IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.10069 of 2017

Indian Bank Employees Union,
Rep.by its Deputy General Secretary,
No.6, Moore Street, Mannady Corner,
Chennai-600 001. ...Petitioner

vs.

1. The Presiding Officer
Central Government Industrial Tribunal-cum-Labour Court,
Shastri Bhavan, Chennai-600 006.

2. Deputy General Manager(HRM),
Indian Bank DO:HRM Department,
264, Avvai Shanmugam Salai,
Royapettah, Chennai-600 014. ... Respondents

PRAYER:
Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records from the files of the 1st respondent in I.D.No.99/2015 and quash its impugned Award made therein dated 11.05.2016 insofar as it has denied and negatived the claim of the petitioner for grant of pensionary benefits to Mrs.Shanthi Radhakrishnan by the 2nd respondent bank.

For Petitioner : Mr.K.M.Ramesh

For Respondents : R1-Tribunal
M/s.Ritachandra sekaran
for M/s.Aiyar and Dolia
for R2.

O R D E R

The award dated 11.05.2016 passed in I.D.No.99 of 2015 is sought to be quashed by the Indian Bank Employees Union.

2. The writ petitioner Union states that the employee concerned, Mrs.Shanthi Radhakrishnan, joined the services of the second respondent Bank as Clerk on 12.06.1982. On 08.01.2007,

the Indian Bank introduced Extraordinary Leave Scheme. Accordingly, the employee Mrs.Shanthi applied for grant of extraordinary leave for 3 years. On 31.10.2007, the said leave was sanctioned. On 27.04.2010, a Bipartite Settlement was arrived at for extending second option for pension to those who not have exercised option earlier, pursuant to Pension Scheme of the year 1995. The concerned employee Mrs.Shanthi opted for pension scheme well within the stipulated time and the said option was accepted by the Bank. On 25.10.2010, the employee applied for extension of leave for three months. On 27.12.2010, she applied for voluntary retirement from service. The extension of leave applied for by the employee was rejected. Consequently, on 25.06.2011, the Zonal Manager of the Indian Bank issued an order stating that the concerned employee had voluntarily left the services. An internal appeal was filed to treat the voluntary service of the employee as compulsorily retirement from service, enabling her to get the pensionary benefits. The said application was not considered and therefore, the Petitioner Union, on behalf of the employee concerned, raised an Industrial dispute before the Assistant Labour Commissioner (Central), Chennai. The industrial dispute was referred for adjudication and the Tribunal rejected the industrial dispute, against which the present writ petition is filed.

3. The petitioner states that only in the event of dismissal or termination, the forfeiture of past services can be effected for rejecting the claim petition for pension. In the present case, it was cessation of service, and therefore, she is entitled for pension as per the Pension Scheme, 1995. It is contended that the employee concerned had applied for extraordinary leave for three years and thereafter, she had submitted an application for voluntary retirement. Thus, the second respondent ought to have treated the application as voluntary retirement application, for all purposes, enabling her to get the pensionary benefits. Contrarily, the absence of the employee was treated as “Cessation of service” and an order was passed to that effect. The Labour Court has also failed to consider these aspects. The writ petitioner further states that the action of the second respondent bank, invoking Clause-33 of the Bipartite Settlement, in the case of the employee concerned is unnecessary as she had applied leave for 3 years, which was sanctioned and further application was submitted for extension of leave. However, the said application was rejected. No disciplinary action was taken against the employee concerned. Under these circumstances, the employee also submitted an application to treat her as an employee retired compulsorily, for the purpose of granting pensionary benefits.

4. The learned counsel appearing for the writ petitioner/ Union in support of the contention cited the Judgment of the

Supreme Court of India in BANK OF BARODA vs. S.K.KOOL reported in 2014 2SCC 715, the relevant paragraph Nos.12, 13 & 14 are extracted hereunder:

> 12. In 2002, a Bipartite Settlement was signed by the Indian Banks 'Association and the Banks' workmen's Union with regard to disciplinary action procedure. It is common ground that in the light of the said Bipartite Settlement, Clause 6(b) was interested as one of the punishments which can be inflicted on an employee found guilty of gross misconduct and the same reads as follows:
>
> "6.An employee found guilty of gross misconduct may:
> (a) * * *
> (b) be removed from service with superannuation benefits i.e.,
> pension and/or provident fund and gratuity as would be due otherwis under the rules or regulations prevailing at the relevant time and without disqualification from future employment; or"
>
> The employee undisputedly has been visited with the aforesaid penalty in terms of the Bipartite Settlement.
>
> 13.Regulation 22 of the Regulations, which is relied on to deny the claim of the employee reads as follows:
>
> "22. Forfeiture of service.-(1) Resignation or dismissal or removal or termination of an employee from the service of the Bank shall entail for forfeiture of his entire past service and consequently shall not qualify for pensionary benefits".
>
> From a plain reading of the aforesaid Regulation, it is evident that removal of an employee shall entail forfeiture of his entire past service and consequently such an employee shall not qualify for pensionary benefits. If we accept this submission, no employee removed from service in any event would be entitled for pensionary benefits. But the fact of the matter is that the Bipartitie Settlement provides for removal from service with pensionary benefits "as would be due otherwise under the rules or regulations prevailing at the relevant time". The consequence of this construction would be that the words quoted above shall become a dead letter. Such a construction has to be avoided.
>
> 14. The regulations do not entitle every employee to pensionary benefits. Its application and eligibility is provided under Chapter II of the Regulations whereas Chapter IV deals with qualifying service. An employee who has rendered a minimum of ten years of service and fulfills other conditions only can qualify for pension in terms of Regulation 14 of the Regulations. Therefore, the expression "as would be due otherwise" would mean only

such employees who are eligible and have put in minimum number of years of service to qualify for pension. However, such of the employees who are not eligible and have not put in required number of years of qualifying service shall not be entitled to the superannuation benefits though removed from service in terms of Clause 6 (b) of the Bipartite Settlement. Clause 6(b) came to be inserted as one of the punishments on account of the Bipartite Settlement. It provides for payment of superannuation benefits as would be due otherwise.

5. With reference to the above judgment, the facts before the Supreme Court was that the respondent Mr.S.K.Kool, was working as a Clerk with the petitioner Bank of Baroda and while working as such, after a departmental enquiry, as a measure of punishment, visited with the penalty of "removal from service with superannuation benefits as would be due otherwise and without disqualification from future employment". Thus, the punishment itself provides the benefit of superannuation and other benefit regarding the future employment. In those circumstances, the denial of superannuation and the benefit including the pension, was held as violation of the service regulations. Thus, those facts before the Supreme Court as well as the decision rendered in that regard, cannot be applied with reference to the facts and circumstances of the case. Thus, the above judgment is not applicable to the present case.

6. In the case of NARENDRA KUMAR vs. CHAIRMAN AND MANAGING DIRECTOR reported in 2019 SCC ONLINE SC 711, the Supreme Court held as follows:

15. We have examined the submissions advanced by learned counsel for the appellant and learned counsel for respondent No.1 in the contours of the aforesaid factual position. In our view, the impugned decisions of the respondent No.1 Bank are wholly unjustified and unsustainable in law even as per the Pension Regulations.
16. The appellant was on deputation from time to time. Before applying for the post of Presiding Officer, DRT, a 'No objection Certificate' had been obtained from the respondent No.1 Bank. The period of deputation of the appellant was extended keeping in mind the fact that he had already applied for the post and his application was pending consideration. It is during the extended period that the appellant was issued the appointment letter on 20.01.2006. To say the least, it is a hyper technical view to take that the appellant ought to have joined the respondent No.1 Bank for a couple of days, got himself relieved and then joined the office of the Presiding Officer, DRT. It, thus, appears to be more of an ego

issue rather than any case of service impropriety or illegality. The appellant even took the precaution to write a letter on 25.01.2006 to respondent No.1 Bank for permission to take over charge of the new post of Presiding Officer which post he had to occupy within a period of one month as stated aforesaid from the date of issue of letter dated 20.01.2006. This letter received not response for 11 months, a clear laxity on the part of the respondent No.1 Bank. The appellant, thus, joined the post of the Presiding Officer. No shadow whatsoever can be cast over the conduct of the appellant in this behalf.
17. Now, turning even to the so called technicality of the appellant based on Clause 22(2) of the Pension Regulations, the same requires any interruption in service of a Bank employee to entail forfeiture of his past service. In our view, there was no interruption of service of the Bank employee as would cause such forfeiture. The appellant was on deputation when he was so appointed and took over the new post. The fact that he did not report back to the Bank for a couple of days, got himself relieved and then joined the post cannot be categorized as 'interruption in service' by any stretch of imagination. As noticed above, the appellant had already addressed a communication to respondent No.1 Bank on 25.01.2006 which elicited no response for 11 months. We may also add that even the Ministry of Finance, the parent Ministry of respondent No.1 Bank, brought to the notice of the Bank the inappropriateness of not extending the benefits by commenting, as extracted aforesaid. It has been noted that there was no communication from the Bank after issue of appointment letter dated 20.01.2006 and notification dated 09.02.2006 till the matter was raised with the Ministry for the first time by the Bank after a gap of more than 6 months on 17.07.2006.

7. Even in that case, the facts have no relevance with reference to the issues raised in the present writ petition. Thus, the above two judgments are of no avail to the writ petitioner and would not be helpful for the purpose of considering the facts of the case in the present writ petition.

8. The learned counsel appearing on behalf of the second respondent disputed the contention raised by the writ petitioner by stating that the second respondent bank passed an order stating that the concerned employee left the service voluntarily. Dereliction of duty was consciously done by the employee concerned. She was well aware of the consequences.

9. The facts were admitted by both parties. The facts regarding the sanction of leave was admitted by the bank as

well as by the employee concerned. The application submitted for extension of leave was also admitted by the Bank as well as the employee. Further, it was admitted by the employee concerned that the extension of leave was not granted by the Bank. Thus, there is no dispute regarding the cessation of service by the employee. Further, the employee concerned admitted the fact that she was residing in Canada for more than three years. She opted to continue to reside in Canada for a further period also. Under these circumstances, the Bank formulated an opinion that the employee concerned is not interested in continuing the service of the Bank. Naturally questions would raise, what would be an option when an employee had settled in a foreign country for more than 3 years and continues to reside in Canada for further period and submitted an application for extension of leave. Under these circumstances, the employer is left with no option but to pass an order stating that the employee concerned left the services voluntarily. The said cessation of service is done knowingly and it only shows disinterest on the part of the employee concerned to continue in the services of the Nationalized Bank. Under these circumstances, the employee cannot expect that she is entitled for pensionary benefits as if she must be treated as an employee, who is retired compulsorily. Compulsory retirements can be imposed only on certain circumstances, and not in respect of the case where the employee left the services without any sanction of leave. The Labour Court in paragraph No.13 of the award categorically found that "the petitioner has joined the Pension Scheme it will not make her eligible for the benefit of pension. The employee has refused to join the service of the Bank in spite of notices issued to her and she has accepted the order of voluntary cessation from service also. She has challenged it only after her request for pension was refused. Having been unauthorizedly absent and her absence having been treated as voluntary cessation from service will the employee be entitled to pension as per the provisions of the Bipartite Settlement? Clause-22 (i) of the Pension Regulations states that 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 pensionery benefits. As seen from Clause-22 (2) an interruption in the service of the Bank employee entails forfeiture of his past service except in the case of authorized leave of absence, suspension where it is immediately followed by reinstatement, transfer to a non-qualifying service in the establishment under the control of the Government or bank if such transfer has been ordered by a competent authority and joining time while on transfer from one post to another. Thus, it is clear that even if there is no specific reference to voluntary cessation from service it is more drastic in nature than resignation from service and the period of absence in between is an interruption in service entailing forfeiture of service. So, in view of the very Bipartite Settlement entered into by the Petitioner Union and the Respondent Bank, the concerned employee would not be entitled to the benefit of pension having, voluntarily ceased to be in service".

10. In support of the said contention, the learned counsel appearing on behalf of the second respondent cited the judgment of this Court in W.P.M.D.No.5226 of 2015 dated 24.07.2019, wherein this Court has observed as follows:

> 13. While interpreting the statutes, the rule of interpretation requires that the statutes are to be interpreted in its language and the same cannot be interpreted contrary to the purpose, object as well as the intention of the legislature. Thus, the object of reasons as well as the intention of the legislature must be the prime factor for ascertaining the meaning of the rule and there cannot be any contrary interpretation so as to bend the provision for the purpose of granting the relief. In such an event, the very intention and purpose of the Rule would be violated and the same will set a wrong precedent, which may be followed by the other persons resulting dilution and violation of the statutory provisions, which is impermissible and cannot be construed as in consonance with the provisions of the Constitution of India.

11. The Labour Court in its award has considered that leaving the services voluntarily is also a ground for effecting forfeiture of the past services. Clause 22 of the Indian Bank (Employees') Pension Regulations, 1995 speaks about "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. With reference to the exceptions carved out in Sub-clause 2 to clause 22, the case of the employee concerned did not fall under the exceptions. The case of the employee was that she had submitted an application for extension of leave, which was not considered by the second respondent/Bank. Thus, for all purposes, it is considered that she left the services and settled abroad in Canada. Therefore, there is no infirmity in respect of the order of the second respondent that the employee left the service at her own volition and not at the instance of the Bank. When an employee applied for leave for about three years and continued to stay in a foreign country, and submitted her application for extension of leave, the same cannot be construed as if she should be allowed to retire compulsorily or

she is entitled for pension. For all purposes, it is to be construed as removal from service and such a removal is also forfeiture of services as per Clause 22 of the Pension regularization. The order dated 25.06.2011 states that by invoking Clause 33 of the "VIII B Bipartite Settlement dated 02.06.2005, the bank called upon the employee concerned to report for duty. However, the employee concerned neither reported for duty within 30 days of 1st notice nor within 30 days of the 2nd notice. This apart, no explanation was submitted for such absence of duty. Consequently, the second respondent/bank passed an order that the employee concerned voluntarily left the services of the Bank and vacated her employment in the bank from the date of the letter. This ground was well considered by the Labour Court in its award, more specifically in paragraph No.10, which is extracted hereunder:

> " 10. It is not in dispute that the petitioner has failed to join duty even after expiry of the period of extraordinary leave of 3 years that was granted to her. Ex.M1 is the copy of the scheme for extraordinary leave. Clause-D of the scheme states that the period of extraordinary leave shall be for a minimum period of one year and for a maximum period of three years. It is further clarified that the maximum period of leave that can be availed under the scheme is not more than three years during the entire service of an employee. Since Shanti Radhkrishnan has failed to join duty even after the expiry of the period of her leave Ext.M2 notice dated 24.03.2011 has been issued to her by the Bank stating that she has been absenting herself from duty unauthorizedly since 31.10.2010, the date of expiry of the sanctioned leave. By the notice she was asked to report for duty within 30 days of the notice in terms of Clause-33 of the Bipartite Settlement. Even after this she has failed to join duty and one more notice dated 03.05.2011 was issued to her by the Bank, again asking her join duty within 30 days. Still she failed to comply with the direction and it was thereafter the Bank has issued order dated 25.06.2011 informing her that in terms of Clause-33 of 8th Bipartite Settlement she has voluntarily left the services of the Bank and vacated employment in the Bank from the date of the letter."

13. The learned counsel for the writ petitioner reiterated that the employee concerned submitted an application on 25.10.2010 for extending the leave period. The option exercised by the concerned employee was accepted by the respondent Bank in proceedings dated 08.12.2010. Therefore, there is no reason to pass an order impugned in proceedings dated 25.06.2011, stating that the employee concerned voluntarily left the services of the

Bank and vacated the employment in the Bank. Such an order amounts to removal from service and when the employee concerned was on leave with the approval of the competent authority for three years, and thereafter submitted an application for extension of leave, the Management ought to have considered her case for voluntary retirement. Contrarily, they have issued an order stating that the employee left the services of the Bank.

14. In this regard, the learned counsel appearing for the respondent reiterated that the employee was already on leave for more than three years. She had settled in Canada, but she is going on writing letters to the Bank and has not shown any interest to continue in the services. Such attitude cannot be encouraged by the respondent Nationalized Bank, which is serving the citizens of this great nation. Such a conduct of the petitioner cannot be approved by the Management and therefore, there is no infirmity in declaring that the employee concerned left the services voluntarily and vacated the employment. The Bank cannot extend the leave for an unspecified period, at the request of the employee concerned. The employee has expressed by way of letters for not reporting on duty. Thus, the Bank was forced to take a decision that the employee concerned left the services. An employee, who is totally disinterested in continuing the employment, cannot be conferred with the pensionary benefits. Such a settlement would give a wrong message to other employees, and the discipline and morality of the Nationalized Bank would get affected. Therefore, there is no infirmity in respect of the actions taken by the respondent Bank. In this regard, the learned counsel for the respondent cited the Judgment of this Court in W.P.MD.No.5256 of 2015 dated 24.07.2019, the relevant paragraph No.18 is extracted hereunder:

> "18. Further, in the said decision, the Hon'ble Supreme Court of India, in unambiguous terms, clarified that wherever the Rules provide resignation amounts to forfeiture of the services, then, an employee, who resigned his job, which was accepted by the authority competent, cannot claim any pensionary benefits under the Rules. He voluntarily withdraw the benefit of the pensionary benefits on account of the specific provision in the Rules. Therefore, the Court cannot provide a contrary interpretation by accepting the arguments of the learned counsel for the writ petitioner for the purpose of grant of pensionary benefits under the provisions of the Rules."

15. In view of the facts and circumstances of the case, this Court is of the considered opinion that the labour Court has considered all the grounds raised by the writ petitioner as well as the second respondent. This apart, the employee concerned voluntarily left the services of the Bank and even after

availing the extraordinary leave for a period of three years. Thereafter also, she received the notice but had not reported for duty. Considering the facts and circumstances, as well as the conduct of the employee concerned, there is no reason whatsoever to interfere with the award of the Labour Court. Accordingly, the award dated 11.05.2016 passed in I.D.No.99/2015 by the Labour Court is confirmed and the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

ssb

To

1. The Presiding Officer
Central Government Industrial Tribunal-cum-Labour Court,
Shastri Bhavan, Chennai-600 006.

2. Deputy General Manager(HRM),
Indian Bank DO:HRM Department,
264, Avvai Shanmugam Salai,
Royapettah, Chennai-600 014.

+1cc to M/s.Aiyar and Dolia, Advocate, S.R.No.87412

SPD(CO)
CS/11/12/2019