

HON'BLE SRI JUSTICE M.GANRA RAO

W.P.No.13649 OF 2001

ORDER

This writ petition is filed seeking to issue a Writ of Mandamus declaring the action of the respondents in not adding five years notional service to the actual service rendered as qualifying service for fixing pension of the petitioners 2 to 10 herein under Circular No.3/68, dated 5.1.2001 issued by the 2<sup>nd</sup> respondent as arbitrary and illegal and consequently to direct the respondents to fix and pay the pension of the petitioners 2 to 10 by adding five years of notional service as qualifying service to the actual service on the basis of pay and dearness allowance drawn by them preceding ten months of service before the date of retirement from service with all attendant benefits including arrears.

The brief facts of the case are that the 1<sup>st</sup> petitioner is a registered society and petitioners 2 to 4, 6, 8 and 10 worked as Officers in Middle Management Grade II and petitioners 5,9 and 11 worked as Officers in Junior Management Grade-I in the respondent-Andhra Bank. The petitioners are governed by the Andhra Bank (Officers) Service Regulations, 1982 as well as Andhra Bank (Employees) Pension Regulations, 1995 (for short 'the Regulations'). The Board of Directors of respondent-Bank had approved the Voluntary Retirement

Scheme for the employees of the Bank, named as “Andhra Bank Employees Voluntary Retirement Scheme-2000” (for short ‘the Scheme’). The said scheme was circulated by the 2<sup>nd</sup> respondent under Circular No.279, dated 29.11.2000. As per the said circular, the scheme shall remain open in operation from 11<sup>th</sup> December 2000 to 10<sup>th</sup> January, 2001. The scheme is applicable to both Officers and workmen of the respondent-Bank. As per Clause 5 of the said scheme, all the permanent employees of the Bank are eligible to seek voluntary retirement, provided that they have completed minimum of 15 years of service or 40 years of age as on 10<sup>th</sup> December, 2000. However, the employees falling in the categories referred to under Clause 5.2 of the Scheme are not eligible to seek for voluntary retirement. The petitioners had joined in the service of the respondent-Bank in different years viz., 1973, 1974, 1976, 1978 and 1980. The petitioners have opted for voluntary retirement from service under the said Scheme and the same was accepted by the competent authority and they were relieved from service by the end of January, February and March, 2001. As per Clause 6 of the said Scheme, in addition to the normal retirement benefits, as per eligibility, an employee seeking voluntary retirement, is entitled to 60 days salary for each completed year of service or

salary for the number of months of service left whichever is less. As per Clause 7 of the said Scheme, an employee seeking voluntary retirement is entitled to the benefits in addition to ex-gratia amount viz., (i) gratuity as per Payment of Gratuity Act, 1972, or gratuity under the Service Rules as the case may be (ii) individuals contribution to provident fund and Bank's contribution towards provident fund in the case of those employees, who had opted for contributory provident fund or individual's contribution to provident fund and pension, including commuted value of pension, in terms of Andhra Bank (Employees) Pension Regulations, 1995, in the case of those employees who opted for pension and have put in 20 years of service in the Bank (iii) Leave encashment of accumulated privilege leave upto a maximum of 240 days as per the Rules of the Bank. As per Clause 9 of the Scheme, the competent authority shall have absolute discretion either to accept or reject the application of an employee for voluntary retirement from service. As per Clause 11.5 of the Scheme, it is not left open for an employee to withdraw the request made for voluntary retirement under the Scheme after having exercised such option. While settling the retirement benefits to the petitioners 2 to 10 and other retired employees under the said Scheme, the pension payable to the petitioners was

not fixed as per Regulation 29 (5) of the Andhra Bank (Employees) Pension Regulations, 1995 read with Clause 7 (ii) b of the Scheme. Regulation 29(5) provides that the qualifying service of an employee retiring voluntarily under the 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 superannuation. Regulation 29 (5) further provides that , all the employees, who were retired under the Scheme including the petitioners are entitled to add five years more of qualifying service for the purpose of pensionary benefits. The petitioners and several other employees, who have opted the said Scheme, was denied the benefit of Regulation 29 (5) of the Regulations, i.e., adding five years of qualifying service for the purpose of pensionary benefits.

The 2<sup>nd</sup> respondent issued Circular No.302, dated 21.12.2000 notifying the proposed amendment to Regulation 28 of the Regulations, reducing the qualifying service for pensionary benefits to 15 years from 20 years and also the decision of the respondent-Bank to extend the benefit of pension, including commuted value of pension in the case of those employees, who have already opted for pension and

have put in 15 completed years of qualifying service in the Bank pending amendment to Regulation 28 of the Regulations. The 2<sup>nd</sup> respondent had issued a Circular No.3/68, dated 5.1.2001, long after the petitioners had submitted their options for voluntary retirement from service under the said Scheme, notifying that the employees who have opted for pension and opted to retire under the said Scheme and is accepted by the Competent Authority, shall be eligible for superannuation pension if they have put in 15 completed years of service or more on prorated basis only for the period of service rendered by them in terms of proposed amendment to Regulation 28 of the Regulations and that the provision of adding five years of notional service to the actual service rendered in case of those opted for voluntary retirement under Regulation 29 of pension Regulations will not be available to those who opt for voluntary retirement under the Scheme. Being aggrieved by the action of the respondent-Bank in not adding five years of notional service to the actual service rendered as qualifying service for fixing pension of the petitioners under Circular No.3/68, dated 5.1.2001 issued by the 2<sup>nd</sup> respondent, which is illegal and arbitrary, the present writ petition is filed.



Learned counsel appearing for the petitioners would contend that Circular No.3/68, dated 5.1.2001, under which the provision of adding five years of notional service to the actual service rendered by the voluntarily retired employees under the said Scheme as in the case of those who opted for voluntary retirement under Regulation 29 of the Regulations, is sought to be taken away, is ex facie illegal and without jurisdiction in as much as the respondents have no power or authority to add, amend or alter the provisions of the Scheme, after closing the Scheme on 1.1.2001. The Circular dated 5.1.2001, under which the benefit of adding five years of notional service to actual service rendered by voluntarily retired employees is taken away, is illegal, void and unenforceable. Learned counsel further contends that the right and benefit conferred under Clause 7(ii) b of the said Scheme cannot be varied to the disadvantage of the employees who had opted for voluntary retirement from service under the scheme without first giving notice to the affected employees and the action of the respondents is contrary to the established principles of natural justice and as such it is illegal, void and unenforceable. Learned counsel also contends that the petitioners are entitled to the benefit of adding five years of notional service to the actual service on

the basis of pay and dearness allowance drawn by them preceding ten months of service before the date of retirement from service with all attendant benefits including arrears.

This writ petition was admitted on 6.7.2001. In spite of the matter underwent several adjournments, the respondent-Bank did not choose to file counter-affidavit till date. Since the matter pertains to the year of 2001, it was directed to be listed the caption “for orders”, and the writ petition can be decided based on the material available on record.

In the facts and circumstances of the case, this Court is of the considered view that the petitioners who worked as Officers in Middle Management Grade-II and Junior Management Grade-I in the respondent-Bank opted for the Scheme issued vide Circular No.279, dated 29.11.2000. The said Scheme remained in operation from 11<sup>th</sup> December, 2000 to 10<sup>th</sup> January, 2001. As per Clause 5 of the said Scheme, all the permanent employees of the Bank are eligible to seek voluntary retirement provided they have completed minimum of 15 years of service or 40 years of age as on 10<sup>th</sup> December, 2000. The employees falling in the said categories under Clause 5.2 of the Scheme are not eligible to seek for voluntary retirement. The Scheme provides several benefits to the employees, who opted the same. Likewise, as per Regulation

29(5) of the Pension Regulations, all the employees, who retired under the said Scheme, are entitled to the addition of five years more as qualifying service for the purpose of pensionary benefits. The petitioners and other employees, who opted for the Scheme were denied the said benefit. The said benefit was withheld by the 2<sup>nd</sup> respondent vide Circular No.3/68, dated 5.1.2001 illegally without any notice and contrary to the principles of natural justice. Without giving any benefit to the employees who opted for the said Scheme, the 2<sup>nd</sup> respondent had withdrawn the said Scheme. Hence, this Court finds that the 2<sup>nd</sup> respondent is not entitled to issue the Circular No.3/68, dated 5.1.2001 withdrawing the benefit of adding five years of notional service to the actual service rendered by the voluntary retired employees, who opted the Scheme. Hence, the Circular dated 5.1.2001 is liable to be set aside.

Accordingly, the Writ Petition is allowed by setting aside the Circular No.3/68, dated 5.1.2001 and the respondent-Bank is directed to grant all the benefits available to the petitioners under the said Scheme issued vide Circular No.279, dated 29.11.2000 by adding five years of notional service to the actual service rendered by voluntary retired employees as per Regulation 29 (5) of the Regulations and settle the same



within a period of three months from the date of receipt of a copy of this order. No costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

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JUSTICE M.GANGA RAO

*21<sup>st</sup> June, 2018*  
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