



2024:DHC:7504



\$~92

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

%

Date of Decision: 05th September, 2024

+ W.P.(C) 8941/2011

SK JAIN AND ORS

.....Petitioners

Through: Ms. Vandana Sharma, Advocate

versus

PUNJAB NATIONAL BANK AND ORS

.....Respondents

Through: Mr. Rajat Arora, Mr. Niraj Kumar
and Mr. Raviranj Mishra, Advocates for R-1 and
R-2.**CORAM:****HON'BLE MS. JUSTICE JYOTI SINGH****JUDGMENT****JYOTI SINGH, J. (ORAL)**

1. This writ petition has been preferred on behalf of the Petitioners under Article 226 of the Constitution of India seeking the following reliefs:

“a) direct the Respondent Bank to pay the pension with effect from the date following the date of retirement and to pay arrear of pension from the said date of retirement to 26-11-2009 with interest.

b) direct the Respondent bank to refund the excess amount in proportion to the retirement period of the Petitioners, contributed by the Petitioners in 56% of the Contributory provident fund, alongwith interest.”

2. Facts to the extent necessary are that Petitioners were regular employees of Punjab National Bank ('Bank') and retired before 27.04.2010. Bank had no pension scheme when Petitioners joined prior to 01.11.1993. Pursuant to a settlement signed at the industry level on 29.10.1993, Bank framed the statutory Punjab National Bank (Employees') Pension



Regulations, 1995 ('1995 Regulations') and offered pension to certain categories of employees/ex-employees/families of ex-employees viz. (a) employees who were in service of the Bank on or after 01.01.1986 but had retired before 01.11.1993; (b) employees who had retired on or after 01.11.1993 but before the notified date; (c) employees who were in service before the notified date and continued to be in the service of the Bank on or after the notified date; and (d) employees who joined the Bank on or after the notified date etc. The option was to be exercised by the employees within 120 days from 29.09.1995. Those who did not opt for pension continued to remain under the Contributory Provident Fund ('CPF') Scheme. Admittedly, Petitioners who retired prior to 27.04.2010 did not opt for pension and continued to be governed under the CPF Scheme.

3. On persistent demand of the Workmen Union's/Officers' Association at the industry level to provide one more option for pension to the employees who failed to exercise their option in the year 1995, the Indian Banks' Association ('IBA') agreed to accept the demand *inter alia* subject to certain conditions which were agreed upon and reduced in writing in a Memorandum of Settlement ('MoS') executed on 27.04.2010 between IBA, representing Member's Bank, on one hand and Workmen Union's/Officers' Association representing the existing/retired employees/officers on the other hand. Being signatory to the MoS, Bank offered one more option for pension to its employees and issued Circular No.8 of 2010 dated 16.08.2010. Petitioners submitted their options and filled up the option form agreeing to accept the terms of MoS and the Circular. As per the settlement, employees were required to exercise option within 60 days from the date of offer as also refund within 30 days thereafter the entire amount of Bank's



contribution to the Provident Fund ('PF') and interest accrued thereon received on retirement together with employee's share in contribution towards meeting 30% of the funding gap. On an individual basis, payment over and above Bank's contribution to PF and interest was worked out at 56% of the said amount of Bank's contribution to PF and interest received by the employee on retirement.

4. By this petition, Petitioners seek pension from the date following their dates of retirements along with arrears as well as refund of the excess amount in proportion to the amount contributed towards 56% of the CPF with interest. Contention of the Petitioners is two-fold, as broadly understood. Learned counsel for the Petitioners submit that Bank has arbitrarily fixed a cut-off date i.e., 27.11.2009 from which the pension was payable to the Petitioners and there is a clear discrimination between Petitioners who opted under the second option pursuant to the MoS and those employees who opted under 1995 Regulations and retired subsequently. Pensioners form a homogenous class and all policies relating to pension must be uniformly applied to all.

5. It is further argued that the Bank claims that the settlement was with the consent of the respective Unions of the Workmen/Officers, however, this is an incorrect fact inasmuch as retirees/retired employees were never invited for or consulted in the joint meeting. The joint note/MoS on which emphasis is laid by the Bank to deny benefits of pension to the Petitioners from the respective dates of their retirements had no statutory force and could not amend 1995 Regulations, which were statutory in nature. It needs no reiteration that a statutory regulation cannot be amended or superseded by an Executive order/Notification/Circular as held by the



Supreme Court in *Bank of Baroda and Another v. G. Palani and Others*, (2022) 5 SCC 612.

6. The next and the only other contention is that while on one hand, Petitioners have been denied payment of pension from actual dates of their retirements, they have been subjected to a uniform recovery of 56% of CPF and additionally, Bank has made no contribution to the corpus placing the entire financial burden on the pensioners including the Petitioners.

7. Mr. Rajat Arora, learned counsel for the Bank, *per contra*, argues that Petitioners who are 43 in number were all employees of the Bank and had retired prior to 27.04.2010. At the time of their retirements/superannuation, they had not opted under 1995 Regulations which were notified in the Gazette on 29.09.1995. There were consistent demands by the employees for one more pension option to those employees who had not opted in terms of 1995 Regulations and looking into the demands, a joint note/MoS was executed on 27.04.2010 between IBA and the Workmen Union's/Officers' Association. Pursuant to the settlement, Bank issued a Circular dated 16.08.2010 in terms of which, employees who had not opted under the 1995 Regulations were given a second option to opt for pension in terms of the said Regulations. The MoS was entered into with the consent of the stakeholders and the terms as agreed upon were stipulated not only in the MoS but also in the Circular dated 16.08.2010. It was provided in the MoS in Clause 8 that pension shall be paid w.e.f. 27.11.2009 as also that those who opted under the MoS will have to share 30% of the funding gap in addition to refunding the Bank's contribution to PF within the stipulated time. With their eyes open, Petitioners opted under the second option and cannot question the terms of the settlement, more particularly, as their



right flows only from the MoS and the subsequent Circular since at the time of retirement they were not pension optees and were not entitled to pension.

8. Mr. Arora further argues that Bank has acted strictly in terms of the MoS/Circular and Petitioners have been paid all their dues towards pension in consonance thereof. Moreover, even under the 1995 Regulations, pension was paid w.e.f. 01.11.1993 to the eligible employees. Nothing has been pleaded or even argued on behalf of the Petitioners in support of the frivolous plea that the cut-off date of 27.11.2009 is arbitrary or discriminatory. As for the contribution of 30% of the funding gap and/or refund of Bank's contribution, there can be no argument by the Petitioners as these were the clear terms of the settlement and pre-conditions which the Petitioners had seen and understood before opting for pension. The MoS was executed after a prolonged and deliberated negotiations between all stakeholders weighing the pros and cons and save and except, the 43 Petitioners herein no individual employee/union/association has come forward to challenge the settlement and/or any term thereof which was an industrial level settlement. It is pertinent to point out that after the Circular was issued on 16.08.2010 incorporating Clause 'B' requiring the Petitioners to exercise the option as well as refund the entire amount of Bank's contribution to PF and interest thereon received on retirement together with their share in the contribution for meeting 30% of the funding gap, Petitioners willingly submitted their option forms declaring that they had understood the terms of settlement/joint note dated 27.04.2010 and agreeing to refund the amount towards Bank's contribution to PF with interest *plus* an amount equal to 56% of the Bank's contribution so as to contribute towards



30% of the funding gap. Reliance is placed by the learned counsel on the judgment of the Orissa High Court in *Parsuram Mohanty v. Chairman, Managing Director and Anr., 2011 SCC OnLine Ori 409*.

9. In response to the argument of the Petitioners that Bank has either not contributed or made a meagre contribution to the funding gap/corpus, it is submitted that it was noted in the joint note that the funding gap was estimated as Rs.6,000 Crores. Employees offered to contribute Rs.1,800 Crores being 30% of the estimated gap for extending pension to those employees who were in service of the Bank prior to 29.09.1995. Bank has also placed on record Annual Financial Results for the period 31.03.2011 to 31.03.2014. Bank had reopened the pension option for such employees who had not opted for pension under 1995 Regulations. As a result of this offer, a total of 33,982 employees had exercised the second pension option. Bank incurred or was liable to incur a liability of Rs.2,757.65 Crores for disbursement of payments. Additionally, limit of gratuity was also enhanced pursuant to amendment to the Payment of Gratuity Act, 1972 which resulted in additional liability of Rs.566 Crores. The Annual Financial Statements reflect that in terms of the Accounting Standards, the entire benefit i.e. Rs.3,323.65 Crores (Rs.2,757.65 + Rs.566) is required to be charged to the Profit and Loss Account applying the RBI Circular dated 09.02.2011. In accordance with the provisions of the circular, Bank has charged Rs.664.73 Crores representing 1/5th of Rs.3,323.65 Crores to Profit and Loss account for the year 2011 and the balance amount of Rs.2,658.92 Crores (Rs.3,323.65-664.73) Crore has been carried forward. Similarly for the period ending 31.03.2012, another sum of Rs.664.73 Crores has been amortized with respect to enhancement of gratuity and reopening of the



pension option. Similarly, for the period upto 31.03.2013, an amount of Rs.664.73 Crores towards amortization relating to enhanced gratuity and reopening of pension option for existing employees has been given to the fund and the same position continued for the next year upto 31.03.2014. Therefore, it is incorrect to allege that the Bank had not made any contribution towards the funding gap. In fact, it is the Bank which has contributed towards 70% of the funding gap, a fact supported by the Financial Statements of the Bank, duly audited.

10. Heard learned counsels for the parties and examined their respective contentions.

11. Pursuant to a settlement signed at the industry level on 29.10.1993, Bank framed 1995 Regulations and offered pension to various categories of employees, as aforementioned. Option was to be exercised by eligible employees within 120 days from 29.09.1995. Petitioners did not exercise the option under the said Regulations and continued as CPF optees. On consistent demand of Workmen Union's/Officers' Association at the industry level to provide one more option for pension to employees who had failed to exercise option under 1995 Regulations, an MoS was executed on 27.04.2010 between IBA on one hand and Workmen Union's/Officers' Association representing existing/retired employees/officers on the other hand incorporating the terms of settlement. From a reading of the MoS, copy of which has been placed on record, the points that be culled out are that pension was payable w.e.f. 27.11.2009 and the employees who chose to opt to join the pension scheme were obliged to refund the entire amount of Bank's contribution to the PF with interest accrued thereon received at the time of retirement together with their share in contribution towards meeting



30% of the estimated funding gap and on individual basis the contribution was worked at 56%.

12. Pursuant to the aforesaid settlement, Bank offered one more option for pension to eligible employees/ex-employees/family of ex-employees under 1995 Regulations and issued Circular No. 8 of 2010 dated 16.08.2010 with certain conditions therein which for the ease of reference, are extracted hereunder:-

“ANOTHER PENSION OPTION IN TERMS OF 9TH BI-PARTITE SETTLEMENT (WORKMEN EMPLOYEES)/JOINT NOTE DATED 27.04.2020 (OFFICERS)

Memorandum of Settlement dated 27th April 2010, in the case of Workmen Employees and Joint Note dated 27th April 2010 in the case of Officer Employees (copies enclosed as Annexure A & Annexure B) have been signed between Indian Banks' Association (IBA) on behalf of Management of Banks and Representatives of Workmen Employees Unions and Officers Association offering another Pension Option.

2. Indian Banks' Association (IBA) vide their Circular No. CIR/HR&IR/G2/665/90/2010-11/999 dated August 10, 2010 has informed as under: -

(i) To facilitate early implementation, Government has consented IBA advising all Banks **that they may undertake the exercise for seeking the option from the employees** both serving and retirees who did not opt for pension earlier, explaining the terms and conditions for such option.

(ii) Sanction of the Government is also accorded to implement the terms of Settlement/Joint Note dated 27th April 2010 between IBA and Unions/Associations for the grant of option to the retirees and payment of pension to such retirees w.e.f 27th November 2009, who opt for pension and comply with terms and conditions set out in the Settlement/Joint Note for the grant of pension, pending necessary amendments in the Bank (Employees') Pension Regulations, 1995.

xxxx

xxxx

xxxx

3. **In terms of Settlement/Joint Note dated 27th April 2010, another option for joining the existing Pension Scheme shall be extended to: -**

xxxx

xxxx

xxxx



(B) EMPLOYEES/OFFICERS WHO WERE IN THE SERVICE OF THE BANK PRIOR TO 29TH SEPTEMBER 1995 AND RETIRED AFTER THAT DATE BUT PRIOR TO THE DATE OF SETTLEMENT/JOINT NOTE DATED 27.04.2010 PROVIDED THAT THEY:

(a) Exercise an option in writing within 60 days from the date of offer, to become a member of the Pension fund and

(b) Refund within 30 days after expiry of the said period of 60 days, the entire amount of the bank's contribution to the Provident Fund and interest accrued thereon received by him on retirement together with his share in contribution towards meeting 30% of the funding gap. On an individual basis, the payment over and above the bank's contribution to Provident Fund and interest thereon has been worked out at 56% of the said amount of Bank's contribution to Provident Fund and interest thereon received by the officer/employee on retirement."

13. From a conjoint reading of the MoS and the Circular, more particularly, Clause 'B' of the Circular, it is evident that those employees/officers who were in service of the Bank prior to 29.09.1995 and retired thereafter but prior to 27.04.2010 i.e. the date of MoS, could opt for pension within 30 days but were under an obligation to refund the entire amount of Bank's contribution to PF with interest accrued thereon received at the time of retirement with their share towards meeting 30% of the funding gap. Petitioners opted pursuant to the MoS and the Circular by signing on the option form and undertook to be bound by the terms of the agreement. Illustratively, the option form of one of the Petitioners is as follows:-

"OPTION FORM TO BE FILLED BY THE EMPLOYEES RETIRED ON OR AFTER 29TH SEPTEMBER 1995 BUT PRIOR TO 27.04.2010

*To,
The Chief Manager,
PF & Pension Fund Department,
Head Office, Rajendra Bhawan,
Rajendra Place,
New Delhi.*

Date 06/09/2010



I hereby declare that I have read and understood the terms of the Settlement/Joint Note 27.4.2010 for extending another option to join Pension Scheme. I have understood that the terms of the Settlement/Joint Note have been arrived at on the basis of the Unions/Associations offering to contribute 30% of the initial funding gap assessed for extending another option for joining the pension scheme. I am agreeable to the said contribution of 30% towards the funding gap and hereby voluntarily opt for Bank's Pension Scheme as per the provisions of the said Settlement/Joint Note. I undertake to refund the Bank's contribution to Provident Fund together with interest thereon paid to me on my retirement plus an amount equal to 56% of the Bank's contribution to Provident Fund with interest received at the time of retirement being 30% contribution towards the initial funding gap in terms of Clause 3(c) of Joint Note dated 27.4.2010 and Clause 2 (IV)(b) of the Settlement dated 27.4.2010."

14. It is thus clear that when the Petitioners retired, they had not opted for pension and the right to pension flowed from the MoS dated 27.04.2010 only, which beyond any doubt provided the cut-off date of 27.11.2009 from which pension was payable as also required refund of the PF contributions towards 30% of the funding gap. Having taken the benefit of the settlement and having given an undertaking to be bound by the terms of settlement, in my view, it is not open to the Petitioners to question either the cut-off date or the refund of the amounts towards PF contributions. Petitioners cannot have the benefit of the Scheme and question it at the same time as that would amount to approbation and reprobation. Moreover, nothing has been argued or pleaded which would even remotely suggest that the cut-off date of 27.11.2009 is arbitrary or creates discrimination between those set of employees who had opted under the 1995 Regulations besides the fact that even under the 1995 Regulations, a cut-off had been stipulated. It is no longer *res integra* that it is open to an employer to fix a cut-off date for grant of benefits as long as the classification is founded on an intelligible differentia which distinguishes persons or things that are grouped together



from those that are left out of the group and that differentia has a rational nexus to the object sought to be achieved. In fact, the case of the Bank is squarely covered by the observations of the Orrisa High Court in ***Parsuram Mohanty (supra)*** which are as follows:-

“2. Earlier there was no provision for pension for the employees of Nationalized Banks up to the year 1995. The employees were under C.P.F. (Contributory Provident Fund) scheme under which the employees used to contribute 10% of their salary and the employer also used to contribute a similar amount. Both the amounts were being deposited in the Provident Fund Account of the respective employees. Since there was demand from different associations for introduction of pension scheme, the Government of India came out with a pension scheme for the bank employees in the year 1993, which could not be implemented. A revised Pension Regulation came into effect in the year 1995 in the lines of Central Civil Service Rules, 1972 as applicable to the Central Government Employees. The Regulation was approved by the Government of India and the Reserve Bank of India and published in the Government of India Gazette on 20-9-1995. The said Regulations was adopted by all the Public Sector Banks. As per the provision of the said Regulation, employees, who opted for pension, have to forego the employer's part of P.F. contribution with interest accrued thereon which will be credited in pension fund account. The pension fund will constitute the employer's contribution of 10% of employee's salary and other incomes earned out of investment of this fund. Any shortfall has to be met by the employer by making provision at regular intervals. The employees were asked to give their option for availing the pension scheme. The regulation prepared for the above purpose contained penal clauses like forfeiture of past service in case of participation in strike etc. and because of such penal clauses, large number of employees did not opt for the conditional pension scheme. The petitioner was one of them. After repeated demands, the said penal clauses were deleted from the regulations but the due date of opting for pension scheme had already expired. Accordingly, again demand was made by the associations to introduce a scheme for second option. However, the said demand was not conceded. Only in Annexure-1 dated 16th August, 2010 another option was permitted. As per the second option scheme formulated under Annexure-1, the employees, who retired from service on superannuation or on voluntary retirement on or after 29th September, 1995 rendering at least 15 years of service and opted for pension have to pay 156% of what they have received on retirement on account of Bank's contribution to SPF and interest accrued thereon being the employees share of 30% initial funding gap. The other option was in respect of the employees who joined the bank prior to 1st April, 2010 and were in service of the Bank on 27th



April, 2010. Therefore so far as the petitioner is concerned, in order to opt for the pension scheme under Annexure-1, he was required to pay 156% of what he had received on retirement and interest accrued thereon. This clause contained in Annexure-1 for exercising the second option is challenged on the ground that retiring officers exercising the second option under Annexure-1 have to pay back the banks contribution to the provident fund and in addition thereto 56% of provident fund with interest accrued thereon. Such a condition according to the petitioner is discriminatory. The second ground taken at the time of argument was that Annexure-1 read with joint note dated 27-4-2010 have been issued on the authority of the Pension Regulations whereas the Pension Regulation, 1995 do not contain any provision requiring the Officers concerned to pay additional 56% of the Provident Fund (bank's contribution) already received by the officers. Learned counsel appearing for the petitioner in course of his submission drew attention of the Court to the provisions contained in United Bank of India (Employees Pension Regulations, 1995), the judgment of Kerala High Court in the case of M.C. Ratnakaran v. Canara Bank vide OP No. 37198 of 2001 (C) disposed of on 31st August, 2010.

3. The opposite party-Bank has filed a counter affidavit. The stand taken in the counter affidavit is that IBA is only a voluntary association of Banks consisting of Public Sector, Private Sector, foreign and Co-operative Banks. IBA negotiates wage revision based on mandate given by each of the member banks. The settlements signed between Workmen Unions are under the provisions of Industrial Disputes Act and in respect of officer employees, the Officers' Service Regulation are required to be amended for implementation of the understandings by following the procedures thereof in terms of Section-19 read with sub-section (2) of Section 12 of Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 by the Board of Directors of each Bank in consultation with the Reserve Bank of India, with previous sanction of the Central Government. Since the consultation process takes time, an approval from the Government of India is only sought for implementing the terms of understanding reached, pending amendments to the Regulations. It is further stated in the counter affidavit that when the pension scheme, 1995 was implemented, a vast majority of employees had opted for pension under the scheme. The employees who did not opt for the pension scheme took such a decision on the basis of advantages/disadvantages of the scheme specially with reference to higher rates of interest prevailing at that point of time. It is also stated in the counter-affidavit that pension in the banking industry was introduced in the year 1995 with effect from 1-11-1993 for those employees who were in service of the Banks as on 29-9-1995 and those who have retired from service with effect from 1-1-1986. The said pension Regulations was framed and



implemented on the basis of a memorandum of settlement dated 29-10-1993 between IBA and union of workman employees as well as the officers association who had signed the joint notes. In terms of the memorandum of understanding and joint note, the pension scheme was introduced in the Banks in lieu of Contributory Provident Fund and employees were given option to choose either the pension scheme or Contributory Provident Fund. Now under the second option, if one chose to opt the pension scheme he is required to surrender the Bank's contribution to the provident fund with accrued interest thereon. Since, pension is to be paid from the income generated from the pension fund, affordability of the same was a major concern for the banks for payment of pension to the bank employees. Therefore, negotiations were held with the Unions/Association and the proposal given by UFBU to share the funding cost for admitting the P.P. optees as members of the pension fund was viewed as an alternative proposal as agreed in the 8th Bipartite Settlement and Joint Note dated 2-6-2005. After negotiation, UFBU agreed to share 30% of the funding gap which was arrived at for extending another option to non-optees. The amounts so agreed to share works out to Rs. 1800 Crores. When the said amount was translated to individual shares it came to 156% of the banks contribution to provident fund and interest accrued thereon till the date of retirement in the case of retired employees and 2.8 times of the revised pay payable in the month of November, 2007 in respect of serving employees. Therefore, after long negotiation with the Unions and the Officers' association, a decision was arrived at to introduce the second option scheme on the basis of the understanding arrived in course of negotiation and the contents of Annexure-1 are the decisions taken during negotiation between IBA and the Unions as well as the Officers' association.

4. *Shri Mohanty, learned counsel appearing for the petitioner drew attention of the Court to Clause-III of the Circular in Annexure-1 and submitted that Clause-III(A) is applicable to the case of the Petitioner, he having retired from service after 29th September, 1995. According to the learned counsel appearing for the petitioner, the petitioner had not opted for pension scheme introduced in the year 1995 because of certain penal clauses contained in the pension regulation and on retirement, he had received the contribution made by the bank towards Provident Fund, which was equal to the contribution made by him towards provident fund. Therefore, while giving another opportunity to the retired employees and the employees in service to opt for the second time, all that the Bank could have asked for is refund of its contribution towards provident fund with accrued interest thereon. However, under the scheme the Bank is illegally demanding not only refund of its contribution provident fund with accrued interest thereon already received by the retired employees but also additional 56% thereon which the bank had never paid to the employees.*



Learned counsel also submitted that discrimination has been made between the retired and serving employees. Serving employees have only been directed to pay 2.8 times of the revised pay as on 1-11-2007 and they have not been directed to pay back the provident fund contribution made by the bank whereas the retired employees are being asked not only to refund the banks contribution towards provident fund with accrued interest but also in addition thereto 56% of what they had received towards provident fund contributed by the bank with accrued interest thereon. Shri Dhal, learned counsel appearing for the Bank drew attention of the Court to the counter affidavit and submitted the manner in which the figures have been arrived at and it is specifically submitted by Shri Dhal, learned counsel appearing for the Bank that since pension is paid under the scheme from out of the income generated from the pension fund, the short fall of huge amount was decided to be shared by either the Bank and the employees. After long negotiation with the employees unions and officers association, a decision was arrived at in terms of Annexure-1 and, accordingly, the said circular was issued.

5. *The stand taken in the counter affidavit filed by the Bank that pension is paid out of the income generated from the pension fund is not disputed in the rejoinder filed by the petitioner. The petitioner has admitted in the writ application that after coming into force of a revised pension regulation in the year 1995, he did not opt for the same and, accordingly on retirement received all the retirement dues including provident fund to which not only he but also the bank had contributed. If pension is to be paid from out of the income generated from pension fund, the bank cannot be made responsible to take the additional financial burden in the event pension is paid to the retired employees as per 1995 Regulation. Therefore, the stand taken in the counter affidavit by the Bank is that the scheme under Annexure-1 was formulated after long negotiations between IBA the employees union and the association. The authority of IBA is questioned in the writ application basing on the judgment of Kerala High Court in the case of M.C. Ratnakaran v. Canara Bank vide OP. No. 37198 of 2001(C) disposed of on 31st August, 2010. On perusal of the said judgment, it is found that the petitioner therein retired from service of the bank on 14-8-2001 when the amended rules were only in contemplation. The Rules were, amended on 30-11-2002. However, the Bench held on the basis of a previous judgment that the memorandum of understanding cannot meddle with the statutory prescriptions. Nobody can agree by way of a settlement at the behest of an organization taking away the benefit conferred on individuals by way of statutes or statutory rules. If this position of law argued by the learned counsel appearing for the petitioner on the basis of the aforesaid judgment is accepted by the Court, the petitioner having not opted for pension scheme introduced in the year 1995 by way of amendment to the regulation and having retired from*



service on receipt of retirement benefits including provident fund contribution made by the bank has no authority at all to challenge Annexure-1. If Annexure-1 is against the statutory Rules of 1995, the same cannot be given effect to and 1995 regulations have to be given effect to. The petitioner having not availed the opportunity of opting for pension under the amended Regulations of 1995, it is no more open for him to rely on Annexure-1, scheme for pension and at the same time make a submission that Annexure-1 is against 1995 regulation.

6. *Since there is no dispute, that pension is paid out of the income generated from pension fund, the IBA had consultations with the concerned Unions and the Officers Association and ultimately on calculation, found that so far as the employees, who have retired after 29th September, 1995 are concerned, they are required to pay 156% of what they have received on retirement on account of bank's contribution to SPF and interest accrued thereon being his/her share of 30% initial funding gap. Therefore, over and above the amount already paid by the bank towards its contribution, the retired employees have to pay 56% more to fill up the gap. Similarly, on calculation it was also found that the employees in service who had not opted for the pension scheme have to pay 2.8 times of the revised pay as on 1-11-2007 being his/her share of 30% of initial funding gap. So far as these figures are concerned, they having been made after negotiation with the concerned unions and association, there is hardly any scope to disagree with the said calculation. On the above basis, we find that no discrimination has been made between the retired employees and the employees who are still in service but did not opt for pension scheme earlier.*

7. *Apart from the above we find that though IBA is not a statutory body, admittedly it is an agency of the Government to negotiate with the Employees Unions and Officers Associations for revision to pay and other financial service benefits to be extended to the officers and other employees of constituent Bank members. The decision in Annexure-1 was arrived at after long negotiations with the employees Unions and Officers' Associations and all agreed to the terms and conditions contained in Annexure-1. As per practice, the decision is to be implemented pending amendment in the Regulations. Therefore, the petitioner cannot now challenge the same on ground of absence of any such provision in the Regulations."*

15. As for the argument that the Bank has not contributed towards the funding gap/corpus, Mr. Arora pointed out that on account of reopening of the pension option and additional burden due to enhancement in the gratuity



2024:DHC:7504



amount, Bank had incurred a liability of Rs.2,757.65 Crores and copies of the Annual Financial Results placed on record by the Bank fortify the stand of the Bank that following the RBI Circular dated 09.02.2011 with respect to the Accounting Standard, it had charged Rs.3,323.65 Crores (Rs.2,757.65 Crores + Rs.566 Crores) to the Profit and Loss Account and had been amortizing a sum of Rs.664.73 Crores towards the fund. Therefore, even the second contention that only the employees were bearing the burden of contribution to the funding gap/corpus is misplaced and without merit.

16. For all the aforesaid reasons, this writ petition is dismissed being devoid of merit.

JYOTI SINGH, J

SEPTEMBER 05, 2024/kks/shivam