



IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 04.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.16784 of 2004

1. The Commercial Banks
Registered Employees Association,
(Regn.No.293/2001)
Rep. by its Secretary,
Old No.87 (New No.2),
4th Main Road, Gandhi Nagar,
Adyar, Chennai - 20,
Tamil Nadu.

2. V.Rangaramanujam

...Petitioners

Vs

1. The Union of India,
Rep. by its Secretary to Govt.,
Ministry of Finance,
Department of Economic Affairs,
(Banking Division), "Jeevan Deep"
Parliament Street,
New Delhi - 110001.
2. Andhra Bank through
The Chairman & Managing Director,
Andhra Bank, Head Office,
5-9-11, Secretariat Road,
Saifabad,
Hyderabad - 500004.(Andhra Pradesh)
3. Canara Bank through
The Chairman & Managing Director,
Canara Bank, Head Office,
112, J.C.Road,
Bangalore - 560002. (Karnataka)
4. Indian Bank through
The Chairman & Managing Director,
Indian Bank, Head Office,
31, Rajaji Salai,
Chennai - 600 001.(Tamil Nadu)



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5. UCO Bank through
The Chairman & Managing Director,
UCO Bank, Head Office,
10, BTM Sarani,
Kolkata - 700 001. (West Bengal).

6. United Bank of India through
The Chairman & Managing Director,
United Bank of India,
Head Office,,
16, Old Court House Street,
Kolkata - 700 001. (West Bengal).

7. Allahabad Bank through
The Chairman & Managing Director,
Allahabad Bank, Head Office,
2, Netaji Subhas Road,
Kolkata - 700 001. (West Bengal)

8. Central Bank of India through
The Chairman & Managing Director,
Central Bank of India, Central Office,
Chander Mukhi, Nariman Point,
Mumbai - 400 021 (Maharashtra).

9. Reserve Bank of India through
Its Governor, Central Office,
Shahid Bhagat Singh Road,
Mumbai - 400 001. (Maharashtra)

...Respondents

(R4, R6 & R7- given up & deleted as per
order dated 16.09.14 in
WP.MP.No.200 of 14 in WP.16784 of 2004)

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Declaration that the action of the respondents in denying the members of the 1st petitioner, whose names are given in the typed set of papers the benefits promised under the Voluntary Retirement Schemes based on which the members of the 1st petitioner submitted VRS application which was accepted by the Bank as illegal and consequently direct the respondents to grant them the benefit of Pension Regulation 1995 by taking into account the last drawn 10 months average pay as per Reg.2(d) for the period from the date of retirement till 30th April, 2005 together with commutation and Dearness Relief as per Appendix II as per Reg.37 as existing on the date of retirement under VRS since the date of retirement together with interest at 12% per annum.
(Prayer amended vide order dated 04.04.2019 made in W.P.M.P. 199/2014 in W.P.16784/2004)



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For Petitioner : Mr.A.R.Nixon

For Respondents: Mr.J.Madanagopal Rao, SCGSC
for R1

Mrs.Rita Chandrasekar
for M/s.Aiyar & Dolia
for R2

Mr.Goutam S.Raman
for R3

Mr.Rajnish Pathiyil
for R5

Mr.R.Devaraj
for R8 & R9

O R D E R

Today, when the matter was called, the learned counsels for the petitioners as well as the respondents herein submitted that the issue with regard to the relief sought for in the present writ petition, was a subject matter of a Civil Appeal in C.A.No.5525 of 2012 in the case of Bank of Baroda & another vs. G.Palani & others. The Hon'ble Apex Court in its Judgment dated 13.02.2018, had observed as follows:

29. Thus, in our opinion, the Regulations which were in force till 2003, would apply with full force and as a matter of fact, the amendments made in it by addition of Explanation (c) in Regulation 2(s) did not have the effect of amending the Regulations relating to pension, as contained in Regulation 38 read with Regulations 2(d) and 35 of the Regulations of 1995. Even otherwise, if it had the effect of amending the pay and perks 'average emoluments', as specified in Regulation 2(d), it could not have operated retrospectively and taken away accrued rights. Otherwise also, it would have been arbitrary exercise of power. Besides, there was no binding statutory force of the so called Joint Note of the Officers' Association, as admittedly, to Officers' Association even the provisions of Industrial Disputes Act were not applicable and joint note had no statutory support, and it was not open to forgo the benefits available under the Regulations to those officers who have retired from 1.4.1998 till December 1999 and thereafter, and to deprive them of the benefits of the Regulations. Thus, by the Joint Note that has been relied upon, no estoppel said to have been created. There is no estoppel as against the enforcement of



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statutory provisions. The Joint Note had no force of law and could not have been against the spirit of the statutory Regulations and the basic service conditions, as envisaged under the Regulations framed under the Act of 1970. They could not have been tinkered with in an arbitrary manner, as has been laid down by this Court in Central Inland Water Transport Corporation Limited & Anr. vs. Brojo Nath Ganguly & Anr., (1986) 3 SCC 156 & Delhi Transport Corporation vs. D.T.C. Mazdoor Congress, (1991) Supp.1 SCC 600.

30. Reliance has been placed on the decision of this Court by learned counsel appearing for the Banks, on Manojbhai N. Shah & Ors. vs. Union of India & Ors., (2015) 4 SCC 482, where the position was converse. Revision of pay was granted with retrospective effect to the eligible employees. Instant cases are not the cases of the revision of benefits being given with retrospective effect, but taking away of a right that had accrued with retrospective effect. Thus the decision in the aforesaid case has no application.

31. Similarly, the decision in Union of India vs. P.N. Menon & Ors., (1994) 4 SCC 68, has been pressed into service in which this Court has laid down with respect to dearness allowance granted to a Government servant, who retired on or after 30.9.1977. It was claimed that the said benefit should be given retrospectively to all the employees irrespective of their date of superannuation. It was not the case of taking away of vested right or accrued right with retrospective amendment. Thus, the decision has no application.

32. Reliance has also been placed on the decision of this Court in D.S. Nakara vs. Union of India, (1983) 1 SCC

305. It was observed in the context of pension scheme that was non-contributory in character that the benefit, which was given under the scheme, was prospective. In all cases wherever they retire, they would be governed by the liberalized pension scheme, because the scheme was a scheme for payment of the pension governed by 1972 Rules. The date of retirement would be the relevant date. The revised scheme would be operative from the date mentioned in the scheme. It was also not a case of taking away the benefit that had accrued with retrospective effect or taking away



of the vested or accrued rights. Thus, the decision has no application, rather the spirit of the decision runs counter to and fails to buttress the submissions raised on behalf of the banks.

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33. The only purpose of the addition of Explanation (c) to Regulation 2(s), was to take away the actual computation of the pension on the basis of the salary, which was drawn in the preceding ten months. Thus, we have no hesitation to strike it down being arbitrary and repugnant to other provisions/Regulations namely 2 (d), 38(1)(2) and 35. The Explanation (c) to Regulation 2(s) is hereby struck down, as it could not have been enacted retrospectively to take away accrued rights. Even otherwise also it is held to be arbitrary and irrational. More so, in view of the fact that only by way of a temporary measure, that discrimination was created and the Explanation was deleted with effect from 1.5.2005.

2. The above observations are self explanatory. As such, the relief sought for in the present writ petition is directly covered by the aforesaid Judgment. It is also brought to the notice of this Court that the Hon'ble First Bench of this Court, by relying upon the above decision of the Hon'ble Apex Court, had passed orders in WP.Nos.970, 5916 and 19830 of 2002. The learned Single Judge of this Court has also followed the said decision and allowed the writ petition in WP.No.6273 of 2006 dated 25.01.2019, in the case of Bank of Baroda Retired Officers' Association & others vs. Bank of Baroda & others.

3. In view of the settled proposition, the present writ petition stands allowed. Consequently, the respondents 2, 3, 5 and 8 shall re-compute the pension of the retired employees in conformity with the observations made by the Hon'ble Apex Court in its decision in C.A.No.5525 of 2012 and pay the balance due, within a period of 4 months from the date of their entitlement along with 9% interest per annum calculated as per the reducing balance. While computing the pension, the concerned respondents shall adhere with the terms of the VRS scheme. No costs.

-s/d-

Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

jas/hvk



To

1. The Secretary to Government,
The Union of India,
Ministry of Finance,
Department of Economic Affairs,
(Banking Division), "Jeevan Deep"
Parliament Street,
New Delhi - 110001.
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Andhra Bank, Head Office,
5-9-11, Secretariat Road,
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8. The Chairman & Managing Director,
Central Bank of India, Central Office,
Chander Mukhi, Nariman Point,
Mumbai - 400 021 (Maharashtra).



9.The Governor,
Reserve Bank of India
Central Office,
Shahid Bhagat Singh Road,
Mumbai - 400 001. (Maharashtra)

- +1 CC to M/s.Aiyar and Dolia, Advocate sr 34597.
- +1 CC to M/s. Rajnish Pathiyil, Advocate sr 33064.
- +1 CC to Mr.A.R.Nixon, Advocate sr 32909.
- +1 CC to Mr.C.Seetahpathy, Advocate sr 32590.
- +1 CC to Mr.T.S. Gopalan & Co, sr 32429.

W.P.No.16784 of 2004

SP(15/05/2019)