

(2003) 05 AP CK 0017

In the Andhra Pradesh High Court

Case No : Writ Petition No. 11763 of 1998

Mohd. Nizamuddin

APPELLANT

Vs

General Manager and Appellate Authority Bank of India and
Another

RESPONDENT

Date of Decision : 02-05-2003

Acts Referred:

Citation : (2003) 3 ALD 663 : (2003) 5 ALT 170 : (2003) 3 LLJ 92

Hon'ble Judges : R. Subhash Reddy, J

Bench : Single Bench

Advocate : P. Navin Rao, for the Appellant; Surya Prakash Rao, SC, for the Respondent

Judgement

R. Subhash Reddy, J.—The petitioner, a gold-medalist in Bachelor of Arts, who entered into service as a Probationary Officer in Bank of India in the year 1972, filed this Writ Petition questioning the orders of the second respondent - General Manager, dated 20-1-1997 dismissing the petitioner from service and also the orders dated 7.11.1997 of the appellate authority confirming the order of dismissal and for a direction to the respondents to sanction pension on voluntary retirement to the petitioner as per Bank of India (Employees) Pension Regulations, 1995.

2. The grievance of the petitioner, which led to filing of the writ petition, is thus:

3. The petitioner had completed his Graduation in Arts and secured gold medal. He was selected as Probationary Officer in the year 1972 in the Bank of India and he was also promoted as Middle Management Officer in the year 1981. The petitioner had served the Bank very sincerely and without any demur till February, 1994. He applied for extraordinary leave in the month of February, 1994 and in the meanwhile, on notifying Bank Employees Pension Regulations, 1993 (Draft Regulations), he submitted his application dated 19.5.1994 opting for pension on voluntary retirement as provided in Regulation 17 of the Draft Regulations and the same is admitted to have been received by the Bank on

23.5.1994. Pursuant to the said application, he was asked to submit all the relevant papers to settle the retirement benefits, which the petitioner did. Thereafter, as, for a considerable time, no action was taken on his application, he requested for extension of pension on retirement in view of the deeming provision contained in the Draft Regulations. In the year 1996, he also made an application for commutation of pension. But, to the petitioner's surprise, the respondents, instead of extending the pension pursuant to the petitioner's option for pension on retirement, initiated disciplinary proceedings against the petitioner on the information stated to have been received from the Vigilance Department, and, in view of the initiation of disciplinary proceedings, no further steps had been taken pursuant to his application dated 19.5.1996 opting for pension scheme on voluntary retirement. After the initiation of the disciplinary proceedings, three charges were framed against the petitioner, which read:

"Article - I:

Sri Nizamuddin had submitted an application for availing vehicle loan under Proposal dated 4-9-1993 for Rs. 80,000/- for purchase of one Maruti Van bearing Registration No. AEA 7000 from one Mr. Mohd. Ibrahim Asif. The loan was sanctioned by the Zonal Manager on 10-3-1993 for Rs. 80,000/-. On verification, it was found that vehicle was registered in the name of Mr. Nasaruddin as on 27-7-1993 and no transaction took place up to 8-10-1993. While availing the aforesaid loan, Shri Nizamuddin has mentioned the vendor's name as Md. Ibrahim Asif in the proposal dated 4-9-1993 and submitted an undertaking for depositing stamped receipt, R.C. Book, Insurance Policy on 11-9-1993 when a pay order was issued for Rs. 80,000/- to him favouring the vendor.

From the above facts it is clear that the purported vendor, namely, Md, Ibrahim Asif was not the real owner of Maruthi Van No. AEA 7000. Subsequently, Shri Nizamuddin never submitted stamped receipt, RC Book or Insurance Policy. On 23-11-1995, he deposited a cheque for Rs. 95,120/- in the vehicle loan account in order to close the said account. In this above manner Sri. Nizamuddin had availed a loan of Rs. 80,000/- and misutilised the funds so lent without actually purchasing any vehicle and subsequently deposited an amount of Rs. 95,120/- after a lapse of 2 years and 2 months to close the account.

Article -2 :

Sri Nizamuddin availed LTC advance of Rs. 39,780/- during October, 1993 originally proposing to avail of LTC facility during 16.9.1993 to 21.9.1993. For the said purpose, he was sanctioned privilege leave for the said period. Having availed the LTC advance, he remained unauthorisedly absent from the duties and submitted a claim to the Branch for having availed LTC facility during the period when he had remained unauthorisedly absent. The LTC claim was hence not sanctioned. He did not refund the LTC advance so availed. In this manner he has misutilised LTC advance of Rs. 39,780/-.

Article-3:

Sri Nizamuddin has been remaining unauthorisedly absent from duties from 1.2.1994. He submitted a leave application dated 7.2.1994 for extraordinary leave from 1.2.1994. He did not report for duties on 2.4.1994. The Branch reminded him to report for duties vide letter dated 7.2.1994 and subsequent letter dated 18.5.1994. The registered letters sent by the Branch were returned undelivered. It is observed that he has not reported for duties till date. In the above manner, he remained unauthorisedly absent from duties and left headquarters without prior permission from the competent authority. Sri Nizamuddin was charged for committing breach of Regulation 3(1) of Bank of India Officer Employees (Conduct) Regulations. The aforesaid misconduct is a misconduct in terms of Regulation 24 of Bank of India Officer Employees (Discipline and Appeal) Regulations, 1976."

After the framing of the charges against the petitioner, Enquiry Officer was appointed as per the provisions of Bank of India Employees (Disciplinary and Appeal) Regulation, 1976 and the Enquiry Officer issued a notice to the petitioner. Pursuant to the said notice, the petitioner did not attend the enquiry initially, but, later on, he had replied that since he is deemed to have retired on the expiry of three months from the date of his application opting for pension on voluntary retirement, in view of the deeming provision contained in the Regulations, no disciplinary action can be continued/taken at that stage. The Enquiry Officer, on the ground that the petitioner did not participate in the enquiry in spite of issuance of notice to him to have his say, conducted the enquiry ex parte and submitted his report holding that Charge Nos. 1 and 3 are proved against the petitioner and Charge No. 2 relating to misuse of Leave Travel Concession, is not proved. Accepting the enquiry report, the second respondent-disciplinary authority passed final orders on 20.1.1997 in Ref.No. ZO:IR:1229:1097 stating that in view of the gravity of misconduct, a consolidated penalty of dismissal from service is imposed on the petitioner. As against the said order, the petitioner preferred a representation to the first respondent, which is treated as an appeal, and the first respondent by orders dated 7.11.1997 held that the appeal filed by the petitioner-appellant is not based on any material and further held that in the absence of any material, no interference is called for in the order of dismissal passed by the second respondent. Hence, questioning the legality of these orders, the petitioner has filed this Writ Petition.

4. Heard Sri Naveen Rao, learned Counsel for petitioner and Sri S. Suryaprakash Rao, learned Counsel for Bank, elaborately.

5. The learned Counsel for the petitioner submits that the petitioner had submitted application on 19.5.1994 opting for pension on voluntary retirement as per the Bank Employees Pension Regulations, 1993 notified by the Bank of India and in view of the proviso to Sub-regulation (ii) to Regulation 17, his option for pension on voluntary retirement is deemed to have been accepted, as there is no communication within a period of three months and in view of the same, the relationship of employer and employee also ceases to exist. Therefore, fresh

initiation of disciplinary proceedings against the petitioner are illegal and void ab initio. He further submits that in the month of February, 1994 itself, he has applied for extraordinary leave and in the meantime, he opted for pension on voluntary retirement, as early as on 19-5.1994, in terms of the Bank Employees Pension Regulations of 1993. It is stated that, at no point of time, any complaint is lodged against the petitioner nor there are any adverse remarks against him. But, since, for a sufficiently longer time, no steps are taken pursuant to his application for pension on voluntary retirement, to cover up the lapses on the part of the respondents, at a very belated stage, as an afterthought, in order to deprive the petitioner of his pension, disciplinary proceedings are initiated.

6. With reference to the charges framed against the petitioner, the learned Counsel for the petitioner submits that they are without any basis and they do not call for any disciplinary action. In respect of Charge No. 1 relating to avilment of car loan, it is submitted that the petitioner with a bona fide intention of purchasing the car, applied for and obtained the loan. The real owner of the car intended to be purchased by the petitioner was one Mr. Naseeruddin, who happened to be a foreign citizen and when he came to India, he had taken a Maruti Van for his personal use and while leaving India, he left the car with another relative of him, who is his brother-in-law and who was authorized by way of Power of Attorney to dispose of the car. After bargaining with the Power of Attorney-holder, petitioner wanted to purchase the car, but, later, as the said person demanded for more money, the transaction could not be fructified. Immediately after the failure of the said transaction, the petitioner in the year 1995 itself paid back the amount of loan taken along with the interest. Hence, there is no misconduct on the part of the petitioner and on the said charge, no disciplinary action is called for.

7. Even the other charge, which is held to be proved against the petitioner, is only unauthorized absence from 1.2.1994. With reference to the same, it is stated that the petitioner had already applied for extraordinary leave from the said date and in view of his option for pension on voluntary retirement in terms of the Draft Regulations, and, as the respondents have not taken any action on his option, the same cannot be treated as unauthorised absence, as the petitioner is deemed to have retired voluntarily on the expiry of three months from the date of exercise of his option i.e., 19.5.1994. It is submitted that the respondents have vindictively and illegally framed the said charge, which has no basis to proceed against the petitioner.

8. Lastly, learned Counsel for the petitioner submits that the charges, at any rate, are very trivial in nature having regard to the fact that the petitioner had rendered 20 years of unblemished service in the Bank and the punishment of dismissal inflicted on the petitioner is totally disproportionate to the misconduct proved.

9. As, both the issues of unauthorized absence and the extension of the benefit of pension on voluntary retirement under the Regulations are inter-linked, the

petitioner filed the present writ petition clubbing the said two issues.

10. Counter-affidavit has been filed by the 2nd respondent on behalf of himself and also the first respondent. It is stated in the counter-affidavit that the petitioner had applied for extraordinary leave from 1.2.1994 to 31.3.1994 and on the expiry of the said leave, he did not resume his duties on 2.4.1994. As the leave was not sanctioned for from 1.2.1994, the said period amounts to unauthorized absence. By letter dated 10.5.1994, the petitioner was advised to report to duty and was also asked to explain his absence without prior intimation/approval. Thereafter, the application dated 19.5.1994 was filed by him opting for pension on voluntary retirement from service, which was received by the Bank on 23.5.1994. It is further stated that in the meanwhile, in view of the credible information received from the Vigilance Department of the Bank that the petitioner committed irregularities, disciplinary proceedings were initiated by framing charges on 9.7.1996. With reference to the charge of loan for car is concerned, it is stated that, the petitioner had obtained a loan of Rs. 80,000/-, but, he had not purchased the vehicle and deposited the amount of Rs. 95,120/- after a lapse of two years and two months. With reference to the second charge of misutilisation of Leave Travel Concession of Rs. 39,780/-, the same is not held proved by the Enquiry Officer, which was accepted by the disciplinary authority. Hence, there is no need to mention about the same. The third and the last charge against the petitioner is unauthorized absence from 1.2.1994. It is stated that the petitioner had applied for leave from 1.2.1994 as extraordinary leave and extended up to 31.3.1994. As the said leave was not sanctioned, the same was treated as unauthorized absence.

11. It is further stated in the counter that several opportunities were afforded to the petitioner to put-forth his say against the charges before the Enquiry Officer, but, the petitioner did not avail of those opportunities and did not participate in the enquiry. Some of the registered letters sent to the petitioner were not claimed, and, ultimately, the Enquiry Officer was constrained to hold ex parte enquiry and submit the report. Accepting the report of the Enquiry Officer, the second-respondent, disciplinary authority, had passed final orders. It is stated that having regard to the misconduct held to be proved in the enquiry, the punishment of dismissal of the petitioner from service is an appropriate punishment. It is stated that the Bank Employees' (Pension) Regulations, 1993 are only draft regulations, which are issued in accordance with the Memorandum of Settlement signed between Indian Banks Association and All India Workmen Unions on 29.10.1993 and by a Joint Note signed between Indian Bank Association and All India Officers' Organizations, they agreed for introduction of Pension Scheme for Bank Employees. In view of the said settlement, the Draft Pension Regulations of 1993 were framed and same were forwarded by the Indian Banks Association to all Branches of the Bank and the idea of circulating the draft pension regulations is to make it known to all the employees about the scheme and if options are exercised in advance, they could be acted upon as and when the Regulations are approved by the competent authority. It is further

stated that the draft regulations have no force and no action can be taken on the option dated 19.5.1994 exercised by the petitioner, AS the regulations were not approved by then. The petitioner cannot rely on the said regulations so as to plead the benefit of deemed retirement on expiry of three months from the date of his application. It is further stated that the Regulations are approved in the year 1995 and have come into force on 29.9.1995 (the date of publication in the Gazette). In any event, it is further submitted that pursuant to his representation dated 19.5.1994, he was advised to appear on 13.7.1994 for Exit Interview before the second respondent so as to find out the reason for such a decision of the petitioner to quit service and opt for pension on voluntary retirement. As the petitioner failed to attend the said interview, it cannot be said that no action has been taken for a period of three months to claim the benefit of deeming provision. Further, it is stated that as the petitioner has not participated in the enquiry and inasmuch as the charges against the petitioner are held proved and the order of the second respondent is based on enquiry report and the appeal filed by the petitioner, on examination by the appellate authority, was also rejected, it is not a fit case for interference by this Court in exercise of the extraordinary power under Article 226 of the Constitution of India.

12. It is submitted by the learned Counsel for the petitioner that as per Regulation 17(1), the employees who have completed 20 years of qualifying service are permitted to retire voluntarily after giving three months' notice in writing to the competent authority. He submits that under proviso to Sub-regulation (2) of Regulation 17, it is clearly stated that where the competent authority does not communicate its decision not to accept voluntary retirement before the expiry of period specified in the notice the retirement shall become effective from the date of expiry of such period entitling the employee for pension. In that view of the matter, he submits that he is deemed to have retired from service. As such, no action for disciplinary proceedings could have been maintained against the petitioner and the final order of dismissal passed against the petitioner is illegal and arbitrary. Further, he submits that assuming that Regulations of 1993 are to be treated as Draft Regulations, in the year 1995, Bank of India (Employees'') Pension Regulations, 1995 were framed by the Board of Directors of Bank of India, after consultation with the Reserve Bank of India and with the previous sanction of the Central Government, in exercise of the powers conferred by Clause (f) of Sub-section (2) of Section 19 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970. The said Regulations were approved by the Board of Directors on 19.12.1994 and the approved regulations were notified in the year 1995. He also further submits that the letter dated 1.11.1995 issued while circulating the Regulations of 1995 mentioned that those who have exercised options pursuant to 1993 Draft Regulations, need not give a fresh option for pension. In that view of the matter, as there is no refusal even after 1995 Regulations have come into force, the petitioner is deemed to have retired from service after expiry of three months. With regard to the stand of the respondents that the petitioner was called for exit

interview pursuant to his option dated 19.5.1994, the learned Counsel submits that there is no such provision for Exit Interview and if there is no rejection within a period of three months, automatically, the option comes into effect for voluntary retirement. As such, the notice for Exit Interview issued within a period of three months has no bearing on the issue. Further, the learned Counsel for the petitioner submits that for sufficiently longer period after the scheme of 1995 became operational, no action was taken and at a very belated stage, the respondents have initiated disciplinary proceedings on trivial and technical grounds only to deprive the petitioner of his right for pension on voluntary retirement.

13. The learned Counsel for the petitioner relied on the decisions in W.P. No. 510 of 2002, dated 21.11.2002, *Bank of India v. Rajagopalan and Ors.*, (2000) 1 LLJ 1617SC, *State of Haryana and Others Vs. S.K. Singhal*, *Manjushree Pathak Vs. The Assam Industrial Development Corporation Ltd. and Others*, *G. Sreenivasa Reddy Vs. Zonal Manager LIC of India and Others*, *K.G. Prakash Chary Vs. High Court of A.P. and Others*, *Colour-Chem Limited Vs. A.L. Alaspurkar and Others*, *Syed Zaheer Hussain Vs. Union of India (UOI) and Others*, and *Om Kumar v. Union of India* (2001) 2 SCC 386, in support of his contentions.

14. Sri Suryaprakash Rao, learned Counsel for the respondents submits that the very option submitted by the petitioner on 19.5.1994 is not in the proforma, which is contemplated for the exercise of option and the same cannot be acted upon. He submits that though the petitioner, at a later point of time, in the year 1994, submitted the option in the proforma prescribed, but, even by that time, the Regulations had not come into force. The Regulations, which are notified in the year 1993, were not acted upon as the said regulations were notified only to keep the options ready to give the benefit to the employees as and when they are approved by the management, Inasmuch as the draft regulations have come into force in the year 1995, the petitioner who had applied in the month of May, 1994, cannot seek the benefit of the said regulations for claiming the benefit of pension on voluntary retirement. As such, he continued to be the employee of the respondent-Bank and the bank authorities are entitled to take disciplinary action against the petitioner.

15. With reference to the merits of the case, the learned Standing Counsel submits that the petitioner has availed the bank loan of Rs. 80,000/- to purchase car and ultimately he did not purchase the same and though he has paid back the entire amount in the year 1995, inasmuch as, the petitioner did not purchase the car, it amounts to misconduct within the meaning of Conduct Regulations of the Bank. In respect of the other charge viz., unauthorized absence, which is held proved, the learned Counsel submits that inasmuch as respondent-authorities had not granted leave from 1.2.1994 and the petitioner unilaterally went on leave on mere application, the absence of the petitioner from 1.2.1994 amounts to unauthorized absence. Even after the expiry of initial period of leave on 31.3.1994, he did not join on 1.4.1994 and thereafter, he sought extension of

the said leave and in the meanwhile, he had applied for pension on voluntary retirement on 19.5.1994. He submits that the option was exercised on 19.5.1994 and as the regulations are not approved regulations, the period beyond that date also amounts to unauthorized absence. He submitted that the Enquiry Officer gave ample opportunity of being heard to the petitioner, but the petitioner did not avail of the same and did not participate in the enquiry and, therefore, the enquiry was held ex parte and the report was submitted and accepting the said report, the disciplinary authority passed final orders of dismissal, which were confirmed on appeal to the first respondent. He submitted that since the charges held proved against the petitioner are serious in nature, the punishment of dismissal from service is proportionate to the misconduct proved. In support of his contentions, the learned Standing Counsel relied on the judgment in *The Secretary, APSWREI Society v. J. Prathap and Ors.* 2002 (1) SLR 1, the Supreme Court set aside the order passed by the High Court by which the High Court interfered in the order of termination, which was passed on the ground of production of fake degrees while seeking employment, and directed withholding of two increments with cumulative effect. The Supreme Court observed that there was no occasion or justification for the High Court to have shown magnanimity in a matter like it. He also relied on the judgment of Supreme Court in *Union of India (UOI) and Others Vs. Narain Singh*, wherein the scope of interference on the quantum of punishment was elaborately discussed by the Apex Court.

16. In W.P.No. 510 of 2002 decided by a learned Single Judge of this Court on 21.11.2002 it was held that no disciplinary proceedings can be taken in view of cessation of relationship of employer and employee. The learned Judge held, having regard to the factual scenario in that case, thus:

"As the petitioner's active and jural relationship with the respondent as an employee stood determined with effect from 24.9.1999 as per the analysis above and in the absence of any plea by the respondents that they are entitled to initiate disciplinary proceedings after cessation of an employer and employee relationship, the initiation of disciplinary proceedings against the petitioner for unauthorized absence by the Memorandum of Charges dated 29.11.1999 and culminating the impugned order dated 12.12.2001 is incompetent, without jurisdiction and non est. Consequently, the impugned order bearing Reference No. HO:PER:PNA:5086:2001, dated: 12.12.2001 is set aside. The petitioner would be entitled to his terminal benefits payable by the respondents, subject to deduction of his liability under Paragraph 5(2) of the 1976 scheme."

In the said case, the learned Judge, in view of the specific finding that the petitioner's active jural relationship with the respondent as an employee stood determined, held that no disciplinary proceedings can be continued thereafter against the petitioner therein. It all depends on the facts of each case and the said ratio can be applied only in the event of holding that the relationship of employer and the employee is ceased. But when it is open for debate, the ratio

decided in that case cannot be applied in every case. In this case, on 19.5.1994, the Draft Regulations have not come into force, thereby, it cannot be said that the employer and employee relationship has come to an end, on the expiry of three months period by taking the benefit of the Draft Regulations notified in the year 1993.

17. In *Bank of India v. Indu Rajagopalan and Ors.* (supra), the Supreme Court has examined the applicability of pension scheme for two different classes i.e., on who ordinarily retired prior to 1-11-1993 and those voluntarily retired on or after 1.11.1993. In the said case, the Supreme Court on finding that the authorities having sought to make a distinction and not applied the regulations framed subsequent to their retirement, did not interfere with the order of High Court.

18. In *State of Haryana v. S.K.Singhal* (supra) the Supreme Court discussed various categories of Voluntary Retirement Schemes as to when the voluntary retirement comes into force and when it is not.

19. In *Manjushree Pathak v. Assam Industrial Development Corporation Ltd.* (supra) the Supreme Court discussed the discretion of the authority in accepting or rejecting the application of Voluntary Retirement and it is held by the Apex Court that the discretion has to be exercised reasonably, fairly and judiciously and the discretion is not unfettered or absolute.

20. In *G.Sreenivasa Reddy v. Zonal Manager, LIC of India and Ors.* (supra), a learned Single Judge of this Court elaborately dealt with the matter regarding the power of this Court on disciplinary matters and the proportionality of the punishment.

21. In *K.G.Prakash Chary v. High Court of A.P.* (supra), a Division Bench of this Court held the punishment of termination imposed in that case is disproportionate to the gravity of misconduct proved.

22. In *Colour-Chem Ltd. v. A.L. Alaspurkar and Ors.* (supra), the Supreme Court discussed the proportionality of the punishment with reference to minor and major misconducts and held that if the provisions are capable of two constructions, one which furthers the policy and object of the Act and which is more beneficial to the employees should be preferred and if the provisions are capable of only one meaning, plain meaning thereof should be given effect to.

23. In *Syed Zaheer Hussain v. Union of India and Ors.* (supra) the Apex Court finding that the punishment of dismissal on the ground of unauthorized absence for seven days is too harsh a penalty substituted the said punishment of dismissal with another penalty.

24. In *Om Kumar and Ors. v. Union of India* (supra), the Supreme Court has elaborately considered the proportionality of the punishment to the guilt proved.

25. Having regard to the judgments relied on by the petitioner, the ultimate

question which falls for consideration is as to whether the petitioner is entitled to the benefit of pension on voluntary retirement pursuant to his application dated 19.5.1994 under Regulation 17 of the Draft Rules?

26. As rightly contended by the learned Standing Counsel, Sri Suryaprakash Rao, the regulations which are notified in the year 1993 are only Draft Regulations based on the settlement and are not approved. The said regulations are notified inviting options, as rightly stated by the respondents, to keep the options ready and to extend the facility as and when the regulations are approved. But, the fact remains that the said regulations were approved at the Board Meeting held on 9.12.1994 and were published in the Gazette on 29.9.1995. They are titled as "Bank of India (Employees") Pension Regulations, 1995. As per Regulation 29 of the said Regulations, on or after the 1st day of November, 1993, at any time after an employee has completed twenty years of qualifying service, he may, by giving notice of not less than three months in writing to the appointing authority retire from service. As per Clause 29(2), the notice of voluntary retirement given under Sub-regulation (1) shall require acceptance by the appointing authority and further by virtue of proviso to Sub-regulation (2) of Regulation 29, where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period. Further, it is relevant to note that even while communicating the Bank of India (Employees") Pension Regulations, 1995 to all the Branches of Bank of India, specific mention has been made in the letter dated 1.11.1995 stating that the employees who had already exercised option for pension within stipulated time-limit in pursuance of Settlement, shall be deemed to have exercised option for Pension and it is categorically stated that they need not give a fresh option for pension under the approved Regulations.

27. The Bank of India (Employees) Pension Regulations are not mere administrative instructions, but, their origin is traceable to statutory power under Clause (f) of Sub-section (2) of Section 19 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970. The said regulations are approved by the Bank of India after consultation with the Reserve Bank of India with the previous sanction of the Central Government. When the said regulations are framed with a specific avowed object prescribing several modes for seeking pension by opting for voluntary retirement, the regulations have to be implemented in their true spirit by interpreting them reasonably and judiciously. The options filed cannot be just ignored indefinitely by raising technical grounds. In view of the admitted position that the Bank authorities themselves called for options in 1993 to keep them ready to give the benefit as and when the regulations are approved, there is no reason or justification for keeping silence on the option submitted by the petitioner. It is evident from Regulation 29 of the Regulations of 1995 that those who have completed 20 years of service by 1.11.1993 are given the benefit of the superannuation pension. Though the Regulations were approved in the year 1995, but even the options filed pursuant

to the notification of 1993 Regulations based on settlement are also intended to be given effect to, under approved regulations of 1995.

28. In view of the above, the case of the petitioner has to be examined with reference to these Regulations. It is not in dispute that the petitioner had applied for pension on voluntary retirement on 19.5.1994, and, in continuation thereof, he had also applied in the prescribed form as per the respondents' advice on 19.9.1994. Even if the option exercised by the petitioner on 19.4.1994 is not construed to be in the prescribed form, it is admitted by the respondents that subsequently, on 19.9.1994, he had given another form in the prescribed form. But, at no point of time, there was any valid consideration for the said applications. In that view of the matter, having failed to take any further action on notifying the Bank of India (Employees') Pension Regulations, 1995 for a considerable length of time, it is not open to the respondents to ultimately refuse the benefit of the said regulations. It is stated by the learned Standing Counsel that after submission of option on 19.5.1994, in the month of July, 1994, the petitioner was asked to appear for Exit Interview. Therefore, the bank authorities cannot be said to have not taken any action on the option exercised by the petitioner within a period of 90 days and hence, the petitioner is not entitled for any benefit under the deeming clause. In this context, it has to be seen that there is no such procedure and power for calling for Exit Interview either under the Bank Employees' Pension Regulations, 1993 or under the Bank of India (Employees') Pension Regulations, 1995. As such, having failed to take any action for a considerable length of time, it is not open to the respondents to say that the petitioner is not entitled to the benefit of the said Regulations. In this context, the petitioner has relied on the judgment of the Supreme Court in *Manjushree Pathak v. Assam Industrial Development Corporation Ltd.* (supra), wherein the Supreme Court while dealing with the Scheme for voluntary retirement has categorically held that the discretion has to be exercised reasonably, fairly and judiciously and the discretion is not unfettered or absolute. In the said case, silence on the application for voluntary retirement for a period of two months and thereafter initiating disciplinary proceedings, was held to be illegal by the Apex Court. By applying the principles laid down in the said case to the instant case, it has to be seen that for a considerable time, no action has been taken and the petitioner was never intimated about the option exercised by him in the year 1994 and at a belated stage, when he represented for commutation of pension, disciplinary proceedings were initiated in the month of July, 1996 and charges were framed. In that view of the matter, it is evidently a fit case for grant of directions to consider the options filed by the petitioner opting for pension on voluntary retirement. Though initially application was filed on 19.5.1994, but, subsequently, option was exercised in the prescribed form on 19.9.1994, and the said options were never considered either under Regulations of 1993 or under approved Regulations of 1995. Even assuming that Regulations of 1993 are only Draft Regulations, which are notified only for the purpose of inviting options, there is no reason to consider the said options after the

notification of the approved Regulations in the year 1995. Even according to the respondents, the employees who had filed] their options on notifying the Draft Regulations in the year 1993, are not required to submit any further option forms after approved regulations were notified in the year 1995. In that view of the matter, the respondents have not considered the valid options exercised by the petitioner seeking relief of pension on voluntary retirement. As such, it is evidently a fit case to direct the respondents to consider the option submitted on 19.5.1994 together with the option submitted in the prescribed form on 19.9.1994 treating them to be valid options under Bank of India (Employees'') Pension Regulations, 1995.

29. Now remains the aspect of dismissal, on the ground of two charges held to have been proved, to be considered.

30. Coming to the first charge of availing cash loan of Rs. 80,000/- and not purchasing the car, which is held to have been proved, is concerned, it has to be seen that the petitioner paid back the entire amount and interest tantamounting to Rs. 95,120/- in the year 1995 itself. Thereafter, at no point of time, any complaint is made against the petitioner with reference to his car loan and only after he had consistently pursued his application for pension on voluntary retirement, at the very belated stage, the said disciplinary proceedings are initiated with reference to the above said charge. Seriousness of the said charge has to be viewed from the factum of repaying the entire loan amount much prior to the initiation of the disciplinary proceedings and the petitioner had explained the reasons as to why the transaction to purchase the car was not fructified and the circumstances, which led to paying back of the loan amount with interest. In that view of the matter, I am of the opinion that the charge is not such a serious one, and, in any event, it will not attract the extreme punishment of dismissal from service.

31. The next charge held to have been proved is the unauthorized absence. The petitioner who was initially appointed as Probationary Officer in the year 1972 and promoted as Middle Management Officer, in the year 1981 with an unblemished record of service, cannot be allowed to be thrown out by an order of dismissal on the ground of unauthorized absence. When the petitioner had applied for extraordinary leave from 1.2.1994 onwards and the respondents did not take any action on the option dated 19.5.1994 and in the prescribed form on 19.9.1994 for pension on voluntary retirement exercised by the petitioner, it is not open to the respondents, at this belated stage to level the charge of unauthorized absence. Even assuming that the said period of absence from 1.2.1994 is not explained, the same cannot be examined in isolation without reference to the application for voluntary retirement, which he bona fide made pursuant to the Bank Employees' (Pension) Regulations, 1993. Hence, the said misconduct has to be considered with reference to his claim for pension on voluntary retirement under Bank Employees' (Pension) Regulations, 1993 and the Bank of India (Employees'') Regulations, 1995. When the charge of

unauthorized absence is examined with reference to his option for pension on voluntary retirement, the period of absence overlaps and even, technically, assuming that the period anterior to 19.5.1994 has to be treated as unauthorized absence, in that context also, the said charge, which is levelled at this belated stage cannot be construed such a serious one to impose the extreme penalty of dismissal from service.

32. Viewed from any angle and applying the ratio decided by the Apex Court in catena of judgments relied on by the learned Counsel for petitioner and referred to above with regard to the proportionality of the punishment vis-a-vis gravity of misconduct proved, I am of the opinion that the dismissal of the petitioner from service is quite disproportionate to the gravity of the charge of misconduct alleged and proved against the petitioner and having regard to the above said circumstances, I hold that the dismissal is unwarranted and the punishment of dismissal is disproportionate to the gravity of the charge, and, at the same time, I prefer to remit the matter back for reconsideration, of the penalty on the charges levelled against the petitioner and imposition of lesser punishment in proportion to the misconduct proved.

33. For the foregoing reasons, the orders of dismissal dated 20.1.1997 passed by the 2nd respondent and confirmed by the first respondent by orders dated 7.11.1997 are set aside. The respondents are directed to pass appropriate final orders in the disciplinary proceedings in the light of the observations made hereinabove for imposing lesser punishment commensurate with the charges proved within a period of six weeks from the date of receipt of a copy of this order. The respondents are further directed to treat the option exercised by the petitioner on 19.5.1994 and further option in the prescribed form on 19-9-1994 as valid options under the Bank of India (Employees'') Pension Regulations, 1995 and pass appropriate orders as per the said Regulations within a period of two weeks thereafter. If the petitioner is ultimately not given the benefit of voluntary retirement for any valid reason, he shall be reinstated into service subject to orders passed in the disciplinary proceedings.

34. The writ petition is allowed to the extent indicated above. No costs.