

Shri Ram Prasad (deceased) by his Legal Representative

Vs

The State of Punjab

Civil Appeal No. 530 of 1964

(CJI P. B. Gajendragadkar, K.N. Wanchoo, M. Hidayatullah, V. Ramaswami-I, R. Satyanaryan Raju JJ)

07.02.1966

JUDGMENT

SATYANARAYANA RAJU, J. -

This appeal, on certificate granted by the High Court of Punjab, arises out of a suit filed by one Ram Prasad, against the State of Punjab, for a declaration that the order of compulsory retirement passed by the latter against him was invalid.

Ram Prasad originally entered service as a Clerk, in the year 1924, in the Patiala Saddar Treasury in what was then the Patiala State. He was subsequently transferred in the same capacity to the Patiala State Bank on February 27, 1984 Bk and was confirmed in his appointment. On September 1, 1985 Bk, he was promoted to the next higher grade on the establishment of the Patiala State Bank. Thereafter, he was promoted as Manager and posted to Bhatinda branch of the Bank on April 1, 1944. On April 1, 1949 he was promoted as Selection Grade Manager by the Board of Directors of the Bank in the grade of Rs. 340-20-500-525-700. On September 23, 1953 he was compulsorily retired from service but was subsequently reinstated by the Government on June 10, 1954 Since the order was legally defective. On June 11, 1958 the Board passed an order compulsorily retiring him from service.

Ram Prasad challenged the order of compulsory retirement passed by the Board on various grounds, by means of a suit instituted in the Court of the Subordinate Judge, Patiala. He pleaded that the order of compulsory retirement amounted to 'dismissal or removal' from service within the meaning of Article 311 of the Constitution. He further maintained that r. 27 of the Bank of Patiala (Staff) Rules, 1954, hereinafter termed the Staff rules, under which the order of compulsory retirement was made, was illegal and void. The order was also challenged on the ground that it was mala fide. The substantial relief claimed by him in the suit was a declaration that r. 27 of the Staff rules was wholly unconstitutional, null and void for the reasons stated by him.

The respondent contested the suit contending inter alia that the order of compulsory retirement was passed by the Board of Directors of the Bank under rules which were legal and constitutionally valid and governed the employees of the Bank.

The Subordinate Judge, Patiala, framed appropriate issues. He found all but two issues in favour of the appellant and granted a decree substantially allowing the claims made by him. The respondent thereupon filed an appeal in the High Court of Punjab which allowed the appeal and set aside the judgment of the Subordinate Judge. During the pendency of the appeal in the High Court Ram

Prasad died and his widow was brought on record as his legal representative. However, it will be convenient to refer to Ram Prasad as the appellant.

Before entering into the merits of the appeal, it would be convenient to refer every briefly to the historical background of the legislation. The Patiala State Regulations were first promulgated in the year 1908 and governed the employees of the State in matters relating to pay, allowances, leave, pension and travelling allowances. The Regulations were revised and re-published in the year 1931. Subsequently, they were again revised and reissued and as the Patiala Services Regulations in the year 1947. Meanwhile, in April 1941, these Regulations were made applicable expressly to the Bank staff of the Patiala State Bank by the Maharaja, with the exception of the rules relating to pension. On 20 August 1948, Patiala became a constituent unit of the Patiala and East Punjab States Union (PEPSU). On the formation of the Union, the Patiala Services Regulations were made applicable to the entire territories of the Union by Ordinance No. 1 of 2005 Bk. Therefore the Patiala Services Regulations continued to govern the members of the Patiala State Services even after they became integrated into the PEPSU Services.

On March 4, 1953, the President of India assumed the powers of the Government of PEPSU, in exercise of the powers conferred on him by Article 356 of the Constitution.

On February 27, 1954, the President, in exercise of the powers vested in him in relation to PEPSU by the Proclamation, issued the Bank of Patiala Regulation and Management Order, 1954, hereinafter called the Regulation Order, to provide for the better regulation and management of the affairs of the said Bank. We will have occasion to refer to the material clauses of this Order at a later stage.

By virtue of the powers conferred upon it by Clause 4(1)(iii) of the Regulation Order, the Board of Directors of the Bank framed the Staff rules. Rule 27 of these rules, at the relevant date, was in the following terms :

"An employee shall retire at fifty five years of age provided that

(i) The Bank may, at its discretion and without giving any reasons, retire any employee from the Bank's service after he has completed the age of fifty years or the service of twenty five years whichever happens first and no claim to special compensation on this account will be entertained;

(ii) the Bank retains the absolute right to retire any employee after he has completed 10 years of service with out giving any reasons and no claim to special compensation on this account will be entertained. This right will not be exercised expect when it is the interest of the Bank to dispense with the further services of an employee such as on account of inefficiency, dishonesty, corruption or infamous conduct.

Explanation 1 :

The action under proviso (ii) is intended to be taken :

(a) Against an employee whose efficiency is impaired but against whom it is not desirable to make formal charge of inefficiency or, who has ceased to be fully efficient that is, the value of the employee is clearly incommensurate with the pay which he draws. It is not the intention to use the provision as a financial weapon that

is to say the provision shall be used only in case of employees who are considered unfit for retention on personal as opposed to financial grounds;

(b) In cases where reputation for corruption, dishonesty or infamous conduct is clearly established even though no specific instance is likely to be proved under those rules.

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The arguments advanced by Mr. Agarwala, learned counsel for the appellant, have covered a wide ground, but, in the main, he has impugned the validity of r. 27 set out above. His contentions may be briefly summarised as follows :

(1) Prior to the promulgation of the Regulation Order in 1954, the Patiala State Regulations and other Rules or Orders, except the pension rules, made by the Ruler of Patiala, were applicable to the staff of the Patiala State Bank. The Staff rules were made by the Board of Directors of the Bank by virtue of the delegation made in its favour under Clause 4(1)(iii) of the Regulation Order. The delegation in favour of the Board lapsed on 7, March 1954 with the termination of the President's rule in Patiala and East Punjab States Union. Thereafter, the Board had no authority or power or jurisdiction to approve of the Staff rules on 25 March 1954 and to enforce them from 1 April 1954. (2) The Board, assuming the delegation in its favour to be valid, was not vested with the power to make rules regarding compulsory retirement of the servants of the Bank. (3) The Staff rules seek to supersede the provisions of Regulation IX of the Patiala State Regulations. Rules made by the Board cannot abrogate the Regulations promulgated by the Ruler who exercised the powers of the legislature. (4) The Board which promulgated the Staff Rules had not been properly constituted inasmuch as all the Directors were not present at the meeting.

However, the main ground on which the validity of the staff rules is challenged is that the Regulation Order, though made on 27 February 1954, was published in the Gazette only on 14 March 1954, that by reason of the revocation of the Proclamation issued by the President the power of the President to make rules governing the service conditions of Government servants in the State had lapsed and that the delegation by the President to the Board power to frame rules ipso facto came to an end when the Proclamation was revoked, on the principle that the delegate's power comes to an automatic end by reason of the principal's power having lapsed.

Mr. Bishan Narain, learned counsel for the respondent State, countered these arguments and maintained that the Staff Rules were valid.

We may initially set out the relevant facts with regard to the Proclamation of Emergency by the President and its revocation. As already stated, by notification dated 4, March 1953, the President, in exercise of the powers conferred by Article 356 of the Constitution, assumed all functions of the government of the State of Patiala and East Punjab States Union and all powers vested in or exercisable by the Rajpramukh of the State. The Notification declared that the powers of the legislature of the State shall be exercisable by or under the authority of Parliament.

By an order made by the President on the same date, the president issued a direction that all the functions of the Government of the State of Patiala and East Punjab States Union and all the powers vested and exercisable by the Rajpramukh of the State under the Constitution or under any other law in force in the State shall, subject to the superintendence, direction and control of the President, be

exercised by the Rajpramukh of the said State who was to act on the advice of the Adviser appointed by the President in that behalf.

By notification dated March 21, 1954, in exercise of the powers conferred by Clause (2) of Article 356 of the Constitution, the President revoked the Proclamation issued by him under the said article on 4 March 1953.

When a proclamation is made under art. 356, it will be open to the President to specify in such proclamation (a) that he will himself exercise all or any of the functions of the Govt. of the State or all or any of the powers vested in or exercisable by the Governor or any body or authority in the State other than the Legislature of the State; (b) declare that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament. When declaration is made to this effect by the President, it shall be competent for Parliament to direct that the legislative power of the State Legislature shall be exercised by the President himself or by any other authority to whom such power may be delegated by the President under Article 357(1). Article 357(2) provides that any law made in exercise of the power of the legislature of the State by Parliament or the President or other authority referred to in sub-clause (a) of clause (1) which Parliament or the President or such other authority would not, but for the issue of a Proclamation under Article 356, have been competent to make shall, to the extent of the incompetency, cease to have effect on the expiration of a period of one year after the Proclamation has ceased to operate, but Clause (2) of Article 357 makes an exception..... in the case of things done or omitted to be done before the expiry of the period of one year. It is argued firstly that the Regulation Order was not made before the date of revocation of the Proclamation. It is said that the Order, though purporting to have been made on 27 February, 1954 was not published in the Gazette till March 14, 1954.

It is doubtless true that the Regulation Order, though made on February 27, 1954, was not published in the Official Gazette till March 14, 1954. But clause 1(b) of the Order provides that it shall come into force at once and repeal all the previous Orders and instructions in so far as they are inconsistent with the provisions of the Regulation Order. By reason of the fact that the Order itself provides for its commencement as the date on which it was made, it is clear that the Order came into operation on February 27, 1954, though it was published at a later date. The Order was therefore made before the date of termination of the President's rule in PEPSU.

Now, it is contended by learned counsel for the appellant that the Regulation Order is in effect and substance a legislative act and that its operation could not extend beyond the period specified in Article 357(2). It may be initially stated that this contention was not raised in the Courts below and there was no pleading or any issue covering that contention. Further, there is nothing on record to show that no order was passed during the period of one year provided by Article 357(2) extending the life of the Regulation Order beyond that period.

Coming to the contention, the question is whether, on a fair construction of all its provisions and its intendment, the Regulation Order comes within the scope of the expression "things done" occurring in Article 357(2). In Craies On Statute Law, Sixth Edition, it is pointed out at p. 415 that if an Act is repealed with a proviso 'except as to things done under it' the proviso will receive a liberal interpretation. In *Foster v. Pritchard* ((1857) 26 L.J. Ev. 215.) it was contended, with respect an action tried after the passing of the County Courts Act, 1856, that the trespass committed by the defendant under colour of the process of the Court was not 'an act done under' the repealed section, but, said the Court, 'there can be no doubt that it was the intention of the legislature that the words in this proviso as to acts done under the repealed statutes should be construed in an extensive sense.'

It is therefore open to the Court to find, on a fair construction of all the provisions of the Regulation Order which must be read as an integrated whole, whether they were intended to continue to be in force after the period specified in Article 357(2). It therefore becomes necessary to examine the provisions of the Regulation Order.

The Regulation Order provides that the management, control, supervision and direction of the affairs and business of the Bank shall vest in a Board constituted as provided in clause 3(1). There can be no doubt that the management, control, supervision and direction of the affairs and business of the Bank are matters which were provided for not for a limited period but for an unspecified period even beyond the period of one year as provided by Article 357(2). Clause 4(1) is important. It provides that the Board shall pass the half-yearly balance-sheets and annual budget estimates and frame rules for the day to day working of the Bank. We may, for the present, omit Clause 4(1)(iii). Sub-clause (iv) provides that the Board may grant advances and fix limits up to which bills of exchange drawn by individual constituents may be accepted and frame rules in that behalf. Sub-clause (v) provides for the Board framing rules regarding the Provident Fund for employees of the Bank, and sub-clause (vi) for sanctioning expenditure and framing rules for its sanction by the Managing Director and other officers of the Bank. Under sub-clause (vii), the Board shall invest the funds of the Bank in Government Securities, shares, debentures and other securities and sell them; under sub-clause (viii), the Board shall borrow moneys and negotiate, transfer, sell, endorse, renew, pledge or mortgage Government promissory notes and other securities for the purpose of taking overdrafts and demand loans on their security; under sub-clause (ix) issue instructions for the guidance of the Managing Director and require him to submit to the Board all information regarding the transaction of the Bank. Lastly, under sub-clause (x) the Board shall delegate to the Managing Director, or subject to the Managing Director's supervision, to any of the other employees of the Bank any of the aforesaid powers. Clause 5 provides that the Board shall comply with such general or special directions as may from time to time be issued by the State Government.

Clause 6 provides for the meetings of the Board being held at least once in every three months or at such shorter intervals as the Chairman may decide and Clause 7 specifies the powers of the Managing Director. Clause 8 provides for the conduct of the business of the Bank. Clause 9 provides for the applicability of some of the provisions of the Banking Companies Act to the Bank. Clause 10 provides for the audit of the accounts of the Bank and clause 11 provides that the Board shall, at the end of every calendar year, submit to the State Government the annual balance-sheet of the Bank accompanied by a report on the working of the Bank and that the Board shall submit to the State Government such other information concerning the affairs of the Bank as may from time to time be required by the State Government.

On a consideration of the provisions of the Regulation Order set out above, it is manifest that those provisions have been made as is stated in the preamble to the Order, for the better regulation and management of the affairs of the Bank. Indeed, clause 3 of the Order provides for the constitution of a Board of Directors for the management, control, supervision and direction of the affairs and business of the Bank. The matters provided, barring clause 4(1)(iii), relate to the day-to-day administration of the affairs of the Bank. It is impossible to say that the matters provided for in the Order would cease to be in operation after the period of one year. It will result in an absurdity to hold, for instance, that provisions like the one for sanction of expenditure, would cease to be in operation after the period of one year.

We may now deal with clause 4(1)(iii) which provides that the Board shall appoint, remove, dismiss and lay down the general conditions of service of the employees of the Bank other than the

Managing Director and frame rules in that behalf. It is pursuant to the powers vested in it under this clause that the Board of Directors of the Bank made the Staff rules, including rule 27 whose validity it questioned. The expression 'things done' occurring in Article 357(2), in our opinion, must receive a liberal and extensive construction. As already indicated, all the clauses of the Regulation Order must be read together as an integrated whole and we have to find, on a construction of all the clauses, whether they were intended to continue beyond the period of one year provided by Article 357(2). In the context in which clause 4(1)(iii) occurs, it is not unreasonable to construe the power to make rules vested in the Board under that clause as 'things done' within the meaning of Article 357(2). There can be no doubt about the intention to preserve and continue the rules even after the period of one year after the cessation of the Emergency so that there may not be any hiatus in the administration of the affairs of the Bank.

It must therefore be held that all the clauses of the Regulation Order, including clause 4(1)(iii), come within the purview of the saving cause occurring in Article 357(2) of the Constitution and that they continue to be in operation after the period specified in that article.

On this conclusion it follows that the delegation made by the President in favour of the Board of Directors of the Bank under the Regulation Order did not lapse on the termination of the President's rule in PEPSU. It is therefore unnecessary to consider the decisions bearing on the question of the extent of the authority or power of a delegatee.

Learned counsel for the appellant has contended that the Patiala Services Regulations were existing law made by the Maharaja and it was not competent for the President to make the Regulation Order empowering the Board of Directors of the Bank to supersede those Regulations. The learned Judges of the High Court held that the President was competent to promulgate the Regulation Order under Article 309 read with Articles 330 and 372 of the Constitution. Having regard to the conclusion reached by us, that the Regulation Order was validly made, we consider it unnecessary to go into the larger question whether the Regulation Order had the force of rules framed under article 309.

It is then contended that the Patiala State Regulations governing the conditions of service of public servants were laws made by the erstwhile rule of Patiala and could not be changed to the disadvantage of such public servants. The rules, as published on 17 February 1930, contain the following, in Part I, Chap. I, Preliminary, under the heading 'Right of Changing Rules' :

"1. The rules contained in these Regulations may not be modified or departed from except under the orders of the Ijlas-i-Khas based upon a report of the Finance Minister.

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4. The rules in these regulations apply to all officers holding appointments in the Patiala State, except in so far as they are over-ridden by distinct provision in any formal agreement entered into with the State by any officer."

It is not the appellant's case that there was any formal agreement between him and the State of Patiala that rules shall not be changed during the period of his service.

The Patiala Services Regulations, Vol. I, published in 1947, preserved the right of the Maharaja to change the rules. Rule 1.7, of Chapter I, reads :

"Right of changing rules : The rules contained in these Regulations shall not be modified or departed from except under the orders of the Ijlas-i-Khas based upon a report of the Finance Minister."

Rules 1.7 of the 1947 Regulations corresponds to rr. 1 and 4 of the 1930 Regulations. The contention of the appellant that the rules could not be change is not therefore sustainable. They can certainly be changed by an authority competent to change them, as is evident from Ex. P. 8, dated 19 July 1940. The change was in fact effected by the Maharaja in his administrative capacity. Exhibit P-8 is as follows :

"The Patiala State Bank is a State Department governed by its Constitution laid down by the Ijlas-i-Khas, but being at the same time autonomous as regards its accounts, which are kept on commercial basis, it has become necessary to define how far the rules applying to other State Departments and the Patiala State Regulations shall apply to the Bank. The Board of Directors think and recommend that the internal management of the Bank shall be subject to rules and regulations framed by them subject to the following exceptions :-

(a) The P.S.R. shall apply to the Bank Staff with the exception of the pension rules, but instead thereof will have the benefit of a contributory Provident Fund, as already established.

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(c) The Bank service shall be recognised as State service for the purposes of employment in State service of suitable candidates among the descendants of Bank employees.

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The Chairman of the Board of Directors put up a note to the Maharaja of Patiala underneath :

"I respectfully request that the recommendations of the Board of Directors of the Bank, as stated above, may graciously be sanctioned".

On this, the Finance Committee recommended as follows :

"The Finance Committee recommends that

(1) Requests of the Chairman, Board of Directors, at (c), (e), (f) and (g) may be sanctioned.

(2) The request at (a) may be sanctioned adding the following 'and other State Rules or orders' after 'Patiala State Regulations' in the first line.

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This recommendation was made by the Revenue Minister and the Finance Minister who constituted the members of the Finance Committee. On this the Cabinet supported the recommendations of the Finance Committee and submitted the same to the Maharaja. These recommendations were accepted

by the Maharaja on April 8, 1941.

It may be noted that the Order issued by the Maharaja on 19 July 1940, viz., Ex-P. 8 quoted above, is headed : 'Precis'. It states that by reason of the fact that the Patiala State Bank is an autonomous department it became necessary to define how far the rules applying to other State departments and the Patiala State Regulations applied to the Bank. It was specifically stated in the recommendation made by the Board of Directors that the internal management of the Bank shall be subject to rules and regulations framed by them. Two important exceptions were made and those were that the Patiala State Regulations shall apply to the Bank staff with the exception of the pension rules, but that the staff shall have the benefit of a contributory provident fund and that the Bank service shall be recognized as a State service for the purposes of employment in State service of suitable candidates from among the descendants of the Bank employees.

The Finance Committee, as provided in rules 1-7 of the rules, recommended that the request might be sanctioned. The Cabinet supported the recommendation of the Finance Committee. On this, the Maharaja made an endorsement : "We approve the recommendation of the Cabinet". This was dated April 11, 1941.

It is therefore clear that the extension of the rules governing the conditions of service of Government servants to the employees of the State Bank of Patiala was the result of 'an extension' made by the Maharaja pursuant to the executive power vested in him. The act of extension being an executive act, there can be no doubt that it could be changed by a similar executive act. Therefore it is clear that what was changed or superseded was the extension and not the rules.

It is contended on behalf of the appellant that rule 27 of the Staff rules is not valid since it violates the constitutional guarantee under Article 311 of the Constitution. We may here refer to the position in law with regard to a rule providing for compulsory retirement. In *Moti Ram Deka v. N. E. Frontier Railway* ((1964) 5 S.C.R. 683, 715 = AIR 1964 S.C. 600,613.) where the decisions on the question were reviewed it was stated :

"The next decision in the same volume is the *State of Bombay v. Saubhag Chand M. Doshi*, ((1958) S.C.R. 571 = A.I.R. 1957 S.C. 892.) This was a case of compulsory retirement under rule 165-A of the Bombay Civil Services Rules as amended by the Saurashtra Government. In so far as this case dealt with the compulsory retirement of a civil servant, it is unnecessary to consider the Rule in question or the facts relating to the compulsory retirement of the civil servant. It is of interest to note that in dealing with the question as to whether compulsory retirement amounted to removal or not, the tests which were applied were in regard to the loss of benefit already accrued and stigma attached to the civil servant. It is, however, significant that in considering the objection based on the contravention of Article 311 (2), Venkatarama Aiyar J., took the precaution of adding that 'questions of the said character could arise only when the rules fix both an age of superannuation and an age for compulsory retirement and the services of a civil servant are terminated between these two points of time. But where there is no rule fixing the age of compulsory retirement, or if there is one and the servant is retired before the age prescribed therein, then that can be regarded only as dismissal or removal within Article 311(2)'. It would be noticed that the rule providing for compulsory retirement was upheld on the ground that such compulsory retirement does not amount to removal under Article 311(2) because it was another mode of retirement and it could be enforced

only between the period of age of superannuation prescribed and after the minimum period of service indicated in the rule had been put in. If, however, no such minimum period is prescribed by the rule of compulsory retirement, that according to the judgment, would violate Article 311(2) and though the termination of a servant's services may be described as compulsory retirement, it would amount to dismissal or removal within the meaning of Article 311(2). With respect, we think that this statement correctly represents the true position in law".

The validity of rule 27 cannot, in the instant case, be assailed on this ground.

It is then argued that the Staff rules are invalid because they offend Article 14. The ground of complaint is that different rules govern different public servants in the same State and that they are bad because they are discriminatory. This Court has held in a series of decisions culminating in the judgment of this Court in *Lachhman Das v. State of Punjab* ((1963) 2 S.C.R. 353 = A.I.R. 1963 S.C. 222.), that after the enactment of the States Reorganisation Act, 1956, different Acts in different parts of the same State could be sustained on the ground that the differentiation arise from geographical classification based on historical reasons. The contention raised by the learned counsel therefore fails.

There remains a minor contention which is that the Staff rules were not properly made by the Board of Directors. It is stated that Clause 3 of the Regulation Order, which provides for a minimum number of six members, was not complied with and that since the Staff rules were made by four members instead of six, they were invalid. As pointed out by the learned Judges of the High Court, under the law governing corporations a majority of the members of the corporation is entitled to exercise the powers of the corporation and that the rule regarding corporations is equally applicable to a company. We are in agreement with this view.

As a result of the conclusions reached by us, this appeal must fail and is dismissed. In the circumstances of the case there will be no order as to costs.

Appeal dismissed.

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