

(1991) 09 DEL CK 0008

In the Delhi High Court

Case No : Civil Miscellaneous Appeal No. 2199 of 1991

M.S. Jasra

APPELLANT

Vs

Governor, Reserve Bank of India and Others

RESPONDENT

Date of Decision : 20-09-1991

Acts Referred:

Citation : (1992) 1 BC 416 : (1992) 46 DLT 665 : (1991) 63 FLR 902

Hon'ble Judges : B.N. Kirpal, J;Arun Kumar, J

Bench : Division Bench

Advocate : R.K. Anand, Inderjeet Sharma, K.N. Bhatt, Alok Aggarwal and N.R. Nath, for the Appellant;

Judgement

B.N. Kirpal, J.

(1) The short question which arises for consideration in this case is with regard to the correct interpretation of Section 45(5)(i) and Proviso (ii) thereof of the Banking Regulation Act, 1949 (hereinafter referred to as the said Act).

(2) Briefly stated the facts are that the petitioner joined the Reserve Bank of India where he worked till 8th March, 1983. on which date he joined the Lakshmi Commercial Bank as an Assistant General Manager. On his appointment in the Lakshmi Commercial Bank, he resigned from the Reserve Bank of India.

(3) On 27th April, 1985, the Central Government passed an order u/s 45(2) of the said Act, placing the Lakshmi Commercial Bank under moratorium. Thereafter the Reserve Bank of India prepared a scheme of amalgamation of Lakshmi Commercial Bank with Canara Bank. This scheme was prepared u/s 45(5) and on 23rd August, 1985 it was sanctioned by the Central Government u/s 45(7). As a result of the aforesaid scheme of amalgamation, the staffs of two bank were merged and w.e.f. 24th August, 1985 the petitioner became an employee of the Canara Bank. He was first appointed as an Officer on Special Duty and thereafter on 1st October, 1985 he was appointed as a Divisional Manager in the Canara Bank. The petitioner represented to the Reserve Bank of

India and sought protection of his status, pay, seniority, increments etc. The Reserve Bank of India, however, did not agree with the contentions of the petitioner and also came to the conclusion vide its letter dated 6th June, 1990 that the age of retirement of the petitioner was 58 years and not 60 years. The petitioner made a representation but vide letter dated 18th May, 1991 this representation was rejected. The petitioner, if he is to retire on attaining the age of 58 years, will superannuate on 30th September, 1991.

(4) The contention of the petitioner is that by virtue of provisions of Section 45(5)(i) he is entitled to remain in service till he attains the age of 60 years. It is submitted that no scheme can be prepared by the Reserve Bank of India which can in any way dilute the terms and conditions as also the remuneration which the petitioner was entitled to while he was working in the Lakshmi Commercial Bank.

(5) The respondents, on the other hand, seek to rely on the second proviso to Section 45(5)(i) and contend that on a scheme of amalgamation being prepared, all the officers of the transferor bank have to be treated at par. The transferred bank employee cannot get better conditions of service than the corresponding employee of the transferee bank. It is contended that prior to nationalisation of Canara Bank, its officers were entitled to remain in service till they attained the age of 60 years. The officers who joined after nationalisation, were to retire on their attaining the age of 58 years. The petitioner, it is submitted, joined service in Lakshmi Commercial Bank after Canara Bank had been nationalised and, Therefore, after amalgamation the petitioner is to be dealt with in the same way as other officers of the Canara Bank who had joined service on the day when the petitioner had joined the Lakshmi Commercial Bank, i.e. in the year 1983. According to the respondents, the age of retirement of such officers was 58 years and, Therefore, the petitioner has to superannuate on 30th September, 1991.

(6) The submissions on behalf of Canara Bank have been supported and reiterated by the Counsel for the Reserve Bank of India. In order to appreciate the relevant contentions, it is necessary to refer to the provisions of the Banking Regulation Act. Section 45(5)(i) and Proviso (ii) thereof read as under: "45(5)(i) the continuance of the services of all the employees of the banking company (excepting such of them as not being workmen within the meaning of the industrial Disputes Act, 1947 are specifically mentioned in the scheme) in the banking company itself on its reconstruction or, as the case may be, in the transferee bank at the same remuneration and on the same terms and conditions of service which they were getting or, as the case may be, by which they were being governed, immediately before the date of the order of moratorium: Provided that the scheme shall contain a provision that- (i) (ii) the transferee bank shall pay or grant not later than the expiry of the aforesaid period of three years, to the said employees the same remuneration and the same terms and conditions of service, as are, at the time of such payment or grant, applicable to the other employees of corresponding rank or status of the

transferee bank subject to the qualifications and, experience of the said employees being the same as or equivalent to those of such other employees of the transferee bank." Another relevant provision contained in the said Section is the Explanation to Sub-section (15) which was inserted w.e.f. 15th February, 1984 which provides that: "reference in this Section to the terms and conditions of service as applicable to an employee shall not be construed as extending to the rank and status of such employees."

(7) As would be evident from the provisions of Section 45(5), the Reserve Bank of India was required to frame a scheme of amalgamation. In the scheme which was so prepared, there are two clauses which are relevant for our purpose. They are clauses 10 and 12 and the same read as under ; "(10) All the employees of the transferor bank other than those specified in the schedule referred to in the succeeding paragraph shall continue in service and be deemed to have been appointed by the transferee bank at the same remuneration and on the same terms and conditions of service as were applicable to such employees immediately before the close of business on 27th April, 1985. Provided that the employees of the transferor bank who have, by notice in writing given to the transferor or the transferee bank at any time before the expiry of one month next following the date on which this scheme has been sanctioned by the Central Government, intimated their intention of not becoming employees of the transferee bank, shall be entitled to the payment of such compensation, if any, under the provisions of the Industrial Disputes Act, 1947 and such pension, gratuity, provident fund and other retirement benefits as may be ordinarily admissible under the rules of authorisations of the transferor bank immediately before the close of business on 27th April, 1985. Provided further that the transferee bank shall in respect of the employees of the transferor bank who are deemed to have been appointed as employees of the transferee bank be deemed also to have taken over the liability to make the payment of retrenchment compensation in the event of their being retrenched while in the service of the transferee bank on the basis that their service has been continuous and has not been interrupted by their transfer to the transferee bank." "(12) The transferee bank shall, on the expiry of period not longer than three years from the date on which this scheme is sanctioned, pay or grant to the employees of the transferor bank the same remuneration and the same terms and conditions of service as are applicable to the employees of the corresponding rank and status of the transferee bank subject to the qualifications and experience of the said employees of the transferor bank being the same as or equivalent to those of such other employees of the transferee bank. Provided that if any doubt or difference arises as to whether the qualifications or experience of any of the said employees are the same as or equivalent to the qualifications and experience of the other employees of the corresponding rank or status of the transferee bank or as to the procedure or principles to be adopted for the fixation of the pay of the employees in the scales of pay of the transferee bank, the doubt or difference shall be referred to the Reserve Bank of India whose decision thereon

shall be final."

(8) Under Clause (i) of Section 45(5) of the said Act, the Reserve Bank may frame a scheme which is to provide for the conditions of service of the transferred employees. According to this sub-Section, the scheme which is to be formulated should provide for the transferred employees the same remuneration and the same terms and conditions of service which they were getting before their transfer. In other words, the rights of the transferor bank's employees were to be protected. This became important for the simple reason that the Explanation to Section 45(15) clearly provided that rank and status of an employee would not be regarded as the terms and conditions of service which were protected u/s 45(5)(i). The implication of this Explanation is that on amalgamation the transferred employee may be posted and given a rank in the transferee bank which may be lower than the rank and status which he was enjoying in the transferor bank. Section, 45(5)(i) protected the terms and conditions of service of the transferred employees and the Explanation makes it clear that rank and status would not be regarded as a part and parcel of the terms and conditions. Perhaps this amendment was brought about in order to get over the difficulty which may have been created as a result of the decision of the Supreme Court in the case of State Bank of Travancore Vs. Elias Elias and Others, . In this case the Supreme Court has held that on the merger of two banks by virtue of provisions of Section 45(5)(i), the rank status of an employee of the transferor bank must be maintained. In that case Elias was working as a Civil Agent but on amalgamation he was fixed in the category of Subordinate Staff. This was done on the basis that he lacked educational qualifications and experience for being appointed to a higher category. The Supreme Court upheld the decision of the High Court and came to the conclusion that In view of the guarantee given u/s 45(5)(i), Elias was entitled to be fixed in the clerical cadre. It is quite obvious that in order to get out of the difficulties that the Explanation was inserted to Section 45(15).

(9) It appears to us that Clause 10 of the scheme has been framed keeping in mind the provisions of Section 45(5)(i). The said clause categorically states that the employees of the transferor bank shall be deemed to be appointed by the transferee bank at the same remuneration and on the same terms and conditions which were applicable to them as on the date of amalgamation. This clause protects the remuneration as well as the other terms and conditions of service. If remuneration of a transferred employee cannot be reduced after amalgamation it would stand to reason that the other terms and conditions including the age of superannuation cannot be altered to his disadvantage. It is difficult for us to construe the second proviso to Section 45(5)(i) and clause 12 of the scheme in such a way as to render the provisions of Section 45(5)(i) and Clause 10 of the scheme as nugatory. If the contention of the respondents is accepted the effect would be that on the promulgation of the scheme it is only the terms and conditions, including the remuneration, which are available to the employees of the transferee bank which can be given to the transferred employees. In view of

the fact that the transferee bank can, on amalgamation, place a transferred employee in a lower rank and status by reason of his qualification and experience, and if on that lower rank the pay-scale is lesser than the one which the transferred employee was getting, then the remuneration would not be protected. This certainly could not have been the intention of the Legislature. Under no circumstances could the remuneration of a transferred employee be adversely affected on the amalgamation of the two banks. On the same partly of reasons the other than terms and conditions could also not be adversely affected because the remuneration as well as the terms and conditions form part and parcel of the same provisions viz , Section 45(5)(i) of the Act and clause 10 of the scheme.

(10) The mandate of Section 45(5)(i) is that the scheme which is formulated may contain provisions with regard to continuation of service of the employees of the banking companies and such a scheme should protect the remuneration and other terms and conditions of an employee. The second proviso to Section 45(5) (i) of the Act as well as clause 12 of the scheme have to be read harmoniously with Section 45(5)(i) and clause 10 of the scheme. The second proviso was not meant to take away or dilute the rights which are conferred by clause (i) Keeping this in view clause 10 of the scheme was formulated which specifically provides that the terms and conditions of the employees like the petitioner shall be those as were applicable to them immediately before the close of business on 27th April, 1985.

(11) It could happen that on amalgamation, the terms and conditions of the transferred employees were not the same as of the original employees of the transferee bank. More often than not the terms and conditions of the transferred employees were inferior to that of the original employees of the transferee bank. Second proviso was inserted to give a period of three years to the transferee bank to enable it to give to the transferred employees the emoluments and terms and conditions of service which were being given to the existing employees of the transferee bank. The use of the expression "pay" or "grant" seems to imply that the transferee bank was required to give something more than what the transferred employees were originally getting from the transferor bank. If the intention of the Legislature was that with the promulgation of the scheme there should be no difference in the conditions of pay, remuneration etc. between the transferred employees and that of the existing employees of the transferee bank, then the protection contained in Section 45(5)(i) would not have been there and, secondly, the second proviso would have clearly stipulated that on a scheme being promulgated, notwithstanding the provisions of Section 45(5)(i), all the employees of the transferee bank including employees like the petitioner, will get same remuneration and will be entitled to the same terms and conditions of service. No such provision has been incorporated in the Act or in the Scheme. Clause 12 of the scheme or the second proviso to Section 45(5)(i) cannot be so read as to take away the vested rights of the transferred employees which rights were that their remuneration as well as the terms and conditions of

service were not to be adversely affected.

(12) For the view which we are taking support can be derived from a decision of the Supreme Court in the case of S.P. Dubey Vs. M.P.S.R.T. Corpn. and Another, . In that case the employees of a company were to superannuate at the age of 60 years. This company was taken over by the State Government. Assurance was given that the terms and conditions of the employees of the erstwhile company would not be adversely affected. The State Service Rules, however, fixed the age of superannuation at 58 years. The Supreme Court held that the transferred employees who were to retire at the age of 60 years would not be liable to retire at the age of 58 years and the State Service Rules were not applicable.

(13) It is submitted by Mr. Bhat that the Supreme Court based its conclusion on the fact that there was an assurance given by the State Government that the retirement age of the employees of the erstwhile company would not be reduced. He submits that there is no such assurance in the present case. We are unable to agree with this submission. While in S.P. Dubey's case there was only an administrative assurance that the retirement age would not be reduced, in the present case on the other hand, there is a statutory assurance contained in Section 45(5)(i). The assurance contained in this provision coupled with clause 10 of the scheme gives a right to an employee like the petitioner to continue to remain in service till the age of 60 years. The ratio of the decision of the Supreme Court in S. P. Dubey's case is clearly applicable in the instant case as well.

(14) For the aforesaid reasons this writ petition is allowed. We issue a writ of mandamus quashing the directions contained in the letter dated 18th May, 1991 of the Reserve Bank of India wherein it has been stated that the petitioner will retire at the age of 58 years and we hold that the age of retirement of the petitioner is 60 years.

(15) There will be no order as to costs.