

(2016) 08 GUJ CK 0048

In the Gujarat High Court

Case No : Special Civil Application No. 2893 of 2012

D.P. Chauhan

APPELLANT

Vs

Chairman and Managing Director

RESPONDENT

Date of Decision : 24-08-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 3 GCD 2042 : (2017) 1 GLR 153

Hon'ble Judges : Smt. Abhilasha Kumari, J.

Bench : Single Bench

Advocate : Mr. Satyen B. Rawal, Advocate, for the Petitioner; Mr. Yogi K. Gadhia, Advocate, for the Respondent No. 3; Notice Unserved, for the Respondent Nos. 1 and 2; Rule Not Recd. Back, for the Respondent No. 3; Rule Served, for the Respondent Nos. 1 and 2

Final Decision : Allowed

Judgement

Smt. Abhilasha Kumari, J. (Oral)—By preferring this petition under Article 226 of the Constitution of India, the petitioner has prayed for the issuance of a writ of mandamus or an appropriate writ or direction to the respondent Indian Bank to release the pensionary benefits of the petitioner expeditiously.

2. The present case turns upon its own facts, therefore, it would be necessary to notice the factual background in which the petition has been filed. The petitioner was initially appointed at the Rajkot Branch of the respondent Bank as a Clerk on 30.08.1978. Thereafter, he was transferred to various Branches from time to time. The petitioner's last place of posting was at the Circle Office of the respondent Bank at Ahmedabad. The petitioner has thirty-three years of service to his credit and it is his assertion that he is entitled to receive benefits such as pension, gratuity and other benefits of superannuation.

3. It so transpired that during the course of his service, the petitioner was issued a Charge-sheet dated 20.11.2001, which was followed by a Departmental Inquiry. The said Departmental Inquiry culminated in an order of compulsory

retirement, passed by the Disciplinary Authority on 30.04.2010. As per the said order, the petitioner was directed to be compulsorily retired with superannuation benefits such as pension and/or provident fund and gratuity, as would be due otherwise under the Rules and Regulations prevailing at the time and without disqualification from future employment. The petitioner has accepted the above order of penalty and the same is not the subject matter of challenge in this petition. Neither has the respondent Bank carried this order in appeal to the higher authorities, therefore, this order has attained finality.

4. As the pensionary benefits of the petitioner were not being released, the petitioner sought information under the Right to Information Act, 2005, on 02.11.2010, asking why he was not being given pension, as per the Pension Scheme. In reply to this query, it was stated by the respondent Bank that the petitioner had not provided the mandate to the learned advocate who had made the query under the Right to Information Act and information requested could not be divulged. No further action was taken by the respondent Bank and as the pensionary benefits of the petitioner were not released, the petitioner made a detailed representation dated 13.12.2011, to the Chairman and Managing Director of the respondent Bank (the first respondent herein) praying for the disbursement of his pensionary benefits. In the reply dated 10.01.2012 to the said representation, the respondent Bank stated that, though the petitioner was in service of the Bank on 27.04.2010, the date of the Pension Settlement, however, his option for pension was registered on 07.10.2010, after he was compulsorily retired from the Bank on 30.04.2010. He was, therefore, not eligible to opt for the Pension Scheme. It is further mentioned that 2.8 times of the November 2007 salary of the petitioner amounting to Rs. 57,092/- that had been deducted from the petitioner when the option form was accepted, has been refunded/ credited to him. Aggrieved by the action of the respondent Bank in not granting him any pensionary benefits, the petitioner is before this Court.

5. Mr. Satyen B. Rawal, learned advocate for the petitioner, has submitted that the Indian Banks' Association, which is an association of all Nationalized Banks in India, has entered into a Settlement with the Workmen Unions on 27.04.2010. By way of this settlement, another option has been extended to those employees to join the Pension Scheme who did not do so earlier. It is submitted that as per Clause (1) of the Terms of Settlement, all employees who are in the service of the Bank as on the date of this Settlement and exercise the option to join the Pension Scheme in terms of the Settlement, are eligible to opt for the Pension Scheme. It is submitted that the petitioner was in service on 27.04.2010, which is the date of the Settlement, therefore, he is entitled to join the Pension Scheme.

6. It is further submitted that the respondent Bank has floated the options by way of a Circular dated 21.08.2010. The petitioner has filled in the option on 07.10.2010. This option was accepted and processed by the respondent Bank and an amount of Rs. 57,092/- was deducted from the account of the petitioner. However, now a stand is being taken that the petitioner is not entitled to the

Pension Scheme as, on the date of filling up the option form, he was no longer in service.

7. It is submitted that the entitlement of the petitioner to join the Pension Scheme flows from the date mentioned in the Terms of Settlement, that is, 27.04.2010, on which date he was in service. The filling up of the option form is a procedural requirement for those employees who are entitled. The petitioner's form was accepted by the respondent-Bank and even processed further, at the relevant point of time.

8. Learned counsel for the petitioner further submits that six categories of employees have been carved out in the Terms of Settlement who can avail of the Pension Scheme. The petitioner falls in the first category. Even those employees who were in the service of the Bank prior to 29.09.1995, but have retired after that date and prior to the date of Settlement, have been included in the Pension Scheme. The fact that the petitioner was not in service on the date of filling in the option form, therefore, would have no relevance. His entitlement flows from the Terms of Settlement which state that all employees who were in the service on the date of the Settlement are eligible to join the Pension Scheme.

9. It is next submitted that the contention raised by the respondent Bank that an employee who has been compulsorily retired, such as the petitioner, is not eligible to avail of pensionary benefits, is not correct as there is no such bar in the Terms of Settlement. Learned counsel for the petitioner has referred to Clause (3) of the Terms of Settlement wherein only those employees who joined the services of the Bank on, or after, 01.04.2010, have been debarred from the Pension Scheme. It is submitted that the Scheme does not contemplate any bar in the case of employees who have been compulsorily retired. Learned counsel for the petitioner has also relied upon the Indian Bank (Employees) Pension Regulations, 1995 ("the Regulations" for short). Referring to Chapter-V of the said Regulations, it is submitted that various classes of pension have been enumerated therein. The petitioner would be covered by Regulation 33, pertaining to "Compulsory Retirement Pension". It is submitted that even persons who are compulsorily retired are eligible to be granted pension, though at the rates enumerated in Regulation 33. The stand of the Bank that the petitioner is not entitled to pension because he has been compulsorily retired is, therefore, not only against the Terms of Settlement but also contrary to the Rules and Regulations.

10. It is submitted that the petitioner has put in thirty-three years of service. While imposing the penalty of compulsory retirement, the Disciplinary Authority has specifically stated that the petitioner stands compulsorily retired with all superannuation benefits such as pension, provident fund and gratuity, that would be admissible under the relevant Rules and Regulations. As there is no bar to the grant of pension in the Rules, the stand of the respondents is arbitrary and unjust.

11. The petition has been strongly opposed by Mr. Yogi K. Gadhia, learned advocate for the respondents.

12. The first submission made by him is regarding the charges that were framed against the petitioner vide the Charge-sheet dated 20.11.2001. Learned counsel for the respondents has read out the charges and submitted that they were serious, regarding siphoning off the funds of the Bank, due to which a loss of Rs. 21,61,811/- was caused to the said Bank. It is submitted that the petitioner has admitted the charges and pleaded guilty, therefore, the punishment of compulsory retirement was imposed upon him on 30.04.2010. It is submitted that as the petitioner has been ordered to be compulsorily retired, he is not eligible to receive the benefits of the Pension Scheme.

13. Learned counsel for the respondent Bank has further submitted that the Settlement was arrived at on 27.04.2010, on which date, the petitioner was in service. However, the order of compulsory retirement came to be passed three days later on 30.04.2010. The respondent Bank has issued a Circular dated 21.08.2010 floating the option to join the Pension Scheme. On the date of the issuance of the Circular, the petitioner was no longer in the service of the Bank. It is further submitted that the petitioner has filled up and submitted the option form on 07.10.2010, on which date he was no longer in service. The form was to be filled up only by those persons who are in the service. As the petitioner was not an employee of the respondent Bank when he filled up the option form, he is not entitled to receive any pensionary benefits.

14. It is further contended that in the case of another employee, the Bank had addressed a query dated 28.04.2010, to the Indian Banks' Association, asking whether an employee who had been in the service of the Bank prior to 20.09.1995, and continued to be in service as on the date of the Settlement dated 27.04.2010, but had resigned subsequently under compelling circumstances, would be eligible to exercise the option for pension. In reply to the said query, the Indian Banks' Association had replied on 26.08.2010, that such an employee would not fall under any of the eligible categories in the Terms of Settlement. It is submitted that in the present case as well, the petitioner had compulsorily retired after the date of the Settlement, therefore, he would also not be eligible for the grant of pension.

15. It is further contended that the employee concerned was to authorise the Bank to transfer an amount equal to 2.8 times the revised salary for the month of November 2007. The said amount so transferred by the petitioner has been refunded to him, therefore, there is no contribution towards the Contributory Provident Fund (CPF), to be transferred to the Pension Fund, in the case of the petitioner. On this count as well, the petitioner cannot be granted pension. It is elaborated that the contribution of the Bank to the CPF was forfeited by the Bank as per the terms of punishment imposed upon the petitioner which is also evident from Regulation 7 of the Regulations, pertaining to "Composition of the Fund". According to learned counsel for the Bank, for this reason as well, the

petitioner is not entitled to receive any pensionary benefits.

16. In rejoinder, Mr. Satyen B. Rawal, learned advocate for the petitioner, has reiterated the submissions advanced earlier and has further clarified that the query addressed by the respondent Bank to the Indian Banks' Association in the case of some other employee, whose name is not mentioned, would not cover the case of the petitioner. It appears from the said query that the employee concerned had resigned under compelling circumstances. The petitioner has not resigned, but has been made to retire compulsorily from service as a penalty but with all pensionary benefits as admissible under the Rules and Regulations. In the case of resignation, per se, the employee would forfeit his pensionary benefits whereas, in the case of the petitioner, while passing the order of compulsory retirement, the Disciplinary Authority has clearly stated that he is entitled to receive superannuation benefits such as pension, provident fund and gratuity, as admissible under the Rules and Regulations. It is submitted that the query addressed by the respondent Bank to the Indian Banks' Association and the reply thereto, cannot be made applicable to the petitioner.

17. Referring to the option form filled in by the petitioner, Mr. Satyen B. Rawal, learned advocate for the petitioner, has submitted that on 05.10.2010, the form of the petitioner was accepted and the necessary amount recovered from the petitioner, with interest. Insofar as the refund of the amount is concerned, it is submitted that without informing the petitioner, the respondent-Bank has credited the amount of Rs. 57,092/- to his account. The refund of the amount would not disentitle the petitioner to the benefits of the Pension Scheme, if he is otherwise found entitled. The petitioner is also willing to refund the said amount, in case the Court arrives at the conclusion that the petitioner is covered under the Terms of Settlement and is entitled to exercise his option for the Pension Scheme. It is submitted that the action of the respondent Bank in denying the petitioner his pensionary benefits amounts to double jeopardy, as the petitioner has already been punished once by the order of compulsory retirement. The forfeiture of his pension would amount to a second penalty, which is totally unjustified.

18. On the above grounds, it is prayed that the petition be allowed.

19. This Court has heard learned counsel for the respective parties at length, perused the averments made in the petition and other pleadings and the documents annexed thereto.

20. Though learned counsel for the respondent Bank has referred, at length, to the nature of the charges that were framed against the petitioner and the aspect that the petitioner had admitted his guilt during the departmental inquiry, in the view of this Court, the charges and the Departmental Inquiry are not relevant in the present case. It is the stage thereafter that is relevant as the question of superannuation benefits flows from the order of penalty.

21. Undoubtedly, the petitioner has accepted the order of compulsory retirement

which has now become final. The respondent Bank has also accepted the said order and has not appealed to the higher authority against the stipulation therein regarding the grant of superannuation benefits to the petitioner.

22. The case of the petitioner is to the effect that, by the order of compulsory retirement, he has been granted the benefits of superannuation as would otherwise be due to him under the Rules and Regulations prevailing at the relevant point of time. The issue for determination arising before the Court is whether the petitioner is entitled to such benefits under the Terms of Settlement and the Rules, or not.

23. To place the matter in proper perspective, it would be necessary to reproduce the operative part of the order of compulsory retirement dated 30.04.2010, which is as below:

"Be compulsorily retired with superannuation benefits i.e. Pension and/or Provident fund and Gratuity as would be due otherwise under the Rules and Regulations prevailing at the relevant time and without disqualification from future employment."

24. The said order clearly permits the petitioner to avail of superannuation benefits as would be due otherwise under the Rules and Regulations. It would, therefore, be necessary in the first instance, to take a look at the relevant Regulations in this regard. Chapter-V of the Regulations is titled "Classes of Pension". It enumerates as many as six different types of pension. For the purpose of this petition, Regulation 33 pertaining to "Compulsory Retirement Pension" would be relevant. It is reproduced herein below:

"33. Compulsory Retirement Pension: (1) An employee compulsorily retired from service as a penalty on or after 1st day of November, 1993, in terms of Indian Bank Officer Employees" (Discipline and Appeal) Regulations, 1976 or awards/settlements may be granted by the authority higher than the authority competent to impose such penalty, pension at the rate not less than two-thirds 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.

(2) Whenever in the case of a bank employee the Competent Authority passes an order (whether original, appellate or in exercise of power of review) awarding a pension less than the full compensation pension admissible under these regulations, the Board of Directors shall be consulted before such order is passed.

(3) A pension granted or awarded under sub-regulation (1) or, as the case may be, under sub-regulation (2), shall not be less than the amount of rupees three hundred and seventy five per mensem."

25. From the above Regulation it is evident that even an employee upon whom the penalty of compulsory retirement has been inflicted is entitled to pension in accordance with the said Regulation. The submission of learned counsel for the

respondent Bank that because the petitioner has been compulsorily retired he is not entitled to pension is, therefore, not correct, in view of the above Regulation.

26. The next relevant aspect would be whether the petitioner is entitled to pension under the Pension Scheme that has been floated under the Terms of Settlement arrived at between the Indian Banks' Association and the Workmen Unions.

27. It appears that earlier, there was another Pension Scheme for which options had been exercised by some employees. As per the Settlement arrived at between the Indian Banks' Association and the Workmen Unions on 27.04.2010, it was decided to extend another option to join the Pension Scheme to those employees who had not opted for it earlier. Terms of Settlement were drawn up, indicating the categories of employees who would be entitled to exercise the option to join the Pension Scheme. The relevant extract of the Terms of Settlement is reproduced herein below:

"Terms of the Settlement

(1) All employees (Officers and Award Staff) who are in the service of the Bank as on the date of this Settlement and exercise option to join the Pension Scheme in terms of this Settlement will contribute from their arrears on account of wage revision in terms of the Settlement dated 27th April 2010 an amount of Rs. 878.00 crores towards their share in the amount of Rs. 1,800.00 crores offered by Officers' Associations and Employees' Unions towards 30% of the estimated funding gap of Rs. 6000.00 crores. The said amount is worked out at 2.8 times of the revised pay for the month of November 2007, for individual employees.

(2) Another option for joining the existing Pension Scheme shall be extended to those employees who:

(I) (a) were in the service of the Bank prior to 29th September 1995 and continue in the service of the Bank on the date of this Settlement;

(b) Exercise an option in writing within 60 days from the date of offer, to become a member of the Pension Fund and

(c) Authorize the Trust of the Provident Fund of the Bank to transfer the entire contribution of the Bank along with interest accrued thereon to the credit of the Pension Fund.

(II) (a) were in service of the Bank prior to 29th September 1995 and retired after that date and prior to the date of this Settlement.

(b) exercise an option in writing within 60 days from the date of offer to become a member of the Pension Fund and"

(emphasis supplied)

28. Clause (3) of the Terms of Settlement debars certain class of employees from the existing Pension Scheme as under:

"(3) (i) Existing Pension Scheme will not be applicable to those who join the services of the Bank on or after 1st April 2010.

(ii) Employees joining the services of the Bank on or after 1st April 2010 shall be eligible for the Defined Contributory Pension Scheme, Bank will be introducing for them. The Defined Contributory Pension Scheme proposed to be introduced for them will be one as governed by the provisions of New Pension Scheme introduced for employees of Central Government with effect from 1st January 2004 and as modified from time to time. The Scheme shall be regulated and administered by the Pension Fund Regulatory and Development Authority (PFRDA).

(iii) Employees joining the services of the Bank on or after 1st April 2010 shall contribute 10% of Pay and Dearness Allowance towards the Defined Contributory Pension Scheme and the Bank shall make a matching contribution in respect of these employees.

(iv) There shall be no separate Provident Fund for employees joining services of Bank on or after 1st April 2010."

(emphasis supplied)

29. The Terms of Settlement, therefore clearly indicate those categories of employees who are eligible to join the Pension Scheme and those categories of employees who are debarred therefrom. Other than the employees who have joined services of the Bank on or after 01.04.2010, there is no specific bar for any other category of employees subject to the categories included. The Terms of Settlement therefore, do not debar an employee who has been compulsorily retired from exercising the option to join the Pension Scheme. From the above, it is clear that the submission advanced on behalf of the respondent that the petitioner is not covered under the Pension Scheme because he has been compulsorily retired, cannot be accepted in view of the Regulations and the Terms of Settlement.

30. This brings us to the emphatic submission made by learned counsel for the respondent Bank, to the effect that on 21.08.2010, on which date, the Circular offering the option to join the Pension Scheme was issued and on 07.10.2010, when the petitioner filled in the option form, he was no longer in the service of the Bank. According to learned counsel for the Bank, for this reason the petitioner is not eligible to exercise the option for joining the Pension Scheme.

31. In order to decide whether the petitioner is entitled to opt for the Pension Scheme or not, it would be apt to have another look at the Terms of Settlement. Clause (1) clearly stipulates that all employees (Officers and Award Staff) who are in the service of the Bank as on the date of this Settlement and exercised the option to join the Pension Scheme in terms of the Settlement will make a contribution from their arrears on account of wage revision in terms of the Settlement dated 27.04.2010. This means that all employees who are in service

of the Bank as on 27.04.2010, which is the date of the Settlement, are entitled to exercise the option to join the Pension Scheme in terms of the Settlement and contribute the necessary amount for the said purpose. Admittedly, the petitioner was in service on 27.04.2010, the date of the Settlement. The order of compulsory retirement was issued only three days thereafter, on 30.04.2010. In terms of Clause (1) of the Terms of Settlement, the petitioner, being in service on the date of the Settlement dated 27.04.2010, was very much eligible to exercise his option to join the Pension Scheme. The entitlement and eligibility of the petitioner flows from Clause (1) of the Terms of Settlement, and he cannot be debarred from joining the said Scheme by any subsequent event such as compulsory retirement as neither the Terms of Settlement nor the Rules exclude him. To exercise the option is an action that the petitioner would undertake after his eligibility is determined. As the petitioner was in service on 27.04.2010 and was entitled to exercise his option as per Clause (1) of the Settlement, he proceeded to fill up the option form on 07.10.2010. Though the petitioner was not in service on 21.08.2010, when the respondent Bank issued the circular inviting options and on 07.10.2010, when he actually filled in the option form, however, the entitlement of the petitioner to join the Pension Scheme neither flows from the circular nor from the option form. The entitlement flows from the Terms of Settlement which clearly lay down that all those employees who were in the service of the Bank as on the date of Settlement, which is 27.04.2010, are entitled to exercise the option to join the Pension Scheme. The entitlement of the petitioner cannot be confused with subsequent procedural formalities that may be required to be undertaken, such as, filling in of the option form. The Circular dated 21.08.2010, issued by the respondent Bank is an intimation to its employees of the Terms of Settlement and the requirement of filling up the option form by eligible employees. It cannot, and does not, detract from the eligibility and entitlement of an employee such as the petitioner, who is covered under the Terms of Settlement. There is nothing in the Circular dated 21.08.2010 stating that the employee should be in service on the date of the issuance of the Circular or filling up the option form. The Circular clearly mentions the Terms of Settlement and the eligibility of the employee concerned flows from that. To state otherwise would amount to unilaterally changing the Terms of Settlement on the part of the respondent Bank, which cannot be permitted.

32. The respondent Bank accepted the option form of the petitioner and also deducted an amount of Rs. 57,092/- being 2.8 times of the basic pay component of the revised November, 2007 pay of the petitioner as per Clause (1) of the Terms of Settlement. Meaning thereby, that the Bank had no doubt, on the date of the acceptance of the option form, that the petitioner was entitled to pensionary benefits. What induced the Bank to reverse its decision and take a contrary stand, is not discernible from the available record. For reasons best known to the respondent Bank, after accepting the option form of the petitioner and deducting the amount referred to above, the Bank, without intimation to the petitioner, credited the said amount to the account of the petitioner. This was

referred to by the Bank-in-reply to the representation of the petitioner, for the first time.

33. A submission has been advanced on behalf of the respondent Bank that the refund of the amount of 2.8 times of the basic pay component of the revised November 2007 salary of the petitioner means that he is not entitled to pension. Moreover, the said amount has been accepted by the petitioner. In the view of this Court, the refund of the said amount does not determine the entitlement of the petitioner which flows from the Terms of Settlement only and not from any action taken by the respondent Bank subsequently.

34. During the course of submissions, learned counsel for the respondent, has laid emphasis on Regulation 7 occurring in Chapter 3 of the Regulations titled "The Fund". This Chapter is regarding the constitution of the fund called "The Indian Bank (Employees") Pension Fund". Regulation 7 provides for the composition of the fund.

35. It is sought to be argued that the contribution of the Bank to the Provident Fund with regard to the petitioner has been forfeited by Rule 11 of the Staff Provident Fund Rules, which provides that when an employee is dismissed, discharged, compulsorily retired or removed from service for misconduct, causing financial loss to the Bank, the Bank shall be entitled to recover such loss from the Provident Fund account of the concerned employee. Insofar as the composition of the fund as indicated in Regulation 7 is concerned, it has no relevance to the issue arising for determination before this Court. It is not the nature of the contribution or the manner of contribution that is in issue. It is the entitlement, or otherwise, of the petitioner for the grant of pensionary benefits that is to be decided by the Court and not the internal mechanisms regarding the contribution of the employee or the Bank, as the case may be.

36. Rule 11 of the Staff Provident Fund Rules provides that "where the employee is dismissed, discharged, compulsorily retired or removed from service for misconduct causing financial loss to the Bank, the Bank shall be entitled to recover such loss from the Provident Fund account of the employee concerned." In the case of the petitioner, no such order of recovery appears to have been passed. None is placed on record by either side. As this Rule also does not determine the entitlement of the petitioner to be covered by the Pension Scheme, it is not relevant to the matter in issue.

37. It was sought to be argued on behalf of the Bank that the contribution of the petitioner has been forfeited, therefore, no amount can be transferred to the Pension Fund in his case. The manner of making contributions and how the Bank arranges its internal affairs has nothing to do with the entitlement of the petitioner. In view of the above discussion, this argument is baseless.

38. The strenuous submissions advanced on behalf of the Bank mainly revolve around the aspect that on the date of exercising the option, the petitioner was not in service. It may be relevant to note that in the Terms of Settlement, about

six categories of the employees have been enumerated as being eligible and entitled to join the Pension Scheme. These categories include the employees who were in the service of the Bank prior to 29.09.1995 and have retired after that day and prior to the date of the Settlement. This clearly indicates that the Terms of Settlement also includes employees who were in the service of the Bank on a particular date but have retired prior to the date of the Settlement. The intention and object in framing the Terms of Settlement is not to exclude retired employees totally, but to carve out categories of employees who are eligible to join the Pension Scheme, even if they are retired, provided that they fulfil the requirements of the Terms of Settlement. Such an argument, therefore, cannot be raised in the case of the petitioner who was very much in service on the date when the Settlement took place on 27.04.2010. The relevant date is not the date on which the option form is filled up, but the date on which the Settlement was arrived at. Admittedly, the petitioner was in service on 27.04.2010, when the Settlement took place. It is from this date that his legal entitlement to join the Pension Scheme flows. This entitlement cannot be taken away by the respondents by raising inconsequential grounds only with a view of depriving the petitioner of his just and proper entitlement.

39. It cannot be ignored that the petitioner has put in about thirty-three years of service. Even the order compulsory retirement permits the petitioner to avail of superannuation benefits such as pension, gratuity and Provident Fund, as would be available under the Rules and Regulations prevailing at the relevant point of time. As has already been discussed earlier, there is no bar in Regulation 33 in granting pension to an employee who has been compulsorily retired, though such pension is to be granted in terms of the Regulation. Similarly, the Terms of Settlement contain no bar for an employee who has been made to retire compulsorily.

40. Considering the case of the petitioner from all possible angles, it is evident that the action of the respondent Bank in denying pensionary benefits to the petitioner is dehors the Terms of Settlement and thus arbitrary, unjust and in violation of the order of compulsory retirement which has attained finality, as well as the Regulations.

41. As a necessary consequence of the above discussion and for the reasons stated herein above, the following order is passed:

(I) The petitioner is entitled to join the Pension Scheme as per the Terms of Settlement dated 27.04.2010.

(II) The respondents are directed to release the pensionary benefits of the petitioner as per the applicable Rules and Regulations as expeditiously as possible and not later than a period of three months from the date of the receipt of a copy of this judgment.

(III) If the pensionary benefits are not released within the stipulated period of time, the respondents shall pay interest at the rate of 8% per annum from the

date of the expiration of such period till the date of actual payment.

(IV) The petitioner shall refund the amount of Rs. 57,092/-, as stated by learned advocate, upon instructions from the petitioner, if required by the Bank to do so. The petitioner shall also cooperate with the respondent Bank in working out the modalities of the payment as per the Rules.

42. The petition is allowed in the above terms. Rule is made absolutely, accordingly. There shall be no order as to costs.