

(1987) 02 CAL CK 0031
In the Calcutta High Court

Amar Nath Khanna

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 11-02-1987

Acts Referred:

Constitution of India, 1950 — Article 12, 226, 311
Industrial Disputes Act, 1947 — Section 10, 2, 9A
Reserve Bank of India Act, 1934 — Section 58
State Bank of India Act, 1955 — Section 16, 17, 18, 19, 2

Citation : (1987) 2 LLJ 277

Hon'ble Judges : Manash Nath Roy, J; Dalip Kumar Basu, J

Bench : Division Bench

Judgement

Manash Nath Roy, J.—This appeal is directed against an order dated August 1, 1980, passed in Civil Rule No. 8989(W) of 1978, whereby an application dated June 21, 1980, as filed by the appellant petitioner, was disposed of on certain terms. In fact, the prayers as made in the said application and more particularly the one relating to prayer (a) was allowed in entirety and the other prayers were not allowed in their entirety. The prayers as made would be indicated hereinafter.

2. In or about November, 1940, the petitioner was appointed as a clerk in the services of the Imperial Bank of India which, since 1955 and on the coming into force of the State Bank of India Act, 1955, is known as State Bank of India (hereinafter referred to as "the said Bank") and he was confirmed in that post in May, 1941. It has been stated that thereafter, in or about July, 1952, the petitioner was promoted to the post of an Assistant and (Subsequently he was confirmed as Staff Assistant. It was the further case of the petitioner that he was ultimately promoted to the rank of Officer Grade I. It was also indicated by the petitioner that initially his terms of service and conditions of employment were governed by the rules governing the service of Assistants in the erstwhile Imperial Bank of India and thereafter by the State Bank of India (Supervising Staff) Service Rules, which came into force on or about July 1, 1975 and more particularly as on invitation of option from the employees whose services stood

transferred from the Imperial Bank of India to the said Bank, he opted for the Imperial Bank of India Rules.

3. It would appear that by an order dated October 10, 1973, the petitioner was put under suspension by an order of the Secretary and Treasurer of the said Bank, on the allegations of serious irregularities in the Bill Discounting limit business during the period of 1967-1970. Such order of suspension pending investigation was passed u/s 14 of the Imperial Bank of India Rules. It was claimed by Mr. Mallick that even though the said order of suspension was pending investigation, such investigation was never made within a reasonable time or diligently and till March 23, 1978 i.e. the day when the writ petitioner was informed by the Chief General Manager of the said Bank that in terms of the decision of the appropriate authority with immediate effect he ceased to be in the said Bank's services and further, he could avail of leave as due to him prior to his suspension, subject to the usual ceiling. It was an admitted fact that the petitioner was paid subsistence allowance at the rate of 50% of his pay and allowances and he retained his residential accommodation on usual charges for sometime and thereafter on payment of penal rent. It has been alleged that neither any proceeding was drawn up nor any charge-sheet was served.

4. On or about May 5, 1976, the petitioner was asked to vacate the flat in his possession within a stipulated time and he continued to occupy the accommodation, as stated hereinbefore, on payment of enhanced rate of rent. It has also been alleged that on or about December 14, 1976, the Chief Manager concerned intimated to the petitioner that the house-rent allowance would not be taken into consideration for determining the subsistence allowance payable to him and since such allowance has been drawn from October 1976, necessary adjustment would be made from subsequent months. It was the further case of the petitioner that he had attained the age of 55 years on October 5, 1974 and till after that he continued to receive the subsistence allowance.

5. We have indicated earlier about the date when the State Bank of India (Supervising staff) Service Rules came into force and also the particulars of the option as exercised by the petitioner. The petitioner contended that in view of Rule 2(1) of the said Rules and also in view of Rule 26 of the same, the steps as taken were irregular, void and bad. The provisions of these Rules are quoted herein below:

Rule 2(1): These rules shall apply to all Officers, Staff Officers and Senior Staff Officers in the Bank other than persons who were in the service of the Bank on the 30th June 1955 either as Officers or as Assistants.

Rule 26 All Assistants shall retire at fifty five years of age or upon the completion of thirty years" service whichever occurs first.

6. Admittedly, the petitioner by his two representations dated April 10, 1978 and May 23, 1978 asked for clarification of the said Bank's communication dated March 23, 1978, the particulars whereof have been indicated hereinbefore and

whereby he was informed that he ceased to be in the Bank's service with immediate effect and was further advised that leave due to him prior to his suspension might be availed of subject to the usual ceiling. It has been indicated that by a communication of June 24, 1978, the petitioner was allowed time to vacate his quarters on or by July 22, 1978. Against the orders and determinations or the actions as sought to be taken to evict the petitioner, he, on December 1, 1978 moved and obtained Civil Rule No. 8989 (W) of 1978 and also obtained an interim order of injunction to the effect that he should not be evicted from the quarters till the disposal of the Rule.

7. The Respondents in their affidavit-in-opposition in that Rule, which was dated June 4, 1979, apart from other contentions stated, that the rights, if any, of the petitioner were purely contractual and as such the petition was not maintainable. While on the question of maintainability, it was further claimed that be it under the Imperial Bank of India or the said Bank, the rights, if any, arose from a contract of employment, which had no statutory force or basis. It was further claimed that in any case, the petitioner could not maintain his claims under the Imperial Bank of India Rules, as they were framed only by the Imperial Bank of India, a non-statutory body and such being the position, even on adoption of those Rules by the said Bank, they could not be enforced in a writ proceedings. It was also claimed that the said Bank, in term of the State Bank of India Act, 1955, is a body corporate and constituted under the provisions of the said Act and is neither a statutory body nor the same performs any statutory duties and such being the position, no writ or writs as prayed for by the petitioner could be issued. It was submitted that the petitioner had no right which could be capable of being enforced in a proceeding under Article 226 of the Constitution of India. Apart from the above, it was also claimed that the application involved disputed questions of fact which could not at all be decided in a writ proceeding.

8. It was also contended in the said affidavit-in-opposition that the Imperial Bank Rules as mentioned above governing the service of Assistants provides as follows:

1. These rules embody the terms and conditions of service of Assistants in the Imperial Bank of India. They apply to all Assistants appointed Probationary Assistants or Staff Assistants on or after the 1st July, 1936 and they also apply, subject to the provisos in Appendix 1, to all Assistants in the service of the Bank on the 30th June, 1936.

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3. The Central Board of the Bank reserves the right of changing the rules here laid down from time to time as may be found to be necessary or considered desirable and those Rules as mentioned hereinbefore, were claimed to have no statutory force and were stated to be concerned only with the contractual employment of the Staff Assistants and formed part and parcel of their contract of employment. It was further pointed out that the exercise of the power of suspension under Rule 24 of those Rules was duly exercised and the answering

Respondents were not obliged to provide any reasons for such suspension.

9. It has been indicated that on or about 5th April, 1968 a firm known as M/s. Bidar Industries, which had a Current Account with the said Bank's branch at Calcutta Main Branch, applied for bill discount limit of Rs. 3 lakhs. At that point of time, the petitioner was the bill examiner and he was instructed to process such requests. It has been stated that the request of the concerned firm was recommended by the petitioner for approval and on March 22, 1969, they applied for renewal of the facility for a period of one year, which was also recommended by the petitioner and on that basis the Chief Accountant of the said Bank sanctioned the limit for a period of one year. It has also been stated that the firm in question was connected with the firm of Bidar Company and Victoria Engineering Works which also enjoyed the bill limit with the said Bank and they applied on March 28, 1970 for the renewal of the facility for a further period of one year, which again was recommended by the petitioner for a period of six months, to meet their outstanding on the strict understanding of their good performance. But, later, the said Bank was saddled with over-due bills. From such happenings, it has been alleged that it was clear that at no stage due assessment was made by the petitioner of the genuineness of the concerned firm's requirements of the bill finance. It has been alleged that the selection of drawers was not made wisely and the petitioner did not also give the sanctioning authority the correct information which could enable them to take appropriate decision. In fact, it has been stated that the petitioner failed to report the sanction of the limit to Secretary and the Treasurer of the said Bank in accordance with the prescribed procedure. It has been stated that for enquiry into the involvement by the petitioner, the matter was entrusted to the Central Bureau of Investigation, Special Police Establishment Division, Calcutta in January, 1974 and in terms of paragraph 1.7 of Chapter III of the Vigilance Manual, the Bank did not carry out a parallel investigation under their Conduct and Discipline Rules. Such investigation was entrusted to the Central Bureau of Investigation as non-official persons were involved and criminal proceedings was commenced, inter alia, against the petitioner in respect of the complaint in question.

10. It has been disclosed that one Shaligram Pandey, a partner of the said Bidar Industries, moved this Court in its writ jurisdiction on June 19, 1974 and the investigation by the Central Bureau of Investigation was held up. This Rule was marked as Civil Rule No. 3660 (W) of 1974 and was finally discharged on December 6, 1978 and, as a consequence thereof, all interim orders were vacated. While on the question of the exercise of option by the petitioner, it has been claimed that no such option was ever exercised by the petitioner, admittedly was superannuated on March 5, 1978. It has been indicated that the petitioner was well aware of the investigation as mentioned above and so also the proceedings which were pending in this Court and the date of disposal of the same. The deponent of the affidavit has stated that the petitioner was all throughout kept informed about the irregularities of his conduct and no charge-

sheet was served on him in view of paragraph 1.7, Chapter III of the Vigilance Manual, the particulars whereof are quoted hereunder:

1.7. Once a case has been entrusted to the C.B.I. for investigation, further enquiries should be left to them and departmental enquiry, whether fact-finding or formal, under the Discipline and Appeal Rules, if any, commenced already should be held in abeyance until such time as the investigation by the C.B.I. has been completed. Parallel investigation of any kind should be avoided. Further action by the administrative authority should be taken on the completion of the investigation by the C.B.I. on the basis of their report.

11. It has also been averred that as the question of the petitioner being given an opportunity of disproving any allegation or making any proper or effective representation did not and could not arise as the relationship between the petitioner and the respondents were that of master and servant and as such there was and could have been no statutory protection for him as alleged and that the said Bank was entitled to suspend or dismiss the petitioner in accordance with the contract of service. It has been stated that the petitioner completed his 30 years of service on June 2, 1971 and was due to retire on that date under the concerned rules, but he was granted extension of service until October 4, 1977 i.e. the age of 58 years and this fact would appear clear from the Memorandum dated March 11, 1971 from the said Bank to the petitioner which stated that he was given extension of service upto October 4, 1977 when he attained 58 years of age. subject to his continued physical fitness and satisfactory service. It has also been stated that the decision to raise the normal retirement age from 55 years to 58 years was taken by the resolution of the Executive Committee of the Central Board of the said Bank in 1967 and such and above being the position, the allegations made by the petitioner in paragraph 10 of his petition of motion were totally baseless and irrelevant and the question of his service being desirable did not and could not arise. The deponent has also stated that the subsistence allowance during the period of suspension was continued to the petitioner as the investigation was being carried on.

12. It has been stated by the deponent of the affidavit that, because of the pendency of Civil Rule No. 8989(W) of 1974 and at the point of time when the petitioner had completed 58 years of service, the said Bank was advised not to terminate his services in view of such pendency of the said Civil Rule the petitioner was duly notified that he had ceased to be in the employment of the said Bank by the letter of March 23, 1978, as mentioned hereinbefore. It has further been stated that the order containing the decision of the appropriate authority was duly communicated to the petitioner and in the matter of such communication there was no discrimination. The deponent has further stated that under the Central Bureau of Investigation enquiry report, criminal liability was fastened on the petitioner and, accordingly, as indicated herein before, a criminal proceeding was drawn up against him. It should be noted that during the course of the hearing before us, Mr. Mullick pointed out and mentioned that

the criminal proceeding, as was initiated against the petitioner, has been quashed by this Court. It was the firm stand of the deponent that even if the petitioner's conduct was full of irregularities, no steps could be taken against him earlier than the disposal of the said Civil Rule No. 8680(W) of 1974. It was alleged that the irregularities committed by the petitioner were known to him and in fact, he was duly apprised of such irregularities and in the matter of taking the impugned action against him there was no violation of principles of natural justice or those of fairplay. The order of suspension was further claimed to be due, legal, valid and proper, apart from claiming that the same was issued with due jurisdiction of the appropriate authority. It was also the case of the deponent of the affidavit that the employees governed by the said Bank's (Supervising Staff) Service Rules are entitled to subsistence allowance as per Rule 52 of the concerned Rules and in case employees governed by the Rules of Imperial Bank of India, subsistence allowance (equal to half of the pay) was payable and the claim of the petitioner that since there is no specific rate fixed for payment of subsistence allowance under the Imperial Bank's Rules, he would be entitled to be paid subsistence allowance at the full rate of his remuneration was baseless and not maintainable. It has further been stated that the petitioner has been paid his pension as per his entitlement and has not also been deprived of his provident fund money or gratuity or bonus or any other benefits, to which he is entitled in accordance with law. In short, it has been claimed that payment on those accounts have been made to the petitioner duly.

13. The affidavit-in-reply to the opposition of the Respondents as mentioned above, was dated July 12, 1979 and therein, the material allegations as contained in the affidavit-in-opposition have been denied. It would also appear that on or about 3rd August, 1974, an order was made by the learned Trial Judge and from the reference to that order it would appear that Mr. Bhaskar Sen, appearing for the Respondents at that time, on his asking, got the Rule made absolute in terms of prayer (a) to the petition, meaning thereby a writ of or about in the nature of mandamus was issued commanding the Respondents to determine and pay the petitioner all service benefits including terminal benefits as admissible under the Rules forthwith and further commanding them not to withhold such payment. In fact, the Rule was made absolute for the said prayer (a) to the petition and so far prayers (b) and (c) were concerned, the learned Trial Judge has observed that to him it seemed that those prayers have become in fruituous and as such no order could or should be made in respect of them. It was further directed by the learned Trial Judge that the Respondents before him should dispose of the application as filed against the petitioner, within six weeks from the date in accordance with law. In fact, on 3rd August, 1979, the Rule, after treating the same as on day's list for hearing, was disposed of in the manner as indicated hereinbefore. Since some clarifications were sought for the order dated 3rd August, 1979, the learned Trial Judge on the matter being mentioned, had passed an order for clarification of the order dated 3rd August, 1979 and further directed that the said Bank would determine and pay the

amount to the petitioner within six weeks from the date of the order as made and that apart, the petitioner was directed to take all steps that were required for the purpose for getting the money on receipt of the communication from the said Bank.

14. It would also appear from the records of the proceedings that as there were some difficulties in having the earlier orders implemented, on May 9, 1980, another application was filed by the petitioner, firstly, for a direction on the said Bank to pay to the petitioner the admitted amount under three cheques for Rs. 59,378.47 P together with interest as accrued thereon within a stipulated time, secondly, a direction on the Respondents to determine the total dues of the petitioner on account of service terminal benefits upto the date of cessation of his service in accordance with their letter dated March 23, 1978 whereby the said Bank had advised that in accordance with the decision of the Appellant Authority, the petitioner had ceased to be in Bank's service with immediate effect, within a fort night and to pay the same to the petitioner and thirdly, for a direction on the Respondents to calculate and pay the pension and other benefits relating thereof to the petitioner within a fortnight. In fact it was claimed all throughout and also before us that such calculations should have been made from October 10, 1973 to March 23, 1978 and not on the basis of calculations as indicated by the said Bank from 1969 to 1973. In the proceedings, the claims of the said Bank and that of the petitioner have been indicated and on the basis of the calculations of the said Bank the petitioner was entitled to a pension Rs. 702.12 P while on the basis of the claim of the petitioner the said amount would come to Rs. 750/- per month and, ultimately, on or about May 21, 1980, the petitioner filed a further application requiring the Respondents in the Rule to pay to him all the amounts including the provident fund money, gratuity, pension, bonus, encashment of leave, medical facilities, deduction of Rs. 450/- as extra rent and for payment of his full salary, which application was disposed of by the impugned order dated August 1, 1980. The first portion of the order, as stated before us by the learned Advocates of the parties, to the effect that the cheques amounting of Rs. 59,378.47 paise will be revalidated and drawn in favour of the petitioner within a fortnight and will be handed over to the learned Advocate for the petitioner, has been carried on. It has also been stated that the salary and the retirement benefits of the petitioner have been paid. But the dispute, for resolving whereof this appeal has been preferred, is against the other portion of the order whereby the learned Trial Judge has directed that the said Bank will calculate the dues of the petitioner from the period of October 10, 1973 to March 23, 1978 on the basis of 50% of his basic salary and if on that calculation any amount is found due to him, then a cheque for an amount along with the calculation should be handed over to the learned Advocate for the petitioner within four weeks from the date and the learned Trial Judge has also directed that irrespective of any Rule, in the facts and circumstances of the case, in calculating the pension of the petitioner within such period as mentioned above, the Rules should be taken into consideration and the petitioner's pension will be calculated at the rate of 50%

of his basic salary during that period.

15. Mr. Mallick, appearing for the appellant, firstly claimed that the payments as directed are not to be calculated at the rate of 50%, either on account of basic salary or pension and payment should be made at the rate of 100% instead of 50% and that too, from October 10, 1973 to March 23, 1978, since there is no stipulated Rules in the Imperial Bank of India Rules, by which the petitioner was governed, about payment of less than the monthly remuneration as subsistence allowance. Consequent to the above order being made, Mr. Mallick claimed that other reliefs would necessarily be at that rate and at a higher rate than what has been offered for payment to the petitioner. In support of his submissions that in case there is no specific Rule for payment of subsistence allowance at a rate less than the monthly remuneration of an employee, he would be entitled to subsistence allowance at the full rate and such being the position, the petitioner in the instant case was entitled to 100% subsistence allowance as the Imperial Bank of India Rules, which governed him, has not specified any such lesser rate of subsistence allowance. In support of his submissions Mr. Mallick referred to the case of Balvantray Ratilal Patel Vs. The State of Maharashtra, , where the question of payments during suspension of the appellant arose and what should be the basis of such payments came up for consideration and the Supreme Court has observed that the authority entitled to appoint the public servant is entitled to suspend him pending a departmental enquiry into his conduct or pending a criminal proceeding, which may eventually result in a departmental enquiry against him. But what amount should be paid to the public servant during such suspension will depend upon the provisions of the statute or statutory rule in that connection. If there is such a provision the payment during suspension will be in accordance therewith. But if there is no such provision, the public servant will be entitled to his full emoluments during the period of suspension. On general principles, therefore, the Government, like any other employer, would have a right to suspend a public servant in one or two ways. It may suspend any public servant pending departmental enquiry or pending criminal proceedings this may be called interim suspension. The Government may also proceed to hold a departmental enquiry and after his being found guilty, order suspension as a punishment if the rules so permit. This will be suspension as a penalty. The question as to what amount should be paid to the public servant during the period of 5 interim suspension or suspension as a punishment will depend upon the provisions of the statute or statutory rules made in that connection.

16. Mr. Mallick, on a reference to the Imperial Bank of India's Pension and Guarantee Fund Rules and Regulations, indicated that the absence of any lesser allowance than the actual remuneration drawn by the employee concerned during the period of his suspension, would entitle the petitioner in this case, as mentioned hereinbefore, to the payment of full remuneration as his subsistence allowance. To establish that the petitioner in this case, even after the coming into force of the State Bank of India Act and the Service Rules framed thereunder for supervising staff, Mr. Mallick pointed out that Rule 2(1) of the State Bank of India

(Supervising Staff) Service Rules would make it clear that they shall apply to all officers, staff officers and senior staff officers in the Bank other than the persons who were in service of the Bank on the 30th June, 1955, either as officer or assistant and as such, the said State Bank of India (Supervising staff) Service Rules, which has now indicated the rate of subsistence allowance to be paid to an employee, would not apply in the case of the petitioner who was admittedly in the service of the Bank on 30th June, 1955 and more particularly when he, on being asked, had exercised his option for being governed by the Imperial Bank of India Rules. It should be noted that Rule 52(2) of the State Bank of India Rules postulates that during suspension the employee shall receive subsistence allowance at half of his substantive salary and such other allowances as the suspending authority may decide. If the suspension was not followed by dismissal, the period spent under suspension shall be dealt with in such manner as the Executive Committee or the Local Board (in the case of officer Grade III serving in a Circle) may decide and the remuneration of the employee during that period adjusted accordingly. The respective amounts as offered and claimed by the parties, on account of pension payable to the petitioner and the difference of claims have been indicated hereinbefore. While on his submissions regarding the validity of the claim of the petitioner, Mr. Mallick also referred to the charts as filed by the said Bank and so also by the petitioner and claimed that the said Bank was under obligation to pay to the petitioner, higher amount on account of pension and as was claimed by him.

17. Dr. Banerjee, appearing for the Respondents, after placing the relevant pleadings, submitted that the writ petition itself in the instant case was not maintainable since the petitioner was governed by the Imperial Bank of India Rules as mentioned above, which were not statutory Rules. He also submitted that under Rule 11 of that Rules the retirement of all officers of the Bank shall be subject to the sanction of the Executive Committee of the Central Board. The retirement of all other employees of the Bank shall be subject to the sanction of the Executive Committee or the Local Board concerned with their employment. Any officer or other employee who shall leave the services without sanction as required by this Rule shall forfeit all claim upon the fund for pension. It was Dr. Banerjee's submissions that the validity or vires of Rule 11 has not been challenged and such challenge not having been made, the petitioner cannot succeed in this proceeding and more particularly when under that Rule he was required to have the necessary approval of the Executive Committee of the Central Board of the said Bank. The date of the superannuation of the petitioner was known to the Respondents and it is very difficult for us to follow, why an employee, who will be retiring on his appointed date, should approach the Executive Committee concerned for their sanction. Such approach by the employee concerned for necessary sanction of the Executive Committee may be necessary in case the employee opts to go out of employment or if he wants himself to be superannuated prematurely. Such being not the case here, we feel that there is no substance in the submissions of Dr. Banerjee that the petitioner

should have approached the Executive Committee of the Central Board of the said Bank for permission to retire and if such construction as asked for by Dr. Banerjee is given to the concerned Rule 11, that would not, in our view, be proper.

18. Mr. Mallick, while making his submission on the appeal, after placing the relevant dates and the documents, indicated that unnecessarily the petitioner has been kept in suspension for a long time and that too without any fault or any failure on his part. In fact he contended that the dragging of the disciplinary proceedings in this case was highly unfair, improper and not bonafide. In answer to those submissions, Dr. Banerjee referred to the sequences of events as indicated hereinbefore and for which the disciplinary proceedings was suspended. We feel that there is sufficient explanation given by the said Bank to have the disciplinary proceedings postponed and in fact, they, in our view, had justifiable reason to keep in abeyance the disciplinary proceedings during the pendency of the Civil Rule as mentioned hereinbefore or the proceedings before the Central Bureau of Investigation.

19. Dr. Banerjee, in support of his submissions, stated that either the Imperial Bank of India Rules or the State Bank of India Service Rules are not statutory Rules, and such being the position, the petitioner, as indicated earlier, would not be entitled to maintain the writ petition. In support of such submissions, reference was made by Dr. Banerjee firstly, to the case of K.L. Tripathi Vs. State Bank of India and Others, , where a point arose as to whether the employee of State Bank of India is a civil servant and secondly, whether the terms of Article 311 of the Constitution of India applies to him. In that case a further contention was raised regarding the power of the Central Board under Sections 43 and 50 of the State Bank of India Act, 1955 and the executive instruction u/s 43, if would be enforceable, apart from the contention whether the State Bank of India (Supervising Staff) Service Rules are statutory and as such, if enforceable under Article 226 of the Constitution of India, and in that case, it has been observed by the Division Bench of the Allahabad High Court that the Central Board has no power to frame statutory regulations in violation of the mandate of the legislature. It is open to the Central Board to issue administrative instructions u/s 43 which though binding on the Staff of the Bank cannot be enforced in a Court of law much less under Article 226 of the Constitution of India and the Central Board while framing regulations u/s 50 of the Act, acts in the exercise of delegated legislature power. The power to make subordinate legislation is derived from the enabling Act and it is fundamental that the delegate on whom the power is conferred has to act within the limits of authority conferred by Act. Further the delegate has to exercise the power of making subordinate legislation in accordance with the procedure prescribed, if any. The requirement u/s 50 of the State Bank of India Act is that the consultation with Reserve Bank and previous sanction of the Central Government is mandatory and as such the regulations to become effective must have the consultation with the Reserve Bank and the "previous sanction" of the Central Government apart from holding

that since State Bank of India (Supervising Staff) Service Rules have not been framed by the Central Board after consultation with the Reserve Bank and with the previous sanction of the Central Government, they have no statutory character. If a writ petitioner has failed to establish that the service rules are statutory, the petitioner is not entitled to any relief by means of the writ petition under Article 226 of Constitution. The petitioner has further stated that the Central Board cannot frame "statutory regulations" in the exercise of its general power of superintendence u/s 17 without following procedure laid down in Section 50 and Regulation 55 authorized the Local Board to exercise all powers of the State Bank in respect of the staff serving in the areas in its jurisdiction. By virtue of this regulation no authority has been conferred upon the Central Board to frame regulations and secondly, by referring to a Single Bench decision of this Court in the case of He serve Bank Employees Association v. Union of India and Ors. 1979 (1) Cal. L.J 513, on a reference to the case it would appear that it has been observed that the Reserve Bank issued an office order on 14th December 1976 regarding late attendance and reducing the grace time of attendance of the employees to 15 minutes. Prior to that on March 30, 1976 Personnel Officer of the Reserve Bank issued to all Managers and Heads of the Departments, a circular regarding late attendance of the employees. On April 6, 1976 a notice u/s 9A of the Industrial Disputes Act, 1947 was given by the Manager, Reserve Bank, Calcutta. R.B. Employees Association recorded their opposition to the said notice, conciliation proceedings were started but the proceedings failed. Thereafter on December 1, 1976 Ministry of Labour, Government of India issued an order stating that the Government did not consider the dispute fit for reference to an Industrial Tribunal because curtailment of concession allowed to the workmen does not amount to change in service condition of their workmen. R.B. Employees Association moved a writ petition challenging the R.B. office order dated 14th December 1976 as also the Government order dated December 1, 1976. Its contention is the R.B. circular amounted to a change in the conditions of service of the employees, that such a change could not be brought by an office circular. Such a change to be a valid one could only be effected by framing regulation u/s 58(2)(j) of the Reserve Bank of India Act, 1934 otherwise it is invalid and of no effect. As regards the Government order, the petitioner contended that the dispute raised by virtue of the office order was an industrial dispute within the meaning of Section 2(k) of the Industrial Disputes Act, 1947 and it was obligatory on the part of the Government of India to refer it to an Industrial Tribunal for adjudication u/s 10. Respondent contends that Section 58(2)(j) is only concerned with staff funds and superannuation funds and does not empower the Bank to frame any Rules and Regulations concerning the conditions of service of its staff, that Regulations have not been framed in exercise of any statutory power under the Act and that contractual obligations cannot be enforced in the writ jurisdiction and the learned Judge on such facts has observed that Section 58 Sub-section (2), Clause (j) of the Reserve Bank of India Act, 1934 is only confined to the staff funds and superannuation funds and has nothing whatsoever to do with the recruitment or conditions of service of the

staff or employees of the Bank, apart from holding that if a statutory body is acting in a private and contractual capacity, the reliefs under the writ jurisdiction cannot be attracted. The Reserve Bank of India (Staff) Regulations, 1948 has no statutory force. These are merely certain contractual obligations sought to be imposed by the employer on the employees which have been accepted by the employees in the form of declarations. In view of Desai Award and the Aijar Award the bank is fully competent to take a unilateral decision as to when the working hours would commence and how long after the commencement would the employees be entitled to attend office. The non-acceptance of these terms by the employees does not make any difference to its binding character. The office order cannot be challenged in the writ jurisdiction in any event and in view of the provisions of Section 9A read with the Second and Fourth Schedules of the Industrial Disputes Act, 1947 the withdrawal of a customary concession is a change in the condition of service of the workmen which is clearly an industrial dispute within the meaning of Section 2(k) of the Industrial Disputes Act, 1947. The concession which admittedly existed since the very inception of the Bank of allowing its employees to be late up to 12 noon on two days in a month is clearly a customary concession. As such, in refusing to make the reference u/s 10 of the Industrial Disputes Act, the Union Government was clearly erroneous in law in holding that it was not a change in the condition of service of the workmen. In view of the determinations as mentioned above. Dr. Banerjee wanted to supplement his submissions that the application for appropriate writ or writs in this case was not maintainable, since the Regulations of the Imperial Bank of India had no statutory force or character.

20. Mr. Deb, who was assisting Mr. Mallick, in reply stated that in view of the fact that on consent the Rule was made absolute so far prayer "(a)" was concerned, the submission as made by Dr. Banerjee would be hit by-res judicata or principles analogous thereto. He further submitted that in view of the two orders dated 3rd August, 1979 and August 23, 1979, such claim of maintainability, as has been put forward by Dr. Banerjee, would not be available to the answering Respondents.

21. The said Bank, in terms of the State Bank of India Act, 1955, which came into effect and force on May 8, 1955 was constituted, for the purpose of having to the same, the undertaking of Imperial Bank of India transferred and also to provide for other matters connected therewith or incidental thereon and further, the Act of 1955 was brought into force, as it was felt that for the extension of banking facilities on a large scale, more particularly in the rural and semi-urban areas, and for diverse other public purpose, it was expedient to constitute the same and to transfer to it, the undertaking of Imperial Bank of India as indicated hereinbefore. On a further reference to Section 3 of that Act and its sub-sections, it would appear that the said Bank was constituted to carry on the business of the banking and other business in accordance with the provisions of the Act of 1955 and for the purpose of taking over the undertaking of the Imperial Bank. It would also appear from Sub-section (2) of Section 3 that the Reserve Bank,

together with such persons as may from time to time become shareholders in the said Bank in accordance with the provisions of the Act, shall, so long as they are shareholders in the said Bank, constitute a body corporate with perpetual succession and a common seal under the name of the said Bank and shall sue and be sued in that name and furthermore, as indicated by Section 3(3), the said Bank shall have power to acquire and hold property, whether movable and immovable, for the purpose for which the same is constituted and to dispose of the same. It would also appear from a reference to Section 6 of the Act, 1955 that by the same, assets and liabilities of the Imperial Bank of India have been transferred to the said Bank. Section 7 makes provisions for transfer of services of existing officers and employees of the Imperial Bank of India to the said Bank, who were in the service of the Imperial Bank immediately before the appointed day i.e. May 8, 1955. In fact, those officers, on and from the appointed day, became officers or other employees, as the case may be, of the said Bank and on that score they were and are entitled to hold their offices or services on the basis of their tenure and on the same remuneration and upon the same terms and conditions and with the same rights and privileges as to pension, gratuity and other matters to which they were entitled on the appointed day, if the undertaking of the Imperial Bank had not vested in the said Bank, and would continue to do so unless and until their employment in the said Bank is terminated or until their remuneration, terms or conditions are duly altered by the said Bank. The provisions of Section 7 also make it clear that any person who, on the appointed day, was entitled or was in receipt of his pension and other superannuation benefits or compassionate allowance or benefits from the Imperial Bank or any provident fund, pension or other funds or any authority administering such funds, would be entitled to be paid by, and to receive from, the said Bank the provident fund, pension or other funds or any authority administering such funds, the same pension, allowance or benefits so long as they observe the conditions on which the pension, allowance or benefits were granted and if any question arose as to whether the employee has observed such conditions, the same shall be determined by the Central Government and the decision of the Central Government thereon shall be final.

22. On a further reference to Section 16 of the 1955 Act, it would appear that unless otherwise provided by the Central Government, by notification in the Official Gazette, Central Office of the said Bank shall be at Bombay and in terms of Section 2(b) of the Act, "Central Board" means the Central Board of Directors of the said Bank. The said Central Board, in terms of Section 17 will have the general superintendence and directions over the affairs and business of the said Bank, who may also exercise all powers and do all such acts and things as may be exercised or done by the said Bank and not, by the Act, expressly directed or required to be done by the said Bank in a General Meeting and such Board, in discharging their functions, shall act on business principles, regard being had to the public interest. Section 18 postulates that Central Board is to be guided by the directions of the Central Government and in fact, they would be guided by

such directions in the matters of policy involving public interest, which the Central Government may, in consultation with the Governor of the Reserve Bank, and the Chairman of the said Bank, give to it and all directions by the Central Government, are required to be given through the Reserve Bank and, if any question arises as to whether a direction relates to a matter of policy involving public interest, the decision of the Central Government thereon shall be final. The composition of the Central Board has been indicated in Section 19 of the 1955 Act and there also, one would find that not more than two Managing Directors, if any, of the Central Board must be appointed by the Central Board with the approval of the Central Government. It would also appear that the Chairman and the Vice-Chairman of the Central Board shall hold office for such terms, not exceeding five years as the Central Government may fix, when appointing them and they shall be eligible for reappointment. We further find that even in respect of Local Boards, which are required to be constituted at places where the said Bank has a Local office, the Central Government, in terms of Section 21(c) is authorized to nominate six members of such Board, in consultation with the Reserve Bank. Apart from the above, it should be noted that on the question of the removal from office of the Directors, the Central Government has also a part to play and in fact, they may, after consulting with the Reserve Bank, remove from office, the Chairman or the Vice-Chairman and again the Central Board may, with the approval of the Central Government, remove a Managing Director. Apart from the above, the Central Government, after consulting with the Reserve Bank, may also remove from office, any Director nominated under Sub-section (d) of Section 19(1) of the 1955 Act, or any member of a Local Board, nominated u/s 21(1)(c) of that Act and nominate in the place, another person, to fill up the vacancy. The Central Government, in terms of Section 25 of the. 1955 Act, has also a part to play in case of casual vacancies of Chairman, Vice-Chairman and Managing Director of the said Bank and they may, in the case of the Chairman or the Vice-Chairman, in consultation with the Reserve Bank and after considering the recommendations of the Central Board, appoint any persons to officiate in the concerned vacancy.

23. Apart from the above. Section 27 of the 1955 Act would also establish that the Central Government has also a large role to play over the remuneration of the Chairman and in fact, he shall receive such salaries, fees, allowances and perquisites as may be determined by the Central Board with the approval of the Central Government and it has further been provided that in respect of the first Chairman, the Central Government may determine his salaries, fees, allowances and perquisites. On the question of the remuneration of Vice-Chairman, the Central Government has also a part to play and the provisions are more or less akin to those which are applicable in the case of Chairman, the particulars whereof have been indicated hereinbefore. Similarly, u/s 29, the Central Government has also a role to play in the case of fixation of remuneration and allowance payable to the Managing Director.

24. The said Bank is required to act as an agent of the Reserve Bank of India and

for such acting, Sub-clause (3) of Section 32 of the 1955 Act makes it clear that the Central Government has a positive role to play in respect of other business, which the said Bank may transact and in many cases their approval is necessary. Such approval of the Central Government is also required in case of sanction of any advances or loans under any law for the time being in force and which is given by the Central Board of the said Bank and Sub-clause (xa) of Section 33(a) of the 1955 Act, would also establish that in some cases, the said Bank acts as an agent of the Central Government or State Government or Corporations, in implementing some schemes and for such implementation, the approval of the Central Government is necessary. Such approval of the Central Government is also necessary and to be obtained by the said Bank in case of subscribing, buying, holding or selling of any shares or debentures of any such financial institutions as may be notified by the Central Government in that behalf and also in connection with the carrying out of any other kind of business, which the Central Government, in consultation with the Reserve Bank and on the recommendation of the Central Board, may authorize. It would further appear that the said Bank, in terms of Section 35 of the 1955 Act, may acquire the business of other Banks, with the sanction of the Central Government, and shall, if so directed by the Central Government in consultation with the Reserve Bank, enter into negotiations for acquiring the business, including the assets and liabilities, of any banking institutions and all approval, even if by the Reserve Bank, shall be submitted to the Central Government for their sanction and they, by order in writing, may accord the necessary sanction. Section 35 also points out the other necessary controls of the Central Government on the said Bank or its activities and they have also some control, however remote they may be, over the funds, accounts and audits of the said Bank and it would also appear that without the order by the Central Government, the said Bank cannot be placed in liquidation and such liquidation, with the necessary approval of the Central Government, may be given effect to in such a manner as the Central Government may direct. Apart from the above, Section 49 of the 1955 Act makes it clear that the Central Government has power to make rules in respect of the items as specified therein and Section 50(1)(o) makes it clear that the establishment, maintenance or superannuation, pension, provident fund or other funds for the benefit of the employees of the said Bank or the dependents of such employees or for the purpose of the said Bank, and in granting superannuation allowance, annuities and pension payable out of any such funds, the Central Board of the said Bank may, after consulting with the Reserve Bank and with the previous sanction of the Central Government, may act.

25. On the basis of the provisions as indicated hereinbefore, the Central Government has thus, amongst others, some control and supervision over those matters as indicated and such being the position, it may be indicated that the said Bank, even on application of the principles as indicated in the case of Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, and the earlier determinations in Sukhdev Singh, Oil and

Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation, , would be an Authority or an Instrumentality of the Government, if not a State under Article 12 of the Constitution of India or in terms of that Article. Such being the position, fairness in action of or by the said Bank is expected and not only they, but the Rules as framed for the purpose of controlling the terms of service and conditions of employment of their employees, should not be arbitrary. We have indicated earlier that under or in terms of the State Bank of India (Supervising Staff) Service Rules and more particularly under Rule 52(2), an employee of the said Bank, after coming into force of those Rules would be entitled to a specified amount of subsistence allowance and Rule 2(1) makes it clear that the provisions of that Rule will not be applicable to the employees who were in the services of the said Bank on June 30, 1955. The authorities of the said Bank were aware of this position and as such, they had admittedly asked for an option from the petitioner, whose services stood transferred from the Imperial Bank of India to the said Bank and more particularly when the option was to the effect that he would like to be governed by the Imperial Bank of India's Rules or would not like to come under the purview of the State Bank of India's Rules as mentioned above. Such option was asked from the petitioner and in fact, he has duly exercised his option to be governed by the Imperial Bank of India Rules and it was his case that in terms of Rule 2(1) as mentioned above, the State Bank of India's Rules had no application in his case. The above averments have of course been sought to be denied by the answering Respondents. But, we feel that their denial was not due and specific and in fact on the basis of their statements as contained in the affidavit-in-opposition, it would appear that such option was really asked for from the petitioner by the Bank, but they have stated that the appellant petitioner did not exercise his option duly. Such case of the answering Respondents as appeared from the records as produced and on the averments, was not true, due and proper. The appellant petitioner in our view and that too on the basis of the records as produced, duly opted for being governed by the Imperial Bank of India's rules and since in those Rules, there has been no provision for lesser subsistence allowance than the remuneration to be drawn by the employee concerned or to be paid to him during the period of his suspension, we feel that in terms of the determinations in the case of Balavantarai Ratilal Patel v. State of Maharashtra (supra), if the writ application is held to be maintainable, then the said Bank should pay to the appellant petitioner his full remuneration as subsistence allowance, which is to be calculated from October 10, 1973 to March 23, 1978 i.e. from the date of his suspension to the date of his retirement.

26. Let us now see whether the writ application is maintainable. As indicated earlier, we also observe that in terms of the determinations as cited, the said Bank is an "Authority" or an "Instrumentality" of the Government, if not a State under Article 12 of the Constitution of India and such being the position and

more particularly when the appellant petitioner, after coming into force of the said Bank, opted, on asking, to be governed by the erstwhile Imperial Bank of India's Rules and when, even though appointed by the Imperial Bank of India, he continued to be an employee under the said Bank, who had taken up all assets and liabilities of the Imperial Bank of India including their employees, he should be paid full subsistence allowance during the period of the suspension as the Imperial Bank of India Rules are silent on the point of the rate at which subsistence allowance is to be paid and more particularly when the same has made no provisions for lesser subsistence allowance to be paid than the remuneration of the employee concerned. The said Bank, as appears, is, and is admittedly, a statutory body and as such, the employees under their services can claim their services to be in the nature of public employment and they would thus certainly be entitled to invoke the principles of natural justice, which means, amongst others, fairness of action and dealings. The Rules as framed by the State Bank of India or those by the Imperial Bank of India, for procedural fairness in the matter of payment of pension and other funds, even if have no statutory force, will be binding in terms of the decision of the Supreme Court in the case of B.S. Minhas Vs. Indian Statistical Institute and Others, .

27. The other submission of Mr. Deb as indicated hereinbefore, may also be of substance and it is difficult to hold that the answering Respondents, having allowed the Rule to be made absolute in terms of prayer (a), would be entitled to argue and maintain their points, as sought to be urged now.

28. Such being the position, we uphold the contentions of Mr. Mallick and reject those of Dr. Banerjee and as such, this Appeal is allowed on our holding that the petition was maintainable. There will be no order as to costs.

29. It must also be noted that Mr. Mallick tiled a list of terminal service benefits which according to him, were and are payable to the appellant petitioner. We direct the said list to be kept in the record and make no definite order on the same, as we feel, that if as a result of this order, the appellant petitioner is required to be paid in accordance with law, that may include those terminal benefits. As indicated earlier, we make it clear and restate that we have not made any firm decision on that aspect. Stay as asked for is refused.

Dalip Kumar Basu, J.

30. I agree.