

Imperial Bank of India Pensioners' Association By Its Secretary, C. L. Kapoor and Others

Vs

State Bank of India by Its Chairman and Others

Writ Petition (Civil) No. 305 of 1987

(K. Jagannatha Shetty, Kuldip Singh, A. M. Ahmadi JJ)

23.02.1989

JUDGMENT

AHMADI, J. –

1. This petition under Article 32 of the Constitution of India is preferred by and on behalf of the retired employees of the Imperial Bank of India (IBI) which has since been taken over by the State Bank of India (SBI) constituted under the provisions of the State Bank of India Act, 1955 (Act 23 of 1955). Petitioners 2, 3 and 4 are the pensioners of IBI. Petitioner 1, the IBI Pensioners' Association, is impleaded as a party to give the petition a representative character. The grievance of the petitioners is that the instant Pension Plan governing the employees of the erstwhile IBI is outdated and does not provide reasonable pension required for survival. Several contentions have been raised in the petition but it is not necessary to traverse them because the pension plan has undergone a change during the pendency of the petition. The question of suitably revising the IBI Employees Pension and Gratuity Fund Rules and Regulations (hereinafter called 'the Rules') was taken up by the Bank has now received the approval of the Central Government. The proposal submitted by the Bank has now received the approval of the Central Government as well as the Reserve Bank of India. Copies of the approved proposal are placed on record. To give effect to the said proposal, Rules 18 and 20 of the Rules are proposed to be amended. It was also decided to introduce a Family Pension Scheme for the benefit of the family members of the pensioners. These changes are intended to be given effect from January 1, 1987.

2. In order to appreciate the changes sought to be brought about in the pension plan of IBI employees, it would be advantageous to read the extant rules and the proposed rules in juxtaposition. Old Rules 18 and 20 and the proposed Rules 18 and 20 read as under :

Existing Rules Proposed Rules
18. Subject to the other provision Subject to the other provisions of these rules and regulations of these rules and regulations pensions shall, in the case of pensions shall, in the case of members on the staff in India, members on the staff in India, be payable at the rate of one- payable at the rate of one- sixtieth part for every year's sixtieth part for every year's service of the average monthly service of the average monthly substantive salary drawn substantive salary drawn during during last five years service last twelve months' pensionable and in the one-sixtieth part service and, in the case of for every year's service of members on the staff in London, salary at date of retirement. one-sixtieth part for every Subject to the provision of year's service of the salary Rule 20, the amount of pen- at date of retirement. Subject to sion payable under this rule the provision of Rule 20, the or any other rule, if it amount of pension payable under contains element of paise, this

rule or any other rule if it will be rounded off to the contains element of paise, shall next higher rupee. be rounded off to the next higher rupee.20. (1) The maximum pension The maximum pension shall not (except in cases which the exceed: trustees in their discret- (a) in the case of employees on ion may unanimously consi- the staff in India, one-half of der special) shall not the average monthly substantive exceed Rs. 750 per mensem salary drawn during last twelve and in no case shall it months' pensionable service or exceed Rs. 1000 per mensem Rs. 1300 p.m. whichever is less; in India and 600 per annum provided that the limit of in the case of employees on Rs. 1300 p.m. may be relaxed up the staff in London who have to Rs. 2400 p.m. in the case of not done previous service officer employees; in India. (b) in the case of employees on the staff in London who have not done previous service in India 600 per annum. Provided that the pension payable to the staff in India under the revised rules from January 1, 1987 shall not be less than that payable under the previous Rules.20. (2) The maximum pension The minimum pension shall not be shall not be less than Rs. less than Rs. 300 p.m. to the 200 p.m. to the employees employees on staff in India. on staff in India.##

3. In addition to the above changes a new Rule 20-A(1) is proposed to be added which reads as under :

In the event of death of a member (i) while in service of the Bank after completion of pensionable service of one year or (ii) after retirement, the trustees may sanction family pension to the dependent(s) of the employees on the terms and conditions approved by the Central Board.

The terms and conditions of the newly proposed Family Pension Scheme are as under :

Substantive Salary p.m. Rate of Family Pension p.m. (a) Rs. 1500 and below 30 percent of substantive salary subject to a minimum of Rs. 300 p.m. (b) Above Rs. 1500 15 percent of substantive salary subject to a minimum of Rs. 450 p.m. and a maximum of Rs. 1000 p.m.##

4. There are two provisos; the first providing that when a member dies while in service on completion of 20 years pensionable service, the family shall be eligible for the first five years after the date of death, for a family pension at the full rate of normal pension to which the employee would have been entitled had he actually survived and retired on that date and thereafter at the rate prescribed for family pension and the second providing that when a member dies after retirement but before the expiry of five years of retirement, the family shall be eligible for a family pension at the full rate of normal pension for the balance period up to five years after date of retirement and thereafter at the rate prescribed for family pension. The family pension in payable :

(a) to the widow of a male employee up to the date of her death or remarriage;

(b) failing the widow, to the eldest surviving son of an employee until he attains the age of 25 years or is gainfully employed, whichever is earlier; and

(c) failing both, to the eldest surviving unmarried daughter until she attains the age of 25 years or is married, whichever occurs first.

5. After the above changes were indicated, C. L. Kapoor, a retired employee of the Bank, filed an

additional affidavit on behalf of the petitioners suggesting the following changes :

- (i) Rule 18 should be so amended as to do away with the discrimination meted out to India-based pensioners vis-a-vis the London-based pensioners.
- (ii) The new provision restricting the pension to one-half of the average substantive salary should be done away with as it has the effect of nullifying the upward revision of maximum limits from Rs. 750 to Rs. 1300 and Rs. 1000 to Rs. 2400. The ceiling of Rs. 1300 should also go and only the outer ceiling of Rs. 2400 should remain.
- (iii) The upward revision of the minimum pension from Rs. 200 to Rs. 300 per month is not sufficient and should therefore be made effective from January 1, 1983 and not January 1, 1987.
- (iv) Parity should be established between old pensioners and the new pensioners by merging the dearness allowance in the basic salary of old pensioners up to 332 points of Consumer Price Index (CPI) (1960=100) for the purposes of calculation of pension.
- (v) The family pension should be admissible to all employees at the uniform rate of 30 percent of salary regardless of the salary drawn and the same should be given effect from January 1, 1986 as was originally agreed.

6. When the petition was filed employees of the Bank were governed by two sets of pension rules, namely, one applicable to IBI employees and another applicable to SBI employees. In the case of IBI employees pension was calculated on average monthly substantive salary drawn during the last five years whereas in the case of SBI employees the pension was worked out on the basis of three years average substantive salary. The monthly ceiling was fixed at Rs. 750 relaxable up to Rs. 1000 at the discretion of the trustees. Rs. 200 was fixed as the minimum pension. There was no provision for family pension. Now, under the proposed pension plan evolved after consultation with SBI employees' federations, the distinction regarding the mode of calculation of pension is removed by providing for calculation of pension on the uniform basis of last 12 months' average salary. The existing ceiling of Rs. 750 relaxable up to Rs. 1000 per months is sought to be replaced by Rs. 1300 relaxable up to Rs. 2400 per month. The revised ceiling of Rs. 2400 is now made applicable to all officers instead of restricting it to senior staff officers only. The further ceiling of pension as one-half of the average substantive salary is introduced to achieve uniformity with the pension plan applicable to SBI employees. The minimum pension of Rs. 200 per month is raised to Rs. 300 per month. In addition a wholly new scheme for Family Pension is introduced. These proposed modifications are intended to come into effect from January 1, 1987. It, therefore, appears that the Bank authorities have realised the need to upgrade the existing pension plan because of the fall in the rupee value on account of inflation.

7. The present salary structure of the bank employees is related to 332 points of CPI (1960=100) which means that the dearness allowance up to 332 points is merged in the existing pay scales. The employees are paid dearness allowance at the cycle of every 8 points rise in the CPI as in the case of Central Government employees before the implementation of the recommendations of the Fourth Central Pay Commission, (for short 'the Commission'). In the same way, pensioner are also entitled to dearness allowance at the prescribed rate. On the implementation of the proposed formula, corresponding adjustments in the dearness allowance will have to be made in certain cases which

are matters of detail not required to be stated here. In this backdrop, we may now consider the contentions raised in the additional affidavit of C. L. Kapoor filed on behalf of the IBI pensioner.

8. The first grievance is in regard to the so-called discrimination between India-based pensioner and London-based pensioner. According to Rule 18 of the Rules, India-based pensioners are entitled to pension at the rate of one-sixtieth part for every year's service of the average monthly substantive salary drawn during the 'last five year's whereas London-based pensioners are entitled to pension equal to one-sixtieth part for 'every year's service at the date of retirement. Now, under the proposed change India-based pensioners will also be entitled to pension at the rate of one-sixtieth part for every year's service as in the case London-based pensioners. However, insofar as the fixation of maximum pension is concerned, the ceiling for India-based pensioners is Rs. 750 relaxable up to Rs. 1000 per month at the discretion of the trustees whereas for London-based pensioners it is fixed at 600 per annum. Now, under the proposed change the ceiling of Rs. 750 is sought to be raised to Rs. 1300 relaxable up to Rs. 2400 per month in the case of officer employees whereas in the case of London-based employees the figure of 600 remains constant. London-based employees constitute a class by themselves and, therefore, we do not see any substance in the contention that there is discrimination in the same class. That apart, under the proposed change the situation is substantially altered to the advantage of the India-based IBI pensioners and hence their grievance should not survive.

9. The second limb of the grievance relates to the fixation of the ceiling at Rs. 1300 per month. In this connection the submission was twofold : Firstly the ceiling of Rs. 1300 is unrealistic and secondly the calculation of pension at 50 percent of the basic salary is uncalled for as it introduces a second ceiling. It must be realised that the bank authorities have worked out the revised scheme keeping in mind the recommendations made by the Commission. Insofar as the pension scheme for government employees is concerned, the provision is more or less identical, viz., 50 percent of the average substantive salary not exceeding Rs. 4500 per mensem (vide Chapter V, Part II, of the Commission's Report). We, therefore, fail appreciate the objection to a similar provision in the proposed pension plan. However, the contention that the ceiling of Rs. 1300 is unrealistic is correct. Once it is realised that pension is a right and not a bounty, it would not be proper to leave the quantum of pension at the discretion of the trustees in each case. To do so would be to leave the employees at the mercy of the Trustees who would naturally exercise the discretion in any manner they like in the absence of guidelines. Even in the case of Central Government only the outer ceiling is prescribed. We, therefore, think that outer ceiling of Rs. 2400 should suffice. We are, therefore, of the opinion that the figure of Rs. 1300 in the proposed Rule 20(1) (a) should be replaced by the figure of Rs. 2400 and the proviso should be deleted. Consequential changes, wherever necessary, should be made.

10. The next grievance concerns the fixation of minimum pension. Under the extant rules the minimum pension is fixed at Rs. 200 per month and the same is now proposed to be raised to Rs. 300 per month by amending Rule 20(2) of the Rules. In this connection the grievance is that since the changes have been proposed in the light of the recommendations of the Commission, the minimum pension should be fixed at Rs. 350 (raised to Rs. 375 by the Government of India) instead of the proposed Rs. 300 per month. This submission overlooks the fact that the minimum pension fixed under the proposed plan is related to the CPI 332 points (1960=100) whereas the minimum fixed under the Commission's Report is reliable to 608 points. If the minimum is calculated after adding dearness relief as admissible up to the index point 608 [see paragraph 3(iii) of Bank's letter No. PA : CIR : 163 dated October 25, 1988] minimum pension amount exceeds the minimum admissible to Central Government employees. We, therefore, do not see any substance in this

grievance.

11. A grievance was made at the bar in regard to the fixation of minimum under the purposed Family Pension Scheme. The proposed scheme prescribes the rate of 30 percent for those drawing Rs. 1500 and below subject to a minimum of Rs. 300 per month whereas the rate prescribed for employees drawing above Rs. 1500 is 15 percent subject to a minimum of Rs. 450 per month. The submission was that that the rate should be uniform, namely, 30 percent of average substantive salary for all employees. Now, the inspiration for the introduction of this Family Pension Scheme as a welfare measure for Bank employees comes from an identical family pension scheme recommended by the Commission. This becomes evident on a perusal of the recommendations contained in paragraph 6.8 of Chapter VI Part II, of the Report. We do not, therefore, see any reason to depart from the said scheme.

12. It was then submitted that since the proposed changes in the pension plan are based on the recommendations of the Commission, they should be given effect from January 1, 1983 to which the bank's wage structure relates and if that is not possible in any case from January 1, 1986. We see force in this contention. The proposal sent by the Bank to the Central Government for approval was that the revision should be made effective from January 1, 1986. But, the Government of India changed the date of effect to January 1, 1987 for reasons which it is difficult to discern. We are, therefore, of the opinion that the proposed changes should be made effective from January 1, 1986 and consequential adjustments should be made, wherever necessary, in the revised pension plan.

13. The last submission made by the learned counsel for the petitioners relates to parity between the old pensioners and new pensioners by merging the dearness allowance up to 332 points in the basic salary of old pensioners. Under the existing rules the bank is paying dearness relief on pension to its pensioners in accordance with the formula applicable to Central Government pensioners prior to the Commission's Report. The question of payment of dearness relief on revised pension from January 1, 1987 was considered by the Bank in consultation with the employees' federations and it was decided that the existing formula of dearness relief on pension should continue for the time being till a general review is made after the next salary revision for officers and workmen is finalised. In view of this agreement between the employees' federations and the bank authorities, we do not think that a change should be effected at this stage when the larger question of revision of the entire salary structure of officers and workmen of the bank is under consideration.

14. These were the only contentions urged during the hearing of this petition. The rule is made absolute in that (i) the figure of Rs. 1300 in the proposed Rule 20(1) (a) will be replaced by the figure of Rs. 2400 and the proviso appearing thereafter will be deleted and (ii) the new pension scheme will be made effective from January 1, 1986 and consequential benefits will be given within a period of three months from today. The petition is partly allowed to the above extent with costs which we quantify at Rs. 5000. The respondent-Bank will pay the same.

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