

B. S. Yadav and Another

Vs

Chief Manager, Central Bank of India and Others

Writ Petition Nos. 601-02 of 1980

(K. N. Singh, E. S. Vankataramiah JJ)

05.05.1987

JUDGMENT

VENKATARAMIAH, J. -

1. The petitioners in these writ petitions filed under Article 32 of the Constitution of India have prayed for a declaration that Rule 3 of the Rules for Age of Retirement contained in Annexure I to the Central Bank of India (Officers') Service Regulations, 1979 (hereinafter referred to as 'the Regulations') framed under Regulation 19(1) of the Regulations is unconstitutional and void, and to direct the Central Bank of India (hereinafter referred to as 'the Bank') to fix the age of retirement of all the officers of the Bank uniformly at 60 years. They have further prayed for the quashing of the order dated February 25, 1980 issued by the Chief Manager of the Bank at its Regional Office, New Delhi retiring petitioner 1, B. S. Yadav from service as being illegal and unconstitutional and for a declaration that petitioner 1, B. S. Yadav continues or shall be deemed to be in the service of the Bank till he attains the age of 60 years with consequential benefits. The petitions are filed by B. S. Yadav, who was working as an officer of the Bank and the All India Central Bank Employees' Federation.

2. The Bank came to be established under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (hereinafter referred to as 'the Act') under which the banking business of 14 banking companies was nationalised. At the commencement the process of nationalisation of these banks was not smooth sailing. On the Government of India taking a decision to nationalise the banking business of 14 banking companies the Banking Companies (Acquisition and Transfer of Undertakings) Ordinance 8 of 1969 was promulgated by the President on July 19, 1969. The Ordinance provided for the acquisition and transfer of the undertakings of certain banking companies which were 14 in number in order to serve better the needs of development of the economy in conformity with the national policy and objectives and for matters connected therewith or incidental thereto. Under the Ordinance 14 'corresponding new banks' were established. The Bank which is involved in these cases is the corresponding new bank of the Central Bank of India Ltd. which was one of banking companies whose undertaking was taken over under the Ordinance. The corresponding new banks were authorised to carry on and transact the business of banking as defined in clause (b) of Section 5 of the Banking Regulation Act, 1949 and also to engage in one or more forms of business specified in sub-section (1) of Section 6 of the Act. The Chairman of the banking company whose business was taken over holding office immediately before the commencement of the Ordinance was appointed as the custodian of the corresponding new bank. The general superintendence, direction and management of the affairs and business of the corresponding new bank was vested in the custodian who was to be the Chief Executive Officer of that bank. The above Ordinance was replaced by the Banking Companies (Acquisition and Transfer

of Undertakings) Act, 22 of 1969. The constitutional validity of both the Ordinance and the Banking Companies (Acquisition and transfer of Undertakings) Act 22 of 1969 was questioned before this Court in *Rustom Cavasjee Cooper v. Union of India* ((1970) 3 SCR 530 : (1970) 1 SCC 248 : AIR 1970 SC 564 : (1970) 40 Com Cas 325). By the decision rendered in the said case this Court declared the Ordinance and the Banking Companies (Acquisition and Transfer of Undertakings) Act 22 of 1969 as invalid and the action taken or deemed to have been taken in exercise of the powers under them was unauthorised. The above judgment of the court was pronounced on February 10, 1970. The effect of the judgment was that the undertakings of the 14 banking companies, whose business had been acquired by the Central Government under the authority of the abovesaid Ordinance and the Act, reverted to the banking companies. With a view to resuming control over the business of those banking companies, the President again promulgated on February 14, 1970 the Banking Companies (Acquisition and Transfer of Undertakings) Ordinance, 1970. The provisions of the earlier Act which were struck down by this Court had been duly modified by promulgating the said Ordinance. The said Ordinance provided for the acquisition and transfer of the banking business of the said banking companies with effect from July 19, 1969, i.e., the date on which those undertakings were initially acquired by the Central Government. This Ordinance was replaced by the Act within a short period which was deemed to have come into force from July 19, 1969. By Section 3 of the Act 14 corresponding new banks which were mentioned in the First Schedule to the Act came to be established. The paid-up capital of every new bank constituted under Section 3 of the Act was, until any provision was made in that behalf in any scheme made under Section 9 of the Act, to be equal to the paid-up capital of the existing bank in relation to which it was the corresponding new bank. The existing banks were the banking companies mentioned in the Second Schedule to the Act whose banking business had been earlier taken over on July 19, 1969. The entire capital of each corresponding new bank was vested in and allotted to the Central Government. Every corresponding new bank was treated as a body corporate with perpetual succession and a common seal with power, subject to the provisions of the Act, to acquire, hold and dispose of property, and to contract and to sue and be sued in its own name. Under the Act the Bank became the corresponding new bank in respect of the Central Bank of India Ltd. Among other provisions, the Act provided for the appointment of officers and employees of the corresponding new bank. Section 12 of the Act reads thus :

12. Removal of Chairman from office. - (1) Every person holding office, immediately before the commencement of this Act, as Chairman of an existing bank shall, if he becomes Custodian of the corresponding new bank, be deemed, on such commencement, to have vacated office as such Chairman.

(2) Save as otherwise provided in sub-section (1), every officer or other employee of an existing bank shall become, on the commencement of this Act, an officer or other employee, as the case may be, of the corresponding new bank and shall hold his office or service in that bank on the same terms and conditions and with the same rights to pension, gratuity and other matters as would have been admissible to him if the undertaking of the existing bank had not been transferred to and vested in the corresponding new bank and continue to do so unless and until his employment in the corresponding new bank is terminated or until his remuneration, terms and conditions are duly altered by the corresponding new bank.

(3) For the persons who immediately before the commencement of this Act were the trustees for any pension, provident, gratuity or other like fund constituted for the officers or other employees of an existing bank, there shall be substituted as trustees

such persons as the Central Government may, by general or special order, specify.

(4) Notwithstanding anything contained in the Industrial Disputes Act, 1947, or in any other law for the time being in force, the transfer of the services of any officer or other employee from an existing bank to a corresponding new bank shall not entitle such officer or other employee to any compensation under this Act or any other law for the time being in force and no such claim shall be entertained by any court, tribunal or other authority.

3. Sub-section (2) of Section 12, in particular, provided for the transfer of the services of all officers and other employees of an existing bank from the existing bank to the corresponding new bank on the same terms and conditions and with the same rights to pension, gratuity etc. and it stated that any officer or employee of the existing bank whose services were so transferred was to continue to be in the employment of the corresponding new bank until his employment in the corresponding bank was terminated or until his remuneration, terms or conditions were duly altered by the corresponding new bank. Section 19 of the Act conferred power on the Board of Directors of a corresponding new bank to frame regulations after consultation with the Reserve Bank of India and with the previous sanction of the Central Government for all matters for which provision was expedient for the purpose of giving effect to the provisions of the Act. Clause (d) of Section 19(2) of the Act specifically conferred powers on the Board of Directors to make regulations with regard to the conditions or limitations subject to which the corresponding new bank might appoint advisers, officers or other employees and fix their remuneration and other terms and conditions of service. After the bank came to be established there were two classes of officers and employees working in it, namely, officers and employees who had become officers and employees of the Bank under sub-section (2) of Section 12 of the Act and the officers and employees of the Bank appointed after July 19, 1969.

4. The age of retirement of the officers and employees of the various banks established in India has been the subject matter of several awards and settlements from several years. On March 20, 1953 the Sastry Award which was passed on the industrial disputes between certain banking companies and their workmen directed thus :

We direct that after the workman has reached the age of 55 years he may be retired after giving him two months' notice in writing in case his efficiency is found by the employer to have been impaired : subject to this rule and also subject to any rule under an existing pension fund the workman should not be compelled to retire before he is 58 years old.

5. The National Industrial Tribunal (Bank Disputes) Award known as Desai Award, on industrial disputes between certain banking companies and corporations and their workmen took the view as under :

A workman should not be compelled to retire before he is 58 years old. Banks however, will be at liberty wherever they consider fit, to make rules providing for a higher age of retirement.

6. The First Bipartite Settlement on industrial disputes between certain banking companies and their workmen entered into on October 19, 1966 provided thus :

In supersession of paragraph 15.13 of the Desai Award, after a workman has reached the age of 57 years, he may be retired after giving him two months' notice in writing in case his efficiency is found by the employer to have been impaired.

7. By a circular dated March 11, 1969, the erstwhile Central Bank of India Ltd. directed that as far as possible no member of the staff should be allowed extension in service beyond the retirement age of 60 years. The said circular which is marked as 'Annexure - R-2' and enclosed to the counter-affidavit filed by Shri A. S. Jain, Assistant General Manager of the Bank at its Regional Office, New Delhi reads thus :

#BID/STAFF/69/17 March 11, 1969 (To All Offices in India) Re : Age of Retirement##

It has now been decided that as far as possible no member of the staff should be allowed extension in service beyond the retirement age of 60. Branches are therefore advised to refrain from recommending the case of any member of the staff for extension in service beyond the retirement age.

Staff members who retire at the age of 60 may, however, be allowed to avail of, from the date of retirement, ordinary leave, if any, due to them, and treated as retired from service from the date of expiry of such leave.

P. C. Mevawalla General Manager##

8. It is thus seen that on the eve of the nationalisation of the banking companies the members of the staff of the Central Bank of India Ltd. were entitled to remain in the service of the bank till 60 years and that until the terms and conditions of service were altered under sub-section (2) of Section 12 of the Act, every officer or employee belonging to the Central Bank of India Ltd. whose services were transferred under Section 12(2) of the Act to the Bank was entitled to the benefit of the said rule relating to the age of retirement. He could, therefore, continue in service till he attained the age of 60 years in the Bank subject to any alteration that might be made by the Bank.

9. Upon nationalisation of the 14 banks it became necessary to rationalise the terms and conditions of service of the employees of the banks, particularly in view of the varying terms and conditions of service that existed in different banks prior to nationalisation which were continued by virtue of sub-section (2) of Section 12 of the Act. The Government of India, therefore, appointed on July 19, 1973 a committee consisting of five members with Shri V. R. Pillai as the Chairman (which was popularly known as the Pillai Committee) to enquire into and to make recommendations with regard to standardisation of scales of pay, allowances and perquisites of the transferred officers (other than award staff) in the 14 nationalised banks. One of the points referred to the Pillai Committee was the question relating to the age of superannuation of and the nature and quantum of terminal benefits for the officer cadres. The Pillai Committee submitted its report in May 1974. Paragraphs 8, 18 and 8.22 of the Pillai Committee Report relating to the age of superannuation read thus :

8.18. According to existing practices, the age of superannuation (or retirement) in eleven of the nationalised banks is 60 years, with a provision that after an officer has attained the age of 57 years he can be retired, after giving him two months' notice in writing, if his efficiency is found to have been impaired. In another bank, though the age of superannuation is 60, the proviso about earlier retirement applies only when

the officer has attained the age of 58 years. In two other banks the age of superannuation itself is 58 years.

8.22. In the circumstances, we recommend that the age of superannuation of officers in the banks should be 60 years, with a provision for review at the age of 58 years to adjudge the fitness of the officer for continuance in service. In order to remove uncertainties, the above review may be initiated on the officer attaining the age of 57 years and completed well before he reaches 58 years.

10. Thereafter in September 1976 the Government of India appointed a study group, called the Study Group of Bankers, to make suggestions for the implementation of Pillai Committee Report. After examining the Report of the Pillai Committee and taking into consideration all other aspects the Study Group of Bankers made its recommendations on all questions including the age of superannuation of officers who had become the employees of the banks under Section 12(2) of the Act. On receipt of the recommendations of the Study Group of Bankers the Government of India issued guidelines to the nationalised banks to frame appropriate regulations with regard to the terms and conditions of the service of the officers working in them. Accordingly the Bank prepared its regulations after consultation with the Reserve Bank of India and submitted them for the approval of the Government of India. The Government of India gave its approval to the regulations with some modifications. On receipt of the approval of the Central Government on May 23, 1979 the Bank brought into force the Regulations with effect from July 1, 1979. Regulation 19 of the Regulations provided as under :

19. Age of Retirement. - (1) The age of retirement of an officer employee shall be as determined by the Board in accordance with the guidelines issued by the government from time to time :

Provided that the Bank may, at its discretion on review by the Special Committee as provided hereinafter in sub-regulation (2) retire an officer employee on or at any time after the completion of 55 years of age or on or at any time after the completion of 30 years of total service as an officer employee or otherwise, whichever is earlier;

11. In accordance with the guidelines issued by the Central Government, the Board determined the Rules for Age of Retirement as follows :

The age of retirement of an officer in the Bank on or after the appointed date shall be determined as under :

(1) An officer employee of the Bank recruited/promoted prior to July 19, 1969 shall retire on completion of 60 years of age.

(2) An officer employee of the Bank recruited prior to July 19, 1969 but promoted as an officer on or after July 19, 1969 shall retire on completion of 60 years of age.

(3) An officer employee of the Bank recruited whether as an Award Staff or as an officer employee on or after July 19, 1969 shall retire on completion of 58 years of age.

12. Rules 1 and 2 of the Rules for Age of Retirement relate to an officer employee who had been recruited or promoted as an officer prior to July 19, 1969, i.e., prior to the date on which the banking business of the former banking companies was nationalised and to an employee recruited

prior to nationalisation but promoted as an officer thereafter. Rule 3 of the Rules for Age of Retirement relates to an officer employee of the Bank recruited whether as an award staff or an officer employee on or after July 19, 1969. The officer employees who had been recruited or promoted prior to July 19, 1969 or recruited prior to July 19, 1969 but promoted as officers, after July 19, 1969 were allowed to retire under the Rules for Age of Retirement on completion of 60 years of age. All other officer employees recruited whether as an award staff or an officer employee on or after July 19, 1969 were required to retire on completion of 58 years of age. The difference between the age of retirement of officer employee falling under Rules 1 and 2 of the Rules for Age of Retirement and the age of retirement of the officer employees falling under Rule 3 thereof arose on account of the decision taken by the Government of India and the Bank not to alter to their prejudice the right which the employees of the Bank who had been recruited prior to July 19, 1969 had acquired under the circular issued by the Central Bank of India Ltd. on March 11, 1969 before nationalisation of the banks. Section 12(2) of the Act, as already stated, provided that any employee of the Bank whose services were transferred to the corresponding new bank could hold his office in that bank on the same terms and conditions and with the same rights to pension, gratuity, etc. until they were duly altered by the corresponding new bank. Since there was no alteration of the condition relating to the age of superannuation, the said officers continued to enjoy the benefit of the condition of service relating to retirement which was in existence prior to nationalisation of banks. But as regards employees who were recruited after July 19, 1969 the Bank fixed the age of superannuation at 58 years having regard to the prevailing age of superannuation of the members belonging to the various services in public sector corporations, Central Government and many of the State Governments.

13. Petitioner 1 was appointed on August 13, 1972 as an officer in the post of Chief Cashier in the Bank. The letter of appointment issued in his case contained a clause which read as follows :

You will be governed by the terms and conditions of service as applicable to the other officer staff of the Bank.

14. On the Regulations coming into force in 1979 petitioner 1 was served with a notice dated February 25, 1980 issued by the chief Manager of the Bank stating that he would be treated as finally retired from the Bank's service after the close of business on February 29, 1980 on completion of 58 years of age. The above writ petitions were filed in April 1980 questioning the order of retirement issued in the case of petitioner 1 and praying inter alia for a declaration, as mentioned above, that all officers including petitioner 1 should be permitted to continue in service till the completion of 60 years of age as in the case of officers falling under Rules 1 and 2 of the Rules for Age of Retirement. The principal grounds urged in support of the writ petitions were that there could not be two different ages of retirement in the case of officers of the Bank and that since Rule 3 of the Rules for Age of Retirement required the officers, who were recruited subsequent to July 19, 1969, to retire on completion of 58 years of age while others falling under Rules 1 and 2 of the said rules could continue till 60 years of age, Rule 3 was liable to be struck down as being violative of Articles 14 and 16 of the Constitution. The petitions were opposed by the Bank and the Union of India. It was pleaded by them that since the employees whose services were transferred to the Bank under sub-section (2) of Section 12 of the Act were entitled to continue in service till 60 years of age by virtue of the conditions of service prevailing in the Central Bank of India Ltd. prior to nationalisation of banks, the Bank and the government found that it would be unjust and unfair to reduce the age of superannuation from 60 years in the case of such employees and, therefore, did not alter the said condition of service. In the absence of any alteration they were entitled to continue to be in service till they attained 60 years of age even after nationalisation by virtue of sub-section

(2) of Section 12 of the Act. The officers and employees other than (sic including) the award staff recruited after the nationalisation of the banks were required to retire on completion of 58 years of age which was the age of superannuation genially prevailing in the services of all public sector corporations, Central Government and many of the State Governments. It was urged that since the employees recruited prior to July 19, 1969 belonged to a different class altogether, it could not be said that there had been violation of Articles 14 and 16 of the Constitution, and the difference in the ages of retirement of the two classes of officers was due to historical reasons.

15. It is no doubt true that the order of appointment in the case of petitioner 1 stated that he would be governed by the terms and conditions which were applicable to other officers of the Bank. That condition, however, did not prevent the Bank from making a regulation which was applicable exclusively to the officers recruited after July 19, 1969. In case of officers falling under Rules 1 and 2 of the Rules for Age of Retirement no extra benefit was conferred on them. They were only permitted to carry the benefit of the Rules for Age of Retirement which was prevailing in the former banking company which was taken over by the government on nationalisation. We are of the view that there was good reason to make a distinction between the employees who had entered service prior to nationalisation and those who joined thereafter. At the time of nationalisation the corresponding new banks did not have their own employees to run the vast business taken over under the Act. There was, therefore, necessity to secure the services of the employees of the former banking companies without causing much dissatisfaction to them. There was also need for standardising the conditions of service of all such employees belonging to the 14 banks. The Government of India took the advice of the Pillai Committee and the Study Group of Bankers and after due deliberation evolved a uniform pattern of conditions for the transferred employees keeping in view the conditions of service of the employees prevailing in the majority of the banking companies which were nationalised. Insofar as the employees recruited after nationalisation were concerned the government applied the rules generally applicable to all its employees in other spheres of Government service.

16. We have given detailed reasons in our judgment in LIC v. S. S. Srivastava decided on May 5, 1987 justifying the existence of a rule fixing different ages of retirement to different classes of employees of the Life Insurance Corporation of India in the circumstances existing there. The circumstances prevailing in this case are almost the same. Those reasons are equally applicable to the present case too. In Goivindarajulu v. Management of the Union Bank of India (Writ Petition No. 5486 of 1980, decided on November 21, 1986, in the High Court of Madras) decided on November 21, 1986 the High Court of Madras has rejected the contentions similar to those which are raised before us. In that case a regulation framed by the Union Bank of India which was similar to the one in this case was upheld. That decision has been approved by us in LIC v. S. S. Srivastava. In Dr. Nikhil Bhushan Chandra v. Union of India (1983 Lab NOC 109 (Cal)) similar regulations framed by the United Commercial Bank which was also nationalised under the Act came up for consideration before the High Court of Calcutta. The High Court rejected the theory of discrimination put forward on the basis that fixing 60 years as age of retirement for those who were recruited prior to July 19, 1969 and 58 years of age who joined after that date lacked an intelligible differential. The Calcutta High Court points out that the terms and conditions of the service of the employees of the banks which were taken over under the Act had been protected by the Act and it was not possible to hold that there had been any hostile discrimination against the petitioner in that case. We are of the view that the decisions of the Madras High Court and the Calcutta High Court referred to above, lay down the correct principle. It is true that if the nationalised banks wanted to reduce the age of retirement of the transferred employees they could have done so. But they have tried to standardise their conditions of service and to bring about some uniformity without giving

room for much discontent or dissatisfaction. The question involved in this matter is not one of mere competence. It involves justice and fairness too. Having regard to all aspects of the matter, the nationalised banks have tried to be fair and just insofar as the question of age of retirement is concerned. We cannot say in the circumstances that the Bank's attitude is unreasonable, particularly when the age of retirement of the new entrants is quite consistent with the conditions prevailing in almost all the sectors of public employment.

17. We are of the view that the classification of the employees into two categories, i.e., those falling under Rules 1 and 2 of the Rules for Age of Retirement and those falling under rule 3 thereof satisfies the tests of a valid classification laid down under Articles 14 and 16 of the Constitution. We do not, therefore, find any ground to declare Rule 3 of the Rules for Age of Retirement, which is impugned in this case, as unconstitutional.

18. The writ petitions are, therefor, dismissed. There shall, however, be no order as to costs.

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