**(2011) 04 GUJ CK 0170**

**In the Gujarat High Court**

**Case No :** Letters Patent Appeal No. 96 of 2005 in Special Civil Application No. 1759 of 2004

A.V. Shukla APPELLANT

Vs

Manager Punjab National Bank and Another RESPONDENT

**Date of Decision :** 07-04-2011

**Acts Referred:**

Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 — Section 19
Constitution of India, 1950 — Article 136, 14, 19, 21
Pension Regulation, 1995 — Regulation 10, 14, 17, 18, 2(w)

**Citation :** (2011) 04 GUJ CK 0170

**Hon'ble Judges :** K.A. Puj, J;D.H. Waghela, J

**Bench :** Division Bench

**Advocate :** D.D. Vyas, for Vyas Associates, for the Appellant; B.D. Karia, for the Respondent

**Final Decision :** Allowed

# Judgement

K.A. Puj, J.—The Appellant - original Petitioner has filed this Letters Patent Appeal under Clause 15 of the Letters Patent challenging the order dated 02.11.2004 passed by Learned Single Judge of this Court in Special Civil Application No. 1759 of 2004 dismissing the said petition and confirming the action of the Respondent Bank of not treating the Appellant as eligible for pension on the ground that the Appellant''s service was less than minimum service required for pension.

2. This Court has issued notice for final disposal on 01.09.2008. Pursuant to the notice, Mr. B. D. Karia, learned advocate appeared on behalf of the Respondent Bank.

3. It is the case of the Appellant that the Appellant joined the Respondent Bank on 07.11.1979 and served the Bank in various capacities. The Appellant had opted for Voluntary Retirement Scheme (''VRS'' for short) on 19.12.2000 and retired on the same day. All the other benefits were granted to the Appellant

considering his total length of service. The pension has, however, been denied to the Appellant, inspite of the fact that the Appellant had opted for the same, on the ground that he had not put in qualifying service for pension. The Appellant had preferred Special Civil Application No. 1759 of 2004 before this Court which came to be dismissed on 02.11.2004. The Appellant, therefore, filed the present Letters Patent Appeal before this Court.

4. Mr. D. D. Vyas, learned Senior Counsel appearing for M/s. Vyas Associates for the Appellant has submitted that Learned Single Judge while dismissing the petition has failed to appreciate the submissions of the Appellant that the Respondent Bank has acted in an arbitrary and high-handed manner especially when the Petitioner was entitled to get all the retirement benefits and yet, not considered the case of the Appellant for payment of pension. He further submitted that the Circular No. 1765 issued by the Personnel Division of the Respondent Bank categorically mentions that "the employees who are seeking voluntary retirement and are pension optees under Pension Regulation, 1995 will be eligible for pro-rata pension for a period of service rendered by them, as if they are to retire on attaining the age of superannuation on the date of their relieving under the new Voluntary Retirement Scheme introduced by the Bank." He further submitted that the amendment to Regulation 28 of the Pension Regulations makes it clear that the superannuation pension shall be granted to an employee who has retired on attaining the age of superannuation specified in the Service Regulations or the settlement. Proviso to this Regulation makes it further clear that the pension shall also be granted to an employee who opts to retire before attaining the age of superannuation, after having served for a minimum of 15 years in terms of any Scheme that may be framed for the purpose of the Bank''s Board with the concurrence of the Government. Mr. Vyas, therefore, submitted that on completion of minimum period of service, the Appellant became entitled for the offer of v. under PNBEVRS-2000 and the Appellant has already been paid other terminal benefits. He further submitted that there is a distinction between the minimum period of service and the minimum qualifying service. Nowhere in the Rules, it is stated that for entitlement of pension, minimum qualifying service is required instead of minimum period of service. He further submitted that the Appellant was appointed on 07.11.1979 and he has been relieved under PNBEVRS-2000 Scheme on 19.12.2000. Thus, the actual period of service rendered by the Appellant was 21 years, 1 month and 12 days. But so far as the period for entitlement for the pension is concerned, the Respondent Bank has arbitrarily deducted the period of suspension for 860 days and the period of leave without pay for 1538 days and arrived at the conclusion that the net qualifying service is 14 years, 6 months and 4 days.

5. Mr. Vyas further submitted that Rule 18 of the Pension Rules makes it clear that total period of service of an employee includes broken period of service of less than one year and if such broken period is more than six months, then it shall be treated as one year. Looking to the facts and circumstances, the

 

Respondent Bank had considered the net qualifying service of the Appellant at 14 years, 6 months and 4 days and it is required to be rounded off to one year. In support of this submission, Mr. Vyas relied on the decision of the Madras High Court in the case of Venkatramani N. v. Indian Bank 2005 LLJ 3 703 wherein service of 14 years 9 months was directed to be construed as 15 completed years. The Appellant''s case is also identically placed in terms of the v. for all nationalised Banks and Regulation 18 must be applied to the broken period / fraction of more than six months and construed as full completed year of service. The said judgment of the Division Bench of the Madras High Court has been confirmed by the Apex Court in the case of Indian Bank and Another Vs. N. Venkatramani, The ratio of the said judgment has also been applied by the Madras High Court in its subsequent judgment rendered on 02.09.2010 in the case of C. Nagrajan (W.P. No. 21756 of 2005) holding therein that fraction / broken period of the year, if more than six months, has to be construed as full / completed year and hence, the service of 19 years and 7 months was directed to be considered as 20 completed years.

6. Mr. Vyas further submitted that the communication dated 14.08.1999 issued by Indian Bank Association showing the purported / proposed / pending amendment to the said Regulation 18 to the effect that the said Regulation cannot be applied to make an employee eligible for pension has not attained legally enforceable finality as the requisite formalities stipulated and procedure laid down in Section 19 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 have not been observed. On the other hand, he pointed out three Circulars issued by the Bank showing that the amendment to Pension Regulations, 1995 have been carried out and came into force from the date of publication in Gazette. He has, therefore, submitted that such purported / proposed / pending amendment is not at all legally enforceable and hence, cannot be applied.

7. Mr. Vyas further submitted that even if the Appellant goes by Bank''s contention that the Appellant has qualifying service of 14 years 6 months and 4 days and not 15 years as calculated by the Bank after excluding 860 days of suspension period, the said period of 860 days cannot be excluded / reduced on the basis of Regulation 21 since it cannot be applied / operated in retrospect i.e. before coming into force and that too detrimental to the Appellant''s pensionary benefits. In support of this submission, he relied on the decision of the Apex Court in the case of N. V. Subba Rao v. Corporation Bank 2007 (12) SCC 112 wherein it is held that when the order of dismissal is set aside and the Appellant is reverted to the post of Clerk, he will be entitled to the service benefits including pension and gratuity available to the said post. Mr. Vyas further submitted that when the suspension order merges with the order of dismissal and once the dismissal order is set aside / modified, the suspension order would not survive and when it would not survive, the question of that period not taking into account for the purpose of computing service or for the purpose of seniority / promotion or any other benefit as provided under the Regulations,

 

does not arise. In support of this submission, he relied on the decision of the Karnataka High Court in the case of Canara Bank v. Ramchandrappa 1999 LLN 2 1072 wherein the suspension order was merged with the dismissal order. The said order was challenged in appeal and the Appellate Authority set aside that order by modifying the punishment to that of stoppage of four increments with cumulative effect. There was no direction not to treat the period of suspension pending inquiry as a period in service. In absence of such direction, if the said order is to be treated as not in service, it amounts to amending the order of the Appellate Authority and reducing the part of the order which is not within the purview of the Court nor there is any Rule or Regulation to that effect that where the Appellate Authority is silent about the suspension period, it has to be deemed that the said period has to be treated as not on duty. In absence of any such Rules or Regulations or directions in the order of the Appellate Authority, it cannot be inferred that the said period has to be treated as not on duty. While arriving at this conclusion, the Court relied on the earlier decisions in the case of (i) H.L. Mehra Vs. Union of India (UOI) and Others, , (ii) M. Gopala Krishna Naidu Vs. State of Madhya Pradesh, (iii) Tekraj Vasandhi @ KL Basandhi v. Union of India, (iv) Tekraj Vasandi alias K.L. Basandhi Vs. Union of India (UOI) and Others, and (v) Om Prakash Gupt v. State of Uttar Pradesh AIR 1955 SC 60.

8. Mr. Vyas further submitted that Regulation 21 cannot be applied in retrospect and that too detrimental to the pension benefit of the Appellant. Since the Regulations were framed in 1995 and reinstatement order was passed prior to that period, the authority did not and could not envisage Regulation 21 to come in force w.e.f. 1995 and hence, did not make order in terms of Regulation 21. In support of this submission, he relied on the decision of the Apex Court in the case of Naraindas Revachand Hamrajani Through Supreme Court Naraindas Revachand Hamrajani through Supreme Court Legal Aid Committee Vs. Union of India (UOI) and Another, The said ratio has been further elaborated and adopted in the judgment of B. Vittal Pai v. Syndicate Bank 1999 LLN 2 1072 wherein the Court took the view that since the Pension Regulations came into force subsequent to the order passed by the Disciplinary Authority, the Disciplinary Authority could not have made an order in terms of Regulation 21 of the Pension Regulations. In so far as Regulation 21 of the Pension Regulations is concerned, the same is only prospective in operation. It cannot be made retrospective in operation in view of the conditions provided in the said Regulation, which makes it obligatory on Disciplinary Authority to pass an order as to how the period of suspension has to be treated.

9. Mr. Vyas further submitted that when there is no negative order, suspension period should be considered / included for qualifying service for pension. In support of this submission, he relied on the decision of the Kerala High Court in the case of Antony Zacharias v. State Bank of India, decided on 16.12.2008 in Original Petition No. 4700 of 2001.

10. Mr. Vyas further submitted that Regulation 14 provides eligibility for

 

minimum 10 years of service. It says that subject to other conditions contained in these Regualtions, an employee who has rendered a minimum 10 years of service in the Bank on the date of his retirement or the date on which he is deemed to have retired shall qualify for pension. All pension optees whose v. is accepted under PNBEVRS-2000 are deemed to have retired on superannuation, as per the Personnel Division Circular No. 1765 dated 19.12.2000 of the Bank which says that ".... as if they are to retire on attaining the age of superannuation on the date of their reliving under the new v. introduced by the Bank." He has, therefore, submitted that Regulation 14 automatically applies and it provides pension for minimum 10 years of service. He has submitted that despite this contention having been raised by the Appellant before Learned Single Judge, no cognizance of the said contention was taken by Learned Single Judge. He relied on the decision of the Punjab & Haryana High Court in the case of Dharam Pal v. Punjab National Bank 2008 LLJ 2 814 wherein it is held that as per Regulation 14, 10 years is the period of qualifying service. Therefore, a conjoint reading of the eligibility condition and the benefits payable under the Scheme read with Regulation 14, the Petitioner is entitled to pension.

11. Mr. Vyas further submitted that despite the fact that the Appellant was entitled to pension, he was deprived of such pension and hence, the Appellant is also entitled to interest on pension arrears. In support of this submission, he relied on the decision of the Apex Court in the case of S.K. Dua Vs. State of Haryana and Another, wherein it is held that interest on delayed payment of retirement benefits is legally sustainable in view of Articles 14, 19 and 21 of the Constitution. If there are statutory Rules occupying the field, the Appellant could claim payment of interest relying on such Rules. If there are administrative instructions, guidelines or norms prescribed for the purpose, the Appellant may claim benefit of interest on that basis. But even in absence of statutory Rules, administrative instructions or guidelines, an employee can claim interest under Part III of the Constitution relying on Articles 14, 19 & 21 of the Constitution. Mr. Vyas further submitted that the Respondent Bank is in money lending business earning hefty interest rates on the funds deployed. The Appellant''s pension amount is withheld by the Bank for more than 10 years. Had the amount been at disposal of the Appellant, interest earned would have been much higher. He has, therefore, submitted that the Appellant may be awarded interest @ 12% p.a. on the arrears of pension amount from the date it became due to the Appellant till the date of actual payment.

12. Mr. Vyas ultimately urged the Court to direct the Respondent Bank to hold the Petitioner eligible for pension benefit in terms of Pension Regulations as amended and also direct the Respondent to consider the qualifying service of 14 years 6 months and 4 days as completed 15 years by applying the benefit of Regulation 18. The Respondent Bank be further directed to include period of 860 days of suspension period which was arbitrarily and illegally deducted from the qualifying service and to calculate the pension in accordance with the qualifying service as arrived at by applying Regulation 18 and including 860 days of

 

suspension period and lastly, the Respondent Bank be further directed to pay interest @ 12% with half yearly rests / compounding on the amount of pension and arrears, from the date of retirement under PNBEVRS-2000 till the date of actual payment. The Respondent Bank be further directed to pay monthly pension to the Appellant with immediate effect.

13. Mr. B. D. Karia, learned advocate appearing for the Respondent Bank, on the other hand, has submitted that the Appellant had accepted v. having understood PNBEVRS-2000 Scheme voluntarily. The Bank has not withheld any amount due and payable to the Appellant without there being any reason whatsoever in nature. The Appellant had been given all the benefits under the v. Under Clause 3.5 of the Personnel Division Circular No. 1755 dated 29.09.2000, the Appellant would be entitled to benefit of Gratuity as per the provisions of Gratuity Act, 1972 or gratuity payable as per the Service Rules as the case may be, for the service rendered and pension under the Punjab National Bank (Employees'') Pension Regulations, 1995. As per the Pension Regulations 1995, as they existed prior to the amendment to Regulation 28, the employees who were pension optees and had opted for v. under PNBEVRS-2000 after completion of 40 years of age or 15 years of service, were not eligible for payment of pension in any of the then classes of pension mentioned in Pension Regulations, 1995. In other words, as per the unamended Regulation 28, except the employees retiring on superannuation, no other employee was eligible for pension. However, after publishing the v. - 2000, the Indian Banks Association approached the Govt. of India for proper solution and pending amendment to Regulation 28, the Personnel Division Circular No. 1765 dated 19.12.2000 was issued, which entitles the employee for pension if he has completed 15 years of service and opted for v. - 2000. The Appellant is not entitled for payment of pension under Regulation No. 28 of the Pension Regulations, 1995, which are statutory in nature, because his qualifying service is less than 15 years, which has been arrived at by reducing the period of 860 days leave and loss of pay of 1538 days as provided in Regulations 17 & 21 of the Pension Regulations, 1995. He has, therefore, submitted that in view of Regulations 17, 21 & 28, the Appellant is not entitled to pension as he has not completed 15 years of service and/or he has not rendered service for minimum period of 15 years.

14. Mr. Karia further submitted that the Appellant has not rendered service of 21 years as required under the Pension Regulations, 1995. Out of the total service, the Appellant has enjoyed leave without pay of 1538 days and had remained on suspension for a period of 860 days. The Appellant was taken on service because of the grace shown by the Bank by altering the punishment imposed upon him from dismissal to warning. Therefore, the Appellant could not say that the allegations levelled against him in the charge-memo were not proved. The period spent on suspension as well as leave without pay and / or unauthorized absence could, therefore, be excluded from the period of qualifying service for retirement benefits. The Appellant could not claim retirement benefits for the period he did not serve with the Bank. He further submitted that the Appellant''s case was of a

 

major punishment. He was initially dismissed from service. However, by an order dated 12.03.1990, the Bank decided to reinstate him in service from the date he reports to the Regional Manager, Rajkot. However, in the said order, it was made clear that the Appellant would not be entitled to any salary / wages for the intervening period of his dismissal i.e. from 29.05.1989 till he reports for duty to Regional Manager, Rajkot. Having accepted this condition, after having been reinstated in service with the Bank, the Petitioner could not now claim that the period spent on suspension should be considered for pensionary benefits.

15. Mr. Karia further submitted that Regulation 14 would apply only in case of employees retired on superannuation and not in the case of v. as envisaged under Regulation 28. It was made clear by Personnel Division Circular No. 1765 dated 19.12.2000 that the retirement is not under Regulation 29 but it is under Regulation 28 and, therefore, the Appellant cannot claim benefit under Regulation 14, which deals with pensionary benefits in case of retirement on superannuation. It is made clear in the Proviso to Regulation 28 that employees who accepts v. has to render minimum service of 15 years. Therefore, the Appellant could not rely on Regulation 14 for claiming pensionary benefits. He further submitted that proviso to Regulation 18 specifically provides that the said Regulation shall not apply for determining the minimum service required to make an employee eligible for pension. So far as the case of the Appellant is concerned, provisions of Regulation 18 are not attracted because his total qualifying service, in view of Regulations 17, 21 read with 28 is less than the minimum service of 15 years required to make him eligible for pension.

16. Mr. Karia further submitted that the Appellant was aware that he would be given pension if he was otherwise entitled to the same as per the Pension Regulations, 1995. Having waived his right with acquaintance and knowledge of the same, the Appellant cannot now question the action of the Bank of not including 860 days spent on suspension after which ultimately he was dismissed from service. Thereafter, considering the case of the Appellant sympathetically, the punishment of dismissal was substituted by warning with specific condition that he would not be entitled to any salary / wages for the period spent on suspension. He has, therefore, submitted that the period of 860 days not considered for pensionary benefit is just and proper. He further submitted that the punishment of warning imposed upon the Appellant for the lapse on his part for which he was placed under suspension for about 860 days, has not been challenged by the Appellant. The Appellant has also not challenged the order passed by the Competent Authority for not treating the period for which he remained under suspension as on duty and/or the punishment imposed upon him. Therefore, the Appellant is not entitled to contend that the period for which he remained under suspension should be counted as qualifying service for the purpose of pension under Pension Regulations, 1995. He has, therefore, submitted that the Letters Patent Appeal deserves to be dismissed.

17. Having carefully considered the rival submissions of the parties and having

 

minutely examined various provisions of the Pension Regulations, 1995 and the Punjab National Bank Employees Voluntary Retirement Scheme - 2000, in light of the decided case law on the subject, the Court is of the view that main four issues arose in this Letters Patent Appeal for consideration of the Court. They are as under:

Whether the Appellant has duly and legally completed 15 years of qualifying service by virtue of Regulation 18 ?

Whether the Appellant''s qualifying service should include 860 days of suspension period keeping in mind Regulation 21 and whether the said Regulation operates retrospectively ?

Whether the Appellant is entitled to pension in view of the fact that he has completed minimum 10 years of service on the date of his retirement by virtue of Regulation 14 ?

Whether the Appellant is entitled to interest, if he succeeds on any of the above issues ?

18. There is no dispute about the fact that the Appellant was allowed to retire under PNBEVRS-2000 on 19.12.2000 and was paid ex-gratia amount as well as gratuity on the basis of 21 years of service. However, according to the Appellant, his legitimate claim / right of pension was refused by the Respondent Bank, without assigning any specific reasons in terms of any Rules or Regulations. The Appellant has raised this issue on different occasions vide his letters / communications dated 18.06.2001, 01.01.2002 and 24.08.2002. Despite these efforts, since the Appellant did not get pensionary benefits, he filed Special Civil Application No. 1759 of 2004 before this Court and Learned Single Judge vide his judgment and order dated 02.11.2004 dismissed the said petition holding therein that Regulation 18 regulates as to how to treat the broken period of service of an employee. In the Appellant''s case, it is not the contention of the Respondents also that the service of the Petitioner was in broken periods. Regulation 18 would have application only when for some reason, the service of the employee is in broken spells and in such a situation, it is provided that the broken spell in excess of 6 months should be counted as one full year and broken period of less than 6 month should be ignored. Learned Single Judge, therefore, took the view that the said Regulation has no application to the facts of the Appellant''s case. With regard to suspension period, Learned Single Judge has observed that no case has been made out that the Appellant was fully exonerated or that his suspension was found to be wholly unjustified or that the Competent Authority or any other Authority prescribed under the said Regulation had expressly declared that the period of suspension shall count for the purpose of pension. Learned Single Judge, therefore, took the view that the Appellant could not claim to count the suspension period of 860 days towards qualifying service for pension. Learned Single Judge has not dealt with the issue as to whether the Appellant is entitled to pension on his completion of 10 years qualifying service, in view of

 

the provisions contained in Regulation 14. It appears that no claim was made by the Appellant either in the petition or at the time of hearing before Learned Single Judge as regards the interest on delayed payment of pension, in the event he succeeds in his claim for pension.

19. So far as the first issue regarding completion of 15 years service is concerned, it appears to us that Learned Single Judge has committed an error in taking the view that Regulation 18 is not applicable to the facts of the present case as it would have application only when for some reason, the service of the employee is in broken spells and only in such a situation, it is provided that the broken spell in excess of six months should be counted as one full year. To understand the main purpose and purport of Regulation 18, it is necessary to have a close look at Regulation 18 and how it is interpreted by the Court. Regulation 18 reads as under:

18. Broken period of service of less than one year.

If the period of service of an employee includes broken period of service less than one year, then if such broken period is more than six months, it shall be treated as one year and if such broken period is six months or less it shall be ignored.

20. The Respondent Bank had issued Personnel Division Circular No. 1755 dated 27.09.2000 explaining the salient features of PNBEVRS-2000. Clause 5 of the Scheme refers to eligibility. It says that all permanent full time employees of the Bank will be eligible to seek Voluntary Retirement under the Scheme provided they meet the following eligibility criteria:

On the date of application

(1) They have completed 15 years of service or

(2) 40 years of age. Clause 10 talks about General Conditions.

21. Clause 10.2 says that fraction of service of six months and above will be reckoned as one year for the purpose of calculating the ex-gratia. The fraction of service less than six months will be ignored for the purpose of calculating the ex-gratia. Application of Regulation 18 is not restricted by any of the other Regulations in any manner whatsoever and it operates independently. The said Regulation has come up for consideration before the Division Bench of the Madras High Court in the case of Venkatramani N. v. Indian Bank 2005 LLJ 3 703 (Supra) wherein the Court observed that as far as Regulation 18 is concerned, the said Regulation provides the manner as to how a broken period of service of less than one year can be counted. Going by the expression "broken period of service", in the first blush, one may tend to think that the said Regulation would come into play only where there were more than one spells of service in the Bank. Learned Single Judge of this Court has taken this view. The Division Bench of the Madras High Court was also mindful of this fact and hence, it was observed that it may appear that this expression can be applied only in cases where in

 

between two spells, if there is a break in service, then in what manner such broken service can be taken into account for the purpose of counting the period of service for ascertaining the eligibility of an employee either for the purpose of qualifying service or for the purpose of payment of pension. The Court, however, further observed that but on a close scrutiny of the said Regulation, the Court was of the opinion that the said Regulation need not be construed only in the above said manner, but can also be applied to cases where the employee was in continued service without any break in between from the date of initial appointment and that the said service ultimately breaks at the end without completing the full year. Even in such cases, by virtue of application of Regulation 18, part of the last spell of a service can also be treated as one full year, as that would come within the mischief of ''broken service'' and thereby satisfy the stipulation contained in that Regulation. While interpreting Regulation 18, the Madras High Court has derived support from various judgments of the Apex Court and further observed that while dealing with the claim for pension based on the interpretation of the Regulations, it will have to be held that the construction of the Regulation which would achieve the object of the Regulation should be made. In other words, it is well known canon of construction that an interpretation of a provision in respect of a beneficial piece of legislation one should always construe it in a manner that would fulfill the object and purport of the legislation. The Division Bench of the Madras High Court accordingly set aside the order impugned in the writ petition and directed the Respondent Bank to grant pensionary benefits under IBVRS-2000 as per the Regulations. The Court has also directed to settle the arrears of pension payable to the Petitioner along with interest.

22. It is worthwhile to note here that the above referred judgment of the Madras High Court was taken to the Apex Court by the Bank and while disposing of the said matter, the Apex Court in its decision i.e. Indian Bank and Another Vs. N. Venkatramani, (Supra) observed that meaning of the term "broken period" for the purpose of grant of pension while implementing a voluntary retirement scheme is the question involved herein. The Apex Court in paragraph 13 of its judgment has made it abundantly clear that Regulation 18 is not controlled by any of the said provisions. It does not brook any restrictive interpretation. It only provides for a rule of measurement. An employee as noticed hereinbefore, was entitled to pension provided he has completed the specified period of service. How such a period of service would be computed is a matter which is governed by the statute. It is one thing to say that a statute provides for completion of 15 years of minimum service, but if a provision provides for measurement of the period, the same cannot be lost sight of. Provision of the Regulations which are beneficial in nature, should be construed liberally. The Apex Court ultimately held that it is not a case where the Court should exercise its discretionary jurisdiction under Article 136 of the Constitution of India and since no case has been made out for interference in the impugned judgment of the Madras High Court, the appeal was dismissed with cost.

 

23. In view of the above authoritative pronouncement of the Madras High Court, duly confirmed by the Apex Court, the period of service of 14 years 6 months and 4 days shall be construed as completed 15 years by applying the provision of Regulation 18 and the Appellant is, therefore, held to be eligible for payment of pension.

24. This brings us to the next issue as to whether 860 days of suspension period should be included in the qualifying service of the Appellant. It is precisely the case of the Appellant that as regards calculation of qualifying service for the purpose of pension is concerned, his suspension period was required to be included. In February, 1990, when reinstatement order was issued by the competent authority, Pension Scheme / Rules were not in force in the Bank. The Pension Rules / Regulations have been promulgated in 1995. As such, the competent authority has not made the reinstatement order expressly treating the period of suspension towards counting the qualifying service benefits. The Appellant was sanctioned extraordinary leave and notional increments for the period of suspension and accordingly, notional increments have also been released by the Bank. Considering the Rules position existing at the relevant time, the Respondent Bank had duly considered the suspension period for the service benefits. It is true that Regulation 21 specifically states that period of suspension of an employee pending inquiry shall count for qualifying service where, on conclusion of such inquiry, he has been fully exonerated or the suspension is held to be wholly unjustified and in other cases, the period of suspension shall not count as qualifying service unless the competent authority passing the orders under the Service Regulations or Discipline and Appeal Regulations or settlements governing such cases expressly declares at the time that it shall count to such extent as authority may declare. Admittedly, the Appellant is not fully exonerated or the suspension is also not held to be wholly unjustified.

25. Considering the submissions of Mr. Vyas and the authorities relied upon by him on this issue, we are of the view that PNB (Employees) Pension Regulations, 1995 have come into force in 1995. The said Regulations will have to be read in its entirety. Regulation 2 (w) defines "qualifying service" which means service rendered while on duty or otherwise which shall be taken into account for the purpose of pension under this Regulation. Regulation 21 deals with period of suspension which, inter alia, states that the period of suspension of an employee pending inquiry shall count for qualifying service where, on conclusion of such inquiry, he has been fully exonerated or the suspension is held to be fully unjustified. While considering the qualifying service of the Appellant, Regulation 21 shall have to be taken into account. Simply because the competent authority could not have passed any order in terms of Regulation 21, as it was not in existence at the time when the dismissal order was revoked and the Appellant was reinstated with penalty of warning, it cannot be held that the suspension period of 860 days should not be excluded while computing qualifying service of the Appellant for the purpose of pensionary benefits. We, therefore, do not

 

accept the submissions of Mr. Vyas on this issue.

26. In view of our finding on the first issue that the Appellant has completed qualifying service of 15 years, it is not necessary for us to go into the question as to whether the Appellant is entitled to pension on completion of 10 years qualifying service in view of Regulation 14. Even otherwise, Learned Single Judge has not given any finding on this issue. No useful purpose would be served in remanding the matter for adjudication of this issue.

27. Since the Appellant has not made any claim with regard to interest in the writ petition filed before Learned Single Judge, it is not open for him to make any new claim in the present Letters Patent Appeal and hence, we thought it fit not to pass any order with regard to interest on the delayed payment of pension. It is, however, made clear that if the Respondent Bank fails to make the payment of the pensionary benefit to the Appellant within 30 days from the date of receipt of writ or certified copy of this judgment, whichever is earlier, the Respondent Bank shall be liable to pay interest for the delayed period thereafter @ 12% p.a.

28. With this direction and observation, this Letters Patent Appeal is allowed to the above extent without any order as to costs.