

(1973) 05 DEL CK 0025

In the Delhi High Court

Case No : Civil Writ Appeal No. 1341 of 1970 and 690 of 1972

J.S. Sachdev and Others

APPELLANT

Vs

Reserve Bank of India, New Delhi and Another

RESPONDENT

Date of Decision : 11-05-1973

Acts Referred:

Citation : (1973) ILR Delhi 392 : (1973) 2 LLJ 204

Hon'ble Judges : M.R.A Ansari, J;D.K. Kapur, J

Bench : Division Bench

Advocate : L. Ramamurthy, C.N. Murthy, I.N. Shroff and R.P. Kapur, for the Appellant;

Judgement

M.R.A. Ansari, J.

(1) The petitioners in both the writ petitions are the employees of the Reserve Bank of India. Delhi Centre, (hereinafter referred to as the Bank) and in their respective writ petitions, they seek to challenge the validity of certain schemes formulated by the Bank regulating the fixation of seniority and the method of promotion of the said employees. It would be convenient to dispose of both the writ petitions by a common judgment.

(2) The Bank was constituted under the Reserve Bank of India Act, 1934 (hereinafter referred to as the Act). The primary purpose for the constitution of the Bank, according to the preamble to the Act was "to regulate the issue of Bank notes and the keeping of reserves with a view to securing monetary stability in India and generally to operate the currency and credit system of the country to its advantage". To this primary function of the Bank, other functions were added from time to time as and when the parliament passed other legislation to meet the economic needs of the country. For carrying out all these functions, the Bank classified its administrative machinery into the following five groups:-

1.General side. i.e.. Banking Department, Issue Department, Public Debt Office

and Exchange Control Department; 2. Department of Banking Operations and Development and the Industrial Finance Department; 3. Agricultural Credit Department as provided in section 54 of the Act; 4. Economic Department and the Department of Statistics; and 5. Industrial Development Bank of India.

(3) The departments falling under the first group were known as the General Departments and those falling under the other four groups were known as the Specialized Departments. Although in the first instance, recruitment to the various posts in the Bank was made on a common basis, i.e., by a competitive examination and selection, the successful candidates were allotted either to the General Departments or to the Specialized Departments according to the vacancies available in the respective Departments. But when once such allotment was made, the seniority and promotion of the employees in the various departments were determined on the basis that each department was a separate department. In other words, separate seniority lists were prepared for the employees in the General Departments and in the Specialized Departments and the employees in the Central Departments could not claim confirmation and promotion in the vacancies arising in the Specialized Departments and vice versa.

(4) It so happened that with the expansion of the activities of the Bank in various fields as a result of the policies of the Government and the legislation that was passed by Parliament from time to time, there was greater expansion in the Specialized Departments of the Bank as compared to the General Departments of the Bank. This again resulted in greater scope for confirmation and promotion for the employees working in the Specialized Departments as compared to the employees working in the General Departments. The latter naturally felt dissatisfied and wanted the Bank to equalise them with the employees in the Specialized Departments for the purpose of seniority and promotion. The Government constituted a National Industrial Tribunal consisting of Mr. Justice Kantilal T. Desai in 1960 to consider the grievances of the employees of the Bank in this regard. Before the Tribunal, the All India Reserve Bank Employees Association pleaded that

" ALL promotions should be made strictly according to the combined seniority irrespective of the cadre or department and that such wide discretionary powers in the matter of promotions should not be vested in the administration"- The Bank, on the other hand, claimed that under the Reserve Bank of India Staff Regulations, 1948, the Bank had the absolute discretion in the matter of making appointments and promotions notwithstanding the seniority of an employee in any grade and it justified the maintenance of separate seniority lists for the various Departments on the ground that the work in each of these groups was becoming more and more of a special nature and inter-transferability was not only undesirable in the best interest of the Bank but was also hard to achieve. The Tribunal in its award made the following observations:- "Having carefully considered all aspects of the matter and all the evidence placed before me in view of the limited scope of the item under reference, I am unable to give any

specific directions to the Bank in connection therewith. I can only generally observe that it is desirable that wherever it is possible, without detriment to the interests of the Bank and without affecting efficiency, to group employees in a particular category serving in different departments at one centre together for the purpose of being considered for promotion, a common seniority list of such employees should be maintained. The same would result in opening up equal avenues of promotion for a large number of employees and there would be lesser sense of frustration and greater peace of mind among the employees".

(5) The above views of the Tribunal were endorsed by the Supreme Court in *All India Reserve Bank Employees Association Vs. Reserve Bank of India*, .

(6) In pursuance of the above recommendations made in Desai's award and which were endorsed by the Supreme Court, the Bank formulated schemes from time to time with a view to give greater opportunities to the employees in the General Departments for confirmation and promotion. The first scheme which the Bank formulated with this object was what is called the First Optee Scheme, 1965 (hereinafter referred to as the Optee Scheme). Some of the broad features of this scheme were that an option was given to the confirmed Grade II Clerks and officiating Grade I Clerks of the General Departments to be allotted to the Specialised Departments. Out of the employees who exercised such option, a panel was drawn by selection on the basis of seniority and merit and those who were selected were transferred to the Specialised Departments from time to time as and when vacancies in the Specialised Departments arose. On such transfers, these transferees were posted only as Grade-II Clerks in the Specialized Departments even if some of them had been officiating as Grade I Clerks. While maintaining their seniority inter se, their seniority vis-a-vis the employees who were already working in the Specialized Departments was determined on the basis "that their transfer was in the interest of the Bank, that is to say, the substantive position of the transferee in the seniority list of the Department concerned will be fixed above the employee who joined service after the date of his recruitment or date of graduation as the case may be and below the employee who joined service before the date of his recruitment/graduation". The petitioners in C.W. No. 690/72 were among those who were transferred from the General Departments to the Specialized Departments under the Optee Scheme. Some of them were officiating as Grade I Clerks in the General Departments, but on their transfer to the Specialized Departments, under the Optee Scheme, they were posted to substantive posts of Grade II Clerks. Some of these petitioners not only had to forego the higher pay which they were drawing as officiating Clerks Grade I but also lost their seniority in the General Departments. The other petitioners did not suffer any monetary loss by such transfer but lost their seniority in the General Departments. These optees, however, expected that the loss of seniority and the monetary loss which some of them had suffered by such transfer would be compensated by the speedier chances of promotion in the Specialized Departments.

(7) The confirmed Clerks Grade I in the General Departments, however, felt dissatisfied with the Optee Scheme as they were left out of the scope of the said scheme and were denied the chance of being transferred from the General Departments to the Specialized Departments. With a view to redress their grievances, the Bank formulated another scheme which will hereinafter be referred to as the Optee Scheme, 1969. Under this scheme, confirmed Clerks Grade I in the General Departments were eligible to be transferred to the Specialized Departments to the extent of 33-1/3% of the long term normal vacancies of Clerks Grade I (that is to say, excluding expansion vacancies) arising in the Specialized Departments during the period 1-2-1969 to 30-6-1970. Transfers from the General Departments to the Specialized Departments were to be made by selection and a panel was prepared of the persons selected. Transfers of the persons in this panel to the Specialized Departments were to be made as and when long term vacancies of Clerks Grade I arose in each of the Specialized Departments, the 1st, 4th, 7th and 10th and so on vacancies being filled up by drawing on the panel in the order in which the names were listed. It would not be necessary to refer to the other provisions in the scheme, as the main ground on which this scheme is challenged is that the benefit under the same was available only to a limited extent, namely, to the extent of 33-1/3% of the vacancies in the Specialized Departments and not to the extent of 100%. In 1970, the Bank constituted another Specialised Department known as the Industrial Development Bank and a scheme was formulated for the recruitment to the several posts in the Industrial Development Bank. This scheme was put in the form of an office circular dated 22-4-1970. We are concerned only with the scheme of recruitment to the posts of Clerks Grade I under this circular. The posts of Clerks Grade I in the Industrial Development Bank were to be filled up on selection basis by inviting applications from the employees attached to the General Departments as well as the Specialized Departments in Groups 2 and 3 of the Bank who possessed certain qualifications which were prescribed in the circular. Confirmed Clerks Grade I either in the General Departments, or in the other specialized Departments were, however, not eligible to apply for the posts of Clerks Grade I in the Industrial Development Bank.

(8) It would thus be seen that the various schemes formulated by the Bank benefited only certain categories of employees in the General Departments and the demand made by the All India Reserve Bank Employees' Association before the National Industrial Tribunal consisting of Mr. Justice Desai, namely, that there should be a common seniority list for all the employees in all the departments of the Bank and that promotions to all the posts in the Bank should be made on the basis of the common seniority list, had not been fully satisfied by the Bank by any of the schemes formulated by it. Therefore, the Association continued to agitate for the acceptance of its original demand and after prolonged negotiations, the Bank and the Association concluded an agreement on 7-5-1972. Under this agreement, the Bank substantially conceded the demand of the Association that there should be a common seniority list for all the employees

of the Bank and that the Bank should not maintain separate seniority lists in each of its groups and that confirmations and promotions should be made only on the basis of the common seniority list. Under this agreement, the non-clerical employees of the Bank were also given the option to be transferred to the clerical side subject to their being a graduate or possessing the certificate of having passed I.I.B. Examination. These non-clerical optees were also given the benefit of seniority by treating one third of their total service on the non-clerical side as service on the clerical side. As some of the employees of the Bank including the petitioners in C.W. No. 690/72 did not accept the terms of this agreement and as the agreement would be binding only upon the parties thereto, the Bank issued an office circular dated 12th May, 1972 which contained the terms of this agreement with a view to make it binding upon the petitioners and the other employees of the Bank who were not parties to the agreement.

(9) The petitioners in C.W. No. 690/72 have challenged the validity of the office circular dated 12th May, 1972 and petitioners in C.W. No. 1341/70 have challenged the validity of the Optee Scheme of 1965 and the office circulars of 1969 and 1970. The details of these schemes and the circulars and the grounds on which they are challenged will be referred to at a later stage. But it may be stated at this stage itself that the main controversy is in respect of the combined seniority list which was contemplated under the office circular dated 12th May, 1972. If this circular is upheld, then the petitioners in C.W. No. 1341/70 will no longer be concerned with challenging the validity of 1965 Optee Scheme and the office circulars of 1969 and 1970. It is only if the office circular of 1972 is held to be bad that we may be called upon to consider the objections to the other schemes which have been put forward by the petitioners in C.W. No. 1341/70,

(10) The petitioners in both the writ petitions challenged the several schemes mainly on the ground that these schemes are violative of Articles 14 and 16 of the Constitution of India. The question of the violation of Articles 14 and 16 of the Constitution arises only if the Bank is considered to be a "State" within the meaning of Article 12 of the Constitution. Therefore, the Bank has raised a preliminary objection against the maintainability of both the writ petitions on the ground that the Bank is not "State" within the meaning of Article 12 of the Constitution. We have, Therefore, first to consider this preliminary objection raised by the Bank against the maintainability of the two writ petitions.

(11) A lot of case law has been cited before us on this point by the learned counsel for the Bank as well as for the petitioners in the two writ petitions. It would be unnecessary to consider all the cases cited by the learned counsel in view of the fact that most of these cases have been considered by a Full Bench of this Court in L.P.A. No. 155 of 1972 (The Industrial Finance Corporation of India v. Delhi Administration and others) decided on 29th January, 1973.

(12) It will be sufficient if we refer only to one of the cases, viz., Rajasthan State Electricity Board, Jaipur Vs. Mohan Lal and Others, in which it was held as follows

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" THESE decisions of the Court support our view that the expression "other authorities" in Art. 12 will include all constitutional or statutory authorities on whom powers are conferred by law. It is not at all material that some of the powers conferred may be for the purpose of carrying on commercial activities. Under the Constitution, the State is itself envisaged as having the right to carry on trade or business as mentioned in Art 19(1)(g). In Part Iv, the State has been given the same meaning as in Art. 12 and one of Directive Principles laid down in Art. 46 is that the State shall promote with special care the educational and economic interests of the weaker sections of the people. The State, as defined in Art. 12, is thus comprehended to include bodies created for the purpose of promoting the educational and economic interests of the people. The State, as constituted by our Constitution, is further specifically empowered under Art. 298 to carry on any trade or business. The circumstance that the Board under the Electricity Supply Act is required to carry on some activities of the nature of trade or commerce does not, Therefore, give any indication that the Board must be excluded from the scope of the word "State" as used in Art. 12. On the other hand, there are provisions in the Electricity Supply Act which clearly show that the powers conferred on the Board include power to give directions, the disobedience of which is punishable as a criminal offence. In these circumstances, we do not consider it at all necessary to examine the cases cited by Mr. Desai to urge before us that the Board cannot be held to be an agent or instrument of the Government. The Board was clearly an authority to which the provisions of Part Iii of the Constitution were applicable".

(13) The Full Bench of this Court was largely guided by the decision in the Rajasthan State Electricity Board's case and after reviewing the case law on the subject, laid down the following principles:-

"ON a consideration of the various observations referred to above, we are of the opinion that a body or authority cannot, by the mere fact that it has been constituted or set up by a statute, be regarded as an "authority" and hence "state" within the meaning of Article 12. To be 4such an "authority", it should have functions and powers such asre mentioned or indicated in the aforesaid observations of the Supreme Court. Broadly stated, the said observations indicate that a body or authority constituted or set up by or under the Constitution or a statute within the territory of India or under the control of the Government of India would be an "authority" and hence "state" within the meaning of Article 12 if- (i) it is an agent or instrument of the Government; or (ii) it has been set up for the purpose of administering laws enacted by the Parliament or by the State, or has been vested with the duty to make decisions in order to implement those laws; or (iii) it has been vested with power to carry out governmental or quasi-governmental functions, or powers to give directions which are to be obeyed and command obedience of the same; or (iv) it is invested with power to make rules or regulations and to administer or enforce them to the detriment of citizens and others".

(14) It is in the light of the above principles that we have to consider whether the Bank is a "state" within the meaning of Article 12 of the Constitution and for this purpose, we have to examine the scheme of the Act. We have already referred to a portion of the preamble to the Act which reads as under:-

" WHEREAS it is expedient to constitute a Reserve Bank for India to regulate the issue of Bank notes and the keeping of reserves with a view to securing monetary stability in India and generally to operate the currency and credit system of the country to its advantage".

Section 3 of the Act states that-

" A bank to be called the Reserve Bank of India shall be constituted for the purposes of taking over the management of the currency from the Central Government and of carrying on the business of banking in accordance with the provisions of this Act."

(15) Section 4 of the Act fixed the capital of the Bank at five crores. of rupees. Although at the time of the constitution of the Bank a part of this capital was derived from non-governmental sources also, but subsequently the entire capital was contributed by the Central Government. Though under sub-section (2) of section 3 of the Act the Bank was designated as a body corporate whose affairs are managed by the Governor of the Bank, the Deputy Governor and the Central Board of Directors, still the Governor, Deputy Governor and the Central Board are all nominated by the Central Government and they have to function in accordance with the directions given to the Bank by the Central Government. Section 11 of the Act gives the power to the Central Government to remove from office the Governor, the Deputy Governor or any other Director. Section 17 of the Act authorises the Bank, inter alia, to accept money on deposit without interest from, and the collection of money for the Central Government, the State Governments, local authorities, banks and any other persons and to purchase, sell and rediscount of bills of exchange and promissory notes. u/s 20 of the Act, the Bank shall undertake to accept monies for account of the Central Government and to make payments up to the amount standing to the credit of its account and to carry out its exchange, remittance and other banking operations, including the management of the public debt of the Union. u/s 21 of the Act, the Central Government shall entrust the Bank, on such conditions as may be agreed upon, with all its money, remittance, exchange and banking transactions in India, and, in particular, shall deposit free of interest all its cash balances with the Bank. u/s 22 of the Act, the Bank shall have the sole right to issue bank notes in India and may xx. xx. xx. xx. issue currency notes of the Government of India supplied to it by the Central Government and under sub-section (2), the Central Government divested itself of the power to issue any currency notes. u/s 30 of the Act, the Central Government has the power to supersede the Central Board of the Bank and thereafter the general superintendence and direction of the affairs of the Bank shall be entrusted to such agency as the Central Government may determine and such agency may

exercise the powers and so all acts and things which may be exercised or done by the Central Board under the Act. Section 32 of the Act gives the authority to the Bank to punish any person contravening the provisions of section 31 of the Act. u/s 38 of the Act, the Central Government undertook not to put into circulation any rupees, except through the Bank and the Bank undertook not to dispose of rupee coin otherwise than for the purposes of circulation. Section 40 of the Act gives the power to the Bank to sell or buy from any authorised person foreign exchange at such rates of exchange and on such conditions as the Central Government may from time to time determine. Section 42 of the Act makes it obligatory on every scheduled bank to maintain a percentage of its cash reserves in the Bank and the Bank also is authorised to increase the cash reserves. All the scheduled banks are under an obligation to send regular statements to the Bank furnishing information about their financial position and in cases of default by any of the scheduled banks, the Bank has the power to punish the Director, Manager or Secretary of the scheduled bank with a fine. u/s 53 of the Act, the Bank shall prepare and transmit to the Central Government a weekly account of the Issue Department and of the Banking Department in such form as the Central Government may by notification in the Gazette of India prescribe. The Bank has also to transmit a copy of the annual accounts of the Bank within two months from the date on which the annual accounts of the Bank are closed. u/s 58 of the Act, the Central Board has the power to make regulations with the previous sanction of the Central Government to provide for all matters for the purpose of giving effect to the provisions of this Act.

(16) In addition to the functions entrusted to the Bank under the Act, other functions were entrusted to the Bank under other laws like the Foreign Exchange Regulation Act, The Banking Regulation Act etc. The preamble to the Foreign Exchange Regulation Act, 1947 is in the following terms :-

" WHEREAS it is expedient in the economic and financial interests of India to provide for the regulation of certain payments, dealings in foreign exchange and securities and the import and export of currency and bullion."

(17) Section 3 of the said Act gives the power to the Bank to authorise any person to deal in foreign exchange and u/s 4, no person other than an authorised dealer shall, except with the previous general or special permission of the Bank, buy or otherwise acquire or borrow from, or sell or otherwise transfer or lend to, or exchange with, any person not being an authorised dealer, any foreign exchange. u/s 17, no person residents in India, shall, except with the general or special permission of the Bank, settle or make a gift of, any property so that a person who at the time of the settlement or t^e making of the gift is resident outside India, elsewhere than in territories notified in this behalf by the said Bank will have an interest in the property, or exercise any power for payment in favor of a person who at the time of the exercise of the power is resident outside India elsewhere than, in such notified territories. u/s 18B, no airline, shipping company or travel agent shall, except with the general or special permission of the Reserve

Bank and subject to such conditions, if any, as may be specified therein, book for any person a passage for a journey the whole or any part of which is outside India. u/s 19(2), the Reserve Bank has the power to examine any information, book or other document in the possession of any person and also to require any such person to furnish, or to obtain and furnish to the Bank such information, book or other document. u/s 23, a contravention of any of the provisions of the said Act is considered an offence and upon conviction by a Court, the offender is punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

(18) Under the Banking Regulation Act, 1949 (hereinafter referred to as the Regulation Act) the Bank is vested with considerable powers of superintendence and control over other banks. u/s 12A of the Regulation Act, the Reserve Bank has the power to require any banking company to call a general meeting of the shareholders within a specified time to elect in accordance with the voting rights permissible under the Regulation Act fresh directors and the banking company shall be bound to comply with the order of the Bank. u/s 18 of the Regulation Act, every banking company, not being a scheduled bank, shall maintain in India by way of cash reserve with itself or in the current account opened with the Reserve Bank a sum equivalent to 3 per cent of the total of its time and demand liabilities and shall submit to the Reserve Bank before the fifteenth day of every month a return showing the amount so held. u/s 21 of the Regulation Act, the Reserve Bank is authorised to determine the policy in relation to advances to be followed by banking companies generally or by any banking company in particular and when the policy has been so determined, all banking companies or the banking company concerned, as the case may be, shall be bound to follow the policy as so determined. Under sub-section (2) of the same section, the Reserve Bank has the power to give directions to the banking companies as to the purposes for which advances may or may not be made, the margins to be maintained in respect of secured advances etc., and every banking company shall be bound to comply with any directions given to it under this section. u/s 22, no banking company shall carry on banking business in India unless it holds a license issued by the Reserve Bank and any such license may be issued subject to such conditions as the Reserve Bank may think fit to impose it. The Reserve Bank may cancel a license granted to a banking company under this section if the company ceases to carry on banking business in India; or if the company at any time fails to comply with any of the conditions imposed upon it under sub-section (1); or if at any time, any of the conditions referred to in sub-section (3) is not fulfilled. Under sub-section (2) of section 25 of the Regulation Act, every banking company shall submit to the Reserve Bank a return in the prescribed form and manner of the assets and liabilities referred to in sub-section (1) of that section and u/s 26, every banking company shall within thirty days after the close of each calendar year, submit a return in the prescribed form and manner to the Reserve Bank as at the end of such calendar year of all accounts in India which have not been operated upon for ten years. u/s 29, every banking

company shall prepare a balance-sheet and profit and loss account in respect of all business transacted by it and u/s 31, such account and balance-sheet shall be furnished as returns to the Reserve Bank within three months from the end of the period to which they refer. u/s 35 of the Regulation Act, the Bank is empowered to inspect any banking company's books and accounts and if upon such inspection the Reserve Bank is satisfied that in the public interest or in the interest of banking policy etc., it is necessary to issue directions to the banking companies generally or to any banking company in particular, the Bank may u/s 35A issue such directions as it deems fit and the banking companies shall be bound to comply with such directions. u/s 36AA, the Reserve Bank has the authority in certain circumstances to remove from office any chairman, director, chief executive officer or other officer or employee of the banking company. u/s 36AE, the Reserve Bank may report to the Central Government that a banking company may be taken over by the Central Government and upon such report, the Central Government may acquire the undertaking of such banking company. u/s 45, the Bank may apply to the Central Government for an order of moratorium in respect of a banking company and on such application, the Central Government may make an order of moratorium staying the commencement or continuance of all actions and proceedings against the company for a fixed period of time on such terms and conditions as it thinks fit and proper. Section 46 provides for the levy of penalties on the banking companies and the officers of such companies for contravention of the provisions of the Regulation Act or of the orders or directions issued by the Bank to the said companies and under certain circumstances, the Bank itself has the power u/s 47A to impose penalties on erring banking companies.

(19) The several provisions of the Act, the Foreign Exchange Act and the Regulation Act, which have been referred to above, are, in our view, sufficient to bring the Bank within the scope of the principles enunciated by the Full Bench of this Court. The Bank is a statutory body constituted under an Act of Parliament. Its entire capital is contributed by the Government. In other words, the Government is the only shareholder of the Bank. The Government exercises complete control over the administration of the Bank. The Governor, the Deputy Governors of the Bank and the Central Board of Directors are all nominated by the Government and they are liable to be removed by the Government. The Bank is constituted to, regulate the issue of Bank notes and the keeping of reserves with a view to securing monetary stability in India and generally to operate the currency and credit system of the country to its advantage. These functions constitute the sovereign functions of the Government and the several provisions of the Act which have already been referred to, and which vest the Bank with the exclusive power to operate the currency of the country have the effect of vesting the Bank with some of the sovereign functions of the Government. In the words of the Full Bench of this Court, the Bank has been vested with powers to carry out governmental functions and is also an instrument of the Government. The Foreign Exchange Regulation Act was passed to regulate dealings in foreign

exchange and securities and the import and export of currency and bullion. This again is a sovereign function of the Government and the Bank has been made the instrument of the Government to carry out this sovereign function. By virtue of the Regulation Act, the Bank has been given control of other private banks. The several provisions of these two Acts which have been referred to above make it abundantly clear that the Bank has been set up for the purpose of administering laws enacted by the Parliament and has been vested with the power to make decisions in order to implement those laws. It has been also vested with powers to give directions which are to be obeyed and command obedience of the same. It has been vested with power to make rules and regulations and to administer or enforce them to the detriment of citizens and others. It is also an agent of the Government inasmuch as under the provisions of the Act referred to above it can accept payments and make payments on behalf of the Government.

(20) It would also be useful at this stage to refer to the reasons given by the Full Bench of this Court for holding that the Industrial Finance Corporation of India was not a State within the meaning of Article 12 of the Constitution. Reference was made to the preamble of the Industrial Finance Corporation Act which stated that it was established as it was expedient to do so for the purpose of making medium and long-term credits more readily available to industrial concerns in India, particularly in circumstances where normal banking accommodation is inappropriate or recourse to capital issue methods is impracticable. Reference was also made to the fact that the Central Government was only a minor shareholder of Corporation and such, it could not be said that the Government was having such control over the Corporation as was contemplated by Article 12 of the Constitution. Referring to the provisions of the said Act which conferred the power on the Central Government to have general superintendence over the affairs and business of the Corporation, it was held that it was only in the nature of a kind of check over the working of the Corporation and could not be regarded as control over the entire Corporation within the meaning of Article 12 of the Constitution. Referring to section 23 of the said Act which enumerated the kind of business which the Corporation may transact, the Full Bench expressed the view that that business consisted, generally speaking, of guaranteeing, underwriting and granting loans and advances and the various clauses in the section read like the clauses of the Memorandum of a company. Referring to section 23(e), the Full Bench observed that no doubt the said provisions permitted the Corporation to act as an agent for the Central Government or, with its approval, for the International Bank for Reconstruction and Development in the transaction of any business with an industrial concern, but that it was obvious that such agency was only one kind of business which the Corporation might transact and the said provisions could not be said to make the entire corporation an agent or instrument of the Central Government. Referring to certain penal provisions of the said Act, the Full Bench observed that these provisions merely made certain acts offences punishable under the Act and that

these provisions did not make any disobedience of any (direction given by the Corporation punishable as an offence, but it only made certain actions of persons dealing with the Corporation punishable as offences. The full Bench further observed that the said actions were punishable not because of any disobedience of any order or direction of the Corporation but were punishable by reason of the statute itself. After reviewing the provisions of the Act, the Full Bench observed as follows :-

" THE above review of the provision in the Act shows that some of them treat the Corporation as any other financial institution, while some provisions give certain special rights or powers in the matter of recovery of its dues or reliefs in case of default on the part of its debtors or loanes, which provision do not militate against the Corporation being a trading Corporation or a banking Corporation. No doubt, some of the provisions show that under the Act the Corporation needs the sanction or permission of the Central Government in certain matters and the Central Government has the power to issue directions to the Corporation regarding certain matters. But, they are not, in our opinion, sufficient to make the Corporation an agent or instrument of the Central Government. The provisions do not show that the Corporation has been set up for administering any laws enacted by the Parliament or by the State or that it has been vested with any duty to make decisions in order to implement such laws. They do not also show that the Corporation has been vested with powers to carry out Governmental or quasi-governmental functions, or powers to give directions which are to be obeyed and command obedience of the same."

(21) It will be obvious that the reasons given by the Full Bench for holding that the Industrial Finance Corporation of India was not a State within the meaning of Article 12 of the Constitution do not, in our view, apply to the Bank. On the other hand, in our view, these reasons clearly exemplify the distinctions between the functions of the Bank and those of the Industrial Finance Corporation of India.

(22) Mr. I. N. Shroff, learned counsel for the Bank, however, contends that the primary function of the Bank is to carry on banking business and the other functions referred to above are incidental functions of the Bank and that, Therefore, the Bank cannot be regarded as a State. This contention cannot be accepted in view of the following rule laid down by the Supreme Court in the case of Rajasthan State Electricity Board :-

"IT is not at all material that some of the powers conferred may be for the purpose of carrying on commercial activities. Under the Constitution, the State is itself envisaged as having the right to carry on trade or business as mentioned in Art. 19(1)(g). In Part IV, the State has been given the same meaning as in Art. 12 and one of Directive Principles laid down in Art. 46 is that the State shall promote with special care the educational and economic interests of the weaker sections of the people. The circumstance that the Board under the Electricity Supply Act is required to carry on some activities of the nature of trade or commerce does not, Therefore, give any indication that the Board must be

excluded from the scope of the word "State" as used in Art. 12."

(23) The last contention of Mr. Shroff on this question is that the Bank is not state qua its employees and in support of this contention, he has pointed out that the disputes between the Bank and its employees have been referred from time to time to arbitrators constituted under the Industrial Disputes Act. He has, however, not cited any authority to the effect that the mere reference of certain disputes by the Bank under the Industrial Disputes Act will stamp the Bank with the character of a private institution or that it will take away its character as State. Further, we cannot make any distinction between the employees of the Bank with reference to their functions in respect of the banking activities of the Bank and its functions as an agent of the Government or the instrument of the Government. The same employees carry out all the functions of the Bank.

(24) In view of the above discussion, it must be held that the Bank is "State" within the meaning of Article 12 of the Constitution and the petitioners in both the writ petitions can invoke Articles 14 and 16 of the Constitution against the Bank. This preliminary objection of the Bank against the maintainability of the writ petitions has, Therefore, to be rejected.

(25) The next preliminary objection raised by Mr. Shroff against the maintainability of the two writ petitions is that the employment of the petitioners in the Bank was on the basis of a contract and that any rights which the petitioners have against the Bank under the said contract cannot be enforced under Article 226 of the Constitution and the only remedy open to the petitioners is by way of ordinary suit in the civil court. In this connection, he refers to the Reserve Bank of India (Staff) Regulations, 1948 passed by the Bank and to the declaration made by the petitioners at the time of their appointment. Reference, in particular, is made to Regulations 28, 29 and 31 which are reproduced below :-

"28.Seniority.-An employee confirmed in the Bank's service shall ordinarily rank for seniority in his grade according to his date of confirmation in the grade and an employee on probation according to the length of his probationary service. 29. Promotion.-All appointments and promotions shall be made at the discretion of the Bank and notwithstanding his seniority in a grade no employee shall have a right to be appointed or promoted to any particular post or grade. 31. Scope of an employee's service.-Unless in any case it be otherwise distinctly provided, the whole time of an employee shall be at the disposal of the Bank, and he shall serve the Bank in its business in such capacity and at such place as he may from time to time be directed."

The declaration which the petitioners signed at the time of their appointment is in the following terms :-

" DECLARATION to be bound by the staff Regulations. Place : Date : I hereby declare that I have read and understood the Reserve Bank of India (Staff) Regulations, 1948, and I hereby subscribe and agree to be bound by the said Regulations. Name in full : Nature of appointment : Date of appointment :

Signature : Witness : Date : The learned counsel has also referred to two decisions of the Supreme Court, namely, (1) Satish Chandra Anand Vs. The Union of India (UOI), and (2) Banchhanidhi Rath Vs. The State of Orissa and Others, ."

(26) We do not construe the Regulations and the declaration made by the employees as a contract entered into between the Bank and its employees regarding the terms of their service. It is not the case of the Bank that the appointment of a particular employee was made on the basis of a contract. According to the Bank, the appointments of all the employees of the Bank are made under a contract. We have not come across a case where a statutory body like the Bank, which is state within the meaning of Article 12 of the Constitution, makes appointments of all its employees under a contract. If the Regulations referred to above are to be construed strictly as a contract, then no rights at all are secured under the contract in favor of an employee and he would be completely at the mercy of the Bank. This could not have been the intendment of the Regulations. The two decisions of the Supreme Court cited by the learned counsel for the Bank do not advance his contention at all. In the case of Satish Chandra Anand, the petitioner before the Supreme Court was employed by the Government on a five year contract in the Directorate-General of Resettlement and Employment of the Ministry of Labour. The contract of service was due to expire in 1950 and shortly before its expiration, the Government of India made him a new offer, embodied in its letter dated 30th June, 1950, to continue him in service on the expiry of his contract on the terms specified in that letter. He was asked in that letter to intimate to the Ministry of Labour whether he was willing to continue in service on those terms and he accepted the offer and continued in service. He was not a permanent Government servant, for he was on a five year contract and the work for which he was employed, namely, Resettlement and Employment, was itself only of a temporary character. On these facts, it was held by the Supreme Court that the employment of the petitioner was on a contractual basis and that having accepted the offer, he could enforce any rights which he had under his contract in the ordinary courts and that he could not seek relief under Article 32(1) of the Constitution for the alleged violation of Articles 14 and 16 of the Constitution. Similarly, in the case of Banchhanidhi Rath, the appellant was appointed as Head Master of a private school under a contract. That school along with many other schools was subsequently taken over by the Government and the Government wrote to the Director of Public Instruction that the Government had decided to retire Head Masters of all such schools on attaining the age of 58 years. This order of the Government was challenged by the appellant and the Supreme Court held that the appellant could not have enforced the contract of employment in an application under Article 226 of the Constitution and that if a right was claimed in terms of the contract, such a right could not be enforced in a writ petition. In both the cases cited above, the employment of the particular person was under a contract. In the first case, the petitioner was appointed under a special contract which was to be in force for

five years in the first instance and the post to which he was appointed itself was of a temporary nature. In the second case, the appellant claimed a higher age of superannuation on the basis of a contract which he had entered into with the management of the school before