

(1990) 07 SC CK 0003

In the Supreme Court Of India

Case No : Civil Appeal No's. 3392-3394 of 1990

State of Bank of India

APPELLANT

Vs

S. Vijaya Kumar

RESPONDENT

Date of Decision : 18-07-1990

Acts Referred:

Constitution of India, 1950 — Article 136, 311

State Bank of India Act, 1955 — Section 43, 49, 50

Citation : AIR 1991 SC 79 : (1991) 61 FLR 605 : (1990) 3 JT 308 : (1991) 2 LLJ 122 : (1990) 2 SCALE 110 : (1990) 4 SCC 481 : (1990) 3 SCR 398 : (1990) 2 UJ 467 : (1990) 2 UPLBEC 961

Hon'ble Judges : N. M. Kasliwal, J; L. M. Sharma, J

Bench : Division Bench

Advocate : C.S. Agarwal, H.r. Parekh and S. K. Jain, for the Appellant;

Final Decision : Disposed Of

Judgement

1. Special leave granted.

2. All the above cases are disposed of by one single order as identical questions of law are involved in all these cases. In order to appreciate the controversy, facts in brief are stated of all these cases.

SLP No. 4176 of 1988:

3. The respondent Vijaya Kumar was appointed as a Probationary Officer (Gr. I Officer) by an Order of the Executive Committee of the Central Board of the State Bank of India on 7.12.71. The respondent was charge sheeted in respect of gross irregularities and corrupt practices and was ultimately dismissed from service by an order dated 22.12.88 passed by the Chief General Manager of the Bank. Shri Vijay Kumar filed a writ petition No. 194/83 before the Andhra Pradesh High Court challenging his order of dismissal. A Division Bench of the High Court heard the writ petition along with writ appeal No. 141/86 and allowed the writ petition but dismissed the writ appeal by order dated 26.11.87. The

State Bank aggrieved against the aforesaid order of the High Court passed in writ petition No. 194/83 has filed this special leave petition. The High Court has allowed the writ petition only on one ground that the appointing authority of Vijaya Kumar was Executive Committee of the Bank and as such Chief General Manager being an authority lower than the appointing authority was not competent to pass an order of dismissal.

SLP No. 15235 of 1988:

4. In this case the respondent T. Dayakar Rao was appointed as a Clerk in the State Bank of India in the month of October, 1962. In the month of July, 1971 he was selected as a Trainee Officer and was given job training at various branches of the Bank for two years. While he was working as a Bank Manager he was charge sheeted for irregularities committed by him during the period 1.9.79 to 15.6.80. Disciplinary proceedings were initiated on 29.7.82. On 6.3.84 the Chief General Manager in the capacity of disciplinary authority passed an order of dismissal. T. Dayakar Rao filed a writ petition No. 1204/84 in the High Court. The Division Bench of the High Court by an order dated 13th August, 1988 allowed the writ petition following the decision of Division Bench given in writ appeal No. 141/86 dated 26.11.87. The Bank aggrieved against the aforesaid order has filed the SLP under Article 136 of the Constitution.

SLP No. 2069 of 1990:

5. In this case Shri A.K. Soundararajan appellant was appointed as Technical Officer by an order dated 14.6.68 of the Executive Committee of the Central Board of the Bank. It was mentioned in the Order that Shri Soundararajan would be governed by the State Bank of India (Officers & Assistants) Service Rules. Post of Technical Officer was considered equivalent to Staff Officer Grade III under the Rules. He was suspended and given a charge sheet on 23.4.82 and was dismissed by an order dated 31.3.83 passed by the Chief General Manager. Shri Soundararajan filed a writ petition No. 7108/85 in the High Court challenging his order of dismissal. Learned Single Judge of the High Court by order dated 31.10.88 allowed the writ petition by following the decision given by the Division Bench in writ petition No. 1204/84 in the case of T. Dayakar Rao. The State Bank aggrieved against the order of the learned Single Judge filed an appeal before the Division Bench. The Division Bench in this case took into consideration an amendment made in Regulation 55 by a resolution dated 25.8.88 made applicable with retrospective effect. The Division Bench by Order dated 30th November, 1989 allowed the appeal filed by the Bank. Shri A.K. Soundararajan aggrieved against the Order of the High Court has filed this Special Leave Petition

6. It would be necessary to narrate the facts of SLP (C) No. 5139/88 (State Bank of India v. Hanumantha Rao) disposed of by an order of this Court dated 30th January, 1990.

7. Hanumantha Rao was promoted as Grade I Officer on 1.4.1973 by the

Executive Committee of the Central Board of State Bank of India. In 1979 he was posted as the Manager of a branch of the Bank in Warangal District. In respect of certain alleged acts of misfeasance/malfeasance he was suspended on 17.8.81. On 4.5.82 a memo of charges was served on Hanumantha Rao by the Chief General Manager of the Bank. The Chief General Manager of the State Bank of India, local head office Hyderabad dismissed Hanumantha Rao by an order dated 7.1.84. Hanumantha Rao filed a writ petition No. 5509/84 in the High Court. Learned Single Judge allowed the writ petition declaring the order of dismissal as incompetent and invalid. The Bank aggrieved against the order of the Learned Single Judge filed a Letters Patent Appeal No. 141/86 before the Division Bench. The Division Bench heard and disposed of the writ appeal No. 141/86 and-writ petition No. 194/83 by a common order. The Division Bench agreed with the conclusion of the learned Single Judge that the order of dismissal passed by the Chief General Manager is incompetent and invalid being violative of the guarantee contained in the proviso to Regulation 55(2)(a) of the State Bank of India General Regulations, 1955.

8. While dealing with the cross objections filed by Shri Hanumantha Rao the Bench took notice of the fact that the writ petitioner had died on 24.11.87 and as such gave the following direction:

On account of the death of the writ-petitioner it is unnecessary for us to go into the merits of the contentions urged by way of cross-objections. There is no question of any enquiry or further enquiry hereafter. We may mention in this connection that the learned Counsel for the petitioner (respondent in this Writ Appeal) offered to file a petition to bring on record the legal representatives of the deceased writ-petitioner as respondents in this Writ Appeal since, according to him, they would be entitled in any event to claim the monetary benefits flowing from the orders of this Court. Now that we have agreed with the learned single Judge that the order of dismissal was incompetent and invalid, we direct that the writ petitioner shall be treated to be under suspension pending enquiry till 24.11.1987 and all the monetary benefits that he is entitled to on that basis, including the arrears of suspension allowance, shall be paid over to his legal representatives. Mr. Prasad will file the legal representatives petition within two weeks from today. Post this Writ Appeal for orders after two weeks.

The Writ Appeal, accordingly, fails and is dismissed, but in the circumstances, without costs.

9. The Bank aggrieved against the aforesaid order filed the SLP No. 5139/88 before this Court. Taking note of the facts and circumstances of the case of Hanumantha Rao having died on 24.11.87 leaving behind 14 children, this Court on 30th January, 1990 did not consider it fit to interfere with impugned order of the Division Bench. It was further made clear that even though this Court was not interfering with the impugned order, the questions raised on behalf of the Bank were left open. The Bank was directed to treat Hanumantha Rao in service and pay the dues, arrears of salary and other terminal benefits in accordance

with law to his legal representatives. With these observations, the SLP was dismissed.

10. The question which calls for consideration in all these cases is whether the order of dismissal could be passed by the Chief General Manager who was lower in rank to the Executive Committee who was the appointing authority in these cases.

11. In order to appreciate this controversy, it would be proper to give reference of the relevant provisions of the State Bank of India Act, 1955 (hereinafter referred to as the Act), State Bank of India General Regulations, 1955 (hereinafter referred to as the Regulations) and the State Bank of India (Supervising Staff) Service Rules, 1975 (hereinafter referred to as the Rules).

Section 43 of the Act empowers the State Bank to appoint such number of officers, Advisors and Employees as it considers necessary or desirable for the efficient performance of its functions and to determine the terms and conditions of their appointments and service.

12. Section 49 of the Act confers power on the Central Government in consultation with the Reserve Bank to make rules to provide for all matters in which provision is necessary or expedient for the purpose of giving effect to the provisions of the Act.

13. Section 50(1) of the Act confers powers on the Central Board of Directors of the Bank to make regulations.

14. Sub-section (3) of the Section 50 of the Act empowered the Reserve Bank to make the first regulations with the previous sanction of the Central Government.

15. In exercise of the powers conferred by Sub-section (3) of Section 50 of the Act, the Reserve Bank of India with the previous sanction of the Central Government made the State Bank of India General Regulations, 1955. These regulations have been amended from time to time by the Central Board of Directors by making regulations under Sub-section (1) of Section 50 of the Act.

16. Regulation 55(2)(a) deals with the initial appointments and promotions to various categories of employees in the bank. Initially the appointments of Officers used to be made only by the Executive Committee as provided in Regulation 55(2)(a). As the bank grew larger in branches, the bank thought fit to vest the power of appointment and promotion to various functionaries of the bank and also gave power to delegate their power of appointment also. Regulation 55(2)(a) was thus substituted by a resolution dated 18th August, 1971 of the Central Board. After this resolution for Officers Grade I & II, the appointing authorities were specified as the Secretary and Treasurer or the Managing director respectively depending upon whether the appointment/promotion is for service in the Circle or the Central Office. The State Bank of India Officers & Assistants Rules which govern the service conditions of Grade I Officer whether they were Probationary Officers or Trainee Officers and Staff

Officers followed the scheme of "appointing authority" laid down in the Regulations. Regulation 55(2)(a) was again amended by a resolution of the Central Board on 11th July, 1972. By this amendment there was only a terminological regrouping of the earlier regulation rather than any qualitative change. The State Bank Laws (Amendment) Act, 1973 introduced various amendments and one of the amendments was relating to change of designation of Secretary and Treasurer as Chief General Manager. Hence the Central Board vide its resolution dated 29.3.74 for the words "Secretary & Treasurer" substituted "Chief General Manager." The service conditions of all Officers came to be brought under a single set of service rules viz. the State Bank of India (Supervising Staff) Service Rules which came into force on 1.7.75. It would be important to mention that Regulation 55(2)(a) at all relevant period for our purpose recognized the right of the officers or employees of the Bank under the following clause "such officers or employees shall not be dismissed from service of the State Bank by an authority lower than the appointing authority." Clause (f) of Rule 3 of the State Bank of India (Supervising Staff) Service Rules which is relevant for our purposes reads as under:

(f) "Appointing Authority" means

(i) in the case of Officers Grade II and Grade I and of other employees to whom the salary scales applicable to Officers Grade II and Grade I generally apply with or without modification, the Chief General Manager concerned or the Managing Director according as the employee is serving in the Circle or in or under Central Office;

(ii) in the case of Staff Officers of various grades and of other employees to whom the salary scales applicable to Staff Officers generally apply with or without modification, the Managing Director;

(iii) in the case of Senior Staff Appointments and of employees to whom the salary, scales applicable to Senior Staff Appointments generally apply with or without modification, the Executive Committee;

17. Sub-rule (1) of Rule 50 relevant for our purposes is also reproduced below:

50(1)(i) The Disciplinary Authority may itself, or shall when so directed by its superior authority, institute disciplinary proceedings against an employee.

(ii) The Disciplinary Authority or any Authority higher than it may impose any of the penalties in Rule 49 on an employee.

18. It may be further noted that an amendment in Regulation 55 was approved by Central Board at its meeting dated August 25, 1988 which reads as under:

55(1) Save as provided in Sub-regulation (2) and as may be directed the Central Board, a Local Board may exercise all the powers of the State Bank in respect of the Staff serving in the areas in its jurisdiction.

2(a) The appointing and/or promoting authority for various categories/grades of

officers and employees shall be such as the Executive Committee may by general or special order designate from time to time.

(b) No officer or employee of the Bank shall be dismissed, discharged, removed or retired from the service of the Bank or reduced to a lower grade or post or to a lower stage in a time scale by an authority lower than the appointing authority. Explanation (For the purpose of Clause (b) the term 'appointing authority' shall mean and include the authority who has been designated as such in respect of such class or grade of officers or employees to which the officer or employee concerned, as the case may be belongs at the time when such Order is passed or any proceeding leading to such Order or termination is initiated.)

(c) Nothing in this sub-regulation shall affect the powers of a disciplinary authority appointed or notified under any award, settlement under the Industrial Disputes Act, 1947, governing, affecting or regulating the service conditions of workmen of the Bank, and for the purpose of Clause (b) above, the appointing authority shall be deemed to have been substituted by such disciplinary authority.

(d) The salary and other emoluments to be granted to officers and other employees shall be as laid down in the Rules of Service approved by the Central Board and, where no such rules have been laid down, as fixed by the Executive Committee.

(e) The power to grant pensions to officers and other employees leaving the service of the State Bank, other than pensions provided for under the Rules of pension funds respectively applicable to them, shall be reserved to the Central Board.

(f) The grant of gratuities or other financial assistance, either temporary or permanent, to widows, children or other dependents of deceased officers or other employees shall be made by the Executive Committee of the Central Board except where grant of any such gratuity or financial assistance is authorised by any general direction given by the Central Board. Explanation (The term 'Officers' in this regulation shall include any employee to whom the rules of service generally applicable to officers, apply with or without modification.) (Sub-regulation (2) substituted with effect from 1.10.79).

19. The Executive Committee of the Bank passed the following resolution on August 30, 1988:

20. In exercise of the powers conferred by Sub-section (1) of Section 43 of the State Bank of India Act, 1955 (23 of 1955) and amended Sub-regulation (2)(a) of Regulation 55 of the State Bank of India General Regulations, 1955, the Executive Committee of the Central Board of the State Bank of India hereby makes the following order:

21. The initial appointments and/or promotions to various categories of officers and other employees in the Bank set out in Column I here under shall be made by the authority specified in Column II.

Column I Column II

Employees working at branches

i) Employees other than officers a) Subordinate the concerned Staff Branch Manager Deputy General Manager, ii) Clerical staff the concerned Regional Manager Dy. General Manager. b) Employees working at LHOs/ Regional Offices. and their establishments The concerned Office Manager/ Admn. Officer at Staff Colleges or Institutes Manager Dy. Chief Manager or, where there is no post of above descriptions the head of concerned dept. /office.

ii) Officers in Junior Management Grade Scale 1 and Middle Management Grade Scale II The Chief General Manager for appointments/ promotions in the Circle and the Chief General Manager Manager (Personnel & HRD) in Central Office for Central Office establishment.

iii) Officers in Middle Management Grade Scale III The Deputy Managing Director

iv) Officers in Senior Management Grade Scale IV, V The Managing Director

v) Officers in Top Executive Grade Scale VI, VII and special scales
Recommending Authority :

The Directors Promotion Committee consisting of the Chairman, the Managing Director and the Director nominated by the Central Government in terms of clause (c), sub-section (1) of Section 19 and the Director nominated by the Reserve Bank of India in terms of clause (0 of sub-section (1) of Section 19 of the Act. Promoting/ Appointing Authority : The Executive Committee of the Central Board.

22. All authorisations in respect of appointing authority and/or promoting authority made by the Executive Committee from time to time after 1.10.79 shall be deemed to have been done under the amended regulation 55. Appointments authorised by the Chief General Manager (Personnel & HRD) in respect of JMGS I after 1.10.79 are also confirmed hereby.

23. All the employees of the bank in the cases before us where appointed by the Executive Committee. Order of dismissal in their cases has been passed by the Chief General Manager. It is an admitted position that on the date of passing the order of dismissal the Chief General Manager was the appointing authority. According to the Bank though the employees were appointed by the Executive Committee, but at the time when inquiry was held and the order of dismissal passed, the Chief General Manager had become the appointing authority. On the other hand the contention on behalf of the employees is that the Executive Committee being the appointing authority, no authority lower than the Executive Committee can pass the order of dismissal in their cases. According to their contention the Chief General Manager, being a lower authority than the Executive Committee, he had no competence to pass the order of dismissal. Learned

Counsel for the employees in this regard referred to Article 311 of the Constitution of India and placed reliance on a plethora of cases decided on the basis of guarantee enshrined under Article 311 of the Constitution.

24. The guarantee clause under Article 311(1) of the Constitution of India which is relevant for our purpose reads as under:

No person who is a member of a Civil Service of the Union or an All India Service or a Civil Service of a State or holds a Civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

25. Now so far as the right which has been conferred on the employees of the State Bank contained in Regulation 55(2)(a) is that such officers or employees shall not be dismissed from service of the State Bank by an authority lower than the appointing authority. Thus a comparison of the provisions contained in Article 311(1) of the Constitution and the right guaranteed to the employees of the State Bank under Regulation 55(2)(a) shows that there is a material difference between the language used in the two provisions. Under Article 311(1) the words used are "by which he was appointed." In Regulation 55(2)(a) there are no such words "by which he was appointed" and in its place the only right guaranteed is that the employee shall not be dismissed by an authority lower than the appointing authority. Thus the right guaranteed in case of the officers or employees of the State Bank is that the order of dismissal cannot be passed by an authority lower than the appointing authority. A perusal of the relevant Regulations and Rules mentioned above clearly go to show that the Chief General Manager had become the appointing authority of the employees in question under Regulation 55(2)(a) with effect from 1.7.74. Admittedly the orders of dismissal have been passed long after these amendments when the Chief General Manager had already become their appointing authority under the Regulations and the Rules. The right that an officer or employee of the State Bank of India cannot be dismissed from service by an authority lower than the appointing authority is a creation of statutory rules and regulations. So far as the right or protection guaranteed under Article 311 of the Constitution is concerned, it applies to members of the Civil Service of the Union or an All India service or a Civil Service of a State or who holds a Civil Post under the Union or a State. Admittedly the employees of the State Bank do not fall under any one of these categories and they cannot seek any protection under Article 311(1) of the Constitution. The employees of the State Bank can only claim such rights which have been conferred under Regulation 55(2)(a) of the General Regulations. The only right conferred under the said provision is that the officers or employees of the State Bank cannot be dismissed by an authority lower than the appointing authority. With the risk of repetition it may be stated that on the date when the order of dismissal has been passed, Chief General Manager had already become the appointing authority and as such the order of dismissal has not been passed by an authority lower than the appointing authority.

26. Apart from the view taken by us as mentioned above the Regulation 55 has been amended by a resolution of the Central Board dated August 25, 1988 with retrospective effect. It has now been made clear in the explanation that for the purpose of Clause (b) the term appointing authority shall mean and include the authority who has been designated as such in respect of such class or grade of officers or employees to which the officer or employee concerned, as the case may be belongs at the time when such order is passed or any proceedings leading to such order or termination is initiated. This provision now concludes the controversy if any and clearly provides that the appointing authority shall mean and include the authority who has been designated as such at the time when such order is passed. It was contended on behalf of the Learned Counsel for the employees that the Bank had no power to amend the Regulations with retrospective effect. We see no force in this contention. Section 50(2)(a) of the Act clearly provides that all regulations made under this section shall have effect from such earlier or later date as may be specified in the regulation. Thus the regulations can be made to give effect from earlier dates also as may be specified in the regulations. We find no force in the contention of learned Counsel for the employees that they had vested right in this regard and the same could not have been taken away by making regulations with retrospective effect. There cannot be any vested right in such a matter. As already mentioned above it was a right conferred under Regulation 55(2)(a) and the same can be amended with retrospective effect also in case the authority competent to make regulations has been given a right to make regulations with retrospective effect. It has been held in *The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others*, that it is well settled that a Government servant acquires a 'status' on appointment to his office and as a result his rights and obligations are liable to be determined under statutory or constitutional authority which for its exercise requires no reciprocal consent. In *Bishun Narain Mishra Vs. State of Uttar Pradesh and Others*, it was held that new rule reducing the age of retirement from 55 years to 53 years could not be said to be retrospective. The proviso to the new rule and the second notification were only methods to tide over the difficult situation which would arise in the public service if the new rule was applied at once and also to meet any financial objection arising out of the enforcement of the new rule. The new rule therefore, could not be struck down on the ground that it was retrospective in operation. In *Roshan Lal Tandon Vs. Union of India (UOI)*, it was held that the legal position of Government servant is more one of status than of contract. The hallmark of status is the attachment to a legal relationship of rights and duties imposed by the public law and not by mere agreement by the parties. Emolument of the Government servant and his terms of service are governed by statute or statutory rules which may be unilaterally altered by the Government without the consent of the employee. It was further held in the above case that the petitioner had no vested contractual right in regard to the terms of his service and that the same can be altered unilaterally. We may further add that the prohibition if any to alter the terms and conditions can be found only under the Constitution of India and in case power of the rule or law making authority is

not circumscribed or limited by any constitutional mandate then it has power to amend such terms and conditions of service unilaterally without the consent of the employee. In the cases in hand before us the right whatsoever conferred on the employees of the State Bank was on the basis of Regulation 55(2)(a) and the Central Board of the Bank was authorised to amend such regulations from any date u/s 50(2)(a) of the Act.

27. In the result the appeals filed by the State Bank of India in the case of Vijaya Kumar and T. Dayakar Rao are allowed, the impugned orders passed by the High Court are set aside and the cases are remanded to the High Court for deciding the writ petitions on other points in accordance with law. Now so far as the appeal filed by Sh. C A.K. Soundararajan is concerned, the point decided by us shall remain concluded but the appellant would be free to raise other points before this Court which are left undetermined. This case may now be listed for further hearing and final disposal at an early date.

28. In the facts and circumstances of the case, the parties shall bear their own costs.