

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ LPA 597/2008

PUNJAB NATIONAL BANK Appellant
Through: Ms. Raavi Birbal with Mr. R.S. Mathur,
Advocates

versus

HARISH CHANDRA DHUPAR & ANR. Respondents
Through:: Mr. Bharat Bhushan with Mr.
B.K.Saini, Advocates for R-1

Reserved on : July 13, 2009
Date of Decision: August 07, 2009

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MANMOHAN

1. Whether Reporters of local papers may be allowed to see the judgment? .
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the digest? Yes

J U D G M E N T

MANMOHAN, J:

1. Present Letters Patent Appeal being LPA No. 597/2008 has been filed challenging the judgment dated 09th July, 2008 whereby learned Single Judge has partly allowed the respondent's writ petition after holding that Regulation 29(5) of the PNB (Employees) Pension Regulations, 1995 (hereinafter referred to as "Regulations 1995") would apply. Learned Single Judge has also directed the appellant-bank to pay arrears of pension to respondent within two months with interest @8% per annum from the due date till the date of payment and in case the aforesaid payment was not made within the stipulated period, the appellant-bank was directed to pay interest

LPA 597/2008

@10% per annum after a period of two months.

2. Briefly stated the material facts of this case are that the appellant-bank had introduced PNB Employees Voluntary Retirement Scheme, 2000, (hereinafter referred to as “Scheme 2000”) which was a non-statutory scheme. Pension under the said Scheme 2000 was to be calculated in accordance with Regulations 1995. While Regulation 28 of the Regulations 1995 dealt with superannuation pension, Regulation 29 dealt with pension on voluntary retirement. Regulation 28 and relevant portion of Regulation 29 of the Regulations, 1995, are reproduced hereinbelow:

“28. *Superannuation Pension*

Superannuation pension shall be granted to an employee who has retired on his attaining the age of superannuation specified in the service Regulations or Settlements.

29. *Pension on Voluntary Retirement*

1) On or after the 1st day of November, 1993, at any time after an employee has completed twenty years of qualifying service he may, by giving notice of not less than three months in writing to the appointing authority retire from service.

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5) The qualifying service of an employee retiring voluntarily under this regulation shall be increased by a period not exceeding five years, subject to the condition that the total qualifying service rendered by such employee shall not in any case exceed thirty three years and it does not take him beyond the date of superannuation.”

3. On 02nd November, 2000, respondent filed an application for Voluntary Retirement under Scheme 2000. On 15th December, 2000, the

appellant-bank accepted respondent's application and he was relieved from duties on 16th December, 2000.

4. However, on 19th December, 2000, the appellant-bank changed its service conditions by issuing a circular which proposed to amend Regulation 28 of the Regulations 1995 with retrospective effect from September 01, 2000. By way of amendment, a proviso was inserted to Regulation 28 which reads as follows:

“Provided that pension shall also be granted to an employee who opts to retire before attaining the age of superannuation, but after having served for a minimum period of 15 years in terms of any scheme that may be framed for the purpose by the Bank's Board with the concurrence of the Government.”

5. Aggrieved by the alleged retrospective amendment of Regulation 28 of the Regulations 1995, respondent filed the writ petition being W.P.(C) No. 2263/2001 seeking recall/quashing of the acceptance cum relieving letter dated 16th December, 2000 and for being allowed to resume duties with continuity of wages and other consequential benefits.

6. Learned Single Judge by a well considered judgment held that Regulation 29(5) would apply to the respondent's case and not the amended Regulation 28.

7. Aggrieved by the said order, the appellant-bank has filed the present appeal.

8. Learned counsel for appellant-bank contended that even though the said Circular had been issued after the respondent had been relieved on 16th

December, 2000, the respondent would be governed by the amended Regulation 28 and not Regulation 29(5) of Regulations, 1995. She submitted that the controversy in the present case was covered by a judgment of Supreme Court in ***Bank of Baroda & Ors. v. Ganpat Singh Deora*** reported in **2009 (1) SCALE 168**, wherein the Supreme Court has held as under:

“18. However, we are inclined to agree with Ms. Bhati that Regulation 29 does not contemplate voluntary retirement under the Voluntary Retirement Scheme and applies only to such employees who themselves wish to retire de hors any Scheme of Voluntary Retirement, after having completed 15 years of qualifying service for the said purpose. There is a distinct difference between the two situations and Regulation 29 would not cover the case of an employee opting to retire on the basis of a Voluntary Retirement Scheme.

19. Furthermore, Regulation 2 of the Voluntary Retirement Scheme, 2001, of the appellant-Bank merely prescribes a period of qualifying service for an employee to be eligible to apply for voluntary retirement. On the other hand, Regulations 14 and 29 of the Pension Regulations, 1995, relate to the period of qualifying service for pension under the said Regulations, in two different situations. While Regulation 14 provides that in order to be eligible for pension an employee would have to render a minimum of 10 years service. Regulation 29 is applicable to the employees choosing to retire from service prematurely, and in their case the period of qualifying service would be 15 years. The facts of this case, however, do not attract the provisions of Regulation 29 since the respondent accepted the offer of voluntary retirement under the Scheme framed by the Bank and not on his own volition de hors any Scheme of Voluntary Retirement. In such a case, Regulation 14 read with Regulation 32 providing for premature retirement would not also apply to the case of the respondent. While Regulation 2 of the BOBEVRS-2001 speaks of eligibility for applying under the Scheme, Regulation 14 of the Pension Regulations, 1995, contemplates a situation whereunder an employee would be eligible for premature pension. The two provisions are for two different purposes and for two different situations. However, Regulation 28 of the Pension Regulations, 1995, after amendment made provision for situations similar to the one in the instant case. In the absence of any particular

provision for payment of pension to those who opted for BOBEVRS-2001 other than Regulation 11(ii) of the Scheme, we are once again left to fall back on the Pension Regulations, 1995, and the amended provisions of Regulation 28 which brings within the scope of Superannuation Pension employees who opted for the Voluntary Retirement Scheme, which will be clear from the Explanatory Memorandum. However, the period of qualifying service has been retained as 15 years for those opting for BOBEVRS-2001 and is treated differently from premature retirement where the minimum period of qualifying service has been fixed at 10 years in keeping with Regulation 14 of the Pension Regulations, 1995.”

9. However, in our view, the controversy in the present case is squarely covered by a subsequent judgment of the Supreme Court in the case of ***Bank of India & Anr. v. K. Mohandas & Ors., Civil Appeal No. 1942/2009, decided on 27th March, 2009*** wherein not only Regulations 28 and 29(5) of Regulations, 1995 have been considered but also the scope and effect of the aforesaid judgment in the case of ***Bank of Baroda*** was considered. The relevant portion of the ***Bank of India’s*** judgment (supra) is reproduced herein below:-

“23. The principal question that falls for our determination is: whether the employees (having completed 20 years of service) of these banks (Bank of India, Punjab National Bank, Punjab & Sind Bank, Union Bank of India and United Bank of India) who had opted for voluntary retirement under VRS 2000 are entitled to addition of five years of notional service in calculating the length of service for the purpose of the said Scheme as per Regulation 29(5) of Pension Regulations, 1995?”

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32. The fundamental position is that it is the banks who were responsible for formulation of the terms in the contractual Scheme that the optees of voluntary retirement under that Scheme will be eligible to pension under Pension Regulations, 1995, and, therefore, they bear the risk of lack of clarity, if any. It is a well-known principle of construction of contract that if the terms applied by one party are unclear, an interpretation

against that party is preferred. [Verba Chartarum Fortius Accipiuntur Contra Proferentum].

33. What was, in respect of pension, the intention of the banks at the time of bringing out VRS 2000? Was it not made expressly clear therein that the employees seeking voluntary retirement will be eligible for pension as per Pension Regulations? If the intention was not to give pension as provided in Regulation 29 and particularly sub-regulation (5) thereof, they could have said so in the scheme itself. After all much thought had gone into the formulation of the VRS 2000 and it came to be framed after great deliberations. The only provision that could have been in mind while providing for pension as per Pension Regulations was Regulation 29. Obviously, the employees, too, had benefit of Regulation 29(5) in mind when they offered for voluntary retirement as admittedly Regulation 28 as was existing at that time was not applicable at all. None of the Regulations 30 to 34 was attracted. It appears that VRS 2000 evoked huge response, much more than expected and then began the second thought. At the fag end of operation of VRS 2000, at the instance of NBA, the banks proposed amendment in the Pension Regulations and a circular came to be issued. But, by that time ball had gone out of the hands of the employees; they had already made their offers which were irrevocable; it was not open to them to withdraw the offers as per specific condition incorporated in the scheme (albeit this Court in O.P. Swarnakar held that offer could be withdrawn before acceptance) and their offers were accepted and they were relieved. We are afraid, it would be unreasonable if amended Regulation 28 is made applicable, which had not seen the light of the day and which was not the intention of the bank when scheme was framed. The banks in the present batch of appeals are public sector banks and are 'State' within the meaning of Article 12 of the Constitution and their action even in contractual matters has to be reasonable, lest, as observed in O.P. Swarnakar, it must attract the wrath of Article 14 of the Constitution.

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35. The amendment to Regulation 28 can, at best, be said to have been intended to cover the employees with 15 years of service or more but less than 20 years of service. This intention is reflected from the communication dated September 5, 2000 sent by the Government of India, Ministry of Finance, Department of Economic Affairs (Banking Division) to the Personnel Advisor, Indian Banks' Association. The said letter may be set out as it is which reads thus:

F. No. 4/8/4/2000-IR

*Government of India
Ministry of Finance
Department of Economic Affairs
(Banking Division)*

New Delhi, the 5th Sept, 2000

*To
The Personnel Advisor,
Indian Bank's Association,
Mumbai.*

Sub: Amendment to Regulation 29 of the Pension Regulations.

Sir,

I am directed to refer to this Division's letter No. 11/1/99 IR dated 29th August, 2000 conveying Government's no objection for circulation of Voluntary Retirement Scheme in Public Sector Banks. The scheme, inter-alia, provides that employees with 15 years of service or 40 years of age shall be eligible to take voluntary retirement under the scheme. As per provisions contained in Regulation 29 of Pension Regulations an employee can take voluntary retirement after 20 years of qualifying service and thereafter becomes eligible for pension. Thus employees having rendered 15 years of service or completing 40 years of age but not having completed 20 years of service shall not be eligible for pensionary benefits on taking voluntary retirement under the scheme.

In order to ensure that such employees do not lose the benefit of pension, IBA may work out modalities and suggest amendments, if any, required to be made in the pension regulations to ensure that these employees also get the benefit of pension.

*Yours faithfully,
Sd/-
(U.P. Singh)
Director (IR)*

36. Two things immediately become noticeable from the said communication. One is that as per Regulation 29 of Pension Regulations, 1995, an employee can take voluntary retirement after 20 years of qualifying service and become eligible for

pension. The other thing is that the Scheme provides that the employees with 15 years of service or 40 years of age shall be eligible to take voluntary retirement under the Scheme and under Regulation 29, the employees having rendered 15 years of service or completed 40 years of age but not completed 20 years of service shall not be eligible for pensionary benefits on taking voluntary retirement under the Scheme. The use of the words 'such employees' in the communication is referable to employees having rendered 15 years of service but not completed 20 years of service and, therefore, it was decided to bring in amendment in the Regulations so that employees having not completed 20 years service do not lose the benefit of pension. The amendment in Regulation 28; as is reflected from the afore-referred communication, was intended to cover the employees who had rendered 15 years service but not completed 20 years service. It was not intended to cover the optees who had already completed 20 years service as the provisions contained in Regulation 29 met that contingency.

37. Even if it be assumed that by insertion of the proviso in Regulation 28 (in the year 2002 with effect from September 1, 2000) all class of employees under VRS 2000 were intended to be covered, such amendment in Regulation 28, needs to be harmonized with Regulation 29, particularly Regulation 29(5) which provides for addition of qualifying service by five years for the optees who had put in 20 years service or more subject to the condition that total qualifying service rendered by such employee shall not in any case exceed 33 years. This would be in tune and consonance with the explanatory note appended to the amendment in Regulation 28 wherein it is stated that the amendment with retrospective effect would not adversely affect any employee or officer of the respondent-bank. That would also meet the test of fairness.

38. The contention was raised on behalf of the banks that if Regulation 29(5) of the Pension Regulations, 1995, is applied for the purposes of VRS 2000, the same would create an anomalous situation inasmuch as two different classes of employees for the purpose of granting pension would be created, namely, a class of employees who had completed 15 years of service but less than 20 years of service and this class would not be entitled to receive benefits under Regulation 29(5) while the employees who had completed 20 years service or more would be entitled to receive the benefit under Regulation 29(5). It was submitted that by such construction a class within the class would be created which is impermissible. We do not agree. If a special benefit under Regulation 29(5) is available to the employees who had completed 20 years of service or more, by no stretch of imagination, can it be said that it is

discriminatory to those employees who had completed 15 years of service but not completed 20 years. In view of the provision contained in Regulation 29(5), if the optees who have not completed 20 years get excluded from the weightage of five years which has been given to optees who have completed 20 years of service or more, it is no discrimination. Such provision can neither be said to be arbitrary nor can be held to be violative of any constitutional or statutory provisions. The weightage of five years under Regulation 29(5) is applicable to the optees having service of 20 years or more. There is, thus, basis for additional benefit. Merely because the employees who have completed 15 years of service but not completed 20 years of service are not entitled to weightage of five years for qualifying service under Regulation 29(5), the employees who have completed 20 years of service or more cannot be denied such benefit.

39. On behalf of the banks, it was contended that Pension Regulations, 1995, are statutory in nature and these Regulations cannot be altered, amended or read down in view of any contract or a contractual scheme. It was submitted that any contract (or contractual scheme), contrary to a statutory law would be hit by Section 23 of the Contract Act and, therefore, it is the contract or the scheme which has to be modified, altered or read down to bring it in tune with the provisions of statutory Regulations and not the other way round. The contention does not impress us. It is misplaced assumption that by reading Regulation 29(5) in the Scheme, the Pension Regulations would get altered or amended. Can it be said that statutory relationship of employee and employer brought to an end prematurely by contractual VRS 2000 amounted to alteration or amendment in the statutory Regulations. Surely, answer has to be in negative and that must answer this contention. The precise effect of Pension Regulations, for the purposes of pension, having been made part of scheme, is that Pension Regulations, to the extent, these are applicable, must be read into the Scheme. It is pertinent to bear in mind that interpretation clause of VRS-2000 states that the words and expressions used in the scheme but not defined and defined in the Rules/Regulations shall have the same meaning respectively assigned to them under Rules/Regulations. The Scheme does not define the expression 'retirement' or 'voluntary retirement'. We have, therefore, to fall back on the definition of 'retirement' given in Regulation 2(y) whereunder voluntary retirement under Regulation 29 is considered to be retirement. Regulation 29 uses the expression, 'voluntary retirement under these Regulations'. Obviously, for the purposes of the Scheme, it has to be understood to mean

with necessary changes in points of details. Section 23 of the Contract Act has no application to the present fact situation.

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41. It was vehemently contended on behalf of the banks that VRS 2000 was a self-contained Scheme and it provided for special benefits in the form of ex-gratia. It was submitted that ex-gratia was not available to the employees claiming voluntary retirement under Pension Regulations and it was because of that, that Scheme did not envisage granting of pension benefits under Regulation 29(5) of the Pension Regulations, 1995, along with the payment of ex-gratia which was a substantial amount. It is true that VRS 2000 is a complete package in itself and contractual in nature. However, in that package, it has been provided that the optees, in addition to ex-gratia payment, will also be eligible to other benefits inter alia pension under the Pension Regulations. The only provision in the Pension Regulations at the relevant time during the operation of VRS 2000 concerning voluntary retirement was Regulation 29 and Clause (5) thereof provides for weightage of addition of five years to qualifying service for pension to those optees who had completed 20 years service. It, therefore, cannot be accepted that VRS 2000 did not envisage grant of pension benefits under Regulation 29(5) of the Pension Regulations, 1995, to the optees of 20 years service along with payment of ex-gratia. The whole idea in bringing out VRS 2000 was to rightsize workforce which the banks had not been able to achieve despite the fact that the statutory Regulations provided for voluntary retirement to the employees having completed 20 years service. It was for this reason that VRS 2000 was made more attractive. VRS 2000, accordingly, was an attractive package for the employees to go in for as they were getting special benefits in the form of ex-gratia and in addition thereto, inter alia pension under the Pension Regulations which also provided for weightage of five years of qualifying service for the purposes of pension to the employees whose service for the purposes of pension to the employees who had completed 20 years service.

42. In support of their contention that the employees, who have sought voluntary retirement under VRS 2000, are not entitled to benefit of Regulation 29(5) of Pension Regulations, 1995, on behalf of banks, heavy reliance was placed on a decision of this Court in the case of Bank of Baroda and Ors. v. Ganpat Singh Deora 2009 (1) Scale 168. As a matter of fact, it was submitted that the decision of this Court in the case of Bank of Baroda concludes the controversy and the legal position is no

more res integra. Reliance in this connection was placed on the following observations:

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43. A word about precedents, before we deal with the aforesaid observations. The classic statement of Eari of Halsbury , L.C. in *Quinn v. Leathern* 1901 AC 495, is worth recapitulating first:

Before discussing Allen v. Flood (1898) AC 1 and what was decided therein, there are two observations of a general character which I wish to make; and one is to repeat what I have very often said before -that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but are governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logically at all.

44. This Court has in long line of cases followed the aforesaid statement of law. In *State of Orissa v. Sudhansu Sekhar Misra* AIR 968 SC 647, it was observed:

...A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it.

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49. It is true that the controversy in the case of *Bank of Baroda* arose out of the same voluntary retirement scheme with which we are concerned in this group of appeals. However, there is vital factual difference in that case and this group of appeals. Pertinently that was a case where the employee had completed only 13 years of service(not even 15 years of service much less 20 years' service) although he completed 40 years of age at the time he offered for voluntary retirement. The employee's

application therein for voluntary retirement was accepted by the Bank of Baroda and he was paid all retiral benefits. However, his request for grant of pension in addition to the other retiral benefits was not acceded to by the bank. It was so because he had not completed even 15 years of service. The employee pursued industrial adjudicatory process for redressal of his grievance in respect of non-grant of pension by the bank. The employee's claim was opposed by the Bank of Baroda contending that in terms of Regulations 14, 28 and 29 of the Pension Regulations, 1995, the employee was not entitled to pension. The observations made by this Court in Bank of Baroda which have been quoted above and relied upon by the banks in support of their contention have to be understood in the factual backdrop namely, that the employee had completed only 13 years of service and, was not eligible for the pension under the Pension Regulations, 1995 and for the benefit of addition of five years to qualifying service under Regulation 29(5), an employee must have completed 20 years of service. The question therein was not identical in form with the question here to be decided. The following observations in paragraph 11 of the report in Bank of Baroda are significant:

...since both the Tribunal as well as the High Court appear not to have considered or taken note of the fact that the respondent was not eligible for pension as he had not completed 15 years of qualifying service....

50. The decision of this Court in Bank of Baroda is, thus, clearly distinguishable as the employee therein had not completed qualifying service much less 20 years of service for being eligible to the weightage under Regulation 29(5) and cannot be applied to the present controversy nor does that matter decide the question here to be decided in the present group of matters.

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52. Insofar as the present group of appeals is concerned, the employees are not seeking to resile from the Scheme. They are actually seeking enforcement of the clause in the Scheme that provides that the optees will be eligible for pension under the Pension Regulations, 1995. According to them, they are entitled to the benefits of Regulation 29(5). In our considered view, plea of estoppel is devoid of any substance; as a matter of fact it does not arise at all in the facts and circumstances of the case.

53. We hold, as it must be, that the employees who had completed 20 years of service and were pension optees and

offered voluntary retirement under VRS 2000 and whose offers were accepted by the banks are entitled to addition of five years of notional service in calculating the length of service for the purposes of that Scheme as per Regulation 29(5) of the Pension Regulations, 1995. The contrary view expressed by some of the High Courts do not lay down the correct legal position.

54. The only question now remains to be seen is whether the concerned employees are entitled to interest on unpaid pension.

55. Although it has been held by us that the subject employees are entitled to the weightage in terms of Regulation 29(5) of Pension Regulations, 1995, but we are satisfied that any award of interest on unpaid pension would not be in the interest of justice. It is so because different High Courts did not have unanimous judicial opinion on the issue. Punjab and Haryana High Court and the Division Bench of the Kerala High Court upheld the contention of the employees with regard to applicability of Regulation 29(5) to the optees who had completed 20 years of service while the Division Bench of the Calcutta High Court and a single Judge of the Kerala High Court took exactly an opposite view. The stance of the banks, although found not meritorious, cannot be said to be totally frivolous. We, accordingly, hold that the subject employees are not entitled to interest on unpaid pension.

56. The result of the foregoing discussion is that the appeals preferred by the banks must fail and are dismissed while the appeals of the employees deserve to be allowed and are allowed accordingly. The respective banks shall now recalculate, within one month from today, the pension payable to the concerned employees by giving them the benefit of Regulation 29(5). However, the employees shall not be entitled to interest on unpaid pension. The pending applications in these appeals stand disposed of. The parties shall bear their own costs.”

(emphasis supplied)

10. Consequently, we are of the opinion that in view of the subsequent judgment of **Bank of India** (Supra) which not only considers the same issue under the same Regulations, 1995 but also the earlier judgment of the Supreme Court in **Bank of Baroda** (supra), the issue raised in the present appeal is squarely covered against the appellant. Accordingly, the present

appeal being devoid of merits is dismissed but keeping in view the observations of the Supreme Court in paragraphs 54, 55 and 56 in the case of *Bank of India* (supra), the respondent would not be entitled to any interest on the arrears of pension.

MANMOHAN, J

CHIEF JUSTICE

AUGUST 07, 2009
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