IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3707 OF 2012
WITH
CIVIL APPLICATION NO. 516 OF 2013

Mr. Vasudeo V. Phadnis and Ors.	}	Petitioners
versus		
The Reserve Bank of India	}	
and Ors.	}	Respondents

WITH
WRIT PETITION NO. 3708 OF 2012

WITH
CIVIL APPLICATION NO. 515 OF 2013
AND
CIVIL APPLICATION NO. 129 OF 2016

Shri. Vishwanath S. Ternikar	}	
and Ors.	}	Petitioners
versus		
The Reserve Bank of India	}	
and Ors.	}	Respondents

Mr. V. P. Vaidya with Ms. Anjali N. Helekar for the petitioners.

Mr. R. S. Pai with Mr. Anand R. Pai and Mr. Darshan Ashar i/b. M/s. Sanjay Udeshi and Co. for respondent no. 2.

Mr. Parag Vyas with Mr. J. S. Saluja for respondent no. 3 (UOI).

CORAM :- S. C. DHARMADHIKARI &
B. P. COLABAWALLA, JJ.

DATED :- DECEMBER 9, 2016

P.C. :-

1. By these petitions under Article 226 of the Constitution of India, the petitioners are seeking a direction to respondent no. 1 so that it can ensure that the employees of the Sangli Bank Limited (ESBL), who have retired from service and have not exercised their option with regard to pension, be permitted to exercise the same within a specified time.

2. The first respondent shall also ensure that the petitioners, who are entitled to get pension, are paid the same after they exercise their option.

3. The other relief is of a direction to respondent no. 2 to grant pension to the petitioners as per the Sangli Bank Employees Pension Regulations, 1995 (hereinafter referred to as "the 1995 Regulations") after they exercise the pension option.

4. Since the facts in both the writ petitions are identical, we would refer to the facts in Writ Petition No. 3707 of 2012.

5. The petitioners claim these reliefs on the footing that they had joined the services of ESBL. They worked under different capacities. They completed more than 20 years of service, a qualifying service for getting pensionary benefits under the 1995 Regulations. Some of the petitioners, namely, petitioner nos. 1 to

9 retired from the service of Sangli Bank Limited on attaining age of superannuation. Whereas, some retired from the service of the second respondent bank on attaining that age. Petitioner nos. 10 and 25 to 27 are award staff, who retired from service of the second respondent bank on attaining the age of superannuation. The petitioners rely upon a settlement dated 29th October, 1993 arrived at under section 2(p) and section 18(1) of the Industrial Disputes Act, 1947 read with Rule 58 of the Industrial Disputes (Central) Rules, 1957 between the Indian Banks' Association, representing the management of member banks on one hand and All India Bank Employees' Association, representing the workmen on the other hand. The Indian Banks' Association agreed to introduce pension scheme for all the employees in banks, which were parties to the settlement, in lieu of employers' contribution to the provident fund. Relying upon the memorandum of settlement as also the joint note in pursuance thereof, a circular was issued by the Indian Banks' Association/respondent no. 4 on 17th March, 1994 on how to operate the joint decisions/settlement.

6. After setting out features of this scheme in paras 7 and 8, the petitioners state that respondent no. 4 requested the Ministry of Finance on 4th January, 1996 for *post facto* confirmation in

respect of resignations to be treated as deemed options and *post facto* confirmation was given by the Ministry of Finance.

7. It is stated that the ESBL did not abide by any of these documents, but issued a circular informing the staff that it has proposed to implement the pension scheme once the required formalities are complete. The 1995 Regulations were also circulated. As far as the nationalised banks are concerned, the notified date is 29th September, 1995. That is the date of publication of the notification in official gazette and in respect of other banks, the notified date was from the date the scheme is adopted/implemented. However, while implementing the scheme, the ESBL informed its employees on 18th July, 1994 that the pension scheme would be available to those who retired before 1st November, 1993. The pension scheme implemented by other member banks stipulated a date of September, 1995. Therefore, all those employees, who were in service of ESBL on the date of circular i.e. 14th March, 2000 were given an option to join the proposed pension scheme and to exercise their option in writing within 120 days from 14th March, 2000. That is how the petitioners would become members of the fund. However, this was not extended by the ESBL to those employees, who retired/voluntarily retired/resigned from the service between 1st

November, 1993 to 14th March, 2000. The petitioners point out certain acts on the part of ESBL, but concede that respondent no.2 to these writ petitions (ICICI Bank) came on the scene after amalgamation of that bank and the erstwhile Sangli Bank Limited was approved. It was made effective from 19th April, 2007. That is how the argument proceeds on the footing that all prior schemes, agreements and stipulations therein would apply post the amalgamation. That is how the second respondent is also under an obligation to abide by the scheme. The first respondent to these writ petitions, namely, Reserve Bank of India (RBI) must ensure that the second respondent abides by the scheme and alternatively so also without prejudice, in the event the first respondent cannot be directed as above, then, independently, the second respondent be issued the necessary orders/directions.

8. It is conceded that there is an objection raised to the maintainability of the writ petitions by the counsel appearing for the contesting respondents. They have urged that the scheme is in relation to a bank, which was operating as a limited company. It is taken over by another non-nationalised bank, namely, the second respondent and therefore, in exercise of powers under Article 226 of the Constitution of India, this court cannot issue the orders and directions as claimed.

9. That apart, our attention is invited to a judgment of the Hon'ble Supreme Court of India in the case of *V. Kannappam and Others vs. Additional Secretary, Ministry of Finance and Commercial Affairs and Ors.* in Civil Appeal Nos. 10364-10371 of 2014 along with Civil Appeal No. 10372 of 2014, decided on 18th November, 2014. We have perused this judgment with the assistance of both, Mr. Vaidya and Mr. Pai. The Hon'ble Supreme Court analysed and interpreted a *pari materia* scheme. It also considered the same regulations. It also considered a stipulation of identical nature. The Hon'ble Supreme Court of India concluded that a claim for pension, where the employees were in service or had retired at the time of promulgation of 1995 Regulations, was sustainable only on behalf of such employees, who were opting for pension and who retired under voluntary retirement scheme governed by the 1995 Regulations. Therefore, the employees were only entitled to pensionary benefits if they have exercised their option for pension. None of the appellants had opted for such exercise of 1995 Regulations. The submission was that exercise of option prior to promulgation of voluntary retirement scheme would be conceivable. This contention was also negated as would be clear from a perusal of the observations and conclusions from pages 8 and 9 of the copy of the order of the Hon'ble Supreme Court of India. The Hon'ble Supreme Court,

having considered the stipulations, came to the conclusion that the exercise of option should be in writing and within the stipulated time expressed in 1995 Regulations.

10. In the light of the above, we find that even if we were to entertain the writ petitions and hold that they are maintainable, still, in view of this authoritative pronouncement of the Hon'ble Supreme Court of India, which binds us, we do not think that any relief could have been granted. Once the Hon'ble Supreme Court of India considers an identical issue and controversy, then, its order binds us. We dispose of these writ petitions in the light of this judgment.

11. In the light of the disposal of the writ petitions, the civil applications do not survive and stand disposed of as such.

(B.P.COLABAWALLA, J.) **(S.C.DHARMADHIKARI, J.)**