

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.04.2018

CORAM

The HON'BLE MS.INDIRA BANERJEE, CHIEF JUSTICE

AND

The HON'BLE MR.JUSTICE ABDUL QUDDHOSE

W.P.Nos.970, 5916 and 19830 of 2002

W.P.No.970 of 2002:

- 1.T.R.Sankaran
 - 2.P.Rajaram
 - 3.K.Sundararaman
 - 4.J.Rangarajan
 - 5.P.Ramamurthy
 - 6.R.Rajeswari
 - 7.M.V.Krishnaswamy
 - 8.S.P.Dhanaraj
 - 9.D.Sundaresan
 - 10.Chandra Guruvayurappan
 - 11.S.Janakiraman
 - 12.N.Ramadoss
 - 13.K.R.Narasimhan
 - 14.R.Rajendra Babu
 - 15.Kalluri Sundara Ramamurthy
 - 16.R.Venkatasubramanian
 - 17.T.V.Raghupathy
 - 18.K.V.Subbaraman
 - 19.C.B.Thothadri
 - 20.S.Venkatachari
 - 21.N.A.Moorthy
 - 22.K.Padmanabhan
 - 23.T.R.Sampath Kumar
 - 24.C.Raghavan
 - 25.V.Mugthukrishnan
- ... Petitioners

vs.

- 1.Bank of Baroda,
rep. by the Chairman & Managing Director,
Central Office,
PB 10046, 3, Walchand Hirachand Marg,
Ballard Pier,
Mumbai - 400 038.

2.The Competent Authority
for Pension Regulations,
(Asst. General Manager)
Bank of Baroda,
Suraj Plaza III,
Sayajigunj,
Baroda - 390 005.

3.Union of India,
rep. by its Secretary to the Banking Division,
Ministry of Finance,
New Delhi - 110 001.

.. Respondents

(R3 impleaded as per the order dt. 4.9.2007 by KCJJ
in WP MP No.17404 of 2006 in WP.970/02)

PRAYER : Writ Petition filed under Article 226 of the
Constitution of India for issuance of a writ of declaration
declaring that sub-clause (c) of clause (s) of Regulation 2 of
Bank of Baroda (Employees) Pension Regulation, 1995, is null and
direct the second respondent to pay the petitioners the
difference in Basic Pension and additional pension and
commutation of pension with interest at the rate to be
determined by this Hon'ble Court in terms of the Bank of Baroda
(Employees) Pension Regulations, 1995. [prayer amended as per
order dated 4.9.2007 in WP MP.No.17405 of 2006]

W.P.No.5916 of 2002:

1.A.B.Kasthurirangan
2.K.Parasuraman
3.M.Sudarsan
4.R.Kannan
5.D.Rangarajan
6.G.Ramachandran
7.N.Selvaraj
8.R.Paul Rajasekaran
9.P.Srinivasan
10.P.Dhanram
11.M.Gandhimathinathan
12.W.R.Varadan
13.S.M.Kumar
14.E.K.Athmaraman
15.N.S.Jothiram
16.R.Vijayaraghavan
17.S.Lakshmanan
18.A.Dhakshinamurthy
19.R.Venkatesan

20.K.N.Ramesh
21.P.Seralathan
22.K.Gopalan
23.N.Raghunathan
24.N.Venkataraman
25.K.V.Reghunath
26.M.R.Venkatasubramanian
27.R.Sankaranarayanan
28.T.R.Venkatesan
29.S.Vaidyanathan
30.C.R.Gopalakrishnan
31.V.Sethuraman
32.S.G.Balakrishna Rao
33.R.Radha Bai
34.S.Sathyamurthy
35.V.Sivaramakrishnan
36.S.Ranganathan
37.V.Subramanian
38.S.L.Krishnan

... Petitioners

vs.

1.Canara Bank,
rep. by the Chairman & Managing Director,
Head Office,
112, J.C. Road,
Bangalore - 560 002.

2.The Competent Authority,
Canara Bank (Employees') Pension
Regulations, 1995,
Canara Bank,
Head Office,
112, J.C. Road,
Bangalore - 560 002.

3.Union of India,
rep. by its Secretary to the Banking Division,
Ministry of Finance,
New Delhi - 110 001.

.. Respondents

(R3 impleaded as per the order dt. 4.9.2007 KCJJ
in WP MP No.17081 to 17083 of 2006 in WP.5916/02)

PRAYER : Writ Petition filed under Article 226 of the
Constitution of India for issuance of a writ of declaration
declaring that sub-clause (c) of clause (S) of Regulation 2 of
Canara Bank (Employees) Pension Regulation, 1995, is null and

void, and direct the second respondent to pay the petitioners the difference in Basic Pension and additional pension and commutation of pension with interest at the rate to be determined by this Hon'ble Court in terms of the Canara Bank (Employees) Pension Regulations, 1995. [prayer amended as per order dated 4.9.2007 KCJJ in WP MP.No.17081 to 17083 of 2006] WP.5916/2002

W.P.No.19830 of 2002:

1.S.Krishnamurthy

2.V.R.Balasubramaniam

.. Petitioners

vs.

1.Indian Overseas Bank,
rep. by the Chairman & Managing Director,
Central Office,
762, Anna Salai,
Chennai - 600 002.

2.The Competent Authority
for Pension Regulations,
(General Manager)
Indian Overseas Bank,
Central Office,
763, Anna Salai,
Chennai - 600 002.

3.Union of India,
rep. by its Secretary to the Banking Division,
Ministry of Finance,
New Delhi - 110 001.

.. Respondents

(R3 impleaded as per the order dt. 4.9.2007 KCJJ
in WP MP No.17415 of 2006) IN WP.19830/2002

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of declaration declaring that sub-clause (c) of clause (s) of Regulation 2 of Indian Overseas Bank (Employees) Pension Regulation, 1995, is null and void, directing the first respondent to ignore clause 16 of the Memorandum of Settlement dated 27.03.2000 made under Section 2(p) and Section 18(1) of the Industrial Disputes Act and the second respondent to pay the petitioners the difference in Basic Pension and additional pension from the date of their retirement and commutation of pension with interest at a rate to be determined by this Court, in terms of the Indian Overseas

Bank (Employees) Pension Regulations, 1995. [prayer amended as per order dated 4.9.2007 BY KCJJ in WP MP.No.17416 of 2006] in wp.19830/2002

For Petitioner : Mr.V.Kalyanaraman
for M/s.Aiyar & Dolia
in W.P.No.970 & 5916 of 2002

Mr.V.Kalyanaraman
for M/s.C.R.Chandrasekaran
in W.P.No.19830 of 2002

For Respondents : Mr.Senthil Kumar
for M/s.Sampath Kumar
Associates for R1 & R2
in W.P.No.970 of 2002

Mr.C.Seethapathy
for respondent No.1 & 2
in W.P.No.5916 of 2002

Mr.K.Gunasekar
SPCCG for R3 in all WPs.

No appearance for
R1 & R2 in W.P.No.19830 of
2002

COMMON ORDER

(Order of the Court was made by the Hon'ble Chief Justice)

In these three writ petitions, the respective writ petitioners, who are retired employees of Bank of Baroda; Canara Bank and Indian Overseas Bank respectively have challenged Clause 2(s)(c) of Bank of Baroda (Employees') Pension Regulation, 1995; Canara Bank (Employees') Pension Regulation, 1995 and Indian Overseas Bank (Employees') Pension Regulation, 1995, as amended, collectively referred to as "the Bank (Employees') Pension Regulation, 1995".

2. It appears that on 29th September 1995, the Board of Directors of the respective banks, in exercise of their powers under Section 19 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 and in consultation with the Reserve Bank of India and prior sanction of Central Government, had notified the Bank (Employees') Pension Regulations, 1995. The provisions of the Bank (Employees) Pension Regulation of the three banks are identical.

3. Some of the relevant provisions of the said Regulations are set out herein below:

"2. Definitions:

In these Regulations, unless the context otherwise requires,

.....

(d) "Average Emoluments" means the average of the pay drawn by an employee during the last ten months of his service in the Bank.

.....

(s) "Pay" includes,

.....

(c) in relation to an employee who retired or died while in service on or after the 1st day of April, 1998-

i) the basic pay including stagnation increments, if any; and

ii) all other components of pay counted for the purpose of making contribution to the Provident Fund and for the payment of dearness allowance; and

iii) increment component of Fixed Personal Allowance; and

iv) dearness allowance thereon on the above calculated up to index number 1616 points in the All India Average Consumer Price Index for Industrial Workers in the series 1960 = 100. (Notified in Government Gazette on 15/3/2003).

35. Amount of Pension.

(1) In respect of employee who retired between the 1st of January 1986 but before the 31st day of October 1987, basic pension and additional pension will be updated as per the formula given in Appendix-I.

(2) In the case of an employee retiring in accordance with the provision of the Service Regulations or Settlement after completing a qualifying service of not less than thirty-three years the amount of basic pension shall be calculated at fifty per cent of the average

emoluments.

(3) (a) Additional pension shall be fifty per cent of the average amount of the allowance drawn by an employee during the last ten months of his service;

(b) no dearness relief shall be paid on the amount of additional pension.

Explanation: - For the purpose of this sub-regulation "allowance" means allowance which are admissible to the extent counted for making contributions to the Provident Fund.

(4) Pension as computed being aggregate of sub-regulation (2) and (3) above shall be subject to the minimum pension as specified in these regulations.

(5) An employee who has commuted the admissible portion of his pension as per the provisions of Regulation 41 of these Regulations shall receive only the balance of pension, monthly.

(6) (a) In the case of an employee retiring before completing a qualifying service of thirty-three years, but after completing a qualifying service of ten years, the amount of pension shall be proportionate to the amount of pension admissible under sub-regulations (2) and (3) and in no case the amount of pension shall be less than the amount of minimum pension specified in these regulations.

(b) Notwithstanding anything contained in these regulations, the amount of invalid pension shall not be less than the ordinary rate of family pension which would have been payable to his family in the event of his death while in service.

(7) The amount of pension finally determined under these regulations shall be expressed in whole rupee and where the pension contains a fraction of a rupee, it shall be rounded off to the next higher rupee.

37. Dearness Relief.

(1) Dearness relief shall be granted on basic pension or family pension or invalid pension or on compassionate allowance in accordance with the rates specified in Appendix II.

(2) Dearness relief shall be allowed on full basic pension even after commutation.

38. Determination of the period of ten months for average emoluments. -

(1) The period of the preceding ten months for the purpose of average emoluments shall be reckoned from the date of retirement.

(2) In the case of voluntary retirement or premature retirement, the period of the preceding ten months for the purpose of average emoluments shall be reckoned from the date on which the employee voluntarily retires or is premature retired by the Bank.

(3) In the case of dismissal or removal or compulsory retirement or termination of service, the period of the preceding the months for the purpose of average emoluments shall be reckoned from the date on which the employee is dismissed or removed or compulsorily retired or terminated by the Bank.

(4) If during the last ten months of the service, an employee had been absent from duty on extraordinary leave on loss of pay or had been under suspension and the period whereof does not count as service, the aforesaid period of extraordinary leave or suspension shall not be taken into account in the calculation of the average emoluments and equal period before the ten months shall be included."

4. Pursuant to the negotiations between the Indian Banks' Association and its Officers' Association, a joint Note had been entered into and signed on 14.12.1999 with regard to periodical pay revision of the officers of the member Banks. The joint Note indicated that revised scales of pay, dearness allowance and pension would take effect from 01.4.1998.

5. Thereafter, on 18.1.2003, the definition of 'pay' in Regulation 2(s) of the Regulations referred to above was amended by incorporation of an Explanation, after Regulation 2(s)(c), which is set out herein below:

"Explanation: For the purpose of this clause basic pay, other components of pay and Fixed Personal Allowance would mean the basic pay, other components of Pay and Fixed Personal Allowance drawn by the employee in terms of the scales of pay as applicable and rates at which the other components of pay were payable prior to 1.11.1997 (in the case of workmen) and prior to 1.4.98 (in the case of officers)"

6. Under Regulation 35(2) of the Regulations, the basic pension of an employee retiring in accordance with the provision of the Service Regulations is to be computed at 50% of the average emoluments. Similarly, additional pension is to be

computed at 50% of average amount of allowances drawn during the last ten months of service under Regulation 35(3) (a).

7. Regulation 38 of the Bank (Employees') Pension Regulation, 1995 prescribes the method of determination of the period of ten months for average emoluments, which is to be reckoned for ten months prior to the date of retirement or compulsory retirement or voluntary retirement, as the case may be, subject to the exception of Regulation 38(4).

8. Under Regulation 2(d), 'average emoluments' means the average pay drawn by the employee during last ten months of his service in the Bank. Pension would have to be determined by computing the salary drawn in the last ten months prior to the date of retirement.

9. However, by reason of amendment of Regulation 2(s)(c) by insertion of the Explanation after 2(s)(c)(iv), the basic pay, other components of pay and Fixed Personal Allowance in Clause 2 (s) is to mean the basic pay, other components of pay and Fixed Personal Allowance drawn by the employee in terms of the scales of pay as applicable and rates at which the other components of pay were payable prior to 01.11.1997 in the case of workmen and prior to 01.4.1998 in the case of officers.

10. Disputes have thus arisen with regard to the computation of pension in case of employees who retired after 1.11.1997 and the officers who retired after 01.04.1998. The petitioners, who are employees, who retired after 01.11.1997 have challenged the insertion of Explanation inter alia as discriminatory and arbitrary.

11. In Civil Appeal No.5525 of 2012, dated 13.02.2018 (Bank of Baroda and another v. G.Palani and others), the Supreme Court held that Explanation (c) to Regulation 2(s) was ultra vires, void and unenforceable. Pension has to be calculated on the basis of average pay of the employees during the preceding ten months of the date of retirement irrespective of the date of retirement.

12. The issues raised in these writ petitions are covered by the judgment of the Hon'ble Supreme Court in Civil Appeal No.5525 of 2012, dated 13.02.2018 (Bank of Baroda and another v. G.Palani and others) etc. batch.

13. The respondents shall recompute the pension of the petitioners on the basis of the average salary drawn by the petitioners during the preceding ten months prior to the respective dates of their retirement. The balance due payable to the petitioners shall be paid within four months from date

along with 9% interest per annum calculated as per the reducing balance.

The writ petitions are, accordingly, disposed of. No costs.

Sd/-
Assistant Registrar (CS-ix)

//True Copy//

Sub Assistant Registrar

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Note: Issue order copy on : 23.04.2018.

To:

1. The Secretary to the Banking Division,
Union of India,
Ministry of Finance,
New Delhi - 110 001.

2. The Competent Authority
for Pension Regulations,
(Asst. General Manager)
Bank of Baroda,
Suraj Plaza III,
Sayajigunj,
Baroda - 390 005.

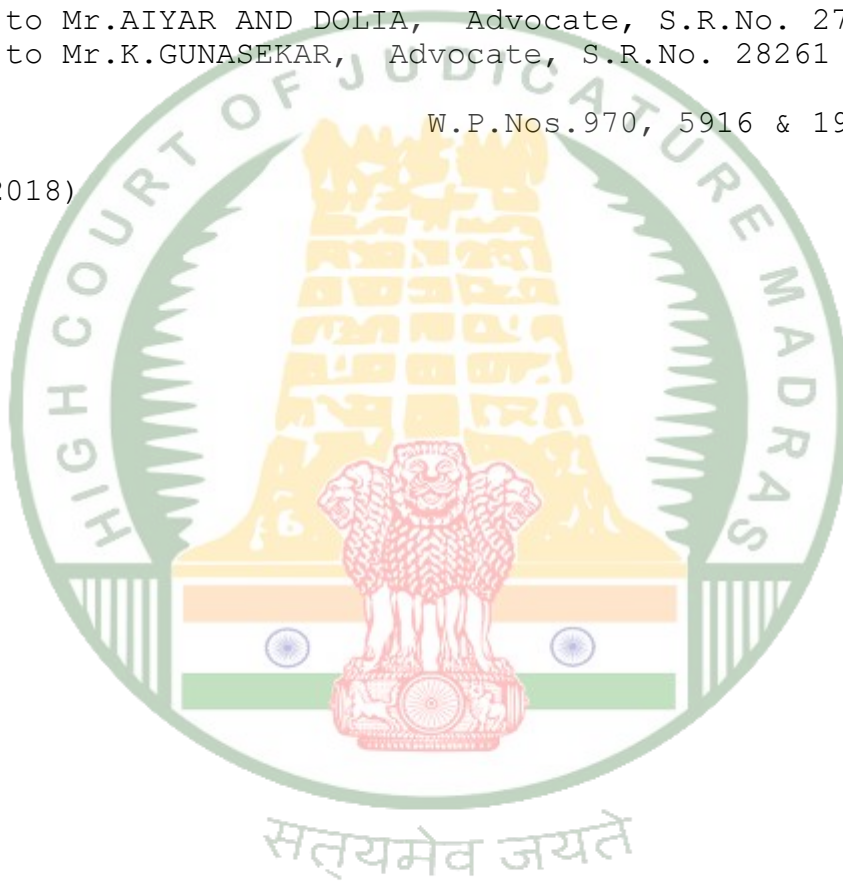
3. The Competent Authority,
Canara Bank (Employees') Pension
Regulations, 1995,
Canara Bank,
Head Office,
112, J.C. Road,
Bangalore - 560 002.

4.The Competent Authority
for Pension Regulations,
(General Manager)
Indian Overseas Bank,
Central Office,
763, Anna Salai,
Chennai - 600 002.

+1cc to Mr.C.SEETHAPATHY, Advocate, S.R.No. 28691
+1cc to Mr.SAMPATHKUMAR & ASSO, Advocate, S.R.No. 27979
+1cc to Mr.AIYAR AND DOLIA, Advocate, S.R.No. 27974
+1cc to Mr.K.GUNASEKAR, Advocate, S.R.No. 28261

W.P.Nos.970, 5916 & 19830 of 2002

TR(23/04/2018)



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