

(2012) 03 KAR CK 0116

In the Karnataka High Court

Case No : WA No. 4269, 4093, 4901 of 2011 (S-RES) , WA No's. 4546, 4548, of 2011 and WA No's. 465-466 of 2012 (S-RES) , WA No. 4547 of 2011 and WA No's. 17867-870 of 2011 (S-RES) , WA No. 4548 of 2011 and WA No's. 103-115 of 2012 (S-RES) , WA No's. 4901-4921 o

Vijaya Bank and Others

APPELLANT

Vs

Smt. Suvasini S Shetty

RESPONDENT

Date of Decision : 08-03-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 21
Industrial Disputes Act, 1947 — Section 10 A
Pension Regulations, 1995 — Regulation 29 (5)

Citation : (2012) 03 KAR CK 0116

Hon'ble Judges : Vikramjit Sen, C.J.;B.V. Nagarathna, J

Bench : Division Bench

Advocate : Pradeep S. Sawkar, for M/s. Sundaraswamy and Ramdas in WA Nos. 4269, 4260-4262, 4263-4265, 4266-67, 4268, 4922-5136, 15917-15919, 4901-4921, 4271/2011 S-RES and WA Nos. 4546/2011 and WA Nos. 465-466/2012 S-RES, WA No. 4557/11 and WA Nos. 17867-870/11S-RES, WA No. 4548/2011 and WA Nos. 103-115/12 S-RES, WA Nos. 4901-4921/2011 S-RES and WA No. 4271 of 2011 S-RES, Sri. B.G. Sridharan for Sri. Varadaraj R Havaladar, in WA Nos 4093, 4115-4141, 4185-4192, 4806-4815, 4860-4889, 4113-4196, 4158-4163 4166-4177, 4094-4114, 4197-4198, 4199-4201, 4816-4830, 4831-4892, 4833-4836, 5221-5232, 5233-5244, of 2011 S-RES, Sri. T.P. Muthanna. in WA No. 4256-4259 and 5202-5205 of 2011 and 17496-551, 17592-696/2011 and N.S. Prasad, in WA No. 590 of 2012, for the Appellant; S Vittal Shetty, for R1 in WA Nos. 4269, 4260-4262, 4263-4265 and 4266-4267/2011 (S-RES), Sri M.N. Prasanna, for Sri P.S. Rajagopal in WA Nos. 4268, 4922-5136, 15917-15919, 4093, 4115-4141 4185-4192, 4806-4815, 4860-4889, 4113-4196, 4158-4163, 4166-4177, 4901-4921, 4271, 4256-4259, 17496-551/2011 of 2011 (S-RES) and WA Nos. 5202-5205 of 2011 and 17592-696/2011 (S-RES), Sri. P.S. Ranganathan in WA Nos. 4546/2011 and WA Nos. 465-466/2012 (S-RES), WA No. 4557/11 and WA Nos. 17867-870, 4271/11(S-RES), Sri M.N. Prasanna, for M/s Sri P.S. Rajagopal, Associates in WA No. 4548/2011 and WA Nos. 103-115/12 (S-RES), for the Respondent

Final Decision : Dismissed

Judgement

Vikramajit Sen, C.J.—This conglomeration of appeals challenge the judgment dated 08.04.2011 pronounced by learned Single Judge (Anand Byrareddy J.) concerning the claim of several erstwhile employees of the appellant banks who had availed of a Voluntary Retirement Scheme (VRS) offered to them by the employer banks vide Circular dated 15.12.2000. The writ petitions are substantially similar in content inasmuch as, the prayers therein are to quash the sundry Circulars which attempt to amend Regulation 29(5) of the Bank Employees Pension Regulations 1995 ("Pension Regulations 1995" for brevity) and thereby deprive them of the benefit of an addition of five years to their respective "qualifying service"; and secondly, for computing the pension in accordance with Regulation 38 of the Pension Regulations 1995, i.e., predicated the computation on the average emoluments drawn in the preceding ten months of their service. The factual matrix leading up to the respondent -employees seeking reliefs in the writ petition is that the appellant - Banks adopted VRS, as formulated by the Indian Bank's Association with the approval of the Central Government. The scheme adopted by the Banks although separately, is identical and bears similar salient features with minor variations. The salient features of the Scheme [VRS - 2000] as elucidated in the case of Bank of India and Another Vs. K. Mohandas and Others, read as follows :-

(I) All permanent employees of the bank who have put in minimum 15 years of service or completed 40 years of age on the date of coming into force of the Scheme are eligible for voluntary retirement.

(II) In addition to the normal retirement benefits available to an employee, according to the terms and conditions of his employment in the bank, an employee whose application for voluntary retirement is accepted will be paid a lump sum amount equivalent to 60 days' salary for each completed year of service.

(III) The competent authority may accept or reject the application of an employee for voluntary retirement and the decision of the competent authority shall be final.

(IV) No voluntary retirement shall come into effect unless the competent authority has passed orders accepting the applications of the employees to retire voluntarily under the Scheme.

(V) The Scheme can be withdrawn at the discretion of the bank at any time without assigning any reason.

(VI) It shall be open to the bank to alter/amend the conditions of the scheme. (In the Scheme framed by Punjab National Bank such provision is not there.)

(VII) The applications made under the Scheme will be irrevocable and the employee will not have the right to withdraw the application once submitted.

(VIII) An employee whose application for voluntary retirement is accepted and relieved from the bank shall be eligible for:

(i) gratuity as per the Gratuity Act/ service gratuity as the case may be:

(ii) own contribution of provident fund and bank's contribution towards provident fund, in case of those who have opted for contributory provident fund or own contribution of provident fund and pension in terms of the Employees Pension Regulations, 1995, in case of those who have opted for pension and have put in 20 completed years of service in the bank; and

(iii) leave encashment as per rules.

2. The Banks had made their Regulations in respect of pension separately.

3. The admitted factual position in these batch of appeals is that each of the employees had completed 20 years of service. The employees of the various Banks who opted for retirement under the Scheme have been given retiral benefits except the benefit of Regulations under the Regulation 29(5) of the Pension Regulations, 1995. It deals with addition of a period of qualifying service not exceeding five years and the total qualifying service rendered by an employee not exceeding 33 years. In other words, employees sought for addition of notional five years of service in calculating the length of service for the purpose of Scheme as per Regulations 29(5) of the Pension Regulations, 1995.

4. The second issue that arose for consideration in the writ petitions is as to whether the pension has to be fixed on the Pay Scales prior to 01/01/1997 i.e., in terms of joint note or the settlement as the case may be entered into with the Officers of the Pension Banks or with the non-official cadres respectively, subject to the necessary amendments being carried to the Pension Regulations.

5. After submission of applications for Voluntary Retirement Scheme by the employees, the Bank issued circulars communicating proposed amendment of Regulation 28 of Pension Regulations. Subsequently, the circulars were issued amending Regulation 29 of Pension Regulations, 1995. On account of the said amendments, the Bank sought to deny the benefit of addition of five years qualifying service to the employees. The Banks had the benefit of revision of Pay Scales w.e.f. 01/01/1997. However, in the memo of settlement, it was stated that pay for the purpose of pension shall be the aggregate of the pre-revised pay and dearness allowance thereon at consumer Price Index 1616 points. This should be relevant to the provisions made in the Pension Regulations. It is the case of the petitioners that the Pension Regulations were not amended as on the date of their retirement and was so amended subsequently and in the case of State Bank of Mysore, the Pension Regulations have not been amended at all to bring it in line with the settlement or the joint note. Therefore, the case of the Bank employees is that the reliance placed on pre-revised Pay Scales for the purpose of pension is illegal.

6. The relevant Regulations, for present purposes, are reproduced for ready

reference -

CHAPTER I

PRELIMINARY

2. Definitions:

In these Regulations, unless the context otherwise requires:-

xxx

(d) "Average emoluments" means the average of the pay drawn by an employee during the last ten months of his service in the Bank;

(s) "Pay" includes - (a) "in relation to a workman who had either retired or died on or after the 1st day of January, 1986 but before the 1st day of November, 1992; and in relation to an officer who had either retired or died on or after the 1st day of January, 1986 but before the 1st day of July, 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 a workman who retired or died while in service on or after the 1st day of November, 1992; and in relation to an officer who retired or died while in service on or after the 1st day of July, 1993, -

(i) the basic pay including stagnation increments, if any, and

(ii) all allowances counted for the purpose 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.

(c) in relation to an employee who retired or died while in service on or after the 1st day of April, 1998-

(i) the basic pay including stagnation increments, if any, and

(ii) all other components of pay counted for the purpose of making contributions to the Provident Fund and for the payment of dearness allowance; and

(iii) increment component of Fixed Personal Allowance; and

(iv) dearness allowance thereon on the above calculated up to Index number 1616 points in the All India Average Consumer Price Index for Industrial Workers in the series 1960=100.

Explanation:

For the purpose of this clause basic pay, other components of pay and Fixed Personal Allowance would mean the basic pay, other components of pay and Fixed Personal Allowance drawn by the employee in terms of the scales of pay as applicable and the rates at which the other components of pay were payable prior to 01-11-1997 (in the case of workmen) and prior to 1-4-1998 (in the case of officers);

(t) "pension" includes the basic pension and additional pension referred to in Chapter Vf of these Regulations.

CHAPTER IV

QUALIFYING SERVICE

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.

CHAPTER V

CLASS OF 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 Settlement.

Provided that with effect from 1st day of September 2000 pension shall also be granted to an employee who opts to retire before attaining the age of superannuation, but after rendering service for a minimum period of 15 years in terms of any scheme that may be framed for such purpose by the Board with the approval of the Government.

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 appointing 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 of notice of three months on merits and if it is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, the appointing authority may relax the requirement of notice of three months on the condition that the employee shall not apply for commutation of a part of his pension before the expiry of the notice of three months.

4) An employee who has elected to retire under this regulation and has given necessary notice to that effect to the appointing authority, shall be precluded from withdrawing his notice except with the specific approval of such authority; Provided that the request for such withdrawal shall be made before the intended date of his retirement.

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 thirty-three years and it does not take him beyond the date of superannuation.

6) The pension of an employee retiring under this regulation shall be based on the average emoluments as defined under Clause (d) of regulation 2 of these Regulations and the increase, not exceeding five years in his qualifying service, shall not entitle him to any notional fixation of pay for the purpose of calculating his pension.

CHAPTER VI

RATE OF PENSION

xxx

38. Determination of the period of ten months for average emoluments:

1) The period of the preceding ten months for the purpose of average emoluments shall be reckoned from the date of retirement.

2) In the case of voluntary retirement or premature retirement the period of the preceding ten months for the purpose of average emoluments shall be reckoned from the date on which the employee voluntarily retires or is prematurely retired by the Bank.

3) In the case of dismissal or removal or compulsory retirement or termination of service the period of the preceding ten months for the purpose of average emoluments shall be reckoned from the date on which the employee is dismissed or removed or compulsorily retired or terminated by the Bank.

4) If during the last ten months of the service an employee had been absent from duty on extraordinary leave on loss of pay or had been under suspension and the period whereof does not count as service, the aforesaid period of extraordinary leave or suspension shall not be taken into account in the calculation of the average emoluments and an equal period before the ten months shall be included

7. In respect of Vijaya Bank the Circular particulars are No. 10/2001 dated 11.01.2001; in respect of Canara Bank No. 237/2000 dated 15.12.2000. Similar writ petitions have been filed by erstwhile employees of the State Bank of Mysore praying for quashing of Clause 4 of its Circular No. 127/2000- 01 dated 30.01.2001; and for a declaration to the effect that the petitioners are entitled to be paid retiral benefits such as ex gratia, gratuity, leave encashment, pension and commutation value of pension, calculating the basic pay on the date of the respective retirements. With regard to the Syndicate Bank, the prayer is for declaring the denial to the petitioners of the benefit of Regulation 29(5) of the Pension Regulations 1995 promised under VRS by taking into account the last drawn ten months average pay as per Regulation 2(d) of the Pension Regulations 1995. These writ petitions were also allowed vide Judgment dated 06.04.2011. Yet another batch of writ petitions were filed by the erstwhile employees of the Central Bank of India who had availed of VRS offered by the said Bank. The prayers are similar to that in the petitions pertaining to Syndicate Bank which also came to be allowed by Judgment dated 06.04.2011.

8. Another learned Single Judge (Ashok B.Hinchigeri J.) by Judgment dated 21.04.2011 allowed several other writ petitions filed against certain Banks including Union Bank of India praying for quashing its Circulars dated 21.12.2000 and 29.12.2000, and for declaring that the petitioners are entitled to an increased qualifying service by a period not exceeding five years subject to the condition that the total qualifying service rendered by such employees shall not in any case exceed 33 years of service and also that it does not tantamount to taking the petitioners beyond the date of superannuation; and direct the Banks to calculate and pay pension in accordance with Regulation 29(5). Hinchigeri J. also allowed petitions against the Vijaya Bank, Canara Bank, Syndicate Bank, Union Bank of India, Indian Bank, Indian Overseas Bank, State Bank of Mysore, UCO Bank, State Bank of India and Bank of Baroda by Judgment dated 21.04.2011. After noting the ratio of Bank of India and Another Vs. K. Mohandas

and Others, , and in deference to the dictum in Official Liquidator vs. Dayanand, 2001(10) SCC 1, Hinchigeri J. applied the judgment of Anand Byrareddy J. and disposed of the petitions before him in terms of the Judgment dated 08.04.2011, the operative paragraph of which reads as follows:

Circular No. 1/2001 dated 2.1.2001 insofar as it seeks to amend Regulation 28 and Circular No. 10/2001 dated 11.1.2001 are quashed. The petitioners are entitled to increase in their qualifying service by a period not exceeding five years subject to the condition that the total qualifying service rendered by the petitioners shall not in any case exceed 33 years and does not take them beyond the date of superannuation. The respondent-banks are directed to pay pension to the petitioners after applying the same and the orders by the banks insofar as the same deprived the addition of five years qualifying service are quashed. The petitioners are entitled to payment of pension calculated on the basis of actual pay fixed, personal pay, special pay and other allowances and emoluments drawn by them during the last ten months of service as provided under Regulations 35 and 38 of the Pension Regulations together with Dearness Allowance thereon and the respondent - bank shall pay the differential amount of pension and commutation value of pension to the petitioners on that basis, within a period of eight weeks, if not earlier and in the event of failure to make the payment as above, the banks shall be liable to pay interest at the rate of 10% on the said amounts till the date of payment.

9. It would be relevant to underscore that the Union Bank of India, the Indian Overseas Bank and the Indian Bank have implemented the judgment against them inasmuch as they have not preferred any appeals. It will also be relevant to highlight that although amendments were eventually carried out to the Pension Regulations after inordinate delay in late 2002, it materialized only after the petitioners had availed VRS. This amendment departed from the extant method of calculation of pension keeping in perspective the pay drawn in the last ten months of service. Significantly, the Pension Regulations 1995 were amended once again in 2005, thereby reverting to and restoring the original position in 1995. In other words, in the period post 2005 the calculation of pension is founded on the pay drawn in the last ten months of service. Therefore the decision in these Appeals will impact upon a relatively short period of four years. It is further relevant to underscore that both the learned Single Judges have concluded that the dispute stands covered on all fours by the decision of the Apex Court in Mohandas. We mention this for the reason that it appears to us that the extremely scarce time of the Court as well as the Bank's resources have been avoidably and unnecessarily expended on an exercise in futility. The questions canvassed before us, it is plain to us, are no longer *res Integra* as the learned counsel for the appellants have comprehensively failed to dislodge the opinion of the two learned Single Judges to the effect that Mohandas completely covers the controversy. Furthermore, so far as the State Bank of Mysore is concerned it has not carried out any amendment to the Pension Regulation 1995. Nevertheless it has filed and vehemently and extensively argued its Appeals.

Their sanguine expectation is that we shall be persuaded to ignore Regulations having statutory strength.

10. The subject Pay Revision applicable to petitioner officers became operational with effect from 1.4.1998 and there is no dispute that they were drawing their pay and allowances in terms thereof upto the date on which they retired from the respective Banks by availing of the subject VRS. The contention of the Banks is that in the interregnum an understanding was arrived at pertaining the calculation and payment of pension by virtue of a Joint Note dated 14.12.1999 (for officers) and a Memorandum of Settlement dated 27.03.2000 (for the non-officer ministerial and clerical cadre). We shall briefly deliberate the salient features of the Joint Note agreed upon by the Negotiating Committee of the Indian Bank Association (IBA) which represented the Management of all the Banks on the one hand and the All India Bank Officers' Confederation, the All India Bank Officers' Association, the Indian National Bank Officers' Congress and the National Organization of Bank Officers on the other hand.

11. The caption of the "Joint Note" is "Salary Revision for Officers". The prefatory comments record that the process of amending the Officers' Service Regulations and Bank Employees' Pension Regulations, 1995 shall be initiated in order to implement the terms contained in Annexure-I. Significantly it states that IBA shall take steps to recommend to the Private Sector Banks (PSB) to give effect to the salary revision covered by Annexure-I. On the part of the Officers' Association, their request for release of adhoc amount, equivalent to the net arrears payable for the period April 1998 to November 1999 as well as, future salaries and allowances was also recorded. We must emphasis forthwith that the so-called Joint Note was at best an inchoate agreement, a mere proposal, which would attain legal sanctity only on the amendments to the Officers' Service Regulations and Bank Employees' Pension Regulations, 1995 being carried out. Annexure-I to the said Joint Note deals with (1) Scales of Pay, (2) Dearness Allowance, (3) House Rent Allowance, (4) City Compensatory Allowance, (5) Provident Fund, (6) Pension, (7) Medical Allowance, (8) Recovery of House/Furniture Rent, (9) Fixed Personal Allowance, (10) Professional Qualification Allowance, (11) Other Allowances, (12) Other Allowances and loans linked to Basic Pay and (13) Date of effect. The last subject reads - "For the payment of arrears, the benefits under the various provisions as above, shall be effective from the dates specified hereunder:- (i) Scales of Pay, Dearness Allowance and Pension w.e.f. 1.4.1998; (ii) House Rent Allowance, City Compensatory Allowance, Provident Fund, Gratuity, Medical Aid, Recovery of House/Furniture Rent and other Allowances with effect from 01.11.1999. So far as "pension" is concerned, the proposal contained in Annexure-I reads - "Pay" for the purpose of Pension shall be the aggregate of pre-revised pay and Dearness Allowances thereon at CPI 1616 Points". The computation and payment of Pension was pegged at the pre-revised pay and Dearness Allowance at consumer price index of 1616 points. Since the Pension Regulations 1995 were then in operation, it was perforce agreed that requisite amendments would be carried out therein,

substituting the last ten months pay and emoluments to the lesser amount of 1616 points of the price index. It is the unassailed position that the postulated amendments were incorporated after inordinate delay on 23.11.2002 (Syndicate Bank) and 14.12.2002 (Vijaya Bank). By that date the VRS had been availed of; all the petitioners retired between December 2000 and July 2001.

12. Constitution Benches of the Supreme Court in *Indian Ex-Services League - Vs- Union of India* (1991) 2 Supreme Court Cases 104 and thereafter in *Chairman, Railway Board and others Vs. C.R. Rangadhamaiah and others*, have enunciated that "reckonable emoluments which are the basis for computation of pension are to be taken on the basis of emoluments payable at the time of retirement". Equally, there is no debate that the VRS which the officers received included an ex gratia payment which did not find feature in the Pension Regulations, 1995. The ex gratia was an added, nay distinct, attraction of the subject VRS which is why the Banks prefer to nomenclature it as a "Special Scheme". The ex gratia has been duly tendered by the Banks and has been received with alacrity by the petitioners.

However assuming that these sums were not claimable by the petitioners as their stance was that they were bound by the extant Pension Regulation 1995; the Appellant Banks could conceptually have initiated Legal proceedings for recovery. We should not be understood to proffer the opinion that such proceedings would have met with success. However, principles of estoppel could not have been pressed into service by the Banks.

13. On behalf of the Appellant-Banks it has been clarified that an upward revision of pay-scale was negotiated as per the sundry Joint Notes and these upward revisions of pay-scales came to be cemented by amending the Officers Service Regulations 1979, however, it is submitted by learned counsel for the Appellant Bank it is only to be expected that a hiatus normally occurs between the decision and the amendment, due to procedural delays. In the event, the amendments to the Bank Officers Services Regulations 1979 and the Bank Pension Regulations 1995 were simultaneously effected by the respective Banks, albeit by each of them on different dates. It is also the common case of all the parties that the amendment took place after the petitioners/respondents had taken voluntary retirement from the services of their respective employer/Bank. The writ petitioners, it is contended on behalf of the Banks, cannot be permitted to accept the benefits flowing from the revised pay-scales for the purposes of salaries up to the date of retirement and yet refuse to accept the definition of "pay", both of which have been dealt with in the Joint Note. The Banks complaint is that the Petitioners are thus approbating and reprobating, which is always considered a reprehensible endeavor.

14. It is pointed out that in the Memorandum of Settlement the Management and the non-officer employees had compacted with each others to peg the pay increase at 12.25% of the wage bill and costing for pension at 18.25% of the incremental pay. Accordingly, the submission on behalf of the Banks is that on

the date of retirement the pay-scales, as also pay under Regulation 2(s) of the Pension Regulations, 1995 was the pre-revised pay-scales and this formed the bedrock for the calculation and computation of the appellant-Banks. It is also stressed by learned counsel for the appellants that at least from the date of amendment to the Pension Regulations 1995, the appellants would be entitled to apply the pre-revised pay in the context of Regulation 2 (s) thereof. It seems evident to us that the primary point in the negotiations was the increase wage/salary fixation, and pension was dealt with en passant, as one consequential or incidental offshoot.

15. Succinctly stated, the terms of the Joint Note dated 14.12.1999 stipulated that the "Pay" for the determination of pension shall be pre-revised pay and not the revised pay. We have already mentioned that both Single Benches were of the considered conclusion that the dispute stood concluded by the decision of their Lordships in Mohandas which, of necessity, we must immediately analyse. Firstly, it is beyond cavil that it was the very same VRS 2000" which was in the specific contemplation of the Supreme Court. Secondly, their Lordships summarized the salient features of VRS 2000", inter alia, to include - "(ii) in addition to the normal retirement benefits available to an employee, according to the terms and conditions of his employment in the bank, an employee whose application for voluntary retirement is accepted will be paid a lump sum amount equivalent to 60 days salary for each completed years of service." Since the learned counsel for both the adversaries before us have laid great store on the dictum laid down by the Apex Court in Mohandas we can do no better than to reproduce the analysis of the conundrum in the words of the Apex Court itself, which can be garnered from the following paragraphs -

24. The principal question that falls for our determination is: whether the employees (having completed 20 years of service) of these banks (Bank of India, Punjab National Bank, Punjab and Sind Bank, Union Bank of India and United Bank of India) who had opted for voluntary retirement under VRS 2000 are entitled to addition of five years of notional service in calculating the length of service for the purpose of the said Scheme as per Regulation 29(5) of the Pension Regulations, 1995?

xxx

27. In view of the admitted position that VRS 2000 was a contractual scheme; that it was an invitation to offer containing a term that the optee will also be eligible for pension as per the Pension Regulations; that an application by an employee for voluntary retirement was a proposal or offer and that upon acceptance of the application for voluntary retirement made by the employee and a communication of acceptance to him, the concluded contract came into existence and the offeree was relieved from the employment. For consideration of the question posed herein, the Court needs to examine the contract and the circumstances in which it was made in order to see whether or not from the nature of it, the parties must have made their bargain on the footing that a

particular thing or state of things would continue to exist.

xxx

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 fortius accipiuntur contra proferentem*).

33. What was, in respect of pension, the intention of the banks at the time of bringing out VRS 2000? Was it not made expressly clear therein that the employees seeking voluntary retirement will be eligible for pension as per the Pension Regulations? If the intention was not to give pension as provided in Regulation 29 and particularly sub-regulation (5) thereof, they could have said so in the Scheme itself. After all much thought had gone into the formulation of VRS 2000 and it came to be framed after great deliberations. The only provision that could have been in mind while providing for pension as per the Pension Regulations was Regulation 29. Obviously, the employees, too, had the benefit of Regulation 29(5) in mind when they offered for voluntary retirement as admittedly Regulation 28, as existed at that time, was not applicable at all. None of Regulations 30 to 34 was attracted.

34. It appears that VRS 2000 evoked huge response, much more than expected and then began the second thought. At the fag end of operation of VRS 2000, at the instance of IBA, the banks proposed amendment in the Pension Regulations and a circular came to be issued. But, by that time, ball had gone out of the hands of the employees; they had already made their offers which were irrevocable; it was not open to them to withdraw the offers as per specific condition incorporated in the Scheme (albeit this Court in O.P. Swarnakar held that offer could be withdrawn before acceptance) and their offers were accepted and they were relieved.

xxx

46. The precise effect of the Pension Regulations, for the purposes of pension, having been made part of the Scheme, is that the Pension Regulations, to the extent, these are applicable, must be read into the Scheme. It is pertinent to bear in mind that interpretation clause of VRS 2000 states that the words and expressions used in the Scheme but not defined and defined in the rules/Regulations shall have the same meaning respectively assigned to them under the rules/Regulations. The Scheme does not define the expression "retirement" or "voluntary retirement". We have, therefore, to fall back on the definition of "retirement" given in Regulation 2(y) whereunder voluntary retirement under Regulation 29 is considered to be retirement. Regulation 29 uses the expression "voluntary retirement under these Regulations". Obviously, for the purposes of

the Scheme, it has to be understood to mean with necessary changes in points of details. Section 23 of the Contract Act has no application to the present fact situation.

xxx

49. It was vehemently contended on behalf of the banks that VRS 2000 was a self-contained scheme and it provided for special benefits in the form of ex gratia. It was submitted that ex gratia was not available to the employees claiming voluntary retirement under the Pension Regulations and it was because of that, that the Scheme did not envisage granting of pension benefits under Regulation 29(5) of the Pension Regulations, 1995, along with the payment of ex gratia which was a substantial amount.

50. It is true that VRS 2000 is a complete package in itself and contractual in nature. However, in that package, it has been provided that the optees, in addition to ex gratia payment, will also be eligible to other benefits inter alia pension under the Pension Regulations. The only provision in the Pension Regulations at the relevant time during the operation of VRS 2000 concerning voluntary retirement was Regulation 29 and sub-regulation (5) thereof provides for weightage of addition of five years to qualifying service for pension to those optees who had completed 20 years" service. It, therefore, cannot be accepted that VRS 2000 did not envisage grant of pension benefits under Regulation 29(5) of the Pension Regulations, 1995, to the optees of 20 years" service along with payment of ex gratia.

51. The whole idea in bringing out VRS 2000 was to right size workforce which the banks had not been able to achieve despite the fact that the statutory Regulations provided for voluntary retirement to the employees having completed 20 years" service. It was for this reason that VRS 2000 was made more attractive. VRS 2000, accordingly, was an attractive package for the employees to go in for as they were getting special benefits in the form of ex gratia and in addition thereto, inter alia, pension under the Pension Regulations which also provided for weightage of five years of qualifying service for the purposes of pension to the employees who had completed 20 years" service.

xxx

64. On behalf of banks it was submitted that the employees, having taken benefits under the Scheme (VRS 2000), are estopped from raising any issue that their entitlement to pension would not be covered by amended Regulation 28. It was suggested that the employees having taken benefit of the Scheme cannot insist for pension under Regulation 29(5). O.P. Swarnakar was relied upon in this regard wherein it has been held that an employee, having taken the ex gratia payment, or any other benefit under the Scheme cannot be allowed to resile from the Scheme.

65. Insofar as the present group of appeals is concerned, the employees are not

seeking to resile from the Scheme. They are actually seeking enforcement of the clause in the Scheme that provides that the optees will be eligible for pension under the Pension Regulations, 1995. According to them, they are entitled to the benefits of Regulation 29(5). In our considered view, plea of estoppel is devoid of any substance; as a matter of fact it does not arise at all in the facts and circumstances of the case.

66. We hold, as it must be, that the employees who had completed 20 years of service and were pension optees and offered voluntary retirement under VRS 2000 and whose offers were accepted by the banks are entitled to addition of five years of notional service in calculating the length of service for the purposes of that Scheme as per Regulation 29(5) of the Pension Regulations, 1995. The contrary views expressed by some of the High Courts do not lay down the correct legal position.

16. A perusal of Mohandas makes it manifestly clear that the arguments addressed before us do not raise any new-grounds. It needs to be emphasized that Punjab National Bank, Punjab and Sind Bank, Bank of India, Union Bank of India and United Bank of India, all of whom were parties in Mohandas cannot now be permitted to press the same points in these Appeals, as had been raised and pronounced upon by the Apex Court in Mohandas; or even fresh and new grounds which could have been contended but were not so done in previous litigation culminating in Mohandas. Piecemeal and staggered arguments are anathema to law. The argument that VRS 2000" was distinct from Pension Regulations 1995 is not worthy of consideration, it having already been cogitated and ruled upon by the Apex Court, such an exercise would tantamount to judicial indiscipline. Similarly, the argument that having received the benefit of ex gratia as well as the increased salary in terms of the Joint Note dated 14.12.1999 the petitioners are precluded from falling back on the Pension Regulations 1995 as the same can be countenanced only by a Larger Bench of the Supreme Court than that in Mohandas.

17. Further, several banks who were not parties in Mohandas have vehemently argued that VRS 2000" had the characteristics of an "invitation to offer" and not a contract. We are not persuaded in the least, for the simple reason that a completed and enforceable contract emerged on the acceptance by the Banks of the offer contained in their applications for retirement of the petitioners. This contract must necessarily be disengaged altogether from the Pension Regulation 1995. This contract was in addition to the terms contained in the Pension Regulations 1995, which had failed to enthuse the widespread acceptance that the contracts together with the Regulation regime subsequently did.

18. Learned counsel for the Petitioner Officers, contend that any agreement arrived at in the course of negotiations, if contrary to the Pension Regulations 1995 which have statutory character, would lack legal legitimacy and efficacy. In this regard reliance has been placed on N.S. Giri Vs. The Corporation of City of Mangalore and Others, . In that case, disputes had emerged between the

workmen and the management of the Corporation of City of Mangalore which came to be resolved in proceedings pursuant to Section 10A of the Industrial Disputes Act, 1947 by an Award published in the Mysore Gazette dated 13.02.1969. The uncontroverted case was that under the applicable Statutory Service Rules the age of superannuation was 55 years; regardless, the Arbitrator had fixed it at 58 years. After discussing the decisions in *The New Maneck Chowk Spinning and Weaving Co. Ltd., Ahmedabad and Others Vs. The Textile Labour Association, Ahmedabad*, and *The Hindustan Times Ltd., New Delhi Vs. Their Workmen*, , the Apex Court struck down that Award since it ordained the age of superannuation to be 58 years, contrary to the statutory prescription of 55 years. Therefore, we are unable to appreciate the manner in which the decision of the Two Judge Bench in *Transmission Corpn., A.P. Ltd. and Others Vs. P. Ramachandra Rao and Another*, can be of any avail to the Appellant Banks in view of the authoritative decision of the Constitution Bench in *New Maneck Chowk* and the Four Judges Bench in *Hindustan Times*.

19. We should also refer to *A.C. Jose Vs. Sivan Pillai and Others*, , commonly called the "electronic voting machines case", wherein it was held that the order of the Election Commission directing the casting of ballots by electronic voting machine in some polling stations was without jurisdiction. In that connection the Court was called upon to consider the contention that the appellant candidate stood estopped from challenging the employment of challenged mechanical process, inasmuch as he had not opposed it when it was initially mooted. The Court opined that it was immaterial and ignorable that the appellant had participated in the meeting that was held before introduction of the voting machines and agreed to their user, solely since that process was not permissible or authorized by law; the principles of estoppel would therefore not have come into play. In *P. Sadagopan and Others Vs. Food Corporation of India, Zonal Officer (South Zone) Represented by its Zonal Manager and Another*, , it has been reiterated that - "Executive instructions cannot be issued in derogation of the statutory Regulations". In a similar situation in *Dr. Rajinder Singh Vs. The State of Punjab and Others*, , their Lordships have reiterated that "the settled position of law is that no government order, notification or circular can be a substitute of the statutory rules framed with the authority of law". Accordingly, we are of the opinion that it is impermissible for any party to ignore the Pension Regulations 1995 and create a competing regime to it. The Statutory Regulations should have been amended before the VRS 2000 was implemented for two reasons. Firstly, the IBA recommendations were merely so and no more. The recommendations would metamorphose into a binding and enforceable contract on their acceptance by each of the Appellant Banks followed by amendments to the Regulations. Secondly, this exercise would have to have been completed contemporaneously with the implementation of the VRS in view of the dicta in *Indian Ex-Services* and *Chairman Railway Board*.

20. Mohandas, makes mention of the maxim *contra proferentem* which rule, if applied in the case in hand, would enjoin us to give the benefit of any doubt to

the petitioners in case ambiguity is encountered. The Rule is of long standing origin and is applicable if two interpretations are possible, the one favourable to the party, who has drafted the contract and the other against him. In that case, the interpretation against that party has to be preferred. This is predicated on the principle that all deeds are to be construed most strongly against the grantor and in favour of the grantee. In other words, a covenant though has to be construed according to the intent of the parties, yet have to be taken most strongly against the party who stipulates. It is also a settled rule, that, where there is a grant and an exception out of it, the exception has to be taken as inserted for the benefit of the grantor, and to be construed in favour of the grantee. Further, the general rule is that where there is any doubt as to the construction of any stipulation in a contract, one has to construed strictly against the party in whose favour it has been made. An inference adverse to the appellant-Banks would have to be drawn since it was the latter who have drafted the Voluntary Retirement Scheme and the paperwork attendant thereto. The Petitioners had merely responded to the Bank's invitation to respond to the voluntary retirement conceptualized by it. The Petitioners made an offer to voluntarily retire from service on the terms devised and spelt out by the Bank by filling and forwarding the standard form application crafted by the Banks. Interestingly, whilst the captioned subject bore a reference to the Voluntary Retirement from service under Bank (Employees) Voluntary Retirement Scheme 2000 communicated vide Circular No. 231/2000 dated 23.11.2000, the 4th paragraph of the Application states - "I have opted for pension under the Vijaya Bank (Employees) Pension Regulations, 1995." The same format is common to all Banks, save for the change of the name of the Employer. Significantly, the succeeding paragraph-5 of that very application states - "I also seek voluntary retirement under Regulation 29 of Vijaya Bank (Employees'') Pension Regulations, 1995 and request the Competent Authority to waive the requisite notice of three months for seeking voluntary retirement under the said Regulations" In these premises it is legally impermissible and untenable for the Appellant-Banks to accept this "irrevocable and unconditional application seeking voluntary retirement" and nonetheless invoke a subsequent Circular of its own making and initiative, the terms of which are detrimental to the Petitioners' interests. As already commented upon by the Supreme Court, the Banks were apparently astounded by the overwhelming response to the Special Voluntary Retirement Scheme, and as a consequence, were desirous of diluting the terms contained in their invitation to offer. The entire process should have commenced once again if new terms were to be placed in substitution of the initial ones. It is certainly conceivable that the Petitioners would not have applied for VRS on the newly offered terms; this inference can be drawn from the manifestly lukewarm response to the then extant VRS. In other words, under the Indian Contract Act or purely on equitable ground it would be unfair and legally inconceivable to hold the petitioners thereafter to retire, since the terms and initiative had been varied and departed from at the instance of the appellant-Banks. We think it is the Banks which are guilty of approbation and reprobation.

21. Without reference to P. Sadagopan, a larger Bench came to the same conclusion in K. Kuppusamy and Another Vs. State of T.N. and Others, wherein it spoke thus - "Statutory rules cannot be overridden by executive orders or executive practice. Merely because the Government had taken a decision to amend the rules does not mean that the rule stood obliterated. Till the rule is amended, the rule applies. Even today the amendment has not been effected. As and when it is effected ordinarily it would be prospective in nature unless expressly or by necessary implication found to be retrospective". It would be apposite to mention here that the State Bank of Mysore has not amended its Pension Regulations till date. As we have already underscored, except for the brief interlude of four years, between the time when the Petitioners had retired and when the amended Regulations were reversed, the same position continued in vogue. It seems to us that VRS 2000 additionally offered, ex gratia etc., which is why it was found attractive and therefore acted upon.

22. Learned counsel for the Appellant-State Bank of Mysore has tried, we think in vain, to take refuge behind the observations made in Bank of India and Others Vs. O.P. Swaranakar etc., which we reproduce here below:

48. The employees of the nationalized bank may not enjoy a "status" as is the case of government employees or the statutory authorities whose terms and conditions of service are governed by the constitutional provision and/or the statutes and the statutory rules; but there is no gainsaying that the employees of the nationalized banks enjoy security of their employment. So far as the employees of the State Bank of India are concerned, their terms and conditions of service, as noticed hereinbefore, are governed by statutory rules. However, so far as the employees of the nationalized banks are concerned, except for the matter of grant of pension which is covered by the Regulations framed in terms of Section 19 of the 1970 Act, other terms and conditions of their service are not statutory in nature. But the State Bank of India as also the nationalized banks are "States" within the meaning of Article 12 of the Constitution of India. The services of the workman are also governed by several standing orders and bipartite settlements which have the force of law. The Banks, therefore, cannot take recourse to "hire and fire" for the purpose of terminating the services of the employees. The banks are required to act fairly and strictly in terms of the norms laid down therefore. Their actions in this behalf must satisfy the test of Articles 14 and 21 of the Constitution of India. Having regard to the intendment of the Scheme, each and every employee would not be entitled to the benefit of the said Scheme. Those who are facing disciplinary proceedings or working in a particular class of employment are not eligible therefore.

It is sought to be argued that the legality of Bipartite Settlement has been affirmed by their Lordships in the above paragraph. We think that this is not the ratio of the Judgment. Too much is being read into the last two sentences and what is articulated before that is being ignored. In the context of the questions which have arisen before us the legal position has been crystallized in

paragraph-61 of the said judgment. The pronouncement of the Court inter alia was that "Voluntary Retirement Schemes" are in the nature of an invitation to offer; application from the employees assumed the nature of an offer; and only that offer could have been accepted or rejected by the Bank. Had the Court intended to prescribe a regime different to New Maneck Chowk, they were bound to refer and analyze that decision as well as Hindustan Times. In any event, the Three Judge Bench in Swarnakar would not have intended to deviate from the ratio of a Constitution Bench and of a Four Judge Bench. Ergo, Swarnakar is of no possible advantage to the case of the appellant-Bank.

23. In this analysis and in view of the dictum of the Constitutional Bench referred to above and the Four Judge Bench, we are of the considered opinion that these Appeals are devoid altogether of any merit. We respectfully reiterate that, as it has been held in Mohandas, the officers who had availed of VRS 2000" were entitled to an addition of five years of notional service in calculating the length of service, as contemplated in the Service Regulations 1995. These officers/petitioners are not estopped from availing the benefits contained in the Pension Regulations 1995, inspite of availing the benefit of ex gratia payment and better pay-scales contained in the Joint Note dated 14.12.1999. We affirm the view of both the learned Single Judges, as the controversy stands concluded by the dictum of the Apex Court in Mohandas and therefore, there is no conundrum that has emerged calling for any further consideration by this Court. Accordingly, these writ appeals are dismissed. Since the Pension Regulation 1995 have not at all been amended by the State Bank of Mysore, its appeals are bereft altogether of any merit, and must be held liable to pay costs of Rs. .10,000/- to each of their former employees/petitioners.