that the petitioner had ever sought voluntary retirement vide his letter dated 01.7.1995. The respondent/Bank in its counter-affidavit has stated that the letter dated 01.7.1995 was not only never received by the respondent/Bank, but the petitioner himself never made any reference of this letter in his subsequent communications to the respondent/Bank dated 31.12.1997, 07.2.1998, 10.2.1998 and 25.7.1998. The alleged letter dated 01.7.1995 by the

petitioner was for the first time only referred to by the petitioner in his communication dated 14.6.2000 i.e after 5 years from 1995.

5. The respondent/Bank relies upon the judgment of the Supreme Court in the case of ***M.R.Prabhakar & Ors. Vs. Canara Bank & Ors. (2012) 9 SCC 671***, which lays down the ratio that a person who resigns from the Bank is not entitled to pension because resignation cannot be equated with voluntary retirement. The relevant paragraphs of the judgment in the case of ***M.R.Prabhakar (supra)*** are para nos. 15 to 17, and which read as under:-

> 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: UCO Bank v. Sanwar Mal; (2004) 4 SCC 412*, wherein this Court has distinguished the words "resignation" and "retirement" and held as follows: (SCC p. 419, para 9)
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>> "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 the 1995 Regulations was also considered and the Court held as follows: (*Sanwar Mal case (supra),* SCC pp. 419-20, para 9)

"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 Article14 of the Constitution by keeping out such class of employees. The view we have taken is supported by the judgment of this Court in *RBI v. Cecil Dennis Solomon: (2004) 9 SCC 461*. Before

> concluding we may state that Regulation 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 1995 Regulations, 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." (underlining added)

6. It may be noted that in ***M.R.Prabhakar***'s case ***(supra)***, the Supreme Court distinguished the judgment in the case of ***Sheelkumar Jain Vs. New India Assurance Co. Ltd. (2011) 12 SCC 197*** on the ground that the said judgment pertained to the facts of 'insurance scheme' and not a 'pension scheme'.

7 (i). In my opinion, the petitioner is not entitled to the benefit of pension in terms of the 1995 Pension Regulations, because of the ratio of the judgment

of the Supreme Court in the case of ***M.R.Prabhakar (supra)*** and because the petitioner never sent his letter dated 01.7.1995 seeking voluntary retirement. Since the petitioner had not applied for voluntary retirement before resignation, hence the petitioner cannot place reliance upon the circular of the Indian Banks Association and the respondent/Bank as contained in paras 11 and 16 of the writ petition. In view of the ***M.R.Prabhakar***'s case ***(supra)***, the petitioner cannot contend and argue that his resignation be treated as voluntary retirement. Once the petitioner's case is a case of resignation, the petitioner in view of the ratio of the judgment in the case of ***M.R.Prabhakar (supra)*** and the circular of the respondent/Bank which denies pension to an employee who resigns from service, cannot be granted the benefit of pension taking his resignation as voluntary retirement.

(ii) The petitioner has also not come to this Court with clean hands as he has fabricated the letter dated 01.7.1995, which was never received by the respondent/Bank and by which letter, the petitioner claimed that he had sought the voluntary retirement but was forced to resign as his voluntary retirement application was not accepted. The respondent/Bank has rightly pointed out in its counter-affidavit that for as many as 5 years, no reference of this letter dated 01.7.1995 was made by the petitioner in any of the communications to the respondent/Bank, and in fact in all these communications from 1995 to 2000, there is not even a whisper that the petitioner had asked for voluntary retirement from the respondent/Bank, but was forced to resign as his voluntary retirement application was not accepted.

8. It may be noted that the petitioner has otherwise received from the respondent/Bank all his provident fund and gratuity dues and other monetary emoluments, on the petitioner's services coming to an end on his resigning from his services with the respondent/Bank. Details of the dues paid to the petitioner have been stated in the counter-affidavit of the respondent/Bank.

9. In view of the above, there is no merit in this writ petition, and the same is therefore dismissed. No costs.

MARCH 11, 2015 **VALMIKI J. MEHTA, J**

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