IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 18th DAY OF APRIL, 2012

BEFORE

THE HON'BLE MR. JUSTICE H.N. NAGAMOHAN DAS

<u>W.P.Nos.24158-24160/2011 &</u> <u>W.P.Nos.24162-24180/2011 (S-RES)</u>

W.P.Nos.24158-24160/2011

BETWEEN:

- 1. Sri C.NARASIMHAPPA
 S/O Sri CHALLA PEDDA
 NARASIMHAPPA
 AGED ABOUT 61 YEARS
 RESIDING AT No.3, EC-158,
 JII 'E'CROSS, KASTHURINAGAR
 EAST OF NGEF,
 BANGALORE 560 043.
- 2. Sri D.VENKATARAMANA REDDY
 S/O D.RAGHUNATHA REDDY
 AGED ABOUT 54 YEARS
 RESIDING AT FLAT No.301,
 BRUNDAVANAM, PLOT No.252 & 253,
 KALYAN NAGAR, OPP.RELIANCE
 FRESH, HYDERABAD 500 038.

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3. Sri LAXMAN RAO
S/O Sri V.S.R.SARMA
AGED ABOUT 53 YEARS
RESIDING AT B-311,
SIDDAM SETTY, TOWERS,
STREET, No.5, JAWAHAR NAGAR,
NEAR BAKARAM,
HYDERABAD – 500 020.

... PETITIONERS

<u>W.P.Nos.24162-24180/2011</u> <u>BETWEEN</u>:

- 4. Sri S. NARAYANAN
 S/O Sri A.R.SWAMINATHAN
 AGED ABOUT 61 YEARS
 RESIDING AT No.32, RATHNA NAGAR
 I FLOOR, VIRUGAMBAKKAM,
 CHENNAI 600 600.
- 5. Sri M.S.GOVINDAN
 S/O I. SANKARA MENON
 AGED ABOUT 62 YEARS
 RESIDING AT No.6-C, CAPITAL
 SYMPHONY, KANATTUKURA,
 WEST FORT, THRISSUR-680 011.
- 6. Sri VIJAY MATHUR
 S/O Sri T.N.MATHUR
 AGED ABOUT 62 YEARS
 RESIDING AT No.B-11/122,
 SRINATHJI VIHAR, 538,
 SITAPUR ROAD, MIRALA NAGAR
 EXTENSION, LUCKNOW 226 020.

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- 7. Sri K.RAMDAS KAMATH
 S/O Sri KUNDU KAMATH
 AGED ABOUT 62 YEARS
 RESIDING AT KT-133/A, 4TH CROSS,
 MARIGOWDA LAYOUT,
 MANDYA 571 401.
- 8. Sri RAJKUMAR CHOPRA S/O Sri SANTRAM CHOPRA AGED ABOUT 63 YEARS RESIDING AT EE-1, PANJ PEER ROAD, JALLANDHAR CITY, PUNJAB.
- 9. Sri B.S.N. ARADHYA
 S/O Sri SHAMBU SOMA ARADHYA
 AGED ABOUT 60 YEARS
 RESIDING AT No.5, T BLOCK,
 7 TREASURY BAGADI, II STREET,
 MYSORE 570 026.

10.Sri L.SUBRAMANIAN
S/O Sri NILATCHUMANAN
AGED ABOUT 61 YEARS
RESIDING AT PLOT No.161,
DOOR No.17, SINDHU APARTMENTS
GROUND FLOOR, 6TH STREET,
KUMARAN COLONY, VADAPALANI
CHENNAI- 600 026.

11.Sri RAVIRAJA SHETTY
S/O Sri ANNAPPA HEGDE
AGED ABOUT 62 YEARS
RESIDING AT GUDDI HOSEMANE
TEMPLE ROAD, SHIRURU-576 228
KUNDAPUR TALUK,
DAKSHINA KANNADA DISTRICT.

12. Sri P.V.RAMAKRISHNAN S/O Sri KAMMARAN NAIR AGED ABOUT 61 YEARS RESIDING AT SOUPARNIKA CHUNGAM, ERANHOLI, THALASSERY – 670 107.

13.Sri T.R.KALLURAYA
S/O T.V.KALLURAYA
AGED ABOUT 61 YEARS
RESIDING AT KRUPA KIRANA
No.3/1190, CTO ROAD, DARBE
FUTTUR-574 202.
DAKSHINA KANNADA DISTRICT

14.Sri GAJANAN RAO YERUDOOR S/O Sri RAMANANDA RAO YERUDOOR AGED ABOUT 58 YEARS RESIDING AT FLAT No.331, Sri NIKETH, M.S.R. COLLEGE ROAD, MATHIKERE, BANGALORE – 560 054.

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15.Sri M.BALAKRISHNA
S/O Sri B.THAMMAIAH SHERIGAR
AGED ABOUT 60 YEARS
RESIDING AT 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 60 YEARS
RESIDING AT LAKSHMI SADANA
VAKWADY, KUNDAPUR TALUK,
UDUPI DISTRICT-576 237
SOUTH KANARA DISTRICT.

17.Sri K.GOVINDA PRABHU
S/O Sri K.NARAYANA PRABHU
AGED ABOUT 60 YEARS
RESIDING AT No.302, D BLOCK,
DEEPIKA RESIDENCY, NAGAVARA
PALYA MAIN ROAD, C.V.RAMAN
NAGAR, BANGALORE – 560 093.

18.Sri K.KARIAPPA
S/O Sri KARIAPPA
AGED ABOUT 58YEARS
RESIDING AT No.14/1, 4TH MAIN
ROAD, PALACE GUTTAHALLI,
BANGALORE – 560 003.

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19.Sri KRISHNA B.GUJRAN
S/O Sri A.B.KUNDER
AGED ABOUT 63 YEARS
RESIDING AT No.793, GOKULA
37TH MAIN, 17TH C CROSS, J.P.
NAGAR VI PHASE,
BANGALORE – 560 078.

20.Sri P.SRINIVAS BHAT, S/O Sri GAUTHAM BHAT AGED ABOUT 58 YEARS RESIDING AT FLAT No.369, BLOCK-I, II FLOOR, MAHAVIR WILLOW, KENGERI SATELLITE TOWN, BANGALCRE – 560 060.

21.Sri RAMESH HEJMADI S/O Sri H.T.GURURAJA RAO AGED ABOUT 58 YEARS RESIDING AT FLAT No.4, No.29, I CROSS, NEHRU NAGAR, BANGALORE – 560 020.

22.Sri C.A.SUNDARA
S/O Sri C.ANJANAPPA
AGED ABOUT 64YEARS
RESIDING AT No.7, II FLOOR
4TH CROSS, GANDHINAGAR,
BANGALORE – 560 009.

.. PETITIONERS

(By Sri M.N.PRASANNA, ADV.)

AND:

VIJAYA BANK
A BODY CONSTITUTED UNDER THE
BANKING COMPANIES (ACQUISITION
AND TRANSFER OF UNDERTAKING)
ACT, 1980, REPRESENTED BY ITS
GENERAL MANAGER (PERSONNEL)
HEAD OFFICE, 41/2, M.G.ROAD,
BANGALORE – 560 001.

RESPONDENT

(By MISS SNEHA NAGARAJ, ADV., FOR Sri PRADEEP S.SAWKAR, ADV.)

THESE WRIT PETITIONS FILED U/A 226 & 227 OF CONSTITUTION OF INDIA PRAYING TO QUASH CLAUSE-7 OF CIRCULAR No.10191 DATED 07.09.10 UNDER ANNEXURE-L AND ETC.

THESE PETITIONS HAVING BEEN HEARD AND RESERVED FOR ORDERS, THIS DAY, H.N.NAGAMOHAN DAS. J, PRONOUNCED THE FOLLOWING:

ORDER

In these writ petitions the petitioners have prayed for a writ in the nature of certiorari to quash Clause-7 of Circular No.10191 dated 7.9.2010, Annexure-L, the endorsement dated 2.11.2010, Annexures-M to M.4, endorsement dated 3.11.2010, Annexures-

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M5 and M6 and endorsement dated 10.11.2010, Annexure-M7 and for other reliefs.

- 2. Between 1971 and 1982, petitioners joined the service of respondent bank as Clerks. After completing 20 years of service, petitioners resigned from the service. On 27.3.2007, the respondent bank accepted the resignations tendered by the petitioners without any condition and relieved them from service. The service condition of the petitioners and the respondent bank was governed by settlements from time to time entered into between the recognised trade unions representing the bank employees and the management of respondent bank.
- 3. When the petitioners joined the service of respondent bank there were only two retiral benefits i.e., contributory provident fund and gratuity. There was a persistent demand from the employees of the bank for introduction of pension as a third

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retiral benefit. Finally in a bipartite meeting between the Indian Banks' Association representing the management of Banks and trade unions of bank employees held on 21.10.1993 agreed to extend the benefit of pension scheme in the pattern of RBI pension scheme with agreed improvements. Thereafter on 29.10.1993 there came to be a settlement agreeing to introduce the pension as a second retirement benefit in lieu of contributory provident fund w.e.f. 1.11.1993. Clause 5 of this settlement specifies that employees voluntarily retiring after 20 years of completed service as per provisions to be incorporated in the scheme will get proportionate pension. Long thereafter the respondent bank notified the regulations called Vijaya Bank (Employees') Pension Regulations, 1995. Some of the clauses in the regulations were contrary to the earlier settlement. On this ground the trade union of the employees agitated against the respondent bank.



prolonged negotiations and correspondence, the pension regulations came to be amended deleting certain clauses.

Though the pension regulations came into force on 4. 1.11.1993, the implementation was delayed on account of introduction of certain clauses contrary to the settlement and agitation by the trade unions. In the circumstances, the petitioners and some of the similarly placed employees did not give their options for pension. In this connection, the matter went up to the Supreme Court. Finally on 25.2.2008, a memorandum of understanding was signed between the Indian Banks' Association and the negotiating trade unions to extend similar option for pension to those who did not opt for pension when the pension regulations were implemented in the year 1995. Subsequently, on 27.4.2010 a settlement was signed. Consequent to this settlement the respondent bank issued a Circular dated 7.9.2010 as per



Annexure-L. In terms of this Circular petitioners submitted their options for pension within time. The respondent bank rejected the options exercised by the petitioners under the impugned endorsements M to M7 on the ground that under clause-7 in the circular, Annexure-L the petitioners who have resigned from service are not entitled for pension. Therefore the petitioners are before this court calling in question clause-7 of the circular, Annexure-L and the endorsement Annexures-M to M7.

- 5. Heard arguments on both the side and perused the entire writ papers.
 - 6. Clause -7 in the circular reads as under:

"This option to join the Pension Scheme shall not be extended to those employees (Officers & Award Staff) who



ceased to be in the service of the Bank in any manner other the categories mentioned herein above."

- 7. The Supreme Court in Sheelkumar Jain v. New India Assurance Co. Ltd, AIR 2011 SC 2990 and it is held as under:
- 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 of 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.

8. A Division Bench of this Court in Smt.Satya Srinath vs Syndicate Bank, ILR 2003 KAR 2605 held as under:

In deciding the entitlement of an employee for pension and other pensionary benefits, the Court should necessarily bear in mind the well settled position in law that where an employee put in more than minimum qualifying service for pension under the relevant Regulations or the Rules, even incase of resignation after putting in the qualifying service, the employee would be entitled to pension and otherwise the rule denying the pension merely on the ground that the employee has resigned even though the employee has putin required service prescribed under the relevant Regulations or the Rules, will be violative of Article 14 postulates and the provision of Article 16 of the Constitution. In holding so, we may derive support from the judgments of the Apex Court in UNION OF INDIA vs D.R.R.SHASTRI and in UNION OF INDIA



vs LT.COL.T.S.BHARGHAVA. Further the pension Regulations nowhere exclude deemed voluntarily retires from entitlement to pension. The Supreme Court in the case of COMMISSIONER OF INCOME TAX vs MYSODET PRIVATE LIMITED held that under a deemed clause unless exclusion is specific and categorical, no exclusion could be inferred or imposed or read into.

- 9. Keeping the law declared by the Apex court and this court in the decisions referred to supra, the facts in the present case are to be examined. It is not in dispute that petitioners have put in more than 20 years of qualifying service in the respondent bank. Merely because the petitioners have resigned from service is not a ground to deny the pension. Therefore, the impugned clause in the circular and also the impugned endorsements are liable to be quashed.
- 10. Learned counsel for the respondents relying on two decisions of the Supreme Court reported in AIR 2004 SC 2135 and



AIR 2004 SC 3196 contend that an employee tendering resignation not entitled for pension. These two decisions are considered and distinguished by the Supreme Court in the case of Sheelkumar Jain Vs. The New India Assurance Co. Ltd., and others, AIR 2011 SC 2990. Therefore the decision relied on by the learned counsel for the respondent will not be useful to address the controversy involved in the present case on hand.

11. For the reasons stated above, the following:

<u>ORDER</u>

- <u>I.</u> Writ petitions are hereby allowed.
- II. The impugned clause no.7 of Circular No.10191 dated 7.9.2010 as per Annexure-L and endorsements as per Annexures-M to M7 are hereby quashed.

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- III. Petitioners are entitled for pension as per the pension regulations of the respondent bank.
- IV. Respondents to calculate and to extend the benefit of pension to the petitioners.

Sd/. IUDGE

DKB.