

(2002) 12 KAR CK 0055

In the Karnataka High Court

Case No : Writ Petition No's. 20780-20789 of 1997

Y.R. Shenoy and Others

APPELLANT

Vs

Syndicate Bank and Others

RESPONDENT

Date of Decision : 20-12-2002

Acts Referred:

Syndicate Bank Officers Service Regulations, 1979 — Regulation 46 (2)

Citation : (2003) 97 FLR 812 : (2003) 4 KCCR 258 SN : (2003) 2 LLJ 977

Hon'ble Judges : N. Kumar, J

Bench : Single Bench

Advocate : Latha Rao and P.S. Rajagopal, for the Appellant; Sunderswamy Ramdas, D.L.N. Rao, B.S. Shankaranarayana, T.M. Venkata Reddy, Ashok Harnahalli, S.V. Narasimhan and Anand, for the Respondent

Judgement

N. Kumar, J.—As in these Writ Petitions common question of law and facts are involved these petitions are disposed of by a common order. However, for the purpose of clarity the brief facts pertaining to each batch of these writ petitions are set out as hereunder:

W.P. Nos. 20780-20789/1997 and W.P, Nos. 13575-92/1997:

The petitioners in these Writ Petitions except the petitioner in W.P. No. 13592/1997 were working as officers in Syndicate Bank. The petitioner in W.P. No. 13592/1997 is the widow of one P.S. Krishnaji Rao who died, while in service from the respondent-bank on August 6, 1993 who had put in over 24 years of service in the respondent-bank. All of them have retired between July 1, 1993 to October 31, 1994. On the basis of an agreement called Joint Note entered into on June 23, 1995 between the Unions of Officers and Indian Banks' Association, the service conditions governing the officers of the respondent-bank known as Syndicate Bank (Officers) Service Regulations, 1979, was amended by adding second proviso to Regulation 46(2) which provided that the pay for the purpose of gratuity for an officer who ceased to be in service during the period July 1, 1993 to October 31, 1994 shall be with regard to the scale of pay as specified in

Sub-regulation (1) of Regulation-4.

W.P. No. 31085/1996:

2. The petitioner herein joined the service of Canara Bank on June 9, 1959 and after completing 35 years of service he retired from service on May 31, 1994 after reaching the age of superannuation. The service conditions of the petitioner are governed by the statutory regulations called the Canara Bank Officers' Service Regulations, 1979, which came into force on July 1, 1979. In the instant case, also on the basis of agreement dated June 23, 1995 regulations were amended. In terms of the said agreement entered into Regulation-46(1) of the Canara Bank Officers' Service Regulations, 1979 came to be amended introducing second proviso which provided that the pay for the purpose of gratuity for an officer who ceased to be in service during the period July 1, 1993 to October 31, 1994 shall be with regard to the scale of pay as specified in Sub-regulation (1) of Regulation-4.

W.P. No. 35137/1997:

3. The petitioner joined the service of the first respondent- Punjab National Bank as a clerk in the year 1956 and earned successive promotions and was finally promoted as officer in Junior Management Grade Scale-I. After 38 years of blemishless record of service he retired from service on May 31, 1994 on reaching the age of superannuation. The service conditions for the petitioner is governed by Punjab National Bank (Officers) Service Regulations, 1979. In view of the agreement dated June 23, 1995 the Regulation-46 of Punjab National Bank (Officers') Service Regulations came to be amended introducing the second proviso which provided that the pay for the purpose of gratuity for an officer who ceased to be in service during the period July 1, 1993 to October 31, 1994 shall be with regard to the scale of pay as specified in Sub-regulation (1) of Regulation-4.

4. The petitioners in all these Writ Petitions have challenged the aforesaid regulation made long after their retirement which deprives them the payment of gratuity on the basis of the revised pay scales which reads as under:

"Provided further that pay for the purpose of Gratuity for an officer who ceased to be in service during the period July 1, 1993 to October 31, 1994 shall be with regard to scale of pay as specified in Sub-regulation (1) of Regulation 4".

W.P.No. 21610/1997:

5. The first petitioner is registered society having as its members Officer employees who have retired from the services of the respondent bank. The second petitioner joined the service of the respondent-State Bank of Mysore on March 18, 1957 and on reaching the age of superannuation he retired from service on June 30, 1994. The second respondent is governed by the statutory regulations known as State Bank of Mysore Officers (Service) Regulations, 1979. In view of the agreement entered referred to above between the Unions and

Indian Bank Association, the pay of all the officers were revised. In terms of the said agreement entered into, the first respondent bank issued a circular dated July 3, 1995 bearing No. 033/95-96 advising wage revision of officer employees and to the said circular Annexure-1 was appended. The petitioners are aggrieved by Clause-7 of Annexure-1 to the said circular which provided as under:

"As per consensus reached, gratuity computed in terms of the Officers Service Regulations to be now amended shall be recalculated and difference paid only to such eligible officer employees who cease to be in the bank's service on or after November 1, 1994. No arrears on account of gratuity shall be payable to officers who ceased to be in the bank's service prior to November 1, 1994."

6. The few dates which are of importance in resolving the dispute between the parties are as under: The scales of pay which were introduced with effect from November 1, 1987 was due for upward revision with effect from November 1, 1992. After protracted negotiation between the management and the employees' association a joint note was entered into on June 23, 1995 agreeing for the revision. The said joint note was given effect to by circular issued in 1996, As per the terms of the revised pay-scale the same was notionally given effect to from November 1, 1992. Different effective dates were prescribed for different components of wage revision. Arrears of House Rent Allowance was paid from November 1, 1992. Basic pay D. A. were notionally revised from November 1, 1992 but arrears paid from July 1, 1993. C.C.A. was paid from November 1, 1993. In so far as gratuity is concerned which is the subject matter of dispute in these writ petitions, the officers are divided into two groups : (1) Those who retired between July 1, 1993 and October 31, 1994 and (2) those who retired between November 1, 1994 and June 23, 1995, the date of signing of the joint note. The first group was denied the gratuity on the basis of the revised pay whereas the second group was paid gratuity on the basis of the revised pay. It is that discrimination which is challenged in these writ petitions.

7. Learned counsel for the petitioners Sri P.S. Rajagopal submitted Section 19 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 does not authorise the bank to make any regulation with retrospective effect. The second proviso to the said Regulation added in the year 1996 to be effective from an anterior date is without competence as it would take away an accrued right or a vested right and therefore the second proviso to Regulation 46 is illegal and liable to be struck down. Though the joint note was arrived at by way of an agreement between the parties as it is contrary to the statutory regulations it has no effect. Lastly he contended the classification of the retired officers into two categories prior to the date of the joint note is arbitrary and not based on any intelligible differentia which distinguishes with those who are grouped different from others and the said differentia has no rational relation to the object sought to be achieved, as such it is violative of Articles 14 and 16 of the Constitution of India.

8. Sri S.S. Ramdas, learned senior counsel appearing for the banks contended as

the joint note was agreed to between the officers union and the management it is not open to the petitioners who had the benefit of the said revised pay to challenge that portion of the joint note which is not favourable to them. Gratuity being a one time payment payable immediately, after the retirement when the petitioners have been paid gratuity on the basis of the last drawn pay they are not entitled to the benefit of the revised pay as on the day the revised pay came into effect as they were not the employees of the bank at all. Therefore, he contends that the petitioners have no right to claim gratuity on the basis of the revised pay scale.

9. Sri D.L.N. Rao, learned senior counsel appearing for the Indian Banks' Association, contended since the Regulations were amended pursuant to the settlement arrived at between the parties petitioners cannot question the said regulation without impleading the necessary parties apart from the fact that the said understanding arrived at between the parties has a binding force on all officers concerned. Secondly he contended as per the package worked out additional load factor/financial implication agreed upon was 10.5%. How this 10.5% is to be allocated was left to the wisdom of the officers' representatives who after a detailed deliberation have agreed for increase in respect of 8 parameters at different percentage of increase from different cut-off dates. Therefore, the petitioners who have taken the benefit of the revised pay scale which is one of the parameters representing the load factor cannot question the other parameters which are not favourable to them as arbitrary or discriminatory. He further contended as on the date of retirement, gratuity was paid as per the existing provisions on that day and any further revision of the pay-scale will not automatically result in payment of gratuity when the officer has already retired. There is no continuing relationship with the employees in respect of the pay, gratuity, HRA, CCA and any other allowances, as such the petitioners are not entitled to gratuity on the basis of the revised pay scale. Assuming that the regulation is bad, the whole thing needs to be reworked, keeping in mind the load factor and all parameters and cut-off dates will have to be reworked to conform to the load factor, which will affect nearly three lakh officer-employees who have been covered under this package which is impracticable.

10. From the aforesaid rival contentions, the points that arise for my consideration are as under:

(i) What is the nature of right in so far as gratuity is concerned under the Payment of Gratuity Act, 1972?

(ii) As the joint note and regulations are based on agreement between the parties, when the petitioners had the benefit of a portion of the said agreement it is open to them to challenge that portion which is not favourable?

(iii) The denial of gratuity to petitioners who have retired during July 1, 1993 to October 31, 1994 on the basis of revised pay scale is arbitrary, discriminatory and violative of Articles 14 and 16 of the Constitution of India?

11. Re point No. (i): Right to gratuity was the subject matter of various decisions of the Supreme Court. The principle deduced from those decisions can be broadly stated as under:

The fundamental principle underlying gratuity is that it is a retirement benefit for long service as a provision for old age. Demands of social security and social justice made it; necessary to provide for payment of gratuity. On the enactment of Payment of Gratuity Act, 1972 a statutory liability was cast on the employer to pay gratuity. Pension and gratuity coupled with contributory Provident Fund are well recognized retiral benefits. Pension and gratuity are both retiral benefits ensuring that the workman who has spent his useful span of life in rendering service and who never got a living wage, which would have enabled him to save for a rainy day, should not be reduced to destitution and penury in his old age. As a return of long service he should be assured social security to some extent in the form of either pension, gratuity or provident fund whichever retiral benefit is operative in the establishment. It must not be forgotten that it is not a gratuitous payment, it has to be earned by long and continuous service. A scheme of gratuity and a scheme of pension have much in common. Gratuity is a lump sum payment while pension is a periodic payment of a stated sum. Undoubtedly both have to be earned by long and continuous service. If gratuity is a retiral benefit and can be earned as a matter of right on fulfilling the conditions subject to which it is earned, any rule conferring absolute discretion not testable on reason, justice or fair play which denies the same must be treated as utterly arbitrary and unreasonable and discarded. Rules for payment of gratuity became incorporated in the Standing Orders and thereby acquired the status of statutory condition of service, an arbitrary denial referable to whim, fancy or sweet will of the employer must be rejected as arbitrary. The claim to absolute discretion not to pay gratuity even when it is earned is a hangover of the laissez faire days and utterly inconsistent with the modern notions of fair industrial relations and, therefore, it must be rejected as ineffective and hence unenforceable.

12. Therefore, gratuity is a statutory right I to be earned by long and continuous service, I which is payable as a retiral benefit, a definite sum as lumpsum payment on retirement. It is a right if accrued cannot be taken away by agreement between the parties. Amount I payable is also definite, by agreement between the parties it cannot be reduced, but it could be enhanced.

13. Re. Point No. (ii):-The joint note entered into between the management and the "officers" union is binding on the parties. However, if the term of the agreement is inconsistent with the provisions of the Payment of Gratuity Act, 1972 such a term of the agreement has no effect. Even otherwise the consideration or object of an agreement is of such a nature that if permitted it would defeat the provisions of any law the said term of the agreement would be unlawful, void abolition and unenforceable. When the gratuity payable to an employee is statutory right which he has earned by long and continuous service, thus when once it is accrued, by agreement of the parties what is accrued cannot

be deprived. Merely because an employee had the benefit of the other provisions of the agreement that does not estop the employee from challenging that portion of the agreement which is unlawful, void abolition. If the said offending portion of the agreement could be separated without nullifying the entire agreement it is permissible to challenge that portion of the agreement which is unlawful. Therefore, it is open to the petitioners who had the benefit of the remaining portion of the agreement to challenge that portion of the agreement which deprives them of a statutory right which has accrued to them by their long continuous service.

14. Re. Point No. (iii) Learned counsel for the parties invited my attention to a number of decisions of the Hon"ble Supreme Court in support of their respective contentions. I have gone through all of those decisions and in my opinion two decisions referred to by them have a bearing on the question in issue. A Constitution Bench of the Supreme Court in the case of D.S. Nakara and Others Vs. Union of India (UOI), dealing with a cut-off date for the application under the pension scheme between persons who retired prior to the date of the scheme and subsequent to the date of scheme has held as under at paras 15, 16, 32 of LLJ:

"The fundamental principle is that Article 14 forbids class legislation but permits reasonable classification for the purpose of legislation which classification must satisfy the twin tests of classification being founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group and that differentia must have a rational nexus to the object sought to be achieved by the statute in question. The doctrine of classification was evolved to sustain a legislation or State action designed to help weaker Sections of the society or some such segments of the society in need of succor. Legislative and Executive action may accordingly be sustained, if it satisfies the twin tests of reasonable classification and the rational principle correlated to the abject sought to be achieved. The State, therefore, would have to affirmatively satisfy the Court that the twin tests have been satisfied. It can only be satisfied if the State establishes not only the rational principle on which classification is founded but correlates it to the objects sought to be achieved. Where all relevant considerations are the same, persons holding identical posts may not be treated differently in the matter of their pay merely because they belong to different departments. If that cannot be done when they are in service, can that be done during their retirement? Expanding this principle, it can confidently be said that if pensioners form a class, their computation cannot be by different formula affording unequal treatment solely on the ground that some retired earlier and some retired later."

15. The Hon"ble Supreme Court in the case of V. Kasturi Vs. Managing Director, State Bank of India, Bombay and Another, after reviewing the entire case law starting from Nakara's case up to that date held the following legal positions clearly gets projected at pp. 252, 253 of LLJ:

"Category I

20. If the person retiring is eligible for pension at the time of his retirement and if he survives till the time by subsequent amendment of the relevant pension scheme, he would become eligible to get enhanced pension or would become eligible to get more pension as per the new formula of computation of pension subsequently brought into force, he would be entitled to get the benefit of the amended pension provision from the date of such order as he would be a member of the very same class of pensioners when the additional benefit is being conferred on all of them. In such a situation the additional benefit available to the same class of pensioners cannot be denied to him on the ground that he had retired prior to the date on which the aforesaid additional benefit was conferred on all the members of the same class of pensioners who had survived by the time the scheme granting additional benefit to these pensioners came into force. The line of decisions tracing their roots to the ratio of *Nakara's* case (supra) would cover this category of class.

Category II

21. However, if an employee at the time of his retirement is not eligible for earning pension and stands outside the class of pensioners, if subsequently by amendment of relevant Pension Rules any beneficial umbrella of pension scheme is extended to cover a new class of pensioners and when such a subsequent scheme comes into force the erstwhile non-pensioner might have survived, then only if such extension of pension scheme to erstwhile non-pensioners is expressly made retrospective by the authorities promulgating such scheme, the erstwhile non-pensioner who has retired prior to the advent of such extended pension scheme can claim benefit of such a new extended pension scheme. If such new scheme is prospective only, old retirees non-pensioners cannot get the benefit of such a scheme even if they survive such new scheme. They will remain outside its sweep. The decisions of this Court covering such second category of cases are: *Commander, Head Quarter, Calcutta v. Capt. Bhilabendra Chandra* (supra) and *Government of Tamilnadu v. K. Jayaraman* (supra) and Ors. to which we have made a reference earlier."

16. If the petitioners satisfactorily bring their case within the first category of cases they would be entitled to get additional benefits of gratuity. But if their case falls under certain (sic) category they would not be entitled to the additional gratuity.

17. At the outset, the learned counsel for the respondents contended that all the aforesaid judgments were dealing with the question of application of pension and not gratuity. Pension is paid to an employee even after the termination of service but as far as gratuity is concerned it is "paid at once" on the basis of the last drawn pay on the date of retirement and therefore any subsequent revision of pay would not enable the retired employees to claim additional gratuity as claim for gratuity does not exist as on that date and therefore submits the aforesaid

judgment of the Supreme Court has no application to a case of payment of gratuity. I do not find any substance in this argument. Though pension is paid after the cessation of employment every month and gratuity is paid on retirement in lumpsum it makes no difference. Both gratuity and pension are retiral benefits whereas gratuity is paid in one lump-sum on retirement whereas pension is paid in instalments on retirement till the employee is alive. On revision of pay scale, though on the date revised pay scale came in to effect the employee is not in service he is paid the revised pay from a date anterior to his date of retirement. If on account of retirement the relationship of master and servant has come to an end as contended by the respondents, the question of paying revised pay to an employee who has ceased to be a servant would not arise. The revision of pay is done periodically but in practice this revision of pay is not given effect to on the appointed date because of the protracted negotiations. The revision of pay is not made on the due date. It takes some time, but it is given from an anterior date or from the date it is actually due. If employees are retired by that time, still they are given the benefit because it is something which is accrued to them before retirement but for reasons beyond control it was not paid to them. When once the revised pay scale is given from an anterior date and if that anterior date happens to be a date prior to retirement, that retired employee is entitled to gratuity on the basis of that revised pay scale as gratuity is calculated on the last drawn pay. Merely because on the date of retirement, the revised pay scale has not come into effect and he was drawing the old pay scale it cannot be said he is not entitled to the benefit of the revised pay scale for the purpose of gratuity though he has been given the benefit of the revised pay scale for all other purposes. Therefore, the contention that as the petitioners ceased to be the employees on the date of revised pay scale they are not entitled to gratuity on that basis has no substance.

18. Now coming to the discrimination or arbitrariness in denying the gratuity on the basis of the revised pay scale is concerned it is not in dispute that the benefit of the revised pay scale was given to all persons who retired between July 1, 1993 to June 23, 1995 except the gratuity benefit. However, persons who retired between November 1, 1994 and June 23, 1995 were given the benefit of gratuity on the basis of revised pay scale. But employees who retired between July 1, 1993 and October 31, 1994 were deprived of the same. If persons who retired prior to the date of joint note and who retired subsequent to the joint note are treated as a class by themselves and persons who retire prior to the joint note had been denied the benefit which was given to persons who retired subsequent to the joint note it should be said there is a reasonable classification. Then such a case is covered under Category-II in V, Kasturi's case referred to supra. But, if among the persons who retired prior to the date of Joint note two classes are created and one class is given the benefit and another class is deprived of that benefit the arbitrariness is manifest. Though on the date of the joint note persons who had retired between November 1, 1994 and June 23, 1995 are held to be eligible to get the gratuity on the basis of the revised pay the same class of

pensioners who have retired between July 1, 1993 and October 31, 1994 cannot be denied the aforesaid benefit merely because they retired prior to November 1, 1994. There is absolutely no nexus sought to be achieved and there is no rationale behind such qualification. Article 14 forbids class legislation, it does not forbid reasonable classification for the purpose of legislation. However, the said classification should satisfy the twin test of classification founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group and that differentia must have a rational relation to the objects sought to be achieved, the employees who have retired prior to the date of joint note would form a class by themselves. If among the said class benefit of gratuity on the basis of revised pay scale is given to persons who have retired subsequent to November 1, 1994 and deprived to those who have retired earlier to November 1, 1994, it is manifestly arbitrary. The said classification is not founded on any intelligible differentia which distinguishes persons who have retired before November 1, 1994 and persons who have retired subsequent to November 1, 1994 much less that differentia has any rational nexus to the object sought to be achieved. Therefore, the instant case falls squarely under Category-I in V. Kasturi's case.

19. The learned counsel for the respondents explaining the reasons for such differentia contends that as per the package worked out additional load factor/ financial implication agreed was upon 10.5% and how this 10.5% is to be allocated was left to the wisdom of the officers representative who after a detailed deliberation have agreed for increase in respect of 8 parameters at different percentage of increase from different cut-off dates and therefore if they have suggested the persons who have retired prior to November 1, 1994 are not entitled to gratuity on the basis of the revised pay scale and persons who have retired subsequent to November 1, 1994 are entitled to gratuity on the basis of the revised pay scale that constitute a reasonable classification and therefore it cannot be challenged. As already stated gratuity is a statutory right. Once the right is accrued by long and continuous service it is payable on the basis of such employee's last drawn pay. Once the benefit of the revised pay scale is given to the petitioners from a date anterior to the date of retirement the last drawn pay would be as per the revised pay scale and not under the old pay scale and they are entitled to gratuity on the basis of that last drawn scale as per the revised pay scale. The office bearers of the employees' association has to bear in mind this statutory right and the computation is to be made as statutorily provided under the Act. The management is also fully aware of this statutory right and the mode of computation. If both of them have not taken sufficient care in working out the details and arrived at the figures contrary to these statutory requirements and provisions and the agreement arrived at is contrary to law and the statutory provisions it is not open to them to contend that the petitioners have no right to challenge the same merely because the agreement binds them and that they have taken the benefit of the joint note in respect of the remaining parameters. A statutory right, a Constitutional Right cannot be waived, curtailed

or bartered away by the employees" union and taken away by the management. Ignorance of law is no excuse. Therefore, the classification does not satisfy the twin test of classification being founded on an intelligible differentia which distinguishes persons or things that are grouped together from those which are left out of the group and that differentia has no rational nexus to the object sought to be achieved. The classification does not stand the test of Articles 14 and 16 of the Constitution. The equal treatment guaranteed in Article 14 is wholly violated inasmuch as the gratuity payable being statutory in character, since the specified date, the rules accord differential and discriminatory treatment to equals in the matter of commutation of gratuity. A 48 hours" difference in matter of retirement would have a traumatic effect. Division is thus both arbitrary and unprincipled and is therefore, liable to be struck down as unconstitutional. Omitting the unconstitutional part in the joint note and in the regulations it is clear that all the petitioners are entitled for gratuity on the basis of the revised pay scale.

20. Therefore, in view of my findings on the aforesaid points, I pass the following:

ORDER

(i) The second proviso to Regulation-46 of the Syndicate Bank (Officers) Service Regulations, 1977 and as amended The Canara Bank (Officers) Service Regulations, 1979 as amended and The Punjab National Bank (Officers) Service Regulations as amended which read as under:

"Provided further that pay for the purpose of Gratuity for an Officer who ceased to be in service during the period July 1, 1993 to October 31, 1994 shall be with regard to scale of pay as specified in Sub-regulation (1) of Regulation 4 is hereby quashed.

(ii) Similarly Clause-7 of Annexure-1 the circular issued under the State Bank of Mysore (Officers) Service Regulations, 1979 which read as under:

"As per consensus reached, gratuity computed in terms of the Officers Service Regulations to be now amended shall be recalculated and difference paid only to such eligible officer employees who cease to be in the bank"s service on or after November 1, 1994. No arrears on account of gratuity shall be payable to officer who ceased to be in the bank"s service prior to November 1, 1994".

is hereby quashed.

(iii) Consequently, it is declared that the petitioners who retired between July 1, 1993 to October 31, 1994 are also entitled to gratuity on the basic pay as per revised pay scales calculated as on the date of their retirement:

(iv) The respondents are directed to pay the difference in gratuity amount within three months from the date of receipt of this order.

21. Parties to bear their own costs.