



SYNDICATE BANK PENSIONERS & RETIREES ASSOCIATION(REGD.)

(Affiliated to AIBPARC, a wing of AIBOC)

CENTRAL OFFICE

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Circular No. 3/2014

(PLEASE CIRCULATE TO ALL MEMBERS)

Date: 11.06.2014.

Dear Comrades,

**COM. DINKER PUNJA
NOW
GENERAL SECRETARY OF AINBOF**

It gives us immense pleasure in informing our members about elevation of Com. Dinker S Punja, GS SBOA, as the next General Secretary of All India Nationalised Bank Officers Federation. At its CC meeting held at Mumbai on 23rd May 2014 AINBOF co-opted him unanimously for the said coveted post. Com. Punja richly deserves the position as he has the calibre, commitment and he can contribute to the cause and carry forward the movement of Nationalised Bank officers. We heartily congratulate him and also wish him success in all his efforts in the new assignment.

AINBOF TAKES UP RESIGNEES ISSUE WITH FINANCE MINISTER

The General Secretary of AINBOF, Com. Dinker Punja has addressed a detailed letter to Shri Arun Jaitely the Hon'ble Finance Minister in the matter of denial of pension option to resignees in the banking industry vide Ref. No :DSP/001/2014/GOVT.Date : 10.06.2014. The text is reproduced hereunder for information of our members.

With warm greetings.

Yours comradely,

C Gangadhar Yadav
GENERAL SECRETARY

**SBPRA - ZINDABAD
AIBPRC - ZINDABAD**

Text of letter Ref. No :DSP/001/2014/GOVT.Date : 10.06.2014

**Sri Arun Jaitley,
Honourable Finance Minister,
Ministry of Finance,
Government of India
New Delhi**

Sub: Effect of resignation on pension –unjust pension regulations applicable to Public Sector Banks

The provisions of social security measures, retiral benefits like gratuity, provident fund and Pension (known as the triple benefits) are of special importance. Pension, as retiral benefit, in lieu of contributory PF was introduced as an optional mode with effect from 01.11.1993.

The pension option was available to all employees who were in service of the Bank on or after 01.01.86, but had retired before 01.11.93. It shall also apply to employees who had retired on or after 01.11.93, but before the notified date. It was also a requisite as per Pension Regulations that an option in writing be exercised within 120 days from the notified date to become member of the fund and refund within 60 days after expiry of 120 days, the Bank's contribution of PF including the interest thereon with further simple interest @ 6% p.a. on the said amount from the date of settlement of PF till date of refund or till 01.04.95, whichever is earlier.

Qualifying Service: Regulation 14 inter alia stated that an employee, who has rendered minimum of 10 years service in the Bank on the date of his retirement, shall qualify for pension. Therefore, any person who has rendered the requisite

service becomes eligible for pension. Next, when we see as to what entails **forfeiture of pension**, the same is covered under Regulation 22. The same stipulates that resignation or dismissal or removal or termination of an employee from the service of the Bank shall entail **forfeiture of entire service** and consequently shall not qualify for pension.

This leaves a situation creating an anomaly where though an employee would have rendered requisite service, qualifying for eligibility of pension, owing to resignation during the period 01.01.86 to 01.11.93, the same would be forfeited, since the severance of service is not on account of superannuation/ retirement.

In such instances, when the Bank's Contribution is refunded, such employees ought to have been permitted to exercise their pension option and should have been given the eligibility. Unfortunately, citing resignation as a reason, these category of employees were not allowed to exercise their option. This is a disparity / discrimination amongst equally placed employees.

1. ***In Vijaya Bank Vs. C Narasimhappa & Others***, such staff members_ who had resigned during that interim period (29.09.1995 to 27.04.2010) after putting in 20 years of service had approached Karnataka High Court seeking redressal. Karnataka High Court in its Judgment dated 18.04.2012 quashed the particular clause in Vijaya Bank Circular extending the option which made Officers / staff who ceased to be in service in any manner to become eligible for pension option.

The Division Bench of Karnataka High Court in this case had clubbed the various WPs filed by individual employees / group of employees against various PSBs. The Writ appeal was dismissed. **Vijaya Bank had gone on review of High Court order which was also dismissed and dismissal of review was escalated to Supreme Court, which also dismissed the SLP on 06.12.2013, leaving the question of Law open.**

Therefore, Vijaya Bank though complied with Supreme Court directions for 22 employees, **deeming them to have voluntarily retired from the Bank as on date of resignation**, have not given the same benefit to other similarly placed employees.

The Hon'ble Division Bench in para 44 & 47 of the judgment categorically held that what is required is not nature of retirement but minimum qualifying service and fulfilment of other conditions to entitle pension. If cessation / termination / resignation was not punitive, voluntary and the employee had to his credit minimum qualifying service, he cannot be denied pensionary benefits.

2. ***In M R Kulkarni & others vs. Bank of Maharashtra (2004-II-LLJ-1007-Bom.*** this kind of an anomaly was dealt as to whether the employees who had 'resigned' could be treated as 'deemed to have retired' under 1995 Pension Regulations. **Certain section of employees found that those who had voluntarily retired after putting in 20 years of service were eligible to receive pension by refunding Bank's contribution of PF, but those who had resigned were treated as ineligible for pensionary benefits.** The main issue raised in this case was that the resignees should also be deemed to have retired and therefore eligible for pensionary benefits. However, Bombay High Court held that it is not possible to hold resignation on par with VRS.

At the same time, Bombay High Court dealt elaborately the provisions of Pension Regulations wherein there is enabling provisions to provide some pension even to employees who have been dismissed, removed or terminated and there are enabling provisions to grant full pension who have been prematurely retired by the Bank and / or to grant pension even to compulsorily retired employees. While so, Bombay High Court was led to consider whether excluding those who have resigned honourably to receive pension would be arbitrary, though they have put in the qualifying service and made observations accordingly

Second option for pension: In 2010, when second option of pension was sought to be introduced after protracted discussions and deliberations by Unions with IBA, the eligibility was again prescribed as those who were in service on the cut off date (29.09.1995) in **Nationalised Banks** and who had continued in service till 27.04.2010 or had retired during the interim period. Here again the employees who had resigned during the interim period i.e. Between 29.09.1995 to 27.04.2010, though had put in qualifying service were denied second option for pension.

3. ***In UCO Bank and others vs. Sanwarmal (AIR-2004-SC-2135)*** the Hon'ble Supreme Court had dealt with Regulation 22 of UCO Bank (Employees) Pension Regulations, 1995 which stipulates forfeiture of service owing to resignation and in turn Regulation 3(1) which states that 1995 Regulations would apply to employees who were in service of the Bank on or after 01.01.1986 **but retired** prior to 01.11.1993. In this judgment, the Supreme Court held that Pension Scheme is a self supporting scheme and a code by itself and gave a distinction that retirement and resignation stand in a different footing. The Hon'ble Supreme Court gave reasoning that when a retiree opts for a self financing Pension Scheme, he brings in **accumulated contribution** earned by him after completing qualifying number of years of service under PF rules, whereas a person who resigns may not have adequate credit balance to his PF account (ie. Bank contribution) and therefore, Regulation 3 do not cover resigned employees.

Here again we wish to submit that all that has to be stressed upon to ensure equal treatment is that even if they are resigned employees, they should bring in the amount equivalent to accumulated contribution of qualifying service, but not total denial. Further, only if Pension Regulation is made applicable Regulation 22 can be made applicable even to take a stringent stand that resignation entails forfeiture etc. When the entry itself is denied based on such an interpretation, it only tantamount to gross injustice meted out to clan of employees who were not given the faintest clue of what was in the offing.

4. *In Smt. Satvasrinath Vs. Syndicate Bank (ILR-2003-KAR-2605)* Division Bench of Karnataka High Court has observed and held that where an employee has put in more than minimum qualifying service for pension, then even in case of resignation, the employee would be entitled to pension and any rule denying pension merely on the ground that the employee has resigned will be violative of Article 14 & 16 of the Constitution.

5. *In Syndicate Bank Vs. Satvasrinath (2009-16-SCC-422)* The Hon'ble Supreme Court **affirmed** the judgment of Division Bench of Karnataka High Court, though the instance covered pre-mature retirement thrust upon an employee by the Management. In the subject case, the employee was unauthorisedly absent and even then applying equity, Apex Court refused to treat the instance as 'deemed to have voluntarily retired' to disentitle her from pensionary benefits.

While such instances have been dealt with by Apex Court with principles of equity, Natural Justice and fair play, factoring in that the unauthorised absence was on medical grounds etc, and granted pension, in instances where the employees have rendered their services honourably and resigned without any blemish after the qualifying service it is not fair to deny pension.

Pension is not a bounty or a charity:

Normally, pension, gratuity, contributory PF etc. are retirement benefits which are payable as a right in recognition of long, continuous and unblemished services rendered and is not a bounty, payable at the mercy or whims and fancies of the employer. It is deferred portion of compensation for past service. It is in fact, in the nature of social security plan to provide for the December of life, of a superannuated employee. In fact, it is recognised as a right to property too. The right to property cannot be taken away, without due process of Law, as per provisions of Article 300 A of Constitution of India.

- a) *State of Bihar & others (1971-Supp.SCR-634)*
- b) *D S Nakara & Others Vs. Union of India (1983-1-SCC-305)*,
- c) *In Deokinandan Prasad Vs. State of Bihar (1971-2-SCC-330)*
- d) *In All India RBI Retired Officers Association & Others Vs. Union of India (AIR-1992-SC-767)*,
- e) *In State of Jharkhand & Others Vs. Jitendrakumar Srivastava, (AIR-2013-SC-3383)*,

What has to be looked into is whether the employee has the minimum qualifying service to his credit and whether he would bring the accumulated amount.

6. *In Union of India Vs. Lt. Col. P S Bhargava (AIR-1997-SC-565)* the Hon'ble Supreme Court opined that if an Officer has to his credit, the minimum period of qualifying service, he earns a right to get pension and as the regulation stand, the right to get pension can be taken away only if an order is passed under Regulation 3 or 16.

7. *In Bank of Baroda Vs. S K Kool (2014-1-LLJ-373-SC)* the instance of an employee who was removed from service and his entitlement to pension under bipartite settlement was dealt. Even the legal heirs of the deceased employee was held to be entitled for pensionary benefits as he had put in 20 years of qualifying service.

The notable factor in this judgment is that even Hon'ble Supreme Court has observed that a plain reading of Regulation 22 would mean that removal of an employee for any reason in any manner whatsoever will entail forfeiture of his entire past service and consequently such employee shall not qualify for pensionary benefits. However, If the interpretation becomes acceptable, no employee removed from service in any event will be entitled to pensionary benefits and would render it a dead letter.

Each Regulation operates in different fields. Here again, we wish to submit that forfeiture of service etc should only be the ambit of Service regulations. The Pension Regulations ought to only prescribe Qualifying Service for each category of pension. Further akin to Gratuity Act, the Pension Regulations ought to have prescribed what instances would be appropriate to withhold or forfeit Pension. Instead it has stretched a little too far by stipulating that by resignation the entire service is forfeited, which cannot be the ambit of Pension Regulations.

8. *In Jeewanlal (1929) Ltd. ETC. Vs. Appellate Authority under the Payment of Gratuity Act and Ors. (AIR1984SC1842)* Hon'ble Supreme Court has stressed that whenever such doubt or difficulty is expressed by the High Courts in the application of provisions of social security measures viz., retirement benefits, gratuity, provident fund and Pension and the like, the Govt must introduce suitable legislations / measures to cure the defects rather than wait

for judicial interpretation by the Apex Court. In fact, the Apex Court has laid down that periodical review of such social welfare legislations ought to be made from time to time and factoring in such disparities / defects etc, reform of the laws relating to industrial relations must be made on time, with the changing needs of the society.

The paramount consideration in such cases of consideration of / rendering of social welfare measures should be to ensure that there is no injustice caused to society. (Ref: Deb Narayan Shyam and Ors. v. State of W.B. and Ors. (2005)2SCC286 (para 26 and 29) and State of Bihar and Ors. v. Kameshwar Prasad Singh and Ors. AIR2000SC2306 (para 36).

Even in the Pension regulations, there are enabling provisions to pay some pension even to employees who have been dismissed, removed or terminated and there are enabling provisions to grant full pension who have been prematurely retired by the Bank and / or to grant pension even to compulsorily retired employees. While so, excluding those who have resigned honourably to receive pension would be arbitrary, though they have put in the qualifying service. In fact, such an act is **travesty of justice**.

Incidentally, there has to be parity in any Service Regulations amongst PSBs. Employees of all Nationalised Banks (PSBs) should constitute one homogenous class and should be treated with parity. Rightly SBI do not contain any such provisions entailing forfeiture of pension on resignation etc. As per SBI rules, only dismissal from service would disentitle an employee from receiving pensionary benefits.

The kind intervention of the Honourable Finance Minister, the beacon of hope in this regard will be most useful at this juncture to create the balance and set the disparity RIGHT. The dawn of pragmatism in the New Government is our source of hope for the justice.

Thanking you.

Yours faithfully,

Sd/-

(D.S.PUNJA)

GENERAL SECRETARY

Copy to :

- 1. Sri Narendra Modi, Honourable Prime Minister, Government of India, New Delhi**
We seek your kind intervention and suitable advice/instructions to Finance Ministry
- 2. Chairman, Indian Banks Association, Mumbai**

There are instances when the organisation / Institutions have addressed the issues of disparity within their realm to amend the relevant provisions and same has also been upheld by Apex Court as indicated Supra. In fact even Supreme Court has observed and held that instead of waiting for Court to give interpretation on such issues which can ever be subjective, the concerned Arm of Govt may take pro- active measures to balance the inherent disparities/ ambiguities and discrepancies.

3.Com Harvinder Singh, General Secretary, AIBOC

4.Com. Sudershan, President. AIBOC

With a request to kindly take up with IBA during the negotiations for the benefit of all the Officers of Nationalised Bank's including Associate Bank's who are deprived of the benefit of extension of 2nd option of pension.

Sd/-

(D.S.PUNJA)

GENERAL SECRETARY