

(1983) 09 DEL CK 0014
In the Delhi High Court
Case No : C.W.P. No. 1484 of 1980

C.B. Dhall

APPELLANT

Vs

State Bank of India and others

RESPONDENT

Date of Decision : 02-09-1983

Acts Referred:

Citation : (1984) 1 ILR Delhi 890 : (1984) 1 LLJ 537

Hon'ble Judges : A.B. Rohtagi, J

Bench : Single Bench

Advocate : P.K. Chatterjee, A.K. Nag, Y.S. Chitaley, S.S. Shroff and P.S. Shroff, for the Appellant;

Judgement

1. THE FACTS : This is a pension case. The petitioner C. B. Dhall retired from the service of the respondent State Bank of India, on 30th June, 1979 as head cashier. It was a pensionable post. He joined the service in July 1939 as a cashier in the then Imperial Bank of India. The State Bank Act, 1955 (the Act) was passed on 8th May, 1955. It came into force on 1st July, 1955. The services of the petitioner were transferred to the State Bank. In July 1956 he was promoted as head cashier.

2. During 1969-73 the petitioner was posted at Agra as a head cashier. On 31st May, 1973 he was suspended on account of certain charges brought against him. On 24th November, 1975 a charge sheet was served on him. This enquiry went on till 29th May, 1979. On 30th June, 1979 the petitioner attained the age of 60 years and retired from the service of the Bank.

3. After the petitioner had retired, the enquiry officer made his report to the disciplinary authority. The disciplinary authority held petitioner guilty of certain charges.

4. On 22nd November, 1979 the petitioner received the following letter from the Chief General Manager :

State Bank of India

Local Head Office

Post Box No. 398

II Sansad Marg

New Delhi-110 001

Disciplinary Action Cell

No. DAC/79/RV. 1336

Dated 22nd November, 1979

Dear Sir,

With reference to the correspondence resting with your letter dated the 29th June, 1976 in reply to the statement of charges served on you in terms of our letter No. R-VI No. 8190 dated the 24th November, 1975 and the subsequent department enquiry held against you, we have perused the findings of the Inquiring Authority vis-a-vis the proceedings of the enquiry and "hold you guilty of charges No. 1, 2, 4, 5, 6, 7, (a) 9, 10 and partially charge No. 3.

ii) With reference to your letter dated the 1st August, 1979 as the charges proved against you are grave and you attained the age of 60 years on the 30th June, 1979 and ceased to be in the service of the Bank from that date, you are hereby required to show cause why recommendations should not be made to Local Board to withhold the sanction of your retirement and pension in terms of Rule 11 of the Imperial Bank of India Pension and Guarantee Fund Rules. Please also show cause as to why the Bank's contribution towards your provident fund may not be forfeited as you are liable to the Bank to the extent of Rs. 37,458.83.

iii) Your reply in this regard should reach the undersigned within 7 days of the receipt of this letter by you, otherwise it will be presumed that you have nothing to submit in this regard and we shall proceed accordingly.

Yours faithfully,

(Sd)...

Chief General

Manager."

5. The petitioner showed cause. He denied his liability. The Local Board of the bank met on 26th April, 1980. They sent their recommendation to the Central Board. The Central Board met on 4th June, 1980 and passed a resolution forfeiting the petitioner's pension and provident fund so far as the bank's contribution was concerned. On 16th July, 1980 the Chief General Manager conveyed the decision to the petitioner in the following letter :

State Bank of India

Local Head Office

Post Box No. 398

11 Sansad Marg

New Delhi-110 001

No. DAC

Disciplinary Action Cell

Dear Sir,

Agra Branch

Shri C. B. Dhall, Officer Grade-II

(Head Cashier) - Under Suspension

With reference to your written statement dated the 11th February, 1980, we advise that the entire matter has been considered by Executive Committee of the Central Board at its meeting held on the 4th June, 1980 and it has resolved that sanction to retire you be withheld and the Bank's Contribution to your Provident Fund Account amounting to Rs. 24,006.49 be forfeited.

ii) Therefore, our tentative decision conveyed to you vide letter No. DAC/79/R-V/1336 dated the 23rd November, 1979 is confirmed.

Yours faithfully,

(Sd.).....

Chief General Manager

6. The sum total was that after 40 years of service of the bank the petitioner was deprived of his pension and provident fund (bank's contribution). His own contribution, however, he was paid. So on 24th October, 1980 he brought this writ petition under Art. 226.

7. Three questions arise for decision. First, whether pension can be forfeited of an employee who retires on attaining the age of superannuation. Second, whether the bank can refuse to pay bank's contribution to the provident fund on holding the employee guilty of "grave" charges. Third, whether the bank can continue the enquiry against the employee after his retirement on superannuation and after holding him guilty, deprive him of retirement benefits.

8. The outstanding feature of this case is that the petitioner "attained the age of 60 years on the 30th July, 1979 and ceased to be in the service of the Bank from the date" as is admitted in bank's own letter dated 22nd November, 1979 quoted above. What is the effect of his retirement on the enquiry which was pending at

that time and had not concluded ? This question looms large on the horizon.

FIRST QUESTION :

9. There are Pension and Gratuity Fund Rules of the Imperial Bank of India which apply. This is admitted on both hands. The Bank claims the power of forfeiture of pension from Rule 11. It says :

"11. 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 service without sanction as required by this rule shall forfeit all claim upon the fund for pension."

10. The bank says that they have power to withhold sanction to retirement and forfeit pension. This very contention was raised by the bank in another similar case and was rejected by the Division bench of this court (Deshpande CJ and Harish Chandra J.) in *State Bank of India v. A. N. Gupta* (L.P.A. of 1975 decided on 25th February, 1980). The bench held that Rule 11 does not cover a case of retirement superannuation i.e. retirement mandated and brought about by service Rules. They said : "Such a retirement comes about by mere efflux of time and does not remain pending or suspended by Rule 11 of the pension Rules." On 30th June, 1979 the petitioner retired on attaining the age of 60 years under the Service Rules. This is the admitted case. The bank has no power under Rule 11 to sanction retirement where under the Services Rules the contract of employment comes to an end by efflux of time. The service contract, like leasehold, is determined by effluxion of time. The man has to relinquish office because of the age bar. He cannot go beyond 60. It is not like a freehold that he can go on forever.

11. The critical words in Rule 11 are "Any officer or other employees who shall leave the service without sanction as required by this rule shall forfeit all claim upon the fund for pension." What is the meaning of the word "leave" ? On superannuation the employee demits his office and relinquishes the charge. "Leave" connotes voluntary action. (See *Stretch v. Scout Motors* (1918) 87 LJ K.B. 1006).

12. The word "leave" means willful departure with intent to remain away. It refers to voluntary leaving of service by the employee and would not include an automatic case of retirement on reaching a certain age. This is the natural meaning of the word "leave" when applied to a contract of employment, and I think it is also its legal meaning. "Words", Justice Holmes has told us, "express whatever meaning convention has attached to them." Where a person leaves the bank's employment of his own volition it can justly be said that he has left the service. (See *Superintendence Company of India v. Krishnan Murgal* 1981 1 L.L.J. 121. *Stretch* case in England and *Krishan Murgal* in India interpret the word "leave" as meaning voluntary departure.

13. Nor is there anything in the scheme and structure of the Rules to support the bank's contention. The power of forfeiture is contained in Rule 10, it says :

"An employee dismissed from the bank's service for willful neglect or fraud shall forfeit all claims upon the fund for pension".

11. The order case where pension can be forfeited is when he leaves service "without sanction" under Rule 11. These are the cases where power of forfeiture can be exercised. An employee of the staff in India is entitled to pension on his completing 25 years service (Rule 15). Then Rule 13 says :

"Pension shall begin to accrue on the first day succeeding that of retirement and shall be payable monthly to the beneficiary personally or to his order when supported by a life certificate bearing his signature and attested by a magistrate, justice of the peace or banker."

15. So on retirement, pension at once accrues on "the first day succeeding to that of retirement." The rule is peremptory. The accrual of pension cannot be postponed by delaying or refusing sanction. It accrues by force of the rule. The rule has the force of a statute and is not dependent on the will of the employer. It is not subject to the sanction of the Executive Committee or the local Board".

16. Pension is a stated allowance paid under given conditions to a persons following his retirement from service due to age or disability. Philosophically, linguistically, and morally, it is a contradiction in terms that after retirement pension can be forfeited. No service regulation can achieve this result unless the pension rules so provide. It can be done only if pension rules prescribe penalty for a specified conduct or breach of condition or nonperformance of some obligation. Forfeiture is a punishment annexed by law to some legal act. It is a penalty. Rule 11 deals with the case of willful departure of the employee. Leaving service of the employer when the contract of employment is in force and joining another and a more lucrative position in that act or delinquency against which Rule 11 was enacted. For example, if the officer wishes to accept employment in another bank within two years from the date of retirement he shall obtain the previous sanction of the bank. If he does not, the pension payable to him can be withdrawn. (Rule 14).

17. Deokinandan Prasad v. State of Bihar [1971 1 L.L.J. 557 is locus classics on the subject of pension. It demolished the theory, once for all, that pension is in the nature of a bounty of the Government, which it has the right to give, withhold, distribute or recall at its discretion. It held that the right of a government servant to receive pension is property and by a mere executive order the state did not have the power to withhold to same. It is no longer a bounty. It cannot be taken away except according to procedure established by law. (Art. 301 of the Constitution). Pension is not a bounty payable on the sweet will and pleasure of the Government and that the right to pension is a valuable right vesting in a government servant. Deokinandan's case shows in a most illustrative way how the law can, where there is still room for manoeuvre, move

with the times. After he has retired from office or employment pension is the only security in life. This he has earned after long years of hard work. He can say with Longfellow :

"Something attempted something done, Has earned a night's repose."

Pension is the only means of support to a man of middle class, middle aged and middle salaried. "You take my life/When you do take the means whereby I live". (The Merchant of Venice, IV 1.376). Though retired from a pensionable employment, pension eludes petitioner's grasp.

SECOND QUESTION :

18. The Provident Fund (Bank's contribution) was forfeited. For this reliance was placed of Rule 20 of the Employee Provident Fund Rules. Rule 20 says :

"When a member resigns or retires from the service of the Bank he shall, if he has served the Bank for a period of five years or more (including service in the presidency Banks), be entitled to receive the balance at his credit in the fund. Provided that when any member "resigning or retiring from the service of the Bank is under a liability incurred by him to the Bank, the trustees shall, irrespective of the duration of his service, pay to the Bank, out of the balance at his credit in the fund any amount due by him to the Bank (not exceeding in any case the sums contributed by the Bank to his account in the fund and any interest credited to his account on the sums so contributed)."

19. The question is what is the meaning of the words "liability incurred by him to the Bank" for which the bank can claim payment from the trustee of the Provident Fund. In Gupta's case the Division Bench held that "liability" refers to that amount which is either admitted or established after adjudication by the legal process. But if the employee disputes his liability the only forum in which the disputes can be settled is the Civil Court. The Bank cannot be a judge in its own cause in the absence of any statutory provisions empowering it to act as such (See General Manager, North East Frontier Railway and Others Vs. Dinabandhu Chakraborty, and Union of India (UOI) Vs. Raman Iron Foundry, . No man can be a judge in his own cause. This is a principle of natural justice. This rule is of universal application, and founded upon the plainest principles of justice. Unless the petitioner is pronounced to be liable by a competent court no liability is incurred by him under the rule.

20. In this case the bank made a claim for Rs. 37,458.83 against the petitioner. The petitioner admitted his liability for Rs. 10,000/-. The rest he denied. So out of the provident fund this sum can be deducted. The remaining amount the petitioner is entitled to get with interest. The bank has no right to withhold it.

THIRD QUESTION :

21. Now I come to the crucial question of the bank's power to continue the inquiry even after retirement. For this reliance is placed on Service Rules 20A

and 20B. These rules are as under :

"20A. Notwithstanding anything to the contrary in these rules, no employee who has ceased to be in the Bank's service by the operation of, or by virtue of, any rule, shall be deemed to have retired from the Bank's service for the purpose of the Imperial Bank of India, Employees' Pension and Guarantee Fund Rules or the State Employees' Pension Fund Rules unless such cessation of service has been sanctioned as retirement for the purpose of either of the said pension fund rules as may be applicable to him."

"20B. In case disciplinary proceedings under these rules have been initiated against an employee before he ceases to be in the Bank's service by the operation of, or by virtue of, any of these rules, the "disciplinary proceedings may, at the discretion of the Managing Director, be continued and concluded by the authority by which the proceedings were initiated in the manner provided for in these rules as if the employee continues to be in service, so however, that he shall be deemed to be in service only for the purpose of the continuance and conclusion of such proceedings."

22. The first question is : Are these rules statutory ? They are not framed under any statute. They do not have the force of law. They have not been approved by the Central Government. They have not been framed in exercise of the power conferred by sub-s. (3) of S. 50 of the Act. So these are not statutory. They are very much like an agreement of service entered into by a private employer with a private employee. The employee's contract is governed by non-statutory service rules. (See A. R. Joshi v. State Bank 1978 1 L.L.J. 48 and K. L. Tripathi v. State Bank 1978 2 L.L.J. 457.

23. A contrary view was taken in Jagannath Dash v. State Bank 1979 2 L.L.J. 131. In respectfully dissent. The court assumed the service rules to be statutory. This assumption is against facts. The petitioner placed before me the proceedings of the Central Board dated 31st March, 1977 which show that the Board introduced new Rules 20A and brought them into force from 1st April, 1977. It is not the case of the bank that the Service Rules were made after consultation with the Reserve Bank and with the previous sanction of the Central Government as required by S. 50(1) of the Act.

24. If the true character of the new Rules 20A and 20B is non-statutory and purely contractual the next question is whether they sufficiently empower the bank to continue the enquiry after the employee has retired from service. My answer is an emphatic no.

25. A short answer to the power claimed by the bank to continue and conclude the enquiry is that Rules 20A and 20B are contractual. The Pension Rules and the Provident Fund Rules are statutory. So in a clash with the statutory rules the contractual rules cannot override the statutory rules. This is plain. Rule 13 of the Pension Rules provides that pension shall accrue on the first day after retirement. But Rule 20A postpones the retirement for purpose of Pension Rules until it is

sanctioned. Rule 20B says that if disciplinary proceedings have been started against the employee before retirement the employee "shall be deemed to be in service only for the purpose of the continuance and conclusion of such proceedings" even though he has retired for all other purposes.

26. These are curious rules. They have been framed to keep employee under the thumb of the employer long after he has ceased to be in service and has actually retired on superannuation, as in this case. The bank has invented an interlocking device, a device to retain strict control over the employee, his life liberty, property such as pension and provident fund for any length of time.

A SERVILE CONTRACT :

27. The object of these new Service Rules is to put the pension provisions in the power of the bank. Though the contract of employment has terminated by effluxion of time these new Rules 20A and 20B ensure a large measure of control over the employee even after his de facto retirement. De-jure retirement does not take place because these rules postpone the retirement till sanction in one case and till disciplinary proceedings in the other. Until sanction is given or the enquiry is completed the employee is not a free man. He remains subservient to a stern master. Service becomes serfdom. It is a servitude of the worst kind.

28. During the currency of the contract of employment the employer has control over the employee. For in his hands lies the ultimate sanction, the power of dismissal. But once he has retired he is no longer subject to the control of the master. These rules artificially create a bond, a relationship of master and servant hitherto unknown to law. The most important Indicia of a contract of service is the right of control, a right critical and decisive of the legal quality of the relationship of master and servant. After retirement he is not subject to control. See the purpose of the Rules. Rule 20A is a crude attempt to arrest the operation of Rule 13 of the Pension Rules. It was forgotten that nothing can suspend the operation of statutory rule. In a clash with contractual rules the Pension Rules prevail.

29. Rule 13 of the Pension Rules has to be interpreted on its own terms. No interlocking device can be employed to prevent its full operation. Under Rules 20A and 20B the employee does not work. Correspondingly he gets no pay. But by a deeming fiction he has not retired for purposes of pension by reason of Rule 20A. Under Rule 20B he continues to be in service by a deeming fiction though "only for the purpose of the continuance and conclusion of such (disciplinary) proceedings." This means that he will not get any pay for this deeming service but if in the disciplinary proceedings he is found guilty his pension and provident fund can be forfeited. So he will get all the kicks and none of the kisses.

30. It is a strange sort of relationship. A contract of employment involves mutual obligations. But not so here. The employee ceases to be under any duty to work and the employer ceases to be under any consequential duty to pay. But deeming service in the old job continues. The employee is doomed to be

condemned to a servile station. Till the crack of doom he will remain in slavery. Though released from active duty he continues to be in bondage. This state of servitude is repugnant to law. The petitioner retired in 1979. Till 1983 there is no trace of any retirement pension or provident fund. Though it was a pensionable post where he served for 40 years he is told in the evening of his life that he remains their servant even now. Life would be hell, an endless state of torment with no promise of relief.

31. The courts will not enforce a contract of service which seeks to make the servant his master's slave (Batt - Law of Master and servant 5th ed. p. 26) As Bowen LJ said in *Davies v. Davies* (1887) Ch. D. 359 :

"The law allows a man to contract for his labour or to place himself in the service of a master, but it does not allow him to attach to his contract of service any servile incidents - any element of servitude as distinguished from service."

32. Deploring the conduct of the bank the judges in *A. N. Gupta's* case said :

"We cannot but regret that the Bank should have held back the retirement benefits of S. Shri Gupta and Gulati all these eight years on one pretext or the other and thus set an example not worthy of a premier institution of the public sector."

33. These Service Rules 20A and 20B show the high degree of control that the employer is seeking to retain over its employees even after retirement by means of fictions. Power has to be exercised in a certain perspective. So narrow a base for so wide a power.

34. The control of the employer remains before retirement and not after. As happened in *State of Punjab Vs. K.R. Erry and Sobhag Rai Mehta*, , a statutory rule gave power to the Government to impose a cut if, in the opinion of the government, the service record of the officer was not thoroughly satisfactory. Will the control continue till doom's day ? In *Gupta's* case this control continued for 8 years. In this case it has continued for 4 years. The man is living without pension and provident fund. Though pensioned off all bank says : We do not give you sanction to retire for the purpose of Pension Rules.

POWER OF FORFEITURE :

35. The bank has conferred on itself the power (i) to sanction retirement and (ii) to continue the employee in service for conclusion of disciplinary proceedings. But where is the power of forfeiture in case guilt is established in the disciplinary proceedings ? The power of forfeiture must be explicit. Unless the power is clearly conferred by law there cannot be forfeiture. Forfeiture is possible in two specified cases : (i) Dismissal for willful neglect or fraud (Pension Rules 10), (ii) Premature leaving of service (Pension Rule 11). It cannot be ordered in any other case. Service Rule 20A gives power to give or withhold sanction for retirement. But there is no power to forfeit pension in Pension Rule 11 event if guilt is established after retirement in disciplinary proceedings.

36. "Forfeiture is where a person loses some property, right, privilege or benefit in consequence of having done or omitted to do a certain act." (Jowitt's Dictionary of English Law (2nd ed.) Vol. 1 p. 815). Forfeiture is a penalty. It is a punishment. Penal provision must be strictly construed. As Lord Easher said :

"If there is a reasonable interpretation which will avoid the penalty in any particular case, we must adopt that construction. If there are two reasonable constructions we must give the more lenient one. This is settled rule for construction of penal section." (Tuck & Sons v. Priester (1887) 19 Q.B.D. 629.

37. We will be treading upon very dangerous ground if we hold that pension can be forfeited on superannuation under Rule 11 of the Pension Rules. Having regard to the well settled rule that the court will not hold that a penalty has been incurred, unless the language of the rule which is said to impose it is so clear that the case must necessarily be within it. We ought keep on the safe side and hold that there is no power of forfeiture conferred on the bank by Pension Rule 11 in explicit terms and Therefore pension cannot be forfeited simply because disciplinary proceedings continued and concluded after retirement the pensioner was found guilty.

38. "Now the cases. I was referred to Stephenson v. London Joint Stock Bank, XX Times Law Reports 8. In that case a bank employee was dismissed. The letter of the bank said : "You are required to resign your appointment in the bank." The question arose whether the employee was entitled to a retiring pension. Wright J. held that it was a dismissal (See XIX) Times L.R. p. 138). On appeal his judgment was affirmed by the Court of Appeal. Halsbury LC said. "There could be no doubt that the plaintiff was dismissed. The use of polite instead of peremptory language did not alter the fact." This case is of no assistance to me because in the present case I find that there is a clash between the Service Rules and the Pension Rules. Pension Rules will prevail. The legislative will prevail against the executive will.

39. Counsel for the Bank referred to J. K. Kulkarni v. State Bank of India, and the unreported judgment of a single judge of the Bombay High Court. (Misc. Pet. No. 964 of 1977 decided on 29th November, 1977 by Deshmukh J). In Gupta's case the division bench of this court dissented from Kulkarni. I am bound by Gupta's case.

40. Counsel then referred to T. Narasiah v. State Bank of India 1978 2 L.L.J. 173 and the unreported Judgment of the division bench (S. Rao CJ and Raghuvir J) in T. Narasiah v. State Bank) Writ Appeal 181 of 1973 decided on 24th July, 1978). It is sufficient to say that the view taken in these decisions is contrary to Gupta's case by which I am bound.

41. The decision of Jeevan Reddy J. in T. Narasiah v. State Bank of India (supra), is typical of the other school of thought. He followed the decision of Deshmukh J. in J. K. Kulkarni. T. Narasaiah was a case of superannuation. Reddy J. held that Rule 11 of the Pension Rules will apply even to a case of retirement on attaining

apply even to a case of retirement on attaining the age of superannuation. He said that as no sanction had been accorded to the petitioner's retirement under Rule 11 "he cannot claim a vested or enforceable right to get pension." I entirely disagree. The question is not of sanction. The question is of the power of forfeiture. Under Rule 11 forfeiture can be ordered only in cases of voluntary leaving of service without sanction and in no other. Rule 16 supports this view. But no sanction is required where the contract of employment terminates on attaining the age of 58 years, or if extended, 60 years under Service Rule 20.

42. Pension is not a bounty payable on the sweet will and pleasure of the government. Right to superannuation including its amount is a valuable right vesting in a government servant. (See Deokinandan Prasad supra). It is a "right of property" (Rule 7). Rule 12 reinforces this interpretation. It is a misreading of the Pension Rules to say that pension on superannuation depends on sanction to retire. There is no power to forfeit pension once the man has retired on attaining the age of superannuation. Nor does he require any sanction to retire.

43. These decisions which take a contrary view reduce the right of pension to a mere bounty. They go against the Supreme Court decision in Deokinandan's case. They ignore the supremacy of the statutory rule and its overriding effect. They attach no importance to Pension Rule 13. They give to the bank a suspending power, a power to postpone and even to destroy the right to pension enshrined in Rule 13. Deokinandan travelled from bounty, to right. These decisions travel back to bounty, if I may say so with respect.

44. Lastly I was referred to an unreported judgment of G. P. Singh CJ and KK Dube dated 3rd March, 1982 in Misc. Petition No. 637 of 1980 : State Bank of India Officers' Association v. State Bank of India. What was held in that case was that the cashiers remain responsible for the loss in particular cases indicated in the terms of service and the bank is entitled to enforce the service and the bank is entitled to enforce the clause by Realizing the amount from the petitioners. The court held that it was not a departmental action against them and the principles of natural justice as applicable to departmental enquiries cannot be invoked. The Supreme Court dismissed the SLP on 3rd January, 1983 summarily. This case too I do not find of any help in deciding the three questions I have posed above.

45. Dr. Chitale, on behalf of the bank, argued that towards retirement the temptation to commit fraud is great and this is why the bank retains it should over the supervisory staff by postponing or forfeiting pension. If the court does not uphold this power it will be putting a premium on dishonesty he said. I do not agree. Rule 1 of the Imperial Bank Employee's Pension and Guarantee Fund Rules says that the object is to provide pension to bank's employees. A Guarantee Fund is created to give "Security to the bank against losses arising from dishonesty on the part of the employees required to furnish guarantees for the faithful discharge of their duties to the bank." Rule 28 provides for making good the loss which the bank may sustain by the dishonesty of a guaranteed

employee. Forfeiture of pension is not the answer as suggested by Dr. Chitaley.

46. The strong arm of the criminal law will deal with embezzlers and perpetrators of fraud. "If there were no bad people", wrote Charles Dickens, "there would be no good lawyers." With this comforting assurance from the Old Curiosity Shop I will leave this subject for wiser heads to pursue.

CONCLUSIONS :

47. To sum up. On superannuation the employee retires under Service Rule 20. He is then master of himself. He takes orders from nobody. Superannuation and sanction to retire are contradiction in terms. On account of reaching an age limit he is disqualified to hold the post. So he lays down the office. Having retired Service Rule 20A says that for purposes of pension he shall be deemed to be in service until sanction is given.

48. There are three answers to this argument founded on Rule 20A. (1) Rule 20A does not apply to a case of superannuation. (2) Suppose it does Pension Rule 11 confer no power of forfeiture in the event of retirement on superannuation. It gives power only in cases of premature retirement. (3) Whatever Service Rule 20A may say, Pension Rule 13 will prevail. Service Rule 20A files in the face of the statutory rules of pension. In this conflict the statutory rules will prevail.

49. The following conclusions are inevitable :

(1) There can be no forfeiture of pension except on two specified grounds viz. (i) dismissal for neglect and fraud; (ii) voluntary leaving of service without sanction.

(2) There can be no forfeiture of provident fund unless the liability to pay the amount is admitted or established in a court of law.

(3) There can be no enquiry into the employee's conduct after retirement on superannuation.

(4) That Service Rules 20A and 20B do not give power to the bank to forfeit pension of the employee on being found guilty of charges after retirement.

(5) That Service Rules 20A and 20B are no part of the Pension Law.

(6) That the operation of Pension Rule 13 cannot be postponed. The rule is peremptory. This is the governing provision. It has a dominant object. It shows that the legislature wants no shackles on the mind or the spirit of the pensioner.

50. On retirement the employee ceases to be the servant of the bank. This is the reality of the situation. After retirement he can jolly well say, "Henceforth I take no orders from anybody." The reasons for this sturdy answer is that the master has no dominion and control over the servant. The relation of master and servant has been permanently abrogated. By a strange twist of the law, it is again temporarily constituted for the purpose of pension by Service Rules 20A and 20B. They serve as a buckle to bind the man and the master. But the rules cannot suspend the operation of the Pension Rules. The bank has no suspending or

dispensing power. Pension Rule 13 operates proprio vigore. The truth is that Service Rules 20A and 20B move in the world of fiction. They are out of touch with the world of reality.

51. The result is that the enquiry against the petitioner was invalid and he was entitled to disregard it. The order of forfeiture of pension was invalid as Rule 11 of the Pension Rules gives no power to forfeit pension after the employee has retired on attaining the age of superannuation.

52. For these reasons the writ petition is allowed. The resolution of the Executive Committee of the Central Board passed at its meeting held on 4th June, 1980 and the letter dated 16th July, 1980 are hereby quashed. I further order that the respondent State Bank of India, shall pay within six weeks to the petitioner the following amounts.

(1) The entire arrears of pension in accordance with the Pension and Gratuity Fund Rules with interest at the rate of 6% per annum

(2) Pension in future in accordance with the rules. Pension will be computed and paid on the basis of full pay during the period of suspension.

(3) The Provident Fund (bank's contribution which has been withheld) with interest according to the rules after deducting the admitted sum of Rs. 10,000/-. The Provident Fund and interest up to the date of payment according to the rules will be calculated first. Thereafter the admitted amount of Rs. 10,000/- will be deducted there from. The balance shall be paid to the petitioner.

(4) The petitioner shall also be given such other retirement benefits as are admissible to him according to the Service Rules, if already not given to him.

(5) The Petitioner shall also be entitled to full pay for the period of suspension after deducting such amount as has been paid to him during the suspension period by way of subsistence allowances or otherwise.

(6) The petitioner shall be entitled to his costs. "Counsel"s fee Rs. 500/-.

53. At the conclusion of the hearing I announced the order on 22nd February, 1983. Now I have given my reasons.

54. Writ Petition Allowed.