IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 02.11.2023

DELIVERED ON: 22.12.2023

CORAM:

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

W.P.No.26227 of 2012
M.P.No.1 of 2012

1.S.Meeran Sahib
2.Ms.M.Shoba Raghuvir (Roll No.10791)
3.S.Vijayakumar (Roll No.8985)
4.K.N.Sivaramakrishnan (Roll No.10798)
5.Mir Kasim Ali (Roll No.7723)
...Petitioners

vs.

Indian Overseas Bank,
rep. by the General Manager,
Central Office,
762, Anna Salai,
Chennai – 600 002.
...Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus to direct the respondent to extend to the petitioners option to join the pension scheme, namely, Indian Overseas Bank Employees' (Pension) Regulations, 1995, in accordance with their circular bearing Misc.No.EST/62/2010-11 dated 30.08.2010.

For Petitioners	:	Mr.R.Viduthalai, Senior Counsel for Ms.R.Revathy
For Respondent	:	Mr.K.Srinivasa Murthy

for Mr.N.G.R.Prasad

O R D E R

The Writ Petition has been filed seeking a direction to extend the petitioners option to join in the Pension Scheme namely, Indian Overseas Bank Employees (Pension) Regulations, 1995 of the respondent bank in accordance with the Circular No.EST/62/2010-11 dated 30.08.2010.

2.Heard, Mr.R.Vidhuthalai, learned Senior Counsel for Ms.R.Revathy, learned counsel appearing for the petitioners and Mr.K.Srinivasa Murthy, learned counsel for Mr.N.G.R.Prasad, learned counsel appearing for the respondent.

3.The learned Senior Counsel appearing for the petitioners would submit that the first and fourth petitioners were appointed as clerks on 01.04.1972 and 29.09.1976, the second and fifth petitioners were appointed as Probationary Officers on 16.08.1976 and 15.12.1971 and the third petitioner were appointed in the clerical cadre on 27.01.1975. The petitioners had resigned from the services of the respondent bank on 30.06.1999, 06.12.2006, 31.03.2002, 15.07.1997 & 06.07.2005 respectively on medical grounds. He would contend that on 29.10.1993 a joint note for introducing Pension Scheme for employees with effect from 01.01.1986 in lieu of contributory provident fund was entered into between Indian Banks' Association, Federation of banks, and various officers Unions and a settlement on similar lines under the provisions of Industrial Disputes Act were arrived at by the Indian Banks' Association.

4.He would further submit that the petitioners were eligible for voluntary retirement as under Regulation 29 of the Indian Bank (Employees) Pension Regulations, 1995 (hereinafter referred to as “Pension Regulation”) which provides for voluntary retirement after completing 20 years of qualifying service which came into force from 01.11.1993. Due to delay in implementation of the pension regulations some employees who were eligible to retire under Regulation 29 of pension regulations had to resign between 01.11.1993 and 29.09.1995. All those employees have been granted pension by the bank treating them as voluntarily retired.

5.He would submit that the petitioners had not opted for pension regulations in response to the circular of the bank in 1995 offering pension in lieu of contributory provident fund and that therefore they were not governed by the pension regulations, despite the fact that the petitioners had fulfilled all the conditions for voluntary retirement. He would submit that Clause 5 of the Settlement dated 29.10.1993 entitles the petitioners for voluntary retirement as they had completed more than 20 years of service. But the respondent bank failed to implement the Settlement/Joint Note promptly and the unilateral changes made by them in Regulation 22(4)(b) of the pension regulations inserting strike clause which disabled petitioners from voluntarily retiring which states that any interruption in the service of an employee due to participation in a strike would result in forfeiture of his/her entire past service but this penal clause was not included in the Joint Note/Settlement dated 29.10.1993, so which many of the employees including the petitioners did not opt for Pension and the said clause was removed in the year 1998. Thereafter the petitioners and a large number of employees who did not opt for pension, both retired as well as serving, approached the respondent bank to allow them to seek option for pension under Pension Regulations, but the same was not entertained.

6.He would submit that on 27.04.2010 another Joint Note was signed by the parties for extending another option for pension, this offer of another option is linked with bearing a percentage of funding the gap of additional consequential cost this amounted the petitioners refunding bank contribution to provident fund and interest thereon received by them on retirement and the differential portion of the PF received if any while implementing the 9th Bipartite Settlement / Joint Note together with 56% of the said total amount.

7.He would submit that as per the Clauses 2(a), 3(a), 4, 5, 6(1), 7 of the joint note dated 27.04.2010 another option for joining the existing Pension

Scheme shall be extended to those Officers, Clause (2)(a) who were in the service of the bank prior to 29.09.1995 and continue in the service of the bank on the date of the Joint Note, Clause (3)(a) who were in service of the bank prior to 29.09.1995 and retired after that date and prior to the date of the Joint Note, Clause (4) The family of those officers who were in the service of the bank prior to 29.09.1995 retired after that date and had died will be eligible for family pension, Clause (5) The family of those officer who were in the service of the bank prior to 29.09.1995 but have died while in service of the bank after that date will be eligible for family pension, Clause (6)(1) The existing pension scheme will not be applicable to those who join the services of banks on or after 01.04.2010. Clause (7) Officers who ceased to be in service on or after 29.09.1995 on account of voluntary retirement under special scheme after rendering service for a minimum period of 15 years, shall be eligible to exercise an option to join the Pension Scheme subject to the terms and conditions mentioned for retiring officers opting for joining the Scheme.

8.He would further submit that a Settlement in terms of the provisions of Industrial Disputes Act was entered into between Indian Banks Association and various workmen unions on the same date, i.e., 27.04.2010, with above said identical provisions. The Pension Regulations shall be applicable to those who opt for the Pension Scheme in terms of joint note / settlement dated 27.04.2010.

Further the respondent bank had issued a Circular bearing

Misc.No.EST/62/2010-11 dated 30.08.2010, stating that the meeting held by the board on 21.08.2010 has accorded approval to extend another option to join the Pension Scheme for the employees who had retired, serving and eligible dependents of deceased workmen/officers. He would further submit that the Pension/Family pension to those who opt to join the Pension Scheme complying with the terms of joint note/Settlement dated 27.04.2010 shall be payable with effect from 27.11.2009, provided that employees who retired after that date shall get pension from the respective dates of their retirement.

9.He would further submit that the petitioners filed their application for another option as in the circular dated 30.08.2010. For which the respondent bank vide their communication dated 10.02.2012 stated that the fourth petitioner had retired on resignation and he is not eligible for another Option for Pension, as per the Bipartite Settlement and other petitioners have not received any reply. The petitioners had rendered their services between 27 to 30 years and the qualification criteria for availing voluntary retirement is 20 years of service. Therefore he would contend that it is not correct on the part of the respondent bank to state that the petitioners had retired on resignation.

10.He would submit that there cannot be two different classes of employees, and the respondent bank should consider that there can be no discrimination between those who retired on superannuation under Regulation 28 of Pension Regulations on the one hand and those retired on voluntary retirement on resignation under Regulation 29 exercising another option. Therefore the would contend that the respondent bank to extend the petitioners option to join the pension scheme, viz., Indian Overseas Bank Employees' (Pension) Regulations, 1995, and to grant pension to the petitioners with effect from 27.11.2009 in accordance with their Circular dated 30.08.2010.

11.The learned Senior Counsel appearing for the petitioner relied on the following judgments:

(i) Vijaya Bank vs. Narasimhappa and others arising out of W.A.No.2956 of 2012 dated 30.07.2012

(ii) Review filed by the Vijaya Bank in the aforesaid judgment was dismissed in R.P.No.68 of 2013 dated 25.10.2013 stating that the employees had put in requisite number of years of service qualifying for pensionary benefits.

(iii) SheelKumar Jain vs. New India Assurance Company Limited and others reported in (2011) 12 SCC 197

(iv) Shashikala Devi vs. Central Bank of India reported in (2014) 16 SCC 260

(v) Punjab National Bank and others vs. Virender Singh Siwach arising out of LPA No.735 of 2012 dated 09.10.2015.

12.Countering his arguments the learned counsel for the respondent would submit that the petitioners were the employees of the bank and they all had taken voluntary retirement. The petitioners had filed this Writ petition seeking to direct the respondent bank to extend the petitioners option to join the Pension Scheme viz., Indian Overseas Bank Employees (Pension) Regulation 1995 in accordance with their circular dated 30.08.2010. He would submit that the circular of the respondent bank was issued pursuant to the Joint Note/Settlement dated 27.04.2010 which was signed by Indian Bank Association with the officers Organization and Workman Unions.

13.He would submit that the circular issued pursuant to the Joint Note dated 27.04.2010 does not provide for giving an option to those who have resigned from the Bank's service. The pension scheme in the respondent Bank is a contributory scheme in lieu of Employee Provident Fund which was introduced in the year 1995. To be a part of the pension scheme the employees who were in service during that period were required to opt for the pension scheme and were required to transfer Bank's contribution to the Employee Provident Fund. Under Regulation 22 (1) of the Pension Regulations, resignation will have the effect of forfeiting the entire past service and hence will not qualify an employee even if they are a member of Pension Scheme.

14.He would submit that the payment of pension would depend upon the provisions of the scheme. When the pension scheme does not provide for payment of pension to those who have resigned from the services of the Bank, the respondent is right in declining the petitioner's request. The petitioners have not left the Bank opting for Voluntary Retirement under the service Regulations. They did not opt to join the pension scheme when the same was introduced on 29.09.1995. The petitioners had also received all their terminal benefits, even at that point of time the petitioners have not questioned the Pension Regulations 1995 or the Joint Note/Settlement/Circular dated 30.08.2010. So the petitioners are not entitled to claim any benefit under the Pension Scheme.

15.He would further submit that as per the guidelines relating to the Voluntary Retirement under Regulation 19(1) of the Indian Overseas Bank (Officer's) Service Regulations 1979, an employee should have completed 55 years of age or put in 30 years of service for applying for Voluntary Retirement. The petitioners do not fulfil either of the conditions, therefore they are not eligible for opting Voluntary Retirement. The fourth petitioner being an officer, has completed 30 years of service in the bank and did not opt for VRS under Regulation 19(1) of the 1979 Rules. He would further submit that VRS 2000 scheme was a special scheme which was Introduced pursuant to the policy decision taken by the administration. As per the scheme employees who had completed 15 years of service or 40 years of age were given an option to apply for voluntary retirement from the service of the Bank.

16.He would submit that the first and fifth petitioners resigned from the respondent bank prior to the introduction of the VRS 2000 scheme. Therefore, the Petitioners cannot compare themselves with those who have voluntarily retired under Voluntary Retirement Scheme, 2000 and in the case of other petitioners who were in the service of the respondent Bank during the introduction of VRS scheme 2000 did not opt for the same and choose to resign from the service after the said scheme expired. He would further submit that a person to be fit into the Pension Scheme should either opt for the same within the time prescribed or comply with the conditions mentioned in the Circular dated 30.08.2010, but the petitioners herein do not choose to opt for the Pension Scheme introduced in 1995 while they were in service. Thereby the petitioners do not fall under any of the categories mentioned in the circular dated 30.08.2010. He would submit that similar other persons like the petitioner herein had filed cases seeking similar relief and the same was also dismissed.

17.The learned counsel for the respondent relied on the following citations:

(i) UCO Bank and another vs. Sanwarmal, reported in (2004) 4 SCC 412

(ii) Reserve Bank of India and another vs. CECIL Dennis Solomon and another, reported in (2004) 9 SCC 461

(iii) K.G.Krishnan vs. Indian Overseas Bank *reported* in 2009 SCC OnLine Mad 1687

(iv) M.R.Prabhakar and others vs. Canara Bank and others arising out of Civil Appeal Nos.7188-7191 of 2012 dated 03.10.2012.

18.I have heard the submissions made by the learned counsel appearing on either side and perused the materials available on record.

19.The claim of the petitioners in this Writ Petition is that the petitioners were employed with the respondent bank and they had submitted their resignation during various periods. Their claim is that they had submitted resignation in view that Rule 22(4)(b) of the Indian Bank Employees Pension Regulation, 1995. The said Rule 22(4)(b) according to them disentitles counting of service of persons who had participated in the strike would have to forfeit their entire past service. Since the petitioners had participated in the strike, they would not be entitled to invoke Rule 29 of the said pension rules which provided for voluntary retirement. The pension regulation came into being in the year 1995 with effect from 01.11.1993. The Rule 22(4)(b) came to be omitted from the said Pension Regulation in the year 1998. Except the fourth petitioner, all other petitioners had submitted their resignation after 01.11.1999. Therefore, they cannot be heard to say that Pension Regulation 22(4)(b) which provided for forfeiture of past service was a bar for them to apply for the voluntary retirement scheme envisaged under the Pension Regulation. Further as regards to the fourth petitioner, he had also not taken any steps to convert his resignation as voluntary retirement on the omission of Rule 22(4)(b) from the Pension Regulation. All these petitioners had made their claim only in the year 2010 when a favourable circular was issued in respect of the persons who had voluntarily retired from service. The said circular was not made applicable to the persons who had resigned from service.

20.Learned Senior Counsel had made strenuous efforts to convince this Court that the resignation which had been given by the petitioners should be treated as voluntary retirement. In view of the aforesaid conclusion that the petitioners 1, 2, 3 & 5 had submitted their resignation only after the omission of Rule 22(4)(b) and that the fourth petitioner had not taken any steps at the earliest point of time, I am not convinced to accept the reasons assigned by the learned Senior Counsel. Further, the learned Senior Counsel would rely upon various judgments of the Hon'ble Apex Court and primarily rely upon the judgments of the Hon'ble Apex Court in the case of ***SheelKumar Jain vs. New***

India Assurance Company Limited and others reported in ***(2011) 12 SCC 197*** and and in the case of ***Shashikala Devi vs. Central Bank of India reported in (2014) 16 SCC 260*** and the judgment of the Hon'ble Division judgment of the Karnataka High Court in the case of ***Vijaya Bank vs. Narasimhappa and others*** arising out of ***W.A.No.2956 of 2012 dated 30.07.2012.***

21.Learned counsel appearing for the respondents had also relied upon the judgments of the Hon'ble Apex Court as follows:

(i) ***UCO Bank and another vs. Sanwarmal*** reported in ***(2004) 4 SCC 412***

(ii) ***Reserve Bank of India and another vs. CECIL Dennis Solomon and another*** reported in ***(2004) 9 SCC 461***

(iii)***M.R.Prabhakar and others vs. Canara Bank and others arising out of Civil Appeal Nos.7188-7191 of 2012 dated 03.10.2012***.

(iii) ***K.G.Krishnan vs. Indian Overseas Bank*** reported in ***2009 SCC OnLine Mad 1687***

22.What the learned counsel appearing on either side had not brought to the notice of this Court is a later larger bench judgment of the Hon'ble Apex Court in the case of ***Senior Divisional Manager, Life Insurance Corporation of India Limited and Others vs. Shree Lal Meena*** reported ***(2019) 4 SCC 479***

The Hon'ble Apex Court after considering various judgments on the issue including the judgment relied upon by the learned counsel appearing on either side had held as follows:

> *"16.The moot point which, thus, arises for consideration is the effect of the retrospective application of these Rules in the given factual scenario. Had the Pension Rules been only prospective in application, there is no doubt that Shree Lal Meena could not even have endeavoured to prefer a claim. In order to appreciate this aspect, the extent to which retrospectivity applies would have to be analysed, strictly on the basis of these Pension Rules, which are also contributory in their character.*
>
> *17.The undisputed fact is that as on the date when Shree Lal Meena was revolving the thought in his mind of voluntary retirement, there was no such provision in the Staff Regulations applicable. Thus, his repeated communications setting forth a thought process for 'voluntary retirement' had no legal backing on that date. It is in these circumstances that no response was forthcoming to his letters, when he talked about a concept which did not exist. Conscious of this aspect and wanting to leave the services of LIC, Shree Lal Meena took recourse to what was permissible on that date i.e. 'resignation'. Section 3 of the Staff Regulations has a heading 'Termination'. The other expression used before the relevant Regulation 18 is 'Determination of Service'.*

The Regulation itself uses the expression 'leave or discontinue' service. In whatever manner these expressions are understood, in legal and common parlance, they amount to, first a unilateral act on the part of an employee, desirous of not continuing with her/his service with the employer and then, the acceptance of the same by the employer, subject to a notice period, which, in the present facts, had been waived at the request of the employee. Thus, on the relevant date he took a conscious decision to disengage himself from the services of the appellant, on the terms and conditions as prevalent on that date. As to what happened five years hence, in our view, would have no bearing on any benefit, which can accrue to such employee as a respondent, except to the extent which is specifically made applicable to him.

18.It is trite to say that statutory provisions must be given their clear meaning unless there is ambiguity in the wordings. [Grundy v. Pinniger, (1852) 1 LJ Ch 405; Pinner v. Everett, (1969) 1 WLR 1266 : (1969) 3 All ER 257 (HL) : (Pinner case, All ER pp. 258 I~259 A) In determining the meaning of any word or phrase in a statute the first question to ask always is what is the natural or ordinary meaning of that word or phrase in its context in the statute It is only when that meaning leads to some result which cannot reasonably be supposed to have been the intention of the legislature, that it is proper to look for some other possible meaning of the word or *phrase.] There is no ambiguity in the Pension Rules in question as to require any import to be given that is different from its plain words. The Pension Rules have been brought into force from a retrospective date of 1~11~1993. Thus, they would logically apply to all employees in service on or after 1~11~1993. The respondent was not such a person. There is only one further twist to the Pension Rules. Rule 3(1)(a) of the Pension Rules refers to applicability of these Pension Rules even to such of the employees who retired on or after 1~1~1986 and before 1~11~1993. Even for such of the employees, there is a requirement for an option to be exercised, in writing, that within a period of time of 120 days from the notified date they become member of the Life Insurance Corporation of India (Employees) Pension Fund, and refund within 60 days thereafter, the entire amount of LIC-s contribution to the Provident Fund, including interest accrued thereon. This is so, as employees who retired during this period of time had availed of the contributory provident fund benefit under the then existing Staff Regulations, and would have to surrender the benefits under those Regulations to the extent they were contributed by LIC, for the new Pension Rules to be made applicable to them. The expression used in Rule 3(1)(a) is clear and unequivocal retired. It has not used any alternative expression also, for determination of the relationship of employer~employee, like 'resignation'. In the same Rules, expressions like 'resignation',* *'dismissal', 'removal' have been used, more specifically in Rule 23 of the Pension Rules. When different expressions are used in the same Rules, in different contexts then all of them cannot be given the same meaning. [Board of Revenue v.Arthur Paul Benthall, (1955) 2 SCR 842 : AIR 1956 SC 35; Kanhaiyalal Vishindas Gidwani v. Arun Dattatray Mehta, (2001) 1 SCC 78 : (SCC p. 89, para 15) 15. It is true that when the same statute uses two different words then prima facie one has to construe that these two different words must have been used to mean differently.]*

19.What is most material is that the employee in this case had resigned. When the Pension Rules are applicable, and an employee resigns, the consequences are forfeiture of service, under Rule 23 of the Pension Rules. In our view, attempting to apply the Pension Rules to the respondent would be a self~defeating argument. As, suppose, the Pension Rules were applicable and the employee like the respondent was in service and sought to resign, the entire past service would be forfeited, and consequently, he would not qualify for pensionary benefits. To hold otherwise would imply that an employee resigning during the currency of the Rules would be deprived of pensionary benefits, while an employee who resigns when these Rules were not even in existence, would be given the benefit of these Rules.

26.There are some observations on the principles of *public sectors being model employers and provisions of pension being beneficial legislations. [Shashikala Devi v. Central Bank of India, (2014) 16 SCC 260 : (2015) 3 SCC (L&S) 319; Asger Ibrahim Amin v. LIC, (2016) 13 SCC 797 : (2015) 3 SCC (L&S) 12] We may, however, note that as per what we have opined aforesaid, the issue cannot be dealt with on a charity principle. When the legislature, in its wisdom, brings forth certain beneficial provisions in the form of Pension Regulations from a particular date and on particular terms and conditions, aspects which are excluded cannot be included in it by implication. The provisions will have to be read as they read unless there is some confusion or they are capable of another interpretation. We may also note that while framing such schemes, there is an important aspect of them being of a contributory nature and their financial implications. Such financial implications are both, for the contributors and for the State. Thus, it would be inadvisable to expand such beneficial schemes beyond their contours to extend them to employees for whom they were not meant for by the legislature.*

23.A Division Bench of this Court in which I was a part W.A.No.209 of 2016 & W.P.Nos.863 & 864 of 2015 dated 11.12.2023 in a similar issue had an opportunity to consider the same. The Hon'ble Apex Court in the aforesaid case has held an employee who had been in service at the time of implementation of the scheme, when had resigned would not be entitled to pension as per the terms of the scheme including the persons who had resigned earlier. The Hon'ble Apex Court in a larger bench had distinguished the scope of resignation and voluntary retirement and that the claim of the employees that their resignation should be treated as voluntary retirement should not be entertained.

24.The Hon'ble Division Bench had also held that the persons who had submitted their resignation cannot be entitled to claim that their resignation should be treated as voluntary retirement.

25.In view of the aforesaid discussions, reasonings & findings, I do not find any merit in the Writ Petition.

26.In fine, the Writ Petition is dismissed. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

22.12.2023

Index: Yes/No
Speaking order: Yes/No
Neutral Citation: Yes/No
pam

To

The General Manager,
Indian Overseas Bank,
Central Office,

762, Anna Salai,
Chennai – 600 002.

W.P.No.26227 of 2012
M.P.No.1 of 2012

K.KUMARESH BABU, J.

After pronouncing the orders, the learned counsel for the petitioners submitted that in the interregnum, the petitioners and the respondent bank entered into a Memorandum of Understanding on 09.11.2023. If such Memorandum of Understanding entered between the petitioners and the respondent bank, it is for the petitioners to approach the bank as per the Memorandum of Understanding.

22.12.2023

dpa

K.KUMARESH BABU, J.

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