

(1999) 08 KAR CK 0017
In the Karnataka High Court
Case No : Writ Petition No. 30323 of 1996

B. Vittal Pai

APPELLANT

Vs

Syndicate Bank, Manipal

RESPONDENT

Date of Decision : 22-08-1999

Acts Referred:

Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970 — Section 12, 19 (2)

Syndicate Bank Officers Service Regulations, 1979 — Regulation 19 (1), 26

Citation : (2000) ILR (Kar) 306 : (2000) 2 KarLJ 109 : (2000) 1 KCCR 84

Hon'ble Judges : P. Vishwanatha Shetty, J

Bench : Single Bench

Advocate : Sri P.S. Rajagopal, for the Appellant; Sri S. Ramadas, Senior Advocate, for the Respondent

Judgement

1. The petitioner, in this petition, is a former Assistant General Manager of the respondent-Syndicate Bank (hereinafter referred to as "the Bank").

2. The facts of this case are few and are not in dispute. They may be stated as hereunder:

(a) The petitioner, who was originally employed in the Canara Banking Corporation Limited, now known as Corporation Bank, as an officer, was appointed in the Executive Grade by the respondent-Bank, by means of its order dated 1st of April, 1969. The petitioner was born on 30th of September, 1932. The age of retirement of an employee of the Bank till May 1998, was 58 years. Therefore, as per the service conditions of the Bank by which the petitioner was governed, the petitioner was to attain the age of superannuation on 12th of September, 1990, but in terms of the Explanation given to Regulation 19(1) of the Syndicate Bank Officers' Service Regulations, 1979 (hereinafter referred to as "the Service Regulations"), the petitioner was to retire from service and relinquish his office only on 30th of September, 1990 being the end of the month.

(b) However, by means of order dated 26th of September, 1990, a copy of which

has been produced as Annexure-D, the petitioner was kept under suspension and retained in service for the purpose of enquiry proposed to be held against him on account of certain charges of misconduct levelled against him. It is useful to extract the relevant portion of the said order, which reads as hereunder:

"Now, therefore, the undersigned in exercise of the powers conferred upon him under the said regulations hereby places Sri B. Vittal Pai under suspension with immediate effect. It is further ordered that Sri B. Vittal Pai shall not retire or be permitted to retire on his reaching the date of superannuation but shall be retained in the services until the enquiry into the charges/criminal offences is concluded and a final order is passed thereon by the Competent Authority.

During the period of suspension, Sri B. Vittal Pai will be paid subsistence allowance in terms of Regulation 14 of Syndicate Bank Officer Employees" (Discipline and Appeal) Regulations, 1976 upto 30-9-1990. However, he is not entitled to any subsistence allowance in terms of Regulation 14.4 of the said Regulations, thereafter".

However, on the basis of the enquiry held against the petitioner, order dated 16th of June, 1995, a copy of which has been produced as Annexure-H, came to be passed wherein the petitioner was found guilty of contributory negligence resulting in breach of Regulation 3(1) read with Regulation 24 of the Syndicate Bank Officer Employees" (Conduct) Regulations. 1976, and, therefore, punishment by way of reduction of his Basic Pay by one stage was awarded. Further, a sum of Rs. 1,00,000/-being part of the pecuniary loss caused to the Bank due to the negligence on the part of the petitioner, was ordered to be recovered from the amount as may be due to him.

(c) The appeal filed by the petitioner challenging the said order having been dismissed, the petitioner has challenged the said order in Writ Petition No. 4513 of 1998 before this Court and the said petition is still pending consideration. Subsequent to the order Annexure-H passed by the Bank against the petitioner the Bank had passed another order dated 14th of July, 1995, a copy of which has been produced as Annexure-J, retiring the petitioner from service with effect from 30th of September, 1990. In the said order Annexure-J, the petitioner was also informed that consequent upon the reduction of pay-scale, his reduced pay was fixed at Rs. 5,350/- per month in the time scale of pay and a sum of Rs. 1,00,000-00 the petitioner was made liable to pay to the Bank towards the loss caused to the Bank, would be recovered from the terminal benefits payable to the petitioner.

(d) Aggrieved by order Annexure-J notifying that the petitioner has retired from service with effect from 30th of September, 1990, the petitioner preferred an appeal to the Chairman and Managing Director of the Bank and the said appeal came to be rejected by the General Manager of the Bank by his communication dated 31st of October, 1995, a copy of which has been produced as Annexure-L. Thereafter, the petitioner gave another representation to the General Manager of

the Bank on 31st of May, 1996 requesting the Bank to give him the benefit of 12 years of past service in Canara Banking Corporation as qualifying service and also to add the period of service from 1-10-1992 to 14-6-1995 as qualifying service for the purpose of his monetary retirement benefits. The said request made by the petitioner was turned down by the General Manager of the Bank by his communication dated 30th of August, 1996, a copy of which has been produced as Annexure-Q.

(e) However, during the pendency of disciplinary proceedings, since the petitioner was not paid subsistence allowance, the petitioner had approached this Court seeking for a direction to the Bank to pay the subsistence allowance. This Court, by its order dated 11th of August, 1993 made in Writ Petition No. 39667 of 1993, directed the respondent-Bank to pay the subsistence allowance to the petitioner from 1-10-1990 upto the date of termination of the disciplinary proceedings. It is useful to extract the relevant portion of the direction given by this Court in the order made in the said petition, which reads as hereunder:

"Under these circumstances, the first respondent is directed to pay subsistence allowance to the petitioner from 1-10-1990 upto the date of termination of disciplinary proceedings initiated against him. Four weeks" time is granted to the respondent to comply with this order".

Pursuant to the direction given by this Court, it is not in dispute that the petitioner was paid subsistence allowance from 1st of October, 1990 till the termination of the disciplinary proceeding as per order Annexure-H.

3. In this petition, the petitioner has called in question the correctness of the order Annexure-J, dated 14th of July, 1995 wherein the said order insofar as it relates to the direction retiring the petitioner from service with effect from 30th of September, 1990 and also orders Annexure-L, dated 31st of October, 1995 and Annexure-Q, dated 30th of August, 1996 wherein the request of the petitioner to treat the period of service from 1st of October, 1990 till 14th of June, 1995 and the past service of 12 years put in by the petitioner in the Canara Banking Corporation, came to be rejected by the Chairman and Managing Director of the Bank. The petitioner has also prayed for a direction to give the benefit of five years of qualifying service for the purpose of pension in terms of Syndicate Bank (Employees) Pension Regulations, 1995 (hereinafter referred to as "the Pension Regulations"), if necessary by declaring the second and third provisos given to Regulation 26 of the Pension Regulations as null and void. However, during the hearing of this petition, Sri P.S. Rajagopal, learned Counsel for the petitioner, submitted that the petitioner will not press his prayer for a direction to the Bank to consider his service from 3rd of August, 1956 to 30th of April, 1969 rendered by him in Canara Banking Corporation for the purpose of pension. He has also filed a memo on 16th of December, 1998 stating that the petitioner does not press his prayer (d) wherein he had sought for a direction to the Bank for payment of revised subsistence allowance with effect from 1st of July, 1993 and also revised gratuity and leave salary on the basis of revised

salary and allowance in terms of Circular dated 19th of July, 1995. He submitted that the petitioner may be reserved liberty to seek the said prayer in a separate writ petition. Accordingly, the petitioner was permitted to delete prayer (d) with liberty reserved to the petitioner, if he is so advised, to challenge the same by means of a separate writ petition.

4. Sri P.S. Rajagopal, learned Counsel appearing for the petitioner, in support of the relief sought by the petitioner, made three submissions. Firstly, he submitted that since the petitioner was kept under suspension on 26th of September, 1990 and he was continued in service till 16th of June, 1995, the said period of service is required to be taken into account for the purpose of considering the qualifying service put in by the petitioner for reckoning the pension payable to him. Elaborating this submission, he pointed out that when the petitioner was retained in service till 16th of June, 1995, it is not permissible for the Bank to pass order Annexure-J notifying that the petitioner is deemed to have retired from service with effect from 30th of September, 1990. Secondly, he submitted that since, in the absence of any order made by the Disciplinary Authority imposing punishment on him that the period of suspension should not be taken into account for the purpose of qualifying service, the period of service cannot be denied to him for determining the qualifying service of the petitioner in terms of Regulation 21 of the Pension Regulations. According to Sri Rajagopal, the Pension Regulations introduced by the Bank on 29th of September, 1995, which was communicated to the staff of the Bank by means of communication dated 4th of November, 1995, having been made retrospectively applicable extending the benefit to the employees of the Bank, who have retired on or after 1st of January, 1986, the petitioner cannot be denied of the benefit of the pension for the period from 1st October, 1990 to 16th of June, 1995. It is his submission that the pension having been earned by an employee, the employee cannot be deprived of the same except by way of penalty imposed for proved misconduct committed by an employee. Thirdly, he submitted that since the petitioner has put in 13 years of service in Canara Banking Corporation i.e., from 3rd of August, 1956 to 30th of April, 1969, the petitioner is entitled for the benefit of five years of qualifying service for the purpose of computing pension in terms of Regulation 26 of the Pension Regulations. Drawing my attention to the letter of appointment Annexure-C given to the petitioner by the Bank, he submitted that the petitioner was appointed in the Executive Grade and as such, for the purpose of computing the qualifying service of the petitioner, the period of five years is required to be added. It is his submission that since the Pension Regulations were notified subsequent to the retirement of the petitioner making it retrospectively applicable with effect from 1st of January, 1986, the second and third provisos given to Regulation 26 wherein it is provided that the benefit of the earlier service could be given in respect of any service or post in respect of which specific provision is made under the Service Regulations making Regulation 26 applicable with the approval of the Central Government, cannot be made applicable insofar as the case of the petitioner is concerned; and in case it is to

be held that it applies to the case of the petitioner, the said two provisos require to be declared as null and void in law. Sri Rajagopal, in support of his above submissions, relied upon the following decisions of the Supreme Court:

- (1) The State of Mysore Vs. C.N. Vijendra Rao, ;
- (2) Bibhuti Bhushan Chaudhary v. Union of India and Others, (1997) 11 SCC 373 ;
- (3) Naraindas Revachand Hamrajani through Supreme Court Legal Aid Committee Vs. Union of India (UOI) and Another, ;
- (4) Vasant Gangaramsa Chandan Vs. State of Maharashtra and Others, ;
- (5) D.S. Nakara and Others Vs. Union of India (UOI), ;
- (6) Khem Chand Vs. Union of India (UOI), ;
- (7) Workmen Vs. Williamson Magor and Co. Ltd. and Another, ;
- (8) Alembic Chemical Works Co. Ltd. Vs. The Workmen, ;
- (9) Sultana Begum Vs. Prem Chand Jain, ;
- (10) R.L. Marwaha Vs. Union of India (UOI) and Others, ;
- (11) T.S. Thiruvengadam Vs. Secretary to Government of India, Ministry of Finance, Department of Expenditure, New Delhi and Others, ;
- (12) Canara Bank, Head Office, J.C. Road, Bangalore and Another Vs. M. Ramachandrappa, ;
- (13) M. Ramachandrappa v Canara Bank and Another.

5. However, Sri Ramadas, learned Senior Counsel appearing for the Bank, while strongly countering the argument of Sri Rajagopal, submitted that the petitioner's continuance after 30th of September, 1990, was only for the purpose of conducting an enquiry and continuance of such service cannot be treated as retention of the petitioner in the services of the Bank. According to him, for the purpose of determining the qualifying service and other retirement benefits, the age of superannuation fixed by the Bank alone should be taken into consideration and the period of retention of the petitioner in the services of the Bank for the purpose of conducting disciplinary proceedings initiated against him, cannot be taken into consideration. He also submitted that for any reason, if the continuance of service of the petitioner should be treated as retention of the petitioner in the services of the Bank and on that basis, his qualifying service is required to be determined, since in terms of Regulation 21 of the Pension Regulations, there is no order passed by the disciplinary authority declaring that the period of suspension is required to be treated as qualifying service, the period from 1st of October, 1990 to 16th of June, 1995 cannot be taken into consideration. With regard to the third submission of Sri Rajagopal that for the

purpose of determining the qualifying service, the length of service to the extent of five years is required to be added to the qualifying service of the petitioner is concerned, Sri Ramadas made two submissions. Firstly, he submitted that under Regulation 26 of the Pension Regulations, an employee would be eligible to add to his service qualifying for superannuation pension, the actual period not exceeding one-fourth of the length of his service or actual period by which his age at the time of recruitment exceeded the upper age limit specified by the Bank for direct recruitment or a period of five years, whichever is less, if the service or post to which the employee is appointed is one (a) for which postgraduate research, or specialist qualification or experience in scientific, technological; or professional fields, is essential; and (b) to which candidates of age exceeding the upper age limit specified for direct recruitment are normally recruited; (c) for which the candidate was given age relaxation over and above the maximum age limit fixed by the Bank on account of his possessing higher qualifications or experience. Therefore, he submits that unless the requirement of clauses (a), (b) and (c) of Regulation 26 of the Pension Regulations is satisfied, the petitioner is not entitled to seek for the benefit of five years of service for the purpose of calculation of pension as claimed by him. It is his submission that the petitioner was not appointed to a post relating to postgraduate research or specialist qualification or experience in scientific, technological; or professional fields. He further submitted that the order of appointment Annexure-C relied upon by the petitioner clearly indicates that he was appointed only as an officer of the Bank and he was placed in Executive Grade of officers; and his appointment as an officer and placing him in Executive Grade of Officers, under no stretch of imagination, can be treated as an appointment of the petitioner to the post specified under clause (a) of Regulation 26 of the Pension Regulations. Secondly, he submitted that though the Pension Regulations for the purpose of grant of pension, is made retrospective in operation, insofar as Regulation 26 is concerned, it is prospective in operation. In this connection, he drew my attention to the second and the third proviso given to Regulation 26 of the Pension Regulations and submitted that no person is entitled for the benefit of previous service unless the recruitment rules in respect of the said service or post contain specific provision that the service or post is one which carries benefit of Regulation 26 and the said recruitment rules are made with the approval of the Central Government. It is his submission that insofar as the post held by the petitioner is concerned, there is no Recruitment Rules which specifies that the person, who holds the said post, is entitled for the benefit of the previous service. In support of his submissions, Sri Ramadas relied upon the decisions of the Supreme Court in the case of V. Kasturi Vs. Managing Director, State Bank of India, Bombay and Another, and State of Punjab Vs. Justice S.S. Dewan (Retired Chief Justice) and others, .

6. In the light of the rival contentions advanced by learned Counsel appearing for the parties, the substantial questions that would arise for consideration in this petition, are.-

(1) Whether the continuance of the petitioner in service after 30th of September, 1990 for the purpose of disciplinary enquiry instituted against him, could be treated as the retention of the petitioner in the services of the Bank?

(2) If the continuance of the petitioner from 1st of October, 1990 till 16th of June, 1995 in the services of the Bank is so treated, whether, in terms of Regulation 21 of the Regulations, the said period is not required to be taken into account for computing the pensionary benefits?

(3) Whether the appointment of the petitioner to the Executive Grade by means of order Annexure-C, dated 30th of April, 1969 can be treated as an appointment made to a post to which specialist qualification or experience in professional field is required?

(4) Whether, in view of the second and third provisos given to Regulation 26 of the Pension Regulations, in the absence of Recruitment Rules of the Bank providing for making the regulations applicable to the post held by the petitioner with the approval of the Central Government, the petitioner is entitled for the benefit of five years of service as claimed by him?

Re. Question (1):

7. The answer to the first question depends upon the interpretation to be placed on Regulation 20(3)(c) of the Syndicate Bank Officers' Service Regulations, 1979 (hereinafter referred to as "the Service Regulations"). It is useful to extract the said regulation, which reads as hereunder:

" An officer under suspension on a charge of misconduct shall not be retired or permitted to retire on his reaching the date of compulsory retirement, but shall be retained in service until the enquiry into the charge is concluded and a final order is passed thereon".

As noticed by me earlier, the petitioner had attained the age of superannuation on 12th of September, 1990, but in view of the explanation given to Regulation 19(1) of the Service Regulations, which provide that an officer/employee will retire on the last day of the month in which he completes the age of retirement, the petitioner was to retire from service on 30th of September, 1990. However, on 26th of September, 1990, the petitioner was kept under suspension with immediate effect; and in the order of suspension Annexure-D, it was stated that the petitioner would not retire and would not be permitted to retire, on his attaining the age of superannuation, but he shall be retained in service until the enquiry into the charges levelled against him, is completed. Thereafter, by another order dated 27th of September, 1990, a copy of which has been produced as Annexure-E, the petitioner was also informed that he would not retire from the services of the Bank on his reaching the age of superannuation on 30th of September, 1990 and he was retained in the services of the Bank until the enquiry into the charges levelled against him, as stated in the disciplinary proceedings of the disciplinary authority, is concluded and final orders are

passed. In fact, the order of suspension Annexure-D and order Annexure-E dated 27th of September, 1990, in terms, repeat the language provided in Regulation 20(3)(c) of the Service Regulations and state that the petitioner would not retire from service and was retained in the services of the Bank until the enquiry into the charges levelled against him is concluded.

8. Now, the question is that if the petitioner, who was to retire on 30th of September, 1990, was not permitted to retire in view of the disciplinary proceedings instituted against him, whether the period from 1st of October, 1990 till the termination of the disciplinary proceedings i.e., on 16th of June, 1995, could be treated as the continuance of the petitioner in the services of the Bank? No doubt, as per the service conditions of the Bank applicable at that time, the age of superannuation was 58 years. But, Regulation 20(3)(c) of the Service Regulations specifically provides that an officer under suspension on a charge of misconduct shall not be retired or permitted to retire on his reaching the date of compulsory retirement, but shall be retained in service until the enquiry into the charge is concluded and a final order is passed thereon. It is not in dispute that the Service Regulations have been framed by the Bank in exercise of the power conferred on it u/s 19 read with sub-section (2) of Section 12 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970. Therefore, if the regulations fix the age of retirement of an employee of the Bank at 58 years and Regulation 20(3)(c) of the Regulations states that an officer under suspension on a charge of misconduct shall not be retired or permitted to retire on his reaching the date of retirement, but shall be retained in service until the enquiry into the charge is concluded and a final order is passed thereon, in my view, by virtue of the said provision, an officer of the Bank would normally retire on reaching the age of superannuation, but if he is kept under suspension, he would continue to be in service till the enquiry is concluded and a final order is passed. There is no ambiguity in the language employed in Regulation 20(3)(c) of the Service Regulations. According to the Black's Law Dictionary, the word "Retain" is given the following meaning:

Retain. To continue to hold, have, use, recognize, etc., and to keep.

To engage the services of an Attorney or Counsellor to manage a specific matter or action or all legal matters in general".

In Webster's Encyclopedic Dictionary of the English Language, the word "Retain" is understood as follows:

Retain. 1. To keep possession of; 2. To continue to use, practice, etc., to retain an old custom; 3. To continue to hold or have; 4. To keep in mind; remember; 5. To hold any place or position; 6. To engage esp. by payment of a preliminary fee; to retain a lawyer".

It is permissible under the Service Conditions Rules to provide for the timing of retirement of an employee in modes or circumstances more than one. It can be one in normal course and another in cases where disciplinary proceedings are

instituted against an employee and when such an employee is kept under suspension. Therefore, it is not possible to take the view that when the age of superannuation is provided under the regulations, the employee would retire from service as soon as he attains the age of superannuation under all circumstances; and continuance of such an employee as per the terms of the regulations either for the purpose of conducting disciplinary enquiry or for any other purpose specified in the regulations after the age of superannuation, cannot be considered as retaining or continuing such an employee in service. This aspect of the matter is also required to be examined keeping in mind the hardship that would be caused to an employee of the Bank who is kept under suspension and retained in service; and on account of that, prevented from taking any other avocation or employment in life after his retirement. In the instant case, admittedly, the petitioner was retained in service for nearly five years; and on account of that, he was prevented from taking up any other avocation. Preventing a person from taking up any other avocation after retirement from service would, in my view, have serious effect on the right to livelihood guaranteed to a person under Article 21 of the Constitution of India. Under these circumstances, if a regulation is framed by the Bank which provides that an officer under suspension on a charge of misconduct shall not be retired or permitted to retire on his reaching the date of retirement, but shall be retained in service until the enquiry into the charge is concluded and a final order is passed, in my view, for all purposes such a person could be treated as a person who is continued in the services of the Bank. After a person retires from service, he must have the option to take up any other employment or avocation in life. Even if a person is retained in service for the purpose of disciplinary proceedings, like the petitioner, he will be deprived of his right to take up any other employment. To that extent, his right to carry on any profession or avocation guaranteed under Article 19(1)(g) of the Constitution is affected. The retention of such an employee in service after reaching the age of superannuation may be justified on the ground that disciplinary proceedings are instituted against him. But, in my view, it will not be reasonable or fair to take the view that an employee, who is retained in service for the purpose of disciplinary enquiry, will not be treated as an employee continued in service for the purpose of retirement benefits. Further, I am also of the opinion that this view, to a large extent, would prevent the employer continuing the disciplinary proceedings against an employee who is under suspension, for a period more than what is reasonably required for the purpose of concluding the disciplinary proceedings. Further, it is also necessary to notice that this Court, in Writ Petition No. 39667 of 1993 disposed of on 11th of August, 1993, filed by the petitioner for non-payment of subsistence allowance, had directed the respondent-Bank to pay the subsistence allowance from 1st of October, 1990 upto the date of termination of disciplinary proceedings initiated against the petitioner. While repelling the contention of the Bank that the petitioner was not entitled for subsistence allowance, this Court has held that the petitioner was not permitted to retire from the service and as such, he was entitled for payment of subsistence allowance until he was

permitted to retire from service or until the disciplinary proceedings were concluded. It is useful to refer to the observations made by this Court, which read as hereunder:

"It is the contention of the respondent's Counsel that this regulation has to be read along with Regulation 14(4) of the Syndicate Bank Officer Employees" (Discipline and Appeal) Regulations, 1976. I am not prepared to accept this contention. Since the petitioner has not been permitted to retire and the enquiry is still pending against him, I am of the view that the petitioner is entitled for Subsistence Allowance until he is permitted to retire from service by respondents or until the disciplinary proceedings are concluded".

Therefore, I am of the view that the petitioner was retained and continued in the services of the Bank till 16th of June, 1995.

Re. Question (2):

9. Now, the next question is that even if the petitioner was continued in service as an officer of the Bank, whether, in terms of Regulations 21 and 28 of the Pension Regulations, the period of continuance of the services of the petitioner after the age of retirement till the termination of the disciplinary proceedings, should be taken into account for the purpose of computing the pensionary benefits? To consider this question, it is useful to refer to Regulations 2(k), (w) and (y), 21 and 28 of the Pension Regulations, which read as hereunder:

"2. Definitions.--In these regulations, unless the context otherwise requires.-

(k) "date of retirement" means the last date of the month in which an employee attains the age of superannuation or the date on which he is retired by the Bank or the date on which the employee voluntarily retires; or the date on which the officer is deemed to have retired;

(w) "qualifying service" means the service rendered while on duty or otherwise which shall be taken into account for the purpose of pension under these regulations;

(y) "retirement" means cessation from bank's service:

(a) on attaining the age of superannuation specified in Service Regulations or Settlements;

(b) on voluntary retirement in accordance with provisions contained in Regulation 29 of these Regulations;

(c) on premature retirement by the Bank before attaining the age of superannuation specified in Service Regulations or Settlement.

21. Period of suspension.--Period of suspension of an employee pending enquiry shall count for qualifying service where, on conclusion of such enquiry, he has been fully exonerated or the suspension is held to be wholly unjustified, and in other cases, the period of suspension shall not count as qualifying service unless

the Competent Authority passing the orders under the Service Regulations or Discipline and Appeal Regulations or Settlements governing such cases expressly declares at the time that it shall count to such extent as such authority may declare.

28. Counting of service rendered on permanent part-time basis.-

(1) In case of an employee who was employed on scale wages and on a permanent part-time basis in the service of the Bank and was contributing to the Provident Fund, such service rendered by him on a permanent part-time basis from the date he became a member of the Provident Fund shall be counted as qualifying service.

(2) The length of qualifying service of the employee referred to in sub-regulation (1) for the purpose of calculating the amount of pension shall be determined in accordance with Appendix IV".

Regulation 21 of the Pension Regulations, referred to above, on which strong reliance is placed by Sri Ramadas, no doubt, provides that where an employee, against whom disciplinary proceedings have been instituted, who was under suspension, is not exonerated, the period of suspension shall not count as qualifying service unless the Competent Authority passing the orders under the Service Regulations or Discipline and Appeal Regulations expressly declares that it shall count to such extent as such authority may declare. But, it is the submission of Sri Rajagopal that Regulation 21 of the Pension Regulations has to be understood in the backdrop of the object and the principle behind payment of pension to an officer of the Bank. It is his submission that pension is not paid to an employee by way of bounty, but is earned by an employee having put in certain number of years of service in the Bank. It is also his submission that admittedly, since there is no specific order made by the disciplinary authority or the Appellate Authority stating that the period of suspension shall not be counted for the purpose of pensionary benefits, the period of suspension cannot be refused to be taken into account while computing the pensionary benefits payable to the petitioner. As rightly contended by Sri Rajagopal, the "pension" is not a bounty payable by the Bank to the employee, but it is earned by the employee by virtue of the fact that he puts in minimum qualifying service in the Bank. The Supreme Court, in the case of Vasant Gangaramsa Chandan, supra, has observed thus:

"Pension is not a bounty of the State. It is earned by the employee for service rendered to fall back, after retirement. It is a right attached to the office and cannot be arbitrarily denied. Therefore, we read down the rule".

In the case of Bibhuti Bhushan Chaudhary, supra, at paragraph 3 of the judgment, the Supreme Court has observed thus:

"3. The learned Counsel for the petitioner has confined his submissions to the computation of the pension payable to the petitioner and has urged that although

the subsistence allowance has been paid to the petitioner for the period of suspension, the said period has been excluded from the qualifying service of the petitioner for the purpose of computing the pension payable to him. Having regard to the fact that the petitioner has been paid the subsistence allowance for the period of suspension, the said period of suspension could not be excluded from the qualifying service for the purpose of computing pension of the petitioner and the pension payable to the petitioner should be calculated by taking into account the said period of suspension as part of his qualifying service. It is, therefore, directed that the petitioner is entitled to count the period of suspension as part of his qualifying service for the purpose of computing the pension payable to him. The amount of pension payable to the petitioner should be reassessed on that basis and the amount of arrears found payable to the petitioner as a result of such reassessment shall be paid to the petitioner within a period of three months. The writ petition is disposed of accordingly.".

Further, in the case of Naraindas Revackand Hamrajani, *supra*, while considering sub-rule (1) of Rule 21 of the State Bank of India Rules, which is fairly identical to Regulation 21 of the Pension Regulations, the Supreme Court has taken the view that unless an order is made by the Disciplinary Authority denying the benefit of the period of suspension for computing the period of pensionary benefits, such benefits cannot be taken away. It is useful to extract the observations made by the Supreme Court at paragraphs 3, 4 and 5 of its judgment, which read as hereunder:

"3. We are not concerned with any other sub-rule. It is not in dispute that the appellant joined the bank service as a Clerk on 30-3-1960. He was confirmed as a clerk on 30-9-1960. That would be the beginning of the period of pensionable service for him. The order of compulsory retirement took effect from 6-3-1982. Therefore, by that time, he can be said to have completed 20 years of pensionable service. Further our attention was drawn by the learned Counsel for the respondent to Rule 21, sub-rule (1) which reads as under:

"21. (1) No period of leave granted without leave salary or of absence without leave shall count as pensionable service. A period of suspension shall count as pensionable service only to such extent as the authority which reinstates him declares it to be pensionable at the time of reinstatement or the authority which sanctions his retirement declares it to be so at the time of according the sanction".

4. When we turn to the order of the Appellate Authority, we find that the said authority was inclined to take a lenient view on the question of punishment by substituting the order of compulsory retirement for the earlier order of removal from service. It has been noted by the Appellate Authority that the appellant was 44 years of age. He had to look for some employment. Removal will carry a heavy stigma while, compulsory retirement may not. It was, therefore, felt by the Appellate Authority that punishment awarded to the appellant by the Disciplinary Authority could be reduced from removal of service to compulsory

retirement. Accordingly, the appellant was ordered to be compulsorily retired under Rule 49(f) of the State Bank of India (Supervising Staff) Service Rules with effect from 8-3-1982, i.e., the date on which he received the order dated 6-3-1982 passed by the Disciplinary Authority.

5. The order of the Appellate Authority does not show as to how the suspension period is to be treated. Consequently, it can be visualised that no order under Rule 21, sub-rule (1) was passed by the sanctioning authority directing compulsory retirement of the appellant. In the absence of such order under Rule 21, sub-rule (1) it must be held that the appellant had completed 20 years of pensionable service. However, that is not the end of the matter. For applicability of Rule 22, sub-rule (1)(a) of the Rules, the appellant must fulfill two conditions: (i) at the time of retirement he should have completed 20 years of pensionable service; (ii) at the time of retirement he must have reached the age of 50 years. In the present case, though the first condition is satisfied, the second condition is admittedly not satisfied. He had not attained the age of 50 years when he was compulsorily retired. He fell short of six years of service. For the purpose of the present discussion, we will assume in favour of the appellant that Rule 22, sub-rule (1)(a) will also cover the case of compulsory retirement. Even then the appellant cannot get benefit of the aforesaid rule at the second condition for its applicability is admittedly not satisfied".

(emphasis supplied)

The Supreme Court, while interpreting sub-rule (1) of Rule 21 of the State Bank of India Rules, which is similar to Regulation 21 of the Pension Regulations, has, at paragraph 5 of the judgment extracted above, taken the view that in the absence of an order made under sub-rule (1) of Rule 21 of the said rules as to how the period of suspension has to be treated, it must be held that the petitioner, in the case before the Supreme Court, had completed 20 years of pensionable service. As observed by me earlier, in the instant case, admittedly no order was made while imposing the penalty that the period of suspension shall not be taken into account by the Bank either for the purpose of pensionary benefits or for any other purpose. Further, since the Pension Regulations came into force subsequent to the order passed by the Disciplinary Authority, the Disciplinary Authority could not have made an order in terms of Regulation 21 of the Pension Regulations. Insofar as Regulation 21 of the Pension Regulations is concerned, in my view, the same is only prospective in operation. It cannot be made retrospective in operation in view of the conditions provided in the said regulation, which makes it obligatory on a Disciplinary Authority to pass an order as to how the period of suspension has to be treated. Therefore, in cases where the disciplinary proceedings came to be terminated before coming into force of the Pension Regulations on 29th of September, 1995, the Disciplinary Authority making an order holding the period of suspension wholly justified or making an order holding that the period of suspension should be taken into account for the purpose of qualifying service, would not arise for consideration. In the instant

case, admittedly, the disciplinary proceedings came to be terminated on 16th of June, 1995. The Pension Regulations came into force on 29th of September, 1995. Therefore, I am of the view that Regulation 21 of the Pension Regulations cannot be made applicable insofar as the case of the petitioner is concerned to deprive him of his pensionary benefits. Further, I am also of the view that unless the period of suspension is sought to be deprived of by way of penalty, the period of suspension of an employee, pending disciplinary proceedings, cannot be refused to be taken into account while computing the period for the purpose of pensionary benefits. Therefore, I am of the view that for the purpose of considering the qualifying service of the petitioner for computing the pensionary benefits, the period from 1st of October, 1990 till 16th of June, 1995 is required to be taken into account. Question (2) is answered accordingly.

Re. Questions (3) and (4):

10. Since Questions (3) and (4) are interlinked, I am of the view that it is convenient to consider both the questions together. At the outset I may point out that my answer on Question 3 should unhesitatingly be against the petitioner. However, before I proceed to consider the said question, it is useful to extract Regulation 26 of the Pension Regulations, which reads thus:

"26. Addition to qualifying service in special circumstances.--An employee shall be eligible to add to his service qualifying for superannuation pension (but not for any other class of pension) the actual period not exceeding one-fourth of the length of his service or actual period by which his age at the time of recruitment exceeded the upper age limit specified by the Bank for direct recruitment exceeded the upper age limit specified by the Bank for direct recruitment or a period of five years, whichever is less, if the service or post to which the employee is appointed is one.-

(a) for which postgraduate research, or specialist qualification or experience in scientific, technological, or professional fields, is essential; and

(b) to which candidates of age exceeding the upper age limit specified for direct recruitment are normally recruited;

(c) for which the candidate was given age relaxation over and above the maximum age limit fixed by the Bank on account of his possessing higher qualifications or experience:

Provided that this concession shall not be admissible to an employee unless his actual qualifying service at the time he quits the service in the Bank is not less than ten years:

Provided further that this concession shall be admissible if the recruitment rules in respect of the said service or post contain specific provision that the service or post is one which carries benefit of this regulation:

Provided also that the recruitment rules in respect of any service or post which

carries the benefit of this regulation shall be made with the approval of the Central Government".

As it can be seen from clause (a) of Regulation 26, an employee is entitled for the benefit of the extended service of five years, provided he was appointed to a post for which postgraduate research, or specialist qualification or experience in scientific, technological or professional fields, was required. The order of appointment of the petitioner in the respondent-Bank, a copy of which has been produced as Annexure-C, does not state that the petitioner was appointed on account of the postgraduate research, specialist qualification or experience in scientific, technological or professional fields. The said order simply states that the petitioner was appointed as an officer of the Bank. There is no material placed before me by the petitioner to show that the petitioner was appointed keeping in mind his specialist qualification or experience. Therefore, as observed by me earlier, I am of the view that the petitioner, on facts, is not entitled for the benefit of Regulation 26 of the Pension Regulations. Even otherwise, in my view, Regulation 26 is prospective in nature. As rightly contended by Sri Ramadas, while benefit of pension is made retrospective, the provisions contained in Regulation 26 are made prospective. This is clear from the provisos given to Regulation 26.

11. Now, the last question is as to whether the second and third provisos given to Regulation 26 of the Pension Regulations are required to be struck down as discriminatory in nature as contended by Sri Rajagopal. Even on this question, I am unable to accede to the submission of Sri Rajagopal. As noticed by me earlier, when the Pension Scheme is made operative retrospectively, Regulation 26 of the Pension Regulations, in ray view, is prospective in operation. Further, payment of pension was not one of the conditions of service, which was applicable to the employees of the Bank till passing of the Pension Regulations. Therefore, merely because the benefit of Regulation 26 is not given to all the employees including the employees who have retired from service, it is not possible to take the view that the second and third provisos given to Regulation 26 are liable to be struck down as discriminatory in nature. The benefit of previous service is an additional concession given by the Pension Regulations; and that too limited number of posts which satisfy the requirements laid down in the said regulations. While framing the Pension Regulations, since new benefits are extended, in my view, it is open to the Bank to make it prospective in operation. It is not the case where the petitioner and other employees of the Bank were entitled for the benefit of the Pension Scheme and an additional benefit under the scheme is sought to be given to the existing benefits. Therefore, Sri Rajagopal cannot derive any assistance from the decision of the Supreme Court in the case of D.S. Nakara, supra. As observed by me earlier, in the instant case, the benefit of the Pension Scheme was introduced for the first time after the retirement of the petitioner from service. In my view, while introducing the Pension Scheme for the first time, as it has been done in the instant case, while the scheme was made to come into operation with effect from

1986, it was open to the authorities to impose certain conditions to make the scheme applicable in respect of part of the additional benefit given under the scheme prospective in operation. In such cases, there is no question of discrimination or any scope for making a grievance that such provisions are violative of Article 14 of the Constitution of India. The provision in the scheme has to be understood in the backdrop of the timing and object of the introduction of the scheme. The two provisos impugned, which impose certain conditions for the benefit of additional service of five years, in my view, cannot be considered as either unreasonable or arbitrary. The decision of the Supreme Court in Kasturi's case, supra, in my view, is a complete answer to the submission of Sri Rajagopal. In the said decision, the Supreme Court has elaborately reviewed the earlier case law on the subject and after referring to the various judgments of the Supreme Court, noticed a distinction between the grant of new pensionary benefits and additional or liberalised pensionary benefits to the existing pensionary benefits. It is useful to refer to paragraphs 19, 25 and 26 of the said judgment, which reads as hereunder:

"19. Learned Counsel for the appellant, at the outset, invited our attention to the Constitution Bench decision of this Court in D.S. Nakara's, case, supra. The Constitution Bench in the aforesaid case, speaking through D.A. Desai, J., had to consider the question of a cut-off date found in the Pension Scheme which was uniformly applicable to all the Central Government employees who had formed one class at the time of retirement and who were entitled to pension. The question was whether amount of pension which was computed for them in the light of available formula could have been further enhanced on the basis of a subsequent more beneficial formula and whether it could be denied only on the ground that they had retired prior to the date on which such enhanced computation of pension was made available to the pensioners. In the light of the aforesaid fact situation it was observed that all employees governed by the Pension Scheme and had become eligible to earn pension at the time of their retirement formed one class. It was held that such a cut-off date for granting additional benefits to only some of the pensioners in the same class of employees could not be countenanced on the touchstone of Article 14 of the Constitution of India. In para 8 of the report it was noted that the:

"Primary contention is that the pensioners of the Central Government form a class for the purpose of pensionary benefits and there could not be mini-classification within the class designated as pensioners".

A question was posed in para 9 of the report that can this class of pensioners further be divisible for the purpose of "entitlement" and "payment" of pension into those who retired by certain date and those who retired after that date. The aforesaid decision cannot be of any assistance to learned Counsel for the appellant on the facts of the present case. In Nakara's case, supra, admittedly all the Central Government servants were governed by Pension Scheme and were eligible to draw pension on retirement. They therefore, formed one class. In the

facts of the present case, it is difficult to appreciate how the appellant can be said to be forming the same class of employees who came to be later on governed for the first time in 1986 by the Pension Scheme by being conferred the benefit of newly introduced pension eligibility as per amended clause (c) of Rule 22(1). The new class of employees covered by it was consisting of all the then existing members of the fund who had completed 20 years of pensionable service and who could be below the age of 50 years at the time of their retirement as the earlier restriction of age of 55 years as found in clause (a) of Rule 22(1) was revised by re-enacting clause (c). It is also to be noted that earlier clause (a) gave retirees at the age of 50 years full pension. And clause (c) sought to give retirees below 50 years only proportionate pension for the first time after September 1986. This new class of employees were for the first time made eligible to get the benefit of Pension Scheme under Rule 22(1). Such pensionary benefit was not available to them prior to the amendment of clause (c) of Rule 22(1). Hence, it was certainly a new Pension Scheme for them and not old wine in a new bottle. For such class of employees there was no question of any mini-classification as for the entire class of such employees for the first time the benefit of Pension Scheme was made available by the amendment. The decision of the Constitution Bench in Nakara's case, *supra*, therefore, cannot advance the case of learned Counsel for the appellant. We may also mention that the ratio of Nakara's case, *supra*, was distinguished by two later Constitution Bench decisions of this Court.....

25. We may now turn to two decisions of this Court which have a direct bearing on the result of these proceedings. In the case of Commander Head Quarter, Calcutta and others Vs. Capt. Biplabendra Chanda, , a two-Judge Bench of this Court had to examine the new revised rules which had reduced the requisite minimum qualifying service for earning pension while considering the case of a person who had retired earlier and was ineligible to get pension under the rules in force then. This Court held that he could not be given eligibility for pension by virtue of the amended rule. In the said case, the Bench examined the fact situation wherein the claimant was a Commissioned Officer. He retired on 18-5-1982. On the date of his retirement only 2/3rd of pre-commissioned service was allowed to be counted towards qualifying service for earning pensionary benefits. The Pension Rules were amended with effect from 1-1-1986 and the full commissioned service was directed to be taken into account for working out the qualifying service. While the High Court allowed the writ petition based on Nakara's case, *supra*, this Court held that Nakara's case, *supra*, has no application as the claimant was ineligible for grant of pension because on the date of his retirement he did not possess the qualifying service as per the rules then existing. It becomes obvious, therefore, that when the person earlier retiring from service is not eligible to get pension as per the rules, then if by subsequent prospective amendment of the rules such class of persons are brought within the sweep of pension provisions, these provisions have to be treated as a new scheme of pension which cannot apply to those employees who

retired prior to the advent of such a new Pension Scheme. The fact situation in the present case is almost parallel. We do not see any reason why the ratio of the said decision cannot be applied to the present case.

26. We may also lastly refer to a decision of two Judge Bench of this Court in Union of India (UOI) and Others Vs. Lieut (Mrs) E. Iacats, . Sujata Manohar, J., in that case examined liberalised Pension Scheme by which the group of employees who were earlier not covered by the Pension Scheme were conferred benefit from a given date. As the respondent before the Court had already retired prior to that date, he was held not entitled to benefits of liberalised Pension Scheme. It was held that such a respondent could not claim of discriminatory treatment in the grant of pension because there was no provision for grant of pension in the terms and conditions of her appointment which she had herself accepted. The appellant's case also falls in the same category of cases which were examined in the aforesaid decision by this Court. This decision also, therefore, goes in favour of the respondent and against the appellant".

As observed by me earlier, the law laid down by the Supreme Court in the case of Kasturi, supra, in my view, would clearly support the view I have taken above to negative the contention of Sri Rajagopal. In the light of the discussion made above, I find it unnecessary to refer to some of the other decisions relied upon by Sri Rajagopal.

12. In the light of the discussion made above, I make the following:

ORDER

(i) Order Annexure-J, dated 14th of July, 1995 insofar as it retrospectively retires the petitioner with effect from 30th of September, 1990, is hereby quashed.

(ii) The respondent-Bank is directed to compute the period of the petitioner's service from 1st of October, 1990 till 16th of June, 1995 for the purpose of pensionary benefits.

(iii) The challenge made to the validity of the second and third provisos given to Regulation 26 of the Pension Regulations is hereby rejected and consequently, the claim of the petitioner for adding five years of service in terms of Regulation 26 of the Pension Regulations is also hereby rejected.

(iv) The respondent-Bank is directed to recalculate the pensionary benefits of the petitioner in the light of the direction given above, and pay the same to the petitioner within three months from today.

13. In terms stated above, this petition is allowed and disposed of.

14. However, no order is made as to costs.