

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1942 OF 2009
(Arising out of S.L.P. © No. 22704/2005)

Bank of India & Anr. .. Appellants

Versus

K. Mohandas & Ors. .. Respondents

WITH

CIVIL APPEAL NO. 1943 OF 2009
(Arising out of S.L.P. © No. 18215/2006)

N.U. Kurup & Ors. .. Appellants

Versus

Union Bank of India & Ors. .. Respondents

WITH

CIVIL APPEAL NO. 1944 OF 2009
(Arising out of S.L.P. © No. 19463/2007)

Punjab & Sind Bank & Ors. .. Appellants

Versus

Baldev Singh ..
Respondent

WITH

CIVIL APPEAL NO. 1945 OF 2009
(Arising out of S.L.P. © No. 14406/2007)

Punjab & Sind Bank & Ors. .. Appellants

Versus

Baldev Singh ..Respondent

WITH

CIVIL APPEAL NO. 1946 OF 2009
(Arising out of S.L.P. © No. 8772/2008)

Sr.Regional Manager, Punjab National Bank .. Appellant

Versus

C.J. Singh & Ors. ..Respondents

WITH

CIVIL APPEAL NO. 1947 OF 2009
(Arising out of S.L.P. © No. 8902/2008)

Punjab National Bank .. Appellant

Versus

Balwant Rai Girdhar & Ors. ..
Respondents

WITH

CIVIL APPEAL NO. 1948 OF 2009
(Arising out of S.L.P. © No. 9029/2008)

Punjab National Bank .. Appellant

Versus

Anita Garg & Anr. ..Respondents

WITH

CIVIL APPEAL NO. 1949 OF 2009
(Arising out of S.L.P. © No. 10846/2008)

Punjab & Sind Bank & Ors. .. Appellants

Versus

Ranbir Singh & Ors. .. Respondents

WITH

CIVIL APPEAL NO. 1950 OF 2009
(Arising out of S.L.P. © No. 11112/2008)

Punjab & Sind Bank & Ors. .. Appellants

Versus

Gurcharan Singh Rein & Ors. .. Respondents

WITH

CIVIL APPEAL NO. 1951 OF 2009
(Arising out of S.L.P. © No. 11114/2008)

Punjab & Sind Bank & Ors. .. Appellants

Versus

Harinder Singh & Ors. .. Respondents

WITH

CIVIL APPEAL NO. 1952 OF 2009
(Arising out of S.L.P. © No. 11115/2008)

Punjab & Sind Bank & Ors. .. Appellants

Versus

Kulbir Singh Bhatia ..Respondent

WITH

CIVIL APPEAL NO. 1953 OF 2009
(Arising out of S.L.P. © No. 11190/2008)

Punjab & Sind Bank & Ors. .. Appellants

Versus

Arvinder Kaur Bedi ..Respondent

WITH

CIVIL APPEAL NO. 1954 OF 2009
(Arising out of S.L.P. © No. 11324/2008)

Punjab & Sind Bank & Ors. .. Appellants

Versus

Bhupinder Singh Sachdeva & Ors. ..Respondents

WITH

CIVIL APPEAL NO. 1955 OF 2009
(Arising out of S.L.P. © No. 13428/2008)

Punjab & Sind Bank & Ors. .. Appellants

Versus

Chanan Singh Sidhu ..
Respondent

WITH

CIVIL APPEAL NO. 1956 OF 2009
(Arising out of S.L.P. © No.23585/2005)

Subhas Chandra De & Ors. .. Appellants

Versus

United Bank of India & Ors. ..Respondents

AND

CIVIL APPEAL NO. 1957 OF 2009
(Arising out of S.L.P. © No. 8050/2006)

Amitava Mitra & Ors. .. Appellants

Versus

Zonal Manager,
Punjab National Bank & Ors. ..Respondents

J U D G E M E N T

R.M. LODHA, J.

Leave granted.

2. These sixteen appeals arise from the judgments of Punjab and Haryana High Court, Calcutta High Court and Kerala High Court and relate to different banks but since the common issues are involved, it is appropriate that these appeals are dealt with and disposed of by the common judgment.

3. In the month of May, 2000, Government of India, Ministry of Finance (Banking Division), advised the nationalized banks to carry out detailed manpower planning as these banks were found to have 25% of its manpower as surplus. A Human Resource Management Committee was constituted to examine the said issue and to suggest suitable remedial measures. The committee so constituted observed that high established cost and low productivity in public sector banks affect their profitability and it was necessary for these banks to convert their human resources into assets compatible with business strategies. *Inter alia*, the committee placed the draft Voluntary Retirement Scheme with the Central Government that would assist the banks in their efforts to

optimize their human resources and achieve a balanced age and skills profile in keeping with their business strategies. With the approval of the central government, Indian Bank Association (IBA) circulated salient features of the draft scheme to the nationalized banks for consideration and adoption by their respective boards vide its letter dated August 31, 2000. The Board of Directors of each of the nationalized banks, keeping in view the objectives, considered the draft scheme and adopted it separately.

4. In the present batch of appeals, the Voluntary Retirement Scheme brought out by the Punjab National Bank, Punjab & Sind Bank, Bank of India, Union Bank of India and United Bank of India is in issue.

5. The scheme adopted by these banks, although separately, is identical and bears similar salient features with some variation in certain respects. It is not necessary to consider them individually. For the sake of brevity, we shall refer the scheme as VRS 2000.

6. The objective of VRS 2000 has been:

-to transform the organizational as more efficient as well as for controlling operational costs;

-to improve the prospects and career growth and skills upgradation for employees by rationalizing the manpower;

-to help the bank to rightsize the growth.

7. We may, at this stage, summarise the salient features of VRS 2000. These are :

(i) All permanent employees of the bank who have put in minimum 15 years of service or completed 40 years of age on the date of coming into force of the scheme are eligible for voluntary retirement.

(ii) In addition to the normal retirement benefits available to an employee, according to the terms and conditions of his employment in the bank, an employee whose application for voluntary retirement is accepted will be paid a lump sum amount equivalent to 60 days salary for each completed year of service.

(III) The competent authority may accept or reject the application of an employee for voluntary retirement and the decision of the competent authority shall be final.

(IV) No voluntary retirement shall come into effect unless competent authority has passed orders accepting the applications of the employees to retire voluntarily under the scheme.

(V) The scheme can be withdrawn at the discretion of the bank at any time without assigning any reason.

(VI) It shall be open to the bank to alter/amend the conditions of the scheme. (In the scheme framed by Punjab National Bank such provision is not there).

(VII) The applications made under the scheme will be irrevocable and the employee will not have the right to withdraw the application once submitted.

(VIII) An employee whose application for voluntary retirement is accepted and relieved from the bank shall be eligible for :

(i) gratuity as per Gratuity Act/service gratuity as the case may be;

(ii) own contribution of provident fund and bank contribution towards provident fund, in case of those who have opted for Contributory Provident Fund or own contribution of provident fund and pension in terms of Employees Pension Regulations, 1995, in case of those who have opted for pension and have put in 20 completed years of service in the bank (emphasis supplied) and

(iii) leave encashment as per rules.

8. The period during which VRS 2000 was to remain in operation in respect of the banks with which we are concerned is as follows:

Punjab and Sind Bank 01.12.2000 to 31.12.2000

Punjab National Bank 01.11.2000 to 30.11.2000

Bank of India 15.11.2000 to

14.12.2000

Union Bank of India 01.12.2000 to 31.12.2000

9. Section 19 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (for short ‘ Act 1970’) empowers the Board of Directors to make regulations consistent with the provisions of the Act or any Scheme made thereunder after consultation with the Reserve Bank and with the previous sanction of the Central Government in respect of matters provided therein.

Section 19 (2)(f) reads thus:

“(2) In particular, and without prejudice to the generality of the foregoing power, the regulations may provide for all or any of the following matters, namely:--

(f) the establishment and maintenance of superannuation, pension, provident or other funds for the benefit of officers or other employees of the corresponding new bank or of the dependants of such officers or other employees and the granting of superannuation allowances, annuities and pensions payable out of such funds.”

10. These banks have made their regulations in respect of pension separately. Since they bear identical provisions; we shall refer them as Pension Regulations, 1995 generally. On the date of the commencement of the VRS 2000, Regulations 28 and 29 read as follows:

“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 autonomous 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 that 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;

Provided that the request for such withdrawal shall be made before the intended date of his retirement.

(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."

11. It appears that the benefits provided under Regulation 29 were not found to be attractive by the employees and did not help these banks in rightsizing

their manpower; thus, arose a necessity of special scheme. VRS 2000 is, in a way, special scheme launched for a very limited period.

12. VRS 2000 came up for consideration before this Court in the case of *Bank of India & Ors. vs O.P. Swarnakar & Ors.*, (2003) 2 SCC 721. The question under consideration in that case was whether an employee who opts for voluntary retirement pursuant to or in furtherance of a scheme floated by the nationalized banks would be precluded from withdrawing the said offer.

This Court culled out the following aspects:

- (i) The banks treated the application from the employees as an offer which could be accepted or rejected.
- (ii) Acceptance of such an offer is required to be communicated in writing.
- (iii) The decision-making process involved application of mind on the part of several authorities.
- (iv) Decision-making process was to be formed at various levels.
- (v) The process of acceptance of an offer made by an employee was in the discretion of the competent authority.
- (vi) The request for voluntary retirement would not take effect in present but in future.

(vii) The bank reserved its right to alter/rescind the conditions of scheme.

13. In *O.P. Swarnakar*, it has been held that scheme is contractual in nature. It amounted to an invitation to offer and not an offer or proposal itself; the application made by the employees was an offer.

14. The statement of law with regard to nature of voluntary retirement scheme expounded in *O.P. Swarnakar* has been reiterated in *HEC Voluntary Retd. Employees Welfare Society v. Heavy Engineering Corporation Ltd.* (2006) 3 SCC 708; *albeit* a different voluntary retirement scheme.

15. The admitted factual position in this batch of appeals is that each of the employees had completed 20 years of service.

16. It may be noticed that at the fag end of the operation of VRS 2000, at the instance of IBA and with the approval of the Central Government, Regulation 28 was proposed to be amended. The amendment in fact

was carried out in the year 2002 with retrospective effect from September 1, 2000. By way of amendment, a proviso has been inserted to Regulation 28, which reads as follows:

“Provided that pension shall also be granted to an employee who opts to retire before attaining the age of superannuation, but after having served for a minimum period of 15 years in terms of any scheme that may be framed for the purpose by the Bank’s Board with the concurrence of the Government.”

17. The optees have been given retiral benefits by the respective banks under VRS 2000 save and except the benefit of pension under Regulation 29(5). Their representation in this regard did not yield any result and that necessitated them to approach various High Courts for redressal of their grievance.

18. The views of High Courts differ. Punjab and Haryana High Court has held that employees are entitled to add a period of qualifying service not exceeding five years in terms of the Regulation 29(5); the total qualifying service rendered by an employee seeking voluntary retirement in any case shall not exceed 33 years. With

regard to the amendment in Regulation 28, Punjab and Haryana High Court has held that by the said amendment, the provision contained in Regulation 29(5) of the Regulations does not get affected so as to disentitle the employees the benefit provided therein.

19. There are two views in so far as Kerala High Court is concerned. In the case of K. Mohandas (Civil Appeal arising out of SLP (c) 22704/2005), the Division Bench in the Writ Appeal held that the employees seeking voluntary retirement under VRS 2000 were entitled to benefit under Regulation 29(5) of Pension Regulations, 1995. However, in the case of N.U. Kurup, the single Judge held otherwise. The single Judge took the view that the employees seeking voluntary retirement under VRS 2000 were entitled to pension under Regulation 28 and that they are not entitled to benefit of addition of five years service as provided in Regulation 29(5). The view of the Division Bench of Calcutta High Court is on the lines of the view of the single Judge of Kerala High Court that the optees of voluntary retirement under VRS 2000

are not entitled to benefit of addition of five years service under Regulation 29(5).

20. We have heard the senior counsel, counsel for the respective parties and Baldev Singh who appeared in person at quite some length. The written submissions have also been filed by the parties which we considered thoughtfully.

21. The submissions on behalf of the banks may be summarised thus : (i) that Pension Regulations, 1995, as were existing during the operation of VRS 2000, did not cover the class of employees retiring under the Scheme which is contractual in nature. Regulation 28 came to be amended by insertion of proviso thereto to cover the employees retiring under the Scheme inasmuch as by the said amendment, the employees having completed 15 years of service or more became entitled to pension on pro-rata basis; (ii) that voluntary retirement under VRS 2000 cannot be compared or equated with voluntary retirement under Pension Regulations, 1995. VRS 2000 is completely different and distinct scheme from voluntary retirement contemplated under Regulation

29 of the Pension Regulations, 1995; (iii) that Regulation 29(5) of Pension Regulations, 1995, read: “the qualifying service of an employee retiring voluntarily under this regulation shall be increased by a person not exceeding” The words “under this regulation” would mean ‘under Regulation 29’ and no other interpretation to the meaning could be attributed to these words; (iv) that during operation of VRS 2000, the concerned banks had brought out circulars to bring to the notice of the concerned employees the proposed amendment and, thus, the employees were aware of the proposed amendment of Pension Regulations and could have withdrawn their offer but in the absence of such withdrawal and after having accepted the benefits under VRS 2000, they are estopped under law from challenging the Scheme or claiming benefit of addition of five years of notional service in calculating the length of service for the purposes of pension and (v) that Regulation 29 does not cover persons retiring under VRS 2000 which is *de hors* the statutory scheme for voluntary retirement.

22. On the other hand, on behalf of the employees, it was contended: (i) that Pension Regulations, 1995, were framed and notified in the year 1995 that provides for different classes of pension which might be available to a pension optee, *inter alia*, two classes of these pension are; superannuation pension (Regulation 28) and pension on Voluntary Retirement (Regulation 29); that VRS 2000 was brought out with the object of optimizing human resources at various levels for achieving the balanced age and skills profile in keeping with business strategies and the banks allowed its employees to retire voluntarily under the Scheme with an intention to confer attractive benefits in addition to ex-gratia and such additional benefits also included pension as per Pension Regulations, 1995; (ii) that VRS 2000 is not statutory in nature; rather, it is an invitation to treat by the bank to its employees to offer for voluntary retirement. The offer for voluntary retirement was founded on the terms of scheme. By acceptance of the said offer made by the employees, the concluded contract came into existence between the bank and the employee which

could not have been altered; (iii) that on the date of the relieving the concerned employees, Regulation 28 had not been amended and, therefore, the entitlement to the pension could not have been decided in terms of that Regulation and the pension benefits to the optees could only be given under Regulation 29; (iv) that by making provision in the Scheme that optees would be eligible for the benefits in addition to the ex-gratia amount, *inter alia*, pension as per Pension Regulations, 1995, the employees understood that what was contemplated was pension under Regulation 29. Any ambiguity in VRS 2000 ought to be construed that harmonized with the intention of the parties; (v) that the amendment in Regulation 28 was introduced for a class of employees who had put in more than 15 years but less than 20 years of service. In terms of Pension Regulations, 1995, as it stood before amendment to Regulation 28, an employee although a pension optee under VRS having not completed 20 years service was not entitled to any pension. In order to take care of this anomalous position and to confer pensionary benefits on such employees, the amendment

was brought into effect in Regulation 28 which cannot affect the subject employees who undisputedly have put in more than 20 years of service; (vi) that the employees made the offer to retire from service in terms of the Scheme which was accepted by the banks without any reservation. In terms of the Scheme under the head 'other benefits', the optees are eligible for benefit of pension as per Pension Regulations, 1995. Regulation 29 was the only regulation under the Pension Regulations, 1995, applicable to voluntary retirement and, therefore, Regulation 29, *ipso facto*, became the term of the contract and (vii) that each and every paragraph of Regulation 29 can be made applicable to an optee of more than 20 years of service without coming into conflict with any provision of the Scheme; the notice period of three months in Regulation 29(3) can be waived at the discretion of the banks.

23. The principal question that falls for our determination is : whether the employees (having completed 20 years of service) of these banks (Bank of India, Punjab National Bank, Punjab & Sind Bank, Union

Bank of India and United Bank of India) who had opted for voluntary retirement under VRS 2000 are entitled to addition of five years of notional service in calculating the length of service for the purpose of the said Scheme as per Regulation 29(5) of Pension Regulations, 1995 ?

24. As noticed above, Pension Regulations, 1995, came to be framed by each of the afore-referred banks separately in exercise of the powers conferred by clause(f) of sub-Section 2 of Section 19 of the Act, 1970. In the interpretation clause various expressions have been defined.

25. Regulation 2(t) defines 'pension':

"pension" includes the basic pension and additional pension referred to in Chapter VI of these Regulations".

Regulation 2(y) defines 'retirement':

"retirement" means cessation from bank's service

"(a).....

(b) on voluntary retirement in accordance with provisions contained in Regulations 29 of these Regulations.

(c)....."

26. Chapter V of Pension Regulations deals with the various classes of pension:

superannuation pension (Regulations 28); voluntary retirement pension (Regulation 29); invalid pension (Regulation 30); premature retirement pension (Regulation 32) and compulsory retirement pension (Regulation 33).

27. In view of the admitted position that VRS 2000 was a contractual scheme; that it was an invitation to offer containing a term that optee will also be eligible for pension as per Pension Regulations; that an application by an employee for voluntary retirement was a proposal or offer and that upon acceptance of the application for voluntary retirement made by the employee and a communication of acceptance to him, the concluded contract came into existence and the offeree was relieved from the employment, for consideration of the question posed herein, the court need to examine the contract and the circumstances in which it was made in order to see whether or not from the nature of it, the

parties must have made their bargain on the footing that a particular thing or state of things would continue to exist.

28. The true construction of a contract must depend upon the import of the words used and not upon what the parties choose to say afterwards. Nor does subsequent conduct of the parties in the performance of the contract affect the true effect of the clear and unambiguous words used in the contract. The intention of the parties must be ascertained from the language they have used, considered in the light of the surrounding circumstances and the object of the contract. The nature and purpose of the contract is an important guide in ascertaining the intention of the parties.

29. In *Ottoman Bank of Nicosia vs. Ohanes Chakarian*, AIR 1938 PC 26, Lord Wright made these weighty observations:

“----- that if the contract is clear and unambiguous, its true effect cannot be changed merely by the course of conduct adopted by the parties in acting under it.”

30. In *Ganga Saran vs. Firm Ram Charan Ram Gopal*, AIR 1952 SC 9, a four Judge bench of this Court stated:

“Since the true construction of an agreement must depend upon the import of the words used and not upon what the parties choose to say afterwards, it is unnecessary to refer to what the parties have said about it.”

31. It is also a well-recognized principle of construction of a contract that it must be read as a whole in order to ascertain the true meaning of its several clauses and the words of each clause should be interpreted so as to bring them into harmony with the other provisions if that interpretation does no violence to the meaning of which they are naturally susceptible. [(The North Eastern Railway Company vs. L. Hastings) (1900 AC 260)].

32. The fundamental position is that it is the banks who were responsible for formulation of the terms in the contractual Scheme that the optees of voluntary retirement under that Scheme will be eligible to pension

under Pension Regulations, 1995, and, therefore, they bear the risk of lack of clarity, if any. It is a well-known principle of construction of contract that if the terms applied by one party are unclear, an interpretation against that party is preferred. [*Verba Chartarum Fortius Accipiuntur Contra Proferentum*].

33. What was, in respect of pension, the intention of the banks at the time of bringing out VRS 2000? Was it not made expressly clear therein that the employees seeking voluntary retirement will be eligible for pension as per Pension Regulations? If the intention was not to give pension as provided in Regulation 29 and particularly sub-regulation (5) thereof, they could have said so in the scheme itself. After all much thought had gone into the formulation of the VRS 2000 and it came to be framed after great deliberations. The only provision that could have been in mind while providing for pension as per Pension Regulations was Regulation 29. Obviously, the employees, too, had benefit of Regulation 29(5) in mind when they offered for voluntary retirement as admittedly Regulation 28 as was existing at that time was not

applicable at all. None of the regulations 30 to 34 was attracted. It appears that VRS 2000 evoked huge response, much more than expected and then began the second thought. At the fag end of operation of VRS 2000, at the instance of NBA, the banks proposed amendment in the Pension Regulations and a circular came to be issued. But, by that time, ball had gone out of the hands of the employees; they had already made their offers which were irrevocable; it was not open to them to withdraw the offers as per specific condition incorporated in the scheme (*albeit* this court in *O.P. Swarnakar* held that offer could be withdrawn before acceptance) and their offers were accepted and they were relieved. We are afraid, it would be unreasonable if amended Regulation 28 is made applicable, which had not seen the light of the day and which was not the intention of the bank when scheme was framed. The banks in the present batch of appeals are public sector banks and are 'State' within the meaning of Article 12 of the Constitution and their action even in contractual matters has to be reasonable, lest, as observed in *O.P. Swarnakar*, it must

attract the wrath of Article 14 of the Constitution.

34. Any interpretation of the terms of VRS 2000, although contractual in nature, must meet the test of fairness. It has to be construed in a manner that avoids arbitrariness and unreasonableness on the part of the public sector banks who brought out VRS 2000 with an objective of rightsizing its manpower. The banks decided to shed surplus manpower. By formulation of the Special Scheme (VRS 2000), the banks intended to achieve its objective of rationalizing its force as they were overstaffed. The Special Scheme was, thus, oriented to lure the employees to go in for voluntary retirement. In this background, the consideration that was to pass between the parties assumes significance and a harmonious construction to the Scheme and Pension Regulations, therefore, has to be given.

35. The amendment to Regulation 28 can, at best, be said to have been intended to cover the employees with 15 years of service or more but less than 20 years of service. This intention is reflected from the communication dated September 5, 2000 sent by the

Government of India, Ministry of Finance, Department of Economic Affairs (Banking Division) to the Personnel Advisor, Indian Banks' Association. The said letter may be set out as it is which reads thus:

"F.No.4/8/4/2000-IR

Government of India
Ministry of Finance
Department of Economic Affairs
(Banking Division)

New Delhi, the 5th Sept.2000

To
The Personnel Advisor,
Indian Bank's Association,
Mumbai.

Sub: Amendment to Regulation 29 of the Pension Regulations.

Sir,

I am directed to refer to this Division's letter No. 11/1/99 IR dated 29th August, 2000 conveying Government's no objection for circulation of Voluntary Retirement Scheme in Public Sector Banks. The scheme, inter-alia, provides that employees with 15 years of service or 40 years of age shall be eligible to take voluntary retirement under the scheme. As per provisions contained in Regulation 29 of Pension Regulations an employee can take voluntary retirement after 20 years of qualifying service and thereafter becomes eligible for pension. Thus employees having rendered 15 years of service or completing 40 years of age but not having completed 20 years of service shall not be eligible for pensionary benefits on taking voluntary retirement under the scheme.

In order to ensure that such employees do not lose the benefit of pension, IBA may work out

modalities and suggest amendments, if any, required to be made in the pension regulations to ensure that these employees also get the benefit of pension.

Yours faithfully,
Sd/-
(U.P. Singh)
Director (IR)”

36. Two things immediately become noticeable from the said communication. One is that as per Regulation 29 of Pension Regulations, 1995, an employee can take voluntary retirement after 20 years of qualifying service and become eligible for pension. The other thing is that the Scheme provides that the employees with 15 years of service or 40 years of age shall be eligible to take voluntary retirement under the Scheme and under Regulation 29, the employees having rendered 15 years of service or completed 40 years of age but not completed 20 years of service shall not be eligible for pensionary benefits on taking voluntary retirement under the Scheme. The use of the words ‘such employees’ in the communication is referable to employees having rendered 15 years of service but not completed 20 years of service and, therefore, it was decided to bring in amendment in

the Regulations so that employees having not completed 20 years service do not lose the benefit of pension. The amendment in Regulation 28, as is reflected from the afore-referred communication, was intended to cover the employees who had rendered 15 years service but not completed 20 years service. It was not intended to cover the optees who had already completed 20 years service as the provisions contained in Regulation 29 met that contingency.

37. Even if it be assumed that by insertion of the proviso in Regulation 28 (in the year 2002 with effect from September 1, 2000), all class of employees under VRS 2000 were intended to be covered, such amendment in Regulation 28, needs to be harmonized with Regulation 29, particularly Regulation 29(5) which provides for addition of qualifying service by five years for the optees who had put in 20 years service or more subject to the condition that total qualifying service rendered by such employee shall not in any case exceed 33 years. This would be in tune and consonance with the explanatory note appended to the amendment in Regulation 28 wherein it is stated that

the amendment with retrospective effect would not adversely affect any employee or officer of the respondent-bank. That would also meet the test of fairness.

38. The contention was raised on behalf of the banks that if Regulation 29(5) of the Pension Regulations, 1995, is applied for the purposes of VRS 2000, the same would create an anomalous situation inasmuch as two different classes of employees for the purpose of granting pension would be created, namely, a class of employees who had completed 15 years of service but less than 20 years of service and this class would not be entitled to receive benefits under Regulation 29(5) while the employees who had completed 20 years service or more would be entitled to receive the benefit under Regulation 29(5). It was submitted that by such construction a class within the class would be created which is impermissible. We do not agree. If a special benefit under Regulation 29(5) is available to the employees who had completed 20 years of service or more, by no stretch of imagination, can it be said that it is discriminatory to those employees who had completed 15 years of service but not completed 20

years. In view of the provision contained in Regulation 29 (5), if the optees who have not completed 20 years get excluded from the weightage of five years which has been given to optees who have completed 20 years of service or more, it is no discrimination. Such provision can neither be said to be arbitrary nor can be held to be violative of any constitutional or statutory provisions. The weightage of five years under Regulation 29(5) is applicable to the optees having service of 20 years or more. There is, thus, basis for additional benefit. Merely because the employees who have completed 15 years of service but not completed 20 years of service are not entitled to weightage of five years for qualifying service under Regulation 29(5), the employees who have completed 20 years of service or more cannot be denied such benefit.

39. On behalf of the banks, it was contended that Pension Regulations, 1995, are statutory in nature and these Regulations cannot be altered, amended or read down in view of any contract or a contractual scheme. It was submitted that any contract (or contractual scheme),

contrary to a statutory law would be hit by Section 23 of the Contract Act and, therefore, it is the contract or the scheme which has to be modified, altered or read down to bring it in tune with the provisions of statutory Regulations and not the other way round. The contention does not impress us. It is misplaced assumption that by reading Regulation 29(5) in the Scheme, the Pension Regulations would get altered or amended. Can it be said that statutory relationship of employee and employer brought to an end prematurely by contractual VRS 2000 amounted to alteration or amendment in the statutory Regulations. Surely, answer has to be in negative and that must answer this contention. The precise effect of Pension Regulations, for the purposes of pension, having been made part of scheme, is that Pension Regulations, to the extent, these are applicable, must be read into the Scheme. It is pertinent to bear in mind that interpretation clause of VRS-2000 states that the words and expressions used in the scheme but not defined and defined in the Rules/Regulations shall have the same meaning respectively assigned to them under

Rules/Regulations. The Scheme does not define the expression 'retirement' or 'voluntary retirement'. We have, therefore, to fall back on the definition of 'retirement' given in Regulation 2(y) whereunder voluntary retirement under Regulation 29 is considered to be retirement. Regulation 29 uses the expression, 'voluntary retirement under these Regulations'. Obviously, for the purposes of the Scheme, it has to be understood to mean with necessary changes in points of details. Section 23 of the Contract Act has no application to the present fact situation.

40. It was submitted on behalf of the banks that amendment to Regulation 28 has neither been challenged nor the said Regulation has been declared ultra vires and, therefore, that provision cannot be rendered *otiose* by taking recourse to Regulations 29. It is true that validity and legality of Regulation 28 has not been put in issue. It was apparently not done because, according to the employees, amended Regulation 28 although made retrospective could not have affected the concluded contract. We have already indicated above as to how the

amendment in Regulation 28 in the year 2002 with effect from September 1, 2000 could not have applied to the optees under the Scheme who had completed service of 20 years. Lack of challenge to the Regulation 28 by the employees is, therefore, not very material. It is not correct to say that by taking recourse to Regulation 29, the amendment to Regulation 28 is rendered *otiose*.

41. It was vehemently contended on behalf of the banks that VRS 2000 was a self-contained Scheme and it provided for special benefits in the form of ex-gratia. It was submitted that ex-gratia was not available to the employees claiming voluntary retirement under Pension Regulations and it was because of that, that Scheme did not envisage granting of pension benefits under Regulation 29(5) of the Pension Regulations, 1995, along with the payment of ex-gratia which was a substantial amount. It is true that VRS 2000 is a complete package in itself and contractual in nature. However, in that package, it has been provided that the optees, in addition to ex-gratia payment, will also be eligible to other benefits *inter alia* pension under the Pension Regulations. The only

provision in the Pension Regulations at the relevant time during the operation of VRS 2000 concerning voluntary retirement was Regulation 29 and clause(5) thereof provides for weightage of addition of five years to qualifying service for pension to those optees who had completed 20 years service. It, therefore, cannot be accepted that VRS 2000 did not envisage grant of pension benefits under Regulation 29(5) of the Pension Regulations, 1995, to the optees of 20 years service along with payment of ex-gratia. The whole idea in bringing out VRS 2000 was to rightsize workforce which the banks had not been able to achieve despite the fact that the statutory Regulations provided for voluntary retirement to the employees having completed 20 years service. It was for this reason that VRS 2000 was made more attractive. VRS 2000, accordingly, was an attractive package for the employees to go in for as they were getting special benefits in the form of ex-gratia and in addition thereto, *inter alia* pension under the Pension Regulations which also provided for weightage of five years of qualifying service for the purposes of pension to the employees who

service for the purposes of pension to the employees who had completed 20 years service.

42. In support of their contention that the employees, who have sought voluntary retirement under VRS 2000, are not entitled to benefit of Regulation 29(5) of Pension Regulations, 1995, on behalf of banks, heavy reliance was placed on a decision of this Court in the case of *Bank of Baroda and Ors. Vs. Ganpat Singh Deora*, 2009 (1) Scale 168. As a matter of fact, it was submitted that the decision of this Court in the case of *Bank of Baroda* concludes the controversy and the legal position is no more *res integra*. Reliance in this connection was placed on the following observations:

“15. The only question which is required to be determined in the instant case is whether Regulation 29 of the Pension Regulations, 1995, could have been applied in the case of the respondent or whether Regulation 14 has been rightly applied both by the Tribunal and the High Court.

.....
18. However, we are inclined to agree with Ms. Bhati that Regulation 29 does not contemplate voluntary retirement under the Voluntary Retirement Scheme and applies only to such employees who themselves wish to retire de hors any Scheme of Voluntary Retirement, after having completed 15 years of qualifying service for the said purpose. There is a distinct difference between the two situations and

Regulation 29 would not cover the case of an employee opting to retire on the basis of a Voluntary Retirement Scheme.

19. Furthermore, Regulations 2 of the Voluntary Retirement Scheme, 2001, of the appellant-Bank merely prescribes a period of qualifying service for an employee to be eligible to apply for voluntary retirement. On the other hand, Regulations 14 and 29 of the Pension Regulations, 1995, relate to the period of qualifying service for pension under the said Regulations, in two different situations. While Regulations 14 provides that in order to be eligible for pension an employee would have to render a minimum of 10 years service, Regulation 29 is applicable to the employees choosing to retire from service pre-maturely, and in their case the period of qualifying service would be 15 years. The facts of this case, however, do not attract the provisions of Regulation 29 since the respondent accepted the offer of voluntary retirement under the Scheme framed by the Bank and not on his own volition de hors any Scheme of Voluntary Retirement. In such a case, Regulation 14 read with Regulation 32 providing for premature retirement would not also apply to the case of the respondent. While Regulation 2 of the BOBEVRS -2001 speaks of eligibility for applying under the Scheme, Regulation 14 of the Pension Regulations, 1995, contemplates a situation whereunder an employee would be eligible for premature pension. The two provisions are for two different purposes and for two different situations. However, Regulations 28 of the Pension Regulations, 1995, after amendment made provision for situations similar to the one in the instant case. In the absence of any particular provision for payment of pension to those who opted for BOBEVRS-2001 other than Regulation 11(ii) of the Scheme, we are once again left to fall back on the Pension Regulations, 1995, and the amended provisions of Regulation 28 which brings within the scope of Superannuation Pension employees who opted for the Voluntary Retirement Scheme, which will be clear from the Explanatory Memorandum. However, the period of qualifying service has been retained as 15 years for those opting for BOBEVRS-2001 and is treated differently from premature retirement where the minimum period of qualifying service has been fixed at 10 years in keeping with Regulation 14 of the Pension Regulations, 1995."

43. A word about precedents, before we deal with the aforesaid observations. The classic statement of Earl of Halsbury , L.C. in *Quinn vs. Leathem*, 1901 AC 495, is worth recapitulating first:

“Before discussing *Allen v. Flood* (1898) AC 1 and what was decided therein, there are two observations of a general character which I wish to make; and one is to repeat what I have very often said before –that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, *but are governed and qualified by the particular facts of the case* in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logically at all.”

44. This Court has in long line of cases followed the aforesaid statement of law. In *State of Orissa vs. Sudhansu Sekhar Misra*, AIR 1968 SC 647, it was observed:

“.... A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it.”

45. In the words of Lord Denning:

“Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.”

46. It was highlighted by this Court in *Ambica Quarry*

Works Vs. State of Gujarat, (1987) 1 SCC 213:

“18....The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it.”

47. In *Bhavnagar University vs. Palitana Sugar Mill*

(P) Ltd., (2003) 2 SCC 111, this Court held that a little

difference in facts or additional facts may make a lot of

difference in the precedential value of a decision.

48. This Court in *Bharat Petroleum Corporation Ltd. vs. N.R. Vairamani*, (2004) 8 SCC 579, emphasized that the Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which the reliance is placed. It was further observed that the judgments of courts are not to be construed as statutes and the observations must be read in the context in which they appear to have been stated. The Court went on to say that circumstantial applicability, one additional or different fact may make a word of difference between conclusions in two cases.

49. It is true that the controversy in the case of *Bank of Baroda* arose out of the same voluntary retirement scheme with which we are concerned in this group of appeals. However, there is vital factual difference in that case and this group of appeals. Pertinently that was a case where the employee had completed only 13 years of service(not even 15 years of service much less 20 years' service) although he completed 40 years of age at the time he offered for voluntary retirement. The employee's

application therein for voluntary retirement was accepted by the Bank of Baroda and he was paid all retiral benefits. However, his request for grant of pension in addition to the other retiral benefits was not acceded to by the bank. It was so because he had not completed even 15 years of service. The employee pursued industrial adjudicatory process for redressal of his grievance in respect of non-grant of pension by the bank. The employee's claim was opposed by the Bank of Baroda contending that in terms of Regulations 14, 28 and 29 of the Pension Regulations, 1995, the employee was not entitled to pension. The observations made by this Court in *Bank of Baroda* which have been quoted above and relied upon by the banks in support of their contention have to be understood in the factual backdrop namely, that the employee had completed only 13 years of service and, was not eligible for the pension under the Pension Regulations, 1995 and for the benefit of addition of five years to qualifying service under Regulation 29(5), an employee must have completed 20 years of service. The question therein was not identical in form with the

question here to be decided. The following observations in paragraph 11 of the report in *Bank of Baroda* are significant:

“.....since both the Tribunal as well as the High Court appear not to have considered or taken note of the fact that the respondent was not eligible for pension as he had not completed 15 years of qualifying service.....
.....”

50. The decision of this Court in *Bank of Baroda* is, thus, clearly distinguishable as the employee therein had not completed qualifying service much less 20 years of service for being eligible to the weightage under Regulation 29(5) and cannot be applied to the present controversy nor does that matter decide the question here to be decided in the present group of matters.

51. On behalf of banks it was submitted that the employees, having taken benefits under the scheme (VRS 2000), are estopped from raising any issue that their entitlement to pension would not be covered by amended Regulation 28. It was suggested that the employees having taken benefit of the scheme cannot insist for

pension under Regulation 29(5). *O.P. Swarnakar* was relied upon in this regard wherein it has been held that an employee, having taken the ex-gratia payment, or any other benefit under the scheme cannot be allowed to resile from the scheme.

52. Insofar as the present group of appeals is concerned, the employees are not seeking to resile from the Scheme. They are actually seeking enforcement of the clause in the Scheme that provides that the optees will be eligible for pension under the Pension Regulations, 1995. According to them, they are entitled to the benefits of Regulation 29(5). In our considered view, plea of estoppel is devoid of any substance; as a matter of fact it does not arise at all in the facts and circumstances of the case.

53. We hold, as it must be, that the employees who had completed 20 years of service and were pension optees and offered voluntary retirement under VRS 2000 and whose offers were accepted by the banks are entitled to addition of five years of notional service in calculating the length of service for the purposes of that

Scheme as per Regulation 29(5) of the Pension Regulations, 1995. The contrary view expressed by some of the High Courts do not lay down the correct legal position.

54. The only question now remains to be seen is whether the concerned employees are entitled to interest on unpaid pension.

55. Although it has been held by us that the subject employees are entitled to the weightage in terms of Regulation 29(5) of Pension Regulations, 1995, but we are satisfied that any award of interest on unpaid pension would not be in the interest of justice. It is so because different High Courts did not have unanimous judicial opinion on the issue. Punjab and Haryana High Court and the Division Bench of the Kerala High Court upheld the contention of the employees with regard to applicability of Regulation 29(5) to the optees who had completed 20 years of service while the Division Bench of the Calcutta High Court and a single Judge of the Kerala High Court took exactly an opposite view. The stance of the banks,

although found not meritorious, cannot be said to be totally frivolous. We, accordingly, hold that the subject employees are not entitled to interest on unpaid pension.

56. The result of the foregoing discussion is that the appeals preferred by the banks must fail and are dismissed while the appeals of the employees deserve to be allowed and are allowed accordingly. The respective banks shall now recalculate, within one month from today, the pension payable to the concerned employees by giving them the benefit of Regulation 29(5). However, the employees shall not be entitled to interest on unpaid pension. The pending applications in these appeals stand disposed of. The parties shall bear their own costs.

.....J
(D.K. Jain)

.....J
(R.M. Lodha)

New Delhi,
March 27, 2009

