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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2320 OF 2001

Mr. Vilas Anant Deshpande
Hindu Inhabitant of Bombay
residing at G/7, B-Wing,
Nav-Nutan Vasundhara Co-operative
Housing Society Ltd., Saraswat
Colony, Dombivali (East) 421 201. ...Petitioner

versus

Union 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. Ashok D. Shetty with Mr. Swapnil P. Kamble, for Respondent.

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

RESERVED ON : 1st JULY 2017

PRONOUNCED ON : 21st JULY 2017

<u>JUDGMENT (PER M.S. KARNIK, J.)</u> :-

The petitioner by this Petition filed under Article 226 of the Constitution of India prays that pensionary benefits under the Bank of India (Employees) Pension Regulations, 1995 (hereinafter referred to as "PR of 1995") may be extended to the petitioner. The petitioner worked with the Respondent-Bank for 25 years. At the relevant time the petitioner was 46 years of age and was working as Deputy Manager in Scale II with Pune (Camp) Branch of the Respondent-Bank. The petitioner's wife had undergone an open heart surgery and was not keeping well. The petitioner was also keeping ill-health. On account of the advice given by the Doctors, the petitioner decided to leave the employment of the respondent-bank. The petitioner accordingly gave a notice of the voluntary retirement to the respondent-bank and wrote to the respondent-bank that he desired to 'resign/voluntarily retire' from the service of the respondent-bank. The petitioner had not completed 30 years of services or 55 years of age. The only manner in which his employment could come to an end was by the respondent-bank accepting his resignation. The petitioner's service came to an end on 1st November, 1992. At that point of time the pensionary benefits were not available to the employees of the respondent-bank and as such there was no question of exercising any option to avail the pension. The petitioner, therefore, had no option but to resign. The petitioner has averred that he gave a notice of voluntary retirement to the respondent-bank and wrote to the respondent-bank that he desired to 'resign/voluntarily retire' from the service of the respondent-bank.

2. The petitioner by his application dated 16/6/1994 submitted his option for the Bank's Pension Scheme as per the provisions of the said scheme. The petitioner undertook to refund the Bank's contribution to provident fund together with accrued interest.

3. The respondent-bank by letter dated 27/11/1994 informed the petitioner that the employees who have resigned from the services of the bank are not eligible for the pension.

4. The learned Counsel for the petitioner vehemently urged that though the petitioner had resigned the services, the same was infact a voluntary retirement. The respondent-bank has filed an affidavit wherein the stand is taken by them that the petitioner has resigned and left the services of the respondent-bank prior to the introduction of the PR Scheme. Though the petitioner in his letter dated 1st September, 1995 has stated that by his letter dated 12th August, 1992 he had given a notice for voluntary retirement on medical grounds, the said notice is not placed on record. There is no material on record on the basis of which an interference can be drawn that the resignation tendered is nothing but a voluntary retirement on medical grounds.

5. Learned Counsel for the petitioner contends that after putting more than 25 years of service the petitioner resigned on medical grounds. He had no option but to resign because there was no provision of voluntary retirement upon completion of 20 years of service. In the submission of the

learned Counsel the PR of 1995 are discriminatory. According to him, the employees who are covered by the PR of 1995 have an option of receiving pension upon completion of 20 years of qualifying service vide Regulation 29. In his submission as the petitioner has completed more than 20 years and as the petitioner is similar situate, the petitioner also should be extended the benefit of Regulation 29 by treating his resignation as voluntary retirement.

6. Learned Counsel further submits that the definition "retirement" in Regulation 2 (y) itself postulates that "retirement" means cessation from Bank's service. It therefore follows that even the resignation is cessation of service and therefore there is no reason why the benefit of the PR of 1995 should not be extended to the petitioners. Moreover, Regulation 3 (1) (a) specifies that the regulation applied to the employees who were in service on or after 1st day of January, 1986 but had retired before 1st day of November, 1993. Learned Counsel therefore contends that the petitioner was in service of the bank

after the 1st day of January, 1986 but had resigned before 1st day of November, 1993. In his submission 'retire' would include 'resignation'. Learned Counsel submits that Regulation 22 which provides from consequence of forfeiture of entire past service and consequently not qualifying for pensionary benefits upon an employee resigning is harsh and arbitrary. In the submission of the learned Counsel for the petitioner as there is no provision for voluntary retirement upon completion of 20 years service prior to the coming into force of the PR of 1995, the petitioner had no option but to resign. In the submission of the learned Counsel for the petitioner, therefore, if Regulation 29 provides for the benefits of pension and voluntary retirement after completing 20 years of qualifying service and as the PR of 1995 are also made applicable to the employees of the bank who are in the service on or after 1st day of January, 1986 but had retired before 1st day of November, 1993, the respondent is not justified in forfeiting the entire past service and consequently not qualifying the petitioner for pensionary benefits only on account of resignation so tendered. Learned Counsel has relied upon several decisions of the Apex Court in support of his contentions.

1. Shashikala Devi v/s. Central Bank of India (2014 (14) SCALE 288).
2. Syndicate Bank v/s. Satya Srinath (2007 (5) SCALE 744).
3. Asger Ibrahim Amin v/s. Life Insurance Corporation of India [(2016) 13 SCC 797].
4. Virendra Kumar Suri vs. UCO Bank & Ors. (2016 LabIC4228).
5. Subhashchandra Chimanlal Patel vs. State of Gujarat & Ors. [(2017)1GLR723].
6. Purna Chandra Barik v/s. General Manager, UCO Bank & Ors. (122 (2016)CLT617).
7. Ch. Chandrasekhar Babu vs. Chairman & Managing Director, Andhra Bank and Ors. (2017 (2) ALT284).
8. Calcutta Dock Labour Board vs. Chittaranjan Das (High Court of Calcutta in A.P.O.No.305 of 2014 and W.P.No.129 of 2009)
9. Bank of India vs. Ghanshyambhai Muljibhai Patel (High Court of Gujarat in LPA No.446/2013 in Spl. Civil Application no.8605/2000 with Civil Application No.3447/2013)

Learned Counsel for the petitioner heavily relied upon the decision of the Apex Court in case of **Shashikala Devi** (supra) to contend the resignation tendered by the petitioner is in essence a letter seeking premature retirement. Learned Counsel therefore prays that the petitioner be granted the benefit of the PR of 1995.

7. Learned Counsel appearing for the Respondent-Bank submitted that the claim of pension has rightly been denied to the petitioner who had resigned from his services before the settlement reached between All India Bank Officers' Federation and Indian Banks' Association and that PR of 1995 would not apply to the petitioner. It was further pointed out that the petitioner had resigned prior to 1/11/1993 and was not covered by the statutory settlement and the PR of 1995. It was pointed out that the reliance placed by the petitioner either on the Regulation 22 and Regulation 29 in support of his contentions was completely misplaced since the petitioner was not covered by the Pension Scheme introduced by the Bank w.e.f. 1/11/1993. Learned Counsel for the Respondent-Bank submitted that the judgment of the Apex Court in the case of

UCO Bank and others vs. Sanwar Mal, (2004) 4 SCC 412, squarely applies to the facts of the present case. In that case, identical regulations came up for interpretation and identical relief were sought, which were rejected by the Apex Court. Learned Counsel for the Respondent-Bank 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 as the petitioner had resigned from the services prior 1/11/1993 and that he has failed to show any pre-existing right in his favour within the statutory settlement/joint note dated 29-10-1993 or under the 1995 Regulations. The petitioner is not entitled to any relief. Reliance placed by the petitioner either on the Regulation 22 or Regulation 29 in support of his contentions cannot be accepted, as he is not covered by the scheme of pension introduced by the banks w.e.f. 1-1-1993 is the submission of the learned Counsel.

8. Learned Counsel for the Respondents also relied upon the decision of the Apex Court in the case of **RBI & Anr.**

v/s. Cecil Dennis Solomon & Ors. [(2004) 9 SCC 461] to contend that a resignation cannot be equated with voluntary retirement and the claim of the petitioner for pension cannot be allowed on that basis.

9. Considered the rival submissions advanced by the respective parties. 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."*

10. Chapter II of the Regulations provides for

"Application and Eligibility". Regulation no.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."*

11. Chapter IV provides for "Qualifying Service".

Regulation no.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 no.22 provides for "Termination of Service". Regulation no.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."*

12. 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."*

13. In the present case the petitioner has submitted his resignation prior coming into force of the PR of 1995. The petitioner stood relieved of his 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 and 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, 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 pension or 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.

14. In our view, the petitioner did not retire from the services, but resigned from the services. 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."

15. We thus find that the petitioner when he tendered his letter of resignation, was governed by the 1979 Service Regulations. Regulation 20 (2) of 1979 Regulations dealt with resignation from service and they tendered resignation in the light of that provision. Regulation 20 (2) of the Officers' Service Regulations, 1979 deal 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."

16. Learned Counsel for the petitioner heavily relies upon the decision of the High Court of Calcutta in the case of **Virendra Kumar Suri vs. UCO Bank and Ors. (2016 LabIC 4228)** to contend that a specific order is required to be passed denying pension to an employee on his resignation, removal, dismissal or termination of the services. In our opinion, the said decision has no application to the present case as the issue in **Virendra Kumar Suri's** case concerned the provisions regarding grant of compulsory retirement pension and it is in this context the finding is recorded.

17. We are of the view that the petitioner failed to show any pre-existing rights in his favour either in the statutory settlements or PR of 1995. The petitioner had resigned from the services prior to 1/11/1993, therefore, not covered by the PR of 1995. The petitioner could not show established pre-existing

legal, statutory or fundamental rights in their favour to claim the benefits of the PR of 1995. Consequently, the reliance placed by the petitioner either on Regulation 29 or Regulation 22 in support of his contentions, cannot be accepted since he is not covered by the scheme of pension introduced by the Bank w.e.f. 1/11/1993.

18. We do not find any merit in this Petition and the same is dismissed with no order as to costs.

19. Rule to stand discharged.

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