IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18444 of 2008

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Rajani Kant Choubey, Ex Senior Manager, Central Bank of India, Danapur Branch, (Compulsory retired w.e.f. 25.09.2007) aged about 61 years, son of late Sankracharya Choubey, resident of Priyambica Apartment, Rash Bihari Path, Vijay Nagar, Bailey Road, P.O. Veterinary College, P.S. Rupaspur, District Patna.

.... Petitioner/s

Versus

1. The Central Bank of India through the Chairman and Managing Director, Central Bank of India, Central Office, Chander Mukhi, Narain Point, Mumbai-400021.
2. The General Manager (P), Central Bank of India, Central Office, Chander Mukhi, Narain Point, Mumbai- 400021
3. The Assistant General Manager, Central Bank of India, Zonal Office, Block-B, 2nd Floor, Maurya Complex, Dak Bunglow Road, Patna-800001.
4. The Zonal Manager, Central Bank of India, Zonal Office, Block-B, 2nd Floor, Maurya Complex, Dak Bunglow Road, Patna-800001
5. The Chief Manager, Central Bank of India, Zonal Office, Block-B, 2nd Floor, Maurya Complex, Dak Bunglow Road, Patna-800001
6. The Branch Manager, Central Bank of India, Danapur Branch, Patna.
7. The Central Bank of India, Provident Fund Department, NCL, Society, Plot No. C-6, Block No. E, 4th Floor, Bandra Kurla Complex, Bandra (East), Mumbai-400051 through its (Provident Fund) Assistant Manager/Manager.

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 10278 of 2015

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Md. Shamsuddin Shams S/o late Md. Shahabuddin Ex-Manager, Allahabad Bank, Kumaripur Branch, Resident of- Z.S. House, Khalilpura (West), P.S. & P.O.- Phulwarisharif, District- Patna

.... Petitioner/s

Versus

1. The Allahabad Bank through the Chairman of Allahabad Bank, Head Office: 2 Netaji Subhash Road, Kolkata (West Bengal)

2. The General Manager (HRD), Allahabad Bank, Head Office: 2 Netaji Subhash Road, Kolkata (West Bengal)

3. The Assistant General Manager & Disciplinary Authority, Zonal Office, Allahabad Bank, Patna, Bihar

4. The Deputy General Manager, Zonal Office, Allahaband Bank, Patna, Bihar

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 10300 of 2015

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Dilip Kumar Sinha S/o Sri Rajeshwar Pd. Singh, Ex - Manager - Allahabad Bank, Gaya Branch, Resident of Shiva Complex Flat No. 23, Ved Nagar, off Bailey Road, P.S. Rupaspur, Danapur, District - Patna - 800014

.... Petitioner/s

Versus

1. The Allahabad Bank through the Chairman - Cum - Managing Director of Allahabad Bank, Head office 2, Netaji Subhash Road, Kolkata (West Bengal)

2. The General Manager, Zonal Office, Allahabad Bank, Patna, Bihar

3. Assistant General Manager, Zonal Office, Allahabad Bank, Patna, Bihar

4. Deputy General Manager, Zonal office, Allahabad Bank, Patna, Bihar

.... Respondent/s

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Appearance :

(In CWJC No. 18444 of 2008)

For the Petitioner/s :

For the Respondent/s :

(In CWJC No. 10278 of 2015)

For the Petitioner/s :

For the Respondent/s :

(In CWJC No. 10300 of 2015)

For the Petitioner/s :

For the Respondent/s :

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 23-09-2015

Heard learned counsel for the parties.

The controversy in the present writ petitions relates to the respondent Banks denying the second option with regard to grant of pension to the petitioners who have been compulsorily retired from service by way of penalty.

The Court is not going into the finer details on facts and only noting down those facts which are relevant for deciding the issue at hand. Admittedly, in all the three cases the petitioners are entitled to give the second option as per the Joint Note on agreed conclusions reached between the Indian Banks' Association on behalf of the

Managements of Banks listed in the Schedule and All India Bank Officers' Confederation (AIBOC), All India Bank Officers' Association (AIBOA), Indian National Bank Officers' Congress (INBOC) and National Organisation of Bank Officers (NOBO) dated 27th April, 2010. It is also not in dispute that the respondent Banks in the present cases are covered by the said Joint Note. The dispute is only with regard to the fact that since the petitioners have been compulsorily retired by way of penalty, whether as per the said Joint Note, they also have a right to give second option for pension. Notwithstanding the said position, the petitioners did give their second option within the time stipulated as per the Joint Note subsequently adopted by the Banks.

Learned counsel for the petitioners submit that in view of the Rules governing grant of pension a distinction has been made between a retiree simpliciter and a person who has been compulsorily retired, may be as a penalty or otherwise. It is submitted that all retirees, who may have superannuated, voluntarily retired or compulsorily retired, even on a charge, come under the said category of retiree entitled to pension under the Bank Rules. It is submitted that the issue has been settled by various High Courts in favour of the stand taken by the petitioners in the present writ petitions, where it has been held that persons compulsorily retired even by way of penalty are entitled to second option under the Joint Note, as the Rules do not make any distinction between a person retiring simpliciter on attaining the age of superannuation, taking voluntary retirement or having been compulsory retired even by way of penalty. For such proposition, learned counsel for the petitioners have relied upon the decisions of the Andhra Pradesh High Court dated 22.03.2012 in **Writ Petition No. 9069 of 2011** in the case of **Sreeram Ramamurthy vs. Andhra Bank** challenge to which has been rejected by the Hon'ble Supreme Court in Special Leave to Appeal (C) No. 35389 of 2013 dated 05.09.2014; the Delhi High Court in its decision dated 18.09.2013 in **L.P.A. No. 693 of 2013** in the case of **Deepak Sapra vs. Punjab National Bank**; the Gujarat High Court in its decision dated 11.02.2013 in **Special Civil Application No. 8605 of 2000** in the case of **Ghanshyambhai Muljibhai Patel vs. Bank of India;** the Madras High Court in its decision dated 11.06.2012 in **W.A. No. 2320 of 2003** in the case of **V. Subramaniam v. The Central Bank of India and Another** and the decision of the Madras High Court dated 01.04.2015 in **W.P. No. 15766 of 2013** in the case of **D. Kalaichelvan vs. Union Bank of India.**

Learned counsel for the respondent Banks, though not in a position to counter the decisions relied upon by learned counsel for the petitioners, have tried to make a distinction inasmuch as it has been submitted by them that mere dismissal of the Special Leave Petition before the Hon'ble Supreme Court i*pso facto* the issue cannot be said to have been finally settled by the Hon'ble Supreme Court. However, with regard to the decisions of the various High Courts which have not travelled to the Hon'ble Supreme Court it is not disputed that they have attained finality. Learned counsel have also tried to make a fine distinction that the petitioners having been compulsorily retired on a charge are not entitled to the benefit of pension which is otherwise due to an employee whose service is unblemished.

Learned counsel for the respondents have further submitted, particularly with regard to the Central Bank of India regarding the case decided by the Madras High Court, that the person had resigned from service. It is further their contention that since the decision of various High Courts has been taken in the case of other Banks, unless the Indian Banks' Association issues note to be followed by all the Banks clarifying/modifying the earlier instructions, they themselves cannot take unilateral decision with regard to allowing the prayer of the petitioners for acceptance of the second option for grant of pension.

The Court has considered the matter in detail and is persuaded by the arguments advanced on behalf of the petitioners moreso in view of the decisions relied upon by them and the reasoning given by the Courts in such decisions. The respondent Banks, either being a party in the said proceeding or being identically situated with regard to the Rules which are relevant for deciding the present issue, cannot take the plea of there not being a judgment with regard to their Bank by the Courts on identical facts. Once any High Court in India has decided an issue on merits giving reasons thereof and the respondent Banks having a pan India and even international presence having similar service regulations especially dealing with the situation at hand, the technical objections do not appear to be tenable. The Courts having decided that a person, in view of existing Rules applicable, even if compulsorily retired on the basis of a charge, by way of penalty, is also covered as per the Joint Note for exercising second option, the respondent Banks cannot be allowed to take a different stand and deal differently with persons living in different states of India.

In view of the aforesaid, the Court holds that the petitioners shall be entitled to all the benefits of the scheme as per the Joint Note dated 27.04.2010 with regard to grant of pension by exercising the second option, which they have already opted for within the timeframe fixed. The exact details of the scheme shall be worked out by the Banks in cooperation with the petitioners and after completing all the formalities, the dues admissible to the petitioners shall be granted to them within three months from the date of production of a copy of this order before the concerned Branch Manager of the Bank where the petitioners had last worked.

It goes without saying that the petitioners shall be at liberty to approach the appropriate forum in accordance with law if there is any discrepancy with regard to actual fixation of the emoluments etc.

The writ petitions stand disposed off in the aforementioned terms.

(Ahsanuddin Amanullah, J)

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