
(2015) 04 RAJ CK 0022
In the Rajasthan High Court
Case No : Civil Writ Petition No. 2388/1999

Yashwant Mal

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 10-04-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2016) LabIC 1127

Hon'ble Judges : Jaishree Thakur, J.;Sunil Ambwani, J.

Bench : Division Bench

Advocate : M.S. Singhvi, Senior Advocate and Hemant Dutt, for the Appellant;
Sanjay Mathur, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Sunil Ambwani, C.J.—The petitioner was initially appointed as Agriculture Extension Officer in the service of the State of Rajasthan. While he was working in the service of the State, the post of Technical Field Officer (Agriculture) was advertised by the Punjab National Bank (PNB). The post required the qualification of graduation in Agriculture with a minimum 5 years" service in the field of Agriculture. The maximum age prescribed for applying to the post was 25 years. The petitioner was selected and was given appointment on the post of Technical Field Officer (Agriculture) in PNB on 13.3.1970, after giving the age relaxation in terms of the advertisement as he was 31 years of age at that time.

2. The petitioner was promoted as Assistant Manager in PNB in the year 1976. In the year 1980, he was promoted as Manager Scale-II and in the year 1986, as Senior Manager. He was superannuated from the service of PNB on 31.5.1997.

3. The petitioner applied for grant of benefit of additional period of qualifying service under Regulation 26 of the Punjab National Bank (Employees") Pension Regulations, 1995 (for short, "the Regulations of 1995"), by a representation dated 24.4.1997. The representation was rejected by a communication dated

21.5.1997 on the ground that since the provisions of benefit of additional period of qualifying service were made after the petitioner was appointed, he was not entitled to the benefit of the same.

4. By this writ petition, the petitioner has prayed for quashing the decision on his representation dated 21.5.1997 and has prayed for entitlement of the benefit of Regulation 26 of the Regulations of 1995. He has also prayed for declaring the second proviso to Regulation-26 of the Regulations of 1995 to be illegal and arbitrary being violative of Article 14 of the Constitution of India.

5. Regulation 26 of the Regulations of 1995 provides as follows:--

"26. Addition to qualifying service in special circumstances.

An employee shall be eligible to add to his service qualifying for superannuation pension (but not for any other class of pension) the actual period not exceeding one fourth of the length of his service or the actual period by which his age at the time of recruitment exceeded the upper age limit specified by the Bank for direct recruitment or a period of five years, whichever is less, if the service or post to which the employee is appointed to one-

(a) for which post-graduate research, or specialist qualification or experience in scientific, technological or professional fields, is essential; and

(b) to which candidates of age exceeding the upper age limit specified for direct recruitment are normally recruited;

(c) for which the candidate was given age relaxation over and above the maximum age limit fixed by the Bank on account of his possessing higher qualifications or experience:

Provided that this concession shall not be admissible to an employee unless his actual qualifying service at the time he quits the service in the Bank is not less than ten years:

Provided further that this concession shall be admissible if the recruitment rules in respect of the said service or post contain specific provision that the service or post is one which carries benefit of this regulation:

Provided also that the recruitment rules in respect of any service or post which carries the benefit of this regulation shall be made with the approval of the Central Government."

6. It is submitted by learned counsel appearing for the petitioner that the post of Technical Field Officer (Agriculture) in the bank requires the qualification of graduation in Agriculture with five years experience. The maximum age prescribed was 25 years, with relaxation upto the age of 35 years for the candidates eligible to apply with 5 years service. The Regulation 26 of the Regulations of 1995 was made to give benefit to such candidates, who had entered late in service with exemption in age for the purpose of pension. The

object was to give benefit to set off the delay in entry in service for those persons whose previous service was not required to be counted for superannuation pension.

7. It is submitted that Chapter-IV of the Regulations of 1995 provides for qualifying service. Regulation 14 provides for minimum of 10 years of service in the bank on the date of his retirement or on the date when he is deemed to have retired to qualify for pension. Regulation 15 provides for commencement of qualifying service. Regulations 16 and 17 provide for counting of service on probation and counting of periods spent on leave respectively. The broken period of service under Regulation 18, if it is more than six months, shall be treated to be one year. The period spent on training is to be counted under Regulation 19 and that under Regulation 20, the past service in the erstwhile Bank was to be counted for superannuation pension. Regulation 21 provides for period of suspension. Regulation 22 provides for forfeiture of service and Regulation 23 provides for period of deputation to foreign service. Regulation 24 provides that an employee who has rendered military service before appointment in the Bank shall continue to draw the military pension, if any, and military service rendered by the employee shall not count as qualifying service for pension. The period of deputation will, however, count under Regulation 25 for qualifying service for pension.

8. Regulation 26 is a right given under the Regulations of 1995 to an employee to make him eligible to add to his service qualifying for superannuation pension, the actual period not exceeding one fourth of the length of his service or the actual period by which his age at the time of recruitment exceeded the upper age limit specified by the Bank for direct recruitment or a period of five years, whichever is less. The second proviso providing for specific provision that the service or post is one which carries benefit of the Regulation, is contrary to the object and purpose of Regulation 26.

9. It is submitted that the benefit cannot be restricted to the previous service on post containing specific provision that the service or post is one which carries benefit of this Regulation. Learned counsel further submits that the reasons for which the benefit was denied is not relevant to the object and purpose of Regulation 26. The Regulations of 1995 provide for special benefits and amount to change in the conditions of service for superannuation pension. Relying on the judgment of the Supreme Court in D.S. Nakara and Others Vs. Union of India (UOI), , it is submitted that the Regulations of 1995 have created two different classes for award of pension, which is not permissible as it violates Articles 14 and 16 of the Constitution of India. Reliance has also been placed on the judgments of the Supreme Court in M.C. Dhingra Vs. Union of India and Others, and State Bank of India Vs. L. Kannaiah and Others, , for challenging the impugned order as arbitrary and denial of benefit of addition to qualifying service under Regulation 26 to the petitioner is violative of Articles 14 of the Constitution of India.

10. Learned counsel for the respondent-bank submits that the benefit of addition to qualifying service in special circumstances in Regulation 26, other than those prescribed in Chapter-IV, does not create two different classes amongst the bank employees. The petitioner has qualified for pension as he has more than ten years of service. In fact, he has 27 years of service to his credit and is receiving pension. The Regulations of 1995 have provided for some special rights, which includes the right under Regulation 26 for addition to qualifying service with similar provision of addition of period of service in special circumstances. The petitioner did not enter into service with any such condition and thus, the Regulation 26 creating new rights was not an existing right, in the conditions of service in which he has joined the Bank. The representation has been rightly rejected on the ground that addition to qualifying service in special circumstances under Regulation 26 is applicable only to those who joined the service after the enforcement of the Regulations of 1995.

11. Learned counsel for the respondent-Bank has relied on the judgments of Patna High Court in Rama Nand Singh v. Punjab National Bank and ors. decided on 28.1.2000 and Paras Nath Tiwari v. The Chairman Cum Managing Director, Punjab National Bank and Ors. (Civil Writ Jurisdiction Case No. 14094 of 2012) decided on 23rd June, 2014. In both these cases, the Patna High Court held that the benefit under Regulation 26 is to be given to the employees in special circumstances and that the Regulation specifically stipulates such conditions for grant of benefit. The unnumbered proviso-2 specifically provides that the benefit shall be admissible if the recruitment rules in respect of the service or post contain specific provision that the service or post is one which carries benefit of the said regulation. The benefit of Regulation 26 can only be given to those employees whose recruitment rules or post contain specific provision for grant of benefit of the said Regulation. The Regulations do not intend to give benefit of Regulation 26 to those employees who were appointed prior to enforcement of the Regulations of 1995. The Regulation was not existing when the petitioner was appointed and thus, the Regulation does not intend to be a benefit to the petitioner.

12. It is submitted that Punjab and Haryana High Court has also taken a similar view in K.C. Gupta v. Punjab National Bank and ors. (LPA No. 1640 of 2011) decided on 13.2.2012.

13. In Punjab National Bank v. K.C. Chopra and anr. decided by the Supreme Court on 24th July, 1997, it was held on the question of age retirement that Article 14 of the Constitution of India could not be applied to a situation where its benefit as claimed, would be contrary to law. The respondent in that case was not employee of the appellant-Bank prior to 19.7.1969. He could not claim the benefit of retirement at the age of 60 years, as his letter of appointment clearly shows that he was absorbed as employee of the Bank in the year 1982, whereas the Regulations of the appellant-Bank became applicable to the respondent from 10.3.1972. The petitioner could not claim the benefit of Nakara's case.

14. In *D.S. Nakara and ors. v. Union of India* (supra), the Supreme Court struck down the Rule by which the pensionary benefits were denied to the employees who had retired prior to the enforcement of the Regulations providing for better conditions for retirement benefits. In paragraph 50 of the judgment, it was held that there is nothing immutable about the choosing of an event as an eligibility criteria subsequent to a specified date. If the event is certain but its occurrence at a point of time is considered wholly irrelevant and arbitrarily selected having no rationale for selecting it and having an undesirable effect of dividing homogenous class and of introducing the discrimination, the same can be easily severed and set aside. The discrimination part retaining the beneficial portion can be severed. The petitioners in that case did not challenge the liberalized pension scheme. They sought benefit of it. Their grievance was that denial of the same was by arbitrary introduction of the words of limitation.

15. In the present case, the special benefit of addition to qualifying service in special circumstances was provided for the first time by Regulation 26 of the Regulations of 1995, providing that an employee shall be eligible to add to his service qualifying for superannuation pension the actual period not exceeding one fourth of the length of his service or the actual period by which his age at the time of recruitment exceeded the upper age limit specified by the Bank for direct recruitment or a period of five years, whichever is less, with the conditions that the concession was not admissible to an employee unless his actual qualifying service at the time he quits the service in the Bank is not less than ten years and further, that the concession was admissible if the recruitment rules in respect of the said service or post contain specific provision that the service or post is one which carries benefit of the said Regulation.

16. By the very nature of the special provision under Regulation 26 providing for addition to qualifying service, the addition was applicable to those, who have not less than 10 years service and the recruitment rules under which appointment was made, had a specific provision that the service or post is one which carries benefit of the Regulation. The object and purpose of introducing a special benefit of addition to qualifying service in special circumstances under Regulation 26, was to grant benefit prospectively. The benefit did not create two different classes out of a homogeneous class to be treated as arbitrary and violative of Article 14 of the Constitution of India.

17. The principles as laid down in *D.S. Nakara's* case (supra) are not applicable to the present case, as the Regulation does not cause a discrimination amongst the similarly situated persons, nor gives a benefit to the persons, who are similarly situated. The beneficial provision under the Regulations of 1995, introduced for the first time, such as superannuation pension, have to be treated prospective in nature unless the Rules either specifically or by necessary intendment provide otherwise. Chapter IV of the Regulations of 1995 provides for qualifying service, which is a minimum of ten years in the Bank on the date of retirement or on the date on which he is deemed to have retired. The addition to

qualifying service in the Rules and Regulations is ordinarily provided to an employee to enable him to qualify for pension. In case any discrimination was caused in applying the Regulation by which addition to qualifying service is made, the principle in D.S. Nakara's case (supra) could have applied to rationalize the Regulation by severing offending part of it. The addition to qualifying service in the special circumstances for increasing superannuation pension with the condition that the service or post in which person had earlier served carries a similar stipulation, is a rule which is applicable prospectively, inasmuch as, it creates new and fresh rights, which cannot be claimed by those who were appointed prior to enforcement of the Regulations of 1995. The petitioner did not enter service with nor had a vested right for addition of service, prior to the enforcement of the Regulations of 1995.

18. We do not find that the second proviso to Regulation 26 of the Regulations of 1995 providing for concession of addition to qualifying service in special circumstances to be admissible if the recruitment rules in respect of the said service or post contain specific provision that the service or post is one which carries benefit of the Regulation, is violative of Articles 14 and 16 of the Constitution of India and may be severed to give benefit of the Regulation to the petitioner. The second proviso is a condition precedent on which a person may claim addition to qualifying service in special circumstances stipulated in Regulation 26 of the Regulations of 1995.

19. The writ petition has no merit and is accordingly dismissed.