

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 30TH DAY OF JULY 2012

PRESENT

THE HON'BLE MR.VIKRAMAJIT SEN, CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE ARAVIND KUMAR

WRIT APPEAL Nos.2956-2977/2012 (S-RES)

BETWEEN:

VIJAYA BANK
A BODY CONSTITUTED UNDER
THE BANKING COMPANIES (ACQUISITION AND
TRANSFER OF UNDERTAKINGS) ACT, 1980,
REPRESENTED BY ITS
GENERAL MANAGER (PERSONNEL),
HEAD OFFICE, 41/2, M.G.ROAD,
BANGALORE-560001
NOW REPRESENTED BY ITS
CHIEF MANAGER (PER-IRD)
SRI GUNA SINGH.

..... APPELLANT

(BY SRI S.S.RAMDAS, SENIOR COUNSEL
FOR M/S. SUNDARSWAMY & RAMADAS ADVOCATES)

AND:

1. SRI C. NARASIMHAPPA
S/O SRI CHALLA PEDDA NARASIMHAPPA
AGED ABOUT 62 YEARS,
R/A NO.3, EC-158, III 'E' CROSS,
KASTHURINAGAR, EAST OF NGEF,
BANGALORE-560043

2. SRI D. VENKATARAMANA REDDY
S/O. D. RAGHUNATHA REDDY
AGED ABOUT 55 YEARS,
R/A FLAT NO.301, BRUNDAVANAM,
PLOT NO.252 & 253, KALYAN NAGAR,
OPP. RELIANCE FRESH,
HYDERABAD-500038
3. SRI. LAXMAN RAO, S/O SRI V. S. SARMA
AGED ABOUT 54 YEARS,
R/A B-311, SIDDAM SETTY TOWERS,
STREET NO.5, JAWAHAR NAGAR,
NEAR BAKARAM, HYDERABAD-5000 20
4. SRI S. NARAYANAN S/O SRI A.R. SWAMINATHAN
AGED ABOUT 62 YEARS,
R/A NO.32, RATHNA NAGAR,
I FLOOR, VIRUGAMBAKKAM
CHENNAI-600 600
5. SRI M.S. GOVINDAN, S/O I. SANKARA MENON
AGED ABOUT 63 YEARS,
R/A NO.6-C, CAPITAL SYMPHONY,
KANATTUKURA, WEST FORT,
THRISUUR-680 011
6. SRI VIJAY MATHUR S/O SRI T.N. MATHUR
AGED ABOUT 63 YEARS,
R/A NO.B-11/122, SRINATHJI VIHAR,
538, SITAPUR ROAD, MIRALA NAGAR
EXTENSION, LUCKNOW-226 020
7. SRI K.RAMDAS KAMATH
S/O SRI .KUNDU KAMATH
AGED ABOUT 63 YEARS,
R/A KT-133/A, 4TH CROSS,
MARIGOWDA LAYOUT,
MANDYA-571 401

8. SRI RAJKUMAR CHOPRA
S/O SRI SANTRAM CHOPRA
AGED ABOUT 64 YEARS,
R/A EE-1, PANJ PEER ROAD,
JALLANDHAR CITY, PUNJAB
9. SRI B.S.N. ARADHYA
S/O SRI SHAMBU SOMA ARADHYA
AGED ABOUT 61 YEARS,
R/A NO.5, T BLOCK, 7 TREASURY BAGADI,
II STREET, MYSORE-570 026
10. SRI. L. SUBRAMANIAN
S/O SRI NILATCHUMANAN
AGED ABOUT 62 YEARS,
R/A PLOT NO.161, DOOR NO.17,
SINDHU APARTMENTS, GROUND FLOOR,
6TH STREET, KUMARAN COLONY,
VADAPALANI, CHENNAI-600026
11. SRI RAVIRAJA SHETTY
S/O SRI ANNAPPA HEGDE
AGED ABOUT 63 YEARS,
R/A GUDDI HOSEMANE,
TEMPLE ROAD, SHIRURU-576 228
KUNDAPUR TALUK,
DAKSHINA KANNADA DISTRICT
12. SRI P.V. RAMAKRISHNAN
S/O SRI KAMMARAN NAIR
AGED ABOUT 62 YEARS,
R/A SOUPARNIKA, CHUNGAM,
ERANHOLI, THALASSERY-670 107
13. SRI T.R. KALLURAYA S/O T.V. KALLURAYA
AGED ABOUT 62 YEARS,
R/A KRUPA KIRANA,
NO.3/1190, C.T.O ROAD,
DARBE PUTTUR-574 202
DAKSHINA KANNADA DISTRICT

14. SRI. GAJANAN RAO YERUDOOR
S/O SRI RAMANANDA RAO YERUDOOR
AGED ABOUT 59 YEARS,
R/A FLAT NO.331, SRI NIKETH,
M.S.R COLLEGE ROAD,
MATHIKERE, BANGALORE-560054
15. SRI M. BALAKRISHNA

S/O SRI B. THAMMAIAH SHERIGAR
AGED ABOUT 61 YEARS,
R/A NO.3-65/48, GAUTHAM,
I MAIN, LOHIT NAGAR, ASHOKNAGAR POST,
MANGALORE-575 006
DAKSHINA KANNADA DISTRICT
16. SRI V. KRISTAPPA SHETTY
S/O SRI PINIYA SHETTY
AGED ABOUT 61 YEARS,
R/A LAKSHMI SADANA, VAKWADY,
KUNDAPUR TALUK, UDUPI DISTRICT-576 237
SOUTH KANARA DISTRICT
17. SRI K. GOVINDA PRABHU
S/C SRI K. NARAYANA PRABHU
AGED ABOUT 61 YEARS,
R/A NO.302, D BLOCK,
DEEPIKA RESIDENCY,
NAGAVARA PALYA MAIN ROAD,
C.V.RAMAN NAGAR, BANGALORE-560093
18. SRI K. KARIAPPA S/O SRI KARIAPPA
AGED ABOUT 59 YEARS,
R/A NO.14/1, 4TH MAIN ROAD,
PALACE GUTTAHALLI,
BANGALORE-560003
19. SRI KRISHNA B. GUJLAN
S/O SRI A.B. KUNDER
AGED ABOUT 64 YEARS,

R/A NO.793, GOKULA,
37TH MAIN, 17TH C CROSS,
J.P.NGAR VI PHASE,
BANGALORE-560078

20. SRI P. SRINIVAS BHAT
S/O SRI GAUTHAM BHAT
AGED ABOUT 59 YEARS,
R/A FLAT NO.369, BLOCK-I,
II FLOOR, MAHAVIR WILLOW,
KENGARI SATELLITE TOWN,
BANGALORE-560020
21. SRI RAMESH HEJMADI
S/O SRI H.T. GURURAJA RAO
AGED ABOUT 59 YEARS,
R/A FLAT NO.4, NO.29,
I CROSS, NEHRU NAGAR,
BANGALORE-560020
22. SRI C.A. SUNDARA S/O SRI C. ANJANAPPA
AGED ABOUT 65 YEARS,
R/A NO.7, II FLOOR,
4TH CROSS, GANDHINAGAR,
BANGALORE-560009

... RESPONDENTS

(BY SRI P.S.RAJAGOPAL, SENIOR COUNSEL
FOR M/S. P.S.RAJAGOPAL ASSOCIATES, ADVOCATE)

These Writ Appeals are filed under Section-4 of the Karnataka High Court Act, praying to set aside the order passed in Writ Petition Nos.24158 to 24160/2011 and Writ Petition No.24162 to 24180/2011 (S-Res) dated 18.04.2012.

These Writ Appeals having been heard and reserved for pronouncement of judgment, this day, **the Chief Justice** pronounced the following :

J U D G M E N T

Vikramajit Sen, C.J.

These Appeals challenge the correctness of the Order dated 18.04.2012 passed in Writ Petition Nos.24158-24160/2011 and W.P 24162-24180/2011 by the learned Single Judge who was pleased to issue *certiorari* quashing clause 7 of Circular No.10191 dated 07.09.2010. Succinctly stated, this clause denied pensionary benefits to the Writ Petitioners (who are the Respondents before us) on the grounds that they had resigned from the services of the Vijaya Bank. All the Respondents had completed 20 years of qualifying service and were therefore eligible to voluntarily 'retire' from their employment in Bank. The learned Single Judge was of the opinion that the dispute stood determined by the decision in **Sheelkumar** Jain -Vs- New India Assurance Co. Ltd. AIR 2011 SC 2990. The learned Single Judge also placed reliance on the decision of the Division Bench of this Court in Smt. Satya Srinath -Vs- Syndicate Bank ILR 2003 KAR 2605. It is obvious that the learned counsel had not brought it to the notice of the learned Single Judge that the decision of the Division Bench had been affirmed by the Apex

Court in Syndicate Bank, Bangalore –Vs- **Satya Srinath**, (2009)
16 SCC 422.

2. The contention of the learned Senior Counsel for the Appellant-Bank is that the Writ Petitioners were not entitled to opt for pension scheme/benefits because of the then extant Rules and Regulations so prohibited, since at some point of time in their services they had participated in an 'illegal strike'. Our attention has been specifically directed towards clause 22 (1) (4) (b) of the Vijaya Bank (Employees') Pension Regulations, 1995 (for brevity "Regulations 1995") which reads thus:

"22. Forfeiture of Service –

(1) Resignation or dismissal or removal or termination of an employees from the service of the Bank shall entail forfeiture of his entire past service and consequently shall not qualify for pensionary benefits;

xxxx

(4) (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”.

We are not persuaded that this clause has relevance for the resolution of the dispute before us which pertains to the benefits that would enure to such employees on the cession of their services. Clause 20 (2) merely prescribes the procedure to be followed in the event that an employee is desirous of actually resigning from the services of the Appellant-Bank. The Regulations 1995 do not define resignation but retirement has been dealt with in these words –

“2. Definition:-

(y) ‘retirement’ means cessation from Bank’s service:-

- (a) on attaining the age of superannuation specified in Service Regulations or Settlements;
- (b) on voluntary retirement in accordance with the provisions contained in Regulation 29 of these Regulations;
- (c) On premature retirement by the bank before attaining the age of

superannuation specified in Service Regulations or Settlement”.

3. The learned Senior Counsel for the Respondents sought to support his submission on UCO Bank -Vs- **Sanwar Mal**, AIR 2004 Supreme Court 2135, wherein their Lordships had recognized that ‘resignation’ and ‘retirement’ have disparate connotations; that an employee can ‘resign’ at any point of time but, in contradistinction, can ‘retire’ only on completion of the prescribed period of qualifying service. It is trite that in instances where the Supreme Court has analyzed its previous decision, the interpretation imparted by the Bench to the earlier decision must be followed by all subordinate Courts. We therefore need to analyse **Sheelkumar** in which their Lordship had before them an identical clause which ordains thus:

“Forfeiture of Service: Resignation or dismissal or removal or termination or compulsory retirement of an employee from the service of the Corporation or a Company shall entail forfeiture of his entire past service and consequently shall not qualify for pensionary benefits”.

In **Sheelkumar, Sanwar Mal** and Reserve Bank of India –Vs- **Cecil Dennis Solomon** AIR 2004 SC 3196 were distinguished in the light of the fact that in those cases the Court was not called upon to differentiate between ‘resignation’ and ‘retirement’, whereas this was the kernel of the contention before them. Instead, reliance was placed on the previous decision in Sudhir Chandra Sarkar –Vs- Tata Iron and Steel Co AIR 1984 SC 1064 in which an employee who had resigned was nonetheless held entitled to payment of gratuity. Similarly, in Union of India –Vs- Lt. Colonel P.S. Bhargava AIR 1997 Supreme Court 565 the Apex Court had opined that if “an Officer has to his credit the minimum period of qualifying service, he earns a right to get pension and as the Regulations stand that right to get pension can be taken away only if an order is passed under Regulations 3 or 16”.

We are in no manner of doubt that the observations are to the benefit of the Respondents-Writ Petitioners and are against the Appellant-Bank. We think it to be facile and futile to contend that this decision is not applicable to the facts of the present case because the Respondent was the Insurance Company whilst

in the present case it is the Bank. As already noted, the relevant provisions are in *pari materia*. Reliance has been placed on both the dimensions before us on the following paragraph of **Sheelkumar** which we therefore extract below.

“13. 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. 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. 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.”

4. It is just and necessary to note that in 1993 an Industrial Settlement had been arrived at extending Pensionary benefits in lieu of Contributory Provident Fund which then existed. This Settlement envisaged that ex-employees would be eligible to opt for the Pension Scheme [which was on the same line as that was existing in the Reserve Bank of India] subject to their refunding the already received Contributory Provident Fund along with interest at the rate of 6% per annum. The Regulations 1995, which came to be published in September 1995, contained the draconian clause pertaining the forfeiture of entire past service of those employees who had participated in illegal strike(s). The majority of the employee could and therefore did not opt for the Pension Scheme and when parlays to remove this cause for unrest did not come to fruition, a strike call was made in 1997 leading to deletion of this clause in January 1998 by which time several employees had retired.

5. The learned Senior Counsel for the Appellant-Bank has sought to rely on the Division Bench ruling dated 02.09.2005 in W.A.No.314/2005 wherein no legal impropriety was found against the action of the Bank. We think it is to be unfair to

refer to this decision for the reason that a Special Leave Petition against the Judgment was filed and was Admitted. Eventually it was dismissed as withdrawn, since the management had acceded to the demands of the Union by deleting clause stipulating the forfeiture of entire service in the event of participation in an 'illegal strike'. The avowed objective of this change was to enable all the employees who had put in requisite qualifying service to seek retirement.

6. It is also noteworthy that attention of the learned Single Judge was not drawn to the decision of the Hon'ble Supreme Court in Syndicate Bank Bangalore -Vs- **Satya Srinath** upholding the decision of the Division Bench of this Court, which was duly reflected upon in the impugned Order. **Satya Srinath** was held by its employer, the Syndicate Bank, to have resigned by operation of a separate deeming Regulations. The employer, the Syndicate Bank did not hold any Disciplinary Enquiry and thus, the cession of services could not have been construed as punitive in nature. Once again the Apex Court emphasized the difference between 'resignation' and 'retirement' and directed that

since the respondent therein had put in 20 years of qualifying services, she was entitled to the benefits of the 'Pension Scheme'.

7. We must immediately pen down the circumstances in which the Writ Petitioners opted to 'resign' rather than 'retire'. At the material point of time, the Regulations debarred retirement where the concerned employees had participated in a strike. It is not disputed that from the very inception of its inclusion this clause was remonstrated against by the Unions, leading eventually to its withdrawal altogether. At that stage, the employees were given a second opportunity/option to opt for the pension scheme by returning the benefits already received by them and making pecuniary adjustment so as to fall in line with the pension formulations and calculation. Immediately, the Writ Petitioners had exercised the second option but it was the Bank which declined to admit them to the benefits of pension scheme. As in the other precedents, the fact that they had already put in requisite number of years of service qualifying them to pensionary benefits in accordance with the modified pension scheme, impel us likewise to hold them entitled to those benefits.

For these manifold reason we find no error whatsoever in the impugned Order. The Appeals are accordingly dismissed but we refrain from imposing costs.

Sd/-
CHIEF JUSTICE

Sd/-
JUDGE

Vr