

**HIGH COURT OF GUJARAT**

**GHANSHYAMBHAI MULJIBHAI PATEL**

*Versus*

**BANK OF INDIA**

**Date of Decision:** 11 February 2013

**Citation:** 2013 LawSuit(Guj) 1362

**Hon'ble Judges:** [Paresh Upadhyay](#)

**Eq. Citations:** 2014 1 CLR 146, 2013 3 GLR 2391, 2013 LabIC 1941

**Case Type:** Special Civil Application

**Case No:** 8605 of 2000

**Subject:** Banking, Constitution, Service

**Editor's Note:**

**Bank of India (Employees) Petition Regulation, 1995 - Regulation 33 - Classification between cut-off-date i.e. 1-11-1999 but after date 1-1-1986 discriminatory - Directions given to consider petitions case for pension ignoring the said cut-off-date - Petitions allowed**

**Acts Referred:**

[Constitution Of India Art 16, Art 14](#)

[Banking Companies \(Acquisition And Transfer Of Undertakings\) Act, 1970 Sec 19\(2\)\(f\)](#)

**Advocates:** [A K Clerk](#), [Nandish Chudgar](#), [Nanavati Associates](#)

**Cases Cited in (+): 1**

**Paresh Upadhyay, J.**

**[1]** The petitioner, who was compulsorily retired by the respondent Bank vide order dated 23.08.1988, claims pension and challenge is made to Regulation No. 33 of the Bank of India (Employee's) Pension Regulations, 1995, insofar as it denies pension to compulsory retirees prior to 01.11.1993. Heard Mr. A.K. Clerk, learned advocate for the petitioner and Mr. Nandish Chudgar for Nanavati Associates for the respondent Bank.

**[2]** Learned counsel for the petitioner stated that the date of birth of the petitioner is 18.08.1928. He had joined the service of the respondent Bank as Clerk on 18.10.1948 and he was promoted as an officer on 16.11.1960. He was further promoted as Chief Manager in the year 1983. His date of birth being 18.08.1928, and the superannuation age being 60 years, he was to retire on 31.08.1988. About a week before effective date of retirement, respondent Bank passed an order on 23.08.1988, ordering compulsory retirement of the petitioner, which was by way of penalty for misconduct. The said punishment order is not the subject-matter of this petition. It is also stated that whatever was payable at the relevant time as per Rules, was paid to the petitioner. It is the case of the petitioner that even with the penalty of compulsory retirement, he is entitled to pension, and denial by the respondent Bank is only on the ground that the said penalty was inflicted on 23.08.1988, which is prior to cut-off date 01.11.1993 stipulated in Regulation No. 33 of the Pension Regulations of the respondent Bank, which reads as under:

### 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.

**[3]** Learned counsel for the petitioner submitted that Compulsory Retirement Pension is one class of pension and those who are compulsorily retired for misconduct, on and after 01.11.1993 are entitled to be considered for grant of pension in terms of Regulation No. 33, which is reproduced above. It is pointed out that it is the cut-off date in this regard, which is coming in the way of petitioner. It is indicated that, had the date of punishment order been, after 01.11.1993 but before issuance of Pension Regulations which happened in the year 1995, then also the petitioner was entitled to pension, as per the Regulation of the respondent Bank itself. So far as prescription of

01.11.1993 as the cut-off date is concerned, according to learned counsel for the petitioner, the same is arbitrary, it has no rationale and this issue, according to him, is already concluded by the decisions of various High Courts, as confirmed by Honourable the Supreme Court of India. In this regard, reliance is placed on the decision of the Bombay High Court in case of *Madhav K. Kritikar v. Bank of India* (respondent Bank itself), in Writ Petition No. 620 of 1996 dated 07.01.1997, Annexure-B to this petition. It is also indicated that the said decision of the Bombay High Court was challenged by the respondent Bank before Honourable the Supreme Court of India and the said challenge failed. The said order of Honourable the Supreme Court of India, which is at Annexure-C to this petition, is subsequently [Bank of India v. Indu Rajagopalan and others](#), 2001 9 SCC 318. Reliance is also placed on the decision of Honourable the Supreme Court of India in case of [United Bank of India v. Prasanta Kumar Roy and others](#), 2012 2 LLJ 12as well as in case of [Syndicate Bank, Bangalore v. Satya Srinath](#), 2007 2 LLJ 820 and on the decision of Madras High Court in case of *C.P. Krishnaswamy v. Punjab National Bank* in Writ Appeal No. 2768 of 2002, decided on 10.12.2009. It is contended that in view of above pronouncements, the claim of the petitioner be accepted and denial by the respondent Bank on the ground of the penalty order having been passed prior to 01.11.1993, be interfered with and relief as prayed for be granted. Learned counsel for the petitioner at this stage also stated that, in the event the case of the petitioner is accepted by the Court, the petitioner is ready and willing to refund the amount, which may be required as per Rules, or the same be adjusted by the respondent Bank, against the amount which may become payable to the petitioner.

**[4]** On the other hand, Mr. Nandish Chudgar for Nanavati Associates appearing for the respondent Bank vehemently contended that the action of the respondent Bank is in consonance with the Regulations and therefore, the denial of pension cannot be termed as arbitrary. So far as the challenge to Regulation is concerned, it is contended that it is the settled position of law that Courts of law would not normally interfere in the cut-off date, even if the Court finds that the employer has not offered reasonable explanation for it. In support of this contention, learned counsel for the respondent Bank has relied on the following decisions.

- (i) in case of Council of [Scientific and Industrial Research and others v. Ramesh Chandra Agrawal and another](#),, 2009 3 SCC 35;
- (ii) in case of [Government of Andhra Pradesh and others v. N. Subbarayudu and others](#), 2008 14 SCC 702;
- (iii) in case of [UCO Bank and others v. Sanwar Mal](#), 2004 AIR(SC) 2135; and

(iv) Judgment of this Court in Special Civil Application No. 10532 of 1996, dated 16.09.1999.

Learned counsel for the respondent has also, relied on the affidavit-in-reply filed on behalf-of respondent Bank and has contended that the petitioner is not entitled to any relief and there is nothing wrong with the impugned Regulation No. 33, either in substance or in the cut-off date prescribed therein.

**[5]** Before the rival contentions are examined by this Court, the relevant Regulations of the respondent Bank are required to be recorded, which are as under:

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.

....

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

CHAPTER IV

## QUALIFYING SERVICE

14. ...

....

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 therefore:

(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.

30. ...

31. ...

32. ...

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 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.

(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.

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.

**[6]** On conjoint reading of above provision in the Regulations of the respondent Bank, it becomes clear that though Regulations were framed in the year 1995, its effective date is 01.01.1986, since even those who have retired or died after 01.01.1986 are held to be eligible to get pension/family pension. Those who were imposed penalty of compulsory retirement or those who had opted for voluntary retirement after 01.01.1986 but prior to 01.11.1993, were held to be not entitled to pension in view of cut-off date prescribed in Regulation Nos. 33 and 29 respectively, as referred above. Looking from different angle, these Regulations treated even those employees entitled to pension, who either had opted for voluntary retirement or were compulsorily retired by way of penalty, if such retirement was after 01.11.1993. Thus, in effect, it is the cut-off date of 01.11.1993 and not the substance of Regulation Nos. 29 and 33, which renders such employees ineligible for pension. In this factual background, if the judgments relied on by learned counsel for the petitioner are examined, the following picture emerges.

**[7]** In case of Madhav K. Kritikar v. Bank of India, , decided by the Bombay High Court, an employee of the respondent Bank after 41 years of service, opted for voluntary retirement in the year 1987, which was accepted. Subsequently, pension was denied to him contending that though voluntary retirement is after 01.01.1986 but since it is prior to 01.11.1993, in view of cut-off date prescribed in above referred Regulation No. 29, he was not entitled to pension. After referring to various judgments of Honourable the Supreme Court of India, as well as taking note of the fact that, those who have retired after 01.01.1986 were entitled to pension by the same Regulations of the respondent Bank, it was held by the Bombay High Court that the denial of pension by the respondent Bank was arbitrary and it was directed to the respondent Bank to give pension to the petitioner of the said case.

**[8]** The conjoint reading of above Regulations also suggests that, after 01.11.1993, those who have retired on superannuation, those who have retired voluntarily, and those who are made to retire compulsorily, all are treated equally. Between the period 01.01.1986 to 01.11.1993, the categories carved out by the respondent Bank on the basis of the above Regulations are like this:-- (i) Those who retired/died after 01.01.1986, or after 01-11-1993, they both are treated equally and are entitled to pension, (ii) Those who voluntarily retired after 01.01.1986 but before 01.11.1993 on one hand, and voluntarily retired on and after 01.11.1993, they are not treated equally. Same way, (iii) those who were compulsorily retired after 01.01.1986 but before 01.11.1993 on one hand, and compulsorily retired on and after 01.11.1993, are not treated equally. Thus, the first of the above three categories stood on one hand, and the second and the third categories jointly stood on the other hand. Of these, the second and the third categories, which were treated equally by the Regulation Nos. 29 and 33 of the respondent Bank, on the challenge being made by an employee belonging to the second category, a voluntary retiree, the Bombay High Court has declared and held that prescription of cut-off date 01-11-1993 in Regulation No. 29 was arbitrary. Said decision of the Bombay High Court is confirmed by Honourable the Supreme Court of India in case of [Bank of India](#), 2001 9 SCC 318, and thus, that issue has attained finality. Learned counsel for the respondent Bank however sought to draw distinction by contending that the said judgment was in case of voluntary retirement and not in case of compulsory retirement. It is also pointed out that it was cut-off date of 01.11.1993 mentioned in Regulation No. 29 which was interfered with and not the cut-off date of 01.11.1993 as mentioned in Regulation No. 33 and therefore the above referred judgment of the Bombay High Court will not have any applicability in the facts of this case. In my view, keeping in view the reasoning recorded and principle laid down by the Bombay High Court, as confirmed by Honourable the Supreme Court of India, this distinction sought to be made, in substance, would not take the case of the respondent Bank any further and therefore, the same is rejected. In my view, the point



at issue in the present petition, in substance, if not the same, is identical to what was before the Bombay High Court. The reasoning recorded by the Bombay High Court in the said judgment, in my view, applies with full force in the facts of this case as well. Further, the said judgment is upheld by Honourable the Supreme Court and this Court is bound to follow the same.

**[9]** There is one more reason to follow the above referred Bombay High Court judgment. Reference in this regard can be made to the judgment of the Madras High Court in case of C.P. Krishnaswamy v. Punjab National Bank, . The facts of the said case were that, an employee of Punjab National Bank was compulsorily retired on 25.01.1990, he was denied pension by referring to Regulation No. 33 of Punjab National Bank, which is the same as in case of Bank of India, which is the respondent herein. Regulation No. 33 of the Punjab National Bank which fell for consideration before the Madras High Court reads as under:

### 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 Punjab National Bank Officers' (Discipline and Appeal) Regulations, 1977 or awards/settlement may be granted by the authority higher than the authority competent to impose such penalty, pension at a rate not less than two-thirds and not more than full pension admissible to him on the date of his compulsory retirement if otherwise he was entitled to such pension on superannuation on that date.

Thus, it is not in dispute that Regulation No. 33 of Bank of India, which is the respondent herein, and that of Punjab National Bank, which was respondent in the case decided by Madras High Court is verbatim the same. The Madras High Court, after taking note of the above referred judgment of the Bombay High Court, ultimately came to the conclusion and held that the cut-off date viz., 01.11.1993, fixed in Regulation 33(1) of the Punjab National Bank Employees' Pension Regulations, 1995 is arbitrary, discriminatory and violative of Articles 14 and 16 of the Constitution. True it is, that the judgment of the Madras High Court may not bind this Court, however, even independent of that judgment, the view which this Court proposes to take, of following the above referred Bombay High Court judgment, even in case of compulsory retirement, is already taken by the Madras High Court, following the same judgment of the Bombay High Court and thus, the view which I propose to take is further fortified by the view of the Division Bench of the Madras High Court. Further, it is also on record that the pension regulations of all the nationalised banks are uniform, they are in effect framed, after due procedure of consultation with different Staff Unions/Association etc., by the Indian

Banks' Association, in consultation with the Reserve Bank of India and approved by the Central Government. Thereafter the Board of Directors of respective Banks adopts the same, without any material change therein. As noted above, so far the impugned Regulation is concerned, it is pari materia with that of the Punjab National Bank, which is already held to be illegal by the Madras High Court.

**[10]** So far as reliance placed on various judgments, including the judgments of Honourable the Supreme Court of India, by respondent Bank is concerned, there cannot be any dispute with regard to settled proposition of law that Court shall be slow in interfering with the prescription of cut-off date in service conditions, more particularly, when it pertains to entitlement of pension or other monetary benefits. In my view, this Court, by this judgment does not interfere in the cut-off date but it is only held that the classification made by the respondent Bank, between the group of employees who opted for voluntary retirement or who were compulsory retired after 01.01.1986 but before 01.11.1993, and same group after 01.11.1993, is unreasonable, arbitrary and discriminatory and further it is held that, those who are made to retire compulsorily after 01.01.1986 but prior to 01.11.1993 should not have been treated differently, than those who are compulsorily retired after 01.11.1993. The prescription of cut-off date of 01.01.1986 in the Regulation is not touched either by the Bombay High Court or by the Madras High Court nor that is the controversy in this petition, thus, the judgments relied by learned counsel for respondent Bank, in my view, will not have any applicability in the facts of this case. Further, when the specific point raised in this petition is answered by other High Courts and the said view is confirmed by Honourable the Supreme Court of India, that will have binding force on this Court and this Court can neither take any different view, nor I see any reason to do so. For the reasons recorded above, the petition is allowed. The decision of the respondent Bank, of denying consideration of the case of petitioner for grant of pension under Regulation No. 33, only on the ground that punishment order was prior to 01.11.1993, is set aside. Respondent Bank is directed to consider the case of the petitioner for pension, in accordance with the substance of Regulation No. 33, ignoring the cut-off date prescribed therein. It is directed that the respondent Bank shall pass appropriate order, after such consideration within a period of two months from today. If the said order is adverse to the petitioner on merits, it would be open to the petitioner to challenge the same in accordance with law. Rule is made absolute. No order as to costs.