
(1989) 04 MAD CK 0058
In the Madras High Court
Case No : Writ Appeal No. 136 of 1989

M.K. Chubby Raj

APPELLANT

Vs

State Bank of India

RESPONDENT

Date of Decision : 05-04-1989

Acts Referred:

Banks (Nationalization) Act, 1974 — Section 12
Constitution of India, 1950 — Article 14, 16, 19(1)
State Bank of India Act, 1955 — Section 4, 4(3), 43, 43(1)

Citation : (1990) 2 LLJ 474

Hon'ble Judges : S. Mohan, O.C.J.; K. Venkataswami, J

Bench : Division Bench

Judgement

S. Mohan, Offg. C.J.

1. The short facts leading to the writ appeal are as follows :

2. The first respondent-Bank was constituted under the State Bank of India Act, 1955 (Act 23 of 1955). The said Act came into force on 1st July 1955. According to sub-section (3) of Section 4 the said Act the service conditions of the employees of the Imperial Bank of India were to be the same as on 1st July 1955. It was on that date the Imperial Bank of India was taken over by the State Bank of India. The terms and conditions of service were duly altered by the State Bank of India.

The appellant joined the services of the first respondent-Bank as Law Officer on a contractual basis on terms and conditions contained in the offer of appointment dated 24th October 1977. On 2nd February 1978 an order of appointment was issued in and by which he was appointed for a period of three years with option to the Bank to absorb him as a Law Officer on long term basis on satisfactory completion of the initial employment for a period of three years.

When the appellant joined the State Bank of India, viz. the first respondent-Bank, the service conditions were governed by the State Bank of India

(Supervising Staff) Service Rules 1975 (These Rule will hereinafter be referred to as the "Service Rules"). Rule 20 provided for retirement of an employee of the Bank which we will deal in detail in the later part of our judgment.

In exercise of the powers conferred under sub-section (1) of section 43 of the State Bank of India Act, 1955, the first respondent-bank determined the terms and conditions of service of Officers. The revised service conditions came into force on 1st October 1979. This is called the State Bank of India Officers (Determination of Terms and Conditions of Services) Order, 1979 (hereinafter referred to as "the DTCS Order"). Paragraph 19 of the said order, more or less similar to Service Rule 20, talks of age of retirement. Inter-alia it provided that 58 years will be the age of retirement. Even beyond this age of 58 years, or completion of 30 years of service, the service could be extended by the competent authority at its discretion if deemed desirable in the interests of the Bank.

A meeting was held between the Management of the first respondent-Bank and All India State Bank Officers" Federation on 22nd November, 1979. One of the points that came up for discussion was the grant of extension beyond the age of 58 years. The Federation sought clarification on this point which is embodied in paragraph 19 of the Minutes of the Meeting, which is to be following effect :

"The present practice regarding grant of extension beyond the age of 58 will be followed only in respect of employees recruited either as workmen or officers before the 19th July 1969."

A Note was annexed to the Minutes of the Meeting of 22nd November, 1979. On 31st December, 1979, the Chief General Manager, State Bank of India, wrote to the State Bank of India Officers" Federation concerning this as under :

"While the provisions herein are substantially the same as in erstwhile Rule 20, it has been decided that the existing practice of granting extension beyond the age of 58 will continue only in respect of employees who joined the service either as workmen or as Officers before the 19th July 1969. This should be carefully diarised and carried over suitably to ensure that this factor is not overlooked at the time when the cases of employees who joined on-or after 19th July 1969 come up for consideration.

Your attention is also invited to the explanation appended to this paragraph of the order. We clarify that in case an Officer"s computable service for the purpose commences on the first day of a month or his date of birth is the first day of a month, he will complete the stipulated service or age of retirement on the last day of the month previous to the month and will stand retired as from the close of business on that date."

23rd February 1984, the Central Board of the first respondent-Bank at its meeting introduced a new proviso to sub-paragraph (1) of Paragraph 19 of the DTCS Order which was to the following effect :

"Provided further that an Officer who had joined the service of the Bank either as an Officer or otherwise on or after the 19th July 1969 and attained the age of 58 years shall not be granted any further extension of service"

In so far as it is a common case that the appellant joined only after 19th July, 1969 the services of the first respondent-Bank he is not to get the benefit of extension altogether. It is the validity of this second proviso which was challenged before the learned single Judge, Bakthavatsalam, J. in W.P. 10892 of 1987. The prayer in the writ petition was for a declaration that the second proviso of sub-paragraph (1) of Paragraph 19 of the State Bank of India Officers (Determination of Terms and Conditions of Service) Order, 1979 is illegal, arbitrary and in violation of the "fundamental rights guaranteed under Articles 14, 16 and 19(1)(g) of the Constitution of India". It was inter-alia contended that there was no nexus between the date 19th July, 1969 and the object sought to be achieved and therefore by such a fanciful date, the right of the appellant to be considered for extension could not be deprived. Therefore, there is violation of Article 14 in so far as the proviso makes an invidious distinction between Officers who joined the service prior to 19th July, 1969 and after 19th July, 1969.

3. In opposition to this, it was argued on behalf of the Bank that having regard to the recommendations of the Pillai Committee and having regard to the fact that a uniform policy has to be followed with regard to all Nationalized Banks, the date 19th July, 1969 came to be chosen. That was taken as the cut-off date, because it was on that date the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (Central Act 5 of 1970) came into force. Therefore, there was nothing fanciful about it. Further, if under Paragraph 19 of the DTCS Order, a discretion was conferred on the authority to grant or not to grant extension of service, there could not be a case of right, much less fundamental right to be considered for grant of extension. In any event, if the matter were to rest purely on a contract, the remedy will be for the breach of such contract, not by way of a writ petition.

The learned single judge upheld the contentions of the first-respondent-Bank that 19th July, 1969 was not an arbitrary date. Further there was no fundamental right, or any right, for the appellant to get extension, or even to be considered. In this view, he thought it was unnecessary to decide whether the right is one of contractual nature, and left open the question.

Hence the appeal by the appellant.

4. Mr. R. Krishnamurthi, learned counsel for the appellant, after taking us through the relevant provisions of the Act and also the law prior to 1969, would urge that in view of the law prior to 1969 normally, subject to physical fitness and integrity, the services of the appellant would have been extended. As a matter of fact, the Staff Circular clearly lays down as to what are the criteria to be observed for grant of extension of service. Further, cases of extension were to be reviewed. In explicit terms, the Staff Circular says that extension of service is

always granted subject to the officer's continued good health and rendering useful service to the Bank. In case there is deterioration in an officials's health, the desirability of retiring him may be examined by the Review Committee.

5. Rule 14 of the Supervising Staff Rules lays down an elaborate procedure touching extension of service including a procedure for appeal, and therefore by having a fanciful date 19th July, 1969 all these rights cannot be deprived. Then again, there is absolutely no nexus between the date and the object sought to be achieved; namely, the grant of extension of service. The very classification of the officers who belong to one group based on a fanciful date is wholly arbitrary and is violative of Article 14 of the Constitution of India. In support of this submission reliance is placed on *Railway Board Vs. A. Pitchumani*, . That was also a case where fanciful date of 26th December 1963 was held to be void and discriminatory. The ratio of that judgment will squarely apply here.

6. The very second proviso came to be considered by the Supreme Court in *State Bank of Bikaner and Jaipur and others Vs. Jag Mohan Lal*, . From a reading of paragraph 11 of that judgment it is clear that there is an obligation on the part of the first respondent-Bank to consider the grant of extension.

7. Again, reliance was place on *D.R. Nim, I.P.S. Vs. Union of India (UOI)*, where the period of officiation of an employee was ignored without any justification that was held to be bad.

8. In *B.S. Yadav and Another Vs. Chief Manager, Central Bank of India and Others*, , Section 12 of the Bank Nationalization Act was considered and the nationalization with effect from 19th July, 1969 was upheld. However, as far as the case on hand is concerned, that date is irrelevant and arbitrary because the State Bank of India came to be constituted under State Bank of India Act, 1955. That Act came into force on 1st July 1955. Therefore, right from the date it was very much a nationalized bank. If that be so, there was no justification or reason to choose another date, 19th July 1969. Such an arbitrary discrimination with regard to pension came to be criticised and was held to be bad holding that one cannot discriminate a class of persons retiring before a particular date as against others retiring after that particular date. The learned Judge's finding in this regard cannot be accepted.

9. The second submission of the learned counsel is that a contract had been entered into between the appellant and the Bank. That contractual right cannot be taken away by introducing a proviso to DTCS Order. That Order is traceable to Section 43 of the State Bank of India Act. The said section does not empower passing a resolution in 1984 so as to affect retrospectively the employees who had entered into service in 1969. In other words, in contra-distinction to Section 50 wherein there is power given to make regulation even retrospectively, Section 43 does not provide for such a situation. Therefore, the right to be considered for extension cannot be taken away retrospectively. Reliance is placed on *K. C. Arora v. State of Haryana* (1984) 3 SCC 282 . This Court had considered the scope of

Section 43 of the State Bank of India Act in Writ Appeal No. 404 of 1982. Reliance is also place on Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation, .

10. Mr. M. R. Narayanaswamy, learned counsel appearing for the State Bank, after taking us through the Act, draws our attention to the Report of the Committee constituted for standardization of pay-scale, allowance and perquisites for Officers in Nationalized Banks - what is called the Pillai Committee Report. The relevant paragraphs 8.21 and 8.22 clearly underscore the need for uniformity. When an argument was put forth before the Supreme Court that those who came to be employed prior to 19th July, 1969 could be retired at the age of 60 years, while that benefit is denied to those persons who joined service after 19th July 1969, who are obliged to retire at the age 58 years, and that would constitute discrimination, that argument was repelled in *B. S. Yadav v. Central Bank of India* (supra). In the case of Life Insurance Corporation also, similar argument came to be rejected as seen from *Life Insurance Corporation of India and Others Vs. S.S. Srivastava and Others*, .

11. In Rule 20 of the State Bank of India (Supervising Staff) Service Rules, the retirement is spoken to. A careful reading of that Rule based on the rule and policy of the State Bank of India which was adopted by the Government would clearly show that the principle enunciated by the Pillai Committee would apply to State Bank of India also, of course, keeping in mind the special features of the State Bank of India. To say that 9th July, 1969 is a fanciful date is far from being correct. As a matter of fact, it was only after long deliberation, because of the agreement between the Management on the one side and the representatives of All India State Bank Officers' Federation on the other, this date came to be chosen. Therefore, there is nothing arbitrary. It is somewhat curious that while the appellant, could attack the date 19th July, 1969 as arbitrary, in his affidavit he would say that if it had been July, 1955 he would have no objection. That shows the hollowness of his argument. In this connection, reliance is placed on *V.T. Khanzode and Others Vs. Reserve Bank of India and Another*, .

12. Learned counsel further submits that Paragraph 19 of the DTCS Order, even in its unamended form, conferred no right of extension of service. Strong reliance is placed on *State Bank of Bikaner & Jaipur v. Jag Mohan Lal* (supra). By a careful reading of the said Paragraph, it is clear that such a provision was only to enable, and to preserve a discretion, to consider in individual cases with no corresponding right conferred on the employees, question of extension. Regard may also be had to the dictum of the Supreme court in *K. Nagaraj and Others Vs. State of Andhra Pradesh and Another*, . If, therefore, there was no right, and the matter has remained purely in the area of discretion, what right could the appellant urge as to what exactly is the scope of discretionary power in matters of this kind, can be gathered by a reading of Halsbury's Laws of England, Fourth

Edition, Volume 1, para 33, which speaks of the amplitude of discretionary power. In this connection, a useful reference may be made to *British Oxygen Co. v. Minister of Technology* (1971) AC 610. Again Wade's *Administrative Law*, Fifth Edition, at pages 333 and 334, the principles are set out. These support the respondent-Bank.

13. The scope of Section 43 of the State Bank of India Act had come to be laid down in W.A. No. 404 of 1982. It has held to be non-statutory in character. Where by amending Paragraph 19 and adding a second proviso u/s 4, the contract between the parties alone is altered, there is no scope for contending that retrospectively the deprivation is sought to be made. As a matter of fact, the case of the appellant was that the terms and conditions of service are contractual in nature, and it is not open to the respondent-Bank to change it unilaterally. If that be the position, the remedy for the breach of contract, however gross the breach may be, certainly is not by a writ petition.

14. With regard to the nature of the service in *V. Ramiah Vs. State Bank of India*, clearly spells out. That ruling of the learned Judge was confirmed by a Division Bench.

15. Mr. R. Krishnamurthi, in reply, would submit, relying on *Sankar Prasad Chattakhandi and Others Vs. State Bank of India and Others*, a ruling of the Calcutta High Court, which clearly supports the appellant.

16. Having regard to the above, the questions which arise for our consideration are :-

- (1) nature of right with regard to extension;
- (2) scope of discretion under paragraph 19;
- (3) whether 19th July, 1969 is arbitrary;
- (4) whether the right of the appellant is based on contract.

17. The State Bank of India was constituted on 1st July, 1955 by Central Act 23 of 1955. The Parliament enacted Act 5 of 1970 under the name and style of "The Banking Companies (Acquisition and Transfer of Undertakings) Act 1970, popularly known as "The Banks Nationalization Act". However, the Act came into force with effect from 1st July, 1969, the date of which an early Act on the same subject had been enacted, which was struck down by the Supreme Court. As per the Act, the corresponding new Banks were constituted in which the Undertakings of the then Banks vested.

18. The terms and conditions of service of Officers of the Nationalized Banks were the subject-matter of a reference to a Committee, called the Pillai Committee. The said Pillai Committee, in so far as it related to age of superannuation and extension of service, observed, in Paras 8.20, 8.21 and 8.22 of its Report, as follows :-

"8.20 : Regarding this matter, we have elicited the views of managements as well as the individuals/officers/associations who had submitted memoranda and given oral evidence. The general consensus of opinion is in favour of retaining the age of superannuation at 60 years which is dominant pattern in the banks. The weight of evidence is also in favour of giving managements the discretion to retire an officer between the ages of 55 and 58 if his efficiency or faculties or health is impaired or there are adverse reports about him which have been substantiated.

"8.21 : We find that in the majority of public sector banks the age of superannuation is 60 years. Even in the State Bank of India and Life Insurance Corporation, though it is 58, provision has been made for extension up to 60 years subject to physical fitness and continuous satisfactory service. As the age of superannuation in the Government is 58 years, there is a case for adopting it as a uniform pattern in all public sector undertakings. But for all practical purposes, the effective age of superannuation in the public sector generally is 58, extensions are allowed upto 60, while in others it is fixed at 60 and a review is provided for at the age of 57 or 58. In this matter we have to give weight to two important factors. The first is that in 12 out of 14 banks the existing practice is that officers superannuate at the age of 60. Secondly, for the Award staff in Banks the age of superannuation is 60. As this is a condition of service, all existing officers may claim it as a matter of right. Clerks who are promoted as officers in future may also legitimately demand the continuance of this condition of service when they become officers. Thus any change in the existing practice could apply only to the small number of officers to be directly recruited in future.

8.22 : In the circumstances, we recommend that the age of superannuation of officers in the banks should be 60 years, with a provision for review at the age of 58 years to adjudge the fitness of the officer for continuance in service. In order to remove uncertainties, the above review may be initiated on the officer attaining the age of 57 years and completed well before he reaches 58 years."

In the light of this Report, the Government of India directed as follows :-

"As regards State Bank of India, Government have accepted the recommendation of the Reserve Bank that the broad principles enunciated by the Pillai Committee would apply to State Bank of India Group also, though certain modifications may be necessary in their case keeping in view the special features obtaining in State Bank of India. We shall be grateful if the special features are identified and modifications necessary in applying the Pillai Committee's recommendations to State Bank of India are indicated to us. As the Pillai Committee's recommendations are to be implemented in the nationalised banks with effect from 1st April, 1977, the same uniform date should be adopted in SBI Group also by applying the recommendations on D.A. now accepted by Government for nationalised banks the D.A. question in SBI Group can be settled."

The State Bank of India (Supervising Staff) Service Rule 20, provided as under :-

"20. An employee shall retire from the service of the Bank on attaining the age of fifty-eight years or upon the completion of thirty years" pensionable service, whichever occurs first.

Provided that the Appropriate Authority may, at its discretion, extend the period of service of an employee who has attained the age of fifty-eight years or has completed thirty years" pensionable service should such extension be deemed desirable in the interest of the Bank so, however, that the service rendered by the concerned employee beyond 58 years of age except to the extent of the period of leave due at that time will not count for propose of pension.

Provided further that an employee may at the discretion of the Executive Committee, be retired from Bank"s Service after he has attained 50 years of age or has completed 25 years" pensionable service by giving him three months" notice in writing or pay in lieu thereof.

Provided further that an employee who has completed 25 years" pensionable service may be permitted by the Executive Committee to retire from the Bank"s service, subject to his giving three months" notice in writing or pay in lieu thereof unless this requirement is wholly or partly waived."

19. Following the adoption of Pillai Committee"s Report, the Officers" Service Regulations were framed in other nationalised banks with effect from 1st July, 1979. The rules and guidelines in the other nationalised banks provided that the officer-employees of the bank recruited prior to 19th July 1969 may be given extension up to 60 years of age. However, Officer employees who were recruited after that date will not be given extension beyond 58 years of age. It was this pattern the State Bank of India was required to follow : As already seen, since Rule 20 provided that extension beyond 58 years of age is of the discretion of the Appropriate Authority, it was felt that there was no need to amend the existing Rules. It would suffice if any administrative instructions are issued to clarify that the existing practice of grant of extension beyond 58 years of age would continue only in respect of those who joined the service of the Bank before 19th July, 1969.

20. There were negotiations between the Bank on the one hand and the All India State Bank Officer"s Federation on the other, this Federation representing the interests of the Officers of the Bank. It was agreed by both parties that the present practice regarding grant of extension beyond 58 years of age will be followed only in respect of those employees who were recruited either as workmen or as Officers prior to 19th July, 1969. A Note containing all the clarifications was circulated under cover of Central Office letter No. PER. ADM. 74 dated 31st December, 1979. The contents of the above understanding with the Federation and the Circular were brought to the notice of all Officers including the appellant. The recommendations of the Pillai Committee and a new set of Service Regulations came into effect in other nationalised banks from 1st July, 1979. As far as State bank of India was concerned, the State Bank of India

officers (Determination of Terms and Conditions of Service) Order 1979 came into force on 1st October, 1979.

21. It is definite case of the respondent-management that before the appellant was absorbed on a permanent basis with effect from 2nd February, 1981, the provision of retirement of Officers viz., those who joined the Bank after 19th July, 1969 will not be given extension beyond 58 years of age had already come into effect, of course by way of administrative guidelines, knowing that, the appellant has accepted the job. As the Government of India, Banking Division suggested that appropriate amendment may also be made in the Officers' Service Rules formally, the amendment was carried out on 23rd February, 1984. Therefore we find force in the argument of the learned counsel for the respondents that the grievances of the appellant are unfounded.

22. We have also seen the circumstances under which the date viz., 19th July, 1969 was chosen for introducing the impugned proviso to Para 19(1) of D.T.C.S.

23. In this connection, the judgment of the Supreme Court reported in *B. S. Yadav v. C. M., Central Bank India* (supra) can be usefully referred to. In that case, the Supreme Court considered the different treatment given regarding the age of retirement of employees of Central Bank of India (one of the nationalised Banks) by making a distinction between those who were recruited prior to 19th July, 1969 and those recruited subsequently and whether it violates the rights guaranteed under Article 14 or 16 of the Constitution of India.

24. While upholding the date viz., 19th July, 1969, the Supreme the observed as follows :-

"It is no doubt true that the order of appointment in the case of the first petitioner stated that he would be governed by the terms and conditions which were applicable to other officers of the Bank. That condition, however, did not prevent the Bank from making a regulation which was applicable exclusively to the Officers recruited after 19th July, 1969. In the case of officers falling under rules 1 and 2 of the Rules for Age of Retirement no extra benefit was conferred on them. They were only permitted to carry the benefit of the Rules for Age of Retirement which was prevailing in the former banking company which was taken over by the Government on nationalisation. We are of the view that there was good reason to make a distinction between the employees who had entered service prior to nationalisation and those who joined thereafter. At the time of nationalisation the corresponding new banks did not have their own employees to run the vast business taken over under the Act.

There was, therefore, necessity to secure the services of the employees of the former banking companies without causing much dissatisfaction to them. There was also need for standardising the conditions of service of all such employees belonging to the 14 banks. The Government of India took the advice of the Pillai Committee and the Study Group of Bankers and after due deliberation evolved a uniform pattern of conditions for the transferred employees keeping in view the

conditions of service of the employees prevailing in the majority of the banking companies which were nationalised. In so far as the employees recruited after nationalisation were concerned, the Government applied the rules generally applicable to all its employees in other spheres of Government service.

We have given detailed reasons in our judgment in *Life Insurance Corporation of India and Others Vs. S.S. Srivastava and Others*, justifying the existence of a rule fixing different ages of retirement of different classes of employees of the Life Insurance Corporation of India in the circumstances existing there. The circumstances prevailing in this case are almost the same. Those reasons are equally applicable to the present case too. In *Govindarajulu v. Management of the Union Bank of India*, Writ Petn. No. 5486 of 1980 decided on 21st November, 1986, the High Court of Madras has rejected the contentions similar to those which are raised before us. In that case a regulation framed by the Union Bank of India which was similar to the one in this case was upheld. That decision has been approved by us in the *Life Insurance Corpn of India v. S. S. Srivastava* (supra) In *Dr. Nikhil Bhushan Chandra v. Union of India* 1988 LIC 109 (Cal) similar regulations framed by the United Commercial Bank which was also nationalised under the Act came up for considerations before the High Court of Calcutta. The High Court rejected the theory of discrimination put forward on the basis that fixing 60 years as age of retirement for those who were recruited prior to 19th July, 1969 and 58 years of age for those who joined after that date lacked an intelligible differential. The Calcutta High Court pointed out that the terms and conditions of the service of the employees of the banks which were taken over under the Act had been protected by the Act and it was not possible to hold that there had been any hostile discrimination against the petitioner in that case. We are of the view that the decisions of the Madras High Court and the Calcutta High Court, referred to above, lay down the correct principle. It is true that if the nationalised banks wanted to reduce the age of retirement of the transferred employees they could have done so. But they have tried to standardise their conditions of service and to bring about some uniformity without giving room for much discontent or dissatisfaction. The question involved in this matter is not one of mere competence. It involved justice and fairness too. Having regard to all aspects of the matter the nationalised banks have tried to be fair and just in so far as the question of age of retirement is concerned. We cannot say in the circumstances that the Bank's attitude is unreasonable, particularly when the age of retirement of the new entrants is quite consistent with the conditions prevailing in almost all the sectors of public employment.

We are of the view that the classification of the employees into two categories i.e. those falling under Rules 1 and 2 of the Rules for Age of Retirement and those falling under Rule 3 thereof satisfies the tests of the valid classification laid down under Articles 14 and 16 of the Constitution. We do not, therefore, find any ground to declare Rule 3 of the Rules for Age of Retirement, which is impugned in this case, as unconstitutional."

Applying the principles laid down by the Supreme Court as extracted above, it can be held that there was need for standardising the conditions of service of employees in the State Bank of India along with the employees in all the nationalised Banks. That was the reason for fixing 19th July, 1969 as relevant date, which is certainly not based on any arbitrary or fanciful consideration as contended by the learned counsel for the appellant. Again the Supreme Court in a very recent case reported in *State Bank of Bikaner & Jaipur v. Jag Mohan Lal* (supra) had occasion to consider the Regulation 19(1) of State Bank of Bikaner & Jaipur (Officers") Service Regulations 1979, identical with the order with which we are concerned. This decision was also cited by the learned counsel for the appellant, in particular reliance was placed on paragraph 11 of the judgment. In this case the Supreme Court while construing the main provision has held as follows *State Bank of Bikaner and Jaipur and others Vs. Jag Mohan Lal*, :

"Look at the language of proviso and the purpose underlying. The Bank may in its discretion extend the service of any officer. On what ground ? For what purpose ? That has been also made clear in the proviso itself. It states "should such extension be deemed desirable in the interest of the Bank". The sole purpose of giving extension of service is, therefore, to promote the interest of the Bank and not to confer any benefit on the retiring officers. Incidentally the extension may benefit retired officials. But it is incorrect to state that it is a conferment of benefit or privilege on officer. The officers upon attaining the age of superannuation or putting the required number of years of service do not earn that benefit or privilege. The High Court has completely misunderstood the nature of right purpose of the proviso. The proviso preserves discretion to the Bank. It is a discretion available with every employer, every management, State or otherwise. If the Bank considers that the service of an an officer is desirable in the interest of the Bank, it may allow him to continue in service beyond the age of superannuation. If the Bank considered that the service of an officer is not required beyond superannuation, it is an end of the matter. It is no reflection on the officer. It carries no stigma.

The Bank, however, is required to consider the case of individual officers with due regard to (i) continued utility; (ii) good health; and (iii) integrity beyond reproach of the officer. If the Officer lacks one or the other, the bank is not bound to give him extension of service. In this case, the Bank has shown to the High Court that the case of responded was considered and he did not fit in the said guidelines. The High Court does not sit in an appeal against that decision. The High Court under Art. 226 cannot review that decision.

It was, however, argued for the respondent that the Bank falls within the concept of "State" for the purpose of enforcement of fundamental rights. The Bank, therefore, cannot extend the service of some and reject the case of others similarly situated. The concept of Article 14 of the Constitution is relied upon. The argument in our opinion proceeds on a wrong premise. The Bank has no obligation to extend the service of all officers even in they are found suitable in

every respect. The interest of the Bank is the primary consideration for giving extension of service. With due regard to exigencies of service, the Bank in one year may give extension to all suitable retiring officers. In another year it may give extension to some and not to all. In a subsequent year, it may not give extension to anyone of the officers. The Bank may have a lot of fresh recruits in one year. The Bank may not need the services of all retired persons in another year. The Bank may have lesser work load in a succeeding year. The retiring persons cannot in any year demand that "extension to all or none". If we concede that right to retiring persons, then the every purpose of giving extension in the interest of the Bank would be defeated. We are, therefore, of opinion that there is no scope for complaining arbitrariness in the matter of giving extension of service to retiring persons."

In our view, the above decision of the Supreme Court is clear and unequivocal and in favour of the respondent. The reliance placed by the learned counsel for the appellant in paragraph 11 of the judgment will be of no avail as the case considered by the Supreme Court was regarding an employee recruited prior to 19th July, 1969 and therefore, the management, was duty bound to consider the case for extension and that observation cannot be relied on to contend that in the case of the appellant recruited after 19th July, 1969, he has got a right to be considered for extension, notwithstanding the proviso now under challenge. The clear dictum of the Supreme Court is that a Government servant has no right to continue in service beyond the age of superannuation and if he is retained beyond that age, it is only in exercise of the discretion of the Government.

25. In the light of the above Supreme Court Judgments there cannot be any doubt that the employees who were recruited subsequent to 19th July, 1969 have no right at all to be considered for extension beyond 58 years. More so, in the case of the appellant in view of the fact that when he was permanently absorbed he was made aware of the position viz., that he is not entitled to ask for any extension beyond 58 years of age.

26. As against these decision of the Supreme Court which are directly on point, we do not think that the reliance placed by the learned counsel for the appellant on the decisions of the Supreme Court reported in :

- i) Railway Board v. A. Pitchumani (supra)
- ii) Nim v. Union of India (supra)
- iii) K. C. Arora v. State of Haryana (supra)

will be of any help. Apart from the fact that the decisions cited by the learned counsel for the respondent are directly on point, the decisions cited by the learned counsel for the appellant are all distinguishable on facts.

27. It is no doubt that in the decision reported in S. Prasad Chattakhandi & Ors & Nandalal Ghosh v. S. B. I. & Ors. (supra), a learned single Judge of the Calcutta High Court has taken a slightly different view. Even here it is clear from the facts

that the learned Judge was considering the case of employees recruited prior to 19th July, 1969. Further, in view of the later judgment of the Supreme Court reported in *State Bank of Bikaner & Jaipur v. Jag Mohan Lal* (supra), it is doubtful whether the conclusion of the learned Judge can still be held as good law.

28. For the foregoing reasons, we hold that the petitioner/appellant has not right even to be considered for an extension and that the date chosen viz., 19th July, 1969 is neither arbitrary nor fanciful. As these conclusions are sufficient to dispose of the writ appeal we need not consider the other two points viz., the scope of discretion in Paragraph 19 and whether the right of the appellant is based on contract.

29. For the foregoing reasons, we dismiss the writ appeal, but in the circumstances of the case, there will be no order as to costs.