(1996) 04 DEL CK 0010

In the Delhi High Court

Case No : Civil Writ Petition No. 875 of 1992

H.L. Sethi APPELLANT

Vs

Reserve Bank of India and Another RESPONDENT

Date of Decision : 23-04-1996

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1996) ILR Delhi 425

Hon'ble Judges : P.K. Bahri, J;Cyriac Joseph, J

Bench : Division Bench

Advocate : A.K. Sikri, Piyush Sharma, R.P. Bhatt, H.S. Parihar and Y.S. Parihar, for the Appellant;

Judgement

Cyriac Joseph, J.

(1) The challenge in this writ petition is against the order of the respondent Reserve Bank of India, rejecting the plea of the petitioner, a retired employee of the Reserve Bank, to exercise his option for Pension Scheme under the Reserve Bank of India Pension Regulations 1990.

(2) The petitioner was a confirmed Staff Officer Grade-D (Deputy Chief Officer) in the Reserve Bank of India. Since he was attaining 58 years of age as on 2nd November, 1985, the petitioner was to retire on superannuation on 30th November, 1985. However, by Annexure-I, letter dated 17th October, 1985, the second respondent informed the petitioner as follows:-

"IN terms of sub-regulation (4) of Regulation 26 of the Staff Regulations, you will be entitled to avail or ordinary leave earned but not availed of as on the date of reretirement subject to a maximum period of six months in which case you will be deemed to have retired from service on the expiry of the leave. It will be open to you to encash ordinary leave standing to your credit, if you so desire. as provided for in Administration Circular No. 5 dated December 3, 1981. Accordingly, you may advise the Bank in advance whether you propose to avail of leave preparatory to reretirement, in terms of sub-regulation (4) of Regulation 26 or encash the ordinary leave standing to your credit, in terms of Administration circular No. 5 dated December 3, 1981 as amended by the Bank''s subsequent circular Ppd No. 121 /R. (I) Cp 190-8-82/83 dated August 12, 1982."

The petitioner invoked the provisions in Regulation 26 (4) of the Reserve Bank of India (Staff) Regulations, 1948 and informed the second respondent that he would avail of the facility of leave preparatory to reretirement (LPR). The said information was conveyed by the petitioner through his application dated 18th November, 1985. In response to the petitioner''s application dated 18th November, 1985, A the second respondent by Annexure-II letter dated 4th December, 1985 informed the petitioner that he had been sanctioned leave preparatory to reretirement from 1st December, 1985 to 7th April, 1986 (both days inclusive) for 4 months and 7 days and that after the leave i.e. from 7th April, 1986 (afternoon) he would be deemed to have retired from the Bank service. During the said period of leave preparatory reretirement the second respondent by Annexure-III letter dated 5th March, 1986 informed the petitioner that he had been sanctioned an increment of Rs. 125 per mensem in Grade-D in the scale of Rs. 3175-125-3800 with effect from February 1, 1986 raising his pay from Rs. 3675 per menserm to Rs. 3800 per mensem for the limited purpose of calculation of gratuity only. After his reretirement on 7-4-1986, the petitioner was paid on 12-4-1986 a sum of Rs. 83,176.05 representing the balance due to him in his Provident Fund Account. This is evidenced by Annexure Iv, a communication dated 12-4-1986 from the second respondent. The petitioner was also paid a sum of Rs. 56,400 by way of gratuity as evidenced by Annexure-V communication dated 29-4-1985 from the second respondent. Later the petitioner was given the benefit of Administration Circular No. Viii dated 8-9-1988 (Annexurc-VII) by which the ceiling of gratuity payable for first 38 years of service was revised with effect from 1-1-1986. The said benefit of revised ceiling was to be available only to employees who ceased to be in the Bank service on or after 1-1-1986. The petitioner was treated as an employee who ceased to be in the Bank service on or after 1-1-1986 and was paid an amount of Rs. 31,000 on amount of payment of arrears of gratuity This is evidenced by Annexure-VII, communication dated 3rd December, 1988 from the second respondent. During the period of leave preparatory to reretirement (1-12-1986 to 07-4-1986) the petitioner was paid full salary (i.e. basic pay plus usual allowance like dearness allowance, house allowance and city compensatory allowance on monthly basis as per Rules and Regulations. Annexure-VIII is the photocopy of the extract from the petitioner''s Savings Bank Pass Book showing the credit of salary for the months of December 1985. January 1986, February 1986, March 1986 and April 1986 by way of credit invoices sent by the bank. The petitioner was a member of the Bank''s Contributory Provident Fund (CPF) Scheme and was required to contribute towards the Cpf for the period of leave preparatory to reretirement (1-12-1985 to 7-4-1986) at the rate of 10% of his basic pay. The employer bank also Contributed equivalent arnouni I towards the

Provident Fund Account of the petition site''. Aline-Kurc-IX retirement from the Ban-k service. The said statement shows that the petitioner for the period from 1st April, 19?.5 to the date of his retirement from the Bank service. The said statement shows that the petitioner was treated to be inservice till April 1986. The petitioner has also produced as Annexure-X, copy of the office order No. Mgr 982/85/86 dated April 7, 1988 which stated thus :-

"ON the expiry of his ordinary leave as leave preparatory to reretirement for 4 months and 7 days from December 1, 1985 to April 7, 1986 (inclusive) Shri H. L. Sethi. Deputy Chief Officer, attached to Department of Banking Operations and Development has finally retired from the Bank''s service as from the close of business on April 7, 1986."

(3) From the above mentioned facts and documents it is clear that the petitioner was treated by the respondent as continuing in service beyond his normal date of superannuation and to have retired from service only with effect from 7-4-1986.

(4) Subsequently, in exercise of the powers conferred by clause (j) of sub-section (2) of Section 58 of the Reserve Bank of India Act, 1934. the Central Board of the Reserve Bank of India with the previous sanction of the Central Government made the Reserve Bank of India Pension Regulations 1990. A copy of the said Pension Regulations is Annexure-XI to the writ petition. As per the said Regulations a Pension Scheme was introduced for the employees of the bank in substitution of the existing Contributory Provident Fund Scheme. The Regulations came into force on 1st November, 1990. Regulations 3 of the said Pension Regulations stated thus :---

"3.APPLICATION These Regulations shall apply to :- (1) Employees who join the Bank''s service on or after 1st November, 1990. (2) Employees who are in the service of the Bank as on 1st November, 1990, except those employees who, within the period prescribed by the Bank, exercise an option in writing not to be governed by these Regulations. (3) Employees who were in service as on 1st January, 1986 (excluding those on leave preparatory to reretirement) and had retired before 1st November, 1990 provided they exercise option to be governed by these Regulations and refund within such period as may be specified the Bank''s contribution to Provident Fund including interest received by them from the Bank together with simple interest at six per cent per annum from the date of withdrawal till the date of payment: Pension shall be payable to them in accordance with Regulation 31."

Regulation 31 provided as follows :-

"31.PAYMENT Of Pension To Employees Who RE- Tired Between 1ST January, 1986 And 31ST October, 1990. Employees who have retired from the Bank''s service on or after 1st January, 1986 and before 1st November, 1990 shall be eligible for pension from 1st November, 1990 or after expiry of leave preparatory to reretirement subject to Regulation 22. The payment of pension shall be subject to their refunding Bank''s contribution to Provident Fund including interest received by them from the Bank, together with simple interest at the rate of six per cent per annum from the date of withdrawal till the date of repayment. Such employees will be permitted to commute their pension also with effect from 1st November, 1990, after due medical examination."

Regulation No. 22 is extracted below :-

"22.LEAVE Preparatory To REretirement.-Leave Preparatory to Reretirement shall not count as qualifying service and pension shall not be payable during leave preparatory to reretirement. Employees Will have the choice as under:- (a) either to encash the entire period of accumulated Leave Preparatory to Reretirement and draw pension from the first of the month following the date of superannuation itself (as Leave Preparatory to Reretirement commences from the beginning of that month) (b) to avail of Leave Preparatory to Reretirement for completed months and encash the broken period of Leave Preparatory to Reretirement of less than a month so as to draw pension from the first of the succeeding month."

(5) After the above mentioned Pension Scheme was introduced as per the Reserve Bank of India Pension Regulations 1990, the petitioner made a representation dated 30-11-1990 to the second respondent requesting that the petitioner be allowed to opt for the pension scheme. The said representation is Annexure-XII to the writ petition. In the said representation the petitioner had referred to the fact that employees whose dates of superannuation were prior to 1-1-1986 but was allowed to avail of leave preparatory to reretirement and thereby continued to be in service as on 1-1-1986 were excluded from the application of the pension scheme. However, placing reliance on Regulation 26(4) of the Reserve Bank of India Staff Regulations, the petitioner pointed out that he retired from service only on 7-4-1986 and was in service on 1-1-1986 and hence ha should be allowed to opt for the pension scheme. The said representation dated 30-11-1990 of the petitioner revoked a reply dated 24-1-1991 (Annexure-xIII) from the respondent. The communication dated 24-1-1991 contained a cryptic reply slating as follows : -

"WITH reference to your letter dated 30-11-1990, we advise that your request has been carefully considered but we regret our inability to accede to same."

Thus the request of the petitioner was rejected without staling any reason.

(6) The above mentioned communication dated 24-1-1991 rejecting the request of the petitioner for permission to opt for the pension scheme is challenged in this writ petition. The petitioner has also prayed for a direction to the respondent-bank to allow the petitioner to exercise his option for the pension scheme brought into effect by the Reserve ank of India Pension Regulations 1990 with consequential benefits. There is a further prayer to strike down the portion of Regulation 3(3) of the Reserve Bank of India Pension Regulations 1990 i.e. "excluding those on leave preparatory to reretirement" being unconstitutional and in violation of provisions of the Pension Regulations and the Reserve Bank of

India Staff Regulations.

(7) Learned counsel for the petitioner Mr. A. K. Sikri contended that in view of the provisions in the Reserve Bank of India Staff Regulations, particularly Regulation No. 26(4), the petitioner retired from the Bank''s service only on 7-4-1986. The pension scheme introduced by the Reserve Bank of India Pension Regulations 1990 is applicable to the employees in service as on 1-1-1986 who opt for pension under the above mentioned pension scheme. Having treated the petitioner to have continued in service till 7-4-1986 though on leave preparatory to reretirement, it is illegal and unjust on the part, of the respondent to deny benefit of pension to the petitioner. The provision in Regulation 3(3) of the Reserve Bank of India Pension Regulations 1990 excluding those on leave preparatory to reretirement, is inconsistent with and vocative of Regulations 26(4) of Reserve Bank of India Staff Regulations. It was also contended that the exclusion of those in service on leave preparatory to reretirement, is discriminatory and vocative of Article 14 of the Constitution of India.

(8) On the other hand the learned counsel for the respondent Mr. R. P. Bhatt contended that the Reserve Bank of India Pension Regulations 1990 was the subject matter of challenge in the Writ Petition (Civil) No. 10/91 filed by All India Reserve Bank Retired Officers Association and others in the Hon''ble Supreme Court of India. The Supreme Court in the judgment All India Reserve Bank Retired Officers Association and others Vs. Union of India and others, upheld the validity of Regulation 3(3). After the Supreme Court gave its approval to the validity of Regulation, it is not open to the petitioner again to challenge the same on some other frivolous grounds. It was also contended that this Court is bound by the above judgment of the Supreme Court and cannot examine the question again. However, learned counsel conceded that the question of the validity of the exclusion of employees on leave preparatory to reretirement from the purview of the pension scheme was not specifically raised or considered in the above mentioned case. But according to Mr. Bhatt the petitioner cannot agitate the said point in this writ petition in view of the principles of res judicata. It was further contended that the petitioner retired prior to 1-1-1986 and was not in service as on 1-1-1986. According to the learned counsel the exclusion of the employees on leave preparatory to reretirement from the purview of the pension scheme is neither arbitrary nor discriminatory. They are excluded for valid and sufficient reasons.

(9) Admittedly when the petitioner retired from service (whether on 30-11-1985 or on 7-4-1986), the petitioner and other employees of the Reserve Bank of India were not entitled to any pension. The pension scheme was introduced only subsequently as per the R.B.I. Pension Regulations 1990. The petitioner''s claim for pension is only based on the said Regulations. It is not disputed that those who retired from service prior to 1-1-1986 are not entitled to pension under the above mentioned Pension Regulations. It is also not disputed that from among those who were in service as on 1-1-1986 and retired before 1st November,

1990, those who were on leave preparatory to reretirement are excluded from the purview of the Pension Scheme. Hence the questions to be considered in this case are : -

(A)Whether the petitioner retired from service prior to 1-1-1986 ? In other words, whether he was in service on 1-1-1986 ? (b) If the petitioner was in service on 1-1-1986, whether the petitioner falls in the category of those in service as on 1-1-1986 and retired before 1-1-1990 but were on leave preparatory to reretirement ? (c) If the petitioner falls in the above mentioned category, whether the exclusion of such category of employees from the purview of the Pension Scheme is discriminatory and unconstitutional as contended by the petitioner ?

(10) The service conditions of the employees of the Reserve Bank of India pertaining to reretirement from service are contained in the Reserve Bank of India Staff Regulations 1948. Hence the date of reretirement of the petitioner depends on ''.he provisions in the R.B.I. Staff Regulations. Regulations 18(2) and 26(4) of the Reserve Bank of India (Staff) Regulations 1948 are extracted below : -

"REGULATION18(2): ''Service'' includes the period during which an employee is on duty as well as on leave duly authorised by a competent authority but does not include any period during which an employee is absent from duty without permission or overstays his leave, unless specially permitted by a competent authority." Regulation 26(4): "Notwithstanding anything contained in this Regulation, where an employee has ordinary leave earned but not availed of as on the date of reretirement, he may at his option, (a) be permitted to avail of leave subject to a maximum of six months in respect of leave earned under these Regulations and in that case the employee will be deemed to retire from service at the expiry of the leave : Or (b) be paid a lumpsum amount which would be equivalent to pay as defined in Regulation 3(f) of these Regulations as on the date of his reretirement, for the unaveiled ordinary leave earned subject to a maximum of six months plus dearness allowance in respect thereof."

Admittedly, the petitioner was on leave preparatory to reretirement from 1-12-1985 to 7-4-1986 and the said leave was duly authorised by the competent authority. Hence in view of Regulation 18(2) quoted above, the petitioner was in service till 7-4-1986 as the period from 1-12-1985 to 7-4-1986 is liable to be treated as service Regulation 26(1) says that an employee other than an employee in Class Iv shall retire at 58 years of age and an employee in Class Iv at 60 years of age. But as per clause (4) of Regulation 26 where an employee has ordinary leave earned but not availed of as on the date of reretirement, he may at his option be permitted to avail of leave subject to a maximum of six months in respect of the leave earned and in that case he will be deemed to retire from service on the expiry of leave. The benefit under clause (4) of Regulation 26 is provided ''notwithstanding anything contained in the said regulation Hence an employee covered by clause 3(a) Regulation 26 will be deemed to retire from service only on the expiry of the leave availed under clause 4(a) notwithstanding the age of reretirement stipulated in clause (1) of Regulation 26. Since the petitioner was permitted to avail of leave under clause 4(a) of Regulation 26 and since the said leave expired only on 7-4-1986 the petitioner is entitled to be deemed to have retired from service only with effect from 7-4-1986. In this context it may be mentioned that in S. Pratap Singh Vs. The State of Punjab, the Supreme Court rejected the contention that when a Government servant proceeds on leave Preparatory to reretirement, he ceases to hold office and to be in the employment of Government and that in fact he practically retires on the date he avails of the leave. The Supreme Court pointed out that a Government servant is in service till his service terminates and that the service can terminate only by dismissal, removal or reretirement. It was held in the said judgment that the date from which a Government servant is on leave preparatory to reretirement cannot be treated as the date of his reretirement from service.

(11) Hence there is merit in the contention of the petitioner that he retired from service only on 7-4-1986. His contention is also supported and strengthened by the respondent''s conduct as revealed by the facts and documents mentioned in paragraph 2 above. The conduct of the respondent clearly shows that the respondent treated the petitioner as continuing in service till 7-4-1986 and to have retired from service only on 7-4-1986. Hence we reject the contention of the respondent that the petitioner retired from service prior to 1-1-1986.

(12) It is to be noted that the provisions in the R.B.I. Pension Regulations 1990 do not stand in the way of determining the date of reretirement Of the petitioner with reference to the R.B.I. Staff catapultions Regulation 2(6) of the Pension Regulations defines "date of reretirement" as the date on which an employee attains the age of superannuation or he is retired by the Bank or the date on which the employee voluntarily retires. Regulation 2(12) of the Reserve Bank of India Pension Regulations defines "reretirement" as reretirement in terms of Regulation 26 and other instructions issued by the Bank under Settlement/ Awards. Hence, for the purpose of implementing the pension scheme introduced by the R.B.T. Pension Regulations 1990, it is necessary to refer to Regulation No. 26 in the R.B.I. Staff Regulations to determine the date on which an employee retired from service. As already explained above, in view of clause 4 of Regulations 26 of the R.B.I. Staff Regulations, the petitioner should be deemed to have continued in service beyond 30-11-1985 and to have retiled from service only on 7-4-1986.

(13) The petitioner was in service on 1-1-1986 and retired on 7-4-1986. He was on leave preparatory to reretirement daring the period from 1-12-1985 to 7-4-1986. Hence he falls in the category of those who were in service as on 1-1-1986 and retired before 1-1-1990 but were on leave preparatory to reretirement. Consequently he is not eligible for pension in view of Regulation 3(3) of the Reserve Bank of India Pension Regulations according to which

employees who were on leave preparatory to reretirement as on 1-1-1986 arc excluded from the application of the Pension Regulations.

(14) According to the petitioner the exclusion of employees like the petitioner from the application of the Pension Regulations is discriminatory and unconstitutional being vocative of Article 14 of the Constitution of India. Before we deal with this aspect it is necessary to consider the objection raised by the respondent on the basis of Writ Petition (Civil) No. 10/91 decided by the Supreme Court. We find from the judgment All India Reserve Bank Retired Officers Association and others Vs. Union of India and others, that the only question raised in the said Writ Petition and decided by the Supreme Court was the validity of a cut off date for the application of the Pension Scheme. The validity of the exclusion of employers who were on leave preparatory to reretirement as on 1-1-1996 was neither raised nor considered in the above case Hence the judgement of the Supreme Court in Writ Petition (Civil) No. 10/91 does not stand in the way of this Court considering the question raised by the petitioner in this case. We are also not impressed by the argument of the learned counsel for the respondent that this petition is hit by the principles of res judicata. Firstly, there is no such pleading in the counter/reply affidavit of the respondents. Secondly, there is no pleading that the petitioner herein was a petitioner in the Write Petition (Civil) 10/91 or was a member of the All India Reserve Bank Retired Officers Association which filed Writ Petition (Civil) No. 10/91 before the Supreme Court. Learned counsel for the petitioner categorically stated before us that the petitioner was neither a petitioner in the Writ Petition, nor a member of the Association which filed the said Writ Petition. The respondents could nut effectively rebut this statement. There is also no material to show that the petitioner herein was a party to the Writ Petition filed in the Supreme Court. Hence we overrule the objection raised. by the learned counsel for the respondents on the basis of Writ Petition (Civil) No. 10/91 decided by the. Supreme Court.

(15) Now we come to the petitioner''s contention that the impugned portion of clause (3) of Regulation 3 of the Pension Regulations violates Article 14 of the Constitution and is, hence liable to be struck down. We have already observed that even if the petitioner is held to have retired from service only on 7-4-1986; he will not be eligible to opt for being governed by the pension scheme in view of the impugned clause in Regulation 3. The specific contention of the learned counsel for the petitioner is that employees who were in service as on 1-1-1986 and had retired from service before 1-11-1990 form one homogeneous class of retired employees and a further artificial division of this homogeneous class into those who were or; leave preparatory to reretirement and those who were not, is wholly arbitrary and unreasonable and liable to be struck down. It is contended that the impugned classification is not founded on any intelligible differentia having a rational nexus to the object sought to be achieved by the Pension Regulations. It is further contended that denial of pension to the petitioner on the basis of such artificial, arbitrary and unreasonable division is unconstitutional

and unjust. Hence the petitioner has prayed for quashing the impugned clause in Regulation 3(3) and for a direction to the respondents to allow the petitioner to exercise his option to be governed by the new pension scheme.

(16) It has to be clearly understood that the attack in this writ petition is not against the classification of employees with reference to a cut off date, namely, 1-1-1986. The attack in this case is against the further classification of Complies who were in service as on 1-1-1986 and retired before 1-1-1990, treating those who were on leave preparatory to reretirement differently and excluding them from the application of the Pension Regulations.

(17) It is well settled that Article 14 forbids class legislation but does not forbid reasonable classification. As pointed out by the Supreme Court in Deepak Sibal Vs. Punjab University and Another, to make it permissible under Article 14 the classification must satisfy two conditions :-

(I)The classification must be Founded on an intelligible differentia which distinguishes persons or things that grouped together from others left out of the group. (ii) The differentia must have a rational nexus to the object sought to be achieved by the Statute in question.

(18) The Reserve Bank of India Pension Regulations 1990 were made in exercise of the powers conferred by clause (1) of sub-section (2) of Section 58 of the Reserve Bank of India Act. 1934 and hence statutory in character. By clause (3) of Regulation 3, employees who were in service 35 on 1-1-1986 and retired before 1-1-1990. excluding those who were on leave preparatory to reretirement, are treated as one group and are given the benefit of option ''for the newly introduced pension scheme. Those who were on leave preparatory to reretirement during the period from 1-1-1986 to 1-1-1990 are left out of the group. Hence the question is whether the service during the period of leave preparatory to reretirement sanctioned under Regulation 26(4) of the Staff Regulations is an intelligible differentia which has a nexus to the object sought to be achieved by the Pension Regulations.

(19) In this context it is useful to refer to paragraphs (4) and (8) of the judgment in All India Reserve Bank Retired Officers Association and others Vs. Union of India and others, for a proper understanding of the background in which Regulation 3(3) of the R.B.I. Pension Regulations was formulated. They are extracted below :---

"4Before we proceed to deal with the main contention based on the decision of this Court in D.S. Nakara and Others Vs. Union of India (UOI), it would be advantageous to notice the fact that employees of the Reserve Bank of India were, prior to the introduction of the pension scheme, enjoying superannuation benefits comprising (i) Cpf, and (ii) gratuity. Representation of the employees and officers'' staff had been clamouring clamouring for the introduction of a pension scheme as a third retrial benefit since quite some time. To consider the demand the Bank had constituted a Study Group in October, 1979 under the

Chairmanship of Shri W. S. Tambe, retired Executive Director of the Bank with representatives of the recognised Unions/Associations representing different classes of Bank employees as members. The Study Group submitted its report in 1981. It would appear there from that the members held divergent view point. However, in paragraph 3.24 of the report they recommended equalisation of superannuation benefits in the Reserve Bank of India with those available to Central Government employees by introducing pension at 25% of last pay drawn. On the question of the date from which the said recommendation should be made effective the members were divided in their opinion. One view expressed was that since the latest wage settlements for overwhelming majority of employees were made operative 1st September, 1978 and since the appointment of the Study Group was made pursuant thereto, its recommendation should be made effective from 1st September, 1978. The other view was that since the Study Group was constituted in October, 1979 and the said period fell within the Bank''s accounting veer from July, 1979 to June 1980, it would not be reasonable to give effect to the recommendation from a date prior to 1st July, 1979. The Study Group was Therefore, not unanimous in respect of the date from which its recommendation should be made effective. It appears from the letter of Joint Secretary of the Staff Officers'' Association dated 20th March, 1981 that the draft of the report was approved by him. The subsequent letter, of March 1, 1982 discloses that the recommendations made by the Study Group were not approved by the Government of India in the Ministry of Finance. In paragraph 7 of that letter after objecting to the manner in which the recommendations of the Study Group had been brushed aside it was stated as under: "All the same we are inclined to consider the alternative in constructive manner if we are informed of the basis and the manner of the applicability of the Government Pension Scheme." It would thus appear from the above that after the proposal for the introduction of a third retrial benefit as recommended by the Study Group was negatived, the alternative proposal for introduction of a pension scheme on the lines of the Government Pension Scheme was mooted. Subsequently, by the Circular of June 15, 1982 the Association informed its member''s about the rejection by the Central Governing of the recommendation made by the Study Group. This is how the demand for the introduction of a third retrial benefit ended. Thereafter in the beginning of 1986 a large section of employees of the Bank belonging to various classes represented that the Bank should at least work out a pension scheme as an alternative to and in lieu of the existing Cpf scheme. Taking into account the general feeling of a large section of the Bank employees a fresh review was undertaken in 1987 informal discussion took place with the officers of the Central Government The Central Government ultimately towards the end of 1989 agreed to the Bank introducing a pension scheme patterned on Government Pension Scheme as revised by the Fourth Central Pay Commission with effect from 1st January, 19S6 in lieu of the Cpf scheme. Accordingly, the Bank Authorities took a decision to introduce a pension scheme in substitution of the extant Cpf scheme and ultimately framed the Regulations referred to above. Thus 1st January 1986 was. selected as a cut-off dated having regard to the fact that the Government Pension Scheme as a cut-off date having regard to the fact that the Government Pension sion Scheme was brought into -force with effect from that date. This, in brief, is the background in which Regulations 3(3) and 31 came to be formulated." "8. From what we have stated above it becomes clear that the demand of Bank employees for introduction of a pension scheme as a third retiral benefit as recommended by the Study Group in its report submitted in 1981 was rejected by the Central Government sometime in 1982, Thereafter a fresh demand was made for the introduction of a pension scheme in substitution of the Cpf scheme on the pattern of the pension scheme admissible to Central Government employees. This proposal met with the approval of the Central Government and accordingly the Bank introduced the Regulations incorporating the same. Under the Regulations new entrants joining on and after 1st November, 1990 automatically become governed by the pension scheme; for them the Cpf scheme has no existence. Those employees who were in the employment of the Bank prior to 1st November, 1990 were given an option to switch ever to the pension scheme subject to the conditions stated earlier. An option was also given to those employees who had retired between 1st January, 1986 and coming into force of the Regulations to come over to the pension scheme, provided they were willing to refund the employer''s contribution under their Cpf scheme with interest thereon and with further interest at 6 per cent per annum from the date of receipt of the provident fund amount till the date of repayment. It will thus be seen that the pension scheme introduced under the Regulations is patterned on the pension scheme governing the Central Government employees which was brought into effect from 1st January, 1986 on the recommendations of the Fourth Central Pay Commission found in Chapter X of the report, vide paragraph 10.19 of that Chapter. There is, however, no doubt that by fixing the cut-off date Bank employees who superannuated on or before 31st December, 1985 are denied the benefit of the Pension scheme."

(20) While rejecting the attack against the fixation of a cut-off date i.e. 1-1-1986, the Supreme Court in the above judgment held that :---

(I)The pension scheme introduced the R.B.I. Pension Regulations is a totally new one. It was not in existence prior to its introduction w.e.f. 1-1-1990. The employees of the Reserve Bank who bad retired prior to that date were admittedly governed by the Cpf scheme. (ii) If the Cpf retirees were not admitted to the new Pension Scheme they could not make any grievance in that behalf. They had no right to claim coverage under the new pension scheme since they had already retired and had collected their retiral benefits from the employer. (iii) D.S. Nakara and Others Vs. Union of India (UOI), itself has drawn a distinction between an existing scheme and a new scheme. When an existing scheme is revised or liberalised, all those who are governed by the said scheme must ordinarily receive the benefit of such revision or liberalisation and if the State desires to deny it to a group thereof, it must justify its action on the touch-stone of Article 14. But when an employer introduces an entirely new scheme which has no connection with the existing scheme, different considerations enter the decision making process. (iv) In the case of a new scheme, in respect whereof the retired employees have no vested right, the employer can restrict the same to certain class of retirees, having regard to the fact situation in which it came to be introduced, the extent of additional financial burden that it will throw, the capacity of the employer to bear the same, the feasibility of extending the scheme to all retirees regardless of the dates of their reretirement, the availability of records of every retiree etc.

(21) In the light of the above judgment the petitioner had no vested right to opt for the new pension scheme. The Reserve Bank was entitled to restrict the applicability of the scheme to certain class of retirees having regard to relevant aspects. The Bank decided to restrict the applicability of the scheme to those who were in service as on 1-1-1986 keeping out those who retired from service prior to 1-1-1986. This classification was upheld by the Supreme Court. By the impugned clause in Regulation 3(3) the Bank also decided to keep out of the scheme employees whose date of superannuation was prior to 1-1-1986 but continued to be in service on and after 1-1-1986 availing of the benefit under Regulation 26(4) of the R.B.I. Staff Regulations. The above category of employees were liable to be retired before 1-1-1986 and were fusty deemed to be in service on and after 1-1-1986 for the limited purpose of enabling them to avail of the unveiled earned leave. During the period of the said leave preparatory to reretirement they were paid full salary and other benefits since they would have been entitled to such benefits, bad they availed of the earned leave prior to the date of superannuation. However, in view of the fact that the dale of superannuation was over and the service after the date of superannuation was only deemed service to enable the employee to avail of the unveiled earned leave, no enhancement of salary was allowed during the period of leave preparatory to reretirement though increment was sanctioned for the limited purpose of calculating gratuity. Thus, the service during the period of leave preparatory to reretirement availed under Regulation 26(4) of the Staff Regulations can be clearly distinguished from the service prior to the date of superannuation. In terms of Regulation 26(4) (a) the former is deemed service for a limited purpose and the latter is actual service during the normal period of employment. As pointed out by the Supreme Court the above mentioned judgment All India Reserve Bank Retired Officers Association and others Vs. Union of India and others, pension is earned for rendering long service and is often described as deferred portion of compensation for past service. Hence pension depends on past service. Thus the nature of the service rendered by an employee has relevance in determining pension. Consequently the nature of the service has nexus to the object sought to be achieved by a pension scheme newly introduced to provide for pension to retired employees in respect of their past service to the Bank. In this connection it may be noticed that as per Regulation 22 (which is not challenged in the writ petition) leave preparatory to reretirement shall not count as qualifying service and pension shall not be payable during leave preparatory to reretirement. Hence the service during the

period of leave preparatory to reretirement availed under Regulation 26 (4) (a) is an intelligible and reasonable differentia which has a rational nexus to the object sought to be achieved by the Pension Regulations.

(22) It is also to be noted that the petitioner continued in service beyond 31-10-1985 on the strength of the deeming clause in Regulation 26(4)(a) of the R.B.I. Staff Regulations. Petitioner''s date of reretirement stood postponed to 7-4-1986 due to a legal fiction created by the said Regulation 26(4) (a), put the Court is bound to ascertain for what purpose the fiction is created, as observed by the Supreme Court in Prafulla Kumar Swain vs. Prakash Chandra Misra & others, (JT 1993 (1) 360) (5) quoting the following passage from Principles of Statutory Interpretation by Justice G. P. Singh;

"AS was observed by James, L.J. : When a statute enacts that something shall be deemed to have been done, which in fact and in truth was not done, the court is entitled and bound to ascertain for what purpose and between what person the statutory fiction is to be resorted to". "When a legal fiction is created", stated S. R. Das, J. "for what purpose, one is led to ask at once, is it so created?"

By Regulation 26 (4) (a) of the Staff Regulations a fiction was created for the limited purpose of enabling the employees to avail of the unveiled earned leave. There was no intention to extend the term of employment for any further period conferring all consequential benefits. This is clear from the fact that even though increments were sanctioned during the period of leave preparatory to reretirement no enhancement in salary was allowed. The increment was sanctioned only for the limited purpose of calculating gratuity. Hence there is nothing unreasonable in treating the service during the period of leave preparatory to reretirement differently from the service prior to the date of superannuation.

(23) When the petitioner opted in 1985 to avail of the unveiled earned leave as per Regulation 26(4) (a) of the Staff Regulations. there was no pension scheme in existence. What was in existence was only the Cpf scheme. The petitioner could not have made the option then to avail of the unveiled earned leave expecting grant of pension. Hence by excluding the petitioner from the application of the pension scheme introduced in 1990, no injustice was done to him and no promise was breached.

(24) If employees like petitioner are allowed to opt for the pension scheme, they will be stealing a march over others whose dates of superannuation also were prior to 1-1-1986 but chose not to avail of the unveiled earned leave under Regulation 26 (4) (a) of the Staff Regulations. Such a discriminatory treatment of granting pension to some and denying pension to others similarly situated was not intended by the provisions in the said a regulation.

(25) For the reasons stated above we hold that the impugned provision in the R.B.I. Pension Regulations is not arbitrary or unreasonable or unjust or vocative of Article 14 of the Constitution of India. There is no merit in the petition.

Petitioner is not entitled to any of the reliefs claimed. Hence the writ petition is dismissed with no order as to coats.

