

(2016) 11 AP CK 0033

In the Andhra Pradesh High Court

Case No : W.P. Nos. 33775, 14847 and 14881 of 2014

Ch. Chandrasekhar Babu

APPELLANT

Vs

Chairman and Managing Director, Andhra Bank

RESPONDENT

Date of Decision : 09-11-2016

Acts Referred:

Andhra Bank (Employees) Pension Regulations, 1995 — Regulation 22
Andhra Bank Officer Employees (Discipline and Appeal) Regulations, 1981 —
Regulation 33

Citation : (2017) 2 ALT 284

Hon'ble Judges : Sri M.S. Ramachandra Rao, J.

Bench : Single Bench

Advocate : Mr. P.S. Rajasekhar, Advocate, for the Petitioners; Mr. K. Lakshmi Narasimha, SC for A.B, for the Respondent

Final Decision : Disposed Off

Judgement

Sri M.S. Ramachandra Rao, J.—The petitioners in these matters had been previously employed by the Andhra Bank, which is the 1st respondent in all these cases.

2. They had all suffered orders of punishment of compulsory retirement from service on different dates.

3. It is not in dispute that the Andhra Bank (Employees) Pension Regulations, 1995 (for short, "the Regulations") had been in vogue ever since the year 1995, but none of the petitioners had opted for pension within the period provided for exercising of such option at the time when such scheme was introduced.

4. They had applied for pension seeking the benefit under a Joint Note dated 27.04.2010 recording an agreement between the Indian Officers' Association on behalf of Managements of Banks listed under the Schedule and the All India Bank Officers' Confederation (A.I.B.O.C.), All India Banks Officers' Association (A.I.B.O.A.), Indian National Banks Officers' Congress (I.N.B.U.C.), and National

Organization of Bank Officers (N.O.B.O.).

5. However, it is not in dispute that under the Joint Note referred to above, another option for joining the said existing pension scheme was extended to Officers who were in service in the Bank prior to 29.09.1995 in the case of Nationalised Banks and "retired" after that date and prior to the date of the Joint Note.

6. The petitioners contend that though there were imposed punishment of compulsory retirement, they still come within the definition of the term "retired"; since they were in service of the Andhra Bank prior to 29.09.1995, and were compulsorily retired thereafter prior to the date of the Joint Note dated 27.04.2010, they also should be paid pension by the said Bank; that basing on the Joint Note, a Circular No.199 Reference No.03/38 dated 01.09.2010 was issued by the Andhra Bank implementing the decision taken in the Joint Memo; and the Andhra Bank should have accepted their option for joining the pension scheme provided under the 1995 Regulations.

7. Separate orders have been passed by the Andhra Bank in respect of each of the petitioners holding that they were not eligible to exercise the option for pension as per the Joint Memo. In these orders, the Andhra Bank contended that the petitioners had not retired from service of the Bank voluntarily under the Voluntary Retirement Scheme introduced by the said Bank in the year 2000, and they had also not retired on superannuation during the period 29.09.1995 and 27.04.2010.

8. These individual orders passed against the petitioners are impugned in the respective Writ Petitions by petitioners.

THE CONTENTIONS OF PETITIONERS

9. The petitioners place reliance on the order dated 22.03.2012 in W.P. No. 9069 of 2011 of a learned Single Judge of this Court which order had been confirmed by order dated 08.08.2013 in Writ Appeal No.902 of 2012. They contend that both the learned single Judge as well as the Division Bench interpreted the term "retired" in the Joint Note as well as the 1995 Pension Regulations and had taken a view that the said term applies to all retirees whether they retired on superannuation or voluntarily or those who retired compulsorily. According to petitioners, the Court had held that the respondents cannot discriminate one set of retirees who suffered penalty of compulsory retirement and other set of retirees (those who retired under a VRS scheme or on superannuation), and that the Bench took the view that the word "retiree" is a generic term including all categories of retirees and it is impermissible to restrict the meaning of the said term only to those who retired voluntarily or on superannuation since it would go against the object and purpose of the agreement under the Joint Note.

10. The counsel for petitioners also pointed out that this view expressed by the Division Bench was also confirmed in S.L.P. No. 35389 of 2013 on 05.09.2014 by

the Honourable Supreme Court of India; and that the Punjab High Court in *Surinderjit Singh v. Punjab and Sind Bank* (1)2015 SCC Online P&H 12714 and in *Central Bank of India v. V.K.Vohra L.P.A.No.1249 of 2016* dated 26.07.2016., and the Patna High Court in *Rajani Kant Choubey v. Central Bank of India* 2015 SC Online Pat 8119 followed this view of this Court. He also relied upon the judgment of the Division Bench of this Court in *Andhra Bank and others v. Y. Shivaji Writ Appeal No.502 of 2016* dated 12.08.2016 wherein the Division Bench also took the view that compulsory retirement does not amount to termination under Regulation 38 of the Andhra Bank (Officers") Service Regulations, 1982 which dealt with encashment of privilege leave of an employee who had suffered punishment of compulsory retirement.

11. He contended that Regulation 33 of the 1995 Pension Regulations contemplates grant of pension to an employee who has been compulsorily retired from service and Regulation 38 provides for the manner of computation of the period of 10 months for the purpose of average emoluments for the purpose of calculating the pension payable to a compulsorily returned person and the respondents have acted illegally and contrary to law in denying to the petitioners the benefit of pension by rejecting their option.

CONTENTIONS OF THE RESPONDENTS/ANDHRA BANK

12. Sri K. Lakshmi Narasimha, counsel for petitioners contended that the Andhra Bank had committed no illegality in refusing the request of the petitioners to be allowed to exercise the second option for pension as per the Joint Note dated 27.04.2010 and the Circular dated 01.09.2010 issued by the Bank. According to him, the decisions rendered by this Court in W.P.No.9069 of 2011 and W.A.No.902 of 2012 are decisions rendered per incuriam on the ground that in those decisions the Court had not considered and interpreted the words "specified in Service Regulations or Settlements" occurring in Clause (c) of Regulation 2(y), and Regulation 2(za), apart from Regulation 22 of the 1995 Pension Regulations.

13. According to him, the term "Service Regulations" has been defined in Regulation 2(za) to mean Andhra Bank (Officers") Service Regulations, 1982 made under Section 19 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980. He contended that the term "Termination of Service" includes compulsory retirement of an employee; and under Regulation 22 resignation or dismissal or removal or termination of an employee from service of the Bank would entail forfeiture of his entire past service and consequently deprive him of pensionary benefits. It is his contention that the term "Termination" used in Regulation 22 includes termination by way of compulsory retirement also and in view of Regulation 22, persons like the petitioners who suffered punishment of compulsory retirement would not be entitled for pensionary benefits.

14. He further contended that the punishment of compulsory retirement is not

deal with by the Andhra Bank (Officers") Service Regulations, 1982 and since only those regulations have to be looked into under Clause (c) of Regulations 2(y) and not the Conduct, Discipline and Appeal Regulations of the Andhra Bank (which deal with imposition of punishment of compulsory retirement), the petitioners would not be entitled to exercise option for pension under the 1995 Regulations. His contention is that this issue was not argued in W.P.No.9069 of 2011 and in W.A.No.902 of 2012, that the attention of the Court was not drawn to this point, and therefore, the said decisions would not operate as a precedent.

15. Alternatively, he contended that the Joint Note was only an extension of the Pension Scheme and was not an amendment to the Pension Regulations, and that insofar as the definitions, applicability and eligibility criteria, as stipulated under the Pension Regulations are concerned, they were not altered.

16. He reiterated that the petitioners would not be entitled to the benefit of pension since their exit from the Bank was not by way of voluntary retirement under a Voluntary Retirement Scheme, and since they were imposed with a punishment of compulsory retirement under the Discipline and Appeal Regulations.

17. He vehemently contended that compulsory retirement cannot be treated as retirement and that the term "retirement" would normally cover only retirement on superannuation, voluntary retirement or premature retirement as provided in the Regulations, but not compulsory retirement. He placed reliance on the following decisions, viz., United Bank of India v. Prasanta Kumar Roy and others (2012) 12 SCC 519, United Bank of India v. Pijush Kanti Nandy and others (2009) 8 SCC 605, Sudhir Kumar Consul v. Allahabad Bank (2011) 3 SCC 486, Pepsu Road Transport Corporation, Patiala v. Mangal Singh and others (2011) 11 SCC 702, United Bank of India v. Prasanta Kumar Roy and others (2012) 12 SCC 519, M.R. Prabhakar and others v. Canara Bank and others (2012) 9 SCC 671, K.P. Manu v. Chairman, Scrutiny Committee for Verification of Community Certificate (2015) 4 SCC 1, Government of Andhra Pradesh and another v. B. Satyanarayana Rao (Dead) by LRS. and others (2000) 4 SCC 262, Junior Telecom Officers Forum and others v. Union of India and others 1993 Supp (4) SCC 693, and Union of India v. Madras Telephone SC & ST Social Welfare Association (2000) 9 SCC 71.

18. He further contended that the Joint Note cannot be considered to be contrary to the statutory Regulations, and in view of Regulation 22 the petitioners would not be entitled to any pension.

19. He also sought to meet the argument of the counsel for petitioners who had relied on Regulation 33 by pointing out that in Clause (1) of Regulation 33, the following words "if otherwise he was entitled to such pension on superannuation on that date" occur, and contended that the word "otherwise" would mean contrarily and since the petitioners did not superannuate, Regulation 33 would not help the petitioners and they are not entitled to pension. According to him, a

person can claim pension only after he becomes a pension optee since he would be covered by the pension regulation, and Regulation 33 would apply only to such of those employees who have chosen to become pension optees or who were covered by the Joint Note and become a pension optee under the Regulation.

20. I have noted the submissions of both sides.

THE CONSIDERATION BY THE COURT

21. It is not in dispute that prior to 1995 there was no pension scheme in the Andhra Bank and it was introduced for the first time in 1995. In exercise of powers conferred by Clause (e) of sub-Section (2) of 19 of the Act, the Board of Directors of the Andhra Bank, after consultation with the Reserve Bank of India and with the previous sanction of the Central Bank the Andhra Bank (Employees) Pension Regulations, 1995 were framed.

22. Chapter 2 of the Pension Regulations deals with application and eligibility conditions. Regulation 3 thereof entitles employees who were in service of the Bank on or before 01.01.1986, but had retired before 01.11.1993 and who had exercised an option in writing within 120 days from the notified date to become a Member of the fund and refund within (60) days after the expiry of the period of (120) days, the entire amount of the bank's contribution to the Provident Fund.

23. Such options were also given to persons who had retired on or before 01.11.1993, but before the notified date and those who were in service of the Bank before the notified date and continued to be in service of the Bank on or before the notified date and also to persons who joined in the service of the Bank on or before the notified date, and other categories mentioned therein.

24. It is not in dispute that the petitioners had not exercised the option for pension at that point of time.

25. It is only after the Joint Note dated 27.04.2010 containing the terms of the agreement between the Indian Banks' Association on behalf of the Managements of Banks listed in the Schedule and the various Officers Associations mentioned above, that the petitioners made a request that they be permitted to exercise the option to join the Pension Scheme.

26. The Joint Note specifically referred to another option for joining the existing pension scheme and its extension to those officers who were in service of the Bank prior to 29.09.1995 (in the case of Nationalised Banks) and who retired after that date and prior to the date of the Joint Note, and who exercised an option in writing within 60 days from the date of offer to become a member of the pension fund, and refund within 30 days after expiry of the said period of 60 days the entire amount of the Bank's contribution to the Provident Fund with interest thereon.

27. The crux of the issue is the interpretation of the word "retired" occurring in

sub-Clause (a) of Clause 3 of the Joint Note.

28. It is not in dispute that the terms of this Joint Note had been reduced into a Circular No. 199 Reference No.03/38 dated 01.09.2010 mutatis mutandis. Clause (2) of the said Circular mentions as under :

"2) Officer/Workmen employees, those who were in service of the Bank, prior to 29.09.1995 and retired after that date and prior to 27.04.2010, Officer/Workmen employees who opted for Voluntary Retirement under Special Voluntary Scheme after rendering a minimum of 15 years service, and the family of those Officers/Workmen who were in service of the Bank prior to 29.09.1995 retired after that date and died shall be eligible to exercise option to join the Pension Scheme subject to terms and conditions applicable to retirees as under :

(i) Entire Banks' contribution with interest thereon paid to the retirees at the time of retirement refunded by them,

(ii) Pay 56% of the above said Banks's Contribution remitted by them towards their share of funding gap,

(iii) To exercise an option in writing within 60 days in format prescribed by the Bank (Annexure-II) for retirees who are alive, and Annexure-III for spouse of the retiree for the purpose of family pension) for membership of the Pension Scheme."

29. While the petitioners contend that the term "retired", referred to above, covers persons like the petitioners who have suffered punishment of compulsory retirement, the respondents contend that they would not be covered and only persons who retired on superannuation or voluntarily or who took premature retirement can be said to have "retired" and not persons such as petitioners who have suffered a punishment of compulsory retirement.

THE ORDER DATED 22.3.2012 IN W.P.No.9069 of 2011

30. In W.P. No. 9069 of 2011, the question whether the petitioner therein, who was compulsorily retired from service of the Andhra Bank, was entitled to opt for the pension scheme of the Bank in terms of the Circular of the Bank dated 01.09.2010 was considered. After referring to the terms of the Joint Note and the pension Regulations, and in particular, Regulation 2(y) and Regulation 33, this Court held that there are different categories of employees who were covered by the Joint Note and the Circular of the Bank, and they could be classified as under :

"13. ? ? ? (1) Those in the service of the bank prior to 29.09.1995 in case of Nationalised Banks / 26.03.1996. In case of Associate Banks of State Bank of India and continue in the service of the bank on the date of this Joint Note;

(2) Those who were in service for the same period, as aforesaid, but retired after that date and prior to the date of this Joint Note;

(3) Family of such officers who were in the service of the bank on the aforesaid dates but retired after that date and had died will be eligible for family pension;

(4) Family of such officers who were in the service of the bank prior to the dates aforesaid, but have died while in service of the bank after that date will be eligible for family pension."

31. It then held that retirees, who qualified within any of the four categories as mentioned above, would be eligible to opt for pension, and Clause (2) under the Regulation thereof covers three different categories, but the respondents had apparently examined the petitioners' case as if they must satisfy all conditions of Clause (2). It held that it is sufficient if a retiree satisfies any one of the criteria under the said Clause (2). It specifically rejected the contention of respondents that the retirees who have retired compulsorily (on imposition of such punishment) were not included in the scheme as there is no reference to such retirees.

32. It held that the Joint Note as well as the Circular refers to the retirees from the Bank and the word "retiree" is a generic term including all categories of retirees. It held that restricting the meaning of the said word only to those who retired voluntarily or on superannuation is not only against the object and purpose of the agreement under the Joint Note and the Circular, but would also amount to reading something else therein.

33. It therefore held that the Joint Note and the Circular would apply to all retirees and excluding persons such as petitioners who are compulsorily retired from the operation of the Joint Note and Circular would violate Article 14 of the Constitution of India.

34. The Court pointed out that the first option under the pension scheme shall apply to all retirees including those who were compulsorily retired; in para.6 of the counter-affidavit filed therein it was stated that petitioner had not chosen to opt for pension and preferred to continue as member of the Contributory Provident Fund; and in para.9 of the counter-affidavit it was stated that Regulation 33 is not applicable to petitioner and would apply only to those who were pension optees by the date of imposition of penalty of compulsory retirement. It noted that this averment itself indicates that those who suffered compulsory retirement, but who opted for pension by the date of imposition of penalty are eligible under the pension scheme, and therefore, the respondents cannot discriminate one such set of retirees on penalty of compulsory retirement from the other set of retirees.

35. The Court allowed the Writ Petition, set aside the order impugned therein passed by the respondents rejecting the request of petitioner therein to be pension optee and directed the respondents to re-consider the option exercised by petitioner therein under the Circular dated 01.09.2010 read with a Joint Note dated 27.04.2010.

THE ORDER DATED 8.8.2013 IN W.A.NO.902 OF 2012

36. The Bank, admittedly, preferred W.A.No.902 of 2012 against the said judgment and the said appeal was dismissed on 08.08.2013. The Division Bench also considered Regulation 2(y) and Regulation 33 of the 1995 Pension Regulations and concurred with the view of the single Judge that the petitioner therein was entitled to exercise the option of pension and such option could not have been rejected by the respondents.

THE ORDER DATED 5.9.2014 IN SLP NO.35389 OF 2013

37. This order was confirmed by the Supreme Court of India in S.L.P.No.35389 of 2013 on 05.09.2014.

38. It is no doubt true that the contention now being urged on behalf of the respondents was not specifically raised either in the counter-affidavit filed by respondents in the earlier Writ Petition No.9069 of 2011 or before the Division Bench or in the Supreme Court.

39. The question arises then whether in the light of the submissions now raised by respondents, the Court ought to take a different view of the matter ?

40. Before dealing with the respective contentions, I will first refer to the relevant clauses in the Pension Regulations, 1995.

41. Regulations 2(l), 2(x), 2(y), 2(za), 22, 23 and 38 state as under :

"2(l) "Deemed to have retired" means cessation from service of the Bank on appointment by Central Government as a whole-time Director or Managing Director or Chairman in the Bank or in any other Bank specified in column 2 of the FIRST SCHEDULE of the Act or Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970) or in any public financial institution or State Bank of India established under State Bank of India Act, 1955 (23 of 1955);

2(x) "Retired" includes deemed to have retired under clause (1);

2(y) "Retirement" means cessation from Bank's service, -

(a) on attaining the age of superannuation specified in Service Regulation or Settlements;

(b) on voluntary retirement in accordance with provisions contained in Regulation 29 of these regulations;

(c) on premature retirement by the Bank before attaining the age of superannuation specified in Service Regulations or Settlements;

2(za) "Service Regulations" means Andhra Bank (Officers") Service Regulations, 1982 made under Section 19 of the Act;

22. Forfeiture of service : -

(1) Resignation or dismissal or removal or termination of an employee from the service of the Bank shall entail forfeiture of his entire past service and consequently shall not qualify for pensionary benefits;

(2) An interruption in the service of a Bank employee entails forfeiture of his past service, except in the following cases, namely :-

(a) authorised leave of absence;

(b) suspension, where it is immediately followed by reinstatement, whether in the same or a different post, or where the Bank employee dies or is permitted to retire or is retired on attaining the age of compulsory retirement while under suspension;

(c) transfer to non-qualifying service in an establishment under the control of the Government or Bank if such transfer has been ordered by a competent authority in the public interest;

(d) joining time while on transfer from one post to another.

(3) Notwithstanding anything contained in sub-regulation (2), the appointing authority may, by order, commute retrospectively the periods of absence without leave as extraordinary leave.

(4) (a) In the absence of a specific indication to the contrary in the service record, an interruption between two spells of service rendered by a bank employee shall be treated as automatically condoned and the pre-interruption service treated as qualifying service;

(b) Nothing in clause (a) shall apply to interruption caused by resignation, dismissal or removal from service.

23. Period of deputation to foreign service :

An employee deputed on foreign service to the United Nations or any other foreign body or organization may at his option :

(a) pay pension contribution in respect of his foreign service and count such service as qualifying service under these regulations; or

(b) avail of the retirement benefits admissible under the rules of the foreign employer and not count such service as qualifying service under these regulations :

Provided that where an employee opts for clause (b), retirement benefits shall be payable to him in India in rupees from such date and in such manner as the Bank may, by order specify.

38. Determination of the period of ten months for average emoluments :-

(1) The period of the preceding ten months for the purpose of average emoluments shall be reckoned from the date of retirement.

(2) In the case of voluntary retirement or premature retirement, the period of the preceding ten months for the purpose of average emoluments shall be reckoned from the date on which the employee voluntarily retires or is premature retired by the Bank.

(3) In the case of dismissal or removal or compulsory retirement or termination of service, the period of the preceding ten months for the purpose of average emoluments shall be reckoned from the date on which the employee is dismissed or removed or compulsorily retired or terminated by the Bank.

(4) If during the last ten months of the service, an employee had been absent from duty on extraordinary leave on loss of pay or had been under suspension and the period whereof does not count as service, the aforesaid period of extraordinary leave or suspension shall not be taken into account in the calculation of the average emoluments and an equal period before the ten months shall be included."

42. A reading of the above Regulations, no doubt, show that under Regulation 22 resignation or dismissal or removal or termination of an employee from the service of the Bank would entail forfeiture of his entire past service and disentitle him for pensionary benefits.

43. It is in this context that the counsel for respondents urged that the term "termination" used in Clause (1) of Regulation 22 would include termination by way of punishment of compulsory retirement. He further referred to the term "retirement" in Regulation 2(y) and contended that as per the said definition only retirement on attaining the age of superannuation, voluntary retirement service or pre-mature retirement would be covered and not compulsory retirement. In respect of this submission, he relied upon the last line in sub-Clause (c) of Regulation 2(y) which referred to "service regulations" and pointed out that the said term was defined in Clause 2(za) to mean only Andhra Bank (Officers") Service Regulations, 1982. According to him, those service regulations did not deal with compulsory retirement, and therefore, persons such as petitioners who suffered punishment of compulsory retirement would not be covered for benefits under the Pension Regulations notwithstanding the Joint Note dated 27.04.2010 and the Circular dated 01.09.2010.

44. No doubt, at first blush, this argument appears to be attractive since in common parlance the term "termination of service" could be generic and cover termination of service by way of resignation, dismissal, removal or compulsory retirement.

45. But the fact that Regulation 33 itself gives an option to employees who were compulsorily retired to opt for pension belies this interpretation. If the Government of India had intended that the term "termination" in Clause (1) of Regulation 22 to cover even cases of compulsory retirement, then Regulation 33 could not have been framed, giving pension to employees who were compulsorily retired from service as a measure of penalty. Therefore, it cannot be held that

the word "termination" used by the Government of India in Clause (1) of Regulation 22 would cover cases of compulsorily retirement.

46. This interpretation is also reinforced by Regulation 38 of the Pension Regulations which provides in Clause (3) thereof that in case dismissal, removal or compulsory retirement or termination of service, the period of the preceding ten months for the purpose of average emoluments shall be reckoned from the date on which the employee is dismissed or removed or compulsorily retired or terminated by the Bank. If the intention of the Andhra Bank, which framed the Regulations, was not to cover cases of compulsory retirement also under the category of "termination of service", then Clause (3) of Regulation 38 would not have included compulsory retirement apart from dismissal, removal, or termination of service.

47. Moreover, there are separate definitions for the term "retired" in Regulation 2(x) and the word "retirement" in Regulation 2(y). The definition of the term "retired" in Regulation 2(x) is an inclusive definition and would thus cover cases of all persons who retired, whether on attaining the age of superannuation, or on voluntary retirement, or pre-mature retirement, or compulsory retirement.

48. I am also of the opinion that various classes of pension are laid down in Chapter-V, that superannuation pension is dealt with in Regulation 28 [corresponding to Clause (a) of Regulation 2(y)] pension on voluntary retirement is dealt with in Regulation 29, [corresponding to Clause (b) of Regulation 2(y)] and pre-mature retirement pension is dealt with in Regulation 32 [corresponding to Clause (c) of Regulation 2(y)].

49. Therefore, the various classes of retirement mentioned in Regulation 2(y) having been dealt with in Regulations 28, 29 and 32, there is no scope for Clause (c) of Regulation 2(y) to exclude compulsory retirement by using the words "service regulations" which is defined in Regulation 2(za) as meaning ? the Andhra Bank (Officers') Service Regulations, 1982.

50. Admittedly, even in the counter-affidavit filed in W.P.No.9069 of 2011, it was specifically admitted by the Andhra bank that even those who suffered compulsory retirement but who opted for pension by the date of imposition of penalty of compulsory retirement would be eligible under the pension scheme.

51. If the contention of the counsel for respondents raised now in this Writ Petition is to be accepted, and if the term "termination" raised in Regulation 22 can be held to cover cases of compulsory retirement also, then it is inexplicable how in the counter-affidavit filed in W.P.No.9069 of 2011, the respondents could state that persons who suffered penalty of compulsory retirement, and who opted for pension by the date of imposition of compulsory retirement, would be eligible under the pension scheme.

52. The respondents cannot be allowed to blow hot and cold, and take different pleas in the earlier W.P.No.9069 of 2011 and the present Writ Petitions.

53. Therefore, the view expressed in WP.No.9069 of 2011 and W.A.No.902 of 2012 by this Court that persons who compulsorily retire from service of the Andhra bank are also entitled to opt for the pension scheme of the Bank in terms of the Circular No.199 Reference No.03/38 dated 01.09.2010 cannot be said to be per incuriam. The respondents cannot be allowed to re-agitate the issue by taking a different plea and seek to deny to the petitioners the choice of being a pension optee.

54. I am also of the opinion that none of the decisions cited by the counsel for respondents are directly on point and persuade this Court to take a different view from that taken by this Court in W.P.No.9069 of 2011 or in the W.A.No.902 of 2012.

55. Having said so, one cannot lose sight of the fact that under Regulation 33 an employee compulsorily retired from service as a penalty on or before 01.11.1993 in terms of the Andhra Bank Officers Employees" (Discipline and Appeal) Regulations, 1981 or awards/ settlements may be granted by the authority higher than the authority competent to impose such penalty, pension at a rate not less than 75% and not more than full pension admissible to him on the date of his compulsory retirement, if otherwise he was entitled to such pension on superannuation on that date.

56. In the Joint Note dated 27.04.2010 as well as in the Circular No.199 Reference No.03/38 dated 01.09.2010, neither the quantum of pension payable to retired employees nor the formula on the basis of which that pension is to be computed have not been altered. Only the eligibility of persons who are given second option again is altered to cover cases of persons like the petitioners.

57. In this view of the matter, and in view of Clause (8) of the Joint Note which specifically states that all the regulations of the Bank Employees" Pension Regulations, 1995 would be applicable to those who opt for the pension scheme in terms of the Joint Note, the petitioners would also be entitled to grant of pension at the rates specified in Clause (1) of Regulation 33 only and not to full pension. Of course, this issue as to the quantum of pension payable to persons who had been compulsorily retired from service as a penalty was not specifically in issue nor was it considered in W.P.No.9069 of 2011 and in W.A.No.902 of 2012.

58. For the aforesaid reasons, the Writ Petitions are allowed; the orders passed by 4th respondent in respect of each of the petitioners rejecting their options for pension are declared as illegal, arbitrary and contrary to the Joint Note dated 27.04.2010 and the Circular No.199 Reference No.03/38 dated 01.09.2010 issued by the Andhra Bank as well as Regulation 33 of the Andhra Bank Employees" Pension Regulations, 1995; and the respondents are directed to accept the option letter given by the respective petitioners for joining the pension scheme, treat the petitioners as pensioners and grant pension as stipulated in Clause (1) of Regulation 33 of the said Regulations. No order as to costs.

59. This exercise shall be completed within a period of eight (08) weeks from the

date of receipt of a copy of this order.

60. As a sequel, miscellaneous petitions pending if any in these Writ Petitions, shall stand closed.