

Judgement Relating to CRS Category Bankers - Division Bench of Honorable High Court of AP - August 2013

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This Writ Appeal is filed against the order dated 22.03.2012 in W.P.No.9069 of 2011, wherein the learned single Judge set aside the impugned order of rejection of option exercised by the respondent herein before the 4th appellant herein and the learned single Judge also directed the appellants herein to consider the option exercised by the respondent herein under the circular dated 01.09.2010 read with the Joint Note dated 27.04.2010 and pass appropriate orders in accordance with the said circular within a period of two (2) months from the date of receipt of a copy of the order.

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Brief facts, which are necessary for disposal of the appeal, are as under:

The respondent was appointed as Clerk-cum-Cashier in the appellants-bank on 25.05.1983 and reached the stage of Middle Management, Gr.II by June, 2002. On the basis of the charge sheet dated 03.01.2008 alleging unauthorized absence for 242 days, punishment of compulsory retirement vide proceedings of the appellants-bank dated 18.03.2009 was imposed on the respondent herein. The respondent herein claims that under Regulation 33 of the Andhra Bank

(Employees') Pension Regulations, 1995 (for short 'the Regulations'), such employees, who are compulsorily retired from service on/after 01.11.1993, may be granted pension at not less than 2/3rd and not more than full pension admissible to them. It is also the case of the respondent herein that there was negotiation between various associations of the employees of the bank and Joint Note dated 29.10.1993 was signed introducing pension scheme in lieu of contributory provident fund in respect of those officers, who opted for the said pension scheme. However, such of the officers, who did not opt for the said pension scheme, were demanding to allow another option, which after prolonged negotiations, was, admittedly, accepted by the bank under the Joint Note dated 27.04.2010. It is the case of the respondent herein that as per para-3(a) of the said Joint Note, he is eligible for giving option, even if he had not given option earlier. It is also the case of the respondent herein that the bank issued circular dated 01.09.2010, wherein another option for pension to contributory provident fund optees, both serving and retired, who had not opted for pension earlier, were provided opportunity subject to the terms and conditions of the said circular. It is the further case of the respondent herein that first part of clause 2 under eligibility criteria of the circular dated 01.09.2010 is same as clause 3-A of the Joint Note and the respondent herein is eligible therein. The respondent herein submitted his option dated 03.09.2010, which has been rejected under the impugned proceedings dated 13.09.2010 on the ground that the respondent herein was neither retired voluntarily nor on superannuation during the period 29.09.1995 to 27.04.2010, hence not eligible to exercise option. The said rejection in proceedings dated 13.09.2010 was questioned by the respondent herein by filing the present writ petition.

The appellants-bank filed counter affidavit stating that the punishment of compulsory retirement imposed against the respondent herein under proceedings dated 18.03.2009 has become final; the respondent herein did not choose to opt though the bank introduced the pension scheme in the year 1995. It is also stated that on imposition of compulsory retirement, the respondent herein was paid all the terminal benefits including contribution to the provident fund and though under Joint Note dated 27.04.2010 another option was provided subject to terms and conditions, as the respondent herein was not in service on the date of the said joint note, he is stated to be not eligible for exercising the second option.

Learned single Judge after considering the relevant provisions and after elaborating discussion, allowed the writ petition by setting aside the impugned order in the writ petition and directed the appellants-bank to reconsider the option exercised by the respondent herein under circular dated 01.09.2010 read with the joint note dated 27.04.2010 and pass appropriate orders in accordance with the circular, within a period of two months from the date of receipt of a copy of the order. Challenging the same, the present writ appeal has been preferred by the bank.

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Heard both sides.

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Dr. K.Lakshminarasimha, learned Standing Counsel for the appellants-bank, contended that the respondent herein did not give his option under the Regulations and later he was inflicted with major penalty of compulsory retirement from the service of the bank by order dated 18.03.2009, and since the respondent herein was not a member of the Pension Scheme, he could not be paid the Compulsory Retirement Pension as envisaged in Regulation 33, as such he is not entitled to any

pension. He also contended that though subsequently by letter dated 01.09.2010, the Board of the bank by resolution dated 31.08.2010 has approved to extend another option for Contributory Pension Scheme (CPS) optees both serving and retired who have not opted for pension earlier, on the terms and conditions mentioned. He further contended that the officers/workmen employees, those who are in service of the bank prior to 29.09.1995 and retired after that date and prior to 27.04.2010, are alone entitled to exercise option to join the Pension Scheme. He further contended that in the present case, the respondent herein was compulsorily retired on 18.03.2009 voluntarily from the bank's service. He further contended that as per the Regulations, it has treated retirement as meaning superannuation, voluntarily retirement in accordance with the provisions and premature retirement by the bank, and chapter 5 of the Regulations deal with classes of Pension:-

Regulation 28 deal with Superannuation Pension;

Regulation 29 deal with Pension on voluntary Retirement;

Regulation 30 deal with Invalid Pension;

Regulation 31 deal with Compassionate Allowance;

Regulation 32 deal with Premature Retirement Pension;

Regulation 33 deal with Compulsory Retirement Pension – this is applicable only to such of those employees who have opted to come under this scheme as on the date of such punishment order being imposed. In the present case the punishment order was imposed on 18-3-09 and admittedly on that date the respondent was not an optee of the Pension Regulations and hence he could not have been paid the Compulsory Retirement Pension.

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He further contended that since the respondent herein was compulsorily retired, he does not fall under the conditions wherein he can exercise the second option that is the reason his request for second option was rejected by the impugned proceedings, and as such the learned single Judge should not have allowed the writ petition directing to reconsider the option exercised by the respondent herein under circular dated 01.09.2010 r/w joint note dated 27.04.2010. He further contended that compulsory retirement does not come within the scheme frame by the bank.

On the other hand, the learned counsel for the respondent-writ petitioner submitted that the circular dated 01.09.2010 is prepared in pursuance to joint note dated 27.04.2010, while issuing the circular, the bank has not properly taken into account the joint note dated 27.04.2010, that is the reason the learned single Judge directed for reconsideration of the option under circular dated 01.09.2010 r/w joint note dated 27.04.2010. **He also contended that the compulsory retirement cannot be treated on different footing than the retirement by superannuation, etc. It is further contended that the learned single Judge has considered all the relevant provisions and correctly came to conclusion and issued direction in this case for reconsideration of the option made by the respondent herein under circular dated 01.09.2010 r/w joint note dated 27.04.2010.**

Relevant portion of clause 2 of the circular dated 01.09.2010 in the present case reads as follows:

" (2) Officer/Workmen employees, those who were in service of the Bank prior to 29.09.1995 and retired after that date and prior to 27.04.2010. Officer/Workmen employees who opted for Voluntary

Retirement under Special voluntary Scheme after rendering a minimum of 15 years service, and the family of those Officers/Workmen who were in service of the Bank prior to 29.09.1995 retired after that date and died shall be eligible to exercise option to join the Pension Scheme subject to the terms and conditions applicable to the retirees."

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We may also refer to Pension Regulations, which define retirement under Regulation 2(y) of the Compulsory Retirement Pension under Regulation 33, as under:

"2(y) **Retirement**" means cessation from Bank's service:-

- (a) on attaining the age of superannuation specified in Service Regulation 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 Settlements;"

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It is also relevant to extract portions i.e., 2(a), 3(a), 4, 5 6(i) and 8 of the Joint note dated 27.04.2010, which are as under:

"Another option for joining the existing Pension Scheme shall be extended to those Officers who: -

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(2) (a) were in the service of the bank prior to 29th September 1995 in case of Nationalized Banks/26th March 1996 in case of Associate Banks of State Bank of India and continue in the service of the bank on the date of this Joint Note;

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(3) (a) were in service of the bank prior to 29th September 1995 in case of Nationalized Banks/26th March 1996 in case of Associate Banks of State Bank of India and retired after that date and prior to the date of this Joint Note:

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(4) The family of those officers who were in the service of the bank prior to 29th September 1995 in case of Nationalized Banks/26th March 1996 in case of Associate Banks of State Bank of India and retired after that date and had died will be eligible

for family pension;

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(5) The family of those officers who were in the service of the bank prior to 29th September 1995 in case of Nationalized Banks/26th March 1996 in case of Associate Banks of State Bank of India, but have died while in service of the bank after that date will be eligible for family pension;

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(6) (i) The existing pension scheme will not be applicable to those who join the services of banks on or after 1st April 2010.

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(8) Pension/Family Pension to those who opt to join the pension scheme complying with the terms of this Joint Note shall be payable with effect from 27th November 2009, provided that officers who retired after that date shall get pension from the respective dates of their retirement. All the Regulations of the Bank Employees' Pension Regulations, 1995/1996 shall be applicable to those who opt for the Pension Scheme in terms of this Joint Note except to the extent mentioned in the foregoing Clauses of this Joint Note."

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After examining the above provisions, it is to be seen that as far as the case of the respondent herein is concerned, the first part of clause (2) of eligibility criteria is relevant, which provides that the officers/workmen who are in service of the Bank prior to 25.09.1995 and retired after the date and prior to the date of joint note dated 27.04.2010 are eligible for pension. Since the respondent herein was compulsorily retired on 18.03.2009, his case comes within the first part of clause (2) of the eligibility criteria, which also satisfies para-3 of the joint note.

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While passing the impugned order, the appellants-bank have not kept the above factors into account, as such, the impugned order is erroneous. It is also to be seen that the joint note as well as the circular refers to retirees from the bank and word retiree in generic terms includes all categories of retirees. Restricting the meaning of the said word only to those, who retired voluntarily or on superannuation, is not only against the object and purpose of

the agreement under the joint note and the circular but would also amount to reading something else therein, which does not mean. The averment in the counter affidavit filed by the appellants-bank that who suffered compulsory retirement but who opted for pension by the date of imposition of penalty, are eligible under the pension scheme, which goes to show that the appellants-bank cannot discriminate one such set of retirees on penalty of compulsory retirement from the other set of retirees. The second option provided under the circular, based on the joint note, was applicable to such category of retirees, who qualified within one of the four criteria. The respondent herein is clearly falling within the said criteria.

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In view of the above discussion, we are of the view that the rejection of the option exercised by the respondent herein is erroneous. It is to be seen that the learned single Judge has also referred to above provisions and came to the same conclusion and we agree with the same.

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Accordingly, the writ appeal is dismissed while confirming the order of the learned single Judge dated 22.03.2012 in W.P.No.9069 of 2011. There shall be no order as to costs.

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As a sequel, miscellaneous petitions, if any pending in this appeal, shall stand disposed of.

ASHUTOSH MOHUNTA, J.

08-08-2013

A.RAJASHEKER REDDY,J.