

**IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM RESIDENTIAL OFFICE VIA VIDEO APPLICATION)
Civil Writ Jurisdiction Case No.12921 of 2019**

Shrinath Upadhyay S/o Late Janardan Upadhyay, Resident of Sasaram, Rauza Canal Road, Gramin Bank Colony, Sasaram, Sasaram, Rohtas, P.S. Sasaram, Dist. Rohtas-821115 Petitioner

Versus

1. Union of India through its Secretary Ministry of Finance, Department of Financial Service, RRB Section, Banking Division, Jeevan Deep Building, 3rd Floor, Parliament Street, New Delhi-110001
2. National Bank for Agriculture and Rural Development (NABARD) through its Chief Central Manager Having its Head Office At-Plot C-24,G Block, Bandra Kurla Complex, BKC Road, Bandra East, Mumbai,Maharashtra-400051
3. Punjab National Bank (PNB) through its CMD Having Its Head Office At Plot No.04,Sector 10,Dwarka New Delhi-110075
4. Dakshin Bihar Gramin Bank through its Chairman Having Its Office At Shri Vishnu Commercial Complex, NH-30 New Bypass Near BP Highway Services Petrol Pump, Asochak,Patna-800016
5. Board of Directors Dakshin Bihar Gramin Bank through its Chairman Having Its Office At Shri Vishnu Commercial Complex, NH-30 New Bypass Near BP Highway Services Petrol Pump Asochak, Patna-800016
6. The Chairman Dakshin Bihar Gramin Bank (DBGB) having Its Office At Shri Vishnu Commercial Complex, NH-30 New Bypass Near BP Highway Services Petrol Pump Asochak, Patna-800016
7. The General Manager(HRD/Pension) Dakshin Bihar Gramin Bank having Its Office At Shri Vishnu Commercial Complex,NH-30 New Bypass Near BP Highway Services Petrol Pump Asochak, Patna-800016
8. Chief Manager Pension Cell Dakshin Bihar Gramin Bank having Its Office At Shri Vishnu Commercial Complex, NH-30 New Bypass Near BP Highway Services Petrol Pump Asochak, Patna-800016

... ... Respondents

Appearance :

For the Petitioner/s : Mr.Jai Prakash Singh, Advocate
For the Respondent No.1: Mr. Satyavrat Verma, Advocate
For the Bank : Mr. Mahesh Narayan Parbat, Sr. Advocate

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
C.A.V. JUDGMENT**

Date : 05-10-2020

The petitioner in the present case is aggrieved by and dissatisfied with the communication as contained in letter reference no. DBGB/HO/HRD-



Pension/3998 dated 30.05.2019 issued under seal and signature of the Chief Manager of Dakshin Bihar Gramin Bank whereby he has informed the petitioner that because of the punishment of compulsory retirement from service (CRS) awarded to him on 16.01.2018, he would not qualify for pension under Regulation 20 and Regulation 31 of the Banks (Employees) Pension Regulation dated 12.12.2018. The petitioner has prayed that after quashing of this communication dated 30.05.2019 (Annexure '7/1') this Court may issue a direction to the respondent Bank for accepting the employers' contribution of provident fund in the Banks Pension Trust account as per Regulation 3(C) of the Madhya Bihar Gramin Bank (Employees) Pension Regulation 2018 and Madhya Bihar Gramin Bank (Officers and Employees) Service (Amendment) Regulation 2018 and there upon the respondent Bank be directed to make payment of pension along with 18 % interest from the date of retirement till date of actual payment.

2. The another prayer of the petitioner is to issue a direction to the respondent Banks to pay the leave encashment amount to the petitioner together with interest at the rate of 18 % per annum from the date of retirement till date of actual payment. Several other directions and declarations have been prayed for in the writ application but in course of hearing learned counsel for the petitioner has confined his submissions to claim the benefits as mentioned above.

Brief Facts of the case & Submissions of the Petitioner

3. The petitioner joined the service of the erstwhile Bhojpur Rohtas Gramin Bank as a clerk-cum-cashier on 09.06.1979. The said Bank was



amalgamated with Madhya Bihar Gramin Bank on 10.02.2006 and again it has been amalgamated with Dakshin Bihar Gramin Bank on 01.01.2019. It is a Regional Rural Bank constituted under the provision of the Regional Rural Bank Act 1976.

4. The petitioner later on came to be posted on the upgraded post as an officer in the junior management (Grade- I). He was then promoted from Scale-I Officer to Scale-II but after completing more than 38 years of his service, he was made to compulsorily retire from service on 20.01.2018 while working on the post of Manager, Murlidwari Branch in the District of Nawada. It is his case that without serving any show cause notice he was directly served with charges dated 08.05.2017 with regard to the matter when he was posted as manager at Nauhatta and Balia Branch in the District of Rohtas during the year 2014-2015 and 2009-2012 respectively.

5. It is the submission of the petitioner that the punishment of compulsory retirement was awarded to him but without any remarks as to forfeiture of any retiral benefits. After his retirement he got his retiral dues such as gratuity and provident fund with employers' contribution as also the group saving linked insurance amount but has not been paid his leave encashment. At the relevant time of his retirement he was covered by the Employees Pension Scheme 1995 under Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as 'the Act of 1995')

6. It is stated that vide Memorandum of Settlement dated 29.10.1993 between the management of 58 Banks as represented by Indian Bank Association on the one hand and their workmen represented by the All-India



Bank Employees Association on the other hand the sponsor Bank (Nationalised Commercial Bank) employees were covered under Nationalised Commercial Banks Employees Pension Schemes 1995 and after the settlement dated 29.10.1993 the sponsor Bank i.e. Punjab National Bank circulated a Regulation with regard to pension of the employees known as Punjab National Bank (Employees) Pension Regulations 1995.

7. It is in the aforesaid background that All-India Regional Rural Bank Employees Association filed a writ application in the Hon'ble High Court of Karnataka at Bangalore and prayed for an appropriate direction to the Union of India to take steps for working out a pension scheme for the employees of the regional rural banks on the same line with the pension scheme formulated for the employees of sponsored Banks. The Hon'ble Karnataka High Court vide its judgment dated 22.03.2011 (Annexure '3') while partly allowing the writ application directed the respondents to take steps to ensure that the modalities are worked out for a pension scheme in line with the pension scheme formulated for the employees of the sponsored banks in terms of Memorandum of Settlement dated 29.10.1993 with such changes as would be appropriate and keep in line with the present circumstances. It is submitted that when no step was taken despite direction of the Hon'ble Karnataka High Court, the Gramin Bank Pensioners Samiti and Others filed a Civil Writ Petition bearing No. 4366 of 2005 in the Hon'ble Rajasthan High Court at Jodhpur. The Hon'ble Single Judge of Rajasthan High Court allowed the writ application and directed that the Union of India would formulate and Implement Pension Scheme for employees of the regional rural banks. The order passed by the learned Single



Judge of Hon'ble Rajasthan High Court was challenged before the Hon'ble Division Bench of the High Court which was dismissed vide judgment dated 23.08.2012 (Annexure '4'), therefore, the Union of India preferred a Special Leave to appeal (SLP) (C No. 39288 of 2012) against the judgment of the Hon'ble Rajasthan High Court. The said Special Leave to Appeal was dismissed and thereafter the Union of India was directed to implement the judgment in respect of the regional rural banks within a period of three months (Annexure'5').

8. Learned counsel for the petitioner has submitted that in the aforementioned background the Union of Indian in its Human Resource Development Department published Madhya Bihar (Employees) Pension Regulations 2018 and Madhya Bihar Gramin Bank (Officers and Employees) Service (Amendment) Regulation 2018, it was published on 12.12.2018 (hereinaft referred to as the '2018 Regulation' or Regulation of 2018') after consultation with the Punjab National Bank (sponsor Bank), the National Bank for Agriculture and Rural Development (NABARD) and with the previous sanction of the Central Government (Annexure '6').

9. Learned counsel for the petitioner submits that as per Chapter II, Regulation 3(C) the petitioner being eligible for submitting his application/option under the Pension Regulations 2018, submitted his application dated 28.03.2019 (Annexure '7') which has been rejected by the impugned communication as contained in Annexure '7/1'.

10. Learned counsel for the petitioner submits that as per Regulation 32(1) read with Regulation 13 and 14 of the Regulations of 2018 the petitioner



is duly qualified and eligible for pension and there is no question of application of regulation 20 and 31 of the Regulations of 2018 in the case of this petitioner. It is his submission that Regulation 20 deals with forfeiture of service and under this provision 'compulsory retirement' is not stated to be a kind of punishment which would entail forfeiture of the entire past service of the petitioner. It is submitted that under sub-Section (1) of Regulation 20 resignation not amounting to voluntary retirement or dismissal or removal or termination of an employee from the service of the Bank shall entail forfeiture of his past service and consequently he shall not qualify for pension. It is submitted that it would be a wrong reading of Regulation 20 if compulsory retirement is taken as included under sub-Regulation (1) of Regulation 20.

11. Similarly, it is his submission that so far as Regulation 31 is concerned, it cannot be read as excluding the employee who has been compulsorily retired from service prior to the effective date i.e. 01.04.2018. Regulation 31, according to the learned counsel for the petitioner is rather showing the intention of the makers of the Regulation that compulsory retirement does not entail forfeiture of the past service and is not one of those reasons for cessation in service covered under sub-Regulation (1) of Regulation 20 which may attract forfeiture of the entire past service of the employee.

12. Learned counsel submits that Regulation 32 comes after Regulation 31, therefore the rule makers were fully aware of the fact that they have made available the pension to those employees who have been compulsorily retired from service on or after the effective date, therefore, being fully aware of this, under Regulation 32 the rule makers covered all the retired



employees who had retired from the service of Bank before 31st March, 2018. It is submitted that by virtue of Regulation 32 of the 2018 Regulations an employee who was in service between 1st day of December, 1987 and 31st day of March, 2010 and retired from the service of the Bank before 31st day of March, 2018 shall, subject to the provisions of the Regulations, be eligible for payment of pension from effective date. Thus, learned counsel for the petitioner submits that the intention of the rule makers has been very clear and constantly showing that those who have retired from service prior to effective date would be covered under the scheme and then to avoid any ambiguity with respect to the employees who have been compulsorily retired from service on or after the effective date, rule makers made it clear at the outset that by virtue of Regulation 31 they would also be covered under the 2018 Regulations.

13. Learned counsel, therefore, submits that the petitioner would be covered under the pension scheme and no distinction may be made on the ground that the punishment of compulsory retirement awarded to the petitioner prior to the effective date would be taken to have excluded the petitioner by virtue of Regulation 31. There is no such exclusion in Regulation 31 rather incorporation of Regulation 32 after Regulation 31 ensures that all those who had retired from service prior to the effective date are covered under the scheme. "Retirement" has been defined under Regulation 2(x) and it covers the case of the petitioner.

14. Learned counsel for the petitioner has then submitted that the denial of the leave encashment benefit to the petitioner is equally wrong as there is no specific provision under the Regulations of 2010 providing for forfeiture



of the past service or lapse of accumulated privilege leave of an employee who ceases to be in service. It is submitted that in this connection the reliance placed by the respondent Bank on Regulation 67 of the 2010 Regulation is totally perverse and is an absurd kind of interpretation which is not fit to be accepted.

15. Learned counsel for the petitioner has relied upon several judicial pronouncements. He has placed before this Court the judgment of the Hon'ble Punjab and Haryana High Court in the case of **Umed Singh vs. Sarva Haryana Gramin Bank and another** (CWP No. 16233 of 2014); judgment of the Hon'ble Bombay High Court Bench at Aurangabad in the case of **Ashok and others vs. Chief Secretary Union of India and others** (Writ petition No. 1347 of 2016); Hon'ble Division Bench judgment of this Court in the case of **Indian Bank through CMD and Ors. Versus Kaushal Kishore Thakur** (LPA No. 580 of 2016) and the judgment of the Hon'ble Apex Court in the case of **Bank of Baroda versus S. K. Kool (D) LRs. and Anr.** reported in **AIR 2014 SC 915**.

16. His entire submission is that the punishment of compulsory retirement, in absence of there being specific provision under the Regulations of 2010, cannot be taken as attracting forfeiture of entire past service of the petitioner and in terms of Regulation 32 of the 2018 Regulations the petitioner would be entitled for the leave encashment amount as well.

Submissions of the Dakshin Bihar Gramin Bank (Respondent Nos. 4 to 8)

17. Mr. Mahesh Narayan Parbat, learned Senior Counsel representing respondent Bank and its' authorities (respondent no. 4 to 8) has supported the impugned communication as contained in Annexure '7/1' to the writ



application. Learned Senior Counsel submits that in the disciplinary proceeding the petitioner has been awarded with a punishment of compulsory retirement, the appeal preferred against the said order was dismissed by the appellate authority, hence the petitioner would not be entitled in law for grant of pension under the Pension Regulations of 2018. His submission is that the punishment of compulsory retirement was awarded to the petitioner in this case on 16.01.2018 whereas the effective date of implementation of Regulations of 2018 is 01.04.2018, therefore the application for pension of the petitioner has been rightly rejected by the competent authority. Learned Senior Counsel has submitted that the petitioner could not qualify for grant of pension because of the specific bar created under Regulations 20 and 31 of the Regulations of 2018. It is his submission that the petitioner is misconstruing Regulations 13, 14 and 32(1) of the Pension Regulations of 2018.

18. By filing the written notes of argument, Mr. Parbat has briefly taken note of the submissions of learned counsel for the petitioner and learned Senior counsel admits that the case of the petitioner is that he is entitled for pension in terms of the Regulation 32(1), 13 and 14 of the Pension Regulation of 2018 but the contention of the petitioner is that his application has been wrongly rejected citing Regulation 20 and 31 of the Pension Regulation 2018.

19. Learned Senior Counsel has given the legislative history behind the establishment of regional rural banks under the provisions of the Regional Rural Bank Act 1976 (hereinafter refer to as 'the Act of 1976'). In his written notes of argument he submits that in terms of Section 3 of the Act of 1976 the Central Government is empowered in law to establish regional rural banks by



notification, on the request of a sponsor bank, in a State or, Union Territory which would be body corporate with perpetual succession and common seal with power, subject to provision of the Act. Under Section 17(1) of the Act of 1976 regional rural banks are empowered in law to appoint their officers and other employees for proper functioning of the Bank. It is his submission that after directions were issued by the Hon'ble Apex Court to the Union of India a scheme was formulated by the Union of India and was adopted only by the regional rural banks under Section 30(1) of the Act of 1976 and the Government of India, Ministry of Finance, Department of Financial Services in its letter dated 16.11.2018 authorised the Chairmen of the respective Regional Rural Banks to sign notifications in respect of the Regulations to be issued in terms of and in compliance of the provisions of the Controller of Publication Government of India, Department of Publication (Ministry of Housing and Urban Affairs), Delhi for publication of Model RRB (Employees) Pension Regulation 2018 and Model RRB (Officers and Employees) Service (Amendment), 2018 in the Gazette of India.

20. Although in the written notes of argument some more history with regard to constitution of equation committee by the Government of India have been stated but to this Court it appears that those discussions are not relevant in this case.

21. Mr. Parbat has further submitted that the petitioner having suffered the punishment of compulsory retirement as penalty prior to the effective date 01.04.2018, is not eligible for grant of pension in view of Regulations 20 and 31 and so far as leave encashment of the petitioner is



concerned, it is not payable to him in terms of Regulation 67 of the Service Regulation 2010.

22. In his written notes of argument the main questions which have been raised on behalf of the respondent nos. 4 to 8 are as under:

(i) whether in the facts and circumstances of the case the petitioner is fulfilling eligibility criteria for grant of pension in terms of Pension Regulation 2018 of the Bank and also for payment of leave encashment in terms of Regulation 67 of the Services Regulation 2010 of the Bank.

(ii) Whether the present writ application is maintainable against the respondent Bank and writ can be issued to the Bank for grant of reliefs claimed, in presence of Section 17(1) second proviso of the Act of 1976 when no relief has been sought against the Union of India.

23. It is the submission of Mr. Parbat in his written notes of argument that in Regulation of 2018 the word “effective date”, “eligible employee” and word “notified date” for pension scheme has been defined in Regulation 2(1)(k), 2(1)(l) and 2(1)(s) respectively which state that “effective date” means the first day of April of 2018, “eligible employee” means an employee who is eligible for pension under this Regulation and “notified date” means the date on which these Regulations are published in official Gazette. Similarly, Chapter II of 2018 Regulations deals with application and eligibility and Regulation 3(1)(a) covers those employees who were in service of the Bank on or after 01.09.1987 but has retired on or before 31.03.2010, 3(1)(b) covers those employees who were in service of the Bank on or after 01.09.1987 and continued to be in service on or after notified date i.e. 12.12.2018 and 3(1)(c) covers those employees who were



in service of Bank between 01.09.1987 and 31.03.2010 and continued to be in service on or after effective date but retired before notified date. It is the contention of Mr. Parbat, learned Senior Counsel that so far as the petitioner is concerned, admittedly he continued in service between 01.09.1987 and 31.03.2010 but compulsorily retired by way of penalty on 20.01.2018 i.e. prior to effective date and notified date both and thus, his case is not covered in Regulation (3) of 2018 Regulations. The other provisions in this regard are Regulation 31, 32 and 39(9)(iv) of the Pension Regulation 2018. According to him Regulation 31 deals with those who have compulsorily retired as a penalty on or after the effective date i.e. 01.04.2018 and Regulation 32 deals with those employees who were in service of the Bank between 01.09.1987 and 31.03.2010 but had retired from service before 31.03.2018 and Regulation 39(9)(iv) deals with commutation of pension which is being done after sanction and release of pension only. It has been further stated that the word “retirement” has been defined under Regulation 2(x) of Pension Regulation 2018 and it does not cover those employees who have been “compulsorily retired” as a penalty. Even Regulation 11 of Service Regulation 2010 of the Bank deals with superannuation and retirement and its sub-clause (1) runs as follows:-

“11(1) an officer or employee shall retire on completion of age of 60 years of age”

24. As regards leave encashment, his submission is that the leave has to be computed on the basis of the days of service and duty only and on death or cessation of service of the employee all leave have to be lapsed and payments, if any, have to be done subject to proviso of Regulation 67. In the present case the



word “ceases to be in service” has vast meaning and it includes cessation of service of the employee in any manner including by way of penalty also.

25. In this connection he has relied upon the judgment of the Hon’ble Supreme Court in the case of **Union of India versus Gurnam Singh** reported in **(1982) 2 SCC 314** to submit that leave shall be earned on duty only and hence, after death of an officer or employee or on his cessation of service in any manner privilege leave cannot be accumulated in his account and payment of the privilege leave has to be done to those employees only who are covered under the proviso in terms of Regulation 67.

26. While answering the statement of the petitioner that some of the employees have been granted benefit of the pension scheme under the pension Regulation 2018, the respondent Bank has stated that the employees namely Dwarka Nath Pandey retired on 30.06.2002, Braj Kishore Prasad Shah retired on 30.11.2010 and other and also the name of Pal Govind Chaudhary and Shantanu Mukherjee, these officers of the Bank had retired from the service of the Bank in routine manner after attaining the age of superannuation in the Bank and fulfilling all the eligibility criteria required for superannuation pension in terms of Regulation 26 of Pension Regulations 2018 which specifies that “Superannuation pension shall be granted to an employee who has retired on his attaining the age of superannuation” .

27. Similarly, the case of Pal Govind Chaudhary and Shantanu Mukherjee has also been sought to be distinguished by saying that they have been awarded penalty of ‘compulsory retirement’ vide order dated 30.05.2018 and 29.03.2019, thus, both have been awarded punishment of ‘compulsory



retirement' after the effective date i.e. 01.04.2018 and are covered under Regulation 31 of the Pension Regulations 2018.

28. Mr. Parbat, learned Senior Counsel has also informed this Court that earlier while considering the case of **Birendra Kumar** (supra) a learned Coordinate Bench of this Court has vide its judgment dated 15.06.2020 rejected the similar prayer of the petitioner in the said case by holding that since the petitioner in the said case had been visited with the compulsory retirement prior to the cutoff date/effective date, 2018 Regulations could not be applicable to the petitioner. The learned Co-ordinate Bench took a view that the pension might have been granted only after compulsory retirement by way of punishment would have been awarded on or after the effective date.

29. As regards the issue of leave encashment benefit in the said case, the learned Co-ordinate Bench of this Court granted liberty to the petitioner to approach the authority of the Bank with his representation and the chairman of the Bank (respondent no. 2) has been directed to consider and decide the same by reasoned and speaking order within a period of three weeks from the date of receipt/production of a copy of the judgment. It is, however, admitted that the points with reference to several provisions of the 2018 Regulations which have been argued by learned counsel for the petitioner in this case were not specifically addressed in the case of **Birendra Kumar** (Supra).

Queries and Response in course of Present Proceeding

30. When the matter was taken up for consideration on 08.09.2020, this Court passed the following order:-

“ In course of argument, a question has arisen as to whether the petitioner who had been made to compulsorily retired



from service in the month of January, 2018 would have been covered under the eligibility clause 3 falling under Chapter II of the Regulation of 2018 which came to be notified on 12.12.2018, had he not been awarded compulsory retirement but would have retired in normal course of his service prior to the effective date i.e. 01.04.2018. Mr. M.N. Parbat, learned Senior Counsel representing the Bank seeks a short time to seek instruction from the Bank. Let this matter be called out on Friday i.e. on 11.09.2020 as a passed over/left over cases.”

31. On 11.09.2020, learned counsel for the parties made detailed submissions which have been recorded by this Court and are being reproduced for a ready reference:-

“The matter has been heard at length once again. In response to the queries raised by this court as recorded in the order dated 08.09.2020 Mr. M.N. Parbat, learned Senior Counsel has informed this court that had petitioner been not compulsorily retired from the service prior to 01.04.2018, in case of a normal retirement prior to 01.04.2018 he would have been very well covered under the provisions of the Regulation 2018. In this connection Mr. Parbat has taken this court through Regulation 32 and Regulation 39(9)(iv) of 2018 Regulations. Regulation 32 provides that :

“(1) An employee who was in service between 1st day of September 1987 and 31st day of March 2010 and retired from service of the Bank before 31st day of March, 2018 shall, subject to the provisions of these regulations, be eligible for payment of pension from the effective date.”

Regulation 39(9)(iv) reads as under: -

“39(9). The commutation of pension shall be become absolute in the case of an employee -



(iv) who was in service between 1st September, 1987 and 31st March, 2010 and retired on or before 31st March 2018 and who opts to become a member of the Fund under these regulations, on the 1st day of April, 2018, where the application of commutation is made in Form VI within one year from the date of retirement and Form VII and Form VIII in all other cases, within the period specified in sub-regulation (1) of regulation 3.”

The bone of contention in the present case is an interpretation of regulation 20 which according to Mr. Parbat takes into its compass the employees like the present petitioner, who have been made to compulsorily retire from service. Regulation 20 is quoted hereunder for a ready reference:-

“20. Forfeiture of Service:-

(1) Resignation not amounting to voluntary retirement or dismissal or removal or termination of an employee from the service of the Bank shall entail forfeiture of his entire past service and consequently shall not qualify for pension under these regulations.”

The impugned letter by which petitioner has been denied an opportunity to exercise his option under its regulation of 2018 refers regulation 20 as well as regulation 31 therefore a quick look on regulation 31 is required. Regulation 31 thus reads as under: -

“31. Compulsory retirement pension:-

An employee compulsorily retired from service as a penalty, on or after the effective date, in terms of the Service Regulations, may be granted by the authority higher than the authority competent to impose such penalty, pension at a rate not less than two-thirds and not more than full pension admissible to him on the date of his compulsory retirement, if otherwise he was entitled to such pension on superannuation, on that date:



Provided that where the pension awarded under this regulation is less than the full pension admissible under these regulations, the Board of Directors shall be consulted before such order is passed.”

While it is the contention of Mr. Jai Prakash Singh, learned counsel representing the petitioner that in case of the petitioner regulation 31 would not be applicable and by no stretch of imagination the respondent bank may argue that because of compulsory retirement from service the case of the petitioner would be one like those mentioned in regulation 20 which entails forfeiture of service.

It is his submission that the compulsory retirement from service never invites forfeiture of service as it is not a case of ‘resignation’ not amounting to ‘voluntary retirement’ or ‘dismissal’ or ‘removal’ or ‘termination of an employee from service of the bank’. In this connection, he has relied upon a Hon’ble Division Bench judgment dated 28.10.2016 of this Court in the case of **The Indian Bank through CMD and others Vs. Kaushal Kishore Thakur** passed in L.P.A. No. 580 of 2016 wherein while considering the case of denial of leave encashment benefit to an employee of the Indian Bank on the ground that he had been made to compulsorily retire from service, the Hon’ble Division Bench of this Court agreed with the view taken by the learned Single Judge that compulsory retirement from service is not termination from service.

As regards the payability of the leave encashment benefits, Mr. Parbat, learned Senior Counsel for the Bank has relied on regulation 67 of the Madhya Bihar Gramin Bank (Officers and Employees) Service Regulation, 2010 which reads as under;

“**Lapse of Leave-** All leave shall lapse on the death of an officer or employee or if he ceases to be in the service of the Bank”



It is the contention of Mr. Parbat, learned Senior Counsel that because of regulation 67 the moment this petitioner ceased to be in service of the Bank because of his compulsory retirement from service, he would not be entitled to get leave encashment benefit as all leave shall lapse on his cessation in service of the Bank.

The submission of Mr. Parbat, learned Senior Counsel has been strongly controverted by Mr. Jai Prakash Singh, learned counsel for the petitioner. Mr. Singh has submitted that any such interpretation of regulation 67 would be absurd. It is submitted that the provision of the regulation 67 has to be interpreted in the context in which it has been used.

Learned counsel submitted that the Hon'ble Delhi High Court in the case of **Dipak Sapra Vs. Punjab National Bank (L.P. A. No. 693 of 2013)** and then the Hon'ble Bombay High Court in the case of **Ashok and Others Vs. The Chief Secretary, Union of India & Another (WP No. 1347/2016)** the Hon'ble Punjab & Haryana High Court in the case of **Umed Singh Vs. Sarva Haryana Gramin Bank and Another (CWP No. 16233 of 2014)** have held that an employee of the Regional Rural Bank who has been made to compulsorily retire from service would be entitled for leave encashment.

Mr. Singh, has also submitted that the Indian Bank Association has come out with a Circular dated May 11th, 2015 by which leave encashment was allowed to all such cases of compulsory retirement and based on that one Baroda Rajasthan Kshetriya Gramin Bank had also notified the entitlement of leave encashment to the employees who retired by way of compulsory retirement.

It is his submission that the Hon'ble Supreme Court in the case of **South Malabar Gramin Bank Vs. Co-ordination Committed of South Malabar Gramin Bank Employees' Union and South Malabar Gramin Bank Officers'**



Federation and Others reported in **(2001) 4 SCC 101** has thoroughly discussed the principle of parity which has to be maintained in respect of the employees of the sponsored bank and the regional rural bank and in fact it has also been the consistent view of the Hon'ble Apex Court that the employees of the regional rural bank be treated on the same line as the employees of the sponsored bank are being treated. It is thus his submission that the leave encashment amount is payable to the petitioner. It is, thus the submission of learned counsel for the petitioner that the impugned communication by which the option submitted by the petitioner has been rejected citing Regulation 20 and 31 is fit to be set-aside and a Mandamus be issued accordingly as the petitioner has been able to establish his legal right.

At this stage, Mr. M.N. Parbat, learned Senior Counsel has submitted that one indulgence may be granted to him to go through the entire judgment which have been cited at the Bar by Mr. Jai Prakash Singh, learned counsel for the petitioner.

Mr. Sidharth Prasad, learned counsel who was appearing for the NABARD has put his appearance by way of courtesy to the court, though he has instruction from his client not to appear. While appreciating his conduct this court will not call upon him to argue the matter since he has no instruction for the same.

Mr. Satyavrat Verma, learned Central Government Counsel has appeared on behalf of the Union of India. Mr. Verma, has submitted that in fact Mr. Parbat has himself submitted at the outset that had the petitioner retired in normal course before 01.04.2018 the petitioner would have been entitled for exercising his option under regulation 2018. It is the submission of Mr. Verma that 'compulsory retirement' does not mean dismissal or termination from service. Learned



counsel submits that regulation 20 and 31 of 2018 Regulation will not come in the way of the petitioner.

It is his submission that by no stretch of imagination the employee such as the petitioner who has been made to compulsorily retired from service would be covered under regulation 20 so as to forfeit his entire past service to the bank. It is his submission that the provisions such as Regulation 32 and Regulation 39(9)(iv) which have been pointed out by Mr. Parbat would be applicable in the case of this petitioner and the petitioner would be entitled to apply for exercising his option under 2018 Regulation.

However, as Mr. M.N. Parbat, learned Senior Counsel for the Bank wants to give his reply on Tuesday i.e. 15th September, 2020, let this case be listed specially on 15th September, 2020 for final consideration at 11:30 A.M.”

Submissions on behalf of the Union of India

32. On the next date of hearing, Mr. Satyavrat Verma, learned counsel for the Central Government sought to amend his submissions. Learned counsel was thereafter given an opportunity to file written notes of arguments. The submission of Mr. Verma, learned counsel representing Central Government is that the present case will either succeed or fail upon interpretation of Regulation 20 and 31 of 2018 Regulations. He has contended that since Regulation 31 consciously excludes an employee retired compulsorily prior to 01.04.2018 by way of penalty from the benefits of pension, as such this Court would not read into the Regulations what has not been provided in the Regulation itself until and unless the provisions contained in the Regulations is held ultra vires. As regards applicability of Regulation 20 of the Pension Regulations 2018 it is contended that it is an issue to be



considered and adjudicated. However in this regard in his written notes of submissions he has inter alia submitted as under:-

“.....It is submitted that since an employee who is made to retire compulsorily by way of penalty on or after 01.04.2018 is entitled for pension and is not covered by Regulation 20, then on what basis it is visualized or culled out that an employee who was made to retire prior to 01.04.2018 is covered by Regulation 20, hence it is difficult to comprehend that on what basis this discrimination between compulsorily retired employee has been made, as the provisions of Regulation 20 does not take within its fold that past services of a compulsorily retired employee by way of penalty will also entail forfeiture of his past service”

33. Mr. Verma, learned counsel for the Central Government has still justified the impugned communication saying that the same may be sustained by taking into consideration Regulation 31 of the Pension Regulations 2018.

CONSIDERATIONS

34. Before this Court proceeds to consider this writ application on its own merit, the Court is required to deal with two questions which have fallen for consideration. The first question is as to whether or not this writ application is maintainable in absence of any relief sought against the Union of India. Learned Senior Counsel has referred the second proviso to Section 17(1) of the Act of 1976 which reads as follows:-

“17. Staff of Regional Rural banks.—(1) A Regional Rural Bank may appoint such number of officers and other employees as it may consider necessary or desirable ²[in such manner as may be prescribed] for the efficient performance of its functions and may determine the terms and conditions of their appointment and service:



Provided that it shall be lawful for a Sponsor Bank, if requested so to do by a Regional Rural Bank sponsored by it, to send, ^{3***} such number of officers or other employees on deputation to the Regional Rural Bank as may be necessary or desirable for the efficient performance of its functions:

Provided further that the remuneration of officers and other employees appointed by a Regional Rural Bank shall be such as may be determined by the Central Government, and, in determining such remuneration, the Central Government shall have due regard to the salary structure of the employees of the State Government and the local authorities of comparable level and status in the notified area.”

35. In his own submissions learned Senior Counsel has categorically stated that the Bank has been established under the provisions of the Act of 1976 which provides for incorporation, a regulation and winding up of the regional rural banks and in terms of Section 3 of the Act of 1976, the Central Government is empowered in law to establish regional rural banks by notification, on the request of the sponsor bank in State or Union Territory which would be a body corporate with perpetual succession and common seal with power, subject to the provisions of the said Act. The fact that the Bank has been established by the Central Government and it has a character of a body corporate with perpetual succession and common seal make it clear to this Court that the Bank is “Persona Designata” i.e. a person in the eye of law.

36. In this regard it would be relevant to take note of the definition of the word ‘person’ as provided under the General Clauses Act 1897 the same is quoted hereunder for a ready reference:-

“person” shall include any company or association or body of individuals, whether incorporated or not”

37. In the present case the Union of India is a respondent no. 1. The petitioner is looking for a writ in the nature of Certiorari to quash and cancel the communication as contained in letter dated 30.05.2019 (Annexure ‘7/1’) by



which the General Manager of the Regional Rural Bank has communicated to the petitioner that the pension option application dated 28.03.2019 has been rejected. The petitioner is then looking for a direction to the respondent Bank for accepting the employees' contribution of provident fund in the Banks Pension Trust Account as per Regulation 3(C) of the Pension Regulations 2018 and a direction to the respondent Banks for payment of pension along with interest thereon. The submission of learned Senior Counsel for the respondent nos. 4 to 8 that in absence of there being any relief prayed against the Union of India the writ application is not maintainable has no leg to stand and is to be noted only for purpose of rejection.

38. Although in the written notes of argument on behalf of respondent nos. 4 to 8 no plea has been taken with regard to any binding precedent or that earlier judgment of the learned Coordinate Bench of this Court in the case of **Birender Kumar** (supra) would have force of binding precedent, when this Court has been apprised of the said judgment, it would be necessary to look into the same to find out as to whether the judgment of the learned Co-ordinate Bench of this Court may be taken as a binding precedent in the facts and circumstances as also the statutory provisions which have been pleaded and the judgments of the Hon'ble Apex Court placed before this Court. Admittedly, those statutory provisions on which petitioner has placed reliance had not fallen for consideration in the case of **Birendra Kumar** (supra).

39. It appears that one Birendra Kumar a retired employee who was awarded with the punishment of compulsory retirement under the Regulation



39(1)(b)(iii) of the Service Regulation 2010, moved this Court claiming his pensionary benefit and leave encashment. A submission was made that on a conjoint reading of Regulation 20 and 31 of the Pension Regulation 2018, it would be clear that the order of compulsory retirement does not entail forfeiture of service and that he is entitled to pension at a rate not less than two-thirds and not more than full pension admissible to him on the date of his compulsory retirement.

40. On behalf of the Bank it was pleaded that Regulation 2018 cannot be made a basis of the petitioner's claim for pension because it has come into force in the year 2018 long after the petitioner's retirement. It was submitted that the petitioner in the said case was subjected to departmental proceeding for alleged irregularities and loss caused to the Bank and for that reason he was awarded with punishment of compulsory retirement. It was the contention of the petitioner that since the punishment is that of a date prior to the "effective date" contemplated under Regulation 31 of the 2018 Regulations, thus, the petitioner is not entitled for pension.

41. The learned Co-ordinate Bench noticed three provisions of Regulation 2018. Regulation 2(1)(k) which notifies that "effective date" means the 1st day of April 2018, Regulation 20 which has been quoted hereinabove and Regulation 31. Learned Co-ordinate Bench came to the conclusion that since the petitioner has been awarded with a major punishment of compulsory retirement much prior to the effective date, therefore, 2018 Regulations are not applicable to the petitioner's claim.



42. So far as binding nature of precedence is concerned, there are catena of decisions on the subject. The Hon'ble Supreme Court has while dealing with the concept of binding precedence in the case of **Director of Settlements, Andhra Pradesh & Ors. Vs. M. R. Apparao & Ors.** reported in **(2002) 4 SCC 638 : AIR 2002 SC 1598**, in paragraph '7' held as under:-

“7.But what is binding is the ratio of the decision and not any finding of facts. It is the principle found out upon a reading of a judgment as a whole, in the light of the questions before the Court that forms the ratio and not any particular word or sentence. To determine whether a decision has 'declared law' it cannot be said to be a law when a point is disposed of on concession and what is binding is the principle underlying a decision. A judgment of the Court has to be read in the context of questions which arose for consideration in the case in which the judgment was delivered.....”

43. In the case of **Commissioner of Income Tax versus Sun Engineering Works (P) Ltd.** reported in **(1992) 4 SSC 363 : AIR 1993 SC 43** in paragraph '39' the Hon'ble Supreme Court has held as under:-

“ 39. ...It is neither desirable nor permissible to pick out a word or a sentence from the judgment of this Court, divorced from the context of the question under consideration and treat it to be complete 'law' declared by this Court. The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before this Court. A decision of this Court takes its colour from the questions involved in the case in which it is rendered and while applying the decision to a later case, the courts must carefully try to ascertain the true principle laid down by the decision of this Court and not to pick out words or sentences from the judgment, divorced from the context of the questions under consideration by this Court, to support their reasonings....”



44. In the case of **Ambica Quarry Works v. State of Gujarat and others** reported in **1987 1 SCC 213 : AIR 1987 SC 1073** the Hon'ble Supreme Court referred Lord Halsbury in **Quinn v. Leathem** reported in **(1901) AC 495** in paragraph '18' in the following words:-

“18. ...The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it. (See Lord Halsbury in **Quinn v. Leathem (1901) AC 495**)......”

45. The Hon'ble Supreme Court has dealt with principles of *per-
inquiram* in the case of **M/s Fuerst Day Lawson Ltd. V. Jindal Exports Ltd.** reported in **AIR 2001 SC 2293**. The Hon'ble Supreme Court noticed its various judgment including one in the case of **Mamleshwar Prasad v. Kanhaiya Lal (Dead) through L.Rs., (1975) 2 SCC 232 : (AIR 1975 SC 907)** and paragraph '7' thereof is being reproduced hereunder:-

“7. Certainty of the law, consistency of rulings and comity of Courts - all flowering from the same principle - converge to the conclusion that a decision once rendered must later bind like cases. We do not intend to detract from the rule that, in exceptional instances, where by obvious inadvertence or oversight a judgment fails to notice a plain statutory provision or obligatory authority running counter to the reasoning and result reached, it may not have the sway of binding precedents. It should be a glaring case, an obtrusive omission. No such situation presents itself here and we do not embark on the principle of judgment per incuriam.”

46. In paragraph '19' in the case of **M/s Fuerst Day Lawson Ltd. (Supra)** the Hon'ble Supreme Court recorded in paragraph '19' as under:-



“19. This Court in *A.R.Antulay vs. R.S. Nayak*, (1998 2 SCC 602: (AIR 1988 SC 1531 : 1988 Cri LJ 1661) in para 42 (of SCC): (Para 44 of AIR Cri LJ) has quoted the observations of Lord Goddard in *Moore vs. Hewwit* (1947) 2 All ER 270 and *Penny vs. Nicholas* (1950) 2 All ER 89 to the following effect:

"Per incuriam are those decisions given in ignorance or forgetfulness of some inconsistent statutory provision or of some authority binding on the court concerned, so that in such cases some part of the decision or some step in the reasoning on which it is based, is found, on that account to be demonstrably wrong..."

47. Keeping in view the aforesaid judgments of the Hon'ble Supreme Court, this Court finds that in fact the issues which have been raised in the present application and the statutory provisions which have been referred to by learned counsel for the parties were not placed before the learned Coordinate of this Court in the case of **Birendra Kumar** (Supra). Even the judgments of the Hon'ble Apex Court were not brought before the learned Coordinate Bench. The argument of the petitioner in the present case is that he is entitled for pension in terms of Regulation 32(1), 13 and 14 of the Pension Regulation read with Regulation 3(C) but his application has been wrongly rejected by citing Regulation 20 and 31 of the Pension Regulations. In the case of **Birendra Kumar** (Supra) although a contention was raised on behalf of the petitioner that Regulation 20 would not be applicable, the order of compulsory retirement does not entail forfeiture of the past service of the petitioner, the ratio of the judgment of **Birendra Kumar** (Supra) is not on that issue.

48. Here, in this case even the learned counsel representing the Union of India has categorically submitted that Regulation 20 is an issue to be



considered and adjudicated and those employees who have been awarded the punishment of compulsory retirement on or after 01.04.2018 is not covered by Regulation 20 then on what basis it may be visualized or culled out that an employee who was made to retire prior to 01.04.2018 is covered by Regulation 20.

49. In the present case the statutory provision such as Regulation 32(1), 13 and 14, 3(C) and Regulation 2(x) of the Regulation of 2018 along with some other provisions have come up for consideration which were not there in the case of **Birendra Kumar** (Supra), therefore, this Court finds that the issues which have been raised in the present case are not having any binding precedents.

50. Now coming to the merit of the case, this Court has noticed hereinabove the contention of Mr. Parbat, learned Senior Counsel wherein he has submitted that had the petitioner been not compulsorily retired from service prior to 01.04.2018, in case of a normal retirement prior to 01.04.2018 he would have been very well covered under the provisions of the Regulation 2018. In this connection, he has pointed out Regulation 32 and 39(9)(iv) of 2018 Regulation which are as under:-

“32. Payment of pension or family pension in respect of certain employees.- (1) An employee who was in service between 1st day of September, 1987 and 31st day of March 2010 and retired from the service of the Bank before 31st day of March, 2018 shall, subject to the provisions of these regulations, be eligible for payment of pension from the effective date.
(2) The family of a deceased employee, who was in service between the 1st day of September, 1987 and 31st day of March 2010 and died before the 31st day of March, 2018 shall, subject to the provisions of these regulations, be eligible for payment of family pension from the effective date.”



“39. (9) The commutation of pension shall be become absolute in the case of an employee-
(iv)who was in service between 1st September, 1987 and 31st March, 2010 and retired on or before 31st March, 2018 and who opts to become a member of the Fund under these regulations, on the 1st day of April, 2018, where the application of commutation is made in Form VI within one year from the date of retirement and Form VII and Form VIII in all other cases, within the period specified in sub-regulation (1) of regulation 3;”

51. It is also the submission of Mr. Parbat, learned Senior Counsel and Mr. Verma, learned counsel representing the Central Government that by virtue of Regulation 31 those employees who have retired on or after 01.04.2018 by way of compulsory retirement would be entitled to get pension not withstanding Regulation 20, therefore, in case of those compulsorily retired employees who has retired on or after 01.04.2018, Regulation 20 has not been cited as a bar. In such circumstance a question arises for consideration as to whether the word ‘retired’ as occurring in Regulation 32(1) would include an employee such as the person who has been made to compulsorily retired from service prior to the effective date because unless it is so found it would not be possible to oust the petitioner by giving two different interpretations of Regulation 20 based on the date of compulsory retirement, it cannot be said that while a case of compulsory retirement before 01.04.2018 would be covered under Regulation 20 but an employee who has been awarded the punishment of compulsory retirement on or after 01.04.2018, his case would not be covered under Regulation 20. Even learned Central Government Counsel has raised the issue on this as according to him this requires adjudication.



52. Before this Court answer this issue, it would be also necessary to take note of Regulation 2(x) of the 2018 Regulation which defines the word 'retirement' which are as follows:-

"2(x)" *retirement*" means cessation from Bank's service,-

- (i) on attaining the age of superannuation as specified in the service regulations;
- ii) on voluntary retirement in accordance with provisions contained in regulation 28;
- (iii) on premature retirement by the Bank before attaining the age of superannuation in accordance with provisions contained in regulation 30;

53. Since definition of word 'retirement' talks of those cases which are in the nature of premature retirement before attaining the age of superannuation in accordance with the provision as contained under Regulation 30, Regulation 30 becomes relevant and as such the same is quoted hereunder:-

"30. Premature retirement pension.-

Premature retirement pension may be granted to an employee who, -

- (a) has rendered minimum ten years of service; and
- (b) retires from service on account of orders of the Bank to retire prematurely in the public interest or for any other reason to be recorded in writing, if otherwise he was entitled to such pension on superannuation, on that date.

54. A bare reading of clause (b) of Regulation 30 shows that all those employees who retire from service on account of orders of the Bank to retire prematurely not only in public interest but for any other reason to be recorded in writing, if otherwise he was entitled to such pension on superannuation, on that date, may be granted the premature retirement pension. There cannot be any doubt that this petitioner has been made compulsorily retire from service by an order of the Bank and reasons thereof are provided,



whatever it may be he would be covered under clause (b) of the Regulation 30. This discussion also makes it clear that even the employee who has not attained the age of superannuation as provided under Service Regulation but has ceases to be in Bank's service before attaining the age of superannuation as prescribed in Regulation 11 but in terms of clause (b) of Regulation 30, he has to be taken as being retired from service and the only thing which is required for purpose of being covered under the pension scheme would be that he must be otherwise entitled to such pension on superannuation on that date when he was made to compulsorily retire. In this regard Mr. Parbat, learned Senior Counsel has made it clear to this Court that had the petitioner retired in normal course prior to 01.04.2018, he would have no difficulty in getting covered under the provisions of the Pension Regulation 2018, but the only contest of the Bank is that because the petitioner has not retired in normal course on attaining the age of superannuation and he has been made to compulsorily retire from service prior to 01.04.2018, he would not be entitled to opt for pension.

55. This Court has already noticed the submission of learned counsel for the petitioner at the outset and finds that learned counsel for the petitioner has rightly submitted before this Court that neither Regulation 20 nor Regulation 31 would apply in the case of the petitioner. He has relied on Regulation 32 and it is his categorical submission that the petitioner being otherwise covered under the provision for qualifying service as provided under Chapter IV, his case would be covered under Regulation 32 and a case of 'compulsory retirement' is not covered under Regulation 20. Even learned Central Government counsel has submitted that there cannot be two kinds of



treatments under Regulation 20. He has raised a question that if an employee who is made to retire compulsorily by way of a penalty on or after 01.04.2018 is entitled for pension and is not covered by Regulation 20, then on what basis it is visualized or culled out that an employee who was made to retire prior to 01.04.2018 is covered by Regulation 20. He has found it difficult to comprehend and rightly so in the opinion of this Court.

56. From the aforementioned discussions, this Court comes to a conclusion that by virtue of the definition of the word ‘retirement’ as occurring under Regulation 2(x) read with clause (b) of Regulation 30 of the 2018 Regulation the petitioner who has been compulsorily retired from service by an order of the Bank prior to 01.04.2018 would be covered under the definition of the word “retirement”. Once this Court finds that the case would be one of retirement covered under the aforesaid provisions, the corollary to the same would be that the petitioner is duly covered under Regulation 32 and it makes no difference whether he retires by way of compulsory retirement or a normal retirement on attaining the age of superannuation, no such distinction may be made out on conjoint reading of these provisions. On the date of compulsory retirement the petitioner was otherwise eligible for pension.

57. This Court further finds that the intention of Rule Makers are very clear not to cover the case of compulsory retirement under Regulation 20, otherwise the provisions of Regulation 2(x), 30, 31 (1) and 32(2) would have been rendered incongruous to each other. The intention is further clear from the fact that after Regulation 31 when Regulation 32 was provided, the Rule makers were fully aware that the word “retire” as occurring in Regulation 32



would take its colour from the definition Clause where the word “retirement” has been defined and by virtue of Clause (b) of Regulation 30, all such cases where the Bank has caused cessation of services of an employee either in public interest or for any other reason except those enumerated under Regulation 20 of the 2018 Regulations would be covered subject to only condition that on the said date on cessation / premature retirement the employee was otherwise either qualified or eligible to get pension.

58. In order to gather the intention of rule makers while framing Regulation 2018 it would also be necessary to keep in mind that the Pension Regulations 2018 has been framed after the Special Leave to Appeal (C) No. 39288 of 2012 arising out of judgment and order dated 23.08.2012 in DBCSA No. 2021/2011 in SBCWP No. 4366/2005 passed by the High Court of Judicature for Rajasthan at Jodhpur was dismissed by the Hon’ble Supreme Court. The Hon’ble Supreme Court has in its operative part of the order dated 25.04.2018 recorded as under:-

“.....Be that as it may, it is seen from the judgments of the High Court of both Single and Division Benches that the same is passed following the judgment of the High Court of Karnataka dated 22.03.2011 and the appeal filed by the Union of India against the judgment of the learned Single Judge dated 22.03.2011 before the Division Bench has been dismissed. It is pointed out by the learned Senior counsel for the respondent(s) that the dismissal was set aside and the same was restored on 07.09.2012 and thereafter the same was dismissed again for non-prosecution on 13.01.2014. Thus, the judgment of the High Court of Karnataka has become final as against the appellant/Union of India. The High Court of Judicature for Rajasthan at Jodhpur has only followed that judgment of the High Court of Karnataka, which has otherwise become final.....”

59. In this very order the Hon’ble Supreme Court directed the Union of India to implement the judgment in respect of the regional rural bank



expeditiously and at any rate within three months from the date of production of a copy of the judgment. The judgment of the Hon'ble Karnataka High Court in Writ Petition No. 20034/2003 would unequivocally show that the said writ application was preferred by the Trade Union of the employees working in the Regional Rural Banks. The grievance of the Trade Union was that the opinion of the National Industry Tribunal constituted by the Union of India by a resolution dated 26.11.1987 deciding the question relating to pay, salary, other allowances and other benefits payable to the employees of Regional Rural Banks constituted under the Act of 1976 are not being taken care of. The Tribunal in its award had found that the Commercial Banks and RRBs carry on similar banking business and that the duties and functions of the officers and other employees of RRBs are similar as those officers and other employees in the corresponding posts of rural branches of sponsor banks and, therefore, it was opined that it was unjust and unreasonable to deny the RRBs employees parity in scale of pay as applicable in sponsor banks in comparable posts. It was further concluded that the financial liability of RRBs was an irrelevant criteria in extending the parity in service conditions between the employees of RRBs and NCBs. The Hon'ble High Court of Karnataka had in CWP No. 17905/1997 quashed the appointment of the different committees appointed by the Central Government and the Reserve Bank of India by its order dated 11.11.1998 quashed the appointment of the committee and its report which had addressed the salary and allowances of employees of RRBs. A direction was issued to the Central Government to extend pay and allowances with effect from 01.11.1992 to all the employees of RRBs in accordance with the pay,



allowances and benefits implemented in respect of the employees of the NCBs as per the Bipartite Settlement.

60. In the meanwhile, the employees of South Malabar Gramin Bank has also approached the High Court of Kerala by way of a petition in OP No. 1871 of 1997 seeking similar reliefs and the same was allowed by a learned Single Judge of Kerala High Court. The appeal preferred against the same by the management was also dismissed. The same was taken to a special leave petition before the Hon'ble Supreme Court which was ultimately disposed of by order dated 31.01.2001 confirming the finding of the Kerala High Court and quoted as well to the extent that employees of the RRBs are entitled to parity with the corresponding employees of the sponsor Banks. The Hon'ble Apex Court held that the employees of the RRBs would be entitled to identical wage revision as and when given to the employees of the sponsor banks. The Hon'ble Karnataka High Court discussed all the judgments on the issue and ultimately held as under:-

“6. In the light of the above facts and circumstances, it cannot be said that the endeavour undertaken by the National Industrial Tribunal and the opinions expressed by the Supreme Court was to be restricted to bringing about parity in the pay, allowances and other benefits of the employees of RRBs on par with the employees of the sponsor banks. It necessarily would include pensionary benefits as well. It is patent that the employees of the RRBs would derive greater benefit if there is a pension scheme in lieu of the Employees Contributory Provident Fund and the Scheme thereunder. But, this would require the Central Government to pass an order apart from the modalities of any such pension scheme being worked out by the management of the RRBs. In the present scenario, when the management is reluctant to formulate any such scheme and pleads that there is no obligation on its part to extend such benefit to the employees of the RRBs, it would be necessary for this court to direct the Central Government to pass appropriate orders in order to set right the anomaly pertaining to the retirement benefits, availed by the RRBs vis-a-vis the employees of the sponsor banks.”



In concluding paragraph the Hon'ble Karnatka High Court issued directions as under:-

“.....Hence, the respondents are directed to take steps to ensure that the modalities are worked out for a pension scheme in line with the pension scheme formulated for the employees of the sponsor banks in terms of the Memorandum of Settlement dated 29.10.1993 at Annexure- to the writ petition with such changes as would be appropriate and keeping in line with the present circumstances, including such other relevant criteria that could be reasonably agreed upon in consultation with the employees. Since the petition had been pending on board since the year 2003, the respondents are directed to expedite the process and implement the same within a period of six months from the date of receipt of a copy of this order.”

61. This Court has already discussed in detail the several provisions of the Pension Regulations 2018 and harmonious construction of all the provisions have been made. The background in which Pension Regulations 2018 came and the clear directions of the Hon'ble Karnataka High Court which was approved by the Hon'ble Supreme Court leaves no ambiguity in the minds of this Court that the pension scheme framed for the employees of the RRBs cannot be given any interpretation which may have a potential to draw a distinction in the matter of treatment as respect payment of pensionary benefits between the employee of the sponsor banks and the employee of the Regional Rural Banks. Sometimes the previous judicial pronouncements leading to enactment for framing of a statutory rules comes in aid in interpreting the provisions of the Statute or Rule as the case may be.

62. In the present case the kind of interpretation being sought to be given by respondent nos. 4 to 8 to the Pension Regulations 2018 would only lead to an incongruous position and will detract from the line with the pension scheme formulated for the employees of the sponsor Banks. It is an admitted



position that the employees of the sponsor Banks who have been imposed with a punishment of compulsory retirement are being considered for the superannuation benefits i.e. Pension and/or PF and Gratuity as would be due otherwise under the Rules or Regulations. In this connection, the IBA circular on Pension dated December 23, 2015 as contained in Annexure '8/1' to the writ application may be referred to.

63. This Court, therefore, finds that the impugned communication as contained in Letter Reference No. DBGB/HO/HRD-Pension/3998 dated 30.05.2019 (Annexure 7/1) issued by the Chief Manager of Dakshin Bihar Gramin Bank (respondent no. 8) is not sustainable in law, hence the same is liable to be set aside and accordingly it is hereby set-aside.

64. So far as issue of privilege leave is concerned, this Court finds that the issue has been elaborately discussed in judgment of this Court in the case of **Amitesh Kumar Roy Vs. Madhya Bihar Gramin Bank & Anr.** (C.W.J.C. No. 17150 of 2017 and its analogous case) dated 16.09.2020, the case of the petitioner would be fully covered thereunder, and hence, the petitioner would be entitled for the benefits of encashment of Privilege Leave accumulated to his credit as on the date of his compulsory retirement. In the written notes of argument learned Senior counsel has relied on the judgment of Hon'ble Supreme Court in the case of **Union of India Versus Gurnam Singh** reported in **(1982) 2 SCC 314**. This Court has gone through the same and finds that the respondents cannot draw any support from the same. The judgment, in fact supports the case of the petitioner. The relevant observations from the said judgment are quoted hereunder:-



“.....We may observe that even as a right to receive pension, although accruing on retirement, is a condition of service, so also the right to the payment of the cash equivalent of leave salary for the period of unutilised leave accruing on the date of retirement must be considered as a condition of service.

8. In our judgment, the High Court is right in upholding the claim of the respondent to the payment of the cash equivalent of the leave salary in respect of the period of earned leave at his credit on the date of retirement in accordance with the provisions of Rule 20-R of the All India Services (Leave) Rules, 1955 read with Rule 2 of the High Court Judges Rules, 1956.”

65. The respondent nos. 4 to 8 are therefore, directed to consider the case of the petitioner for pension option in terms of his request as contained in Annexure ‘7’ to the writ application and take a decision keeping in view this judgment within a period of two months from the date of receipt/production of a copy of this judgment.

66. The aforesaid respondent shall also consider the claim of the petitioner on account of privilege leave accumulated to his credit on the date of compulsory retirement and pay the same with interest at the rate of 6% per annum to be calculated from the date three months after the order of compulsory retirement was passed till the date of the payment.

67. This writ application is thus, allowed in the aforementioned terms. There will, however, be no order as to cost.

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(Rajeev Ranjan Prasad, J)

AFR/NAFR	AFR
CAV DATE	15.09.2020
Uploading Date	05.10.2020
Transmission Date	

Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.

