IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL Nos.10364-10371 OF 2014
(Arising out of SLP(C)Nos.12059-12066 of 2010)

V. KANNAPPAN & ORS. ......APPELLANTS

VERSUS

ADDITIONAL SECY & ORS.(MIN.FIN&COM.AFRS) ......RESPONDENTS

WITH
CIVIL APPEAL No.10372 OF 2014
(Arising out of SLP(C)No.20331 of 2011)

J U D G M E N T

J.S.Khehar, J.

Leave granted.

The appellants in these appeals were originally inducted into the service of Bank of Madura. By virtue of a scheme of amalgamation sanctioned by the Reserve Bank of India, the Bank of Madura was merged with the Industrial Credit and Investment Corporation of India Bank (hereinafter referred to as the `ICICI Bank') with effect from 10.03.2001. Consequent upon the aforesaid merger, the appellants became the employees of the ICICI Bank.

All the appellants are retirees, having sought voluntary retirement from the ICICI Bank. Their retirement was operative with effect from 31.07.2003. The appellants' claim is for pension. The instant claim emerges from the Bank of Madura Employees' Pension Regulation, 1995 (hereinafter referred to as the `1995

Regulations'). The 1995 Regulations define the voluntary retirement scheme in Regulation 2(ze). The same is being extracted hereunder:

> "`V.R.S.' means Bank of Madura Employees' Voluntary Retirement Scheme enclosed to the circular CO.STF:39/94-95 dated July 21, 1994, <u>or any other specific scheme, that may be implemented in future bringing such scheme under the definition of this regulation.</u> The employees who have completed 20 years of service in the bank and who have retired subsequent to the expiry of the scheme mentioned in the Circular CO:GM:CIR:2/93-94 dated May 20, 1993, and who were extended the additional benefits in addition to the normal retirement benefits shall be deemed and considered to have retired under V.R.S."
>
> (emphasis is ours)

During the course of hearing, learned senior counsel for the appellants contended, that the voluntary retirement scheme contemplated under Regulation 2(ze), would include any other specific scheme, that may be implemented in future, bringing such scheme under the 1995 Regulations. It is the submission of the learned senior counsel for the appellants, that the Early Retirement Option 2003 (hereinafter referred to as the `ERO 2003) issued by the ICICI Bank on 17.06.2003, was such a scheme, which was implemented after the promulgation of the 1995 Regulations, and was brought within the definition of Regulation 2 (ze). In order to substantiate the instant contention, learned senior counsel for the appellants invited our attention to Regulation 2(zea). The same is being extracted hereunder:

> "<u>Voluntary Retirement Scheme means and to be understood as ICICI Bank Early Retirement Option 2003 scheme</u> and this amendment in benefits will cover only those employees who avail of such early retirement option under ICICI Bank Early Retirement

> option 2003 scheme. (effective from 01.7.2003)”
> (emphasis is ours)

In view of Regulation 2(zea) there can be no doubt whatsoever, that the ERO 2003 must be deemed to be a voluntary retirement scheme within the meaning of Regulation 2(ze) of the 1995 Regulations.

Having satisfied this Court, that the appellants would be entitled to the benefits of the 1995 Regulations, on the basis of ERO 2003, learned senior counsel for the appellants invited our attention to Regulation 35. The Regulation, as it was originally framed, comprised of (iv) clauses. The same is being extracted hereunder:

> “35. Pension to Employees retiring under VRS (i) An employee who has opted for pension and who retired under VRS enumerated in Regulation 2(ze) of these regulations and who has completed twenty years of service in the bank shall be eligible for pension from the date of his attaining the age of superannuation i.e., the date on which he would have retired had he continued in the employment if he is otherwise eligible under these regulations.
>
> (ii) The eligible employees who have already retired under VRS may exercise their irrevocable option in writing in the format prescribed by the Bank within sixty days from the date of notice to be sent to them. Such employees have to refund the bank's entire contribution to the Provident Fund including interest received with further simple interest at the rate of six percent per annum from the date of withdrawal of the Provident Fund amount till the date of refund. The refund of the amount shall be made to the bank within thirty days from the date of superannuation to enable the employee to get the benefits under pension scheme. Otherwise it will be deemed that the member has opted out of the pension scheme.
>
> (iii) If an employee who has opted for pension dies before the date of superannuation but after the date of his relief under VRS, his family shall be paid family pension subject to regulation under chapter VII of this scheme provided the condition stipulated in regulation

35(ii) is complied with.

(iv) The pension amount shall be calculated based on average emolument i.e. average of pay drawn by an employee during the last ten months of his service as per Regulation."

After the introduction of the ERO 2003 Scheme with effect from 17.06.2003, Regulation 35 was amended so as to add thereto clause (v). The same is being extracted hereunder:

"(V) An employee who has opted for pension under this Regulations and who opts for retirement under ICICI Bank Early Retirement Option 2003 as enumerated in regulation 2(zea) of this Regulation, and who has completed 20 years of services in the Bank shall be eligible for pension from the date of retirement thereunder and the payment of pension to him shall commence from the succeeding month."

(emphasis is ours)

The solitary question that arises for our consideration is, whether the appellants are entitled to pensionary benefits under Regulation 35 of the 1995 Regulations. Insofar as the instant aspect of the matter is concerned, it is necessary to mention, that all the appellants were in the service of the Bank of Madura when the 1995 Regulations were introduced. Whilst in the employment of the Bank of Madura options, were invited under Regulation 35 thrice over. On the first occasion, the existing employees of the Bank of Madura were required to exercise their option under Regulation 35, and to indicate whether they would like to draw pensionary benefits under the existing voluntary retirement scheme. Right to furnish the option was to be exercised within a period of 6 months from 25.01.1995 i.e. upto 25.07.1995. The second opportunity was afforded to the employees of the Bank of Madura on 22.07.1995. The right to furnish the option was thereby extended for a further period of three months from 25.07.1995 i.e. upto 25.10.1995. Yet, again a third opportunity to furnish options was given by the Bank of Madura to its existing employees on 01.02.1996. Through the aforesaid Circulars, employees were required to furnish their option under Regulation 35 of the 1995 Regulations up to 30.05.1996. It is not a matter of dispute that eversince their induction into the service of Bank of Madura, and thereafter, whenever options were sought under the 1995 Regulations, none of the appellants opted for the pension scheme under Regulation 35.

No further opportunity for tendering an option, for grant of pension under a voluntary retirement scheme, was sought after the amalgamation of Bank of Madura with the ICICI Bank (with effect from 10.03.2001). In sum and substance therefore, it is apparent that even after the absorption of the appellants in the employment of the ICICI Bank, the appellants never chose to be governed by Regulation 35, of the 1995 Regulations.

On 17.06.2003, ICICI Bank introduced the ERO 2003 Scheme. It afforded an opportunity to its employees to avail of the voluntary retirement scheme contemplated thereunder. Eligibility therefor was expressed in paragraph 4 of the scheme. The same is being reproduced hereunder:

> "4. Eligibility
> All permanent employees of the Bank who have completed at least 7 Years of Service and are 40 years of age as on July 31, 2003 will be considered eligible to opt for the benefits under the Scheme. For the purpose of this clause, the services rendered by the permanent employees in the organization merged with the Bank will be considered as eligible service in terms of

respective schemes of amalgamation."

A perusal of the eligibility clause of the scheme reveals, that an employee who had rendered at least 7 years of service and had attained the age of 40 years on 31.07.2003, was eligible to apply for voluntary retirement, under the ERO 2003 Scheme. It is not a matter of dispute, that all the appellants were eligible for seeking voluntary retirement, under the ERO 2003 Scheme. All the appellants actually applied for voluntary retirement, under ERO 2003 Scheme. Their applications for voluntary retirement were submitted well before the last date i.e.31.07.2003. Consequent upon the acceptance of their voluntary retirement, all the appellants availed of the monetary benefits due to them under the ERO 2003 Scheme. On 10.08.2003, all monetary post retiral benefits including provident fund, were duly paid to the appellants. Having availed of the aforesaid benefits, the appellants raised a claim for grant of pension under Regulation 35 of the 1995 Regulations, on 14.08.2003.

At this juncture, it is necessary to delineate the benefits, that would flow to those who sought voluntary retirement under the ERO 2003 Scheme. These benefits were expressed in paragraph 8 of the scheme. They include "One Time Cash Benefit" (as per paragraph 8A), "Annuity Benefit" (as per paragraph 8B), "Other Benefits", including group medical insurance, encashment of balance privilege leave, amounts payable on retirement date under the Bank's Provident, Gratuity, Superannuation Funds, and payments under Pension/Family Pension Scheme, if any, as per the Rules of the respective Funds/Scheme of the Bank (as per paragraph 8C). Insofar as the benefit of pension claimed by the appellants is concerned, the same was provided for under the heading “Pension Benefit” in paragraph 8D of the ERO 2003 Scheme. Paragraph 8D is being extracted hereunder:

> “8D Pension Benefit
> The Eligible Employees who have opted for the pension benefit as per the erstwhile Bank of Madura Employees' Pension Regulations, 1995, will be eligible for the same as per the terms and conditions of the said Regulations.”

A perusal of paragraph 8D of the ERO 2003 Scheme reveals, that such employees who “have opted for the pension benefits as per the erstwhile Bank of Madura Employees' Pension Regulations, 1995”, alone would be eligible for pension.

The determination of the claim of the appellants would, therefore, essentially emerge from an interpretation of Regulation 35 of the 1995 Regulations. This is so because paragraph 8D of the ERO 2003 Scheme, mandates it as such. It is, therefore, that we shall advert to Regulation 35 aforementioned to determine the claim of the appellants. To draw a legitimate inference, Clauses (i) and (ii) of Regulation 35 need to be read together. Clause (ii) of Regulation 35 relates to employees who had already retired by accepting voluntary retirement i.e., the employees who had retired before the promulgation of the 1995 Regulations. Such employees were allowed to exercise their irrevocable option in writing in the format prescribed by the Bank, within sixty days from the date of notice to be sent to them. We are not concerned with this clause inasmuch as all the appellants were in service of the Bank of Madura when the 1995 Regulations were promulgated. Clause (i) read with Clause (ii) of Regulation 35 would reveal, that a claim for

pension, whether the employee was in service or had retired at the time of promulgation of the 1995 Regulations, was sustainable only on behalf of such employees "who have opted for pension", and who retire under a voluntary retirement scheme, governed by Regulation 2(ze)/2(zea) of the 1995 Regulations. Therefore, employees were only to be entitled to pensionary benefits, if they had exercised their options for pension. Concededly, none of the appellants had exercised such option for pension under the 1995 Regulations. The submission on behalf of the appellants was, that exercise of option prior to the promulgation of a voluntary retirement scheme would be inconceivable. How could one opt for what is not known? It was therefore the contention of the learned senior counsel for the appellants, that the question of the appellants having opted before the VRS scheme introduced by the ICICI Bank in 2003 could not arise, as their right to opt would emerge only when they chose to retire voluntarily under the ERO 2003 Scheme.

It is not possible for us to accept the aforesaid submissions of the learned senior counsel for the appellants. Regulation 35 Clause (i) would make a lot of difference in terms of evaluating the rights of the appellants. If the appellants had exercised their option for drawing pension, then they would simultaneously opt out of the provident fund scheme. Viewed in the manner expressed above, option for pension assumes great significance under Regulation 35(i). Consequent upon an employee not exercising an express option for pension, the employer (on behalf of the employee, as also on its own behalf) shall regularly deduct and deposit an appropriate amount in the provident fund

account of the concerned employee. This exercise would cease immediately on the exercise of a positive option for pension. As already noticed hereinabove, none of the appellants had opted for the pension under Regulation 35(i), and therefore, they continued to be governed, for post retiral benefits, by the other alternatives available to them.

In addition to Clauses(i) and (ii) of Regulation 35, Clause (v) of Regulation 35, which has also been extracted hereinabove, is also of great significance. The binding words of Clause (v) are clear and express. The mandate is, that "an employee who has opted for pension under the 1995 Regulations, and who opts for retirement under ICICI Bank Early Retirement Option 2003", shall be eligible for pension. Clause (v) of Regulation 35 has to be read with paragraph 8D of the ERO 2003 Scheme which provides, that eligible employees who had opted for the pension benefit as per the erstwhile 1995 Regulations, will be eligible for the same as per the terms and conditions of the said Regulations. We are satisfied that since the appellants had not opted for pension under the 1995 Regulations, they are clearly disentitled to claim pensionary benefits under Regulation 35 of the 1995 Regulations, even after the ERO 2003 Scheme was made a part and parcel of Regulation 2 (ze)/2(zea), and even after the amendment of Regulation 35 by adding clause (v) thereto.

It is essential for us while determining the controversy in hand to refer to Regulation 3(9)(a) and (b) of the 1995 Regulations, which were relied upon, on behalf of the appellants. The same are being extracted hereunder:

> “3. Application:- These regulations shall apply to employees who, 1(a) to (8) xxxxxxxxxxxxxx
>
> “(9)(a): Retired under VRS as defined in Regulation 2(ze);
>
> (b) exercise an option in writing within the stipulated time as contained in Regulation 35 to become member of the Fund.”

It was the vehement contention of the learned senior counsel for the appellants, that exercise of option has to be with reference to the acceptance of voluntary retirement under a voluntary retirement scheme, and therefore, exercise of such option would be made when the employee chooses to voluntarily retire under a voluntary retirement scheme. It is not possible for us to accept the contention advanced at the hands of the learned senior counsel for the appellants, because Regulation 3(9)(b) explicitly clarifies, that the exercise of option should be in writing within the stipulated time expressed in Regulation 35 of the 1995 Regulations.

For the reasons recorded hereinabove, we find no merit in these appeals and the same are accordingly dismissed. As a sequel to dismissal of the appeals, the applications for intervention do not survive for consideration, and the same are accordingly dismissed.

...........................J.
(JAGDISH SINGH KHEHAR)

...........................J.
(ARUN MISHRA)

NEW DELHI;
NOVEMBER 18, 2014.