HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

<u>WRIT APPEAL No.395 OF 2008</u>

<u>JUDGMENT</u>: (*Per* Hon'ble Dr. Justice Shameem Akther)

1. Aggrieved by the dismissal order dated 16.08.2004, passed in Writ Petition No.7931 of 1996 by a learned Single Judge of this Court, the unsuccessful petitioner therein preferred this Writ Appeal.

2. The parties hereinafter are referred to as arrayed in Writ Petition No.7931 of 1996.

3. The petitioner filed the writ petition to declare Regulation 22 of the Indian Overseas Bank (Employees) Pension Regulations, 1995 (for short, 'the Regulations'), treating his case, *i.e.* resignation of an employee, on par with the case of dismissal or removal or termination of an employee from the services of the Bank as arbitrary and violative of Article 14 of the Constitution of India, 1949 and further to declare the fixation of date 01.11.1993 in Regulation 29(1) of the Regulations as arbitrary, illegal and the resignation of the petitioner, ought to have treated as voluntarily retired and he should have granted pension and other benefits.

4. The case of the petitioner, in brief, is that, after completion of his S.S.L.C., he was appointed as Shroff/Typist in the Indian Overseas Bank at Nellore on 15.11.1968. In the year 1971, he was transferred to Annanagar Branch, Madras and in May, 1980, on promotion as Officer, he was transferred to Bagole, Bitragunta, Nellore District; became Accountant in the year 1982 and transferred to Ponneri Branch, Madras and served in Madras Region till 1987 and in the year 1990 got transfer to Kurnool. The

petitioner after serving in various regions of the respondent-bank actively for a period of 23 years, as there was no provision for taking voluntary retirement in the Regulations, tendered his resignation, on medical grounds, to his higher officials on 07.10.1991, which was accepted on 20.12.1991. Subsequently, the Central Office of the respondent-bank, issued Circular No.7(f)8 of 1994-95, dated 27.04.1994; wherein paragraph No.2 of the Circular reads as follows:

> "Accordingly, our Employees retired on or after 01.01.1986 but on or before 31.10.1993, have to exercise their option for pension within FOUR MONTHS reckoned from 01.04.1994. The last date for filing such option will be 31.07.1994. As per the pension Rules, the option once exercised is IRREVOCABLE. The option letters (in duplicate) may be received by the Department Head/Branch Manager of the Branch from which the concerned employee retired or by the nearest Branch at the place where the employee permanently resides at present."

5. Adverting to the above provision of the Circular, the petitioner submitted his option for pension in the prescribed format with all enclosures to the 3rd respondent-bank. As there was no response from the respondent-bank, the petitioner again addressed a letter to the 3rd respondent-bank, reminding his earlier correspondence for pension. Surprisingly, on 13.01.1996, the 3rd respondent-bank returned his option for pension stating that the resigned employees are not eligible for pension.

6. Aggrieved by the inaction of the respondent-bank in considering the case of the petitioner for grant of pension, though he has put up a continuous service of 23 years, and happened to resign, only due to non-availability of provision for voluntary retirement on medical grounds, very much within the dates specified in the Circular *i.e.,* between 01.01.1986 and 01.11.1993 and for equating the petitioner who resigned from service

with that of the employees who are either dismissed or removed or terminated from the service, the petitioner preferred the Writ Petition for the aforesaid relief.

7. The learned Single Judge, after hearing the arguments of both the counsel and perusing the material available on record, dismissed the writ petition relying on a decision of the Apex Court in **Reserve Bank of India Vs. Cecil Dennis Solomon**[1] observing that no case was made out for invalidation of Regulation 22 of the Indian Overseas Bank (Employee) Pension Regulations, 1995.

8. Heard the arguments of Smt. Ch. Lakshmi Kumari, learned counsel for the appellant, and Sri M.V. Durga Prasad, learned standing counsel for the respondent-bank.

9. Learned counsel, appearing on behalf of the appellant-writ petitioner, would submit that the petitioner had put up requisite and qualifying service which entitles him to some quantum of pension under the pension scheme for which options were called for and the petitioner had exercised his option; the decision of the respondent-bank to reject the petitioner's claim for pension benefits in lieu of the Regulation 22 of the Regulations; the denial of pension as per Regulation 22 of the Regulation is declared to be invalid and sought pension and consequential benefits; the petitioner is entitled for the pension as per the Regulations on par with the other employees; and finally, prayed to set aside the dismissal order under appeal, as arbitrary, illegal and violative of Article 14 of the Constitution of India. Learned counsel has placed reliance on the following decisions of the Hon'ble Supreme Court in support of his submissions:

[1] 2004 (1) CLR 312

(1) **Sheelkumar Jain v. New India Assurance Company Limited and others**[2];

(2) **Cecil Dennis Solomon's** case (supra 1);

10. On the other hand, learned counsel, appearing on behalf of the respondent-bank, wound submit that the Circular No.7(f)8 of the respondent-bank dated 27.04.1994 has no application; and as per the Regulation 22(1), the petitioner is not entitled for any pension, since as per the said Regulation, employees, who have resigned, dismissed, removed or terminated from service, shall entail forfeiture of the entire past service and consequently, shall not qualify for pensionary benefits. He would further submit that the learned single Judge had elaborately dealt with all the Regulations and rightly dismissed the writ petition and there are no merits and ultimately, prayed to dismiss the writ appeal confirming the order of the learned single Judge.

11. It is not in dispute that the writ petitioner has entered into service in the year 1968 as a "Shroff/Typist" in the respondent-bank; while serving as an Officer, he suffered ill-health and was not in a position to continue in active service; so, on 07.10.1991, he submitted his resignation and the same was accepted on 20.12.1991; he did not give three months' prior notice before his resignation and he made a request to the respondent-bank to recover his three months salary from his terminal benefits; the three months salary was indebted from his terminal benefits and the balance was paid to the petitioner; a Circular was issued by the respondent-bank on 27.04.1994 calling for options from the employees, who had retired on or after 01.01.1986 and before 31.10.1993 to opt for the benefits of the Indian Overseas Bank Employees' Pension Scheme within the specified time; and the writ petitioner has submitted his option

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[2] (2011) 12 SCC 197

for the benefit of the pension scheme on 05.05.1994 within the time specified, in tune with the Regulations of the respondent-bank. It is also not in dispute that by the order of the respondent-bank dated 13.01.1996, the option submitted by the petitioner was returned with an endorsement that he had resigned from service and he was not eligible for pension under the Regulations; as he tendered his resignation; and on the date of submission of resignation by the petitioner, the Regulations were not in force. It is stated by the petitioner that he was made to resign from the active service of the respondent-bank on medical grounds, as there was no pension scheme on the date of his resignation, and had there been a pension scheme, he would have applied for the same instead of submitting his resignation. The Regulation 22 reads as follows:

> "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;
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> (2) An interruption in the service of a Bank employee entails forfeiture of is past service, except in the following cases, namely:-
> (a)authorized leave of absence;
> (b) suspension, where it is immediately followed by reinstatement, whether in the same or a different post, or where the bank employee dies or is permitted to retire or is retired on attaining the age of compulsory retirement while under suspension;
> (c) transfer to non-qualifying service in an establishment under the control of the Government or Bank if such transfer has been ordered by a competent authority in the public interest;
> (d) joining time while on transfer from one post to another.
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> (3) Notwithstanding anything contained in sub-regulation (2), the appointing authority may, by order, commute

retrospectively the periods of absence without leave at extraordinary leave.

(4) (a) In the absence of a specific indication to the contrary in the service record an interruption between two spells of service rendered by a bank employee shall be treated as automatically condoned and the pre-interruption service treated as qualifying service;

(b) Nothing in clause (a) shall apply to interruption caused by resignation, dismissal or removal from service or for participation in a strike:

Provided that before making an entry in the service record of the Bank employee regarding forfeiture of past service because of his participation in strike, an opportunity of representation may be given to such bank employees."

12. Clause (1) of Regulation 22 specifies that the resignation, dismissal, removal or termination of an employee from the service of the respondent-bank shall entail forfeiture of his entire past service and consequently shall not qualify for pensionary benefits. Clause (2) of Regulation 22, however, sets out the exceptions to interruptions of service in the respondent-bank that entail forfeiture of past service. Included in the exceptions, if suspension followed by immediate reinstatement, including a situation where there is a penalty of reduction in rank imposed. Even where an employee is compulsorily retired while under suspension, there would be no forfeiture of past service, and therefore, such an employee would be entitled for the pensionary benefits. Even the period of unauthorized absence which could normally qualify for being characterized as an interruption in the service of respondent-bank and thus entitle forfeiture of past service could be retrospectively commuted by the appointing authority, thus enabling counting of such period for continuity of service and therefore, for pensionary benefits. Resignation from service, albeit with an earlier impeccable record of service however,

would without exception entail forfeiture of the entire past service and render an employee ineligible for any pension, whatsoever.

13. Learned single Judge, while relying on the above Regulation as well as in the decision rendered by the Supreme Court in **Cecil Dennis Solomon's** case (supra 1) submitted by the learned counsel for the respondent-bank, observed that Regulation 18 of the Reserve Bank of India (Pension) Regulations, 1990, fell for consideration of the Supreme Court in that case; the Nagpur Bench of the High Court of Bombay had allowed the writ petitions; employees who tendered resignations prior to the operation of the pension regulations and had later opted for the benefits of the pension regulations were denied pensionary benefits on the basis of Regulation 18 of the Regulations, which administered forfeiture of the entire past service on resignation of an employee, and consequently, disqualified such an employee to the benefits of pension; on appeal, the Supreme Court reversed and held that superannuation, voluntary retirement, compulsory retirement and resignation connote distinct and insular fact situations in service jurisprudence; though voluntary retirement and resignation involve voluntary acts on the part of the employees to leave service, they operate differently; while resignation is at will and could be tendered at any time, voluntary retirement could be sought only after a prescribed period of qualifying service; voluntary retirement also requires the permission of the employer to avail the benefits on retirement, and that it is not the case of resignation from service; as conceptually, voluntary retirement and resignation are distinct events, they legitimately come with different packages of benefits, pointed out by the Supreme Court while allowing the appeal of the Reserve Bank of India; the employees of Reserve Bank of India were denied pension on the ground of their Regulations and the Regulation 22 of the Indian Overseas Bank

(Regulation), 1995, is the similar to the Regulation 18 of the Reserve Bank of India Pension Regulations, 1990; and finally, dismissed the writ petition holding that the petitioner is not entitled to any relief, since no case is made out to invalidate the Regulation 22 of the Indian Overseas Bank (Employees) Pension Regulations, 1995.

14. In view of the above circumstances, it is appropriate to refer the decisions rendered by the Supreme Court submitted by the learned counsel for the appellant-writ petitioner. In **Sheelkumar Jain's** case (supra 2), it is held by the Supreme Court in paragraph Nos.27, 30, 31 and 32 as follows:

> "27. We may now cite the authorities in support of our aforesaid conclusion. In *Sudhir Chandra Sarkar v. Tata Iron and Steel Co. Ltd. and Ors.* [(1984) 3 SCC 369 : 1984 SCC (L&S) 540], the Plaintiff had rendered continuous service under the Respondent from 31.12.1929 till 31.08.1959, i.e. for 29 years and 8 months. He submitted a letter of resignation dated 27.07.1959 and his resignation was accepted by the Respondent by letter dated 26.08.1959 and he was released from his service with effect from 01.09.1959. On these facts, a three-Judge Bench of this Court held:
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> > "The termination of service was thus on account of resignation of the Plaintiff being accepted by the Respondent. The Plaintiff has, within the meaning of the expression, thus retired from service of the Respondent and he is qualified for payment of gratuity in terms of Rule 6."
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> 30. The aforesaid authorities would show 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 and while construing the statutory provisions, the Court will have to keep in mind the purposes of the statutory provisions.

31. The general purpose of the Pension Scheme, 1995, read as a whole, is to grant pensionary benefits to employees, who had rendered service in the Insurance Companies and had retired after putting in the qualifying service in the Insurance Companies. Clauses 22 and 30 of the Pension Scheme, 1995 cannot be so construed as to deprive of an employee of an Insurance Company, such as the Appellant, who had put in the qualifying service for pension and who had voluntarily given up his service after serving 90 days notice in accordance with Sub-clause (1) of Clause 5 of the Scheme, 1976 and after his notice was accepted by the appointing authority.

32. In the result, we set aside the orders of the Division Bench of the High Court in the Writ Appeal as well as the learned Single Judge and allow this appeal as well as the Writ Petition filed by the Appellant and direct the Respondents to consider the claim of the Appellant for pension in accordance with the Pension Scheme, 1995 and intimate the decision to the Appellant within three months from today. There shall be no order as to costs."

15. In **Sheelkumar Jain's** case (supra 2), it is held that as per paragraph Nos.22 and 30 of the General Insurance (Employees') Pension Scheme, 1995, resignation or dismissal or removal or termination of compulsory retirement of an employee from the service of a Corporation or a Company, shall entail for forfeiture of his entire past service and consequently shall not qualify for pensionary benefits. Paragraph Nos.22 and 30 of the said Pension Scheme, 1995, is similar to the Regulation 22(1) of the Indian Overseas Bank (Employees) Pension Regulations, 1995. The Hon'ble Supreme Court, while dealing with a similar issue in the aforesaid citation, held that an employee who has put up the required service, is entitled to pension in the Pension Scheme, 1995 and further held that the authorities concerned 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 and while construing the statutory provisions, the

Court has to keep in mind the purpose of the statutory provisions and the general purpose of the Pension Scheme is to grant pensionary benefits to the employees, who had rendered service in the organization concerned and had retired after putting in the qualifying service as per the Regulations in the Pension Scheme, 1995. So, the Regulation 22(1) of Indian Overseas Bank (Employees) Pension Regulations, 1995, has no application to the case on hand and the appellant-writ petitioner cannot be deprived pension and other benefits, as envisaged in the said Pension Scheme, 1995, since he has put up above 23 years of service, after giving three months notice in writing and his resignation being accepted by the appointing authority.

16. Under the above circumstances, the order under appeal passed by the learned Single Judge is set aside and the Writ Appeal is allowed holding that the Regulation 22(1) of the Indian Overseas Bank (Employees) Pension Regulations, 1995, has no application to the case of the appellant-writ petitioner. The respondent-bank shall consider the claim of the appellant-writ petitioner for pension, par with the other employees under the said Pension Scheme, within a period of three (3) months from the date of receipt of a copy of the order. There shall be no order as to costs. Miscellaneous petitions pending, if any, shall stand disposed of.

RAMESH RANGANATHAN, ACJ

Dr. SHAMEEM AKTHER, J

Date: 10-03-2017.

DSH /SIVA