

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
&
THE HON'BLE SRI JUSTICE G. SHYAM PRASAD

W.A.No.502 of 2016

Date :12-8-2016

Between :

Andhra Bank, represented by its
Chairman & Managing Director,
Dr. Pattabhi Bhavan, Saifabad,
Hyderabad and others

.. Appellants

And

Y. Shivaji

.. Respondent

Counsel for appellants : Dr. K. Lakshmi Narasimha
Counsel for respondent : Mr. P.S. Rajasekhar



The Court made the following :

JUDGMENT: (per Hon'ble Sri Justice C.V. Nagarjuna Reddy)

Feeling aggrieved by order dated 18-4-2016 in W.P.No.32950 of 2010, this appeal under Clause 15 of the Letters Patent is preferred by the Andhra Bank and its functionaries, the respondents in the said Writ Petition.

2. The backdrop in which this appeal arises is briefly stated hereunder:

The respondent was a Scale-III Officer in appellant No.1-Bank. A departmental enquiry was instituted against the respondent into his conduct in sanction and disbursal of certain OCC limits, housing loans and car loans. Charges were framed against the respondent and an Enquiry Officer and Presenting Officer were appointed. Pending the enquiry, the respondent was also placed under suspension. In parallel, the Central Bureau of Investigation (CBI) has prosecuted the respondent. By Judgment dated 16-6-2001, the II Additional Metropolitan Magistrate, Vijayawada, convicted the respondent. Following his conviction, the respondent was dismissed from service and further departmental proceedings were kept in abeyance. The appellate Court, however, reversed the Judgment of the trial Court and acquitted the respondent by its Judgment dated 7-10-2003. Consequent upon the respondent's acquittal, the appellants have set-aside the order of dismissal on 4-2-2004. The disciplinary proceedings were revived and the respondent was continued under suspension. The Enquiry Committee was reconstituted and before conclusion of the enquiry proceedings, the respondent attained the age

of superannuation on 30-4-2004. However, to facilitate the completion of enquiry, the respondent was put on 'deemed continuance in service' without salary/subsistence allowance. The Enquiry Officer submitted his report on 11-9-2004. After calling for the explanation of the respondent and considering the same, the disciplinary authority passed the final order of compulsory retirement from service in terms of Regulation 4(h) of Andhra Bank Officers' (Discipline and Appeal) Regulations, 1981 (for short, "the Discipline and Appeal Regulations"). It was further ordered that the entire period of suspension be treated as 'Not on Duty' and that the respondent is not entitled for any difference of salary or other service benefits including increments, if any, that fell due during the period of suspension, except the subsistence allowance already paid to him. However, the entire period of suspension was directed to be treated as 'continuous service' for the limited purpose of pension, if the respondent is a pensioner.

Post compulsory retirement, the respondent kept on making representations to the appellants for encashment of privilege leave, which got accumulated as on 30-4-2004. More than four years after the respondent made his first representation in this regard, the Assistant General Manager (HR) of appellant No.1-Bank replied with reference to various grievances made by the respondent, including the request for leave encashment. As the present case is confined only to the grievance relating to leave encashment, it is not necessary for us to

refer to the contents of the reply on aspects other than leave encashment.

The respondent's request for leave encashment was rejected on the following reasoning :

“With regard to your grievance of non payment of Leave Salary on your compulsory retirement, it may please be noted that an officer whose services are terminated or who is compulsorily retired as a measure of punishment, will not be entitled to leave encashment.”

Feeling aggrieved by the said rejection, the petitioner filed W.P.No.32950 of 2016. A learned single Judge of this Court allowed the said Writ Petition and aggrieved thereby, the appellants filed this appeal.

3. Dr. K. Lakshmi Narasimha, learned Counsel for the appellants, submitted that the respondent has suffered the penalty of compulsory retirement and therefore such retirement has brought an end to his employment which amounts to termination and hence he is not entitled to the benefit of leave encashment, which is available to those officers who retire on reaching the age of superannuation. He has further submitted that the words ‘where a person retires’ in the first proviso to Regulation 38 of the Andhra Bank (Officers’) Service Regulations 1982 (for short “the Service Regulations”) are referable to only the Officers who retire on reaching the age of superannuation and the same do not include the Officers who are made to retire as a measure of penalty. The learned Counsel has placed reliance on the

Judgment of the Apex Court in **Kanhaiyalal Parasai Vs. Union of India and others**¹ in support of his submissions.

4. Opposing the above submissions, Mr. P.S. Rajasekhar, the learned Counsel for the respondent, submitted that the Regulations in general and Regulation 38 of the Service Regulations in particular, do not distinguish between an Officer who retired on reaching the age of superannuation and the one who was compulsorily retired as a measure of punishment and that in the absence of regulations making any such distinction, the respondent is entitled to the benefit of leave encashment under the first proviso to Regulation 38 of the Service Regulations. The learned Counsel placed heavy reliance on a Full Bench Judgment of the Punjab and Haryana High Court in **UCO Bank and others Vs. Anju Mathur**² and a Division Bench Judgment of the Delhi High Court in **Deepak Sapra Vs. Punjab National Bank**³.

5. We have given our earnest consideration to the rival submissions of the learned Counsel for the parties.

6. Two issues that need adjudication in this case are –

1) Whether compulsory retirement amounts to ‘termination’ under the Regulations, leading to denial of encashment of privilege leave to the delinquent?

¹ 1995 Supp. (4) SCC 73

² 2013(2) ILR P&H 1

³ 2013 SCC Online Delhi 3724

2) Whether the word 'retires' in the first proviso to Regulation 38 of the Service Regulations takes within its sweep 'compulsory retirement' imposed on an employee as a punishment?

7. We need to commence our discussion with the relevant provisions of the Service Regulations. Regulation 19 deals with the age of retirement. Regulation 20 deals with termination of service. Regulation 33 deals with privilege leave. Regulation 38 deals with lapse of leave. Regulation 46 deals with Gratuity. These Regulations, which have a material bearing in the adjudication of this case, are reproduced hereunder :

“Regulation 19 - Age of Retirement:

- (1) *The age of retirement of an Officer Employee shall be as determined by the Board in accordance with the guidelines issued by the Government from time to time.*

Provided that the Bank may, at its discretion, on review by the Special Committee/Special Committees as provided hereinafter in Sub-Regulation (2) retire, if it is of the opinion that it is in the public interest an Officer Employee on or at any time after the completion of 55 years of age or on or at any time after the completion of 30 years of total service as an Officer Employee or otherwise, whichever is earlier.

Provided further that before retiring an Officer Employee, at least three months' notice in writing or an amount equivalent to three months' substantive salary and allowances, shall be given to such Officer Employees.

Provided further that an Officer aggrieved by the order of the Competent Authority, as provided in Sub-Regulation (2) may, within one month of the passing of the order, given in writing a representation to the Board of Directors against the decision of the Competent Authority, and on receipt of such representation from the concerned Officer, the Board of Directors shall consider his representation and take a decision within a period of three months. Where the Board of Directors decides that the order passed by the Competent Authority is not justified, the concerned Officer shall be reinstated as though the Competent Authority has not passed the order.

Provided also that nothing in this Regulation shall be deemed to preclude an Officer Employee from retiring earlier pursuant to the option exercised by him in accordance with the rules in the Bank.

Explanation: *An Officer Employee shall retire on the last day of the month in which he completes his age of retirement. Provided that an Officer Employee whose date of birth is on the first day of a month, shall retire from service on the afternoon of the last day of the preceding month on attaining the age of retirement.*

- (2) *The Bank shall constitute of Special Committee/Special Committees consisting of not less than three members, to review, whether an Officer Employee should be retired in accordance with the first proviso to Sub-Regulation (1). Such Committee/Committees shall from time to time, review the case of each Officer Employee, and no order of retirement shall be made unless the Special Committee/Special Committees recommends in writing to the Competent Authority the retirement of the employee.*

Guidelines issued by the Government in terms of Regulation 19 of Andhra Bank Officers' Service Regulations, 1982:

The age of retirement of an Officer Employee in the Bank shall be determined in accordance with the following conditions:-

- a) *Subject to the provisions of the rules, every Officer shall retire from the service on the afternoon of the last day of the month in which he attains the age of 60 years. Provided that the Officer whose date of birth is 1st of month, shall retire from the service on the afternoon of the last day of the preceding month on attaining the age of 60 years.*
- b) *No extension shall be given to any Officer Employee beyond 60 years of age.*

Regulation 20 – Termination of Service:

1. (a) *Subject to Sub-Regulation 3 of Regulation 16, where the Bank is satisfied that the performance of an Officer is unsatisfactory or inadequate or there is a bonafide suspicion about his integrity or his retention in the Bank's service would be prejudicial to the interests of the Bank and where it is not possible or expedient to proceed against him as per the disciplinary procedure, the Bank may terminate his services on giving him three months' notice or emoluments in lieu thereof in accordance with the guidelines issued by the Government from time to time.*
- (b) *Order of termination under this Sub-Regulation shall not be made unless such Officer has been given a reasonable opportunity of making a representation to the Bank against the proposed order.*

(c) The decision to terminate the services of an Officer Employee under Sub-Regulation (a) above will be taken only by the Chairman & Managing Director.

(d) The Officer Employee shall be entitled to appeal against any order passed under Sub-Regulation (a) above by preferring an appeal within 15 days to the Board of Directors of the Bank. If the appeal is allowed, the order under Sub-Regulation (a) shall stand cancelled.

(e) Where an Officer Employee whose services have been terminated and who has been paid an amount of three months emoluments in lieu of notice and on appeal his termination is cancelled, the amount paid to him in lieu of notice shall be adjusted against the salary that he would have earned, had his services not been terminated and he shall continue in the bank's employment on same terms and conditions as if the order of termination had not been passed at all.

(f) An Officer Employee whose services are terminated under Sub-Regulation (a) above shall be paid Gratuity, Provident Fund including employer's contribution and all other dues, that may be admissible to him as per rules notwithstanding the years of service rendered.

(g) Nothing contained herein above will affect the Bank's right to retire an Officer Employee under Regulation 19(1).

2. *An Officer shall not leave or discontinue his service in the Bank without first giving a notice in writing of his intention to leave or discontinue his service or resign. The period of notice required shall be 3 months and shall be submitted to the Competent Authority as prescribed in these Regulations.*

Provided further that the Competent Authority may reduce the period of three months, or remit the requirement of notice.

3. (i) *An Officer against whom disciplinary proceedings are pending shall not leave/discontinue or resign from his service in the bank without the prior approval in writing of Competent Authority and any notice of resignation given by such an Officer before or during the disciplinary proceedings shall take effect unless it is accepted by the Competent Authority.*

(ii) Disciplinary proceedings shall be deemed to be pending against any employee for the purpose of this Regulation if he has been placed under suspension or any notice has been issued to him to show cause why disciplinary proceedings shall not be instituted against him and will be deemed to be pending until final orders are passed by the Competent Authority.

(iii) The Officer against whom disciplinary proceedings have been instituted will cease to be in service on the date of superannuation but the disciplinary proceedings will continue as if he was in service

until the proceedings are concluded and final order is passed in respect thereof. The concerned Officer will not receive any pay and/or allowance after the date of superannuation.

He will also not be entitled for the payment of retirement benefits till the proceedings are completed and final order is passed thereon except his own contributions to CPF.

Regulation 33 – Privilege Leave:

- (1) An Officer shall be eligible for Privilege Leave computed at one day for every 11 days of service on duty provided that at the commencement of service no privilege leave may be availed of, before completion of 11 months of service on duty.*
- (2) An Officer on Privilege Leave shall be entitled to full emoluments for the period of Leave.*
- (3) The period of Privilege Leave to which an Officer is entitled at a time shall be the period which he has earned, less the period of leave availed off.*
- (4) On and from 1.1.90, Privilege Leave may be accumulated up to not more than 240 days except where leave has been applied for and it has been refused.*
- (5) An Officer desiring to avail Privilege leave shall ordinarily give not less than one month's notice of his intention to avail of such leave.*

Regulation 38 – Lapse of Leave :

Save as provided below, all leave to the credit of an Officer, shall lapse on resignation, retirement, death, discharge, dismissal or termination.

Provided that where an Officer retires from the Bank's service, he shall be eligible to be paid a sum equivalent to the emoluments of any period not exceeding 240 days of Privilege Leave that he had accumulated.

Provided further that where an Officer dies while in service, there shall be payable to his legal representatives, a sum equivalent to the emoluments for the period, not exceeding 240 days of Privilege Leave to his credit as on the date of his death.

Regulation 46 – Gratuity

- 1) Every Officer, shall be eligible for gratuity on :-*
 - a) retirement*
 - b) death*
 - c) disablement rendering him unfit for further service as certified by a Medical Officer approved by the Bank;*

- d) resignation after completing ten years of continuous service;
or*
 - e) termination of service in any other way except by way of
punishment after completion of 10 years of service.*
- 2) *The amount of gratuity payable to an Officer shall be one month's pay for every completed year of service, subject to a maximum of 15 months' pay.*

Provided that where an Officer has completed more than 30 years of service, he shall be eligible by way of gratuity for an additional amount at the rate of one half of a month's pay for each completed year of service beyond 30 years.

Provided further that pay for the purpose of gratuity for an Officer who ceased to be in service during the period 1.7.1993 to 31.10.1994 shall be with regard to scale of pay as specified in Sub-Regulation (1) of Regulation 4.

Provided also that pay for the purpose of Gratuity of an Officer who ceased to be in service during the period 01.04.1998 to 31.10.1999 shall be with regard to scale of pay as specified in Sub-Regulation (2) of Regulation 4.

Note: If the fraction of service beyond completed years of service is 6 months or more, gratuity will be paid pro-rata for the period.

8. We would like to discuss issue No.1 first. The word "termination" assumes significance in the present case for the reason that Regulation 38 (supra) envisages lapse of leave on occurrence of certain events which include termination. Regulation 20 (supra) deals with "Termination of Service". As could be seen from this Regulation, an officer could be terminated where the Bank is satisfied that his performance is unsatisfactory or inadequate or there is a bona fide suspicion about his integrity or his retention in the Bank's service would be prejudicial to the interests of the Bank and that it is not possible or expedient to proceed against him as per the disciplinary procedure. In such cases, the Officer is entitled to three months' notice or emoluments in lieu thereof in accordance with the guidelines

issued by the Government from time to time. While in generic sense every event mentioned in Regulation 38, namely, resignation, retirement, death, discharge, dismissal brings about termination of employment, the termination referred to in Regulation 38 has a specific connotation which is traceable to Regulation 20. It is not the pleaded case of the appellants that other than the termination made as per the procedure followed under Regulation 20, any other event mentioned in Regulation 38 amounts to “termination” within the meaning of Regulation 20. Except a termination made by following the procedure prescribed under Regulation 20, any other event which results in cessation of employment of the officer, such as, resignation, retirement, death, discharge or dismissal does not fall within the ambit of the word “termination” under the Regulations. Indeed, disciplinary proceedings were initiated against the respondent and they culminated in passing of an order of compulsory retirement. Therefore, the respondent falls outside the scope of Regulation 20 and consequently his compulsory retirement cannot be termed as “termination”.

There is another angle from which the issue could be examined. If every event which led to cessation of employment is construed as termination of employment within the meaning of Regulation 38, Regulation 20 would have referred to all such events. The very fact that the word “termination” is referred to as an event distinct from the other events such as, resignation, retirement, death, discharge and dismissal in Regulation 38 shows that each of these events is independent of the other and has its own distinct existence. We,

therefore, hold that the retirement of the respondent does not constitute “termination” within the meaning of Regulation 38.

9. We shall now take up issue No.2. Regulation 19 (supra) envisages two kinds of retirement, i.e., (i) retirement of an officer on completion of age of retirement as determined by the Board in accordance with the Guidelines issued by the Government from time to time; and (ii) retirement after the completion of 55 years of age or on or at any time after the completion of 30 years of total service as an Officer Employee by the Special Committee/Special Committees recommending in writing to the Competent Authority the retirement of the employee before he reaches the age of retirement as fixed by the Board (The Guidelines issued by the Government as extracted supra fixed 60 years as the age of retirement). In addition to the above two modes of retirement, there is another mode of retirement, namely, compulsory retirement as a measure of punishment under the Discipline and Appeal Regulations. It is under these Regulations that the respondent was compulsorily retired though he has reached the age of retirement of 60 years and was in fact retired pending disciplinary proceedings subject to the rider of his deemed continuance for the limited purpose of continuing the disciplinary proceedings.

10. Regulation 33 (supra) conferred the benefit of Privilege Leave of one day for every eleven days of service on duty on every officer, subject to certain conditions envisaged thereunder. The maximum Privilege Leave that is available to the officers under this Regulation

is 240 days and they are entitled to full emoluments for the period of Privilege Leave. Regulation 38 which begins with a saving clause postulates lapse of leave to the credit of an Officer on resignation, retirement, death, discharge, dismissal or termination. This clause, however, carved out two exceptions to the Rule of lapse of leave - the first, where an Officer retires from the Bank's service, he shall be eligible to be paid a sum equivalent to the emoluments of any period not exceeding 240 days of Privilege Leave that he had accumulated; and the second, where an Officer dies while in service, his legal representatives are entitled to receive the emoluments as provided for in the first proviso.

11. The bone of the appellants' contention is that the word 'retires' in the first proviso to Regulation 38 shall be ascribed the meaning of 'retirement' under Regulation 19, i.e., an Officer reaching his prescribed age of retirement, and that the same shall not be stretched to encompass compulsory retirement as a measure of penalty. Though this argument appears attractive at the first blush, on a deeper scrutiny it wanes into insignificance. The ordinary dictionary meaning of the word "retire" is 'leave one's job and cease to work, especially because one has reached a particular age'. The word 'retirement' means 'the action or fact of retirement' (Oxford Dictionary 'Thesaurus & Word power Guide' First Indian Edition, 2007'). Whether retirement has come about on the Officer reaching the prescribed age of superannuation or otherwise, all kinds of retirement lead to cessation of work by an employee. If the extant Regulations framed by an

employer make a conscious distinction between the retirement on attaining the age of superannuation, retirement on assessment of one's performance under Regulation 19 of the Service Regulations, or compulsory retirement under Discipline and Appeal Regulations, no further question would arise and the employee is bound by such Regulations, subject to his availing legal remedies if he feels aggrieved by such distinction. However, the Service Regulations of the appellants do not recognize any such distinction qua Privilege Leave in contrast to Gratuity under Regulation 46. Under the said Regulation, on the retirement/ death/ disablement rendering him unfit for further services/resignation after completing ten years of continuous service or on termination of service after completion of ten years of service, every Officer shall be eligible for Gratuity. The Regulation, however, created an exception in respect of an Officer whose service is terminated by way of punishment. As evident from this Regulation, in case of such termination the Officer is not entitled for payment of Gratuity. Such a distinction in case of Privilege Leave under Regulation 38 of the Service Regulations is totally absent. Had the Rule-making authority intended to deny encashment of Privilege Leave to the Officers who were compulsorily retired, we could not perceive any reason why it has not incorporated a clause similar to sub-clause (e) of Regulation 46(1) which distinguished between termination of service by way of punishment and termination of service otherwise than by way of punishment.

12. It is trite that an employee earns Privilege Leave while in service. When the Service Regulation provides for encashment of Privilege Leave, a right in respect thereto comes to be vested in an employee. Unless the Regulations governing the service conditions of the employee either expressly or by necessary implication takes away such vested right, he cannot be denied such right. While the Service Regulations per se do not expressly deny this right to an employee who suffered punishment of compulsory retirement, the plain language of the Regulations discussed above also does not lead this Court to the conclusion that even by implication the employee is denied of this right.

13. A Constitution Bench of the Supreme Court in **Deoki Nandan Prasad v. State of Bihar and Others**⁴ held that pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a Government servant coming within those rules is entitled to claim pension. In **D.S. Nakara and Others v. Union of India**⁵ Justice D.A. Desai, speaking for the Bench termed 'Pension' as a hard-earned benefit and is in the nature of property and that this right to property cannot be taken away without due process of law as per the provisions of Article 300A of the Constitution of India. A recent judgment of the Supreme Court in **State of Jharkhand and Others v. Jitendra Kumar Srivastava and Another**, (C.A. No.6770 of 2013, decided on 14.8.2013) reiterated the

⁴ [1971] SCR 634

⁵ (1983) 1 SCC 305

law laid down in **Deoki Nandan Prasad** (4 supra) and **D.S. Nakara** (5 supra) and held that in the absence of any provision in the Pension Rules, the State Government cannot withhold a part of pension and/or gratuity during the pendency of the departmental proceedings or criminal proceedings. Extending the same analogy, we have no reason to treat the Privilege Leave earned by an employee during his service as different from Pension and consequently unless this right is taken away either expressly or by necessary implication, deprivation of the same amounts to denial of right to property within the meaning of Article 300A of the Constitution of India.

14. A Full Bench of the Punjab and Haryana High Court in **Anju Mathur** (2 supra) had an occasion to deal with the right of an Officer of the Uco Bank, who was also governed by the same Regulations as are being followed by the appellants in the instant case, and who had also suffered the punishment of compulsory retirement, for payment of Gratuity and Privilege Leave encashment. While holding that the employee was not entitled to payment of Gratuity, the Court nevertheless held that he is entitled to the encashment of Privilege Leave. Dealing with the claim of Gratuity, the Full Bench held as under:

“14. We would like to emphasise that compulsory retirement is of two types. There can be an administrative order retiring an employee compulsorily from service when the employer finds that the employee has become deadwood. However, the compulsory retirement is also provided as one of the modes of punishment in the Disciplinary and Appeal Regulations, 1976 framed by the Bank. Whenever compulsory retirement is effected by way of penalty which is imposed after holding a regular enquiry, then the compulsory retirement leads to termination by way of punishment. Termination of service can result by various modes. It amounts

to cessation of employment whereupon the employer-employee relation comes to an end. The purport of Regulation 46(1)(e) is very clear. Whenever it is a case of termination by any other mode than by way of punishment, gratuity is payable, but not when termination is occasioned by way of penalty on account of misconduct committed by an employee established in the regular departmental enquiry against such delinquent employee.

15. We are, therefore, of the opinion that Regulation 46(1) of the Officers' Regulations would not apply when termination is occasioned by way of compulsory retirement by way of punishment on account of misconduct proved against such an employee after regular departmental enquiry. To that extent, the judgment of Division Bench in Uco Bank and others v. Ashwani Kumar Sharma (LPA No.191 of 2006, dt.01.02.2010) does not lay down correct law and is hereby overruled."

The Court has also placed reliance on sub-section (6) of Section 4 of the Payment of Gratuity Act, 1972, to justify its conclusion. The Full Bench, however, took a different view on the entitlement of the employee who was prematurely retired by way of punishment. The *raison d'être* for arriving at this conclusion is contained in paragraph 26 of the report:

"We have also reproduced Regulation 38 of the Officers Regulations, which deals with leave encashment. This regulation states that leave shall lapse in certain circumstances. Proviso thereto, however, provides an explanation and makes a provision for leave encashment in those cases where an officer "retires" from service. The question is as to whether this retirement would mean retirement on attaining the age of superannuation or retirement caused by other modes as well, including compulsory retirement. It cannot be disputed that compulsory retirement occasioned otherwise than by way of penalty would be covered by the proviso and leave encashment would be admissible as in that eventuality also, the officer "retires" from service. However, unlike Regulation 46 of the Officers' Regulations, the cases where the retirement comes by way of penalty of compulsory retirement, are not excluded. Therefore, when an officer "retires" from service, in whatever manner, he is eligible for leave encashment. In the case of O.P. Garg v. UCO Bank and others (CWP-888-2005, dt.31.7.2007), this issue was specifically dealt with by this Court in the following manner:

'The petitioner in the present case had been wrongly denied encashment of leave through a careless misinterpretation of Regulation 38 and without considering its proviso. From the Regulation 38 it would be revealed that all leave lapses on resignation, retirement, death, discharge, dismissal or termination. What this means is that on the happening of any of the above events an officer cannot insist that he should be permitted to continue in

service to the extent of leave which still stood to his credit. Since leave lapses, the concerned officer must leave service. Funnily leave of an officer who dies while in service also lapse. It seems the framers of regulation probably thought that a dead person may continue on leave till the expiry of the leave to his credit, unless a regulation was framed.

Be that as it may, it is the proviso to Regulation 38 which applies to the petitioner's case and has been actually discussed in Ashwani Kumar Sharma's case (supra). As regards payment of gratuity made to the petitioner of Rs. 2,17,351/- on August 16, 2001, learned counsel submitted that these amounts had been paid without interest and referred to the order Annexure P/7 dated December 29, 2003 regarding payment of simple interest @ 10% for the period July 27, 1999 to August 15, 2001 on the aforesaid gratuity amount. Although interest was not paid to the petitioner at the time of release of the principal amount of gratuity on August 16, 2001, a sum of Rs. 20325/- was the second instalment received by the petitioner on November 17, 2004 but the second instalment was paid without interest. Therefore, the petitioner is entitled to 10% interest on this amount from the due date (July 17, 1999) till the actual payment made on November 27, 2004.

In view of the above discussion, this petition is allowed. The petitioner shall be entitled to payment of emoluments for the period of privilege leave that he had earned (leave encashment) along with interest @ 10% from July 26, 1999 till date of payment.' "

As could be culled out from the above quoted part of the judgment, the Full Bench judgment in **Anju Mathur** (2 supra) was guided by the pronounced difference between Regulation 38 dealing with Leave Encashment and Regulation 46 dealing with gratuity. When the rule-making authority has chosen to treat the employees differently on different aspects, it is not permissible for the employer to obliterate such distinction well maintained by the Regulations, to the detriment of the employees' interest.

15. Faced with the conflicting judgments between **Uco Bank and others v. Ashwani Kumar Sharma** (decided by the Punjab and Haryana High Court on 1.2.2010, in LPA No.191 of 2006), and **Punjab National Bank v. Jyotirmay Roy** (decided by the Calcutta High Court on 17.12.2012, in A.P.O. No.284 of 2012), on an identical

issue, a Division Bench of the Delhi High Court in **Deepak Sapra** (3 supra) had this to say:

“8. Thus, in respect of all categories of retirees, the first proviso states that such employees would be eligible to payment of leave encashment benefits. Advisedly, the regulation which was framed after prior consultation with and approval of the Central Government made no distinction between one class of retirees and another. Indeed there is no dispute about the fact that the cessation of service as a result of retirement can be on the occurrence of three contingencies-attainment of superannuation; option by the employee to voluntarily retire from the service, and the third, retirement of an employee upon imposition of a penalty or exercise by the employer upon imposition of a penalty or exercise by the employer of an option to compulsorily retire the employee on his attaining a certain age or having served for a certain number of years, in public interest. The first proviso makes no distinction between one class of retirees and another. In other words, each one of them, in terms of Regulation 38 of the 1979 Regulations is entitled to leave encashment benefit. In the case of those imposed with penalty of compulsory retirement, there is no dispute that pension - as applicable and other terminal benefits are given. In these circumstances, to single-out one class of retirees, i.e. those imposed with compulsory retirement and deny them the benefit of leave encashment would be contrary to plain intent of Regulation 38 of the 1979 Regulations. This Court is clear that the first part of the learned Single Judge's reasoning that he preferred and relied upon the bank's circular of 18.01.2001 is clearly erroneous. That circular flies in the face of the first proviso to Regulation 38 of 1979 Regulations and could not have added words as it sought to, in the present instance. Another reason which persuades us to hold as we do, i.e. to say that compulsory retirees would be entitled to leave encashment benefits is that singling-out such class of employees for denial for one specific type of retirement benefit is also arbitrary and furthers no rationale, having regard to the express terms of Regulation 38 of the 1979 Regulations.

9. This Court is, therefore, of the opinion that the reasoning embodied in the Full Bench judgment of the Punjab and Haryana High Court in UCO Bank and Ors. v. Anju Mathur [LPA 566/2012, decided on 07.03.2013], which specifically dealt with Regulation 38, is the correct one. The effect and purport of the decision in Jitendra Kumar Srivastava (supra) is the same with one superadded reason that leave encashment benefits are property, being vested rights, which cannot be deprived of without authority of law. The conclusion that this Court is reaching is identical to that reached by the Supreme Court, i.e. that in the absence of specific regulation, depriving one class of retirees (such as those imposed with penalty of compulsory retirement) leave encashment benefits is unwarranted and unsupported in law.”

Thus, the interpretation placed by us on Regulation 38 is supported in all fours by the Full Bench judgment of the Punjab and Haryana High

court in **Anju Mathur** (2 supra) and the Division Bench judgment of the Delhi High Court in **Deepak Sapra** (3 supra).

16. The judgment in **Kanhaiyalal Parasai** (1 supra) relied upon by the learned counsel for the appellants is of no help to them. The facts of the said case reveal that the CCS (Leave) Rules, 1972 made a provision for encashment of Half Pay Leave to the the employees who retire or retired prematurely, while no such benefit was extended to the employees who retired after rendering the full service and on attaining the age of superannuation. While repelling the challenge to this Rule, the Supreme Court held as under:

“...Government servants who retire or are retired prematurely constitute a class distinct from the class of those who avail of the benefit of full service till the date of superannuation and, therefore, if they are governed by separate sets of rules in regard to leave encashment, the latter cannot complain of hostile discrimination nor can it be said that the rule governing the latter class is arbitrary as it does not extend the benefit of encashment of half pay leave to those who superannuate in due course. Under Rule 39(1) as soon as the services of a government servant terminates in one way or the other he ceases to be entitled to leave but provision is made for leave encashment and he would be entitled thereto under the rules only. The reasons for permitting encashment of half pay leave not exceeding the period between the date on which he retires or is retired and the date of his normal superannuation is that premature or compulsory retirement deprives the government servant of the chance to avail of half pay leave because of the sudden termination of his relationship which is not the case with those who retire in due course on superannuation. Since encashment of half pay leave was not admissible under the rules obtaining on the date of the petitioner’s superannuation in 1980, we think the present petition is misconceived, more so because we do not find the challenge based on Article 19(1)(f) and Article 14 to be well founded.”

Unlike in **Kanhaiyalal Parasai** (1 supra), the Regulations framed by the Government in the case of employees of appellant No.1 – Bank did not lay down a separate Regulation in case of employees who are retired otherwise than by way of reaching the prescribed age of

superannuation. In the absence of such a dichotomy created by the Regulations, the appellants cannot on their own create a separate category of employees to deny them the benefit which they have earned. Such an action is not sanctioned by and therefore needs to be termed as *ultra vires* the Regulations.

17. Moreover, as rightly observed by the learned single Judge, the disciplinary authority has not forfeited the right of the respondent to encash the Privilege Leave. Thus, neither under the Regulations nor under the order of the disciplinary authority, the respondent is deprived of his right to encash the Privilege Leave.

18. Before concluding, here is an icing on the cake! Almost at the fag end of the hearing, learned counsel for the respondent placed before us letter dt.11.5.2015 of the Deputy Chief Executive of the Indian Banks' Association wherein it was stated that based on various representations received from the banks, the decisions of the Courts, that of the Government of India, and the HR Committee, the Managing Committee at its meeting held on 30.4.2015 accepted the recommendations of the HR Committee and decided to permit encashment of Privilege Leave by the compulsorily retired employees/officers. This decision of the Indian Banks' Association was approved by the Board of appellant No.1 bank in its Fourth Meeting held on 8.7.2015 at Hyderabad. When this material was placed before us, we have called upon appellant No.2 to explain their conduct in contesting the appeal, and he has sought to justify the same based on an earlier Circular dt.27.11.2000 as per which the

compulsorily retired employees were held not entitled for leave encashment and that when the punishment of compulsory retirement was imposed on the respondent the said Circular was in force. Though in stricto sensu the benefit of the Board's Resolution dt.8.7.2015 cannot be made applicable to the respondent, what is pertinent is that Indian Banks' Association has yielded to the preponderance of the judicial opinion on the interpretation of Regulation 38 of the Service Regulations and veered round to the reality that the Regulations do not deny a compulsorily retired employee of his right to encash the Privilege Leave. Thus, our view derives strength from the aforementioned decision of the Indian Banks' Association and also the Resolution of the Board of Directors of appellant No.1.

19. For the aforementioned reasons, the writ appeal fails and the same is accordingly dismissed.

As a sequel to dismissal of the writ appeal, W.A.M.P. No.1351 of 2016 shall stand disposed of as infructuous.

C.V. NAGARJUNA REDDY, J

G. SHYAM PRASAD, J

12-8-2016

am/bnr

Note: LR copies to be marked.

(B.O)

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