

HIGH COURT OF GUJARAT (D.B.)**BANK OF INDIA**
Versus
GHANSHYAMBHAI MULJIBHAI PATEL**Date of Decision:** 22 August 2013**Citation:** 2013 LawSuit(Guj) 1166**Hon'ble Judges:** [Bhaskar Bhattacharya](#), [J B Pardiwala](#)**Eq. Citations:** 2014 1 GLH 134, 2014 LabIC 634**Case Type:** Letters Patent Appeal; Special Civil Application**Case No:** 446 of 2013; 8605 of 2000**Subject:** Banking, Constitution**Acts Referred:**[Constitution Of India Art 226](#), [Art 14](#)[Banking Companies \(Acquisition And Transfer Of Undertakings\) Act, 1970 Sec 19\(2\)\(f\)](#)**Final Decision:** Appeal dismissed**Advocates:** [Nandish Chudgar](#), [Hardik Mehta](#), [Nanavati Associates](#), [A K Clerk](#)**Cases Referred in (+): 16****J. B. Pardiwala, J.**

[1] This Appeal under Clause 15 of the Letters Patent is at the instance of an unsuccessful respondent of a writ-application and is directed against an order dated 11th February 2013 passed by a learned Single Judge of this Court in Special Civil Application No.8605 of 2000, by which the learned Single Judge allowed the petition, directing the appellant-Bank to consider the case of the respondent herein (original petitioner) for grant of pension under Regulation 33 of the Pension Regulations, 1995.

[2] Being dissatisfied, the unsuccessful respondent of the writ-application has come up with the present Letters Patent Appeal.

[3] In the Special Civil Application No.8605 of 2000 filed by the respondent herein before us, the following prayers were made :

"(a) declaring that regulation 33 of the Bank of India (Employees') Pension Regulations, 1995 in so far as it denies pension on compulsory retirement to an employee compulsorily retired from the service before 01.11.1993 is arbitrary, discriminatory and violative of article 14 of the Constitution of India and unconstitutional.

(b) Quashing and setting aside the regulation 33 of the Pension Regulations, 1995 in so far as it denies pension on compulsory retirement prior to 01.11.1993.

(c) Directing the respondent bank to pay to the petitioner 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 and grant to the petitioner all consequential benefits on that basis with running interest @ 15% per annum from the date the pension ought to have been paid to the petitioner till the date of actual payment.

(d) Granting such other and further reliefs and passing such other and further orders as may be necessary in the facts of the case.

(e) Awarding cost of this petition."

[4] The facts giving rise to this Appeal may be summarised as under :

The appellant is a nationalized bank. The respondent joined the service of the appellant-Bank as a Clerk on 18th October 1948. On 16th November 1960, the respondent was promoted in the cadre of officer. The respondent was thereafter promoted as a Chief Manager in the year 1983. The respondent's date of birth is 18th August 1928. The respondent was compulsorily retired in public interest from service of the appellant-Bank after putting in 40 years of service just a week before his date of superannuation i.e. 31st August 1988, vide order dated 25th August 1988 with effect from 26th August 1988.

The Bank of India (Employees') Pension Regulations, 1995 were framed by the Board of Directors of the appellant-Bank in exercise of the powers conferred by clause (f) of sub-section (2) of Section 19 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970. The said Regulations provide for pensionary benefits for the employees of the appellant-Bank. The said Regulations define various terms like 'retirement', 'pension', etc. Regulation 33 of the 1995 Regulations provides for pension on compulsory retirement. Regulation 33 is reproduced below for the sake of convenience :

"33. Compulsory Retirement Pension.

(1) An employee compulsorily retired from service as a penalty on or after 1st day of November, 1993 in terms of Discipline and Appeal Regulations or settlement by the authority higher than the authority competent to impose such penalty may be granted 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.

(2) Whenever in the case of bank employee the Competent Authority passes an order (whether original, appellate or in exercise of power of review) awarding a pension less than the full compensation pension admissible under these regulations, the Board of Directors shall be consulted before such order is passed.

(3) A pension granted or awarded under sub-regulation (1) or, as the case may be, under sub-regulation (2) shall not be less than the amount of rupees three hundred and seventy five per mensem."

[5] The respondent put forward his claim to draw pension on the strength of the Regulation 33 before the appellant-Bank. The appellant-Bank brought to the notice of the respondent that the Regulation provides for a cut-off date, namely, 1st November 1993 for payment of pension on compulsory retirement, meaning thereby that those employees who have been compulsorily retired before 1st November 1993 are not eligible for pensionary benefits, whereas those who have been compulsorily retired after 1st November 1993 are entitled to pension.

[6] Relying on Regulation 33, the pensionary benefits to the respondent were denied by the appellant-Bank. In such circumstances, the respondent was left with no other option but to file a writ-application under Article 226 of the Constitution of India with the prayers referred to above.

[7] The stance of the appellant-Bank before the learned Single Judge was that the cut-off date was fixed keeping in view the economic conditions, financial constraints and many other administrative and other attending circumstances. Fixing a cut-off date is within the domain of the Bank and the Court should not ordinarily interfere with the fixation of the cut-off date. The cut-off date cannot be dubbed as arbitrary and violative of Article 14 of the Constitution of India.

[8] The learned Single Judge came to the conclusion that the appellant-Bank may be justified in determining the cut-off date but the classification made by the Bank between the group of employees who opted for voluntary retirement or who were compulsorily retired after 1st January 1986 but before 1st November 1993 is unreasonable, arbitrary and discriminatory. The learned Single Judge accordingly allowed the writ-application filed by the respondent herein and directed the appellant-

Bank to consider the case of the respondent for pension in accordance with the Regulation 33 of the 1995 Regulations ignoring the cut-off date prescribed therein.

I. Submissions on behalf of the appellant-Bank :

Mr.Nandish Chudgar, the learned advocate appearing for Nanavati Associates, vehemently submitted that the learned Single Judge committed a serious error in interfering with the policy decision of the Bank. Mr.Chudgar submitted that the learned Single Judge failed to consider the pre-requisite of the Regulation 33, whereby the authority higher than the authority competent to impose such penalty may grant pension more than two-thirds but less than full pension admissible to him, and for grant of such pension, the Board of Directors of the Bank would have to be consulted before passing such order of grant of pension.

Mr.Chudgar also submitted that the fixation of the cut-off date is a prerogative and falls within the ambit of Bank's exclusive administrative domain. The Court should not interfere with such administrative decision.

Mr.Chudgar submitted that the learned Single Judge failed to consider the financial burden the Bank will have to bear if the benefits are extended to all employees.

In such circumstances, Mr.Chudgar submits that the Appeal merits consideration and the order passed by the learned Single Judge deserves to be set-aside.

Mr.Chudgar, in support of his submissions, has relied on the following decisions :

[Government of Andhra Pradesh and others v/s. N.Subbarayudu and others](#), 2008 14 SCC 702;

[M.R.Prabhakar and others v/s. Canara Bank and others](#), 2012 9 SCC 671.

II. Submissions on behalf of the Respondent :

Mr.Abhilash Clerk, the learned advocate appearing for the respondent, submitted that no error, not to speak of any error of law, could be said to have been committed by the learned Single Judge in passing the order impugned, warranting any interference at the hands of this Court. Mr.Clerk submitted that the cut-off date i.e. 1st November 1993 contained in Regulation 33 is arbitrary and violative of Articles 14 and 16 of the Constitution of India. Mr.Clerk submitted that an identical cut-off date under Regulation 29 of the said Pension Regulations, 1995 has been held to be unconstitutional by the Bombay High Court in the case of [Madhav K.Kirtikar v/s. Bank of India](#), 1997 1 LLJ 1094 and confirmed by the Supreme Court, which is reported.

Mr.Clerk further submitted that an order of compulsory retirement is not a punishment and pension is a right of the employee for services rendered. Mr.Clerk submitted that it has been held by the Supreme Court and various other High Courts in a catena of decisions that pension is not a charity or bounty nor is it a conditional payment solely dependent on the sweet-will of the employer. It is earned for rendering a long service and is often described as deferred portion of payment for past services. Mr.Clerk further submitted that if the cut-off date results in classification or division of members identically situated, then in such circumstances, the authorities are obliged to show that the classification is based on an intelligible differentia and on rational consideration which bears a nexus to the purpose and object thereof. Mr.Clerk last submitted that if a temporary Government servant who has rendered 20 years of service, is entitled to pension, if he voluntarily retires, then there is no justification for denying such right to his client only on the ground that his client was required to retire in the public interest.

[9] In such circumstances referred to above, Mr.Clerk prays that there being no merit in this Appeal, the same deserves to be dismissed.

Mr.Clerk, in support of his submissions, relied on the following decisions :

[Bank of India v/s. Indu Rajagopalan and others](#), 2001 9 SCC 318;

[United Bank of India v/s. Prasanta Kumar Roy and others](#), 2012 2 LLJ 12;

Unreported decision of this Court rendered by a learned Single Judge in Special Civil Application No.11135 of 2001, decided on 3rd November 2012;

[Bhagubhai F.Soni v/s. Union Bank of India](#), 2002 2 GLR 1328;

A Division Bench decision of Madras High Court in the case of C.P.Krishnaswamy v/s. Union of India, decided on 10th December 2009;

A Division Bench decision of Karnataka High Court in the case of Canara Bank v/s. B.M.Ramachandra and others, decided on 30th May 1997;

A Division Bench decision of Delhi High Court in the case of [Ashwani Kumar Sharma v/s. Oriental Bank of Commerce](#), 2003 2 LLJ 575.

Having heard the learned counsel for the respective parties and having gone through the materials on record, the following questions fall for our consideration in this Appeal:

Whether the cut-off date fixed in Regulation 33(1), namely, 1st November 1993, for an employee who was compulsorily retired prior to the said date, though he was in service after 1st January 1986, will disentitle him for grant of pension;

Whether the classification of employees compulsorily retired before 1st November 1993 and those retired on or after 1st November 1993 is based on an intelligible differentia and on rational consideration bearing any nexus to the purpose and object thereof.

Whether the learned Single Judge committed any error in passing the order impugned.

[10] In order to answer the aforesaid questions, we may profitably refer to some of the relevant provisions of the Bank of India (Employees') Pension Regulations, 1995 :

" BANK OF INDIA (EMPLOYEES')

PENSION REGULATIONS, 1995

In exercise of the powers conferred by Clause (f) of sub section (2) of section 19 of the Banking Companies (Acquisition and Transfer of Understandings) Act, 1970 (5 of 1970), the Board of Directors of BANK OF INDIA, after consultation with the Reserve Bank of India and with the previous sanction of the Central Government hereby makes the following regulations, namely:-

CHAPTER I

PRELIMINARY

1. Short title and commencement-

(1) These regulations may be called BANK OF INDIA (Employees') Pension Regulations, 1995.

2. Definition-

In these regulations, unless the context otherwise requires,

(a) to (s) xxx xxx xxx

(t) 'pension' includes the basic pension and additional pension referred to in Chapter VI of these regulations;

(u) 'pensioner' means an employee eligible for pension under these regulations;

(w) 'qualifying service' means the service rendered while on duty or otherwise which shall be taken into account for the purpose of pension under these regulations;

(y) 'retirement' means cessation from Bank's service, -

(a) on attaining the age of superannuation specified in Service Regulations or Settlements;

(b) on voluntary retirement in accordance with provisions contained in regulation 29 of these regulations;

(c) on premature retirement by the Bank before attaining the age of superannuation specified in Service Regulations or Settlement;

CHAPTER II

APPLICATION AND ELIGIBILITY

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 the 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 per cent 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) and 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 and interest accrued thereon together with a further simple interest at the rate of six per cent 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 ..."

CHAPTER IV

QUALIFYING SERVICE

22. Forfeiture of service.-

(1) Resignation 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 pensionary benefits;

CHAPTER IV

CLASSES OF PENSION

28. Superannuation Pension.-

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

29. Pension on Voluntary Retirement .-

(1) On or after the 1st day of November, 1993 at any time after an employee has completed twenty years of qualifying service he may, by giving notice of not less than three months in writing to the appointing authority retire from service:

Provided that this sub-regulation shall not apply to an employee who is on deputation or on study leave abroad unless after having been transferred or having returned to India he has resumed charge of the post in India and has served for a period of not less than one year:

Provided further that this sub-regulation shall not apply to an employee who seeks retirement from service for being absorbed permanently in an autonomously body or a public sector undertaking or company or institution or body, whether incorporated or not to which he is on deputation at the time of seeking voluntary retirement:

Provided that this sub-regulation shall not apply to an employee who is deemed to have retired in accordance with clause (1) of Regulation 2.

(2) The notice of voluntary retirement given under sub-regulation (1) shall require acceptance by the appointing authority:

Provided that where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period.

(3)(a) An employee referred to in sub-regulation (1) may make a request in writing to the appointing authority to accept notice of voluntary retirement of less than three months giving reasons therefor:

(b) On receipt of a request under clause (a), the appointing authority may, subject to the provisions of sub-regulation (2), consider such request for the curtailment of the period of notice of three months on merits and if it is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, the appointing authority may relax the requirement of notice of three months on the condition that the employee shall not apply for commutation of a part of his pension before the expiry of the notice of three months.

(4) An employee, who has elected to retire under this regulation and has given necessary notice to that effect to the appointing authority, shall be precluded from withdrawing his notice except with the specific approval of such authority:

(5) The qualifying service of an employee retiring voluntarily under this regulation shall be increased by a period not exceeding five years, subject to the condition that the total qualifying service rendered by such employee shall not in any case exceed thirty-three years and it does not take him beyond the date of superannuation.

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

33. Compulsory Retirement Pension.-

An employee compulsorily retired from service as a penalty on or after 1st day of November, 1993 in terms of Discipline and Appeal Regulations or settlement by the

authority higher than the authority competent to impose such penalty may be granted 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.

Whenever in the case of a bank employee the Competent Authority passes an order (whether original, appellate or in exercise of power of review) awarding a pension less than the full compensation pension admissible under these regulations, the Board of Directors shall be consulted before such order is passed.

A pension granted or awarded under sub-regulation (1) or, as the case may be, under sub-regulation (2), shall not be less than the amount of rupees three hundred and seventy five per mensem.

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-regulation (7) of regulation 3 shall be eligible for pension or for family pension as the case may be with effect from the 1st day of November, 1993."

Regulation 3 makes it clear that the Pension Regulations, 1995 shall apply to all 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.

[11] A perusal of Regulation 33(1) also makes it clear that even an employee who has compulsorily retired from service as a penalty under the appellant Bank's Discipline and Appeal Regulations or Awards/Settlement, may be granted, by an 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 the employee on the date of compulsory retirement if he is otherwise entitled to such pension on superannuation on that date. The cut-off date prescribed under the said Regulation 33(1), namely, 1st day of November 1993, only makes a distinction between the employee who was compulsorily retired prior to 1st day of November 1993 and after 1st day of November 1993, in order to be eligible for invoking the said Regulation.

[12] In our opinion, the distinction sought to be drawn by the appellant with respect to the compulsorily retirees before 1st November 1993 and compulsorily retirees

thereafter appears only to be imaginary and not real and to that extent we are at one with the learned Single Judge.

[13] It is now well-settled that pension is granted in lieu of long service rendered by an employee and is considered as a deferred portion of compensation for past service. It cannot be termed as a charity or a bounty nor is it a gratuitous payment solely dependent upon the whim or sweet-will of the employer. It is in fact in the nature of a social security plan to provide for the December of life of a superannuated employee. Such social security plans are consistent with the socio-economic requirements of the Constitution, more particularly, when the employer is a State within the meaning of Article 12 of the Constitution of India (see [All India Reserve Bank Retired Officers Association and others v/s. Union of India and others](#), 1992 AIR(SC) 767).

[14] To pass the test of permissible classification, two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group; and (ii) that the differentia must have a rational relation to the object sought to be achieved by the Statute in question. The fundamental principle flowing from catena of decisions of the Supreme Court and various High Courts is that that Article 14 of the Constitution forbids class legislation but permits reasonable classification for the purpose of legislation which classification must satisfy the above twin tests. The appellant Bank would have to affirmatively satisfy the Court that the twin tests have been satisfied, and for that, the appellant Bank must establish not only the rational principle on which classification between the two sets of employees was founded but the appellant Bank must also correlated to the object sought to be achieved. If this cannot be shown by the Bank, then the departure could be termed as arbitrary, irrational, unreasonable and discriminatory.

[15] In our opinion, the appellant Bank has failed to establish in any manner that the twin tests referred to above stand satisfied and that the classification has a reasonable nexus with the object sought to be achieved.

[16] In our view, it is not a new retirement benefit. The regulations framed by the Bank is for giving the pensionary benefits to all the employees of the Bank either retired on attaining the age of superannuation or compulsorily retired including voluntary retirement. Therefore, we do not think it is correct on the part of the Bank to fix the cut-off date as 1.11.1993 to give the benefit of the Pension scheme. In our view, the cut-off date fixed for entitlement of pension to the employees who retired after 1.11.1993 is violative of Article 14 of the Constitution of India, more particularly, when the Bank is unable to make any distinction between the employees who retired compulsorily before 1.11.1993 and those who retired on or after 1.11.1993.

[17] A Division Bench of Karnataka High Court, speaking through R.P.Sethi, Chief Justice (as His Lordship then was), in Writ Appeal Nos.8897 to 8972 of 1996 and connected cases decided on May 30, 1997, wherein the question of cut-off date provided for in the regulation of the Canara Bank came up for consideration, held :

"12. The distinction sought to be drawn by the appellants with respect to the retirees before 1.11.93 and retirees there-after appears only to be imaginary and not real. The draft pension Regulations were held applicable to the persons like the writ petitioners and the same were enforced obviously without any amendment or alteration, w.e.f. 29.9.95. The learned Single Judge was therefore right in holding that the Regulation were applicable to all the employees who had opted for voluntary retirement notwithstanding the cut-off date of 1.11.1993.

13. It is acknowledged principle of the interpretation and the Rule of construction that if any impugned action is reasonably capable of construction which does not involve the infringement of any fundamental rights, that construction must be preferred though the same may reasonably be possible to adopt in an another manner which may lead to the infringement of fundamental rights. Applying such a test in the present case it would be seen that if the interpretation sought to be put by the appellants is accepted, the same would amount in violation of fundamental rights of equality as enshrined in Articles 14 & 16 but if the construction is assumed in favor of the employees, the same would not result in the violation of any right much less a fundamental right. In interpreting a provision the Courts are required to keep in mind the facts and circumstances under which the provision is enacted or made, its purpose and object and the ultimate result sought to be achieved. Having regard to the facts and circumstances of the case and the position of law as noted herein above it can safely be held that the Regulations were intended to be made applicable to all the voluntarily retired employees notwithstanding the cut off date."

[18] The learned judge observed :

"A perusal of the record and upon consideration of circumstances it is held that the person like the writ petitioners were held entitled to the pensionary benefits on account of the services rendered by them upon satisfaction of the conditions specified in the Regulations and that grant such pension was neither a concession nor a charity or a bounty..."

[19] Negating the plea that existence of relationship of employer and employee is required for grant of pensionary benefits, it was held:

"If the plea is accepted, then the distinction sought to be made between the retirees of the bank between the dates 1.11.93 to 29.9.95 and between 1.1.86 to 31.10.93 cannot be justified and has to be held to be not only contradictory but artificial and imaginary. If the employees retiring before the commencement of the Regulations but after 1.12.93 can be held to be employees of the bank for the purposes of grant of pension, there is no justification for holding the retirees from 1.1.86 to 31.10.93 being - not entitled to grant of pension on the ground of non-existence of relationship of employer and employee."

[20] In [A.P.Srivastava v/s. Union of India and others](#), 1995 6 SCC 227, the Supreme Court held that even a temporary Government servant would be entitled to pension after he has completed more than 26 years of service. It was held as under :

"5. In view of the rival submissions at the Bar, the question for consideration is whether there is any rationale behind the rule disentitling pension to a Government servant when an order of compulsory retirement is passed in exercise of power under Rule 56(j) of the Fundamental Rules ? As has been noticed earlier after completion of a particular period of service the employer has a right to compulsorily retire and the employee has a right to voluntarily retire on giving three months' notice. It has been held by this Court time and again that the pension is not a charity or bounty nor is it a conditional payment solely dependent on the sweet will of the employer. It is earned for rendering a long service and is often described as deferred portion of payment for past service.

It is in fact in the nature of social security plan provided for a superannuated Government servant. If a temporary Government servant who has rendered 20 years of service, is entitled to pension, if he voluntarily retires, there is no justification for denying the right to him when he is required to retire by the employer in the public interest. In other words, the condition precedent for being entitled to pension in case of a temporary Government servant is rendering of 20 years of service.

6. In view of the legal position that an order of compulsory retirement is not a punishment and pension is a right of the employee for services rendered, we see no justification for denying such right to a temporary Government servant merely on the ground that he was required to retire by the employer in exercise of power under Rule 56(j) of the Fundamental Rules. In our considered opinion a temporary Government servant would be entitled to pension after he has completed more than 20 years of service even if he is required to retire by the employer in exercise of power under Rule 56(j) of the Fundamental Rules."

[21] An almost identical Regulation like the one with which we are dealing of the Punjab National Bank (Employees') Pension Regulations, 1995 came up for consideration before a Division Bench of Madras High Court in the case of C.P.Krishna Swamy . In that case, the Bench observed that the crucial question to be decided was, whether the cut-off date fixed in Regulation 33(1), namely, 1st November 1993 for an employee who was compulsorily retired prior to the said date, although he was in service after 1st January 1986 be disentitle for grant of pension. Answering the said question in the negative, the Bench held as under :

"...We have already noted that by Rule 3(1)(a) the scheme is made applicable to the employees retired after January 1, 1986. Rule 34 then provides that employees who have retired from service of the Bank between January 1, 1986 and October 31, 1993 shall be eligible for pension with effect from November 1, 1993. The combined reading of Rules 3 and 34 shows that the petitioner is entitled to get pensionary benefits which are extended by the Bank, even though it is for the first time. The regulations framed by the Bank is for giving pensionary benefits to all the employees of the Bank either retired on attaining the age of superannuation or retired under the scheme of voluntary retirement. It is therefore not permissible for the bank to fix artificially a further cut-off date as November 1, 1993 to give benefit of the pension scheme to the employees who have retired voluntarily only after November 1, 1993. When the Bank decides to extend the benefit of pension to its employees it cannot make any distinction between the employees who have retired and employees who sought voluntary retirement and retired. I am also supported by an unreported judgment, single Judge of the Karnataka High Court dated September 30, 1996 in Writ Petition Nos.3919 to 3994 of 1996. The Karnataka High Court has held that the employees of the respondent Bank who had voluntarily retired between January 1, 1986 and October 31, 1993 are eligible for pension.

A comparative consideration of the above referred to decision to the facts of this case it emerges that in the case of voluntary retirement though the regulations specifically provided the cut-off date viz., 01.11.1993 and only such of those employees who voluntarily retired after that date alone were eligible for pension, the Division Bench took the view that even such voluntary retirement is nothing but a premature retirement and therefore applying the provisions contained under regulation 32 relating to premature retirement pension, the employee who had gone on voluntary retirement before the cut-off date should also be held to be eligible for payment of pension. The Division Bench went on to hold that the fixation of such cut-off date would amount to creating an artificial further classification amongst the employees who retired voluntarily after 01.01.1986 but

before 01.11.1993, which was wholly irrational, irrelevant and violative of Article 14 of the Constitution.

A further reasoning which weighed with the Division Bench was that when under the regulations the very same category of employees namely those who had gone on voluntary retirement scheme after 01.11.1993, were made eligible, who were also in service after 01.01.1986, a distinction cannot be made in respect of those employees who had gone on voluntary retirement prior to 01.11.1993. The extracted portion of the Bombay High Court Decision goes one step further and states that such position cannot change even if it is granted for the first time.

Keeping the above principles set out in the Division Bench decision in mind, when we analyse the other provisions contained in the regulations, we find that in regulation 2(k) it is specifically provided that the significance of date of retirement means the date on which the employee was retired by the bank. When we examine the definition of retirement as defined under Section 2(y), we find that retirement has been defined to mean cessation from bank service either on attaining the age of superannuation or on voluntary retirement in accordance with regulation 29 or premature retirement by the bank before attaining the age of superannuation specified in service regulation or settlement.

In the service regulations provision for superannuation is provided under regulation 19(1) which states that the age of retirement of an officer/employee shall be as determined by the Bank in accordance with the guidelines issued by the bank from time to time. The first proviso to the said regulation reads as under: Provided that the bank may, at its discretion, on review by a special committee/special committees as provided hereinafter in sub-regulation (2), if it is of the opinion that in public interest an officer/employee on or at any time after the completion of 55 years of age or on or at any time after the completion of 30 years of total service as officer/employee or otherwise which ever is earlier. The second proviso only provides time of three months notice in writing or three months salary/pay and allowance in lieu of such notice.

Apart from such a provision in the service regulations which has been specifically mentioned in the definition of retirement in regulation 2(y), regulation 32 of the pension regulations also makes a mention about premature retirement pension. However under regulation 32(b) while making a provision for grant of premature pension, it is stated that the same may be granted in respect of an employee who has either retired from service on account of orders of the bank to retire prematurely in the public interest or for any other reason specified in service regulations/settlement if otherwise he was entitled to such pension on

superannuation on that date. While we deal with regulation 32, it is relevant to note that under regulation 20 of the service regulations the provision for termination of service is prescribed. Under regulation 20(1)(a) such provision has been made and under regulation 20(1)(f) it is stipulated that the officer/employee whose services are terminated under sub-regulation (a) should be paid gratuity, PF including employer's contribution and all other dues that may be admissible to him as per rules notwithstanding the years of service rendered. Under regulation 20(1)(g) it is again stipulated that nothing contained in the other sub-regulation of 20(1) would affect the banks right to retire an officer/employee under regulation 19(1). One other provision which is kept in mind is Regulation 4(h) of the Punjab National Bank Officer Employees' (Discipline & Appeal) Regulations, 1977. Regulation 4 prescribes the penalties which may be imposed on an officer/employee for acts of misconduct or for any other good and sufficient reason. Regulation 4(h) is one of the major penalties that can be imposed by the bank management on an officer/employee which is compulsory retirement by way of punishment. Therefore, if at all the respondent bank is empowered to compulsorily retire an officer/employee it could be either under regulation 19(1) in public interest or by invoking regulation 20(1) of the service regulations 1979 or Regulation 4(h) of Punjab National Bank Officer Employees' (Discipline & Appeal) Regulations 1977.

When the above provisions confers the power on the respondent bank to compulsorily retire an officer/employee who was in service as on 01.01.1986 and who came to be retired compulsorily by way of punishment or in public interest in our considered opinion, such cessation of employment namely by way of compulsory retirement by way of punishment would also fall well within the four corners of premature retirement.

When we examine the dictionary meaning of the expression 'premature' in P.Ramanatha Aiyar Law Lexicon 2nd Edition, the word 'premature' has been explained to mean happening, or being performed before prior or usual or appointed time. Even going by the above common definition of the expression 'premature', it is quite convincing that the said meaning when read along with the happening of an event namely retirement, one can only conclude that it would take within its fold in the absence of any other specific prescription the retirement of an employee prior to normal date on which he would have otherwise retired on superannuation. It will have to be borne in mind that either regulation 2(k) or 2(x) or 2(y) does not specifically exclude or make a distinction of compulsory retirement by way of punishment as one not falling under premature retirement.

On the other hand, a reading of regulation 2(y)(c) of the pension regulations along with regulation 19(1) first proviso and 20(1) of the 1979 Service Regulations or

Regulation 4(h) of Punjab National Bank Officer Employees' (Discipline and Appeal) Regulations, 1977 persuade us to hold that it would be in order to state that compulsory retirement even by way of punishment having regard to the connotations applicable to it would only fall under the broad classification of premature retirement. Apparently for these reasons, we are able to discern that under the pension regulations, regulation 33 came to be incorporated providing for payment of pension subject however to the grant of such pension by the authority higher than the authority competent to impose such compulsory retirement as a penalty and the rate at which it should be granted as provided therein.

In our considered opinion any other view would run counter to the very object of the bank management in having come forward to grant pension to various categories of employees including those who were retired prematurely in public interest which is otherwise known as compulsory retirement in public interest and also an employee retired compulsorily by way of punishment under regulations 32 and 33 respectively.

We are also convinced that regulation 32(b) having specifically provided for covering those employees who are prematurely retired in public interest namely those who would fall in the category of compulsorily retired employees in public interest and also employees who were retired for any other reason specified in the service regulations or settlement which would cover other cases of premature retirement which would include compulsory retirement by way of punishment and there could be no other category that would fall within the above said expression premature retirement and those retired by the bank within the expression for any other reason specified in service regulations or settlement.

We therefore hold that an officer/employee who is compulsorily retired by way of punishment would also fall within the category of premature retirement and consequently it cannot be said that he would fall outside the pension regulations in order to exclude him from being eligible to claim pension under the pension regulations in particular regulation 33(1)."

[22] The aforesaid decision supports the case of the respondent herein with all vigour and we are in complete agreement with the view taken by Their Lordships of the High Court.

[23] The learned Single Judge has also referred to a decision of the Bombay High Court in the case of [Madhav K.Kirtikar v/s. Bank of India](#), 1997 1 LLJ 1094, which came to be confirmed by the Supreme Court and the said judgment is reported.

[24] The Supreme Court, while confirming the judgment of the Bombay High Court, observed as under :

"3. All that has happened is in such of the banks where a scheme for voluntary retirement was available, certain employees retired under that scheme. Now a comprehensive Pension Scheme has been framed which came into force w.e.f. 1-11-1993 and is applicable uniformly to all bank employees, which provides for voluntary retirement as well. The applicability of these rules to those employees who have voluntarily retired w.e.f. 1-1-1986 to 31-10-1993 is raised in these matters. It is not possible for Shri V.R.Reddy, learned Senior Counsel who appears for the appellants to point out that there is any significant financial or other burden or difference so far as those who had voluntarily retired and those who had ordinarily retired. In that event where there is no distinction, the authorities having sought to make a distinction and not applied the regulations framed subsequent to their retirement, the High Court has given appropriate directions. We also notice that the number of employees who have retired in this manner is also very small. Therefore, we think no interference is called for in these appeals. The appeals are, therefore, dismissed with no order as to costs."

[25] We also took note of the well-celebrated decision of the Supreme Court in the case of [D.S.Nakara v/s. Union of India](#), 1983 1 SCC 305. It was a case of revision of pensionary benefits and classification of pensioners into two groups by drawing a cut-off line and granting revised pensionary benefits to employees retiring on or after the cut-off date. The criterion made applicable was, "being in service and retiring subsequent to the specified date". The Supreme Court held that for being eligible for liberalised pension scheme, application of such a criterion was violative of Article 14 of the Constitution, as it was both arbitrary and discriminatory in nature. The reason given by the Supreme Court was that the employees who retired prior to a specified date, and those who retired thereafter, formed one class of pensioners. The justification to classify them into separate classes/groups for the purpose of pensionary benefits was not founded on any intelligible differentia, which had a rational nexus with the object sought to be achieved.

[26] However in the aforesaid context, we may only say as observed by the Supreme Court in [State of Punjab and others v/s. Amar Nath Goyal and others](#), 2006 AIR(SC) 171 that the view taken in D.S.Nakara over a period of time has been diluted in subsequent judgments, more particularly, in the case of [T.N.Electricity Board v/s. R.Veerasingam and others](#), 1999 3 SCC 414. In that case, the Supreme Court observed that financial constraints could be a valid ground for introducing a cut-off date while implementing a pension scheme on a revised basis. In that case, the pension scheme applied differently to persons who had retired from service before 1.7.1986, and those

who were in employment on the said date. It was held that they could not be treated alike as they do not belong to one class and they formed separate classes. On such distinction, the Supreme Court held the cut-off date to be valid but in the present case, it is difficult to draw a distinction between the employees who were compulsorily retired on 1.11.1993 and those who were compulsorily retired for misconduct after 1.11.1993.

[27] D.S.Nakara came to be considered in one of the recent pronouncements of the Supreme Court in the case of [Union of India and another v/s. S.P.S. Vains \(Retd.\) and another](#), 2008 AIR(SC) 598. In that case, prior to revision of the pay-scales from 1.1.1996, the running pay bank from Lieutenant to Brigadier, irrespective of promotion, introduced on the basis of the Fourth Pay Commission's recommendations, was Rs.2300-100-3900-EB-150-4500-EB-5100. The rank pay that was fixed was Rs.200/-, 600/-, 800/-, 1000/- and 1200/- for the ranks of Captain, Major General, Lieutenant Colonel, Colonel and Brigadier, respectively. While a Major General was given a starting salary of Rs. 6700/- on the basis of the recommendations of the Fourth Pay Commission, a Brigadier could draw Rs.5,100/- and additional rank pay of Rs.1200/- making a total of Rs.6300/-. Consequently, a Major General always drew higher pay than a Brigadier and the pension payable to officers on the basis of the recommendations of the Fourth Pay Commission was calculated on the basis of salary drawn during the last 10 months prior to retirement. Even on such basis, a Major General always drew more pension and family pension than a Brigadier. The rank of Brigadier was a feeder post for the promotional rank of Major General.

[28] The anomaly arose with the acceptance by the Government of the recommendations of the Fifth Pay Commission which created a situation whereby Brigadiers began drawing more pay than Major Generals and were, therefore, receiving higher pension and family pension than Major Generals. In view of the recommendations of the Fifth Pay Commission, a Brigadier was given a pay scale of Rs. 15350-450-17600 together with rank pay of Rs.2,400/- whereas a Major General was given a pay scale of Rs. 18400-500-22400. In other words, the maximum pay in the pay scale of Brigadier was 17,600/- and the minimum pay in the pay scale of Major General was Rs.18,400/-. Inasmuch as, no rank pay was provided for beyond the rank of Brigadier, the minimum pay provided for a Major General became less than that of a Brigadier who may have reached the maximum point in his scale. Consequently, on retirement, the pension of a Brigadier became more than that of a Major General, since rank pay was also taken into consideration for the purpose of calculating pension and family pension. The pension of a Major General thus became Rs.9,200/-, while that of a Brigadier was Rs.9,550/-.

[29] When such anomaly was pointed out, the Government decided to step up the pension of Major Generals who had retired prior to 1.1.1996, from Rs.9,200/-to Rs.9,550/- giving them the same pension as was given to Brigadiers. Before the High Court it was urged on behalf of the writ-petitioners, who at the time of their retirement had held the rank of Major General or Air Vice Marshal, that while the writ-petitioners and other similarly placed officers who had retired prior to 1.1.1996 were given the same pension as that of a Brigadier, those officers of similar rank who had retired after 1.1.1996 were given pension according to clause 12(c) of Special Army Instructions 2/S/1998, as a result whereof they were getting much higher pension and family pension than the writ-petitioners, despite being of the same rank.

[30] The High Court accepted the submissions of the writ-petitioners, holding that such differentiation between the officers holding the same rank on the date of the retirement was wholly erroneous and violative of the provisions of Article 14 of the Constitution of India.

[31] Being dissatisfied with the judgment of the High Court, the Union of India filed an SLP before the Supreme Court. The Supreme Court, while affirming the decision of the High Court, observed as under :

"It was also the respondents' case that though there was no dispute that Major Generals were entitled to higher pensionary benefits than that enjoyed by Brigadiers, the appellant erroneously insisted that the cut-off date had to be fixed in view of the limited financial resources available to cover the additional expenses to be incurred on account of revision of pay scales."

"The said decision of the Central Government does not address the problem of a disparity having created within the same class so that two officers both retiring as Major Generals, one prior to 1.1.1996 and the other after 1.1.1996, would get two different amounts of pension. While the officers who retired prior to 1.1.1996 would now get the same pension as payable to a Brigadier on account of the stepping up of pension in keeping with the Fundamental Rules, the other set of Major Generals who retired after 1.1.1996 will get a higher amount of pension since they would be entitled to the benefit of the revision of pay scales after 1.1.1996."

"In our view, it would be arbitrary to allow such a situation to continue since the same also offends the provisions of Article 14 of the Constitution."

"The question regarding creation of different classes within the same cadre on the basis of the doctrine of intelligible differentia having nexus with the object to be achieved, has fallen for consideration at various intervals for the High Courts as well as this Court, over the years. The said question was taken up by a Constitution

Bench in the case of D. S. Nakara where in no uncertain terms throughout the judgment it has been repeatedly observed that the date of retirement of an employee cannot form a valid criterion for classification, for if that is the criterion those who retired by the end of the month will form a class by themselves. In the context of that case, which is similar to that of the instant case, it was held that Article 14 of the Constitution had been wholly violated, inasmuch as, the Pension Rules being statutory in character, the amended Rules, specifying a cut-off date resulted in differential and discriminatory treatment of equals in the matter of commutation of pension. It was further observed that it would have a traumatic effect on those who retired just before that date. The division which classified pensioners into two classes was held to be artificial and arbitrary and not based on any rational principle and whatever principle, if there was any, had not only no nexus to the objects sought to be achieved by amending the Pension Rules, but was counter productive and ran counter to the very object of the pension scheme. It was ultimately held that the classification did not satisfy the test of Article 14 of the Constitution."

"However, before we give such directions we must also observe that the submissions advanced on behalf of the Union of India cannot be accepted in view of the decision in D.S.Nakara's case . The object sought to be achieved was not to create a class within a class, but to ensure that the benefits of pension were made available to all persons of the same class equally. To hold otherwise would cause violence to the provisions of Article 14 of the Constitution. It could not also have been the intention of the authorities to equate the pension payable to officers of two different ranks by resorting to the step up principle envisaged in the Fundamental Rules in a manner where the other officers belonging to the same cadre would be receiving a higher pension."

[32] The aforesaid decision fortifies the view we have taken in this Appeal.

[33] In a very recent pronouncement of the Supreme Court in the case of [Kallakurichi Taluk Retired Officials Association, Tamil Nadu and others v/s. State of Tamil Nadu](#), 2013 2 SCC 772, the controversy related to a dispute inter se between the State Government and retired employees in respect of the component of 'dearness allowance' liable to be treated as 'dearness pay' for computation of pension. By the impugned Government Order dated 9.8.1989, pensionary benefits of the employee retiring on or after 1.6.1988 were required to be computed by adding 'dearness allowance' as 'dearness pay' at a fixed percentage. By virtue of the aforesaid determination, the employees retiring on or after 1.6.1988 would be at a disadvantage, as against the employees who had retired prior thereto since in the latter case component of 'dearness allowance' was treated as 'dearness pay'. The impugned order

was held unsustainable by the Single Judge of the High Court. The Division Bench allowed the writ appeal filed thereagainst finding that 'employees who had retired prior to 1.6.1988 from a similar post after putting in same number of years of service would get a little higher pensionary emoluments than those who retired thereafter.

[34] The matter was carried to the Supreme Court and the Supreme Court, while allowing the appeals by setting aside the order passed by the High Court, made the following observations:

"...the quantum of discrimination, is irrelevant to a challenge based on a plea of arbitrariness, under Article 14 of the Constitution of India. Article 14 of the Constitution of India ensures to all, equality before the law and equal protection of the laws. The question is of arbitrariness and discrimination. These rights flow to an individual under Articles 14 and 16 of the Constitution of India. The extent of benefit or loss in such a determination is irrelevant and inconsequential. The extent to which a benefit or loss actually affects the person concerned, cannot ever be a valid justification for a court in either granting or denying the claim raised on these counts. The rejection of the claim of the appellants by the High Court, merely on account of the belief that the carry-home pension for employees who would retire after 1.6.1988, would be trivially lower than those retiring prior thereto, amounts to bagging the issue pressed before the High Court. The solitary instance referred to above, which is not a matter of dispute even at the hands of the first respondent, clearly demonstrates, that in a given situation, an employee retiring on or after 1.6.1988 could suffer a substantial loss, in comparison to an employee retiring before 1.6.1988. We are, therefore satisfied, that the High Court clearly erred while determining the issue projected before it."

"At this juncture it is also necessary to examine the concept of valid classification. A valid classification is truly a valid discrimination. Article 16 of the Constitution of India permits a valid classification (see [State of Kerala vs. N.M.Thomas](#), 1976 2 SCC 310). A valid classification is based on a just objective. The result to be achieved by the just objective presupposes, the choice of some for differential consideration/treatment, over others. A classification to be valid must necessarily satisfy two tests. Firstly, the distinguishing rationale has to be based on a just objective. And secondly, the choice of differentiating one set of persons from another, must have a reasonable nexus to the objective sought to be achieved. Legalistically, the test for a valid classification may be summarized as, a distinction based on a classification founded on an intelligible differentia, which has a rational relationship with the object sought to be achieved. Whenever a cut-off date (as in the present controversy) is fixed to categorise one set of pensioners for favourable

consideration over others, the twin test for valid classification (or valid discrimination) must necessarily be satisfied."

[35] In [Union of India v/s. P.N.Menon and others](#), 1994 4 SCC 68, while implementing the recommendations of the Third Pay Commission with regard to dearness pay linked to average index level 272, which was to be counted as emoluments for pension and gratuity under the Central Civil Services (Pension) Rules, 1972, the Central Government had fixed a certain cut-off date and directed that only officers retiring on or after the specified date were entitled to the benefits of the dearness pay being counted for the purpose of retirement benefits. This was challenged as arbitrary and violative of Article 14 of the Constitution. The Supreme Court turned down the challenge and observed:

"Not only in matters of revising the pensionary benefits, but even in respect of revision of scales of pay, a cut-off date on some rational or reasonable basis, has to be fixed for extending the benefits. This can be illustrated. The Government decides to revise the pay scale of its employees and fixes the 1st day of January of the next year for implementing the same or the 1st day of January of the last year. In either case, a big section of its employees are bound to miss the said revision of the scale of pay, having superannuated before that date. An employee, who has retired on 31st December of the year in question, will miss that pay scale only by a way, which may affect his pensionary benefits throughout his life. No scheme can be held to be foolproof, so as to cover and keep in view all persons who were at one time in active service. As such the concern of the court should only be, while examining any such grievance, to see, as to whether a particular date for extending a particular benefit or scheme, has been fixed, on objective and rational considerations."

[36] Although the Supreme Court turned down the challenge, the observations to the effect that "while examining any such grievance to see as to whether a particular date for extending a particular benefit or scheme has been fixed, on objective and rational consideration" assumes significance. Thus, it is very clear that the classification has to be founded on any intelligible differentia.

[37] Mr.Chudgar, the learned counsel appearing for the appellant, very assiduously submitted that the financial impact of making the regulations retrospective can be the sole consideration while fixing a cut-off date. To fortify this submission, strong reliance has been placed on the decision of the Supreme Court in the case of Government of Andhra Pradesh . In that case, the Supreme Court took the view that the cut-off date is fixed by the executive authority keeping in view the economic conditions, financial constraints and many other administrative and other attending circumstances. The

Court also took the view that even if no reason is forthcoming from the executive for fixation of a particular date, it should not be interfered by the Court unless cut-off date leads to some blatantly capricious and outrageous results. There cannot be any dispute so far as the proposition of law as explained by the Supreme Court is concerned. We may only say that in the present case, the pleadings in the form of affidavit-in-reply filed before the learned Single Judge so far as the financial burden is concerned are as under :

"...It is further submitted that at present pension optees are approximately to the tune of 14000 plus and pensioners are about 10000 plus whereas pension corpus of the respondent bank is only Rs.1275 crores. It is pertinent to note that the number of employees and Ex.employees who have not opted for pension would come to a similar number or more.

If the prayers as sought for are granted severe financial implications will be suffered by the respondent bank at this stage which would severely affect the liquidity of the respondent bank which will not be possible for the respondent bank to cope up. It is further submitted that if the prayers as sought for are granted then all such employees will have right to approach for the similar relief of pension and the respondent bank will be burdened heavily and the respondent bank alone may have to make additional provisions at least to the tune of Rs.400 to 500 crores in one go, apart from making substantial provisions every year. It is further submitted that even similarly situated banks will also have to suffer severe financial implications. It is further submitted that financially the respondent bank will be put to precarious condition."

[38] In the affidavit-in-rejoinder filed by the respondent, the plea of financial burden was refuted in the following words :

"The contentions of financial constraints as detailed by the respondent bank are absolutely irrelevant, ridiculous, misplaced and absurd. The respondent bank is obliged to reveal how many such writ petitions it is facing in different courts of law in India for its 2617 branches in different states. The petitioner asserts that there are hardly any cases where the employee is compulsorily retired before 1.11.1993 like the petitioner. Those who retired compulsorily after 1-11-1993 are entitled for pension as a rule. In this connection, it is interesting to know highlight1s of respondent bank's financial results for the year ended 31.3.06.

Operating Profit Rs.1701 crores

Net Profit Rs.701 crores

Reserves excluding revaluation reserves Rs.4089 crores

Bank's gross profit increased by 45% and net profit increased by 61% for the year ended 31.33.06. The respondent bank does not deserve to make irresponsible pleas to mislead the Hon'ble Court. The cost is not a material consideration when the respondent bank has to meet its statutory obligations and liabilities when scrutinised and adjudged by the Hon'ble Court."

[39] It appears that a Division Bench of this Court vide order dated 26th March 2013, while hearing this Appeal, called for the following information from the appellant Bank :

"The applicant - appellant shall submit the following details :-

(a) How many employees are such, who have been compulsorily retired and opted for the Scheme after 1.1.1986, but prior to 1.11.1993 ?

(b) The amount which the respondent may be required to refund with accrued interest and the quantification thereof.

(c) The amount of pension if to be paid as per the decision of the learned Single Judge."

[40] Pursuant to the said order, the Bank furnished the following details :

Number of employees compulsorily retired from service from 1.1.1986 to 1.11.1993

Reply : Approx.37 employees were given punishment of compulsory retirement during the said period.

Amount of employer's contribution of pension to be refunded by the respondent, if the Pension Scheme of 1995 is opted.

Reply : Approx. Rs.3,02,999.35 (with interest @ 6% simple from the date of settlement of his PF Claim till date the amount gets refunded to the Bank for opting second Pension Option.

Amount of pension to be received by the respondent as per Ld.Single Judge's Order in SCA 8605 of 2000.

Reply : Approx. Rs.20,90,000/- (pension arrears payable from 1.11.1993 onwards till April 2013)

Total Monthly Pension to be fixed/payable (including Basic Pension plus DA Relief thereon) - approx. Rs.16,600/- p.m.

[41] Taking into consideration what has been referred to above, even if it is assumed that there is going to be some financial burden on the Bank, that by itself would not be sufficient to deny the benefit to the respondent herein, more particularly, when the classification between the two sets of employees is not based on objective and rational consideration. We do not see any distinction in the scheme amongst employees retired before 1.11.1993 and those retired on or after 1.11.1993.

[42] It is settled law that financial constraints cannot be a ground to deny pensionary rights which are almost analogous to the fundamental rights. Time and again, the Supreme Court, in a number of judgments, has observed that the State cannot avoid its constitutional obligation on the ground of financial inabilities. The Bank is not running in a loss, but it appears from the materials on record that the financial position of the Bank is substantially sound. Apart from the above, the financial implications are not going to be so high that the Bank could be said to be justified in denying the benefit of the pension to the employees who retired before 1.11.1993.

[43] We are of the opinion that the learned Single Judge, after taking into consideration all the relevant aspects of the matter, has rightly held that the respondent herein is entitled to grant of pension under Regulation 33. We see no error, not to speak of any error of law, said to have been committed by the learned Single Judge in allowing the writ-application.

[44] For the foregoing reasons, we hold that there is no merit in this Appeal and the same deserves to be dismissed. The Appeal is accordingly dismissed.

[45] In view of dismissal of the Appeal, the Civil Application does not survive and is accordingly disposed of.

[46] In the facts and circumstances of the case, there shall be no order as to costs.