

(2008) 02 CAL CK 0078

In the Calcutta High Court

Case No : A.P.O. No. 322 of 2001 with W.P. No. 1944 of 1999

Punjab National Bank

APPELLANT

Vs

Smt. Chama Rani Tandon

RESPONDENT

Date of Decision : 13-02-2008

Acts Referred:

Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 — Section 19
Banking Regulation Act, 1949 — Section 45, 45(14), 45(9)
Companies Act, 1956 — Section 159, 285
Constitution of India, 1950 — Article 14
Industrial Disputes (Central) Rules, 1957 — Rule 58
Industrial Disputes Act, 1947 — Section 2, 33(C), 36(A)

Citation : (2008) 1 CALLT 463 : (2008) 3 CHN 945 : (2009) 1 LLJ 814

Hon'ble Judges : Tapen Sen, J; Tapan Kumar Dutt, J

Bench : Division Bench

Advocate : L.K. Gupta and Joydeep Kar, for the Appellant; Pranab Kr. Datta, Samrat Sen and Ambar N. Banerjee for Respondent No. 1 and Arunava Ghosh and Soumya Majumdar, for the Respondent

Final Decision : Dismissed

Judgement

Tapan Kumar Dutt, J.—Heard the learned advocates for the respective parties.

2. The facts of the case, very briefly, are as follows:

The writ petitioner, Lakshmi Narayan Tandon, was an employee of Hindustan Commercial Bank Ltd. and he retired from his service on superannuation on 30.09.1986 and it appears that the writ petitioner's terminal benefits were paid to him by Punjab National Bank. In this context it may be put on record that on 24.05.1985 (when the petitioner was in services with the Hindustan Commercial Bank) a moratorium had been imposed in respect of Hindustan Commercial Bank Ltd., Kanpur and ultimately the said Bank merged with the Punjab National Bank by virtue of a notification dated 18th December, 1986. It further appears that by a Memorandum of Settlement dated 29th October, 1993 between a large number of banks (through the Indian Banks' Association) and their workmen (being

represented by the All India Bank Employees' Association) a Settlement was recorded and a copy of such Memorandum of Settlement has been included in the paper book. Punjab National Bank (the appellant in the present appeal, and for the sake of brevity hereinafter referred to as PNB) was a party to such settlement.

3. It appears that the Indian Banks' Association agreed to introduce a pension scheme in banks for the workmen/employees in lieu of employers' contribution to the Provident Fund with effect from 1st November, 1993. From the memorandum of settlement it will appear that amongst the various categories of employees/retired employees who would be entitled to the said pension scheme the following category of retired employees would be entitled to have the benefit of such scheme: "Retired employees who were in service of the bank/merged bank on or after 31st December, 1985 and retired on or after 1st January, 1986 but before 1st November, 1993 provided that such retired employees apply for it on their own on the format prescribed by each bank and refund within a period of six months, reckoned from 1st November, 1993, the bank's entire contribution to the provident fund including interest received qualifying service in the bank before being merged to a new bank will also be taken as service in the same bank. However, the requirement of qualifying service shall not be applicable for drawing family pension in case an employee dies while in service." (quoted from Clause 2(iii) of the said memorandum of settlement appearing at page 29 of the paper book).

4. In Clause 12 of the said Memorandum of Settlement (appearing at page 32 of the paper book) the following have been provided: "Provisions will be made by a scheme, to be negotiated and settled between the parties to this settlement by 31st December, 1993 for applicability, qualifying service, amounts of pension, payment of pension, commutation of pension, family pension updating and other general conditions, etc. on the lines as are in force in Reserve Bank of India."

5. Clause 14 of the said settlement (appearing at page 33 of the paper book) provides as follows:

The terms and conditions hereof shall continue to govern and bind the parties until the Settlement is terminated by either party giving to the other a statutory notice as prescribed in law at the material time.

6. Clause 16 of the said settlement (appearing at page 34 of the paper book) provides as follows:

Copies of the Memorandum of Settlement will be jointly forwarded by the parties to the authorities listed in Rule 58 of the Industrial Disputes (Central) Rules, 1957 so that terms and conditions thereof are binding on the parties as provided in law.

7. As already noted above the aforesaid Hindustan Commercial Bank Ltd. (hereinafter referred to, for the sake of brevity, as H.C.B.) merged with the

Punjab National Bank by virtue of a notification dated 18th December, 1986. It appears from the said notification that the Reserve Bank of India prepared a scheme for amalgamation of the said H.C.B. with P.N.B. and after having sent the said scheme (in draft) to the banks concerned and after having considered the suggestions and objections received in regard to the said scheme, had modified the scheme and forwarded it to the Central Government for sanction, and thereafter the Central Government sanctioned the scheme subject to the terms and conditions mentioned in the said notification. Such facts will appear from pages 90 and 91 of the paper book. In the said notification it has been provided that "Without prejudice to the generality of the foregoing provisions, all contracts, deeds, bonds, agreements, powers of attorney, grants of legal representation and other instruments of whatever nature subsisting or having effect Immediately before the prescribed date shall be effective to the extent and in the manner hereinafter provided against or in favour of the transferee bank and may be acted upon as if instead of the transferor bank the transferee bank had been a party thereto or as if they had been issued in favour of the transferee bank."

8. In Clause 3 (page 94 of the paper book) of the said notification the following have been stated:

The books of the transferor bank shall be closed and balanced and balance sheets prepared in the first instance as at the close of business on the 24th May, 1986 and thereafter as at the close of business on the date immediately preceding the prescribed date and the balance sheets shall be got audited and certified by a chartered accountant or a firm of chartered accountants approved or nominated by the Reserve Bank of India for the purpose.

A copy each of the balance sheets of the transferor bank prepared in accordance with the provisions of the foregoing paragraph, shall be filed by the transferor bank with the Registrar of Companies as soon as possible after it has been received and thereafter the transfer bank shall not be required to prepare balance sheets or profit and loss accounts, or to lay the same before its members or file copies thereof with the Registrar of Companies or to hold any annual general meeting for the purpose of considering the balance sheet and accounts or for any other purpose or to comply with the provisions of Section 159 of the Companies Act, 1956, and it shall not thereafter be necessary for the Board of Directors of the transferor bank to meet as required by Section 285 of that Act.

9. In Clause 10 (at pages 110 and 111 of the paper book) of the said notification it has been stated as follows:

All the employees of the transferor bank other than those specified in the schedule referred to in the succeeding paragraph shall continue in service and be deemed to have been appointed by the transferee bank at the same remuneration and on the same terms and conditions of service as were applicable to such employees immediately before the close of business on 24th

May, 1986.

Provided that the employees of the transferor bank who have, by notice in writing given to the transferor or the transferee bank at any time before the expiry of one month next following the date on which this scheme has been sanctioned by the Central Government, intimated their intention of not becoming employees of the transferee bank, shall be entitled to the payment of such compensation, if any, under the provisions of the Industrial Dispute Act, 1947, and such pension, gratuity, provident fund and other retirement benefits as may be ordinarily admissible under the rules of authorisations of the transferor bank immediately before the close of business on 24th May, 1986.

Provided further that the transferee bank shall in respect of the employees of the transferor bank who are deemed to have been appointed as employees of the transferee bank be deemed also to have taken over the liability for the payment of retrenchment compensation in the event of their being retrenched while in the service of the transferee bank on the basis that their service has been continuous and has not been interrupted by their transfer to the transferee bank.

10. Subsequently, the PNB, after consultation with the Reserve Bank of India and with the previous sanction of the Central Government made the Pension Regulations which is known as Punjab National Bank (Employees) Pension Regulations, 1995. For the purpose of the present case, the meaning assigned to the following words and/or expressions in the said Pension Regulations are indicated as mentioned below:

"Bank" means Punjab National Bank mentioned under column 2 of The First Schedule of The Act;

"employee" means any person employed in the service of the Bank on full time work on permanent basis or on part time work on permanent basis on scale wages and who opts and is governed by these regulations, but does not include a person employed either on contract basis or daily wage basis or on consolidated wages;

"Pay" includes--(a) in relation to an employee who has either retired or died on or after the 1st day of January, 1986 but before the 1st day of November, 1993,-

- i) the basic pay including stagnation increments, if any, and
- ii) all allowances counted for the purposes of making contribution to the Provident Fund and for the payment of dearness allowance;

(b) in relation to an employee who retires or dies while in service on or after the 1st day of November, 1993,-

- i) the basic pay including stagnation increments, If any; and
- ii) all allowances counted for the purposes of making contribution to the Provident Fund and for the payment of dearness allowance; and

iii) increment component of Fixed Personal Allowance; and

iv) dearness allowance calculated upto Index number 1148 points in the All India Average Consumer Price Index for "Industrial Workers in the series 1960-100";

"settlement" means memorandum of settlement agreed between the management of the Bank represented by the association authorized by them and workmen of such Bank represented by trade unions authorized by them;

11. In Clause 3(1) and Clause 3(7) of chapter 2 of the said Pension Regulations it has been provided inter alia as follows:

3. Application

These regulations shall apply to employees who,-

1) a) were in the service of the Bank on or after the 1st day of January, 1986 but had retired before the 1st day of November, 1993; and

b) exercise an option in writing within one hundred and twenty days from the notified date to become member of the Fund; and

c) refund within sixty days after the expiry of the said period of one hundred and twenty days specified in Clause (b) the entire amount of the Bank's contribution to the Provident Fund including interest accrued thereon together with a further simple interest at the rate of six per cent per annum on the said amount from the date of settlement of the Provident Fund account till the date of refund of the aforesaid amount to the Bank; or

2. xxxxxxxxxxxxxxxxxxxxxxxxx.

3. xxxxxxxxxxxxxxxxxxxxxxxxx.

4. xxxxxxxxxxxxxxxxxxxxxxxxx.

5. xxxxxxxxxxxxxxxxxxxxxxxxx.

6. xxxxxxxxxxxxxxxxxxxxxxxxx.

7. were in the service of the Bank during any time on or after the 1st day of January, 1986 and had died while in service on or before the 31st day of October, 1993 or had, retired on or before the 31st day of October, 1993 but died before the notified date in which case their family shall be entitled to the pension or the family pension as the case may be under these regulations, if the family of the deceased,

a) exercise an option in writing within one hundred and twenty days from the notified date to become member of the Fund; and

b) refund within sixty days of the expiry of the said period of one hundred and twenty days specified in Clause (a) above the entire amount of the Bank's contribution to the Provident Fund and interest accrued thereon together with

further simple interest at the rate of six per cent per annum from the date of settlement of the Provident Fund account till the date of refund of the aforesaid amount to the Bank;

12. According to the writ petitioner he became duly eligible to get pension being a retired employee in terms of the said settlement and it is also the writ petitioner's case that the writ petitioner became entitled to get benefits of the said pension scheme. The writ petitioner opted to become a member of the PNB's Pension Scheme as per rules and regulations of the said scheme. It appears that by a letter dated 27.11.95/ 15.4.96 the PNB wrote to the writ petitioner that as per the pension scheme the writ petitioner has to refund the bank's contribution of Provident Fund including interest and that the writ petitioner was entitled to receive Rs. 55,363.00 as on 29.11.1995 regarding payment of the amount due to the writ petitioner from the bank as contained in the said letter appearing at pages 42 and 43 of the paper book. It appears from the copy of the writ petition that the PNB wrote a letter dated 23.12.1997 to the writ petitioner intimating the writ petitioner that he is not eligible for pensionary benefits since on the date of merger i.e. 19.12.1986. the retired employees of erstwhile HCB did not become employees of PNB. Identical stand was taken by the PNB by another letter dated 04.02.1998 addressed to the writ petitioner. Being aggrieved by the said letters dated 23.12.1997 and 04.02.1998 written by the PNB to the writ petitioner, the writ petitioner moved a writ petition being W.P. No. 1944 of 1995. In the said writ petition the writ petitioner has made an allegation that the writ petitioner has been discriminated against and his valuable legal right has been denied by the authorities concerned. Paragraph 17, 18 and 19 of the writ petition are quoted as hereunder:

17. Your petitioner states and submits that he also made enquiries from other Banks in this regard when he came to learn that the United Industrial Bank Ltd., was merged with Allahabad Bank on 30th October, 1989 i.e. before the date of settlement dated 29th October, 1993 and the employees of United Industrial Bank who retired between 1.1.1986 and 29.10.1989 are getting regular pension, on the basis of aforesaid settlement, Pension Scheme etc., However out of four, such concerned employees are not making over any such document to your Petitioner.

18. Your petitioner further came to learn that Punjab National Bank itself is also paying such pension to even premerged employees of the erstwhile New Bank of India which was merged on 4th September, 1993.

19. Thus the Petitioner is not only being discriminated against, but his valuable legal right is also being denied by the Authority.

13. The said writ petition was contested by the appellant in this appeal and an Hon'ble single Judge of this Court by Order dated 18.09.2001 allowed the said writ petition by holding inter alia that PNB has unnecessarily withheld the pension of the writ petitioner to which he is entitled and as such the writ

petitioner may be compensated for the same. His Lordship was pleased to direct the PNB to pay the sum of Rs. 55,363.00 together with interest calculated at the rate of 6% per annum on and from 27th November, 1995 till the date of payment. His Lordship was further pleased to observe that the writ petitioner will also be entitled to pension which has fallen in arrears, and such arrear pension will also carry interest at the aforesaid rate and that all arrear payments must be made by the PNB within a period of 2 weeks from the date of communication of His Lordship's Order. His Lordship was also pleased to direct that the writ petitioner will also be entitled to costs of the application assessed at Rs. 5,100/- to be paid along with the aforesaid sums by the PNB.

14. Even though, as it appears from the order challenged in this appeal, the appellant raised a point with regard to the writ petitioner's delayed application under the pension regulations, such point was not pressed before this Court at the time of hearing of the appeal as the learned Counsels for the appellant submitted before this Court that the appellant is not pressing such point in this appeal.

15. The learned Counsels for the appellant (since both Mr. L.K. Gupta, learned senior advocate and Mr. Joydeep Kar, learned advocate had made their submissions on behalf of the appellant) argued in this appeal on the question whether the writ petitioner was entitled at all to apply under the Pension Regulations and according to the said learned Counsels the writ petitioner was not at all entitled to have the benefit of the said pension regulations. The Hon'ble single Judge in the order dated 18.09.2001 came to the finding that the appellant has unnecessarily withheld the pension of the writ petitioner to which he is entitled and the writ petitioner should be compensated for the same. It further appears that the Hon'ble single Judge took into consideration the appellant's stand in the appellant's letter dated 27.11.95/15.4.96 as mentioned above. The Hon'ble single Judge was pleased to allow the writ petition with costs.

16. It appears that during the pendency of the present appeal the respondent No. 1/writ petitioner died and in his place and stead his heirs, and/or successors have been substituted being the respondent No. 1 series. The appellant herein was the respondent No. 2 in the writ petition.

17. It has been submitted by the learned Counsels for the appellant that the writ petitioner was never an employee of the PNB and the pension regulations are wholly inapplicable to the writ petitioner since the writ petitioner had no subsisting contract of employment as on the date of merger in view of the fact that the writ petitioner retired from service on 30.09.1983. According to the said learned Counsels the scheme of amalgamation did not envisage any protection of right and/ or interest of any retired employee of HCB. The said learned Counsels further submitted that the writ petitioner cannot pitch his claim on the basis of memorandum of settlement since he has been found ineligible to apply under the Pension Regulations. According to the said learned Counsels the scheme of amalgamation and the Pension Regulations reveal that the writ petitioner is not

entitled to come under the pension scheme. The learned Counsels made a further submission that even if there is anything contrary in the memorandum of settlement to that which is provided in the Pension Regulations, then in that event the Pension Regulations will prevail and the Pension Regulations will have a superseding effect on the contrary provisions, if any, that may be contained in the memorandum of settlement.

18. The learned Counsels have very fairly drew our attention to the various clauses in the memorandum of settlement, notification regarding the amalgamation and also the Pension Regulations, as already indicated above, for the purpose of substantiating their case in the appeal. The said learned Counsels also referred to the Provisions of Section 45 of the Banking Regulations Act, 1949 and also Section 19 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970. Section 45 of the said Act of 1949 deals with the power of Reserve Bank to apply to Central Government for suspension of business by a banking company and to prepare scheme of reconstitution or amalgamation. Section 19 of the said Act of 1970 deals with the power of the Board of Directors of a corresponding New Bank to make appropriate regulations as indicated in the said section.

19. The only question in this appeal, as it has appeared after hearing the learned advocates for the respective parties, is whether or not the writ petitioner was entitled to come under the aforesaid Pension Regulations and have the benefits of the same in view of the memorandum of settlement, as already mentioned above, in the facts and circumstances of the instant case.

20. The learned Counsels for the appellant heavily relied upon Clause 12 of the memorandum of settlement (as mentioned above) and submitted that the words "applicability, qualifying service," appearing in the said clause shows that the question of applicability of the pension scheme to an employee or, in other words, the eligibility of a person to come under the said pension scheme, was left open and it was to be decided later on when the pension scheme would be framed. Thus, according to the said learned Counsels, the memorandum of settlement itself did not confer any specific right upon the writ petitioner to have the benefit of the aforesaid Pension Regulations.

21. In support of the submissions made on behalf of the appellant, the appellant's learned Counsel relied upon a decision reported in Indian Bank Vs. K. Usha and Another,). On perusal of the said reported case it appears that the facts of the said case are not similar to the facts of the instant case. In the said reported case the agreement and/or settlement was entered into between the Union of employees of transferor-Bank with the management of the transferor-Bank itself and the subject was the scheme of compassionate appointment. In the present case the transferee-Bank, that is, the appellant/PNB was itself a party to the memorandum of settlement dated 29th October, 1993. Therefore, in any way it is now not proper for the PNB to turn around and say that such memorandum of settlement is not binding on PNB in view of the subsequent

pension scheme. In the instant case there is no case of foisting upon the appellant an agreement between other parties to which the appellant was not a party. Such distinguishing feature in the instant case has to be kept in mind. That apart, this Court is unable to appreciate as to how the said reported case can be of any help to the appellant. On the contrary, the observations made by the Hon''ble Supreme Court in the said reported case demolishes the case of the appellant. The learned Counsel for the appellant referred to page 671 of the said reports and submitted that the clauses mentioned on the said page are some of the clauses of the scheme of amalgamation which came up for consideration before the Hon''ble Supreme Court in the said reported case and a similarity can be found in some of the clauses contained in the scheme of amalgamation which is the subject, matter for consideration in the present case. It is true that there are similarities when we compare with some of the clauses in the scheme of amalgamation which is now the subject matter of the consideration in the present appeal but we have to take into account the observations made by the Hon''ble Supreme Court in the said reported case after having considered the said clauses in the scheme of amalgamation. The Hon''ble Supreme Court was pleased to observe in paragraph 11 of the said reports: "Thus the said Sub-section (9) of Section 45 of the Act enables the Scheme-making authority to provide in that Scheme the extent to which the properties and assets of the banking company can be transferred and corresponding liabilities attached to such properties and assets of transferor company also can get vested in the transferee company. It is obvious that when assets of the transferor company are being transferred and are to vest in the transferee company under the Scheme, it could not be a one-way traffic. Hence the corresponding liabilities of the banking company attaching to such assets would also have to travel as a result of the said transmission of the properties and assets of the transferor company to the transferee company to the extent provided in the Scheme." Interpreting Clause 2 of the scheme of amalgamation that was the subject matter for consideration in the said reported case the Hon''ble Supreme Court was pleased, to hold in paragraph 11 that "The second part of Clause 2, there fore, cannot be held to be representing a contrary intention or provision of not undertaking the obligation of the transferor-Bank in connection with its contractual liability under 2(p) Settlement with the Union of its employees in connection with the topic of providing compassionate appointments to the heirs of its deceased employees." The Hon''ble Supreme Court was further pleased to observe that "The second part of Clause 2 cannot be read independently of the first part and in isolation." In the present case, Clause 2 of the scheme of amalgamation goes further and provides that "Without prejudice to the generality of the foregoing provisions, all contracts, deeds, bonds, agreements, powers of attorney, grants of legal representation and other instruments of whatever nature subsisting or having effect immediately before the prescribed date shall be effective to the extent and in the manner hereinafter provided against or in favour of the transferee bank and may be acted upon as if instead of the transferor bank the transferee bank had been a party thereto or as if they had been issued in favour of the transferee

bank." Thus, in the instant case there was a clear intention of the parties to the memorandum of settlement that the Terms of Settlement have to be given effect to by the appellant herein. The Hon"ble Supreme Court in the said reports was pleased to observe that "before Sub-section (14) of Section 45 can be pressed into service it must be shown that there is an express provision on a given topic of liability in the Scheme or in the section and such express provision should be irreconcilable with and be in express conflict or be repugnant to any contrary express provision found in any other instrument having the force of the law or in any part of the Act or any other law or award." The Hon"ble Supreme Court was pleased to find in the said reported case that "the provision contained in the 2(p) Settlement is not in conflict with any other contrary express provision in the Scheme especially Clause 10 thereof. In fact the entire Scheme is silent on this topic." The Hon"ble Supreme Court was further pleased to observe that "Repugnancy or conflict as contemplated by Sub-section (14) of Section 45 can arise only when on the same topic there are two contradictory express provisions, one in the Scheme and another in the agreement. Then only the provision in the Scheme would override such contrary express provision in the agreement." In paragraph 14 of the said reports the Hon"ble Supreme Court was also pleased to observe that "a construction which fructifies such a welfare measure has to be preferred as compared to another construction which stultifies such a benevolent welfare measure."

22. In the said reports the Hon"ble Supreme Court was pleased to take into consideration another decision reported at Workmen of Messrs Binny Ltd. Vs. Management of Binny Ltd. and Another, wherein it was held that "it is a trite law that in matters of welfare legislation, especially involving labour, the terms of contracts and the provisions of law should be liberally construed in favour of the weak." In paragraph 15 of the said reports the Hon"ble Supreme Court was pleased to observe that "Hence there is no occasion for the said clauses of the Scheme to project any contrary express provision to override or to supersede the provisions contained in 2(p) Settlement which was binding on the transferor-Bank and which if binding on the transferee-Bank would remain operative to the extent benefit thereunder is available to the claimants concerned like the respondents herein. In the light of the relevant clauses of the Amalgamation Scheme, therefore, it is not possible to agree with the contention of the learned Senior Counsel for the appellant that no liability could be imposed on the appellant-Bank so far as the claim of the respondents for compassionate appointments was concerned. The first contention, therefore, stands rejected."

23. In the instant case, on perusal of the aforesaid Memorandum of Settlement, the notification regarding Amalgamation and also the Pension Regulations, we do not find that there is anything in the Scheme of Amalgamation or in the Pension Regulations which could in any way suggest that the Memorandum of Settlement is not binding upon the appellant or there is any provision in the said Scheme of Amalgamation and/or the Pension Regulations which could be said to be contrary to any of the provisions in the aforesaid Memorandum of Settlement. The

Memorandum of Settlement took within its sweep the retired employees who were in service of the bank/merged bank on or after 31st December, 1985 and retired on or after 1st January, 1986 but before 1st November, 1993 and there is nothing either in the amalgamation scheme or in the Pension Regulations to suggest that such categories of employees will be excluded from the Pension Regulations. On the contrary, there is a clear indication in the notification with regard to the scheme of amalgamation particularly, Clause 10 of the said scheme, which would show that in the scheme of the said amalgamation the writ petitioner would be deemed to have been appointed by the transferor-Bank at the same remuneration and on the same terms and conditions of service as were applicable to such employees immediately before the close of business on 24th May, 1986. The writ petitioner was very much in service as on 24th May, 1986 since the writ petitioner retired only on 30th September, 1986. It is not the case of the parties that the writ petitioner was included in the schedule referred to in Clause 10 of the said notification and thus could not qualify under Clause 10 of the said notification. Clause 2 of the said notification regarding amalgamation clearly shows that the Memorandum of Settlement happens to be an agreement which can be enforced against the transferee-Bank. However, in the present case the appellant was a party to the Memorandum of Settlement. Thus, this Court is of the view that the Indian Bank's case (supra) does not in any way support the case of the appellant herein, and, on the other hand, the said reported case demolishes the case of the appellant.

24. The learned Counsel for the appellant cited a decision reported at (2006)12 SCC 20 (Union Bank of India v. Venkatesh Gopal Mahishi and Anr.). The facts of the said reported case were quite different from the facts of the instant case. In the said reported case an employee of a bank, who was the writ petitioner, submitted an application to the authority seeking retirement on medical grounds with further request to give employment to his dependent son on compassionate ground. Such request was accepted by the bank and the writ petitioner was retired as a Daftary from the service with effect from 01.11.1993 and later on his son was given employment. The bank framed regulations called the Union Bank of India (Employees'') Pension Regulations, 1995. The said writ petitioner submitted an application for pension under the said Pension Regulations, 1995 which was rejected. It appears that it was argued on behalf bank before the Hon'ble Supreme Court that the Pension Regulations did not apply to the said writ petitioner as he was an award staff, that the said writ petitioner was not entitled to take two benefits under different schemes, that the Pension Regulations were not applicable to the said writ petitioner since he was retired on 01.11.1993 and the Pension Regulations were made applicable to those employees only who had voluntarily retired with effect from 01.01.1986 to 31.10.1993 under the statutory scheme/rules of retirement. It also appears that the learned Counsel appearing, on behalf of the writ petitioner/respondent No. 1 in the said reported case attempted to rely upon a letter written by the Chief Manager of the said Bank. The said writ petitioner wanted to show that the said

writ petitioner has been treated as a voluntary retiree from the services of the Bank with effect, from 01.11.1993. In paragraph 13 of the said reports the Hon"ble Supreme Court was pleased to observe that the Pension Regulations shall apply to employees who were in the service of the Bank on or after the 1st January, 1986 but had retired before the 1st November, 1993. It further appears from the facts of the said reported case that the Director (IR), Government of India, Ministry of Finance, Department of Economic Affairs, Banking Division, IR section wrote a letter informing the Bank that the officers who had retired with simultaneous appointment of the dependants on compassionate grounds, will constitute a separate class and hence cannot be extended the benefit of exercising option for pension as has been granted to the incumbents who had voluntarily retired under the Scheme formulated by the Bank under Regulation 19(1) of the Officers' Service Regulation. The Hon"ble Supreme Court was pleased to observe in the said reported case that the said writ petitioner/respondent No. 1 did not deny his status as an award staff when he retired on medical grounds and, thus, he cannot take the benefit of the letter he received from the Chief Manager of the Bank treating him as a voluntary retiree from the service of the Bank with effect from 01.11.1993 under the Pension Regulations as nomenclature of the words "voluntary retired" used in such letter will not change the status of the said employee from an award staff to any other category of the employees of the bank. The Hon"ble Supreme Court in paragraph 28 of the said reports was pleased to observe that the said writ petitioner/respondent No. 1 having retired as an award staff, is not entitled to the grant of pension under Pension Regulations, 1995. Thus, it will appear that the facts of the said reported case are not at all similar to the facts of the instant case and the said reported case cannot be of any assistance to the appellant in the instant case.

25. Another case cited by the learned Counsels for the appellant is one reported in Bank of India v. Rajagopalan and Ors., (2000) 1 LLJ 1617SC . The facts of the said reported case, in so far as it appears on perusal of the said reports, were not similar to the facts of the instant case. In the instant case the Pension Regulations, 1995 have been made applicable to the case of the writ petitioner. The said reported case, in our view, cannot be of any assistance to the appellant.

26. Another case reported in Tamil Nadu Electricity Board Vs. R. Veeraswamy and Ors, was cited by the learned Counsels for the appellant. On perusal of the common issue that arose in the said reported case, it will be clear that the said reported case also cannot be of any assistance to the appellant. The common issue that fell for consideration in the said reported case was, as observed by the Hon"ble Supreme Court, "Whether the appellant-Board has acted illegally or contrary to law in introducing a pension scheme to the employees, who were hitherto not governed by such pension scheme, prospectively from 1-7-1986. To put it differently, whether the employees (respondents) who were all retired before 1-7-1986 after receiving all retiral benefits available to them as per the law existing on their dates of retirement, can compel the appellant-Board to

extend the benefit of the newly introduced pension scheme with retrospective effect." Such is not the issue in the present case in view of the facts and circumstances of the present case as discussed above.

27. The learned Counsels for the appellant cited another case reported at Union of India and Others Vs. Rakesh Kumar etc., and referred to paragraphs 21 and 22 of the said reports. The Hon"ble Supreme Court was pleased to observe in the said reported case that "It would be unjustifiable to submit that by appropriate writ, the Court should direct something which is contrary to the statutory rules. In such cases, there is no question of application of Article 14 of the Constitution. No person can claim any right on the basis of decision which is dehors the statutory rules nor can there be any estoppel. Further, in such cases there cannot be any consideration on the ground of hardship. If the Rules are not providing for grant of pensionary benefits it is for the authority to decide and frame appropriate rules but the Court cannot direct payment of pension on the ground of so-called hardship likely to be caused to a person who has resigned without completing qualifying service for getting pensionary benefits." There cannot be any dispute with regard to such proposition of law but the said reported case cannot be of any assistance to the appellant since the writ petitioner has claimed that he is covered under the Pension Regulations, 1995 and such claim is based on a legal right in view of the facts and circumstances already discussed above. Even if much emphasis is not given on the letter dated 27.11.1995/15.04.1998 written by the appellant to the writ petitioner, the writ petitioner's claim to come under the Pension Regulations, 1995 is validated by the Memorandum of Settlement", the Scheme of Amalgamation and Pension Regulations; 1995, the relevant clauses of which have already been indicated above.

28. In the present case we find in Clause 16 of the Memorandum of Settlement that it has been stated that the terms and conditions in the said Settlement shall be binding on the parties (which includes the appellant) as provided in law. In Clause 14 of the said Memorandum of Settlement it has been stipulated that the terms and conditions of the said Settlement shall continue to govern and bind the parties until the settlement is terminated by either party giving to the other a statutory notice as prescribed in law at the material time. Nothing appears from record to show (at least, not brought to the notice of this Court) that any such notice was given by either of the parties.

29. It will appear from the notification regarding amalgamation that the books of the transferor bank were required to be closed and balanced and balance sheets prepared in the first instance as at the close of business on 24th May, 1986 and thereafter as at the close of business on the date immediately preceding the prescribed date and the balance sheets shall be got audited and certified by a chartered accountant or a firm of chartered accountants approved and nominated by the Reserve Bank of India for the purpose and a copy of each of the balance sheets shall be filed by the transferor bank with the Registrar of Companies as soon as possible after it has been received and thereafter the

transferor bank shall not be required to prepare balance sheets or profit and loss accounts, or to lay the same before its members or file copies thereof with the Registrar of Companies or to hold any annual general meeting for the purpose of considering the balance sheets and accounts or for any other purpose or to comply with the provisions of Section 159 of the Companies Act, 1956, and it shall not thereafter be necessary for the Board of Directors of the transferor bank to meet as required by Section 285 of that Act.

30. Clause 3 of the said notification in this regard has already been indicated above. We find that Clause 10 of the said notification is in tune with such clause as the said Clause 10 says that all the employees of the transferor bank other than those specified in a certain schedule shall continue in service and be deemed to have been appointed by the transferee bank at the same remuneration and on the same terms and conditions of service as were applicable to such employees immediately before the close of business on 24th May, 1986. The meanings of the words "banks", "pay" and "settlement" as per in the said Pension Regulations, 1995 clearly support the writ petitioner's case. Clause 3 dealing with "Application and Eligibility" as contained in the said Pension Regulations, 1995, particularly Sub-clauses (1) and (7) of Clause 3, as indicated above, also support the case of the writ petitioner.

31. The learned Counsel for the respondent No. 3 i.e. Indian Banks" Association, raised a point to the effect that an individual workman cannot raise a dispute and therefore the writ petitioner could not have raised the dispute as raised by him in the writ petition and that it is only the Union which could have raised such dispute on behalf of the workman. The learned Counsel for the respondent No. 3 mentioned Section 2(k), Section 33(C)(2) and Section 36(A) of the Industrial Disputes Act in this regard, but no further argument was advanced in developing this point. The matter was left to the Court to decide such point.

32. The learned Advocate for the respondent No. 1-series, that is, the heirs and successors of the writ petitioner, submitted that the respondent No. 3 is not entitled to even raise such point before this Court of appeal since neither the respondent No. 3 nor the respondent No. 4 filed any affidavit in the writ proceedings nor did they make any submission in the writ proceeding. No such point, as now raised by the learned Counsel for the respondent No. 3, was ever raised during the hearing of the writ application. The said learned Counsel further submitted that no appeal has been filed by either the respondent No. 3 or the respondent No. 4 which happens to be the All India Bank Employees" Association. It will appear from the aforesaid Memorandum of Settlement that both the respondent No. 3 and the respondent No. 4 were parties to the said settlement and neither of the said respondents chose to contest the writ petition. The said respondents have also not filed any appeal against the order challenged in the present appeal. In such circumstances, it can be appropriately held that the respondent No. 3 cannot raise such point at this stage in view of the doctrine of non-traversal and also in view of the fact that neither of the said respondent

raised such point before the Writ Court. It appeared to us that the respondent No. 3 made a very feeble attempt to support the case of the appellant by raising the point as mentioned above.

33. The learned Counsel for the respondent No. 1 series, in course of his submissions, referred to the various clauses of the Memorandum of Settlement, notification regarding the amalgamation of the two banks and also the Pension Regulations, 1995, as already mentioned above and submitted that the writ petitioner was entitled to come under the Pension Regulations, 1995 and to apply under the said Pension Regulations, 1995 and that the letters dated 23.12.1997 and 04.02.1998 (pages 46 and 47 of the paper book) are bad in law and illegal. We have already discussed above the various clauses and their effect and we do not find it necessary to repeat such discussions any further. The said learned Counsel referred to a decision reported in *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, while submitting that the ground mentioned in the aforesaid letters dated 23.12.1997 and 04.02.1998 should only be looked into for the purpose of deciding its validity or otherwise and that the appellant cannot be allowed to supplement such ground by fresh reason by way of affidavit or otherwise. Paragraph 8 of the said reports is quoted below:

8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. in *Commissioner of Police, Bombay Vs. Gordhandas Bhanji*, :

Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.

Orders are not like old wine becoming better as they grow older.

34. In the letters, as aforesaid, which were challenged in the writ petition the only reason given was that "the retired employees of erstwhile HCB did not become employees of PNB". In view of the discussions already made above it cannot be said that writ petitioner did not become an employee of PNB. The writ petitioner should be deemed to have become an employee of PNB in the facts and circumstances of the case. In this regard, Clause 10 of the notification regarding amalgamation, which has already been quoted above, may be referred

35. In view of the discussions made above we do not find any merit in the appeal

which is, accordingly, dismissed. The appellant (respondent No. 2 in the writ petition) shall now comply with the order dated 18.09.2001 passed by the Hon"ble single Judge in W.P. No. 1944 of 1999 immediately, without causing any delay. However, the direction regarding arrear payments as contained in the said order dated 18.09.20.01 passed by the Hon"ble single Judge shall be complied with by the appellant within a period of two weeks from the date of communication of this order to the appellant. There will, however, be no order as to costs in this appeal.

36. Urgent xerox certified copy of this order, if applied for, shall be given to the learned Advocates for the respective parties within seven days from the date of such application, on compliance of usual formalities.

Later:

37. After the aforesaid Judgment was delivered the learned Counsel for the respondent No. 1 series submitted before this Court that in terms of the order dated 05.12.2001 passed in this appeal the learned Registrar, Original Side has already made a deposit of a sum of Rs. 55,363/- in a short term fixed deposit account as directed in the said order. The learned Counsel submitted that the said amount of Rs. 55,363/- was deposited by the appellant in terms of the said order with the learned Registrar, Original Side which in turn was deposited by the learned Registrar as aforesaid. The said learned Counsel submitted that the said amount along with the accrued interest should be released in favour of the respondent No. 1-series. The learned Counsel for the appellant submits that if such amount is released in favour of the respondent No. 1-series then the said fact should be taken into consideration by the appellant and necessary adjustments should be made in the accounts concerned, if the appellant is required to comply with the order of the Hon"ble single Judge. The said learned Counsel for the appellant further prays for stay of operation of the Judgment which has been delivered today. Such prayer has been opposed by the learned Counsel for the respondent No. 1-series. After considering the submissions made by the respective learned Counsels, this Court directs the learned Registrar, Original Side to release the said sum of Rs. 55,363/- along with accrued interest, if any, in favour of the respondent No. 1-series in equal shares upon proper identification of the parties concerned to whom payments may be made and upon proper receipt, and in the event the respondent No. 1-series receive the said sum of Rs. 55,363/- along with interest, if any, the said fact should be taken into consideration by the appellant at the time of calculation of the amount that may be found to be payable to the respondent No. 1-series for the purpose of complying with the order passed by the Hon"ble single Judge as already directed above.

The prayer for stay made by the learned Counsel for the appellant has been considered by this Court but the same is refused.