

(1998) 09 MAD CK 0049

In the Madras High Court

Case No : W.A. No's. 368 and 369 of 1998 and C.M.P. No's. 3832 to 3834 of 1998

A.K. Ansari and Another

APPELLANT

Vs

Bharat Overseas Bank Ltd. and Another

RESPONDENT

Date of Decision : 24-09-1998

Acts Referred:

Bharat Overseas Bank Employees (Pension) Regulations, 1995 — Regulation 3(2)
Constitution of India, 1950 — Article 12, 226

Citation : (2001) 3 LLJ 1367

Hon'ble Judges : Man Mohan Singh Liberhan, C.J;E. Padmanabhan, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Padmanabhan, J.—In the above writ appeals, notice of motion was ordered. The respondents have been served and they have entered

appearance through their counsel. Excepting the factual difference between the two appeals and exercising their options and the materials being

connected therein, all other contentions are common. Learned counsel appearing for either side submitted common arguments and hence the two

writ appeals are disposed by this common judgment.

2. W.A. No. 368 of 1998, has been preferred by one A.K. Ansari aggrieved by the dismissal of this Writ Petition No. 8181 of 1996 praying this

Court to issue a writ of certiorari mandamus calling for the records of the first respondent/Bharat Overseas Bank Ltd., and quash the order

Ref. No. 24/133/96, dated May 7, 1996, and issue mandamus directing the respondent to pay pension under the Bharat Overseas Bank

Employees (Pension) Regulations, 1995, with effect from November 1993 and

award exceptional costs.

3. W.A. No. 369 of 1998 has been filed by one V. Raman being aggrieved by the order passed by the learned single Judge in W.P. No. 9235 of

1996 praying for the issue of certiorarified mandamus calling for the records pertaining to the respondent's order No. CHSECT/102/96, dated

May 4, 1996 and the letter No. 24/110/96, dated May 13, 1996, and quash the same and issue a mandamus directing the respondent-Bank to

grant the petitioner the pension and the commuted pension with effect from July 1, 1994 as per the Bharat Overseas Bank Ltd. Employees"

(Pension) Regulations, 1995, and other benefits of additional pension from November 1, 1994, arrears of basic pay and dearness allowance from

July 1 , 1993 and the arrears of H.R.A. from November 1, 1992 and award exemplary costs.

4. The learned single Judge while holding that the writ petitions are maintainable, dismissed the writ petitions by the common order, dated

December 10, 1997. Being aggrieved by that order, the above writ appeals have been preferred by the respective writ-petitioners.

5. Heard Sri N.G.R. Prasad and Ms. Vaigai, learned counsel for the appellants, in both the writ appeals and Sri T.K. Seshadri, learned counsel

appearing for the respondents/Bank.

6. Though the learned single Judge has held that the writ petitions are maintainable. Sri T.K. Seshadri, the learned counsel for the contesting

respondent, contended that the writ petitions are not maintainable as against the respondent-Bank as it is not an ""other authority"" falling under

Article 12 of the Constitution of India and it is not amenable to writ jurisdiction of this Court under Article 226 of the Constitution of India.

7. Sri T.K. Seshadri also relied upon the unreported order of R. JAYASIMHA BABU, J., dated March 1, 1995 in W.P. No. 3005 of 1995, the

order of P. SATHASIVAM, J., dated April 12, 1997 in W.P.No. 14716 of 1996 and the order of R. JAYASIMHA BABU, J., dated April 12,

1997, in W.P.No. 5184 of 1997. The learned counsel also relied upon the judgment of Gujarat High Court in Special Civil Application No. 7220

of 1996 wherein in respect of the very same respondent-bank, it has been held that the writ petitions are not maintainable and the respondent-bank

is not amenable to writ jurisdiction.

8. Sri T.K. Seshadri also placed reliance on the unreported judgment of a Division Bench of this Court in W.A. No. 584 of 1997, etc., batch,

dated June 17, 1998, wherein the Division Bench consisting of RAJU and Ms. T. MEENAKUMARI, JJ., according to the learned counsel, in

respect of the same Bank held that it will not fall under the category of "other authority" amenable to writ jurisdiction. That apart, Sri T.K. Seshadri

also relied upon the earlier judgments of this Court reported in Madras Labour Union v. Binny, Ltd., 1995-I-LLJ-588 (Mad) and V. Sathasivan

and Ors. v. Binny, Ltd., and Anr. 1998-I-LLJ-349 (Mad) in support of his contention that the respondent Bharat Overseas Bank Ltd., is not

amenable to writ jurisdiction of this Court.

9. Per contra, Sri N.G.R. Prasad and Ms. Vaigai, relied upon the decisions of the Apex Court reported in Miss Raj Soni Vs. Air Officer in Charge

Administration and another, : Smt. Shakuntala Mehrishi Vs. New Delhi Municipal Committee and others, , Union of India (UOI) and Others Vs.

D.R.R. Sastri, and contended that no interference is called for with respect to the learned single Judge holding that the writ petitions are

maintainable and the respondent-Bank is amenable to the writ jurisdiction of this Court under Article 226 of the Constitution.

10. Before the learned single Judge, the learned counsel for the respondent had not chosen to refer the unreported decisions of this Court rendered

in W.Ps. Nos. 3005 of 1995, 14716 of 1996 and 5184 of 1997. The judgment of the Division Bench of this Court in W.A. No. 584 of 1997,

etc., batch could not have been placed before the learned single Judge as the said judgment was delivered after the dismissal of the writ petition on

June 17, 1998.

11. With respect to the maintainability of the writ petitions substantial arguments were addressed by the counsel appearing for either side. Hence

this question has to be decided at the threshold. The next question with respect to the merits of the petitioners claim in each of the writ petitions will

be considered.

12. Point No. 1 : Maintainability. The first respondent, Bharat Overseas Bank, Ltd., was incorporated under the Companies Act, 1956, on

September 22, 1995 and the subscribers to the Memorandum of Association being:

- (1) Indian Overseas Bank
- (2) Bank of Rajasthan Ltd.
- (3) The South Indian Bank Ltd.
- (4) Karnataka Bank, Ltd.
- (5) Vysya Bank, Ltd.
- (6) Karur Vysya Bank Ltd. and
- (7) The Federal Bank Ltd.

13. The Bharat Overseas Bank, Ltd., hereinafter referred to as the bank for brevity is a banking company which transacts the business of banking

in India as defined in Section 5(b) as well as Section 5(c) of the Banking Regulation Act, 1949. In terms of the said provisions of the said

enactment, the Bank is carrying on its banking transactions and its functions should be within the four corners of the said enactment and strictly in

conformity with its provisions as it is a licensed Bank. The Reserve Bank of India controls and supervises the activities of the respondent-bank

besides inspection and has got the power to issue directions. The appointment of Managing Directors or other members, officers of the bank as

well as the Directors or Chairman as the case may be requires to be approved by the Reserve Bank of India. The Reserve Bank of India also

reserves control over the management of the bank as set out in Section 36(aa) of the Act. Apart from other provisions which are pervasive, with

reference to the affairs of the respondent-bank it is to be pointed out that in terms of Section 46(A) the Chairman, Director or any other employee

of a banking company is deemed to be a public servant for the purpose of Chapter IX of the Indian Penal Code. As such, all the persons namely,

Chairman, Director, Auditor, Liquidator, Manager, and any other employee of the banking company shall be deemed to be a public servant for the

purpose of offences mentioned in Chapter IX of the Indian Penal Code.

14. There is no dispute with respect to the status of the respondent-bank which is a company registered under the Indian Companies Act, 1956. It

is also not in dispute that the respondent-bank is not owned by the Central or State Government and 70 per cent of the total share capital of

the bank is being held by other banks either private or public sector banks. The banking business carried on by the respondent-bank throughout

the length and breadth of the country dealing with the public at large who are its customers. It is also not disputed that 30 per cent of the shares is

held by the Indian Overseas Bank, a nationalised bank.

15. SATHASIVAM, J., in W.P.No. 14176 of 1996 declined to issue a writ of mandamus in exercise of Article 226 of the Constitution of India

since the impugned action of the respondent-bank not being monstrous as has been held by the Division Bench in Madras Labour Union v. Binny

Ltd. reported in 1995 (supra), and in that view of the matter dismissed the writ petition. It cannot be said that the learned Judge had taken the view

that no writ petition at all is maintainable against the respondent-Bank. JAYASIMHA BABU, J., also in W.P. No.5184 of 1997 had not held that

the respondent-bank is not amenable to writ jurisdiction of this Court, but had taken the view that this Court will not normally entertain a writ

petition except in most extraordinary circumstances. While disposing of the batch of Writ Appeal No. 584 of 1997, etc., and writ petitions, the

Division Bench of this Court consisting of RAJU and Ms. T. MEENA KUMARI, JJ., before whom a reference was also made to the earlier

orders in W.Ps. Nos. 3005 of 1995 as well as 14176 of 1996 and Division Bench judgment in V. Sadasivan and Ors. v. Binny Ltd. and Anr.

(supra), and the Division Bench analysed the case-law and held thus:

It is by now well settled in a series of decisions of this Court as also the Apex Court, that there is no universal or general rule that no writ petition

could lie against a private person or a private institution and that in certain given circumstances or when the monstrosities of the situation or

exceptional circumstances cry for timely judicial intervention or mandate, nothing precludes this Court in exercise of its writ jurisdiction, to grant

relief against such persons also. The question for consideration therefore, in this case before ever going into the question of the respective claims of

the petitioners as such is as to whether the principles laid down and the criteria indicated in the decision reported in Madras Labour Union v.

Binny, Ltd., and Ors. (supra) and V. Sathasivan and Ors. v. Binny, Ltd. and Anr. (supra), can be said to have been satisfied in this case for this

Court to entertain a writ petition and adjudicate all the issues raised on merits. The fact that the bank management in question is a private institution

not answering the description of the "State" within the meaning of Article 12 of

the Constitution of India is not in serious controversy, since no such exercise has been undertaken before us to substantiate with reference to the Constitution of the bank as such and any principles of law that it so answers the description of "State" within the meaning of Article 12 of the Constitution of India. In such circumstances, the exercise of powers under Article 226 of the Constitution of India could be made only if the subject-matter of the claim, or the grievance sought to be indicated as such could not otherwise be effectively undertaken for pursuit of remedies before any other forum or under any other law. The violation alleged, in our view, in this case cannot be said to be prima facie made out without any further enquiry into the details of the merits of the claims. An adjudication of such issues as have been raised on merits for the claims in these proceedings would involve further collection of material and detailed enquiry and the existing situation as also the respective rights of parties. All such exercises in our view have to be undertaken in every case of any alleged violation of statutory provision de hors the disputed basis of facts of such alleged violation also otherwise this Court would be only substituting itself in the place of the regular machinery created for adjudication under the respective industrial law governing a situation. So far as the case on hand is concerned, or any alleged violation of Section 9A as also Section 33A of the Act, there are ample remedies available under the Act itself to vindicate their rights. The decision in Life Insurance Corporation of India Vs. D.J. Bahadur and Others, , is one pertaining to an institution which answered the description of ""State"" within the meaning of Article 12 of the Constitution of India and the fact that a writ petition was entertained in such a case by itself, is no justification to entertain likewise a writ petition in this case also.

16. The Division Bench had not laid down that no writ is maintainable against the respondent-bank but it has accepted the principle that the writ petition is maintainable against the respondent-bank where situations warrant as has been laid down by the Division Bench in Madras Labour Union v. Binny Ltd., as well as in V. Sathasivan and Ors. v. Binny Ltd. (supra).

17. In V. Sathasivan and Ors. v. Binny, Ltd., and Anr. (supra) RAJU, J., speaking for First Bench of this Court after referring to Madras Labour

Union v. Binny Ltd., as well as earlier pronouncements of this Court summarised

the law relating to the maintainability of writ petitions in respect of public companies as hereunder in 1998-I-LLJ-349 at 360, 361.

9. We have carefully considered the submissions of the learned counsel appearing on either side. In our view, the expansive use and exercise of powers under Article 226 of the Constitution of India cannot be made as a matter of course, merely because some grievance of a wrongful

dismissal is made, despite the fact that such grievance is against a private party and not even any "other authority" and notwithstanding the position

that an adjudication of the issues raised involve determination of question of fact which could be properly and effectively determined only on

appreciation of materials placed on record, documentary or oral, or gathered in the manner known to and in accordance with law. Even the

Division Bench decision reported in *Madras Labour Union v. Binny Ltd.*, (supra), professes to call out certain principles as flowing from out of the

various decisions considered therein and stated such principles in a little too general and wide terms, the facts that ultimately the very Bench in

applying those principles only took the view that the earlier decision of the Division Bench of this Court reported in *Workmen of Buckingham and*

Carnatic Mills v. State of Tamil Nadu 1982-2-LLJ-90 (Mad) taking the view that the implementation of a settlement entered into u/s 12(3) of the

Industrial Disputes Act cannot be had in exercise of the writ jurisdiction, will govern the case before them. The plea of alleged violation of Sections

25-N and 25-O was refused to be gone into as involving consideration of disputed questions of facts. Therefore, the exercise of powers would

always depend upon the peculiar facts and circumstances of the case and there cannot be any hard and fast rule of universal application. If any

violation of fundamental right is directly involved for consideration, it matters very little as to the character or the status of the violator, be it or be

not answering the description of "State" within the meaning of Article 12 and the Court exercising jurisdiction under Article 226 would intervene.

At the same time, even if he be a person or authority against whom ordinarily a writ would lie if the subject-matter of the writ or the grievance

sought to be vindicated is such which the Courts exercising jurisdiction would hesitate to undertake to adjudicate on account of there being an

effective statutory machinery to have such issues or on account of the need to

take or record evidence oral or mark documentary evidence with liberties to do so for either side, the writ Court would always consider it to be inappropriate to embark upon or entertain such issues for adjudication under Article 226 of the Constitution of India, though there are no statutory or constitutional limits stipulated on the exercise of power itself and the limitations imposed are self imposed or imposed by any declaration of law made by the Apex Court. The decisions in 1995(1) L.L.N. 801 and 1996 (2) L.L.N. 965 while also go to show that the claim of the petitioners cannot be countenanced, as projected.

10. We now proceed to consider the area of disputes between parties in this case. There are vertical differences of vital and serious nature in the claim made of the nature of relationship between parties which is a fundamental and basic issue and which will have great impact upon the right to claim relief in this proceeding itself. Whereas the management claims that the staff in question are managerial staff, that they were promoted to such positions with higher scales of pay and that they also executed the required contracts of service and have been enjoying the benefits under the same and it is not open to them to wriggle out of their commitments, the petitioners would contend that they continue even thereafter to do works and attend to jobs which entitle them the retention of the status of workers and unionised staff and, therefore, in the teeth of the alleged violation of the statutory provisions in the Industrial Disputes Act protecting their rights, they are entitled to seek relief in this writ petition. In the absence of proper investigation and determination of the factual issues disputed after collecting the required materials in accordance with law, it would be not only inappropriate but impossible also for this Court to effectively adjudicate on these factual issues concerning the status of the petitioners and the nature of relationship between parties in these proceedings under Article 226 of the Constitution of India. Consequently, we are well justified in declining to go into such factual issues in this proceedings.

18. In the above pronouncement one of us Sri M.S. LIBERHAN, CJ. was a party. In *Sadasivan and Ors. v. Binny Ltd., and Anr.* (supra) also it has not been ruled out that no writ is maintainable against private individual or company or private limited public company and on the other hand the Division Bench had accepted the principle and when situation warrants or

where the situation is monstrous or where the fundamental rights are being infringed, writ petitions are maintainable.

19. The contention of Sri T.K. Seshadri that no writ is maintainable against the respondent-bank in our considered view is too wide and cannot be sustained. In fact in the later pronouncements, their Lordships of the Apex Court had laid down further tests with respect to exercise of jurisdiction under Article 226 even against the private individuals or companies or public companies which requires to be referred to.

20. In Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, , it has been held that employees of public/semi Government undertakings, statutory corporations or instrumentalities of State Government by Article 12 have a status and employment in such undertakings

being public employment in which society has a stake and interest and employees are entitled to invoke the rights guaranteed under Parts III and

IV of the Constitution of India. In the said judgment it has been held thus in 1991-I-LLJ-395;

203. In Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, after elaborate consideration of

the doctrine of "reasonableness or fairness" of the terms and conditions of the contract vis-a-vis the relative bargaining power of the contracting

parties this Court laid down that the principles deducible from the discussion made therein is in consonance with right or reason intended to secure

socio-economic justice and conforms to mandate of the equality clause in Article 14. The principle laid was that Courts will not enforce and will,

when called upon to do so, strike down an unfair and unreasonable contract or an unfair and unreasonable clause in contract, entered into between

parties who are not equal in bargaining power. It will apply to situations in which the weaker party is in a position in which he can obtain goods or

services or means of livelihood only upon the terms imposed by the stronger party or go without them. It will also apply where a man has no choice

or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form or to accept a set

of rules as part of the contract, however unfair, unreasonable and unconscionable a clause in that contract or form or rules may be. This principle,

however, will not apply where the bargaining power of the contracting parties is

equal or almost equal or where both parties are businessmen and the contract is a commercial transaction,

204. In today's complex world of giant corporations with their vast infrastructural organisations the State through its instrumentalities and agencies has been entering into almost every branch of industry and commerce and field of service, there can be myriad situations which result in unfair and unreasonable bargains between parties possessing wholly disproportionate and unequal bargaining power. These cases can neither be enumerated not fully illustrated. The Court must judge each case on its own facts and circumstances.

21. In the light of the above observations, the question requires consideration. In *Madras Labour Union v. Binny Ltd., and Ors.* (supra),

SRINIVASAN, J., as he then was speaking for the Bench after analysing the various pronouncements of the Apex Court as well as this Court

summarised the position as hereunder in 1995-I-LLJ-588.

47. In *Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc.* etc., , the Constitution Bench of the Supreme Court approved

of the dictum of *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and*

Others, and quoted a good portion of the judgment and observed:

"The emphasis in this case is as to the nature of duty imposed on the body. It requires to be observed that the meaning of authority under Article

226 came to be laid down distinguishing the same term from Article 12. In spite of it, if the emphasis is on the nature of duty on the same principle

it has to be held that these educational institutions discharge public duties, irrespective of the educational institutions receiving aid it should be held

that it is a public duty. The absence of aid does not detract from the nature of duty.

What the Bench said with respect to educational institutions will not apply to private companies doing business and it cannot be said that such

companies are discharging public duties.

48. On an analysis of the above rulings, the following propositions emerge:

(1) A private body which is not a "State" within the meaning of Article 12 of the Constitution of India is not generally amenable to Article 226 of

the Constitution

(2) A writ will issue against a private body to protect the fundamental rights declared under Part III of the Constitution of India.

(3) A writ will issue in extraordinary circumstances if the monstrosity of the situation warrants it.

(4) A mandamus will be issued against a private body, if there is no equally convenient remedy and if there is a public duty.

(5) The implementation of a settlement u/s 12(3) of the Industrial Disputes Act is not a public duty and no writ will lie against a private body.

(6) If the features are patent and they establish gross violation of the mandates of law, the jurisdiction under Article 226 of the Constitution could

be exercised to quash a settlement u/s 18(1) or Section 12(3) of the Industrial Disputes Act.

22. The learned counsel for the appellant relied on propositions Nos. 3 and 4 and persuaded this Court to hold that the writ petition is

maintainable. The above propositions have been followed by the subsequent judgment by the Division Bench of this Court in W.A. No.584 of

1997, etc., batch as well as the Division Bench's judgment in V. Sadasivan v. Binny Ltd. (supra). In V.Sadasivan v. Binny Ltd., RAJU, J.,

speaking for the Bench while quoting the propositions laid down by the Division Bench in Madras Labour Union v. Binny Ltd., and Ors. (supra),

emphasised that the exercise of powers under Article 226 would always depend upon the peculiar circumstances of a case and there cannot be

any hard and fast rule of universal application and in appropriate cases, the writ Court could always consider it either it is appropriate or

inappropriate to embark upon or entertain such issues for adjudication under Article 226 of the Constitution of India and restriction on limitations

are only self imposed or imposed by any declaration of law made by the Apex Court.

23. Incidentally, it has been pointed out that in All India Reserve Bank Retired Officers Association and others Vs. Union of India and others, their

Lordships of the Apex Court held that pension is not a bounty or charity or gratuitous payment solely dependent on the whim or sweet will of the

employer. In that context it has been held thus:

The concept of pension is now well known and has been clarified by this Court

time and again. It is not a charity or bounty nor is it gratuitous payment solely dependent on the whim or sweet will of the employer. It is earned for rendering long service and is often described as deferred portion of compensation for past service. It is in fact in the nature of a social security plan to provide for the December of life of a superannuated employee. Such social security plans are consistent with the socio-economic requirements of the Constitution when the employer is a State within the meaning of Article 12 of the Constitution. All the bank employees who had retired prior to November 1, 1990 were governed by the CPF Scheme. However, by the introduction of the pension scheme under the regulations those employees who retired on or after January 1, 1986 have been given an option to switch over to the pension scheme provided they refund the employer's contribution to the CPF Scheme together with interest thereon and further agree to pay interest at 6 per cent per annum from the date of receipt of the fund amount on superannuation till the repayment thereof. The grievance of the petitioners is that all employees who were governed by the CPF Scheme on the date of their superannuation constituted a control of the appropriate Government having protection under Articles 14 and 19(2), it is an instrumentality or agency of the State.

(4) The State is a service Corporation. It acts through its instrumentalities, agencies or persons natural or juridical.

(5) The governing power, wherever located, must be subject to the fundamental constitutional limitations and abide by the principles laid in the Directive Principles.

(6) The framework of service regulations made in the appropriate rules or regulations should be consistent with and subject to the same public law, principles and limitations.

(7) Though the instrumentality, agency or person conducts commercial activities according to business principles and are separately accountable under their appropriate bye-laws or memorandum of association, they become the arm of the Government.

(8) The existence or deep and pervasive State control depends upon the facts and circumstances in a given situation and in the altered situation. It is not the sole criterion to decide whether the agency of instrumentality or

persons is by or under the control of the appropriate Government.

(9) Functions of an instrumentality, agency or person are of public importance following public interest element.

(10) The instrumentality, agency or person must have an element of authority or ability to effect the relations with its employees or public by virtue

of power vested in it by law, memorandum of association or bye-laws or articles of association.

(11) The instrumentality, agency or person renders an element of public service and is accountable to health and strength of the workers, men and

women, adequate means of livelihood, the security for payment of living wages, reasonable conditions of work, decent standard of life and

opportunity to enjoy full leisure and social and cultural activities to the workman.

(12) Every action of the public authority, agency or instrumentality or the person acting in public interest or any act that gives rise to public element

should be guided by public interest in exercise of public power or action hedged with public element and is open to challenge. It must meet the test

of reasonableness, fairness and justness.

(13) If the exercise of the power is arbitrary, unjust and unfair, the public authority, instrumentality, agency or the person acting in public interest,

though in the field of private law, is not free to prescribe any unconstitutional conditions or limitations in their actions.

24. The learned counsel for the appellant emphasised the principles enunciated by the Apex Court in particular (2), (8), (9), (10), and (12) in

support of their contention. The said principles definitely advance the case of the appellant with respect to the contention that the writ petition is

maintainable as the respondent-Bank has been brought into existence not only by a consortium of nationalised banks, by contribution of share

capital, but also by scheduled banks though private the activities of those banks, as well as the respondent-Bank regulated by the provisions of the

Banking Regulation Act which would prove the existence of substantial control on the activities of the respondent-Bank and also the factor that the

respondent has the authority to effect relations with its employees or by public by virtue of power vested in it by Memorandum of association or

bye-laws or articles of Association and not to speak of the Banking Regulation Act. The respondent definitely renders an element of public service

by running a banking institution and it is accountable to the health and strength of workers, its employees and also it is obliged to provide adequate

means of livelihood, reasonable conditions of work,⁴ decent standard of life and opportunity to enjoy full leisure.

25. In the light of the above factors it is obvious that the respondent is amenable to the writ jurisdiction of this Court though it is a company

registered under the Indian Companies Act and may not have the direct investments by the State, but definitely the funds of the State, namely,

nationalised banks have been invested and the respondent-bank as already pointed out, the provisions of the Banking Regulation Act requires the

business of the respondent-bank to be carried on strictly in terms of the said provisions and the said enactment provides for various controls which

are deep and pervasive. Further the respondent being a Bank, a financial institution is connected with the public at large.

26. In D.K. Yadav Vs. J.M.A. Industries Ltd., , their Lordships of the Apex Court emphasised the right to public employment and the

constitutional right to livelihood which is protected by Articles 14 & 21 of the Constitution. In this respect, it has been held thus at p. 701 of LLJ :

11. Therefore, fair play in action requires that the procedure adopted must be fair and reasonable. The manner of exercise of the power and its

impact on the rights of the person affected would be in conformity with the principles of natural justice. Article 21 clubs life and liberty, dignity of

person with means of livelihood without which the glorious content of dignity of person would be reduced to animal existence. When it is

interpreted that the colour and content of procedure established by law must be in conformity with the minimum fairness and processual justice, it

would relieve legislative callousness despising opportunity of being heard and fair opportunities of defence. Article 14 has a pervasive processual

potency and versatile quality, equalitarian in its soul and allergic to discriminatory dictates. Equality is the antithesis of arbitrariness. It is thereby

conclusively held by this Court that the principles of natural justice are part of Art. 14 and the procedure prescribed by law must be just, fair and

reasonable.

12. In Delhi Transport Corporation v. Delhi Transport Corporation. Mazdoor Congress (supra), this Court held that right to public employment

and its concomitant right to livelihood received protective umbrella under the canopy of Articles 14 and 21, etc. All matters relating to employment

include the right to continue in service till the employee reaches superannuation or until his service is duly terminated in accordance with just, fair

and reasonable procedure prescribed under the provisions of the Constitution and the rules made under proviso to Art. 309 of the Constitution or

the statutory provisions or the rules, regulations or instructions having statutory flavour. They must be comfortable to the rights guaranteed in Parts

III and IV of the Constitution. Article 21 guarantees right to life which includes right to livelihood, the deprivation thereof must be in accordance

with just and fair procedure prescribed by law conformable to Articles 14 and 21 so as to be just, fair and reasonable and not fanciful, oppressive

or at vagary. The principles of natural justice are an integral part of the guarantee of equality assured by Art. 14. Any law made or action taken by

an employer must be fair, just and reasonable. The power to terminate the service of an employee/ workman in accordance with just, fair and

reasonable procedure is an essential inbuilt of natural justice. Article 14 strikes at arbitrary action. It is not the form of the action but the substance

of the order that is to be looked into, It is open to the Court to lift the veil and gauge the effect of the impugned action to find whether it is the

foundation to impose punishment or is only a motive. Fair play is to secure justice, procedural as well as substantive. The substance of the order is

the soul and the effect thereof is the end result.

27. In Francis John Vs. Director of Education and Others, , VENKATARAMAIAH, Chief Justice, as he then was, held that a writ petition is

maintainable challenging the order of termination passed by a school which is aided though it is a private educational institution. In that respect it

has been held thus:

Any private school which receives aid from the Government under the Grand-in-aid Code, which is promulgated not merely for the benefit of the

management but also for the benefit of the employees in the school for whose salary and allowances the Government was contributing from the

public funds under Grant-in-aid Code cannot escape from the consequences flowing from the breach of the Code and particularly where the

Director of Education who is an instrumentality of the State is participating in the

decision-making process. Under these circumstances we find that the High Court was wrong in upholding that the orders of the Director of Education and the dispute settlement committee were not amenable to the jurisdiction of the High Court under Article 226 of the Constitution since the matter squarely falls within the principles laid down by this Court in Tika Ram's case 1985(1) L.L.N.20.

28. In the leading case The Praga Tools Corporation Vs. Shri C.A. Imanuel and Others, , the emphasis that was laid being that, there must be a legal right to the performance of a legal duty by one against whom it is sought, and it is not necessary that the person or the authority on whom duty is imposed need be a public official. or official body.

29. In M.K. Agarwal v. Gurgaon Gramin Bank : [1987]3SCR640 , the Apex Court held that the writ is maintainable taking into consideration of the constitution of the Bank and the further fact that the bank is regulated by the Regional Rural Banks Act, 1976. In that context it has been held thus :

Now, to the second point. The bank is constituted under the Regional Rural Banks Act, 1976. Having regard to its constitution and nature of its legal entity and the measure of State control, it is an instrumentality of the State and is made of latter's own "flesh and bones" and is, accordingly, "State" within the meaning, and for purposes of Article 12 of the Constitution.

It is fairly stated at the Bar that whatever policy or benefit or the decision that are conferred by the nationalised banks or scheduled banks is made applicable or adopted on the employees of the respondent-bank as a matter of course as the respondent is a member of the All India Banks"

Association and there is no dispute that the employees of all the banks either nationalised or scheduled or otherwise, are being given the same treatment on par with each other including the terminal benefits.

30. It is also rightly pointed out that the appellants have no alternative or efficacious remedy except to invoke the writ jurisdiction of this Court and right of pension which is sought to be denied is the subject-matter of consideration, it is a livelihood and denial of such a livelihood definitely offends and this situation is monstrous in respect of retirees, who lead a frugal life.

31. In the foregoing circumstances, in the light of the aforesaid pronouncements of the Apex Court as well as the Division Bench of this Court, we

confirm that the view taken by the learned single Judge that the writ petition is maintainable and the contention to the contra raised by Sri T.K.

Seshadri has to be necessarily rejected. On the facts and to the limited extent indicated above, we hold that the writ petition is maintainable.

32. Point No. 2: Factual matrix in W.A. No. 368 of 1998

The appellant on completing 58 years of age and reaching the age of superannuation, retired from the respondent-bank on December 1, 1992

while he was working as a Regional Manager. During 1992, the introduction and framing of pension scheme was under the active consideration of

all banks and it is in lieu of the employer's contribution to provident fund. A scheme has been framed by the respondent-bank in respect of all

present employees as well as employees who have retired from the bank on and after January 1, 1986 and in terms of the scheme the

superannuated employee is eligible for pension with effect from November 1, 1993 provided they exercise option and returned the employer's

share of provident fund with 6 per cent simple interest per annum. The appellant exercised his option for pension as early as July 27, 1994, which

was acknowledged by the personnel department of the respondent-bank on the same date. According to the appellant his request for pension had

been denied on the sole reasoning that the option exercised by him had not been attested by the designated officer in the respondent-bank under

whom the appellant had worked last. March 19, 1996 is the last date for exercise of option in terms of the respondent's letter dated February 8,

1996.

33. It is the claim of the appellant that he had complied with the requisite formalities by exercising the option and he was willing to comply with

further formalities if any. It is the case of the appellant that the respondent-bank, a member of the Indian Banks' Association had issued a notice in

the leading dailies stating that the employees who retired on or before October 30, 1993 can apply in the bank's format for membership of the

pension scheme. The appellant is eligible to avail the benefit under the scheme. The retired employees who desired to opt for pension in lieu of

contributory provident fund were required to exercise their option within four

months from April 1, 1994, i.e., by August 1, 1994 and also refund the banks provident fund contribution with interest at 6 per cent per annum, and such refund should be within seven days of the intimation from the bank. To such a scheme, the respondent-bank was a signatory to the settlement arrived at between the Indian Banks Association and the Federation of Bank Employees.

34. The appellant had exercised his option on July 27, 1994, initially and it was subsequently extended till September 30, 1994. However, the respondent had framed the Bharat Overseas Bank Employees' (Pension) Regulations, 1995 which the appellant was not aware of and as the appellant who had already exercised his option under the earlier scheme, was under the faith that he will get all the benefits under the pension scheme. The option already exercised was not rejected and it was very much with the respondent-bank.

35. On February 8, 1996, the appellant received a letter from the respondent-bank intimating the details of Pension Regulations, 1995, which had come into force with effect from November 20, 1995. In terms of the regulations the employees who retired on or after January 1, 1986 but before November 1, 1993 are also eligible for pension subject to the condition that:

1. They exercise their option by March 19, 1996; and
2. Refund the bank's contribution to provident fund with 6 per cent interest per annum.

It is not in dispute that the appellant had submitted the option format, dated February 15, 1996, along with his covering letter, dated February 16, 1996, On March 14, 1996, the appellant requested the respondent seeking clarification on the exact amount to be repaid by the appellant and also requested for a copy of the Pension Regulations, 1995. Even for the said letter there was no reply. On April 19, 1996 the appellant had sent a telex message to the Chairman of the respondent-bank in this regard while the appellant had complained about the conduct of the personnel department. The appellant had also funded Rs.1.30 lakhs in the savings bank account of the respondent-bank, Annanagar Branch, and advised the head office of the respondent-bank which was the approximate provident fund amount with interest to be refunded by him. After the said telex

message, the respondent by letter, dated April 23, 1996, while alleging certain incidents, intimated the appellant that his right to pension had been

forfeited as he had failed to submit the option format with due attestation by an officer in the bank.

36. Even according to the respondent the option letter is incomplete and despite pointing out the appellant had failed to rectify the defect in the

format, dated February 15, 1996. Thereafter there has been exchange of notices between the appellant and the respondent-bank challenging the

communication of the respondent-bank the appellant filed the writ petition which was dismissed. Hence the writ appeal.

37. A detailed counter has been filed by the respondent-bank. It is not in dispute that pension scheme and the benefits thereof are available to the

eligible employees including those who have retired on January 1, 1986 but before November 1, 1993, provided that option is exercised in the

prescribed format. According to the respondent those who failed to exercise the option in the prescribed format will not be entitled to claim any

benefit. The service particulars of the appellant had not been denied. According to the respondent the appellant had deliberately and wilfully

submitted an invalid letter of option without attestation and, therefore, the option exercised by the appellant is not valid. The said decision of the

respondent was challenged in the writ petition. The writ petition was dismissed by the learned single Judge. Hence the present writ appeal.

38. It is to be pointed out that the pension scheme framed by the respondent-bank, namely, Bharat Overseas Bank Ltd. Employees" (Pension)

Regulations, 1993, had not come into force, so also the Bharat Overseas Bank Employees (Pension) Regulations, 1995, till date, and this scheme

is yet to be implemented in its entirety.

39. In terms of the Bharat Overseas Bank, Ltd. Employees" (Pension) Regulations, 1995, it is admitted that the appellant is eligible to avail the

scheme subject to the conditions that he exercised his option within 120days from November 20, 1995, on which date the pension regulations

came into force. The said regulations had been approved by the Board of Directors of the respondent-bank on November 20, 1995. The time to

exercise the option was to expire on March 19, 1996. Regulation 3(a) also provides that option already exercised by an employee before the

notified date will be deemed to be an option under the 1995 Pension Regulations as well. It is the case of the respondent-bank that on February 8,

1996 a circular was sent to the appellant calling upon the appellant to exercise his option in the format. In terms of the format and as specifically

instructed therein, the option should contain the signature of the optee and it should be attested by the head of the department or by the Manager

of the branch where the employee was working at the time of retirement. It is further admitted that on February 15, 1996, the appellant had

forwarded an incomplete option letter without attestation.

40. It is further pleaded that the respondent-bank's officials contacted the appellant over phone and required the appellant to rectify the defects,

which instructions the appellant had declined to carry out before March 19, 1996 and thereby the appellant had forfeited his claim to become a

member of the Pension Scheme Regulations, 1995. The exchange of notice had been admitted in the counter-affidavit. The main thrust of the

counter being that an incomplete option letter is invalid consequently the appellant had forfeited his right to avail the benefits under the Pension

Scheme, 1995.

41. At the time of arguments in the writ appeal it was contended that the appellant who had failed to send the option in the proper format and his

failure to get attestation in the option letter is fatal and the appellant cannot invoke the writ jurisdiction of this Court. The learned single Judge took

the view that:

if a rule or regulation prescribed that certain things are to be done in a particular way, that has to be done or complied only in such a manner and

there is no exemption for anybody whoever may be and whatever his position may be, and any deviation will be fatal.

42. Sri N.G.R. Prasad, the learned counsel for the appellant, submitted that the attestation of the option letter is a mere formality and merely

because the option letter has not been attested, the appellant cannot be denied benefit of the scheme. It was contended that the action of the

respondent is highly arbitrary and the respondent should not be allowed to deny the benefit which had accrued to the appellant under the Pension

Scheme, 1995, as he had also exercised his option earlier to the commencement of the 1995 Scheme. Sri. N.G.R. Prasad, learned counsel

elaborated his argument contending that it is a beneficial regulation to achieve the social objects and the appellant should not be denied on mere

technicalities and he shall not be deprived of the right to the pension which he is entitled to.

43. Per contra, Sri. T.K. Seshadri the learned counsel for the respondent-bank contended that disputed facts cannot be gone into and therefore

the writ petition is not maintainable. It was also contended by Sri. T.K. Seshadri that pension cannot be equated to livelihood under Article 21 of

the Constitution. It was further contended that the appellant had to blame himself for failure to get the attestation in the option format. It was

pointed out by the learned counsel for the respondent that despite repeated telephone calls, the appellant had declined to rectify the defect in the

option format and had even refused to come on line and that the appellant had forfeited his right to avail the benefit under the scheme. It is essential

to refer to the provisions of the scheme.

44. There is no dispute that the appellant is entitled to avail the benefits of the 1995 Pension Scheme if he satisfies the procedural requirements of

submitting an option format and refunding the provident fund contribution which was paid to him on superannuation. Chapter II of the 1995

Pension Regulations relates to application and eligibility. Regulation 3 in Chapter II provides that an employee who was in service of the bank on

or after January 1, 1986 but had retired before November 1, 1993 and who had exercised the option in writing within 120 days from the notified

date is eligible to become a member of the pension fund and such an employee is bound to refund the entire amount of the bank's contribution to

the provident fund including interest accrued thereon together with a further simple interest at the rate of six percent per annum on the said amount

from the date of settlement of provident fund till date of refund of the aforesaid amount to the bank. Regulation 3(2)(b) provides that exercise of

option should be in writing and it should be within 120 days from the notified date to become a member of the fund.

45. There is no dispute in the present case that the appellant had submitted his option format within 120 days. There is also no dispute that the

appellant is eligible in terms of Regulation 3 to avail the benefits under the 1995 Pension Scheme. Nowhere in Chapter II of the Regulations it has

been provided that the option is liable to be rejected for submission (sic) of any of the defects. In other words consequences for defective

declaration or option had not been provided for in the regulations. Only format A,B or C in the schedule to the 1995 Pension Regulations and that

too as the footnote, it has been indicated that the option letter is required to be attested by the head of the department in the Administrative

Offices/Manager of the Branch, where the member is attached with their specimen signature, number. In the body of regulations and in particular

Chapter II or in Chapter IX. General Conditions, it has not been provided that the option letter has to be attested and that it should be in the

printed format. Nowhere it has been provided in the scheme that the defective option letter such as failure to secure attestation would result in

rejection of the option letter or resulting in forfeiture of the rights under the scheme had been provided for.

46. Sri T.K. Seshadri, learned counsel contended that the format provided in the. Schedule A to the Regulation, according to him abundantly

makes it clear that attestation is essential and any option without attestation is fatal. We are unable to agree with such a contention.

47. The Pension Scheme, 1993, as well as the Pension Scheme, 1995, are social obligation which the management of the respondent-bank and

other banks have undertaken as a social measure. Such a measure should be read so as to advance the spirit and philosophy behind it. The

purpose of the scheme should be given effect.. So also the object of the social welfare or measure which the bank desires to achieve should not be

forgotten. As far as possible the endeavour of the Court must be to cover all the employees than to deny the benefit of the welfare measure and the

regulation should not be used as a measure to deny the fruits of social welfare legislation. It is equally fundamental that the provisions of the

regulations should be so construed as to make it effective and operative.

48. As already pointed out Chapter I. Preliminary Chapter II, Application and Eligibility as well as Chapter IX. General Conditions, nowhere

prescribe that the option letter should be either in the prescribed format or requires attestation. The body of the regulations as set out in the said

three chapters has to be given full meaning and effect as it is a social legislation and a welfare measure. It is not disputed that the appellant is eligible

in terms of Chapter II of the Pension Scheme, 1995. The only defect is the non-attestation of the option letter. It is already pointed out that the three chapters namely Chapters I, II and III nowhere prescribe attestation of the option letter. Only in the format which is found in Schedule A at the bottom it has been indicated that the option letter should be attested. It is merely a formality to confirm the option in case of doubt and such an attestation is not essential when the optee confirms the option and contents of the option letter. The dispute if any with respect to the option could be raised only by the optee or his dependants and not by anybody. To avoid such controversy it has been indicated that option letter requires to be attested by an officer of the bank where the individual had worked on the date of superannuation. Merely because attestation is not found it is farfetching to state that the option is defective and on that score the individual could be denied the benefit of the scheme.

49. As already pointed out, none of the regulation in the scheme provides or mandates or prescribes that the option letter requires to be attested. It is also to be pointed out that nowhere it has been provided in the 1995 Pension Regulations that the failure to attest the option letter would result in rejection of the request to join the pension fund. The consequences alone would make it mandatory which is not the case here.

50. Though Sri T.K. Seshadri took pains and pointed out that format A, B, and C of Schedule forms part of the regulations, it is only a formality which is required to be complied with and at any time the appellant could be called upon to rectify the defects. Except to state that there have been telephone calls, the bank had not chosen to write to the appellant to rectify the defect and no material has been placed in this respect.

51. The Bharat Overseas Bank Ltd. Employees' (Pension) Regulations, 1995, is framed by the respondent-bank to achieve the social object and it is a welfare measure which the bank has undertaken like any other bank.

52. In M/s. Cochin Shipping co. Vs. E.S.I. Corporation, , while interpreting the statutory enactment, which is a social welfare legislation, it has been emphasised that the benefits conferred by the Act under a welfare legislation requires to be given a liberal construction so as to promote its objects. Though the regulation is not statutory, the same principle could very well be adopted in respect of the Pension Scheme, 1995. Even

assuming that the format provides for attestation, it is to be pointed out that the failure to comply with is not fatal. The consequences for such failure

being absent and when it is mere formality, in the absence of any specific provision, such defect would not take away the rights of the appellant

who had admittedly exercised the option within the time prescribed. The format which is heavily relied upon by Sri T.K. Seshadri, the learned

counsel for the respondent, and in particular to the foot note found in the bottom of the format cannot be reason at all to deny the benefit of a social

welfare measure which the bank has undertaken. If such a construction is to be placed in the absence of any specific provision in the regulation

providing for the consequences of non-compliance, we are afraid the very purpose of the pension scheme will be defeated. The object of the

pension scheme should not be allowed to be frustrated by such technicalities.

53. Once the option is confirmed and the optee not only confirms the option but also stands by the option exercised by him and in the present case

the optee had written to the respondent-bank that he is ready with the money to refund the provident fund contribution. Hence there is no reason at

all to deny the benefit of social welfare measure.

54. In respect of the format it has been pointed out by Ms. Vaigai, learned counsel for the appellant, that the three formats in the schedule have no

application to the case of the appellant as the dates mentioned therein are in respect of others and it will not cover the appellant. According to the

counsel for the appellant a formal option letter is more than sufficient for all purposes and the respondents have chosen to reject the appellant's

request on a misconception and misreading of the regulations. At any rate the format will not govern Chapter I or Chapter II and Chapter IX of the

Regulations which requires to be given effect to as a social welfare measure.

55. It is fundamental and it is equally well settled that the format prescribed by the respondent cannot control the regulation or the rules or the

directions. Definitely the format will not control either Chapter I or Chapter II or Chapter IX of the Regulations and at any rate on that score the

benefits to which the appellant is entitled to avail cannot be denied nor it could be contended that the appellant had forfeited his right or claim to the

pension scheme merely because the option letter had not been attested. At this stage we are remembered of the saying ""It is the dog that wags the

tail and not the tail that wags the dog. "" The instruction in the foot-note to the format in the schedule is neither a statutory direction nor it is a

mandatory instruction and it is at best an advice or direction to the retirees so as to avoid disputes. There is nothing in the whole of the scheme

which even remotely is suggestive at a direction, namely, failure to secure attestation would result in automatic rejection of the option letter and

forfeiture of the rights to avail the scheme.

56. The object of attestation, as provided in the option letter is just to ensure that there is no fraud or other vitiating circumstance in the execution

of the said letter of option. The instructions set out at the bottom of the option letter cannot be equated to a statutory provision nor it is akin to

Section 3 of the Transfer of Property Act, 1882, which statutory provision provides the essential conditions of valid execution and attestation of

documents or instruments with respect to transfer of property. Admittedly the appellant had affixed his signature to the option format and there is

no controversy. The appellant is estopped from going back from the consequences of his option. The admission of execution of the option format

by the appellant by themselves serve as sufficient proof of execution as against the appellants, though it be a form which according to the

respondent requires to be attested. As seen from the subsequent correspondence and also from the fact that the appellants have reiterated their

respective option would be sufficient proof against the appellant. For all the above reasons, we hold that the options exercised by the appellants in

the above writ appeals is valid.

57. It is interesting to refer to the passage in this respect in Life Insurance Corporation of India Vs. Escorts Ltd. and Others, wherein it has been

held thus:

Surely, the form cannot control the Act, the Rules or the directions. As one learned Judge of the Madras High Court was fond of saying ""it is the

dog that wags the tail and not the tail that wags the dog."" We may add that this Court had occasion to say in Vasudev Ramachandra Shlat v.

Pranlal Jayanand Thaker.

The subservience of the substance of a transaction to some rigidly prescribed form required to be meticulously observed, savours of archaic and

outmoded jurisprudence.

58. Admittedly, till this date, the Bharat Overseas Bank, Ltd. Employees" (Pension) Regulations, 1995, had not been implemented and none of the

retirees who have been called upon to exercise option or to deposit the employer's contribution with interest until now had been sanctioned

pension under the scheme as the Central Government is yet to amend the rule 89 of the Income Tax Rules so as to grant exemption to the private

sector banks from the requirement of purchasing annuities, from Life Insurance Corporation of India. As the said rule has not been amended till

date the private banks like the respondent-bank have not implemented the pension scheme though the respondent had constituted a trust under a

deed of trust for the management of the fund by the trustees. This factual aspect also persuades us to interfere as there is no justification at all to

deny valuable right of pension, which has accrued to the appellants/retirees and it a livelihood. The denial of such a livelihood to a pension is a

monstrous situation as in these days of spiralling prices pension though earned by all standard is a pittance. The Courts of equity shall not be a

party to denial of such welfare measure of scheme on such minor technical grounds, such as want of attestation. The Court should extend all the

help as has been held by the Apex Court in Cochin Shipping Company v. Employees" State Insurance Corporation (supra), the endeavour of the

Court should be to place a liberal construction so as to promote the objects for which Pension Scheme, 1995, has been framed by the

respondent-bank.

59. In terms of the scheme, we also hold that attestation is neither a must nor it is a mandatory requirement and when the optee had confirmed the

option by following it with letters and by filing the writ petition with respondent shall not insist for attestation in the case of the appellant and the

appellant is entitled to all the benefits in terms of the Bharat Overseas Bank Ltd., Employees (Pension) Regulations, 1995 and the impugned

communication is quashed and the writ petition deserves to be allowed to the limited extent to enable the appellant to claim pension.

Writ Appeal No. 369 of 1998 :

60. As we have already considered the provisions of the Pension Scheme, 1995, in detail in the Writ Appeal No. 368 of 1998, it is not necessary

to refer to the scheme once again. In this writ appeal admittedly the option format had not been forwarded by the appellant. The appellant had

come out with a specific case that he had not received the circular from the bank calling upon the appellant to exercise the option under the 1995

Pension Scheme.

61. Per contra, the respondent-bank contends that the circular had been sent to the appellant and that they also relied upon the despatch register in

this respect. It is not necessary to go into this controversy as admittedly the appellant had submitted an option letter pursuant to the earlier circular

of the respondent-bank in terms of the 1993 Pension Scheme. The appellant in this writ appeal is also eligible and he satisfies the eligibility

conditions prescribed in Chapter II of the 1995 Pension Regulations. The option once exercised is final and binding on the retiree/optee and there

is no doubt about it.

62. Clause (9) of the Regulation 3 in Chapter II provides that an option exercised before the notified date by an employee or the family of a

deceased employee in pursuance of the settlement shall be deemed to be an option for the purpose of Chapter II of the Pension Regulations,

1995. In the present case the appellant had submitted his option immediately after the coming into force of the 1993 Pension Scheme which has

been modified by the 1995 Pension Regulations by providing certain additional facilities. It is not in dispute that in respect of 1993 Pension Scheme

the appellant had submitted his option and the respondent also admitted the same. That being the factual position, there is no reason at all to deny

the benefits of the scheme. As the appellant had admittedly submitted his option under the 1993 Pension Scheme, the benefit of such option will

ensure and enable the appellant to avail the benefits of the Employees' Pension Regulations, 1995, as well. In this view of the matter, other factual

controversies need not be gone into in this writ appeal. Therefore, this writ appeal is also allowed. The order of the learned single Judge is set

aside and there will be a direction in favour of the appellant. Though the appellant's prayer in the writ petition is all inclusive, we are not inclined to

grant such relief as prayed for. It would be sufficient to hold that the appellant had submitted the option and he is entitled to pension benefits as per

the regulations on his refunding the provident fund with interest at 6 per cent as

and when called by the respondent-bank.

63. Before concluding, in fairness to Sri T.K. Seshadri, the learned counsel for the respondent-bank, we have to refer to Union of India and others

Vs. A.J. Fabian, in which case the optee factually despite number of opportunities being given, failed to avail those opportunities given to him and

their Lordship in that view declined to interfere with the orders passed by the Central Administrative Tribunal on the view that the optee will not be

entitled to opt for pension after a lapse of considerable time, which is not the case here. Though the Regulations have been framed by 1995,

admittedly, the pension scheme is yet to commence. Therefore, on facts the said decision has no application to the facts of the present writ appeal.

64. Sri T.K. Seshadri also relied upon the decision reported in Union of India v. D.R.R. Sastri (supra) which decision is far from supporting the

respondent's case, advance the appellants claim for payment of pension under the 1995 Pension Regulations.

65. In the foregoing circumstances:

i) We allow both the writ appeals.

ii) The order dismissing writ petition W.P. No. 8191 of 1996 and W.P.No. 9235 of 1996, passed by the Hon"ble single Judge are set aside.

iii) The impugned proceedings of the respondent-bank are quashed.

iv) The respondent is directed to treat that the appellants have validly exercised their option in terms of Bharat Overseas Bank Ltd. Employees"

(Pension) Regulations, 1995, and they are entitled to payment of pension in terms of the said regulations on the appellants complying with the

balance of requirements prescribed in the said regulation as and when called upon to comply and required to by the respondent-bank.

66. The parties shall bear their respective-costs throughout. Consequently. C.M.Ps. Nos. 3832 to 3834 of 1998 are dismissed.