IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2657 OF 2013

Pradeep Chandra Rastogi } and Ors. } Petitioners

versus

Bank of Baroda and Ors. } Respondents

Mr. A. L. Gore i/b. Mr. C. J. Abhyankar and Ms. Yogita R. Singh for the petitioners.

Mr. Sudhir Talsania - Senior Advocate with Mr. Sanjay Udeshi and Mr. Netaji Gawade i/b. M/s. Sanjay Udeshi and Co. for respondent no. 1.

Ms. Nisha Valani with Mr. Jaydeep Deo for respondent no. 3 (UOI).

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

DATED :- JANUARY 13, 2017

P.C. :-

1. By this writ petition under Article 226 of the Constitution of India, the petitioners are seeking the following reliefs:-

> "(b) This Hon'ble Court may be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction by holding that the arbitrary action of the Respondents in not allowing the Petitioners to opt for the pension scheme is illegal, discriminatory and violates Art. 14 of the Constitution of India and also contrary to the settlement and joint note dated 27.04.2010 and declare the impugned letter Nos. (1) DGM:MMSR:HRM:48:3260 dated 02.07.2013 [Exh-F] (2) CFS/FRT/11/1087 dated 19.08.2013 [Exh-G] (3) HO:HRM:PEN:105:5781 dated 23.08.2013 [Exh-H]

> (4) HO:HRM:PEN:105:5564 dated 10.08.2013 (Exh-I] and (5) HO:HRM:PEN:105:5494 dated 05.08.2013 [Exh-J] issued to the Petitioner Nos. 1 to 5 respectively by the Respondent Bank be quashed and set aside.
>
> (c) This Hon'ble Court may be pleased to direct the Respondents to permit Petitioners to exercise their option for existing pension scheme and also be pleased to direct the Respondents to pay pensionary benefits and all other consequential benefits together with appropriate rate of interest."

2. The petitioners' case is that the first petitioner joined the respondent bank on 22nd December, 1978 as clerk on probation of six months. He was posted at the Mumbai Main Office Branch. After 29 years of service at various branches in clerical cadre and Special Assistant on promotion, he tendered his resignation/retirement/voluntary cessation by letter dated 31st January, 2008. That was accepted by the bank on 29th February, 2008.

3. Likewise, even the second petitioner, who served this bank under different capacities and put in 23 years of service, as well tendered the resignation/retirement/voluntary cessation of service.

4. The other three petitioners are identically placed.

5. The petitioners claim that the service conditions of the employees are covered by statutory regulations framed by the

Board of Directors of the bank with the consultation of the Reserve Bank of India (RBI) and after obtaining sanction of the Central Government. The petitioners refer to Section 12 and 19 of the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970. It is stated that the service conditions in case of employees other than officers are governed by the provisions of the awards as further modified by the subsequent bipartite settlements. The first such settlement is dated 23rd December, 1966 and the last such settlement is dated 27th April, 2010. The service conditions of officers are governed by service regulations, which have come into effect from 1st July, 1979 and styled as “Bank of Baroda Officers' Service Regulations 1979”. They are amended from time to time. It is the case of the petitioners that being the members of the association and a party to the negotiations so also settlement that the first respondent is bound in law to give effect to such settlement and joint note. It is stated that there are specific provisions on salary revision and pension scheme. It is stated that on 9th September, 2010, this joint note was given effect to and it was stated that those employees who desire shifting from any existing scheme to the pension scheme should forward their options and within a given time schedule.

6. It is stated that the Bank of Baroda Employees' Pension Regulations, 1995 are the applicable regulations as far as the pension is concerned. The retired employees are also paid pension, who opt for the pension regulations of 1995. Then, pension regulations have been modified and liberalised during the last settlement dated 27th April, 2010. It is then stated that the settlement/agreement/joint note dated 27th April, 2010 contemplates that such officers and employees, who were in the service of the bank prior to 29th September, 1995 and continued to be in service of the bank on the date of this settlement as also those officers and employees, who were in service of the bank prior to 29th September, 1995 and retired after that date and prior to the date of the settlement, families of such officers and employees, who have died while being in service or retired, but had not opted for pension were made eligible for opting for pension under the said agreement/joint note.

7. It is relying upon this joint note and the subsequent options extended that the petitioners would contend that irrespective of their cessation in service with the bank, they would be entitled to these benefits. There are circulars issued extending the last date for exercise of that option and reliance is placed on that as well.

8. It is in these circumstances that the petitioners would allege a discrimination. They would submit that each of these petitioners desired to exercise this option and made requisite applications, copies of which are annexed to the writ petition. However, these are rejected and by a single line communication. The rejection letter states that since the petitioners had resigned from the services of the bank, they would not be eligible and therefore, cannot join the pension scheme.

9. Mr. Gore appearing for the petitioners would submit that the petitioners had not resigned from service as such, but their letters read in true and proper perspective would denote that they desired to retire voluntarily from the service. They did not, therefore, tender the resignation, which, in opinion of the bank, forfeits all past services. In any event and without prejudice, it is apparent that each of these petitioners have put in requisite qualifying service so as to make them eligible for pension. Having put in such service, but not being granted the benefit, therefore, violates the mandate of Articles 14 and 16 of the Constitution of India. He has brought to our notice, by filing a rejoinder affidavit, that the bank's stand in the affidavit in reply is not correct. The bank seeks to rely upon cases where there was a merger or amalgamation of the existing private sector bank with that of a

nationalised bank. The cases of the present petitioners are not identical. They have throughout served the Bank of Baroda. There was always an option of pension, which they could have exercised and particularly after putting in the qualified service and for these reasons, he would submit that the cases of the employees are not on par with the employees of a private bank and post its take over by the nationalised bank.

10. Mr. Talsania, learned senior counsel appearing for the bank would submit that there is no merit in the writ petition. The entire petition is misconceived. The petitioners had joined the services of the bank, but before the joint note/settlement dated 27th April, 2010, resigned from the services. Upon their resignation, they have already withdrawn the provident fund accumulated to their credit in the account. This is not a case of any voluntary cessation or retirement. This is a clear case where the banks employees tendered resignation and those resignations bring about, as commonly understood, forfeiture of the past service. In any event, taking into consideration the settlement relied upon, the joint note and the letters of option, which have been been put in by other employees, it would be clear that the petitioners' cases cannot be equated with such employees. Therefore, there is no merit in the contention that the action of

the bank is either unfair, unjust or discriminatory. There is no violation of the mandate of Articles 14 and 16 of the Constitution of India.

11. With the assistance of both advocates, we have perused the petition and all annexures thereto, including the affidavits placed on record. It is clear that each of these petitioners addressed more or less identical letters. The first petitioner Pradeep Chandra Rastogi addressed the letter on 31st January, 2008. The subject of this letter is "Resignation". This letter read as a whole indicates that there was no scheme much less any voluntary retirement scheme or any other provision, which was invoked. It was a resignation tendered voluntarily and it was stated that the letter itself be treated as a notice of one month requisite for tendering a resignation. This letter at page 25 of the paper book reads as under:-

"Mr. Pradeep Chandra Rastogi
Emp. Code No. 27069
A/301, Blue Bell C. H. S.
Royal Complex, Eksar Road,
Borivli (West),
Mumbai – 400 091.
Dt. 31-01-2008

To,
The Deputy General Manager,
MMSR
Bank of Baroda,
Ballard Pier,
Mumbai – 400 001.

Respectfully submitted through
The Chief Manager,
Bank of Baroda
Sir P. M. Road Branch,
Mumbai – 400 001.

<u>Sub :- Resignation.</u>

Dear Sir,

I the undersigned submit my resignation from the Bank's Service with immediate effect and this letter be treated as One Month Notice for the same.

I resign from the services of my own accord due to family circumstances and my own health ground.

I am very much thankful to management and all my colleagues who have been ever extended their full co-operation during my tenure of services with the Bank.

Sir, I request your honour to favour me and relieve me of my duties & settlement of all my terminal dues at earliest.

I shall ever remain obliged & grateful.

Thanking you,

Yours faithfully,
S/d.
(Pradeep chandra Rastogi)
Spl. Assistant"

12. This resignation was accepted on 29th February, 2008 and it was conveyed that the resignation is accepted.

13. Mr. Ajaykumar P. Mistry tendered his resignation on 25th September, 2006, once again voluntarily and on account of health problems. This is how his letter reads at page 28 of the paper

book. Similar communication accepting his resignation was received by the said second petitioner. The third petitioner is stated to have retired from service, but never tendered any option. Petitioner no. 4 tendered her resignation on 27th October, 2009. That was also accepted. Petitioner no. 5 also tendered the resignation and which came to be accepted. Thus, these are all cases, which cannot be equated with the employees, who availed of the benefit of a scheme of voluntary retirement. They take benefit of that scheme and that is how their cessation from the service is effected. We do not see how the petitioners can equate their cases with such employees. Even if one of the petitioners retired from service, he failed to exercise the option in terms of the notice of the bank. The communications in the present case, where the pension benefits have been denied, indicate that the bank throughout treated the act of the petitioners as resignation from the services or voluntarily giving up the benefits of the pension scheme. Therefore, their request has rightly been refused. We do not see how the stand taken in the impugned communications can be said to be discriminatory or violating the mandate of Articles 14 and 16 of the Constitution of India.

14. The reliance by Mr. Gore on a Division Bench Judgment of Karnataka High Court in the case of *Smt. Satya Srinath w/o*

Srinath vs. Syndicate Bank[1], decided on 7th April, 2003 is entirely misplaced. There, the party before that High Court was proceeded against for a misconduct of unauthorised absence from duty with effect from 11th March, 1992. A notice to that effect was issued calling upon that party/petitioner to report back for duty or submit resignation for absence within 30 days. The failure would, therefore, denote that the said petitioner is deemed to have voluntarily retired from his services of the bank. The bipartite settlement is specifically referred to by the bank. That is how the bank management communicated with that petitioner. Therefore, on failure of this obligation and in terms of the notice from the bank, the petitioner was taken to have been voluntarily retired. The deemed voluntary retirement then came into effect. That is how her case was treated on par with such of those employees of that bank, who had voluntarily retired from service or retired on superannuation. That is how the pensionary benefits or option could have been exercised by her.

15. We do not see how the facts of the petitioners' case can be equated with that of the petitioner before the Karnataka High Court. There is no parity on facts. Similarly, having understood their act as that of resignation and which ordinarily brings about

1 **Writ Appeal No. 6017 of 1999**

the forfeiture of the past service, we do not see how the petitioners can be granted any relief. Assuming something in their favour, majority of them did not have the pensionary benefit for they ceased to be in bank service prior to 27th April, 2010 settlement/joint note. One of the petitioners failed to exercise the option in terms of the settlement/joint note. Hence, we do not see any merit in the writ petition.

16. As a result of the above discussion, the writ petition fails. It is dismissed.

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