

Assistant G.M. State Bank Of India & Ors vs Radhey Shyam Pandey on 26 February, 2015

Author: Dipak Misra

Bench: Dipak Misra, V. Gopala Gowda

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2463 OF 2015
[Arising out of S.L.P. (Civil) No. 3686 OF 2007]

Assistant General Manager, State Bank of
India & Others

... Appellants

Versus

Radhey Shyam Pandey

... Respondent

WITH

CIVIL APPEAL NOS. 2287-2288 OF 2010
CIVIL APPEAL NOS. 5035-5037 OF 2012
CIVIL APPEAL NO. 10813 OF 2013

J U D G M E N T

Dipak Misra, J.

Leave granted in S.L.P. (Civil) No. 3686 of 2007.

Having regard to the commonality of controversy in this batch of appeals it was heard together and is disposed of by a singular judgment. For the sake of clarity and convenience, I shall adumbrate the facts from Civil Appeal Nos. 2287-2288 of 2010 and at the appropriate stage refer to the views expressed in other appeals. The 1st respondent, M.P. Hallan, an ex- serviceman joined as a clerk on 18.5.1981 in the appellant-Bank which has been constituted under the State Bank of India Act, 1955 (for brevity 'the Act'). The Indian Banks Association (I.B.A.), after obtaining approval from the Government of India evolved a Voluntary Retirement Scheme (V.R.S.) and the appellant-Bank adopted the Scheme with certain modifications, despite it having its own Voluntary Retirement Scheme in the existing service conditions meant for its employees to seek voluntary retirement/premature retirement/resignation. The Scheme, namely, S.B.I. Voluntary Retirement Scheme (for short 'the Scheme') was adopted by the State Bank of India on 29.12.2000. The Scheme was to remain open during the period 15.1.2001 to 31.1.2001 with the option either to close it early

or extend the period, without assigning any reason.

After adoption of the Scheme, the Deputy Managing Director, the competent authority, issued a Circular No. HRD/CDO/ VRS/1 on 29.12.2000 clarifying certain aspects of the Scheme. Another Circular being No. HRD/CDO/VRS/5 was issued on 10.1.2001. On 11.01.2001, the said Circular was brought to the notice of all the Branches/offices of all the Circles, including Chandigarh Circle.

As per the Scheme, the applications for voluntary retirement under the Scheme were to be submitted during the period i.e. 15.1.2001 to 31.1.2001. The 1st respondent submitted his application seeking voluntary retirement and it was accepted on 17.3.2001 with effect from 31.3.2001. On 27.3.2001, the respondent No. 1 submitted an application to withdraw his request for voluntary retirement. The said application was declined by the Bank on 18.4.2001 stating that the date for withdrawal of application had already expired on 15.2.2001. It is apt to note that here the respondent wrote a letter on 12.4.2001 claiming pension under the Pension Fund Rules, 1995 in terms of State Bank of India Employees Pension Rules (for short 'the Rules'). The claim of the 1st respondent for withdrawal of his application for voluntary retirement and grant of pension and leave encashment was refused by the Bank on 4.7.2001. Being grieved by the aforesaid refusal and declination of the prayer, the 1st respondent preferred writ petition being CWP No. 14325 of 2001.

The Writ Court took note of the fact there was acceptance of the voluntary retirement on 17.3.2001 with a stipulation that the employee would be relieved from his duties at the close of business hours on 31.3.2001. The Division Bench referred to the decision in Mohinder Pal Singh v. Punjab and Sind Bank and others[1] and the decision of this Court in Bank of India and others v. O.P. Swarankar etc.[2] and after reproducing the directions of from Swarankar's case came to hold as follows:-

"In view of the aforesaid finding, the moment a decision is taken by the Bank, the jural relationship of employer and employee stood terminated. The petitioner has admittedly sought to withdraw his offer to seek voluntary retirement after the acceptance was conveyed to the petitioner. Mere fact that the date of voluntary retirement was fixed as 31.03.2001, is wholly inconsequential as employer and employee relationship has already come to an end with the communication of acceptance. It was only the procedural part under which the petitioner continued to work till 31.03.2001."

In the ultimate analysis, the High Court did not find any merit with regard to refusal by the Bank in not accepting the application for withdrawal submitted by the employee. Determination on the said score is not under assail in any of the appeals before this court.

The next question that emerged for consideration before the High Court was whether the employee was entitled to pension in terms of the rules, including computed value of pension. It was contended by the 1st respondent in the writ court that the pension rules were amended on 9.3.2001 and the said rules were in vogue when the petitioner had submitted his application for voluntary retirement, and hence, he was entitled to get the pensionary benefits. It was also urged that in terms of the amended Rule 22 of the pension rules, he was entitled to pension. The said submission was resisted

by the Bank that Rule 22 did not cover the cases like that of the petitioner. In justification of the said submission, reliance was placed on the Division Bench judgment of the High Court of Delhi in Vipin Kalia and Ors. v. State Bank of India and Ors. decided on 28.2.2007 in L.P.A. No. 410 of 2002 and also on a decision rendered by the High Court of Andhra Pradesh in C.W.P. No. 2098 of 2006. The Division Bench referred to the anatomy of Rule 22 and after analyzing the scope of the rule distinguished the decision of the High Court of Delhi as well as that of Andhra Pradesh and came to hold that it was apparent from the record that the writ petitioner was in service of the Bank on 01.11.1993 and had completed 10 years of pensionable service and further had attained the age of 58 years. Therefore, in terms of Rule 22 of the Pension Rules, he was entitled to pension. Dealing with the claim for leave encashment which is based upon the circular of the Bank dated 23.09.1986, it opined that the leave encashment was payable to an employee of the Bank, who had been discharged if he was eligible for pension and as it had been found that the petitioner was entitled to pension in terms of the Pension Rules he would be entitled to leave encashment as well. In this batch of appeals, the question that emanates for consideration whether the respondent-employees are entitled to get pension. There can be no cavil over the fact that their right to seek withdrawal from the scheme of voluntary retirement has been negated by the impugned judgments passed by various High Courts and, therefore, I am not required to address the said issue. It is essential to advert to the issue whether the employee would be entitled to pension under the four corners of the Rules. Rule 22 which squarely falls for consideration is as follows:-

"22. (i) A member shall be entitled to a pension under these rules on retiring from the Bank's service -

After having completed twenty years' pensionable service provided that he has attained the age of fifty years or if he is in the service of the Bank on or after 1.11.93, after having completed ten years pensionable service provided that he has attained the age of fifty eight years or if he is in the service of the Bank on or after 22.5.1998, after having completed ten years pensionable service provided that he has attained the age of sixty years;

After having completed twenty years' pensionable service, irrespective of the age he shall have attained, if he shall satisfy the authority competent to sanction his retirement by approved medical certificate or otherwise that he is incapacitated for further active service;

After having completed twenty years pensionable service, irrespective of the age he shall have attained at his request in writing.

After twenty five years' pensionable service.

A member who has attained the age of fifty-five years or who shall be proved to the satisfaction of the authority empowered to sanction his retirement to be permanently incapacitated by bodily or mental infirmity from further active service (such infirmity not being the result of irregular or intemperate habits) may, at the discretion of the

trustees, be granted a proportionate pension.

A member who has been permitted to retire under Clause 1(c) above shall be entitled to proportionate pension."

Keeping the aforesaid Rule in view, it is obligatory to scrutinize the analysis made by the High Court in the backdrop of the facts. The High Court has taken note of the fact that the 1st respondent had completed more than 19 years and 10 months of service as on 31.3.2001 and, therefore, the first part of Clause (a) is not applicable to him. The High Court has also opined that the third part of Clause (a) is not applicable to him as he had completed more than 19 years of service but not attained the age of 60 years. The case of the 1st respondent was that his case was covered under second part of Clause (a) which enables an employee to get pension if he was in service of the Bank as on 1.11.1993 and had completed ten years' of service and attained the age of 58 years. The High Court took note of the fact that the counter-affidavit was silent regarding the claim of the 1st respondent under second part of Clause (a). Analysing further in this regard, the High Court opined as follows:-

"The petitioner has submitted his offer for voluntary retirement in terms of the Pension Rules existing in the month of January, 2001. On the said date a member of the Pension Funds was entitled to pension on completion of 20 years of pensionable service provided he has attained the age of 50 years. Alternatively, if a member is in service of the Bank on or after 01.11.1993 and has completed 10 years of pensionable service and has attained the age of 58 years, he shall be entitled to the pension. The petitioner fulfils the second part of Clause (a) of Rule 22 which was in existence on the day when the petitioner submitted his request for voluntary retirement. Even after the amendment on 09.03.2001, another clause has been added i.e. 3rd part of Clause (a) as mentioned above, which does not affect the claim of the petitioner for pension as he is entitled to pension in the second part of Rule 22(1)(a)."

The High Court referred to the voluntary Retirement Scheme floated on 29.12.2000, and reproduced the relevant part of the said Scheme which is as follows:-

"5. Amount of Ex-Gratia:

The staff member whose request for retirement under SBIVRS has been accepted by Competent Authority will be paid an amount of ex-gratia of 60 days' salary (pay plus stagnation increments plus special pay plus dearness allowance) for each completed year of service (for this purpose fraction of service of six months and above will be taken as one year and accordingly service of less than six months will be counted) or salary for the number of months service is left, whichever is less, fraction of a month, if any, will be ignored. 'Relevant Date' means the date on which the employee ceases to be in service of the Bank as a consequence of the acceptance of the request for voluntary retirement under the scheme.

For the purpose of calculation of ex-gratia, 60 days salary mentioned in the Scheme is to be taken as equivalent to 2 months salary (with reference to salary for the month in which employee is relieved from service on (Voluntary Retirement).

Income Tax shall be deducted at source in respect of ex-gratia exceeding Rs.5.00 lakhs or such other ceiling as may be prescribed under the Income Tax Act as on the relevant date.

Other benefits:

Gratuity as payable under the extent instructions on the relevant date.

Provident Fund Contribution as per State Bank of India Employees Provident Fund Rules as on relevant date.

Pension in terms of State Bank of India Employees' Pension Fund Rules on the relevant date (including commuted value of pension).

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

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 SBIVRS as per present dispensations, at the discretion of 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 facilities. No interest, however, will be paid for the amount so withheld. All other outstanding loans/advances will have to be repaid before date of retirement under SBIVRS, failing which the amount of ex-gratia and other terminal benefits payable to the employee will be appropriate towards the outstanding loans/advances and the balance amount only will be payable to the employee."

The High Court opined that the said paragraphs, when properly appreciated, convey that the amount of ex-gratia is to be paid and what are the other benefits to be paid have also been enumerated. Referring to Clause 6 it ruled that it deals with gratuity, provident fund contribution, pension in terms of the Rules on the relevant date (including commuted value of pension), encashment of balance of privilege leave and certain other benefits. The Court also took note of the clarificatory circular issued by the Bank on 10.1.2001. While answering the question, whether or not, the employee completing 15 years of pensionable service as on relevant date the Court held he would be entitled for pension benefit.

Presently I shall refer to the relevant part of Clarificatory circular:-

"In this connection, we invite a reference to para 6(c) of the Scheme forwarded under the cover of Circular No. CIR.DO/PER & HRD/99 dated 29.12.2000. The payment of

pension to the employee retiring under SBIVRS would be governed by State Bank of India Employees Pension Fund Rules on the relevant date (including commuted value of pension). However, as per existing rules, employees who have not completed 20 years of Pensionable Service are not eligible for pension."

Having noted the rule relating to pension on which the case is founded and the scheme on which reliance has been placed by the High Court, it is necessary to notice how various High Courts have approached this problem. I have already stated that the High Court of Punjab and Haryana has opined that the employee who had opted for voluntary retirement is entitled to pension in the second part of Rule 22 (1) (a). Now, I shall advert to the analysis made by the High Court of Calcutta which is the subject matter of C.A. No. 5035-37 of 2002. The learned Single Judge of the High Court of Calcutta took note of the contention that when an offer of acceptance had become a concluded contract any subsequent change of the pension fund rules could not have adversely affected his rights, for the explanatory memorandum issued by the bank on 9th March 2001 stipulated to the effect that no employee/pensioner of the State Bank of India is likely to be effected adversely by the notification being given retrospective effect. He repelled the contention of the bank that the voluntary retirement scheme itself provided that payment of pension was dependent upon the rules prevalent on the date on which the employee would cease to be in service of the bank and admittedly the writ petitioner therein had ceased to be an employee on 31st March 2001 and, thereafter, the amendment of the pension rules effecting from that day was binding upon him and as such he was not liable to get any pension. The learned Single Judge formulated two issues namely, (i) whether the right of the petitioner to receive pension as per the existing rules could have been taken away by the amended rules which became effective on 31st March, 2001? and (ii) was the writ petitioner estopped from espousing his cause of action due to delay, laches and acquiescence and answered both the issues in the negative against the bank and in favour of the writ petitioner.

On an appeal being preferred the division bench referred to Section 17 and 19 of the Contract Act and came to hold as follows:-

"In the case before us, on the date of acceptance of the contract, it was known to the bank that it had already decided to amend its pension rules by which the appellant would be deprived of his right to get pension although on the date of acceptance if he retired he would be entitled to get pension. The employee had no means of knowledge of such change of pension rules at the time of agreement. In such a situation, the relation between the parties being that of employer and employee, it was the duty of the employer to inform the employee about the future amendment of the pension rules which would deprive the employee of his right to get pension by entering into the voluntary retirement scheme. If he had known this fact, he would not definitely enter into the scheme because if he had retired in due course without opting for voluntary retirement, he would be entitled to get pension even under the amended rules. Therefore, the silence maintained by the employer in such a situation amounted to fraud on its part. As pointed out in illustration (b) to S. 17 of the Contract Act, if it becomes a duty of a father to disclose the defect of the horse proposed to be sold to his just grown up daughter, in the same manner, it is also the

duty of the employer to inform his employee about the future amendment of the pension rules causing prejudice to his employee at the last stage of his service life before accepting the terms of the voluntary retirement scheme declared by it when such source of prejudice is known to the employer and the employee had no manner of knowledge of such perilous condition."

Thereafter, the Bench referred to *Food Corporation of India v. Kamdhenu Cattle Feed Industries*[3] and opined thus:-

"Therefore, on that ground also the writ petitioner is entitled to get the pensionary benefit which was available to him on the date of declaration of the scheme and also on the date of acceptance of the offer of the employee under voluntary retirement scheme. If the proposed amendment was disclosed to the writ petitioner in advance, he would not have accepted such prejudicial terms of voluntary retirement scheme and offered for the scheme. We do not for a moment dispute the submission of Mr. Gupta, the Ld. Sr. Advocate appearing on behalf of the appellant that the contract was completed by acceptance of the offer of the employee under the scheme as laid down in the case of *Bank of India v. O.P. Swarnanakar* but the appellant having committed fraud upon the writ petitioner by adopting silence in the matter of proposed amendment of the pension rules on the last date of the service of the employee, the writ petitioner is entitled to the relief claimed by taking aid of Article 14 of the Constitution of India."

Be it stated, as the Single Judge had not granted interest, the division bench thought it appropriate to grant interest at the rate 12% per annum on arrears amount of pension.

As far as the High Court of Allahabad is concerned, the learned Single Judge had remitted the matter to the bank to consider the case of the writ petitioner for his entitlement for grant of pension. In the intra-court appeal, the Division Bench addressed to the lis on merits, referred to clause 6 (c) of the scheme which provides that pension shall be granted in terms of State Bank of India Employees' Pension Fund Rules on the relevant date (including commuted value pension) and opined that the said clause was a binding contract between the writ petitioner and on 18.3.2001 the bank accepted the offer of retirement made by the writ petitioner, though the employee did in fact retire on 31.3.2001. The High Court took note of the fact although the amendments were sufficiently formulated before 31.03.2001 yet the trustees of the pension fund accepted the amended rules only on the 30.10.2001. The High Court referred to the existing rules and the amended rules which I shall refer to at a later stage. It was contended by the writ petitioner before the Division Bench that he was covered under second part of the Rule 22 (i) (a) inasmuch as he was in the service of the Bank on and after 1.11.1993 and he had completed 10 years of pensionable service, and attained the age of 58 years before the date he retired. The bank resisting the said stand contended that the clarificatory circular issued by the bank and contended that the employee was not entitled to get pensionary benefits. The High Court observed that the clarification had no greater status in law than the reading and understanding the terms of the contract according to one party. It opined that the pension rules should apply to the writ petitioner not by any force of special statutory law but only by force of

agreement. Eventually the Court ruled thus:-

"The second important point raised by the Bank was that under 22(1)(c) of the Pension Fund Rules, when an employee retires upon a request in writing being made by him, he has to complete 20 years of service. Thus the voluntary retirement being a retirement pursuant to the employees' request, it is this clause which will be applicable to him and it will not be proper to give him pension because he comes under another clause i.e. Clause (a), which was merely introduced to accommodate late entrants into service when the retirement age was raised to 58 on 1.11.1993 and then to 60 on 22.5.1998. Clause (a) was inserted so as to give employees benefit of pension after 10 years of pensionable service even if they had joined late. According to the Bank the writ petitioner is seeking to take advantage of this clause although this clause was never intended to cover it.

It is also said that if in cases of retirement on request in writing clause (a) is made applicable then clause (c) will have no field of operation at all. Everybody will be entitled to pension after 10 years and, therefore, the 20 years' requirement of Clause (c) will lose all meaning."

Thereafter the division bench referred to Clause 15 of the Bank Fund Rules which permits retirement on request by the bank employee provided a sanction is made by the competent authority. After referring to the said clause the court held thus:-

"In our opinion, the voluntary retirement under the scheme should not be equated to a retirement to clause 15 of the Pension Fund Rules. It might be that Clause 22(c) made to cover pension aspects for Clause 15 retirements and Clause 22(i)(a) was made to cover normal superannuation retirements, but voluntary retirement was a special contract made available for special purpose, and that too for a very small period of time which was practically one moment or just one short fleeting period during an employee's service career. For this scheme and this contract the pension rules did not apply as rules. The rules apply only as words in the contract. Therefore, if a contracting party is entitled to take benefit of a permissive clause, then that cannot be denied to him on the basis of purpose if construction of a statutory rule. This type of purposive construction is far less, if at all, applied to contracts. Contracts are, generally speaking, strictly interpreted on the basis of the language agreed upon by the parties. The Court does not make out the parties' contract, they make their own contract.

On this basis of strict interpretation, the writ petitioner clearly comes within Rule 22(i)(a) although this is better put as Clause 22(i)(a) of the Pension Fund Rules in reference to the contract.

Regarding the other aspect of Clause 22(i)(c) having no field of operation at all, one bare look will show that the said clause will operate in all cases where the retiring

employee has not even attained the age of 58 years. If the pensionable period of 20 years has been completed before that, and the competent authority grants sanction to retire under Rule 15, then and in that event one would get pension although one would not under the second or third parts of Clause 22(i)(a). Thus each part of the contractual document is left with a meaning even if the interpretation in favour of the writ petitioner is wholly accepted."

At this juncture, it is apt to appreciate the decision rendered in case of Vipin Kalia (supra) by the division bench of Delhi High Court. In the said case the division bench dealing with the State Bank of India Voluntary Retirement Scheme whereunder the option exercised by the employees was accepted by the respondent bank on 31.3.2001. All the appellants therein had either completed 15 years of service or were of 40 years of age as on 31.12.2000 and accordingly, as per the provision of the State Bank of India Employees Pension and Provident Fund Rules they had claimed pension as per the rules. The court referred to Indian Bank's Association letter dated 11.12.2000 which was the fulcrum of the scheme to get the pension. The division bench reproduced the said letter which I think it appropriate to reproduce.

"Indian Bank's Association Stadium House 6th Floor, Block 2 Veer Nariman Road Mumbai-400020 PD/CIR/76/G2/G4/ December 11,2000 Designated officers of all Public Sector Banks.

Dear Sirs, Voluntary Retirement Scheme in Public Sector Banks-Amendments To Bank, (Employees') Pension Regulations, 1995.

Please refer to our circular letter No. PD/CIR/76/G4/933 dated 31st August 2000 convening the 'No Objection' of the Government in banks adopting and implementing a voluntary retirement scheme for employees on the lines of what was contained in the Annexure to the circular.

As per the scheme, an employee who is eligible and applies for voluntary retirement is entitled for the benefit of CPF, Pension, Gratuity and encashment of accumulated privilege leave, as per rules.

Bank (Employees') Pension Regulations, 1955 do not have provisions enabling payment of pension to an employee who retires before attaining the age of super annuation except under circumstances as in Regulations 29, 30, 32 and

33. We had, therefore, taken up with the Government the need to incorporate necessary provisions in the Pension Regulations by way of amendments to Regulation 28 so that employees who retire as above under special/ad hoc schemes formulated by the banks, after serving for a prescribed minimum period would be eligible for pro rata pension.

Government of India has after examining the proposal conveyed its approval and desired that IBA advise banks to make necessary amendments to their Pension Regulations as in the Annexure. We request banks to take note accordingly.

Please note that with the above amendments, employees who apply for voluntary retirement after having rendered a minimum of 15 years of service under a special/ad hoc scheme formulated with the specific approval of the Government and the Board of Directors will be eligible for pro rata pension for the period of service rendered as they are to retire on attaining the age of superannuation on that date.

Yours faithfully, sd/-

(Allen C A Pereira) PERSONNEL ADVISER"

It was contended before the High Court that under the said recommendation the bank was obliged to pay pension to them but the said contention was not accepted by the Single Judge on the ground the said letter is not a binding circular under Section 18 of the State Bank of India Act, 1955. The learned Single Judge had also opined that voluntary retirement scheme was a package by itself and it was not open to the employees to ask for modification of the scheme and if the employees wanted to avail of the benefit of pension, they should not have opted under the scheme and after completing requisite years of service, would have been entitled to pension. The Court examined the SBIVRS dated 30.12.2000 and opined that it was an invitation to the employees to make an offer and opt for voluntary retirement. The scheme, as analysed by the Division Bench, specifically stipulated that the employees who were eligible and the period during which an offer for voluntary retirement could be made. Reference was made to Clause 5 and 6 of the scheme that provides for ex-gratia payment to the officers who had opted for voluntary retirement. The court referring to the letter dated 11.1.2001 opined that the payment of pension to an employee retiring under the voluntary retirement scheme are to be governed by the relevant pension rules, and as per the existing rules, an employee who had not completed 20 years of pensionable service would not be eligible for pension. Thereafter the Division Bench observed that the employee who has opted under voluntary retirement scheme was fully conscious and aware of the fact that he would not be entitled to pension under the scheme as he had not completed 20 years of pensionable service and pension was payable only to those employees who were eligible for pension under the rules as applicable on the relevant date. Reference was made to Bank of India O.P. Swarankar (supra) and accordingly it was held as follows:-

"The appellants, therefore, cannot be allowed to wriggle out of the terms and conditions accepted and agreed upon by the two parties viz. the appellants and the respondent-bank. The appellants had entered into the said contract with open eyes and fully conscious and aware of what benefits they would be entitled to by opting under the Voluntary Retirement Scheme. They were conscious and aware and in fact specifically informed by way of clarification by the respondent that the employees who had not completed 20 years of service, would not be eligible for pension under the relevant rules. The appellants by way of appeal are seeking modification of the terms of the concluded contract which in equity is not just and fair."

Eventually concurring with the Single Judge the Division Bench ruled:-

"13. The State Bank of India, as already stated, has its own pension regulations. The employees of the State Bank of India are bound by the same. Letter/circular dated 11th December, 2000 refers to amendment to Bank (Employees') Pension Regulations, 1995. The said regulations are not applicable to the employees of State Bank of India. The Pension regulations applicable to the State Bank of India employees are different. As far as employees of State Bank of India are concerned, the Bank Employees' Pension Regulations, 1995 are not applicable. The amendment suggested by letter/circular dated 11th December, 2000 by Indian Bank's Association was not applicable to the appellants and the employees of the State Bank of India. We may also point out here that State Bank of India in the counter affidavit has explained that its Voluntary Retirement Scheme was a special and a distinct scheme offering a handsome package for the employees who were ready and willing to opt for retirement. It is also pointed out that the State Bank of India's employees unlike employees belonging to other public sector banks were entitled to both contributory provident fund and membership of a pension fund. It is stated that employees of other public sector bank are eligible either for contributory provident fund or membership of pension fund.

14. Learned Counsel for the appellants, however, also relied on the judgment of a single Judge of this Court in the case of Punjab and Sind Bank Officers Association and Ors. v. Union of India and Anr. on 11th May, 2006. In the said case, learned single Judge was examining regulations 28 and 29 of the Bank (Employees') Pension Regulations, 1995. The issue was which of the two regulations would apply. It was held that Regulation 29 would apply to employees who had taken voluntary retirement whether under normal circumstances or under a special scheme. It was further held that the scheme or package cannot be altered unilaterally. The said decision does not support the contention of the appellants. The terms and conditions of the Voluntary Retirement Scheme were clear and specific. The terms were not ambiguous. The employees including the appellants were fully conscious of the decision taken by them and the benefits they would be entitled to. The appellants voluntarily, with open eyes entered into an agreement and after having retired and enjoyed the benefits, they cannot go behind the concluded contract and claim further benefits. It must be remembered that a Voluntary Retirement Scheme is formulated and conceived in public interest. Interest of the respondent bank is also to be taken into consideration."

Having stated the various views taken by the High Courts I may now refer to certain authorities dealing with these kind of schemes. In Arikaravula Sanyasi Raju v. Branch Manager, State Bank of India, Visakhapatnam (A.P.) and others[4] the question arose whether an officer who is removed from service on finding of misconduct would be entitled to get the relief of pension under Rule 22 of the State Bank of India Service Rules. In the said case the High Court had directed the payment of provident fund in terms of rules but denied the relief of pension. The Court referred to Rule 22 of

the rules and opined had the officer sought retirement on that basis and allowed the retirement from service he would have been entitled to pension on completion of 20 years of pensionable service but removal would not entitle him to get pension. Interpreting Clause 22(i)(c) the two-Judge observed thus:-

"Clause 22(i)(c) envisage only that after completing 20 years of pensionable service, if an incumbent retired at his request in writing and was permitted to retire, he would be entitled to pension. In other words, for voluntary retirement, on completion of 20 years of pensionable service, clause (c) of Rule 22(1) gets attracted"

In *V. Kasturi v. Managing Director, State Bank of India, Bombay and another*[5] though the Court was dealing with eligibility to be entitled for pension under Rule 22(i)(c) yet it reproduced the rule, referred to the contentions and came to hold as follows:-

"12. On a close look at the relevant provisions of the Rules, it is not possible to agree with this contention. The appellant, in order to earn pension under Rule 22(1) clause (c) as amended in 1986 has to satisfy the following twin conditions:

(i) at the time when the amended clause (c) applied, i.e., from 22-9-1986, he should be a member of the pension fund;

(ii) he should have by then completed 20 years of pensionable service, and should have put forward his requisition in writing for availing the benefit of the said provision.

Unless both these conditions are satisfied the amended clause (c) of Rule 22(1) cannot apply in his case."

The afore-referred two decisions show how the Court had perceived the rule position.

In *Vice-Chairman and Managing Director, A.P. SIDC Ltd. and another v R. Varaprasad and others*[6] while dealing with the concept of voluntary retirement schemes the Court has ruled that:-

"All employees who accepted VRS could be relieved at a time or batch by batch depending on availability of funds. Further funds may be made available early or late. If the argument of the respondents that relieving date should be taken as effective date for calculating terminal benefits and financial package under VRS, the dates may be fluctuating depending on availability of funds. Hence it is not possible to accept this argument. When the employees have opted for VRS on their own without any compulsion knowing fully well about the Scheme, guidelines and circulars governing the same, it is not open to them to make any claim contrary to the terms accepted. It is a matter of contract between the Corporation and the employees. It is not for the courts to rewrite the terms of the contract, which were clear to the contracting parties, as indicated in the guidelines and circulars governing them under which

Voluntary Retirement Schemes floated."

In O.P. Swarnakar (supra) the question arose whether an employee who opts for voluntary retirement pursuant or in furtherance of scheme floated by the Nationalised Banks and the State Bank of India would be precluded from withdrawing the said offer. The court dealing with the concept of voluntary retirement held as follows:-

"59. The request of employees seeking voluntary retirement was not to take effect until and unless it was accepted in writing by the competent authority. The competent authority had the absolute discretion whether to accept or reject the request of the employee seeking voluntary retirement under the Scheme. A procedure has been laid down for considering the provisions of the said Scheme to the effect that an employee who intends to seek voluntary retirement would submit duly completed application in duplicate in the prescribed form marked "offer to seek voluntary retirement" and the application so received would be considered by the competent authority on first-come-first-serve basis. The procedure laid down therefor suggests that the applications of the employee would be an offer which could be considered by the bank in terms of the procedure laid down therefor. There is no assurance that such an application would be accepted without any consideration.

60. Acceptance or otherwise of the request of an employee seeking voluntary retirement is required to be communicated to him in writing. This clause is crucial in view of the fact that therein the acceptance or rejection of such request has been provided. The decision of the authority rejecting the request is appealable to the Appellate Authority. The application made by an employee as an offer as well as the decision of the bank thereupon would be communicated to the respective General Managers. The decision-making process shall take place at various levels of the banks."

Eventually analyzing the stand of various banks the court expressed thus:-

"90. The basic concept of the Scheme, therefore, underwent a change which also goes to show that the banks had sought to invoke their power of amending the Scheme. Once the Scheme is amended and/or an apprehension is created in the mind of the employees that they would not even receive the entire benefits as envisaged under the Scheme, they were entitled to revoke their offers. Their action in our considered opinion is reasonable. It may be that some of the employees only opted for the provident fund benefit which did not undergo any amendment but the same would not change the attitude on the part of the banks."

In HEC Voluntary Retd. Employees Welfare Society and Another v. Heavy Engineering Corpn. Ltd. and others[7] the Court referring to concept of voluntary retirement opined that an offer for voluntary retirement in terms of a scheme, when accepted, leads to a concluded contract between the employer and the employee. In terms of such a scheme, an employee has an option either to

accept or not to opt therefor. The scheme is purely voluntary, in terms whereof the tenure of service is curtailed, which is permissible in law. Such a scheme is ordinarily floated with a purpose of downsizing the employees. It is beneficial both to the employees as well as to the employer. Such a scheme is issued for effective functioning of the industrial undertakings. The court further observed that although the Company is a "State" within the meaning of Article 12 of the Constitution, the terms and conditions of service would be governed by the contract of employment. Thus, unless the terms and conditions of such a contract are governed by a statute or statutory rules, the provisions of the Contract Act would be applicable both at the formulation of the contract as also the determination thereof. By reason of such a scheme, it only is an invitation of offer floated. When pursuant to or in furtherance of such a Voluntary Retirement Scheme an employee opts therefor, he makes an offer which upon acceptance by the employer gives rise to a contract. Thus, as the matter relating to voluntary retirement is not governed by any statute, the provisions of the Contract Act, 1872, therefore, would be applicable too. In this context reliance was placed on O.P. Swarankar's case (supra). After so stating, the Court ruled:

"We have noticed that admittedly thousands of employees had opted for voluntary retirement during the period in question. They indisputably form a distinct and different class. Having given our anxious consideration thereto, we are of the opinion that neither are they discharged employees nor are they superannuated employees. The expression "superannuation"

connotes a distinct meaning. It ordinarily means, unless otherwise provided for in the statute, that not only he reaches the age of superannuation prescribed therefor, but also becomes entitled to the retiral benefits thereof including pension. "Voluntary retirement" could have fallen within the aforementioned expression, provided it was so stated expressly in the Scheme.

Financial considerations are, thus, a relevant factor both for floating a scheme of voluntary retirement as well as for revision of pay. Those employees who opted for voluntary retirement, make a planning for the future. At the time of giving option, they know where they stand. At that point of time they did not anticipate that they would get the benefit of revision in the scales of pay. They prepared themselves to contract out of the jural relationship by resorting to "golden handshake". They are bound by their own act. The parties are bound by the terms of contract of voluntary retirement. We have noticed hereinbefore that unless a statute or statutory provision interdicts, the relationship between the parties to act pursuant to or in furtherance of the Voluntary Retirement Scheme is governed by contract. By such contract, they can opt out of such other terms and conditions as may be agreed upon. In this case the terms and conditions of the contract are not governed by a statute or statutory rules."

In the said case the court referred to V. Kasturi Case (supra) and understood it in the following manner:-

"It has not been suggested that voluntary retirement, in the absence of any express statutory rule governing the field, would bring about a case of superannuation. In V. Kasturi, a new rule was introduced providing for pension of an employee after

retirement on completion of 20 years of service, provided he requested in writing therefor. The questions which fell for consideration therein were that if a person was eligible for pension at the time of his retirement and if he survives till the time of subsequent amendment of the relevant Pension Scheme, whether he would become entitled to enhanced pension or would become eligible to get more pension as per the new formula of computation of pension. In the fact situation obtaining therein, it was held that employees could be divided in two [pic]categories i.e. those who were eligible for pension at the time of their retirement and those who were not. Whereas in the case of first category the benefit of the amended provisions would be applicable, but in the second it would not. V. Kasturi also, thus, in our opinion, is not applicable to the fact of the present case."

In this backdrop, I am required to scan the anatomy of Rule 22 and the appropriate interpretation is required to be placed on the same. Rule 22(i) (a) postulates that members shall be entitled to pension under the said rule on retiring from the bank's service. Thus, the key word is retiring from bank's service. The said rule when understood in proper perspective, covers cases of normal retirement/superannuation. There are various compartments and each compartment has different criterion. An employee, who has completed 20 years of pensionable service and has attained the age of 50 years, would be entitled to get the pension under the rules. This is one compartment. Second one, as is envisaged, carves out an exception to the first part, which stipulates that when an employee who is working in the bank on or after 01.11.1993 and has completed 10 years of pensionable service, shall be entitled for pension provided he has attained the age of 58 years. The third part of the rule stipulates that all employees who are in service of the bank or after 22.05.1998 and have put in 10 years of pensionable service, to be eligible for pension provided they have attained the age of 60 years i.e. age of superannuation. As the facts would demonstrate, in the instant case, the employees/respondents, before attaining the age of superannuation, sought voluntary retirement under the Scheme.

At this juncture, it is relevant to state Rule 22(i)(b) which provides that an employee who has completed 20 years of pensionable service, irrespective of age, if he satisfies the authority competent to sanction retirement by appropriate medical certificate or otherwise that he is incapacitated for further active service, he would be entitled to pension. This clause does not cover the present respondents. Clause 22(i)(c) deals with entitlement of pension by an employee if he has completed 20 years of pensionable service irrespective of age, if he seeks retirement at his own request in writing. It is the stand of the Bank that Rule 22(i)(c) was added on 20.09.1986 for the specific purpose of granting pension to those who have voluntarily retired. As is evident from the factual score under the SBI VRS, the employees were required to submit written applications seeking voluntary retirement under the Scheme. When the scheme was in operation, the competent authority i.e. Deputy Managing Director had issued a circular dated 10/15.1.2001 clarifying the position that the employees could withdraw their applications made under SBI VRS by 15.2.2001 and those employees who have not completed 20 years of pensionable service, are not eligible for pension. There can be no doubt, by abundant caution, the bank issued a clarificatory circular. The said circular cannot be given any type of nomenclature other than a clarificatory circular, despite treated as such. It is graphically clear from the same that an employee who has completed 20 years of

pensionable service would be entitled to pension, even if they seek voluntary retirement under SBI VRS. It was open to the employees to withdraw their applications under SBI VRS by 15.2.2001. The respondent-employees, as is manifest, chose not to withdraw. In these circumstances, the question arises whether any part of Rule 22 would apply to the respondent for extension of benefit of pension. As has been elaborated earlier, Clause 22(i)(a) and 22(i)(b) are not applicable to them.

Mr. Rohtagi, learned Attorney General, has submitted that on 30.1.2001, the SBI Employees Pension Fund Rules was amended by the Central Board of SBI. The SBI VRS was in operation from 15.1.2001 to 31.1.2001. The employees were at liberty, as has been stated earlier, to withdraw by 15.2.2001. Admittedly, the Rule was in force on 30.1.2001. The employees were very well aware about the amended Rule. There can be no scintilla of doubt that the Rule existed as on 31.1.2001. If an employee wanted to withdraw, he could have withdrawn prior to 15.2.2001 but as is the admitted position, none of the employees withdrew. There is no cavil over the fact that the employees had accepted all the benefits of the VRS. The crux of the matter is whether the respondents can get the benefit, despite the amendment brought to the Rules.

In *Arikaavula Sanyasi Raju* (supra), it has been clearly held, for voluntary retirement on completion of 20 years of pensionable service, clause (c) of Rule 22(i) gets attracted. Another aspect needs to be noted. The SBI Pension Rules have been framed under Section 50 of the SBI Act, 1955. The Rules have statutory force. The concept of any kind of promissory estoppel, if any, could not be applicable to promote or condone the breach of law.

In *Bangalore Development Authority & Ors. Vs. R. Hanumaiah & Ors.*[8] it has been held that rule of promissory estoppel cannot be availed to permit or condone a breach of law. It cannot be invoked to compel the Government to do an act prohibited by law, for such a direction would be against the statute. To arrive at the said conclusion, the two-Judge Bench placed reliance on *TISCO Ltd. V. State of Jharkhand*[9], *Hira Tikkoo V. Union Territory, Chandigarh*[10] and *Savitaben Somabai Bhatiya V. State of Gujarat*[11].

The High Court, to sustain its conclusion, has referred to Clause 6(c) of the Scheme which postulates that the benefits shall be granted to the employee which include the pension and the said pension shall be granted in terms of the State Bank of India Employees Pension Fund Rules on the relevant date. The High Court referred to Rule 22(i) prior to the amendment i.e. 09.03.2001. The unamended portion of the Rule reads as follows:

"After having completed 20 years' pensionable service provided that he has attained the age of 50 years or if he is in service of the Bank on or after 01.11.1993, after having completed 10 years pensionable service provided that he has attained the age of 58 years."

After the amendment that was incorporated on 9.3.2001, the Rule reads as under:

"After having completed 20 years' pensionable service provided that he has attained the age of 50 years or if he is in service of the Bank on or after 01.11.1993, after having

completed 10 years pensionable service provided that he has attained the age of 58 years or if he is in the service of the Bank on or after 22.05.1998, after having completed 10 years pensionable service provided that he has attained the age of 60 years".

Analysing the said Rule, the High Court opined that the employees would be covered under second part of clause (a) of Rule 22(i) which was in existence on the date when the petitioner submitted his request for voluntary retirement. That apart, the High Court has also held even after amendment on 09.03.2001, by which another clause has been added, that is, third part of clause (a), would not affect the claim of the employees for pension as he is entitled to pension in the second part of Rule 22(i) (a). Here, as I find, the High Court has opined as the respondent was in service of Bank on 1.11.1993 and had completed 10 years of pensionable service and attained the age of 58 years, he would be entitled to pension. There is no doubt that the Government of India, on 22.5.98, advised all the banks that the age of retirement would be 60 years. Accordingly, the Board of SBI, on 22.5.1998 itself, passed a resolution whereby it fixed the age of retirement 60 years w.e.f. that date. As a consequence of re-fixation of age of retirement, the rules were amended and third part of Rule 22(i)(a) was added for all employees who were in service of the bank on or before 22.5.98 and had put in 10 years of pensionable service to be eligible for pension benefit provided that they have attained the age of 60 years. As has been stated earlier, the respondents had not retired on attaining the age of superannuation but sought voluntary retirement under the SBI VRS. The Bank has placed reliance on the clarificatory circular issued by the Deputy Managing Director on 10/15.1.2001, which lays a postulate that employees who have not completed 20 years of pensionable service are not eligible for pension.

In this context, reference may be made to a decision in Bank of Baroda & Others V. Ganpat Singh Deora[12], wherein the Court was interpreting Bank of Baroda (Employees) Pension Regulations 1995. In the said case, the Bank of Baroda had introduced "Bank of Baroda Employees Voluntary Retirement Scheme 2001" and under the Scheme along with terminal benefits pension in terms of 1995 Regulations was to be provided to the employees who opted for the VRS Scheme. The respondent-employee therein, after accepting voluntary retirement, filed an application for claiming pension which was opposed by the Bank in terms of Regulations 14, 28 and 29 of the Pension Regulations 1995. Eventually, the matter travelled to the Tribunal, who, by its award, allowed the respondent's claim and directed the Bank to pay to the respondent pension according to the Pension Regulations. Against the award passed by the Industrial Disputes Tribunal, the Bank preferred a writ petition before the High Court but the said challenge did not meet with any success. This Court referred to the language of the Scheme and opined as follows:

"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, [pic]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.

29. Furthermore, Regulation 2 of the Voluntary Retirement Scheme, 2001 of the appellant Bank merely prescribes a period of qualifying service for an employee to be eligible to apply for voluntary retirement.

30. On the other hand, Regulations 14 and 29 of the Pension Regulations, 1995, relate to the period of qualifying service for pension under the said Regulations, in two different situations. While Regulation 14 provides that in order to be eligible for pension an employee would have to render a minimum of 10 years' service, Regulation 29 is applicable to the employees choosing to retire from service prematurely, and in their case the period of qualifying service would be 15 years".

After so stating, the Court further opined thus:

"31. The facts of the present case, however, do not attract the provisions of Regulation 29 since the respondent accepted the offer of voluntary retirement under the Scheme framed by the Bank and not on his own volition dehors any scheme of voluntary retirement. In such a case, Regulation 14 read with Regulation 32 providing for premature retirement would not also apply to the case of the respondent. While Regulation 2 of the BOBEVRS, 2001 speaks of eligibility for applying under the Scheme, Regulation 14 of the Pension Regulations, 1995, contemplates a situation whereunder an employee would be eligible for premature pension. The two provisions are for two different purposes and for two different situations. However, Regulation 28 of the Pension Regulations, 1995, after amendment made provision for situations similar to the one in the instant case.

32. In the absence of any particular provision for payment of pension to those who opted for BOBEVRS, 2001 other than Regulation 11(ii) of the Scheme, we are once again left to fall back on the Pension Regulations, 1995, and the amended provisions of Regulation 28 which bring within the scope of superannuation pension employees who opted for the Voluntary Retirement Scheme, which will be clear from the explanatory memorandum. However, the period of qualifying service has been retained as 15 years for those opting for BOBEVRS, 2001 and is treated differently from premature retirement where the minimum period of qualifying service has been fixed at 10 years in keeping with Regulation 14 of the Pension Regulations, 1995.

33. We are, therefore, of the view that not having completed the required length of qualifying service as provided under Regulation 28 of the 1995 Regulations, the respondent was not eligible for pension under the Pension Regulations, 1995 of the appellant Bank."

Being of this view, the Court allowed the appeal preferred by the Bank.

In Bank of India and Another V. K. Mohandas and Others[13], the Court referred to Regulation 28 of the Employees' Pension Regulations 1995, which had provided superannuation pension and Regulation 29 provided pension on voluntary retirement. After referring to series of decisions, the Court held thus:

"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 no violence to the meaning of which they are naturally susceptible. (North Eastern Railway Co. v. Lord Hastings[14])

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 [pic]the terms applied by one party are unclear, an interpretation against that party is preferred (*verba chartarum fortius accipiuntur contra proferentem*)".

Thereafter, the Court adverted to intention of the Banks at the time of bringing out VRS 2000. The Court observed that if the intention was not to give pension as provided under Regulation 29 and particularly sub- Regulation (5) thereof, they could have said so in the Scheme itself. The Court also reproduced the communication dated 5.9.2000 sent by the Government of India, Ministry of Finance, Department of Economic Affairs, Banking Division to the Personnel Advisor, Indian Banks Association and came to hold as follows:

"39. Two things immediately become noticeable from the said communication. One is that as per Regulation 29 of the Pension Regulations, 1995, an employee can take voluntary retirement after 20 years of qualifying service and become eligible for pension. The other thing is that the Scheme provides that the employees with 15 years of service or 40 years of age shall be eligible to take voluntary retirement under the Scheme and under Regulation 29, the employees having rendered 15 years of service or completed 40 years of age but not completed 20 years of service shall not be [pic]eligible for pensionary benefits on taking voluntary retirement under the Scheme.

40. The use of the words "such employees" in the communication is referable to employees having rendered 15 years of service but not completed 20 years of service and, therefore, it was decided to bring an amendment in the Regulations so that the employees having not completed 20 years' service do not lose the benefit of pension. The amendment in Regulation 28, as is reflected from the afore referred communication, was intended to cover the employees who had rendered 15 years' service but not completed 20 years' service. It was not intended to cover the optees who had already completed 20 years' service as the provisions contained in Regulation 29 met that contingency.

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43. It was submitted that by such construction a class within the class would be created which is impermissible. We do not agree. If a special benefit under Regulation 29(5) is available to the employees who had completed 20 years of service or more, by no stretch of imagination, can it be said that it is discriminatory to those employees who had completed 15 years of service but not completed 20 years. In view of the provision contained in Regulation 29(5), if the optees who have not completed 20 years get excluded from the weightage of five years which has been given to the optees who have completed 20 years of service or more, it is no discrimination. Such provision can neither be said to be arbitrary nor can be held to be violative of any constitutional or statutory provisions. The weightage of five years under Regulation 29(5) is applicable to the optees having service of 20 years or more. There is, thus, basis for additional benefit. Merely because the [pic]employees who have completed 15 years of service but not completed 20 years of service are not entitled to weightage of five years for qualifying service under Regulation 29(5), the employees who have completed 20 years of service or more cannot be denied such benefit.

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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.

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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".

In the said case, the decision rendered in Bank of Baroda (supra) was distinguished by stating thus:

"63. The decision of this Court in Bank of Baroda is, thus, clearly distinguishable as the employee therein had not completed qualifying service much less 20 years of service for being eligible to the weightage under Regulation 29(5) and cannot be applied to the present controversy nor does that matter decide the question here to be decided in the present group of matters".

Eventually, the Court concluded thus:

"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."

Recently, in State Bank of Patiala V. Pritam Singh Bedi & Others[15], the Court was dealing with the State of Bank of Patiala Voluntary Retirement Scheme, 2000, introduced by a circular dated 20.1.2001. The Court quoted in extenso from K. Mohandas & Others (supra). Thereafter the Court referred to Clause 3 and 7. Clause 7 thereof dealt with other benefits including pension or Bank's

contribution to provident fund as the case maybe as per rules applicable on the relevant date on the basis of actual years of service rendered. The Court also took note of Regulation 2(w) and 2(y) of State Bank of Patiala (Employees) Pension Regulations, 1995. Regulation 2(w) defined "qualifying service" and 2(y) defined "retirement". Regulation 2(y)(b) referred to voluntary retirement in accordance with provisions contained in Regulation 29 of the Regulations. Reference was also made to Regulation 14 that defined "qualifying service" which stipulates that employee who has rendered a minimum of ten years in the bank from the date of his retirement or on the date on which he is deemed to have retired shall qualify for pension. Reference was also made to Regulation 18 which prescribes how the broken period of service of less than one year has to be computed. Regulation 28 thereof dealt with superannuation pension and Regulation 29 related to pension on voluntary retirement. Scanning the various provisions of the Regulations, the Court held thus:

"22. The Respondents completed more than 10 years of service in the Bank on the date of retirement; therefore, they fulfill the requirement of qualifying service as per Regulation 14.

23. It has not been disputed by Appellant-Bank that the Respondents in all the appeals have completed much more than 19 years 6 months of service in the Bank. For example, Respondent No. 1-Prakash Chand in C.A. No. 173 of 2010 had joined the Bank on 4th May, 1981 and relieved on 31st March, 2001. Thus, he had completed 19 years, 10 months and 28 days of qualifying service on the date of relieving from service.

24. Regulation 18 of the Pension Regulations, 1995 provides that if broken period is more than six months, it shall be treated as one year. Therefore, all the Respondents-writ Petitioners having completed more than 19 years and 6 months of service in the Bank, they are to be treated to have completed 20 years of service. The aforesaid question was neither raised nor decided in the case of 'Bank of Baroda' or 'Bank of India'.

25. In view of the aforesaid fact, the Appellant-Bank cannot derive the benefit of the decision of this Court in Bank of Baroda as the employees who were parties before the Court in the said case had not completed 20 years of service. As per the decision of this Court in Bank of India, the Respondents-writ Petitioners having completed 20 years of service are entitled to the benefit of Regulation 29."

Keeping in view the aforesaid pronouncements, I shall advert to the Regulations and the Scheme in question. From the aforesaid two decisions, it is graphically clear that the Court has read into the scheme, Regulations governing the pension. In the case at hand, as I find, the Regulation 22(i)(a) refers to three categories; twenty years of pensionable service and attaining age of fifty years, or as on 1.11.1993 an employee in service has completed ten years of pensionable service provided he has attained the age of fifty-eight years, or an employee to be in service of the Bank on or after 22.05.1998 and has completed ten years of pensionable service provided that he has attained the age of sixty years. The High Court has held that the employees would be covered under second part of

Clause (a). I have already dealt with clause (b). Mr. Rohtagi has heavily relied on Clause 22(i)(c). It really requires close scrutiny. It stipulates that a member shall be entitled to pension on completion of 20 years of pensionable service irrespective of the age he has attained if the retirement is at his own request in writing. Thus, there is a distinction between a normal retirement and a voluntary retirement. A voluntary retirement stands in a distinction to retirement and also retirement which comes under Clause 22(i)(b) which dwells on sanction of competent authority and member being incapacitated. A scheme has come into existence because of certain objectives. The objectives of the scheme were to have a balanced age-profile providing for mobility, training, development of skills and succession plans for higher-level positions, to provide for an exit for employees who have an honest feeling that they should now retire and take rest or that there are better opportunities elsewhere, to have overall reduction in the existing strength of the employees and to increase productivity and profitability. Clause 3 of the Scheme provides eligibility criterion. It reads as follows:

"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 December 2000. Age will be reckoned on the basis of the date of birth as entered in the service record."

Clause 4 deals with ineligibility which need not be referred to. Clause 5 deals with amount of ex-gratia. Clause 6 deals with other benefits which I have already referred to. Clause 6(c) clearly stipulates that an employee seeking voluntary retirement would have the benefit of pension in terms of State Bank of India Employees' Pension Fund Rules on the relevant date.

40. In this context, what I have noticed in the case of K. Mohandas (supra) that the Court has referred to the Scheme to understand the true meaning of several clauses; formulation of the contractual scheme where reference has been made to Pension Regulations 1995 of the Banks which were in appeal before this Court and the special salient features of the scheme which stipulated that an employee whose application for voluntary retirement is accepted and relieved from the Bank shall be eligible 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. The Court also referred to Regulations 28 and 29, which deals with superannuation pension and the pension on voluntary retirement respectively. The Court also took note of the fact that all employees who have completed 20 years of service and the amendment in Regulation 28, which was carried out in 2002 with retrospective effect from 1.9.2000 and the amendment inserted a proviso which provided that pension shall also be granted to an employee who opts to retire before attaining the age of superannuation but after having served for a minimum period of 13 years in terms of any scheme that may be framed for the purpose by the Bank's Board with the concurrence of the Government. The Court took note of the fact that the benefits provided under Regulation 29 were not found to be attractive by the employees and, therefore, the necessity arose for floating a special scheme i.e. VRS-2000. The grievance of the optees in the case was that they were given the retiral benefits by the respondent- Bank under VRS-2000 save and except the benefit of pension under Regulation 29(5). Regulation 29(5) in the case of those banks is as follows:

"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".

One of the contentions canvassed by the Bank was that the Regulation 29 does not cover the persons retired under VRS-2000 which is dehors the statutory scheme for voluntary retirement. The counter submission on behalf of the employees was that by making provisions in the scheme that the optees would be eligible for the benefits in addition to the ex-gratia amount, inter alia, pension as per the Pension Regulations, 1995, the employees understood that what was contemplated was pension under Regulation 29 and, therefore, any ambiguity in VRS 2000 ought to have been construed and harmonized with the intention of the parties; Regulation 29 was the only regulation under the Pension Regulations, 1995, applicable to the voluntary retirement and, therefore, Regulation 29, ipso facto, became the terms of the contract; and that each and every paragraph of Regulation 29 can be made applicable to an optee of more than 20 years of service without coming into conflict with any provision of the scheme; the notice period of three months in Regulation 29(3) can be waived at the discretion of the banks. The Court posed the questions as follows:

"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?"

To examine the question posed, the Court thought it appropriate 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.

I have already referred to Clause 6 of the Scheme, which deals with 'other benefits'. Sub-clause (3) of Clause 6 stipulates that an employee would be entitled to get pension in terms of the State Bank of India Employees Pension Fund Rules on the relevant date. The High Courts have placed reliance on the second part of Rule 22(i)(a). Similar contention has been advanced before us. Per contra, Mr. Rohtagi would submit that it is Rule 22(i)(c) which would be applicable. I find force in the said submission, for Rule 22(i)(a) deals with the concept of retirement and 22(i)(c) deals with the concept of retirement on request. In K. Mohandas (supra), the Rule was read into the Scheme in the absence of any other postulate. Same is the case here and, therefore, I read the Rule to the Scheme. Interpreting the 1995 Regulations, this Court had said that it will apply in entirety and, therefore, benefit was extended in Rule 29(5). Be it noted, in the said Regulation, it was categorically provided that pensionary benefits should be available to a person seeking voluntary retirement if he has put in 20 years of service. Same is the provision here, that is, 20 years of service irrespective of the age. As some doubts had arose, a clarificatory circular was issued on 10.1.2001. Relevant part has already

been reproduced earlier. It has been clearly clarified that as per existing Rules, employees who have not completed 20 years of Pensionable Service are not eligible for pension. This clarification is in consonance with the Rules. The amendment facet which has come into existence afterwards is absolutely inconsequential as it deals with different facets of Rule 22(i)(a). In this context, reference to circular dated 11.1.2001 is absolutely necessitous. The relevant part reads as follows:

"In this connection, queries have been raised whether an employee who submits his application for retirement under SBIVRS can withdraw such an application subsequently. Corporate Centre have examined the issue and have advised that the scheme is purely voluntary. The role of the employee is active. It is his conscious decision and there will be no reason for his withdrawal of application at a later date. However, there could be few, yet genuine cases where the employees would like to withdraw the application submitted under the scheme for various reasons. It has, therefore, been decided that the employee who has submitted an application for retirement under SBIVRS may be permitted to withdraw the application on or before 15th February, 2001. For this purpose, the employee will have to make a written request which must reach the Branch Manager/head of the Department/ Head of the Unit i.e. authority to whom the application for retirement under SBIVRS has been submitted, on or before 15.02.2001. The authority receiving the applications for withdrawal must forward it to the competent authority immediately but not later than the following day and obtain a confirmation to that effect from the competent authority."

Both the circulars were almost simultaneous and both were within the knowledge of the employees and if an employee desired to withdraw, he could have done so as time was there till 15.2.2001. None of the respondents chose to withdraw. In the absence of withdrawal, there cannot be any trace of doubt that the employees would be governed by the rules existing at the time of floating of the Scheme which has to be read into the Scheme, for the Scheme clearly stipulates that the employees availing the benefit of the Scheme would be entitled to pension as per the Pension Rules. I have already scanned the anatomy of the Rules and I notice that there is a categorical distinction between 'retirement' and 'voluntary retirement'. In all the impugned judgments, as I find, the High Courts have not appreciated the said distinction and applied the Rule pertaining to normal retirement. If the decisions in K. Mohandas (supra) and Ganpat Singh Deora (supra) are read carefully, it will go a long way to show that a voluntary retirement and retirement are distinguishable, if the Rule/Regulations/Scheme distinguishes. In the case at hand, it is clear as day that the Rule carves out two categories of retirement, one, normal retirement on superannuation and second, retirement on request i.e. voluntary retirement, ordinarily called the golden handshake and, therefore, the scheme was floated. In the instant case, as I perceive, the Scheme which is more beneficial was provided. It had the pension and the ex-gratia. However, it had a condition as enumerated in the Rule that if an employee had not completed 20 years of service, as per Rule 22(i)(c), he would not get pension. In K. Mohandas (supra), if an employee has completed 20 years of service, apart from pensionary benefits, he would also get the benefit under Regulation 29(5) as stipulated therein. To elaborate, unless one is not entitled to pension, the other additional benefits pertaining to pension do not arise. I may hasten to add that I am only concerned with the concept of voluntary retirement

under the Rules and the Scheme and as I find, the Rule cannot be interpreted as employees would be entitled to pension. That is neither the intention nor the spirit of the Rule, which has to be read into the Scheme as a part of it. I have been apprised with regard to the relevant details of the respondents herein. It is as follows:

NAME OF THE RESPONDENT	LENGTH OF SERVICE	AGE AS OF 31.03.2001	EX-GRATIA AMOUNT PAID
Radhey Shyam Pandey	19 yrs. 8 months	59 yrs. 3 months	Ex-Gratia-Rs.6,20,014/-
Mihir Kumar	12 yrs. 3 months	58 yrs.	Ex-Gratia-Rs.2,46,576/-
Nandi C.A.No.	24 days	1 month	-
M.P. Hallan	19 yrs. 4 months	58 yrs. 11 months	Ex-Gratia-Rs.5,55,108/-
R.P. Nigam	16 yrs 6 months	56 yrs. 11 months	Ex-Gratia-Rs.4,40,037/-

In the case at hand, unlike the decision of Ganpat Singh Deora (supra), there is no provision for computation of broken period and, therefore, unless an employee has completed 20 years of service, he would not be entitled to pension. Therefore, I have no hesitation in holding that the impugned judgments and orders passed by various High Courts, namely, High Court of Judicature at Allahabad, Punjab & Haryana High Court at Chandigarh and High Court of Calcutta are unsustainable in law and accordingly I set aside the same.

Consequently, the appeals are allowed and the impugned judgments and orders are set aside. In the facts and circumstances of the case, there shall be no order as to costs.

.....J. [Dipak Misra] New Delhi;

February 26, 2015 IN THE SUPREME COURT OF INDIA CIVIL APPELLATE JURISDICTION CIVIL APPEAL NO.2463 OF 2015 (ARISING OUT OF S.L.P. (C) NO. 3686 of 2007) ASSISTANT GENERAL MANAGER, STATE BANK OF INDIA & ORS.APPELLANTS VERSUS RADHEY SHYAM PANDEYRESPONDENT WITH C.A. NOS.2287-2288 of 2010 State Bank of India & Ors APPELLANTS VERSUS M.P. HALLAN & ANR. RESPONDENTS C.A. NOS.5035-5037 of 2012 CHAIRMAN, State Bank of India & Ors. APPELLANTS VERSUS MIHIR KUMAR NANDI & ANR. RESPONDENTS AND C.A. NO. 10813 of 2013 STATE BANK OF INDIA & ORS.APPELLANTS VERSUS RAMESH PRASAD NIGAMRESPONDENT J U D G M E N T V. GOPALA GOWDA, J.

I had the opportunity to read the opinion of my brother Judge, Justice Dipak Misra and I am in respectful disagreement with the opinion rendered by him in the present appeals.

2. Leave granted in SLP (C) No. 3686 of 2007. The appellant Bank-the State Bank of India, on the recommendation of the Indian Banks Association (in short "IBA"),

introduced a scheme titled 'SBI Voluntary Retirement Scheme, 2000 (in short 'SBI-VRS'). This scheme was introduced by SBI despite there being provisions in the State Bank of India Employees' Provident Fund Rules, for its employees to avail premature retirement/resignation/voluntary retirement. SBI-VRS was in operation for a limited period and was introduced by the appellant Bank with package for the purpose specified in the scheme.

3. It is the claim of the appellant Bank that clause 6(c) of the SBI-VRS provided for "other benefits" which is, "Pension in terms of the SBI Employees' Pension Fund Rules on the relevant date (including the commuted value of pension).

4. It is the further claim of the appellant Bank that the employees who applied for retirement under SBI-VRS will be bound by the circular dated 11.01.01, issued by the competent authority viz., Dy. Managing Director of the Bank clarifying that:-

".... However, as per existing rules employees who have not completed 20 years of pensionable service are not eligible for pension."

The respondents, who were employees of the State Bank of India, applied for voluntary retirement under SBI-VRS on different dates between 15.1.2001 and 31.1.2001. Their applications got accepted and they stood retired from the bank service with effect from 31.3.2001.

5. In the meanwhile, a parallel development had taken place in the appellant Bank with respect to its employees' Pension Fund Rules. On 31.1.2001, the age of normal retirement of the employees working in the appellant Bank was extended from 58 years to 60 years. Accordingly, the Service Rule as well as Rule 22(i)(a) of the SBI Pension Fund Rules was amended wherein it was added that a member would be entitled to pension :

"..... if he is in the service of the bank on or after 22.5.1998, after having completed 10 years pensionable service provided that he has attained the age of 60 years."

6. The respondents made representations where they sought pension under Rule 22(i)(a) and were advised by the bank that they were not eligible for pension under Rule 22(i)(a). The respondents filed Writ Petitions before respective High Courts of their jurisdictions namely, the High Court of Judicature at Allahabad, High Court of Judicature at Kolkata and the High Court of Punjab and Haryana, which were allowed by both the Single Bench and the Division Bench of the High Court. Hence, the appeals are filed by the appellant Bank before this Court.

7. I am in respectful disagreement with the opinion rendered by my brother Judge in the present appeals. However, I intend to assign my reasons for the same, based on certain relevant considerations. The issues arising for deliberation in this case are as under:

Whether the respondents in the present appeals are to be considered for pension benefits under the provisions of Rule 22(i)(c) of the State Bank of India Employee's

Pension Fund Rules alone, as claimed by the appellant Bank?

Whether the State Bank of India is entitled to retain its own employment Rules which is not in consonance with the subsequent amendments made in the Employee's Pension Regulations, 1995 in all the public sector undertaking Banks in the light of the correspondence between the Finance Ministry and Indian Banks Association?

Under what legal provisions will the respondent employees be entitled to make their claims for pension?

Answer to Point no. 1

8. Pension benefits accrue upon an employee on retirement from his employment. Therefore, we first need to assess the definition of 'retirement' before answering the question on pension benefits for the respondents herein. Neither the State Bank of India Act, 1955 nor the State Bank of India Employees' Pension Fund Rules defines retirement. Therefore, I am inclined to read the definition of retirement as has been mentioned in the State Bank of Patiala Employee's Pension Regulation 1995 which provides for the definition of retirement from employment since the same is *pari materia* to the Employees' Pension Regulation 1995. Section 2(y) of the Regulation reads thus:

"2(y) 'retirement' means cessation from the Bank's service-

On attaining the age of superannuation specified in Service Regulations or Settlements;

On voluntary retirement in accordance with provisions contained in regulation 29 of these regulations;

On premature retirement by the Bank before attaining the age of superannuation specified in Service Regulations or Settlements."

In the present case, however, clause (b) of the definition will also be read in the light of the amended Regulation 28 which was intended to provide relief to the employees seeking voluntary retirement under the VRS 2000, after providing 15 years of pensionable service. Thus, from the above definition, one is left with no doubt that the employees who availed VRS 2000 have 'retired' from the Bank as per the definitions.

It is pertinent now to highlight the object and purpose of the SBI-VRS. At a meeting conducted on 13.6.2000 between the Finance Minister and the Chief Executives of the Public Sector Banks, the human resource and manpower planning in Public Sector Banks was reviewed. A committee was constituted to examine the issues confronting the Public Sector Banks in this regard and to suggest suitable remedial measures. The committee had observed that high establishment costs and low productivity in Public Sector Banks affect their profitability. It was hence, necessary to convert their human resources into assets compatible with business strategies through a variety of measures

including constant upgradation of skills, achieving proper age and skill profile, creating opportunities for lateral as well as vertical career progression and including fresh skilled personnel with technical and professional skills for new business opportunities.

9. The data available with IBA indicated that 43% of employees in Public Sector Banks are in the 46+ age group and only 12% are in the 25-35 years age group. This pattern of jobs in the public sector Banks, according to the committee, had serious implications for the Banks with reference to mobility, training, development of skills and succession plans for high level positions. This, coupled with excess manpower wherever it exists, would come in the way of induction of new skills and proper career progression.

The Committee had therefore recommended introduction of a Voluntary Retirement Scheme that would assist the Bank in their effort to optimize their human resources and achieve a balanced age skills profile in keeping in mind with the business strategies. The Banks were further advised by the IBA to implement the scheme in right earnest.

10. From the memorandum of the Voluntary Retirement Scheme presented by the appellant Bank itself, it is clear that the SBI-VRS scheme was introduced for the purpose of business enhancement and profitability of the Bank itself and not for the benefits of the employees per se. The intention of the Public Sector Banks including the appellant Bank, in introducing the VRS 2000, is rightfully highlighted in the decision of this Court in Bank of India v. K. Mohandas & Ors.[16] which read as under:

"36.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 overstaffed. The special Scheme was, thus, oriented to lure the employees to go in for voluntary retirement. In this background, the consideration that was to pass between the parties assumes significance and a harmonious construction to the Scheme and the Pension Regulations, therefore, has to be given".

(emphasis supplied) In ordinary situation, an employee who retires either on reaching the age of superannuation, or by request in writing after completing the prescribed number of years, become eligible to pension under the State Bank of India Employee's Pension Rules. The pertinent provisions under the SBI Employees Pension Rules relating to pension of employees, read as under:

"22. (i). A member shall be entitled to a pension under these rules on retiring from the Banks service-

a). After having completed twenty years' pensionable service provided that he has attained the age of fifty years or if he is in the service of the Bank on or after 1.11.93, after having completed ten years pensionable service provided that he has attained fifty eight years or if he is in the service of the Bank on or after 22.05.1998, after having completed ten years pensionable service provided that he has attained the age

of sixty years.

XXX XXX XXX

c). After having completed twenty years pensionable service, irrespective of the age he shall have attained at his request in writing. "

11. This situation is altered temporarily by the introduction of the SBI- VRS. Therefore, it is also important to understand the framework of SBI- VRS. In the absence of the SBI-VRS, the respondents had the option of seeking voluntary retirement under Rule 22(i)(c) which in fact, the respondents did not avail. Instead they availed the SBI-VRS. It is therefore pertinent to see how the SBI-VRS was functioning and what the respondents seeking SBI-VRS might have reasonably foreseen while availing the scheme. When the application of voluntary retirement of respondent Radhey Shyam Pandey was accepted by the appellant Bank on 18.3.2001, he still had about 9 months services left and he was 59 years and 3 months old.

As on 31st March, 2001, when his voluntary retirement from service became effective, he had been on pensionable service for 19 years, 9 months and 18 days.

12. If the respondent had chosen to retire by superannuation after attaining 60 years of age which was the normal age of retirement, he would have put in a little more than 20 years of pensionable service. He consequently, would have become eligible to pension. However, when he retired on 31.3.2001, he still had 2 and months short to complete 20 years of service. It is pertinent to understand what prompted him to opt for the SBI-VRS at this stage.

13. In clause 5 of the scheme, the incentive of the Voluntary Retirement Scheme is mentioned. It is an ex-gratia payment of 60 days salary for every year of completed service. Since, the respondent had finished 20 years of service approximately, he would have been entitled to 40 months of salary as ex-gratia.

Pension on the other hand, is calculated as half month's salary per month. Therefore, by utilizing the SBI-VRS, although the respondent had given up 9 months service still left, he would have gained 40 months incentive. To add to this, he becomes eligible for pension, then he in addition to ex-gratia, will get half month's salary as his pension from the time he retires. This can be considered as a good bargain from availing the SBI- VRS. On reasonable presumption, it can be ascertained that it is this benefit provided by the SBI-VRS through ex-gratia payment along with pension which prompted the employees in availing the benefits of the scheme rather than retiring on superannuation under the Rules.

14. On the other hand, if he is not entitled to pension, then availing SBI- VRS is unwise since the respondent has given up his half month's salary worth pension for his working period in return of 40 months' salary.

SBI-VRS is admittedly a contract between the Bank and its employees as has been recognized in the case of Bank of India v. K. Mohandas case mentioned supra. The application of the Voluntary Retirement Scheme meant that the Bank employees agreed with the Bank that it would be bound by the scheme thereby entering into a contract. However, clause 6(c) of SBI-VRS states:

"6. Other Benefits :

XXX	XXX	XXX
XXX	XXX	XXX

(c) Pension in terms of State Bank of India Employees' Pension Fund Rules on the relevant date (including commuted value pension)."

15. Considering that the incentives of SBI-VRS are distinct from the benefits provided under Rule 22(i)(c) of the State Bank Employees Pension Fund Rules and also, that Clause 6(c) of SBI-VRS does not specifically state that the pension benefits are to be provided under rule 22(i)(c) of SBI Employees Pension Fund Rules, the claim for pension by the respondents cannot be decided solely on the basis of the provision of Rule 22(1)(c) of the State Bank of India Employees' Pension Rules.

Answer to Point no. 2

16. It has been claimed by the appellant Bank that State Bank of India has its own Pension Rules that are different from the Employees' Pension Regulations 1995 which operate in the other Public Sector Banks. The claim made by the appellant Bank that it is not bound by the Pension Regulations 1995, is premised on the assumption that the employees of the State Bank of India form a distinct class of employment from the employees of the other Public Sector Banks on the ground of reasonable and intelligible differentia.

This conclusion by the appellant Bank is not warranted since all the employees of Public Sector Bank forms one homogenous class since all the fourteen Public Sector Banks which were formed under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 and the six banks under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980, are subject to the control of the Central Government. It is pertinent to note that Section 19 of both- The Banking Companies (Acquisition and Transfer of Undertakings) Acts of 1970 and 1980 and Section 50 of the State Bank of India Act, 1955, vest the power on the Central Government to make consistent rules for all the Public Sector Banks.

Section 50(2)(o) of State Bank of India Act, 1955 reads thus:

"50. Power of Central Government to make regulations: (1) The Central Board may, after consultation with the Reserve Bank and with the previous sanction of the Central Government [by notification in the Official Gazette] make regulations, not

inconsistent with this Act and the rules made thereunder, to provide for all matters for which provision is expedient for the purpose of giving effect to the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such regulation may provide for-

XXX XXX XXX

(o) The establishment and maintenance of superannuation, pension, provident or other funds for the benefit of the employees of the State Bank or of the dependent of such employees or for the purposes of the State Bank, and the granting of superannuation allowances, annuities and pensions payable out of any such fund;]"

17. The Central Government through a letter dated 5.9.2000 directed the Indian Banks Association to formulate a uniform norm for pensions for employees voluntarily retiring under SBI-VRS 2000 and the same was formulated by the Indian Banks Association on 11.12.2000. Therefore, the State Bank of India is bound by the directions issued in this regard by the Indian Banks Association under Section 50(2)(o) of the State Bank of India Act, 1955.

18. The appellant Bank, State Bank of India is an instrumentality of the State as has been held by this Court in the case of Bank of India & Ors. v. O.P. Swarnakar & Ors.[17] which reads as under:

"48...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 therefor. Their actions in this behalf must satisfy the test of Articles 14 and 21 of the Constitution of India.

Therefore, the appellant Bank cannot engage in acts which are antithetical to equality. In the case of E.P. Royappa v. State of Tamil Nadu[18], the constitution Bench of this Court held as under:

"Equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbed cabined and confined" within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Art. 14, and if it affects any matter relating to public employment, it is also violative of Art. 16. Arts. 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. They require that State

action must be based on valent relevant principles applicable alike to all similarly situate and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality. Where the operative reason for State action, as distinguished from motive inducing from the antechamber of the mind, is not legitimate and relevant but is extraneous and outside the area of permissible considerations, it would :amount to mala fide exercise of power and that is hit by Arts. 14 and 16."

19. Even though the SBI-VRS is in the nature of contract, it has to be interpreted under the scanner of Article 14 of the Constitution of India. In the process of implementation of the Voluntary Retirement Scheme on its own terms, the appellant Bank being an associate Bank of the Indian Banks Organization, it cannot set rules and procedures which deviates from the standard and safeguards set by the Central Government in consensus with the Indian Banks Association.

20. It is the claim of the appellant Bank that the SBI-VRS provides the optees with handsome ex-gratia amount on retirement. It does not however mean that the appellant is entitled to deprive the respondent of his pension on the ground that he has been given handsome ex-gratia amount under the scheme. Pension received by an employee upon his retirement is not a bounty as has been held in the case of Deokinandan Prasad v. State of Bihar[19] as under:

"Pension is not a bounty payable on the sweet will and pleasure of the Government and that, on the other hand, the right to pension is a valuable right..."

21. The same proposition of law was reiterated by the Constitution Bench of this Court in the case of D.S. Nakara v. Union of India[20] wherein this Court held as under:

"20. The antiquated notion of pension being a bounty, a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through court has been swept under the carpet by the decision of the Constitutional Bench in Deokinandan Prasad v. State of Bihar wherein this court authoritatively ruled that pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a government servant coming within rules is entitled to claim pension. It was further held that the grant of pension does not depend upon anyone's discretion. It is only for the purpose of quantifying the amount having regard to service and other allied matters that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of the order but by the virtue of rules. This view was reaffirmed in State of Punjab v. Iqbal Singh."

(emphasis supplied) Therefore, depriving the respondents seeking SBI-VRS of their right to pension solely on the ground that they have availed voluntary retirement under a scheme while providing less than 20 years of service and also on the ground that they have been provided with handsome ex-gratia amount on their retirement, is arbitrary and attracts the wrath of Article 14 of the

Constitution of India. This is particularly so, because SBI-VRS was introduced for the benefit of the Public Sector Banks which included the appellant Bank. It was not a welfare scheme which provided the respondents with multiple offers to choose from. Therefore, the appellant Bank at this stage, cannot absolve itself from the responsibility of granting the respondents what is due to them by virtue of providing pensionable services, on the pretext of having provided ex-gratia amount.

22. In another case of Roop Chand Adlakha v. Delhi Development Authority[21], this Court held as under:

"To overdo classifications is to undo equality. The idea of similarity or dissimilarity of situations of persons, to justify classifications, cannot rest on merely differentia which may, by themselves be rational or logical, but depends on whether the differences are relevant to the goals sought to be reached by the law which seeks to classify. The justification of the classification must needs, therefore, to be sought beyond the classification. All marks of distinction do not necessarily justify classification irrespective of the relevance or nexus of objects sought to be achieved by the law imposing the classification."

(emphasis supplied)

23. In the case on hand, the classification between employees who have voluntarily retired under the SBI-VRS and those who have retired under the same scheme introduced by the other Public Sector Banks, is not rational since they constitute the employees of the appellant Bank into a distinct class on the basis of the VRS 2000 scheme introduced by the appellant Bank and the same scheme introduced by other Public Sector Banks, with no intelligible differentia. The payment of ex-gratia cannot be held against the employees since it cannot be expected of a person to give up his service before superannuation without reasonable incentives. What the appellant Bank intends to show as the benefit of the employees seeking VRS under the scheme, is actually meant for the benefit of the appellant Bank itself.

24. In setting up schemes such as the SBI-VRS, the appellant Bank, which is the instrumentality of the State under Article 12 of the Constituion, cannot deviate from its constitutional duties as has been held in the case of D.S. Nakara v. Union of India (supra) :

"36. Having set out clearly the society which we propose to set up, the direction in which the State action must move, the welfare State which we propose to build up, the constitutional goal of setting up a socialist State and the assurance in the Directive Principles of State Policy especially of security in old age at least to those who have rendered useful service during their active years, it is indisputable, nor was it questioned, that pension as a retirement benefit is in consonance with and in furtherance of the goals of the Constitution. The goals for which pension is paid themselves give a fillip and push [pic]to the policy of setting up a welfare State because by pension the socialist goal of security of cradle to grave is assured at least when it is mostly needed and least available, namely, in the fall of life.

25. Moreover, this decision of the appellant Bank to distinguish between two sets of employees, goes against Article 39 of the Constitution of India which directs the State to make policies to ensure equal pay for equal work. The appellant Bank being an instrumentality of the State, is not permitted to make such discriminations. Hence, the appellant Bank is liable to implement the amendments made by the Indian Banks Association to accommodate the grant of pension to those employees who sought voluntary retirement through SBI-VRS.

Answer to point no. 3

26. Under Rule 22 of the State Bank of India Employees' Pension Rules, an employee's entitlement to pension accrues on retiring from the Bank service on one of the following conditions:

Under Rule 22(1)(a):

After having completed 20 years pensionable services provided that he has attained the age of 50 years OR If he was in the service on or after 1.11.93, then after having completed 10 years of service provided that he has attained the age of 58 years, OR If he was in the service on or after 22.5.98, then after having completed 10 years pensionable service provided, that he has attained the age of 60 years.

Under Rule 22(1)(c):

After 20 years of pensionable service, at his request in writing (where the entitlement is to proportionate pension).

On the other hand, the un-amended Employee's Pension Regulations, 1995 provide for pension under the following condition:

Regulation 28 reads as under:

"28. Superannuation Pensions:-

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

Regulation 29 reads as under:

"29. Pension on Voluntary Retirement:

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;"

27. It can be observed that the State Bank of India Employees' Pension Rules and the un-amended Employee's Pension Regulation, 1995 are consistent in so far as both Rules set the eligibility of pension on voluntary retirement service only after 20 years of pensionable service. However, it is imperative to understand the amendment which the correspondence between the Finance Ministry and Indian Banks Association, following the introduction of the SBI-VRS, brought about.

28. By a letter (F.no.4/8/4/2000-IR), dated 5.9.2000, written by the Finance Ministry to the Indian Banks Association, the Ministry recommended to the IBA to suggest amendments to Regulation 29 of the Pension Regulations in the following terms:

"I am directed to refer to this Division's Letter no. 11/1/99 IR dated 29-8- 2000 conveying the Government's no objection for circulation of Voluntary Retirement Scheme in public sector banks. The Scheme, inter alia, provides that employees with 15 year of service or 40 years of age shall be eligible to take voluntary retirement under the Scheme. As per the provisions contained in Regulation 29 of the Pension Regulations, an employee can take voluntary retirement after 20 years of qualifying service and thereafter becomes eligible for pension. Thus employees having rendered 15 years of service or completing 40 years of age, but not having completed 20 years of service shall not be eligible for pensionary benefits on taking voluntary retirement under the Scheme.

In order to ensure that such employees do not lose the benefits of pension, IBA may work out modalities and suggest amendments, if any, required to be made in the Pension Regulations to ensure that these employees also get the benefits of pension".

Pursuant to this correspondence, the Indian Banks Association suggested an amendment to the Regulations in the following terms:

"INDIAN BANKS ASSOCIATION STADIUM HOUSE, 6th FLOOR BLOCK 2 VEER NARIMAN ROAD MUMBAI- 400020 PD/CIR/76/G2/G4/ December 11, 2000 VOLUNTARY RETIRMENT SCHEME IN PUBLIC SECTOR BANKS AMENDMENTS TO BANK (EMPLOYEES') PENSION REGULATIONS, 1995 Designated officers of all Public Sector Banks.

Dear Sirs, Please refer to our circular letter no. PD/CIR/76/G4/993 dated 31st August 2000 convening the 'No Objection' of the Government in banks adopting and implementing a voluntary retirement scheme for employees on the lines of what was contained in the Annexure to the circular. As per the scheme, an employee who is eligible and applies for voluntary retirement is entitled for the benefits of CPF, Pension, Gratuity and encashment of accumulates privilege leaves, as per rules. Bank (Employees') Pension Regulations, 1955 do not have provisions enabling payment of pension to an employee who retires before attaining the age of superannuation except under circumstances as in Regulations 29, 30, 32 and

33. We had, therefore, taken up with the Government the need to incorporate necessary provisions in the Pension Regulations by way of amendments to Regulation 28 so that employees who retire as above under special/ ad hoc schemes formulated by the banks, after serving for a prescribed minimum period would be eligible for pro rata pension. Government of India has after examining the proposal conveyed its approval and desired that IBA advise banks to make necessary amendments to their Pension Regulations as in the Annexure. We request banks to take note accordingly.

Please note that with the above amendments, employees who apply for voluntary retirement after having rendered minimum 15 years of service under a special/ ad hoc scheme formulated with the specific approval of the Government and the Board of Directors will be eligible for pro rata pension for the period of service rendered as they are to retire on attaining the age of superannuation on that date.

Yours Faithfully, Sd/-

(Allen C A Pareira) PERSONNEL ADVISER"

Pursuant to this suggestion, Regulation 28 of Employees Pension Regulations, 1995 was amended to include the proviso with retrospective effect from 1.9.2000 as under:

"Provided that pension shall also be granted to an employee who opts to retire before attaining the age of superannuation, but after having served for a minimum period of 15 years in terms of any scheme that may be framed for the purpose by the Bank's Board with the concurrence of the Government."

This Court, in the case of Bank of India v. K. Mohandas (supra) further clarified the intention behind amendment of Regulation 28 and its retrospective application. The relevant paragraphs read as under:

"40.....The amendment in Regulation 28, as is reflected from the afore referred communication, was intended to cover the employees who had rendered 15 years' service but not completed 20 years' service.

41. Even if it be assumed that by insertion of the proviso in Regulation 28 (in the year 2002 with effect from 1-9-2000), all classes of employees under VRS, 2002 were intended to be covered, such amendment in Regulation 28, needs to be harmonized with Regulation 29....."

29. While answering Point no, 2 in favour of the respondents, I held that the State Bank of India should implement the amendment made to Rule 28 of the Employees Pension Regulation in granting pension to the employees seeking voluntary retirement under SBI-VRS.

I therefore, answer point no 3 in favour of the respondents and direct the appellant Bank to grant pension to the employees seeking voluntary retirement under the SBI-VRS after completing 15 years of pensionable service. Therefore, the respondent Radhey Shyam Pandey, having completed 19 years 8 months and 18 days of service, respondent M.P. Hallan, having completed 19 years and 4 months of service and the respondent R.P. Nigam, having completed 16 years and 6 months of service, become eligible for pension as per the amended Regulation 28 of Employees Pension Rules, 1995. By virtue of power vested in this Court under Article 142 Constitution of India, I hold that the pension relief is also extended to all the other employees who have availed SBI-VRS 2000 after having completed 15 years of pensionable service. Thus, C.A. No.@ SLP (C) No.3686 of 2007, C.A. Nos.2287- 2288 of 2010 and C.A. No. 10813 of 2013 are dismissed.

30. The C.A. Nos.5035-5037 of 2012 of the appellant Bank succeed in that respondent Mihir Kumar Nandi, having completed 12 years 3 months and 4 days of service, becomes ineligible for pension benefits.

31. All the appeals are disposed of accordingly. No costs.

..... J.

[V. GOPALA GOWDA] New Delhi, February 26, 2015

- [1] 2002 (2) SLR 716
- [2] (2003) 2 SCC 721
- [3] AIR 1993 SC 1601
- [4] (1997) 1 SCC 256
- [5] (1998) 8 SCC 30
- [6] (2003) 11 SCC 572
- [7] (2006) 3 SCC 708
- [8] (2005) 12 SCC 508
- [9] (2005) 4 SCC 272
- [10] (2004) 6 SCC 765
- [11] (2005) 3 SCC 636
- [12] (2009) 3 SCC 217
- [13] (2009) 5 SCC 313
- [14] (1900) AC 260
- [15] 2014 (8) SCALE 397
- [16] (2009) 5 SCC 313
- [17] (2003) 2 SCC 721
- [18] AIR 1974 SC 555
- [19] 1971 SCR 634
- [20] (1983) 1 SCC 305
- [21] 1988 (Supp 3) SCR 253
