

(2025) 04 KL CK 1288
In the High Court Of Kerala
Case No : Writ Appeal No.976 Of 2015

The General Manager (Personal)

APPELLANT

Vs

V.T.Radhakrishnan

RESPONDENT

Date of Decision : 01-04-2025

Acts Referred:

Constitution of India, 1950 — Article 226

Kerala High Court Act, 1958 — Section 5(i)

Life Insurance Corporation of India (Employees) Pension Rules, 1995 — Rule 23

Citation : (2025) 04 KL CK 1288

Hon'ble Judges : Anil K.Narendran, J;Muralee Krishna S., J

Bench : Division Bench

Advocate : K.Anand, Joseph Sebastian Parackal, Latha Krishnan,
M.N.Radhakrishna Menon, B.Bipin, R.Reji, M.V.Thamban, Thara Thamban

Final Decision : Allowed

Judgement

Muralee Krishna, J.

1. This is an intra-court appeal filed under Section 5(i) of the Kerala High Court Act, 1958, by the respondents in W.P.(C)No.20291 of 2011 challenging the judgment dated 02.02.2015 passed by the learned Single Judge, whereby the writ petition filed by the respondent herein was allowed directing the 2nd appellant Bank to admit the respondent as a member of the Pension Scheme and disburse consequential benefits to him with effect from 27.04.2010. The respondent was further directed to refund the entire amount as contemplated under Ext.P5 to the Bank within six weeks.

2. The writ petition was one filed by the respondent herein under Article 226 of the Constitution of India seeking the following reliefs:

"i) to issue a writ of Certiorari, calling for the records leading upto Exhibit P11 and quash Exhibit P7 and P11. ii) to issue declarations as follows:-

(a) Though petitioner used the word 'resignation' in Exhibit P2 request to relieve

from the service due to health reason, the nature of the request is definitely seeking permission' from the Bank authorities to relieve him from the duty which is in effect, a case of Voluntary Retirement. Hence turning down the request of the petitioner for treating Exhibit P2 as a request for voluntary retirement by Exhibit P11 order by the 1st respondent is highly arbitrary, illegal and without any application of mind.

(b) to declare that using of the word 'Resignation' in Exhibit P2 cannot be used to deny the petitioner's right to join pension scheme and that the petitioner is entitled and qualified to join the pension scheme in terms of 9th Bipartite settlement/ joint note dated 27.04.2010, as his case is squarely covered under clause A (1) of Exhibit P5 pension Scheme.

iii). to issue a writ of mandamus or other writ or order directing the respondents to permit the petitioner to join the pension scheme as per Exhibit P5 and to accept the contribution and sanction pension".

3. The respondent joined the service of the 2nd appellant Bank on 01.09.1975 in one of its branches at Calicut. On 30.04.2010, he submitted Ext.P2 resignation letter to the Bank requesting to relieve him with effect from 31.05.2010, due to his ill-health. By Ext.P3 letter dated 28.05.2010 his resignation was accepted by the 3rd appellant Deputy General Manager of the Bank. On the basis of Exts.P2 and P3, the respondent received all his service benefits from the Bank. Meanwhile, the 9th bipartite settlement dated 27.04.2010 was signed between the Indian Banks' Association and Workmen's Union and the same was circulated by Ext.P5 circular dated 07.09.2010 of the Bank. As per paragraph No.1 of Ext.P5, the employees who were in service of the Bank prior to 29th day of September 1995 and continue to be in the service of the Bank as on 27th day of April, 2010 were entitled to give an option in writing within 60 days from the date of the said Circular to become a member of the Pension Fund. The respondent exercised his option in writing on 13.09.2010 and he undertook to refund the service benefits received by him. But, by Ext.P7 letter dated 03.11.2010, the 3rd appellant rejected his request. Thereafter, the respondent submitted Ext.P8 representation dated 14.02.2011 to the 2nd appellant to treat Ext.P2 request as the one made for voluntary retirement. Since no action was followed in Ext.P8 representation the respondent approached this Court by filing W.P.(C)No.6992 of 2011 and that writ petition was disposed of by Ext.P9 judgment dated 07.03.2011 directing consideration of Ext.P8 representation.

Pursuant to Ext.P9 judgment, the 1st appellant offered a personal hearing to the respondent and thereafter by Ext.P11 order dated 25.05.2011, Ext.P8 representation was rejected. Contending that the respondent made Ext.P2 with an intention to give him voluntary retirement and not as a resignation, he filed the W.P.(C)No.20291 of 2011 before this Court. By the impugned judgment dated 02.02.2015, the learned Single Judge allowed the writ petition directing the 2nd appellant to extend the benefit of the Pension Scheme to the respondent, holding that no employee after putting more than 35 years of

service will be interested to forfeit his past service

4. Heard the learned counsels on both sides.

5. The learned counsel for the appellants submitted that there is a difference between resignation and voluntary retirement. In the instant case the respondent has submitted Ext.P2 request to accept his resignation with effect from 31.05.2010 and that was accepted by Ext.P3 letter dated 28.05.2010. Ext.P5 circular was issued on 07.09.2010. On coming to know about Ext.P5, the respondent subsequently came up with a request that Ext.P2 has to be treated as a request for voluntary retirement and not as a resignation. Clause 6 of Ext.P5 Scheme is applicable to the ex-employees who ceased to be in service on account of Vijaya Bank (Employees) Voluntary Retirement Scheme-2000 after rendering service for a minimum period of 15 years. As per Clause 7 of Ext.P5 Scheme, the option to join the Pension Scheme shall not be extended to those employees who ceased to be in the service of the Bank in any manner other than the categories mentioned in Clause 6. Though Clause 7 of Ext.P5 has been struck down by the Karnataka High Court in W.P.(C)No.24158 of 2011 and connected cases and it was affirmed by the Division Bench, while dismissing the Special Leave Petition, the Apex Court ordered that the question of law arises in the context of challenge with reference to Clause 7 of Ext.P5 Scheme shall be left open. As per Clause 22 of the Vijaya Bank (Employees Pension) Regulations, 1995 a resigned employee is not qualified for pensionary benefits. After finding that there is a difference between resignation and voluntary retirement, the learned Single Judge ought not have allowed the writ petition. In support of his argument regarding the difference between voluntary retirement and resignation, the learned counsel relied on the judgment of the Apex Court in Senior Divisional Manager, Life Insurance Corporation India Ltd. v. Shree Lal Meena [(2019) 4 SCC 479].

6. The learned counsel for the respondent would submit that the respondent was suffering from mental illness and it was for that reason he submitted Ext.P2 resignation letter which actually he meant as a request for voluntary retirement. Though he subsequently submitted Ext.P8 request to treat Ext.P2 as a letter of voluntary retirement, it was not accepted by the Bank. The learned Single Judge made correct findings in the impugned judgment and hence no interference is warranted.

7. The appellants are relying on Clauses 6 and 7 of Ext.P5 as well as Regulation 22 (1) of the Vijaya Bank (Employees) Pension Regulations, 1995, to contend that a person resigns from the Bank is not entitled for the benefit of Ext.P5 circular and the Pension Scheme mentioned therein. Clauses 6 and 7 of Ext.P5 read thus:

"6. Ex-employees, who:

Ceased to be in service on account of Special Voluntary Retirement Scheme, i.e., Vijaya Bank (Employees') Voluntary Retirement Scheme-2000 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 applicable to retired employees, who are opting for joining the Scheme.

7. 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 than the categories mentioned herein above."

8. Though Clause 7 of Ext.P5 was struck down by the Karnataka High Court in W.P.(C)No.24158 of 2011 and connected cases, it was not disputed that while dismissing the Special Leave Petition, the Apex Court ordered that the question of law arising in the contest of challenge with reference to Clause 7 of Ext.P5 is left open.

9. Clause 22 (1) of the Pension Regulation of the Bank reads as under:

"Resignation or dismissal or removal or termination of an employee from the service of the Bank shall entail forfeiture of his entire past service and consequently shall not qualify for pensionary benefits"

10. In *Shree Lal Meena* [(2019) 4 SCC 479] the Apex Court while answering a reference, whether the employees, who had resigned from service post the date from which the pension schemes were made applicable, but prior to the date on which the schemes got notified, would be entitled to the benefit of the pension schemes in question, considered a similar situation in the case of Life Insurance Corporation of India (Employees) Pension Rules, 1995, wherein Rule 23 of that Rules is the same as that of Clause 22 of the Vijaya Bank Pension Regulations. By considering the distinction between resignation and voluntary retirement the Apex Court held thus:

"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."

(emphasis supplied)

11. The respondent submitted Ext.P2 resignation on 30.4.2010 requesting to permit him to resign from the service of the Bank with effect from 31.05.2010. The reason for resignation is stated as ill health due to eyesight and hypertension related problems. The said request was accepted by Ext.P3 letter dated 28.05.2010 by the Deputy General Manager of the Bank. Ext.P5 circular was issued only on 07.09.2010. It was thereafter the respondent submitted Ext.P8

request dated 14.02.2011 to treat Ext.P2 as a request for voluntary retirement. By Ext.P11 proceedings dated 25.05.2011 this request was not accepted by the General Manager of the Bank.

12. Viewed in the light of Clause 22 of Vijaya Bank (Employees) Pension Regulations 1995 and the law laid down in the decision of the Apex Court in Shree Lal Meena [(2019) 4 SCC 479] we hold that the respondent who had resigned from service post the date from which the Pension Scheme was made applicable by Ext.P5 circular, but prior to the date on which the schemes got notified is not entitled to seek the benefit of the Scheme. In such circumstances the impugned judgment of the learned Single Judge is liable to be set aside.

In the result, the writ appeal is allowed by setting aside the impugned judgment dated 02.02.2015 passed by the learned Single judge in W.P.(C)No.20291 of 2011 and the writ petition stands dismissed.