

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
CIVIL APPEAL NO. 5195 OF 2010

VIJAYA BANK

Appellant (s)

VERSUS

NEELA ARUN MOHILE & ORS.

Respondent(s)

(With prayer for interim relief)

WITH

C.A.No.5284/2010

(With Appl.(s) for ex-Parte stay and intervention and directions and with office report),

C.A.No.5285/2010

(With Prayer for Interim Relief and Office Report),

C.A.No.5286/2010

(With Prayer for Interim Relief and Office Report),

C.A.No.5287/2010

(With Prayer for Interim Relief and Office Report),

C.A.No.5290/2010

(With Office Report),

C.A.No.5240-5248/2010

(With Office Report),

C.A.No.5604/2010

(With Appl.(s) for interim stay and impleadment and permission to place addl. documents on record),

C.A.No.5398/2010

(With Appl.(s) for permission to file additional documents),

C.A.No.5399/2010

(With Appl.(s) for permission to file additional documents),

C.A.No.5400/2010

(With Appl.(s) for permission to file additional documents),

C.A.No.5401/2010

(With Appl.(s) for permission to file additional documents)

C.A.No.2923/2008

(With Appln.(s) for early hearing and bring on record subsequent event and Prayer for Interim Relief)

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Date: 13/02/2014 These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SURINDER SINGH NIJJAR

HON'BLE MR. JUSTICE A.K. SIKRI

For parties :

Mr. Rajiv Nanda, Adv.
Mr. Samdarshi Sanjay, Adv.
Mr. Venkateswara Rao Anumolu, Adv.
Mr. C.S. Rajan, Sr. Adv.
Mr. P. A. Aziz, Adv.
Mr. Sureshan P., Adv.
Mr. Rameshwar Prasad Goyal, Adv.
Mr. Dhruv Mehta, Sr. Adv.
Mr. Rajesh Kumar, Adv.
Ms. Arpita Seth, Adv.
Mr. MannoJ Mehta, Adv.
Mr. Sarv Mitter, Adv.
for M/S Mitter & Mitter Co.
Mr. Shivaji M. Jadhav, Adv.
Mr. Shailendra Bhardwaj, Adv.
Ms. Aroma S. Bhardwaj, Adv.
Mr. Rana Mukherjee, Adv.
Mr. Sidharth Gautam, Adv.
Ms. Kanchan Yadav, Adv.
for M/s Victor Moses & Associates
Mr. C. Mukund, Adv.
Mr. Ashok Kr. Jain, Adv.
Mr. Pankaj Jain, Adv.
Mr. Bijoy Kumar Jain, Adv.
Ms. Abha Jain, Adv.
Mr. Bhaskar P. Gupta, Sr. Adv.
Mr. Partha Sil, Adv.

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UPON hearing counsel the Court made the following
O R D E R

The appeals are disposed of in terms of the two signed orders.

| (VINOD LAKHINA)
| COURT MASTER

| | (INDU BALA KAPUR)
| COURT MASTER

(TWO SIGNED ORDERS ARE PLACED ON THE FILE)
IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5195 OF 2010

VIJAYA BANK

...APPELLANT

VERSUS

NEELA ARUN MOHILE & ORS.

...RESPONDENTS

ORDER

On 7th January, 2014, a request was made on behalf of the appellant - Vijaya Bank for adjournment to place on the record an additional affidavit. It was stated by the learned counsel for the appellant that the Bank is in the process of taking a decision which would perhaps render the present appeal infructuous. An additional affidavit dated 8th January, 2014 has been duly filed. Paragraph 3 of the aforesaid affidavit reads as under:

"3. On 28.12.2013, the Board of Directors of Vijaya Bank/Appellant vide their resolution (agenda item No. A-203/13) has accorded permission for grant of additional 5 years of service under regulation 29 of aforesaid pension regulation 1995 to VRS optees for the purpose of calculation of pension. The relevant part of the Board Resolution pertaining to the present issue is reproduced below:-

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Perused the Memorandum submitted by Personnel Department (IRD) and resolved that approval be and is hereby accorded for grant of additional 5 years of service under Regulation 29 of Vijaya Bank Employees' (Pension) Regulations, 1995 to VRS 2000 optees for the purpose of calculation of pension.

While according approval, the Board directed as under:

1. The pay for the purpose of determination of pension shall be as per Bipartite Settlement & Joint Note dated 14.12.1999 (i.e. it should be pre revision pay).
2. Bank to continue its case for a court decision on definition of pay and interest payment."

A perusal of the aforesaid paragraph shows that the grievance of the employees has been redressed. Therefore, the matter need not be heard on merits.

The appeal is disposed of as having been rendered infructuous.

.....,J.
(SURINDER SINGH NIJJAR)

.....,J.
(A.K. SIKRI)

NEW DELHI
FEBRUARY 13, 2014

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 5398 OF 2010

ALLAHABAD BANK & ANR. ...APPELLANTS

VERSUS

ANIL PATERIA & ORS. ...RESPONDENTS

WITH
CIVIL APPEAL NO.5284/2010
[ALLAHABAD BANK AND OTHERS VERSUS MADHAV BHALCHANDRA PATWARDHAN]

CIVIL APPEAL NO.5285/2010
[ALLAHABAD BANK AND OTHERS VERSUS SULBHA D. JAYADE]

CIVIL APPEAL NO.5286/2010
[ALLAHABAD BANK AND OTHERS VERSUS NETRA A. OAK]

CIVIL APPEAL NO.5287/2010
[ALLAHABAD BANK AND OTHERS VERSUS DYNANDEV RAMKRISHNA GHULE]

CIVIL APPEAL NO.5290/2010
[ALLAHABAD BANK AND OTHERS VERSUS SUSHMA M. KHARE]

CIVIL APPEAL NOS.5240-5248/2010
[ALLAHABAD BANK VERSUS RAKESH MEHRA AND OTHERS]

CIVIL APPEAL NO.5604/2010
[UNITED BANK OF INDIA AND OTHERS VERSUS DILIP KUMAR DEV]

CIVIL APPEAL NO.5399/2010
[ALLAHABAD BANK AND ANR. VERSUS VILAS GADRE]

CIVIL APPEAL NO.5400/2010
[[ALLAHABAD BANK AND ANR. VERSUS SUDHIR KUMAR SHARMA]

CIVIL APPEAL NO.5401/2010
[ALLAHABAD BANK VERSUS S.R. GAUR]

CIVIL APPEAL NO.2923/2008
[ALLAHABAD BANK AND OTHERS VERSUS MANIK KUNDU & ORS.]

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ORDER

These appeals arise from the judgments and orders of the Calcutta High Court, Madhya Pradesh High Court, Gauhati High Court, Delhi High Court and Bombay High Court and relate to different banks (Allahabad Bank and United Bank of India) but since the common issues are involved, it is appropriate that these appeals are dealt with and disposed of by the common order.

These banks have made their regulations in respect of pension separately. Since they bear identical provisions; we shall refer to them as Pension Regulations, 1995 generally.

The main issue involved in all these appeals is as to whether Regulation 29(5) of the Pension Regulations, 1995 would be applicable to the Bank employees, who retired under the applicable Voluntary Retirement Scheme of a particular Bank.

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The issue was considered in detail by this Court in the case of Bank of India Versus K. Mohandas and others [(2009) 5 SCC 313]. In paragraph 24 of the aforesaid judgment, the Court formulated a principal question in the following words:

"24. The principal question that falls for our determination is: whether the employees (having completed 20 years of service) of these banks (Bank of India, Punjab National Bank, Punjab and Sind Bank, Union Bank of India and United Bank of India) who had opted for voluntary retirement under VRS 2000 are entitled to addition of five years of notional service in calculating the length of service for the purpose of the said Scheme as per Regulation 29(5) of the Pension Regulations, 1995?"

In paragraph 13, this Court notices Regulations 28 and 29, as they existed on the date of the VRS 2000, which read as follows:

"28. Superannuation Pension:-

Superannuation pension shall be granted to an employee who has retired on his attaining the age of superannuation specified in the Service Regulations or Settlements.

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29. Pension on Voluntary Retirement:-

(1) On or after the 1st day of November, 1993 at any time, after an employee has completed twenty years of qualifying service he may, by giving notice of not less than three months in writing to the appointing authority retire from service.

Provided that this Sub-regulation shall not apply to an employee who is on deputation or on study leave abroad unless after having been transferred or having returned to India he has resumed charge of the post in India and has served for a period of not less than one year:

Provided further that this Sub-regulation shall not apply to an employee who seeks retirement from service for being absorbed permanently in an autonomous body or a public sector undertaking or company or institution or body, whether incorporated or not to which he is on deputation at the time of seeking voluntary retirement;

Provided that this Sub-regulation shall not apply to an employee who is deemed to have retired in accordance with Clause (1) of regulation -2.

(2) The notice of voluntary retirement given under sub-regulation (1) shall require acceptance by the appointing authority:

Provided that where that appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period.

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(3)(a). An employee referred to in sub-regulation (1) may make a request in writing to the appointing authority to accept notice of voluntary retirement of

less than three months giving reasons therefor.

(b) On receipt of a request under Clause (a), the appointing authority may, subject to the provisions of Sub-regulation (2) , consider such request for the curtailment of the period of notice of three months on merits and if it is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, the appointing authority may relax the requirement of notice of three months on the condition that the employee shall not apply for commutation of a part of his pension before the expiry of the notice of three months.

(4) An employee, who has elected to retire under this regulation and has given necessary notice to that effect to the appointing authority, shall be precluded from withdrawing his notice except with the specific approval of such authority;

Provided that the request for such withdrawal shall be made before the intended date of his retirement.

(5) The qualifying service of an employee retiring voluntarily under this regulation shall be increased by a period not exceeding five years, subject to the condition that the total qualifying service rendered by such employee shall not in any case exceed thirty three years and it does not take him beyond the date of superannuation.

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(6) The pension of an employee retiring under this regulation shall be based on the average emoluments as defined under clause (d) of regulation 2 of these regulations and the increase, not exceeding five years in his qualifying service, shall not entitle him to any notional fixation of pay for the purpose of calculating his pension."

Upon noticing the aforesaid Regulations, it is observed that:

"It appears that the benefits provided under Regulation 29 were not found to be attractive by the employees and did not help these banks in rightsizing their manpower; thus, arose a necessity of special scheme. VRS 2000 is, in a way, special scheme launched for a very limited

period."

Upon consideration of the pleadings and submissions of the learned counsel for the parties with regard to the Pension Regulations, 1995, this Court has concluded as follows:

44. On behalf of the banks, it was contended that the Pension Regulations, 1995 are statutory in nature and these Regulations cannot be altered, amended or read down in view of any contract or a contractual scheme. It was submitted that any contract (or contractual scheme), contrary to a statutory law would be hit by Section 23 of the Contract Act and, therefore, it is the contract or the scheme which has to be modified, altered or read down to bring it in tune with the provisions of statutory Regulations and not the other way round. The contention does not impress us.

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45. It is misplaced assumption that by reading Regulation 29(5) in the Scheme, the Pension Regulations would get altered or amended. Can it be said that statutory relationship of employee and employer brought to an end prematurely by contractual VRS 2000 amounted to alteration or amendment in the statutory Regulations. Surely, the answer has to be in negative and that must answer this contention.

46. The precise effect of the Pension Regulations, for the purposes of pension, having been made part of the Scheme, is that the Pension Regulations, to the extent, these are applicable, must be read into the Scheme. It is pertinent to bear in mind that interpretation clause of VRS-2000 states that the words and expressions used in the Scheme but not defined and defined in the rules/regulations shall have the same meaning respectively assigned to them under the rules/regulations. The Scheme does not define the expression 'retirement' or 'voluntary retirement'. We have, therefore, to fall back on the definition of 'retirement' given in Regulation 2(y) whereunder voluntary retirement under Regulation 29 is considered to be retirement. Regulation 29 uses the expression, 'voluntary retirement under these Regulations'.

Obviously, for the purposes of the Scheme, it has to be understood to mean with necessary changes in points of details. Section 23 of the Contract Act has no application to the present fact situation.

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The aforesaid ratio of law has been laid down upon consideration of the earlier judgments rendered by this Court in Bank of India and others versus O.P. Swarnakar and others [(2003) 2 SCC 721] and Bank of Baroda and others versus Ganpat Singh Deora [(2009) 3 SCC 217].

Mr. Dhruv Mehta, learned Senior Counsel appearing for the appellants in Civil Appeal No.5398 of 2010, has submitted that the judgment in K. Mohandas and others (supra) needs to be reconsidered.

Having considered the detailed submissions made by the learned Counsel for the appellants - Banks, we are not inclined to accept the submission. In our opinion, the issue involved in all these appeals is squarely covered by the judgment of this Court in K. Mohandas and others (supra). Consequently, all the appeals filed by the Banks are dismissed.

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Mr. Dhruv Mehta, learned Senior Counsel, has sought to persuade us that even though the employees are held entitled to pension, the payment that is now required to be made by the Bank should not be burdened with interest.

Mr. Bhaskar P. Gupta, learned Senior Counsel appearing for respondent No.1 in Civil Appeal No.2923 of 2008, at this stage, brought to our notice Circular, dated 17th August, 2009 issued by the Indian Banks' Association, on the subject of implementation of the judgment of this Court in K. Mohandas and others (supra). The Circular provides as under:

"Since the judgment of the Hon'ble Court is on interpretation of the provision of the Pension Regulations, we are of the view that the judgement will be applicable to all the similarly placed VRS 2000 optees who are pensioners and the benefit of Regulation 29(5) will have to be

extended to them also. We understand that various High Courts have passed judgement on the same lines after the Hon'ble Supreme Court has decided the issue. Therefore, it is suggested that the banks may extend the benefit of Regulation 29(5) of the Pension Regulations to the VRS optees of Voluntary Retirement Scheme 2000 who

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are pensioners, if considered appropriate after obtaining sanction at appropriate level and pay them pension hereafter accordingly. They also may be paid the arrears of pension based on the revised calculations from the date of retirement till date; thereby implementing the judgement of the Hon'ble Supreme Court."

In spite of the aforesaid Circular, the employees have still not been paid pension in accordance with the revised calculation and in accordance with the Regulation 29(5). The employees cannot be deprived of the interest as the litigation has been pending in this Court, at the instance of the Banks only. We, therefore, deem it appropriate to direct that difference in pension on recalculation shall be paid with interest at the rate of 9 per cent from the date of the judgment of the High Court till payment. It is made clear that all employees are entitled to receive their pension in terms of the Circular issued by the Indian Banks' Association and in terms of the present order.

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In view of the above, applications for impleadment and intervention are allowed.

The appeals are dismissed in the above terms. No costs.

.....,J.
(SURINDER SINGH NIJJAR)

.....,J.
(A.K. SIKRI)

NEW DELHI
FEBRUARY 13, 2014