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WP.No.33009/2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 24.07.2023

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

WP.No.33009/2017

N.Rajasekaran

... Petitioner

Versus

1.Bank of Baroda
rep.by its Chairman and Managing
Director, No.3, Wallchand Hirachand
Marg, Bellard Pier, Bombay 400 038.

2.The General Manager
[Recoveries & Monitored Accounts]
Bank of Baroda, No.3, Wallchand
Hirachand Marg, Bellard Pier
Bombay 400 038.

3.The Deputy General Manager
Bank of Baroda, Zonal Office
No.93, C.P.Ramasamy Road
Alwarpet, Chennai 600 018.

4.Assistant General Manager
Bank of Baroda, No.252A,
TTK Road, II and III Floor
Alwarpet, Chennai 600 016.

... Respondents



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Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of declaration, declaring the action of the respondents in denying pension to the petitioner on and from the date when the petitioner is entitled to receive pension under the Bank of Baroda [Employees'] Pension Regulations, 1995 as illegally, arbitrary and contrary to law and consequently, direct the respondents to pay pension, arrears of pension and continue to pay pension to the petitioner under the Bank of Baroda [Employees'] Pension Regulations, 1995.

For Petitioner : Ms. S.Kaavya for
Mr.Balan Haridas

For RR 1 to 4 : Mr.T.S.Gopalan

ORDER

- (1) The writ petition has been filed in the nature of a declaration, declaring that the action of the respondents in denying pension to the petitioner on and from the date when the petitioner was entitled to receive pension under the Bank of Baroda [Employees] Pension Regulations, 1995, as contrary to law and direct the respondents to pay the pension, arrears of pension and continue to pay pension to the



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petitioner under the Bank of Baroda [Employees] Pension Regulations, 1995.

- (2) Though learned counsel for the petitioner had argued the case, learned counsel for the respondent stated that the learned counsel who is supposed to argue, is held up elsewhere. But, however, the facts are clear. The facts are simple. The facts are straight forward. Therefore, I would, instead of sending the matter back to almirah to rest for the next six years, pass orders.
- (3) The writ petitioner had joined the respondent Bank [Bank of Baroda] on 04.05.1967. He had a very interesting career in the Bank. On 21.11.1991, a charge memo was served on him that proceeded in manner known to law and finally, he was compulsorily retired on 28.09.1993. Questioning that particular punishment imposed, the petitioner has filed an appeal. That was rejected on 05.01.1994. He did not let the matter rest at that. He filed a review and that review was also rejected on 09.04.1994. The matter could have ended there. But the respondents appear to have given an option to those who had retired to opt for a pension scheme. The petitioner, in the first



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instance opted for such scheme by giving an application consequent to a notice dated 19.03.1994. The application which he made was rejected on the ground that he had given his application or exercised his option beyond the cut off date. To his good fortune, the respondents issued another Notification seeking exercise of such option. That was on 18.11.1995. The petitioner this time, was a little more vigilant and exercised his option on 24.11.1995.

- (4) It is contended by the learned counsel for the petitioner that the respondents had actually forwarded the request forms for exercising the said option and the petitioner had the benefit of receiving those forms, filling up those forms and forwarding them to the respondents. The respondents then fell back to their Regulations aforementioned, namely, the Bank of Baroda [Employees] Pension Regulations, 1995 and placing reliance on two particular Regulations, Regulation No.3 and Regulation No.33, held that the petitioner is not eligible to exercise such option. The petitioner is aggrieved that he has not been granted that opportunity of receiving pension, though he had exercised his option.



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- (5) The respondents had filed a counter affidavit, wherein they had stated that the petitioner had not retired on attaining the age of superannuation, but had rather been compulsorily retired on charges being proved and that was a punishment which had been imposed on the petitioner herein. They had stated further that those who are in service in the Bank on or after 01.01.1986 but had retired before 01.11.1993, as stipulated under the Regulations were alone eligible to avail this particular benefit. As on 01.11.1993, it is a fact that the petitioner had suffered an order of compulsory retirement which was passed on 28.09.1993. But, it is also a fact that he had filed an appeal and that appeal was finally disposed of to his disadvantage on 05.01.1994 and a subsequent review was also dismissed on 09.04.1994.
- (6) The issue whether on 01.11.1993 he could consider himself as being eligible though he had suffered an order of compulsory retirement, is a moot question and which, to my fortune, has been answered by a judgment of a Division Bench of this Court dated 10.12.2009 passed



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in **WA.No.2768/2002 [C.P.Krishnaswamy Vs. Union of India, Ministry Of Finance, New Delhi and 3 Others]**. That was a judgment relating to Punjab National Bank and the learned counsel for the petitioner was extremely insistent in stating that the Regulations for that particular Bank and the Regulations for the Bank herein, namely, Bank of Baroda, are *Pari Materia* and same and the reasonings in that particular judgment of the Division Bench would equally apply to the facts of the present case. It is also contended that the facts therein are also similar to the facts of this case.

- (7) So far as the second point on which the respondents had rejected the petitioner's request to exercise the option is the reliance placed by them on Regulation 33 of the Regulations of the respondents Bank. Regulation 33 also gives a cut off date for exercising such option and that particular cut off date as is evident from a reading of the said Regulations is again 01.11.1993.
- (8) In effect, the respondents have contended that since the petitioner had suffered an order of dismissal on 28.09.1993, he was not eligible on the cut off date on 01.11.1993 to exercise any option whatsoever.



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- (9) It is also stated in the counter affidavit which had been sworn to by one Mr.Suresh Gajendran, who claimed that he was the Deputy General Manager and Deputy Zonal Head of Chennai Zone in the respondents Bank, that the judgment in the writ appeal requires re-consideration. I am not able to understand as to how a party to a litigation can claim that a judgment of the High Court, particularly, of a Division Bench, should be reconsidered. There should be some discipline maintained in pleadings.
- (10) Learned counsel for the petitioner, however stated that the respondents in that particular writ appeal, namely, Punjab National Bank, have put that order into effect. Any order is binding not only on the petitioner therein but also lays down a dictum to all those who rely on those particular Rules.
- (11) Regulations 3 and 33 have been very specifically questioned and analysed and orders have been passed by stating that, that the particular date in those Regulations are arbitrary. Merely stating that the judgment requires reconsideration by the respondents herein cannot advance the case of the respondents. There should be some



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conformity to the Rule of law and discipline must be maintained while expressing opinions of a Judgment of the Court. Unfortunately, the respondents do not seem to so care.

- (12) At this juncture, learned counsel for the respondent also entered into the scene and placed a preliminary objection that the writ petitioner herein is not eligible at all for pension under Regulation 3. He apparently had further instructions about reconsideration of the judgment of the writ appeal and stated that there are two other Division Bench judgments which had held otherwise, but had not produced copies of the said judgments. Let me therefore, confine to the judgment of the Division Bench which has been forwarded across the Bar.

- (13) Paragraphs.No.16 and 17 are relevant and they are extracted below:

"16.When we examine the definition "date of retirement" under regulation 2(k) we find that while stating that the said definition would mean the last day of the month in which the employee attains the age of superannuation, it is also stated that such date of retirement would be the date on which the employee is



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retired by the bank. It also refers to the date on which the said employee voluntarily retires or the date on which the officer is deemed to have retired. Therefore amongst the retirees, there is one category namely an employee who is retired by the bank. When it comes to the question of application of the regulations, regulation 3(1)(a) makes it clear that the regulations would not apply to employees who were in the services of the bank on or after 01.01.1986, but who had retired before the first date of November, 1993. Therefore reading regulations 2(k), 2(x), 2(y) and 3(1)(a) together, it can be safely held that all types of retirement namely retirement on reaching the age of superannuation, deemed retirement, voluntary retirement or any other premature retirement would fall within the expression retirement as well as the other provisions of applicability namely regulation 3(1)(a).

17. A perusal of regulation 33(1) discloses that even an employee who is compulsorily retired from service as a penalty under the respondent's bank Discipline and Appeal Regulations or awards/settlement may be granted by an authority higher than the authority competent to impose such



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penalty, pension at a rate not less than two-thirds and not more than full pension admissible to the employee on the date of his compulsory retirement if he is otherwise entitled to such pension on superannuation on that date. The cut-off date prescribed under the said regulation 33(1) viz., 01.11.1993, only makes a distinction between the employee who was compulsorily retired prior to 1.11.1993 and after 01.11.1993, in order to be eligible for invoking the said regulation."

- (14) In the judgment of the Division Bench above referred, there is also a reference to another judgment of another Division Bench in WA.No.1076/2006 dated 31.08.2006 which related to an employee of the Indian Overseas Bank. There, his request for voluntary retirement came to be accepted and he was allowed to retire voluntarily. The Division Bench therein, was also concerned with the provision which contained the very same Regulations and in particular, Regulation 29- Right to grant of Pension to those who take the option of voluntary retirement as well as Regulation 32 which deals with premature retirement. There was also a reference to the judgment of the Bombay



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High Court reported in **1997 [1] LLJ 1094 [Madhav K.Kirthikar Vs. Bank of India]**.

- (15) The Division Bench in WA.No.1076/2006 relating to an employee of the Indian Overseas Bank, had extracted the judgment of the Bombay High Court which is as follows:-type marked portion below:-

"7. There is no dispute that in the present case the respondent has been given premature retirement vide letter dated 9.5.1989. The definition of 'retirement' provided in clause 2(y) covers all the retirements and also the voluntary premature retirement by the bank before superannuation. It is also not disputed that the Indian Overseas Bank (Employees') Pension Regulations, 1995 are applicable to all the employees who were in the service of the bank on or after first January, 1986 but had retired before the first day of November, 1993. Regulation 32 states that the premature retirement pension may be granted to an employee who has rendered minimum 10 years of service, retires from service on account of orders of the bank to retire prematurely in the public interest or for any other reasons specified in the service regulations or settlement, if otherwise, he was entitled to such



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pension or superannuation on that date. A combined reading of clause (c) of Regulation 2(y) with Regulation 32 and Regulation 34, clearly shows that the scheme is applicable in respect of employees who had retired or died between 1.1.1986 and 31.10.1993. The appellant bank has however contended that the respondent by his own accord voluntarily retired on medical grounds on 9.5.1989 as per non statutory circular bearing permanent EST 104/86 of 27.8.1986 which is based on Central Government's guidelines dated 25.5.1982 permitting the public sector banks to modify their scheme or appointment on compassionate grounds so as to extend the benefit to the dependants of the employees who retired on medical grounds. The submission is that the respondent retired on his own accord and therefore, his case could not fall under clause (c) of Regulation 2(y) of the Pension Regulations. We are unable to accept the argument of the bank. In the first place there is nothing in the Regulations to indicate that the Scheme does not cover the employee who has prematurely retired as per the statutory circular. On the other hand the definition of 'retirement' in Regulation 2(y) is wide and cover all cases of premature retirement where the employee has



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retired before attaining the age of superannuation specified in Service Regulations or Settlement. Now the Bank has chosen to apply the scheme to the employees who have retired after 1.1.1986. The benefit of the scheme, therefore, must be given to all the employees who have retired after 1.1.1986. It will be totally impermissible to make artificially a further classification amongst the employees retired after 1st January, 1986 as it will be totally irrational, arbitrary and violative of Article 14 of the Constitution. This is more so because under the scheme the employees who have retired prematurely after 1st November, 1993 are expressly covered by the scheme."

- (16) The Division Bench in **C.K.Krishnasamy's case** [referred above], had thereafter examined other Regulations relating to pension. It is useful to extract the relevant paragraphs:

"26. On the other hand, a reading of regulation 2(y)(c) of the pension regulations along with regulation 19(1) first proviso and 20(1) of the 1979 Service Regulations or Regulation 4(h) of Punjab National Bank Officer Employees' (Discipline and Appeal) Regulations, 1977 persuade us to hold that it would be in order to state that compulsory retirement even by way of punishment



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having regard to the connotations applicable to it would only fall under the broad classification of premature retirement. Apparently for these reasons, we are able to discern that under the pension regulations, regulation 33 came to be incorporated providing for payment of pension subject however to the grant of such pension by the authority higher than the authority competent to impose such compulsory retirement as a penalty and the rate at which it should be granted as provided therein.

27. In our considered opinion any other view would run counter to the very object of the bank management in having come forward to grant pension to various categories of employees including those who were retired prematurely in public interest which is otherwise known as compulsory retirement in public interest and also an employee retired compulsorily by way of punishment under regulations 32 and 33 respectively.

28. We are also convinced that regulation 32(b) having specifically provided for covering those employees who are prematurely retired in public interest namely those who would fall in the category of compulsorily retired employees in public interest and



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also employees who were retired for any other reason specified in the service regulations or settlement which would cover other cases of premature retirement which would include compulsory retirement by way of punishment and there could be no other category that would fall within the above said expression premature retirement and those retired by the bank within the expression #for any other reason specified in service regulations or settlement.

29. We therefore hold that an officer/employee who is compulsorily retired by way of punishment would also fall within the category of premature retirement and consequently it cannot be said that he would fall outside the pension regulations in order to exclude him from being eligible to claim pension under the pension regulations in particular regulation 33(1)."

(17) In **1992 Supp. [1] SCC 644 [All India Reserve Bank Retired Officers Association and Others Vs. Union of India]**, it was held as follows:-

"45.The learned counsel then relied upon an unreported decision of the Delhi High Court rendered in Civil Writ No.3830 of 1998 dated 30.08.1999. In the said judgment the issue involved is identical to the case



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on hand. The learned single Judge by applying the decision of All India Reserve Bank Retired Officers Association and others Vs. Union of India (1992 Supp (1) SCC 644) took the view that fixing of the cut-off date of 01.11.1993, being a reasonable classification was justified. Since there is intelligible difference between two sets of classification and the classification has a nexus to the fixation of the cut-off date. We are not in a position to approve the reasoning of the learned Judge for more than one reason. In the first place we do not find any detailed consideration of the various regulations of the pension regulations, 1995. In the earlier part of our Judgment we have considered the regulations where the definition of 'date of retirement', 'retirement' and regulation Nos.3, 29 and 32, consideration of which, persuade us to hold that there was a discriminatory treatment meted out to a set of employees falling in a homogeneous group and by fixing the cut-off date, arbitrary discrimination is shown. Secondly, we had an opportunity to consider the case of voluntary retirement for whom also a similar cut-off date has been prescribed under regulation 29 which has been held to be arbitrary, discriminatory and violative of Articles 14 and 16 of



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the Constitution..."

(18) It had been very specifically stated that the respondent Bank therein, had not provided any valid ground for discriminating between compulsorily retired employees as a measure of punishment prior to 01.11.1993 and after 01.11.1993. Finally, the Division Bench had concluded as follows:-

"49.For all the above stated reasons, we hold that the cut-off date viz., 01.11.1993, fixed in regulation 33(1) of the Punjab National Bank Employees' Pension Regulations, 1995 as arbitrary, discriminatory and violative of Articles 14 and 16 of the Constitution. We therefore set aside the impugned order of the respondent bank dated 26.04.1999, in RM:PER:MR381:99 and consequently direct the respondent bank to entertain the option exercised by the appellant in the format of Annexure II dated 08.07.1994, applying regulation 33(1) of the regulations and the competent authority prescribed under Regulation 33(1) to pass appropriate orders in accordance with law. Such exercise shall be carried out by the respondent bank within eight weeks from the date of receipt of a copy of this order. Since the



appellant is now 79 years old, in the interest of justice, it will be appropriate for the respondent bank to pass orders as expeditiously as possible within the stipulated time granted in this judgment. The appeal stands allowed. No costs."

- (19) The ratio applies to the case on hand. Though the learned counsel for the respondents stated that there are contrary views taken by the other Division Benches in their respective judgments, unfortunately, the same had not been placed for consideration before this Court.
- (20) This judgment is placed before me, applies to the facts of this case and I would therefore, also follow it and hold that the cut off date namely 01.11.1993, stated in Regulation 33[1] of the respondents Bank Regulations, which is pari-materia to the Punjab National Bank [Employees] Regulations, 1995, is arbitrary, discriminatory and violative of Articles 14 and 16 of the Constitution of India.
- (21) Holding the same view as that of the Division Bench, I would direct that the respondents must pass necessary orders as expeditiously as possible. The writ petitioner was aged 72 years on the date of filing of the writ petition in the year 2017 and by any mathematical



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calculation, should be at least 78 years as on this date. The Division Bench, had given a time period of eight weeks for compliance from the date of receipt of that particular order. Since the learned counsel for the respondents still has some grievances, let me extend that time period and grant a time period of sixteen weeks from the date of receipt of a copy of this order for making necessary compliances. The respondents may work out the arrears and pass necessary proceedings in that regard.

(22) The writ petition stands **allowed**. No costs.

24.07.2023

AP

Internet : Yes



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- 1.The Chairman and Managing
Director, Bank of Baroda
No.3, Wallchand Hirachand
Marg, Bellard Pier, Bombay 400 038.
- 2.The General Manager
[Recoveries & Monitored Accounts]
Bank of Baroda, No.3, Wallchand
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C.V.KARTHIKEYAN, J.,

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