Note on why should Bank pay benefit, under Regulation 29(5) of State Bank of Mysore Pension Regulations, 1995 to all those eligible retirees under SBMVRS 2001 & Exit Policy and Pension based on last 10 months' average 'Pay' in respect of those who retired during the period from 1.4.1998 to 31.10.2002 :

Background :

50% 'Pay' issue : Wage Agreement/Memorandum of Understanding signed on 27.03.2000/30.03.2000 IBA and Unions/Associations were signed. Clause 16 of 7th BPS is relating to issue of 'Pension', wherein it is agreed that the pension is calculated on aggregate of 'Pay' and DA thereon calculated at 1616 of CPI points. This is applicable to those who retired during the period from 1.4.1998 to 31.10.2002. This clause of the Agreement is subject to necessary amendments to be made to the relevant provisions of Bank (Employees') Pension Regulations, 1995. The 7th BPS is implemented in the Bank, but the State Bank of Mysore Pension Regulations, 1995 have not been amended so far. Therefore, some of the retirees filed Writ Petitions in Karnataka High Court. Two separate benches of Karnataka High Court have allowed prayers and has ordered bank to pay benefits, as prayed for.

SBMVRS 5 Year issue : Bank introduced SBMVRS vide SC 121/2000-01 dated 27.01.2001, wherein it was clearly stated that 'Pension in terms of State Bank of Mysore Employees' Pension Regulations as on the relevant date (including commuted value of pension)' (vide Page 6 para 06 D) and relevant date is defined as 'The date on which employee ceases to be in service of the Bank as a consequence of the acceptance of the request for voluntary retirement under the scheme'. However, in Para 04 of SC 127/2000-01 dated 30.01.2001, it was clarified that 'in terms of clarification received from Govt of India, the benefit of increased qualifying service as provided under Regulation 29(5) of State Bank of Mysore Employees' Pension Regulations, 1995 will not be applicable to those who seek retirement under SBMVRS'. Thereafter, more than 1300 employees retired and relieved on 24/31.03.2001. However, the bank has not amended SBMEPR, 1995 till date. In the meantime, some of those who retired under SBMVRS filed WP in Karnataka High Court. Hon'ble Supreme Court, on 27.03.2009, ordered payment of benefit of increased qualifying service as provided under Regulation 29(5) of BEPR, 1995 in Civil Appeal 1942 of 2009 – Bank of India, IBA & others Vs Mr.K Mohandas & others. Subsequent Revision Petition filed is also dismissed. In the meantime, IBA, in its Circular No. CIR/HR&IR/76/L-43H/G2/20010/1134 of 17.08.2009, advised all Public Sector Banks, that judgment of Supreme Court is applicable to all similarly placed VRS optees and subsequently, various High Courts passed judgement on the same lines. It was also suggested to Banks to pay the benefit. However, our Bank took a stand that 'the facts relating to VRS are not similar/same as were considered by the Hon'ble Supreme Court. These aspects would be brought to the notice of the Karnataka High Court and a decision would be taken by the bank after conclusive pronouncement by the Court'. Two separate benches of Karnataka High Court has allowed prayers and has ordered bank to pay benefits, as prayed for. However, the Bank has preferred an appeal before Division Bench of Karnataka High Court.

Why pensioners are entitled to receive these benefits ?

a. There is no clause in SBM Employees' Pension Regulations, which bestows right on the Bank to take away any benefit, available in Pension Regulations ;

b. SBMVRS is a Special Scheme and there is a contract. Any such scheme/contract should be in tune with Statute, but not vice versa ;

c. The Bank is trying to assert its right to deny benefits which are available under SBM Employees' Pension Regulations, without amending the Pension Regulations ;

d. Clause relating to definition of 'Pay' in relation to payment of Pension in Understanding/Settlement dated 27.03.2000/30.03.2000 is qualified by a condition which stipulates amendment to Pension Regulations. Application of this clause for defining 'Pay' in relation to payment of Pension should not be made effective in parts and Pension Regulations have not yet been amended

e. An administrative order cannot snatch away rights of Pensioners, which is available under Pension Regulations, which are statutory in nature.

f. Retrospective amendments snatching benefits vesting with retirees is violation meof Article 12 and 14 of the Constitution of India.

g. Different commutable Basic Pension amount for two persons with identical service and average pay is opposed to Article 14 of the Constitution of India.

50% 'Pay' issue : Wage Agreement/Memorandum of Understanding signed on 27.03.2000/30.03.2000 IBA and Unions/Associations were signed. The Bank believes that it is clearly agreed and informed that the 'Pay' for the purpose of computing pension is aggregate of pre-revised pay and DA upto 1616 points of CPI. It is contended that the amendments to Pension Regulations are not required for implementing the terms of settlement by IBA & Unions/Associations as these elements are part of Agreement/MOU settled by IBA with Unions/Associations and necessary amendments are also proposed. The Bank also contends that 'Settlements prevail over regulations' based on Judgement of Supreme Court in L.I.C. v. D. J. Bahadur and AP High Court in Andhra Pradesh Diploma Engineers Association & Others Vs APSEB & Others.

However, the Bank has not taken note of last sentence of Para 16 of the Agreement dated 27.03.2000, (Annexure A) which unambiguously states that

> *'this shall be subject to the necessary amendments to be made to the relevant provisions of Bank (Employees') Pension Regulations, 1995'.*

This clause is a condition precedent for altering definition of 'Pay'. But, the relevant amendments to Pension Regulations have not been made till date. Having waived its right to amend Pension Regulations duly incorporating the clauses of Understandings/Settlements, the Bank is estopped from giving effect to the other part of clause 16 of Understanding/Settlement. Not amending or amending prospectively brings entire Clause 16 of Understanding/ Settlement, relating to pensions to nullity. Therefore, this situation does not come under sweep of principles laid down in Judgement of Supreme Court in L.I.C. v. D. J. Bahadur and

AP High Court in Andhra Pradesh Diploma Engineers Association & Others Vs APSEB & Others. The Judgment of Division Bench of Kerala High Court in Syndicate Bank v. Celine Thomas dated 08/08/2005 states that

> *'. . . nobody can agree by way of a settlement at the behest of an organisation taking away the benefit conferred on individuals by way of statutes or statutory rules and it cannot be varied to their disadvantage unless otherwise by amendment to the statute.'*

Further, Pension Regulations are statutory in nature and any terms of the Contract which is contrary to Pension Regulations hit Section 23 of Contract Act. Therefore, Pension has to be paid as per SBMEPR, 1995 as on date of retirement. This is upheld by Kerala High Court judgement in Mr.M C Ratnakaran Vs Canara Bank dated 31/08/2010. (Annexure B)

The division bench of Madras High Court has also ordered payment of pension based on 50% of average last ten months' pay drawn. With this three benches and One division bench of three High Courts have favoured retirees. There must be sufficient force in the law, facts and arguments of retirees.

However, 'Not amending' Pension regulations take away any claim of the Bank in this regard. Further, in Judgment of Supreme Court in The Chairman, Railway Board and Others Vs C.R. Rangadhamaiah and Others dated 25/7/1997 by five Judges bench(Annexure C), it is laid down that retrospective amendments cannot take away vested rights/benefits.

> *'. . . but a rule which seeks to reverse from an anterior date a benefit which has been granted or availed, e.g., promotion or pay scale, can be assailed as being violative of Articles 14 and 16 of the Constitution to the extent it operates retrospectively.'*
>
> . . . .
>
> *29. It has also been laid down by this Court that the reckonable emoluments which are the basis for computation of pension are to be taken on the basis of emoluments payable at the time of retirement. (See : Indian Ex-services League v. Union of India.).*

Therefore, it has been held that an amendment having retrospective operation which has the effect of taking away a benefit already available to the employee under the existing rule is arbitrary, by a retrospective amendment is discriminatory and violative of the rights guaranteed under Articles 14 and 16 of the Constitution.

It is also decided that the executive instructions can not amend or dilute statutory rules. Following lines are extracted from the said judgement :

> *'. . . . on the basis that the order dated March 22, 1976 is in the nature of executive instructions and on that basis the said order was struck down by the Tribunal for the reason that the executive*

instructions could not amend or dilute statutory rules. The said judgment of the Tribunal has become final'.

It is also pertinent to note that all Banks have considered 7th BPS for calculation of Commutation in respect of those who opted for pension as provided in the agreement/settlement dated 27.04.2010. This has also created an anomalous situation in which two persons with same basic, same date of retirement and same age have different commutable amount of pension.

5 Years issue : It is contended by the Bank that :

a. SBMVRS is a Special Scheme and Pension is a part of the benefit extended to those who opted to retire under the scheme. The Bank has right to alter any of the benefits, but duly informing the beneficiaries as to such alterations at the commencement of the operation of the scheme ;

b. It is further the contended by the Bank that having clarified as to non-availability of benefit under Regulation 29(5) at the commencement of the scheme and also allowed those who opted to retire to withdraw their applications, the retirees cannot claim the benefit now.

c. The basis for the Supreme Court Judgement in Bank of India Vs K Mohandas is not providing opportunity to withdraw application after coming to know that they are not entitled to benefit under Regulation 29(5). This inference of the bank is based on comments in Para 34, which states that 'But, by that time, ball had gone out of the hands of the employees; they had already made their offers which were irrevocable; it was not open to them to withdraw the offers as per specific condition incorporated in the scheme' and 'application once submitted cannot be withdrawn'. Having given opportunity to withdraw application after issue of clarification as to non-applicability of benefit under Regulation 29(5), those who retired under SBMVRS are not placed similarly with those retired under SVRS-2000 of Banks which are parties in Bank of India Vs K Mohandas. Therefore, judgement of Hon'ble Supreme Court in Bank of India Vs K Mohandas is not applicable to those who retired under SBMVRS – 2001.

d. Having given opportunity to withdraw application, those who retired under SBMVRS-2001 cannot claim benefit as available under Regulation 29(5).

State Bank of Mysore Employees' Pension Regulation, 1995 is statutory in nature. Therefore, the Bank's first ground is untenable as Bank does not have right to alter the benefits available in statutory regulations/rules, without amending the same, even if benefits available in such statutory rules/regulations form a part of any scheme/contract. It is stated in Para 22 of the Judgement (Bank of India Vs K Mohandas) that :

'22. On behalf of the banks, it was contended that 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 Judgment of Division Bench of Kerala High Court in Syndicate Bank v. Celine Thomas dated 08/08/2005 also say that :

'. . . nobody can agree by way of a settlement at the behest of an organisation taking away the benefit conferred on individuals by way of statutes or statutory rules and it cannot be varied to their disadvantage unless otherwise by amendment to the statute.'

But above stand of the Bank is in contrast to basis for the Judgement and the Bank has ignored another portions of the Judgment. Above contentions of the Bank, are demolished by the Supreme Court and the Court has considered this contention of the Bank and it is stated in Para 22 (iv) of Judgement,

'that during operation of VRS 2000, the concerned banks had brought out circulars to bring to the notice of the concerned employees the proposed amendment and, thus, the employees were aware of the proposed amendment of Pension Regulations and could have withdrawn their offer but in the absence of such withdrawal and after having accepted the benefits under VRS 2000, they are estopped under law from challenging the Scheme or claiming benefit of addition of five years of notional service in calculating the length of service for the purposes of pension'.

This is not disputed by the Respondent/Appellant Retirees. Respondent/Appellant Retirees did not base their arguments on these grounds. Umpteen reading of Judgment do not indicate that this is the reason for the conclusion. In 'Head Notes' of citation SCC 2009 (5) 313, this reason does not find a place.

n fact, other portions of the Judgment give a lot of reasons for the Bank to pay the benefit. These portions of the Judgment make position of the bank non-tenable.

Further, in Para 36, it is stated that

'The Special Scheme was, thus, oriented to lure the employees to go in for voluntary retirement. In this background, the consideration that was to pass between the parties assumes significance and a harmonious construction to the Scheme and Pension Regulations, therefore, has to be given'.

It is to be noted that the Pension Regulations have not been amended, so far and it was clarified that Regulation 29(5) is not applicable to those eligible retirees under

SBMVRS. Therefore, it is abundantly clear that both bank and optees had only Regulation 29 in mind as applicable regulation, when the scheme was introduced. The Pension Regulations have come into existence under Subsidiary Banks Act and consequently, the Bank does not have right to alter, tamper, modify or deny benefits as available under Pension Regulations, without amending the Pension Regulations. Mere clarification or administrative orders cannot alter the benefit that flows from the Pension Regulation.

The Government of India in Para 4.4 of its Speaking Order (vide their letter No. F. No. I 6/1/58/2008-IR dated 23.10.2009, consequent to Orders of Mumbai High Court date 27.4.2009) (Annexure D) has ordered that

> *'. . As regards the contention that the RBI can issue administrative orders to cover 'notional pay', it is stated that the Administrative Orders cannot override the Statutory Regulations and such Administrative Orders which violate provisions of the Statutory Regulations are unsustainable. The Administrative Orders or instructions cannot become a tool to circumvent the provisions of the Statutory Regulations. . . '.*

The Bank is a 'State' in terms of Article 12 of the Constitution of India and is bound to implement directives of Government in toto, both in letter and spirit. But, instead of amending Pension Regulations, as directed by Govt of India vide letter No. F.No.4/8/4/2000-IR dated 5th September, 2000, the Bank has chosen to go by a copy of a letter addressed to some other bank in a different context. All Public Sector Banks, other than Associate Banks, have amended Pension Regulations, which shows that Associate Banks have not followed Government guidelines. In this regard, in Para 35, Supreme Court has stated that

> *'. . the banks in the present batch of appeals are public sector banks and are 'State' within the meaning of Article 12 of the Constitution and their action even in contractual matters has to be reasonable, lest, as observed in O.P. Swarnakar, it must attract the wrath of Article 14 of the Constitution'.*

The Bank is asserting its right to deny or alter benefits as available in Pension Regulations, which is not tenable and illegal, as the Pension Regulations are statutory in nature and prescribed procedure needs to be followed. Since, the Bank has not even initiated any such process with regard to applicability or otherwise of Regulation 29(5), the stand of the bank does not pass touch stone of law.

The SBMVRS is a contract. It is a contract of Adhesion. Both Bank and Optee have to honour all applicable terms of contract in full, without exceptions. Mere administrative advice, which is not in accordance with statutory regulations, cannot alter terms of contract. Regarding benefits to optees, the Bank has in its 'Invitation to Offer', stated that Pension in terms of State Bank of Mysore Employees' Pension Regulations as on the relevant date (including commuted value of pension)' (vide Page 6 para 06 D) and relevant date is defined as 'The date on which employee ceases to be in service of the Bank as a consequence of the acceptance of the request for voluntary retirement under the scheme'. Now, the Bank has to honour all its commitments as 'offered' at the time of inception of the scheme and since

Pension Regulations have not been amended either retrospectively or otherwise, the Bank is bound to pay Pension according to State Bank of Mysore Employees' Pension Regulations, 1995 as on 31.03.2001, including the benefit as available under Regulation 29(5).

The Bank cannot even take a stand that SBMVRS is a Special Scheme and as such the Bank has right to alter the benefits including Pension, through 'Clarification Instructions'. However, Hon'ble Supreme Court in K Mohandas's case (supra), it is clearly considered whether VRS 2000 is different from Voluntary Retirement under Regulation 29 or not. It is stated that :

> *'22. The submissions on behalf of the banks may be summarised thus:*
>
> *(i) that Pension Regulations, 1995, as were existing during the operation of VRS 2000, did not cover the class of employees retiring under the Scheme which is contractual in nature. Regulation 28 came to be amended by insertion of proviso thereto to cover the employees retiring under the Scheme inasmuch as by the said amendment, the employees having completed 15 years of service or more became entitled to pension on pro-rata basis;*
>
> *(ii) that voluntary retirement under VRS 2000 cannot be compared or equated with voluntary retirement under Pension Regulations, 1995. VRS 2000 is completely different and distinct scheme from voluntary retirement contemplated under Regulation 29 of the Pension Regulations, 1995;*
>
> *(iii)*
>
> *(iv)*
>
> *(v) that Regulation 29 does not cover persons retiring under VRS 2000 which is de hors the statutory scheme for voluntary retirement'.*

Hon'ble Supreme Court has considered the contention of the Bank that SBMVRS is a special scheme and has right to alter the benefits as available under Pension Regulations or deemed to be altered. This contention has also been answered in K Mohandas's Case (Supra) in para 45, which is extracted hereunder :

> *'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, answer has to be in negative and that must answer this contention.'*

Since, SC 121/2000-01 dated 27.01.2001 (Circular introducing SBMVRS), wherein it was clearly stated that 'Pension in terms of State Bank of Mysore Employees' Pension Regulations as on the relevant date (including commuted value of pension)'

(vide Page 6 para 06 D) and in Para 04 of SC 127/2000-01 dated 30.01.2001, it was stated that 'in terms of clarification received from Govt of India, the benefit of increased qualifying service as provided under Regulation 29(5) of State Bank of Mysore Employees' Pension Regulations, 1995 will not be applicable to those who seek retirement under SBMVRS', there is no clarity under which regulations, pension is paid. There is no clarity as to regulation under which such clarification can alter benefits available under Pension Regulations. In any case, without amending Pension Regulations, only a part of one of the Regulations cannot be applied. Therefore, Para 32 of Supreme Court Judgement in K Mohandas's case (supra) is applicable which is as under :

> *32. The fundamental position is that it is the banks who were responsible for formulation of the terms in the contractual Scheme that the optees of voluntary retirement under that Scheme will be eligible to pension under Pension Regulations, 1995, and, therefore, they bear the risk of lack of clarity, if any. It is a well-known principle of construction of contract that if the terms applied by one party are unclear, an interpretation against that party is preferred. [Verba Chartarum Fortius Accipiuntur Contra Proferentum].*

Therefore, it is abundantly clear that the Judgement of Hon'ble Supreme Court has considered every ground relied upon by the Bank. The Bank therefore, cannot take a stand that SBMVRS-2001 does not come under the sweep of Judgement of Hon'ble Supreme Court in K Mohandas and others.

The Judgement of Hon'ble High Court of Karnataka in WP 34619/2003 has covered all these points, save the grounds not raised by the Bank.

16. Pension

In relation to an employee who retires or dies while in service on or after the 1st day of April, 1998 'Pay' for the purpose of Pension shall be the aggregate of the pay drawn by the member of the award staff in terms of the Sixth Bipartite Settlement dated 14th February, 1995 and the dearness allowance thereon calculated upto index number 1616 points in the All India Average Consumer Price Index for Industrial Workers in the series 1960 = 100. **This shall be subject to the necessary amendments to be made to the relevant provisions of Bank (Employees') Pension Regulations, 1995.**

IN THE HIGH COURT OF KERALA AT ERNAKULAM

OP.No. 37198 of 2001(C)

1. M.C.RATNAKARAN . . . Petitioner

Vs

1. CANARA BANK . . . Respondent

For Petitioner :SRI.P.NARAYANAN

For Respondent :SRI.M.C.SEN (SR.)

The Hon'ble MR. Justice S.SIRI JAGAN

Dated :31/08/2010

O R D E R

S. SIRI JAGAN, J.

O.P. No. 37198 OF 2010

Dated this the 31st day of August, 2010

J U D G E M E N T

The petitioner retired from service of the first respondent bank on 14.8.2001. However, he was not given pension and other retirement benefits calculated on the basis of the rules in force as on the date of his retirement namely, 14.8.2001. The petitioner submitted Ext.P1 application for such retirement benefits. In reply to the same, the petitioner was supplied with Ext.P2 proforma of an undertaking to be filled up and submitted by the petitioner, whereby the petitioner was to authorise the bank to release the provisional pension reckoning pre-revised pay till such time Canara Bank (Employees) Pensions Regulations 1995 are amended and also undertaking to refund or irrevocably authorise the bank to recover any excess amount paid on account of salary revision. The petitioner refused to submit such an undertaking in so far as, according to the petitioner, the petitioner is not liable to give such an undertaking and he is entitled to payment of pension calculated on the basis of the rules in force as on the date of his retirement without reference to any amendment proposed to be carried out to the rules in future, which is the reason for insisting on the undertaking. Since he did not submit the proforma undertaking, retirement benefits were not paid to the petitioner. It is under the above circumstances, the petitioner has filed this original petition seeking the following reliefs:

i. To issue a Writ of Mandamus commanding the respondents to immediately disburse to the petitioner all amounts of pension and commutation benefits etc. due to him with interest at 18% per annum from the date on which it is payable till the date of actual payment.

ii. To declare that the denial of pension and commutation benefits to the petitioner is violative of Articles 14, 16, 19 and 21 of the Constitution of India and therefore, void".

Subsequently, the petitioner got the original petition amended by filing I.A.No.8712/2003 adding one more prayer namely:

> "Declare that the petitioner is entitled to pensionary benefits as per the Pension regulations which were in force and prevailing on the date of his retirement i.e. On 14-08-2001"

2. A counter affidavit has been filed by the respondents taking the contention that during the negotiations with the trade unions and associations of officers of the bank for salary revision during 1999-2000, it was agreed that in relation to an officer employee who retires on or after the first day of April 1998 'pay' for the purpose of pension shall be aggregate of the pre-revised pay and the dearness allowance thereon calculated at 1616 points of the All India Average Consumer Price Index for industrial workers in the series 1960=100. Based on the said understanding between the management and the associations it was decided to make suitable amendments to the regulations applicable to the employees. Pending formal amendment of the regulations the service benefits including pension was to be disbursed on adhoc basis, for which purpose an undertaking as per Ext.P2 was also to be obtained from the ex-employee in order to facilitate recovery of any excess payments made to the ex-employee, if applicable as per the amended Pension Regulations. According to the respondents, it is in accordance with the said understanding that the petitioner was directed to submit a declaration in the form provided as per Ext.P2. But the petitioner refused to submit an undertaking in that form and consequently the retirement benefits were not paid to the petitioner.

Later on, the rules were formally amended on 30.11.2002 and thereafter in accordance with the amended regulations the retirement benefits due to the petitioner has been paid. The respondents would contend that the petitioner is not entitled to any benefits more than what has been so paid to him.

3. I have considered the rival contentions in detail. The petitioner now admits that the petitioner has received the retirement benefits paid to him in accordance with the regulations amended as per amendment on

30.11.2002. But he submits that he is entitled to the balance retirement benefits also calculated on the basis of the rules applicable as on the date of his retirement namely 14.8.2001. In support of his contention he relies on two decisions, one of this Court namely, Syndicate Bank v. Celine Thomas [2005 KHC 1841] and Chairman, Railway Board and others v. C.R. Rangadhamaiah and others [1997(6) SCC 623].

4. Admittedly as on the date of the retirement of the petitioner namely, 14.8.2001 the amended rules were only in contemplation. Rules were amended only on 30.11.2002. That amendment was not even made retrospective. I am of opinion that the understanding, if any, between the associations of officers and the bank cannot override the statutory regulations regarding retirement benefits due to the petitioner. In fact, it has been held so by the Division Bench in Celine Thomas's case (supra). Therein what was in question was whether a memorandum of understanding can be relied upon against the statutory rules. Considering that question in paragraph 7 of the judgment the Division Bench held thus:

> "7.Memorandum of Understanding cannot meddle with the statutory prescriptions. Nobody can agree by way of a settlement at the behest of an organisation taking away the benefit conferred on individuals by way of statutes or statutory rules. There need not have any authority to substantiate this. Statutory prescriptions crystallize the rights in favour of the subjects of that statute. It cannot be varied to their disadvantage unless otherwise by amendment to the statute. Of course, in the case of regulation governing the employees of the Syndicate Bank, the regulation has been amended as provided in the last proviso to Clause 46 quoted above. But, that amendment had been incorporated far later than the date of retirement of the petitioners in O.P.No.3502 of 2002 and no provision in the parent statute enabling retrospective amendment is brought to our notice. Therefore, such amendment can have only prospective effect affecting those who retired later than such amendment. But going by the works contained in that provision it cannot affect even such persons. So, that amendment will not adversely affect any of the statutory benefit entitled to the petitioners in O.P.No.3502 of 2000".

Here, also the bank is relying on an understanding between the officers associations and the bank which has absolutely no statutory force especially against statutory rules in force at the relevant time. In fact, the Supreme Court has in the decision in Rangadhamaiah's case (supra) went to the extent of holding that even a retrospective

amendment cannot take away the rights of an employee for retirement benefits in accordance with the rules in force as on the date of his retirement. The ratio of these decisions is squarely applicable to the case of the petitioner. As I have already stated, admittedly, on the date of his retirement, the rules, which the bank has applied for calculating the petitioner's retirement benefits, had not yet come into force at all. It was only in contemplation. The so called understanding between the officers and the bank does not have any statutory backing whatsoever and that understanding cannot be relied upon to deny the petitioner retirement benefits on the basis of statutory rules which were in force as on the date of the petitioner's retirement. Therefore, I have absolutely no hesitation to hold that the stand of the bank is totally unsustainable.

Accordingly, I declare that the petitioner is entitled to the balance retirement benefits also calculated on the basis of the rules in force as on the date of the petitioner's retirement, namely 14.8.2001, without taking into account the amendments made to the rules which came into force on 30.11.2002.

Consequently, there would be a direction to the respondents to pay to the petitioner the arrears of retirement benefits due to him on the basis of the unamended rules as in force as on 14.8.2001 as expeditiously as possible, at any rate, within two months from the date of receipt of a copy of this judgment.

The writ petition is allowed as above.

S. SIRI JAGAN,
JUDGE

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Equivalent citations: AIR 1997 SC 3828, JT 1997 (7) SC 180, 1997 (5) SCALE 209

SUPREME COURT OF INDIA

Bench:

J.S. VERMA CJ,
M PUNCHHI,
S AGRAWAL,
A ANAND,
S BHARUCHA.

Chairman, Railway Board And Others
vs
C.R. Rangadhamaiah And Others

on 25/7/1997

ORDER

S.C. Agarwal, J.

1. These appeals and special leave petitions filed by the Union of India and the Railway Administration involve the question regarding validity of the Notifications Nos. G.S.R. 1143(E) and G.S.R. 1144(E), dated December 5,1988 issued in exercise of the power conferred on the President of India under the Proviso to Article 309 of the Constitution whereby Rule 2544 of the Indian Railway Establishment Code, Volume II (Fifth Reprint) has been amended with retrospective effect. By Notification No. G.S.R. 1143(E) the said rule was amended with effect from January 1, 1973 and by Notification No. G.S.R. 1144(E) the amendment was made with effect from April 1, 1979.

2. In Railways there are certain employees such as Drivers, Guards, Shunters, etc., who are connected with the movement of trains and are categorised as "running staff". In addition to the pay the running staff are entitled to payment of Running Allowance. Under the relevant rules computation of pension after retirement is made on the basis of average emoluments and a part of the Running Allowance is included in average emoluments. Provision in this regard is contained in Clause (g) of Rule 2544 of the Indian Railway Establishment Code. Prior to its amendment by the impugned notifications Rule 2544 provided as follows: -

Rule 2544 (C.S.R. 486) - Emoluments and Average Emoluments: The term "Emoluments", used in these Rules, means the emoluments which the Officer was receiving immediately before the retirement and includes:

(a) pay other than that drawn in tenure post;

(b) Personal allowance, which is granted (i) in lieu of loss of substantive pay in respect of a permanent post other than a tenure post, or (ii) with the specific sanction of the Government of India, for any other personal consideration.

Note : Personal pay granted in lieu of loss of substantive pay in respect of a permanent post other than a tenure post shall be treated as persona! allowance for the purpose of

this article. Personal pay granted on any other personal considerations shall not be treated as personal allowance unless otherwise directed by the President;

(c) fees or commission if they are the authorised emoluments of an appointment, and are in addition to pay. In this case "Emoluments" means the average earnings for the last six months of service;

(d) acting allowance of an Officer without a substantive appointment if the acting service counts under Rule 2409 (c.s.r. 371), and allowances drawn by an Officer appointed provisionally substantively or appointed substantively pro tempore or in an officiating capacity to an office which is substantively vacant and on which no Officer has a lien or to an Office temporarily vacant in consequence of the absence of the permanent incumbent on leave without allowances or on transfer to foreign service;

(e) deputation (duty) allowances; (f) duty allowances (special pay); and (g) (i) For the purpose of calculation of average emoluments: Actual amount of running allowances drawn by the Railway servant during the month limited to a maximum of 75% of the other emoluments reckoned in terms of (a) to (f) above.

(ii) For the purpose of gratuity and/or death-cum-retirement gratuity ; The monthly average of running allowance drawn during the three hundred and sixty five days of running duty immediately preceding the date of quitting service limited to 75% of the monthly average of the other emoluments reckoned in terms of items (a) to (f) above drawn during the same period.

Note : In the case of an Officer with a substantive appointment who officiates in another appointment or holds a temporary appointment, "Emoluments" means:

(a) the emoluments which would be taken into account" under this Rule in respect of the appointment in which he officiates or of the temporary appointments, as the case may be, or

(b) the emoluments which would have been taken into account under this Rule had he remained in this substantive appointment whichever are more favourable to him.

3. On the basis of the recommendations of the Third Pay Commission the pay scales of the staff in the Railways were revised by the Railway Services (Revised Pay) Rules, 1973 (hereinafter referred to as 'the 1973 Rules') notified vide notification dated December 7, 1973 which came into force on January 1, 1973. With regard to provisional payment of certain allowances in conjunction with pay fixed under the 1973 Rules, the Railway Board by their letter dated January 21, 1974 intimated that the question of revision of rules for regularisation of various allowances consequent upon the introduction of the revised pay-scales under the 1973 Rules was under the consideration of the Board and pending final decision thereon, the Board had decided as under

(i) Treatment of Running Allowance for various purposes in case of Running Staff. The existing quantum of Running Allowance based on the prevailing percentages laid down for various purposes with reference to the pay of the Running Staff in Authorised Scales of pay may be allowed to continue.

4. Through letter of the Railway Board dated March 22, 1976 it was intimated:

1. The question of revision of rules regarding treatment of Running Allowance as pay for certain purposes consequent upon the introduction of revised pay scales under Railway Services (Revised Pay) Rules, 1973 has been under consideration of this Ministry. It has now been decided that the existing rules in this respect may be modified as follows in the case of Running Staff drawing pay in revised pay scales:

(i) Pay for the purpose of passes and PTOs shall be pay plus 40% of pay.

(ii) Pay for the purpose of Leave Salary, Medical attendance and treatment, Educational Assistance and retirement benefits shall be pay plus actual amount of running allowance drawn subject to a maximum of 45% of pay.

(iii) Pay for the purpose of fixation of pay in stationery posts, Compensatory (City) Allowances, House Rent Allowance and rent for Railway quarters shall be pay plus 30% of pay.

2. These orders take effect from 1-4-1976.

3. The payments already allowed on provisional basis in terms of para 2 of Railway Ministry's letter No. PCIII/73/RA, dated 21-1-1974 for the period from 1 -1 -1973 to 31-3-1976 shall be treated as final.

4. The above has the sanction of the President.

5. By letter of the Railway Board dated June 23, 1976 the direction contained in the letter dated March 22, 1976 was modified and it was intimated:

2. In partial modification of the orders contained therein, the Railway Ministry have decided, as a special case, that in the case of Running Staff retiring between 1-1-1973 to 31 -3-1976, pay for the purposes of retirement benefits only shall be pay in revised scales plus actual amount of running allowance drawn subject to a maximum of 45% of pay in revised pay scales.

3. The above has the sanction of the President.

6. By letter of the Railway Board dated July 17, 1981 the decisions taken on the recommendations of its Committee on Running Allowances were communicated. In the said letter it was stated:

3.23. Reckoning of Running Allowance as Pay.

(i) For the specified purposes for which running allowance is reckoned as Pay at present, 30% of the basic pay of the running staff concerned will be reckoned except as below:
(a) for the purpose of retirement benefits, 55% of basic pay will be taken into account. This provision will be made applicable retrospectively from 1-4-1979 so that those running staff who have already retired with effect from that date or afterwards will also have their retirement benefits re-calculated and re-settled.

(ii) x x x x

7. A Writ Petition (Writ Petition No. 915 of 1978) titled Dev Dutt Sharma v. Union of India, was filed in the Delhi High Court by employees who had been working as railway guards. Some of them had retired from service while some had filed the Writ Petition in a representative capacity through the General Secretary of All India Guards Council. In the said Writ Petition the petitioners challenged the validity of the order of the Railway Board as contained in the letter dated March 22, 1976 whereby the quantum of percentage of the Running Allowance for the purpose of retirement and other benefits was reduced from 75% as prescribed in Rule 2544 to 45% with effect from January 1, 1973. After the Constitution of the Central Administrative Tribunal under the Administrative Tribunals Act, 1985, the said Writ Petition was transferred to the Principal Bench of the Central Administrative Tribunal (hereinafter referred to as 'the Tribunal') and was registered as No. T-310 of 1985. The said petition was allowed by the Tribunal by judgment dated August 6, 1986 and the order of the Railway Board dated March 22, 1976 was quashed on the ground that under the Indian Railway Establishment Code which contains the statutory rules framed by the President under Article 309 of the Constitution Running Allowance up to a maximum of 75% of the pay has to be taken into account for the purpose of calculating pecuniary benefits and other entitlements and that the said right under the statutory rules could not be taken away by order dated March 22, 1976 which was a mere executive instruction and the fact that it was issued with the sanction and approval of the President did not give it a character of a statutory rule. It was held that the said executive instruction cannot be accepted to be a statutory amendment of the existing rules governing the Running Allowance.

8. No steps were taken by the Railway Administration to challenge the correctness of the said judgment of the Tribunal and it has become final. After the said decision of the Tribunal, the impugned notifications were issued on December 5, 1988. Notification No. G.S.R. 1143 (E) is as follows:

G.S.R. 1143(E):-In exercise of the powers conferred by the proviso to Article 309 of the Constitution, the President is pleased to amend Rule 2544 of Indian Railway Establishment Code, Volume II (Fifth Reprint) as in the Annexure.

This amendment will be effective from 1-1-1973.

ANNEXURE

Rule 2544

Sub-rule g(i) and g(ii) may be substituted by the following:

g(i) For the purpose of calculation of average emoluments :- actual amount of running allowance drawn by the Railway servant during the month limited to a maximum of 45% of pay, in the revised scales of pay.

g(ii) For the purpose of gratuity and/or death-cum-retirement gratuity :- the monthly average of running allowances drawn during the 365 days of running duty immediately preceding the date of quitting service limited to 45% of average pay drawn during the same period, in the revised scale of pay.

Notification No. G.S.R. 1144 (E) is as under:

G.S.R. 1144(E):-In exercise of the powers conferred by the proviso to Article 309 of the Constitution, the President is pleased to amend Rule 2544 of the Indian Railway Establishment Code, Volume II (Fifth reprint) as in the Annexure.

The amendment will be effective from 1-4-1979.

ANNEXURE

Rule 2544

Sub-rule g(i) and g(ii) may be substituted by the following:

g(i) For the purpose of calculation of average emoluments:- 55% of basic average pay, in the revised scales of pay, drawn during the period;

g(ii)For the purpose of gratuity and/or death-cum-retirement gratuity :- 55% of basic average pay, in the revised scales of pay, drawn during the period.

9. At the time when these notifications were issued O.A. No. K-269 of 1988 filed by K. S. Srinivasan and others was pending before the Ernakulam Bench of the Tribunal. After the issuance of the said notifications the petitioners in the matter amended the petition to assail the validity of the said notifications insofar as they were given retrospective effect with effect from January 1, 1973 and April 1, 1979 respectively. O.A. No. K-269 of 1988 was allowed by the Ernakulam Bench of the Tribunal by judgment dated April 2, 1990 and the impugned notifications were quashed to the extent the amendments in Rule 2544 were given retrospective effect on the view that **the said amendments in the rule insofar as the same were given retrospective effect were unjust, unreasonable and were violative of Article 14 of the Constitution.** A Review Application filed by the Union of India against the said judgment of the Ernakulam Bench of the Tribunal was dismissed by order dated July 25, 1990. Special Leave Petition No. 10373 of 1990 has been filed by the Union of India against the said judgment of the Ernakulam Bench of the Tribunal.

10. It appears that the Principal Bench of the Tribunal by its judgment dated October 23, 1991 in O.A. No.1572 of 1988 filed by C. L. Malik and others, took a contrary view on the question of validity of the impugned notifications and held that the vested rights of the employees were not affected by the amendment of the rules on the ground that total amount of pension and retirement benefits they would have received before the amendment were not reduced by the amended rules. It seems that the earlier decision of the Ernakulam Bench of the Tribunal in O.A. No. K-269 of 1988 was not brought to the notice of the Bench which decided O.A. No. 1572 of 1988. The said decision of the Principal Bench of the Tribunal was followed by the Ahmedabad Bench of the Tribunal in judgment dated February 28, 1992 in O.A. Nos. 351-423 of 1988. The Ahmedabad Bench of the Tribunal also did not notice the earlier judgment of the Ernakulam Bench of the Tribunal. In view of the conflicting decisions of various Benches of the Tribunal the matter was referred to the Full Bench of the Tribunal. In its judgment dated December 16, 1993 in C. R. Rangadhamaiah v. Chairman, Railway Board and other connected matters, the Full Bench, agreeing with the view of the Ernakulam Bench of the Tribunal, has held:

(1) Under the Proviso to Article 309 of the Constitution, the President has power to promulgate rules with retrospective effect. This, however, is subject to the condition

that the rules do not offend any of the fundamental rights conferred by Part III of the Constitution.

(2) Pension is a valuable right which a Government servant earns. It is neither charity nor bounty. Government servant acquires right to pension and other retirement benefits on the date he retires from service. Deprivation of such a valuable vested right after retirement is manifestly unreasonable, arbitrary and, therefore, violative of Article 14 of the Constitution.

(3) By the revision of the pay scales the pay scales of the members of the running staff were enhanced with effect from January 1, 1973. Under Rule 2544 the members of the running staff are entitled to computation of their pay and. retirement benefits by taking into account the Running Allowance which they have been receiving subject to a maximum of 75% of the pay and other allowances.

(4) By notifications dated December 5, 1988, Rule 2544 was amended prescribing the maximum at 45% from January 1, 1973 to April 1, 1979 and 55% from April 1, 1979 onwards. Those who retired from January 1, 1973 to December 4, 1988 were, in accordance with Rule 2544, as it then stood, entitled to take into account Running Allowance in the matter of computation of pension and retirement benefits up to the maximum of 75% of their pay and other allowances. As their pay was revised with effect from January 1, 1973 the limit of 75% had to be worked out with reference to the enhanced pay and other allowances that they became entitled to receive in accordance with the 1973 Rules which came into effect from January 1, 1973.

(5) When the maximum was reduced from 75% to 45% up to April 1, 1979 or at the rate of 55% from April 1, 1979, the vested rights of all those who retired between January 1, 1973 and December 4, 1988 in the matter of receiving pension and retirement benefits were adversely affected.

(6) Persons who retired between January 1, 1973 and December 4, 1988 had earned a right to computation of pension in accordance with the statutory rules then in force. As by the time they retired, revision of pay had come into force, it is the revised pay and the Running Allowance subject to a maximum of 75% of the revised pay and allowances that was required to be taken into account
.
(7) This right which accrued in their favour on their retirement between January 1, 1973 and December 4, 1988 was sought to be affected by amending the rules on December 5, 1988 with retrospective effect reducing the maximum limit of running allowance that qualifies for pension.

(8) The Ernakulam Bench had rightly declared that the amended provisions to the extent they have been given retrospective effect as void as offending Article 14 of the Constitution.

11. On the basis of the said decision of the Full Bench of the Tribunal, other Benches of the Tribunal at Bangalore, Hyderabad, Allahabad, Jabalpur, Jaipur, Madras and Ernakulam have passed orders giving relief on the same grounds. These appeals and special leave petitions have been filed against the decision of the Full Bench and those other Benches of the Tribunal. Some of these matters were placed before a Bench of three learned Judges of the Court on March 28, 1995 on which date the following order was passed

'Two questions arise in the present case, viz., (i) what is the concept of vested or accrued rights so far as the Government servant is concerned, and (ii) whether vested or accrued rights can be taken away with retrospective effect by rules made under the proviso to Article 309 or by an Act made under that Article, and which of them and to what extent'.

We find that the Constitution Bench decisions in Roshan Lal Tandon v. Union of India ; B.S. Vadera v. Union of India and State of Gujarat v. Raman Lal Keshav Lal Soni , have been sought to be explained by two three Judges Bench decision in Ex-Capt. K.C. Arora v. State of Haryana and K. Negaraj v. State of Andhra Pradesh in addition to the two-Judges Bench decision in P.D. Aggarwal v. State of U. P. and K. Narayan v. State of Karnataka , prima facie, these explanations go counter to the ratio of the said Constitution Bench decisions. It is not possible for us sitting as three-Judges Bench to resolve the said conflict. It has, therefore, become necessary to refer the matter to a larger Bench. We accordingly refer these appeals to a Bench of five learned Judges. This is how these matters have come up before this Bench.

12. Shri K. N. Bhat, the learned Additional Solicitor General, has, in the first place, urged that the orders dated March 22, 1976 and June 23, 1976 were not in the nature of executive instructions, but were statutory rules made by the Railway Board in the exercise of its power under Rule 157 of the Indian Railway Establishment Code and had the effect of amending Rule 2544. This plea has been raised on behalf of the Union of India for the first time in this Court. It was not put forward before the Tribunal in No. T-310 of 1985 and the judgment of the Tribunal dated August 6, 1976 in the said case proceeds on the basis that the order dated March 22, 1976 is in the nature of executive instructions and on that basis the said order was struck down by the Tribunal for the reason that the executive instructions could not amend or dilute statutory rules. The said judgment of the Tribunal has become final. This plea was also not raised before the Full Bench of the Tribunal. The question whether the Railway Board, while issuing the orders dated March 22, 1976 and June 23, 1976, was exercising its power under Rule 157 of the Indian Railway Establishment Code, is not a pure question of law. It cannot be decided in the absence of relevant facts. Moreover, the impugned notifications dated December 5, 1988, whereby Rule 2544 has been amended, proceed on the basis that the orders dated March 22, 1976 and June 23, 1976 were in the nature of executive instructions. The following Explanation is appended below

Notification G.S.R. 1143 (E) wherein it has been clearly stated:

Explanation:

The Rule 2544 of the Indian Railway Establishment Code, Volume II (Fifth reprint) has been modified through administrative instructions issued with the President's approval effective from 1-1-73. These instructions were necessitated by the introduction of the revised scales of pay recommended by the Third Central Pay Commission. The purpose of this amendment is to give statutory force to the administrative instructions with effect from the same date on which the instructions were issued.

(Emphasis supplied)

13. Similar Explanation is appended below Notification G.S.R. 1144 (E). In view of the said statement in the Explanation appended below the impugned notifications to the

effect that Rule 2544 had earlier been modified by administrative instructions and that the purpose of the amendments is to give statutory force to the administrative instructions the contention urged by the learned Additional Solicitor General that the orders dated March 22, 1976 and June 23, 1976 were statutory rules cannot be entertained.

14. The question which, therefore, needs to be examined is whether the amendments made in Rule 2544 by the impugned notifications, to the extent they have been given effect from January 1, 1973 and April 1, 1979, can be treated as a valid exercise of the power to make rules under the Proviso to Article 309 of the Constitution.

15. On the basis of the decision of the Constitution Bench in Roshan Lal Tandon v. Union of India, the learned Additional Solicitor General has submitted that the relationship between the Government and its servants is not like an ordinary contract of service between a master and servant, but is something in the nature of status. It is urged that once appointed to a post or office, the Government servant acquires a status and his rights and obligations are no longer determined by consent of both parties, but by statute or statutory rules which may be framed and altered unilaterally by Government and the Government servant has no vested right in regard to the terms of his service. The learned Additional Solicitor General has further submitted that the rules made in exercise of the power conferred on the President under the Proviso to Article 309 of the Constitution have the same effect as an act of the Legislature and that such rules can be made to operate prospectively as well as retrospectively. In support of the said submission reliance has been placed on the decision of the Constitution Bench in B. S. Vadera v. Union of India . The submission is that since a Government servant has no vested right in the terms and conditions of his service and the said terms can be altered with retrospective effect by the rules made under the Proviso to Article 309, the retrospective operation of a rule cannot be assailed on the ground that it takes away a vested right of the Government servant.

16. It is no doubt true that once a person joins service under the Government the relationship between him and the Government is in the nature of status rather man contractual and the terms of his service while he is in employment are governed by statute or statutory rules, which may be unilaterally altered without the consent of the employees. It has been so held by this Court in Roshan Lal Tandon, (supra) and State of Jammu and Kashmir v. Triloki Nath Khosa . It may, however, be mentioned that in Roshan Lal Tandon (supra), the petitioner was invoking his rights under the contract of service and the said contention was rejected by the Court with the observations:

We are therefore of the opinion that the petitioner has no vested contractual right in regard to the terms of his service ,and that the counsel for the petitioner has been unable to make good his submission on this aspect of the case. (p. 196)

17. In B. S. Vadera (AIR 1969 SC 118) (supra), it has been held that the rules under the Proviso to Article 309 have effect subject to the provisions of the Act made by the appropriate legislature under the main part of Article 309, if the appropriate legislature has passed an Act under Article 309 and in the absence of any Act of the appropriate legislature on the matter the rules made under the Proviso to Article 309 are to have full effect both prospectively and retrospectively. Since the power of the appropriate legislature to enact a law under Article 309 has to be exercised subject to the provisions of the Constitution, the power to make rules under the Proviso to Article 309

has to be exercised subject to the provisions of the Constitution. The Court has, therefore, said:

Apart from the limitations, pointed out above, there is none other, imposed by the proviso to Article 309, regarding the ambit of the operation of such rules. In other words, the rules, unless they can be impeached on grounds such as breach of Part III, or any other constitutional provision, must be enforced, if made by the appropriate authority. (p. 585) (of (1968) 3 SCR 575): (at p. 124 of AIR).

18. This means that even though the President, in exercise of his power under the Proviso to Article 309, can make rules which may have prospective or retrospective operation, the said rules may be open to challenge on the ground of violation of the provisions of the Constitution, including the Fundamental Rights contained in Part III of the Constitution.

19. In Triloki Nath Khosa (AIR 1974 SC 1) (supra), rules had been framed altering the criterion of eligibility for promotion from the post of Assistant Engineer to the post of Executive Engineer and the same were challenged on the ground of retrospectivity by the Assistant Engineers who were in service on the date of making of these rules. Rejecting the said contention, this Court said:

It is wrong to characterise the operation of a service rule as retrospective for the reason that it applies to existing employees. A rule which classifies such employees for promotional purposes, undoubtedly operates on those who entered service before the framing of the rule but it operates in future, in the sense that it governs the future right of promotion of those who are already in service. The judgment rules do not recall a promotion already made or reduce a pay scale already granted. They provide for a classification by prescribing a qualitative standard, the measure of that standard being educational attainment. Whether a classification founded on such a consideration suffers from a discriminatory vice is another matter which we will presently consider but surely, the rule cannot first be assumed to be retrospective and then be struck down for the reason that it violates the guarantee of equal opportunity by extending its arms over the past. If rules governing conditions of service cannot ever operate to the prejudice of those who are already in service, the age of superannuation should have remained immutable and schemes of compulsory retirement in public interest ought to have foundered on the rock of retrospectivity. But such is not the implication of service rules nor is it their true description to say that because they affect existing employees they are retrospective.

20. It can, therefore, be said that a rule which operates in future so as to govern future rights of those already in service cannot be assailed on the ground of retrospectivity as being violative of Articles 14 and 16 of the Constitution, but a rule which seeks to reverse from an anterior date a benefit which has been granted or availed, e.g., promotion or pay scale, can be assailed as being violative of Articles 14 and 16 of the Constitution to the extent it operates retrospectively.

21. In B. S. Yadav v. State of Punjab , a Constitution Bench of this Court, while holding that the power exercised by the Governor under the Proviso to Article 309 partakes the characteristics of the legislative, not executive, power and it is open to him to give retrospective operation to the rules made under that provision, has said that when the retrospective effect extends over a long period, the date from which the rules are made to operate must be shown to bear, either from the face of the rules or by extrinsic

evidence, reasonable nexus with the provisions contained in the rules (p. 1068 of SCR) : (at pp. 585 and 586 of AIR).

22. In State of Gujarat v. Raman Lal Keshav Lal Soni , decided by a Constitution Bench of the Court, the question was whether the status of ex-ministerial employees who had been allocated to the Panchayat service as Secretaries, Officers and servants of Gram and Nagar Panchayats under the Gujarat Panchayat Act, 1961 as Government servants could be extinguished by making retrospective amendment of the said Act in 1978. Striking down the said amendment on the ground that it offended Articles 311 and 14 of the Constitution, this Court said:

The legislature is undoubtedly competent to legislate with retrospective effect to take away or impair any vested right acquired under existing laws but since the laws are made under a written Constitution, and have to conform to the do's and don'ts of the Constitution neither prospective nor retrospective laws can be made so as to contravene Fundamental Rights. The law must satisfy the requirements of the Constitution today taking into account the accrued or acquired rights of the parties today. The law cannot say, twenty years ago the parties had no rights, therefore, the requirements of the Constitution will be satisfied if the law is dated back by twenty years. We are concerned with today's rights and not yesterday's. The legislature cannot legislate today with reference to a situation that obtained twenty years ago and ignore the march of events and the constitutional rights accrued in the course of the twenty years. That would be most arbitrary, unreasonable and a negation of history. (pp. 319-320) (of SCR): (at p. 177 of AIR).

23. The said decision in Raman Lal Keshav Lal Soni, AIR 1984 SC 161 (supra) of the Constitution Bench of this Court has been followed by various Division Benches of this Court. (See : Ex.-Capt. K. C. Arora v. State of Haryana ; T.R. Kapur v. State of Haryana ; P.D. Aggarwal v. State of U.P. ; K. Narayanan v. State of Karnataka ; Union of India v. Tushar Ranjan Mohanty ; and K. Ravindranath Pai v. State of Karnataka .

24. In many of these decisions the expressions "vested rights" or "accrued rights" have been used while striking down the impugned provisions which had been given retrospective operation so as to have an adverse effect in the matter of promotion, seniority, substantive appointment, etc. of the employees. The said expressions have been used in the context of a right flowing under the relevant rule which was sought to be altered with effect from an anterior date and thereby taking away the benefits available under the rule in force at that time. It has been held that such an amendment having retrospective operation which has the effect of taking away a benefit already available to the employee under the existing rule is arbitrary, discriminatory and violative of the rights guaranteed under Articles 14 and 16 of the Constitution. We are unable to hold that these decisions are not in consonance with the decisions in Roshan Lal Tandon (supra); B. S. Yadav (supra) and Raman Lal Keshav Lal Soni .(supra).

25. In these cases we are concerned with the pension payable to the employees after their retirement. The respondents were no longer in service on the date of issuance of the impugned notifications. The amendments in the rules are not restricted in their application in future. The amendments apply to employees who had already retired and were no longer in service on the date the impugned notifications were issued.

26. In Deokinandan Prasad v. State of Bihar , decided by a Constitution Bench it has been laid down:

Pension is not a bounty payable on the sweet will and pleasure of the Government and that, on the other hand, the right to pension is a valuable right vesting in a Government servant. (p. 152)

27. In that case the right to receive pension was treated as property under Articles 31(1) and 19(1)(f) of the Constitution.

28. In D. S. Nakara v. Union of India , this Court, after taking note of the decision in Deokinandan Prasad (supra), has said:

Pension to civil employees of the Government and the defence personnel as administered in India appear to be a compensation for service rendered in the past. However, as held in Douge v. Board of Education a pension is closely akin to wages in that it consists of payment provided by an employer, is paid in consideration of past service and serves the purpose of helping the recipient meet the expenses of living.

Thus the pension payable to a Government employee is earned by rendering long and efficient service and therefore can be said to be a deferred portion of the compensation or for service rendered. (p. 185) (of SCR):-(at pp. 137 and 138 of AIR).

29. **It has also been laid down by this Court that the reckonable emoluments which are the basis for computation of pension are to be taken on the basis of emoluments payable at the time of retirement. (See : Indian Ex-services League v. Union of India .**

30. Rule 2301 of the Indian Railway Establishment Code incorporates this principle. It lays down:

A pensionable railway servant's claim to pension is regulated by the rules in force at the time when he resigns or is discharged from the service of Government.

31. The respondents in these cases are employees who had retired after January I, 1973 and before December 5, 1988. As per Rule 2301 of the Indian Railway Establishment Code they are entitled to have their pension computed in accordance with Rule 2544 as it stood at the time of their retirement. At that time the said rule prescribed that Running Allowance limited to a maximum of 75% of the other emoluments should be taken into account for the purpose of calculation of average emoluments for computation of pension and other retiral benefits. The said right of the respondents- employees to have their pension computed on the basis of their average emoluments being thus calculated is being taken away by the amendments introduced in Rule 2544 by the impugned notifications dated December 5, 1988 inasmuch as the maximum limit has been reduced from 75% to 45% for the period from January 1, 1973 to March 31, 1979 and to 55% from April 1, 1979 onwards. As a result the amount of pension payable to the respondents in accordance with the rules which were in force at the time of their retirement has been reduced.

32. In Salabuddin Mohamed Yunus v. State of Andhra Pradesh , the appellant was employed in the service of the former Indian State of Hyderabad prior to coming into force of the Constitution of India. On coming into force of the Constitution the appellant continued in the service of that State till he retired from service on January 21,1956. The appellant claimed that he was entitled to be paid the salary of a High Court Judge

from October 1, 1947 and also claimed that he was entitled to receive pension of Rs. 1000/- a month in the Government of India currency, being the maximum pension admissible under the rules. The said claim of the appellant was negatived by the Government. He filed a Writ Petition in the High Court of Andhra Pradesh. During the pendency of the said Writ Petition relevant rule was amended by notification dated February 3, 1971 with retrospective effect from October 1, 1954 and the expression "Rs. 1000 a month" in Clause (b) of Sub-rule (1) of Rule 299 was substituted by the expression "Rs. 857.15 a month". This amendment was made in exercise of the power conferred by the Proviso to Article 309 read with Article 313 of the Constitution. The said amendment was struck down by this Court as invalid and inoperative on the ground that it was violative of Articles 31(1) and 19(1)(f) of the Constitution. Relying upon the decision in Deokinandan Prasad (AIR 1971 SC 1409) (supra), it was held:

The fundamental right, to receive pension according to the rules in force on the date of his retirement accrued to the appellant when he retired from service. By making a retrospective amendment to the said Rule 299(1)(b) more than fifteen years after that right had accrued to him, what was done was to take away the appellant's right to receive pension according to the rules in force at the date of his retirement or in any event to curtail and abridge that right. To that extent, the said amendment was void. (pp. 938-939) (of SCR): (at pp.1909 and 1910 of AIR).

33. It is no doubt true that on December 5, 1988 when the impugned notifications were issued, the rights guaranteed under Articles 31(1) and 19(1)(f) were not available since the said provisions in the Constitution stood omitted with effect from June 20, 1979 by virtue of the Constitution (Forty-fourth Amendment) Act, 1978. But the notifications G.S.R. 1143 (E) and G.S.R. 1144 (E) have been made operative with effect from January 1, 1973 and April 1, 1979 respectively on which dates the rights guaranteed under Articles 31(1) and 19(1)(f) were available. Both the notifications insofar as they have been given retrospective operation are, therefore, violative of the rights then guaranteed under Articles 19(1) and 31(1) of the Constitution.

34. Apart from being violative of the rights then available under Articles 31(1) and 19(1)(f), the impugned amendments, insofar as they-have been given retrospective operation, are also violative of the rights guaranteed under Articles 14 and 16 of the Constitution on the ground that they are unreasonable and arbitrary since the said amendments in Rule 2544 have the effect of reducing the amount of pension that had become payable to employees who had already retired from service on the date of issuance of the impugned notifications, as per the provisions contained in Rule 2544 that were in force at the time of their retirement.

35. The learned Additional Solicitor General has, however, submitted that the impugned amendments cannot be regarded as arbitrary for the reason that by the reduction of the maximum limit in respect of Running Allowance from 75% to 45% for the period January 1, 1973 to March 31, 1974 (1979) and to 55% from April 1, 1979 onwards, the total amount of pension payable to the employees has not been reduced. The submission of the learned Additional Solicitor General is that since the pay scales had been revised under the 1973 Rules with effect from January 1, 1973, the maximum limit of 45% or 55% of the Running Allowance will have to be calculated on the basis of the revised pay scales while earlier the maximum limit of 75% of Running Allowance was being calculated on the basis of unrevised pay scales and, therefore, it cannot be said that there has been any reduction in the amount of pension payable to the respondents as a result of the impugned amendments in Rule 2544 and it cannot

be said that their rights have been prejudicially affected in any manner. We are unable to agree. As indicated earlier, Rule 2301 of the Indian Railway Establishment Code prescribes in express terms that a pensionable railway servant's claim to pension is regulated by the rules in force at the time when he resigns or is discharged from the service of Government. The respondents who retired after January 1, 1973 but before December 5, 1988 were, therefore, entitled to have their pension computed on the basis of Rule 2544 as it stood on the date of their retirement. Under Rule 2544, as it stood prior to amendment by the impugned notifications, pension was required to be computed by taking into account the revised pay scales as per the 1973 Rules and the average emoluments were required to be calculated on the basis of the maximum limit of Running Allowance at 75% of the other emoluments, including the pay as per the revised pay scales under the 197.3 Rules. Merely because the respondents were not paid their pension on that basis in view of the orders of the Railway Board dated January 21, 1974, March 22, 1976 and June 23, 1976, would not mean that the pension payable to them was not required to be computed in accordance with Rule 2544 as it stood on the date of their retirement. Once it is held that pension payable to such employees had to be computed in accordance with Rule 2544 as it stood on the date of their retirement, it is obvious that as a result of the amendments which have been introduced in Rule 2544 by the impugned notifications dated December 5, 1988 the pension that would be payable would be less than the amount that would have been payable as per Rule 2544 as it stood on the date of retirement. The Full Bench of the Tribunal has, in our opinion, rightly taken the view that the amendments that were made in Rule 2544 by the impugned notifications dated December 5, 1988, to the extent the said amendments have been given retrospective effect so as to reduce the maximum limit from 75% to 45% in respect of the period from January 1, 1973 to March 31. 1979 and reduce it to 55% in respect of the period from April 1, 1979, are unreasonable and arbitrary and are violative of the rights guaranteed under Articles 14 and 16 of the Constitution.

36. For the reasons aforementioned, the appeals as well as special leave petitions filed by the Union of India. and Railway Administration are dismissed. But in the circumstances, there will be no order as to costs.

37. Special Leave Petitions Nos. 18721/1995, 4290-4307/1996, 18280/1995, 20547/1995 and 3282-83/1997 are delinked and they may be listed before the appropriate Bench.

F. No. I 6/1/58/2008-IR
Gov of India
Ministry of Finance
Department of Financial Services

Jeevan Deep, III Floor
Parliament Street, New Delhi-1 10001.
Dated 23.10.2009

To

I. Shri Arvind Ganesh Karnik
205 Gaganagiri Towers
Santramdas Marg, Mulund (E)
Mumbai-400081.

2. Shri Anil Pandnirinath Kale
Satkar Building, Fiat No. A
Nath Pai Nagar, Ghatkopar (E)
Mumbai-400077
3, Shri Laxman Vasudeo Kulkami
1/3 Madhuwanti Society
Near Karve Statue
Kothrud, Pune-4 11 038.

Sub: Writ Petition No. 710 of 2009 filed by Shri Arvind Ganesh Karnik Vs. Reserve Bank of india and Union of India & Others — Speaking Order thereof.

Sir,

I am directed to say that on the Writ Petition No. 710 of 2009 by Shri Arvind Ganesh Karhik & Others Vs. Reserve Bank of India & Union of India & others, Div Bench pf the High Court, Bombay passed an order dated 27.4.2009, inter—alia, directing therein that within a period of four weeks from that date, the petitioners shall make representation to the Government of India with a copy to Reserve Bank of India (RBI) pointing out to them that they are making representation against the directions issued by the Government of India to the Reserve Bank of India. The petitioners are entitled to point out that the Government of India does not have Powers to issue such directions under Section 7 of the Act. The Government of India after receiving representation shall grant an opportunity of being heard to the petitioners and then dispose of the representation by a speaking order. The order shall be communicated to the

petitioners and the Reserve Bank of India. In case, the order goes against the Petitioners, the, Reserve Bank of India shall not reduce the pension of the petitioners for a period of eight weeks from the date on which the order is communicated to the Petitioners

.

. 2. In compliance with the directions of the Division Bench of the High Court Bombay, the petitioners were requested to make a representation to the Central Government for consideration of the same and to dispose it by a speaking order, after giving an opportunity to hear them vide letter dated 22.05.2009. (Annex-I)

3. In pursuance thereof, a representation from All India Reserve Bank of India Employees Association, Mumbai dated 19.05.2009 was received on 26.05.2009 (referred to as "Representation" hereinafter) Further, as directed by the Hon'ble High Court, it was requested vide letter dated 17.06.2009 (Annex-II) to make it convenient to attend the personal hearing on 29.06.2009. The hearing was attended by the representatives of All India Reserve Bank of India Retired Employees Association along with their Advocate on the scheduled date. During the course of the hearing, it was also requested by All India Reserve Bank of India Retired Employees Association that the Government may also hold a meeting with RBI for deliberations before passing an order to this effect. A meeting was accordingly held with the officers of RBI on 14.07.2009. The issues were deliberated at length with the officers of RBI in the meeting.

4. The points raised in the representation have been examined carefully. Viewing the matter in its entirety, the position of the Government of India is elucidated on each para of the Representation dated 19.05.2009 as indicated below. The contents of this letter may be taken as the Speaking Order' passed by Ln2 Government of India on the representation.

.

4.1. **Reply to Para-1.** .

The Central Government has not given any directions to the RBI under Section 7 (1) of the RBI Act, 1934. The Central Government has only pointed out that Regulation 28 of the RBI Pension Regulations, 1990, clearly lays down that the rate of basic pension will he fifty per cent of the average emoluments subject to a minimum of Rs 720/- per mensem .The average emoluments have been defined in Regulation 2 (2) of the RBI. Pension Regulations, 1990 which states that "average emoluments means " average of pay drawn by an employee during the last 10 months of his service". Thus the Circular of RBI dated 1.9.2003 contravenes the provisions of the RBI Pension Regulations, 1990. .

.

4.2.**Reply to Para 2** .

As has been stated in reply to Para 1, the Central Government has not given any direction in the instant case under Section 7 (1) of the RBI Act, 1934. The Government has only pointed out that it contravenes the provisions of Regulation 2 (2) of the RBI Pension Regulations, 1990

.

4.3 **Reply to Para 3**

It has been amply clarified that the Central Government has not issued any directions under Section 7(1) of the RBI Act, 1934 and , therefore, the question of invoking it does not arise.

.

4.4 **Reply to Para 4:**

Emoluments for the purpose of pension have been unambiguously defined in Regulation 2 (2), which states average emoluments means average of pay drawn during the last 10 months of his service. It hardly leaves any point of doubt that the pension is to be determined on the basis of the emoluments drawn and not on the notional pay. .

.

As regards the contention that the RBI can issue administrative orders to cover 'notional pay', it is stated that the Administrative Orders cannot override the Statutory Regulations and such Administrative Orders which violate provisions of the Statutory Regulations are unsustainable. The Administrative Orders or instructions cannot become a tool to circumvent the provisions of the Statutory Regulations. Further, the most harmonious interpretation of Regulation 2 (a) to (f) does not lead to cover the 'Notional Pay' as pay drawn.

.

4.5 **Reply to Para 5:**

RB Pension Regulations, 1990 have been framed under Clause (j) of sub section (2) of Section 58 of RBI Act, 1934 by the Central Board of RBI with the previous sanction of the Central Government. The Board of the bank thus can exercise only such powers which have been specifically vested/ authorized in the Pension Regulations. The Board is not entitled to assume, usurp and exercise such powers, which are not vested with it. .

4.6 **Reply to Para 6:**

RBI Staff Regulations, 1948 are administrative instructions and these cannot override the statutory regulations. Irrespective of this, the pay as defined in clause 3 (f) of the RBI Staff Regulations, 1948 states 'pay' means the amount drawn by an employee and does not cover within its ambit "Notional Pay".

.

4.7 **Reply to Para 7:**

As per RBI Pension Regulations, 1990, pension is to be calculated on the basis of the average of last 10 months pay drawn and not on the basis of the notional pay. Further, there is no provision in the RBI Pension Regulations, 1990 to update pension.

.

4.8 **Reply to Para 8:**

Regulation 5 relates to the application of regulations and does not envisage mutatis mutandis applicability of CCS Pension Rules, 1972. A plain reading of the Regulation 5 clearly brings out that it relates to the application of the regulation in so far as these can be adapted to the service in the bank, but subject to such exceptions and modification as the bank may from time to time determine. It does not envisage covertly or overtly to contravene the provisions of the regulations. .

.

4.9 **Reply to Para 9:**

The pension of the Central Government employees is determined in terms of the CCS (Pension) Rules, 1972 and the orders issued from time to time. The terms and conditions of service of the Central Government employees are entirely different from that of the RBI and the orders issued in the case of Central Government employees are not mutatis mutandis applicable to the RBI employees. If this had been so, the New Pension Scheme substituting the 'defined contribution

scheme' to replace 'defined benefit scheme' introduced in the Central Government w. e. f. 01.01.2004 would have also been made applicable in RBI Since RBI has not introduced the New Pension Scheme till date, it goes against the grain of the contention that any change in the Pension scheme of Central Government is equally applicable to pension scheme of RBI. The terms and conditions of employees of RB I which is a statutory body cannot be equated with the employees of the Central Government in respect of pension because pension of the RBI employees is governed by the Regulations framed under RBI Act, 1934. RB1 Pension Regulations, 1990 have been framed under clause (j) of sub section (2) of Section 58 of the RB Act, 1934 by the Central Board of the Reserve Bank of India with the previous sanction of the Central Government. .

. .

4.10 **Reply to Para 10:** **.**

There is no paragraph with number 11 (iv) in the affidavit filed on behalf of UOI. Paragraph 12 (iv) states that in the case of Central Government employees, the definition of average emoluments has been changed for the purpose of updation of pension by the order. However, in the case of RBI, no such orders have been issued to change the definition of the pay as this needs amendment in the Regulations to be approved by the Board of Directors of RBI with the previous sanction of the Government. It is also pertinent to mention that the case of D.S. Nakara Vs UOI is not applicable to the bank employees. .

.

4.11 **Reply to Para 11:**

The retrial benefits of the RBI Employees are regulated in terms of the RBJ Pension Regulations, 1990. No inspiration or parallel can be drawn on the terms and conditions of the service of an entirely different set of employee: RBI Employees are having an edge over the Central Government employees on the entitlement of the gratuity, pay structure, revision of salary after 5 years. This would lead to an anarchical situation, if each service is allowed cherry picking the best of other services. The question of formal amendment, in the Central Government Pension Rules is not very relevant as the Central Government has issued the necessary Notification, in this regard. .

.

4.12 **Reply to Para 12:**

It is true that the pension scheme in the banks including RBI has been modeled on the pension scheme in the Central Government. It is evident that the scheme has been modeled and not the same as that of the Central Government employees. The model of the scheme on the pattern of another scheme does not construe that as and when some amendments are carried out in the scheme modeled similar amendments need to be carried out on the scheme modeled there from.

. .

4.13 **Reply to Para 13:** It needs no comment, as the pensioners are also granted Dearness relief on the pension based on the consumer price index. .

.

4.14 **Reply to Para 14:**

The pension on the basis of notional pay was introduced in the Central Government in 1996 and prior to that there were no such phenomena of determination of pension on the basis of notional pay. The updation of pension mentioned in the RBI Circular dated 13.03.1992 is out of context as the concept of updation of pension in the Central Government was not even conceived then as it was introduced after the pay revision from 01.01.1996.

. . .

4.15 **Reply to Para 15:** A plain reading of the paragraph of 5th CPC recommendations leaves without an iota of doubt that these recommendations are not applicable to RBI / autonomous bodies. It has been, inter-alia, stated therein that 'it would not be appropriate for us to put fetters on the, discretion and authority of State Governments or autonomous organizations to determine the condition of service and quantum of salary benefits to their employees". inter-alia, stated therein that 'it would not be appropriate for us to put fetters on the, discretion and authority of State Governments or autonomous organizations to determine the condition of service and quantum of salary benefits to their employees. .

. .

4.16 **Reply to Pan 16:**

The case referred in the petition was on the issue of arbitrary cut off date of 01.01.1986 for the grant of option for pension. The Supreme Court decided the case against the petitioners. The observations in the case cannot be selectively quoted as the observations are made with reference to a particular context. The Court had also, inter-alia, observed therein that "This court in paragraph 34 of the judgement repealed the contention based on Article 14 read with

issue in D.S. Nakara Case as fallacious in view of the fact that while in the case of pension of retirees who are alive, the Government had the continuing obligation, while in the case of PF retirees each one's right is final". . .

.

4.17 **Reply to Para 17:**

It is a matter of fact that the pay structure of RBI is not comparable with that of Central Government employees for the reasons that pay scales of the employees of RBI are revised after every 5 years, while pay scales of the Central Government employees are revised after 10 years and also manner of pay fixation is different, as no fitment of stage to stage fixation in the new pay scales is allowed in the Central Government. Besides this, there are no perquisites in the Central Government employees, while RBI employees are entitled to a host of perquisites. This is precisely the reason that two services are not comparable and both these services are regulated in terms of their respective terms and conditions of service. Further the pensioners are granted Dearness relief on pension to compensate the increase in cost of prices of essential commodities,

4.18 **Reply to Para 18:**

In the case of retirees from 01.01.1986 to 31.10.1987, it was not notional fixation of pay but the merger of D.A. in the pay scales to save them from a disadvantageous position. The pay revision of the RBI employee is after 5 years and their pay revision prior to the revision in 1987 was effected in 1982.

4.19 **Reply to Para 19:**

As has already been stated that the retirees of pre 1.1.1986 to 31.10.1987 would have been at a disadvantageous position as their pension would have been determined on the basis of their pay scales of 1982. In that case also, the D.A. was allowed to be merged for the determination of pension.

4.20 **Reply to Para 20:**

The core issue is whether as per the extant RB! Pension Regulations, 1990, the pension is required to be determined on the basis of the average of the last 10 months pay drawn or on the pay notionally arrived. On this issue, Regulation 2 (2) of the RB! Pension Regulations, 1990

defines unambiguously and without an iota of doubt that average emoluments for the purpose of pension is average of 10 months pay drawn. Similar provisions exist in the Pension Regulations, 1995 of PSBs.

4.21 **Reply to Para 21:**

In the case of Central Government retirees, the Government had accorded approval for the fixation of the pay of the retirees on notional basis and thereafter re-fixation of pension on the basis of notional pay. In the case of RBI retirees, Government has not accorded approval for the determination of pension on the basis of notional pay. The extant regulations of RB Pension Regulations, 1990 provide for the determination of pension on the basis of average of last 10 months pay drawn.

4.22 **Reply to Para 22:**

The information furnished by RBI clearly indicates that the bank has made the additional contribution in the pension fund over and above 10% of the basic pay. The information furnished as under from 2001 onwards indicate the additional contribution made by the Bank over and above normal ccntribution of 10%:

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(Rs in crores)

Year	Bank's contribution of basic pay @yearly 10%	Additional contributions
7.1.2001	45.43	201.00
7.1.2002	50	303.25
7.1.2003	35.05	484.85
7.1.2004	30.95	841.46
7.1.2005	26.68	151.35
7.l.2006	75.38	371.33
7.l.2007	44.04	303.44
7.l.2008	45.45	112.69
7.1.2009	40.70	622.53

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the case diary which was produced. In several documents it was clearly noted that the vehicle was being driven by Munna Singh and not by Sanjeev Kumar as claimed. Sanjeev Kumar is the son of the owner of the jeep. Particular reference is made to the case diary wherein it has been stated as follows:

> "In the accident deceased Amitabh Singh alias Munna Singh, s/o late Shri Muzafar Singh, r/o Village Simar Kol PS Rajauli. The post-mortem report of the deceased is below:
>
> * * *
>
> (*ii*) *Name of the deceased, sub-name (sic* surname*), father's name, residence, age, sex.*—Deceased *Amitabh alias Munna Singh, s/o* late Shri Muzafar Singh, r/o Village Simar Kol PS Rajauli, District Nawada at present driver of Jeep No. JH 02 A 4827 age about 22 years, male, Hindu." (emphasis supplied)

Similarly, in the post-mortem report it has been stated as follows:

"(*ii*) Name of the deceased, surname, father's name, age, sex.	Deceased Amitabh Singh alias Munna Singh, s/o late Shri Muzafar Singh, r/o Village Simar Kol PS Rajauli, District Nawada at present driver of Commander Jeep No. JH 02 A 4827 age 22 years, male, Hindu."

Learned counsel for the appellant highlighted these facts to submit that they were completely ignored by the District Forum, the State Commission and the National Commission.

10. Learned counsel for the respondent on the other hand submitted that there are several documents including the claim petition filed by the legal representatives of the deceased Amitabh Singh alias Munna Singh showing that the vehicle was being driven by Sanjeev Kumar.

11. From a bare perusal of the orders passed by the District Forum, the State Commission and the National Commission it is clear that the relevance of the entries in the case diary and the post-mortem report have not been considered in the proper perspective.

12. In the peculiar facts of the case it would be appropriate for the District Forum to reconsider the matter after taking into account the various documents and materials placed by the parties. Accordingly we set aside the impugned order and remit the matter to the District Forum to adjudicate the matter afresh.

13. Since the matter is pending for long, the District Forum is directed to dispose of the matter within three months from the date of receipt of order after due notice to the parties. We make it clear that we have remitted the matter because of non-consideration of certain materials and documents. But we have not expressed any opinion on the merits of the case.

14. The appeal is accordingly disposed of. No costs.

(2009) 5 Supreme Court Cases 313

(BEFORE D.K. JAIN AND R.M. LODHA, JJ.)

Civil Appeal No. 1942 of 2009†

BANK OF INDIA AND ANOTHER .. Appellants;

Versus

K. MOHANDAS AND OTHERS .. Respondents.

With

Civil Appeal No. 1943 of 2009‡

N.U. KURUP AND OTHERS .. Appellants;

Versus

UNION BANK OF INDIA AND OTHERS .. Respondents.

With

Civil Appeal No. 1944 of 2009††

PUNJAB AND SIND BANK AND OTHERS .. Appellants;

Versus

BALDEV SINGH .. Respondent.

With

Civil Appeal No. 1945 of 2009†‡

PUNJAB AND SIND BANK AND OTHERS .. Appellants;

Versus

BALDEV SINGH .. Respondent.

With

Civil Appeal No. 1946 of 2009‡†

SENIOR REGIONAL MANAGER, PUNJAB NATIONAL BANK .. Appellant;

Versus

C.J. SINGH AND OTHERS .. Respondents.

With

Civil Appeal No. 1947 of 2009‡‡

PUNJAB NATIONAL BANK .. Appellant;

Versus

BALWANT RAI GIRDHAR AND OTHERS .. Respondents.

† Arising out of SLP (C) No. 22704 of 2005. From the Judgment and Order dated 21-6-2005 of the Hon'ble High Court of Kerala at Ernakulam in WA No. 1640 of 2002-D

‡ Arising out of SLP (C) No. 18215 of 2006

†† Arising out of SLP (C) No. 19463 of 2007

‡‡ Arising out of SLP (C) No. 14406 of 2007

‡† Arising out of SLP (C) No. 8772 of 2008

‡‡ Arising out of SLP (C) No. 8902 of 2008

With

Civil Appeal No. 1948 of 2009†††

PUNJAB NATIONAL BANK .. Appellant;

Versus

ANITA GARG AND ANOTHER .. Respondents.

With

Civil Appeal No. 1949 of 2009†††

PUNJAB AND SIND BANK AND OTHERS .. Appellants;

Versus

RANBIR SINGH AND OTHERS .. Respondents.

With

Civil Appeal No. 1950 of 2009†††

PUNJAB AND SIND BANK AND OTHERS .. Appellants;

Versus

GURCHARAN SINGH REIN AND OTHERS .. Respondents.

With

Civil Appeal No. 1951 of 2009†††

PUNJAB AND SIND BANK AND OTHERS .. Appellants;

Versus

HARMINDER SINGH AND OTHERS .. Respondents.

With

Civil Appeal No. 1952 of 2009†††

PUNJAB AND SIND BANK AND OTHERS .. Appellants;

Versus

KULBIR SINGH BHATIA .. Respondent.

With

Civil Appeal No. 1953 of 2009†††

PUNJAB AND SIND BANK AND OTHERS .. Appellants;

Versus

ARVINDER KAUR BEDI .. Respondent.

†† Arising out of SLP (C) No. 9029 of 2008
††‡ Arising out of SLP (C) No. 10846 of 2008
†‡† Arising out of SLP (C) No. 11112 of 2008
†‡‡ Arising out of SLP (C) No. 11114 of 2008
‡†† Arising out of SLP (C) No. 11115 of 2008
‡†‡ Arising out of SLP (C) No. 11190 of 2008

With

Civil Appeal No. 1954 of 2009‡‡†

PUNJAB AND SIND BANK AND OTHERS .. Appellants;

Versus

BHUPINDER SINGH SACHDEVA AND OTHERS .. Respondents.

With

Civil Appeal No. 1955 of 2009‡‡‡

PUNJAB AND SIND BANK AND OTHERS .. Appellants;

Versus

CHANAN SINGH SIDHU .. Respondent.

With

Civil Appeal No. 1956 of 2009†*

SUBHAS CHANDRA DE AND OTHERS .. Appellants;

Versus

UNITED BANK OF INDIA AND OTHERS .. Respondents.

And

Civil Appeal No. 1957 of 2009*†

AMITAVA MITRA AND OTHERS .. Appellants;

Versus

ZONAL MANAGER, PUNJAB NATIONAL BANK AND OTHERS .. Respondents.

Civil Appeals No. 1942 of 2009 with Nos. 1943-57 of 2009, decided on March 27, 2009

A. **Service Law — Banks — Employees' Pension Regulations, 1995 — Regns. 29(5) and 28 proviso (added in 2002 retrospectively from 1-9-2000) — Benefit of five years' additional qualifying service under Regn. 29(5) — Availability of benefit to employees taking retirement under Voluntary Retirement Scheme, 2000 (VRS 2000) on completion of 20 years' service — Held, the benefit is available notwithstanding that such employees had received ex gratia payments under VRS 2000 — Further held, Regn. 28 which was amended subsequently by adding a proviso retrospectively, could not be applied to such employees — Retirement — Voluntary retirement — Benefits available**

B. **Service Law — Banks — Voluntary Retirement Scheme, 2000 (VRS 2000) — Contractual nature of — The Scheme, held, though contractual in nature, should be interpreted in a manner which avoids arbitrariness and unreasonableness — This is because the banks which formulated the Scheme are public sector banks and therefore are "State" within the**

‡†† Arising out of SLP (C) No. 11324 of 2008
‡‡‡ Arising out of SLP (C) No. 13428 of 2008
†* Arising out of SLP (C) No. 23585 of 2005
*† Arising out of SLP (C) No. 8050 of 2006

meaning of Art. 12 — Their action has to be fair and reasonable — Besides, harmonious construction has to be given to the Scheme and the Employees' Pension Regulations, 1995 — Constitution of India — Art. 12 — "State" — Public sector banks (PSBs) are "State" — Government Contracts/Tenders — Interpretation of — Fairness and reasonableness

The appellant public sector banks framed scheme known as Voluntary Retirement Scheme, 2000 (VRS 2000) under which all permanent employees of bank who had put in minimum 15 years of service or completed 40 years of age were eligible to seek voluntary retirement. The Scheme was framed for optimising the staff strength by shedding excess employees. VRS 2000 provided that an employee whose application for voluntary retirement was accepted, would inter alia be entitled to "pension in terms of the Employees' Pension Regulations, 1995, in case of those who have opted for pension and have put in 20 completed years of service in the bank". Besides, there was also a parallel provision in Regulation 29 of the Pension Regulations, under which an employee with 20 years' qualifying service could take voluntary retirement. Such an employee was entitled to benefit of five years' additional qualifying service under Regulation 29(5). The issue involved was, whether an employee with 20 years' service, who had taken retirement under VRS 2000 (and not under Regulation 29) was entitled to benefit of five years' additional qualifying service as provided in Regulation 29(5) of the Pension Regulations.

Contention of appellant Banks was that benefit of five years' additional qualifying service was admissible only to an employee who took voluntary retirement under Regulation 29, and not to an employee who took retirement under VRS 2000. The employees however relied on Ministry of Finance Communication dated 5-9-2000 (reproduced in para 38 of the judgment) to support their contention that proviso was added to Regulation 28 for the purpose that an employee who takes VRS on completing 15 years of service but before 20 years' service, also gets pension.

Rejecting the contention of the appellant Banks and declaring that the employees who took retirement under the VRS 2000 were entitled to benefit of five years' additional qualifying service under Regulation 29(5), the Supreme Court

Held :

The employees who had completed 20 years of service and offered voluntary retirement under VRS 2000 are entitled to addition of five years of notional service in calculating the length of service for the purposes of that Scheme as per Regulation 29(5) of the Pension Regulations. If the intention was not to give pension as provided in Regulation 29 and particularly sub-regulation (5) thereof, the banks could have said so in the Scheme itself. Much thought had gone into formulation of VRS 2000 and it came to be framed after great deliberations. The only provision that could have been in the mind while providing for pension as per the Pension Regulations was Regulation 29. The employees too had the benefit of Regulation 29(5) in mind when they offered for voluntary retirement as Regulation 28, as was existing at that time, was not applicable at all.

(Paras 66 and 33)

VRS 2000 was an attractive package for the employees as they were getting special benefits in the form of ex gratia payments and in addition thereto, inter alia, pension under the Pension Regulations which also provided for weightage

of five years of qualifying service for the purposes of pension to the employees who had completed 20 years' service. (Para 51)

Bank of Baroda v. *Ganpat Singh Deora*, (2009) 3 SCC 217 : (2009) 1 SCC (L&S) 622, *distinguished*

It would be unreasonable if amended Regulation 28 is made applicable, which had not seen the light of the day and which was not the intention of the banks when the Scheme was framed. The banks are public sector banks and are "State" within the meaning of Article 12 of the Constitution. Their action even in contractual matters has to be reasonable, lest, it must attract the wrath of Article 14 of the Constitution. (Para 35)

Bank of India v. *O.P. Swarnakar*, (2003) 2 SCC 721 : 2003 SCC (L&S) 200; *HEC Voluntary Retd. Employees Welfare Society* v. *Heavy Engg. Corpn. Ltd.*, (2006) 3 SCC 708 : 2006 SCC (L&S) 602, *relied on, on this point*

Any interpretation of the terms of VRS 2000, although contractual in nature, must meet the test of fairness. It has to be construed in a manner that avoids arbitrariness and unreasonableness on the part of public sector banks which brought out VRS 2000 with an objective of rightsizing their manpower. The Scheme was oriented to lure the employees to go in for voluntary retirement. In this background, the consideration that was to pass between the parties assumes significance and a harmonious construction to the Scheme and the Pension Regulations, therefore, has to be given. (Para 36)

C. **Service Law — Banks — Employees' Pension Regulations, 1995 — Regn. 28, proviso (added in 2002 retrospectively from 1-9-2000) and Regn. 29(5) — Scope, object and applicability — Held, purpose of the proviso is to confer benefit of pension to those employees who sought voluntary retirement after completion of 15 years but before completion of 20 years of service — Proviso cannot be interpreted to deprive benefit of five years' additional qualifying service to those employees who took retirement after 20 years of service under VRS 2000 — Service Law — Retirement — Voluntary retirement**

D. **Administrative Law — Subordinate/Delegated legislation — Interpretation of subordinate/delegated legislation — External aids — Explanatory note/memorandum — Taken into consideration while interpreting regulations**

Held :

The amendment in Regulation 28, as is reflected from Communication dated 5-9-2000, was intended to cover employees who had rendered 15 years' service but not completed 20 years' service. It was not intended to cover optees who had already completed 20 years' service as the provisions contained in Regulation 29 met that contingency. Even if it be assumed that by insertion of proviso in Regulation 28 (in the year 2002 with retrospective effect from 1-9-2000), all classes of employees under VRS 2000 were intended to be covered, such amendment in Regulation 28, needs to be harmonised with Regulation 29, particularly Regulation 29(5) which provides for addition of qualifying service by five years. This would be in tune and consonance with the explanatory note appended to the amendment in Regulation 28 wherein it is stated that the amendment with retrospective effect would not adversely affect any employee or officer of the respondent Bank. That would also meet the test of fairness.

(Paras 40 and 41)

Weightage of five years under Regulation 29(5) is applicable to the optees having service of 20 years or more. Merely because the employees who have completed 15 years of service but not completed 20 years of service are not entitled to weightage of five years for qualifying service under Regulation 29(5), the employees who have completed 20 years of service or more cannot be denied such benefit. It is also not correct to say that by taking recourse to Regulation 29, the amendment to Regulation 28 is rendered otiose. (Paras 43 and 48)

E. Service Law — Banks — Voluntary Retirement Scheme, 2000 (VRS 2000) — Effect of Employees' Pension Regulations, 1995 having been made part of VRS 2000 — Held, meaning of words and expressions not defined in the Scheme has to be ascertained from Regulations — Thus retirement under VRS 2000 is also considered as retirement in terms of Regn. 2(y) of the Regulations — Employees' Pension Regulations, 1995 — Regns. 2(y) and 29(5) — Contract Act, 1872, S. 23

Held :

The precise effect of 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. 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". Therefore the definition of "retirement" given in Regulation 2(y) whereunder voluntary retirement under Regulation 29 is considered to be retirement, has to be taken into consideration. Regulation 29 uses the expression, "voluntary retirement under these Regulations". 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, 1872 has no application to the present fact situation. It cannot be accepted that VRS 2000 did not envisage grant of pension benefits under Regulation 29(5) to the optees of 20 years' service along with payment of ex gratia. (Paras 46 and 50)

F. Estoppel, Acquiescence and Waiver — Estoppel — Non-applicability — Held, bank employees who had taken retirement under the Voluntary Retirement Scheme, 2000 (VRS 2000) and claimed benefit of additional qualifying service under Employees' Pension Regulations, 1995, were not resiling from VRS 2000, rather were enforcing the Scheme — Question of estoppel therefore did not arise — Evidence Act, 1872, S. 115 (Para 65)

G. Service Law — Pension — Bona fide delay in payment — Inadmissibility of interest — When warranted — Factors — Delay due to litigation wherein genuine issue of law needed to be resolved in view of difference of opinion between High Courts — Besides, stand taken by appellant Banks was also not frivolous though ultimately rejected by Supreme Court — Grant of interest, held, under these circumstances was not warranted (Para 68)

H. Contract and Specific Relief — Construction of contract — General principles — Held, depends upon words used — Subsequent conduct or statements of parties not relevant — Intention of parties to be ascertained from language used which is to be considered in the light of surrounding circumstances and object of the contract — Nature and purpose of the contract is also an important guide — Contract must be read as a whole — Attempt should be made to harmonise various provisions but without doing violence to natural meaning of a word or expression — Evidence Act, 1872, Ss. 91 and 92

I. Contract and Specific Relief — Construction of contract — General principles — Unclear term or expression — Interpretation against the party which framed unclear term or expression — Held, interpretation against that party is to be preferred (*verba chartarum fortius accipiuntur contra proferentem*) — Maxims — *Verba chartarum fortius accipiuntur contra proferentem*

Held :

True construction of a contract must depend upon import of words used and not upon what the parties choose to say afterwards. Nor does subsequent conduct of the parties in the performance of contract affect the true effect of clear and unambiguous words used in contract. Intention of the parties must be ascertained from the language they have used, considered in the light of surrounding circumstances and the object of the contract. Nature and purpose of contract is an important guide in ascertaining intention of the parties. Contract must be read as a whole in order to ascertain true meaning of its several clauses and the words of each clause should be interpreted so as to bring them in harmony with other provisions, if that interpretation does no violence to the meaning of which they are naturally susceptible. It is the banks which were responsible for formulation of the terms in the contractual Scheme that the optees of voluntary retirement under that Scheme will be eligible to pension under the Pension Regulations, 1995, and, therefore, they bear the risk of lack of clarity, if any. If the terms applied by one party are unclear, an interpretation against that party is preferred. (*Verba chartarum fortius accipiuntur contra proferentem.*) (Paras 28, 31 and 32)

Ottoman Bank of Nicosia v. *Ohanes Chakarian*, AIR 1938 PC 26; *Ganga Saran* v. *Firm Ram Charan Ram Gopal*, AIR 1952 SC 9; *North Eastern Railway Co.* v. *Lord Hastings*, 1900 AC 260 : (1900-03) All ER Rep 199 (HL), *relied on*

J. Precedents — Ratio decidendi — Application of, in the context of facts it was laid down — Proposition of law reiterated that precedent has to be considered in the facts and circumstances of a case in which it was laid down — Constitution of India, Art. 141

Quinn v. *Leathem*, (1901) 1 AC 495 (HL); *State of Orissa* v. *Sudhansu Sekhar Misra*, AIR 1968 SC 647; *Ambica Quarry Works* v. *State of Gujarat*, (1987) 1 SCC 213; *Bhavnagar University* v. *Palitana Sugar Mill (P) Ltd.*, (2003) 2 SCC 111; *Bharat Petroleum Corpn. Ltd.* v. *N.R. Vairamani*, (2004) 8 SCC 579, *relied on*

Allen v. *Flood*, 1898 AC 1 : (1895-99) All ER Rep 52 (HL), *cited*

K-D/40788/CL

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Chronological list of cases cited *on page(s)*

1. (2009) 3 SCC 217 : (2009) 1 SCC (L&S) 622, *Bank of Baroda* v. *Ganpat Singh Deora* 333*f*, 333*f-g*, 336*b*, 336*e*, 336*f*, 336*g*
2. (2006) 3 SCC 708 : 2006 SCC (L&S) 602, *HEC Voluntary Retd. Employees Welfare Society* v. *Heavy Engg. Corpn. Ltd.* 324*e-f*
3. (2004) 8 SCC 579, *Bharat Petroleum Corpn. Ltd.* v. *N.R. Vairamani* 336*a*
4. (2003) 2 SCC 721 : 2003 SCC (L&S) 200, *Bank of India* v. *O.P. Swarnakar* 324*a-b*, 324*e*, 324*e-f*, 329*d*, 329*e-f*, 337*a-b*
5. (2003) 2 SCC 111, *Bhavnagar University* v. *Palitana Sugar Mill (P) Ltd.* 335*g*
6. (1987) 1 SCC 213, *Ambica Quarry Works* v. *State of Gujarat* 335*f*
7. AIR 1968 SC 647, *State of Orissa* v. *Sudhansu Sekhar Misra* 335*c-d*
8. AIR 1952 SC 9, *Ganga Saran* v. *Firm Ram Charan Ram Gopal* 328*e*
9. AIR 1938 PC 26, *Ottoman Bank of Nicosia* v. *Ohanes Chakarian* 328*d*
10. (1901) 1 AC 495 (HL), *Quinn* v. *Leathem* 335*a*
11. 1900 AC 260 : (1900-03) All ER Rep 199 (HL), *North Eastern Railway Co.* v. *Lord Hastings* 328*f-g*
12. 1898 AC 1 : (1895-99) All ER Rep 52 (HL), *Allen* v. *Flood* 335*a-b*

The Judgment of the Court was delivered by

R.M. LODHA, J.— Leave granted.

2. These sixteen appeals arise from the judgments of the Punjab and Haryana High Court, the Calcutta High Court and the Kerala High Court and relate to different banks but since the common issues are involved, it is appropriate that these appeals are dealt with and disposed of by the common judgment.

3. In the month of May 2000, the Government of India, Ministry of Finance (Banking Division), advised the nationalised banks to carry out detailed manpower planning as these banks were found to have 25% of their manpower as surplus. A Human Resource Management Committee was constituted to examine the said issue and to suggest suitable remedial measures.

4. The Committee so constituted observed that high establishment cost and low productivity in public sector banks affect their profitability and it was necessary for these banks to convert their human resources into assets compatible with business strategies. Inter alia, the Committee placed the draft voluntary retirement scheme with the Central Government that would assist the banks in their efforts to optimise their human resources and achieve a balanced age and skills profile in keeping with their business strategies.

5. With the approval of the Central Government, Indian Banks' Association (IBA) circulated salient features of the draft scheme to the nationalised banks for consideration and adoption by their respective boards vide its letter dated 31-8-2000. The Board of Directors of each of the nationalised banks, keeping in view the objectives, considered the draft scheme and adopted it separately.

6. In the present batch of appeals, the voluntary retirement scheme brought out by Punjab National Bank, Punjab and Sind Bank, Bank of India, Union Bank of India and United Bank of India is in issue. The scheme adopted by these banks, although separately, is identical and bears similar salient features with some variation in certain respects. It is not necessary to consider them individually. For the sake of brevity, we shall refer the scheme as VRS 2000.

7. The objective of VRS 2000 has been:

- to transform the organisation as more efficient as well as for controlling operational costs;
- to improve the prospects and career growth and skills upgradation for employees by rationalising the manpower;
- to help the bank to right size the growth.

8. We may, at this stage, summarise the salient features of VRS 2000. These are:

(*I*) All permanent employees of the bank who have put in minimum 15 years of service or completed 40 years of age on the date of coming into force of the Scheme are eligible for voluntary retirement.

(*II*) In addition to the normal retirement benefits available to an employee, according to the terms and conditions of his employment in the bank, an employee whose application for voluntary retirement is accepted will be paid a lump sum amount equivalent to 60 days' salary for each completed year of service.

(*III*) The competent authority may accept or reject the application of an employee for voluntary retirement and the decision of the competent authority shall be final.

(*IV*) No voluntary retirement shall come into effect unless the competent authority has passed orders accepting the applications of the employees to retire voluntarily under the Scheme.

(*V*) The Scheme can be withdrawn at the discretion of the bank at any time without assigning any reason.

(*VI*) It shall be open to the bank to alter/amend the conditions of the Scheme. (In the Scheme framed by Punjab National Bank such provision is not there.)

(*VII*) The applications made under the Scheme will be irrevocable and the employee will not have the right to withdraw the application once submitted.

(*VIII*) An employee whose application for voluntary retirement is accepted and relieved from the bank shall be eligible for:

(*i*) gratuity as per the Gratuity Act/service gratuity as the case may be;

(*ii*) own contribution of provident fund and bank's contribution towards provident fund, in case of those who have opted for contributory provident fund or own contribution of provident fund *and pension in terms of the Employees Pension Regulations, 1995, in case of those who have opted for pension and have put in 20 completed years of service in the bank*; and

(*iii*) leave encashment as per rules. (emphasis supplied)

9. The period during which VRS 2000 was to remain in operation in respect of the banks with which we are concerned is as follows:

Punjab and Sind Bank	1-12-2000	to	31-12-2000
Punjab National Bank	1-11-2000	to	30-11-2000
Bank of India	15-11-2000	to	14-12-2000
Union Bank of India	1-12-2000	to	31-12-2000
United Bank of India	1-1-2001	to	31-01-2001

10. Section 19 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (for short "the 1970 Act") empowers the Board of Directors to make regulations consistent with the provisions of the Act or any scheme made thereunder after consultation with Reserve Bank and with the previous sanction of the Central Government in respect of matters provided therein.

11. Section 19(2)(*f*) reads thus:

"19. (2) In particular, and without prejudice to the generality of the foregoing power, the regulations may provide for all or any of the following matters, namely—

* * *

(*f*) the establishment and maintenance of superannuation, pension, provident or other funds for the benefit of officers or other employees of the corresponding new bank or of the dependents of such officers or other employees and the granting of superannuation allowances, annuities and pensions payable out of such funds;"

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

13. On the date of the commencement of VRS 2000, Regulations 28 and 29 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.

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.

(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.

(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."

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.

14. VRS 2000 came up for consideration before this Court in *Bank of India* v. *O.P. Swarnakar*[1]. The question under consideration in that case was whether an employee who opts for voluntary retirement pursuant to or in furtherance of a scheme floated by the nationalised banks would be precluded from withdrawing the said offer. This Court culled out the following aspects: (SCC p. 753, para 61)

> "(*i*) The banks treated the application from the employees as an offer which could be accepted or rejected.
>
> (*ii*) Acceptance of such an offer is required to be communicated in writing.
>
> (*iii*) The decision-making process involved application of mind on the part of several authorities.
>
> (*iv*) Decision-making process was to be formed at various levels.
>
> (*v*) The process of acceptance of an offer made by an employee was in the discretion of the competent authority.
>
> (*vi*) The request of voluntary retirement would not take effect in praesenti but in future.
>
> (*vii*) The bank reserved its right to alter/rescind the conditions of the Scheme."

15. In *O.P. Swarnakar*[1] it has been held that the scheme is contractual in nature. It amounted to an invitation to offer and not an offer or proposal itself; the application made by the employees was an offer. The statement of law with regard to nature of voluntary retirement scheme expounded in *O.P. Swarnakar*[1] has been reiterated in *HEC Voluntary Retd. Employees Welfare Society* v. *Heavy Engg. Corpn. Ltd.*[2]; albeit a different voluntary retirement scheme.

16. The admitted factual position in this batch of appeals is that each of the employees had completed 20 years of service. It may be noticed that at the fag end of the operation of VRS 2000, at the instance of IBA and with the approval of the Central Government, Regulation 28 was proposed to be amended. The amendment in fact was carried out in the year 2002 with retrospective effect from 1-9-2000. By way of amendment, a proviso has been inserted to Regulation 28, which reads as follows:

> "Provided that pension shall also be granted to an employee who opts to retire before attaining the age of superannuation, but after having served for a minimum period of 15 years in terms of any scheme that may be framed for the purpose by the Bank's Board with the concurrence of the Government."

1 (2003) 2 SCC 721 : 2003 SCC (L&S) 200
2 (2006) 3 SCC 708 : 2006 SCC (L&S) 602

17. The optees have been given retiral benefits by the respective banks under VRS 2000 save and except the benefit of pension under Regulation 29(5). Their representation in this regard did not yield any result and that necessitated them to approach various High Courts for redressal of their grievance. The views of the High Courts differ.

18. The Punjab and Haryana High Court has held that employees are entitled to add a period of qualifying service not exceeding five years in terms of Regulation 29(5); the total qualifying service rendered by an employee seeking voluntary retirement in any case shall not exceed 33 years. With regard to the amendment in Regulation 28, the Punjab and Haryana High Court has held that by the said amendment, the provision contained in Regulation 29(5) of the Regulations does not get affected so as to disentitle the employees from the benefit provided therein.

19. There are two views insofar as the Kerala High Court is concerned. In *K. Mohandas* [civil appeal arising out of SLP (C) No. 22704 of 2005], the Division Bench in the writ appeal held that the employees seeking voluntary retirement under VRS 2000 were entitled to benefit under Regulation 29(5) of the Pension Regulations, 1995. However, in *N.U. Kurup*, the Single Judge held otherwise. The Single Judge took the view that the employees seeking voluntary retirement under VRS 2000 were entitled to pension under Regulation 28 and that they are not entitled to the benefit of addition of five years' service as provided in Regulation 29(5).

20. The view of the Division Bench of the Calcutta High Court is on the lines of the view of the Single Judge of the Kerala High Court that the optees of voluntary retirement under VRS 2000 are not entitled to benefit of addition of five years' service under Regulation 29(5).

21. We have heard the Senior Counsel, counsel for the respective parties and Baldev Singh who appeared in person at quite some length. The written submissions have also been filed by the parties which we have considered thoughtfully.

22. The submissions on behalf of the banks may be summarised thus:

> (*i*) that the Pension Regulations, 1995, as were existing during the operation of VRS 2000, did not cover the class of employees retiring under the Scheme which is contractual in nature. Regulation 28 came to be amended by insertion of proviso thereto to cover the employees retiring under the Scheme inasmuch as by the said amendment, the employees having completed 15 years of service or more became entitled to pension on pro rata basis;
>
> (*ii*) that voluntary retirement under VRS 2000 cannot be compared or equated with voluntary retirement under the Pension Regulations, 1995. VRS 2000 is a completely different and distinct scheme from voluntary retirement contemplated under Regulation 29 of the Pension Regulations, 1995;
>
> (*iii*) that Regulation 29(5) of the Pension Regulations, 1995, reads:

"29. (5) The qualifying service of an employee retiring voluntarily under this Regulation shall be increased by a person not exceeding...."

The words "under this Regulation" would mean "under Regulation 29" and no other interpretation to the meaning could be attributed to these words;

(*iv*) that during operation of VRS 2000, the banks concerned had brought out circulars to bring to the notice of the employees concerned the proposed amendment and, thus, the employees were aware of the proposed amendment of the Pension Regulations and could have withdrawn their offer but in the absence of such withdrawal and after having accepted the benefits under VRS 2000, they are estopped under law from challenging the Scheme or claiming benefit of addition of five years of notional service in calculating the length of service for the purposes of pension; and

(*v*) that Regulation 29 does not cover persons retiring under VRS 2000 which is dehors the statutory scheme for voluntary retirement.

23. On the other hand, on behalf of the employees, it was contended:

(*i*) that the Pension Regulations, 1995, were framed and notified in the year 1995 that provide for different classes of pension which might be available to a pension optee, inter alia, two classes of these pension are: superannuation pension (Regulation 28) and pension on voluntary retirement (Regulation 29); that VRS 2000 was brought out with the object of optimising human resources at various levels for achieving the balanced age and skills profile in keeping with business strategies and the banks allowed their employees to retire voluntarily under the Scheme with an intention to confer attractive benefits in addition to ex gratia and such additional benefits also included pension as per the Pension Regulations, 1995;

(*ii*) that VRS 2000 is not statutory in nature; rather, it is an invitation to treat by the bank to its employees to offer for voluntary retirement. The offer for voluntary retirement was founded on the terms of the Scheme. By acceptance of the said offer made by the employees, the concluded contract came into existence between the bank and the employee which could not have been altered;

(*iii*) that on the date of relieving the employees concerned, Regulation 28 had not been amended and, therefore, the entitlement to the pension could not have been decided in terms of that Regulation and the pension benefits to the optees could only be given under Regulation 29;

(*iv*) that by making provision in the Scheme that the optees would be eligible for the benefits in addition to the ex gratia amount, inter alia, pension as per the Pension Regulations, 1995, the employees understood that what was contemplated was pension under Regulation 29. Any ambiguity in VRS 2000 ought to be construed that harmonised with the intention of the parties;

(*v*) that the amendment in Regulation 28 was introduced for a class of employees who had put in more than 15 years but less than 20 years of service. In terms of the Pension Regulations, 1995, as it stood before amendment to Regulation 28, an employee although a pension optee under VRS having not completed 20 years' service was not entitled to any pension. In order to take care of this anomalous position and to confer pensionary benefits on such employees, the amendment was brought into effect in Regulation 28 which cannot affect the subject employees who undisputedly have put in more than 20 years of service;

(*vi*) that the employees made the offer to retire from service in terms of the Scheme which was accepted by the banks without any reservation. In terms of the Scheme under the head "other benefits", the optees are eligible for benefit of pension as per the Pension Regulations, 1995. Regulation 29 was the only regulation under the Pension Regulations, 1995, applicable to voluntary retirement and, therefore, Regulation 29, ipso facto, became the term of the contract; and

(*vii*) that each and every paragraph of Regulation 29 can be made applicable to an optee of more than 20 years of service without coming into conflict with any provision of the Scheme; the notice period of three months in Regulation 29(3) can be waived at the discretion of the banks.

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?

25. As noticed above, the Pension Regulations, 1995 came to be framed by each of the afore referred banks separately in exercise of the powers conferred by clause (*f*) of sub-section (2) of Section 19 of the 1970 Act. In the interpretation clause various expressions have been defined. Regulation 2(*t*) defines "pension":

"2. (*t*) 'pension' includes the basic pension and additional pension referred to in Chapter VI of these Regulations;"

Regulation 2(*y*) defines "retirement":

"2. (*y*) 'retirement' means cessation from bank's service

(*a*) * * *

(*b*) on voluntary retirement in accordance with provisions contained in Regulations 29 of these Regulations;

(*c*) * * *"

26. Chapter V of the Pension Regulations deals with the various classes of pension: superannuation pension (Regulations 28); voluntary retirement pension (Regulation 29); invalid pension (Regulation 30); premature retirement pension (Regulation 32) and compulsory retirement pension (Regulation 33).

27. In view of the admitted position that VRS 2000 was a contractual scheme; that it was an invitation to offer containing a term that the optee will also be eligible for pension as per the Pension Regulations; that an application by an employee for voluntary retirement was a proposal or offer and that upon acceptance of the application for voluntary retirement made by the employee and a communication of acceptance to him, the concluded contract came into existence and the offeree was relieved from the employment. For consideration of the question posed herein, the Court needs to examine the contract and the circumstances in which it was made in order to see whether or not from the nature of it, the parties must have made their bargain on the footing that a particular thing or state of things would continue to exist.

28. The true construction of a contract must depend upon the import of the words used and not upon what the parties choose to say afterwards. Nor does subsequent conduct of the parties in the performance of the contract affect the true effect of the clear and unambiguous words used in the contract. The intention of the parties must be ascertained from the language they have used, considered in the light of the surrounding circumstances and the object of the contract. The nature and purpose of the contract is an important guide in ascertaining the intention of the parties.

29. In *Ottoman Bank of Nicosia* v. *Ohanes Chakarian*[3], Lord Wright made these weighty observations: (AIR p. 29)

> "... that if the contract is clear and unambiguous, its true effect cannot be changed merely by the course of conduct adopted by the parties in acting under it."

30. In *Ganga Saran* v. *Firm Ram Charan Ram Gopal*[4] a four-Judge Bench of this Court stated: (AIR p. 11, para 6)

> "*6.* ... Since the true construction of an agreement must depend upon the import of the words used and not upon what the parties choose to say afterwards, it is unnecessary to refer to what the parties have said about it."

31. It is also a well-recognised principle of construction of a contract that it must be read as a whole in order to ascertain the true meaning of its several clauses and the words of each clause should be interpreted so as to bring them into harmony with the other provisions if that interpretation does no violence to the meaning of which they are naturally susceptible. (*North Eastern Railway Co.* v. *Lord Hastings*[5])

32. The fundamental position is that it is the banks who were responsible for formulation of the terms in the contractual Scheme that the optees of voluntary retirement under that Scheme will be eligible to pension under the Pension Regulations, 1995, and, therefore, they bear the risk of lack of clarity, if any. It is a well-known principle of construction of a contract that if

3 AIR 1938 PC 26

4 AIR 1952 SC 9

5 1900 AC 260 : (1900-03) All ER Rep 199 (HL)

the terms applied by one party are unclear, an interpretation against that party is preferred (*verba chartarum fortius accipiuntur contra proferentem*).

33. What was, in respect of pension, the intention of the banks at the time of bringing out VRS 2000? Was it not made expressly clear therein that the employees seeking voluntary retirement will be eligible for pension as per the Pension Regulations? If the intention was not to give pension as provided in Regulation 29 and particularly sub-regulation (5) thereof, they could have said so in the Scheme itself. After all much thought had gone into the formulation of VRS 2000 and it came to be framed after great deliberations. The only provision that could have been in mind while providing for pension as per the Pension Regulations was Regulation 29. Obviously, the employees, too, had the benefit of Regulation 29(5) in mind when they offered for voluntary retirement as admittedly Regulation 28, as was existing at that time, was not applicable at all. None of Regulations 30 to 34 was attracted.

34. It appears that VRS 2000 evoked huge response, much more than expected and then began the second thought. At the fag end of operation of VRS 2000, at the instance of IBA, the banks proposed amendment in the Pension Regulations and a circular came to be issued. But, by that time, ball had gone out of the hands of the employees; they had already made their offers which were irrevocable; it was not open to them to withdraw the offers as per specific condition incorporated in the Scheme (albeit this Court in *O.P. Swarnakar*[1] held that offer could be withdrawn before acceptance) and their offers were accepted and they were relieved.

35. We are afraid, it would be unreasonable if amended Regulation 28 is made applicable, which had not seen the light of the day and which was not the intention of the banks when the Scheme was framed. The banks in the present batch of appeals are public sector banks and are "State" within the meaning of Article 12 of the Constitution and their action even in contractual matters has to be reasonable, lest, as observed in *O.P. Swarnakar*[1], it must attract the wrath of Article 14 of the Constitution.

36. Any interpretation of the terms of VRS 2000, although contractual in nature, must meet the test of fairness. It has to be construed in a manner that avoids arbitrariness and unreasonableness on the part of the public sector banks who brought out VRS 2000 with an objective of rightsizing their manpower. The banks decided to shed surplus manpower. By formulation of the special scheme (VRS 2000), the banks intended to achieve their objective of rationalising their force as they were overstaffed. The special Scheme was, thus, oriented to lure the employees to go in for voluntary retirement. In this background, the consideration that was to pass between the parties assumes significance and a harmonious construction to the Scheme and the Pension Regulations, therefore, has to be given.

37. The amendment to Regulation 28 can, at best, be said to have been intended to cover the employees with 15 years of service or more but less than 20 years of service. This intention is reflected from the communication dated 5-9-2000 sent by the Government of India, Ministry of Finance,

1 *Bank of India* v. *O.P. Swarnakar*, (2003) 2 SCC 721 : 2003 SCC (L&S) 200

Department of Economic Affairs (Banking Division) to the Personnel Advisor, Indian Banks' Association.

38. The said letter may be set out as it is which reads thus:

"F. No. 4/8/4/2000-IR
Government of India,
Ministry of Finance,
Department of Economic Affairs
(Banking Division)
New Delhi, 5-9-2000

To
The Personnel Advisor,
Indian Banks' Association,
Mumbai

Sub.: Amendment to Regulation 29 of the Pension Regulations.

Sir,

I am directed to refer to this Division's Letter No. 11/1/99 IR dated 29-8-2000 conveying the Government's no objection for circulation of Voluntary Retirement Scheme in public sector banks. The Scheme, inter alia, provides that employees with 15 years of service or 40 years of age shall be eligible to take voluntary retirement under the Scheme. As per the provisions contained in Regulation 29 of the Pension Regulations an employee can take voluntary retirement after 20 years of qualifying service and thereafter becomes eligible for pension. Thus employees having rendered 15 years of service or completing 40 years of age but not having completed 20 years of service shall not be eligible for pensionary benefits on taking voluntary retirement under the Scheme.

In order to ensure that such employees do not lose the benefit of pension, IBA may work out modalities and suggest amendments, if any, required to be made in the Pension Regulations to ensure that these employees also get the benefit of pension.

Yours faithfully,
sd/-
(U.P. Singh)
Director (IR)"

39. Two things immediately become noticeable from the said communication. One is that as per Regulation 29 of the Pension Regulations, 1995, an employee can take voluntary retirement after 20 years of qualifying service and become eligible for pension. The other thing is that the Scheme provides that the employees with 15 years of service or 40 years of age shall be eligible to take voluntary retirement under the Scheme and under Regulation 29, the employees having rendered 15 years of service or completed 40 years of age but not completed 20 years of service shall not be

eligible for pensionary benefits on taking voluntary retirement under the Scheme.

40. The use of the words "such employees" in the communication is referable to employees having rendered 15 years of service but not completed 20 years of service and, therefore, it was decided to bring an amendment in the Regulations so that the employees having not completed 20 years' service do not lose the benefit of pension. The amendment in Regulation 28, as is reflected from the afore referred communication, was intended to cover the employees who had rendered 15 years' service but not completed 20 years' service. It was not intended to cover the optees who had already completed 20 years' service as the provisions contained in Regulation 29 met that contingency.

41. Even if it be assumed that by insertion of the proviso in Regulation 28 (in the year 2002 with effect from 1-9-2000), all classes of employees under VRS 2000 were intended to be covered, such amendment in Regulation 28, needs to be harmonised with Regulation 29, particularly Regulation 29(5) which provides for addition of qualifying service by five years for the optees who had put in 20 years' service or more subject to the condition that total qualifying service rendered by such employee shall not in any case exceed 33 years. This would be in tune and consonance with the explanatory note appended to the amendment in Regulation 28 wherein it is stated that the amendment with retrospective effect would not adversely affect any employee or officer of the respondent Bank. That would also meet the test of fairness.

42. The contention was raised on behalf of the banks that if Regulation 29(5) of the Pension Regulations, 1995 is applied for the purposes of VRS 2000, the same would create an anomalous situation inasmuch as two different classes of employees for the purpose of granting pension would be created, namely, a class of employees who had completed 15 years of service but less than 20 years of service and this class would not be entitled to receive benefits under Regulation 29(5) while the employees who had completed 20 years' service or more would be entitled to receive the benefit under Regulation 29(5).

43. It was submitted that by such construction a class within the class would be created which is impermissible. We do not agree. If a special benefit under Regulation 29(5) is available to the employees who had completed 20 years of service or more, by no stretch of imagination, can it be said that it is discriminatory to those employees who had completed 15 years of service but not completed 20 years. In view of the provision contained in Regulation 29(5), if the optees who have not completed 20 years get excluded from the weightage of five years which has been given to the optees who have completed 20 years of service or more, it is no discrimination. Such provision can neither be said to be arbitrary nor can be held to be violative of any constitutional or statutory provisions. The weightage of five years under Regulation 29(5) is applicable to the optees having service of 20 years or more. There is, thus, basis for additional benefit. Merely because the

employees who have completed 15 years of service but not completed 20 years of service are not entitled to weightage of five years for qualifying service under Regulation 29(5), the employees who have completed 20 years of service or more cannot be denied such benefit.

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 the statutory Regulations and not the other way round. The contention does not impress us.

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 the 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.

47. It was submitted on behalf of the banks that amendment to Regulation 28 has neither been challenged nor has the said Regulation been declared ultra vires and, therefore, that provision cannot be rendered otiose by taking recourse to Regulation 29.

48. It is true that validity and legality of Regulation 28 has not been put in issue. It was apparently not done because, according to the employees, amended Regulation 28 although made retrospective could not have affected the concluded contract. We have already indicated above as to how the amendment in Regulation 28 in the year 2002 with effect from 1-9-2000 could not have applied to the optees under the Scheme who had completed service of 20 years. Lack of challenge to Regulation 28 by the employees is, therefore, not very material. It is not correct to say that by taking recourse to Regulation 29, the amendment to Regulation 28 is rendered otiose.

49. It was vehemently contended on behalf of the banks that VRS 2000 was a self-contained scheme and it provided for special benefits in the form of ex gratia. It was submitted that ex gratia was not available to the employees claiming voluntary retirement under the Pension Regulations and it was because of that, that the Scheme did not envisage granting of pension benefits under Regulation 29(5) of the Pension Regulations, 1995, along with the payment of ex gratia which was a substantial amount.

50. It is true that VRS 2000 is a complete package in itself and contractual in nature. However, in that package, it has been provided that the optees, in addition to ex gratia payment, will also be eligible to other benefits inter alia pension under the Pension Regulations. The only provision in the Pension Regulations at the relevant time during the operation of VRS 2000 concerning voluntary retirement was Regulation 29 and sub-regulation (5) thereof provides for weightage of addition of five years to qualifying service for pension to those optees who had completed 20 years' service. It, therefore, cannot be accepted that VRS 2000 did not envisage grant of pension benefits under Regulation 29(5) of the Pension Regulations, 1995, to the optees of 20 years' service along with payment of ex gratia.

51. The whole idea in bringing out VRS 2000 was to right size workforce which the banks had not been able to achieve despite the fact that the statutory Regulations provided for voluntary retirement to the employees having completed 20 years' service. It was for this reason that VRS 2000 was made more attractive. VRS 2000, accordingly, was an attractive package for the employees to go in for as they were getting special benefits in the form of ex gratia and in addition thereto, inter alia, pension under the Pension Regulations which also provided for weightage of five years of qualifying service for the purposes of pension to the employees who had completed 20 years' service.

52. In support of their contention that the employees, who have sought voluntary retirement under VRS 2000, are not entitled to benefit of Regulation 29(5) of the Pension Regulations, 1995, on behalf of banks, heavy reliance was placed on a decision of this Court in *Bank of Baroda* v. *Ganpat Singh Deora*[6]. As a matter of fact, it was submitted that the decision of this Court in *Bank of Baroda*[6] concludes the controversy and the legal position is no more res integra.

53. Reliance in this connection was placed on the following observations: (*Bank of Baroda case*[6], SCC pp. 221-22, paras 25 & 28-32)

> "*25.* The only question which is required to be determined in the instant case is whether Regulation 29 of the Pension Regulations, 1995, could have been applied in the case of the respondent or whether Regulation 14 has been rightly applied both by the Tribunal and the High Court.
>
> * * *

6 (2009) 3 SCC 217 : (2009) 1 SCC (L&S) 622 : (2009) 1 Scale 168

28. However, we are inclined to agree with Ms Bhati that Regulation 29 does not contemplate voluntary retirement under the Voluntary Retirement Scheme and applies only to such employees who themselves wish to retire dehors any scheme of voluntary retirement, after having completed 15 years of qualifying service for the said purpose. There is a distinct difference between the two situations and Regulation 29 would not cover the case of an employee opting to retire on the basis of a voluntary retirement scheme.

29. Furthermore, Para 2 of the Voluntary Retirement Scheme, 2001, of the appellant Bank merely prescribes a period of qualifying service for an employee to be eligible to apply for voluntary retirement.

30. On the other hand, Regulations 14 and 29 of the Pension Regulations, 1995, relate to the period of qualifying service for pension under the said Regulations, in two different situations. While Regulation 14 provides that in order to be eligible for pension an employee would have to render a minimum of 10 years' service, Regulation 29 is applicable to the employees choosing to retire from service prematurely, and in their case the period of qualifying service would be 15 years.

31. The facts of the present case, however, do not attract the provisions of Regulation 29 since the respondent accepted the offer of voluntary retirement under the Scheme framed by the Bank and not on his own volition dehors any scheme of voluntary retirement. In such a case, Regulation 14 read with Regulation 32 providing for premature retirement would not also apply to the case of the respondent. While Para 2 of the BOBEVRS, 2001 speaks of eligibility for applying under the Scheme, Regulation 14 of the Pension Regulations, 1995, contemplates a situation whereunder an employee would be eligible for premature pension. The two provisions are for two different purposes and for two different situations. However, Regulation 28 of the Pension Regulations, 1995, after amendment made provision for situations similar to the one in the instant case.

32. In the absence of any particular provision for payment of pension to those who opted for BOBEVRS, 2001 other than Para 11(*ii*) of the Scheme, we are once again left to fall back on the Pension Regulations, 1995, and the amended provisions of Regulation 28 which brings within the scope of superannuation pension employees who opted for the Voluntary Retirement Scheme, which will be clear from the explanatory memorandum. However, the period of qualifying service has been retained as 15 years for those opting for BOBEVRS, 2001 and is treated differently from premature retirement where the minimum period of qualifying service has been fixed at 10 years in keeping with Regulation 14 of the Pension Regulations, 1995."

54. A word about precedents, before we deal with the aforesaid observations. The classic statement of Earl of Halsbury, L.C. in *Quinn* v. *Leathem*[7], is worth recapitulating first: (AC p. 506)

> "... before discussing ... *Allen* v. *Flood*[8] and what was decided therein, there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, *but are governed and qualified by the particular facts of the case* in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all."
> (emphasis supplied)

This Court has in long line of cases followed the aforesaid statement of law.

55. In *State of Orissa* v. *Sudhansu Sekhar Misra*[9] it was observed: (AIR p. 651, para 13)

> "*13.* ... A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it."

56. In the words of Lord Denning:

> "Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide, therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

57. It was highlighted by this Court in *Ambica Quarry Works* v. *State of Gujarat*[10]: (SCC p. 221, para 18)

> "*18.* ... The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it."

58. In *Bhavnagar University* v. *Palitana Sugar Mill (P) Ltd.*[11] this Court held that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision.

7 (1901) 1 AC 495 (HL)
8 1898 AC 1 : (1895-99) All ER Rep 52 (HL)
9 AIR 1968 SC 647
10 (1987) 1 SCC 213
11 (2003) 2 SCC 111

59. This Court in *Bharat Petroleum Corpn. Ltd.* v. *N.R. Vairamani*[12] emphasised that the courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. It was further observed that the judgments of courts are not to be construed as statutes and the observations must be read in the context in which they appear to have been stated. The Court went on to say that circumstantial applicability, one additional or different fact may make a world of difference between conclusions in two cases.

60. It is true that the controversy in *Bank of Baroda*[6] arose out of the same voluntary retirement scheme with which we are concerned in this group of appeals. However, there is a vital factual difference in that case and this group of appeals. Pertinently that was a case where the employee had completed only 13 years of service (not even 15 years of service much less 20 years' service) although he completed 40 years of age at the time he offered for voluntary retirement. The employee's application therein for voluntary retirement was accepted by Bank of Baroda and he was paid all retiral benefits. However, his request for grant of pension in addition to the other retiral benefits was not acceded to by the Bank. It was so because he had not completed even 15 years of service. The employee pursued industrial adjudicatory process for redressal of his grievance in respect of non-grant of pension by the Bank. The employee's claim was opposed by Bank of Baroda contending that in terms of Regulations 14, 28 and 29 of the Pension Regulations, 1995, the employee was not entitled to pension.

61. The observations made by this Court in *Bank of Baroda*[6] which have been quoted above and relied upon by the banks in support of their contention have to be understood in the factual backdrop, namely, that the employee had completed only 13 years of service and, was not eligible for the pension under the Pension Regulations, 1995 and for the benefit of addition of five years to qualifying service under Regulation 29(5), an employee must have completed 20 years of service. The question therein was not identical in form with the question here to be decided.

62. The following observations in *Bank of Baroda*[6] are significant: (SCC p. 221, para 21)

> "*21.* ... since both the Tribunal as well as the High Court appear not to have considered or taken note of the fact that the respondent was not eligible for pension as he had not completed 15 years of qualifying service...."

63. The decision of this Court in *Bank of Baroda*[6] is, thus, clearly distinguishable as the employee therein had not completed qualifying service much less 20 years of service for being eligible to the weightage under Regulation 29(5) and cannot be applied to the present controversy nor does that matter decide the question here to be decided in the present group of matters.

12 (2004) 8 SCC 579

6 *Bank of Baroda* v. *Ganpat Singh Deora*, (2009) 3 SCC 217 : (2009) 1 SCC (L&S) 622

64. On behalf of banks it was submitted that the employees, having taken benefits under the Scheme (VRS 2000), are estopped from raising any issue that their entitlement to pension would not be covered by amended Regulation 28. It was suggested that the employees having taken benefit of the Scheme cannot insist for pension under Regulation 29(5). *O.P. Swarnakar*[1] was relied upon in this regard wherein it has been held that an employee, having taken the ex gratia payment, or any other benefit under the Scheme cannot be allowed to resile from the Scheme.

65. Insofar as the present group of appeals is concerned, the employees are not seeking to resile from the Scheme. They are actually seeking enforcement of the clause in the Scheme that provides that the optees will be eligible for pension under the Pension Regulations, 1995. According to them, they are entitled to the benefits of Regulation 29(5). In our considered view, plea of estoppel is devoid of any substance; as a matter of fact it does not arise at all in the facts and circumstances of the case.

66. We hold, as it must be, that the employees who had completed 20 years of service and were pension optees and offered voluntary retirement under VRS 2000 and whose offers were accepted by the banks are entitled to addition of five years of notional service in calculating the length of service for the purposes of that Scheme as per Regulation 29(5) of the Pension Regulations, 1995. The contrary views expressed by some of the High Courts do not lay down the correct legal position.

67. The only question now remains to be seen is whether the employees concerned are entitled to interest on unpaid pension.

68. Although it has been held by us that the subject employees are entitled to the weightage in terms of Regulation 29(5) of the Pension Regulations, 1995, but we are satisfied that any award of interest on unpaid pension would not be in the interest of justice. It is so because different High Courts did not have unanimous judicial opinion on the issue. The Punjab and Haryana High Court and the Division Bench of the Kerala High Court upheld the contention of the employees with regard to applicability of Regulation 29(5) to the optees who had completed 20 years of service while the Division Bench of the Calcutta High Court and a Single Judge of the Kerala High Court took exactly an opposite view. The stance of the banks, although found not meritorious, cannot be said to be totally frivolous. We, accordingly, hold that the subject employees are not entitled to interest on unpaid pension.

69. The result of the foregoing discussion is that the appeals preferred by the banks must fail and are dismissed while the appeals of the employees deserve to be allowed and are allowed accordingly. The respective banks shall now recalculate, within one month from today, the pension payable to the employees concerned by giving them the benefit of Regulation 29(5). However, the employees shall not be entitled to interest on unpaid pension. The pending applications in these appeals stand disposed of. The parties shall bear their own costs.

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1 *Bank of India* v. *O.P. Swarnakar*, (2003) 2 SCC 721 : 2003 SCC (L&S) 200