

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 20TH DAY OF SEPTEMBER 2012

BEFORE

THE HON'BLE MR. JUSTICE SUBHASH B ADI

WRIT PETITION NOS.35355-35361/2010(S-R)

BETWEEN :

- 1 G CHANNARAMAKRISHNA
S/O GANGA REDDY, AGED ABOUT 57 YEARS
R/AT NO.83, OLD CHANNASANDRA ROAD.
DODDABANASAWADI
BANGALORE- 560 043
- 2 K S SRINIVASA S/O LATE RAMAIAH
AGED ABOUT 46 YEARS
RAT KAMASUMDRAM
PIN- 563 129 BANGARPET TALUK,
KOLAR DISTRICT.
- 3 P A JOS, S/O P ANTHONY
AGED ABOUT 62 YEARS
R/AT NO 375, 12TH CROSS
PILLIANNA GARDEN 3RD STAGE,
BANGALORE- 560 045
- 4 H N SURESHMOORTHY S/O LATE S KRISHNA MOORTHY
AGED ABOUT 57 YEARS
R/AT NO.63, 3RD CROSS
RMS LAYOUT, SANJAYNAGAR,
BANGALORE – 560 094
- 5 G SHIVA KUMAR S/O LATE M GOVINDRAJU
AGED ABOUT 46 YEARS
R/AT NO.24, ANJUMANE IST CROSS
PASHIM COUNTY
ABBIGERE, BANGALORE – 560 090

6 BARNARD FONSECA S/O LATE R D CRUZ
AGED ABOUT 62 YEARS
R/AT NO.2, RAGHAVAPPA GARDENS
COX TOWN, JEEVANAHALLI,
BANGALORE- 560 005

7 SMT CHANDRIKA W/O LATE G L MAJUNATH
AGED ABOUT 47 YEARS
R/AT NO.17/12, 9TH MAIN,
KALLAPPA BLOCK SRINAGAR,
BANGALORE- 560 050

...PETITIONERS

(BY SRI. SARAT CHANDRA BIJAI, ADV.,)

AND :

1 UNION OF INDIA
BY ITS SECRETARY
MINISTRY OF FINANCE
DEPARTMENT OF FINANCIAL SERVICES
BANKING DIVISIONA, JEEVANDEEP
BUILDING, PARLIAMENT STREET
NEW DELHI- 110 001

2 INDIAN BANK ASSOCIATION
REPRESENTED BY ITS CHAIRMAN/SECRETAY
HAVING ITS OFFICE AT
WORLD TRADE CENTRE COMLEX,
CENTRE I, 6TH FLOOR ,CUFFEE PARADE
MUMBAI - 400 005

3 CANARA BANK
A BODY CONSTITUTED UNDER THE
BANKING COMPANIES (ACQUISITION &
TRANSFER OF UNDERTAKING) ACT 1970
REPRESENTED BY ITS CHAIRMAN CUM
MANAGING DIRECTOR
HEAD OFFICE AT 112,
J C ROAD,
BANGALORE- 560 002

4 CENTRAL BANK OF INDIA

A BODY CONSTITUTED UNDER THE
BANKING COMPANIES (ACQUISITION &
TRANSFER OF UNDERTAKING ACT, 1970),
REPRESENTED BY ITS CHAIRMAN CUM
MANAGING DIRECTOR
CENTRAL OFFICE AT CHANDER MUKHI
NARIMAN POINT MUMBAI - 400 021

- 5 ALL INDIA BANK EMPLOYEES ASSOCIATION
REPRESENTED BY ITS SECRETARY
HAVING ITS OFFICE AT SINGAPORE PLAZA
3RD FLOOR 164, LINGHI CHETTY STREET
CHENNAI - 600 001
- 6 NATINOAL CONFEDERATION OF BANK EMPLOYEES
REPRESENTED BY ITS SECRETARY
HAVNIG ITS OFFICE AT C/O STATE BANK
OF INDIA, LOCAL HEAD OFFICE, 3RD FLOOR
BHADRALAL DAWAJA, AHMEDABAD- 380 001
- 7 BANK EMPLOYEES FEDERATION OF INDIA
REPRESENTED BY ITS SECRETARY
HAVNIG ITS OFFICE AT
NARESH PAUL CENTRE
563, RADHA BAZAR LANE, 1ST FLOOR
KOLKATA - 700 001
- 8 INDIAN NATIONAL BANK EMPLOYEES FEDERATION
REPRESENTED BY ITS SECRETARY
HAVNIG ITS OFFICE AT
C/O CENTRAL BANK OF IDNIA
1ST FLOOR BAJAJ BHAVAN
NARIMAN POINT, MUMBAI - 400 021
- 9 NATIONAL ORGANISATION OF BANK WORKERS
REPRESENTED BY ITS SECRETARY
HAVNIG ITS OFFICE AT
20/3A, (DS), PREM NAGAR,
JAIL ROAD, P.O.JANAKAPURI
NEW DELHI -110058
- 10 ALL INDIA BANK OFFICER CONDEDERATION

REPRESENTED BY ITS SECRETARY
HAVNIG ITS OFFICE AT
C/O STATE BANK BUILDING,
ST.MARKS ROAD,
BANGALORE – 560 001

- 11 ALL INDIA BANK OFFICERS ASSOCIATION
REPRESENTED BY ITS SECRETARY
HAVNIG ITS OFFICE AT
A.K.NAYAK BHAVAN 14, 2ND LANE BEACH
CHENNAI - 600 001
- 12 INDIAN NATIONAL BANK OFFICERS CONGRESS
REPRESENTED BY ITS SECRETARY
HAVNIG ITS OFFICE AT
C/O BANK OF BARODA
3, WALCHAND HIRACHAND MARG,
BALLARD ESTATE,
MUMBAI - 400 001
- 13 NATIONAL ORGANISATION OF BANK OFFICERS
REPRESENTED BY ITS SECRETARY
HAVNIG ITS OFFICE AT
03, NAKSHATARA APARTMENTS
PLOT NO.22, SRIRAM SOCIETY WARJE
PUNE- 411 058

...RESPONDENTS

(BY SRI.ABHILASH RAJU A/W SRI. RAMDAS, SR.COUNSEL FOR M/S
SUNDARASWAMY & RAMDAS, ADVS., FOR R-2 & R-4; SRI.
T.P.MUTHANNA, ADV. FOR R-3; SRI. K.B.NARAYANASWAMY ADV. FOR
SRI. M.C.NARASHIMHAN ASSTS., ADVS., FOR R-5; SRI.
M.R.SHASHIDHARA, ADV., FOR R-12; R-1, R-6, R-7, R-8, R-9, R-10, R-11 &
R-13 SERVED)

THESE WRIT PETITIONS ARE FILED UNDER ARTICLES 226 & 227
OF THE CONSTITUTION ON INDIA, PRAYING TO QUASH AND SET ASIDE
THE MEMORANDUM OF SETTLEMENT AND JOINT NOTE AS REGARDS
TO PENSION OPTION, BOTH DATED 27.04.2010 i.e., AT ANNEXURES A
AND B, IN SO FAR AS IT RELATES TO THE CONDITION OF REQUIRING
THE PETITIONERS NO. 1, 2, 4 AND 5 TO BECOME PENSION OPTES BY
CONTRIBUTING 2.8 TIMES OF REVISED PAY PAYABLE FOR THE MONTH

OF NOVEMBER 2007 TO THE PENSION FUND, AND IN SO FAR AS IT RELATES TO CONTRIBUTION REFUND ADDITIONAL SUM OF 56% OF THE MANAGEMENT CONTRIBUTION TO PROVIDENT FUND IN RESPECT OF THE RETIREES LIKE PETITIONERS NO.3, 6 AND 7 FOR BECOMING PENSION OPTEEES BY DECLARING THE SAME AS BAD AND ILLEGAL UNDER THE LAW & ETC.,

THESE PETITIONS COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

In these writ petitions, the petitioners have sought for quashing of the joint note dated 27.4.2010 and the memorandum of settlement produced at Annexures-A and B insofar as it relates to condition of petitioner Nos.1, 2, 4 and 5 requiring the Bank employees to contribute 2.8 times of revised pay scale to become pension optees. Relating to contribution of fund additional of 56% of the Management contribution to the Provident Fund in respect of the retirees like petitioner Nos.3, 6 and 7 and for a mandamus directing respondent Nos.1 to 4 to implement the Canara Bank (Employees') Pension Regulations, 1995 and Central Bank of India (Employees') Pension Regulations, 1995, without insisting on any other condition other than stipulated in the said Pension Regulations.

2. The main grievance of the petitioners is that, under the Pension Regulations, there is no requirement for contribution of additional fund by the employees, who were in employment as on 29th September 1995 and continued as on the date of signing of the Memorandum of Settlement and Joint Note, to contribute 2.8 times of the revised pay scale to opt for pension in terms of the settlement and insofar as retirees are concerned, to contribute by refunding additional fund of 56% towards the Management contribution to the Provident Fund.

3. It is not in dispute that, there was a prolonged demonstrative resistance by the employees of different Banks demanding for pension on their retirement from the service. The Indian Banks Association, All India Bank Employees' Association, National Confederation of Bank Employees, Bank Employees' Federation of India, Indian National Bank Employees' Federation and National Organization of Bank Workers, entered into a settlement dated 27th April 2010.

4. It is also not in dispute that, the said Unions as well as the

Association of Indian Banks signed the Joint Note agreeing on certain terms for grant of pension to the Bank employees, who come within the terms and conditions of the said Joint Note. The Joint Note was made applicable to the employees working as on that day and retired employees, who also fulfilled the terms and conditions therein. However, to mobilize necessary fund for the purpose of granting the pension on retirement, both Unions as well as the Banks' Association agreed on certain terms, *interalia* agreeing to authorise the Trust of the Provident Fund of the Bank to transfer the entire contribution of the Bank along with interest accrued thereon to the credit of the Provident Fund in respect of employees, who were in service prior to 29th September 1995 in case of Nationalized Banks and 26th March 1996 in case of Associate Banks of the State Bank of India and who continued to be in service of the Bank on the date of settlement in order to make 30% of the estimated contribution to fill up the funding gap of Rs.6,000 crores needed for the purpose of disbursing the pension.

5. In case of Bank employees, who were in service prior to 29.9.1995 in case of Nationalized Bank and 26.3.1996 in case of

Associate Banks of State Bank of India required to refund within 30 days after the expiry of the said period of 60 days, the entire amount of banks contribution to the Provident Fund and interest accrued thereon received by the employees on retirement together with their share in contribution towards meeting 30% of contribution i.e., Rs.3115 crores which is estimated and reckoned as the funding gap for those eligible under Clause 2(ii), (iii) and (iv) of the said agreement. On an individual basis, the payment over and above the bank's contribution to Provident Fund and interest thereon was worked out at 56% as additional fund of bank's contribution to the Provident Fund and interest thereon received by the employees on retirement.

6. Similarly, in case of family pension also, they were required to comply with the terms as agreed. Having regard to the settlement, share of contribution from the employee was estimated at 30% funding gap.

7. It is not in dispute that, this settlement is signed by all the Unions referred to above and also by the Association of Indian Banks.

It is not in dispute that, the petitioners before this Court viz., petitioners-1 to 6 and husband of petitioner No.7 were all members of the Union, which is signatory to the Joint Note and settlement. Amongst these petitioners, petitioner Nos.1, 2, 4 and 5 are still in service and petitioner Nos.3 and 6 are retired. Petitioner No.7 is widow of the bank employee, who died while he was in service, the settlement arrived by the Union is binding upon them. Clause-13 of the Joint Note provide for the Association and the Union, who are parties to the said Joint Note, that during the operation of the Joint Note, they will not raise any demand of any nature whatsoever on any Bank in respect of the matters covered by the Joint Note. Clause 14 of the Joint Note provides for resolving the dispute, in case of any difference of opinion regarding interpretation of any of the provisions of the Joint Note, in such event, the matter will be taken up only at the level of the Indian Banks' Association and the Officers' Association for discussion.

8. Admittedly, this agreement entered into between the Banks on one hand the Union on another hand, being an agreement between two parties, does not permit this Court to alter the terms and conditions of

the agreement. Parties having solemnly undertaken and agreed on certain terms, the parties to such agreement are bound by such terms, as such, the writ petition asking to quash certain terms of the agreement is not maintainable.

9. Apart from this, Sri.Ramdas, learned Senior Counsel for the Indian Banks' Association and the Central Bank of India pointed out even under the Central Bank of India (Employees') Pension Regulations 1995, it provides for as to how the fund to be generated for the purpose of disbursement of pension. Clause-3 of the said Regulations does provide for refund of entire Bank's contribution made towards the Provident Fund and interest accrued thereon together with a further simple interest @ 6% per annum on the said amount from the date of settlement of the Provident Fund account till the date of refund of the aforesaid amount to the Bank.

10. Clause-7 – Composition of the Fund includes

- (i) *the contribution by the Bank at the rate of 10% per month of the pay of the employees, who are in service;*
- (ii) *the accumulated contributions of the Bank to the*

Provident Fund and interest accrued thereon upto the date of such transfer in respect of the employees;

- (iii) *the amount consisting of contributions of the Bank along with interest refunded by the employees who had retired before the notified date but who opt for pension in accordance with the provisions contained in the Regulations.*

11. He also referred to Clause-11 where actuarial investigation of the fund was made by an Actuary into the financial condition of the Fund for every financial year, on the 31st day of March, and to make such additional annual contributions to the Fund as may be required to secure payment of the benefits under the Pension Regulations.

12. He also submitted that, both in Pension Regulations as well as in the Joint Note and the Settlement, the composition of fund for providing pension has been fixed and it is agreed by both the Union as well as the Indian Bank Association. In this regard, he also relied on Ex.R1 produced along with statement of objections wherein the Union had agreed to abide by the conditions as regard to the financial implications. Having regard to these circumstances, he submitted that, there is absolutely no justification even otherwise to claim that the

petitioners are not liable to contribute to opt for pension under the Regulations. He also submitted that, under the Pension Regulations as well as under the Joint Note and Settlement, the contribution as agreed has to be made and without such compliance, one will not be admitted for pension under the Pension Regulations 1995.

13. Sri.T.P.Muttanna, learned Counsel for Canara Bank also adopted the arguments of the learned Senior Counsel and further submitted that, similar undertakings were given by the employees individually while opting pension. Hence, submitted that, there is no reason for the petitioners to question the settlement individually.

14. Admittedly, it is a Joint Note entered into between the Indian Banks' Association and the Employees' Unions for which the petitioner Nos.1 to 6 and husband of petitioner No.7 were members. The said settlement and the Joint Note are binding on them. These financial implications were sorted out on a prolonged deliberate discussions for several years and thereafter, the settlement has been arrived, which has been accepted and it is agreed as to how to arrange the funding gap, as

it involves large financial implications running to several crores. Bank has also agreed to contribute large sum of amount and employees have given consent for contributing their portion of contribution to enable each of the employees, who are the members of the Union, who have opted for pension to have the benefit of the Pension Scheme.

15. In my opinion, first of all, the writ petition itself is not maintainable. Even otherwise also, looking at the scheme, which is more beneficial for the employees and has been entered into by the Union, same cannot be interfered at the instance of few employees. Hence, I find no grounds to interfere with the impugned agreement.

Accordingly, these writ petitions fail and are dismissed.

**Sd/-
JUDGE**

KNM/-