



Association of Retired IOB's Employees (ARISE)

Regn. No.SL. No. 243 / 2003

Regd. Office : No.6/4, III Lane, 1st Floor, M.K. Amman Koil Street, Mylapore, Chennai - 600 004
☎ 24670419 Email : ksrseetha@yahoo.co.in

9th April 2009

Dear Comrades,

TRUTH TRIUMPHS JUSTICE PREVAILS

Great injustice to VRS 2000 retirees has been undone by the Supreme Court of India on 27th March, 2009. **Entitlement upto 5 years notional benefit for pension in terms of Reg 29(5) of Pension Regulations has been upheld for pension optees who have completed 20 years of qualifying service who retired under VRS 2000 scheme.** It was held that Reg 28 would be applicable only to those who have not completed 20 years of qualifying service but have completed only 15 years of service.

VRS 2000 optees became victims of unfairness. We all know how and where this diabolic plan was conceived, how the IBA grabbed it and how self-styled purists justified it. Supreme Court has justly exposed the false rational behind this denial when it said -

*“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 IBA, the banks proposed amendment in the Pension Regulations and a circular came to be issued.”*

The operative part rendering justice to VRS 2000 optees reads as under :

“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.

The only question now remains to be seen is whether the concerned employees are entitled to interest on unpaid pension. 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. *We, accordingly, hold that the subject employees are not entitled to interest on unpaid pension.”* (emphasis supplied)

Retirees in various banks having failed in their individual or collective representation to Banks resorted to legal recourse. We in ARISE are no exception. There were good samaritans like Indian Overseas Bank Officers' Association, though few in number who came forward to help us. When no sympathy emanated to their cause from their own representative Retirees' body in most Banks VRS 2000 retirees began to organize themselves in every bank and so ARISE was born in IOB with the help of IOBOA then headed by Com. M.R. Gopinatha Rao and Com. K.V. Acharya who in the meanwhile were able to contain the damage of above denial by holding dialogue with the Bank. We are thankful that the assistance from IOBOA still continues under the present leadership of Com. J.D. Sharma and Com. K. Anandakumar. While trying to convene ARISE and register it, we also lodged our request with the Bank to reconsider their stand and extend notional service upto 5 years to all VRS 2000 pension optees who have completed 20 years of qualifying service but in vain. So we had to resort to legal remedy. It was consciously decided to chalk out different strategies while pursuing the legal recourse so as to keep some arsenal in reserve.

We stand vindicated and justice has been done to VRS 2000 retirees. This is only a beginning. While those who refused to take up the cause of VRS 2000 and looked upon them with contempt are anxious in "Breaking news". ARISE does not believe in 'Breaking News' but in 'Making news.' Though Order came to be passed by the Supreme Court on 27th March, 2009 the full judgement passed came on record only on 6th / 7th April, 2009. Excerpts from the judgement are given in annexe. Full judgement can be downloaded from the website of Supreme Court for the date 27th March, 2009.

We have requested the Bank to add upto 5 years notional service to all eligible employees and disburse arrears of pension at the earliest.

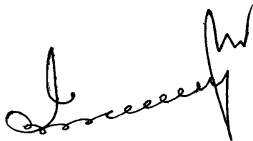
This is only the first victory against discrimination. Pension updation and immediate 100% neutralization are the major discriminations that have to be attended to.

We will keep you posted of the developments. We thank all our members who have been with us in this struggle. We shall unite further and stronger to achieve what we deserve.

Stand united under ARISE

With warm regards,

Yours Comradely,



(K.S. RENGARAJAN)
PRESIDENT



(S.B.C. KARUNAKARAN)
GENERAL SECRETARY

ARISE ZINDABAD !
OUR UNITY ZINDABAD !

Excerpts from Supreme Court Judgment

***(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..)***

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. ... 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,.....The Board of Directors of each of the nationalized banks, keeping in view the objectives, considered the draft scheme and adopted it separately.

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.

The *submissions on behalf of the banks* may be summarised thus: ...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....

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." 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).

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 nature and purpose of the contract is an important guide in ascertaining the intention of the parties. 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.”

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 IBA, the banks proposed amendment in the Pension Regulations and a circular came to be issued.

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.

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 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 September 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)”

*...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.*

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 ..

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. .. **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.

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.

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. ... **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.

On behalf of banks 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. *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.**

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.

The only question now remains to be seen is whether the concerned employees are entitled to interest on unpaid pension. 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. *We, accordingly, hold that the subject employees are not entitled to interest on unpaid pension.*

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