

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

+ **RFA No. 42/2012**

% **6th December, 2018**

STANDARD CHARTERED BANK & ORS. Appellants

Through: Mr. Ajay Monga with Mr.
Sanjay Gupta, Mr. Ateev
Mathur, Ms. Jagriti Ahuja,
Advs.(Mobile No.9213743613).

versus

GOPINATH MEHRA & ANR. Respondents

Through: Mr. Aseem Mehrotra, Adv.
Mobile No. 9811062351).

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the defendants in the suit impugning the Judgment of the trial court dated 03.12.2011 by which the trial court has decreed the suit filed by respondents/plaintiffs and has ordered the appellants/defendants to pay the complete monthly pension amount to the respondents/plaintiffs. By the impugned

judgment, a declaration has been granted in favour of the respondents/plaintiffs that on completion of a particular number of years during which the difference between the actual pension and the commuted pension is received, resulting in the realization of the lumpsum payment received by the respondents/plaintiffs at the time of the retirement, the original pension amount is to be restored. Money decrees were also passed in favour of the respondents/plaintiffs along with interest at 11% per annum as to the amounts in the hands of the appellants/defendants existing after the number of years during which the commuted amount of pension would stand adjusted. An Injunction was also passed against the appellants/defendants restraining them from recovering any amount from the pension of the respondents/plaintiffs holding that the entire commuted amount already stands recovered.

2. The three appellants in the appeal are three defendants in the suit. Actually, in my opinion, the appellants no. 1 and 3/defendant nos. 1 and 3 were actually neither necessary parties to the suit nor in the appeal inasmuch as the pension fund being the appellant no.2/defendant no.2 is a legal entity and it is this pension fund which

is making payment of the pension to the respondents/plaintiffs. In fact, pension is being paid by the appellant no.2/defendant no. 2/Trust Fund to the respondents/plaintiffs on receipt of amounts from Life Insurance Corporation (*hereinafter 'LIC'*) inasmuch as the funds of the appellant no.2/defendant no. 2/Trust Fund are invested in different policies and annuities of LIC for payments of pension and commuted amount of pension to the members of the appellant no.2/defendant no. 2/Trust Fund.

3. The admitted facts are that respondents/plaintiffs retired from the services of the appellant no.1/defendant no. 1 on 30.11.1988 and 31.01.1991. The respondents/plaintiffs were members of the appellant no.2/defendant no. 2/Trust Fund and at the time of their retirement they received as a lumpsum amount being the commuted amount of pension, and the respondents/plaintiffs thereafter received a lesser monthly pension payment on account of having received a commuted lumpsum amount of pension at the time of their retirement. The respondents/plaintiffs claim that though the rules of appellant no.2/defendant no. 2/Trust Fund, and of which they were members and accordingly governed by the rules of the Trust, do not provide for

restoration of the full amount of pension, since however there was no prohibition for restoration of the full amount of pension, therefore, once on lesser amount of monthly pension is received over the number of years, hence the lumpsum amount received by the respondents/plaintiffs at the time of the retirement is recovered by adding the total monthly deductions. Hence the original pension amount of the respondents/plaintiffs should be restored. Appellants/Defendants challenged and disputed the claim of the respondents/plaintiffs on the ground that in the scheme of which the respondents/plaintiffs were members and the relevant rules of the appellant no.2/defendant no. 2/Trust Fund qua the respondents/plaintiffs, there was no provision for restoration of the pension to the entire amount, although after a particular number of years recovery from the monthly pension amount the recovery is complete of the lumpsum pension amount.

4. There are two main issues which have been urged on behalf of the parties before this court. Firstly, the issue which is urged is that even if the relevant Pension Trust Rules of the appellant no.2/defendant no. 2/Trust Fund do not provide for restoration of the

complete monthly pension amount, in view of the fact that there is no prohibition to restore the complete monthly pension amount then whether the respondents/plaintiffs are therefore entitled to restoration of the complete monthly pension amount on account of lack of a prohibition entitled rule. The second aspect which is argued is that the respondents/plaintiffs claim parity with the employees of the Grindlays Bank and this Grindlays Bank was merged with the appellant no.1/defendant no. 1/bank, and employees of the Grindlays Bank, as per the relevant pension rules and Pension Trust Fund to which they were members, contained an appropriate rule providing for restoration of complete amount of pension on account of monthly recoveries made from the monthly pension payment which would at a particular point of time result in recovery by the Pension Trust Fund of the lumpsum payment made as commuted pension to the employees on the dates of their retirement.

5. On the first aspect, in my opinion, the trial court has completely erred in holding that since there is no prohibition of restoration of the complete pension, and even if the rules of the appellant no.2/defendant no. 2/Trust Fund, do not provide for restoration of the complete

monthly pension amount, only because there is no prohibition in the rules for restoration of the entire monthly pension amount, therefore, the monthly pension amount has to be restored to its complete amount once recoveries are made every month totaling to the lumpsum commuted pension amount which is received by the employees. Admittedly, the contracts of the respondents/plaintiffs either with their employer being the appellant no.1/defendant no. 1 or with the appellant no.2/defendant no. 2/Trust Fund which is an independent entity, are private contracts. Private contracts are governed by their private contractual terms and conditions. The rules of the appellant no.2/defendant no. 2/Trust Fund are in the nature of contractual terms between its members and the appellant no.2/defendant no. 2/Trust Fund, with the respondents/plaintiffs being the members of appellant no.2/defendant no. 2/Trust Fund and thus being contractually bound as per the Pension Trust Fund Rules of the appellant no.2/defendant no. 2/Trust Fund. An entitlement as per a contract, has to be a categorical entitlement and it is not an acceptable answer that since the rules do not prohibit restoration of the original amount of monthly pension, a rule to restore pension amount to the original amount must be deemed

to be included in the relevant Pension Trust Fund Rules of the appellant no.2/defendant no. 2/Trust Fund. After all, we are concerned with imposition of a financial liability, and this is all the more so because Ld. Counsel for the appellants/defendants rightly argues that the financial instruments which are purchased by the appellant no.2/defendant no. 2/Trust Fund for its members from the LIC are only because of and as per the rules of the appellant no.2/defendant no. 2/Trust Fund, and these contractual rules are framed as per the financial requirements in terms of the agreements among the employees of the appellant no. 1/defendant no.1. Putting it in other words, it is rightly argued by the appellant no.2/defendant no. 2/Trust Fund that once the respondents/plaintiffs have such contractual rights and obligations which are provided in the contract, being the Pension Trust Fund Rules of the appellant no.2/defendant no. 2/Trust Fund, then such contractual rules will prevail, and that once these contractual Pension Trust Fund Rules do not provide for restoration of the original amount of monthly pension, if financial liability is created upon the appellant no.2/defendant no. 2/Trust Fund beyond that envisaged in the rules, then the entire financial mechanics and the

funds available to the appellant no.2/defendant no. 2/Trust Fund would get jeopardized, and this jeopardy will result in financial losses to the appellant no.2/defendant no. 2/Trust Fund, with the consequential chain reaction to the other members of the Pension Trust who may not get their requisite amounts of pension or annuities as the appellant no.2/defendant no. 2/Trust Fund would have reduced funds available with it on account of paying moneys to persons such as the respondents/plaintiffs who have not subscribed to a scheme in which they are restored the original monthly amount of pension. I also agree with the arguments urged on behalf of the appellants/defendants that once to no other similarly situated person to the respondents/plaintiffs the original monthly pension amount has been restored, the respondents/plaintiffs cannot get original monthly pension amount because this will result in respondents/plaintiffs being discriminated favourably as against those other persons who did not and do not get the complete pension amount even after the lumpsum commuted pension amount is recovered from the monthly pension payments of employees over a particular number of years. I, therefore, hold that the trial court has erred in holding that merely because the

Pension Trust Funds Rules are silent, the respondents/plaintiffs would be entitled to restoration of the original monthly pension.

6. Even the second argument urged as regards the parity claimed by the respondents/plaintiffs with the employees of Grindlays Bank, and this entity/bank merged with the appellant no. 1/defendant no. 1, this argument is a completely misconceived argument because admittedly the employees of the Grindlays Bank are governed by a separate Pension Trust Fund with its separate rules, and these rules do provide for restoration of the original monthly pension amount after recovery of the commuted lumpsum payment from the monthly pension payments which are made to the restored employees. Obviously such scheme which exists for Grindlays Bank employees would have resulted in such financial instruments being purchased by the Pension Trust Fund of the Grindlays Bank employees which would take care of the requisite financial liability of such Pension Trust Fund of Grindlays Bank, whereas in the present case, the Pension Trust Fund of the employees of appellant no.1/defendant no.1/bank with the appellant no.2/defendant no. 2/Trust Fund, and of which the respondents/plaintiffs are members, do not have any rule of restoration

of the total monthly pension amount after a particular number of years of making payment of reduced monthly pension amount on account of lumpsum commuted pension amount being paid to the retired employees and financial instruments accordingly only would have been purchased by appellant no.2/defendant no. 2/Trust Fund to take care of the expected and agreed financial requirements.

7. Ld. counsel for the respondents/plaintiffs sought to place reliance upon two judgments of the Hon'ble Supreme Court in support of the aforesaid two contentions being *Common Cause & Ors. v. Union of India, (1987) 1 SCC 142* and *Welfare Association of Absorbed Central Government Employees in Public Enterprises & Ors. v. Union of India & Anr., (1996) 2 SCC 187*. However, neither of the judgments will apply because these judgments deal with the relevant provisions of law and rules pertaining to Central Government employees or employees of the Public Sector Undertakings, and the relevant rules of the Pension Trust Funds of the Public Sector Companies, but the same parity cannot be granted to the present situation as the same is qua the employees of the private Pension Trust

Funds herein being the retired employees of the appellant no. 1/defendant no. 1/bank.

8. In view of the aforesaid discussion, this appeal is allowed. Impugned judgment and decree of the trial court dated 03.12.2011 is set aside. Suit of the respondents/plaintiffs will stand dismissed. Parties are left to bear their own costs. Amount deposited by the appellant no. 1/defendant no. 1 in this Court, along with accrued interest, be released back to the appellant no. 1/defendant no.1.

DECEMBER 06, 2018
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VALMIKI J. MEHTA, J