
(1998) 03 DEL CK 0083
In the Delhi High Court
Case No : C.W.NO. 5633 of 1993

Ravinder Raj

APPELLANT

Vs

Union Bank of India and Others

RESPONDENT

Date of Decision : 18-03-1998

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1998) 2 AD 709 : (1998) 72 DLT 463 : (1998) 45 DRJ 85

Hon'ble Judges : Dr. M.K. Sharma, J

Bench : Single Bench

Advocate : Mr. O.P. Gaggar Advocate, for the Respondent

Judgement

Dr. M.K. Sharma, J.—The present writ petition is directed against the order passed by respondent No.1 retiring the petitioner from service w.e.f. 31.12.1993 on attaining the age of 58 years. According to the petitioner the retirement age of the petitioner is guided by the circular dated 13.7.1970 according to which the petitioner should have been allowed to continue and retire at the age of 60 years.

2. The petitioner, who appears in person before me, during the course of his arguments submitted that the conditions of service of the petitioner including the age of retirement are governed by various circulars issued by the respondent No.1 whereunder the age of retirement of the petitioner holding the post of Personnel Officer has been laid down to be 60 years. According to petitioner the change brought about by the provisions of regulation 19(1) of 1979 Regulations of respondent No.1 is not applicable to the petitioner as there is no resolution of the Board as required under regulation 19(1) of the said regulations accepting 58 years as the age of retirement so far the petitioner is concerned, and Therefore, the circular dated 13.7.1970 would continue to operate, according to which the age of retirement of the petitioner is 60 years.

It was further submitted that the guidelines of the Central Government relied upon by respondent No.1 as laying down the age of retirement of the petitioner

was issued under the proviso to regulation 19(1). Therefore, the petitioner submitted that any guideline issued in respect of the proviso to regulation 19(1) can only regulate compulsory/ premature retirement and not the retirement on superannuation. It was also submitted that there is no material whatsoever on the basis of which the petitioner could be retired prematurely in public interest at the age of 58 years particularly when the procedure necessary for such premature retirement was not followed by respondent No.1. It was also submitted by the petitioner that regulations of 1979 cannot apply to the petitioner as such regulations can not be given retrospective operation in view of the fact that the petitioner joined the respondent company in the year 1974, during which period the circular dated 13.7.1970 was applicable and holding the field entitling the petitioner to continue till his age of superannuation at 60 years, and Therefore, the petitioner cannot be divested of a vested right. The petitioner also assailed the order of retirement of the petitioner on superannuation at the age of 58 years on the ground that the same is inoperative in view of the principle of promissory estoppel and legitimate expectation of the petitioner to continue in service after 58 years of age.

3. I have heard the learned counsel appearing for respondent No.1, who has drawn my attention to the various circulars issued by the Ministry of Finance, Department of Economic Affairs as also the guidelines issued by the said Ministry which have been placed on record. The learned counsel appearing for respondent No.1 also placed heavy reliance on the decision of the Supreme Court in B.S. Yadav and Another Vs. Chief Manager, Central Bank of India and Others, and also on an un-reported decision of the Madras High Court in N. Govindarajulu Vs. The Management of Union Bank of India & others; writ petition No.5486/1980 decided on 20.11.1986.

4. In the light of the aforesaid submissions the issue that arises for my consideration is as to whether the respondent No.1 was justified in retiring the petitioner on superannuation at the age of 58 years. In order to appreciate the contentions of the petitioner it would be necessary to extract the relevant provisions of the Union Bank of India (Officers) Service Regulations, 1979, hereinafter called the Regulations of 1979. Relevant regulation for the purpose of deciding the present case is the age of retirement which finds place in regulation 19(1) which Along with the provisos are extracted below:-

19(1). Age of retirement. - The age of retirement of an Officer employee shall be as determined by the Board in accordance with the guidelines issued by the Government from time to time.

Provided that the Bank may, at its discretion, on review by the Special Committee as provided hereinafter in Sub-regulation (2) retire an Officer employee on or at any time after the completion OF 55 years of age or on or at any time after the completion of 30 years of total service as an Officer employee or otherwise, whichever is earlier;

Provided further that before retiring an Officer Employee, atleast three months" notice in writing or an amount equivalent to three months" substantive salary/ pay and allowances, shall be given to such Officer employee;

Provided also that nothing in this regulation shall be deemed to preclude an Officer employee from retiring earlier pursuant to the option exercised by him in accordance with the rules in the BANK.

The Government guidelines issued by the Government in terms of the provisions of regulation 19(1) of the said service regulations also find place at page 50 of the said regulations which also for the purpose of convenience stand extracted below:-

The following guidelines are issued by the Government in terms of proviso to Regulation 19(1) of the Union Bank of India (Officers") Service Regulations, 1979.

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 19th July, 1969 shall retire on completion of the 60 years of age.

(2) An Officer employee of the Bank recruited prior to 19th July, 1969 but promoted as an Officer on or after 19th July, 1969 shall retire on completion of 60 years of age.

(3) An Officer employee of the Bank recruited whether as an Award Staff or as an Officer employee on or after 19th July, 1969 shall retire on completion of 58 years of Age.

5. Referring to the provisions of Section 19(1) read with the first proviso the petitioner submitted that the in order to give effect to the said provisions the age of retirement of an Officer Employee is required to be determined by the Board in accordance with the guidelines issued by the Government from time to time. The petitioner submitted that there is no determination by the Board accepting the guidelines issued by the Government in respect of regulation 19(1) and no decision has been placed on record of the Board indicating such determination and Therefore, the aforesaid guidelines issued by the Government in terms of the provisions of regulation 19(1) cannot be said to be applicable to the respondent No.1. It is also submitted that the aforesaid guideline in respect of regulation 19 was issued by the Government in terms of proviso to regulation 19(1) as is apparent from page 50 of the regulation and Therefore, in this particular case the respondent No.1 while retiring the petitioner at the age of 58 years sought to take action under proviso to Regulation 19(1) which applies to a case of compulsory retirement. It is submitted that the respondent could not have compulsorily retired the petitioner without following the mandatory provisions for exercising such powers. It was also contended that these regulations relied upon by respondent No.1 for invoking the power of retiring the petitioner from service on attaining the age of 58 years came into force on 1.7.1979 whereas the

petitioner joined the service of the respondent No.1 in the year 1974 when age of retirement was 60 years in accordance with the circular dated 13.7.1970, which was in vogue at that relevant time and Therefore, the regulation which has come into effect in 1979 could not be made applicable to the petitioner and he is entitled to continue till 60 years of age. In support of his submissions the petitioner relied upon the decision of the Supreme Court in 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, , laying down that statutory bodies are required to comply with statutory provisions and that the statutory bodies are required to act in accordance with the requirement and in the manner prescribed. Almost to the same effect is the decision of the Supreme Court in Miss Raj Soni Vs. Air Officer in Charge Administration and another, . He also relied upon the decisions of the Supreme Court in Punjab National Bank Vs. Ghulam Dastagir, and Som Prakash Rekhi Vs. Union of India; wherein it has been held by the Supreme Court that the bank is to be a model employer. In support of his submission that the petitioner could not be divested of a vested right the petitioner relied upon the decisions of the Supreme Court in S.K. Siddique Vs. Madhya Pradesh State Road Transport Corporation and another, , S.P. Dubey Vs. M.P.S.R.T. Corpn. and Another, , K. Narayanan and others Vs. State of Karnataka and others, and Ex-Capt. K.C. Arora and Another Vs. State of Haryana and Others, . The petitioner also relied upon the ratio of the decisions in Union of India (UOI) and Others Vs. Godfrey Philips India Ltd., and Navjyoti Housing Society Vs. Union of India; 1992 (4) S 477 in support of his contention that the action of the respondent in retiring him at the age of 58 years is illegal and void even on the principles of legitimate expectation and promissory estoppel.

6. The respondent bank admittedly made 1979 regulations in exercise of its statutory powers and the said regulations came into force on 1.7.1979. The respondent No.1 was nationalised in the year 1969. It is true that on the eve of the nationalisation of the Banking Companies the members of the staff of the respondent No.1 were entitled to remain in the service of the bank till 60 years and that until the terms and conditions of service were altered under sub-section (2) of Section 12 of the Banking Companies (Acquisition and Transfer of Undertakings) Act every officer or employee belonging to the respondent No.1 whose services were transferred u/s 12(2) of the Act was entitled to remain in service of the bank till 60 years.

Upon nationalisation of the respondent Bank Along with other banks it became necessary to rationalise the terms and conditions of the service of the employees of the banks particularly those existing in different banks prior to nationalisation. In that view of the matter a Committee consisting of Shri B.R. Pillai as the Chairman was appointed by the Government of India in 1973 to enquire into and to make recommendations with regard to standardisation of the scales of pay and other conditions of service including for determining the age of retirement. Pillai Committee report was submitted to the Central Government and on receipt

thereof the Government of India appointed a Study Group for implementation of Pillai Committee report.

The said Study Group of Bankers submitted its report, on receipt of which the Government of India issued guidelines to the nationalised banks to frame appropriate regulations with regard to the terms and conditions of service of the Officers working under them. Accordingly, the banks including the respondent No.1 prepared their regulations after consultation with the Reserve Bank of India and submitted them for approval to the Government of India. The Government of India gave its approval with some modifications to the said service regulations of the respondent No.1 and the said regulations as approved by the Government of India were brought into force by the banks w.e.f. 1.7.1979. In terms of regulation 19 the Central Government also issued a guideline providing that an officer employee of the bank recruited whether as an Award Staff or as an Officer employee on or after 19th July, 1969 shall retire on completion of 58 years of age whereas an Officer employee of the bank recruited/promoted prior to 19.7.1979 and an Officer employee of the bank recruited prior to 19.7.1979 but promoted as an officer on or after 19.7.1969 shall retire after completion of the age of 60 years of age.

7. Regulation 51 provides that wherever the regulations require that any matter shall be in accordance with the decision of the Board and where such a matter is covered by the recommendations made in the Pillai Committee report as accepted by the Government together with modifications or alterations thereof as made from time to time such recommendations shall, until varied, be deemed to be decisions of the Board.

A harmonious construction of the aforesaid regulation 51 read with regulation 19(1) and its provisos Along with the background facts stated above thus would make it crystal clear that there is a guideline operating in the field determining the age of superannuation in the case of an officer of the respondent bank recruited after 19.7.1969 as 58 years. The expression "in terms of proviso to regular 19(1)" appears to be a clerical or typographical or printing mistake, for reference to guidelines to be issued by the Government finds place in the provisions of regulation 19(1) and not in the proviso thereto. Besides first proviso to regulation 19(1) relates to a case of compulsory retirement which empowers an officer to be retired compulsorily after the completion of 55 years of age and Therefore, the provisions incorporated in the guidelines as referred to at page 50 of the regulations cannot apply to a case of compulsory retirement. As a matter of fact, guideline issued by the Central Government if incorporated to the proviso would not provide any intelligible meaning at all. There fore, in order to give effect to the intention the word "proviso" has to be read as provisions and when read as such, it gives an effective meaning.

8. In this connection reference may be made to the decision of the Supreme Court in B.S. Yadav's case (supra) wherein the Supreme Court had occasion to deal with similar matter and similar regulations with regard to the condition of

retirement in the case of an officer of Central Bank of India. On careful perusal of the said decision it is apparent that similar provision to that of Regulation 19(1) came up for consideration before the Supreme Court and on consideration of the provisions of Banking Companies (Acquisition and Transfer of Undertakings) Act, Central Bank Officers Service Regulations and the guidelines issued by the Central Government, the Supreme Court held Regulation 19(1) to be valid and satisfies tests of valid classification. The Supreme Court upheld the contention of the Bank that the officers and employees recruited after the nationalisation of the banks would retire on completion of 58 years of age which was the age of superannuation generally prevailing in the services of all public sector Corporations, Central Government and many of the State Governments. The Supreme Court further held that there was good reason to make a distinction between the employees/officers who had entered service prior to nationalisation and those who joined thereafter. In paragraph 16 of the said judgment the Supreme Court also took note of a decision of the Madras High Court on almost similar facts and same regulation of Union Bank of India, the respondent No.1. The said decision is of N.Gobinda Rajulu (supra) wherein the High Court of Madras rejected the contentions similar to those which were raised before the Supreme Court. The Supreme Court took note of the regulation framed by the Union Bank of India which was similar to the one in the case before Supreme Court. The said decision of Madras High Court was approved by the Supreme Court both in B.S. Yadav's case (supra) and also in Life Insurance Corporation of India and Others Vs. S.S. Srivastava and Others, . The respondent has also placed on record the decision of the Madras High Court in the case of N.Gobinda Rajulu (Supra) which is Annexure R-4. In the said decision the Madras High Court considered the effect of the same regulation with which I am concerned in the present case and on consideration of all the relevant provisions of the Regulations including regulations 19 & 51 and also the guidelines issued by the Central Government held that the said guidelines issued by the Central Government are fully applicable to all the employees and/or officers of the respondent No.1 bank including such officers who joined the respondent bank after nationalisation. The aforesaid decision of the Madras High Court, as stated above has already been approved by the Supreme Court in the aforesaid Life Insurance Corporation's case (Supra) as also in B.S. Yadav's case (supra) and Therefore, in my considered opinion the ratio and principles laid down in the said decision are fully applicable to the facts and circumstances of the present case as well.

9. On consideration of the entire facts and circumstances and legal position and principles enunciated above, I am fully satisfied that Regulation 19(1) Along with all its provisos being a valid piece of legislation and the Central Government having issued guidelines determining the age of retirement in the case like that of the petitioner to be 58 years in respect of Regulation 19(1) which is applicable, the petitioner was legally retired from service on attaining the age of 58 years and there is no scope of any grievance being made against such action.

In fact the issue raised is settled by the Supreme Court in the decisions of B.S. Yadav (supra) and LIC (Supra).

10. In view of the aforesaid discussions, the present writ petition has no merit and is accordingly dismissed, but without any costs.