

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Letters Patent Appeal No.150 of 2016**

**IN**

**Civil Writ Jurisdiction Case No. 10278 of 2015**

- =====
1. The Allahabad Bank through the Chairman of Allahabad Bank, Head Office: 2 Netaji Subhash Road, Kolkata (West Bengal)
  2. The General Manager (HRD), Allahabad Bank, Head Office: 2 Netaji Subhash Road, Kolkata (West Bengal) 700001
  3. The Assistant General Manager & Disciplinary Authority, Zonal Office, Allahabad Bank, Patna, Bihar
  4. The Deputy General Manager, Zonal Officer, Allahabad Bank, Patna, Bihar

.... .... Respondents / Appellants

Versus

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

.... .... Petitioner / Respondent

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**Appearance:**

For the Appellant/s : Mr. N.K. Malhotra, Sr. Advocate and  
Mr. Binod Kumar Sinha, Advocate.

For the Respondent/s : Mr. Amar Nath Singh and  
Mr. Ajatshatru, Advocate.

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**CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI**

**and**

**HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD**

**ORAL JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)**

**Date: 06-12-2017**

Heard learned counsel for the appellants and learned  
counsel for the respondent.

The appellants Bank have preferred this appeal under  
Clause 10 of the Letters Patent challenging the order dated 23.09.2015  
passed by the learned single Judge in CWJC No. 10278 of 2015 on



the ground that the respondent (petitioner in the Writ Petition), who had been ordered to be compulsorily retired as a measure of penalty, cannot be permitted to avail the option of regular pension by opting out Contributory Provident Fund scheme, which governed him initially.

Admitted position is that a large number of employees were given options of changing over to the regular pension scheme after an agreement was reached between the Bank and the Bank employees and options so exercised were accepted and acted upon within the framework of the scheme. However, a legal objection came to be raised with regard to such employees who had been compulsorily retired treating them to be a class apart.

Such submission and objection were examined by the learned single Judge. Keeping in mind the nature of the order of punishment which did not come in the way of a person availing benefit of pension which was in vogue at the relevant time, as well as keeping in mind that similar matters raised before other High Courts came to be answered in favour of the employees, the Writ Application came to be allowed.

The basic essence of the dispute has to be understood in the context of the status of such employee after the order of punishment of compulsory retirement is issued. If the order of



compulsory retirement nowhere takes away the right of such employee to beget benefit of pension which may be in vogue at the relevant time and if a scheme has come about giving options to such employees who are covered by the C.P.F. scheme earlier to switch over to the regular pension scheme then orders of compulsory retirement without punishment of withholding pension cannot come in the way of such employees opting for the new scheme of regular pension.

The argument made on behalf of the appellants Bank is that since the Bank or the Disciplinary Authority did not have the opportunity of considering imposing punishment of withholding of pension as well as part of his pension, therefore they should be given opportunity of considering the same while granting relief in favour of such employees.

We shall not go by hypothesis but we shall go by the facts which are in existence in the present appeal. What is of relevance is whether the employee in question was entitled to pension or was he debarred from deriving the benefit of pension. If an employee is not debarred from deriving benefit of pension then there is no occasion to prevent them from the benefit of new pension scheme, merely because he was compulsorily retired. We are of the opinion that the order of the learned single Judge does not require to be interfered with in any



manner.

The Appeal is dismissed.

**(Ajay Kumar Tripathi, J)**

**(Rajeev Ranjan Prasad, J)**

Dilip, AR

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