

(2006) 09 GAU CK 0037
In the Gauhati High Court

Upendra Nath Sarma

APPELLANT

Vs

Punjab National Bank and Others

RESPONDENT

Date of Decision : 08-09-2006

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2009) 6 GLR 879

Hon'ble Judges : B.P. Katakey, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.P. Katakey, J.—The petitioner, an Assistant Manager in Punjab National Bank, was imposed with major penalty of compulsory retirement from service vide order dated 28th May, 1992 passed by the Deputy General Manager, Eastern Zone, pursuant to the disciplinary proceeding initiated against him vide charge sheet dated 7.9.1990. The said order imposing major penalty was confirmed by the appellate authority as well as by the reviewing authority and though was challenged by the petitioner in civil rule No. 940 of 1997 before this Court, the same was also dismissed and thus the order imposing the penalty of compulsory retirement attained its finality. The petitioner thereafter approached the bank authority for payment of pension under the provisions of Punjab National Bank (employees") Pension Regulations, 1995 ("Pension Regulation"), which has however been rejected vide communication dated 28.1.1997, on the ground that the petitioner is not entitled to pension under Regulation 33 of the Pension Regulation. The petitioner, therefore, by the present writ petition has prayed for directing the respondents to pay the pensionary benefit to him and also challenging legality and validity of Regulation 33(1) of the Pension Regulation, contending that the petitioner though was inflicted with the penalty of compulsory retirement from service, he is entitled to pension, as under the Pension Regulation the past service of an officer is forfeited only in case of resignation, dismissal, removal or termination of an employee from the service and the petitioner having been compulsorily retired from service his past service

cannot be forfeited and as such he is entitled to pension. The ground on which the petitioner challenges the provision of Regulation 33(1) of the Pension Regulation is that the authority has arbitrarily and without any reasonable basis has fixed the cut-off date as 1st November, 1993, in the said regulation, from which date an employee though is compulsorily retired from service as a measure of punishment, is given the benefit of pension.

2. I have heard Mr. R.P. Sharma, learned senior Counsel for the petitioner and Mr. Pradip Kalita, the Learned Counsel appearing on behalf of the respondents.

3. Mr. Sharma, Learned Counsel for the petitioner referring to Chapter V of the Pension Regulation has submitted that as under Regulation 32 an employee who has been prematurely retired from service on account of the orders of the bank passed in public interest or for any other reason specified in the service regulation or settlement, is entitled to pension subject to his rendering minimum 10 years of service, the petitioner who has been compulsorily retired from service, which is nothing but the premature retirement from service and who has rendered more than 10 years of service, is entitled to pension under the provision of the Pension Regulation. According to the Learned Counsel under Regulation 14 an employee who has rendered a minimum of 10 years of service in the bank is qualified for pension and therefore, the bank authority cannot deny the petitioner from the pension to which he is entitled to. Referring to Regulation 22 the Learned Counsel has further submitted that the said provision specified in what circumstances the past service of an employee is to be forfeited i.e., on resignation, or dismissal or termination from service and the petitioner having not resigned/dismissed/terminated from service, his past service cannot be forfeited and hence he cannot be denied the benefit of pension to which he is entitled to under the Pension Regulation. The Learned Counsel has also made an alternative submission that the fixation of a cut-off date as 1.11.1993 in Regulation 33(1) of the said regulation is absolutely arbitrary having no basis for such fixation and therefore, the denial of the pensionary benefit of the employees who were compulsorily retired from service by way of punishment before 1.11.1993 is highly illegal, more so when the payment of pension is not a bounty but a right accrued to an employee for the services rendered by him. It has further been contended that the authority by fixing a cut-off date as 1.11.1993 is making a class within a class and arbitrarily denied the benefit of pension to the persons who were compulsorily retired from service by way of punishment before 1.11.1993 and they have been unfairly treated. The Learned Counsel in support of his contention has placed reliance on the decision of the Apex Court in All India Reserve Bank Retired Officers Association and others Vs. Union of India and others,

4. Mr. Kalita, Learned Counsel appearing on behalf of the respondents has submitted that the cut-off date of 1.11.1993 has not been fixed arbitrarily or without any basis and the same has been fixed on the basis of memorandum of settlement dated 29.10.1993 arrived at between the Management of 58 banks

including the present bank in question represented by the Indian Banks Association and their workman represented by all India Bank Employees Association. It has further been submitted that the respondent in fixing the cut-off date had not acted mala fide with a view to deprive those persons who were compulsorily retired from service by way of punishment on or before 31st October, 2003. Mr. Kalita, further submits that as such benefit of pension has been given to such employees who were compulsorily retired from service by way of punishment on and from 1.11.1993 and the petitioner is not entitled to benefit of pension under the Pension Regulation, he having been inflicted with the punishment of compulsorily retirement with effect from 28.5.1992. The Learned Counsel referring to Chapter V of the Pension Regulation has submitted that in the said chapter it has specifically been provided who are entitled to pension. According to the Learned Counsel the pre-mature retirement from service being different from the compulsory retirement by way of punishment, the petitioner even though rendered more than 10 years of service, is not entitled to the benefit of pension under Regulation 32 of the said regulation, as it provides for payment of pension to those employees who retired pre-maturely in the public interest or for any other reasons specified in the service regulation or settlement. The service regulation of the bank applicable to the petitioner empowers the bank management to retire any employee from service prematurely on fulfillment of the conditions stipulated therein, which is completely different from the compulsory retirement by way of punishment. Mr. Kalita has further submitted that the punishment of compulsory retirement from service inflicted on the petitioner amounts to termination of service, which entails forfeiture of past service. Mr. Kalita, therefore, contends that the bank management has rightly rejected the claim of the petitioner for payment of pension, as he is not entitled to any benefit under the pension regulation. Mr. Kalita in support of his contention has also placed reliance on All India Reserve Bank Retired Officers Association and others Vs. Union of India and others, and a division bench judgment of Delhi High Court in Kailash Nath Singhal Vs. Union of India,

5. The undisputed facts are that the petitioner, who joined the Punjab National Bank initially as godown keeper on 11.4.60 and thereafter promoted to the post of Assistant Manager in the year 1984, was awarded the punishment of compulsory retirement from service by order dated 28.5.1992 with immediate effect. The question, which arises for consideration of this Court, is: whether the petitioner is entitled to pensionary benefit under the provisions of Pension Regulation, he having been awarded the punishment of compulsory retirement prior to 1.11.1993.

6. Punjab National Bank (Officers") Service Regulations, 1979 (in short Service Regulation) contemplates retirement on superannuation, voluntary retirement as well as premature retirement which can be given to an officer/employee at the discretion of the management after he attains 55 years of age or has completed 30 years of service, which ever is earlier, by giving him three months notice in

writing or pay in lieu thereof. Under Punjab National Bank Officers' Employees' (Discipline and Appeal) Regulations 1977, penalty of compulsory retirement by way of punishment can be awarded for an act of misconduct committed by the officer/employee. Pension regulation defines the "retirement" which reads as follows:

2. (y) "retirement" means cessation from Bank's service,-

(a) on attaining the age of superannuation specified in Service Regulations or Settlements;

(b) on voluntary retirement in accordance with provisions contained in Regulations 29 of these regulations;

(c) on pre-mature retirement by the Bank before attaining the age of superannuation specified in Service Regulations or Settlement;

7. From the bare reading of the definition of "retirement" under the Pension Regulation, it is therefore, evident that the retirement under the Pension Regulation are of three types, i.e., retirement on attaining the age of superannuation, voluntary retirement in accordance with the provision of Regulation 29 and premature retirement before attaining the age of superannuation specified in the/service regulation" or "settlement". "Service Regulation" is defined under the Pension Regulation, which means the Punjab National Bank (Officers') Service Regulation 1979 and the "Settlement" defined to be the memorandum of settlement agreed between the management of the bank and the workmen. Regulation 22 of the Pension Regulation provides that resignation or dismissal or removal or termination of an employee from the service of the bank shall entail forfeiture of his entire past service and consequently shall not be qualified for pensionary benefit under the regulation. Chapter V of the said regulation stipulates the classes of pension, such as, superannuation pension, pension on voluntary retirement, invalid pension, premature retirement pension and compulsory retirement pension. Regulation 32 of Chapter V, on which the learned senior Counsel for the petitioner has placed reliance, provides for payment of premature retirement pension to an employee, who (a) has rendered minimum 10 years of service and (b) retired from service on account of orders of the bank to retire prematurely in public interest or for any other reason specified in the service regulation or settlement, if otherwise he was entitled to such pension on superannuation on that date. Regulation 33 provides for payment of compulsory retirement pension to an employee compulsorily retired from service as a penalty, on or after 1.11.1993, in terms of the discipline and appeal regulation or settlement.

8. The first contention of the learned senior Counsel for the petitioner is that the compulsory retirement is nothing but the premature retirement from service and the petitioner having rendered more than 10 years of service and he having been compulsorily retired from service, even though as a measure of punishment, is entitled to pension under the Regulation 32 of the pension regulation. This

contention of the Learned Counsel for the petitioner cannot be accepted as Regulation 32 specifically provides that such of the employees who retired from service on account of the orders of the bank pre-maturely in public interest or for any other reasons specified in the "service regulation" or "settlement" will be entitled to pre-mature retirement pension. "Service Regulation", as discussed, empowers the bank management to prematurely retire an employee from service who have completed 55 years of age or 30 years of service, by giving him three months notice in writing or pay in lieu thereof. Therefore, the payment of pension to the employee under Regulation 32 of the Pension Regulation does not cover the cases of those employees who are compulsorily retired from service by way of penalty pursuant to the discipline and appeal rules. The petitioner having not been retired from service under Regulation 32 of the Pension Regulation, but having been compulsorily retired from service by way of punishment, cannot come within the scope of Regulation 32 of the Pension Regulation. A person, who claims such benefit of pension, must be entitled to receive such benefit in terms of the pension regulation. The petitioner is not entitled to any pension under Regulation 32 of the Pension Regulation for the reasons stated above.

9. The next contention put forward by the learned senior Counsel for the petitioner is that under Regulation 33 of Pension Regulation a cut off date has been fixed arbitrarily and without any reasonable justification by extending the benefit of pension to the employees who are compulsorily retired from service, as a measure of punishment, on or after 1.11.1993. The petitioner on the ground of arbitrary fixation of cut-off date as well as on the ground of discrimination has challenged the validity of the said regulation, i.e., Regulation 33 of the Pension Regulation. The further contention of the learned senior Counsel for the petitioner is that the bank management by introducing a cut-off date is making an artificial division of a homogenous group.

10. It is evident from the statements made in the affidavit in opposition filed by the bank management as well as additional affidavit filed on 20.1.2006 that a memorandum settlement was executed between the management of 58 banks, which includes the respondent bank and their workmen on 29.10.1993, wherein it was agreed by the parties to introduce pension as second retirement benefit scheme in lieu of contributory provident fund, where it does not exist, for the workmen employees of the member banks with effect from 1.11.1993, and also making the same available to the categories of employees/retired employees, mentioned therein, from 1.11.1993 or the date of retirement, whichever is later. Pursuant to such memorandum of settlement arrived at between the bank managements and their workmen, the Pension Regulation 1995 was framed which contains Regulation 33 for payment of pensionary benefit to the employees who compulsorily retired from service, as a measure of punishment, on or after 1.11.1993. For better appreciation Regulation 33 is quoted below:

33. Compulsory Retirement Pension.- (1) An employee compulsorily retired from service as a penalty on or after 1st day of November, 1993 in terms of Discipline

and Appeal Regulations or settlement by the authority higher than the authority competent to impose such penalty may be granted pension at a rate not less than two-thirds and not more than full pension admissible to him on the date of his compulsory retirement if otherwise he was entitled to such pension on superannuation on that date.

(2) Whenever in the case of a bank employee the Competent Authority Passes an order (whether original, appellate or in exercise or power of review) awarding a pension less than the full compensation pension admissible under these regulations, the Board or Directors shall be consulted before such order is passed.

(3) A pension granted or awarded under Sub-regulation (1) or, as the case may be, under Sub-regulation (2), shall not be less than the amount of rupees three hundred and seventy five per mensem.

11. The petitioner has challenged the said provision contained in the Regulation 33 of the Pension Regulation, more particularly for the cut-off date, i.e., 1.11.1993, on the ground that it is a discriminatory provision and hence unconstitutional. According to the writ petitioner there is no reason as to why the person who were compulsorily retired from service, by way of penalty, should not be given the benefit of the pension, when such benefit was given to those persons who compulsorily retired on and or from 1.11.1993. The main thrust of the argument of the learned senior Counsel is that there is no rationale in fixing the cut-off date as 1.11.1993. The Learned Counsel has placed reliance on All India Reserve Bank Retired Officers Association (supra) in support of his contention that as by fixing the cut-off date as 1.11.1993 in Regulation 33 of the Pension Regulation, the benefit of pension has been denied to the petitioner, such part of the said regulation is unconstitutional, as the pension is longer a bounty but a right accrued to an employee for the service rendered by him.

12. In All India Reserve Bank Retired Officers Association (supra) the fixation of the cut-off date in the contributory provident fund scheme, introduced for the first time in substitution of CPF Scheme in the Reserve Bank of India, as 1.11.1990, was challenged on the ground of arbitrary fixation of such cut-off date and having no rationale in fixing such cut-off date and also on the ground of discrimination, as there is no rational principle in making the classification of pensioners in two groups, namely who retired prematurely prior to the specified date and those who retired subsequent thereto and therefore, is discriminatory, arbitrary and violative of Article 14 of the Constitution of India. The Apex court relying on its earlier decisions including D.S. Nakara case, has held that there must be rationale for fixing of cut-off date and the choice of cut of date, which has necessarily to be introduced to effectuate the fixation, is open to scrutiny by the court and must be supported by the touch stone of the Article 14 of the Constitution of India and if the choice of cut-off date results in classification or division of members of a homogeneous group it would be open to the court to insist that it be shown that the classification is based on an intelligible differential and on rational consideration which bears a nexus to the purpose and object

thereof. It has further been held that the differential treatment accorded to those who retired prior to the specified date and those who retired subsequently thereto must be justified on the touch stone of Article 14, for otherwise, it would be offensive to the philosophy of equality enshrined in the constitution.

13. In the instant case as discussed above, the Pension Regulation was formulated by the bank management in the year 1995 pursuant to the memorandum of settlement arrived at between the bank managements, and their workmen, wherein it was decided to introduce such pension scheme with effect from 1.11.1993. Therefore, the cut-off date as 1.11.1993 has neither been arbitrarily or whimsically fixed nor it has created an artificial division within a homogenous group. Such cut-off date was arrived at after due deliberation and negotiation between the managements of 58 banks represented by Indian Bank Association and their workmen represented by All India Bank Employees' Association. Such Memorandum of settlement between the parties cannot be varied at the insistence of one or a few of employees who are adequately represented through the All India Bank Employees' Association. Such settlement in fact is binding on both the parties and also on those whom they represent, unless and until terms of such settlement are changed mutually, though it may cause some heart burning to a class of employees within a homogeneous group because of fixation of such cut-off date.

14. The Apex Court in paragraph 10 of All India Reserve Bank Retired Officers Association case has observed that when an employer introduce an entirely new scheme which has no connection with the existing scheme, different considerations enter the decision making process and such consideration may be the financial implications of the scheme and the extent of capacity of the employer to bear the burden and keeping in view its capacity to absorb the financial burden the employer would have to decide upon the extent of applicability of the scheme. Paragraph 10 of the said judgment, relevant for the purpose of present case, is quoted below:

10. Nakara judgment has itself drawn a distinction between an existing scheme and a new scheme. Where an existing scheme is revised or liberalised all those who are governed by the said scheme must ordinarily receive the benefit of such revision or liberalisation and if the State desires to deny it to a group thereof, it must justify its action on the touch stone of Article 14 and must show that a certain group is denied the benefit of revision/liberalisation on sound reason and not entirely on the whim and caprice of the State. The underlying principle is that when the State decides to revise and liberalise an exiting pension scheme with a view to augmenting the social security cover granted to pensioners, it cannot ordinarily grant the benefit to a section of the pensioners and deny the same to others by drawing an artificial cut-offline which cannot be justified on rational grounds and is wholly unconnected with the object intended to be achieved. But when an employer introduces an entirely new scheme which has no connection with the existing scheme, different considerations enter the decision making

process. One such consideration may be the financial implications of the scheme and the extent of capacity of the employer to bear the burden. Keeping in view its capacity to absorb the financial burden that the scheme would throw, the employer would have to decide upon the extent of applicability of the scheme. That is why in *D.S. Nakara and Others Vs. Union of India (UOI)*, this Court drew a distinction between continuance of an existing scheme in its liberalised form and introduction of a wholly new scheme; in the case of the former all the pensioners had a right to pension on uniform basis and any division which classified them into two groups by introducing a cut-off date would ordinarily violate the principle of equality in treatment unless there is a strong rationale discernible for so doing and the same can be supported on the ground that it will subserve the object sought to be achieved. But in the case of a new scheme, in respect whereof the retired employees have no vested right, the employer can restrict the same to certain class of retirees, having regard to the fact situation in which it came to be introduced, the extent of additional financial burden that it will throw, the capacity of the employer to bear the same, the feasibility of extending the scheme to all retirees regardless of the dates of their retirement, the availability of records of every retiree, etc. It must be realised that in the case of an employee governed by the CPF scheme his relations with the employer come to an end on his retirement and receipt of the CPF amount but in the case of an employee governed under the pension scheme his relations with the employer merely undergo a change but do not snap altogether. That is the reason why this Court in *D.S. Nakara and Others Vs. Union of India (UOI)*, drew a distinction between liberalisation of an existing benefit and introduction of a totally new scheme. In the case of pensioners it is necessary to revise the pension periodically as the continuous fall in the rupee value and the rise in prices of essential commodities necessitates an adjustment of the pension amount but that is not the case of employees governed under the CPF scheme, since they had received the lump sum payment which they were at liberty to invest in a manner that would yield optimum return which would take care of the inflationary trends. This distinction between those belonging to the pension scheme and those belonging to the CPF scheme has been rightly emphasised by this Court in *Krishna* case.

15. It is, therefore, evident from the aforesaid discussions that the cutoff date of 1.11.1993 has not been fixed arbitrarily or whimsically or without any reasonable basis. Such cur-off date was fixed after due deliberation between the management of 58 banks and their workmen represented by their association. A division bench of Delhi High Court in *Kailash Nath Singhal* (supra) has also upheld the validity of the Pension Regulation and has held that the employees who are compulsorily retired from service by way of penalty prior to 1.11.1993 is not entitled to the benefit of such Pension Regulation, I am in full agreement with the views expressed by the division bench of Delhi High Court.

16. The further contention of the learned senior Counsel for the petitioner that as under Regulation 22 of the Pension Regulation the past services rendered by an

employee can be forfeited, only when an employee has resigned or dismissal or removal or terminated from service and in that case he shall not qualify for pensionary benefit, but an employee who has been compulsorily retired from service by way of punishment, cannot be deprived from such pensionary benefit under the Pension Regulation, cannot be accepted on two grounds, firstly the order of compulsory retirement from service by way of penalty is nothing but the severance the relationship of employer and employee and as such termination and secondly, even if, it does not amount to termination then also an employee is entitled to pensionary benefit only if such pension is payable under the Pension Regulation. The Pension Regulation does not provide for payment of pension to the employees who were compulsorily retired from service as a measure of, penalty on or before 31.10.1993 and even if his past services is not forfeited, such employee will not be entitled to pension in view of the provision contained in Regulation 33 of the pension regulation.

17. In view of the finding recorded above that the fixation of cut off date as 1.11.1993 does not violate Article 14 of the constitution, which is the ground for challenging the vires of Regulation 33 of the Pension Regulation, the contention of the learned senior Counsel for the petitioner in that regard stands rejected. Causing inconvenience or keeping a class of employees out of the purview of the pension regulation, cannot solely be the ground to declare a provision bad.

18. For the reasons, as discussed above, the petitioner is nor entitled to any relief and as such the writ petition stands dismissed. No costs.