

Canara Bank, Bangalore

Vs

M. S. Jasra and others

Civil Appeal No.1054 of 1992

(L. M. Sharma, J. S. Verma, Yogeshwar Dayal JJ)

06.03.1992

JUDGEMENT

VERMA, J.:-

1. Respondent No.1, M. S. Jasra, joined the service of the Reserve Bank of India in 1957, was promoted as a Staff Officer in 1970 and then as a Banking Officer in 1977. M. S. Jasra applied in response to an advertisement issued by the Lakshmi Commercial Bank and was selected in 1983 for the post of Assistant General Manager which he joined in March, 1983.

2. The Central Government, after considering the application made by the Reserve Bank under sub-sec. (1) of S. 45 of the Banking Regulation Act, 1949 made an order of moratorium under sub-sec. (2) thereof in respect of Lakshmi Commercial Bank on April 27, 1985. Thereafter, the Reserve Bank prepared a scheme for amalgamation of the Lakshmi Commercial Bank with the Canara Bank on August 23, 1985 under sub-sec. (4) of S. 45 which was approved by the Central Government on August 24, 1985. As a consequence thereof, the services of the employees of Lakshmi Commercial Bank were continued on amalgamation in the Canara Bank and respondent No.1, M. S. Jasra was fitted in the post of Divisional Manager in the Canara Bank.

3. M. S. Jasra, respondent No.1 was aggrieved by his continuance in the Canara Bank as Divisional Manager since he claimed to be fitted against a higher post by virtue of the office of Assistant General Manager held by him in the Lakshmi Commercial Bank; and he also asserted that he was entitled to continue in the service of Canara Bank till he attained the age of 60 years which was the age of superannuation for him in the Lakshmi Commercial Bank instead of 58 years, the age of superannuation in the Canara Bank. These representations made by M. S. Jasra were rejected by the Canara Bank as well as by the Reserve Bank. Respondent No. 1, M. S. Jasra then filed Writ Petition No. 2199 of 1991 in the Delhi High Court for grant of the relief that he was entitled to continue in service in the Canara Bank till he attained the age of 60 years instead of 58 years. By the impugned judgment dated 20th September, 1991 the High Court has allowed the writ petition quashing the Reserve Bank's letter dated 18th May, 1991 wherein it was stated that the age of superannuation of respondent No. 1, M. S. Jasra was 58 years and not 60 years as claimed by him, and declared that the respondent No. 1 is entitled to continue in service of the Canara Bank till he attains the age of 60 years. Hence, this petition for grant of special leave to appeal against the High Court's judgment has been filed. The only question for decision herein is that of the age of superannuation.

4. Leave is granted.

5. The contention of Shri K. N. Bhat, learned counsel for the appellant, Canara Bank, is that the relevant provisions contained in S. 45 of the Banking Regulation Act, 1949 read with the material portions of the scheme for amalgamation framed by the Reserve Bank show that the employees of the Lakshmi Commercial Bank who are continued in the service of the Canara Bank, on amalgamation of the Lakshmi Commercial Bank with the Canara Bank are entitled, on their integration in the service of the Canara Bank, to the same remuneration and the same terms and conditions of service which are applicable to the other employees of corresponding rank or status in the Canara Bank and not to any higher or larger benefits irrespective of the fact whether the remuneration and terms and conditions of service of the concerned employee were better or worse prior to amalgamation in the Lakshmi Commercial Bank. Shri Harish N. Salve, learned counsel for the respondent, Reserve Bank of India has supported the contention of Shri Bhat. On the other hand, Shri S. C. Gupta, learned counsel for respondent No. 1, M. S. Jasra has attempted to support the High Court's conclusion including the reasons therefor.

6. It would be appropriate at this stage to quote the relevant portion of S. 45 of the Banking Regulation Act, 1949 and scheme for Amalgamation framed by the Reserve Bank under S. 45(4) of the Act :-

"45. Power of Reserve Bank to apply to Central Government for suspension of business by a banking company and to prepare scheme of reconstitution or amalgamation.- (1) Notwithstanding anything contained in the foregoing provisions of this Part or in any other law or any agreement or other instrument, for the time being in force, where it appears to the Reserve Bank that there is good reason so to do, the Reserve Bank may apply to the Central Government for an order of moratorium in respect of a banking company.

(2) the Central Government, after considering the application made by the Reserve Bank under sub-sec. (1), may make an order of moratorium staying the commencement or continuance of all actions and proceedings against the company for a fixed period of time on such terms and conditions as it thinks fit and proper and may from time to time extend the period so however that the total period of moratorium shall not exceed six months.

(3)

(4) During the period of moratorium, if the Reserve Bank is satisfied that-

(a) in the public interest; or

(b) in the interests of the depositors; or

(c) in order to secure the proper management of the banking company; or

(d) in the interests of the banking system of the country as a whole, - it is necessary so to do, the Reserve Bank may prepare a scheme-

(i) for the reconstruction of the banking company, or

(ii) for the amalgamation of the banking company with any other banking institution (in this section referred to as "the transferee bank")

(5) The scheme aforesaid may contain provisions for all or any of the following matters, namely:-

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(i) the continuance of the services of all the employees of the banking company (excepting such of them as not being workmen within the meaning of the Industrial Disputes Act, 1947 are specifically mentioned in the scheme) in the banking company itself on its reconstruction or, as the case may be, in the transferee bank at the same remuneration and on the same terms and conditions of service, which they were getting or as the case may be, by which they were being governed, immediately before the date of the order of moratorium:

Provided that the scheme shall contain a provision that-

(i) the banking company shall pay or grant not later than the expiry of the period of three years from the date on which the scheme is sanctioned by the Central Government, to the said employees the same remuneration and the same terms and conditions of service as are, at the time of such payment or grant, applicable to employees of corresponding rank or status of a comparable banking company to be determined for this purpose by the Reserve Bank (whose determination in this respect shall be final);

(ii) the transferee bank shall pay or grant not later than the expiry of the aforesaid period of three years, to the said employees the same remuneration and the same terms and conditions of service as are at the time of such payment or grant, applicable to the other employees of corresponding rank or status of the transferee bank subject to the qualifications and experience of the said employees being the same as or equivalent to those of . such other employees of the transferee bank.

Provided further that if in any case under Cl. (ii) of the first proviso any doubt or difference arises as to whether the qualification and experience of any of the said employees are the same as or equivalent to the qualifications and experience of the other employees of corresponding rank or status of the transferee bank the doubt or difference shall be referred, before the expiry of a period of three years from the date of the payment or grant mentioned in that clause to the Reserve Bank whose decision thereon shall be final;

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(8) On and from the date of the coming into operation of the scheme or any provision thereof, the scheme or such proviso shall be binding on the banking company or, as the case may be, on the transferee bank and any other banking company concerned in the amalgamation and also on all the members, depositors and other creditors and employees of each of those companies and of the transferee bank, and on any other person having any right or liability in relation, to any of those companies or the transferee bank including the trustee or other persons managing, or connected in any other manner with, any provident fund or other fund maintained by any of those companies or the transferee bank.

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(14) The provisions of this section and of any scheme made under it shall have effect notwithstanding anything to the contrary contained in any other provisions of this Act or in any other law or any agreement, award or other instrument for the time being in force.

(15) In this section, "banking institution" means any banking company and includes the State Bank of India or a subsidiary bank or a corresponding new bank.

Explanation- Reference in this section to the terms and conditions of service as applicable to an employee shall not be construed as extending to the rank and status of such employee.

The relevant Clauses of the Amalgamation Scheme are:-

"(10) All the employees of the transferor bank other than those specified in the schedule referred to in the succeeding paragraph shall continue in service and be deemed to have been appointed by the transferee bank at the same remuneration and on the same terms and conditions of service as were applicable to such employees immediately before the close of business on 27th April, 1985.

Provided that the employees of the transferor bank who have, by notice in writing given to the transferor or the transferee bank at any time before the expiry of one month next following the date on which this scheme has been sanctioned by the Central Government, intimated their intention of not becoming employees of the transferee bank, shall be entitled to the payment of such compensation, if any, under the provisions of the Industrial Disputes Act, 1947 and such pension, gratuity, provident fund and other retirement benefits as may be ordinarily admissible under the rules of authorisations of the transferor bank immediately before the close of the business on 27th April, 1985.

Provided further that the transferee bank shall in respect of the employees of the transferor bank who are deemed to have been appointed as employees of the transferee bank be deemed also to have been taken over the liability for the payment of retrenchment compensation in the event of their being Retrenched while in the service of the transferee bank on the basis that their service continues and has not been interrupted by their transfer to the transferee bank.

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(12) The transferee bank shall on the expiry of period not longer than three years from the date on which this scheme is sanctioned, pay or grant to the employees of the transferor bank the same remuneration and the same terms and conditions of service as are applicable to the employees of corresponding rank or status of the transferee bank subject to the qualifications and experience on the said employees of the transferor bank being the same as or equivalent to those of such other employees of the transferee bank.

Provided that if any doubt or difference arises as to whether the qualifications or experience of any of the said employees are the same as or equivalent to the

qualifications and experience of the other employees of corresponding rank or status of the transferee bank or as to the procedure of principles to be adopted for the fixation of the pay of the employees in the scales of pay of the transferee bank, the doubt or difference shall be referred to the Reserve Bank of India whose decision thereon shall be final."

The High Court has taken the view that Cl. (i) of sub-sec. (5) of S. 45 read with Cl. 10 of the amalgamation scheme confers a vested right on the transferred employees of the Lakshmi Commercial Bank in respect of their terms and conditions of service which could not be adversely affected as a result of the amalgamation with the Canara Bank and Proviso (ii) in S. 45(5)(i) and Cl. 12 of the scheme could not take away or dilute the vested right so conferred by S. 45(5)(i). The material portion of the High Court's judgment is as under:

"The mandate of S. 45(5)(i) is that the scheme which is formulated may contain provisions with regard to employees of the banking companies and such a scheme should protect the remuneration and other terms and conditions of an employee. The second proviso to S. 45(5)(i) of the Act as well as Cl. 12 of the scheme have to be read harmoniously with S. 45(5)(i) and Cl. 10 of the scheme. The second proviso was not meant to take away or dilute the rights which are conferred by Cl. (i). Keeping this in view Cl. 10 of the scheme was formulated which specifically provides that the terms and conditions of the employees like the petitioner shall be those as were applicable to them immediately, before the close of business on 27th April, 1985.

Clause 12 of the scheme or the second proviso to S. 45(5)(i) cannot be so read as to take away the vested rights of the transferred employees which rights were that their remuneration as well as the terms and conditions of service were not to be adversely affected. In the present case, on the other hand, there is a statutory assurance contained in S. 45(5)(i). The assurance contained in this provision coupled with Cl. 10 of the scheme gives a right to an employee like the petitioner to continue to remain in service till the age of 60 years."

The question is whether the construction so made by the High Court of the relevant provisions in S. 45 of the Act and Cls. 10 and 12 of the amalgamation scheme is correct.

7. The further question is whether on that basis, the claim of respondent No. 1 as a former employee of the Lakshmi Commercial Bank to retire at the age of 60 years instead of 58 years is a vested right, as held by the High Court, which cannot be taken away on amalgamation of the Lakshmi Commercial Bank with the Canara Bank in this manner,

8. The Banking Regulation Act, 1949 is an Act to consolidate and amend the law relating to banking. Part III of the Act contains Ss. 36B to S. 45 under the heading 'suspension of business and winding up of banking companies'. S. 45 in part III provides for the power of Reserve Bank to apply to the Central Government for suspension of business of a banking company and to prepare scheme of reconstruction or amalgamation. Sub-sec. (1) enables the Reserve Bank to apply to the Central Government for an order of moratorium in respect of a banking company if there is good reason so to do. Sub-sec. (2) empowers the Central Government, on such an application of the Reserve Bank to make an order of moratorium staying the commencement of continuance of all actions and proceedings against the banking company for a fixed period of time on such terms and conditions as

it thinks fit and proper and permits extension of the period of moratorium so as not to exceed six months. Sub-sec. (4) then provides for preparation of a scheme by the Reserve Bank for the reconstruction of the banking company or for its amalgamation with any other banking institution if the Reserve Bank is satisfied that it is necessary so to do in the public interest, or in the interests of the depositors, or to secure the proper management of the banking company, or in the interests of the banking system of the country as a whole.

9. Sub-section (5) then specifies the provisions which may be made in such a scheme. It is Cl. (i) and the provisos thereunder of sub-sec. (5) with which we are concerned. The opening words in sub-sec. (5) are: "The scheme aforesaid may contain provisions for all or any of the following matters....." It is clear that the scheme so framed under sub-sec. (4) may contain provisions for all or any of the matters specified in sub-sec. (5) so that to it enables all or any of the specified matters be provided in the scheme prepared under sub-sec. (4) and the matters specified in the several clauses in sub-sec. (5) do not automatically get incorporated in such scheme unless the scheme specifically includes any such matter. It means that the matter specified in Cl. (i) of sub-sec. (5) is not an invariable term to be read in such a scheme framed under sub-sec. (4) for amalgamation of the banking company unless it is incorporated specifically in the scheme so prepared. Thus, such a scheme may or may not contain provision for the continuance of the services of all the employees of the banking company in the transferee bank as is specified in Cl. (i). However, if the scheme does provide for this matter, then the continuance of the services of the employees of the banking company in the transferee bank as provided in Cl. (i) is subject to the requirements of the proviso thereunder. In other words, it is not necessary that every scheme of amalgamation framed under sub-sec. (4) must provide for continuance of services of all the employees of the banking company in the transferee bank, but where such a provision is made, it must contain a provision as required by the provisos in Cl. (i). This is clear from the use of the word in the opening words of sub-sec. (5) and the word 'shall' in the proviso. In effect it means that where the scheme provides for continuance of the services of all the employees of the banking company in the transferee bank at the same remuneration and on the same terms and conditions of service which they were getting or, as the case may be, by which they were being governed immediately before the date of the order of moratorium, then the scheme must contain a provision that the transferee bank shall pay or grant not later than the expiry of the period of three years from the date on which the scheme is sanctioned by the Central Government to the said employees the same remuneration and the same terms and conditions of service as are applicable to the other employees of corresponding rank or status of the transferee bank subject to the qualifications and experience of the said employees being the same as or equivalent to those of such other employees of the transferee bank.

10. Clause (i) read with the proviso in sub-sec. (5) results in enabling the making of a provision in the scheme of amalgamation for the continuance of services of the employees of the banking company in the transferee bank on the same terms and conditions by which they were governed before the date of the order of moratorium but when such a provision is made, the scheme has also to provide that the transferee bank shall grant not later than the period of three years the same terms and conditions of service to the employees who are continued, the terms and conditions of service in the transferee bank in the corresponding rank or status, subject to the requisite qualifications and experience. The right of the employees of the banking company in the transferee bank on continuance of the service by virtue of such a provision in the scheme as provided in Cl. (i) of sub-sec. (5) is merely that which is contained in the proviso thereunder, that is, that the transferee bank would treat them at par with its own employees of corresponding rank or status subject to the qualifications and experience irrespective of the earlier terms and conditions of service. In other words, in the scheme provides for continuance of the services of the employees in the transferee

bank, then beyond a period of three years from the date on which the scheme is sanctioned by the Central Government, the transferee bank cannot discriminate between such employees and its other employees of corresponding rank or status. The only right of such an employee whose service is so continued is, therefore, to claim parity with the employees of the transferee bank itself of corresponding rank or status subject to equivalent qualifications and experience and no more. The right of such an employee is provided in the proviso to Cl. (i) and not in the earlier enacting part of Cl. (i) of sub sec. (5) as claimed by respondent No. 1 and upheld by the High Court.

11. Clauses 10 and 12 of the scheme as quoted above merely incorporate the matter specified in Cl. (i) and the proviso thereunder with which we are concerned and so read and understood, there is no ambiguity or conflict in those clauses of the scheme either inter se or with Cl. (i) and the proviso thereunder in sub-sec. (5) of S. 45.

12. Shri S. C. Gupta, learned counsel for respondent No. 1 placing strong reliance on *State Bank of Travancore v. Elias Elias*, (1971) 2 SCR 28 : (AIR 1971 SC 143), attempted to support the view taken by the High Court. In our opinion, that decision which led to the addition of the explanation in S. 45 by Act No. 1 of 1984 to the effect that in this section the terms and conditions of service shall not be construed as extending to the rank and status of such employees, is of no assistance in the present case. With respect, if that decision is read to construe Cl. (i) with its proviso in sub-sec. (5) of S. 45 as suggested on behalf of respondent No. 1, then we are unable to subscribe to that view since the proper construction of these provisions, according to us, is as indicated above.

13. It follows that respondent No. 1 could not, therefore, claim to be governed by the age of superannuation of 60 years in the Lakshmi Commercial Bank. When his services were continued on amalgamation of the Lakshmi Commercial Bank with the Canara Bank he became an employee of the Canara Bank and was, therefore, entitled only to the right given by proviso (ii) to Cl. (i) of subsec. (5) of S. 45 which entitled him to the same terms and conditions of service as employees of the corresponding rank or status of the Canara Bank. Age of superannuation of the employees in Canara Bank being 58 years only, respondent No. 1 could not claim to retire at 60 years. The High Court misconstrued Cl. (i) and proviso (ii) thereunder of sub-sec. (5) of S. 45 of the Act and Cls. 10 and 12 of the amalgamation scheme to take the contrary view. The impugned judgment of the High Court has, therefore, to be set aside resulting in dismissal of the writ petition of respondent No. 1 filed in the High Court. Consequently, the appeal is allowed. No costs.

Appeal allowed.

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