
(2003) 04 P&H CK 0042
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petitoin No. 5613 of 1986

Amrik Singh Bains

APPELLANT

Vs

The Bank of India and Another

RESPONDENT

Date of Decision : 09-04-2003

Acts Referred:

Bank of India (Officers Service) Regulations, 1979 — Regulation 19
Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 — Section 19(3)
Constitution of India, 1950 — Article 14, 16

Citation : (2003) 3 LLJ 386 : (2003) 134 PLR 417 : (2003) 3 RCR(Civil) 93

Hon'ble Judges : S.S. Nijjar, J

Bench : Single Bench

Advocate : Ravi Kapoor, for the Appellant; L.M. Suri and Neeraj Khanna, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Nijjar, J.—Culled out from the pleadings of the parties, the undisputed facts are that the petitioner was a permanent employee in the Cooperative Department of the Punjab Government, when he was taken on deputation with the respondents-Bank of India on 27.9.1969. He was permanently absorbed in the service of the respondents-Bank w.e.f. 14.11.1972. In the Cooperative Department of Punjab (hereinafter referred to as the parent department) the date of retirement of the petitioner would be 58 years of age. The respondents-Bank was nationalised under the provisions of Section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (Act No. 5 of 1970). This Act came into force w.e.f. 19.7.1969. On the eve of nationalisation, the age of retirement of Officers in the respondents-Bank was 60 years u/s 19(3) of the Act, the service conditions of the Officers prior to the coming into operation of the Act were protected. After nationalisation, the respondents-Bank framed Bank of India (Officers) Service Regulation, 1979 in exercise of the powers u/s 19 of the Act (hereinafter referred to as "the Regulations").

Regulation 19 provided as under:-

"Regulation 19: Age of retirements

(1) The age of retirement of an officer employee shall be determined by the Board in accordance with the Guidelines issued by the Government from time to time:

xx xx xx xx xx xx xx

Explanation.-

The age of retirement of an officer in the Bank shall be determined in accordance with the following:

(1) An officer employee of the Bank recruited/promoted prior to 19th July, 1969 shall retire on completion of the 60 years of age.

(2) An officer employee of the Bank recruited prior to 19th July, 1969 but promoted as arc officer on or after 19th July, 1969 shall retire on completion of 60 years of age.

(3) An Officer employee of the Bank recruited whether as an Award staff or as an Officer employee on or after 19th July, 1969 shall retire on completion of 58 years of age."

2. The regulations provide two ages of retirement for the Officers of the Bank. For the Officers recruited or promoted prior to 19.7.1969, the age of retirement has been fixed at 60 years. For Officer recruited whether as an Award Staff or as an Officer employee on or after 19.7.1969, the age of retirement has been fixed at 58 years. The petitioner accepted the terms and conditions of absorption as contained in the letter of the respondents dated 14.11.1972. He had made a request that since he might have to forego his pension/retirement benefits, he should be given a suitable higher basic pay than Rs. 800-820 per month which was being paid to him at that time. This request was rejected with the observations that instead of being given, his pay drawn by him in the parent department, he had been given the benefits of bank's scale of pay with effect from the date he reported to the respondents and his increments were also regulated in terms of bank's scale of pay for Officers. Furthermore, he was given the benefit of the revised scales of pay of Offices w.e.f. 1.1.1970 for all intents and purposes. Therefore, he was drawing a salary in the scale of pay which was admissible to the regular Officers of the Bank. As noticed earlier, the petitioner accepted the terms of absorption as contained in the aforesaid letter. The petitioner alongwith other employees was given an option in respect of the new scales of pay i.e. either to continue in the old scale or to adopt new scale of pay. This was done after nationalisation of the Bank to achieve uniformity in the pay structure and service conditions of different banks and to improve the emoluments of Bank employees at the initiative of the Central Government. This option was given to the petitioner on 7.7.1990. The petitioner had exercised the

option to be governed by the new regulations. The petitioner reached the age of superannuation on 1.11.1986. On 1.5.1986, he addressed a letter to respondent No. 1 for correction of date of joining in the service record. He pointed out that in the service record, his date of joining with the respondents-Bank was shown as 27.5.1972. In fact he had joined the service on 27.5.1969. This representation of the petitioner was rejected by order dated 24.7.1986. He was informed that the date of his joining the Bank will remain as 27.5.1972. Earlier by letter dated 15.5.1986, respondent No. 1 had already advised the petitioner that he will retire from the Bank Service w.e.f. 1.11.1986. He was directed to complete the formalities for payment of gratuity and, provident fund. His claim having been rejected, the petitioner filed the present writ petition.

3. Learned counsel for the petitioner, on the basis of the pleadings continued in the writ petition has submitted that regulation 19 is ultra vires Articles 14 and 16 of the Constitution of India as it creates an invidious discrimination in the cadre of Officers of the Bank. Officers in service of the Bank before 19.7.1969 are permitted to retire at the age of 60 years whereas those recruited after 19.7.1969 have to retire at the age of 58 years. In support of the aforesaid submission, learned counsel has relied on the judgment rendered in the case of Railway Board Vs. A. Pitchumani, . Learned counsel further submitted that even if the regulations are held to be not discriminatory, they could not be given retrospective effect and take away the accrued right of the petitioner. In support of this submission, the learned counsel relied on the judgment of the Supreme Court in the cases of Hukam Chand etc. Vs. Union of India (UOI) and Others, and T.R. Kapur and Others Vs. State of Haryana and Others, . Learned counsel then submitted that the respondents have wrongly decided that the date of absorption of the petitioner is 25.7,1972 as he had been continuously working in the respondents-Bank from 27.5.1969. The petitioner had been enjoying all the benefits of Bank employee including the pay scale from 27.5.1969. Therefore, for all intents and purposes he had become an employee of the respondents-Bank from the date he came on deputation i.e. 27.5.1969. In support of this submission, learned counsel relied on the judgment of the Supreme Court in the case of S.I. Rooplal and Anr. v. Lt. Governor, AIR 2000 Supreme Court 594.

4. Mr. Suri, learned Sr. counsel appearing for the respondents-Bank, on the basis of the averments made in the written statement submitted that the petitioners' date of absorption in the respondents-bank cannot be earlier to 27.5.1972. When he came on deputation, the petitioner was asked to give an option as to whether he intends to continue in the pay scale of his parent department plus deputation allowances or did he wish to be given the pay scale of regular officers of the respondents-Bank. This option was given to the petitioner by the Bank for the welfare of the petitioner. The respondents-Bank was under no legal duty to put the petitioner in the scale of pay enjoyed by the regular offices of the Bank. It has also been submitted that till his absorption in the Bank, the petitioner continued to be an employee of the Punjab Government. He having been absorbed on 27.5.1972, would retire at the age of 58 years under Regulation 19.

Learned Sr. Counsel further submitted that vires of regulations such as regulation 19 have already been upheld in the case of Life Insurance Corporation of India and Others Vs. S.S. Srivastava and Others, . In support of this submission, he also relies on the judgment of the Supreme Court in the case of B.S. Yadav and Anr. v. Chief Manager, Central Bank of India and Ors. (1987)3 S C 120. Identical regulation framed by the Central Bank of India has also been upheld. Therefore, the issue raised by the petitioner with regard to the vires of the regulation 19 is no longer res integra. Learned Sr. Counsel further submits that the petitioner has not come to Courts with clean hands. For 14 years, he had accepted his date of absorption in the respondents-Bank as 27.5.1972. He had also accepted new pay scales under the new regulations. He had accepted the decisions of the respondents-Bank not to give him higher initial start than he was already enjoying in the Bank. According to the learned Sr. Counsel, the present writ petition is an abuse of the process of the Court.

5. I have considered the submissions made by the learned counsel for the parties.

6. Mr. Suri is absolutely correct in his submission that after the decision of the Supreme Court in the case of B.S. Yadav (supra). Regulation 19 is not open to challenge on the ground that it creates any discrimination with regard to the age of retirement of the Officers of the Bank. In the aforesaid case, the Supreme Court was considering the provisions of this very Act and regulation 19 framed under the same Act for the employees/Officers of the Central Bank of India, the Supreme Court observed as follows:-

"14. On the Regulations coming into force in 1979 petitioner I was served with a notice dated February 25, 1980 issued by the Chief Manager of the Bank stating that he would be treated as finally retired from the Bank's service after the close of business on February 19, 1980 on completion of 58 years of age. The above writ petitions were filed in April 1980 questioning the order of retirement issued in the case of petitioner I and praying inter alia for a declaration, as mentioned above, that all officers including petitioner I should be permitted to continue in service till the completion of 60 years of age as in the case of officers falling under Rules 1 and 2 of the Rules for Age of Retirement. The principal grounds urged in support of the writ petitions were that there could not be two different ages of retirement in the case of officers of the Bank and that since Rule 3 of the Rules for Age of Retirement required the officers, who were recruited subsequent to July 19, 1969, to retire on completion of 58 years of age while others falling under Rules 1 and 2 of the said Rules could continue till 60 years of age. Rule 3 was liable to be struck down as being violative of Articles 14 and 16 of the Constitution. The petitions were opposed by the Bank and the Union of India. It was pleaded by them that since the employees whose services were transferred to the Bank under Sub-section (2) of Section 12 of the Act were entitled to continue in service till 60 years of age by virtue of the conditions of service prevailing in the Central Bank of India Ltd. prior to nationalisation of banks, the Bank and the government found that it would be unjust and unfair to reduce the

age of superannuation from 60 years in the case of such employees and, therefore, did not alter the said condition of service. In the absence of any alteration they were entitled to continue to be in service till they attained 60 years of age even after nationalization by virtue of Sub-section (2) of Section 112 of the Act. The officers and employees other than (sic including) the award staff recruited after the nationalisation of the banks were required to retire on completion of 58 years of age which was the age of superannuation generally prevailing in the services of all public sector corporations, Central Government and many of the State Governments. It was urged that since the employees recruited prior to July 19, 1969 belonged to a different class altogether it . could not be said that there had been violation of Articles 14 and 16 of the Constitution, and the difference in the ages of retirement of the two classes of officers was due to historical reasons.

16. We have given detailed reasons in our judgment in *L.I.C. v. S.S. Srivastava* decided on May 5, 1987 justifying the existence of a rule fixing different ages of retirement to different classes of employees of the Life Insurance Corporation of India in the circumstances existing there. The circumstances prevailing in this case are almost the same. Those reasons are equally applicable to the present case too...."

7. In the case of *LIC (supra)*, the Supreme Court was considering the amendments in Regulation 19(2) (as amended on 21.1.1977) of the Life Insurance Corporation of India (Staff) Regulations (1960) introducing two different ages of retirement. The Supreme Court upheld the regulations providing two different ages of retirement.

8. I, therefore, find no merits in the submission made by the learned counsel for the petitioner to the effect that regulation 19 is violative of Articles 14 and 16 of the Constitution of India. There is also no merit in the submission of the learned counsel for the petitioner to the effect that he is entitled to be treated as having been absorbed in the respondents-Bank on permanent basis w.e.f. 27.5.1969. The respondents have stated in the written statement that the resignation of the petitioner from the Punjab Government was accepted w.e.f. fore-noon on 27.5.1972. Copy of the order of the Punjab Government accepting the resignation of the petitioner has been attached to the written statement as Annexure R-2. It is also a settled proposition of law that an employee can have permanent lien on one post only. The petitioner did not lose his lien in the Punjab Government, till his resignation was accepted. Therefore, he could not have been absorbed by the respondents-Bank earlier to the date he was actually absorbed. The petitioner was merely on deputation. The respondents could not have even initiated any disciplinary proceedings against the petitioner without the consultation of his parent department by virtue of regulation 16 of the Discipline and Appeal Regulations 1976 of the Bank. That being so, I do not find any merit in the submission made by the learned counsel for the petitioner to the effect that he is deemed to have been absorbed with the respondents-Bank w.e.f.

27.5.1969. The judgments relied upon by the learned counsel in support of his submission that the regulations could not have retrospectively affected the conditions of the service of the petitioner are not applicable to the facts and circumstances of the present case. The petitioner was clearly governed by the provisions of Regulation 19. His date of retirement had been correctly determined in accordance with Regulation 19. The judgment referred to by the petitioner in the case of S.I. Rooplal (supra.) has no relevance in the facts and circumstances of the present case. In fact it has no relevance even to the questions of law raised in the present proceedings. The Supreme Court in the aforesaid case was considering the question as to whether a Sub Inspector who was appointed as such in the Border Security Force when transferred on deputation to Delhi Police in the cadre of Sub Inspector (Executive) on being permanently absorbed in the transferred post, is entitled to count his substantive service as Sub Inspector in the B\$F for the purpose of his seniority in the Cadre of Sub Inspector (Executive) in Delhi Police or not. As noticed above, the question of law raised in the present proceedings has nothing to do with the seniority of the petitioner.

9. For the reasons mentioned above, I find no merit in the writ petition and the same is hereby dismissed. No costs.