



ALL INDIA BANK PENSIONERS' & RETIREES' CONFEDERATION

(A.I.B.P.A.R.C.)

C/O BANK OF INDIA OFFICERS' ASSOCIATION

(EASTERN INDIA BRANCHES)

BANK OF INDIA, KOLKATA MAIN BRANCH

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(For circulation among all the members of the Managing Committee as well as the Governing Council of AIBPARC, Special Invitees, State Secretaries and Advisors of AIBPARC.)

Dear Comrades,

Sub : Non-implemantation of bank regulations – protracted court cases – avoidance

We are reproducing hereunder CBPRO letter dated 02.04.2018 addressed to Hon'ble Minister, Ministry of Law and Justice, Govt. Of India, for information of members.

With best wishes,

(SUPRITA SARKAR)
GENERAL SECRETARY

QUOTE:

Dated: 02.04.2018

Shri Ravi Shankar Prasad
Hon'ble Minister Ministry of Law & Justice
Government of India
New Delhi

Respected Sir,

Re: Non-Implementation of Bank Pension Regulations – Protracted Court Cases – Avoidance

We wish to introduce ourselves as a Coordinating Body of major Organisations of Retired Bank Employees and Officers consisting of Federation of SBI Pensioners' Associations, AIBPARC, RBONC, AIRBEA and FORBE representing more than 400,000 members. We have been taking up the issues concerning Bank Pensioners and Retirees at various fora and have also met with occasional success. We are thankful to the concerned Authorities for helping us resolve some of the issues/grievances of our members.

We wish to submit that despite there being a well intended litigation policy of the Government of India, the Bank Pensioners have been constrained to knock at the doors of the judiciary in various High Courts and also the Hon'ble Supreme Court of India to seek redressal of their grievances which were duly provided under the Pension Regulations. The following issues were adjudicated in favour of Bank Pensioners by the Hon'ble Supreme Court of India in as much as the same were within the frame work of Pension Regulations having statutory force:

1. Additional Notional Service upto five years to those who retired under Special VRS Scheme 2000- Regulation 29(5).
2. Adding upto five years notional service in case of specialised Officers at the time of superannuation to determine qualifying service-Regulation 26.

3. Re-fixation of basic Pension for those who retired between 1st April, 1998 and 31st October, 2002 and payment of arrears to them upto 2005- Regulations 2(d), 35(1), 35(2), 38(1) and 38(2)

It is worth submitting here that the Hon'ble Supreme Court of India in its order dated 13th February 2018 in case of Bank of Baroda and ANR v/s G. Palani and ORS while setting aside the Judgment rendered by the Hon'ble High Court of Delhi also affirmed the Judgments of Hon'ble High Court of Karnataka at Bangalore and the Hon'ble High Court of Madras has held the following principles with regard to Pensioners:

- a. The Bank Employees' Pension Regulations having been framed in exercise of powers conferred by Section 19 of Banking Companies (Acquisition and Transfer of Undertakings) Act 1970 have statutory force and are binding. These Regulations could not be supplanted or over-ridden by any executive fiat or order which has no statutory basis.
- b. The interpretation of any Regulation as per deeming fiction is wholly impermissible and it is not permissible to add or subtract any word in a provision in view of the settled principles of statutory interpretation.
- c. Pension is not a bounty or charity or gratuitous payable on the sweet will and pleasure of the Government.
- d. Right to Pension is a valuable right vested in a Government Employee and cannot be dealt with arbitrarily.
- e. Right to receive Pension is property under the Act and Article 19 of the Constitution.
- f. Pension is a deferred portion of compensation for the past service and is in the nature of social security to provide for the December (Evening) of life of a Retired Employee and serves the purpose of helping the recipient meet the expenses of living.

In view of the foregoing facts and circumstances we have been following up the issue of Updation of Pension with Banks and Government as Regulation 35(1) of Bank Employees' Pension Regulations 1995 explicitly provides that Basic Pension and Additional Pension wherever applicable shall be updated as per the formulae given in appendix 1.

In this connection it is also pertinent to submit that the Pension Updation as provided under Regulation 35(1) was in fact implemented by all the Banks at the time of introduction of Pension in the Banks in the year 1995-96 in respect of those eligible Pensioners who had Retired between 01.01.1986 and 31.10.1987. However the Banks refused to update the Pension in subsequent years as and when the salary revision took place. Such a refusal to implement updation of pension was in violation of Regulation 35(1) which has the Statutory force and support of the notification in the Gazette of India. It becomes more relevant as the Public Sector Banks fall within the meaning of "State" as per Article 12 of the Constitution of India.

It is very painful that the Banks have been taking a position contrary to the provisions contained in Regulation 35(1) before the judiciary by irrelevantly quoting financial constraints, affordability etc. The position taken by the employers disregards the principle of non applicability of such constraints in the matters which are Statutory in nature and the legal obligation of the employer.

Non-Updation of Pension along with periodical Wage Revision has resulted in a very poor monthly Pension of just about Rs 25000/ only even for those who Retired as Chairmen, Executive Directors, or as General Managers of Banks in 1990s . Thus they draw a monthly Pension which is even less than the now retiring Lower Division Clerk of Government. This ignominy and humiliation is thrust on the Senior Citizens of Banks due to Non-implementation of Bank Employees Pension Regulation 35(1) which clearly provides for the same.

It may be appreciated that the resolution of our demand for implementation of Regulation 35(1) by granting updation of Basic Pension and Additional Pension wherever applicable shall spare the Judiciary of its precious time, and Banks of their time, money and other valuable resources while providing the legitimate entitlement to the Bank Pensioners. It will also help the Pensioners to get their dues without being hurt financially and emotionally apart from losing the value of money owing to considerable amount of time that is consumed by avoidable and forced litigation. A rough estimate suggests that in 80-90% of the cases pending before the Courts, Government is a party to the litigation. It defies the sanctity of well intended litigation policy of the Government more particularly in respect of Service matters including Pensionary Benefits.

Since the judicial system of the country is a very strong pillar of our Democracy, we are confident that the pensioners will ultimately get their rightful entitlement of updation of pension. However, we being in the evening of our life are not very sure as to how many of us will see the next mornings' sunrise. It is in this context we earnestly request you to take initiative to ensure implementation of Regulation 35(1) of Bank Employees Pension Regulations which are subordinate legislation having statutory force. Such a kind consideration of our demand on the part of Government shall also uphold the sanctity of a well meaning and fair litigation policy of the Government. The Bank Pensioners shall ever remain grateful for the same.

With regards

Yours faithfully

A.Ramesh Babu

Joint Conveners

K.V.Acharya