

# Indian Banks' Association

## HR & Industrial Relations

No. CIR/HR & IR/KU/M1/1004

June 30, 2015

### Chief Executives of Member Banks which are parties to Bipartite Settlement dated 10.4.2002

Dear Sir,

**Special Leave Petition No.17054/2009 before the Hon'ble Supreme Court – Bank of Baroda vs. Mr. S.K.Kool (Ex-employee) – Supreme Court decision dated 11.12.2013 against the Bank – Review Petition (C) – No.2344/2014 & SLP No.11443/2014. Bank of Baroda vs. Girish Shukla before the Hon'ble Supreme Court of India**

One Shri S K Kool (since deceased) who was working as Clerk in Bank of Baroda was inflicted with the punishment of **“be removed from service with superannuation benefits i.e., Pension and/or Provident Fund and Gratuity as would be due otherwise under the rules or regulations prevailing at the relevant time and without disqualification from future employment” in terms of provision 6(b) of Bipartite Settlement dated 10.4.02.** based on the punishment inflicted, he was deprived of pension and leave encashment. He, therefore, raised an industrial dispute which was referred to the Industrial Tribunal by the Central Government for adjudication which decided in favour of the employee. Bank of Baroda filed a **Writ Petition** in the Allahabad High Court which was also dismissed. Thereafter, Bank of Baroda challenged the Award of the Tribunal as well as the Order of the High Court by filing a **Special Leave Petition (SLP)** before the Hon'ble Supreme Court. It was contended by Bank of Baroda that in view of **Regulation 22** of the Pension Regulations which provides that Resignation or Removal or Termination of an employee from the service of the Bank shall entail forfeiture of his entire past service and consequently shall not qualify for pensionary benefits. Since, the employee was removed from the service, he will not be eligible for pension and leave encashment.

The Hon'ble Supreme Court vide its Order dated 11.12.2013 observed that

“from a plain reading of the aforesaid Regulation, it is evident that removal of an employee shall entail forfeiture of his entire past service and consequently such an employee shall not qualify for pensionary benefits. If we accept this submission, no employee from service in any event would be entitled for pensionary benefits. But the fact of the matter is that the Bipartite Settlement provides for removal from service with pensionary benefits as would be due otherwise under the Rules or Regulations prevailing at the relevant time.” The consequence of this construction would be that the words quoted above shall become a dead letter. Such construction has to be avoided (page-9).

An employee who has rendered a minimum of ten years of service and fulfills other conditions only can qualify for pension in terms of Article 14 of the Regulation. Therefore, the expression “as would be due otherwise” would mean only such employees who are eligible and have put in minimum number of years of service to qualify for pension. However, such of the employees who are not eligible and have not put in required number

of years of qualifying service shall not be entitled to the superannuation benefit though removed from service in terms of Clause 6(b) of the Bipartite Settlement (page 10).

The Bipartite Settlement tends to provide a punishment which gives superannuation benefits otherwise due. The construction by the employer shall give nothing to the employees in any event. Will it not be a fraud Bipartite Settlement? Obviously it would be (page -11).

Hence, we are of the opinion that **such of the employees who are otherwise entitled to superannuation benefits under the Regulation if visited with the penalty of removal from service with superannuation benefits shall be entitled for those benefits and such of the employees though visited with the same penalty but are not eligible for superannuation benefits under the Regulation shall not be entitled to that”.**

In effect, the award staff employees in Nationalised Banks and Associate Bank of SBI. Who are ‘removed’ and ‘discharged’ from the service. In terms of Clause 6 (b) and (d) respectively. Of the Settlements dated 10.4.2002/27.5.2002 on “Disciplinary Action & Procedure. Therefor” will apparently be eligible for pension. If they have rendered requisite number of years of pensionable service, as per the above Judgement.

Based on the legal opinion obtained by the Bank, a Review Petition against the Order dated 11.12.2013 was filed by the Bank. In the meanwhile, another similar case pertaining to Mr. Girish Shukla, (SCA 9092/2008) before the High Court of Gujarat, Ahmedabad, the decision dated 15.4.2014 had been pronounced against the Bank based on the decision of Kool’s case. Bank filed SLP before the Supreme Court against the Order dated 15.4.14 so that, subsequently, this case also could be clubbed together with the review / reference petition filed in Koo’s case before the Hon’ble Supreme Court. Based at the request of Bank of Baroda to IBA to implead itself in the SLP. As the matter in dispute was having industry-wide ramifications and affecting all PSBs, the managing Committee at its meeting held on 30.5.2014, had acceded to the request of the Bank and IBA impleaded itself in the SLP. In the meanwhile, the Review Petition in the case of Mr. Kool came up for review before the Supreme Court on 12.11.2014 and the Review Petition was dismissed vide Order dated 12.11.2014. In the matter of Girish Shukla also, the Supreme Court has passed an Order dated 27.4.2015 as under:

**“In view of the decision of this Court dated 11.12.2013 in Bank of Baroda vs. S K Kool, (dead) through Lrs. & Anr. 2014 (2) SCC 715, we find no merit in these petitions which are accordingly dismissed”**

The matter was placed before the Managing Committee of IBA at its meeting held on 26.6.2015 for discussion. The Committee, after deliberation, suggested that banks which are parties to the Bipartite Settlement dated 10.4.2002/27.5.2002 may consider implementation of the above judgement of the Apex Court and IBA to initiate suitable amendments in Regulation 22 of the Bank Employees’ Pension Regulations, 1995 as far as workmen employees are concerned.

Member banks may please be guided accordingly.

Yours faithfully,  
**K Unnikrishnan**  
**Dy. Chief Executive**