

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE :16.10.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. Nos.35382 to 35386 and 35016 to 35021 of 2013  
and  
MP.Nos.1 to 1 & 2 to 2 of 2013

1.K.KRISHNA RAJU ... PETITIONER IN WP.NO.35382 OF 2013  
2.MRS.VIJAYALAKSHMI ... PETITIONER IN WP.NO.35383 OF 2013  
3.MRS.S.VARALAKSHMI ... PETITIONER IN WP.NO.35384 OF 2013  
4.K.C.LOHITHAKSHAN ... PETITIONER IN WP.NO.35385 OF 2013  
5.E.R.DEVANARAYAN ... PETITIONER IN WP.NO.35386 OF 2013  
6.CHETTYPALLI RAMAIAH ... PETITIONER IN WP NO.35016 OF 2013  
7.MRS.GEETHA CHANDRASEKAR ... PETITIONER in WP No.35017 of 2013  
8.K.M.BALAKRISHNAN ... PETITIONER in WP No.35018 of 2013  
9.MRS.S.BALU DAVID ... PETITIONER in WP No.35019 of 2013  
10.GAYATHRI P. VITTAL ... PETITIONER in WP No.35020 of 2013  
11.K.GOPINATH ... PETITIONER in WP No.35021 of 2013

- Vs -

1.Indian Overseas Bank,  
Rep. By the Chairman &  
Managing Director,  
Central Office,  
762, Anna Salai,  
Chennai 600 002.

2.The General manager & competent  
Authority under  
Indian Overseas Bank (Employees')  
Pension Regulations, 1995,  
Indian Overseas Bank, Central Office,  
762, Anna Salai, Chennai 600 002.

3.Mr.K.Sankarasubramanian,  
Chief Officer, Pension Cell, P.A.D.,  
Indian Overseas Bank,  
Central Office, 762, Anna Salai,  
Chennai 600 002. ...Respondents in all W.Ps

Prayer in WP 35382 of 2013

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of Certiorarified Mandamus, calling for the records from the Respondent Bank pertaining to the order bearing No.1080 dated 11.05.2012 of the

3<sup>rd</sup> respondent and quash the same, and consequently direct the respondents to restore the pension and all consequential benefits granted to the petitioner when he was voluntarily retired from service in 2001, and to refund the recoveries made from him from June 2012 with interest at the rate to be determined by this Court and to refrain from making any future recoveries with cost.

WP No.35383 of 2013

calling for records from the respondent Bank pertaining to the order bearing No.1074 dt 11.5.2012 of the 3rd respondent and quash the same, and consequently direct the respondents to restore the pension and all consequential benefits granted to the petitioner when she was voluntarily retired from service on 31.1.2001, and to refund the recoveries made from her from March 2012 with interest at the rate to be determined by this Honourable Court and to refrain from making any future recoveries with cost

WP No.35384 of 2013

calling for records from the respondent Bank pertaining to the order bearing No.1087 dt 11.5.2012 of the 3rd respondent and quash the same, and consequently direct the respondents to restore the pension and all consequential benefits granted to the petitioner when she was voluntarily retired from service on 31.1.2001, and to refund the recoveries made from her from March 2012 with interest at the rate to be determined by this Honourable Court and to refrain from making any future recoveries with cost

WP No.35385 of 2013

calling for records from the respondent Bank pertaining to the order bearing No.1077 dt 11.5.2012 of the 3rd respondent and quash the same, and consequently direct the respondents to restore the pension and all consequential benefits granted to the petitioner when he was voluntarily retired from service in 2001, and to refund the recoveries made from him from June 2012 with interest at the rate to be determined by this Honourable Court and to refrain from making any future recoveries with cost

WP No.35386 of 2013

calling for records from the respondent Bank pertaining to the order bearing No.1081 dt 11.5.2012 of the 3rd respondent and quash the same, and consequently direct the respondents to restore the pension and all consequential benefits granted to the petitioner when he was voluntarily retired from service on 31.1.2001, and to refund the recoveries made from him from March 2012 with interest at the rate to be determined by this Honourable Court and to refrain from making any future recoveries with cost

WP No.35016 of 2013

calling for records from the respondent Bank pertaining to the order bearing No.1086 dt 11.5.2012 of the 3rd respondent and quash the same, and consequently direct the respondents to restore the pension and all consequential benefits granted to the petitioner when he was voluntarily retired from service on 30.4.2001, and to refund the recoveries made from him from June 2012 with interest at the rate to be determined by this Honourable Court and to refrain from making any future recoveries with cost

WP No.35017 of 2013

calling for records from the respondent Bank pertaining to the order bearing No.1079 dt 11.5.2012 of the 3rd respondent and quash the same, and consequently direct the respondents to restore the pension and all consequential benefits granted to the petitioner when she was voluntarily retired from service on 31.1.2001, and to refund the recoveries made from her from March 2012 with interest at the rate to be determined by this Honourable Court and to refrain from making any future recoveries with cost

WP No.35018 of 2013

calling for records from the respondent Bank pertaining to the order bearing No.1089 dt 11.5.2012 of the 3rd respondent and quash the same, and consequently direct the respondents to restore the pension and all consequential benefits granted to the petitioner when he was voluntarily retired from service on 31.1.2001, and to refund the recoveries made from him from March 2012 with interest at the rate to be determined by this Honourable Court and to refrain from making any future recoveries with cost

WP No.35019 of 2013

calling for records from the respondent Bank pertaining to the order bearing No.1073 dt 11.5.2012 of the 3rd respondent and quash the same, and consequently direct the respondents to restore the pension and all consequential benefits granted to the petitioner when she was voluntarily retired from service in 2001, and to refund the recoveries made from her from May 2012 with interest at the rate to be determined by this Honourable Court and to refrain from making any future recoveries with cost

WP No.35020 of 2013

calling for records from the respondent Bank pertaining to the order bearing No.1078 dt 11.5.2012 of the 3rd respondent and quash the same, and consequently direct the respondents to restore the pension and all consequential benefits granted to the petitioner when she was voluntarily retired from service in

2001, and to refund the recoveries made from her from June 2012 with interest at the rate to be determined by this Honourable Court and to refrain from making any future recoveries with cost

WP No.35021 of 2013

calling for records from the respondent Bank pertaining to the order bearing No.1072 dt 11.5.2012 of the 3rd respondent and quash the same, and consequently direct the respondents to restore the pension and all consequential benefits granted to the petitioner when he was voluntarily retired from service on 31.1.2001, and to refund the recoveries made from him from March 2012 with interest at the rate to be determined by this Honourable Court and to refrain from making any future recoveries with cost

In All WPs.

For Petitioner : Mr.R.Viduthalai, SC, for M/S.R.Revathy

For Respondents : M/S.N.G.R. Prasad  
in all WP's

COMMON ORDER

As the relief sought for in these petitions are similar in nature, they are disposed of by this common order.

2.The case of the petitioners is that while some of them were clerical staff, some of them were Probationary Officers in the respondent Bank and their service conditions were governed by the awards and various Bipartite Settlement entered into between the Union and the Management. While in service, the respondent Bank floated the Voluntary Retirement Scheme which was accepted by the petitioners and their applications for voluntary retirement based on the said scheme was accepted and they were relieved from services of the first respondent Bank on 31.01.2001 in terms of Regulation 29 of Indian Overseas Bank (Employees') Pension Regulations, 1995. The respective petitioners have put in service of more than 19 years and 6 months. It is the case of the petitioners that while they were relieved under the Voluntary Retirement Scheme, their pension and other service benefits were counted on the premise of their having put in a qualifying service of 20 years and adding a weightage of five years to the same, the benefits were calculated and paid to the petitioners. However, after a span of 11 years from the date of their being retired under the said scheme, vide the impugned order, the benefits that were paid to the respective petitioners were sought to be recovered under the guise of incorrect calculation of their qualifying service. Against the said order, the present writ petitions have been filed.

3.Learned senior counsel appearing for the petitioners submitted that while the petitioners have put in more than 19 years and 6 months of service, based on Regulation 18, which prescribes that where the broken period is beyond six months, the same to be computed as one full year, the respondent bank, rightly computed their qualifying service at 20 years and based on Regulation 29 (5), adding 5 years to the said qualifying service, the net service was computed and the service and monetary benefits including the retiral benefits were calculated and paid to the petitioners. However, the impugned order has been passed on the premise that Regulation 18 is not applicable to the petitioners as they had gone on voluntary retirement, which is against the decision of the Hon'ble Supreme Court in State Bank of Patiala - Vs - Pritam Singh (2014 (13) SCC 474) and the recovery sought to be made in contravention of the said decision, vide the present impugned order deserves to be interfered with.

4.Per contra, learned counsel appearing for the respondent Bank vehemently opposed the stand of the petitioners and, in turn, submitted that the benefit of Regulation 29 (5) would not stand enured to the benefit of the petitioners as the same is only applicable for employees who have completed full 20 years service and gone out on regular retirement. The petitioners, having opted the voluntary retirement scheme and gone out, cannot claim the benefit of Regulation 29 (5), as they are governed by the scheme framed for voluntary retirement. Therefore, counting the broken period as a full year, as mandated under Regulation 18 would not be applicable to the petitioners and the petitioners, having not put in 20 years of service, cannot derive the benefit under Regulation 29 (5). The error in computation made by the respondent Bank, having come to their knowledge at a later point of time, in view of the undertaking given by the petitioners while going out on voluntary retirement that any amount, paid in excess to their entitlement would be refunded, the bank has sought to recover the said amount, which cannot be said to be impermissible and unsustainable and, therefore, pray for dismissal of the present writ petitions.

5.This Court paid its undivided attention to the contentions advanced by the learned counsel on either side and also perused the materials available on record as also the decision relied on by the learned counsel for the petitioners.

6.A perusal of the impugned order itself reveals that based on the decision of the Hon'ble Supreme Court, computation of the qualifying service of the petitioners have been made. However, the order of bereft of any particulars as to the decision which has been relied on while computing the qualifying service.

However, the impugned order proceeds on the premise that the computation based on the order of the Hon'ble Supreme Court is in error and adverting to Regulation 29 (5) and Regulation 18, it has been communicated by the respondent Bank that Regulation 18 is not applicable to the petitioners and pursuant to the same the petitioners cannot derive the benefit of Regulation 29 (5) to have their qualifying service quantified at 20 years.

7. It is in this backdrop, attention of this Court is drawn by the learned senior counsel for the petitioners to the decision of the Hon'ble Apex Court in Pritam Singh's case (supra), wherein the Hon'ble Apex Court, in identical circumstances, considering the applicability of Regulation 18 and 29 (5) to similarly placed persons therein, held as under :-

"21. For premature retirement pension one may refer to Regulation 32, which reads as under:

32. Premature Retirement Pension  
Premature retirement Pension may be granted to an employee who, -

(a) has rendered minimum ten years of service;

(b) retires from service on account of orders of the Bank to retire prematurely in the public interest for any other reason specified in service Regulations or settlement, if otherwise he was entitled to such pension on superannuation on that date.

Regulation 33 deals with an employee compulsorily retired from service as a penalty and which is not applicable in the present case.

22. The Respondents completed more than 10 years of service in the Bank on the date of retirement; therefore, they fulfill the requirement of qualifying service as per Regulation 14.

23. It has not been disputed by Appellant-Bank that the Respondents in all the appeals have completed much more than 19 years 6 months of service in the Bank. For example, Respondent No. 1-Prakash Chand in C.A. No. 173 of 2010 had joined the Bank on 4th May, 1981 and relieved on 31st March, 2001. Thus, he had completed 19 years, 10 months and 28 days of qualifying service on the date of relieving from service.

24. Regulation 18 of the Pension Regulations, 1995 provides that if broken period is more than six months, it shall be treated as one year. Therefore, all the Respondents-writ Petitioners having completed more than 19 years and 6 months of service in the Bank, they are to be treated to have completed 20 years of service. The aforesaid question was neither raised nor decided in the case of 'Bank of Baroda' or 'Bank of India'.

25. In view of the aforesaid fact, the Appellant-Bank cannot derive the benefit of the decision of this Court in Bank of Baroda as the employees who were parties before the Court in the said case had not completed 20 years of service. As per the decision of this Court in Bank of India, the Respondents-writ Petitioners having completed 20 years of service are entitled to the benefit of Regulation 29."

8.A careful perusal of the whole of the decision in Pritam Singh's case (supra), more so the facts therein, clearly show that the facts therein are identical to the case on hand. In the above decision the Hon'ble Apex Court has categorically held that the benefit of Regulation 18 and 29 (5) is available to the petitioners, who had opted for the voluntary retirement scheme, as the Regulations are applicable to the petitioners who had gone out on voluntary retirement scheme floated by the respondent Bank.

9.In the case on hand, it is not in dispute that the petitioners have completed more than 19 years and 6 months of service while they had opted for voluntary retirement and were relieved as per the said scheme. In such a scenario, the petitioners having completed more than 19 years and 6 months on the date of relief are entitled to derive the benefit under Regulation 18 to have the qualifying service reckoned as 20 years and once the qualifying service is reckoned as 20 years by application of Regulation 18, the benefits that flow out of Regulation 29 (5) flows to the petitioners. Therefore, the quantification made to the qualifying service by invoking Regulation 29 (5) is just and proper and the present impugned order to the contra, without proper application of the decision of the Hon'ble Supreme Court cannot the test of judicial scrutiny.

10.This Court, in the decision in W.A. No.1491 of 2018 [Dr.T.Ramasamy Vs. The General Manager(Personnel) and Others], following the decision in Pritam Singh's case (supra), has

allowed the writ appeal and in the light of the binding precedents, this Court is of the considered view that the impugned order suffers from the test of reasonableness and is arbitrary and perverse and the recovery sought for on the basis of the said order deserves to be interfered.

11. Accordingly, for the reasons aforesaid, these writ petitions are allowed setting aside the impugned order dated 11.05.2012 passed by the respondent bank. Recovery, if any, made from the payments made to the petitioner pursuant to the impugned order is directed to be refunded back to the respective petitioners within a period of eight weeks from the date of receipt of a copy of this order in one lumpsum. Consequently, connected miscellaneous petitions are closed. However, there shall be no order as to costs.

Jrs 16.10.2020

For Being Mentioned

This W.P. Nos. 35382 to 35386, 35016 to 35021/2013 coming on for hearing today under the caption "For Being Mentioned", upon perusing the Petition and the affidavit filed in support thereof and upon hearing the arguments of Mr.R.Viduthalai, Senior Counsel for M/s. Revathy, Advocate for the Petitioner and of Mr.N.G.R.Prasad, Advocate for the Respondents this Court made the following order:

This matter is listed today under the caption "For Being Mentioned" at the instance of the learned counsel for the petitioners.

2. It is brought to the notice of this Court by the learned counsel for the petitioners that though eleven writ petition numbers were listed on the said date, which were disposed of by this common order, however, the order copy reveals only the numbers of five writ petitions along with the prayer and inadvertently, the other numbers, viz., six writ petition numbers, have not been included in the said order. Therefore, it is prayed that necessary correction may be made in the order copy throughout and a fresh order copy may be directed to be issued.

3. This Court, vide order dated 16.10.20, while disposed of all the writ petitions listed together under a single serial on that day, in all numbering eleven, however, while typing the order, it is found that inadvertently, W.P. Nos.35016 to 35021 of 2013 have not been shown and, consequent upon the same, while drafting the order, neither the said writ petition numbers, viz., W.P. Nos.35016 to 35021 of 2013, nor the prayer pertaining to the above writ petitions been incorporated in the order dated 16.10.2020.

4. In the above circumstances, in order to rectify the inadvertent error that has crept in the order, Registry is directed to include W.P. Nos.35016 to 35021 of 2013 also in the top of the order copy and also incorporate the cause title as also the prayer of the respective writ petitions in the order dated 16.10.2020, and issue a composite fresh order copy to the parties forthwith.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

jrs  
To

1.Indian Overseas Bank,  
Rep. By the Chairman &  
Managing Director,  
Central Office,  
762, Anna Salai,  
Chennai 600 002.

2.The General manager & competent  
Authority under  
Indian Overseas Bank (Employees')  
Pension Regulations, 1995,  
Indian Overseas Bank, Central Office,  
762, Anna Salai, Chennai 600 002.

3.Mr.K.Sankarasubramanian,  
Chief Officer,  
Pension Cell, P.A.D.,  
Indian Overseas Bank,  
Central Office, 762, Anna Salai,  
Chennai 600 002.

+11 cc to Mr.R.Revathy, Advocate, S.R.No.34626, 34631, 34625,  
34633, 34634, 34635, 34627, 34628, 34629, 34630

+11 cc to Mr.N.G.R.Prasad, Advocate, S.R.No.34499, 34649, 41174

W.P. Nos.35382 of 2013., batch

SVI (CO)  
KKV/07/12/2020  
SP(18/01/2021)