

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 12495 of 2019****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE MAULIK J.SHELAT**

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Approved for Reporting	Yes	No
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DINESHKUMAR MOHANLAL KATPARA

Versus

UNION BANK OF INDIA & ORS.

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Appearance:

MR RAJESH P MANKAD(2637) for the Petitioner(s) No. 1

MR NAGESH C SOOD(1928) for the Respondent(s) No. 1,3

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CORAM:HONOURABLE MR. JUSTICE MAULIK J.SHELAT**Date : 25/11/2025****ORAL JUDGMENT**

1. Rule returnable forthwith. Learned advocate Mr. Nagesh Sood waives service of notice of rule on behalf of the respondents. With the consent of the learned advocates for the parties, the matter is taken up for hearing.

2. Heard learned advocate Mr.Rajesh P. Mankad for the petitioner and learned advocate Mr.Nagesh Sood for the respondents at length.

3. The present writ petition is filed under Articles 14, 16, 226 and 227 of the Constitution of India, seeking the following reliefs :

“(A) The Hon'ble Court will be pleased to admit and allow the present petition and further be pleased to hold and declare that the action of the Respondent Bank of not paying the difference of pension from the date of superannuation (CRS), 31-5-2011 till 27.6.2014 (date of conversion of dismissal into compulsory retirement), Encashment of 240 days leave payable as per Rules on superannuation (CRS) and also not granting and not paying the difference of subsistence allowance and full pay for the period of suspension since final punishment imposed on petitioner is only compulsory retirement from the date of superannuation is against the norms and rules applicable to the Respondent Bank and therefore be pleased to quash and set aside the said action/orders with further direction to the Respondent Bank and its official to make payment of the difference of pension from the date of superannuation (CRS), 31-5-2011 till 27.6.2014 (date of conversion of dismissal into compulsory retirement), Encashment of 240 days Leave payable as per Rules on superannuation (CRS) and also pay the difference of subsistence allowance and full pay for the period of suspension since final punishment imposed on petitioner is only compulsory retirement from the date of superannuation along with interest at commercial rates with further direction to the Respondent Bank to comply with the same and file Compliance Report before this Hon'ble Court in time bound schedule.

(B) By way of ad-interim and or interim relief, Hon'ble Court will be pleased to direct the Respondent Bank to deposit the amount payable on account of difference of pension from the date of superannuation (CRS), 31-5-2011 till 27.6.2014 (date of conversion of dismissal into compulsory retirement), Encashment of 240 days Leave payable as per Rules on superannuation (CRS) and also the difference of subsistence allowance and full pay for the period of suspension with the Registry of this Hon'ble Court with further direction to the Registry to make the payment of the same to the petitioner on appropriate terms and or direction for investment till the pendency and final disposal of the present petition.

(C) Hon'ble Court be pleased to award the cost of present petition.”

SHORT FACTS OF THE CASE :

4. The petitioner came to be appointed as Clerk-cum-Cashier on 10/10/1978 in respondent bank and confirmed in service on 01/04/1979. Later on, he was promoted and transferred to different places from 1984 till August, 2010.

Lastly, when petitioner was working as Senior Manager in the Credit Department, Regional Office, Ahmedabad of respondent bank, he was suspended by the respondent bank on 28/09/2010 alleging misconduct committed by him when acted as Branch Manager, Dr. J.M. Road Branch, Ahmedabad.

4.1 Petitioner was served with the charge-sheet on 04/05/2011 and during the pendency of departmental inquiry initiated by respondent Bank against petitioner, as having reached the age of superannuation on 31/05/2011, respondent Bank vide its communication letter dated 10/05/2011 whereby observed that as per Regulation No.20(3)(iii) of Union Bank of India Officers' Service Regulation, 1979 (hereinafter referred to as "**Regulation, 1979**"), petitioner will cease to be in service of respondent bank w.e.f. 31/05/2011, but disciplinary proceedings will continue as if he is in service until the proceedings are concluded and final order is passed in respect thereof.

4.2 It is made clear in the aforesaid letter dated 10/05/2011 that petitioner will not be entitled to receive any retirement benefit until disciplinary proceedings are completed and specific order is passed thereof, except his own contribution to Compulsory Provident Fund.

4.3 It appears that on completion of aforesaid disciplinary proceedings, having been found guilty of committing misconduct for which petitioner was subjected to inquiry,

disciplinary authority imposed punishment of dismissal from services of respondent bank with immediate effect by its order dated 09/02/2012. Thereafter, petitioner unsuccessfully challenged aforesaid order of dismissal before appellate authority, who vide its order dated 07/12/2012 confirmed the said order of penalty imposed by disciplinary authority.

4.4 As a last hope, petitioner approached the reviewing authority of respondent bank by filing Memorial/Review, and after considering the facts and circumstances of the case, the reviewing authority of respondent Bank vide its order dated 27/06/2014 modified the said order of punishment whereby, order of major penalty of dismissal from service of Bank with immediate effect imposed upon the petitioner stands substituted to compulsory retirement from the services of respondent bank. It may be noted here that reviewing authority has not observed any specific date from which petitioner would compulsorily retired from his service.

4.5 Having received that order of compulsory retirement, petitioner requested the respondent bank to release benefit of leave encashment amount vide its representation dated 09/06/2015 which was turned down by respondent bank, on 24/06/2015. It further appears that petitioner went on with repeated representations asking for aforesaid benefit which was denied by respondent bank vide its different communications wherein it referred communication of Indian Bank Association (hereinafter referred to as **"IBA"**) dated

11/05/2015 whereby, petitioner told that he is not eligible to receive leave encashment as order of punishment, *id est*, compulsory retirement passed in his case prior to 30/04/2015.

4.6 After a long period of time, a legal notice came to be issued by petitioner through his lawyer on 09/04/2019 whereby called upon respondent bank to release benefit of leave encashment and pensionary benefits from 31/05/2011 till 27/06/2014 and also sought for pay difference of subsistence allowance and full pay for the period of suspension as, according to petitioner, he was subjected to only compulsory retirement, thus, entitle to receive aforesaid benefits. The aforesaid legal notice having replied by respondent bank on 07/05/2019, whereby in clear terms denied aforesaid benefits, resultantly, present petition preferred on 19/07/2019.

SUBMISSIONS OF THE PETITIONER :

5. Learned advocate Mr. Mankad for the petitioner would respectfully submit that when petitioner is ordered to be compulsorily retired from service by competent authority of respondent Bank then, as per Regulation 1979, petitioner is entitled to receive leave encashment benefit. It is submitted that as per Regulation No.38 of said regulation, when petitioner compulsorily retired from service, in that eventuality as well, he would entitle to receive benefit of leave encashment.

5.1 Learned advocate Mr. Mankad would respectfully submit that respondent bank has wrongly denied statutory benefit of leave encashment to petitioner, citing irrelevant IBA communication and inapplicable provisions of the said Regulation, thereby violated fundamental rights of petitioner to receive retiral benefits. It is respectfully submitted that respondent Bank was not correct when denied benefit of leave encashment by placing reliance upon communication received from IBA dated 11/05/2015.

5.2 Learned advocate Mr. Mankad would respectfully submit that when statutory regulation framed by respondent bank entitle petitioner to receive leave encashment on his retirement, such statutory benefit could not have been denied by respondent bank by placing reliance upon communication of IBA. It is submitted that IBA might have agreed that 30/04/2015 onwards, if any officer will be compulsorily retired, entitle to receive leave encashment, but it would not mean that any statutory rules entitle employee to receive benefit under it, can be denied.

5.3 Learned advocate Mr. Mankad would respectfully further submit that when any right accrued from regulation which is statutorily framed by respondent bank, no executive instruction or any communication of IBA would supersede such statutory regulation and as such, not binding to petitioner. It is respectfully submitted that there is no justification on the part of respondent bank not to grant

benefit of leave encashment to the petitioner and as such, there is no reasonable nexus sought to be achieved by taking cut-off date of 30/04/2015 when otherwise respondent bank is going to grant such benefit to other similarly situated persons who are compulsorily retired from 30/04/2015 onwards.

5.4 Learned advocate Mr. Mankad would respectfully submit that when respondent having placed reliance upon its regulation i.e. 20(3)(iii) of Regulation, 1979, whereby continued the service of petitioner till final conclusion of disciplinary inquiry initiated against him, when order of dismissal inflicted upon petitioner, on that day, service of petitioner would stand terminated. It is respectfully submitted that when reviewing authority modified the order of punishment imposed by disciplinary authority confirmed by appellate authority, whereby penalty converted from dismissal to compulsory retirement then, in absence of any date of such compulsory retirement mentioned in order of reviewing authority, as a corollary, at least date of dismissal requires to be considered as date of compulsory retirement as till that date, petitioner deemed to have continued in service.

5.5 Learned advocate Mr. Mankad would respectfully submit that considering the aforesaid regulation so cited by respondent bank vide its letter dated 10/05/2011 whereby, though petitioner ceased to be in service of bank from the date of his superannuation i.e. 31/05/2011 but due to legal fiction continued in service till conclusion of inquiry, thus, date of compulsory retirement would requires to be

considered a date of order of dismissal i.e. 09/02/2012, when inquiry concluded. It is submitted that respondent bank has given the effect of granting pension from date of order of compulsory retirement passed by the reviewing authority, i.e. 27/06/2014, which is unjust, improper, arbitrary and requires to be quashed and set aside. It is respectfully submitted that petitioner is entitled to receive pensionary benefit w.e.f. 09/02/2012 if not from date of his superannuation i.e. 31/05/2011, instead of 27/06/2014.

5.6 Learned advocate Mr. Mankad would respectfully state that petitioner having allowed to be compulsorily retired from service, entitle to receive subsistence allowance as order of suspension would stand modified with order of compulsory retirement passed by reviewing authority. It is submitted that unless there is any specific order with regard to suspension period is passed, petitioner is entitled to all regular benefits as if no suspension existed on the date of final punishment, i.e. the date of order of compulsory retirement. It is respectfully submitted that when reviewing authority while passing order of compulsory retirement, has not passed any specific order with regard to denial of salary for suspension period and other benefits, petitioner would be entitled to receive such benefits and same having not paid by respondent, it violated Articles 14 and 16 of the Constitution of India.

5.7 Lastly, learned Advocate Mr. Mankad would respectfully submit that as petitioner having denied retirement benefits by

respondent bank without any just reason, he would be entitled to receive interest on such amount.

5.8 To buttress his arguments, he has relied upon the following judgments:

- (i) ***Judgment dated 25.07.2012 rendered by High Court of Madras in case of D. Kalaichelvan vs. Union of India and another, being W.P.No.27311 of 2010.***
- (ii) ***Oral order dated 17.11.2021 passed by this Court in the case of Vihang Ramnath Dholakia vs. Sundicate Bank Through Regional Manager, being Special Civil Application No.6112 of 2020.***
- (iii) ***Judgment dated 18.09.2013 rendered by High Court of New Delhi in Deepak Sapra vs. Punjab National Bank, being Letters Patent Appeal No.693 of 2013.***
- (iv) ***Judgment of Hon'ble Supreme Court dated 11.12.2013 rendered in case of Bank of Baroda vs. S.K.Kool (D) Through Lrs. And another, being Civil Appeal No.10956 of 2013.***
- (v) ***Judgment dated 06.12.2017 passed by High Court of Patna in Allahabad Bank through Chairman-cum-Managing Director and others vs. Dilip Kumar Sinha s/o. Sri Raneshwar Pd Singh, being Letters Patent Appeal No.414 of 2016.***
- (vi) ***Judgment dated 07.10.2014 rendered by this Court in Keshavlal Amrutlal Prajapati vs. Principal and others - 2014 AIJEL-HC 231834.***

SUBMISSIONS OF THE RESPONDENT :

6. *Per contra*, learned advocate Mr. Nagesh Sood for the respondent bank would vehemently oppose the present petition contending, *inter alia*, that there is no merit in the claim of the petitioner and it is correctly denied by respondent bank.

6.1 Learned advocate Mr. Sood would respectfully submit that petitioner was served with order of dismissal which was later on modified, but major punishment of compulsory retirement imposed upon him thereby, as per Regulation 1979 of respondent Bank, as well as communication dated 11/05/2015 of IBA, petitioner would not be entitled to receive any benefit of leave encashment. It is respectfully submitted that when any major penalty has been imposed upon employee, such employee would not be entitled to receive any leave encashment. It is further submitted that as per Regulation No.4(h) of Union Bank of India Officer Employees' (Discipline and Appeal) Regulation, 1976 (hereinafter referred to as "**Regulation, 1976**"), compulsory retirement fall in the category of major penalty and thus, petitioner would not entitle to receive benefit of leave encashment.

6.2 Learned advocate Mr. Sood would further submit that when IBA at given point of time, accepted and decided that officers of bank who would compulsorily retire from service from 30/04/2015 onwards, entitle to receive leave encashment. It is submitted that as such the order of compulsory retirement in the case of petitioner passed on 27/06/2014, no benefit of leave encashment could have been granted to petitioner, due to aforesaid communication of IBA.

6.3 Learned advocate Mr. Sood would respectfully submit that as per Regulation 38 of Regulation 1979, in the cases of dismissal, termination, or resignation, etc., all leave to the

credit of the officer shall lapse and as such, petitioner having inflicted with order of major penalty i.e. compulsory retirement, it tantamount to terminating his services compulsorily by competent authority, thereby not entitled to receive any benefit of leave encashment.

6.4 Learned advocate Mr. Sood would further submit that as per Regulation No. 20(3)(iii) of Regulation, 1979, services of petitioner would continue until final order which may be passed in the inquiry initiated against him, thus, petitioner would not be entitled to receive any pensionary benefit from the date of order of dismissal but correctly awarded benefit of pension from the date of his compulsory retirement, i.e. 27/06/2014. It is respectfully submitted that when order of dismissal passed by respondent Bank on 09/02/2012, petitioner would not entitle to receive any retirement benefit, including pension but due to order of reviewing authority passed on 27/06/2014, entitled to receive pensionary benefit thereby, petitioner cannot be allowed to claim such benefit of pension from the date of his actual superannuation i.e. 31/05/2011 and/or date of order of dismissal i.e. 09/02/2012, as the case may be.

6.5 Learned advocate Mr. Sood would respectfully submit that petitioner would not entitle to receive any other benefits, i.e. subsistence allowance and/or any regular pay on getting order of compulsory retirement. It is submitted that as per Regulation No.15 of Regulation, 1976, unless there is a specific order passed by competent authority, more

particularly Regulation No.15 (3) (b) of said regulation, period of suspension would not be treated as a period spent on duty. It is not in dispute that petitioner having not exonerated from charge levelled against him in the inquiry, his case would fall under Regulation No.15 (2) of Regulation, 1976 and having no order regularizing period of suspension passed by competent reviewing authority of respondent bank, such benefit not available to petitioner.

6.6 Lastly, learned advocate Mr. Sood would respectfully submit that as the petitioner came after a period of more than four years from the date of denial of the benefit, no interest should be awarded on any of the retirement benefits as claimed in this petition and as such, none of the judgments cited by learned advocate Mr. Mankad would be applicable to the case of the petitioner.

6.7 To buttress his arguments, he has relied upon the following judgments:

- (i) *Chairman-cum-Managing Director, Mahanadi Coalfields Limited vs. Sri Rabindranath Choubey - 2020 (18) SCC 71.***
- (ii) *State Bank of Patiala and another Versus Ram Niwas Bansal (Dead) and Ors. - 2014 (12) SCC 106.***
- (iii) *Manager, Arya Samaj, Girls Higher Secondary School Versus Sunrita Thakur - 1991 (43) DLT 139 : 1991 LabIC 1882.***

7. No other and further submissions are being made by respective learned advocates.

POINTS FOR DETERMINATION:

8. Upon consideration of the rival submissions and having regards to the aforesaid facts, according to my view, following points arise for consideration :

(i) *Whether Respondent Bank justified in denying the benefits of leave encashment to Petitioner when allowed him to compulsorily retire from service? If yes, petitioner entitle to receive interest thereon?*

(ii) *Whether in the facts and circumstances of the present case, from which date petitioner entitled to receive pensionary benefit?*

(iii) *Whether petitioner having inflicted with punishment of compulsory retirement, entitled to receive any difference of subsistence allowance and full pay for the period of suspension till his age of superannuation?*

ANALYSIS :**POINT NO.-(i)**

9. The facts which are observed hereinabove are not in dispute. Petitioner during his service inflicted with charge-sheet by respondent bank whereby, initiated inquiry against him. It is not in dispute that during the pendency of inquiry, as petitioner reached to age of superannuation, *id est*, 31/05/2011. So, vide letter dated 10/05/2011, respondent bank placed reliance upon its Regulation No. 20(3)(iii) of Regulation, 1979, whereby clearly observed that though petitioner will cease to be in service of respondent bank w.e.f.

31/05/2011, until final conclusion of departmental inquiry which is pending against him, his services will continue. Accordingly, on completion of inquiry, the final order of dismissal came to be passed by disciplinary authority on 09/02/2012. Once, the order of dismissal passed, petitioner not entitled to receive any retiral benefits like leave encashment, pension etc.

10. Nonetheless, petitioner first preferred appeal before Appellate Authority of respondent bank who also did not grant any relief in favour of the petitioner. Having not lost any hope, petitioner approached the reviewing authority by way of Memorial/Review who ultimately gave some sigh of relief to petitioner by modifying the order of punishment from dismissal to compulsory retirement. Such order came to be passed by reviewing authority on 27/06/2014.

11. When reviewing authority allowed petitioner to be compulsorily retired from service, then petitioner raised his claim to get leave encashment benefit from respondent bank which was denied on the ground that as per communication dated 11/05/2015 of IBA, petitioner having inflicted with order of penalty of compulsory retirement on 27/06/2014, his case not covered by said communication, thereby told that not entitle to receive any such benefit.

12. This Court has gone through communication of IBA dated 11/05/2015 relied upon by respondent bank. True, as

per aforesaid communication, IBA decided that any officer who inflicted with order of compulsory retirement falls under major penalty as per Regulation No. 4 (h) of Regulation, 1976, entitle to receive benefit of leave encashment from 30/04/2015 onwards as managing committee met on 30/04/2015. While issuing aforesaid communication, IBA taken note of the fact that several affected officers who compulsorily retired approached different High Courts, which granted benefit of leave encashment to them. Even Government Of India through Department of Personnel & Training (DOPT) vide its office memorandum dated 13/02/2006 decided to grant benefit of leave encashment to employee who compulsorily retired from service. Still, IBA thought it fit to consider to grant such benefit w.e.f. 30/04/2015.

13. After minutely going through aforesaid communication of IBA, this Court is unable to find any logic behind fixing the cut-off date by IBA i.e., 30/04/2015, for granting aforesaid benefit of leave encashment to charged officer who received penalty of compulsory retirement. As such, leave encashment considered as privilege leave earned by employee during course of his service, though could have encash it by enjoying it during service, but for the reason, not enjoyed it with a hope to receive monetary benefit by encash it when retired from service. Furthermore, leave encashment benefit available to employee as per statutory rules framed by employer, then no decision contrary to rules can be taken

when to give effect of such benefit. There is no reasonable nexus with the objects sought to be achieved by fixing such cut-off date, inasmuch as, benefit of leave encashment would be statutory benefit entitled to be received by officer as per Regulation No.38 of Regulation, 1979, who earned such privilege leave by rendering services to bank. It is well settled position of law that while framing any policy to grant benefit, when any cut-off date chosen by State (in present case respondent bank, State as per Article 12 of the Constitution of India) is arbitrary, irrational and no reasonable nexus with the objects sought to be achieved by fixing such date, then such fixation of cut-off date amounts to violation of Article 14 of Constitution of India, requires to be interfered by the Constitutional Court. [**See : D.S. Nakara versus Union of India - (1983) 1 SCC 305**].

14. Be that as it may, even if for a time being, it is assumed that IBA well within its right to fix the aforesaid cut-off date i.e. 30/04/2015 to grant benefit of leave encashment to the charged officer who compulsorily retires from 30/04/2015 onwards, then also petitioner could not have been deprived to get such benefit by respondent Bank due to its own Regulation, 1979 framed as per section 19 read with sub-section (2) of section 12 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970.

15. At this stage, it would be profitable to refer to Regulation No.38 of Regulation, 1979 framed by respondent

Bank itself, which reads as under:

“38. Lapse of leave:

Save as provided below, all leave to the credit of an Officer shall lapse on resignation, retirement, death, discharge, dismissal or termination:

Provided that where an Officer retires from the Bank's service, he shall be eligible to be paid a sum equivalent to the emoluments of any period, not exceeding 240 days of Privilege Leave he had accumulated:

Provided, further that where an Officer dies while in service, there shall be payable to his legal representatives, a sum equivalent to the emoluments for the period, not exceeding 240 days of Privilege Leave to his credit as on the date of his death.

Provided also that where an officer leaves or discontinues his services by resignation on or after 1st April, 2001 after giving due notice under sub-regulation 2 of Regulation 20, he may be paid a sum equivalent to the emoluments in respect of the privilege leave to the extent of half of such leave to his credit on the date of cessation of service, subject to maximum of 120 days.”

16. The bare reading of the aforesaid Regulation No.38 more particularly its first proviso would clearly indicate that when any officer retires from the Bank services, he shall be eligible to be paid a sum equivalent to the emoluments of any period, not exceeding 240 days of privilege leave he had accumulated. There is nothing in aforesaid regulation which would remotely suggest and/or indicate that reference of retirement as mentioned in said regulation would not include compulsory retirement. It may be true that compulsory retirement may be one of major penalty falls under Regulation No.4 (h) of Regulation, 1976. But, it would not mean that on getting such compulsory retirement, petitioner would disentitle to receive benefit of leave encashment. According to

my view, when charged officer allow to retire in any form by respondent bank, be it normal retirement having reaches to the age of superannuation or compulsory retirement, as the case may be, such officer would entitle to receive benefit of leave encashment.

17. This issue is no longer remain *res integra* having decided against respondent bank itself by High Court of Madras way back in the year 2012, much prior to denial of such benefit by respondent bank in the present case. The pertinent observation of High Court of Madras in the case of **D. Kalaichelvan (supra)**, reads thus:

“17. The main challenge of the learned counsel for the respondents, to the claim of encashment of accumulated privilege leave and gratuity is that the petitioner was imposed a punishment of compulsory retirement on account of misconduct which resulted in huge loss to the bank, which debars the petitioners to encashment of privilege leave and gratuity.

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21. The learned counsel for the respondent vehemently contends, that the interpretation sought to be given by the learned counsel for the petitioner cannot be accepted, as reading of the regulation shows that leave to the credit of the officer lapses on resignation, retirement, death, discharge, dismissal or termination from service. The word 'termination' would include compulsory retirement, and therefore, petitioner is not entitled to encashment of accumulated privilege leave.

22. This contention of the learned counsel for the respondent cannot be accepted. The termination can be by two modes, i.e. simple termination in terms of contract and service without attaching any stigma, the employee can also be terminated for misconduct with stigma, but by no stretch of imagination termination can cover compulsory retirement.

23. **The very object of imposing punishment of compulsory retirement for misconduct, is that an employee should not**

lose benefit which accrued to him for the service rendered till the date of compulsory retirement. The Regulation 38 being beneficial piece of legislation has to be interpreted to advance the object and not to defeat it and in case two views are possible one favouring the employee is to be accepted. In this case, no other view than the one that employee imposed with punishment of compulsory retirement is entitled to encashment of privilege leave can be formed."

(emphasis supplied)

18. In view of the aforesaid facts and circumstances of the present case and when undisputedly reviewing authority modified the order of punishment from dismissal to compulsory retirement, in view of the aforesaid Regulation No.38 of Regulation, 1979, petitioner would entitle to receive benefit of leave encashment, which was wrongly denied by respondent.

19. Apart from above, it is well settled legal position that when any executive decision (in present case aforesaid communication of IBA) is found contrary to statutory rule/regulation, than it would not be sustainable in law, as no execution instruction/order/notification be issued in derogation to statutory regulation and cannot be substitute of the statutory rules [**See : Bank of Baroda & Ors. versus G Palani & Ors. - (2022) 5 SCC 612, para-28**].

20. At last, it needs to be observed that petitioner having requested such benefit to be granted, but denied by respondent bank on citing communication of IBA dated 11/05/2015, which is not sustainable in law, inasmuch as,

entitlement of the petitioner to receive benefit of leave encashment would be governed by aforesaid Regulation No.38 and not by said communication. Furthermore, in *consimili casu*, of charged officer, when respondent bank was directed by High Court of Madras in case of **D.Kalaichelvan (supra)**, to pay such benefit that too in the year 2012, this Court was informed by both learned advocates that there was no further challenge by respondent Bank against the said decision, it would more incumbent upon respondent Bank to grant benefit of leave encashment to the petitioner when sought for. In fact, when different High Court passed the orders in this regards, which made known and brought to notice of IBA when issued aforesaid communication, as can be discernible from first part of said communication dated 11/05/2015 issued by IBA, respondent bank could have easily grant such benefit to petitioner without drawing any cut-off date. In that view of the matter, now, respondent is liable to pay such benefit of leave encashment to petitioner with interest.

21. Thus, in view of the aforesaid, decision of respondent bank denying benefit of leave encashment to petitioner is not sustainable in law, rather found ex facie erroneous, perverse, arbitrary and contrary to own statutory regulation, thereby liable to be quashed and set aside. This Court further hold that no reasonable nexus with the objects sought to be achieved by fixing cut-off date by IBA i.e. 30/04/2015 to grant benefit of leave encashment to the charged officer, then its violative of Article 14 of the Constitution of India.

22. When decision of respondent bank found to be unsustainable in law and denial and withhold of monetary benefit is unjustified thereby, petitioner deprived of monetary benefit for quite long time, thus, considering overall facts and circumstances and when petitioner also approached this Court little late by way of this writ petition filed in July, 2019 instead of in year 2015 itself when denied benefit, in that view of the matter, petitioner is entitled to receive benefit of leave encashment from respondent bank with 7.5% interest from 01/01/2020 till its realization. *Point No. (i)* answered accordingly.

POINT NO.-(ii)

23. The petitioner during pendency of inquiry reached to the age of superannuation, thereby respondent – bank having placed reliance upon Regulation 20(3)(iii) of Regulation, 1979, vide its letter dated 10/05/2011 observed that though petitioner is going to reach to age of superannuation, i.e., 31/05/2011, thereby he will cease to be in services of the bank from such date, still disciplinary proceeding will continue as if he is in the service until the proceedings are concluded and final order passed in respect thereof. So, in view of the aforesaid letter, as per said regulation of respondent – bank, services of petitioner continued beyond age of superannuation which got over on conclusion of disciplinary proceeding, when final order passed by disciplinary authority. Till such time, relationship between petitioner and respondent bank subsist as employee-employer respectively.

23.1 It is not in dispute that the order of punishment of dismissal substituted to compulsory retirement whereby petitioner ordered to be compulsorily retired from services of bank. There cannot be any dispute, rather undoubtedly said substitution of punishment would consider as major penalty (see - Regulation No. 4 (h) of Regulation, 1976). At the same time, when such order passed by reviewing authority of respondent bank on 27/06/2014, as noted down in the facts, the aforesaid order would not indicate any specific date fixed by reviewing authority, i.e., actual date of compulsory retirement of petitioner from the services of the bank. In this view of the matter, this Court needs to analyze the submissions advanced by respective learned advocates.

24. As such facts noted not in dispute, but to better understand and conclude this point, it is desirable to have a reference of Regulation 20(3)(iii) of Regulation 1979, which reads as under :

“20. Termination of service :

(3)(iii) The officer against whom disciplinary proceeding have been initiated will cease to be in service on the date of superannuation but the disciplinary proceeding will continue as if he was in service until the proceedings are concluded and final order is passed in respect thereof. The concerned officer will not receive any pay and/or allowance, after the date of superannuation. He will also not be entitled for the payment of retirement benefits till the proceedings are completed and final order is passed thereon except his own contribution to CPF.”

(emphasis supplied)

24.1 In view of the aforesaid provision, there is no cavil that even after reaching to the age of superannuation, petitioner deemed to be in service of respondent bank until the disciplinary proceeding initiated against him concluded and final order passed. Further, as per Full Bench decision of Hon'ble Apex Court in the case of **Rabindranath Choubey (supra)**, considering somewhat similar rules as referred hereinabove wherein held thus :

“47. Thus considering the provisions of Rules 34.2 and 34.3 of the CDA Rules, the inquiry can be continued given the deeming fiction in the same manner as if the employee had continued in service and appropriate punishment, including that of dismissal can be imposed apart from the forfeiture of the gratuity wholly or partially including the recovery of the pecuniary loss as the case may be.”

(emphasis supplied)

25. Ordinarily, when order of compulsory retirement of charged officer passed and if such officer not reached to age of superannuation, then naturally, the date of such order would consider as date of his retirement. But when such officer already crosses the age of superannuation and then after inflicted with punishment order whereby compulsory retired from the services, in that eventuality, as observed above, due to said regulation, he deemed to be compulsory retired from service at the end of such department proceeding.

25.1 Having considered the aforesaid facts and reading said provision of Regulation, 1979, it can be gainsaid that when petitioner preferred memorial/review before the reviewing

authority, he was no longer remain in services of respondent bank as already dismissed from service w.e.f. 09/02/2012.

25.2 Learned advocate Mr. Sood unable to show any other provisions than referred above, whereby one can assume that even after conclusion of the inquiry, whereby petitioner dismissed from his services of the bank, still he would remain continue in service till Review decided by the competent authority on 27/06/2014. Such would not be an interpretation of aforesaid regulation, inasmuch as, in absence of any express provision in this regards, no legal deeming fiction can be stretch beyond the point, otherwise it leads to absurdity.

25.3 As can be seen, in the case on hand, such departmental proceeding concluded when disciplinary authority passed final order on 09/02/2012 whereby, imposed the punishment of dismissal upon the petitioner. According to my view, plain and simple reading of aforesaid Regulation 20(3)(iii) and considering the ratio of **Rabindranath Choubey (supra)**, it can be deduced that services of petitioner stands terminated w.e.f. 09/02/2012 and till such time, services of petitioner remained continue with respondent bank, but not beyond such period.

26. Now, if one can see, it is the stand taken by respondent bank that petitioner compulsorily retired from service from date of order of review i.e. 27/06/2014. Nonetheless, respondent bank in its affidavit-in-reply filed on 04/01/2022 in this matter, wherein in para-5 stated thus:

“... .. that the petitioner has been compulsory retired from the service on 31/05/2011 and the order of compulsory retirement in respect of petitioner is prior to the effective date of IBA Circular dated 11/05/2015.”

Prima facie, the tenor of aforesaid affidavit-in-reply would suggest that bank treated petitioner compulsory retired from service from 31/05/2011 i.e. date of superannuation.

26.1 Nevertheless, as observed hereinabove, when as per Regulation 20(3)(iii), services of petitioner deemed to be continued until conclusion of disciplinary proceeding initiated against him, then for such purposes, petitioner would not be considered as retired from service. But when inflicted with final order of dismissal on conclusion of inquiry, that would be a last date of petitioner in services of respondent bank i.e. 09/02/2012.

27. As such, the stand taken by respondent bank whereby granted petitioner pensionary benefit w.e.f. 27/06/2014, the day on which order of compulsory retirement passed, is nothing an erroneous observation and perverse decision of respondent – bank, inasmuch as, petitioner was no longer remained in service of respondent bank after 09/02/2012, as already crossed the age of superannuation and in fact, dismissal order passed thereafter on 09/02/2012.

28. Thus, after having considered and analyzed the submissions so canvassed by the respective learned

advocates, taking into account the orders passed by respondent bank as discussed hereinabove and so also effect of Regulation No.20(3)(iii) and ratio of said decision, I am of the view that correct and appropriate date of compulsory retirement of petitioner would not be later than last date of his services with the respondent bank, i.e., 09/02/2012 instead of 27/06/2014. As a consequence, petitioner is entitled to receive pensionary benefit w.e.f. 09/02/2012, instead of 27/06/2014.

29. At the same time, this Court does not find any malice on part of respondent bank when granted pensionary benefit w.e.f. 27/06/2014 instead of 09/02/2012, and as such, through interpretation, this Court herein above held that petitioner entitled to receive pensionary benefit w.e.f. 09/02/2012 then, in such circumstances, not awarding any interest on arrears of such amount to be paid to petitioner by respondent bank, except directing bank to pay at earliest, failing which saddled with liability of interest. *Point No. (ii)* answered accordingly.

POINT NO.-(iii)

30. The petitioner is claiming difference of subsistence allowance and full pay for the period of suspension till 31/05/2011 i.e. date of superannuation, on the pretext that petitioner was compulsorily retired from service. Such benefit cannot be available and not entitled to be received by petitioner simply on the ground that while passing the order of compulsory retirement, competent authority has not regularized the period of suspension to grant such benefit.

31. It would be apt to refer Regulation No.15 of Regulation, 1976, which reads as under :

“15. PAY, ALLOWANCES AND TREATMENT OF SERVICE ON TERMINATION OF SUSPENSION:

1) *Where the Competent Authority holds that the Officer Employee has been fully exonerated or that the suspension was unjustifiable the Officer Employee concerned shall be granted the full pay to which he would have been entitled, had he not been suspended, together with any allowance of which he was in receipt immediately prior to his suspension, or may have been sanctioned subsequently and made applicable to all Officer Employees.*

2) *In all cases other than those referred in Sub-regulation (1), the Officer Employee shall be granted such proportion of pay and allowances as the Competent Authority may direct;*

Provided that the payment of allowances under this Sub-regulation shall be subject to all other conditions to which such allowances are admissible;

Provided further that the payment and allowances granted under this Sub-regulation shall not be less than the Subsistence and Other Allowances admissible under Regulation 14.

3) (a) *In a case falling under Sub-regulation (1), the period of absence from duty shall, for all purposes, be treated as a period spent on duty.*

(b) In a case falling under Sub-regulation (2), the period of absence from duty shall not be treated as a period spent on duty unless the Competent Authority specifically directs, for reasons to be recorded in writing, that it shall be so treated for any specific purpose.”

(emphasis supplied)

32. As per said Regulation No.15 (2) read with 15(3)(b), unless specifically observed by competent authority while passing any order that period of absence from duty shall be treated as spent on duty, such period of suspension cannot be allowed to be treated as a period spent on duty. As such, learned advocate Mr. Mankad for petitioner unable to point

out any other regulations than referred herein above, framed by respondent bank whereby, petitioner can claim such benefit, rather during course of his submission, unable to countenance his submission.

33. In that view of the matter, in absence of any specific order passed by reviewing authority while modifying the order of punishment, i.e. dismissal to compulsory retirement, as regards period of suspension passed thereby, having not regularized such period and as such period of suspension was not treated to be spent on duty, thus, such claim of petitioner sought for difference of subsistence allowance and full pay for the period of suspension till age of superannuation cannot be accepted, which is hereby denied. *Point No. (iii)* answered accordingly.

CONCLUSION :

34. The upshot of the aforesaid observation, discussion and reasons, following conclusion is drawn:

34.1 The petitioner is entitled to receive benefit of leave encashment when allowed to compulsory retire from service. As respondent bank failed to pay such benefit to petitioner, rather withheld such benefit without any valid justification, then liable to pay benefit of leave encashment to the petitioner with interest at the rate of 7.5% from 01/01/2020 till its realization. Such benefits be calculated including amount of leave encashment and be paid to petitioner on or before 31/01/2026.

34.2 Having regards to facts of present case and foregoing reasons, petitioner deemed to be compulsorily retired from services of respondent bank w.e.f. 09/02/2012 instead of 27/06/2014. Accordingly, petitioner is also entitle to receive pensionary benefit w.e.f. 09/02/2012 instead of 27/06/2014. The respondent bank is hereby directed to calculate the arrears amount of pensionary benefit for period between 09/02/2012 to 27/6/2014 and same shall be paid to petitioner on or before 31/01/2026, failing which petitioner will entitle to receive such arrears amount (pensionary benefits) with interest at the rate of 7.5% from 01/02/2026 till its realization.

34.3 As the competent authority of respondent bank has not regularized period of suspension of petitioner while passing order of compulsory retirement and as such, petitioner not fully exonerated from the charges on conclusion of the inquiry, in that view of the matter and as per Regulation No. 15 (2) read with 15 (3) (b) of Regulation, 1976, petitioner is not entitled to receive any difference of subsistence allowance and full pay of salary for the period of suspension till he reached to the age of superannuation. Accordingly, such benefit is hereby denied.

35. In view of the foregoing conclusion, present writ petition is partly allowed. Rule is made absolute, to the aforesaid extent. No order as to costs.

(MAULIK J. SHELAT, J)

GAURAV J THAKER

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: GAURAVKUMAR JANARDANBHAI THAKER(HC00951), Principal Pvt. Secretary, at High Court of Gujarat on 28/11/2025 11:11:22