IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	6/12/2023
Delivered on	19/6/2024

C O R A M

THE HONOURABLE Dr.JUSTICE D.NAGARJUN

Writ Petition No.40701 of 2015

T.V.Chakrapani ... Petitioner

Vs

1. Lakshmi Vilas Bank Limited
rep. By its Chairman and
Managing Director
Corporate Office
4 Sardar Patel Road
Guindy
Chennai 600 032.

2. The General Manager
H.R.Department
Lakshmi Vilas Bank Limited
Corporate Office
4 Sardar Patel Road
Guindy
Chennai 600 032.

3. Lakshmi Vilas Bank Pension Trust
rep. By its Managing Trustee
4 Sardar Patel Road
Guindy
Chennai 600 032. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for the issuance of a writ of mandamus to direct the respondents to sanction and pay pension to the petitioner with effect from 1/6/2012 together with interest thereon for arrears of pension treating the petitioner as having voluntarily retired on 31/5/2012 in accordance with Regulation 29 of Lakshmi Vilas Bank Limited (Employees) Pension Regulations as also 200 days privilege leave encashment.

For petitioner	...	Mr.V.Prakash Sr.Advocate for Mr.K.Krishnamoorthy
For respondents	...	Mr.G.Anandakrishnan for R.R.1 and 2 No appearance for R.3

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ORDER

This writ petition is filed for the issuance of a writ of mandamus directing the respondents to treat that the petitioner has retired voluntarily on 31/5/2012 in accordance with the Regulation under Clause 29 of Lakshmi Vilas Bank Limited (Employees) Pension Regulations of

1995 and consequently, to direct the respondents to sanction pension to the petitioner with effect from 1/6/2012 and to grant other benefits like leave encashment, etc.

2. The petitioner joined first respondent Bank/Lakshmi Vilas Bank Limited on 7/11/1990 as Probationary Clerk and was eventually promoted as Probationary Officer on 27/8/1999. The first respondent Bank has introduced Pension Scheme on 1/7/1994 which came into effect from 1/11/1993. The petitioner has opted for Pension Scheme on 23/2/2011. He has repaid 2.8 times of basic pay on 29/3/2011 and repaid Provident Fund loan (Employer Contribution) of Rs.2,94,691.90 on 31/3/2011. As per the letter, dated 30/4/2011, Bank has transferred Provident Fund Employer's contribution lying in the petitioner's account into Lakshmi Vilas Bank Limited (Employees) Pension Fund Account. As per Clause 29 of the Lakshmi Vilas Bank Limited (Employees) Pension Regulations, employees may voluntarily retire from service of the Bank on or after first day of November 1993, at any time, after completion of 20 years of qualified service, by giving three months notice in writing to the appointing authority. However, the said provision of voluntary retirement was not implemented by the first respondent Bank in

the year 2011. The petitioner was having personal difficulties, thereby, he has decided to voluntarily retire, but the Bank has not accepted any letter for voluntary retirement. In such circumstances, he gave a letter of resignation on 24/5/2012 by giving three months salary in lieu of notice and after accepting the said resignation, first respondent Bank relieved the petitioner from service with effect from 31/5/2012.

3. The petitioner has made repeated request for grant of pension, however, the same was rejected. Again on 25/5/2015, his request for grant of pension was rejected relying upon Clause 22 (1) of the Pension Regulations. According to which on resignation, entire past service stands forfeited. Aggrieved by the attitude of the first respondent Bank for not considering his letter of resignation as letter of voluntary retirement, this writ petition is filed.

4. Heard Mr.V.Prakash, Senior Advocate for the petitioner and Mr.G.Anandakrishnan, learned counsel for the respondents 1 and 2. There is no representation either in person or through counsel on behalf of the third respondent.

5. It is submitted by the learned counsel for the petitioner that the petitioner has completed 22 years of service and on account of personal reasons, he has submitted application as per Regulation 29 of the pension Regulations for voluntary retirement, thereby, his application shall not be considered as application for resignation.

6. It is further submitted that during the year 2011 – 2012, private banks did not implement Voluntary Retirement Scheme and refused to entertain any application. Similarly, first respondent Bank also did not entertain any voluntary retirement application under Pension Regulations, thereby, Management has been driving the employees to submit a letters of resignations by denying the benefit of voluntary retirement. As per the Regulation of the employees, those who have completed 20 years of service are entitled to apply for voluntary retirement and that the petitioner has completed 21 years and 7 months, thereby eligible for voluntary retirement.

7. The learned counsel appearing for the respondents 1 and 2 has filed a counter affidavit stating that Lakshmi Vilas Bank Limited was one of the private Banks and it was taken over by DBS Bank India Limited

with effect from 27/11/2020. The writ petition is not maintainable against the first respondent Bank as the first respondent Bank is a private entity will not fall within the definition of Article 12 of the Constitution of India and the first respondent Bank is not a State and that no writ will lie against the private Banks.

8. It is further mentioned in the counter affidavit that even the Institutions which are amenable to writ jurisdiction, writ petition would be maintainable only if public duty is sought to be enforced and that as per the pleadings, there is no averment of violation of constitutional or statutory right, thereby, writ petition is not maintainable.

9. It is further mentioned in the counter affidavit that in the year 2011, petitioner has opted for pension, however, in the year 2012, with effect from 31/5/2012, petitioner has resigned from service as the petitioner has obtained lucrative job offer in abroad. As per Regulation 22 (1) of The Lakshmi Vilas Bank Limited (Employees) Pension Regulations, 1995, an employee who resigns from the service of the respondent Bank, forfeits his right for pensionary benefits, thereby, the petitioner who has resigned from the service has no right of pensionary

benefits.

10. As per Regulation 29 (1) of the Lakshmi Vilas Bank Ltd (Employees) Pension Regulations, 1995, option is available to the petitioner for opting Voluntary Retirement Scheme. However, the petitioner has not given any such application. It is further mentioned that as per Regulation 22, any employee, who resigns has to give three months notice, however, the petitioner does not want to stay for three more months and he has paid three months salary to the Department along with the letter of resignation and requested to relieve him immediately.

11. The respondents have filed additional counter stating that between January 2010 and November 2021, about 212 employees have left the service under Voluntary Retirement Scheme. The first and second respondents have enclosed the list of 212 employees have left the service under Voluntary Retirement Scheme. The respondents have enclosed the list of 212 persons who have filed Voluntary Retirement Scheme.

12. It is submitted by the learned counsel for the petitioner that

though the petitioner has opted for Pension Scheme, on account of his resignation submitted, subsequently, the service of the petitioner was forfeited and thereby, he will not get any pensionary benefits.

13. Heard both sides and perused the materials available on record.

14. As per the Pension Scheme of Lakshmi Vilas Bank Limited, dated 1/7/1994, an employee who has completed 20 years of qualifying service, after giving three months notice in writing to the competent authority may be permitted to seek voluntary retirement subject to acceptance of competent authority. According to the learned counsel for the petitioner, Voluntary Retirement Scheme was introduced as per agreement of the Settlement dated 29/10/1993 between IBA and other All India Unions/Associations and according to the said settlement, with effect from 1/11/1993, Pension Scheme was introduced. For those who have not opted earlier, one more opportunity was given as per 9th Bipartite Settlement in 2011. Therefore, it is the contention of the petitioner that though the Settlement was made between IBA and other All India Unions/Associations, the first respondent Bank has failed to implement the said Scheme.

15. It is the submission of the learned counsel for the respondents 1 and 2 that the first respondent Bank is not under the obligation to implement the Voluntary Retirement Scheme. Added to it, as already observed, as per the Pension Scheme dated 1/7/1994, an employee who completes 20 years of service is entitled to seek voluntary retirement. That means irrespective of the fact that whether there is a Scheme as per the agreement between Union and the Management, Pension Scheme dated 1/7/1994 provides for taking voluntary retirement.

16. It is the contention of the petitioner that first respondent Bank has never permitted the employees to avail the benefit of voluntary retirement as per Pension Scheme dated 1/7/1994 and thereby, the petitioner was forced to submit resignation and hence sought for considering the said resignation as application for voluntary retirement.

17. In order to contradict the petitioner's contention, learned counsel appearing for the respondent has submitted that the first respondent Bank has permitted around 212 employees retired voluntarily during the period January 2010 and November 2021. In fact, he has filed the list of all 212

employees who have taken voluntary retirement on various dates. The said list is enclosed to the additional counter affidavit of the respondents. On going through the said list, it is clear that about 212 employees have opted for voluntary retirement. Therefore, the contention of the petitioner that since the Voluntary Retirement Scheme is not being implemented by the employee or respondent Bank, the petitioner has forced to submit the resignation, cannot be accepted.

18. The relevant portion of the resignation letter, dated 24/5/2012 of the petitioner is extracted hereunder:-

> "I am constraint to submit my resignation letter due to personal reasons.
>
> I am very much thankful to our esteemed organisation which has grown me to this level in past 21 years. I thank the management superiors and colleagues for the opportunities provided to me for the professional and personal development.
>
> As per the service agreement, I am enclosing three months basic pay in lie of three months notice

period. I am enclosing herewith D.D.No.419170 dated 24/5/2012 for Rs.84,300/- (Rupees Eighty four thousand three hundred only) drawn on Karur Main Branch, which is my three months basic pay.

I request you to relieve me before 31/5/2012.

I request you to provide experience certificate along with relieving order."

19. On going through the letter, it is clear that the petitioner has submitted the letter of resignation consciously and he has made it clear in the said letter that he was constrained to submit the resignation letter on account of personal reasons. If really the petitioner has submitted resignation on account of not permitted the petitioner by the respondents to retire voluntarily, then in the resignation letter, he must have stated that since he was not being allowed to retire voluntarily, he is submitting the resignation letter. In the entire letter, he has not whispered anything about his intention of voluntary retirement. The petitioner who is a Bank Officer having worked for more than 20 years is expected to be conscious enough to understand the implications of resignation including the fact that he will not get pension.

20. The petitioner was relieved from service with effect from 31/5/2012, as requested by the petitioner in the resignation letter. In normal course, the resignation will come into effect only after three months notice. In the case on hand, petitioner has deposited a Demand Draft for a sum of Rs.84,300/- towards three months salary. If really he has no intention in submitting the resignation, he should not have paid three months salary. The petitioner was informed by the Bank as per letter dated 8/4/2013 that the petitioner was resigned and relieved from the Bank, thereby, the petitioner is not entitled for the pension.

21. Another letter dated 25/5/2013 was addressed to the petitioner stating that as per 22 Clause (1) of the Lakshmi Vilas Bank Limited Employees Pension, 1995, on account of resignation, petitioner is not entitled for pensionary benefits.

22. It is submitted by the learned counsel for the petitioner that since the petitioner has opted for the pension scheme on 23/3/2011, he has repaid 2.8 times on basic pay on 23/3/2011 repaid the P.F loan amount of Rs.2,94,691/- and that the Bank has transferred the P.F Employees

Contribution lying in P.F account to Lakshmi Vilas Bank Limited (Employees) Pension Fund Account. It is true that the petitioner has in fact given option for pension on 23/2/2011 however, even it is an admitted fact that the petitioner has submitted a letter of resignation on 24/5/2012 that means after more than a year of opting for the Pension Scheme, the petitioner has resigned from service. Once the petitioner is resigned from service, as per Regulation 22 (1), he is not entitled for pensionary benefits. Therefore, even though the petitioner has opted for Pension Scheme, on 23/2/2014, on account of his submitting the resignation on 24/5/2012, petitioner is not entitled for any pension.

23. In view of the above letter submitted by the petitioner on 24/5/2012 in which the petitioner has unequivocal terms has mentioned that he is submitting the resignation and the same cannot construed as letter for voluntary retirement. In such a view of the matter, this Court finds there is no merits in the writ petition.

24. Accordingly, this writ petition is dismissed. No costs.

19/6/2024

mvs.

Index: Yes/No

Neutral Citation: Yes/No

Dr.D.NAGARJUN,J

mvs.

Pre-delivery order in
W.P.No.40701 of 2015

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