HIGH COURT OF GUJARAT

BANK OF INDIA RETIRED OFFICERS ASSOCIATION
Versus
BANK OF INDIA

Date of Decision: 18 August 2006

Citation: 2006 LawSuit(Guj) 506

Hon'ble Judges: Akil Kureshi

Eq. Citations: 2007 1 GLR 53, 2006 3 GLH 214, 2007 113 FLR 22, 2007 3 SLR 679, 2007 1 GCD 11

Case Type: Special Civil Application

Case No: 16361 of 2004

Subject: Constitution

Acts Referred:
Constitution Of India Art 16, Art 226, Art 14
Bank Of India (Employees Pension) Regulations, 1995 Reg 52, Reg 34

Final Decision: Petition dismissed

Advocates: M S Trivedi, Rajendra M Desai, Nandish Chudgar, Nanavati Associates

Cases Referred in (+): 7

Akil Kureshi, J.

[1] In this petition, the petitioners have challenged Regulation 34 of the Pension Regulations, 1995 formulated by respondent No. 1-Bank of India.

[2] Brief facts leading to the present petition are that the petitioner No. 1 is an Association of Retired Officers of Bank of India. Petitioner No. 2 is a member of petitioner No. 1 Association.

Respondent No. 1 formulated a pension scheme through regulations called Bank of India (Employees') Pension Regulations, 1995 (hereinafter to be referred to as "the said Regulations"). Through the said Regulations, pensionary benefits were made available to the employees of respondent No. 1-Bank. The pension scheme provided, inter alia, that pension would be made available to those

employees who joined the service of the Bank on or after the notified date. For those who are already in service of the Bank as on the notified date or who had retired before the notified date, different provisions were made.

Broadly stated, in Regulation 3 of the said Regulations, it was provided that those employees who were in service of the Bank on or after the 1st day of January, 1986, but had retired before the 1st day of November, 1993, would be covered by the pension scheme provided they exercise the option in writing within 120 days from the notified date to become member of the pension fund. For those who retired on or after 1st day of November, 1993, but before the notified date also, an option was made available to be exercised in writing within 120 days from the notified date to become the member of the fund. Both these classes of employees had to refund with simple interest at the rate of 6 percent per annum the entire amount of Bank's contribution to the provident fund. Those employees who were in service before the notified date and continued to be in service thereafter also, option was to be exercised within 120 days from the notified date.

Petitioner No. 1-Association espouses the cause of officers of respondent No. 1-Bank who retired after 1-1-1986, but before 1-11-1993. With respect to such employees, provisions were made under Regulation 34 of the said Regulations which provided, inter alia, that they shall be eligible for pension with effect from 1st day of November, 1993. Similarly, families of such employees who died between the said dates also had an option to seek pension, but with a rider that the family shall receive pension only with effect from 1-11-1993. These provisions made in Regulation 34 of the said Regulations aggrieved the petitioners.

[3] The petitioners contend that the cut-off date of employees who have retired before 1-11-1993 and after 1-11-1993 is an artificial demarcation between the otherwise similarly situated employees. It is, therefore, their case that all employees irrespective of the date of their retirement who had opted for pension should receive their pensionary benefits from the date of retirement and not from 1-11-1993 as provided under Regulation 34 of the said Regulations.

[4] The petitioners had made a representation to the respondents on 18th December, 2001 in this regard. The representation, however, came to be turned down by the respondents by communication dated 15-2-2002. The petitioners have, therefore, filed this petition challenging validity of Regulation 34 of the said Regulations.

[5] Respondent Nos. 1 and 2 have filed affidavit-in-reply dated 27th March, 2006. In the affidavit-in-reply, apart from opposing the petition on legal grounds, it is stated that petitioner No. 1-Association had filed Special Civil Application No. 10532 of 1996 before this Court. In the said petition, the grievance of petitioner No. 1-Association was with respect to the payment of commuted value of pension and for payment of interest on such commuted value of pension. It is pointed out that the said petition came to be disposed of by the learned single Judge of this Court by the judgment dated 16-9-1999. The learned single Judge while partly allowing the petition directed that respondent No. 1-Bank shall pay to the officers of the Bank who retired between 1-1-1986 and 31-10-1993 interest at the rate of 6 percent per annum on the commuted value of pension for the period from 1-11-1993 till 31-3-1995. Rest of the prayers made by the Association were turned down. It is also pointed out in the said affidavit-in-reply that against the directions issued by the learned single Judge in the order dated 16-9-1999, respondent No. 1-Bank had preferred Letters Patent Appeal No. 732 of 2000 and by an order dated 10-1-2001, the directions issued by the learned single Judge has been stayed. It is stated that the said L.P.A. is pending. It is further stated that the petitioners have not disclosed these facts in the petition.

In the said reply filed by respondent Nos. 1 and 2, it is further contended that a settlement for pension was signed between the representatives of the employees and the representative of Bank on 29th October, 1993, to provide for pensionary benefits with effect from 1-11-1993 to employees who were in service and who retired subsequently. However, by way of dispensation, all employees who had retired during the period from 1-1-1986 to 31-10-1993, were also made eligible for pension if they applied for the same and refund the C.P.F. as provided in the Regulations. It is, therefore, stated that interms of Regulation 52 of the said Regulations, an employee who is member of the pension fund is entitled to receive pension in the normal course from the date following his retirement. However, in view of the fact that settlement of pension envisaged that the payment of pensionary benefits shall commence from 1-11-1993; in case of employees who retired during the period from 1-1-1986 to 31-10-1993, pension payment could not have commenced from the date following their retirement as provided in Regulation 52. In view of this position, Regulation 34 is incorporated.

It is further stated in the affidavit-in-reply that those who retired prior to 1-11-1993 would have continued to enjoy the fruits of Contributory Provident Fund. They were required to refund the C.P.F. benefits only against the commutation of arrears of pension when actually released to them so that the pensioners would not have difficulty in raising resources for refunding the C.P.F. amount. It is further stated that simple interest at the rate of 6 percent per annum is collected only upto 1-4-1995 irrespective of the date of refund of C.P.F. by the pensioner.

[6] The petitioners have filed affdavit-in-rejoinder. However, no new factual aspects come forth in the said rejoinder statement.

[7] It is on the basis of these pleadings that the parties have made submissions before the Court.

[8] Learned Advocate Shri Trivedi appearing for the petitioners submitted that Regulation 34 of the said Regulations is illegal, unlawful and invalid. He submitted that all employees irrespective of date of their retirement should receive pension w.e.f. date immediately following the date of retirement. He submitted that Regulation 34 of the said Regulations is in conflict with Regulation 52. He further submitted that by introducing Regulation 34, respondent No. 1 has introduced an artificial cut-off date. The employees retiring prior to 1-11-1993 are treated differently from those retiring after 1-11-1993. Those who retired after 1-11-1993 would receive their pension immediately after retirement whereas employees retiring after 1-1-1986, but before 1-11-1993 are held eligible for pension only from 1-11-1993. This, according to the learned Advocate for the petitioner, is discriminatory. He submitted that retirees form a homogeneous class. They have been further sub-classified into two groups, those retiring before 1-11-1993 and those retiring after 1-11-1993 which according to the learned Advocate is not legally permissible.

[9] Learned Advocate Shri Chudgar for the respondents opposed the petition. He submitted that respondent No. 1-Bank had introduced pension scheme through the said Regulations. The said Regulations make different specific provisions for different classes of employees. He submitted that the members of the petitioner No. 1-Association who retired before 1-11-1993 with benefits of C.P.F. scheme cannot claim pensionary benefits without any condition. He further submitted that the pension scheme was made applicable prospectively from 1-11-1993 through a settlement between the employer on one side and the the employees on the other. The settlement had taken place in October, 1993 and it was agreed therein that the pension scheme was to be made applicable with effect from 1-11-1993. It is, therefore, clear that all employees who joined the service of the Bank after 1-11-1993 are included in the pension scheme and by giving limited retrospective effect to the scheme, employees who retired after 1-11-1986 have also been given option to switch over to the pension scheme. He submitted that the capacity of the Bank to weigh the additional burden flowing from such a scheme would be a relevant consideration for this Court while examining the validity of the condition in question. He further submitted that Regulation 52 of the said Regulations is a general regulation providing, inter alia, that pension would be payable to retiring employees on the following date after his retirement. On the other hand, Regulation 34 is a specific regulation applying to special class of employees. He also submitted that petitioner No. 1 Association had approached this Court earlier challenging certain portion of the said Regulations. This Court had substantially turned down the challenge of the Association and provided only for a limited relief of granting interest on the delayed payment of commuted value of pension. Even this direction of the learned single Judge is under challenge before the Division Bench and the L.P.A. is pending and stay has been granted.

[10] Having heard the learned Advocates appearing for the parties, this Court has to decide the legality of Regulation 34 of the said Regulations.

[11] As noted earlier, pension scheme was introduced for the first time by respondent No. 1-Bank through the said Regulations. Regulation 2 of the said Regulations defines certain terms. Regulation 2(r) of the said Regulations defines "notified date" as follows :-

"(r) "notified date" means the date on which these Regulations are published in the Official Gazette."

It is not in dispute that the said Regulations were published in Official Gazette on 29th September, 1995. The notified date, therefore, happens to be 29th September, 1995.

Regulation 3 of the said Regulations provides for application of the said Regulations. Regulation 3 reads as follows :-

"3. Application.

These Regulations shall apply to employees who - (1) (a) were in the service of the Bank on or after the 1st day of January, 1986, but had retired before 1st day of November, 1993; and

(b) exercise an option in writing within one hundred and twenty days from the notified date to become member of the Fund; and

(c) refund within sixty days after the expiry of the said period of one hundred and twenty days specified in clause (b) the entire amount of the Bank's contribution to the Provident Fund including interest accrued thereon together with a further simple interest at the rate of six percent per annum on the said amount from the date of settlement of the Provident Fund account till the date of refund of the aforesaid amount to the Bank or till the 1st day of April, 1995 whichever is earlier or;

(2) (a) have retired on or after the 1st day of November, 1993 but before the notified date;

(b) an exercise an option in writing within one hundred and twenty days from the notified date to become member of the Fund; and

(c) refund within sixty days after the expiry of the said period of one hundred and twenty days specified in clause (b) the entire amount of Bank's contribution to the Provident Fund and interest accrued thereon together with a further simple interest at the rate of six percent per annum on the said amount from the date of settlement of the Provident Fund account till the date of refund of the aforesaid amount to the Bank; or

(3) (a) are in the service of the Bank before the notified date and continue to be in the service of the Bank on or after the notified date; and

(b) exercise an option in writing within one hundred and twenty days from the notified date to become member of the Fund; and

(c) authorise the trust of the Provident Fund of the Bank to transfer the entire contribution of the Bank along with the interest accrued thereon to the credit of the Fund constituted for the purpose under Regulation 5; or

(4) join the service of the Bank on or after the notified date; or

(5) were in the service of the Bank during any time on or after the 1st day of November, 1993 and had died after retirement but before the notified date, their family shall be entitled for the amount of pension payable to them from the date on which they would have been entitled to pension under these Regulations, had they been alive till the date on which they died, if the family of the deceased -

(a) exercise an option in writing within one hundred and twenty days from the notified date to become member of the Fund; and

(b) refund within sixty days after the expiry of the said period of one hundred and twenty days specified in clause (a) above the entire amount of Bank's contribution to the Provident Fund and interest accrued thereon together with a further simple interest at the rate of six percent per annum on the said amount from the date of settlement of the Provident Fund account till the date of refund of the aforesaid amount to the Bank; or

(6) joined the service of the Bank on or after the 1st day of November, 1993 but who have died while in the service of the Bank before the notified date, their family

shall be entitled to the family pension under these Regulations :

Provided that the family of such a deceased employee refunds within one hundred and eighty days from the notified date the entire amount of Bank's contribution to the Provident Fund, if any, and interest accrued thereon together with further simple interest at the rate of six percent per annum from the date of settlement of the Provident Fund account till the date of refund of the aforesaid amount to the Bank.

Provided further that the family of such a deceased employee shall apply in writing for grant of family pension; or

(7) were in the service of the Bank during any time on or after the 1st day of January, 1986 and had died while in service on or before the 31st day of October, 1993 or had retired on or before the 31st day of October, 1993, but died before the notified date in which case their family shall be entitled to the pension or the family pension as the case may be under these Regulations, if the family of the deceased.

(a) exercise an option in writing within one hundred and twenty days from the notified date to become member of the Fund; and

(b) refund within sixty days of the expiry of the said period of one hundred and twenty days specified in clause (a) above the entire amount of Bank's contribution to the Provident Fund and interest accrued thereon together with a further simple interest at the rate of six percent per annum from the date of settlement of the Provident Fund account till the date of refund of the aforesaid amount to the Bank; or till the first day of April, 1995 whichever is earlier; or

(8) joined the service of the Bank on or before the 31st day of October, 1993 and who died while in service on or after the 1st day of November, 1993, but before the notified date in which case their families shall be entitled to family pension under these Regulations if the family of the deceased employee -

(a) exercise an option in writing within one hundred and twenty days from the notified date to become a member of the Fund; and

(b) refund within sixty days of the expiry of the said period of one hundred and twenty days specified in clause (a) above the entire amount of the Bank's contribution to the Provident Fund, including interest accrued thereon together with a further simple interest at the rate of six percent per annum from the date of settlement of the Provident Fund account of the employee till the date of refund of the aforesaid amount to the Bank;

(9) Notwithstanding anything contained in sub-regulations (1), (2), (3) (5) and (8) an option exercised before the notified date by an employee or the family of a deceased employee in pursuance of the settlement shall be deemed to be an option for the purpose of this Chapter if such an employee or the family of deceased employee refund within sixty days from the notified date, the amount of the Bank's contribution to the Provident Fund including interest accrued thereon together with a further simple interest in accordance with the provisions of this Chapter and in case employer's contribution of Provident Fund has not been received from Provident Fund Trust, has authorised or authorises within sixty days from the notified date the trustees of the Provident Fund of the Bank to transfer the entire contributions of the Bank to the Provident Fund including interest accrued thereon in accordance with the provisions of its Chapter to their credit of the Fund constituted for this purpose under Regulation 5."

Regulation 4 of the said Regulations provides, inter alia, that notwithstanding anything contained in sub-regulation (4) of Regulation 3, an employee who joins the service of the Bank on or after the notified date at the age of thirty-five years or more, may, within the period of ninety days from the date of his appointment, elect, to forgo his right to pension, where upon the said Regulations shall not apply to him.

Regulation 14 of the said Regulations provides for qualifying service for pension. Regulation 22 of the Regulations provides for forefeiture of service under certain circumstances, such as, resignation, dismissal or removal of an employee.

Chapter V of the said Regulations pertains to classes of pension. These regulations provided, inter alia, for super annuation pension, pension on voluntary retirement, invalid pension, compassionate allowance, premature retirement pension and compulsory retirement pension. It is in Chapter V that Regulation 34 has been included. Regulation 34 of the said Regulations reads as follows :-

"34. Payment of pension or family pension in respect of employees who retired or died between 1-1-1986 to 31-10-1993.

(1) Employees who have retired from the service of the Bank between the 1st day of January, 1986 and the 31st day of October, 1993 shall be eligible for pension with effect from the 1st day of November, 1993.

(2) The family of a deceased employee governed by the provisions contained in sub-sec. (7) of Regulation 3 shall be eligible for family pension with effect from the 1st day of November, 1993."

Chapter 1/2 of the said Regulations provides for rate of pension. Chapter VII thereof provides for family pension and Chapter VIII provides for commutation of pension. Chapter IX of the said Regulations provides for general conditions. Regulation 52 contained in Chapter IX reads as follows :-

"52. Date from which pension becomes payable.

(1) Except in the case of an employee to whom the provisions of Regulation 43 and Regulation 46 apply a pension other than family pension shall become payable from the date following the date on which an employee retires.

(2) Family pension shall become payable from the date following the date of death of the employee or the pensioner.

(3) Pension including family pension shall be payable for the day on which its recipient dies."

[12] On the basis of the above provisions contained in the said Regulations, the contentions raised on behalf of the petitioners need to be examined.

[13] Before attempting to harmonize the interpretation of the different provisions and to judge the validity of Regulation 34 of the said Regulations, a few salient factual features need to be noted.

The said Regulations were formulated in the year 1993 and actually notified on 29th September, 1995. All the members of petitioner No. 1 Association whose cause the petitioners seek to espouse have retired from service between 1-1-1986 and 1-11-1993 and have opted to become members of the pension fund. In other words, in response to the option made available by the said Regulations, all the concerned employees have opted to switch over to the pension scheme. They had exercised their options at the relevant time. It may be recalled that as per Regulation 3 of the said Regulations, time of 120 days from the notified date was made available to such employees to exercise their option. Thus, all the employees on whose behalf petitioner No. 1 Association has filed the present petition, would have exercised their option for switching over to the pension scheme as per the Regulations way back in the year 1995. For the first time, a protest was made about the pension being made available to them with effect from 1-1-1993 by making a representation on 18-12-2001. This representation was also turned down by respondent No. 1-Bank. It was conveyed to the petitioners the decision thereof vide communication dated 15-2-2002. The present petition has thereafter been filed some time in December, 2004. It may also be noted that petitioner No. 1 Association had filed Special Civil Application No. 10532 of 1996 before this Court raising certain issues about the terms of the said Regulations. The said petition, as noted earlier, received partial success. In the said petition, the petitioners never raised any grievance about Regulation 34 of the said Regulations. It is in this background that the present petition is required to be examined.

[14] From the said Regulations, contents whereof have been noted hereinabove, it can be seen that respondent No. 1-Bank introduced pension scheme for the first time through said Regulations. The Regulations were notified on 29th September, 1995. As is emerging from the affidavit-in-reply filed by respondents Nos. 1 and 2, the said Regulations providing for pension scheme were on account of settlement signed between the management and the employees' Union on 29th October, 1993. In the said settlement, it was decided to provide for pensionary benefits with effect from 1-11-1993 to those employees who were in service then and retiring subsequently. It was only by way of a special concession that employees who had retired prior to 31-10-1993 were also brought within the scope of pension regulations. In this sense, the said Regulations were given retrospective effect. This retrospectivity, was however, limited in two respects. Firstly, pension option was made available only to those employees who are in service on 1-1-1986 and who retired or died after that date. Secondly, it was also provided that such employees would receive pension only with effect from 1-11-1993. These aspects are clear upon the combined reading of Regulation 3 and Regulation 34 of the said Regulations.

A closer scrutiny of Regulation 3 of the said Regulations reveals that following classifications were made by respondent No. 1-Bank :-

(1) Those employees who were in service of the Bank on or after 1-1-1986 but who retired before 1-11-1993.

(2) Those employees who retired on or after 1-11-1993, but before the notified date.

(3) Those employees who were in service of the Bank before the notified date and continued to be in service of the Bank on or after the notified date; and

(4) Those employees who joined the service of the Bank on or after the notified date.

With respect to the employees joining service after the notified date, subject to Regulation 4, were automatically covered under the pension scheme. As per Regulation 4, if the employee concerned is above the age of 35 years, he had option to opt out of the pension scheme.

On the other hand, for the employees who had joined the service of the Bank before the notified date, pension was made available at their option. Such option was to be exercised within the time permitted in Regulation 3 of the said Regulations. Upon exercise of such options within the time so permitted, such employees would be covered under the pension scheme. Additionally, for those employees who had retired prior to the notified date had to surrender the employer's contribution of provident fund. With respect to the employees who were in service of the Bank on or after 1-1-1986, but retired prior to 1-11-1993, an additional special provision was made in Regulation 34 of the said Regulations. It was provided that such employees shall be eligible for pension with effect from 1st day of November, 1993.

[15] The reason for introduction of such a provision is clearly discernible. The pension scheme is envisaged and formulated only with effect from 1-11-1993. Ordinarily, therefore, employees who retired on or after 1-11-1993 would be eligible to receive pension. They would, therefore, receive pension immediately following the date of their retirement as provided under Regulation 52 of the said Regulations. As a special concession, respondent No. 1-Bank enlarged the scope of pension scheme by including even those employees who had retired prior to 1-11-1993 provided they were in service of the Bank at least upto 1-1-1986. For such employees, pension scheme was though made available, the same was subject to two conditions. First condition was that they must surrender the employer's contribution of C.P.F. with interest as provided and second condition was that they shall receive pension only with effect from 1-11-1993. The said condition was necessary since pension scheme itself was to take effect from 1-11-1993. The cut-off date of 1-11-1993 therefore, has rational nexus with the object sought to be achieved through the said pension scheme.

[16] Introduction of cut-off date in a new pension scheme is a well recognized and well accepted principle. By a series of decisions, the Hon'ble Supreme Court has upheld the power of the employer to introduce a cut-off date in a pension

scheme especially when such a pension scheme is being introduced by the employer for the first time. The employer's capacity to weigh the additional burden being one of the relevant considerations, it would not be possible for this Court to alter any such cut-off date. As stated earlier, through the said Regulations, respondent No. 1-Bank was introducing a pension scheme for the first time for its employees. Any cut-off date which was otherwise relevant and reasonable and had a nexus with the object sought to be achieved was therefore open for respondent No. 1 to introduce through such Regulations. In the present case, the said cut-off date of 1-11-1993 did not completely disentitle the concerned employees from seeking pensionary benefits. It only limited their right to claim pension w.e.f. 1-11-

1993 and not earlier. Therefore, in addition to providing for the pension scheme being made applicable from 1-11-1993, if it was given limited retrospectivity, I do not find that the same offended the equality clause of Arts. 14 and 16 of the Constitution. In addition to providing for pension option to those employees who retired after 1-1-1986, also providing that the actual pension will commence only from the date of pension scheme itself i.e. 1-11-1993, I do not find that the Bank committed any illegality.

[17] In the case of D. S. Nakara v. Union of India, AIR 1983 SC 130, the Hon'ble Supreme Court found that it was not open for the employer to provide for a cut-off date for application of liberalised pension scheme. It may be noted that in Nakara's case, the Hon'ble Supreme Court was considering the legality of cut-off date of application of provisions liberalized pension in an existing pension scheme whereas in the present case, this Court is concerned with application of a cut-off date in a newly formulated pension scheme.

In the case of Krishena Kumar v. Union of India, AIR 1990 SC 1782, the Hon'ble Supreme Court noted the decision in the case of D. S. Nakara (supra), but upheld the cut-off date for introduction of a pension scheme. In Para 30 of the said decision, the Hon'ble Supreme Court observed that in Nakara's case, it was never held that both the pension retirees and the P.F. retirees formed a homogeneous class and that any further classification among them would be violative of Art. 14. On the other hand, the Court clearly observed that it was not dealing with the problem of a "fund". It was further observed that under C.P.F. scheme the obligation of the employer ends with the retirement of the employee whereas in pension scheme, the Government's obligation does not begin until the employee retires.

In the case of Indian Ex-Services League v. Union of India, AIR 1991 SC 1182, the Hon'ble Supreme Court turned down the claim of the employees for one rank one pension and held that such a right doesnot flow from the decision in Nakara's case (supra).

In the case of A. I. Reserve Bank Retired Officers Association v. Union of India, AIR 1992 SC 767, the Hon'ble Supreme Court upheld the cut-off date of 1-1-1986 introduced in a pension scheme whereby those who retired under C.P.F. scheme prior to 1-1-1986 were not given the benefit of pension.

In the case of State of Punjab v. Amar Nath Goyal, 2005 AIR SCW 5664, the Hon'ble Supreme Court while considering the validity of cut-off date for revision of quantum of increase in ceiling of gratuity observed that financial and economic implications are very relevant and germane for any policy decision touching the administration of the Government at the Centre or the State level. It was in that background, cut-off date was upheld. This aspect of financial implication was reiterated by the Hon'ble Supreme Court in the case of State of Andhra Pradesh v. A. P. Pensioners Association, 2005 AIR SCW 6045. In Para 38 of the said decision, it was observed that it is beyond any shadow of doubt that financial implication is a relevant criterion for the State Government to determine as to what benefits can be granted pursuant to or in furtherance of the recommendations made by the Pay Commission.

[18] It can thus be seen that the authority of the employer to provide for a cut-off date while introducing a new pension scheme is a well recognized principle and when respondent No. 1-Bank, was introducing a new pension scheme through the said Regulations, it was well within the right of respondent No. 1 to make it applicable from 1-11-1993 as is done in the present case. The date of 1-11-1993 has relevance inasmuch as the settlement was arrived at between the two sides towards the end of October, 1993. With this date in mind, provisions have been made in the said Regulations making the pension scheme available to the existing employees as on that date or those who joined the service thereafter. As noted earlier, the employees existing on 1-11-1993 were given option to switch over to the pension scheme. As a special concession to those employees who had already retired before 1-11-1993, additional provisions were made in the said Regulations giving option to the employees retiring after 1-1-1986, but before 1-11-1993. Such employees, however, had to refund the employer's contribution of provident fund like all other C.P.F. retirees opting for pension. In Regulation 34, it was additionally provided that such employees shall receive their pension only from 1-11-1993. In that sense, the pension scheme was given limited retrospectivity. Nothing has been pointed out to suggest that such retrospectivity offends any of the statutory or constitutional provisions. It was only by way of a concession that the pension scheme was made available at their option to those employees who had retired between 1-1-1986 and 1-11-1993. While introducing a pension scheme for the first time w.e.f. 1-11-1993, it was open for the Bank to exclude altogether the employees retiring prior to the said date. Instead of completely excluding such employees from the purview of the pension scheme, if the Bank offered pensionary benefits to them, but considering the financial implications, limited the benefits of pension to accrue only with effect from 1-11-1993, I do not find that the same is illegal. Upholding the contention of the petitioners would amount to directing the respondent No. 1-Bank to weigh the additional burden of pension of such employees right from 1-1-1986 or from the date of their retirement.

[19] It is not possible to accept the contention that Regulation 34 of the said Regulations is in conflict with Regulation 52. Learned Advocate for the respondents was justified in contending that Regulation 52 of the said Regulations is a general provision making pension available to retiring employees from the date following the date of retirement. Regulation 34 of the said Regulations, on the other hand, applies to those employees who were in service as on 1-1-1986, but retired before 1-11-1993 and who opted to switch over to pension scheme. All such employees are held to be eligible to receive pension only from 1-11-1993. For such class of employees, therefore, Regulation 34 would apply and I see no conflict between the two Regulations.

[20] The question can be looked at from a slightly different angle. When respondent No. 1-Bank provided for pension scheme through the said Regulations for employees retired from 1-1-1986 and 1-11-1993, certain provisions were made. Option was given to such employees to switch over to pension scheme on two conditions. First condition was that the employee concerned must agree to refund the employer's contribution of P.F. with interest as provided. This was a common condition for all C.P.F. retirees opting for pension irrespective of the date of retirement. Second condition was that such employee would receive pension only from 1-11-1993 and not prior thereto. With this clear understanding, the concerned employees exercised their option. They exercised their option in the year 1995. They have received pension from respondent No. 1-Bank all throughout. First time, an objection by way of representation was made in the year 2001. Such objection was turned down by the Bank in the year 2002. The present petition has been filed in December, 2004. Quite apart from gross delay in raising the dispute, I find that the petitioners cannot resile from the option exercised by the employees. It was open for the concerned employees not to opt for the pension scheme and to retain the C.P.F. benefits already received by them. However, having chosen to exercise the option to be covered by the pension scheme with all its attendant benefits and conditions, such employees at such a belated stage cannot turn around and challenge one of the important conditions for permitting them to switch over to the pension scheme. For such employees the offer of pension was a package deal. It was open for them either to accept or to reject the offer in its entirety. In the case of Bank of India v. O. P. Swaramakar, AIR 2003 SC 858, the Hon'ble Supreme Court while upholding the right of employees to withdraw the option for V.R.S., nevertheless provided in Para 114 of the decision that :

> "114. However, it is accepted that a group of employees accepted the ex gratia payment. Those who accepted the ex gratia payment or any other benefit under the scheme, in my considered opinion, could not have resiled therefrom."

> In other words, the Hon'ble Supreme Court found that those employees who received the benefits under the V.R.S. cannot later on resile from their position.

[21] In the result, I do not find any merits in the petition. The same, is therefore, rejected. Notice is discharged with no order as to costs.

Petition dismissed.