

(1999) 04 KAR CK 0025
In the Karnataka High Court
Case No : Writ Petition No. 1369 of 1997

P.S. Panduranga Rao

APPELLANT

Vs

Central Bank of India

RESPONDENT

Date of Decision : 15-04-1999

Acts Referred:

Constitution of India, 1950 — Article 166 (1), 226

Citation : (1999) ILR (Kar) 2852 : (2000) 3 KarLJ 94 : (2000) 1 LLJ 363

Hon'ble Judges : H.L. Dattu, J

Bench : Single Bench

Advocate : Sri P.S. Rajagopal, for the Appellant; Sri S.S. Ramadas, for the Respondent

Judgement

H.L. Dattu

1. Tell me when do I retire? Is it at the age of 58 years or 60 years is the issue posed by an officer of a Nationalised Bank in this petition filed under Article 226 of the Constitution.

2. Brief facts are: petitioner was appointed as a Clerk at the Vijayawada Branch by the respondent-Central Bank of India. After satisfactory completion of period of probation, he was confirmed in the post with effect from 1-7-1967. At the relevant point of time, the service conditions of the Award staff in the Bank was governed by the Industrial Bipartite settlement. By virtue of the settlement, the age of retirement for clerical staff was 60 years.

3. Personal inconvenience and father's serious illness necessitated petitioner to make a representation dated 28-10-1968, requesting the responsible officers of the respondent-Bank seeking transfer from Vijayawada Branch to any of the Branches in Bangalore of the respondent-Bank. That request had been turned down by the respondents for valid reasons. Since personal problems were persisting and mounting and his presence at Bangalore was immediate and absolute, to take care of his father who was suffering from serious ailment of

eye, petitioner was constrained to renew his request by his letter dated 21-6-1969 for transfer to Bangalore Branch. The respondent-Bank, after considering the fervent plea of the petitioner made through his representation, issued a memo dated 2-8-1969, partly agreeing to post him at Bangalore, provided he resigns his job at Vijayawada Branch and accepts appointment at Bangalore Branch as a fresh candidate. The memo so issued has some relevancy, while deciding the issues involved in the petitioner. Therefore, it is extracted and the same reads as under:

"With reference to his representation dated 21-6-1969, Mr. P.S. Panduranga Rao, Clerk, is informed that Head Office have considered his request for permanent transfer to Bangalore sympathetically and have issued the following instructions:

Although he has not completed five years service at this Branch, Head Office are agreeable to consider his request to transfer him to Bangalore, provided he resigns his job at Vijayawada Branch and offers himself as a fresh hand at Bangalore. If this procedure is agreeable to him, Mr. P.S. Panduranga Rao is required to produce an Affidavit signed before a Magistrate wherein he should clearly state that he has resigned of his own free will and of his own volition. Mr. Rao should also declare that he will accept the Starting Salary of the office where he is taken up afresh and not demand at any time in future the same salary he is drawing at Vijayawada.

As soon as he submits his resignation along with the aforesaid Affidavit and Declaration, we shall take up the matter further with our higher authorities. After the acceptance of his resignation by the Bank, he will be taken up at Bangalore, after a lapse of few days as a fresh hand on the Starting Salary applicable to Bangalore. He is required to give the necessary papers in Triplicate".

4. Since petitioner was willing to all the conditions stipulated in the memo and since he was bent upon coming to Bangalore for the reasons already mentioned, petitioner by his letter dated 5-8-1969, accepted the will of the respondent-Bank, therefore he was permitted to resign from Vijayawada Branch on 8-9-1969 and by yet another memo dated 22-9-1969, he was offered fresh appointment as a Award staff at Bangalore Branch. Pursuant to the memo, petitioner joined services of the Bank once again at its Bangalore City Office branch as a fresh candidate and after a gap of few years he was promoted as an officer in the Bank.

5. The Central Bank of India (Officers) Service Regulations, 1979, hereinafter referred to as "Service Regulations" came into force with effect from 1-7-1969, which governs the service conditions of the employee-officers in the respondent-Bank. On coming into force of these regulations, petitioner was placed in Junior Management Grade Scale-I Officer.

6. Among others, the Service Regulations of the Bank provides for the age of retirement of its employees-officers. Regulation 19 of the Service Regulations stipulates the age of retirement and Regulation 19(1) states that the age of retirement of an officer-employee shall be determined by the Board in

accordance with the guidelines issued by the Government from time to time. The Central Government has issued guidelines under the aforesaid provisions prescribing the age of retirement and the same is as under:

"The age of retirement of an officer in the Bank shall be determined in accordance with the following conditions:

- (1) An officer-employee of the Bank recruited/promoted prior to 19-7-1969 shall retire on completion of 60 years of age;
- (2) An officer-employee of the Bank recruited prior to 19-7-1969 but promoted as an officer on or after 19-7-1969, shall retire on completion of 60 years of age;
- (3) An officer-employee of the respondent-Bank recruited whether as an Award staff or as an officer-employee on or after 19-7-1969 shall retire on completion of 58 years of age".

7. Petitioner in view of the above provisions and the guidelines issued by the Central Government and being of the view that he was recruited prior to 19-7-1969, he is entitled to continue in service upto the age of 60 years, made a request through his communication dated 10-5-1989, requesting the Bank authorities to extend him the benefit of continuance of service from 1-7-1966 and permit him to continue in service till he attains the age of 60 years. This desire of the petitioner was rejected by the respondents by their letter dated 12-8-1989. Repetition of the narration made earlier was also rejected by the Bank by their communication dated 3-5-1991 on the sole ground that the appointment of the petitioner in the services of the Bank was only after 19-7-1969 and therefore he is required to retire at the age of 58 years only. Since the "D" day for retirement was fast approaching, petitioner renewed his request once again with the Bank authorities to retire him only on 31-1-1999 and since that request was also rejected by the respondents by their communication dated 31-12-1996, petitioner as a last resort is before this Court in a petition filed under Article 226 of the Constitution inter alia seeking a writ to quash the communication of the Bank dated 31-12-1996 as illegal, invalid and highly arbitrary and further to direct respondent-Bank to continue petitioner in Bank's service till he attains the age of 60 years.

8. Respondents have filed their objections refuting the assertions made in the petition and they strongly resist the relief sought for by the petitioner. The primary objections of the respondents seems to be that since petitioner was appointed after 19-7-1969, by virtue of the guidelines issued by the Government prescribing the age for retirement, petitioner is obliged to retire from service on completion of 58 years.

9. Sri P.S. Rajagopal, learned Counsel for petitioner submits that since petitioner was recruited prior to 19-7-1969, and was appointed at a later date in the services of the Bank as Award Staff, petitioner should be permitted to continue in service and should he retired on completion of 60 years of age. In support of this

submission, he squarely relies upon the language employed in the guidelines issued by the Government prescribing the age of retirement and several communications issued by the Bank from time to time. Nextly, contends that the impugned communication of the respondent dated 31-12-1996 is contrary to the guidelines. Therefore, the same is arbitrary, unfair and unjust. The learned Counsel derives support for his submissions from the observations made by the Supreme Court in the case of *U.P. Awas Evam Vikas Parishad and Others v Rajendra Bahadur Srivastava and Another*, the observations made by Calcutta High Court in the case of *Nalini Kanta Ghosh v United Bank of India and Others* and the law declared by this Court in the case of *G. Padmanabha Shenoy Vs. Canara Bank*, .

10. Per contra, Senior Counsel Sri Ramadas, submits that since petitioner was recruited and appointed on 22-9-1969, after he voluntarily tendered his resignation from the services of the Bank at its Vijayawada Branch, by virtue of clause (3) of the guidelines issued by Government prescribing the age of retirement, petitioner is obliged to retire from Bank's service on completion of 58 years of age. Therefore, submits that the impugned communication is neither in violation of guidelines issued by the Central Government nor in violation of any constitutional provisions and therefore it is neither arbitrary nor unfair and unjust.

11. The primary issue that requires to be considered and decided is whether the recruitment of the petitioner in the Bank's service was prior to or after 19-7-1969. The answer to this legal issue mainly depends on the possible meaning that could be given to the expression "recruitment" in the guidelines issued by the Government prescribing the age of retirement, secondly on the various memos, communications issued and the orders passed by respondent-Bank from time to time.

12. The meaning of the expression "recruitment" came up for consideration before the Supreme Court in the case of *K. Narayanan and others Vs. State of Karnataka and others*, . The Court was pleased to observe that the word "recruitment" is the comprehensive term and includes any method provided for induction of a person in public service, appointment, selection, promotion and deputation are well known methods of recruitment.

13. Similarly, in *G.S. Venkata Reddy v Government of Andhra Pradesh*, while considering the meaning of the term "direct recruitment", it was observed that a person is said to be "recruited direct" to a post, category or class in service, in case his first appointment is made otherwise than promotion, transfer or re-employment.

14. The same view was reiterated in *Jai Singh Dalal and Others Vs. State of Haryana and Another*, , the Apex Court was pleased to observe that candidates selected for appointment have no right to appointment and thus before the entire process is complete, the State has a right to review its earlier decision and revise the eligibility criteria for appointment.

15. Similarly, in *Prafulla Kumar Swain Vs. Prakash Chandra Misra and Others*, , while considering the distinction and difference between the expressions "recruitment" and "appointment", was pleased to observe that the word "recruitment" connotes and clearly signifies enlistment, acceptance, selection or approval of appointment. Certainly that is not actual appointment or posting in service. The contradistinction the word "appointment" means as actual act of posting a person to a particular office.

(emphasis supplied)

16. This Court in the case of *Padmanabha Shenoy*, supra, while answering the issue, whether the recruitment based on contract would come within the meaning of expression "recruitment", was pleased to observe that "the term recruitment and appointment are different and the former must be given a liberal meaning so as to signify even a selection or approval for appointment". In support of its view, the Court was pleased to take into consideration the view expressed by Punjab High Court in the case of *Basant Lal Malhotra Vs. State of Punjab and Others*, .

17. The Calcutta High Court in the case of *Nalini Kanta Ghosh*, supra, was pleased to observe:

"A recruitment process begins with an advertisement and comes to an end, when an offer of appointment is issued and the same is accepted by the offeree. Such a contract would be completed as and when an offer is made and the same is accepted. Such an offer may contain certain conditions but once the offer is accepted, the offeree is bound to fulfill the conditions therefor".

18. In view of the meaning assigned by the Supreme Court to the word "recruitment", it can now safely be said that expression "recruitment" and the term "appointment" are not the words of synonyms. These expressions connote different meanings and used for two different situations. The word recruitment is comprehensive enough to embrace steps such as enlistment, acceptance, selection or approval for appointment. The word "appointment" signifies the actual act of posting a person to a particular office. Keeping in view the meaning of the expression recruitment in clause (3) of the guidelines issued by the Government in prescribing the age for retirement of officers/employees in the Bank's service, the relevant date for determining whether petitioner was recruited as an Award Staff on or after 19-7-1969. In the instance case, it is strongly contended by learned Counsel for petitioner basing on memos issued and orders passed by respondent-Bank, petitioner was recruited prior to 19-7-1969. Therefore, it is necessary to peep into the communications produced by the petitioner in support of his case. Let me commence from the correspondence dated 21-6-1969. In the said letter, petitioner requests the respondent-Bank to transfer him from Vijayawada to any branch in Bangalore for various personal and family problems. In that, he informs the respondent-Bank that if for any reason, his request cannot be acceded, he may be appointed as a

fresh candidate at Bangalore. The said letter addressed to Chief Agency dated 21-6-1969 is extracted and the same is as under:

"I have brought to your kind notice on previous occasions vide my representation dated 19 and 21-1-1969 the hardships I am undergoing both financially and mentally due to the sudden sickness of my father. Now due to Glaucoma (eye disease) he has completely lost his sight and is continuing his treatment at Bangalore. I have enclosed the medical certificate of my father in this connection. My father and other members of the family have to stay in Bangalore firstly on account of medical facilities available there and secondly being native of Bangalore and having a small family house there. By my remaining in Vijayawada I am not in a position to render substantial help financially to my father and other dependents as I have to spend a major portion of my salary towards my expenses here. I therefore request you to consider my request for transfer with great sympathy and transfer me to Bangalore so that I may be in a position to look after my ailing aged father.

I understand that my transfer to Bangalore may be difficult unless I complete 5 years service. But looking at the circumstances mentioned above I hope your good selves will treat my request as a special case by appointing me as a fresh candidate at Bangalore. On hearing from you, I shall be submitting my resignation letter".

19. Respondent-Bank taking into consideration the request made by the petitioner in the aforesaid letter, have accepted the same with certain conditions and the same is communicated to the petitioner by their memo dated 2-8-1969. In that communication, they have clearly stated that the petitioner should resign his post at Vijayawada Branch and should accept as a fresh appointment at Bangalore and also accept starting salary payable at Bangalore. The learned Counsel Sri Rajagopal contends that since a decision has already been taken by the respondent-Bank to appoint him at Bangalore prior to cut-off date and a communication was sent at a later date it should be assumed and presumed that the petitioner was appointed prior to 19-7-1969. In support of this submission, the learned Counsel strongly relies upon the observations made by Constitution Bench of the Supreme Court in the case of S. Pratap Singh Vs. The State of Punjab, . In the said decision, the Court was pleased to observe:

"These observations therefore refer to an order made in the circumstances of the case. It is to be noted that in both the cases, no formal order was at all made by the Government. The impugned order in the present case were formally issued by the Governor on June 3, 1961 and were even published in the Gazette Extraordinary, on June 10. They were final orders. Of course, Governor could at any time, pass further orders superseding those orders. The possibility of a change in the order is not the basis for considering whether certain order is effective or not".

20. Per contra, Sri Ramadas, the learned Senior Counsel contends that orders

would be effective only when it is communicated. In support of that contention, the learned Counsel relies on the observations made by the Supreme Court in the case of *The State of Punjab Vs. Sodhi Sukhdev Singh*, . In the said decision, the Court was pleased to observe:

"Thus it is of the essence that the order has to be communicated to the person who would be affected by that order before the State and that person can be bound by that order. For, until the order is communicated to the person affected by it, it would be open to the Council of Ministers to consider that matter over and over again and therefore till its communication, the order cannot be regarded as anything more than provisional character".

21. The same view was reiterated in *Bachhittar Singh Vs. The State of Punjab*, . It was observed:

"Before something amounts to an order of the State Government, two things are necessary. The order has to be expressed in the name of the Governor as required by clause (1) of Article 166 and then it has to be communicated".

22. Similarly, in *State of Punjab Vs. Amar Singh Harika*, , the Court was pleased to observe:

"The mere passing of an order of dismissal is not effective unless it is published and communicated to the officer concerned. An order of dismissal passed by an appropriate authority and kept on its file without communicating it to the officer concerned as otherwise publishing, it does not take effect as from the date on which the order is actually written out by the said authority; such an order can only be effective after it is communicated to the officer concerned or otherwise published".

23. The same view is reiterated by a Division Bench of this Court in the case of *K. Nageswaran v Punjab National Bank*. In that, the Court was pleased to observe:

"Therefore, communication of the order to the concerned person is sine qua non to become effective. The authority passing it becomes bound by its own order as soon as it is communicated, which means as soon as the order is dispatched because then the order is out of the reach of that authority".

24. The question whether the "recruitment" of Sri Panduranga Rao was complete, merely because he filed an application dated 21-6-1969 that is earlier to the cut-off date specified in the guidelines issued by the Government? In my view, the answer to the question is, the application so filed is mere enlistment of the candidate and for completion of process of recruitment, the offer requires to be accepted and order approving the appointment is to be made. Till the entire process is complete, it cannot be said recruitment has taken place. Certainly, mere filing of an application by no stretch of imagination could be construed as completion of recruitment process. In the guidelines issued by the Central Government, prescribing the age of retirement specifically provides that an

officer/employee of the Bank recruited whether as an Award Staff or an officer/employee on or after 19-7-1969 shall retire on completion of 58 years. It only means that if selection or approval for appointment is complete after the cut-off date, then the employee/officer shall retire after completion of 58 years of age otherwise, he will retire only on completion of 60 years of age.

25. Secondly, a decision might have been taken by the Competent Authorities of the respondent-Bank prior to their communication dated 2-8-1969 but the order offering appointment was made to the petitioner only after July 19, 1969 and any decision taken would be effective only after its communication to the person concerned as declared by Supreme Court in the case of Amar Singh Harika, *supra*. Therefore, even accepting that a decision had been taken to approve the appointment of the petitioner prior to July 19, 1969, since it was communicated after the cut-off date, it cannot be said that recruitment was complete prior to cut-off date. Lastly, in my opinion, the reliance placed by the learned Counsel for petitioner on the observations made by this Court in the Padmanabha Shenoy's case, *supra*, would not assist him. In the said case, the Court was primarily concerned whether the recruitment based on contract would come within the meaning of the expression "recruitment". That was a case whether petitioner was appointed on a contract basis for a period of 3 years on a consolidated remuneration of Rs. 350/-per month by an order dated 18-7-1969. The order also indicated that on satisfactory completion of contract, the petitioner would be entitled to be absorbed in the regular service of the Bank as Probationary Accountant. On completion of contractual period of two years, an agreement of service was executed between the petitioner and the management of the Bank commencing from 27-7-1969. The request of the petitioner to continue him in service till he completes 60 years of age was turned down by the Bank only on the ground that petitioner was recruited in the Bank's service only with effect from 28-7-1969, i.e., after 19-7-1969 prescribed in the guidelines issued by the Central Government. Aggrieved by the said action of the respondent-Bank, he was before this Court. This Court taking into consideration that the petitioner was already recruited in the Bank's service on contractual basis prior to 19-7-1969, he is entitled to continue in service of the Bank till completion of 60 years of age. While coming to that conclusion, the Court was pleased to observe:

"If recruitment, is permissible both on contract as also regular basis, there is no good reason why a recruitment which initially was contractual in nature should not be termed to be a recruitment for all intents and purposes simply because the contractual requirement subsequently matures or ripens into a regular substantive appointment. If the intention behind the guidelines was to extend the benefit of higher age of retirement to only such of the employees as were recruited on regular substantive basis, nothing prevented the Government from making the said intention explicit by using a suitable expression to that effect in the guidelines. In the absence of anything to suggest that recruitment within the meaning of the guidelines would not include a recruitment based on a contract, it is difficult to exclude any such recruitment from the expression "recruited" by

adoption of a narrow or pedantic approach to the whole issue".

26. Similarly, in my opinion, the observations made by Calcutta High Court on which reliance was placed by learned Counsel for petitioner would not assist him in any manner whatsoever. That was a case where respondent-United Bank of India had issued an offer of appointment on 15-7-1969 and the petitioner had accepted the offer on 15-7-1969 itself although he had joined the post after 19-7-1969. The question before the Court was whether the age of retirement of the petitioner in the aforementioned facts and circumstances would be 58 or 60 years. The Court taking note of the meaning of the expression "recruitment" used in the guidelines issued by the Government and basing on the meaning ascribed to the said word by the Apex Court in a catena of decisions was pleased to hold:

"18. In the instant case, the process of recruitment was complete. The petitioner had been enlisted. The service contract also was concluded. It is true that the petitioner joined the services later on but in my opinion, only because the petitioner joined the services later on the same does not mean that the contract of services did not come into being with effect from the day on which the petitioner was handed over the offer of appointment and the same was accepted by him".

27. The facts and circumstances in the instant case are wholly different. The initial appointment of the petitioner as an Award Staff in the respondent-Bank was much earlier to the crucial date prescribed in the guidelines issued by the Central Government. Petitioner resigned voluntarily from the services of the Bank at its Vijayawada Branch. He was relieved from service on 6-9-1969 basing on his representation dated 11-8-1969. Petitioner was reappointed at Bangalore as a fresh candidate by the respondent-Bank by their conditional letter dated 2-8-1969, that is after 19-7-1969. Since petitioner had voluntarily relinquished his right and relation to an office and thereafter, was offered appointment by the Bank and accepted by the petitioner only after 19-7-1969, petitioner in my view is not entitled to retire from service after completion of 60 years of age.

28. Sri Rajagopal, learned Counsel further contends that by his letter of representation dated 21-6-1969 and 11-8-1969, what was sacrificed by the petitioner was only salary benefits and not past service benefits. Therefore, it is submitted that it should be presumed that the petitioner was recruited much earlier to the crucial date viz., 19-7-1969. In support of this contention, the learned Counsel takes enough trouble to read word by word from the aforesaid letters, affidavit filed before the Bank dated 5-8-1969 and the communication dated 2-8-1969 and submits that the respondent-Bank ought to have taken the past services rendered by the petitioner in the Vijayawada Branch of the respondent-Bank, while determining the age of retirement of the petitioner from the services of the respondent-Bank. In support of that contention, reliance was placed on the observations made by the Apex Court in the case of U.P. Awasthi v. Vikas Parishad, supra. In my opinion, the law laid down in the said decision

would not assist the petitioner, since the fact situation therein was wholly different. In the instant case, petitioner retired from service voluntarily as Award Staff from Vijayawada Branch of the respondent-Bank. By this process, petitioner voluntarily gives up his job, and relinquishes all his rights and relation of the post. This resignation is accepted and communicated to the employee, the relationship of employer and employee comes to an end. Thereafter, if he is offered employment once again as a fresh candidate, he cannot assume that his past services would still be counted for other service benefits. Therefore, since the offer of appointment at Bangalore Branch of the respondent-Bank was only as a fresh candidate and the same had been accepted without any reservations, and that contract was complete only after 19-7-1969. The contention of learned Counsel that since petitioner was already recruited in Vijayawada Branch much earlier to crucial date, he should be permitted to retire on completion of 60 years of age cannot be accepted.

29. The other salient feature that was pressed into service to suggest that the petitioner's past service should be taken into consideration by the respondent-Bank is that, the respondent-Bank while appointing petitioner as Award Staff at its Bangalore Branch had not prescribed the period of probation, therefore, it is strongly contended that though the respondent-Bank termed the appointment of the petitioner as fresh appointment, it is in fact continuation of the previous appointment made at Vijayawada Branch of the respondent-Bank. The argument canvassed by the learned Counsel is interesting but on a careful consideration of the submission, in my opinion, it has no merit.

30. It is true that the method of recruitment envisaged in the Code of Service Conditions of Bank Employees, 1990, provides that the period of probation in the case of employee/officers of the Bank should not exceed six months. This prescription is based on paragraph 495 of Sastry Award. Merely because, the respondent-Bank while appointing petitioner as a fresh candidate at its Bangalore Branch without prescribing the period of probation, it does not mean the respondent-Bank has taken into consideration the past services of the petitioner in Vijayawada Branch. A conjoint reading of the correspondence by the Bank with its employee would clearly demonstrate that they are offering the appointment to the petitioner at its Bangalore Branch purely as a fresh candidate, which means he is a new recruit in the services of the Bank. The appointment so made may be contrary to the service conditions of Bank Employees but it does not give any right to the employee to contend that his past services has been taken into consideration for not prescribing the period of probation while appointing him as a fresh candidate at its Bangalore Branch. Even assuming that the appointment so made is contrary to service conditions of the Bank employees, it does not give any right to the petitioner to contend that though he is appointed as a fresh candidate his past services are recognised by the respondent-Bank. Therefore, even this contention has no merit. Accordingly, it is rejected. Ultimately, the only conclusion that could be arrived at is, that the initial recruitment of the petitioner as an Award Staff has taken place only after 19-7-1969, therefore, necessarily

he has to retire from service after completing the age of 58 years of age. This is the answer to the query of the petitioner in this writ petition.

31. For the reasons stated, writ petition deserves to be dismissed. Accordingly, it is dismissed. Rule discharged. In the facts and circumstances of the case, parties are directed to bear their own costs. Ordered accordingly.