

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7034 OF 2024

Usha Ravi

Age: 62, Occupation: Retired Banker,
presently residing at 25/703, Kalpavriksha
Garden, Dhokali Balkum Road,
Thane West – 400 608

... Petitioner

Versus

- 1) Bank of Baroda,
Through its Managing Director & Chief
Executive Officer, having its Corporate
Office at Baroda Corporate Centre, C-26,
G- Block, Bandra Kurla Complex, Bandra,
(E), Mumbai- 400 051
- 2) IDBI Bank Ltd.
Through its Managing Director & Chief
Executive Officer, having its office at :
IDBI Tower, WTC Complex, Cuff Parade,
Colaba, Mumbai- 400 005
- 3) Union of India,
The Secretary,
Department of Financial Services,
Ministry of Finance, Jeevandeep Building,
Sansad Marg, New Delhi – 110 001
Through the Central Government
Advocate Aykar Bhavan, Mumbai -20

... Respondents

WITH

WRIT PETITION NO. 8680 OF 2024

B. Uma Sankar,

Age: 61 Years, Occ: Retired,
presently residing at: Flat No. 409, L.V.S.
Heights, Halehalli, Bengaluru – 560 036
And having a postal address at : Mumbai

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Nariman Road, Fort, Mumbai -01

... Petitioner

Versus

- 1) Union Bank of India,
Through its Managing Director & Chief
Executive Officer, having its Head office
at Union Bank Bhawan, 239, Vidhan
Bhavan Marg, Nariman Point, Mumbai-
400 021.
- 2) Canara Bank,
Through its Managing Director & Chief
Executive Officer, having its office at :
112, JC Road, Bengaluru- 560 002.
- 3) Union of India,
The Secretary,
Department of Financial Services,
Ministry of Finance, Jeevandeep Building,
Sansad Marg, New Delhi – 110 001,
Through the Central Government
Advocate, Aykar Bhavan, Mumbai - 20

... Respondents

**WITH
WRIT PETITION NO. 13400 OF 2023**

Shiv Narain Kaushik,
Age: 61 Yrs, Indian Inhabitant,
Occupation: Retired Bank Officer,
Presently residing at House No. 900,
Sector-3. Rewari, Haryana -123401.
And having a Postal Address at
Elphinstone Building, 1st Floor, 10 Veer
Nariman Road, Fort, Mumbai 01

... Petitioner

Versus

- 1) The Union Bank of India,
Through the Managing Director & the
Chief Executive Officer, Having its Head

office at Union Bank Bhawan, 239,
Vidhan Bhavan Marg, Nariman Point,
Mumbai- 400 021.

- 2) The Chairman,
National Bank for Agriculture and Rural
Development (**NABARD**).
Having its office at Plot No. C-24,
G Block Bandra Kurla Complex, Mumbai-
400 051
- 3) The Union of India,
Through The Secretary,
Department of Financial Services,
Ministry of Finance, Jeevandeep Building,
Sansad Marg, New Delhi – 110 001,
Through the Central Government
Advocate, Aykar Bhavan, Mumbai -
400020

... Respondents

**WITH
WRIT PETITION NO. 13399 OF 2023**

Laxminarayan Rath,
Age: 60 years, Occupation: retired Bank
Officer, Presently residing at Flat No. E
111, Cosmopolis, Dumduma Housing
Board, Khandagiri Post Office,
Bhubaneswar- 751 019.

And having a Postal address at
Elphinstone Building, 1st Floor, 10 Veer
Nariman Road, Fort, Mumbai -01

... Petitioner

Versus

- 1) The Union Bank of India,
Through its Managing Director & Chief
Executive Officer, having their Head
office at Union Bank Bhawan, 239,
Vidhan Bhavan Marg, Nariman Point,
Mumbai- 400 021.
- 2) The Bank of India,
Through its Managing Director & Chief

Executive Officer, Having their Head office at Star House, G Block, Bandra Kurla Complex, Mumbai – 400 051.

- 3) The Union of India,
Through the Secretary, Department of Financial Services, Ministry of Finance, Jeevandeep Building, Parliament Street, New Delhi- 110001
Through the Central Government Advocate, Aaykar Bhavan, Mumbai - 20 ... Respondents

Mr.Suresh Pakale, Senior Advocate with Mr.Nilesh Desai i/b. Ms.Padmaja Malgaonkar for the Petitioners in all Petitions.

Mr.Ashok D. Shetty with Ms.Rita K.Joshi and Mr.Rahul P. Shetty and Mr.Shashikant Patil for the Respondent -Union Bank of India and for Respondent No. 1 in WP Nos. 13400 of 2023, 13399 of 2023 and 8680 of 2024.

Mr.Lancy D'souza with Ms.Deepika Agarwal i/b.Mr.V.M.Parkar for Respondent No.1 in WP Nos. 7034 of 2024 and for Respondent No.2 in WP No. 13399 of 2023.

Mr.Chetan Akerkar for Respondent No.2 in WP No. 7034 of 2024.

Ms.Priyanka Chavan for Respondent No.3-Union of India in all Petitions.

Mr.Shrihari Saranathan for Respondent No.2 in WP No. 8680 of 2024.

CORAM : **RAVINDRA V. GHUGE**
&
ASHWIN D. BHOBE, JJ.

RESERVED ON : **15th APRIL, 2025**

PRONOUNCED ON : **25th APRIL, 2025**

JUDGMENT (PER : RAVINDRA V. GHUGE, J.)

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The question posed in all these cases is, whether the deputation allowance drawn by an Employee, at the time of his superannuation, could be reckoned with for the purpose of calculating the pension and retirement benefits?

3. The common factor in all these cases is that each of these Petitioners was on deputation with a particular bank (commonly referred to as the 'Loanee Bank') until their dates of superannuation. It is the contention of the Petitioners that as they received 15% extra salary on account of being on deputation with the Loanee Bank and as P.F. contributions were deducted on such deputation allowance, the pension should be fixed on the basis of the additional emoluments, since portion of the provident fund deduction was deposited by the Parent Bank (also known as the 'Lending Bank') in the pension account of each Petitioner.

4. In each case, the Government of India, Ministry of

Finance had published an advertisement inviting applications for the post of Central Vigilance Officer (CVO) in Public Sector Banks, Financial Institutions, Insurance Companies, etc. Each of them had applied to the Government seeking deputation and it was under the orders of the Central Government that they were sent on deputation until their dates of superannuation. Each one of them was officiating as a CVO and their deputations were extended on request till their dates of superannuation.

5. Since the entire case turns upon the interpretation of the service rules, we are not adverting to the specific dates on which they were sent on deputation and the dates of their superannuation, as the main issue does not turn upon these details.

6. To appreciate the circumstances resulting in these Petitioners proceeding on deputation, we are referring to the similar orders passed by the Under Secretary (Vigilance), Ministry of Finance, Department of Financial Services Vigilance Section, Government of India, vide which, the Parent Bank in each of these cases was informed that, it was decided in consultation with the Central Vigilance Commission to appoint the particular Petitioner,

who was working as General Manager with the Parent Bank, as the Chief Vigilance Officer with the Respondent No.2/Bank. It is in identical circumstances that these Petitioners were deputed with the Loanee Bank as CVO and each of such Loanee Banks was informed in writing about such deputation.

7. The identical communications by the Under Secretary Vigilance to each of these Petitioners, the Loanee Banks and the Parent Banks, indicated certain conditions. For reference purpose, we are reproducing the conditions made applicable to one of the Petitioners, as under :-

“2(i) She will be treated as on deputation to IDBI Bank, Mumbai for a period of 3 years or till she attains the age of superannuation in her parent bank, whichever is earlier. Her terms may be extended / reduced, if necessary, only with prior concurrence of Department of Financial Services and Central Vigilance Commission.

2(ii) Her pay scale & prerequisites during her tenure as CVO will be equivalent to that of WTD (DMD) of the IDBI Bank. However, she will have the option to draw her pay scale in parent bank plus 15% deputation allowance of her basic pay thereon and prerequisites of lending organisation.

2(iii) During the period of deputation, the contribution towards Leave Salary and Contributory Provident Fund will be borne by the borrowing organisation.

2(iv) The borrowing organization will meet the

expenditure on the TA & DA as per rules applicable to its officers.

3. The officer is requested to send a report of taking over charge as the CVO to his Department and Central Vigilance Commission along with the particulars in the enclosed proforma.

4. MD & CEO of the lending Bank is being requested to relieve the officer to enable joining the new assignment in IDBI Bank, Mumbai.”

8. All the Petitioners communicated his/her acceptance. The particulars of each candidate were filled in to the specified forms. We refer to one such document of one of the Petitioners, which indicates at Clause No.8 as, ‘*Service to which he belongs with cadre – Dena Bank, General Manager*’. At Clause No.13, it is mentioned as, ‘*whether on a deputation or from within the organization – on a deputation from Dena Bank*’.

9. During the course of the submissions of the Petitioners, it was contended with reference to one of the Banks that, Clause No.25 of the Union Bank of India (Employees) Pension Regulations 1995, provided that the period of deputation of an Employee with another organization, will be counted for the purposes of reckoning qualifying service for pensionary benefits. We do not find that there

is any issue on this aspect. Period of deputation is never disconnected or discounted from the service of the Deputationist. Had this been so done, it would have amounted to a break in service. There is no dispute before us that the period of deputation has to be included in the total service while counting qualifying service for pension.

10. An upshot of this case is whether a deputationist, who has responded to an advertisement and volunteered to proceed on deputation with the Loanee Bank, could assert that such deputation can be construed as being a promotion or an elevation to a higher position, thereby leading to a legitimate expectation to seek the fixing of the pension on the basis of the actual salary scale, plus 15% deputation allowance.

11. It is undisputed that each of these Petitioners, themselves applied and volunteered to proceed on deputation in response to the advertisement of the Government of India. In view of such assignment on deputation, it was clearly mentioned in the document addressed to the Parent Bank, the Loanee Bank, as well as, to the Petitioner, vide **Clause-2(i)** that, his/her deputation would

be for a period of three years or till he/she attains the age of superannuation **in his Parent Bank**, whichever is earlier.

Vide **Clause-2(ii)**, the Petitioner was informed that the tenure will be equivalent to the Executive Director and the Petitioner had the option to draw his pay from the Parent Bank, plus 15% of his salary as deputation allowance, basic pay and perquisites admissible in the borrowing organization.

Vide **Clause 2(iii)**, it was mentioned that during the period of deputation, the contribution towards Leave Salary and Contributory Provident Fund, will be borne by the borrowing organization. The lending/Parent Bank was also requested to relieve the officer to enable his/her joining the new assignment.

12. In the case of one of the Petitioners, namely Smt. Usha Ravi, she was informed by the Director Vigilance vide communication dated 6th August, 2018, with intimation to the Parent and Loanee Banks, that Smt. Usha Ravi will be CVO with the Loanee Bank, in addition to the charge of the post of CVO of EXIM Bank. She was then informed by the Under Secretary Vigilance, who addressed the two banks as well, by communication dated 21st May, 2021, that the CVC has concurred to extend the tenure of Smt.

Usha Ravi, CVO IDBI Bank (also holding the post of CVO EXIM Bank as an additional charge on regular basis), for a period of one month and six days till she attains the age of superannuation.

13. It is undisputed that the pension regulations made applicable to these Petitioners by their Parent Banks, are almost identical. For the sake of clarity, we are reproducing the relevant clauses of the Bank of Baroda (Employees) Pension Regulations, 1995, as under :-

*“2(d) **“Average Emoluments”** means the average of the pay drawn by an employee during the last then months of his service on the Bank;*

*2(e) **“Bank”** means BANK OF BARODA mentioned under column 2 of THE FIRST SCHEDULED of the Act;*

25. Period of deputation to an organization in India.

Period of deputation of an employee to another organization in India will count as qualifying service:

Provided the organization to which he is deputed or the employee pays the pensionary contributions at the rates specified in sub-regulation (a) of Regulation 7 of these regulations or at the rates specified by the Bank at the time of deputation, whichever is higher to the Bank.

35(2) In the case of an employee retiring in accordance with the provision of the Service Regulations or Settlement after completing a qualifying

service of not less than thirty-three years the amount of basic pension shall be calculated at fifty per cent of the average emoluments.”

14. The identical grievance of each of these Petitioners is voiced in their individual Petitions. Each of them is aggrieved that the 15% deputation allowance has not been taken into account while computing their last drawn salary, for the purpose of fixing their pension amount. They made representations to their parent banks which were turned down. Hence, these Petitions.

15. Similar grievances of several similarly situated employees, were noticed much earlier by the Ministry of Finance, Department of Economic Affairs (Banking Division), Government of India. Therefore, a clarificatory letter was issued as early as on 27th November, 1998, by the Deputy Secretary to the Government of India, addressed to the Deputy Personnel Adviser, Indian Banks' Association, Mumbai. Following are the contents of the communication.

“Sub : Bank (Employee’) Pension Regulations, 1995 – Emoluments to be reckoned for the purpose of pensionary benefits in the case of an employee who is on deputation.

.....

Sir,

I am directed to refer to your letter no.PB/GSN/85/G(ii)/349 dated 4th July 1998 on the subject cited above and to say that in the light of the provisions contained in rules 33 (note 7) of the CCS Pension Rules, it has been decided that the substantive pay that an officer would have drawn in the parent bank, but for his deputation, be taken as the pay of calculating average emoluments for the purpose of Pensionary benefits and not the pay actually drawn by the officer in the higher scale in the loanee organization.”

16. The Petitioners started approaching their Parent Banks for revising their pension fixation on the ground that they were deprived of higher pension by the Parent Bank by misreading the documents/orders posting these Petitioners on deputation. The Senior Advocate, Shri. Pakale has vehemently canvassed that since the P.F. contributions were deducted even on the 15% additional pay scale on account of the posting of the Petitioners on deputation and since a portion of such deductions were deposited under the Pension Scheme, it indicates the desire of the Parent Bank to treat the Petitioners as being eligible for the higher pay scale (by the addition of 15% deputation allowance). Therefore, the pension should be calculated at such rate, is the contention.

17. The learned Advocates for the Respondent parent

Banks, as well as, the Loanee Banks, have vehemently opposed these Petitions. Contentions are that the services of these Petitioners were loaned to the Loanee Banks in view of the advertisement published by the Central Government. The Petitioners were aware that their services have been temporarily loaned on deputation. They would be getting 15% extra salary only on account of their deputation. Once they return to the parent Bank, the payment of the deputation allowance would be stopped. They have entered their written notes of submissions, in addition to their oral arguments.

18. Despite the strenuous efforts made by the learned Senior Advocate, Shri. Pakale and the other learned Advocates on behalf of the Petitioners, we do not find that their submissions are well placed. It is unassuming that an Employee on deputation who superannuated while on deputation, could be held eligible for pension calculated on the addition of the deputation allowance @ 15%. The order of deputation issued to each of the Petitioners clearly mentions under Clause No.2(ii) that, the deputationist will have the option to draw his pay from the Parent Bank, along with 15% allowance, or to receive it from the Loanee Bank along with the perquisites that would be admissible in the borrowing

organization.

19. We do not find that merely because the provident fund deductions were carried out even on the 15% deputation allowance, could change the law for enabling the Petitioners to claim pension on the basis of the last drawn salary inclusive of the deputation allowance. If a mistake is committed by the Loanee Bank, the same would not create a vested right in the Petitioners. In *EPFO V/s. Vivekananda Vidyamandir (2020) 17 SCC 643*, the Hon'ble Supreme Court held that where an emolument is universally, necessarily and ordinarily paid to all across the Board, such emolument will be a part of the basic pay. In light thereof, since the Loanee Banks were universally, necessarily and ordinarily paying the deputation allowance to each of the deputationists, the Loanee Banks may have thought it appropriate to pay EPF subscription even on the 15% deputation allowance, to avoid future complications. Nevertheless, though this issue is not a subject matter of these Petitions, such subscription towards provident fund would not create a right to be asserted by these Petitioners.

20. Clause No.2(i) clearly mandates that the Petitioner

would be on deputation for a period of three years or till he attains the age of superannuation '**in his Parent Bank**', whichever is earlier. His extension or reduction of the tenure, was subject to the prior concurrence of the Department of Financial Services and Central Vigilance Commission. It is also clarified that during the period of deputation, the contribution towards Leave Salary and Contributory Provident Fund will be borne by the borrowing organization.

21. If the submissions of the Petitioners are to be accepted, it will have to be concluded that a deputation with 15% deputation allowance and additional perquisites, would amount to being promoted on a higher pay scale only because the Employee superannuated under fortuitous circumstances while on deputation. Then, if a deputationist is to be recalled to his Parent Organization, would it be construed as a demotion or reduction in rank? Deputation allowance which is calculated on the basis of the basic pay and the dearness allowance, which is paid on month to month basis along with the regular pay at regular pay intervals, may amount to a wage component and, therefore, provident fund deduction may be justified.

22. No doubt, the gratuity and pensionary benefits are calculated on the average of the last drawn wages. However, we find from the definition of '*average emoluments*' under Regulation 2(d), to mean, '*the average of the pay drawn by an Employee during the last ten months of his service in the Bank*'. Under Regulation 2(e), '*Bank*' is defined to mean the Parent Bank. It also cannot be lost sight of the fact that 15% deputation allowance is calculated on the pay structure of the deputationist on the basis of the salary drawn by him with the Parent Bank and such deputation allowance is payable until the deputation lasts. Normally, in any organization, the deputationist has to return to the Parent Organization prior to his superannuation. Merely because a deputationist attains the age of superannuation while on deputation, would not entitle him to treat such a higher pay scale as a foundation for calculating the pension fixation. Moreover, some of the Petitioners had sought extensions so as to superannuate while being on deputation.

23. In *Bhagwan Dass and Others V/s. State of Punjab and Another*, 2016 SCC OnLine P&H 5892, the learned Single Judge of the High Court of Punjab and Haryana ruled thus :-

“2. The petitioners retired from service on attaining the age of superannuation while performing the duties of the higher post of Principal/Headmaster in Group-A school cadre in the Punjab Education Department while holding the current duty charge of the higher post for different periods ranging from about 1 to 7 years. Their claim is to fix pension and other pensionary benefits on the basis of the last salary drawn by the petitioners in the higher pay scale while performing duties holding the current duty charge of the superior post. They were also given the additional charge of Drawing and Disbursing Officers in their respective schools.

3. The petitioners place reliance on Rules 2.44, 2.47, 2.52, 6.19 and 6.24 including 4.4(a)(i) of the Punjab Civil Service Rules to fortify their cases for obtaining relief through appropriate orders, writs and directions. It is their case that they were called upon to officiate on the higher post in accordance with rule of seniority vide letter dated June 19, 1992 issued by the department in the lead case. The petitioners may have a right to arrears of difference of pay of the post substantively held and the post on which they have performed duties and responsibilities of the higher post but all the same they have acquired no right to the higher pay scale, unless they were duly promoted to the higher posts while in service. But this does not mean that they have a right to the pay scale of the higher post on the date of retirement for claiming pension admissible to the higher post. In none of these cases has a prayer been made that the petitioners should be promoted to the higher post of Principal/Headmaster in accordance with seniority and then to re-fix pension accordingly. In absence of such a prayer and a declaration by the department that petitioners stood validly promoted as per their turn in the seniority list, the relief prayed for in the petition cannot be granted merely because on the date of superannuation they continued to perform the duties of the higher post holding the current duty charge irrespective of length

of such service. It may also be true that a condition in the order giving them the officiating current duty charge of the higher post in their own pay scale may be an argument in their favour on principles of workload but to enhance last pay drawn is another matter which cannot be legally countenanced for absence of substantive promotion. But this does not mean that they would not be entitled to the higher pay on the principle of equal-work-for-equal-pay on the well recognised doctrine of quantum meruit. However, rate of pension cannot be made dependent on such current duty charge or officiation on the posts of Principal or Headmaster. I would, therefore, not intercede in these cases and on the other hand dismiss the petitions as devoid of merit. There is a difference between the two concepts of pay at par with the higher posts for working on them and right to difference of pay between the two posts for discharging full duties and responsibilities of the promotional post.

4. The court rulings relied upon by Mr. Vikas Chatrath in Pritam Singh Dhaliwal v. State of Punjab, 2004 (6) SLR 758 2004 (4) SCT 403 [para.4]; Gurmej Singh v. State of Punjab, 1995 (3) RSJ 491, 1995 (3) S.C.T. 279 (paras.1 to 3] are occasioned by misreading them into the facts of the instant case. The decision of the learned Single Judge in Sohan Singh, Sub Inspector v. The State of Haryana, 1992 (2) SCT 74 [paras.10 and 11] and of the Supreme Court in State of Punjab v. Nirmal Singh, 2002 (2) S.C.T. 723 [para.2] and BCPP Mazdoor Sangh v. NTPC, 2007 (4) S.C.T. 724 (paras.26, 29 and 30) are not directly on the point and of no help. It will be useful to read rule 2.44 of the PCS Rules which defines "pay to mean in the scale of the post held by the Government employee, or to which he is entitled by reason of its position in a cadre and Rule 6.19-C which defines the term "emoluments" when used for the purpose of emoluments reckoning from pension would mean "pay" as defined in Rule 2.44 of the PCS Rules, Vol. 1, Part I including dearness pay as determined by the orders of the Government issued

from time to time, which the employee is receiving immediately before his retirement or the date of his death. Rule 6.24(1) defines "average emoluments" to mean the average calculated up to the last ten months of qualifying service which is applicable to employees retiring after February 29, 1976. These provisions do not contemplate current duty charge and would not hold Mr. Chatrath in good stead to bring relief for his clients and the petitioners in the connected cases.

5. On the other hand, Mr. Nikhil K. Chopra, learned Addl. AG, Punjab appearing for the respondents relies on the ruling in Bidhi Singh v. State of Punjab, 1992 (2) RS) 19: 1992 (1) SCT 590 could demolish the case of the petitioners. This is a case of a Government servant sent on deputation to higher post in another department of Government which brought him higher pay/emoluments. The petitioner therein retired while on deputation and was not promoted in his parent Government department before he retired from service. Therefore, the Court held that pensionary benefits have to be determined on the basis of emoluments which the Government employee would have drawn had he not been sent on deputation. The Single Judge in this case has dealt with the provisions of Rules 6.19-C, 2.44 and 6.24 of the PCS Rules which have been held to have no relevance to the case.

6. In U.K. Walia v. Punjab National Bank, 2013 (2) RS) 385, which is also a case of deputation, Court ruled that benefit of higher grade on deputation will not bring with it a right to enhanced pension on the last pay drawn which has to be calculated in terms of the salary the petitioner would have drawn in the parent Bank on the date of superannuation.

7. Lastly, he relies on an order that I passed in C.W.P. No. 13125 of 2015, Shital Ram v. State of Punjab decided on March 03, 2016 in a case claiming enhancement of pension for discharging duties of Drawing & Disbursing Officer, where it was observed

thus:-

"The petitioner's claim is for his enhancing pension on the ground that he discharged duties of Drawing & Disbursing Officer [DDO] in the substantive rank of Head Master while serving in a Government School.

The State has explained that the petitioner has been compensated for extra work performed as DDO by payment of an allowance.

In such a situation, the extra pay for discharging duties and responsibilities of a DDO does not form part of pay scale prescribed for the post of Head Master. Assigning such duties does not amount to a promotion as it is well settled that the responsibilities of DDO can be given to any Officer to facilitate payment of salaries and other service benefits to the staff on a regular basis. These are in the nature of extra financial duties to facilitate payments of money. The extra payment would not translate in increasing salary in the last pay drawn certificate. Therefore, the prayer for enhancing pension by adding extra payment for extra work towards pension is wholly misconceived."

24. In the cases before us, it is an admitted position that none of these Petitioners were promoted. It was pursuant to the advertisement published by the Government of India calling for Applications from Employees who would volunteer to discharge functions as CVO with a different bank, that the Petitioners were sent on deputation. The Petitioners before us are some such candidates who volunteered to accept the deputation assignment to

work as CVO with different banks. They had the option of drawing 15% extra wages from the Parent Bank or draw the said amount with perquisites from the Loanee Bank. Each of them was aware that he could continue as CVO on deputation for a period of three years or till his superannuation, whichever would occur earlier. In some cases, after the period of three years was over, the Petitioners sought extension and with the concurrence of the Central Government, the extension was granted on request.

25. Regulation 35 of the 1995 Regulations (amended up to 2024) defines amount of pension to mean the amount of basic pension calculated at 50% of the average emoluments. Average emoluments is defined under Regulation 2(d), meaning the average of the pay drawn by an Employee during the last 10 months of his service in the bank. Regulation 2(e) defines bank to mean the Parent Bank.

26. The communication dated 27th November, 1998 (portion reproduced above in Paragraph No.15) indicates that Rule 33(note 7) of the CCS Pension Rules prescribes that the substantive pay that an officer would have drawn in the Parent Bank, but for his

deputation, be taken as the pay for calculating average emoluments for the purpose of pensionary benefits and not the pay actually drawn by the officer in the higher scale in the Loanee Organization.

27. In *Ratilal B. Soni and Others V/s. State of Gujarat and Others*, AIR 1990 SC 1132, a Circle Inspector in the State Service was sent on deputation and was later reverted back to his parent cadre in the Panchayat Service. He challenged the action of bringing him back from deputation to his parent cadre. It was held that the Appellant being on deputation, could be reverted to the parent cadre and he did not get any right to be absorbed on the deputation post.

28. In *Puranjit Singh V/s. Union Territory of Chandigarh and Others*, 1994 Supp (3) SCC 471, it was held that when a deputationist was repatriated, he could not claim promotion in the parent department on the basis of officiating on a higher post in the borrowing organization.

29. In *Umapati Choudhary V/s. State of Bihar and Others*, AIR 1999 SC 1948, the Hon'ble Supreme Court dealt with the aspect of what would deputation amount to and concluded in Paragraph

No.9, as under :-

“9. Deputation can be aptly described as an assignment of an employee (commonly referred to as the deputationist) of one department or cadre or even an organisation (commonly referred to as the parent department or lending authority) to another department or cadre or organisation (commonly referred to as the borrowing authority). The necessity for sending on deputation arises in public interest to meet the exigencies of public service. The concept of deputation is consensual and involves a voluntary decision of the employer to lend the services of his employee and a corresponding acceptance of such services by the borrowing employer. It also involves the consent of the employee to go on deputation or not. In the case at hand all the three conditions were fulfilled. The University, the parent department or lending authority, the Board, the borrowing authority and the appellant the deputationist, had all given their consent for deputation of the appellant and for his permanent absorption in the establishment of the borrowing authority. There is no material to show that the deputation of the appellant was not in public interest or it was vitiated by favouritism or mala fide. The learned single Judge in the previous writ petition had neither quashed the deputation order nor issued any direction for its termination. Indeed the learned single Judge had dismissed the writ petition. No material has been placed before us to show that between November 1987 when the Judgment of the single Judge was rendered and December 1991 when the Division Bench disposed of the writ petition filed by the appellant the petitioners of the previous case had raised any grievance or made any complaint regarding non-compliance of the directions made in the judgment of the learned single Judge. In these circumstances the Division Bench was clearly in error in declining to grant relief to the appellant. Further, the appellant has, in the meantime, retired from service, and therefore, the decision in the case is relevant only for the purpose

of calculating his retiral benefits.”

30. In *U.K. Walia V/s. Punjab National Bank and others, (2012) SCC OnLine P&H 14501*, the Punjab and Haryana High Court dealt with a claim of a Chief Manager from the Punjab National Bank praying for re-fixation of pension on the ground that he was sent on deputation as General Manager with the Punjab Gramin Bank. He desired that the deputation allowance of the next higher grade, being paid to him during his deputation, would mean that his salary was re-fixed. He relied on the same regulations, Clauses 2(d), 2(e), 35 and 38 of the Punjab National Bank (Employees’) Pension Regulations, 1995 and prayed that the average emoluments for a period of 10 months preceding his retirement would include the deputation allowance.

31. The said claim was negated with the following conclusions :-

“From a perusal of the communication, Annexure P-1, which provides for incentives for postings in Regional Rural Banks it is evident that payment of salary in a grade higher than the entitlement of an employee while serving in the bank was temporary. It was limited to the period of deputation, specifically providing therein that it will not confer any right on him. Further clause 2(d) of the Pension Regulations provides that average

emoluments are the average of the pay drawn by an employee during the last ten months in the bank. The bank has been defined to be Punjab National Bank. In nine out of last ten months of his service before retirement, the petitioner was not serving in the Punjab National Bank. He had been sent on deputation to Punjab Gramin Bank where as an incentive he was paid higher pay.

As the regulations were not clear on the issue regarding determination of pension in a case where an employee was getting higher pay while on deputation, issue was clarified vide circular dated 11.1.1999. It is specifically mentioned in the aforesaid circular that the average emoluments in such circumstances would mean the pay which an employee of the bank would have drawn in the parent bank but for his deputation. It has further been mentioned in the aforesaid circular that the same has been issued in terms of the advise of the Government of India, Ministry of Finance (Banking Division). In these circumstances, it cannot be said that the circular runs contrary to the provisions of the Pension Regulations rather it is supplemental. It only clarifies a point which has not been dealt with in the Pension Regulations.

It is not in dispute in the present case that the pension of the petitioner has been calculated in terms of the salary, the petitioner would have drawn in the parent bank namely Punjab National Bank. The petitioner cannot be given any benefit of the higher grade given to him as incentive while on deputation with Punjab Gramin Bank.

For the reasons mentioned above, I do not find any merit in the present writ petition. Accordingly, the same is dismissed.”

32. In view of the above, we do not find any error

committed by the Respondent/Parent Banks in calculating the monthly pension. These **Writ Petitions are, therefore, disposed off. Rule is discharged.**

33. The learned Advocates for the Parent Banks had made a submission that all the provident fund accumulations, inclusive of the subscription on the 15% deputation allowance, if not paid, would be paid to the Petitioners. They also stated that the portions of contributions on the 15% deputation allowance, which were deposited in their pension accounts, would be returned to the Petitioners. We direct that all these amounts be returned to the Petitioners, with statutory interest payable from the dates of their retirement, within a period of 60 days from today.

(ASHWIN D. BHOBE, J.)

(RAVINDRA V. GHUGE, J.)