

Editorial

LOOKING FORWARD

We have just celebrated 19th July 1969, 51st year of a historical and transforming day in the banking history of our country. Bank nationalization was an epoch making and defining economic event in the country. It is admitted by the Reserve Bank of India that it remains the single most important economic decision taken by any government since 1947. We are aware that the public sector banks have ushered in a huge transformation in approach of Indian banks and caused a paradigm shift from class banking to mass banking thereby contributing in a big way towards nation building in all the major economic activities, more particularly in priority sector. Such importance given to priority sector is a real game changer in widening the scope of the rural marketing which in turn has accelerated the economic growth in totality. The impressive growth in GDP, lifting of the population from poverty line, impressive story of rural and urban growth have been made possible by the momentous decision of nationalization on 19th July 1969 and 50 years of missionary services extended by the public sector bankers during all these years despite facing thousand odds in their daily service life.

Bank nationalization day this year came amidst the continuing twin crisis of the COVID-19 pandemic and lockdown induced recession. The government has taken advantage of the pandemic situation and pushed forward its agenda of merger and consolidation in the public sector space. We have expressed our apprehensions earlier that such merger will actually impact the flow of

productive credit at a time when timely dose of bank finance is of absolute necessity. Hon'ble Finance Minister, while announcing the economic package has relied on the banking sector as a savior for lifting the economy from the lockdown induced shock. It is really a matter of great worry that finance is being extended mechanically without proper assessment. Such indiscriminate doling out has failed to create tangible impact on the national economy prompting intervention by the Hon'ble Prime Minister when he had to hold video conference with the CMD of 4 or 5 large banks. We are afraid that this will push up further unplanned injection of liquidity in the system without addressing the basic issues of low aggregate demand and disruption of supply chains. Further, in the context of lack of synchronization among the merged banks, the credit delivery system will remain lopsided. Such adhoc financing will contribute to further piling up of NPA affecting the financials of the banks in the incoming quarter. There are reasons for our apprehension that this burden will be shifted on the shoulders of dedicated employees and the cacophony of privatization will reach a new high pitch.

It is in this backdrop we have to view the signing of MOU for the XIth Bipartite negotiation on 22nd July, 2020. The signing of the MOU for the officer employees at 15% on the wage bill of the PSB (pay slip component cost as on 31.03.2017). The detail of the MOU is shared in this issue. We will avoid repetition. But we have to view this agreement in the backdrop of growing attack on the rights and privileges of

CONSULT A DOCTOR IF YOU HAVE COUGH OR FEVER

the working class taking advantage of the pandemic. The government is pushing one agenda after another for privatization and handing over the economic management to the private sector. There are wild allegations in the social media. We should not forget that IBA initiated the discussion with a 2% wage load offer. IBA also made it clear that they would not enter into negotiation for constructing pay scale up to Scale-III initially. AIBOC made it immensely clear that it would not participate in any discussion unless the IBA agrees to talk about wage revision of officers from Scale-I to Scale-VII. AIBOC boycotted the negotiation. AIBOC hit the street and a massive dharna was organised in New Delhi. It was followed by agitation programmes in all the centres. Finally, AIBOC on its own went to a one day nationwide strike on 21st December, 2019. During this period, the same social media was used to put pressure on AIBOC for agreeing to the offer of IBA. AIBOC was mocked for its principal stand that there would be no negotiation unless the management gives full mandate for negotiation of salary structure for officers from Scale-I to Scale-VII. It is because of the militancy of the membership and uncompromising stand of the leadership, IBA relented to yield to the justified demand of the officers' community. The restoration of the right of negotiation covering all scale of officers is a major achievement of this negotiation. Certain principal stand may not lead to immediate cash benefit but it really strengthens the backbone of the organization in a trying time. Such victory ensures flow of fresh air in a damp atmosphere and emits fresh light on the onward march of the community.

We also have to keep in mind that updating of pension and family pension is a demand dear to the hearts of the thousands of our seniors. No meaningful revision of pension is possible unless the organization have a right to talk with the management covering the entire spectrum of the

officers' community. The ultimate conceding by the IBA on 22.07.2020 that the negotiation will cover the salary structure of the entire officers' community really opens the door for a meaningful beginning for talk for pension updating. The Chairman of IBA assured the meeting that IBA has made a positive recommendation for updating of family pension @ 30% without cap which will bring a new lease of life to thousands of hapless spouses across the country. This is for the first time the IBA has to agree that updating of pension or a component of it is within the ambit of discussion of wage revision and marked a major breakthrough. We may humbly say that all these achievements have been possible due to the alertness and commitment of AIBOC leadership ably backed by lakhs of our members. Congratulation Comrades!

As we have discussed in the earlier paragraphs, news are being deliberately floated about the impending privatization of some public sector banks. There is no official confirmation till date. But we have to be alive to the situation. The misadventure of the government has to be opposed and resisted. The present pandemic do not permit us to organize rallies, symposiums, workshops, meetings, demonstrations, etc. Now, we have to make full use of social media and other available mode of communication so that the entire organizational machineries are fully geared up to meet any eventualities.

We are confident that AIBOC will ensure that our national treasure in the form of public sector banks remain safe and secured. We have to place these facts forcefully before the power that be and the entire citizenry so that the struggle to keep the public sector character of the Indian banking system do really become a peoples movement. Looking forward and looking beyond, this will be our organizational task and we must triumph in the face of all adversities. Stay Safe! ■

ALWAYS WEAR A FACE MASK

ORGANISATION

We are reproducing the full text of the AIBOC Circular No. 2020/54 dated 18.07.2020 for the benefit of our readers at a time when intensified

attack is on the public sector character of the banks by power that be, followed by another Circular by UFBU on MOU.

Circular No. 2020/54

Date: 18.07.2020

BANK NATIONALISATION DAY AMIDST COVID-19 PANDEMIC

19th July 1969 is a historical and transforming day in the economic history of our country. During late evening of this day, the Government of India, through promulgation of the historic Banking Companies (Acquisition & Transfer of Undertakings) Ordinance, 1969, nationalised 14 large sized commercial banks, which till that time were in private sector space. With this and background of formation of State Bank of India in 1955 by way of reconstitution of the Imperial Bank of India, more than 80 per cent of banking assets was converted into state owned ones. Later, on 15th April 1980, 6 more private banks were also nationalised.

Bank nationalisation was an epoch-making and 'defining economic event' in the country. In the Volume 3 of the History of 'The Reserve Bank of India', it has been aptly stated that this remains "the single most important economic decision taken by any government since 1947". The RBI History further delineates: "Not even the reforms of 1991 are comparable in their consequences - political, social and of course, economic." In the prelude to bank nationalisation during 1969, India witnessed two consecutive drought seasons, private banks practising 'class banking' and extending loans only to top industrialists with total apathy and unwillingness to diversify their loan portfolios across different scales of operation of economic units, for instance, with a static two per cent credit share to agricultural sector which remained unchanged for a period of over one and a half decades since 1951 till 1967, peasantry surrendering before vagaries of nature and village 'mahajans' (moneylenders) extending loans at exorbitantly high rates of interest, nose-diving of foreign exchange reserve during 1964-65, negative GDP growth rate during 1965-66 and 1966-67, devaluation of Rupee against the Greenback, spiraling double digit inflationary rate

and so on. The decision of the government was prompted by combination of all these disquieting factors.

This colossal measure initiated by the government went a long way in subverting the scenario of directors of the top Indian banks holding directorships in several other industries and exhibiting an utter disregard to the needs of systemically important sectors as agriculture, small-scale industries and common mass. The advent of the public sector banks (PSBs) as game changers of the economy brought about significant increase in number of bank branches in unbanked / underbanked areas, year to year growth in credit flow to priority sector, achieving economic self-reliance particularly in production of food-grains, liberation of the poorer masses from the clutches of moneylenders and huge socio-economic reforms ensuring equity and justice, thereby fulfilling the principles enshrined in the Constitution.

The PSBs have ushered in a huge transformation in approach of Indian banks and caused a paradigm shift from 'class banking' to 'mass banking', thereby contributing in a big way towards nation building by financing major economic activities of the country, particularly in the industrial, services and infrastructure sectors. It was because of the dominance of the PSBs in the Indian banking sector that the Indian economy could shield itself from the global economic meltdown in 2007-08, though global giants like fell.

Out of the total 39.82 crore number of accounts opened under the Jan Dhan Yojna till 08th July, 2020 (with deposits of Rs.1,31,576.08 crore), 31.60 crore accounts were opened in the PSBs (with a total deposits of Rs.1,01,916.67 crore) and 6.96 crore were

WASH YOUR HANDS BEFORE AND AFTER COOKING

opened in the RRBs (with garnered deposits of Rs.25,640.91 crore), which are sponsored by the PSBs. This shows the level of conviction and commitment on the part of the public sector bankers, which is a strong vindication of the decision of bank nationalisation pursued by the Central Government five decades ago.

Bank Nationalisation Day on July 19 this year comes amidst the continuing twin crises of the Covid-19 pandemic and lockdown induced recession in the global economy. Even before the onset of the pandemic and economic crisis, the Indian economy was witnessing a massive slowdown, with annual GDP growth rate declining from 6.1% in 2018-19 to 4.2% in 2019-20. The banking sector in India has also faced a slowdown with credit growth declining from 13.3% in 2018-19 to a five-decade low of 6.1% in 2019-20. Bank deposit growth has also declined from 10% in 2018-19 to 7.9% as at 31st March, 2020.

Meanwhile, the policies pursued by the Central government have weakened the PSBs over the past decade. The successive Mega Mergers under Narendra Modi government have reduced the number of PSBs from 21 in 2017 to 12 in 2020.

Comrades, despite the contribution of the Public Sector Banks to the Nation, it is unfortunate that Government continues with its neoliberal policies, which seeks to weaken and eventually privatise the PSBs. Mergers and Amalgamations are being contemplated in the garb of 'economies of scale', 'too many players', 'creation of world class banks' etc.

The number of PSB branches and employees are on a decline even when the PSBs are losing market share to the new generation private banks. For instance, as per the Annual Report of SBI, between March, 2018 and March, 2020, the number of bank branches declined by 273 and staff strength declined by 14593.

The deposit and credit growth of the PSBs have fallen sharply in the last few years both as a result of macro-economic factors as well as the policy direction of the government. The market share of new generation private banks is increasing rapidly. Between March 2015 and March 2019, a total of

Rs.6.4 lakh crore worth of NPAs pertaining to the SCBs were written off, out of which over Rs.5 lakh crore were PSB NPAs. Though the PSBs have registered healthy operating profits, on account of unreasonable provisioning norms and massive haircuts forced upon by the implementation of the Insolvency & Bankruptcy Code, they have been incurring enormous net losses. The large corporates of our country have exploited the PSBs in a big way. As per the latest Financial Stability Report of the RBI, large borrowers (above Rs. 5 crore loan accounts) are responsible for over 85% of the NPAs of the scheduled commercial banks. Provisioning for these NPAs is the main reason behind posting of huge net losses by the PSBs. Varieties of restructuring schemes of RBI, which have subsequently been withdrawn by RBI during February 2018, failed to revive distressed accounts and catalysed loan evergreening by the banks, as observed by RBI only in its Asset Quality Review (AQR). Large portions of these restructured advances are also likely to become NPAs. On the other hand, the NPA resolution process through the NCLTs is totally non-transparent and the PSBs are being asked to absorb the major part of the NPAs through haircuts / provisioning rather than recovering NPAs from the corporate defaulters. In the first two years of its operations between 2017 and 2019, the NCLTs under the IBC could resolve only 1,839 NPA cases involving Rs.1.76 lakh crore leading to a recovery of Rs.75,745 crore, which works out to a recovery rate of only around 43%, thereby causing an overall 57% haircut for the banks.

While the Union Government has infused over Rs.3 lakh crore as capital into the PSBs between 2015-16 and 2019-20, capital base of the PSBs has witnessed simultaneous erosion due to higher NPA provisioning and write-offs. This is precisely the reason as to why the capital position of the PSBs has not witnessed any significant improvement.

Moreover, PSB funds are being misused by the Central government to bail out failed private sector banks like Yes Bank Limited. The autonomy of the PSB Boards are being trampled upon by the Union Finance Ministry and the RBI, as seen in the cases of the Mega Mergers as well as the so-called 'reconstruction plan' of Yes Bank. Big corporates are being wrongfully benefitted by the government misusing the PSBs, while the small farmers, MSMEs, SHGs and ordinary

WASH YOUR HANDS OFTEN

customers are being neglected.

On the top of all, the response of the government to the COVID-19 pandemic and economic crisis has also been inadequate. While Hon'ble Prime Minister has claimed that the so-called "Atmanirbhar Package" provided a "stimulus" of Rs.20 lakh crore or 10% of GDP, in reality the actual government spending is around Rs.2 to 3 lakh crore only, amounting to less than 1.5% of GDP. Most of the package comprises of liquidity infusion through RBI and the banks, which will not be much useful in the backdrop of declining credit demand. The government has refused to make substantial cash transfers to the poor, unorganised sector workers which AIBOC had specifically demanded.

The most disturbing element of the Government's policies announced under the 'Atmanirbhar Package' is the emphasis on privatisation of PSEs. Not only that coal blocks and trains are being handed over to the private players, the Finance Minister has of late announced a new policy whereby:

- ⇒ "List of strategic sectors requiring presence of PSEs in public interest will be notified
- ⇒ In strategic sectors, at least one enterprise will remain in the public sector but private sector will also be allowed
- ⇒ In other sectors, PSEs will be privatized (timing to be based on feasibility etc.)
- ⇒ To minimise wasteful administrative costs, number of enterprises in strategic sectors will ordinarily be only one to four; others will be privatised/ merged/ brought under holding companies."

The critical situation arising out of the COVID-19 Pandemic and the 'National Lockdown' since 24th March 2020 to 31st May, 2020 and several state / district wise lockdowns announced by various State Governments / District Administrative Authorities has also thrown up huge challenges to the PSBs. However, despite humongous workload on bank employees everywhere for carrying out 'essential financial services', disbursing of Direct Benefit Transfer (DBT) under the 'Coronavirus Relief

Package' announced by Hon'ble Finance Minister, reviving long inoperative Jan Dhan accounts, added responsibilities of managing the surging crowd at bank branches, bank officers and employees stood like 'Rock of Gibraltar' with high risk of exposing themselves and their families to the deadly virus. Many bankers have been affected with the disease and some of them succumbed to it.

Confederation has been alive to the situation. The misadventures of the Government including the draconian FRDI Bill have always been opposed and resisted. Attempts of attack have been faced successfully. The present circumstances do not permit us to organise, holding rallies, symposia, workshops, meetings, congregations etc. to observe the Bank Nationalisation Day befittingly. Notwithstanding the same, we call upon all our Affiliates, State and District Units to take up all possible social causes, and to demonstrate that we care for the society and well being of the entire working class and their families and also that AIBOC is determined to ensure that our national treasure in the form of public sector banks remain safe and secure and continue to play the role of extending helping hands to millions of our customers who have put their life time savings in the PSBs and depend on the PSBs for running their honest and sincere economic activities.

AIBOC also wants to place these facts before the Union Finance Ministry and the RBI in order to expose the truth that a massive corporate bailout programme has been implemented by the present government under the cover of PSB recapitalisation.

On this significant and historic occasion of the Bank Nationalisation Day, AIBOC urges upon the Central government to immediately halt these corporate bailouts and review its policies on recovery and write-offs of stressed assets.

#Save PSU Save India

With vibrant greetings

Yours Comradely

Sd/-
(Soumya Datta)
General Secretary

ALWAYS COVER YOUR FACE WHILE YOU COUGH OR SNEEZE

Dear Comrade,

XITH BIPARTITE TALKS WITH IBA – MOU SIGNED

We reproduce herewith the text of the circular of UFBU No. 2020/08 dated 23.07.2020 on the captioned subject. We place on record our sincere appreciation for the support received from all the affiliates, office-bearers and above all the general members and retirees during the protracted process

of the wage negotiation talks.

With greetings,
Sd/-
(Soumya Datta)
General Secretary

**CIRCULAR NO.UFBU/2020/08
TO ALL CONSTITUENT UNIONS/MEMBERS**

Date : 23.07.2020

Dear Comrades,

BIPARTITE TALKS WITH IBA – MOU SIGNED – CONGRATULATIONS

After the Sub-Committee meeting held on 16-3-2020 to discuss and finalise the loading factor after merger of DA for construction of revised pay scales, there was no meeting with the IBA on our wage revision issues in view of the corona related pandemic situation and lockdown restrictions on travel. However, having regard to the developing scenario in general and in the banking industry in particular, we felt it expedient and accordingly pursued the matter with IBA for resuming and continuing the negotiation and to reach an early and amicable solution. IBA agreed and fixed the negotiations at Mumbai yesterday i.e. on 22.7.2020.

explained the constraints faced by the Banks and the challenges that are emerging before the Banks consequent to covid19 which are limiting the capacity of the Banks to incur additional load under establishment expense/wage expenses. Hence he urged upon the UFBU to conclude the issue with their offer of pay slip component 15%. From our side, while reiterating our viewpoints made in the earlier round of discussions, we pointed out that the additional loading factor after merger of DA at 6352 points should be satisfactorily resolved so that an MoU could be signed. After prolonged discussions by all the unions and after a lot of deliberations, it was mutually agreed that the additional loading factor after merger of D.A. will be 2.5% thus paving the way for signing the MoU.

IBA team was led by Shri Rajkiran Rai G, MD&CEO, Union Bank of India and Chairman of the Negotiating Committee and UFBU was led by the undersigned i.e. Sanjeev Kumar Bandlish, Convenor and General Secretary (NCBE). From UFBU Com. C H Venkatachalam, General Secretary (AIBEA), Com. Sanjeev Kumar Bandlish, General Secretary(NCBE), Com Subash Sawant, General Secretary(INBEF) participated in the talks in person. Others participated through video conferencing from Chennai, Kolkata, Delhi, Patna and Pune as they could not undertake the travel due to restrictions, quarantine issue, etc.

Accordingly, the MoU/Minutes of Discussions has been finalized and signed. The main features of the Understandings are as under:

- ★ The 11th Bipartite Wage revision/Joint Note for Officers will be effective from 01-11-2017.
- ★ Increase under this Wage Revision will be Rs.7898 crores per year i.e. 15% on the wage bill of PSBs (payslip component cost) as on 31.03.2017.
- ★ New pay scales would be worked by merging DA upto 6352 points of price index with an additional loading of 2.5%.

Earlier on 21st July night, a virtual meeting of the UFBU was held and viewpoints of all constituent unions were enlisted to adopt a common approach. During the discussions with IBA, Shri Rajkiran Rai

THERMAL SCANNERS CAN DETECT IF PEOPLE HAVE FEVER BUT CANNOT DETECT WHETHER OR NOT SOMEONE HAS THE CORONAVIRUS

- ★ After prolonged discussions and deliberations, it has been agreed to introduce Performance Linked Incentive (PLI) in Public Sector Banks, which will be based on Operating/Net Profit of the individual bank (optional for private & foreign banks). The PLI is payable to all employees annually over and above the normal salary payable. The PLI matrix decides the amount payable to the employees (in number of days of pay = Basic + DA) depending on the annual performance of the Bank. All the employees will get the number of days of pay as incentive depending on where in the matrix the Bank's performance fits in, broadly as per Matrix under:

Sr.No.	YoY Growth in Operating Profit	No. of days for which Salary (Basic + DA) shall be paid
1	<5%	Nil
2	5% to 10%	5 days
3	>10% to 15%	10 days*
4	>15%	15 days*

*3rd and 4th slabs are payable only if the Bank has Net Profit. If a Bank has growth in Operating Profit of 5% & more, but there is no Net Profit, then minimum 2nd slab of 5 days will be payable.

- ★ From this calendar year each employee below 55 years of age can encash PL upto 5 days per year for any one festival (7 days for those above 55 years of age).
- ★ For employees who have joined the Banks under NPS, management's contribution would be at 14% of Pay and DA against 10% now.
- ★ Improvement in service conditions discussed and agreed upon so far would be duly incorporated in the final settlement
- ★ All other pending issues including 5 days banking, updation of pension, etc. are open and would be further discussed.
- ★ The full-fledged and final settlement with revised pay scales and allowances and incorporating all the agreed issues would be concluded within the next 90 days.
- ★ Thereafter the Settlement will be implemented and revised salaries would be paid accordingly.

Good news – Improvement in Family Pension: On conclusion and signing of the MoU, the Chairman of IBA and SBI, Shri Rajnish Kumar came in the meeting room and participated in the discussions. During his address to all the participants, he informed that IBA agrees in principle to improve Family Pension to uniform rate of 30% for all family pensioners without any ceiling and the existing ceilings of family pension will be removed. Necessary approval of the Government would be obtained.

Addressing the participants, he expressed his satisfaction on the satisfactory signing of the MoU which includes wage increase and new schemes like PLI and encashment of privilege leave, etc. He emphasized the need to ensure a robust banking system which is responsive to the present-day challenges facing the country and our economy and

hence the importance of improving productivity, efficiency and responsiveness to the needs of the customers and other stakeholders of the banks.

He also made a special reference to the service being rendered by bank employees and officers under the present pandemic circumstances amidst all difficulties. He also informed that the Government is also appreciative of the same and informed that all this could have been possible because of the positive attitude of the Finance Minister for the Bank Employees as well as Officers.

From our side, we expressed our thankfulness to him for his positive interventions during the course of negotiations which has helped in reaching the MoU. We also assured him that the entire banking fraternity would surely rise to the occasion, as hitherto, and it

ANTIBIOTICS DO NOT WORK AGAINST VIRUSES, ANTIBIOTICS ONLY WORK AGAINST BACTERIA

would be our endeavour to improve the services, productivity and efficiency.

We also brought to the attention of the IBA, the various problems faced by bank employees and officers in discharging their duties under lockdown and Pandemic COVID-19 situation and IBA assured to discuss and resolve these issues at their level at the earliest. To our request to fast track compassionate appointments in the case of the families of the employees/officers who lost their lives due to corona infection, IBA assured to look into the same.

Comrades, the signing of the MoU marks the culmination of the long process of our negotiations during which we had to engage ourselves in

agitations including strike actions. The unity and co-operation amongst our unions and members has resulted in achieving this satisfactory MoU amidst the present uncertainties and challenges posed by Covid19 pandemic. We congratulate all of our unions and members for this achievement in the most difficult circumstances.

We shall now take further steps to work out the final Settlement at the earliest.

With greetings,

Yours comradely,
Sd/-
Sanjeev K Bandlish

CIRCULARS

52 dated 6th July, 2020: Text of Letter No. AIBOC/2020/28 dated 06.07.2020 addressed to The CEO, IBA, Head Office, Mumbai regarding reimbursement of medical expenses – COVID-19 - Settlement of claims by Insurance Companies

53 dated 9th July, 2020: Text of Letter No. AIBOC/2020/29 dated 09.07.2020 addressed to Hon'ble Union Minister for Finance & Corporate Affairs, Government of India regarding effect on career path of bank officers on account of protracted process of investigation / inquiry by CBI and other central agencies

54 dated 18th July, 2020: Bank Nationalisation Day Amidst COVID-19 Pandemic

55 dated 23rd July, 2020: XITH BIPARTITE TALKS WITH IBA – MOU SIGNED

56 dated 29th July, 2020: Text of Letter No. AIBOC/2020/32 dated 29.07.2020 addressed to The CEO, IBA, Head Office, Mumbai regarding problems being faced by bankers in case of hospitalisation following COVID-19 CONTAGION

57 dated 31st July, 2020: Revision in Dearness Allowance for the quarter August'20 to October'20.

JUDICIAL VERDICT

**2020-II-LLJ-565 (SC)
LNINDU 2020 SC 49**

IN THE SUPREME COURT OF INDIA

Present:

**Hon.ble Ms. Justice R.Banumathi and
Hon'ble Mr. Justice A.S.Bopanna**

C.A.No. 2236 of 2020

15th April, 2020

**Rajasthan State road Transport Corporation Ltd. and Others.....Appellants
Versus
Smt. Mohani Devi and Another**

...Respondents

Gratuity-Voluntary Retirement –Payment of Gratuity Act 1972, section 4 (1) (b)-Respondent's husband

THERE IS NO EVIDENCE THAT COMPANION ANIMALS/PETS SUCH AS DOGS OR CATS CAN TRANSMIT THE CORONAVIRUS

moved application seeking voluntary retirement from service-No order passed on said application and Respondent's husband continued to remain in service-Single Judge directed Appellants to treat Respondent's husband as having voluntarily retired and release retiral benefits-Appellant's appeal before division Bench of High Court dismissed upholding Single Judge order, hence this appeal-Whether, Respondent's husband acquired indefeasible right to seek for voluntary retirement from service and subsequent resignation submitted by Respondent's husband be considered as application for voluntary retirement and treat cessation of jural relationship of employer-employee under provision for voluntary retirement-Held, when application for voluntary retirement filed and not considered by Employer, if any legal right available appropriate course ought to have been to seek for acceptance of application by initiating appropriate legal proceedings-Respondent's husband yielded to position of non-acceptance of application for voluntary retirement and submitted his resignation-Acceptance of resignation acted upon by receiving terminal benefits - When writ petition filed belatedly and that too after death of employee, consideration of prayer made by Respondent not justified-High Court committed error in passing concurrent orders-Section 4 91)(b) of Act, provides that gratuity should be payable if termination of employment was after 5 years of continuous service and such termination would include resignation-If gratuity amount not paid to Respondent's husband, liability to pay same would subsist and Respondent 1 would be entitled to receive same in accordance with provisions of Act-Appellants directed to calculate gratuity and pay same to Respondent 1, if already not paid-Judgment passed by High Court liable to be set aside - Appeal allowed.

JUDGMENT

Mr. A.S. Bopanna,J.

Leave granted.

2. The respondent herein was the Petitioner in S.B Civil Writ Petition No. 2839/2012 filed before the Rajasthan High Court. The brief facts that led to the filing of the Writ Petition is that respondent herein had claimed Signature Not Verified the retiral benefits of her late husband who was Digitally signed by SUSHMA KUMARI appointed in the post of conductor on 15.03.1979 at Alwar Depot of the Appellant Road Transport Corporation. The benefits were claimed on the basis that her husband be deemed to have voluntarily retired from service instead of having resigned.

3. In the course of service, respondent's husband had moved an application seeking voluntary retirement from service on 28.07.2005 indicating health reasons. No order was passed on the said application for voluntary retirement and the respondent's husband continued to remain in service.

4. Subsequently, the respondent's husband on 03.05.2006 submitted his resignation as he claimed to be under depression and his health condition had further deteriorated. The resignation was accepted by the authorities on 31.05.2006, he was relieved of his duties and the benefits were paid.

5. Thereafter, the respondent's husband is stated to have immediately submitted an application pointing out that he had erred in mentioning 'resignation' and he desired to retire in view of his earlier application for voluntary retirement. The application also mentioned that no decision had been taken by authorities on his first application dated 28.07.2005 and therefore he should be treated as having voluntarily retired with consequent retiral benefits. The respondent after her husband's death approached the High Court with such prayer.

6. The learned Single Judge held that the respondent's husband had moved an application indicating deteriorating health and forcing such employee to work would be an act of oppression.

KEEP YOUR WORKPLACE HYGENIC. USE SANITIZERS FREQUENTLY

Additionally, it was held that the voluntary retirement application was not decided within the period prescribed as per the Clause 19- D(2) of the Pension Scheme and reliance was placed on Clause 18-- D(2) of RSRTC Standing Orders as per which an employee of the Corporation who had rendered pensionable service was entitled to seek voluntary retirement. It held that the respondent's husband would be deemed to have retired even though he had moved another application terming his retirement as resignation in view of the law laid down in Sheel Kumar Jain v. The New India Assurance Co. Ltd. 2012 (1) SLR 305: AIR 2011 SC 2990 : LNIND 2011 SC 698. Thus, the appellants were directed to treat respondent's husband as having voluntarily retired and release the retiral benefits to which he was entitled.

7. Aggrieved, an appeal was filed by the appellants herein in D.B Special Appeal Writ No. 1261/2018. However, no infirmity was found by the Division Bench in the reasoning of the learned Single Judge and the learned Division Bench dismissed the appeal. The same has been assailed by the appellants herein in this appeal.

8. In the above background we have heard Dr. Ritu Bhardwaj, learned counsel for the appellants, Mr. S. Mahendran, learned counsel for the respondents and perused the appeal papers.

9. The short question that arises for consideration herein is as to whether the husband of the respondent had acquired an indefeasible right to seek for voluntary retirement from service and in that light whether the High Court was justified in arriving at the conclusion that the subsequent resignation dated 03.05.2006 submitted by the husband of the respondent be considered as an application for voluntary retirement and treat the cessation of the jural relationship of employer/ employee under the provision for Voluntary Retirement.

10. In order to consider the above aspect, a perusal of the factual matrix in the instant case would indicate that the respondent's husband had joined the service of the Appellant Transport Corporation at Alwar Depot on 15.03.1979. The application seeking voluntary retirement was submitted on 28.07.2005 by which period the respondent's husband no doubt had put in more than 25 years of service. Insofar as the eligibility to apply seeking voluntary retirement in view of the completed length of service, the respondent's husband had acquired such right. The Appellant Transport Corporation however, did not think it appropriate to accept the application and grant the voluntary retirement. In that circumstance the husband of the respondent submitted his resignation on 03.05.2006 which was accepted by the Appellant Transport Corporation and was relieved on 31.05.2006. The respondent contends that immediately thereafter an application was made indicating that the word 'resignation' was inadvertently mentioned and the intention of the respondent's husband was to renew his request for voluntary retirement. However, the consideration of such subsequent application by the Appellant Transport Corporation did not arise and as indicated, the respondent's husband had been relieved on 31.05.2006 and all the service benefits payable in respect of an employee who had resigned from service was paid, which was accepted by the respondent's husband. The undisputed position is also that the respondent's husband subsequently died on 14.04.2011. It is subsequent to the death of the husband, the respondent had filed the writ petition before the High Court of judicature for Rajasthan, Bench at Jaipur in S.B. Civil Writ Petition No.2839/2012. The learned Single Judge while considering the case of the respondent merely took note of the legal position which had been enunciated by this Court in the facts of those cases which had been referred and with a bare reference to Clause 19D(2) of the Rules arrived at the conclusion that the application for voluntary retirement was deemed to have been accepted and therefore, directed that the appellants to treat the

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respondent's husband to have retired from service on the date he was relieved and pay the retiral benefits. The Division Bench has reiterated the said position.

11. Having heard the learned counsel for the parties, we find that the factual aspects which were relevant for decision making in the instant case has not been referred by the High Court during the course of its order but has merely assumed that the voluntary retirement application should be deemed to have been accepted when there was no rejection. As noticed from the objection statement filed by the respondent herein herself, the right to seek for voluntary retirement is stipulated in Rule 50 of Rajasthan Civil Services Pension Rules, 1996. As indicated above, since the same provides for 20 years of qualifying service, the respondent's husband had qualified to apply. However, what is relevant to take note is that sub--Rule(2) thereof provides that the notice of voluntary retirement given by the employee shall require acceptance by the appointing authority. In the instant case, the undisputed position is that there was no acceptance and in that circumstance the husband of the respondent had submitted his resignation on 03.05.2006. Though the High Court has indicated deemed acceptance, the same would not be justified in the instant facts since the position which has not been taken note by the High Court is that as on the date when the husband of the respondent had made the application for voluntary retirement on 28.07.2005 the husband of the respondent had already been issued Charge-Sheets bearing No.7352 dated 16.12.2004 and bearing No.4118 dated 11.07.2005 alleging misconduct. Though the respondent, through the objection statement seeks to contend that the charge alleged against her husband was not justified, that aspect of the matter would not be germane to the present consideration since the position of law is well established that pending disciplinary proceedings if an application for voluntary retirement is submitted there would be no absolute right seeking for acceptance since the employer if keen on proceeding

with the inquiry would be entitled not to consider the application for voluntary retirement. Hence there would be no obligation to accept. In the instant facts the proceedings relating to the charge sheet was taken forward and completed through the final order dated 03.09.2005. The punishment of withholding of the increment was imposed. In such circumstance the non- consideration of the application for voluntary retirement would be justified.

12. Be that as it may, as noted the inquiry had been completed and thereafter when the respondent's husband submitted the resignation on 03.05.2006, the same was processed, accepted, he was relieved on 31.05.2006 and the payment of terminal benefits were made which had been accepted by him. During his lifetime up to 14.04.2011 the husband did not raise any issue with regard to the same. It is only thereafter the respondent has filed the writ petition before the High Court. Primarily it is to be noticed that when the application for voluntary retirement was filed on 28.07.2005 and had not been favourably considered by the employer, instead of submitting the resignation on 03.05.2006, if any legal right was available the appropriate course ought to have been to seek for acceptance of the application by initiating appropriate legal proceedings. Instead the respondent's husband had yielded to the position of non- acceptance of the application for voluntary retirement and has thereafter submitted his resignation. The acceptance of the resignation was acted upon by receiving the terminal benefits. If that be the position, when the writ petition was filed belatedly in the year 2012 and that too after the death of the employee who had not raised any grievance during his life time, consideration of the prayer made by the respondent was not justified. The High Court has, therefore, committed an error in passing the concurrent orders.

13. The learned counsel for the respondent would submit that even if it is a case of resignation the deceased husband of the respondent was entitled to the payment of gratuity as he had put in the

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qualifying service. The learned counsel for the appellant would contend that the gratuity amount had been paid. In that regard, the reference made to para 9 of the writ appeal filed before the High Court would however indicate that though reference is made to the payment disbursed to the respondent's husband while accepting the resignation, the same does not disclose that the gratuity amount has been paid. Further, in the appeal filed before this Court the appellants have sought to justify the non-payment of the gratuity as the husband of the respondent had resigned from service. As rightly pointed out by the learned counsel for the respondents, Section 4(1)(b) of the Payment of Gratuity Act, 1972 provides that the gratuity shall be payable if the termination of employment is after 5 years of continuous service and such termination would include resignation as well. In that view, if the gratuity amount has not been paid to the respondent's husband, the liability to pay the same would subsist and the respondent No.1 will be

entitled to receive the same in accordance with the provisions of the Act. In that regard it is directed that the appellants shall accordingly calculate the gratuity and pay the same to the respondent No.1, if already not paid. Such payment shall be made within four weeks from this date.

14. In the result, the appeal is allowed. The judgment dated 19.11.2018 passed in D.B. Special Appeal(W) No.1261/2018 upholding the order dated 01.11.2017 in S.B. Civil Writ Petition No.2839 of 2012 is set aside. The gratuity amount as directed above shall be paid to respondent No.1 in terms of the provisions of the Payment of Gratuity Act, 1972 within four weeks from this date.

15. Pending application, if any, shall stand disposed of.

Appeal allowed.

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