

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

TUESDAY, THE 15TH DAY OF OCTOBER 2019 / 23RD ASWINA, 1941

WP (C) .No. 32386 OF 2015 (W)

PETITIONERS :

- 1 MURALEE MOHANAN K.T
AGED 62 YEARS
S/O.N.GOVINDAN NAIR, HOUSE NO.49/93-B, PADAM
ROAD, ELAMAKKARA, KOCHI-682026.
- 2 RAMESH KUMAR P.GANGADHARAN
AGED 61 YEARS
S/O.GANGADHARAN, ASHWATHY, 35/2109C, FRIENDSHIP
NAGAR, PALARIVATTOM, KOCHI-682025.
- 3 L.SACHITHANANDA SHENOY
AGED 60 YEARS
S/O.R.LAKSHMANA SHENOY, H.NO.37/2437,
NARAYANEEYAM, VADHYAR ROAD, KALOOR SOUTH,
ERNAKULAM, KOCHI-682017.
- 4 IBRAHIM MOHAMED HASHIM
AGED 60 YEARS
S/O.MOHAMED HASHIM, 7/709-B. BANOOR HASHIM,
DARUSSALAM ROAD, KOCHI-682002.

BY ADVS.

SRI.ASOK M.CHERIAN

SRI.V.K.PRASAD

RESPONDENTS :

- 1 CORPORATION BANK
REPRESENTED BY ITS CHAIRMAN AND MANAGING
DIRECTOR, HEAD OFFICE, P.B.NO.88, MANGALADEVI
TEMPLE ROAD, PANDESHWAR, MANGALORE-575 001,
KARNATAKA

2 THE TRUSTEE SECRETARY
CORPORATION BANK (EMPLOYEES) PENSION FUND, HEAD
OFFICE, P.B.NO.88, MANGALADEVI TEMPLE ROAD,
PANDESHWAR, MANGALORE-575 001, KARNATAKA

3 UNION OF INDIA
REPRESENTED BY SECRETARY TO BANKING DIVISION,
MINISTRY OF FINANCE, NEW DELHI-110 001.

R1 BY ADV. SRI.VIVEK VARGHESE P.J.

R1 BY ADV. SRI.P.S.GOPINATH CGC

R1 BY ADV. MS.VARGHESE JACOB

R2 BY ADV. M/S.VARGHESE & JACOB

R3 BY ADV. SRI.P.S.GOPINATH, CGC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 19.9.2019, THE COURT ON 15.10.2019 DELIVERED THE
FOLLOWING:-

JUDGMENT

Dated this the 15th day of October, 2019

1. Petitioners, who are retired officers of the 1st respondent Bank

have approached this Court seeking the following reliefs:-

i. To call for the records leading to Exhibits P5, P5(a), P5(b) and P5(c) and quash the same by issuing a writ in the nature of certiorari as they are violative of the fundamental rights of the petitioners in Articles 14 and 16 of the Constitution of India.

ii. To declare that the condition mentioned in the note provided to item (6) of Annexure 1 of Exhibit P6 is null and void to the extent it affects the petitioners.

iii. To issue a writ in the nature of mandamus directing respondents to revise the basic pension of the petitioners in accordance with the provisions of the Corporation Bank (Employees) Pension Regulations, 1995 by taking into account the Special Allowance introduced in Exhibit P8 as part of pay for the purpose of Basic Pension.

iv. To issue a writ of mandamus directing the 2nd respondent to recalculate the commutation pension of the petitioners on the basis of the revised basic pension by including the special allowance introduced vide Exhibit P6.

v. To issue a writ of mandamus directing the respondents to refund the pension arrears recovered from the petitioners as per Exhibits P5, P5(a), P5(b) and P5(c).

2. The 1st petitioner retired from service on 30.11.2013, the 2nd petitioner on 30.11.2014, the 3rd petitioner on 30.01.2015

and the 4th petitioner on 28.2.2015. The petitioners contend that their pension amounts have been substantially reduced when a wage revision was effected, due to the non-inclusion of the special allowance in the calculation of pay for the purpose of basic pension. It is stated that recovery has been effected from the arrears of commuted value of pension due to the petitioners by Exhibit P5 proceedings which is also under challenge.

3. Heard the learned counsel for the petitioners and the learned standing counsel appearing for the respondents.

4. It is contended by the learned counsel for the petitioners that Exhibit P2 Pension Regulations are statutory in character. Regulation 2(d) of Exhibit P2 Pension Regulations defines average emoluments as the average of the pay drawn by the employee during the last ten months of his service in the bank. Pay is defined as basic pay including stagnation increments, if any, and all allowances counted for the purpose of making contribution to the Provident Fund and for payment

of Dearness Allowance. It is stated that the petitioners had been granted pension, taking note of the average emoluments drawn as provided in Regulation 2(d). It is stated that the pay and allowances as well as the pension of retired employees underwent an enhancement on the basis of Exhibit P6 Joint Note dated 25.5.2015. It is stated that the petitioners had been granted pension and all allowances on the basis of the revised pay scale, but by Exhibit P5 proceedings, it appears that amounts had been recovered from the commutation arrears due to the petitioners. The petitioners were also given a statement of fixation, which revealed that amounts have been recovered from their commutation arrears, since their pension had been reduced due to the fact that the special allowances granted to them as an addition to pay was not reckoned for the purpose of calculating pension. It is stated that the action of the respondents in effecting a pay revision which results in reducing the pension payable to the petitioners, who had already retired from service as on the date of the Joint Note and in deducting amounts from the legally entitled amounts due to the petitioners is completely

unwarranted and is arbitrary and unsustainable. The learned counsel for the petitioners would rely on the decision of the Apex Court in **State of Rajasthan and others v. Mahendra Nath Sharma** [Civil Appeal No.1123 of 2015 and connected cases] to contend that pension is not bounty but a legal right of the petitioners which is accrued to them by virtue of long years of service and as such there can be no recovery from pension. The judgment of the Apex Court in **Bank of Baroda and another v. G.Palani and others** (Civil Appeal No.5525/2012 dated 13.02.2018) is also relied on.

5.A counter affidavit has been placed on record by the respondents. It is contended therein that the petitioners had retired from service on 30.11.2013, 30.11.2014, 30.01.2015 and 28.2.2015 respectively. It is stated that payment of pension is regulated by Exhibit P6 wage revision accord signed by Indian Banks Association and the Officers Associations. It is stated that a writ petition filed challenging one of the conditions of the Joint Note is not maintainable in view of the fact that the Joint Note is the result of a series of

consultations and negotiations between the Banks and the Employees Association and it has to be seen as a package deal and cannot be challenged on piece-meal basis. It is stated that neither the Indian Banks' Associations nor the Unions or Associations who had participated in the negotiations and had entered into the Joint Note are parties to the writ petition. It is contended that the decision of the Apex Court in **G.Palani's** case has no application, since in the instant case, there is no deduction from any amounts due to the petitioners under any statute and deduction is on account of the specific provision contained in the Joint Note. It is further stated in paragraphs 30 and 31 of the counter affidavit which read as follows:-

30. It is submitted here that the pay structure of the employees of PSBs' are fixed based on the Settlement arrived on time to time. The settlement arrived in the year 2015 is called 10th bipartite settlement/ Joint Note date 25.5.2015 same is applicable for 1.11.2012 to 31.10.2017. Before this settlement, the writ petitioners were drawing salary/pension from the Bank based on this settlement/Joint Note dated 27.4.2010. Hence, once the 10th bipartite settlement/Joint Note dated 25.5.2015 was entered, based on the PSBs' were required to recalculate the salary/pensions based on the 10th bipartite settlement dated 25.5.2015.

31. Based on the recalculation, the Bank has paid more amount as pension to the petitioners however the petitioners were eligible for arrears in commutation. Hence the difference amount was recovered from the arrears commutation and the petitioners got arrears on salary/commutation as mentioned in reply to para 6 of writ petition. “

6. The learned standing counsel would place reliance on the decision of the Apex Court in **Union Bank of India and others v. United Bank of India Retirees, Welfare Association and others** [2016 KHC 6432] to contend that the Apex Court has held that a Joint Note is a package deal and it would be impossible to hold certain parts as good and accepted, while finding other parts to be bad. An interference made by the High Court in one of the provisions of a Joint Note with regard to applicability of dearness relief was found to be bad and was reversed by the Apex Court.

7. I have considered the contentions advanced. The essential challenge raised in the writ petition is against the provision in the Joint Note to the extent it is contrary to the provisions of the pension regulations. The Apex Court in **United Bank of**

India's case (supra) has considered the applicability of a Joint Note in the case of workmen governed by the provisions of the Industrial Disputes Act and held that the Note being a package deal, the petitioners who are governed by the provisions of the Note cannot challenge a specific provision thereof, while enjoying the special benefits granted by the Note.

8. However, in **Bank of Baroda v. G.Palani and others**, the Apex Court drew a distinction where the aggrieved employees are officers who retired from the Bank in question. It was held that the provisions of the Industrial Disputes Act, 1947 are not applicable to such officers. It was held that the Pension Regulations framed under Section 19 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 are statutory in character. In the circumstances, in view of the definition of average emoluments at Regulation 2(d), Pay at Regulation 2(s) and the provision for calculating pension at Regulation 35, it was held that employees are to be paid pension as provided in the Regulations and no reduction

from the same is possible, relying on the provisions of a Joint Note, which has no statutory force, unless the Regulations are appropriately amended. It was held in paragraph 28 of the judgment as follows:-

“28. Thus joint note/agreement could not have been in derogation of the existing statutory Regulations and regulation 2(s)(c) could not have been given retrospective effect. It is also apparent from the decisions of this Court in P.Sadagopan vs. Food Corporation of India [(1997) 4 SCC 301], that executive instructions cannot be issued in derogation of the statutory Regulations. The settled position of law is that no Government Order, Notification or Circular can be a substitute of the statutory rules framed with the authority of law. In Dr.Rajinder Singh v. State of Punjab & Ors (2001) 5 SCC 482, this Court had reiterated that the settled position of law is that no government order, notification or circular can be a substitute of the statutory rules framed with the authority of law. In K.Kuppuswamy & Anr.v. State of Tamil Nadu (1998) 8 SCC 469, this Court has observed that statutory rules cannot be overridden by executive orders or executive practice. Merely because the Government had taken a decision to amend the rules, does not mean that the rule stood obliterated. Till the rule is amended, the rule applies.”

The amendment to Regulation 2(s) of the Pension Regulations was struck down as arbitrary and repugnant to Regulation 2(d), 35 and 38(1) and (2).

9. In the above view of the matter, I am of the opinion that the prayers sought for in the writ petition are liable to be allowed. The petitioners are entitled to pension in terms of the Pension Regulations especially Regulation 2(d) and 35 thereof. The respondents are directed to revise the basic pension of the petitioners in accordance with the provisions of the Corporation Bank (Employees) Pension Regulation, 1995 by taking into account the Special Allowances introduced in Exhibit P6 as part of pay for the purpose of Basic Pension. There will be a direction to the 2nd respondent to recalculate the commutation pension of the petitioners on the basis of the revised basic pension by including the special allowance introduced vide Exhibit P6 and to refund the pension arrears recovered from the petitioners as per Exhibits P5. P5(a), P5(b) and P5(c). The necessary shall be done within a period of three months from the date of receipt of a copy of this judgment.

The writ petition is ordered accordingly.

Sd/-
Anu Sivaraman, Judge

APPENDIX

PETITIONERS' EXHIBITS:

EXHIBIT P1 : A TRUE COPY OF THE 1ST PETITIONER'S PAY SLIP FOR THE MONTH OF NOVEMBER, 2013.

EXHIBIT P1(A) : A TRUE COPY OF THE 2ND PETITIONER'S PAY SLIP FOR THE MONTH OF NOVEMBER, 2014.

EXHIBIT P1(B) : A TRUE COPY OF THE 3RD PETITIONER'S PAY SLIP FOR THE MONTH OF DECEMBER, 2014.

EXHIBIT P1(C) : A TRUE COPY OF THE 4TH PETITIONER'S PAY SLIP FOR THE MONTH OF FEBRUARY, 2015.

EXHIBIT P2 : A TRUE COPY OF THE RELEVANT PORTION OF THE CORPORATION BANK (EMPLOYEES) PENSION REGULATIONS, 1995

EXHIBIT P3 : TRUE COPY OF THE LETTER SENT BY THE SECRETARY OF CORPORATION BANK (EMPLOYEES) PENSION FUND INFORMING 1ST PETITIONER PENSIONARY BENEFIT.

EXHIBIT P3(A) : TRUE COPY OF THE LETTER SENT BY THE SECRETARY OF CORPORATION BANK (EMPLOYEES) PENSION FUND INFORMING 2ND PETITIONER PENSIONARY BENEFIT.

EXHIBIT P3(B) : TRUE COPY OF THE LETTER SENT BY THE SECRETARY OF CORPORATION BANK (EMPLOYEES) PENSION FUND INFORMING 3RD PETITIONER PENSIONARY BENEFIT.

EXHIBIT P3(C) : TRUE COPY OF THE LETTER SENT BY THE SECRETARY OF CORPORATION BANK (EMPLOYEES) PENSION FUND INFORMING 4TH PETITIONER PENSIONARY BENEFIT.

EXHIBIT P4 : TRUE COPY OF THE LETTER FROM THE SECRETARY OF CORPORATION BANK (EMPLOYEES) PENSION FUND.

EXHIBIT P4(A) : TRUE COPY OF THE LETTER FROM THE SECRETARY OF CORPORATION BANK (EMPLOYEES) PENSION FUND.

EXHIBIT P4 (B) : TRUE COPY OF THE LETTER FROM THE SECRETARY OF CORPORATION BANK (EMPLOYEES) PENSION FUND.

EXHIBIT P4 : TRUE COPY OF THE LETTER FROM THE SECRETARY OF CORPORATION BANK (EMPLOYEES) PENSION FUND.

EXHIBIT P5 : TRUE COPY OF THE LETTER SENT TO THE 1ST PETITIONER BY TRUSTEE SECRETARY OF CORPORATION BANK (EMPLOYEES) PENSION FUND.

EXHIBIT P5 (A) : TRUE COPY OF THE LETTER SENT TO THE 2ND PETITIONER BY TRUSTEE SECRETARY OF CORPORATION BANK (EMPLOYEES) PENSION FUND.

EXHIBIT P5 (B) : TRUE COPY OF THE LETTER SENT TO THE 3RD PETITIONER BY TRUSTEE SECRETARY OF CORPORATION BANK (EMPLOYEES) PENSION FUND.

EXHIBIT P5 (C) : TRUE COPY OF THE LETTER SENT TO THE 4TH PETITIONER BY TRUSTEE SECRETARY OF CORPORATION BANK (EMPLOYEES) PENSION FUND.

EXHIBIT P6 : A TRUE COPY OF THE MINUTES SIGNED BETWEEN INDIAN BANK'S ASSOCIATION AND THE OFFICERS UNIONS.

EXHIBIT P7 : A COPY OF THE JUDGMENT DELIVERED BY THE HON'BLE MADRAS HIGH COURT IN 1209 OF 2007

EXHIBIT P8 : A COPY OF THE JUDGMENT DT 1-7-2015 IN CIVIL APPEAL NO.1123/2015 OF SUPREME COURT OF INDIA

True copy

PS to Judge