
(2010) 06 CAL CK 0054

In the Calcutta High Court

Case No : A.P.O. No. 60 of 2009 and C.S. No. 198 of 2006

Chinmoy Pathak

APPELLANT

Vs

Standard Chartered Bank Ltd.

RESPONDENT

Date of Decision : 14-06-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 8, Order 33 Rule 5, Order 7 Rule 11
Constitution of India, 1950 — Article 12, 14

Citation : (2010) 06 CAL CK 0054

Hon'ble Judges : Prasenjit Mandal, J; Bhaskar Bhattacharya, J

Bench : Division Bench

Advocate : Sunit Deb, K.H. Dasan and Mala Chakraborty, for the Appellant; P.S. Sengupta, S. Ghose and A.K. De, for the Respondent

Final Decision : Dismissed

Judgement

Bhaskar Bhattacharya, J.—This appeal is at the instance of a plaintiff in a suit for declaration and injunction and is directed against order dated July 2, 2008 passed by a learned Single Judge of this Court thereby rejecting the plaint on the ground that the averments made in the plaint did not disclose any cause of action.

2. Being dissatisfied, the plaintiff has come up with the present appeal.

3. The appellant, as the General Secretary of ANZ Grindlays Bank Retired Management Staff Pensioners Association, filed a suit being C.S. 198 of 2006 thereby praying for the following relief:

The plaintiff prays for Leave under Order 1 Rule 8, CPC to sue the Defendant Bank for himself and on behalf of and for the benefit of the said other members of the said ANZ Grindlays Bank Retired Management Staff Pensioners's Association, all being interested herein and represented by the Plaintiff and claims;

(a) Declaration that the Plaintiff and all the members of the said ANZ Grindlays

Bank Retired Management Staff Pensioners's Association are entitled to a periodical review of the rate of pension payable to the Plaintiff and to all persons represented by him herein on the basis of rise or fall of the price index;

(b) Declaration that the Plaintiff and all the members of the said ANZ Grindlays Bank Retired Management Staff Pensioners's Association, are lawfully entitled to recover and the Defendant Bank is liable to pay the Plaintiff and to all such persons represented by him herein pension at such increased monthly rate as may be found proportionate and/or commensurate to their cost of living index;

(c) An enquiry into the quantum of the monthly rate of pension that may be found lawfully due and payable by the Defendant Bank to the Plaintiff and such other persons represented by him and to each of them in addition to their present monthly pension and a decree for the amount to be found so due:

(d) Mandatory Injunction commanding and/or directing the Defendant Bank to pay the Plaintiff and all such other persons represented by him on whose behalf and for the benefit of whom the Defendant Bank is sued herein such sums as may be found due upon such enquiry;

(e) Permanent Injunction restraining the Defendant Bank from introducing or enforcing any rules of regulations as may prevent or interfere with the payment and recovery of such sums as may be found due upon such enquiry to the Plaintiff and to the said other persons so interested herein;

(f) Permanent Injunction restraining the Defendant Bank from taking any step and introducing any measure contrary to or inconsistent with the payment of their present pension;

(g) Interest;

(h) Interest upon Judgment;

(i) Receiver;

(j) Attachment before Judgment;

(k) Costs;

(l) Further and other reliefs.

4. The case made out by the plaintiff may be summed up thus:

1. The Plaintiff is the General Secretary of ANZ Grindlays Bank Retired Management Staff Pensioners Association.

2. The ANZ Grindlays Bank Retired Management Staff Pensioners' Association, Calcutta Branches with which Grindlays Bank Retired Officers Welfare Association (Southern Region), Chennai and Standard Chartered Grindlays Bank Management Staff Pensioners' Association, Delhi are affiliated, was formed and registered on 05.02.1997 under the West Bengal Societies Registration Act, 1961

bearing Registration No. S/85969 of 1996-97. The said Association was and still is constituted by its said members who at all material times duly held various posts and offices of the Management during their employment as members of the Management Staff of the aforesaid ANZ Grindlays Bank in Calcutta and elsewhere in India both within and outside the said jurisdiction. Such posts and offices were lawfully held by them until they were retired. Upon expiry of their tenure of service they retired or superannuated and thereby became entitled to pension under the Grindlays Bank Limited Indian Staff Pension Scheme. The Plaintiff and all members of the said Association represented by him therefore were and are entitled to draw pension from the Defendant Bank at such rates as are duly payable to them in law and equity under the said Grindlays Bank Limited Indian Staff Pension Scheme. The rights and obligations of the Plaintiff and others represented by him herein, relating to pension and pensionary benefits, were and still are governed by the Grindlays Bank Limited Indian Staff Pension Scheme Trust Deed and Trust Rules, published in July, 1986 as amended from time to time thereafter, from the office of the Director, South Asia at 19, Netaji Subhas Road, Kolkata - 700001 within the said jurisdiction. The said Scheme and Rules framed there under were and are in force and enforceable by or against the Defendant Bank since the time of acquisition of its business of the said ANZ Grindlays Bank.

3. At all material times, the Plaintiff has been acting as the General Secretary of ANZ Grindlays Bank Retired Management Staff Pensioners" Association, Calcutta Branches and its said affiliated Units, all over the territory of India. The Plaintiff represents his own interest and also has been duly authorized to represent the rights and claim of all the members of the said Association having the same interest in this suit. All the aforesaid members of the Association possess similar rights and privileges and the same interest as that of the Plaintiff in this suit against the Defendant Bank i.e. to realize and/or recover pension at such reasonably increased monthly rate as would be proportionate to their present cost of living index. The Plaintiff therefore as member of the said Association sued the Defendant for himself and on behalf of and/or for the benefit of all the aforesaid members of the ANZ Grindlays Bank Retired Management Staff Pensioners" Association, who had the same interest as the Plaintiff in the suit.

4. The Defendant is a Banking Company incorporated under the appropriate laws of the United Kingdom of Great Britain and Northern Ireland having its registered office at 1, Alderman bury Square, London EC2 V7SB, England, United Kingdom, outside the said jurisdiction. It has also been carrying on business, amongst others, at 19, Netaji Subhas Road, Kolkata - 700001 within the aforesaid jurisdiction of this Hon"ble Court.

5. On or about 01.09.2002, the Defendant Bank upon approval accorded by the Reserve Bank of India acquired for value from Australia & New Zealand Banking Group plc., (ANZ) having its registered office at Level 2, 100 Queen's Street, Melbourne, in the State of Victoria, Australia, outside the said jurisdiction,

amongst others, the running business of ANZ Grindlays Bank in India by way of Purchase. Since such purchase, the Defendant Bank has been carrying on the said business of ANZ Grindlays Bank, amongst others, at 19, Netaji Subhas Road, Kolkata - 800001 being its Eastern Regional Office within the said jurisdiction. The Defendant Bank so acquired the said business with effect from 01.09.2002 and at present has all the rights and liabilities hitherto possessed by the ANZ Grindlays Bank including those obtaining vis-à-vis the Plaintiff and the members of the said Association represented by him. Such rights and liabilities include the rights and claim of the Plaintiff and the aforesaid members of the said Association represented by him herein to all pension, pensionary benefits, their variations and legitimate enhancements.

6. Clause 11 at page 5 of the said Trust Deed and Trust Rules of the said Pension Scheme of the Grindlays Bank Limited published in the July, 1986 reads as follows:

Clause 11: In the event of the Bank being wound up for the purpose of reconstruction, reconstitution or amalgamation with any other bank, the Trustees may make such arrangements or enter into such agreement as they in their absolute discretion shall think fit for the continuance of the Scheme by such reconstructed, reconstituted or amalgamated Bank as if such reconstructed, reconstituted or amalgamated Bank were one bank within the meaning of these presents PROVIDED ALWAYS that no arrangement or agreements under this Clause shall be entered into without prior Revenue Approval and such arrangements or agreements shall be subject to such conditions as may be necessary for the obtaining or maintaining of Revenue Approval

7. The provisions and object of the aforesaid Pension Scheme were and still remain effective and binding on the Defendant Bank because they were calculated to render benefits into its pensioners in whose favour they were made. The intention has to be gathered in the context of the background in which the terms and provisions of the said Scheme were framed or formulated. They have to be given a functional interpretation as would promote the purpose and object of the Scheme which are to eliminate inequality of income and status and standard of life among the pension holders of the Defendant Bank. Its basic framework is to provide a decent standard of life to such pensioners and especially to ensure their security from cradle to grave.

8. Since such time as the said business of ANZ Grindlays Bank was acquired and/or taken over by the Defendant Bank and was amalgamated, the Defendant Bank paid and still is continuing to pay pension and pensionary benefits to the Plaintiff and the other members of the said Association represented by him at the same old rate or rates as prevailing before such amalgamation. Such rates so paid are lawfully amenable to increments and/or enhancements as may be arranged in due exercise of its discretion and power by the Defendant Bank at par with Pension Scheme Rules governing payment of pension to pensioners of the State Bank of India and commensurate with the living index or the cost of living and/or

needs of such pensioners. However, the rate of pension as paid to the Plaintiff and those he represents, although they had served in various posts and offices of the Management staff of the former ANZ Grindlays Bank, was never linked with the cost of their living index and the Defendant Bank wrongfully and in breach of its duty since failed and neglected to arrange for payment of pension at such increased rate or at all. The absence of any reasonable link and/or relation of the pensionary amount payable to their present cost of living index resulted in such shortfall as has prevented them from meeting their everyday needs. Such shortfall of pensionary benefit as are lawfully payable to them has been brought about by the Defendant Bank in breach of their duty to make any arrangement for payment of pension under the aforesaid Pension Scheme as would be linked with their cost of living index. The Plaintiff and those represented by him herein thereby suffered loss and injury.

9. On the other hand, by contract the retired officers of the Management staff of the former ANZ Grindlays Bank in the United Kingdom at all material times were and still are allowed pension linked with prevailing cost of living index. The Defendant Bank, on the contrary, in breach of its duty failed to enter into any agreement and/or make any arrangement with former members of the Management staff of the amalgamated ANZ Grindlays Bank to that effect. The Plaintiff and those represented by him herein are thereby wrongfully denied their lawful right and/or benefit to be paid their pension at par with their counterparts of the State Bank of India in this Country and in the United Kingdom. The defendant Bank since the aforesaid amalgamation and/or taking over the business of the former ANZ Grindlays Bank failed and/or neglected in breach of its duty to make any arrangement to pay pension to the Plaintiff and those represented by him herein proportionate to their prevailing cost of living and/or at par with the State Bank of India. The Plaintiff and those represented by him herein thereby are unlawfully discriminated against and have been subjected to inflationary pressures i.e. decrease of money value of the Indian Currency. Such wrongful failure to link the pension payable to the Plaintiff with the demands made by cost of living has progressively affected their retired lives. By contrast, pension paid to the retirees of the Management staff of the State Bank of India has been rationally linked with increase in the amount of Dearness Allowance. The Defendant Bank, on the contrary, failed and neglected to arrange for and/or provide any reasonable link of the pension payable to the Plaintiff with the rate of their Dearness Allowance.

10. In or about the year 2000 and 2001 the Defendant Bank had proportionately increased the rate of monthly pension payable to its "Award Staff" meaning thereby their clerical and graded staff other than the holders of post and offices of the Management staff since retired approximating the same to the needs of their spiraling cost of living. However, the Defendant Bank in breach of its duty still failed and neglected to make any such or similar arrangement and/or enter into any agreement with the Plaintiff and those represented by him herein constituting its former management staff or on their behalf or for their benefit. In

result, members of its former management staff have been wrongfully and consistently deprived payment of pension at any rate commensurate with their cost of living index. In result, the Plaintiff and those represented by him herein were denied their lawful right and suffered injury.

11. Such lawful revision of the pension scheme payable to the said "Award Staff" was made by the Defendant Bank following a memorandum of settlement which was reached and instituted by and between the ANZ Grindlays Bank and their said workmen represented by All India Grindlays Bank Employees Federation and All India Grindlays Bank Employees Association on 05.03.1986. No such revision was even attempted to be effected by the Defendant in favour of the Plaintiff and those represented by him herein.

12. The Defendant Bank as the lawful successor-in-interest of the ANZ Grindlays Bank has and has the same obligation to effect beneficial revision of pensions proportionate to or commensurate with escalation of all its pensioners' cost of living irrespective of their cadre or categorization. The continuity of the Banking business being one and the same as before and after the amalgamation envisages appropriate periodical revision of pensions that was effected by the ANZ Grindlays Bank prior to such amalgamation. The concept of pension is recognized to have carried with it ingredients of certainty, periodicity and adequacy. Pension is not only compensation for loyal service dutifully rendered by former employees such as the Plaintiff and the aforesaid members of the former ANZ Grindlays Bank Management staff whom he represents but also has a broader significance reflecting the measure of socio-economic justice that would ensure their economic security during later years of life when they are out of service. It is therefore obligatory on the Defendant Bank to revise the pension payable to the Plaintiff and the aforesaid members of the said Association periodically so as to bring it up to a standard which would make the amount of pension payable a meaningful means to meet the daily necessities of life.

13. The former ANZ Grindlays Bank, not unlike the State Bank of India, had three (3) several retirement benefits viz. Pension, gratuity and Contributory Provident Fund while other public sector Banks provided only two (2) retiral benefits i.e. gratuity, pension or Contributory Provident Fund. This fact and the system of providing the aforesaid three retirement benefits by necessary implication were agreed to be continued by the Defendant Bank vis-?-vis, amongst others, the Plaintiff and the said other members of the former ANZ Grindlays Bank since the said amalgamation.

14. The Defendant Bank at the time of the amalgamation of the former ANZ Grindlays Bank with itself entered into a merger scheme whereby the rights and obligations of the Plaintiff and those he represents vis-?-vis the Defendant Bank inter alia were promised by the said Bank to be continued as formerly implemented by the said amalgamated Bank. However, the Defendant bank wrongfully and in breach of such Merger Scheme failed and neglected to comply with its terms and effect with regard to periodical revision of pension payable to

the Plaintiff and those represented by him herein.

In result, pension is still continued to be paid to the Plaintiff and the members of the said Association by the Defendant Bank at the old meagre rate which falls far short of any amount even nearing a meaningful relation to the necessities of their daily lives. However, the said Merger Scheme lies in exclusive possession and special knowledge of the Defendant Bank and all efforts made by the Plaintiff to obtain a copy thereof had proved ineffective. The Plaintiff as such craves leave of this Hon''ble Court to call upon the Defendant Bank to produce the said Merger Scheme in original as entered into and adopted by it at the time of the said amalgamation.

15. It was duly represented to the Defendant Bank that prior to the said amalgamation with the ANZ Grindlays Bank the authorities of the latter Bank duly granted several adhoc monthly increases with regard to the payment of pension to the Plaintiff and those represented by him herein in the year 1986, 1988, 1992 and 1997 and 1998. The increased rate of the year 1998 had retrospective effect from 01.10.1995. in result, the said ANZ Grindlays Bank raised the monthly minimum pension payable to the Plaintiff and the members of the said Association to Rs. 2,500/- payable with effect from 01.01.1999. However, the Defendant Bank wrongfully failed and neglected to allow any increase in the rate of pension last payable to the Plaintiff and others who comprised the former managerial staff of ANZ Grindlays Bank at the time of its amalgamation as aforesaid on 01.09.2002. The Defendant Bank, however, at any material time never expressed nor signified its inability to meet such demand of the Plaintiff and others as aforesaid by reason of shortfall of funds available in its hand. The Plaintiff and other members of the said Association thereby have suffered substantial loss.

16. On 17.09.1998 a Charter of Demand was duly submitted by the member of the said Association including the Plaintiff and those represented by him to the Defendant Bank, amongst others, for payment of a minimum monthly pension of Rs. 7,500/- to be effective from 01.01.1998 onwards and a review of the prevailing inflationary pressures on the pensioners to be relieved by an annual increase of pension on the basis of their cost of living index. In addition to this, a demand was made on the Defendant Bank for domiciliary medical expenses of Rs. 6000/- per annum for individual pensioners of the retired Management staff and their dependents together with hospitalization expenses to be extended up to pensioners of 75 years of age.

17. On or about 05.09.1998, the former President of the ANZ Grindlays Bank Retired Management Staff Pensioners" Association, Calcutta Branches, addressed a letter to Ms. Elizabeth Proust, the former Group General Manager, Human Resources & Management Services, Australia and New Zealand, having her office at Level 31, 100 Queen Street, Melbourne, Victoria 3000 in Australia stating therein that the pensions still paid to them were calculated on the strength of their old salary. Such pensions comprised a mere pittance when compared to

their present needs without any inflation protection provision. Such pensions did not allow such members to maintain themselves even on a subsistence level. Hence, a claim was made for linking pension with cost of living index to offset the pressure of inflation and thereby to get substantial relief to old pensioners.

18. On or about 20.11.1998 the President of the aforesaid Management Staff Pensioners' Association, Calcutta Branches, addressed another letter in reference to Annexure "C" herein to Ms. Elise Calendar, General Manager, Human Resources, Middle East and South Asia. Ms. Elise Calendar then had her office and ANZ Grindlays Bank limited had its branch office at 90, Mahatma Gandhi Road, Post Box No. 725, Mumbai-400001. It was urged upon the Management of the said Bank by the retired members of the management staff to re-assess the quantum of monthly pension for retired management staff and to enhance such minimum monthly pension to Rs. 7,500/- with effect from 01.01.1998. This was urged in view of the prevailing inflationary pressures claiming a review of the payment of pension by an annual increase thereof proportionate to and on the basis of the cost of living index of the said pensioners.

19. On 14.12.1998, the President of the said Association addressed another letter to the said Ms. Elise Calendar, then the Regional General Manager, Human Resources, further urging her to apply her mind to the aforesaid issues of revision of the prevailing rates of pension payable to the members of the said Association by reason of the high prices of essential commodities prevailing in this Country.

20. On or about March 15, 1999 the said ANZ Grindlays Bank addressed to letter to Shri Gurudas Dasgupta, the member of Parliament, Rajya Sabha, who had earlier expressed his concern with the prevailing rate of pension payable to the retired management staff of the said Bank. By the letter to Shri Gurudas Dasgupta addressed on March 15, 1999, the said Bank adverted to the fact that there was no inflation protection clause in the Pension Scheme Rules of the said Bank. From time to time, the said Bank in exercise of its discretion and not because of any legal requirements or predetermined entitlements was known to have granted periodical exgratia increase upon consideration of various factors. Such exgratia increase was represented to have been paid by the Bank from its own revenue and not from the Pension Fund. It was further to be recognized, according to the ANZ Grindlays Bank that its Pension/Superannuation Scheme made an ostensible difference between Companies that were within India and Companies outside India. No valid comparison could be made of Pension/Superannuation arrangement offered within this Country and those that were offered outside this Country. On the basis that no such valid comparison could be made, no case could be made out of discrimination against pensioners of the said Bank in India. The huge majority of the ANZ Bank staff on a global basis did not receive index linked pension. For example, in the United Kingdom the English law provided a statutory guarantee on yearly basis for the increase in the pension payable. However, there was no such statutory guarantee provided in India. Still,

the said ANZ Grindlays Bank had lately increased and level of the minimum pensionary benefits payable to the managerial staff to Rs. 2,500/- per month with effect from 01.01.1999.

21. On April 05, 1999 the said ANZ Grindlays Bank addressed another letter to the Plaintiff informing him that the said Bank had decided to grant adhoc retiral benefit of Rs. 400/- each to these pensioners who had retired on or before 31.12.1998 with effect from 04.01.1999 and contained no reference to the revision of pension claimed time and again by the Plaintiff and all the members of the said Association.

22. While the said ANZ Grindlays Bank continued to pay pensionary benefit strictly in accordance with their said Pension Scheme as alleged, the President of the Association addressed a further letter dated 09.09.1999 to the aforesaid Ms. Elise Calendar at Mumbai stating that the said Pension Scheme by itself did not contemplate the cost of living index while making computation of the pension. In result, the members of the said Association who were retired more than fifteen years ago found themselves completely defenseless against ravages of inflation. The said President himself had retired in September, 1978. He earned a monthly salary of Rs. 4588/- and following this a pension of Rs. 2,050/- in the first month of his retirement. Such pension was barely sufficient to meet the daily necessities only for a month in the year 1999 or thereabout. His last pension cheque when he wrote this letter was received in August, 1999 and such cheque credited his own account by only Rs. 3568/- which was hopelessly inadequate for him to meet his necessities of life. Accordingly, the plight of such pensioners being members of the said Association is solely caused by not linking the pension payable to the cost of the pensioners living index and each of them thereby suffered loss and injury.

23. Finally, on 06.11.2003 the Defendant Bank addressed to the Plaintiff a letter completely digressing from the material issue in controversy between the parties by stating that there were 100 old pensioners in respect of whom individual Annuity Policies were purchased for payment of pension. All such policy documents had been forwarded by Life Insurance Corporation of India, Mumbai Branch. Therefore, payment of pension would be made on schedule time from that source.

24. It will appear from the correspondence and documents referred to hereinabove that by falling in line with the stand taken by the said ANZ Grindlays Bank, its predecessor-in-interest vis-?-vis the Plaintiff and other members of the said Association the Defendant Bank has acted wrongfully, illegally and in an unjustifiable manner in denying them such amount of pension as they were and still are in law entitled to. The Defendant Bank thereby has denied and is interested to deny the rights and claim of the Plaintiff and the members of the said Association he represents to be paid monthly pension at a rationally revised scale proportionate to and/or commensurate with their present cost of living index. Such revised scale has been duly recognized ad payable in law. The

Defendant Bank wrongfully failed and neglected to make any arrangement for payment of such revised scale of pension or pensionary benefit to the Plaintiff and other members of the said Association duly represented by him in spite of repeated requests and demands.

25. In the circumstances aforesaid they at all material time had and have and indefeasible right to recover a substantial sum from the Defendant Bank as and by way of increase of the monthly rate of pension payable to them by the Defendant Bank as will have been found proportionate and suitable to their present cost of living index. The Defendant Bank has been persistently denying and still is interested to deny such right of the Plaintiff and the said others in spite of repeated requests and demands. A cloud has been thereby thrown on their said right and its exercise by the Defendant Bank. The Plaintiff and those represented by him herein, therefore, are entitled to and claim a declaration that the Defendant Bank is duty bound to pay and the Plaintiff and those represented by him herein are entitled to recover from the Defendant Bank such sums as may be quantified upon an enquiry to be lawfully payable to them as and by way of revised monthly rate of pension proportionate to their present cost of living index.

26. It is imperative that such an enquiry should be ordered and/or directed forthwith by this Hon"ble Court to be made by an officer as to this Hon"ble Court may seem fit, to determine or ascertain the quantum of such increase in the monthly rate of pension duly payable to the Plaintiff and to those represented by him herein in accordance with their aforesaid present cost of living index.

27. If and when upon such enquiry the aforesaid increase of the monthly rate of their pension will have been so determined and/or quantified as payable to each of the Plaintiff and other members of the said ANZ Grindlays Bank Retired Management Staff Pensioners" Association represented by him, they would be entitled to an mandatory injunction directing the Defendant to pay to the Plaintiff and the said other pensioners represented by him, pension at such revised monthly scale as may be found due and payable to them upon such enquiry.

28. The Plaintiff and all other persons represented by him herein are further entitled to and claim that the Defendant Bank be permanently restrained by an injunction from interfering with the pension presently paid to them and from introducing and/or enforcing any rules or regulations that may in any manner interfere with or prevent the recovery of such increased monthly rate of pension to be determined as lawfully payable to The Defendant Bank should be further restrained from introducing any measure or taking any step to prevent him from recovering their present pensionary benefit from them.

29. Between them the pension holders of the former managerial staff of the ANZ Grindlays bank consist of numerous persons having the same interest in this suit viz. to recover such increased monthly rate of pension as may be determined or found lawfully due and payable by the Defendant Bank to each of them. The

Plaintiff, therefore, prays for leave of this Hon"ble Court to sue the Defendant Bank for himself and as a representative of all such persons as aforesaid and on their behalf or for the benefit of all such persons so interested.

5. The suit was contested by the defendant by filing written statement thereby denying the material allegations made in the plaint and the defence of the defendant, inter alia, was that the plaint did not disclose any cause of action for getting the relief claimed in the suit.

6. Subsequently, the defendant in the suit filed an application for rejection of the plaint on the ground that it did not disclose any cause of action and the learned Single Judge by the order impugned herein has allowed such application thereby rejecting the plaint on the ground that the same did not disclose any cause of action.

7. Being dissatisfied, the plaintiff has come up with the present appeal.

8. Mr. Deb, the learned advocate appearing on behalf of the appellant has criticized the order passed by the learned Single Judge by contending that in rejecting the plaint the learned Single Judge did not follow the well-accepted principles which are required to be observed while considering an application for rejection of plaint.

9. According to Mr. Deb, in this case, if at this stage all the allegations contained in the plaint are taken to be true, his client has definitely made out a cause of action for maintaining the suit. Mr. Deb submits that it will appear from the various averments made in the plaint and the documents relied upon as an annexure of the plaint that the defendant in the past amended the pension rule by increasing the amount of pension, which was originally fixed, and thus, really there was amendment of the rule governing pension. Mr. Deb submits that by conduct of the defendant, a case of promissory estoppel has been made out in the plaint. Mr. Deb contends that for the purpose of enforcing the doctrine of promissory estoppel, all that is required is that by the act or conduct of the defendant, the plaintiff has acted and in such circumstances, there is no necessity proving any "consideration" for the purpose of application of such doctrine unlike the case of enforcement of a contract. He, therefore, prays for setting aside the order passed by the learned Single Judge and remanding the matter back to the learned Single Judge for decision based on evidence that will be adduced by the parties. In support of such contention, Mr. Deb relies upon the following decisions:

1) Andhra Steel Corporation v. A.S.C. Engineers & Consultants and Ors. reported in 1984 C.W.N. 822;

2) Kandimalla Raghavaiah and Co. Vs. National Insurance Co. and Another,

3) Ranjeet Mal v. Poonam Chan and Anr. reported in AIR 1983 Rajasthan 1;

4) T. Arivandandam Vs. T.V. Satyapal and Another,

- 5) Vijay Pratap Singh Vs. Dukh Haran Nath Singh and Another,
- 6) Jagannath Prasad and Others Vs. Smt. Chandrawati and Another,
- 7) Liverpool and London S.P. and I Asson. Ltd. Vs. M.V. Sea Success I and Another,
- 8) Sarat Chunder Dey and Ors. v. Gopal Chunder Laha and Ors. reported in Indian Appeals Vol. XIX 203;
- 9) Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, ;
- 10) Powell v. Braun reported in (1954) All England Reports 484;
- 11) Mussummat Chand Kour and Anr. v. Partab Singh and Ors. reported in Indian Appeals 156.

10. Therefore, the only question that arises for determination in this appeal is whether the learned Single Judge was in the facts of the present case justified in rejecting the plaint.

11. It is now a settled law that for the purpose of considering a case of rejection of a plaint on the ground that it does not disclose any cause of action as provided in Order 7 Rule 11(a) of the Code of Civil Procedure, the Court should presume all the statements made in the plaint to be true. At that stage, there is neither any scope of considering the proposed defence of the defendant on merit nor should the Court take into consideration any documentary evidence in support of or against the allegations contained in the plaint. The scrutiny of the Court should be restricted to the averments made in the plaint or its annexure, which are part of the plaint. The true test is if the Court finds that even if all the statements contained in the plaint are true, the plaintiff is not entitled to get any relief claimed in the suit, the Court should reject the plaint on the ground that the plaint does not disclose any cause of action. (See Liverpool and London S.P. and I Asson. Ltd. Vs. M.V. Sea Success I and Another, at Paragraph 139). However, there is no scope of part rejection of the plaint on the ground of want of cause of action for part of the relief claimed in the suit. See D. Ramachandran Vs. R.V. Janakiraman and Others, .

12. Bearing in mind, the above-mentioned principles, we now propose to consider the case made out in the plaint including the contents of its annexure.

13. Plaint case as it stands is that plaintiffs and the other members of the Association have been getting pension according to the scheme entered into between the employer and the association but the old rate of pension should be revised according to the present-days" price-index. It is not the case of the plaintiffs that they are not being paid the rate of pension fixed according to the terms mentioned in the Pension Rules. They claim that having regards to the present cost of living, the old rate should be revised. The plaintiffs allege that a section of the retired staff are getting enhanced rate but the plaintiffs and the members of the Association of the plaintiff No. 1 are deprived of such benefit. In

other words, the plaintiffs allege discrimination against the defendant as regards its treatment among various categories of its employees. It is further alleged that in the past, there has been increase of pension on four occasions at the benevolent gesture on the part of the defendant towards the plaintiffs but thereafter, the defendant is reluctant to show any such compassionate signal. Such past increase of pension, according to Mr. Dev, the learned Counsel for the plaintiff, gives right to his client to invoke the doctrine of promissory estoppel.

14. Since the defendant is not a "State" within the meaning of Article 12 of the Constitution of India in regard to the payment of service benefit to its former employees, with whom there is definite terms of payment of the pension at the rate agreed between the parties, the plaintiffs are not entitled to get the benefit of Article 14 of the Constitution of India.

15. Secondly, in this civil suit, the right of the plaintiff emanates from the written contract entered into between the Plaintiff-Association and its employer, the predecessor in interest of the defendant, and the plaintiff can get the benefit claimed only on proving breach of terms of the agreement between the parties. In this case, the plaintiff has not alleged breach of any of the terms of the agreement, but has pressed for enforcement of the moral obligation of the employer to be more beneficent to a section of its formal employee. As pointed out by the Supreme Court in the case of Krishena Kumar and Others Vs. Union of India and others, there is no scope of enforcing moral obligation as distinguished from legal obligation in a Court of law.

16. Lastly, we do not find any substance in the contention of Mr. Dev on the question of applicability of the doctrine of estoppel to the facts of the present case simply because in the past the employer of its own increased the rate of pension. In order to apply the doctrine of estoppel, one must by his declaration or act or omission, intentionally cause or permit another to believe a thing to be true and to act upon such believe and if such thing happens, the former would be estopped from denying the truth of such thing. In this case, merely because in the past, on four different occasions, the employer increased the amount of pension, such fact will not compel the employer to go on increasing the pension for all time to come exceeding the amount agreed to by the parties. In this case, the allegation of the plaintiff is not that the increased pension is again decreased but their contention is that the defendant should go on increasing the pension although there is no agreement to that effect and the last rate of increased pension is being maintained. Thus, the plea of estoppel is a misconceived one.

17. Therefore, even if all the allegations contained in the plaint are taken to be true, those do not prove violation or infringement of any of the legal right of the plaintiffs so as to grant the relief claimed in the suit. In other words, the plaint does not disclose any cause of action to get the relief claimed in the suit.

18. We now propose to deal with the decisions cited by Mr. Dev. In the case of Andhra Steel Corporation (supra), it was held that when on undisputed facts a

question of law arises on which there may be controversy of an interpretation of law on which two views are possible, the plaint should not be rejected. In the case before us, we have already found that there is no controversy as to fact that even if the allegations contained in the plaint are true, the plaintiffs will not be entitled to the relief claimed. On that ground, we propose to reject the plaint without going even through the defence. Thus, the said decision does not help Mr. Dev's clients in anyway.

19. In the case of *British Airways (supra)*, a Division Bench of this High Court pointed out the difference between a case where the plaint does not disclose any cause of action and a case where the plaintiff had no cause of action for the suit. We have already pointed out that a plaint can be rejected if accepting all the allegations made in the plaint to be true, no relief can be granted to the plaintiff. On the other hand, if on consideration of the evidence on record it appears that the plaintiff has failed to prove the cause of action pleaded in the plaint, the Court should dismiss the suit on the ground that there is no cause of action for filing the suit. The case before us falls within the first category, and thus, the said decision does not help the appellant in anyway. In the case of *Jagannath Prasad (supra)*, the Full Bench of the Allahabad High Court had similarly laid down the aforesaid distinction and as such, the said decision is also of no avail to the appellants.

20. In the case of *Vijai Pratap Singh In C. A. No. 253 of 61 and 2. Ramjiwan Misir In C.A. No. 254 of 61 v. Dukh Haran Nath Singh and Anr. (supra)*, the Court was dealing with an application to sue in forma pauperis as provided in order 33 of the Code of Civil Procedure. In that context, the Apex Court held that the learned Trial Judge did not consider the question whether the plaintiff was a pauper but rejected the application only on the ground that it did not show a cause of action, and the High Court erroneously confirmed the order also on that ground. According to the Supreme Court, by the express terms of Rule 5, Clause (d) of Order 33, the Court was concerned to ascertain whether the allegations made in the petition showed a cause of action and the Court was not required to see whether the claim made by the petitioner was likely to succeed. It was merely to satisfy itself, the Supreme Court proceeded, that the allegations made in the petition, if accepted as true, would entitle the petitioner to the relief he claims. If accepting those allegations as true, no case was made out for granting relief, no cause of action would be shown and the petition should be rejected. However, in ascertaining whether the petition showed a cause of action, the Court was not required to enter upon a trial of the issues affecting the merits of the claim made by the petitioner and at the same time, it could not take into consideration the defences, which the defendant might raise upon the merits. According to the Apex Court, the Court is not competent to make an elaborate enquiry into doubtful or complicated questions of law or fact. If the allegations in the petition, prima facie, show a cause of action, the Court cannot embark upon an enquiry whether the allegations are true in fact, or whether the petitioner will succeed in the claims made by him. In the case before us, we have followed the said

principle and held that even if all the allegations made in the plaint are taken to be true, no relief could be granted to the plaintiff and thus, it is a fit case of rejection of plaint. The aforesaid decision rather goes against the appellants. In the case of T. Arivandandam, Petitioner v. T.V. Satyapal and Anr. (supra), the Supreme Court pointed out that "if on a meaningful - not formal - reading of the plaint, it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue", the Court should exercise its power under O. VII R. 11, C. P. C. taking care to see that the ground mentioned therein is fulfilled. In the case before us, the learned Single Judge rightly rejected the plaint by following the provision of Order 7 Rule 11(a) of the Code, which we have approved, as indicated above. Thus, the said decision also goes against the appellants.

21. In the case of Ranjeet Mal v. Poonam Chand and Anr. (supra), a learned Single Judge of the Rajasthan High Court reiterated the well-settled proposition of law that at the stage of deciding as to whether the plaint discloses any cause of action or not, the Court is to find out from the allegations of the plaint itself as to whether a bogus, wholly vexatious or frivolous litigation was sought to be initiated under the garb of ingenious drafting of the plaint and to guard against the mischief of a litigant misusing the process of the Court, by entering into a false litigation, merely for the purpose of harassing the other party and obtaining undue advantage of the process of the Court by adopting tactics and in starting sham and shady actions. The learned Single Judge did not stop there and further held that it did not, however, mean that if a legal question was raised by the defendant in his written statement disputing the claim of the plaintiff, the same was to be decided at that stage. Doing so would be, according to the learned Judge, pre-judging the matter, which should form the subject matter of an issue, as a proposition of law asserted by one party and denied by the other. With great respect to the learned Judge, we are unable to accept the second branch of proposition as a sound one of law in view of the provisions of Order 7 Rule 11 (d) of the Code. If it appears from the averments made in the plaint itself that the claim of the plaintiff is barred by any law for the time being in force, the defendant can without filing written statement point out the said provision and urge before the Court for rejection of the plaint as indicated in Order 7 Rule 11 (d) of the Code.

22. In the case of Kandimalla Raghavaiah and Company v. National Insurance Company and Anr. (supra), the Apex Court while considering the meaning of the phrase "cause of action" for the purpose of finding out the period of limitation held that the term "cause of action" is neither defined in the Act nor in the Code of Civil Procedure, 1908 but is of wide import. It has different meanings in different contexts. According to it, when the same is used in the context of territorial jurisdiction or limitation or the accrual of right to sue, generally, it is described as "bundle of facts", which if proved or admitted, entitle the plaintiff to the relief prayed for. Pithily stated, the court continued, "cause of action" means the cause of action for which the suit is brought. "Cause of action" is the cause of action, which gives occasion for and forms the foundation of the suit.

According to the said decision, in the context of limitation with reference to a fire insurance policy, undoubtedly, the date of accrual of cause of action has to be the date on which the fire broke out. We do not appreciate how the said decision can be of any help to the appellants in the facts of the present case.

23. In our opinion, the most appropriate decision of the Supreme Court on the question of disclosure of no cause of action in the context of Order 7 Rule 11(a) of the Code is in the case of *Liverpool & London S.P. Association Ltd.* (supra) where in paragraph 139 the Apex Court gave the following answer to the question involved herein:

139. Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed.

24. In the case of *Mussammat Chand Kour and Anr.* (supra), the Privy Council pointed out that cause of action has no relation with the defence and that it refers to the grounds set forth in the plaint as the cause of action, or in other words, the media upon which the plaintiff asks the Court arrive at a conclusion in its favour. We have in this case by assuming the aforesaid facts stated in the plaint to be true found that those facts do not warrant grant of relief to the plaintiffs and thus, the said decision does not help the appellants in anyway.

25. In the case of *Motilal Padampat Sugar Mills Co. Ltd.* (supra), the Apex Court enunciated the doctrine of promissory estoppel. The first and foremost condition of application of such doctrine is that the promisee has altered his position by acting on the promise of the promisor. By relying upon the fact that the employer in the past granted ad hoc increment on four occasions, Mr. Deb wanted to convince us that by such conduct an impression has been created to the employees that amount of pension is liable to be increased from time to time and thus, the Court should grant relief to the plaintiffs by invoking the said doctrine. We are afraid, for mere gratuitous conduct on the part of the employer in making additional payment as ad hoc one to the one payable by contract, the employee cannot get a decree for declaration that he had obtained a right to get further increment from time to time. It is not the case of the plaintiffs that the said ad hoc payment has been withdrawn but according to them, such fact gives right to them to have periodical increment from time to time keeping in tune with the price index. The said decision has not laid down as a proposition of law that even if the conditions of applicability of promissory estoppel are not satisfied, in the private field of contract, the Court can direct a party to pay more than what is due according to the terms of the contract. For the selfsame reason, the decision of the Privy Council in the case of *Sarat Chunder Dey and Ors.* (supra) is also of no assistance to the appellants.

26. In the case of Powell v. Braun (supra), on March 18, 1946, the defendant wrote to his secretary, the plaintiff, that instead of rise in salary he proposed to pay her each year bonus on the net trading profits of the previous financial year. On the same day, the plaintiff replied that the "idea of a yearly bonus is very considerate and one which I must appreciate". Bonuses were paid until 1951, but the defendant refused to pay a bonus for the years 1952 and 1953 on the ground that no firm promise had been made and that the promise, if made, was too vague to be enforced. In such a fact, it was held that as a matter of construction of the letters, it was intended by the parties, not that payment of a bonus should be within the discretion of the defendant, but he should pay the plaintiff a reasonable sum, i.e. a sum which bore a reasonable relation to the relevant trading profit; the principle of quantum meruit, according to the said decision, was no less applicable where the remuneration in question was additional remuneration than it was where the basic remuneration was the only remuneration and the plaintiff was entitled to recover a sum agreed as reasonable in respect of the two years in question.

27. In the case before us, there was no such agreement to pay periodical increment of pension and it is not also the case of the plaintiff that the ad hoc increase earlier made has been withdrawn. Therefore, the said decision does not help the plaintiffs in getting future pension with the clause of increase in tune with price index. Moreover, as pointed out by the Supreme Court in the case of Alopi Parshad and Sons Ltd. Vs. Union of India (UOI), compensation quantum meruit is awarded for work done or services rendered, when the price thereof is not fixed by a contract. For work done or services rendered pursuant to the terms of a contract, compensation quantum meruit cannot be awarded where the contract provides for the consideration payable in that behalf. Quantum meruit, the Supreme Court held, is but reasonable compensation awarded on implication of a contract to remunerate, and an express stipulation governing the relations between the parties under a contract, cannot be displaced by assuming that the stipulation is not reasonable. Therefore, the decision in the case of Powel v. Braun is of no avail to the appellants.

28. The decisions cited by Mr. Dev thus do not help his clients.

29. On consideration of the materials on record, we thus find that the learned Single Judge rightly rejected the plaint as it did not disclose any cause of action and we find no reason to interfere for the detailed reasons given by us.

30. The appeal is, thus, dismissed.

31. In the facts and circumstances, there will be, however, no order as to costs.

32. I agree.