

(2013) 09 KL CK 0061

High Court Of Kerala

Case No: WP (C) . No. 2409 of 2011 (A)

Vijaya Bank Retirees" Association

APPELLANT

Vs

Vijaya Bank

RESPONDENT

Date of Decision: Sept. 25, 2013

Hon'ble Judges: A.M. Shaffique, J

Bench: Single Bench

Advocate: T.M. Mohammed Youseff, Sri. P.A. Aziz, Sri. I.G. Manoharan, Sri. N.N. Pankajakshan and Smt. P. Dhanya, for the Appellant; D. Krishna Prasad, Smt. O.K. Santha and Smt. S. Santhy, for the Respondent

Final Decision: Disposed Off

Judgement

A.M. Shaffique, J.

This writ petition is filed by Vijaya Bank Retiree"s Association challenging Ext. P10 order passed by the Chairman and Managing Director of the Bank denying their members the benefit as per Regulation 29(5) of the Vijaya Bank (Employees) Pension Regulations 1995 (hereinafter referred as "Pension Regulations"). The facts as disclosed would indicate that the respondent Bank had implemented a scheme as Vijaya Bank Special Voluntary Retirement Scheme, 2000 (for short "VRS 2000"). In Regulation 29(5) of Pension Regulations it was indicated that persons who had completed 20 years of service at the time of opting for VRS scheme and consequently had become pensioners are entitled to addition of five years notional service for calculating the length of service for pension benefits.

2. According to the petitioner, the persons who had opted for VRS 2000 were entitled for the benefits under Regulation 29(5) of the Pension Regulations as well in addition to the benefits that were provided under the VRS 2000. The VRS 2000 is produced as Ext. P3 and the relevant portion of Pension Regulation is produced as Ext. P3(a).

3. It is further contended that claiming the aforesaid benefits, similarly placed persons who were working in different banks had approached various courts in India and ultimately the Supreme Court in the judgment in [Bank of India and Another Vs. K. Mohandas and Others](#), opined that the employees who had completed 20 years of service and who were pension optees and who had offered voluntary retirement under the VRS 2000, whose offers were accepted by the respondent banks were entitled to addition of five years of notional service in calculating the length of service for the purpose of that scheme as per Regulation 29 (5) of the Pension Regulations of 1995. Ext. P4 is the said judgment. Thereafter, a few of the employees of Vijaya Bank had filed writ petitions before the High Court of Bombay and the High Court of Bombay relying upon the judgment in Mohan Das's case directed the respondent Bank to provide the additional five years qualifying service for fixation of pension in terms of Regulation 29(5) of the aforesaid Regulations. This came to be challenged by the respondent Bank and the matter is now pending before the Supreme Court. At this stage, the petitioner Association approached this Court after filing a representation before the Chairman and Managing Director of the respondent Bank and by judgment dated 14/12/2009 in W.P.C. No. 36026/2009 this Court directed the Chairman and Managing Director of the respondent to consider the said representation, which resulted in Ext. P10 order. In Ext. P10 order, the CMD formed an opinion that the VRS 2000 and the Pension Regulations are to be considered independently and that apart when the matter is pending before the Supreme Court and the SLP is already admitted, the petitioner association is not entitled to file a separate writ petition claiming the same benefits. Exts. P14 and P15 are circulars issued denying the benefits of Regulation 29(5) to the VRS 2000 optees.

4. Counter affidavit is filed by the respondent Bank inter alia supporting the stand taken in Ext. P10. According to them, the VRS 2000 cannot be clubbed with the benefit given in the Pension Regulations of 1995. The VRS 2000 provides for various benefits which are not available in terms of the voluntary retirement under Regulation 29 of the Pension Regulations 1995. Therefore, according to them, the VRS, 2000 has to be considered independently and no further benefits other than what is stated therein can be claimed by the employees of the respondent bank. That apart it is contended that since the matter is pending before the Supreme Court and the petitioner association had already intervened in the said proceedings it is not proper for this Court to enter into a finding regarding the said claim.

5. Having referred to the above factual situation, the question to be considered is whether the members of the petitioner association are entitled for the very same benefits that had been directed to be given by the Supreme Court in Mohandas' case and thereafter by the Bombay High Court in a writ petition filed by three similarly placed persons. Ext. P4 is the judgment in Mohandas's case and there cannot be any doubt regarding the proposition laid down therein. Supreme Court held that the employees who had completed 20 years of service and had opted for

VRS 2000, which were accepted by the bank are also entitled for the five year additional qualifying service in terms of Regulation 29(5) of Pension Regulations for the purpose of calculating their pension. Taking into account the law laid down by the Supreme Court in Mohandas's case, I have no hesitation to hold that, the said case squarely applies to the facts in the present case.

6. But the fact remains that when the Bombay High Court relied upon the said judgment and applied the same to a factual situation that is similar to this case, on an appeal filed by the bank as SLP No. 20521/2009, the Supreme Court had admitted the Special Leave Petition. The question would be whether it would be open for this Court to direct the respondent Bank to comply with the directions in view of the judgment of the Supreme Court, in Mohandas's case.

7. At this stage, this Court can only apply the judgment in Mohandas's case to the facts of the present case as the respondent Bank is unable to point out any difference in the nature of the VRS 2000 as well as the Pension Regulations which was considered by the Supreme Court. No material is produced to show that the VRS 2000 and the Pension Regulations which were considered by the Supreme Court in Mohandas's case were different from the VRS 2000 and Pension Regulations that is the subject matter of the present case. Therefore, as matters stand now, the principle laid down in Mohandas's case squarely applies and Exts. P14 and P15 circulars will not stand in the way of the petitioners' claim. In the event of the SLP being rejected by the Supreme Court, necessarily Mohandas's case would apply to the factual situation herein as well and the members of the petitioner association are entitled for the benefits arising out of the said judgment. Hence, there is no legal impediment for the respondent Bank to apply the principle of law laid down in Mohandas's case. However, when the bank themselves have challenged the decision of the Bombay High Court in Writ Petition No. 1103/2001 and the SLP is admitted by the Supreme Court, the grievance of retirees association can always wait till a decision is taken in the matter by the Supreme Court. Therefore any direction issued in this case would be subject to the result of the SLP pending before the Supreme Court.

8. The respondent Bank has a case that the writ petition has to be rejected on the ground of delay and laches on the part of the members of the petitioner association in approaching this Court as the VRS 2000 was announced in the year 2000 and the members of the petitioner association had availed the benefit of the scheme during the same period. Having opted the scheme as visualised by the respondent bank, it is not open for the association to take up their cause after eleven years. It is not in dispute that the issue involved is regarding the benefit that would accrue to an optee of VRS 2000 which had been accepted by the bank. One of the benefits granted under the scheme was pension as per the Pension Regulations. It is the settled position of law that a claim for pension is a continuing cause of action, it cannot be held that the right of pensioners is lost merely for the reason that they

have kept quite for several years altogether. It is not an instance where large number of persons will be affected on the re-computation of the pension amount. The subject matter of the writ petition is for re-fixing the pension on the basis of the benefit of additional qualifying service in terms of Regulation 29(5) of the Pension Regulations. I am of the view that the failure to pay pension as per VRS 2000 read with Regulation 29(5) is a continuing wrong and therefore delay in filing the writ petition will not stand in the way of the petitioner association making the claim as aforesaid.

9. Hence I am of the view that a declaration can be given in the matter, but the same will be subject to the result in the SLP pending before the Supreme Court. In the result, the writ petition is disposed of as under.

i) Ext. P10 is quashed.

ii) The members of the petitioner Association who have completed 20 years of service and opted for VRS, 2000, and accepted by the bank are also entitled for the benefit of Regulation 29(5) of the Pension Regulations in order to enable them to add five years of qualifying service. However, the recalculation of the pension on this basis shall be subject to the final outcome of the judgment in SLP No. 20521/2009 pending before the Supreme Court and the members of the petitioner association can make a claim for the increased pension only after disposal of the said Special Leave Petition.