

(2009) 09 MAD CK 0238

Madras High Court

Case No: W.A. No's. 1435 to 1442 of 2008 and M.P. No. 1 of 2008 (8 Nos.)

The Managing Director and
Executive Officer ICICI Bank Ltd.
and Assistant General Manager
ICICI Bank Ltd.

APPELLANT

Vs

Additional Secretary Ministry of
Finance and Company Affairs
(Banking and Insurance) and
Others

RESPONDENT

Date of Decision: Sept. 8, 2009

Acts Referred:

- Bank of Madura Employees Pension Regulations, 1995 - Rule 2, 35, 5
- Constitution of India, 1950 - Article 226

Hon'ble Judges: S.J. Mukhopadhaya, J; Raja Elango, J

Bench: Division Bench

Advocate: A.L. Somayaji, SC for R. Sankaranarayanan, for the Appellant; A.S. Chakravarthy, for R-1, T.R. Rajagopalan, SC for L.J. Krishnamurthy, D. Murthy, for RR-8, 16 and 29 in WA 1436/08 and E.J. Ayyappan, for R-7, 126 and 208 in W.A. No. 1437/08, for the Respondent

Final Decision: Allowed

Judgement

S.J. Mukhopadhaya, J.

The writ petitions were preferred by the contesting respondents for direction on the appellant, ICICI Bank (hereinafter referred to as the "Bank") to pay pension according to the Pension Scheme in view of Rule 2 (ze), 2 (zea), 35 (i) and 35 (ii) of the Bank of Madura Employees Pension Regulations, 1995. The writ petition was opposed by the appellant-Bank, apart from merit, on the ground of its maintainability against private bank.

On similar question, against the same Bank, an unreported judgment in W.A. No. 2245/02 dated 4th Jan., 2008, was referred, but learned single Judge having ignored the said judgment and having allowed the writ petitions, the present appeals have been preferred by the Bank.

2. The contesting respondents/writ petitioners were employees in the Bank of Madura (hereinafter referred to as "Madura Bank") and served for more than twenty years in various branches of the Madura Bank. The said Madura Bank framed the Pension scheme in question on 8th Sept., 1994. The respondent petitioners sought for voluntary retirement and after their retirement, the Madura Bank merged with ICICI Bank on 10th March, 2001. The erstwhile employees of Madura Bank, who opted for pension under the scheme were paid pension, but the contesting respondents/writ petitioners having not opted for pension under the scheme, they were not provided with pension. They were provided with contributory provident fund.

3. According to learned senior counsel for the Bank, apart from the question of maintainability of a writ petition against a private bank, even on merit, the respondents/writ petitioners were not entitled for benefit of pension under the Bank of Madura Employees Pension Regulation, 1994. The following facts and regulations were brought to the notice of the Court:

Regulation 2 (ze) defines "VRS" as quoted hereunder:

ze) "V.R.S." means Bank of Madura Employees' Voluntary Retirement Scheme enclosed to the circular CO.STF:39/94-95 dated July 21, 1994, or any other specific scheme that may be implemented in future bringing such scheme under the definition of this regulation. The employees who have completed 20 years of service in the bank and who have retired subsequent to the expiry of the scheme mentioned in the Circular CO:GM:CIR:2/93-94 dated May 20, 1993, and who were extended the additional benefits in addition to the normal retirement benefits shall be deemed and considered to have retired under V.R.S.

Section 3 stipulates application of regulation to certain types of employees, relevant portion of which are quoted hereunder:

3. Application :- These regulations shall apply to employees who,:

(1) (a) were in the service of the Bank on or after the 1st day of January, 1986, but had retired before the 1st day of November, 1993; and

(b) exercise an option in writing within one hundred and twenty days from the notified date to become member of the Fund; and

(c) refund within sixty days from the date of communication from the Bank to this effect, the entire amount of the Bank's contribution to the Provident Fund including interest accrued thereon together with a further simple interest at the rate of six per

cent per annum on the said amount from the date of settlement of the Provident Fund account till the date of refund of the aforesaid amount to the Bank; or

(2) (a) have retired on or after the 1st day of November, 1993 but before the notified date; and

(b) exercise an option in writing within one hundred and twenty days from the notified date to become member of the Fund; and

(c) refund within sixty days from the date of communication from the Bank to this effect, the entire amount of the Bank's contribution to the Provident Fund and interest accrued thereon together with a further simple interest at the rate of six per cent per annum on the said amount from the date of settlement of the Provident Fund Account till the date of refund of the aforesaid amount to the Bank; or

(3) (a) are in the service of the Bank before the notified date and continue to be in the service of the Bank on or after the notified date; and

(b) exercise an option in writing within one hundred and twenty days from the notified date to become member of the Fund; and

(c) authorise the trust of the Provident Fund of the Bank to transfer the entire contribution of the Bank alongwith the interest accrued thereon to the credit of the fund constituted for the purpose under Regulation 5.

4. So far as the question of giving option by the employees is concerned, the Bank of Madura issued the first circular on 25th Jan., 1995, enclosing a copy of pension regulation giving opportunity to employees covered under the regulation to exercise their option for pension by 25th July, 1995. In the said circular, it was made clear that employees, who opted for pension shall not be entitled to the Bank's contribution to the provident fund w.e.f. 1st Nov., 1993 as the Bank's contribution to provident fund would be contribution to the pension fund. Thus, the proposed pension regulation meant that while a provident fund optee would continue to receive matching contribution from the bank in his provident fund, a pension optee would get only his contribution of his provident fund and the amount equal to the bank's contribution to provident fund would be credited to the pension fund. Though a number of employees applied pursuant to the circular dated 25th Jan., 1995, admittedly, the contesting respondents/writ petitioners did not choose to apply nor opted for pension scheme and, thereby, continued with the contributory provident fund scheme.

Subsequently, the 2nd option was given on 22nd July, 1995. Time was extended to opt for pension scheme upto 25th Oct., 1995. Meanwhile, the pension regulations underwent change, which were incorporated in the scheme. Even thereafter, the contesting respondents/writ petitioners did not choose to opt for the pension scheme, but continued to remain under the contributory provident fund scheme.

Third and final option was given by Madura Bank on 1st Feb., 1996. The Bank notified the pension regulations and issued circular highlighting the modification to the original pension scheme and again asked the employees, who are desirous, to submit application opting for pension scheme and time was granted upto 30th Feb., 1996. This time also, the contesting respondents/writ petitioners did not choose to opt for pension. The Madura Bank merged with ICICI Bank on 1st March, 2001. In the meantime, the contesting respondents/writ petitioners opted for VRS and were allowed to voluntarily retire from service.

5. In the aforesaid background, it was contended on behalf of the appellant-Bank that even on merit the respondents/writ petitioners were not entitled for pension and learned senior counsel for the contesting respondents did not dispute the facts and provisions of law as noticed above.

6. In fact, similar question fell for consideration before a Division Bench of this Court in *ICICI Bank Ltd. v. Lakshminarayanan W.A. No. 2245/02* decided on 4th Jan., 2008. In the said case, the Division Bench noticed various decisions, including the decision in [Binny Ltd. and Another Vs. V. Sadasivan and Others](#), wherein the Supreme Court observed that a writ of mandamus for remedy under Article 226 is pre-eminently a "public law remedy" and is not generally available as a remedy against private wrongs. However, the Supreme Court observed that it may be used to do justice when there is a wrongful exercise of power or refusal to perform a statutory duty.

The decision of the Supreme Court in [The Praga Tools Corporation Vs. Shri C.A. Imanuel and Others](#), was also noticed, wherein the Supreme Court held that the condition precedent for issuance of mandamus is that there is one claiming it a legal right to the performance of a legal duty by one against whom it is sought. An order of mandamus is, in form, a command directed to a person, corporation or an inferior tribunal requiring him or them to do a particular thing therein specified, which appertains to his or their office and is in the nature of public duty. In the said case, having noticed the company being not a statutory body and one incorporated under the Companies Act and there was neither a statutory nor a public duty imposed on it by statute in respect of which enforcement could be sought by means of a mandamus, the Supreme Court held that no writ petition for mandamus could lie against the company.

The judgment of the Supreme Court in [Federal Bank Ltd. Vs. Sagar Thomas and Others](#), was also noticed, wherein the Supreme Court observed that a writ petition under Article 226 of the Constitution of India may be maintained against a private body discharging public duty or positive obligation of public nature.

Taking into consideration the aforesaid decisions, the VRS of Madura Bank, Madura Bank Pension Regulations and that the said Madura Bank merged with ICICI Bank, the Division Bench held that the writ petition claiming pension under the pension regulations against ICICI Bank was not maintainable.

7. The aforesaid judgment was brought to the notice of learned single Judge, but single Judge simply ignored the Division Bench judgment of this Court in ICICI Bank Ltd. (supra). Giving reference to one or other judgment of Supreme Court that pension is not a bounty and the authority is duty bound to pay the same, held that the writ was maintainable and ordered to pay pension. Learned single Judge failed to notice the relevant fact that the Bank is not only a private body, but the regulation framed by Madura Bank is not a statutory regulation nor any public duty is cast on the Bank to pay pension. Learned single Judge also failed to notice that there was no positive public obligation for the Bank to pay pension to its employees. This apart, learned single Judge also failed to notice that the contesting respondents/writ petitioners never applied for pension under the Madura Bank Pension Scheme before their retirement, within the time stipulated under different circulars, which were issued thrice, and not disputed by them.

It has already been noticed that learned single Judge, though noticed the unreported judgment of this Court in ICICI Bank Ltd. (supra), indirectly refused to agree with the same and gave her own finding referring some other judgments. She took herself to say indirectly that the previous decision of the Division Bench is not required to be followed. Instead of following the usual procedure, in case of difference of opinion with the earlier decision, of referring the question to a larger Bench, the judicial decorum was breached in the present case.

8. In [Mahadeolal Kanodia Vs. The Administrator-general of West Bengal](#), Supreme Court observed that quality would totally disappear when Judges of coordinate jurisdiction in a High Court start overruling one another's decision. "The position would be equally bad where a Judge sitting singly in the High Court is of opinion that the previous decision of another single Judge on a question of law is wrong and gives effect to his view instead of referring the matter to a larger Bench. In such a case, lawyers would not know how to advise their clients and/or courts subordinate to the High Court would find themselves in an embarrassing position of having to choose between dissentient judgments of their own High Court".

In [Shri Bhagwan and Another Vs. Ram Chand and Another](#), Supreme Court noticed that single Judge considered the question as to whether the earlier decision of the Division Bench of the High Court needed to be reconsidered and revised. Therein the Court held as follows:

Before we part with this appeal, however, we ought to point out that it would have been appropriate if the learned single Judge had not taken upon himself to consider the question as to whether the earlier decisions of the Division Benches of the High Court needed to be reconsidered and revised. It is plain that the said decisions had not been directly or even by necessary implication overruled by any decision of this Court; indeed, the judgment delivered by the learned single Judge shows that he was persuaded to re-examine the matter himself and in fact he had substantially recorded his conclusion that the earlier decisions were erroneous even before his

attention was drawn to the decision of this Court in Laxman Purshottam Pimputkar's case. It is hardly necessary to emphasise that considerations of judicial propriety and decorum require that if a learned single Judge hearing a matter is inclined to take the view that the earlier decisions of the High Court, whether of a Division Bench or of a single Judge, need to be reconsidered, he should not embark upon that enquiry sitting as a single Judge, but should refer the matter to a Division Bench or, in a proper case, place the relevant papers before the Chief Justice to enable him to constitute a larger Bench to examine the question. That is the proper and traditional way to deal with such matters and it is founded on healthy principles of judicial decorum and propriety. It is to be regretted that the learned single Judge departed from this traditional way in the present case and chose to examine the question himself.

In [Tribhuvandas Purshottamdas Thakur Vs. Ratilal Motilal Patel](#), Supreme Court observed "it has been held time and again that a single Judge of High Court is ordinarily bound to accept as correct judgments of Courts of coordinate jurisdiction and of Division Benches and of the Full Benches of the High Court and of this Court. The reason of the rule, which makes a precedent binding lies in the desire to secure uniformity and certainty in law".

In [Sundarjas Kanyalal Bhathija and others Vs. The Collector, Thane, Maharashtra and others](#), the Supreme Court observed as follows:

18. It would be difficult for us to appreciate the judgment of the High Court. One must remember that pursuit of the law, however glamorous it is, has its own limitation on the bench. In a multi-judge court, the judges are bound by precedents and procedure. They could use their discretion only when there is no declared principle to be found, no rule and no authority. The judicial decorum and legal propriety demand that where a learned Single Judge or a Division Bench does not agree with the decision of a bench of co-ordinate jurisdiction, the matter shall be referred to a larger bench. It is a subversion of judicial process not to follow this procedure.

In [Ram Jankijee Deities and Others Vs. State of Bihar and Others](#), the Supreme Court noticed that the issue, as a matter of fact, was no longer res integra and open for further discussion, but learned single Judge went on to decide the issue once again notwithstanding the earlier finding as regards Idol's entitlement. The Supreme Court observed that "when there was an existing order of Division Bench, judicial propriety demands that the learned single Judge dealing with the matter ought to have referred to the same, more so when a contra view is being expressed by learned Judge. It is a matter of judicial efficacy and propriety, though not a mandatory requirement of law. The Court while deciding the issue ought to look into the records as placed before the Court. We are rather at pains to record here that judicial discipline ought to have persuaded the learned single Judge not to dispose of the matter in the manner as has been done, there being no reference

even of the earlier order.

9. In this background, we are of the view that the decision in ICICI Bank Ltd. (supra) being binding on learned single Judge hearing a writ petition, judicial discipline requires that she either followed it or referred the matter to a Larger Bench. Sitting single, learned single Judge could not have taken a different view on the ground that the decision was based on facts of one retired employee and in the present case number of retired employees are concerned.

10. It has already been mentioned, as pointed out above, even on facts, the conclusion of learned single Judge is unsustainable, admittedly the contesting respondents/writ petitioners having not opted for pension under the Madura Bank Pension Regulation inspite of chance being given thrice for their exercising option prior to their retirement. For the reason aforesaid, we set aside the impugned order dated 26th Nov., 2008, passed by learned single Judge and allow the writ appeals. Consequently, connected miscellaneous petitions are closed. In the facts and circumstances, there shall be no order as to costs.