

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

+ **LETTERS PATENT APPEAL No. 403/2015**

% **Reserved on : 27th September, 2016**
Pronounced on : 6th December, 2016

UNITED BANK OF INDIA ...Appellant
Through : Mr. Rajesh Kumar & Mr. Gaurav
Kumar Singh, Advocates
Versus

KAMLESH PRATAP SINGH ...Respondent
Through : Mr. Harish Sharma & Mr. Bharat
Bhushan, Advocates

WRIT PETITION (CIVIL) No. 3817/2016

DEEPAK SAPRA ...Petitioner
Through : Mr. K.G. Mishra & Mr. A.V.
Malhotra, Advocates
Versus

PUNJAB NATIONAL BANK ...Respondent
Through: Mr. Rajesh Kumar & Mr. Gaurav
Kumar Singh, Advocates

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MS. JUSTICE SUNITA GUPTA

SANJIV KHANNA, J.

The afore-stated Letters Patent Appeal and writ petition raise similar issues and are, therefore, being disposed of by this common judgment for clarity and convenience. At the same time, as facts in each case are

required to be noticed and there are dissimilarities, we have preferred to separately deal with each case.

LPA No. 403/2015

2. LPA No. 403/2015 impugns the order and judgment of the learned Single Judge dated 5th May, 2016 passed in W.P.(C) No. 3521/2014 titled Kamlesh Pratap Singh vs. United Bank of India.

2.1 Pursuant to bipartite settlement dated 29.10.1993 signed between Indian Banks' Association and the Workmen Union, the United Bank of India (Employees') Pension Regulations, 1995, (Regulations for short) were framed by the appellant/United Bank of India under Section 19 of the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1990.

2.2 The employees of the appellant Bank who were already covered under the Contributory Provident Fund were required to exercise the option to be governed by the pension Regulations within a period of 120 days from the date of notification. The Bank's contribution to the Contributory Provident Fund, in the case of said employees, was required to be refunded.

2.3 The respondent-Kamlesh Pratap Singh, was an employee of the appellant- United Bank of India, who did not opt for the pension under the Regulations and remained covered by the Contributory Provident Fund scheme.

2.4 In 2009, departmental proceedings were initiated against Kamlesh Pratap Singh vide charge sheet dated 21.3.2009 and the Disciplinary
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Authority imposed punishment of compulsory retirement with superannuation benefit. The operative portion of the punishment order dated 23.12.2009 reads as under:

" In view of the facts and circumstances of the case and the gravity of the proved misconduct, I find that the proposed punishment has been just and proper.

Therefore, I impose on you the following punishment under Clause 61 of the Memorandum of settlement dated 10.0.2002 with immediate effect:

"Compulsory Retirement" with superannuation benefits i.e., Pension and/or Provident Fund and Gratuity as would be due otherwise under the Rules prevailing in the Bank without disqualification from future employment.""

2.5 Kamlesh Pratap Singh not being a pension optee was paid terminal/superannuation benefit, i.e. his own as well as bank's contribution to the provident fund and gratuity. There is no dispute or *lis* about this payment.

3. The United Bank of India by notification/circular dated 16th August, 2010 and in terms thereof had invited fresh options from the serving and retired employees to join the pension scheme. The short question is whether the respondent was eligible and qualified to exercise option and join the pension scheme as per notification/circular dated 16th August, 2010.

4. We would begin with referring to the relevant portion of the said circular/notification dated 16th August, 2010, which reads as under:-

" Indian Banks' Association has signed a settlement with the Workmen Unions and a Joint Note with Officers' Organization on 27.04.2010 in respect of extending another option for pension to the non optees who were in the service of the Bank prior to 29th September, 1995 and confirmed to be in service on or after the said date.

Existing Pension Scheme for which another option is being extended now is not applicable for those who joined the Bank on or after 01st April, 2010.

Salient features of the aforesaid settlement leading to extension of opportunity for another option for pension are as follows:

1. SERVING EMPLOYEES means those who were in service of the Bank as on 27th April, 2010 and joined the Bank prior to 1st April, 2010.

2. RETIRED EMPLOYEES means those who were in service of the Bank on or after 29th September, 1995 and ceased to be in service of the Bank on account of retirement on Superannuation, Voluntary retirement, death or on account of VRS under special scheme prior to 27th April, 2010.

3. Eligibility and terms and conditions:

A) This "another option for pension" will be available to those hitherto non optee retired employees.

i) Retired from the Bank's service on superannuation or on Voluntary retirement on or after 29th September, 1995.

ii) Retired from the Bank's service on account of VRS under special scheme on or after 29th September, 1995 after rendering a minimum of 15 years service.

iii) Died while in service of the Bank on or after 29th September, 1995 (families of the deceased employees may opt for getting family pension).

All of the above retired employees/families of the deceased employees who want to opt for pension now will have to pay 156% of what they received on retirement/death on account of the Bank's contribution to SPF and interest accrued thereon being his/her share of 30% initial funding gap."

5. The Circular/notification records that a fresh option was being granted pursuant to the settlement dated 27th April, 2010 between the Indian Bank's Association and Workmen Unions and the joint note with the Officers Organization. The option was available and confined to "retired employees" who as per the eligibility clause were; (i) employees who were in service of the Bank on or after 29th September, 1995; and (ii) had ceased to be in service of the Bank on account of retirement on superannuation, voluntary retirement, death, or on account of the Voluntary Retirement Scheme (VRS) on or after 29th September, 1995 after rendering a minimum of 15 years service. The term "retired employees" was, therefore, given a precise and definite meaning and conspicuously and consciously excluded employees awarded punishment of "compulsory retirement". The option being available only to the retired employees of the type specified, all employees who could have earlier opted for pension when the Regulation was first introduced in 1995, were not eligible to exercise the second option.

5.1 The retired employees or their families who desired to opt for pension were required to pay 156% of what they had received on retirement/death as the Bank's contribution towards 30% of the initial funding gap.

6. By another circular/notification dated 20th August, 2010, paragraph 2 of the circular/notification dated 16th August, 2010 was partly modified in the following manner:-

"In that Circular inter-alia it has been mentioned under para-2 that "RETIRED EMPLOYEES" means those who were in service of the Bank on or after 29th September, 1995 and ceased to be in service of the Bank on account of retirement on Superannuation, voluntary retirement, Death, or on account of VRS under Special Scheme prior to 27th April, 2010"

Now, instead of the above, para-2 should be read as "RETIRED EMPLOYEES" means those who were in service of the Bank on or after 29th September, 1995 and ceased to be in service of the Bank on account of retirement on Superannuation, Death or on account of VRS under Special Scheme prior to 27th April, 2010.

Again in that Circular, it has been mentioned under para 3 (A) (i) that "Retired from Bank's service on superannuation or on Voluntary Retirement on or after 29th September, 1995.

Now, instead of the above, para 3 (A) (i) should be read as "Retired from Bank's service on or after 29th September, 1995."

By the aforesaid modification the term "voluntary retirement" in paragraph 2 of the notification/circular dated 16th August, 2010 was deleted. However, employees who had taken voluntary retirement under a special scheme prior to 27th April, 2010 were eligible. Paragraph 3 (A) (i) was also amended to delete the words "on superannuation or on voluntary retirement on or after 29th September, 1995". This deletion was inconsequential as the expression "retired employees", was expressly defined in paragraph 2. Noticeably, no amendment was made to incorporate or include those employees who had suffered punishment of compulsory retirement.

6.1 Thus, the circular/notification dated 16th August, 2010 read with the amendment dated 20th August, 2010, did not postulate and cover the employees who were indicted in the disciplinary proceedings and awarded punishment of compulsory retirement with superannuation benefit. They may have been paid contributory provident fund and gratuity, but were not eligible nor conferred any right to opt for pension.

7. Whatever may have been the terms of the settlement agreement between the Indian Banks' Association and Workmen Unions, and the Joint Note with the Officers Organisation, the explicit legal position that emerges from the above mentioned circular/notification and the modification, is that the option for pension was limited and confined to the retired employees as mentioned in the said circular/notification dated 16th August, 2010 as modified by the circular/notification dated 20th August, 2010. The settlement agreement dated 27th April, 2010 on which the respondent relies, was not incorporated in the said circulars/notification. Violation of the settlement agreement would be a different matter, but as far as the exercise of option under the circular/notification was concerned, it was strictly limited to the retired employees as defined in paragraph 2 which precisely defined the term "retired employee", who were eligible to opt. In case, there was any conflict between the settlement agreement and the two circulars/notifications, the latter would prevail and would be

binding, unless the circulars/notifications are challenged and the challenge is upheld.

8 In spite of the aforesaid discussion, we would examine the contention of the respondent-Kamlesh Pratap Singh that the word "retired" in the circular/notification dated 16th August, 2010 as modified by the circular/notification dated 20th August, 2010 should be interpreted as per clause 2(y) of the Pension Regulations read with the settlement agreement dated 27th April, 2010, in light of the decision of the Supreme Court in ***Bank of Baroda Vs. S.K. Kool***, (2014) 2 SCC 715.

9. The submission of the petitioner is to the following effect. Clause 2(y) of the Pension Regulations defines "retirement" as under:-

"y. "retirement" means cessation from Bank's service-

- a. on attaining the age of superannuation specified in Service Regulations or Settlements;
- b. on voluntary retirement in accordance with the provisions contained in Regulation 29 of these Regulations;
- c. on premature retirement by the Bank before attaining the age of superannuation specified in Service Regulations or Settlements;"

Paragraph 2(II)(a) of the settlement agreement dated 27th April, 2010 under "Terms of Settlement" stipulates as under:-

"(2) Another option for joining the existing Pension Scheme shall be extended to those employees who:-

(i)(a) xxxxx

(b) xxxxx

(c) xxxxx

(II)(a) were in service of the bank prior to 29th September 1995 in case of Nationalised Banks/ 26th March 1996 in case of Associate Banks of State Bank Of India and retired after that date and prior to the date of this Settlement;"

Harmoniously construing Clause 2(y) of the pension Regulations and paragraph 2(II)(a) of the settlement agreement, the term "retired" would also cover an employee who was compulsorily retired with superannuation benefits and would thus, be eligible to exercise option to join the pension scheme.

10. In the impugned order and judgment dated 5th May, 2016 the Single Judge has accepted the aforesaid contention of the respondent and held that the decision in *S.K. Kool (supra)* would squarely apply, for in the said case, the respondent therein had suffered an identical penalty of removal with pensionary benefits and it was held that the said employee would be entitled to opt for pension under the identical Regulations as adopted by the Bank of Baroda.

11. On a plain and literal reading of the definition of the term "retired" in clause 2(y) of the Pension Regulations, it is apparent that retired employees would not include those employees who, like the respondent, have suffered the punishment of compulsory retirement with superannuation benefits. With regard to paragraph 2(II)(a) of the settlement

agreement dated 27th April, 2010, it will be wrong and fallacious to assume that the word “retired” used therein was not in the context of or in reference to the word's natural contours, but was reflective of a stretched and hyperbolic meaning so as to include officers who were compulsorily retired as a punishment, with superannuation benefits and have received payments of the contributory provident fund. In *S. K. Kool* (supra), the aforesaid plain and literal interpretation of the word “retirement” was not applied to an employee who was removed with entitlement to superannuation benefits. This was a case of an employee who was entitled to pension, having opted for the same, and not contributory provident fund as superannuation benefit and, therefore, to deny pension would have negated the ameliorative nature of the punishment order. He would have neither got pension, nor payment from the contributory provident fund.

12. In the case of *S.K. Kool (supra)*, the employee had suffered penalty of removal from service with superannuation benefits as would be due otherwise and without disqualification from future employment. The Bank, however, in view of the said punishment had refused to grant leave encashment and pensionary benefits relying upon Regulation 22 of the Pension Regulations, which reads as under:-

"22. Forfeiture of service: (1) Resignation or dismissal or removal or termination of an employee from the service of the Bank shall

entail forfeiture of his entire past service and consequently shall not qualify for pensionary benefits."

The Bank's stance was that in terms of the Regulation 22, the order of removal had the effect of forfeiture of past service and consequently, the employee did not qualify for pensionary benefits. The contention of the bank was firmly and decisively rejected by making reference to the order of punishment, for the employee was entitled to superannuation benefits as would be due otherwise. Importantly, the employee was a pension optee and was, therefore, entitled to pension in terms of the Regulation. Pension was payable albeit was being denied on account of the punishment of removal and Regulation 22. The question whether pension option could be exercised was not the issue. Pension on retirement was payable. This was not a case where the employee had applied for option under the settlement agreement dated 27th April, 2010 or the circular/notification issued by the Bank giving an option to the retired employees which did not include employees who had suffered punishment of compulsory retirement. The question and issue decided was different, and the observations and ratio too was in a different context.

13. In the case of ***S.K. Kool (supra)***, the Supreme Court referred to the bipartite settlement signed by the Indian Banks' Association and the Banks' Workmen's Union with regard to disciplinary action procedure. In terms of the said settlement, clause 6(b) was inserted as one of the punishments

which could be inflicted on an employee found guilty of gross misconduct.

The said clause was as under:-

"6. An employee found guilty of gross misconduct may;

(a).....

(b) be removed from service with superannuation benefits i.e. Pension and/or Provident Fund and Gratuity as would be due otherwise under the Rules or Regulations prevailing at the relevant time and without disqualification from future employment, or.."

The Supreme Court observed that the punishment with which the employee, i.e. S.K. Kool, was visited was punishment of removal from service with superannuation benefits. In this context, it was held that Regulation 22 would not disentitle the employee to pensionary benefits, for it would amount to fraud on the bipartite agreement. The punishment imposed and Regulation 22 had to be harmonized so as to give effect to the punishment imposed in terms of clause 6(b). Accordingly, the punishment of removal with retirement benefits, would not disentitle the employee from payment of retirement benefits which he was otherwise entitled to. In the said case, as the employee, i.e. S.K. Kool, was entitled to pension, which was directed to be paid to him. Not granting the superannuation benefits i.e the pension to S.K. Kool would have been contrary to the punishment imposed.

14. We would like to reproduce paragraphs 14 and 15 in *S. K. Kool (supra)*, which read as under:-

"**14.** The Regulations do not entitle every employee to pensionary benefits. Its application and eligibility is provided under Chapter II of the Regulations whereas Chapter IV deals with qualifying service. An employee who has rendered a minimum of ten years of service and fulfils other conditions only can qualify for pension in terms of Regulation 14 of the Regulations. Therefore, the expression "as would be due otherwise" would mean only such employees who are eligible and have put in minimum number of years of service to qualify for pension. However, such of the employees who are not eligible and have not put in required number of years of qualifying service shall not be entitled to the superannuation benefits though removed from service in terms of Clause 6(b) of the Bipartite Settlement. Clause 6(b) came to be inserted as one of the punishments on account of the Bipartite Settlement. It provides for payment of superannuation benefits as would be due otherwise.

15. The Bipartite Settlement tends to provide a punishment which gives superannuation benefits otherwise due. The construction canvassed by the employer shall give nothing to the employees in any event. Will it not be a fraud Bipartite Settlement? Obviously it would be. From the conspectus of what we have observed we have no doubt that such of the employees who are otherwise eligible for superannuation benefit are removed from service in terms of Clause 6(b) of the Bipartite Settlement shall be entitled to superannuation benefits. This is the only construction which would harmonise the two provisions. It is well-settled rule of construction that in case of apparent conflict between the two provisions, they should be so interpreted that the effect is given to both. Hence, we are of the opinion that such of the employees who are otherwise entitled to superannuation benefits under the Regulations if visited with the penalty of removal from service with superannuation benefits shall be entitled for those benefits and such of the employees though visited with the same penalty but are not eligible for superannuation benefits under the Regulations shall not be entitled to that."

The aforesaid decision, therefore, dealt with an entirely different factual matrix and the legal issue and question involved is clearly distinguishable. The question and interpretation involved in the present case are different. The issue in *S.K. Kool (supra)* related to the impact and

effect of Regulation 22, which postulates forfeiture of past service on punishment of removal, dismissal, resignation and termination, and when the punishment order directs payment of superannuation benefits. This decision does not deal with the question whether or not an employee who had suffered punishment of compulsory retirement with superannuation benefits was entitled to exercise option in terms of the circulars/notifications dated 16th August, 2010 and 20th August, 2010. The decision also does not deal with the question or issue what is meant by the term "retired", for in the said case, the punishment imposed was one of removal from service and not compulsory retirement.

15. The appellant-United Bank Of India had interpreted the term "retired" by giving it a specific meaning in their circulars and notifications dated 16th August, 2010 and 20th August, 2010, to mean retired on superannuation or voluntary retirement under the special schemes prior to 27th April, 2010. Employees who had suffered the punishment of compulsory retirement with superannuation benefits were excluded and ineligible. There was no objection or protest from the Workers Union or Officers Association questioning the definition and meaning of the term "retired" as used in the aforesaid circulars. The appellant bank was not questioned for giving the term "retired" a narrow meaning in contrast with and contrary to the settlement agreement dated 27th April, 2010.

16. The circulars/notifications dated 16th August, 2010 and 20th August, 2010 had the effect of giving a non-optee in service, or a "retired" officer, another chance to opt for the Pension Scheme. In the case of a retired employee, the option was restricted to the categories specified and not to cases wherein the employee had suffered the punishment of compulsory retirement with benefits as due. To sum up, the effect of the aforesaid reasoning would be that employees who had suffered the punishment of compulsory retirement with superannuation benefits without opting for pension, would be entitled to such benefits as were paid or were payable to them under the relevant Contributory Provident Fund Scheme. They would not be covered by the circulars/notifications dated 16th August, 2010 and 20th August, 2010.

17. Reference is made to circular No.HR & IR/CIR/ 2015-16/MI/ 1852 dated 23rd December, 2015, which reads as under:

“Chief Executives of Member banks which are parties to Bipartite Settlement dated 10.04.2002.

Dear Sir,

Special Leave Petition NO.17054/2009 before the Hon’ble Supreme Court – Bank of Baroda Vs. S.K. Kool – Supreme Court decision dated 11.12.13 against the Bank – Review Petition (C)No.2344/2014 & (2) SLP No.11443/2014 Bank of Baroda Vs. G. Sukla before the Supreme Court.

We refer to our Circular No.CIR/HR&IR/KU/MI/1004 dated 30.06.2015 regarding treatment of cases in which an employee who is imposed with punishment of “removed with superannuation benefits” under Clause 6(b) of the Bipartite Settlement dated 10.04.2002/27.5.2002 on “Disciplinary Action & Procedure therefor for Workmen” in view of the above captioned Hon’ble Supreme Court Judgment. Member banks were advised to consider implementation of the said judgment in such cases.

We have been receiving queries from member banks seeking clarifications as to whether the award staff employees who are imposed with punishment of “compulsory retired” (6c) and “discharged from service” (6d) are also covered under the above judgment.

We have examined the matter and are of the view that employees imposed with punishment of “removal”, “compulsory retirement” and “Discharge” as per Clause 6 (b), (c) and (d) of Settlement dated 10.4.2002 are to be considered with superannuation benefits, i.e. Pension and / or PF and Gratuity as would be due otherwise under the Rules or Regulations.

Yours faithfully,

Sd/-

K. Unnikrishnan

Deputy Chief Executive”

The said circular refers to the decision in *S.K. Kool (Supra)* and states that employee who has been imposed punishment of removal with superannuation benefits, as per the bi-partite settlement would be entitled to pensionary benefits. Queries had been received from the member banks

seeking clarification as to whether staff employees, upon whom compulsory retirement has been imposed, were covered by the said judgment. The matter was examined and it was clarified that employees who had suffered punishment of removal / compulsory retirement with discharge, as per Clause 6(b), (c) and (d) of the Settlement dated 10th April, 2002, are to be considered for superannuation benefits, be it pension and/or provident fund and gratuity, as would be due under the Rules and Regulations. The aforesaid circular does not in fact state or hold that the officer, who has suffered punishment of compulsory retirement would be entitled to opt for pension under the two 2010 Circulars. This circular only clarifies that an officer who has suffered punishment of removal, compulsory retirement, discharge is entitled to superannuation benefits as due, and the same should be paid.

18. We would refer to the case law relied upon by the parties when we decide Writ Petition (C) No. 3817/2016, Deepak Sapra versus Punjab National Bank. However, at this stage, we would only notice and record that a Division Bench of this Court in ***Kailash Nath Singhal versus Union of India and Others***, 97 (2002) DLT 602 (DB) holds and directs that employees, who have suffered punishment of compulsory retirement as a punishment for misconduct would constitute a separate class. Kailash Nath Singhal, who was compulsorily retired by way of punishment on 21st

February, 1991 was denied the initial option to opt for pension under the Punjab National Bank (Employees) Pension Regulations, 1995 as the said punishment was imposed prior to 1st November, 1993. We shall refer to the reason for fixing of the cut off date subsequently, but at this stage would refer to paragraphs 8 and 10 of the judgment in *All-India Reserve Bank Retired Officers Association versus Union of India*, (1992) Supp. (1) SCC 664, which were quoted in *Kailash Nath Singhal* (supra). Paragraphs 8 and 10 of *All-India Reserve Bank Retired Officers Association* (supra) read as under:-

“8. From what we have stated above it becomes clear that the demand of Bank employees for introduction of a pension scheme as a third retiral benefit as recommended by the Study Group in its report submitted in 1981 was rejected by the Central Government sometime in 1982. Thereafter a fresh demand was made for the introduction of a pension scheme in substitution of the CPF scheme on the pattern of the pension scheme admissible to Central Government employees. This proposal met with the approval of the Central Government and accordingly the Bank introduced the Regulations incorporating the same. Under the Regulations new entrants joining on and after November 1, 1990 automatically become governed by the pension scheme; for them the CPF scheme has no existence. Those employees who were in the employment of the Bank prior to November 1, 1990 were given an option to switch over to the pension scheme subject to the conditions stated earlier. An option was also given to those employees who had retired between January 1, 1986 and coming into force of the Regulations to come over to the pension scheme, provided they were willing to refund the employer's contribution under their CPF scheme with interest thereon and with further interest at 6 per cent per annum from the date of receipt of the provident fund amount till the date of repayment. It will thus be seen that the pension scheme introduced under the Regulations is patterned on the pension scheme governing the Central

Government employees which was brought into effect from January 1, 1986 on the recommendations of the Fourth Central Pay Commission found in Chapter X of the report, vide paragraph 10.19 of that chapter. There is, however, no doubt that by fixing the cut-off date Bank employees who superannuated on or before December 31, 1985 are denied the benefit of the pension scheme. The contention of the petitioners is that both the groups, namely, those who retired on or before December 31, 1985 and those who retired between January 1, 1986 and October 31, 1990 belong to the same group of CPF retirees and yet the Regulations seek to divide them by placing an artificial cut-off date under Regulations 3(3) and 31 of the Regulations. It is, therefore, contended that this artificial division of a homogeneous group not based on any logic or rationale and having no nexus to the object to be achieved clearly offends the equality clause contained in Article 14. There is no doubt that whenever any rule or regulation having statutory flavour is made by an authority which is a State within the meaning of Article 12 of the Constitution, the choice of the cut-off date which has necessarily to be introduced to effectuate such benefits is open to scrutiny by the Court and must be supported on the touchstone of Article 14. If the choice of the date results in classification or division of members of a homogeneous group it would be open to the Court to insist that it be shown that the classification is based on an intelligible differentia and on rational consideration which bears a nexus to the purpose and object thereof. The differential treatment accorded to those who retired prior to the specified date and those who retired subsequent thereto must be justified on the touchstone of Article 14, for otherwise it would be offensive to the philosophy of equality enshrined in the Constitution. This is quite clear from the ratio of *Nakara case* [(1983) 1 SCC 305 : 1983 SCC (L&S) 145 : (1983) 2 SCR 165] as well as the decision of this Court in *B. Prabhakar Rao v. State of A.P.* [1985 Supp SCC 432 : 1986 SCC (L&S) 49 : 1985 Supp 2 SCR 573] We have, therefore, to consider the limited question whether the classification introduced by clauses 3(3) and 31 of the Regulations is inconsistent with Article 14 of the Constitution as alleged by the petitioners.

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10. *Nakara* [(1983) 1 SCC 305 : 1983 SCC (L&S) 145 : (1983) 2 SCR 165] judgment has itself drawn a distinction between an existing scheme and a new scheme. Where an existing scheme is revised or liberalised all those who are governed by the said

scheme must ordinarily receive the benefit of such revision or liberalisation and if the State desires to deny it to a group thereof, it must justify its action on the touchstone of Article 14 and must show that a certain group is denied the benefit of revision/liberalisation on sound reason and not entirely on the whim and caprice of the State. The underlying principle is that when the State decides to revise and liberalise an existing pension scheme with a view to augmenting the social security cover granted to pensioners, it cannot ordinarily grant the benefit to a section of the pensioners and deny the same to others by drawing an artificial cut-off line which cannot be justified on rational grounds and is wholly unconnected with the object intended to be achieved. But when an employer introduces an entirely new scheme which has no connection with the existing scheme, different considerations enter the decision making process. One such consideration may be the financial implications of the scheme and the extent of capacity of the employer to bear the burden. Keeping in view its capacity to absorb the financial burden that the scheme would throw, the employer would have to decide upon the extent of applicability of the scheme. That is why in *Nakara case* [(1983) 1 SCC 305 : 1983 SCC (L&S) 145 : (1983) 2 SCR 165] this Court drew a distinction between continuance of an existing scheme in its liberalised form and introduction of a wholly new scheme; in the case of the former all the pensioners had a right to pension on uniform basis and any division which classified them into two groups by introducing a cut-off date would ordinarily violate the principle of equality in treatment unless there is a strong rationale discernible for so doing and the same can be supported on the ground that it will subserve the object sought to be achieved. But in the case of a new scheme, in respect whereof the retired employees have no vested right, the employer can restrict the same to certain class of retirees, having regard to the fact-situation in which it came to be introduced, the extent of additional financial burden that it will throw, the capacity of the employer to bear the same, the feasibility of extending the scheme to all retirees regardless of the dates of their retirement, the availability of records of every retiree, etc. It must be realised that in the case of an employee governed by the CPF scheme his relations with the employer come to an end on his retirement and receipt of the CPF amount but in the case of an employee governed under the pension scheme his relations with the employer merely undergo a change but do not snap altogether. That is the reason why this Court

in *Nakara case* [(1983) 1 SCC 305 : 1983 SCC (L&S) 145 : (1983) 2 SCR 165] drew a distinction between liberalisation of an existing benefit and introduction of a totally new scheme. In the case of pensioners it is necessary to revise the pension periodically as the continuous fall in the rupee value and the rise in prices of essential commodities necessitates an adjustment of the pension amount but that is not the case of employees governed under the CPF scheme, since they had received the lump sum payment which they were at liberty to invest in a manner that would yield optimum return which would take care of the inflationary trends. This distinction between those belonging to the pension scheme and those belonging to the CPF scheme has been rightly emphasised by this Court in *Krishena case* [(1990) 4 SCC 207 : 1991 SCC (L&S) 112 : (1990) 14 ATC 846].”

19. The decision in *Kailash Nath Singhal* (supra) also refers to decision of *State of West Bengal and Others versus Ratan Behari Dey and Others*, (1993) 4 SCC 62 wherein it has been held as under:-

“Now it is open to the State or Corporation, as the case may be, to change the conditions of service unilaterally. Terminal benefits as well as pensionary benefits constitute conditions of service. The employer has the undoubted power to revise the salaries and/or the pay scales as also terminal benefits/pensionary benefits. The power to specify a date from which the revision of pay scales or terminal benefits/pensionary benefits, as the case may be, shall take effect is a concomitant of the said power. So long as such date is specified in a reasonable manner, *i.e.* without bringing about a discrimination between similarly situated persons, no interference is called for by the Court in that behalf.

(as quoted in paragraph 18 of *Kailash Nath Singhal* (supra))

20. The Supreme Court in *Bishwanath Prasad Singh vs. State of Bihar & Ors.* (2001) 2 SCC 305, observed that compulsory retirement in service law jurisprudence has two different connotations. Compulsory retirement may be imposed as a penalty on a delinquent employee found guilty of

misconduct, in which case it is a penal and stigmatic order and has consequences. A government servant may also be retired on his attaining a particular age or completing a certain number of years in service. Such premature retirements are in public interest and do not cast any stigma. In the latter case, the government servant is entitled to pension actually earned and other retirement benefits. For the sake of clarity, we would like to quote the relevant portion of the aforesaid decision:-

"12. Compulsory retirement in service jurisprudence has two meanings. Under the various disciplinary rules, compulsory retirement is one of the penalties inflicted on a delinquent government servant consequent upon a finding of guilt being recorded in disciplinary proceedings. Such penalty involves stigma and cannot be inflicted except by following procedure prescribed by the relevant rules or consistently with the principles of natural justice if the field for inflicting such penalty be not occupied by any rules. Such compulsory retirement in the case of a government servant must also withstand the scrutiny of Article 311 of the Constitution. Then there are service rules, such as Rule 56(j) of the Fundamental Rules, which confer on the Government or the appropriate authority, an absolute (but not arbitrary) right to retire a government servant on his attaining a particular age or on his having completed a certain number of years of service on formation of an opinion that in public interest it is necessary to compulsorily retire a government servant. In that case, it is neither a punishment nor a penalty with loss of retiral benefits. (See *Shyamlal v. State of U.P.* [AIR 1954 SC 369 : (1955) 1 SCR 26] , *Brij Mohan Singh Chopra v. State of Punjab* [(1987) 2 SCC 188 : (1987) 3 ATC 496] , *S. Ramachandra Raju v. State of Orissa* [1994 Supp (3) SCC 424 : 1995 SCC (L&S) 74 : (1994) 28 ATC 443] , *Baikuntha Nath Das v. Chief District Medical Officer, Baripada* [(1992) 2 SCC 299 : 1993 SCC (L&S) 521 : (1992) 21 ATC 649] .) More appropriately, it is like premature retirement. It does not cast any stigma. The government servant shall be entitled to the pension actually earned and other retiral benefits. So long as the opinion forming basis of the order for compulsory retirement in public interest is formed bona fide, the opinion cannot be ordinarily interfered with by a judicial forum. Such an order may be subjected to judicial review on very limited grounds such as the order being mala fide, based on no material or on collateral grounds

or having been passed by an authority not competent to do so. The object of such compulsory retirement is not to punish or penalise the government servant but to weed out the worthless who have lost their utility for the administration by their insensitive, unintelligent or dubious conduct impeding the flow of administration or promoting stagnation. The country needs speed, sensitivity, probity, non-irritative public relation and enthusiastic creativity which can be achieved by eliminating the dead wood, the paperlogged and callous (see *S. Ramachandra Raju v. State of Orissa* [1994 Supp (3) SCC 424 : 1995 SCC (L&S) 74 : (1994) 28 ATC 443] . We may with advantage quote the following passage from this decision: (SCC p. 430, para 9)

“Though the order of compulsory retirement is not a punishment and the government servant on being compulsorily retired is entitled to draw all retiral benefits, including pension, the Government must exercise its power in the public interest to effectuate the efficiency of service. The dead wood needs to be removed to augment efficiency. Integrity of public service needs to be maintained. The exercise of power of compulsory retirement must not be a haunt on public servant but act as a check and reasonable measure to ensure efficiency in service, and free from corruption and incompetence. The officer would go by reputation built around him. In appropriate case, there may not be sufficient evidence to take punitive act of removal from service. But his conduct and reputation in such that his continuance in service would be a menace in public service and injurious to public interest.””

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21. Deepak Sapra, the petitioner in WP(C) No.3817/2016, is an ex-employee of the Punjab National Bank, the respondent therein. Departmental proceedings were initiated against the petitioner vide charge-sheet dated 12th January, 2004. By the order dated 20th December, 2004 the penalty of compulsory retirement was imposed. The penalty order has attained finality.

22. The respondent-Punjab National Bank ('PNB' for short) had introduced Punjab National Bank (Employees) Pension Regulations, 1995 (1995 Regulations, for short) on 29th September, 1995. The petitioner, who was then a serving employee, did not opt for pension under the 1995 Regulations. Accordingly, the petitioner was governed and consequent to the penalty of compulsory retirement, was paid the contributory provident fund inclusive of the bank's share and interest accrued thereon and the gratuity.

23. About six years thereafter, the Indian Banks' Association on behalf of management of banks entered into a Settlement dated 27th April, 2010 with workmen employees and a joint note dated 27th April, 2010 with the officers employees. Thereafter the Indian Banks Association had issued the circular dated 10th August, 2010, the relevant portion of which reads as under:

"(i) To facilitate early implementation, Government has consented IBA advising all Banks **that they may undertake the exercise of seeking the option from the employees** both serving and retirees who did not opt for pension earlier, explaining the terms and conditions for such option.

(ii) Sanction of the Government is also accorded to implement the terms of Settlement/Joint Note dated 27th April 2010 between IBA and Unions/Associations for the grant of option to retirees and payment of pension to such retirees w.e.f. 27th November, 2009, who opt for pension and comply with the terms and conditions set out in the Settlement/Joint Note for the grant of pension, pending necessary amendments in the Bank (Employees) Pension Regulations, 1995

(iii) The existing pension scheme will not be applicable to those, **who join the services of the banks on or after 1st April 2010**. Officers/Workmen employees joining services of banks on or after 1st April 2010 shall be eligible for Defined Contributory Pension Scheme on the lines of New Pension Scheme introduced for employees of Central Government. The Officer/Workmen employees joining service on or after 1st April 2010 shall contribute 10% of Pay and DA towards the Defined Contributory Pension Scheme.

(iv) Officer / Workmen employees, who opted for Voluntary Retirement under special Voluntary Scheme after rendering a minimum of 15 years service, shall be eligible to exercise option to join the Pension Scheme subject to terms and conditions applicable to retirees.

(v) Pension/Family Pension will be payable to those, who opt to join pension scheme and comply with terms and conditions set out in the Settlement/Joint Note dated 27.04.2010."

(underlining as per original circular)

As per clause (i) of the Circular, serving employees and retired employees, who had earlier not opted for pension under the 1995 Regulations could now opt for pension. Clause (iv) stipulated that officers/workmen employees, who had taken voluntary retirement under the Special Voluntary Scheme, after having rendered minimum 15 years of service, were eligible to exercise the option to join the Pension Scheme under the 1995 Regulations, subject to the satisfaction of the other terms and conditions by the retiree.

24. By a circular No.8/10 of the respondent-PNB dated 16th August, 2010, it was clarified that the option to join the Pension Regulation had been extended to:

(A) Employees / officers, who were in service of the bank prior to 29th September, 1995 and had continued to be in service of the bank on 27th April, 2010 and had retired thereafter.

(B) Employees / officers, who were in service prior to 29th September, 1995 and had retired after that date but prior to the settlement / joint note dated 27th April, 2010 provided they exercise the option in writing within 60 days to become a member of the Pension Fund and would refund the entire amount of banks contribution to the provident fund and interest accrued thereon received at the time of retirement with his share in contribution towards meeting 30% of the funding gap, within 30 days after expiry of the said period of 60 days. The employees' share, it was stated, had been worked out / computed at 56% of the said amount of banks contribution to the provident fund and interest thereon.

25. Two years after the said circulars, the petitioner filed WP(C)No.4031/2012 in the Delhi High Court, asserting that he was wrongly denied leave encashment on the ground that he had suffered penalty of compulsory retirement. The writ petition was dismissed by the Single Judge vide decision dated 18th July, 2013. However, the petitioner succeeded in LPA No.693/2013 vide decision dated 18th September, 2013, holding that though the petitioner had suffered punishment of compulsory retirement, he cannot be denied leave encashment as this would be

contradictory to the plain intent of Regulation 38 of the PNB Officers Service Regulation 1979. Regulation 38 of the 1979 Regulations as per the first proviso, it was interpreted, would be applicable to all retirees, whether they retire on account of superannuation, voluntarily, in public interest on attaining a certain age or having served for a certain number of years, and even "retirement" upon imposition of penalty of compulsory retirement. It was also observed that in cases where penalty of compulsory retirement was imposed, there was no dispute that pension as applicable and other terminal benefits were given. Consequently, to single out and deny benefit of leave encashment to one class of retirees, i.e. those imposed with compulsory retirement, was arbitrary and without any rationale.

26. Armed with the aforesaid decision, the petitioner wrote several letters, the last one being the representation dated 18th July, 2015, pressing that he should be admitted to pension. The petitioner asserted that he had submitted his e-generated option for pension on 15th September, 2010, after the respondent bank had issued circular dated 16th August, 2010, giving another option/chance to the working and retired employees to opt for pension. On 13th October, 2010, the petitioner had submitted his consent form, medical form and had deposited Rs.7,55,898.68/-, equivalent to 156% of his contribution along with interest accrued towards pension option in terms of the circular dated 16th August, 2010. The respondent

bank, however, had refunded the said amount on 17th January, 2011, informing that the petitioner having suffered the penalty of compulsory retirement was not eligible for pension option.

27. The petitioner as noted above had not raised this plea or prayer relating to exercise of option for pension in W.P. (C) No. 4031/2012. On not receiving any response, the petitioner had filed W.P. (C) No.8018/2016, challenging the rejection communication dated 17th January, 2011. This writ petition was disposed of by the single Judge on 15th February, 2016 with the direction that the representation dated 18th July, 2015 should be decided by a speaking order.

28. The representation of the petitioner was rejected by a detailed speaking order dated 11th April, 2016. This order records that the petitioner was charge-sheeted for serious lapses and irregularities with respect to sanction of various credit facilities during his tenure in branch office of Hari Nagar, branch office at N.46, Connaught Circus and branch office at Delhi Cantt., on the following articles of charge:

“Article I – BO : -46, Con. Circus, New Delhi

He abused his official position and sanctioned credit facilities to various borrowers without verifying their antecedents and ensuring proper pre-sanction appraisal and failed to exercise post-sanction controls thereby jeopardized the interest of the Bank.

Article II – BO : Hari Nagar, New Delhi

He made reckless lending and sanctioned Housing Loan to various borrowers through middlemen without ascertaining

authenticity of income proof, accepted fake housing plans, obtained cross guarantees and accepted unrealistic estimates and failed to verify proper end use of funds, in a view to make pecuniary gains, thereby jeopardized the interest of the Bank.

Article III – BO : Delhi Cantt.

He unauthorized accommodated various borrowers and sanctioned credit facilities without proper pre-sanction appraisal and failed to exercise post-sanction controls thereby jeopardized the interest of the Bank.”

The respondent bank, as a result, had an outstanding amount of more than Rs.3.0 crores, which it was finding difficult to recover. It was apprehended that the bank had suffered a loss of more than Rs.1.0 crores. On the question of pension option, it was elucidated that the petitioner would not be covered for he was not an employee, who had retired on attaining the age of superannuation or who had opted for voluntary retirement. He was also not a pre-maturely retired employee. In the given circumstances, the petitioner could not be treated at par and equated with the employees, who had retired. The decisions relied upon were distinguished, for the petitioner had suffered the penalty of compulsory retirement, whereas in other cases the order of punishment of compulsory retirement postulated pensionary benefits. Further in terms of the joint note / settlement dated 27th April, 2010, an ex-employee was entitled to opt for pension, provided he satisfied the eligibility criteria. The employees, who had suffered punishment of compulsory retirement were not to be

compared or treated at par with those, who had retired on superannuation or had sought voluntary retirement.

28. The petitioner has filed the present writ petition for quashing of Regulation 2(y) and 29 of the 1995 Regulations to the extent that they deny pension to compulsory retired officers; and to quash orders dated 11th April, 2016 and 17th January, 2011, whereby the petitioner's entitlement to exercise option for pension under Circular 8/10 dated 16th August, 2010 has been declined and rejected. The petitioner prays that he should be paid pension with interest @ 18% for the delay in payment.

29. As the petitioner has challenged the regulation 2(y) and 29 of the 1995 Regulations applicable to Punjab National Bank Employees, we would like to reproduce the same:

“Regulation 2(y) “retirement” means cessation from Bank's service,-

- a) on attaining the age of superannuation specified in Service Regulations or Settlements;
- b) on voluntary retirement in accordance with provisions contained in regulations 29 of these regulations;
- c) on premature retirement by the Bank before attaining the age of superannuation specified in Service Regulations or Settlement;

XXXX

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;

Provided that this sub-regulation shall not apply to an employee who is on deputation or on study leave abroad unless after having been transferred or having returned to India he has resumed charge of the post in India and has served for a period of not less than one year:

Provided further that this sub-regulation shall not apply to an employee who seeks retirement from service for being absorbed permanently in an autonomous body or a public sector undertaking or company or institution or body, whether incorporated or not to which he is on deputation at the time of seeking voluntary retirement:

Provided that this sub-regulation shall not apply to an employee who is deemed to have retired in accordance with clause (1) of regulation 2.

2) The notice of voluntary retirement given under sub-regulation (1) shall require acceptance by the appointing authority:

Provided that where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period.

3) a) An employee referred to in sub-regulation (1) may make a request in writing to the appointing authority to accept notice of voluntary retirement of less than three months giving reasons there for;

b) On receipt of a request under clause (a) the appointing authority may, subject to the provisions of sub-regulation (2), consider such request for the curtailment of the period of notice of three months on merits and if it is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, the appointing authority may relax the requirement of notice of three months on the condition that the employee shall not apply for

communication of a part of his pension before the expiry of the notice of three months.

4) An employee, who has elected to retire under this regulation and has given necessary notice to that effect to the appointing authority, shall be precluded from withdrawing his notice except with the specific approval of such authority:

Provided that the request for such withdrawal shall be made before the intended date of his retirement.

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.

6) The pension of an employee retiring under this regulation shall be based on the average emoluments as defined under clause (d) of regulation 2 of these regulations and the increase, not exceeding five years in his qualifying service, shall not entitle him to any notional fixation of pay for the purpose of calculating his pension.”

30. As per regulation 2(y) the term “retirement” means cessation from bank's service on (i) attaining the age of superannuation, as specified in service regulations (ii) voluntary retirement in accordance with regulation 29 and (iii) pre-mature retirement before attaining the age of superannuation. The term “retirement” as defined excludes employees who have suffered punishment of compulsory retirement. It includes employees who are prematurely retired before attaining the age of superannuation. Regulation 29 deals with pension on voluntary retirement.

31. It is not the case of the petitioner that he is a retired employee within the meaning of Regulation 2(y). The petitioner also accepts that he is not entitled to pension under Regulation 29 which is payable to an employee, who seeks voluntary retirement. This is the precise reasons why petitioner is challenging the two regulations. The submission of the petitioner is that the employee, who has suffered compulsory retirement, should be included in the definition of retirement, and regulation 29 which relates to pension on voluntary retirement, should include employees, who have suffered penalty of compulsory retirement. The arguments are very feeble and weak. The words “compulsory” and “voluntary” have a different connotation and meaning. Pertinently, Regulation 33 of the 1995 Regulations deals with compulsory retirement pension. The same reads as under:

“33. Compulsory Retirement Pension:

(1) An employee compulsorily retired from service as a penalty on or after 1st day of November, 1993 in terms of Punjab National Bank Officer Employees’ (Discipline and Appeal) Regulations, 1979 or awards / settlements **may be granted by the authority higher than the authority competent to impose such penalty, pension at a rate not less than two-thirds and not more than full pension admissible to him on the date of his compulsory retirement if otherwise he was entitled to such pension on superannuation on that date.**

(2) Whenever in the case of a bank employee the Competent Authority passes an order (whether original, appellate or in exercise of power of review) awarding a pension less than the full compensation pension admissible under these

regulations, the Board of Directors shall be consulted before such order is passed.

- (3) A pension granted or awarded under sub-regulation (1) or as the case may be, under sub-regulation (2) shall not be less than the amount of rupee three hundred and seventy five per mensem.”

(emphasis supplied)

When there is a specific provision relating to pension in cases where penalty of compulsory retirement has been imposed, we do not see any reason and/ or ground to strike down Regulation 2(y), which defines retirement and Regulation 29 which relates to payment of pension on voluntary retirement. Employees awarded punishment of compulsory retirement are paid pension in accordance with Regulation 33 of the 1995 Regulations.

32. For the reasons elucidated above and while deciding appeal in the case of Kamlesh Pratap Singh, we will have to reject the contention that an officer, who has suffered penalty of compulsory retirement is a treated retired employee under Regulation 2(y). The definition of the retired employee in Regulation 2(y) is clear and specific and does not include officers, who had suffered penalty of compulsory retirement.

33. The petitioner has not claimed and does not seek pension under Regulation 33, which relates to compulsory retirement pension. He is not covered under Regulation 33. We have reproduced Regulation 33 above and would note that while imposing penalty of compulsory retirement to an

employee who is entitled to pension, the disciplinary authority is required to examine the question of quantum of pension payable. The Disciplinary Authority is empowered and competent to impose such penalty reducing the rate of pension not less than 2/3rd. Full pension, depending on facts, need not be paid. It could be urged that the disciplinary authority, when it imposed punishment of compulsory retirement without further stipulation, had impliedly granted full pension. The contra view, which we believe has merit, would be that this aspect was not required to be decided for the petitioner was not a pension optee and there was no need for the Disciplinary Authority to pass an order in terms of Regulation 33 of the Pension Regulation. To draw an assumption as suggested by the petitioner would be to base once decision on conjecture and surmises. There is considerable merit in the contention of the respondent-Bank. If the prayer of the petitioner is to be accepted, it would result in overriding and negating the effect of Regulation 33 of the Pension Regulation. In case the petitioner was a pension optee, the Disciplinary Authority at the time of imposing penalty would have appropriately examined the issued whether full or reduced pension should be paid. The Disciplinary Authority was competent to reduce the pension payable after following the procedure as prescribed in Clause 2 of Regulation 33. Thus, in case the plea and contention of the petitioner is to be accepted, then the penalty order dated

20th December, 2004 would have to be modified and re-written. This was certainly not postulated by the two circulars.

34. In the present case as noted above, the petitioner had not opted for the period covered by the 1995 Regulations. On 20th December, 2004, when the penalty of compulsory retirement was imposed on the petitioner, he was not a pension optee. He was paid terminal benefits as applicable, i.e. the contributory provident fund and gratuity.

35. The petitioner's case is entirely predicated and based upon the circular No.8/10 dated 16th October, 2010, read with the earlier circular dated 10th August, 2010 issued by the Indian Bankers' Association. He submits that as per the circular dated 16th October, 2010 existing or serving employees or those, who had retired and not opted for pension could opt for the same. The pension scheme was not applicable to those, who had joined services on or after 1st April, 2010. Further, the circulars drew a distinction between retired employees and officers / workmen, who had adopted for voluntary retirement under the Special Voluntary Retirement Scheme. Such employees, who had opted for voluntary retirement under the Special Voluntary Retirement Scheme were also eligible to exercise option and join the pension scheme.

36. In *Kailash Nath Singhal* (supra), the petitioner had challenged constitutional validity of Regulation 33. The contention was that the said

Regulation unfairly and arbitrarily fixes the cut off date of 1st November, 1993, thereby unnaturally dividing the same class of compulsory retired employees, who were entitled or not entitled to opt for pension. The employees who were compulsorily retired prior to 1st November, 1993 were denied right to opt for pension, whereas those who had retired after 1st November, 1993 were entitled to pension. The challenge to the said date was rejected for several reasons. After quoting from the judgment of the Supreme Court in *V. Kasturi versus Managing Director State Bank of India, Bombay & Anr.*, (1998) 8 SCC 30 it was held that there was no pension scheme prior to 1st November, 1993. Ergo, the pension scheme was introduced for employees compulsorily retired only through the 1995 Regulations. In such circumstances, employees, who had retired prior to 1st November, 1993 could be left out as they fall in category II as identified in *V. Kasturi* (supra) for no right of a non-pensioner was withdrawn or taken away. Category-II in *V. Kasturi's* case (supra) was of those retirees, who were not covered by any pension scheme. The petitioner's case would be comparable with category-II employees for he was not the pension optee and not covered under the pension scheme. The petitioner's claim is in fact that he should be allowed to opt for the pension scheme and not that he is a pension optee and is being discriminated.

37. The Division Bench referred to the judgment in *Canara Bank versus B.M. Ramachandra and Others*, (1999) 4 Ker.L.J. 628 (DB), but the same was distinguished for the following reasons:-

“33. In *Ramachandra*, some employees had taken voluntary retirement from Canara Bank between the two dates abovementioned. Pursuant to the Settlement (which is the same as in the present case), a pension scheme was formulated by Canara Bank. This pension scheme was made applicable to only those employees who had voluntarily retired on or after 1st November, 1993. This cut-off date was challenged by the respondents, as in the present case. A learned Single Judge

34. A careful reading of *Ramachandra* shows that there are several differences between that case and the present case.

a) The Respondents in *Ramachandra* had taken voluntary retirement under the existing Canara Bank (Officers) Service Regulations, 1979 which permitted an employee to take voluntary retirement, though without pension (pages 632 and 638 of the Report).

b) Pursuant to the Settlement dated 29th October, 1993 the Board of Directors of Canara Bank adopted draft pension regulations provided by the Indian Banks Association. Persons who had taken voluntary retirement between 1st January, 1986 and 1st November, 1993 were treated as eligible for pension under the draft regulations. Not only this, both the employees and Canara Bank had acted on these draft regulations on the basis that they were applicable to employees who had taken voluntary retirement between 1st January, 1986 and 1st November, 1993 (page 633 of the Report). It was only after the draft regulations were formally adopted by Canara Bank in 1995 that the employees were told that they were not entitled to any pension.

c) Although Canara Bank did say that the draft Regulations underwent some modifications before its final formulation, the Karnataka High Court found that "There is nothing on the record to show that the draft Regulations which held the retirees like the writ petitioners entitled to the grant of pension were changed or

modified either by the Central Government or by the Reserve Bank of India." (Page 644 of the Report).

d) The Karnataka High Court also noticed that the financial liability on Canara Bank was not so huge, which if accepted would frustrate the pension scheme (page 643 of the Report).

35. Taking all these factors into consideration, it was held on page 646 of the Report:

"The appellants have not referred to the existence of any circumstances or conditions which can be considered to be a ground for the change of the conditions of the statutory settlement arrived at between the parties. The draft Regulations, as earlier noted, were rightly understood by the parties concerned to confer the benefit of the Pension Scheme to the retirees of the banks prior to 1-1-1993 as well. Any other and contrary interpretation of the Pension Regulations would amount to frustrate the statutory settlement arrived at on 29-10-1993..."

Thereafter, it was held:

"The distinction sought to be drawn by the appellants with respect to the retirees before 1-11-1993 and retirees thereafter appears only to be imaginary and not real. The draft Pension Regulations were held applicable to the persons like the writ petitioners and the same were enforced obviously without any amendment or alteration, w.e.f. 29-9-1995. The learned Single Judge was therefore right in holding that the Regulations were applicable to all the employees who had opted for voluntary retirement notwithstanding the cut-off date of 1-11-1993"

36. The Karnataka High Court also noted that pensionary benefits were granted in similar circumstances to employees of the Reserve Bank of India and the Life Insurance Corporation of India. On these bases, the Respondents in *Ramachandra* were held entitled to pensionary benefits."

38. Reference was also made to ***Bank of India and Others versus Indu***

Rajagopalan and Others, JT 2000(10) SC 334 and the Division Bench

elucidated and explained the position in *Kalilash Nath Singhal* (supra) in the following words:-

“38. We may mention that in Ors., *Bank of India and Ors. v. Indu Rajagopalan and Ors.* VIII(2001)SLT95=JT2000(10)SC334, The Supreme Court declined to interfere with the directions given in Ramachandra. Apart from other things, what appears to have weighed with the Supreme Court in *Indu Rajagopalan* is that there was no significant financial or other burden on the appellant Banks.

39. Taking cue from what was said by the Supreme Court in *Indu Rajagopalan*, we did inquire from the learned Counsel for the parties about the financial impact that a decision in favour of the appellant would have. Neither Counsel was in a position to enlighten us on this, except to say that hardly 3 or 4 similar cases were pending in this Court. We, therefore, take it that the financial burden on the Bank is not considerable. Even then, we do not find it possible to decide in favour of the appellant and others like him. For one, we are of the view that the law is not in favour of the appellant. We cannot brush aside the legal position only because there is little or no financial burden on the Bank. We do not have such a power. Nor can we be asked to compassionate view of the matter, as submitted by the learned Counsel for the appellant, because it is entirely within the domain of the Bank whether or not to view the case of the appellant and others like him with compassion.”

The Division Bench, therefore, in categorical and affirmative terms has upheld the constitutional validity of Regulation 33 dealing with payment of compulsory retirement pension. Deepak Sapra in his writ petition has deliberately not challenged Regulation 33 and has challenged Regulations 2(y) and 29 as he was aware and conscious that constitutional validity of Regulation 33 has been upheld. Challenge to Regulations 2(y)

and 29 is predicated on the same very argument and contentions and should be rejected.

39. The Division Bench decision in ***Kailash Nath Singhal*** (supra) has been followed in the following cases:-

- (i) The decision of the Punjab & Haryana High Court in ***S.L. Loona (deceased) through LRs. versus The Punjab National Bank*** (CWP No. 6298/1999 decided on 27th March, 2009).
- (ii) The decision of the Guwahati High Court in ***Upendra Nath Sarna versus Punjab National Bank*** (W.P. (C) No. 1424/1999 decided on 8th September, 2006)
- (iii) The decision of the Rajasthan High Court in ***T.M. Harsora versus Punjab National Bank*** (Civil Writ Petition No. 6597/1997 decided on 25th November, 2008)

40. However, we also have decisions in which contra view has been taken holding that order of compulsory retirement by way of punishment would be "retirement" and there is no distinction between an employee, who has suffered punishment of compulsory retirement and an employee, who has retired on superannuation, voluntarily or was prematurely retired. This view has been held by:

(i) The Madras High Court in Writ Petition No. 15766/2013, ***D. Kalaichelvan versus Union of India and Another***, decided on 1st April, 2015. It is stated that this judgment has been upheld in appeal;

(ii) The Gujarat High Court upholding the judgment of the single Judge in ***Bank of India versus S. Ghanshyambhai Muljibhai Patel***, LPA No. 446/2013 decided on 22nd August, 2013;

(iii) The Andhra Pradesh High Court in ***Sreeram Ramamurthy versus Andhra Bank***, W.P. No. 9069/2011 decided on 22nd March, 2012 and

(iv) The Madhya Pradesh High Court in ***Ashwin Kumar Sharma versus Punjab National Bank***, Writ Appeal No. 905/2012 decided on 8th August, 2013 upholding the judgment of the single Judge.

41. We would accept that there is variation in the two sets of judgments, but we are bound by the decision in the case of ***Kailash Nath Singhal*** (supra) and for the reasons stated above, we respectfully agree.

FINAL ORDERS

LPA NO. 403/2015

42. Accordingly, the present Letters Patent Appeal is allowed and the impugned order dated 5th May, 2015 is set aside. W.P. (C) No3521/2014

filed by Kamlesh Pratap Singh would be treated as dismissed. In the facts of the case there would be no order as to costs.

W.P.(C) NO. 3817/2016

43. In view of the aforesaid discussion, we do not find any merit in the present writ petition challenging the vires of Regulation 2(y) and Regulation 29 of the Punjab National Bank (Employees) Pension Regulations, 1995. We also reject the submission that the petitioner was entitled to pension under Regulation 33 of the aforesaid Regulations consequent to the circular dated 16th August, 2010. The writ petition is dismissed. In the facts of the present case, there would be no order as to costs.

SANJIV KHANNA, J.

SUNITA GUPTA, J.

DECEMBER 6th, 2016

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