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**(2005) 10 AHC CK 0204**  
**In the Allahabad High Court**  
**Case No : Writ Petition No. 4485 (S/S) of 2002**

Debashish Ghosh and Another

APPELLANT

Vs

Bank of Baroda and Others

RESPONDENT

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**Date of Decision :** 19-10-2005

**Acts Referred:**

**Citation :** (2006) 7 AWC 6975

**Hon'ble Judges :** Rakesh Sharma, J

**Bench :** Single Bench

**Advocate :** Pushkar Baghel, for the Appellant; Jaideep Narain Mathur, for the Respondent

**Final Decision :** Allowed

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## Judgement

Rakesh Sharma, J.—Heard Sri Pushkar Baghel, learned Counsel for the Petitioner and Sri Vinayak Saxena holding brief for Sri J. N. Mathur, learned Counsel appearing for Bank of Baroda (hereinafter referred to as the Bank) and other opposite parties.

2. Learned Counsel for the Petitioners has submitted that Petitioner No. 1 Debashish Ghosh had sought voluntary retirement under the scheme for appointment of dependents of employees who retire on medical ground. This scheme was framed on 23.1.1987 under the Bank of Baroda (Officers'') Service Regulations, 1979. He was declared physically infirm by the Medical Board. He sought voluntary retirement on medical ground on 12.2.1997 to enable his son to be appointed on an appropriate post in the Bank under the said scheme. His voluntary retirement was accepted on 9.10.1997. He applied for the appointment of his son Buton Ghosh, Petitioner No. 2 and necessary formalities in this regard were completed by 6.4.1998, but the matter remained pending due to inaction and lethargy on the part of the opposite parties. However, to the utter surprise of the Petitioners, after more than three years, their application was rejected vide impugned order dated 2.8.2001 and the representation/ appeal preferred against the said order was also dismissed by the Managing Director of the Bank vide

order dated 21/23.9.2002.

3. Sri Pushkar Baghel, learned Counsel for the Petitioners has led stress on the fact that at the time of acceptance of voluntary retirement by Petitioner No. 1 and submission of application for his son's appointment, the afore-mentioned scheme of 23.1.1987 was in vogue. His application was to be scrutinized and decision was to be taken in the light of the said scheme which was alive on 9.10.1997 and at the most on 6.4.1998, when all necessary formalities for appointment of Petitioner No. 2, as directed by the Bank, were completed. The Petitioners' case was dealt with under the newly formulated scheme of 18.8.1998. Learned Counsel for the Petitioners has cited an example of one Sri J. K. Mehrotra, who was General Manager of the Bank and had sought voluntary retirement under the said scheme of 23.1.1987 and in lieu of this, his son Kapil Mehrotra was appointed in clerical cadre in the services of the Bank on compassionate ground on 16.7.1996. It is stated in the writ petition that the Regional Office of the Bank vide letter dated 25.4.1997 had communicated to the Petitioner No. 1 that if he wants to retire on the ground of ill health and desires employment of his son in the Bank, he should get himself medically examined by specially constituted Medical Board. It was also indicated that his son's case shall be considered on its own merit after the request for voluntary retirement is considered favourably. The learned Counsel for the Petitioners has led the Court through Annexure-3 to the petition, which is a copy of the said letter sent by the Regional Office of the Bank. After this assurance, the Petitioner No. 1 went further and submitted an application seeking voluntary retirement. He was 54 years old and had 4 years more to serve the Bank. The Petitioners' case was rejected on 2.8.2001, after about three years of submission of application for compassionate appointment. Learned Counsel for the Petitioners, has placed reliance on a judgment of Hon'ble the Supreme Court of India (5-Judge Bench decision), as in *Shyam Sunder and Another Vs. Ram Kumar and Another*, in support of his submissions that the Petitioners' case ought to have been considered in the light of Scheme dated 23.1.1987, which was in vogue at the relevant time of seeking voluntary retirement and submitting application for employment of Petitioner No. 2 and on the date when all necessary formalities were completed. There is nothing in the new scheme of 18.8.1998 to show that it was enforced with retrospective effect. There is nothing in the service rules of the Bank to show that such scheme, which was framed on 18.8.1998, shall be given retrospective effect.

4. Sri Vinayak Saxena, learned Counsel appearing for opposite parties has submitted that the Petitioners' case cannot be dealt with under the Scheme of 23.1.1987. According to him, when their application was under consideration, the scheme of 18.8.1998 was promulgated and under this new scheme, the Bank had decided not to provide compassionate employment to the dependents of deceased employee of the bank or those who had sought voluntary retirement on medical grounds. The Petitioners' case was considered at length in the light of judicial pronouncements and the decision taken by the Indian Banks Association

and their representation/appeal etc. has rightly been dismissed by the appropriate authorities of the Bank. Learned Counsel for the opposite parties has drawn the attention of the Court to the following feature of the Scheme of 23.1.1987:

The scheme is for employment of the dependent of an employee who becomes physically disabled to the extent that he becomes incapable of rendering any further service in the Bank provided the conditions of the family are indigent and in great distress.

5. In the light of above, the submission of the learned Counsel for the opposite parties is that the Petitioners' case lacks merit.

6. I have heard learned Counsel for the parties and perused the record.

7. It is evident from the record that the Scheme dated 23.1.1987 for appointment of dependents of employees, who sought voluntary retirement on medical grounds, was in vogue, when the Petitioner No. 1 had sought voluntary retirement to enable him to seek employment of his son under the said Scheme. He had completed all the formalities by 6.4.1998 as desired by the Bank for processing his application. The Petitioners' case should have been considered in the light of said Scheme of 23.1.1987. The Bank has acted with a pre-determined mind and pre-judging the issues. The authorities of the Bank could not have imagined on 9.10.1997 and thereafter on 6.4.1998, that in future a scheme would be promulgated in the Bank on 18.8.1998 and the Petitioners' case could be rejected on the basis of said scheme. It appears that a decision had already been taken by the authorities of the Bank to frustrate the Petitioners' move to seek compassionate appointment, which action of the opposite parties was highly arbitrary and mala fide. In fact the authorities of the Bank have played a fraud on its poor and physically infirm employee, Petitioner No. 1, who was 54 years old and had four years more to serve the Bank. It is strange to note that the application submitted by the Petitioners seeking employment under the scheme of 23.1.1987 was not immediately dealt with. Had it been dealt with within a reasonable time, the Petitioners would have been allowed the benefit of the said scheme which remained in force upto 17.8.1998. There is nothing in the scheme of 18.8.1998 or in the relevant service rules to hold that the said scheme was to be implemented with retrospective effect or from some imaginary date. The Petitioners' case is squarely covered by the Constitution Bench decision of Hon'ble the Supreme Court in the case of "Shyam Sunder" (supra), the relevant para 26 of which is quoted below:

26. In *Hitendra Vishnu Thakur and Others Vs. State of Maharashtra and Others*, this Court laid down the ambit and scope of an amending Act and its retrospective operation as follows:

(i) A statute which affects substantive rights is presumed to be prospective in operation unless made retrospective, either expressly or by necessary intendment, whereas a statute which merely affects procedure, unless such a

construction is textually impossible, is presumed to be retrospective in its application, should not be given an extended meaning and should be strictly confined to its clearly-defined limits.

(ii) Law relating to forum and limitation is procedural in nature, whereas law relating to right of action and right of appeal even though remedial is substantive in nature.

(iii) Every litigant has a vested right in substantive law but no such right exists in procedural law.

(iv) A procedural statute should not generally speaking be applied retrospectively where the result would be to create new disabilities or obligations or to impose new duties in respect of transactions already accomplished.

(v) A statute which not only changes the procedure but also creates new rights and liabilities shall be construed to be prospective in operation, unless otherwise provided, either expressly or by necessary implication.

8. I find strength from this judgment of the Apex Court to hold that the Petitioners' case ought to have been considered and scrutinized in the light of the provisions of old scheme dated 23.1.1987. Moreover, this Court has also noted that both the impugned orders dated 2.8.2001 and 21/23.9.2002 are non-reasoned and non-speaking orders. As provided in Clause (1) of the scheme dated 23.1.1987, the Bank had to consider the circumstances (like the conditions of the family, whether they were indigent and in great distress). No reasons have been indicated and there is nothing in these orders to indicate that the authorities of the Bank have dealt with this matter properly and conducted an enquiry or investigation in respect of economic condition of the family of Petitioners. Admittedly no economic package or relief was provided to the Petitioners, as has been done by other banks while refusing compassionate appointments to the dependents of their deceased employees. This element completely missing in the present case.

9. In view of above discussion, the writ petition is allowed with costs, which is assessed as Rs. 10,000. The impugned orders dated 2.8.2001 and 21/23.9.2002 contained respectively in Annexures-1 and 2 to the writ petition are quashed. A writ of mandamus is issued to the opposite parties to consider the case of Petitioners under the Scheme of 23.1.1987 within a period of six weeks from the date of presentation of a certified copy of this order.

10. The costs shall be paid to the Petitioners within one month from today.

11. This order has been passed in the presence of learned Counsel for the Bank, who shall communicate it to the authorities of the Bank contesting this writ petition.