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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2321 OF 2001

Mrs. Sheroo Shapurji
(now Mrs. Sheroo Mistry)
Parsi Inhabitant of Mumbai,
residing at 15/1, Rustom Baug,
Byculla, Mumbai-400 027. ...Petitioner

versus

Bank of India,
a Banking Company having its
Head Office at Express Towers,
Nariman Point, Mumbai 400 021. ...Respondent

Mr. Ajit Kapadia with Mr. Aditya Chitale & Mr. Avinash Belge i/by MNS & Legal for Petitioner.
Mr. R.S. Pai with Mr. Anand Pai and Mr. A.K. Gopalan i/by Haresh Mehta & Co., for Respondent.

CORAM : A.A.SAYED AND M.S.KARNIK, JJ.

RESERVED ON : 1st JULY 2017

PRONOUNCED ON : 21st JULY 2017

JUDGMENT (PER M.S. KARNIK, J.) :-

The petitioner worked with the respondent-bank for a period of 26 years from 1965 to 1991. On 3rd May, 1991, the petitioner resigned from the services of the bank on account of ill-health. It would be material to reproduce the letter dated 25th February, 1991 and the letter dated 15th/23rd April, 1991 in extenso.

EXHIBIT "A"

Bombay
25th February, 1991

The General Manager (Personnel),
Bank of India,
Head Office.

Through : The Zonal Manager,
Bombay South Zone.

Dear Sir,

In view of my weak health I have decided to resign from the services of the bank with effect from 25.5.1991.

2. I thank the Bank for the consideration it has shown me during my continued ill-health and difficult personal circumstances.

3. I have no liability towards the Bank.

Thanking you,

Yours faithfully,
Sd/-
(SHEROO S. SHAPURJI)
OFFICER
CUSTODIAN OF SECURITIES DEPARTMENT

<u>EXHIBIT "B"</u>

Bombay
15th / 23rd April, 1991

The General Manager (Personnel)
Bank of India,
Head Office.

Through : The Zonal Manager,
Bombay South Zone.

...

Dear Sir,

Please refer to my letter of resignation of February 25th, 1991.

Since then, because of ill-health, I have had to avail of five casuals duly supported by Doctor's certificates.

My Doctor has advised me to retire from service as early as possible. His recommendation of 1st April, 1991 is attached. Despite this, I have tried to pull on and attend to my duties but this is now becoming extremely difficult. Accordingly, I request the Bank to release me from service from 3rd May, 1991.

Thanking you,

Yours faithfully,
sd/-
(SHEROO S. SHAPURJI)
OFFICER
CUSTODIAN OF SECURITIES DEPARTMENT

2. The petitioner also relied upon the Certificate dated 1st April, 1991 issued by Dr. J.M. Tralshawala, M.B.B.S., advising the petitioner to retire from the services at an early date. The

petitioner by a letter dated 27th July, 1994 applied for pension under the Bank's proposed Pension Scheme (circulated vide Branch Circular No.88/10 dated 18/4/1994). She pointed out that under the proposed Pension Scheme, employees who leave the bank after a minimum service of 20 years are eligible for pension under the “voluntary retirement” clause. She therefore requested to treat her voluntary resignation(on health ground) as “voluntary retirement”. The petitioner by her letter dated 27th July, 1994 opted for the Bank's Pension Scheme as per the provisions of the said Scheme and undertook to refund the Bank's contribution to Provident Fund together with accrued interest thereon on her retirement plus simple interest thereon at 6% p.a..

3. The bank by letter dated 23rd September, 1994 informed the petitioner that her letter dated 27/7/1994 requesting for considering her resignation as Voluntary Retirement cannot be accepted as the petitioner has resigned from the services of the Bank w.e.f. 3/5/1991 and therefore not

eligible to be covered under the Bank's proposed Pension Scheme. The petitioner has therefore filed this Petition for grant of pension under the Bank of India (Employees') Pension Regulations, 1995.

4. The respondent-bank has not filed any reply. Learned Counsel for the petitioner submits that the letter of resignation dated 25th February, 1991 was in essence a letter seeking pre-mature retirement on medical ground.

5. Originally the employees of the respondent-bank were not entitled to pension. But there was a scheme for payment of provident fund and gratuity under rules. When there was a demand from the bank employees for grant of pension to them, after discussions with the Union, the bank proposed to introduce the pension scheme for all the employees and certain proposals were put-forth while introducing the pension scheme for the officers. It seems that the draft scheme was circulated amongst the employees both in service as well as retired. The bank also called for options to be exercised from the officer

employees who had retired between August 1, 1986 and October 31, 1993. The petitioner by her letter dated 27th July, 1994 (Exh.C-1) and 27th July, 1994 (Exh. C-2) opted for the Bank's proposed Pension Scheme.

6. On September 29, 1995 the Bank of India (Employees') Pension Regulations, 1995 (in short "PR of 1995") were brought into force. The Regulations were framed by the Board of respondent-bank in exercise of the powers conferred by Clause (f) of Sub-section (2) of Section 19 of the Act after consultation with the Reserve Bank of India and the previous sanction of the Central Government. By the PR of 1995 the pension scheme is made applicable to all the employees who have retired during period January 1, 1986 to October 31, 1993. Under the old Regulations the employee had a right to retire voluntarily after completing 30 years of service. However, by the PR of 1995 the employee is given right to retire after 20 years' service under Regulation 29 and it is provided that such a retired employee shall be eligible for pension.

7. Learned Counsel has relied upon the decision of the Apex Court in the case of **Shashikala Devi v/s. Central Bank of India [2014 (14) SCALE 288]**. Learned Counsel for the petitioner relied upon the decision of this Court in the case of **Madhav K. Kirtikar v. Bank of India (1997 LLJ 1094)** wherein this Court had held that in terms of Clause 29 of the PR of 1995 voluntary retirement could be sought by any employee, who had completed 20 years of service, by giving three months' notice in writing and the bank cannot make a distinction amongst employees who retire voluntarily and those who retire otherwise. Learned Counsel further submitted that once the letter of resignation tendered by the petitioners is regarded as a letter of voluntary retirement from the services she would be entitled to the benefits of the Pension Scheme as she has retired during the period 1st August, 1986 and 31st October, 1993.

8. Learned Counsel for the respondent-bank on the other hand contended that the petitioner had resigned from the services of the bank. Upon resignation there is forfeiture of

entire past service consequently she will not qualify for pensionary benefits. Learned Counsel for the respondent-bank relied upon the decision of the Apex Court in the case of **UCO Bank and others vs. Sanwar Mal, (2004) 4 SCC 412** to contend that the resignation entails forfeiture of the entire past service and therefore the employee concerned is not entitled to any pensionary benefits. He invited our attention to para 9 of the decision of the Apex Court which reads thus :-

> *"9. We find merit in these appeals. 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 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 (sic is the same) 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 regulation/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. Further, there are different yardsticks and criteria for submitting resignation vis-a-vis voluntary retirement and acceptance thereof. Since the Pension Regulations disqualify an employee, who has resigned, from claiming pension, the respondent cannot claim membership of the fund. 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. 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 criterion, the Scheme disentitles such category of employees as are out of it."

9. Learned Counsel also relied upon the decision of the Apex Court in the case of **M.R. Prabhakar & ors. vs. Canara**

Bank & Ors. [(2012) 9 SCC 671] to contend that "*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).*"

10. We may now proceed to consider the submissions made on behalf of the learned Counsel on merits. The PR of 1995 were notified on 29/9/1995. Some of the relevant provisions of the Regulations which are necessary to appreciate the present controversy reads thus :-

> *"**2(x)** "retired" includes deemed to have retired under clause (I) ;*
>
> ***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;*
>
> ***2(za)** "service regulations" means BANK OF INDIA (Officers') Service Regulations, 1979 made under section 19 of the Act."*

11. Chapter II of the Regulations provides for "Application and Eligibility". Regulation 3 reads thus :-

> *"3. Application :-*
> *These regulations shall apply to employees who,-*
> *(1) (a) were in the service of the Bank on or after the 1st day of January, 1986 but had retired before the 1st day of November, 1993 ;*
> *(b) exercise an option in writing within one hundred and twenty days from the notified date to become member of the Fund ; and*
> *(c) refund within sixty days after the expiry of the said period of one hundred and twenty days specified in clause (b) the entire amount of the Bank's contribution to the Provident Fund including interest accrued thereon togetherwith a further simple, interest at the rate of six per cent. per annum on the said amount from the date of settlement of the Provident Fund account till the date of refund of the aforesaid amount to the Bank ; or*
>
> *(2) (a) have retired on or after the 1st day of November, 1993 but before the notified date,*
> *(b) and exercise an option in writing within one hundred and twenty days from the notified date to become member of the Fund ; and*
> *(c) refund within sixty days after the expiry of the said period of one hundred and twenty days specified in clause (b) the entire amount of the Bank's contribution to the Provident Fund and interest accrued thereon togetherwith a further simple interest at rate of six per cent. per annum on the said amount from the date of settlement of the Provident Fund account till the date of refund of the aforesaid amount to the Bank."*

12. Chapter IV provides for "Qualifying Service". Regulation 14 reads thus :-

> *"14. Qualifying Service :-*
> *Subject to the other conditions contained in these regulations, an employee who has rendered a minimum of ten years of service in the Bank on the date of his retirement or the date on which he is deemed to have retired shall qualify for pension".*

Regulation 22 provides for "Termination of Service". Regulation 22 reads thus :-

> *"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."*

13. Chapter V of the Regulation provides for "Classes of Pension". Regulation no.28 and Regulation 29 reads thus :-

> *"28. <u>Superannuation Pension</u> :-*
> *Superannuation pension shall be granted to an employee who has retired on his attaining the age of superannuation specified in the Service Regulations or Settlements.*
>
> *29. <u>Pension on Voluntary Retirement.</u>-*
> *(1) On or after the 1st day of November, 1993 at any time after an employee has completed twenty years of*

qualifying service he may, by giving notice of not less than three months in writing to the appointing authority retire from service ;
Provided that this sub-regulation shall not apply to an employee who is on deputation or on study leave abroad unless after having been transferred or having returned to India he has resumed charge of the post in India and has served for a period of not less than one year :
Provided further that this sub-regulation shall not apply to an employee who seeks retirement from service for being absorbed permanently in an autonomous body or a public sector undertaking or company or institution or body, whether incorporated or not to which he is on deputation at the time of seeking voluntary retirement :
Provided that this sub-regulation shall not apply to an employee who is deemed to have retired in accordance with clause (I) of regulation 2.

(2) The notice of voluntary retirement given under sub-regulation (1) shall require acceptance by the appointing authority :
Provided that where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period.

(3) (a) An employee referred to in sub-regulation (1) may make a request in writing to the appointing authority to accept notice of voluntary retirement of less than three months giving reasons therefor ;

(b) On receipt of a request under clause (a), the appointing authority may, subject to the provisions of sub-regulation (2), consider such request for the

curtailment of the period of notice of three months on merits and if it is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, the appointing authority may relax the requirement of notice of three months on the condition that the employee shall not apply for commutation of a part of his pension before the expiry of the notice of three months.

(4) An employee, who has elected to retire under this regulation and has given necessary notice to that effect to the appointing authority, shall be precluded from withdrawing his notice except with the specific approval of such authority :
Provided that the request for such withdrawal shall be made before the intended date of his retirement.

(5) The qualifying service of an employee retiring voluntarily under this regulation shall be increased by a period not exceeding five years, subject to the condition that the total qualifying service rendered by such employee shall not in any case exceed thirty-three years and it does not take him beyond the date of superannuation.
(6) The pension of an employee retiring under this regulation shall be based on the average emoluments as defined under clause (d) of regulation 2 of these regulations and the increase, not exceeding five years in his qualifying service, shall not entitle him to any notional fixation of pay for the purpose of calculating his pension."

14. In the present case the petitioner has submitted her resignation prior to the coming into force of the PR of 1995. The

petitioner stood relieved of her post between the period 1/1/1986 and 21/10/1992. As indicated earlier the PR of 1995 applied to employees who were in services of the Bank on or after 1st day of January, 1986 but had retired before 1st day of November, 1993. Regulation 22(1) provides for forfeiture of service in as much as resignation from the services of the Bank shall entail forfeiture of entire past service consequently not qualifying for pensionary benefits. "The Classes of Pension" are dealt with in Chapter V of the Regulation 28 as stated earlier. Apart from superannuation pension and pension on voluntary retirement, Regulations 30, 31, 32, 33, 34 provides for invalid pension, compassionate allowance, premature retirement pension, compulsory retirement pension and payment of family pension in respect of employees who retired or died between 1-1-1986 to 31-10-1993. The words "retired" and "retirement" are defined in Regulations 2(x) and 2(y) of the PR of 1995 respectively already extracted earlier.

15. The petitioner tried to make out 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 argued that there can be no difference between "voluntary retirement" and "resignation". In this context it is material to note the observation of the Apex Court in the case of **M.R. Prabhakar** (supra) in paras 15, 16,17,18 and 19 wherein it is held thus :-

> *"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" and "retirement", in the context of the same Banking Regulations of 1995, came up for consideration before this Court in Sanwar Mal, 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 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 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."

16. In the abovementioned judgment, this Court has also held that there are different yardsticks and criteria for submitting the resignation, vis-a-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 :

"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 RBI v. Cecil Dennis Solomon. 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 criterion, the scheme disentitles such category of employees as are out of it."

17. We may indicate that in Sanwar Mal, 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 the 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 1995 Regulations 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. The learned counsel appearing for the appellants have placed heavy reliance on Sheelkumar Jain and submitted that in the light of that judgment, the decision rendered in Sanwar Mal requires reconsideration. We find it difficult to accept the contention raised by the learned counsel appearing for the appellants.

19. We may point out that in Sheelkumar Jain 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

> *Regulations are not in pari materia. In Sheelkumar Jain case, 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."*

16. It is also material to note that Regulation 20 (2) of 1979 Service Regulations deals with resignation from service. The same reads thus :-

> *"20 (2) An officer shall not leave or discontinue his service in the Bank without first giving a notice in writing of his intention to leave or discontinue his service or resign. The period of notice required shall be 3 months and shall be submitted to the Competent Authority as prescribed in these regulations.*
>
> *Provided further that the Competent Authority may reduce the period of three months or remit the requirement of notice."*

17. Let us now examine whether the letter of resignation tendered by the petitioner is in essence a letter of voluntary

retirement. Learned Counsel for the petitioner has contended that the stand of the bank denying pension to the petitioner solely on the ground that she resigned prior to 1st November, 1993 though after 1st January, 1986 is manifestly illegal and unconstitutional. In his submissions the circumstances clearly indicate that the letter of resignation in fact is in essence voluntary retirement. In our opinion reading of letter dated 25th February, 1991 and the letter dated 15th / 23rd April, 1991 leaves no manner of doubt that it is on account of the petitioner's continued ill-health and difficult personal circumstances that the petitioner decided to resign. In fact after the petitioner submitted her letter dated 25th February, 1991 to resign from the services of the bank with effect from 25/5/1991, the petitioner by her letter dated 15th / 23rd April, 1991 informed the bank that she had to avail of five casuals duly supported by Doctor's certificates who advised her to retire from the services as early as possible. Accordingly a request was made by her to release her from 3rd May, 1991. The medical certificate dated 1st April, 1991 of Dr. J.M. Tralshawala lists the medical condition of the petitioner and has therefore advised her to retire from the services at an early date. One thing is therefore clear that though the petitioner had initially given a notice of 90 days for her resignation to become effective from 25th May, 1991 but due to her ill-health, she requested that she may be released with effect from 3rd May, 1991. The respondent-bank in fact relieved her from 3rd May, 1991 which indicates that the respondent-bank was conscious of her medical condition and therefore the early release. This also goes to show that though the petitioner had served with the bank for 26 years and she could avail the benefit of 30 years service then required for voluntary retirement, she was not in position to continue and therefore, had no option but to resign on medical grounds as there was no provision to seek voluntary retirement on completing 20 years of service. The petitioner had to term her letter as that of a “letter of resignation”. Even in the letter dated 25th February, 1991 she has clearly mentioned that she is resigning due to her continued ill-health and difficult personal circumstances. In her letter dated 15th / 23rd April, 1991, the petitioner pointed out that her Doctor advised her to retire from service as early as possible and accordingly requested the bank to release her from services from 3rd May, 1991. In our opinion, therefore, the letter dated 25th February, 1991 and the letter dated 15th / 23rd April, 1991 is in essence a letter seeking pre-mature retirement on medical grounds. The petitioner had put in 26 years of services with the bank.

18. Having come to the conclusion that the letter of resignation is in essence a letter of voluntary retirement from services, in our opinion, the petitioner's case is squarely covered by the decision of this Court rendered in the case of **Madhav K. Kirtikar** (supra). In the case in hand the bank has chosen to apply the scheme of the employees who have retired after 1st January, 1986. The benefit of the scheme, therefore, must be given to all the employees who have retired after 1st January, 1986. It will be totally impermissible to make artificially a further classification amongst the employees retired after 1st January, 1986 as it will be totally irrational, arbitrary and

violative of Article 14. This is more so because under the scheme the employees who have retired voluntarily after 1st November, 1993 are expressly covered by Clause 29 of the scheme. It would be material to quot para 15 of **<u>Madhav K. Kirtikar</u>** (supra) which reads as under :-

> *"15. With the assistance of the learned counsel for the parties, I have carefully gone through the pension scheme of 1995. I do not see any distinction in the scheme amongst retired employees. If a proper construction is given to the regulations, in my view, the Bank cannot make a distinction amongst employees who retire under the voluntary retirement scheme and employees who retire otherwise because the term "retirement" which occurs in the regulations enclose voluntary retirement. There is no reason to confine voluntary retirement only to regulation 29 of the regulations. If such a construction is given to regulation 29 it clearly violates Article 14. In Shri Govindlalji v. State of Rajasthan, AIR 1963 SC 1638 it was observed that if the impugned provisions of a statute are reasonably capable of a construction which does not involve the infringement of any fundamental rights, that construction must be preferred though it may reasonably be possible to adopt another construction which leads to the infringement of the said fundamental rights. This rule of interpretation was reiterated by the Supreme Court in M.K.B. Menon v. A.C. Estate Duty, AIR 1971 SC 2392. The Supreme Court held the Court ought not to interpret statutory provisions, unless compelled by their language, in such a manner as would involve its constitutionality because the legislature is presumed*

to enact a law which does not contravene or violate the constitutional provisions. We have already noted that by Rule 3(1) (a) the scheme is made applicable to the employees retired after January 1, 1986. Rule 34 then provides that employees who have retired from service of the Bank between January 1, 1986 and October 31, 1993 shall be eligible for pension with effect from November 1, 1993. The combined reading of Rules 3 and 34 shows that the petitioner is entitled to get pensionary benefits which are extended by the Bank, even though it is for the first time. The regulations framed by the Bank is for giving pensionary benefits to all the employees of the Bank either retired on attaining the age of superannuation or retired under the scheme of voluntary retirement. It is therefore not permissible for the bank to fix artificially a further cut-off date as November 1, 1993 to give benefit of the pension scheme to the employees who have retired voluntarily only after November 1, 1993. When the Bank decides to extend the benefit of pension to its employees who have retired and employees who sought voluntary retirement and retired. I am also supported by an unreported judgment, single Judge of the Karnataka High Court dated September 30, 1996 in Writ Petition Nos. 3919 to 3994 of 1996. The Karnataka High Court has held that the employees of the respondent Bank who had voluntarily retired between January 1, 1986 and October 31, 1993 are eligible for pension."

19. A profitable reference can be made to the decision in the case of **Asger Ibrahim Amin v. Life Insurance Corporation of India [(2016) 13 SCC 797)**. The Apex Court in para 8 has observed as under :-

> *"We shall now consider the 1995 Pension Rules. Rule 3 of Chapter II thereof, provides that the Rules are applicable to employees : (1) who were in the service of the Corporation on or after 1.1.1986 and had retired before 1.11. 1993 i.e. the notified date; or (2) who retired after 1.11.1993; or (3)who were in the service before the notified date and continued to be in service on or after the notified date; or (4) who were in the service on or after 1.1.1986 but had retired on or after 1.11.1993 and before the notified date. What is discernible from these dates is that the 1995 Pension Rules have included two classes of beneficiaries into one homogenous class, to wit, the employees who had retired before the notified date and those who were to retire after the notified date. In our opinion, the advantage of these beneficent Rules should be extended even to the Appellant who was similarly placed as the retirees mentioned in Rule 3 but for the fact that he had 'resigned' rather than retired."*

Learned Counsel for the respondent-bank invited our attention to the decision of the Apex Court in the case of **Senior Divisional Manager, Life Insurance Corporation of India Ltd. & Ors. v. Shree Lal Meena (AIR 2016 SC 1394)**. It is pointed out that the learned Judges did not concur with the view expressed in **Asger Ibrahim Amin** (supra). The matter was therefore directed to be placed before the Hon'ble Chief Justice of India for constitution of a larger Bench.

20. Learned Counsel for the petitioner submitted that the judgment in **Asger Ibrahim Amin's** case will have to be followed until it is overruled. He also relied upon the decision of the Apex Court in the case of **State of Maharashtra and anr. v. Sarve Shramik Sangh, Sangli and ors. [(2013) 16 SCC 16].** Paras 24, 25 and 27 reads thus :-

> *"**24.** The appellants had submitted that the Irrigation Department is not an industry. In that behalf, it was pointed out on behalf of the workmen that it is too late to raise this submission in view of the judgment of this Court in Bangalore Water Supply and Sewerage Board v. A Rajappa. As against that, the counsel for the appellants pointed out that the judgment in Bangalore Water Supply is pending for reconsideration before a larger Bench of this Court in view of the order passed by the Constitution Bench in State of U.P. v. Jai Bir Singh.*
>
> ***25.** The respondent's however, submitted that in the meanwhile the judgment in Bangalore Water Supply will have to be followed until it is overruled, since the proposition therein continues to hold good. Reliance is placed in that behalf, on the approach adopted by this Court in such a situation, in a matter concerning arbitration in State of Orissa v. Dandasi Sahu. In that matter this Court has held that in the exercise of this Court's discretion under Article 136, it would not be justified to allow a party to further*

> *prolong or upset adjudication of old and stale disputes till the decision of the larger Bench is received.*
>
> ***27.*** *It is, however, contended on behalf of the appellant that the said undertaking was being run by the Irrigation Department of the first appellant, and the activities of the Irrigation Department could not be considered to be an "industry" within the definition of the concept under Section 2(j) of the ID Act. As noted earlier, the reconsideration of the wide interpretation of the concept of "industry" in Bangalore Water Supply and Sewerage Board is pending before a larger Bench of this Court. However, as of now we will have to follow the interpretation of law presently holding the field as per the approach taken by this Court in State of Orissa v. Dandasi Sahu, referred to above. The determination of the present pending industrial dispute cannot be kept undecided until the judgment of the larger Bench is received."*

21. In the result Petition succeeds and rule is made absolute in terms of prayer Clause (a) to (d). The arrears be paid to the petitioner within a period of four months from today. The petitioner will have to refund the Bank's contribution to Provident Fund together with accrued interest thereon paid to her on her retirement plus simple interest thereon at 6% p.a. from the date of receipt of the same till the date of refund. The said amount of refund may be adjusted as against the arrears of

pension payable to the petitioner. No order as to costs.

(M.S.KARNIK, J.) **(A.A.SAYED, J.)**