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

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Date of Decision: 8th September, 2016

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W.P.(C) 7397/2012

SH. MANGAL SAIN SHARMA Petitioner
Through: Mr. M. Dutta and Mr. R. S. Bhalla,
Advocates.

Versus

STATE BANK OF INDIA AND ORS. Respondents
Through: Mr. Rajiv Kapur, Advocate.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. Two months after India became independent from the Imperial British Rule, the petitioner was employed by the Imperial Bank of India (for short 'IBI'), which subsequently became the State Bank of India pursuant to the enactment of the State Bank of India Act, 1955; he served there till his superannuation on 31.07.1988 and his pension was assessed at Rs.1617.75 per month. He has a grievance with the fixation of his pension, which is longstanding and has not been addressed till date.

2. Subsequently, in terms of the Notification/Circular dated 01.01.1987, the pension amount was reassessed at Rs.1513/- per month. The petitioner made representations against the same but to no avail. He relied upon a clause in the Circular dated 01.01.1987, which specifically states that, "However, in respect of IBI Employees, the Pension payable under the

Revised Rules from 01.01.1987 shall not be less than that payable under the previous Rules." The petitioner, thereafter, pursued his case before the Central Information Commission (for short 'CIC') in the year 2007 and subsequently before the Consumer Forum in 2010, evidently under improper advice; and subsequently this writ petition was filed by the petitioner in October, 2012.

3. On the basis of the pension computation sheet, the monthly substantive salary paid to the petitioner for the last five years, i.e., from 17.01.1982 to 16.01.1987 and the pension admissible under Rule 18/23 of the Pension Fund Rules, an amount of Rs.1617.75 was fixed, as pension payable to the petitioner. Instead of the said amount, the petitioner was paid pension at Rs.750/- per month because of the limitation of maximum pension payable under Rule 20 of the Pension Fund Rules of the IBI. Subsequently, the cap of Rs.750/- was enhanced to Rs.2400/- and the petitioner was paid an amount of Rs.1513/- per month under the Circular No.PER/43/88 dated 21.09.1988.

4. The learned counsel for the petitioner submits that the said calculation of Rs.1513/- is erroneous and contrary to the Rules, as Clause 3(ii) of the Notification lifts the ceiling of Rs.750/- to Rs.2400/- per month and provides protection to the employees of the erstwhile IBI to the extent that pension payable under the Revised Rules from 01.01.1987 shall not be less than that payable to them under the previous Rules.

5. Relying on the said circular, the respondent has re-calculated the pension of the petitioner by taking the last drawn pay of Rs.3025/- which has come to Rs.1513/- per month. The respondent has justified the aforesaid fixation of pension by way of his letter dated 17.01.1998, which reads as

under:-

“With reference to your letter dated 01.11.1997, we have to advise that your Basic Pension has been correctly fixed at Rs.1,513.00 because your average salary for last 12 months i.e. 17.01.86 to 16.01.87 was Rs.3,025.00 half of which comes to Rs. 1512.50 (say Rs.1513.00). As per Bank's instructions, Basic Pension payable shall be least of Pension payable Rs. 1617.75 / half of average salary Rs.1513.00 ceiling of pension Rs.2,400/-. In your case half of the average salary works out to be the least of the three criteria. Therefore, there is no anomaly in the pension and the same has been correctly calculated.”

6. Furthermore, vide another communication dated 10.09.2005, the respondent has intimated the petitioner as under:-

**“IBI EMPLOYEES PENSION AND GUARANTEE
FUND RULES REVISION OF PENSION**

We refer to your representation dated 16.6.2005 addressed to the Chairman, State Bank of India. In this connection, we advise that your pension was upgraded to Rs 1,513/- p.m. w.e.f. 1.8.88, pursuant to the revision in pension in the year 1989. This revision in pension had a proviso which said that in respect of IBI Employees, the pension payable under the revised rules from 1.1.1986 shall not be less than that payable under the previous rules. Under the previous rules maximum pension payable was Rs 750/- p.m., which was being paid to you. Your contention that your pension should have been fixed at Rs 1,617.78 p.m. is not supported by rules and hence cannot be acceded to.”

7. Pursuant to the letter dated 10.09.2005, the petitioner pursued his grievances before the CIC in the year 2007 and thereafter approached the Consumer Forum in the year 2010, where his application was dismissed as

withdrawn. Finally, he approached this Court. The learned counsel for the respondent contends that the writ petition is barred by laches, while the learned counsel for the petitioner submits that the amount of pension is a continuing right and the petitioner does not claim any benefit except for three years prior to the date of filing of the petition. The Court is of the view that the petitioner's pursuit of the remedies elsewhere was ill-advised and therefore, he cannot be held responsible for the same. The consequences of delay in this case cannot visit the petitioner so precipitately as to prejudice his claim for relief in law. The writ petition was filed in 2012. Should the petitioner succeed, he would at best get the benefit of a revised pension from three years prior to the date of filing of the petition. What then needs to be determined is whether the petitioner is entitled to pension at the rate claimed by him in view of the protection granted to him under Clause 3(ii) of the aforesaid Notification dated 21.09.1988.

8. The learned counsel for the respondent submits that the Rules for calculating pension are placed in Rules 18 to 20 of the IBI Rules, which read as under:-

“18. Subject to the other provisions of these rules and regulations pensions shall, in the case of members of the staff in India, be payable at the rate of one-sixtieth part for every year's service of the average monthly substantive salary drawn during last five years' service and, in the case of members on the staff in London, one-sixtieth part for every year's service of the salary at date of retirement.

19:(i) An employee retiring from the Bank's service after having completed twenty years' service with the Bank shall be entitled to pension provided the employee

has attained the age of fifty years if employed on the male staff in London.

(ii) An employee retiring from the Bank's service after having completed twenty years' service on the staff in India and / or on the staff in London shall be entitled to pension irrespective of the age he shall have attained if he shall satisfy/ the authority competent to sanction his retirement by approved medical certificate or otherwise that he is incapacitated for further active service. (Notwithstanding anything to the contrary in these rules and regulations the total of such employee's service whether in India or London shall count for pension under this rule.)

(iii) An employee who has attained the age of fifty-five or who shall be proved to the satisfaction of the authority competent to sanction his retirement to be permanently incapacitated by bodily or mental infirmity from further active service (such infirmity not being the result of irregular or intemperate habits) may, at the discretion of the trustees, be granted a proportionate pension.

20. The maximum pension (except in cases which the trustees in their discretion may unanimously consider special) shall not exceed Rs.750 per mensem and in no case shall it exceed Rs.1000 per mensem in the case of employees on the staff in India and £600 per annum in the case of employees on the staff in London who have not done previous service in India.”

9. The learned counsel submits that earlier the consideration for calculation of the pension was the average monthly substantive salary drawn during the last five years' for the IBI Employees or three years' pensionable service for the SBI employees. Now, the pension is to be calculated on a

uniform basis of the average substantive salary drawn during the last 12 months' pensionable service.

10. The learned counsel for the respondent has relied upon the case of ***Imperial Bank of India Pensioners' Association Vs. State Bank of India, AIR 1989 SC 1049***, wherein the Supreme Court held that:-

“6. When the petition was filed employees of the Bank were governed by two sets of pension rules, namely, one applicable to IBI employees and another applicable to SBI employees. In the case of IBI employees pension was calculated on average monthly substantive salary drawn during the last five years whereas in the case of SBI employees the pension was worked out on the basis of three years average substantive salary. The monthly ceiling was fixed at Rs. 750/- relaxable upto Rs. 1000/- at the discretion of the trustees. Rs. 200/- was fixed as the minimum pension. There was no provision for family pension. Now, under the proposed pension-plan evolved after consultation with SBI employees' federations, the distinction regarding the mode of calculation of pension is removed by providing for calculation of pension on the uniform basis of last 12 months' average salary. The existing ceiling of Rs. 750/- relaxable upto Rs. 1000/- per month is sought to be replaced by Rs. 1300/- relaxable upto Rs.2400/- per month. The revised ceiling of Rs. 2400/- is not made applicable to all officers instead of restricting it to senior staff officers only. The further ceiling of pension as one-half of the average substantive salary is introduced to achieve uniformity with the pension-plan applicable to SBI employees. The minimum pension of Rs. 200/- per month is raised to Rs. 300/- per month. In addition a wholly new scheme for Family Pension is introduced. These proposed modifications are intended to come into effect from January 1, 1987. It, therefore, appears that the Bank authorities have realised the need to upgrade the existing pension-plan because of the fall in

the rupee value on account of inflation.”

11. The learned counsel for the respondent submits that by virtue of this judgment, the upper limit of pension payable to employees has been fixed at Rs.750/-. This court is not persuaded by the said contention as the factual matrix and reliefs sought in the present case are distinct from those in the aforementioned case. In the case of *Imperial Bank of India Pensioners' Association Vs. State Bank of India (supra)*, the Supreme Court only looked into the limited question of the need to suitably revise the IBI Employees Pension and Gratuity Fund Rules and Regulations, and did not express any view on the method for the computation of pension under the erstwhile Rules. The Supreme Court observed that the proposed changes should be made effective and consequential adjustments should be made, wherever necessary, in the revised pension-plan.

12. Furthermore, Clause 3(ii) of the Notification clearly provides that in respect of IBI Employees, the Pension payable under the Revised Rules from 01.01.1987 shall not be less than the pension payable under the previous Rules. Therefore, the pension payable would have to be calculated under the old Rules but it would be subject to the maximum payable limit imposed under Rule 20.

13. It is the petitioner's case that the maximum limit of Rs.750/- under the erstwhile Rules having been revised to Rs.2400/- under the Amended Rules for all employees, hence the petitioner too would get the benefit thereof.

14. The petitioner has sought the re-computation of his pension. Paragraph-2 of the counter-affidavit of the respondent mentions the same as follows:-

“2. Pension of the petitioner was calculated in terms of Rule 18 and 20 of Imperial Bank Employees Pension and Guarantee Fund prevailing on the date of retirement of complainant viz. 31.07.1988 as under:

Amount of pension admissible under Rule 18	Rs.1617.75
Maximum pension admissible, Under Rule 20	Rs. 750.00

Subsequently on amendment of Imperial Bank Employees Pension and Guarantee Fund w.e.f. 01.01.1986 the petitioner was entitled to get the pension at one of the rates given below, whichever is lower:-

1. Calculation of pension as per length of service
In terms of Rule 18 read with Rule 20(1)a.:
Rs. 1890.63
 - ii. Calculation of pension as per Rule 20(1)(a)
i.e. 50% of average monthly substantive salary
i.e., Rs.3025/- Rs.1512.50
- OR
- iii. Maximum pension Rs.2400.00

Whichever is less i.e. in the instant case it is Rs.1512/-.

As the pension given in column (ii) hereinabove was lower, the petitioner was entitled to receive the pension of Rs.1512.50 per month and accordingly the same was fixed. Prior to the amendment the petitioner was drawing pension @ Rs.750/- per month. Hence, the pension calculated and paid as per revised rules is not less than the pension payable as per pre-revised rules. All the contrary contentions are incorrect and denied. Copies of Rule 18 and 20 as were in force prior to amendment and revised Rule 18 and 20 is annexed as

Annexure R-1.”

15. The petitioner's application for retirement from service dated 24.05.1988 shows that he had joined service with IBI on 14.10.1947 and retired on 31.07.1988. His pension was fixed at Rs.1617.75 per month and he received his pension for the first time on 01.08.1988. From the abovementioned facts, it is clear that the petitioner was entitled to a pension of Rs. 1617.75 per month. However, prior to the amendment, he was to be paid Rs. 750/- per month in accordance with the payment ceiling imposed under the IBI Rules. The amendment to the Rules raised the payment ceiling from Rs. 750/- to Rs. 2400/- with retrospective effect from 01.01.1987. Therefore, the pension payable to the petitioner on 01.08.1988 must be read in consonance with the revised ceiling of Rs. 2400/- which is deemed to have come into effect from 01.01.1987. In effect, with the restriction for payment of the calculated, entitled and payable sum having been removed, the said amount of Rs.1617.75 should be paid to the petitioner. This Court sees no reason why the petitioner should not receive the pension at Rs. 1617.75 per month as per his entitlement. This petition was filed in October, 2012. Hence, the petitioner would be entitled to benefits of three years earlier thereto. Therefore, the pension to be paid to him would be on the basis of the aforesaid pension computation sheet dated 24.05.1988 by which it was fixed at Rs.1617.75 along with interest @ Rs.8% *per annum*. It is ordered accordingly.

16. The learned counsel for the petitioner submits that the petitioner is the sole beneficiary of the pension. He is about 90 years old and is stated to be in frail health. His wife is pre-deceased to him and if his retiral dues are not

given to him during his lifetime, the entire proceedings would be an exercise in futility. He contends that in the twilight years of his life, if his due pensionary benefits are not released to him it would tantamount to frustrating justice. This should not come to pass. Therefore in view of the above, the respondent is directed to pay the arrears of the pension to the petitioner within six weeks from today.

17. The writ petition is disposed off in the above terms.

(NAJMI WAZIRI)
JUDGE

SEPTEMBER 08, 2016
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