
(2014) 09 KL CK 0069

In the High Court Of Kerala

Case No : WA. Nos. 937 and 947 of 2014 in WP (C) No. 26563/2012

State Bank of Travancore Head Office

APPELLANT

Vs

C.M. Paul

RESPONDENT

Date of Decision : 17-09-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Industrial Disputes Act, 1947 — Section 18(1), 2(3)

Citation : (2014) 4 ILR 79 : (2014) LabIC 4537

Hon'ble Judges : Ashok Bhushan, Acting C.J.; A.M. Shaffique, J

Bench : Division Bench

Advocate : P. Ramakrishnan, Advocate for the Appellant; George Cherian, Senior Advocate K.S. Santhi, Latha Susan Cherian and Alexy Augustine, Advocate for the Respondent

Judgement

Ashok Bhushan, Actg. C.J.

1. These two Writ Appeals raising common questions of law and facts have been heard together and are being decided by this common judgment.

2. Both the appeals arise out of the common judgment dated 14.03.2014 in Writ Petition Nos. 26563 and 19572 of 2012. It shall be sufficient to refer to the pleadings in W.A. No. 937 of 2014 for deciding both the Writ Appeals.

3. The Writ Petitions were filed by the respondents to the appeal praying for quashing the decision of the State Bank of Travancore (hereinafter referred to as "the Bank") refusing their claim of grant of pensionary benefits consequent to their retirement under the State Bank of Travancore Voluntary Retirement Scheme, 2001.

4. Facts of the case briefly noted are: The respondents (who shall be hereinafter referred to as the Writ Petitioners) were employees of the Bank. The Bank issued a Scheme, viz., State Bank of Travancore Voluntary Retirement Scheme, 2001 (hereinafter referred to as "Scheme, 2001") inviting employees of the Bank who

have put in 15 years of service or have completed 40 years of age as on 31st January, 2001 to apply for voluntary retirement. Scheme, 2001 detailed various benefits which were to enure on acceptance of voluntary retirement. Scheme, 2001 contemplated that those employees whose voluntary retirement applications under Scheme, 2001 are accepted shall be retired on 31.03.2001. All the petitioners who have completed 15 years of service submitted applications for voluntary retirement under Scheme, 2001. Applications of the petitioners were accepted and they were retired from service with effect from 31.03.2001. The petitioners were not granted pensionary benefits on the premise that since the petitioners have not completed 20 years of qualifying service as per the State Bank of Travancore (Employees") Pension Regulations, 1995 (hereinafter referred to as "Regulation, 1995") they are not entitled for pensionary benefits. Petitioners approached this Court which directed the Bank to consider amendment of Regulation, 1995 but no amendment was made to Regulation, 1995. Consequently, pension was never sanctioned to the petitioners. A bipartite settlement dated 27.04.2010 took place between the Indian Banks Association on behalf of the Management and their workmen represented by the All India Bank Employees" Association under Sections 2(3) and 18(1) of the Industrial Disputes Act, 1947. To the said settlement, the State Bank of India as well as the Bank were parties. Under the settlement it was agreed that those employees who ceased to be in service on or after 26.03.1996 in the case of Associate Banks of State Bank of India on account of voluntary retirement from service under the special retirement scheme after rendering a minimum period of 15 years shall be eligible to exercise their option to join the pension scheme. Petitioners, in pursuance of the bipartite settlement again represented to the Bank to grant them pension. The Bank in the meantime issued a Circular dated 17.09.2010 in purported exercise of the bipartite settlement laying down the eligibility. In the eligibility criteria the Circular again mentioned that those employees who ceased to be in service on or after 26.03.1996 on account of voluntary retirement under Scheme, 2001 after rendering service for a minimum period of 20 years shall be entitled to give option for joining the pension scheme. Petitioners" representation seeking pension was again turned down and letters were issued to all the petitioners in September, 2012 informing them that in view of Regulation 29(2) of Regulations, 1995 they having not completed 20 years of qualifying service shall not be eligible for pension. The representations were rejected by various letters as per Ext. P11. Petitioners being aggrieved by the action of the Bank has filed Writ Petitions. In Writ Petition No. 26563 of 2012 the following are the relief"s which were claimed.

"(i) to issue a writ of certiorari or any other writ order or direction quashing Ext. P11, P11(a), P11(b), P11(c), P11(d), P11(e), P11(f), P11(g).

(ii) to issue a writ of certiorari or any other writ order or direction quashing Exhibit P9 to the extent it imposes a condition of a minimum service period of 20 years in clause 1(a) (v), against Exhibit P7 settlement.

(iii) to declare petitioners are entitled for pension under the Bi-partite settlement and also under the SBT VRS scheme.

(iv) to issue a writ of mandamus or any other writ, order or direction directing the respondents to pay pension to the petitioners as they have completed the minimum eligibility criteria of 15 years.

(v) to allow such other writ order or direction which this Hon"ble Court may deem fit and proper in the circumstances of this case in the interest of justice."

5. A counter affidavit was filed by the Bank in the said Writ Petition reiterating their stand that the writ petitioners having not completed 20 years of qualifying service as per Regulation 29(2) they are not eligible for pension. It is submitted that the bipartite settlement cannot override the statutory Regulation, 1995 and in spite of the request made by the petitioners, the SBI did not amend Regulation, 1995 to amend the eligibility as 15 years. Hence the petitioners' claim have been rejected.

6. Learned Single Judge by his judgment dated 14.03.2014 allowed the Writ Petitions quashing letters, Ext. P11 and the condition of minimum service period of 20 years mentioned in clause (I)(a)(v) in the Circular dated 17.09.2010 (Ext. P9). Learned Single Judge declared that the petitioners are entitled for pension under Ext. P7 bipartite settlement and also under Scheme, 2001. Bank was directed to pay off the pensionary benefits to the petitioners since they have completed the minimum eligibility criteria of 15 years of service. Aggrieved by the said judgment, Bank has come up in these appeals.

7. We have heard Shri P. Ramakrishnan learned counsel appearing for the Bank and learned Senior Advocate Shri George Cherian, appearing for the respondents.

8. Learned counsel appearing for the Bank submitted that the petitioners who do not fulfill the statutory requirement of having 20 years' qualifying service as per Regulation No. 29 are not entitled for pension. He submitted that Scheme, 2001 of the Bank shall not override the statutory regulation. He further submitted that according to Scheme, 2001 itself as per clause 7(III) pension was to be paid in accordance with Regulation, 1995. Hence the learned Single Judge committed an error in allowing the Writ Petitions. He further submitted that the bipartite settlement cannot override the statutory Regulation, 1995 and although clause 7 of the Scheme envisaged amendment of Regulation, 1995, the Regulation has not yet been amended by the State Bank of India, the Bank cannot sanction pension in breach of the statutory provision. He lastly submitted that by the Writ Petitions, the petitioners wanted enforcement of the bipartite settlement, which is a contract and the Writ Petitions cannot be entertained for enforcement of a contract and are liable to be dismissed on this ground alone.

9. Shri George Cherian, learned Senior counsel appearing for the petitioners refuting the submissions of the learned counsel for the Bank contended that the petitioners were entitled for grant of pension both under Scheme, 2001 read with

Regulation, 1995 as well as under the bipartite settlement. He submitted that Scheme, 2001 is a special scheme under which the petitioners accept voluntary retirement which cannot be governed by Regulation 29 which is a voluntary retirement act by an employee of his own. He submitted that Regulation 29 cannot govern the pensionary benefits in the case of retirement under Scheme, 2001. He further submitted that the bipartite settlement is binding on the Bank. Clause 4 of the bipartite settlement specifically provides for pensionary benefits to employees of Associate Banks of State Bank of India who were in service after 26.03.1996 and having completed a minimum period of 15 years, the said benefits cannot be denied to the petitioners. It is further submitted that in any event, as per the stand taken by the Bank, it was the duty of the Bank to get Regulation, 1995 amended and the Bank cannot take shelter on the lame excuse that Regulation, 1995 having been not amended pension cannot be sanctioned. It is submitted that similarly placed employees of Nationalized Banks and several Associated Banks having completed 15 years of service and having accepted Scheme, 2001 have been sanctioned pension, denial of pension to the petitioners is arbitrary and violative of Article 14 of the Constitution of India. Learned counsel placed reliance on the various judgments of the Apex Court and High Courts which shall be referred to while considering the submissions in detail.

10. From the pleadings of the parties and the submissions advanced by the learned counsel for the parties, following are the issues which arise for consideration in these appeals.

(i) Whether an employee who is retired from the Bank under the Scheme, 2001 is entitled for pension having only 15 years of service to his credit as per the Scheme, 2001?

(ii) Whether a person having 15 years" service retired under the Scheme, 2001 of the Bank is not entitled for pension in view of statutory Regulation 29 which required minimum 20 years" qualifying service for pension?

(iii) Whether the Bank was obliged to sanction pension to the petitioners as per the bipartite settlement dated 27.04.2010 to which the Bank is a party?

11. Issue Nos. 1 and 2 being interconnected are being taken together. In Regulation, 1995 statutory regulations were framed under sub-section (2) of Sec. 63 of the State Bank of India (Subsidiary Banks) Act, 1959, by the State Bank of India in consultation with the Board of Directors of the State Bank of Travancore with approval of the Reserve Bank of India. The Regulation came into force with effect from 29.09.1995. Regulation 2(1) is to the following effect:

"2(1) deemed to have retired means cessation from service of the Bank on appointment otherwise on deputation by Central Govt. as a whole time Director or Managing Director or Chairman in any Bank specified in Column 2 of the FIRST SCHEDULE of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970)/Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980) or in any public financial

institution or State Bank of India established under State Bank of India, Act, 1955 (23 of 1955) or in Subsidiary Banks as defined in State Bank of India (Subsidiary Banks) Act, 1959."

Regulation 2(y) defines retirement as under:

"2(y) "retirement" means cessation from Bank's service.,

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

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

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

Regulation 2(zb) defines "settlement" which is to the following effect:

"(zb) "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 authorised by them:"

Regulation 14 defines qualifying service which is quoted as below:

"14. Qualifying Service.-Subject to the other conditions contained in these regulations, an employee who has rendered a minimum of ten years of service in the Bank, on the date of his retirement or on the date on which he is deemed to have retired shall qualify for pension."

Regulations 28 and 29 which are relevant are quoted as below:

"28. Superannuation Pension.-Superannuation pension shall be granted to an employee who has retired on his attaining the age of superannuation specified in the Service Regulation or settlements.

29. Pension on Voluntary Retirement.-(1) 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 competent authority retire from service;

Provided that this sub-regulation shall not apply to an employee who is on deputation or on study leave abroad unless after having been transferred or having returned to India he has resumed charge of the post in India and has served for a period of not less than one year:

Provided further that this sub-regulation shall not apply to an employee who seeks retirement from service for being absorbed permanently in an autonomous body or a public sector undertaking or company or institution or body, whether incorporated or not to which he is on deputation at the time of seeking voluntary retirement:

Provided that this sub-regulation shall not apply to an employee who is deemed to have retired in accordance with clause (1) of regulation 2.

(2) The notice of voluntary retirement given under sub-regulation (1) shall require acceptance by the appointing authority:

Provided that 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.

(3) (a) An employee referred to in sub-regulation (1) may make a request in writing to the appointing authority to accept notice of voluntary retirement of less than three months giving reasons therefor;

(b) On receipt of a request under clause (a), the appointing authority may, subject to the provisions of sub-regulation (2), consider such request for the curtailment of the period notice of three months and if it is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, appointing authority may relax the requirement of notice of three months on the condition that the employee shall not apply for communication of a part of his pension before the expiry of the notice of three months.

(5) The qualifying service of an employee retiring voluntarily under this regulation shall be increased by a period not exceeding five years subject to the condition that the total qualifying service rendered by such employee shall not in any case exceed 33 years and it does not take him beyond the date of superannuation."

Regulation 32 deals with premature retirement and Regulation 33 deals with compulsory retirement pension which are relevant and are quoted as below:

"32. Premature Retirement Pension.-Premature Retirement Pension may be granted to an employee who.-

(a) has rendered minimum ten years of service;

(b) retires from service on account of orders of the Bank to retire permanently in the public interest or for any other reason specified in service regulations or settlement, if otherwise he was entitled to such pension on superannuation on that date.

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 Service Regulations or Settlement by the authority higher than the authority competent to impose such penalty may be granted pension at a 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) Whether the Competent Authority passes an order (whether original, appellate or in exercise of power of review) awarding pension at a rate less than the full pension admissible under these regulations, the Board of Directors or its Executive Committee 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 less than the amount of rupees three hundred and seventy five per mensem".

12. Scheme, 2001 has been enforced by the Bank in January, 2001. Paragraph 3 of Scheme provides for eligibility. Paragraph 7 provides for other benefits which are to be given to an employee whose option is to be accepted. Paragraphs 3 and 7 are quoted below:

"3. ELIGIBILITY:-

The scheme will be open to all permanent employees of the Bank (except those specifically mentioned as "ineligible") who have put in 15 years of service or have completed 40 years of age as on 31st January, 2001.

Age will be reckoned on the basis of the date of birth as entered in the service record.

7. OTHER BENEFITS:

I. Gratuity as payable under the extant instructions on the relevant date.

II. Provident Fund contribution as per State Bank of Travancore Employees" Provident Fund Rules as on relevant date.

III. Pension in terms of State Bank of Travancore Employees" Pension Fund Rules on the relevant date (including commuted value of pension). However, the benefit of increased qualifying service as provided under Regulation 29(5) of SBT Pension Regulations 1995 will not be applicable to those who seek voluntary retirement under this scheme.

IV. Encashment of balance of Privilege Leave, as applicable, on the relevant date.

V. Respective facilities extended to officers/others such as retention of accommodation, telephone, car, continuation of housing loan etc., will be extended to officers/others retiring under SBTVRS, as per existing instructions, at the discretion of the Competent Authority. However, in such cases of retention of physical facilities, 50% of the amount of ex-gratia payable will be released only after the employee surrenders the facility. No interest, however, will be paid for the amount so withheld.

VI. All other outstanding loans/advances will have to be repaid before the date of retirement under SBTVRS, failing which the amount of ex-gratia and other terminal benefits payable to the employee will be appropriated towards the outstanding loans/advances and the balance amount only will be payable to the employee."

Question to be answered is whether despite the petitioners fulfilling the eligibility under Scheme, 2001, they can be denied pension citing Regulation 29. As noted above, Regulation, 1995 defines different concept of pension by the Bank i.e., superannuation pension (Regulation 28), pension on voluntary retirement (Regulation 29), premature retirement pension (Regulation 32) and compulsory retirement pension (Regulation 33). Regulation 29 gives an option to an employee who has completed 20 years" of qualifying service by giving not less than three months" notice in writing to the competent authority retire from service. The retirement under Scheme, 2001 cannot be said to be voluntary retirement as envisaged in Regulation 29. The Bank has enforced Scheme, 2001 with an object to optimize their given resource to achieve a balanced age and business profile skills in keeping with their business strategies. The Government of India had advised the nationalized banks to carry out detail manpower planning as the banks were found to have 25% of the manpower as surplus. Bank had brought Scheme, 2001 for the purpose of reducing their manpower and benefits under Scheme, 2001 were included to give certain benefits to employees who opt for voluntary retirement under the Scheme, 2001.

13. Persons who fulfill their eligibility under Scheme, 2001 were given a choice to submit option to accept retirement under Scheme, 2001. The Apex Court in Bank of India and Another Vs. K. Mohandas and Others, has occasion to lay down the principles which are to be applied for interpreting a voluntary retirement scheme. It is useful to quote paragraphs 31, 32 and 36:

"31. It is also a well-recognised principle of construction of a contract that it must be read as a whole in order to ascertain the true meaning of its several clauses and the words of each clause should be interpreted so as to bring them into harmony with the other provisions if that interpretation does not violence to the meaning of which they are naturally susceptible (North Eastern Railway Co. v. Lord Hastings-1900 AC 260).

32. The fundamental position is that it is the banks who were responsible for formulation of the terms in the contractual Scheme that the optees of voluntary retirement under that Scheme will be eligible to pension under the Pension Regulations, 1995, and, therefore they bear the risk of lack of clarity, if any. It is a well-known principle of construction of a contract that if the terms applied by one party are unclear, an interpretation against that party is preferred (*Verba Chartarum fortus accipiuntur contra proferentem*).

36. Any interpretation of the terms of VRS 2000, although contractual in nature, must meet the test of fairness. It has to be construed in a manner that avoids arbitrariness and unreasonableness on the part of the public sector banks who brought out VRS 2000 with an objective of rightsizing their manpower. The banks decided to shed surplus manpower. By formulation of the special scheme (VRS 2000), the banks intended to achieve their objective of rationalizing their force as they were overshifted. The special Scheme was, thus, oriented to lure the employees to go in for voluntary retirement. In this background, the

consideration was to pass between the parties assumes significance and a harmonious construction to the Scheme and the Pension Regulations, therefore has to be given."

14. Paragraph 7 of Scheme, 2001 which makes the employee giving an option to retire under Scheme, 2001 deals with the benefits which shall be available to the employee. Heading of paragraph 7 is "OTHER BENEFITS". Paragraph 7(III) which deals with pension is quoted as below:

"7(III). Pension in terms of State Bank of Travancore Employees" Pension Fund Rules on the relevant date (including commuted value of pension). However, the benefit of increased qualifying service as provided under Regulation 29(5) of SBT Pension Regulations 1995 will not be applicable to those who seek voluntary retirement under this scheme."

When paragraph 7(III) of the Scheme specifically refers to the benefits which shall be available to a person eligible under Scheme, 2001, the submission of the learned counsel for the Bank cannot be accepted that the said pension can be payable on further fulfillment of the conditions in Regulation No. 29. Regulation 29 deals with pension on voluntary retirement at the option of the employee and did not envisage a situation where under Scheme, 2001 framed by the Bank a person is submitting option for retirement. Paragraph 7(III) of Scheme, 2001 contains two sentences. The first sentence reads; "Pension in terms of State Bank of Travancore Employees" Pension Fund Rules on the relevant date (including commuted value of pension)". The said sentence cannot be read as pension in terms of Regulation 29. The second sentence of the above clause is only clarificatory which provides that "benefits of increased qualifying service as provided under Regulation 29(5) of SBT Pension Regulations, 1995 will not be applicable". The above clarification was made only to clarify that additional benefits were not available as given under Regulation 29. Had Scheme, 2001 intended that pension shall be sanctioned only on fulfillment of conditions under Regulation, 1995, the first sentence would have read "pension in terms of State Bank of Travancore Employees" Pension Regulation, 1995. The use of the above phraseology in paragraph 7(III) indicates that Scheme, 2001 did not intend to deny the employees benefits of pension who fulfills the eligibility under Scheme, 2001 on the ground of Regulation 29.

15. The above interpretation of Scheme, 2001 is in accordance with the principle of interpreting the voluntary retirement scheme as laid down by the Apex Court in Bank of India's case (supra) as quoted above. A benefit which is intended to be given in Scheme, 2001 which was prepared after great deliberation cannot be denied on the ground that although the benefit of pension is admissible under Scheme, 2001 but since Regulation, 1995 contains a minimum qualification of 20 years" service, hence those who opt to retire under the Scheme, 2001 are not entitled for pension. The Apex Court in Bank of Baroda and Others Vs. Ganpat Singh Deora, has occasion to consider a similar voluntary retirement scheme framed by the Bank of Baroda offering voluntary retirement scheme on the terms

and conditions almost similar to one which has been provided under Scheme, 2001. In the voluntary retirement scheme of Bank of Baroda it was also the employees who have completed minimum of 15 years or completed 40 years of age were eligible to apply for voluntary retirement. Paragraph 3 of the judgment gives details of that Scheme which is to the following effect:

"3. Under the said Scheme, along with terminal benefits pension in terms of the Bank of Baroda (Employees) Pension Regulations, 1995 (hereinafter referred to as "the Pension Regulations, 1995") was to be provided to employees who opted for the VRS Scheme. The said Scheme provided that in order to be eligible to opt for the Scheme all permanent employees of the Bank working in India or India-based officers working abroad, who as on 31-3-2001 would have completed/ would be completing minimum 15 years of service OR who would have completed/would be completing 40 years of age would be eligible to apply for voluntary retirement under BOBEVRS, 2001."

Regulation 28 of the Bank of Baroda's pension scheme provided for superannuation pension whereas Regulation 29 of the that Scheme was to the similar effect where there was requirement of 20 years of minimum service for payment of pension. Under that scheme certain employees were given the benefit of retirement who have thereafter made claim for payment of pension although they had not completed 15 years of service. The Tribunal gave an award in their favour which award was challenged by Bank of Baroda in the High Court. The employees filed Writ Petition for implementation of the award which was dismissed by the learned Single Judge. A Division Bench of the court allowed the Writ Petition of the employees and directed the Bank of Baroda to grant the benefit of pension against which the Bank of Baroda filed a Special Leave Petition. Arguments of the parties were noted in paragraphs 21, 22 and 23, which are to the following effect:

"21. Mr. Agarwala submitted that this case was a fit case for interference by this Court since both the Tribunal as well as the High Court appear not to have considered or taken note of the fact that the respondent was not eligible for pension as he had not completed 15 years of qualifying service and it was not open either to the Tribunal or the High Court to apply a different standard for the writ petitioners, and to treat them as employees coming under the general provisions as contained in Paragraph 14 of the Pension Regulations, 1995.

22. Mr. Agarwala's submissions were strongly opposed by Ms. Aishwarya Bhati, learned advocate appearing for the respondent. She emphatically contended that in a case involving voluntary retirement Regulation 29 would not apply and that, in fact, Regulation 14 would be relevant. Ms. Bhati urged that Regulation 29 of the Pension Regulations dealt not with voluntary retirement under a scheme but with cases of premature retirement which would be quite clear from the wording thereof. Ms. Bhati urged that sub-regulation (1) of Regulation 29 provides for a situation where an employee wishes to retire from service even in the absence of a voluntary retirement scheme. The Regulation contemplates that in such a case

the employee is not only required to complete 15 years of service but is also required to give notice of not less than 3 months in writing to the appointing authority, and, thereafter, retire from service.

23. Ms. Bhati also urged that the terms and conditions of Voluntary Retirement Scheme were quite different from the voluntary retirement contemplated under Regulation 29. Learned counsel urged that the impugned judgment of the High Court had been passed on a correct interpretation of the Regulations and did not warrant any interference."

Noticing the retirement scheme in the above case, the Apex Court laid down the following in paragraphs 26 to 28:

"26. BOBEVRS, 2001 itself does not give any indication, other than what has been stated in paragraph 3, as to which of the employees of the appellant Bank would be entitled to opt for voluntary retirement. It only mentions that all permanent employees of the Bank, who as on 31-3-2001, would have completed/ would be completing minimum 15 years of service or those who have completed/ would be completing 40 years of age, would be eligible to apply for voluntary retirement under BOBEVRS, 2001.

27. The conditions relating to completing 15 years of service for being eligible to apply for BOBEVRS, 2001 are special to the Scheme as also to the case of those employees who wished to apply for voluntary retirement under the aforesaid Scheme, if they had completed or would be completing 40 years of age. The latter condition appears to have been incorporated in view of the provisions of Regulations 14 and 32 of the Pension Regulations, 1995 to enable employees who had completed 10 years of service to also become eligible to apply for premature retirement under the Pension Regulations, 1995.

28. However, we are inclined to agree with Ms. Bhati that Regulation 29 does not contemplate voluntary retirement under the Voluntary Retirement Scheme and applies only to such employees who themselves wish to retire dehors any scheme of voluntary retirement, after having completed 15 years of qualifying service for the said purpose. There is a distinct difference between the two situations and Regulation 29 would not cover the case of an employee opting to retire on the basis of a voluntary retirement scheme."

16. In paragraph 31, the Apex Court further laid down that Regulation 29 do not apply.

17. In the above judgment, the Apex Court clearly accepted the submission of the learned counsel for the employees that Regulation 29 does not contemplate voluntary retirement under the voluntary retirement scheme.

18. The ratio of the above judgment is fully attracted to the facts of the present case. Following the aforesaid ratio it can be held that Regulation 29 is not attracted in a case where an employee seeks retirement under the voluntary retirement scheme.

19. The Punjab and Haryana High Court had occasion to consider a case under the State Bank of Patiala (Employees') Pension Regulation, 1995 in LPA No. 312 of 2008, decided on 09.01.2009-State Bank of Patiala v. Pritam Singh Bedi and Others. In the aforesaid case the State Bank of Patiala introduced a voluntary retirement scheme by a Circular dated 20.01.2001. Eligibility was 15 years of service or 40 years of age as on 13.01.2000. Regulation 29 of the State Bank of Patiala Regulation, 1995 was similar to the employees who were permitted to retire but denied the pension on the ground that they have not completed 20 years of service as required under Regulation 29 of that Regulation. Writ Petition filed by the employees was allowed by the learned Single Judge against which State Bank of Patiala filed an appeal. It is to be noted that paragraph 7(III) of the Scheme, 2001 was almost similar to the voluntary retirement scheme which was enforced by the State Bank of Patiala. In paragraphs 10 and 11 the Division Bench noted the Regulation and the voluntary retirement scheme which are quoted below:

"10. Before discussing with the rival submissions, it will be appropriate to extract the relevant Regulations:-

"14. QUALIFYING SERVICE:-

Subject to the other conditions @@contained in these regulations, an employee who has rendered a minimum of ten years of service in the bank on the date of his retirement or the date on which he is deemed to have retired shall qualify for pension.

28. SUPERANNUATION PENSION:-

Superannuation pension shall be granted to an employee who has retired on his attaining the age of superannuation specified in the Service Regulations or Settlements.

32. PREMATURE RETIREMENT PENSION:-

Premature retirement pension may be granted to an employee who,

(b) retires from service on account of orders of the Bank to retire prematurely in the public interest or for any other reason specified in service regulations or settlements, if otherwise he was entitled to such pension on superannuation on that date."

11. It will also be appropriate to extract relevant part of the circular and the Scheme which are under:-

CIRCULAR

1. xx xx xx

2. xx xx xx

3. The Indian Bank's Association, in turn had taken up the matter with Govt. of

India, Ministry of Finance, Banking Division and the IBA with the approval of the Government of India vide their letter No. PD/CIR/76/G2/G4/1529 dated 11.12.2000 has advised all the nationalized Banks, who have introduced the voluntary retirement scheme in their respective bank, as stated above, that the employees who are seeking voluntary retirement and are Pension Optees under Pension Regulations, 1995, will be eligible for pro-rata pension for a period of service rendered by them as if they are to retire on attaining the age of superannuation on the date of their relieving under the new voluntary retirement scheme introduced by the Bank.."

SCHEME

"OTHER BENEFITS"

xxx xxx xxx

xxx xxx xxx

Pension or Banks contribution to Provident Fund as the case may be as per rules applicable on the relevant date on the basis of actual years of service rendered."

The Division Bench in paragraph 12 took the view that Regulation 29 does not apply on retirement on the facts of the aforesaid case and the Division Bench dismissed the appeal of the State Bank of Patiala. Following was laid down in paragraph 12.

"12. A perusal of the Regulation 28 shows that on attaining the age of superannuation specified in Regulations of Settlements pension is payable. The age of superannuation has been laid down in Service Regulations which is said to be 60 years now and earlier it was 58 years. But under the Voluntary Retirement Scheme, which according to the writ petitioners will be at par with Settlement, the requirement is 15 years of service or 40 years of age, which admittedly the writ petitioners had. Under Regulation 32, the pension is payable on premature retirement on account of orders of the bank if the employee was otherwise entitled to pension/superannuation on that day. Read with Regulations 14 and 28, the said age is 10 years and if read with the Scheme, it is 15 years of age or 40 years of service and in either case the employee were covered by the pension scheme. The Hon'ble Supreme Court held that Regulation 29 relating to voluntary retirement was not applicable. Thus, contention on behalf of the Bank that Regulation 29 applied and therefore, pension was payable only after 20 years of service cannot be accepted."

20. It is relevant to note that against the aforesaid judgment of the Punjab and Haryana High Court decided on 09.01.2009 a Special Leave Petition was filed in the Apex Court (Civil Appeal No. 172 of 2010) which has been decided by the Supreme Court on 07.07.2014 in State Bank of Patiala v. Pritam Singh Bedi and Others. The Apex Court dismissed the appeal upholding the Division Bench judgment of the Punjab and Haryana High Court. Appeal of the State Bank of Patiala was dismissed. The Apex Court, however in the said case took the view

that employees having rendered 19 years and 6 months were to be treated as completed 20 years of service.

21. It is to be noted that in the case of Bank of Baroda it was clearly held that Regulation 29 does not apply to retirement under the voluntary retirement scheme. Thus the submission of the Bank's counsel that petitioners entitlement shall be governed by Regulation 29 cannot be accepted. In Bank of Baroda's case the employees were not held to be entitled for pension since they had completed only 13 years of service and not completed 15 years of service which fact was noted in paragraph 4 of the judgment which is to the following effect:

"Claiming to be eligible under the Scheme, having completed 40 years of age, the respondent applied for voluntary retirement under the said Scheme. At the relevant point of time the respondent had completed only 13 years of service in the appellant Bank. However, the respondent's application for voluntary retirement was accepted by the Bank and he was paid all retiral benefits applicable to him under the Scheme, but his request for grant of pension in addition to the other retiral benefits was not acceded to by the Bank."

It is thus clear that the ratio of Bank of Baroda's case is fully attracted in the above case.

22. In view of the forgoing decision, we are of the view that the Writ Petitioners were entitled to the pension under Scheme, 2001 and the action of the Bank in denying pension is unjustifiable.

23. Now we come to the next issue, i.e., the settlement entered between the Bank and its workmen dated 27.04.2010. Paragraphs 4 and 7 are quoted as below:

"4. Employees who ceased to be in service on or after 29th September, 1995 in case of Nationalized Banks/26th March, 1996 in case of Associate Banks of State Bank of India on account of voluntary retirement under special scheme after rendering service for a minimum period of 15 years shall be eligible to exercise an option to join the Pension Scheme subject to the terms and conditions mentioned for retiring employees opting for joining the Scheme.

7. The terms of this Settlement shall be incorporated in the Bank Employees' Pension Regulations, 1995 dated 26th September, 1995 in case of Nationalized Banks/26th March, 1996 in case of Associate Banks of State Bank of India respectively by complying with the procedure for amendment of the relevant Pension Regulations."

In the settlement the State Bank of India as well as the Bank are parties which is clear from the schedule of the Bank. Paragraph 4 of the settlement is clear that employees who ceased to be in service after 26.03.1996 and completed 15 years of service shall be eligible for pension scheme. Paragraph 7 obliged the Bank to incorporate the settlement in the Bank Employees' Pension Regulations, 1995. Paragraph 4 of the above settlement clearly enables the petitioners to have the

benefit of the pension scheme. Petitioners in fact has after the settlement again submitted their claim for demanding pension under the bipartite settlement. The Bank issued Circular dated 17.09.2010 where in the eligibility clause again the condition of having minimum period of 20 years" service was put by the Bank which was clearly contradictory to the terms of the settlement. Learned Single Judge has held that clause 1(a)(v) in so far as it requires minimum period of 20 years is contrary to the settlement and requires to be quashed. Submission of the learned counsel that since the State Bank of India has not amended Regulation 1995, the Bank has rightly rejected the claim of the petitioners by the Circular issued in September, 2010, does not appeal us. The obligation to incorporate the settlement in Regulation, 1995 is those of the State Bank of India which is to amend the Regulation in consultation with the Bank. Employees have no control on their such exercise. Even if the settlement was required to be incorporated in Regulation, 1995 it was for the Bank to take necessary steps. But the Bank relying on Regulation 29 of Regulation, 1995 cannot incorporate the condition of having minimum of 20 years of service in its Circular dated 17.09.2010. Circular dated 17.09.2010 in so far as the above condition is concerned cannot be said to be in accordance with the settlement. The Bank being a party to the settlement was bound to honour the same and could not have rejected the claim.

24. Learned counsel for the respondents has rightly placed reliance on the judgment of the Madras High Court in W.P. No. 9750 of 2006 (C. Sankari v. State Bank of Hyderabad). In the said case the employee applied for voluntary retirement under the State Bank of Hyderabad (Employees") Voluntary Retirement Scheme, 2001 and retired with effect from 31.03.2001. He filed representation for grant of pension which was rejected on the ground that he had not completed 20 years of service. The claim made by the petitioner was laid on the basis of the settlement under the State Bank of Hyderabad Voluntary Retirement Scheme. The State Bank of Hyderabad also issued a similar Circular dated 28.08.2010 as has been issued by the Bank on 17.09.2010. The Circular was held to be contrary to the statutory settlement dated 27.04.2010 in paragraph 11 of the judgment which is quoted as below:

"11. It is not disputed, that the petitioners sought voluntary retirement under the special scheme after rendering 15 years" of service, therefore, was fully eligible for grant of pension. The request of petitioner for grant of pension under settlement dated 27.04.2010, is extended with reference to the circular dated 28.08.2010 of the respondent Bank, which was issued for extending period of option to join the pension scheme. In the circular dated 28.08.2010, it is stipulated that persons, who sought voluntary retirement under the special scheme, would only be entitled to pension after rendering minimum period of 20 years. The circular therefore is prima facie contrary to statutory settlement dated 27.04.2010."

Before the Madras High Court also, a similar plea was raised that the settlement

dated 27.04.2010 is not binding for want of amendment of Regulation, 1995 the contention was rejected. Following was observed in paragraphs 17, 19 and 20, 21, 22 and 23:

"17. It was the contention of learned counsel for the respondents, that the settlement dated 27.04.2010 is not binding on the respondents, for want of amendment to the Pension Regulation. In support, learned counsel placed reliance on Section 63 of the State Bank of India (Subsidiary Banks) Act, 1959, which lists out the procedure for framing of regulation, governing the subsidiary banks. Section 63 provides that the State Bank of India is competent to make regulations, with regard to the subsidiary banks, by issuing notification in the official gazette, which is further required to be placed before the Parliament.

19. This contention of learned counsel for the respondents deserves to be noticed to be rejected, for the reason, that the benefit under the settlement is by way of special scheme and not under the Pension Regulations. If this contention of learned counsel for the respondents is accepted, then it will lead to absurd results, as the State Bank of Hyderabad (Employees") Voluntary Retirement Scheme 2001, under which the petitioner sought retirement, went contrary to the Pension Regulations, which bars the voluntary retirement before completing 20 years of service. Therefore, the pension regulations cannot come in way of petitioner to claim pension under statutory settlement dated 27.04.2010.

20. The very fact, that the scheme was implemented and accepted, shows, that it was open to the Bank to frame special scheme. Furthermore, the circular dated 28.08.2010 clearly shows, that the respondent Bank accepted the statutory settlement dated 27.04.2010 and extended time for option, subject to condition laid in the circular. Therefore, if Section 63 is given true meaning, then it has to be applied only to the regulations, governing the service condition, but not to the special scheme or statutory settlement entered into between the Bank and the employees" union. The Section 63 has no application to this case. The reading of settlement dated 27.04.2010 clearly stipulates that it was to apply to the employees, who had opted for voluntary retirement under special scheme after rendering service for minimum period of 15 years. Therefore, the respondents cannot be allowed to blow hot and cold in the same breath, as on one hand they accepted voluntary retirement under special scheme, which went contrary to the Pension Regulations and at the same time oppose beneficial settlement made applicable to those employees under the grab of Pension Regulations.

21. It may also be noted that the settlement dated 27.04.2010, being statutory, is binding on the respondent Bank. The respondent Bank cannot back out from the said settlement merely on the ground, that it went contrary to the Pension Regulations, when the scheme of voluntary retirement 2001 provided for premature retirement to the persons on completion of 25 years of service, though it was not permissible under the Pension Regulations.

22. As noticed above, the circular dated 28.08.2010 is not applicable to the case

of petitioner, as he had admittedly opted under the settlement dated 27.04.2010, which only stipulates 15 years of service for grant of pension."

25. Thus the judgment of the Madras High Court fully supports the contentions raised by the learned counsel for the petitioners. Petitioners are clearly entitled for the benefit of the settlement dated 27.04.2010 which has been denied by the Bank unreasonably.

26. One more submission has been made by the learned counsel for the appellants, i.e., the Writ Petitions filed for enforcement of a contract, i.e., the settlement dated 27.04.2010 are not maintainable. He has placed reliance on the decision in Kulchinder Singh and Others Vs. Hardayal Singh Brar and Others, . In the case before the Apex Court, Writ Petition was filed by the candidates who were not included in the select list prepared by the registered Co-operative Societies. It was claimed that under some agreements with the bank petitioners have claimed 75% of the quota and were opposing the recruitment on same posts. In the above case, the Apex Court laid down the following in paragraph 11:

"11. There is no doubt that some of the legal problems argued by Sri Ramamurthy deserve in an appropriate case jurisprudential study in depth, although much of it is covered by authority. But assuming, for argument's sake, that what he urges has validly, the present case meets with its instant funeral from one fatal circumstance. The writ petition, stripped of embroidery and legalities, stands naked as a single contract between the staff and the Society, agreeing upon a certain percentage of promotions to various posts or an omnibus, all-embracing promise to give a quota to the existing employees. At its best, the writ petition seeks enforcement of a binding contract but the neat and necessary repellent is that the remedy of Article 226 is unavailable to enforce a contract qua contract. We fail to see how a supplier of chalk to a government school or cheese to a government hospital can ask for a constitutional remedy under Art. 226 in the event of a breach of a contract bypassing the normal channels of civil litigation. We are not convinced that a mere contract agreeing to a quota of promotions can be exalted into a service rule or statutory duty. What is immediately relevant is not whether the respondent is State or public authority but whether what is enforced is a statutory duty or sovereign obligation or public function of a public authority. Private law may involve a State, a statutory body, or a public body in contractual or tortious actions. But they cannot be siphoned off into the writ jurisdiction."

27. There are two reasons due to which the said judgment does not help the appellants. Firstly, in the case before the Apex Court, there was some agreement with the bank providing 75% quota. The said agreement was not a statutory one as in the present case where the settlement is a statutory one entered into under the Industrial Disputes Act, 1947. Secondly, the Apex Court held that mere contract agreeing to quota of promotion cannot be exalted to service rules or statutory duty. In the present case, there is statutory agreement and statutory duty put on the Bank to give effect to the settlement dated 27.04.2010. There is

one more reason due to which the Writ Petition cannot be held to be Writ Petition filed for enforcement of a contract. The petitioners' entitlement for pension is governed by a statutory regulation and a voluntary retirement scheme framed by the Bank. Enforcement of pension is regulated by Statutory Regulation, 1995 and under the Scheme, 2001 entitlement of pension has been included as the benefit consequent to retirement under the Scheme. The petitioners in the Writ Petitions were also claiming their entitlement under the statutory Regulation read with the Scheme. Thus we do not accept the submission made by the learned counsel for the appellants that the Writ Petitions were not maintainable and should not have been entertained.

28. In view of the forgoing discussion, we are of the view that the petitioners have clearly made out a case for entitlement of pension consequent to their retirement with effect from 31.03.2001 under Scheme, 2001 read with Regulation, 1995. Learned Single Judge did not commit any error in allowing the Writ Petitions directing for payment of pension to the Writ Petitioners. No ground has been made out to interfere with the judgment in the exercise of appellate jurisdiction of this Court.

Both the appeals are dismissed.