IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2258 OF 2013

Indrani Pillay,
age about 61 years, Occ: Housewife,
Indian Inhabitant, residing at:
Flat No.601, \`Bhaskara\`, TIFR
Colony, Dr. Homi Bhabha Road,
Mumbai – 400 005. .... Petitioner

- Versus -

1) The Trustees of the Uco Bank
Employees' Provident Fund,
C/o Uco Bank, Head Office,
8th Floor, Uco Tower,
10, B.T.M. Sarani, Kolkata-1.

2) The Chairman & Managing
Director, Uco Bank, a
nationalized bank, established
under the Banking Companies
(Acquisition & Transfer of
Undertakings) Act, 1970; having
their Head Office at: 8th Floor,
Uco Tower, 10, B.T.M. Sarani,
Kolkata – 700 001.

3) The General Manager,
Zonal Office, Uco Bank,
1st Floor, Mafatlal Centre,
Nariman Point,
Mumbai – 400 021. .... Respondents

Mr. Laxman Venkatesan for the Petitioner.

Mr. Mihir Desai, Senior Counsel with Mr. Vishal Khanavkar & Mr. Kedar Dighe for the Respondents.

CORAM: S.C. DHARMADHIKARI &
SMT. BHARATI H. DANGRE, JJ.

DATE : DECEMBER 08, 2017

ORAL ORDER (Per Shri S.C. DHARMADHIKARI, J.**):**

1. By this petition under Article 226 of the Constitution of India, the petitioner initially sought a limited relief. That relief was that the conditions stipulated in certain communications of the respondent-Bank while accepting the resignation of the petitioner be declared as unlawful, null and void.

2. However, there is now an amendment to the petition and by which the petitioner says that this Court should issue a writ of mandamus or any other appropriate writ, order or direction to the Bank directing it to issue a letter of retirement effective from 1-12-2011. The Bank be also directed to pay to the petitioner her terminal benefits such as Provident Fund,

encashment of Earned Leave and such other benefits in full. These benefits be computed after taking into account all the salary revisions which have taken place and in terms of the Bipartite Settlements arrived at between the Indian Bank Association and the various Officers' Associations of the Banks, including AIBOA, between 1-3-1996 to 30-11-2011. The petitioner be therefore treated as in service so as to enable her to draw these benefits from 2-5-1977 till superannuation, as above. Finally, the petitioner be extended the benefit of Pension Scheme by treating her as a superannuated employee. There are several reliefs claimed even in the amended petition but we are primarily concerned with the legality and validity of, what the petitioner terms as, the conditions imposed while accepting her resignation. Once the conditions go or are quashed, then what remains is continued relationship till the date of superannuation and based on that the above orders and directions are claimed.

3. At the outset, we must indicate that this petition was placed before us on several occasions earlier. It was heard partly by us on 4-10-2017 and on 10-10-2017 we passed the following

order:-

> *"1. After this Petition was argued for some time, on our suggestion, Mr. Desai, learned Senior Counsel appearing for the 1st respondent-Bank has taken instructions from the authorized official present in Court.*
>
> *2. On instructions, Mr. Desai states that the UCO Bank, without prejudice to its rights and contentions, including its opposition to the admission of this Petition, is ready and willing to deposit the entire Provident Fund dues computed till 10th October, 2017 within a period of four weeks from today. This amount being brought, presently we do not express any opinion on the rival contentions and post the Petition for admission on 22nd November, 2017 on supplementary list."*

4. Ordinarily, we would have expected that the petition will work itself out in terms of this order and even if the petitioner is dissatisfied with the computation of the amounts due and payable to her, the legal remedies available to her were kept intact, so also the contentions thereunder. It is undisputed that pursuant to our earlier order, the respondents to this petition have brought in this Court and deposited a sum of Rs.16,75,779.61 by way of a Demand Draft. The petitioner did not accept it under protest and without prejudice and by

keeping open her legal remedies. She also did not agree to the petition being disposed of.

5. Her counsel, Mr. Venkatesan, invited our attention to the Notice of Motion moved in this petition and which, according to him, would project the remaining grievances of the petitioner. On such pleadings, he would submit that we must dispose of the petition by a speaking order and the petitioner is not agreeable to the course suggested by this Court. It is on account of this stand of the petitioner that we are constrained to pass a detailed order.

6. The petitioner has set out in the petition itself that she was employed by the UCO Bank, which is a Nationalised Bank and the second respondent to the petition. She is a citizen of India. She joined as a Probationary Officer on 2-5-1977. Since the year 1979, the petitioner's employment with the respondent-Bank was subject to the service conditions laid down in the UCO Bank Officers' Service Regulations, 1979. She would submit that a writ can go to this Bank because it is discharging a public

function and duty. Secondly, it is 'other authority' within the meaning of Article 12 of the Constitution of India. Though it is a Master and Servant relationship, which is a foundation for the relief, yet, being a Nationalised Bank the second respondent cannot resist a writ of mandamus and which can be issued. Based on such assertions, it is alleged that there is a Provident Fund Scheme. That Provident Fund Scheme under which monthly remittances are made, is managed by the first respondent to the petition. There are rules framed and styled as the United Commercial Bank Ltd. Employees' Provident Fund Rules. After our attention is invited to this Scheme and its salient features, it is stated that the petitioner had put in blemishless service. The service dates back to 1977 whereafter the petitioner earned promotions by her hard work and skill. It is her proficiency by which she was short-listed for overseas posting in June, 1991. By an internal competitive test, in Banking, the petitioner was identified and short-listed for a specialised job. The petitioner was then posted in an overseas branch, but on signing of an Undertaking/Bond. That stipulated that the petitioner will serve this Bank for five years after repatriation or pay an amount of Rs.3,00,000/- to the Bank in case of default in honouring the said condition. Annexure “E” is a copy of this Bond dated 11-9-1992. Then, the petitioner was given certain advise in July, 1992 and, therefore, she was posted at Hong Kong in an overseas posting. In due course, the petitioner was relieved of her duties from the Bombay office so as to enable her to proceed to Hong Kong and take up the new assignment. The petitioner reached Hong Kong and thereafter, it is her claim that she worked to the entire satisfaction of her superiors. She completed her two years of service as against the normal period of three to five years of overseas posting. After she was repatriated to India, on her return, she was posted as Senior Manager at the Bank's Nariman Point branch and more than a year later she was brought as Senior Manager at the Colaba branch of the Bank. These were general assignments. While being posted at the Colaba branch, she was served with a letter dated 1-12-1995, transferring her to Hingana, near Nagpur. On account of family reasons, the petitioner made a representation against this transfer. That representation, dated 18-12-1995, was rejected on 23-12-1995. Annexures “H”, “I” and “J” are copies of the transfer order and the communications in furtherance thereof. An appeal was filed on 1-1-1996 against rejection of the representation but that appeal was also rejected on 16-1-1996. It is in this background that the petitioner decided to resign from the services of the Bank and addressed a letter dated 7-2-1996. In this letter, the petitioner stated that she was serving the Bank and maintained that the said resignation was effective from 7-2-1996. On 1-3-1996, the petitioner addressed a communication highlighting certain issues, particularly the Bond/Undertaking regarding the Provident Fund and Gratuity, signed by her prior to her overseas posting to Hong Kong. In this communication she referred to all the developments prior to her resignation. It is in these circumstances, she prayed for waiver of the Bond. The petitioner was informed on 25-4-1996 by the Bank that her request for waiver of the Bond money has been turned down by the Competent Authority and she must pay this amount to the Bank.

Her likely terminal benefits work out to Rs.2,80,000/-, whereas she has to pay to the Bank an amount of Rs.3,25,000/- comprising of Rs.3,00,000/- towards the Bond money and her vehicle loan to the tune of Rs.25,267.25 plus accrued interest thereon. Thus, she must deposit a sum of Rs.75,000/- from her own resources with the Bank before she is relieved from the services of the Bank. In such circumstances, her Manager or immediate superior was directed to ensure that the petitioner is not relieved until the balance amount has been paid.

7. The petitioner says that such a letter, which was issued, therefore, resulted in the Bond being illegally and unlawfully enforced. In any event, the Bond itself was not binding upon her. The petitioner has, therefore, her own version with regard to the Bond. She submits that her resignation was tendered on 7-2-1996 and it was accepted with effect from 6-5-1996. None of the letters which she received thereafter conveying acceptance of the resignation contain any reason for the Bank's refusal to waive the Bond. She has been persistently seeking reasons for refusing to waive these conditions. The

petitioner relies upon the proceedings that she initiated so as to obtain the Gratuity and under the Payment of Gratuity Act, 1972. The petitioner maintains that she was being threatened with disciplinary proceedings on the ground that the conditional acceptance of her resignation and the insistence on the enforcement of the Bond would mean that the relationship of Master and Servant continues. It is on that basis and dissatisfied with the computation of her terminal benefits that the petitioner pursued her claim. That is independent of her demand for payment of Gratuity. From what we have as Rider-I in this petition, it is apparent that the petitioner is asserting that she was proceeding on the footing that her resignation has been tendered and it is accepted. However and in the event this Court records a finding that her resignation from service has not attained finality, then, it would be deemed that she continued to remain in the services of the Bank, without any break. That was till her superannuation as on 1-12-2011. It is in these circumstances that it was prayed that the Bank be directed to compute her benefits.

8. In stating as above, it is stated that the petitioner has been corresponding with the Bank. The petitioner has pointed out, in her correspondence, that the Bank insists on payment of Rs.75,000/- so as to clear off her terminal dues. On the other hand, the Bank continues to correspond by threatening to initiate disciplinary proceedings. That is after allegedly turning down her request for waiver of the Bond. The petitioner, therefore, submits that on such understanding of the legal position, the petitioner stated that she is ready and willing to serve the Bank on the footing that her resignation was accepted with conditions but those conditions are allegedly not satisfied by her. That is why on 11-5-2002 she has claimed to have made an offer to rejoin the Bank and fulfil her obligation by putting in additional service. According to the petitioner, the Bank though approached with the above request, has not allowed her to rejoin the duties. Thus, if the resignation has not come into effect, then, this offer should have been considered, and favourably. In that regard, our attention is invited to paragraphs 35 and 36 of the petition. The case of the petitioner is that she

was making all possible efforts to settle the issues with regard to the Bond and her terminal benefits amicably. However, it is the respondent-Bank which was adamant and did not accommodate her at all.

9. The petitioner has given justification from para 37 as to how she could not present this petition as she was engaged and involved in a distinct litigation pertaining to her Gratuity. Our attention is invited to an order passed by the Controller under the Payment of Gratuity Act, 1972. The order, passed on 30-3-2012, was challenged by the Bank in appeal and the Appellate Authority though maintained the findings, according to the petitioner, the amount or entitlement has been considerably reduced. Being aggrieved thereby (order of the Appellate Authority dated 22-11-2012), Civil Writ Petition No.5556 of 2013 is filed in this Court by the petitioner and is pending.

10. We at once clarify that we do not wish to enter into this controversy on the petitioner's entitlement to Gratuity and particularly the legality and validity of the orders passed by the

authorities under the Payment of Gratuity Act, 1972.

11. All that we are concerned with is whether the petitioner can insist on the above reliefs being granted. It is her version that if the Bank was unwilling to accept her resignation unconditionally and placed a condition on the same, then, it is not an acceptance of the resignation. If this is not an acceptance, then the relationship subsists and if that subsists, the petitioner should have been permitted to rejoin the duties as per her request and to continue till the age of superannuation.

12. We have before us reply of the first respondent-Bank only. It has categorically raised the issue of delay and laches. It is pointed out that the Bond which was executed by the petitioner dates back to 1992. The Bank in order to allow the petitioner to prosper in the service and improve her performance, posted her abroad. After that she was not willing to accept the transfer. Therefore, it is she who decided to resign. The Bank says that all that it pointed out while considering her resignation is that there is an amount payable and if that amount is paid or allowed to be deducted or the difference made

good otherwise, the relationship can be held as snapped straightaway. Even that amount is not paid by the petitioner and is outstanding. There is no question of the relationship being revived, for that has come to an end on the resignation being tendered by the petitioner. There is no question of the resignation being held in abeyance or because there was a demand raised while accepting the resignation that the petitioner can insist on rejoining the services or directing the Bank to treat her as in service till the age of superannuation.

13. It has been specifically said in this affidavit in reply that as the petitioner was not relieved from the service, there was no question of the Bank calculating the amount of terminal benefits and if they were calculated, there was no question of relieving her from the Bond. If the Bank insisted that she should work in its semi-urban/rural branch, that was not unreasonable. The Bank gave an opportunity even when it did not relieve her from the service to resume duty. However, even that aspect goes against the petitioner as she did not rejoin nor did she asked for settlement of the claim. It is now after 17 long years that she

insists that the payment be made. It is in these circumstances that the Bank says that the petition be dismissed. The Bank says that there is delay from 1996 to 2003 of seven years and delay from 2009 to 2013 of four years, both of which are unexplained.

14. In the rejoinder affidavit, the petitioner reiterates the contents of the petition. She once again says that there is no delay because she was fighting a parallel battle for her Gratuity and secondly, because of her domestic difficulties she could not approach the Court in time. For all these reasons, it is submitted that the petition be allowed.

15. Mr. Venkatesan, appearing on behalf of the petitioner, has raised several contentions. His primary contention is that this Court should proceed on the footing that there is a subsisting relationship. That relationship is not snapped and because of the act of the Bank. It is submitted that the petitioner resigned on 7-2-1996. The Bond may have been executed but Mr. Venkatesan would submit that if the Bond is read with the resignation which requires acceptance, then, until

and unless the act of acceptance is unconditional, the relationship does not come to an end. Alternatively, a conditional acceptance cannot be said to be valid. Just as the conditional acceptance cannot be treated as valid, even if the resignation if conditional, that will have its own significance. Further alternatively, if the resignation is treated as valid, the petitioner stopped attending the Bank, repaid the loan, disputed the demand of Rs.3,00,000/- by the Bank does not mean that the legal dues can be withheld. Legal dues have been wrongfully and illegally withheld. If there was no resignation and the petitioner was ready and willing to serve the Bank, then, it should have given that opportunity to the petitioner. In any event, there have been gross violations of the provisions of the Employees' Provident Funds & Miscellaneous Provisions Act, 1952. The first respondent-Trust and the trustees have not fulfilled their obligation in law. Finally, it is urged that all the calculations and the details with regard to the Provident Fund made by the Bank are not accurate.

16. The Counsel places reliance on several decisions of

the Hon'ble Supreme Court of India and this Court. They are as under:-

1. **State of Jharkhand and Others v. Jitendra Kumar Srivastava and Another**, reported in (2013) 12 SCC 210;

2. **Rakesh Rai v. M/s. National Aviation Company of India & Another**, reported in 2014 1 Mh.L.J. 18;

3. **Srikantha S.M. v. Bharath Earth Movers Ltd.**, reported in (2005) 8 SCC 314;

4. **Gorakhpur University and Others v. Dr. Shitla Prasad Nagendra and Others**, reported in (2001) 6 SCC 591;

5. **Union of India and Another v. Wing Commander T. Parthasarathy**, reported in (2001) 1 SCC 158;

6. **Shambhu Murari Sinha v. Project & Development India and Another**, reported in (2000) 5 SCC 621;

7. **J.N. Srivastava v. Union of India and Another**, reported in (1998) 9 SCC 559;

8. **Hindustan Times Ltd. v. Union of India and Others**, reported in (1998) 2 SCC 242;

9. **Power Finance Corporation Ltd. v. Pramod Kumar Bhatia**, reported in (1997) 4 SCC 280 and

10. **Chandrabhaga Machindra Dudhade v. Mahatma Phule Krushi Vidyapeeth**, reported in 2016 (6) All M.R. 357.

17. On the other hand, Mr. Mihir Desai, learned Senior Advocate, submits that the Bank has showed its *bona fides* throughout. He would submit and consistent with the affidavit in reply that there is no merit in the petition and it should be dismissed.

18. We have with the assistance of the learned counsel appearing for the parties perused the petition and all its annexures. The UCO Bank (Officers') Service Regulations 1979 contains provisions dealing with terminal benefits, and particularly the Provident Fund and Pension. Then, there are the Employees' Provident Fund Rules which are also compiled as Annexures “A” & “B”. We have then on record a calculation which is styled as Half Yearly Provident Fund Statement of Account maintained by the Bank.

19. It is clear that there is correspondence with the Bank from Annexure “D” onwards. The first is the Bank offer letter to the petitioner for posting her in Hong Kong branch. Then, there is an Agreement and in that Agreement there is a clause/covenant that the officer will duly discharge her duties.

The Bank also insisted on a Bond and according to the petitioner though the Bank posted her for her own benefit, it imposed an unreasonable condition that on returning to India the petitioner shall serve the Bank continuously for a minimum period of five years at any of the offices/branches of the Bank in India, as directed by the Bank. In the event of this covenant or Undertaking being breached, the petitioner would pay a sum of Rs.3,00,000/- as and by way of agreed liquidated damage. Pertinently, this Agreement has been signed by both parties in September, 1992. To be precise, on 11-9-1992. What transpires thereafter is that the petitioner completes her stint abroad and returns to India. The petitioner was relieved to take up her duties on 25-9-1992. On her return, she was posted, firstly, at the Nariman Point and thereafter the Colaba branch at Mumbai and thereafter a transfer order dated 11-12-1995, which was served on her and in response to that, on 18-12-1995 the petitioner addressed a representation. It is stated by the petitioner in this representation that she had an exemption from rural/semi-urban postings at the time of promotion. Once she was so exempt, she could not have been posted or transferred at Hingana, which is a rural branch. Then it is stated that on repatriation to India before completion of the full overseas term, the petitioner was specifically posted to Bombay, that was on account of representation dated 6-9-1994. She presented her own difficulties and pointed out that the Bank should keep her in Bombay for another 2–3 years. This representation was replied on 23-12-1995 by the Bank (Annexure “J”). The Bank disputed the claim of the petitioner and pointed out that there was a post-promotional obligation of completing rural branch experience and that is mandatory in terms of the Government guidelines. The petitioner's request that she be kept in Bombay for another 2-3 years is unacceptable. The petitioner was, therefore, advised to get herself relieved from the Colaba branch by handing over charge to the next Senior Officer and report to Hingana branch to take up the new assignment. The petitioner on 1-1-1996 refuted the Bank's stand and reiterated that her repatriation from Hong Kong was essentially due to her request to enable her to be with the daughter and because of her difficulties so also her entitlement, she is not able to proceed to take charge at the transferred post. The Bank again reminded her on 16-1-1996 that she should get herself relieved from the Colaba branch.

20. Then the petitioner addressed a letter on 1-3-1996 in which she categorically says that she resigned from the service of the UCO Bank and gave notice of resignation on 7-2-1996. She highlighted the fact that the posting at Hong Kong as EDP Manager was with the sole responsibility to complete the computerisation project. She was repatriated immediately on its successful completion. This was not a routine banking job and the duration of the job was also less than the normal period. In addition, the petitioner has served for one-and-half years after returning from abroad. She has to her credit six months of half-pay sick leave and one-and-half months of privilege leave. She had therefore prayed that the Bond be waived.

21. On 25-4-1996, the petitioner was informed that this request, as made in the representation, cannot be accepted as

the Bank was insisting and maintained that she should be relieved after satisfying and confirming that the Bank has not suffered any pecuniary loss attributable to her during her tenure at the Colaba branch. That is how the Head Office informed that branch to ensure that there are no pecuniary losses. It is in these circumstances that on 22-5-1996, once again the Bank called upon the petitioner to satisfy that dues. However, it also informed that the resignation dated 6/7-2-1996 was accepted by the Competent Authority with effect from 6-5-1996 subject to conditions. The request for waiver of the Bond money of Rs.3,00,000/- has been turned down by the Competent Authority and therefore the amount should be paid. Then the terminal benefits were worked out and there was a balance amount due and payable/recoverable from the petitioner. On both counts, namely, waiver of the Bond money and the terminal benefits, the petitioner preferred an appeal to the Chairman and Managing Director of the Bank against deposit of Rs.75,000/-. That appeal was pending as on 22-5-1996 and no decision was taken. Then the Bank states that the petitioner is not reporting for duty with effect from 6-5-1996. There is no intimation. This period of absence from 6-5-1996 will be treated as unauthorised leave and there would be a loss of pay. The Bank claimed that she has not been relieved so far and therefore she cannot engage herself in other business or gainful employment. The violation of this condition will render her liable for disciplinary action. That is why she was instructed to report for duties immediately till she is relieved from the Bank's services.

22. On 14-6-1996, the Bank once again sought to deal with the petitioner's letter and informed her as to whether the amount should be adjusted from the terminal dues or otherwise. The Bank maintained that the petitioner has to pay this sum.

23. The petitioner relied upon a letter dated 4-5-1996 and in which also the petitioner reiterated that if the Competent Authority had decided to enforce the Bond, then, the calculation to determine the liquidated damages is incorrect. The petitioner never maintained that her understanding of the whole act

attributable to her is on par with that of the Bank. The petitioner requested that her case should be considered sympathetically for release of the Provident Fund and Gratuity after waiving the Bond.

24. The petitioner may have approached the Controller under the Payment of Gratuity Act. The petitioner, in fact, maintained in that application that she has resigned from services with effect from the notice period and that is completion of 19 years of continuous service. The Controller as well, in his order, has dealt with the aspect of payment of Gratuity due to the petitioner on the foundation that the relationship as Master and Servant comes to an end post the resignation. It is in these circumstances that the petitioner may rely upon the case laws but what we find from the letter of 11-5-2002 is that the subject thereof is “Resignation from UCO BANK”. The petitioner contends in this letter that she was forced to resign on account of rural transfer. The Bank accepted her resignation in 1996 but her dues have not been paid as the Bank erroneously seeks to bind her to a Bond signed by her. Then she

maintains that on her return after two years, she has fulfilled her obligation in lieu of her foreign duty. The Bank, therefore, cannot enforce the Bond. She maintains that over six years have lapsed and since the Bank has not taken any steps towards clearing her dues, she requested the Bank to permit her to rejoin the Bank and serve it. This letter pertinently is addressed on 11-5-2002 and when the petitioner was in receipt of letter dated 29-5-2001. The Bank has also communicated with her prior to this communication of the petitioner.

25. On 23-5-2002, the Bank informed the petitioner that their stand was clear. However, what the Bank does is to invite the attention of the petitioner to a representation addressed by her to the Chairman and Managing Director. The Chairman and Managing Director, on receipt of the representation, called upon the Bank to submit the necessary records. The Bank was also informed that post 1996 the vehicle loan has been adjusted. The Bank also received through its regional office a communication informing that the petitioner has not fulfilled the condition and her request of resignation has not yet been accepted. She has

not attended the office and therefore disciplinary proceedings were proposed. Now that a representation dated 11-5-2002 was addressed, the Bank understood that the thrust of her latest representation is that the Bank is still insisting for deposit of Bond money while her financial condition does not permit her to comply with that and she is also deprived of the Provident Fund and Gratuity. The request of the petitioner to rejoin the Bank was then considered but what happens is that though it was examined at all levels, the petitioner herself understood from the Bank's conduct that it is not interested in communicating with her any longer. That is how on 22-11-2003 she addresses the following letter:-

"Through Regional Office, Mumbai

November 22nd, 2003

To,

The General Manager (Personnel),
Head Office,
Personnel Department,
UCO Bank,
12, Old Court House Street,
Kolkata.

Dear Sir,

Subject: Settlement of Terminal Benefits.

I had addressed an appeal to you in this regard on May 11th, 2002 and sent a copy to Regional Office, Mumbai. I understand that Regional Office, Mumbai had also written to you on this matter. I regret to inform you that I have not received any response from you till this date.

In my appeal I had pointed out that the contentious issue of the "Bond for Overseas posting in Banking" is not applicable in my case. To clarify, yet again, I was posted to Hongkong on a specialized assignment for computerisation of Trade Finance operations and immediately repatriated to India on successful completion of the project. My posting was only for a period of two years and on return to India, I have served the bank for over two years and thus, I have fulfilled my duty in lieu of my foreign posting. Hence, I reiterate that the bond does not apply in my case and even if the bond is to be enforced, I have fulfilled my obligations.

Even though over seven years have elapsed since my resignation on May 6th, 1996, my terminal benefits have not been settled causing me acute financial hardship. My PF as per the last statement sent to me in 1998 was over Rs.3 lakhs and furthermore the gratuity payable to me would amount to approximately Rs.1 lakh. I request the bank to, therefore, immediately settle my terminal benefits along with interest at the earliest.

I appeal to you that the bank consider my sincere and devoted service to the bank, for nearly 20 years, in various capacities and render justice in my case.

Thanking you,

Yours faithfully,
Sd/-
Mrs. Indrani Pillay,
Flat 805, Bhaskara,

TIFR Housing Colony,
Homi Bhabha Road,
Mumbai 400005.

cc: Shri V.P. Shetty,
Chairman & Managing Director,
UCO Bank,
10, Brabourne Road,
Kolkata 700001."

26. We have, therefore, on careful perusal of these materials formed an opinion that it is too late in the day for the petitioner to insist that the relief, to treat her as an employee of the Bank till the date of her normal superannuation, to be granted. That relief, therefore, cannot be granted and in a petition which was initially presented to this Court on 20-9-2013.

27. We are not considering here the entitlement of the petitioner. The Bank has computed the amount due and payable to her. That amount is also brought in the Court. We direct that the said amount be paid over to the petitioner with accrued interest within a period of four weeks from the date this order is communicated to the Prothonotary & Senior Master of this Court.

28. We are, therefore, not impressed by the argument of Mr. Venkatesan that the petitioner be treated as an employee in service. Merely because the petitioner was communicated that her resignation cannot be accepted or she cannot be relieved until she fulfils the conditions, all that has transpired thereafter is that the petitioner prayed for waiver of the Bond condition and release of her terminal benefits. Her own conduct shows that she was unwilling to join the transferred post. She was unwilling to rejoin the services of the Bank. Rather she was willing to join on her own terms. Once those terms were not accepted or there was no response from the Bank, the petitioner made no attempt to seek enforcement of any right conferred by the service rules in her. If she was keen and really interested in rejoining the services, she would have promptly approached the Competent Court and in appropriate proceedings she would have sought relief of either permitting her to rejoin or alternatively to settle her dues in terms of the entitlement by waiving the Bond condition. Pertinently, she took benefit of the Agreement/Bond by joining overseas duty. She knew that the

Agreement contains a covenant to serve the Bank on return from Hong Kong. She accepted this condition and never challenged it by approaching a Court of law particularly when the Bank was seeking to enforce it. Her response then was peculiar. So long as she was posted in Bombay after her return from Hong Kong, she did not find anything objectionable in the Bond. It is only upon her transfer that she questions it but does nothing. She does nothing until 2013. The explanation that has been given in the petition does not inspire confidence. We do not think that the explanation given can be termed reasonable and sufficient and for such an enormous delay. The petitioner may claim to be vigilant in moving before the Competent Authority under the Payment of Gratuity Act but conveniently does not mention that she approached the Authority only in the year 2009 and to be precise, by her application dated 7-3-2009. In the circumstances, we do not wish to render any opinion on the entitlement of the petitioner to Gratuity in terms claimed by her as the proceedings in that behalf are still pending. We cannot by accepting the petitioner's contention that she continues to be an employee of the Bank and be treated as retired on attaining the age of superannuation, grant any relief.

29. The reliance by the petitioner's Advocate on a Division Bench decision of this Court in **Rakesh Rai** (supra) is entirely misplaced. In that decision, the Division Bench was considering a case of the petitioner who submitted his resignation in May, 2000 by a letter dated 18-5-2000. He sought acceptance of the resignation with effect from 31-5-2000. He took the decision of resigning since his wife migrated to U.S.A. and he had no choice but to join her. The Air India gave a reply to the petitioner by letter dated 13/14-6-2000 that his letter of resignation could be processed only if certain conditions mentioned there are accepted, one of which is withdrawal of Writ Petition, returning of excess pay and allowances in view of the High Court order, agreeing to pay training cost, agreeing to return all emoluments drawn by him as Co-Pilot on pro-rata basis from the time his training commenced and paying liquidated damages in the sum computed on the basis of 12 times the last drawn emoluments. If the petitioner confirms the

acceptance of these conditions, only thereafter the resignation would be processed. There was a further letter then informing him that his resignation has been accepted with effect from 1-6-2000 subject to the terms and conditions in the earlier letter. The petitioner continued to receive letters to report for flights but he gave his reply that it was not possible for him to accept the terms and conditions in Air India's letter and, therefore, requested that he may be permitted to rejoin the services. It is then the petitioner was informed that once the resignation was accepted, the respondent No.1-Air India was unable to accept his request. The correspondence continued. There was also an offer made for fresh employment. It is in these circumstances and when there were conciliation proceedings which broke down, the petitioner being not taken back in service that the writ petition was filed. It is in these circumstances, the Division Bench made the observations, heavily relied upon before us. All such observations, as are made by the Division Bench, cannot be seen *de hors* this factual background. The Judgments, therefore, which were relied and particularly on the point that there cannot be a conditional acceptance or such acceptance and thereafter refusing to assign work or duties would be considered as a wrongful termination, have been relied upon. We are, therefore, of the opinion that this decision is distinguishable on facts.

30. Equally, the other case laws and compiled so also relied upon are on the point of Pension and Gratuity. We say nothing about Gratuity. Pension, however, would follow on rendering of qualifying service and other stipulations in the service rules being complied with. If all these terms and conditions are complied with, and still the amount of pension is withheld, it is then the Hon'ble Supreme Court holds that it is not a bounty but a right and flowing from rendering of qualifying service satisfactorily. Therefore, even the decision in **State of Jharkhand** (supra) relied upon on the point of pension is distinguishable.

31. In **Srikantha S.M.** (supra), it was a case once again of a resignation but which was withdrawn after acceptance but

before being relieved. The company in that case waived its right and contention particularly that the relationship comes to an end simply because it purported to accept the resignation, directed the employee to be relieved with immediate effect but on the same day granted him casual leave for a subsequent period and informed him that he would be relieved on the evening of the leave period. The company purported to relieve the employee but before that date the employee withdrew his resignation. That is how the argument that he continues in service came to be accepted. If the resignation is withdrawn before it has taken effect, then, work has to be assigned and if such work is not assigned, salary and other benefits for that period become payable. The ratio of this decision is once again inapplicable in the peculiar facts before us. Even **Gorakhpur University's** case (supra) was that of wrongful adjustment of disputed dues from the retiral benefits. When the claim was inchoate and there was no crystallisation of the amount due and payable, then, adjustment could not have been made particularly when the employer's claim was disputed by the employee. Even in the case **Wing Commander T. Parthasarathy** (supra), the resignation was withdrawn before its acceptance. We are not dealing with such a case. Here the petitioner is making capital of her resignation being accepted but conditionally. Even after that conditional acceptance, it is not the petitioner's case for a good number of six years that the relationship continues and she was denied her right to resume duties. The petitioner imposed counter terms and conditions and which were not accepted by the Bank. Thus, it is not the case of the petitioner's insistence on resuming duty on the footing that her resignation does not come into effect. It is more about her terminal benefits.

32. We do not think that this is a case of work and no pay or no work no pay. Therefore, all those decisions rendered on this principle are inapplicable. If the petitioner has not accepted the amount of the Provident Fund computed and payable to her, she may as well take the amount under the Demand Draft and duly deposited in this Court by the Bank under protest and without prejudice to her rights and

contentions to dispute it in appropriate proceedings. We do not think that we are in a position to resolve that dispute and particularly when the facts are as above. It would not be proper on our part to speculate or guess as to what would be the correct sum due and payable as Provident Fund. In such circumstances, keeping open the dispute with regard to correct computation of the terminal benefits, we dismiss this petition. There would be no order as to costs.

(SMT. BHARATI H. DANGRE, J.) (S.C. DHARMADHIKARI, J.)