

Bank of Baroda

Vs

Rajender Pal Soni

Civil Appeal No. 4390 of 1996

(K. Ramaswamy, G. B. Pattanaik JJ)

19.02.1996

JUDGMENT

1. Leave granted.

2. We have heard learned counsel on both sides.

3. It is not necessary to preface the antecedent enquiry conducted against the respondent for misconduct by the Traders Bank which was amalgamated with the appellants-Bank. Suffice it to state that on June 25, 1986 the respondent's service was sought to be terminated by issuance of an order on offering three months' pay in lieu of the requisite notice. Instead, the respondent on even date had tendered his resignation (Ex. P-5) to Traders Bank; transferor-Bank of the appellant had accepted the resignation on July 2, 1986. Consequently, the respondent had returned the cheque of salary offered to him in lieu of notice on the even date. Under Section 45 of the Banking Companies Regulation Act, 1949 (for short, the 'Act'), the scheme of amalgamation of transferor bank with the appellant bank, with effect from November 20, 1987 (Ex. P-8) was initiated. The Central Government had accepted the amalgamation under Sub-section (7) of Section 45 of the Act with effect from the appointed date viz. May 13, 1988. A scheme in that behalf was approved by the Central Government, Clause 10 of the scheme provides as under :

"All the employees of the transferor bank 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 20th November, 1987."

4. Para 2 of the notification dated May 12, 1988 issued under Section 45 (1) read with sub-section (2) of Section 45 of the Act envisages, among other things, undertaking of the liabilities with respect to the pending suits, appeal or other legal proceedings of whatever nature by or against the transferor bank arising as on the prescribed date were allowed to continue on the appellant-Bank thus :

"If on the prescribed date any suit, appeal or other legal proceedings of whatever nature by or against the transferor bank is pending, the same shall not abate, or be discontinued or be in any way prejudicially affected, but shall subject to the other provisions of this scheme, be prosecuted and enforced by or against the transferee bank."

5. Admittedly, the respondent had filed the Civil Suit No. 123 of 1983 which his now re-numbered

as suit No. 61 of 1993 to recover a sum of Rs.69,680/- as the arrears of his pay etc. and also filed Civil Suit No. 122 of 1989 which is now renumbered as Suit No. 63 of 1993 on June 3, 1989 for declaration that the acceptance of resignation by the Traders Bank, viz., the transferor Bank was illegal. Relying upon the notification, the appellant raised preliminary objection after filing written statement to the maintainability of the suit which was rejected by the trial Court. In revision No. 595/94 by order dated March 21, 1995, the Delhi High Court dismissed the revision summarily.

6. Even in this appeal the only question is whether the appellant is liable to take over the services of the respondent? If that finding is recorded in favour of the respondent, necessarily the suit of the respondent would stand maintainable. Section 45 of the Act envisages the power of the Reserve Bank of India to apply to the Central Government for suspension of the business of a Banking Company and prepare a scheme for reconstitution or amalgamation. Admittedly, the Traders Bank was amalgamated with the appellant-Bank by exercise of the power under sub-section (1) read with sub-section (2) of Section 45 of the Act. The sanction in that behalf has been accorded by the Central Government in the scheme under sub-section (7). As seen, clause (10) of the scheme envisages that employees existing as on November 20, 1987 in the transferor bank, viz., the Traders Bank so taken over, shall become employees of the appellant-Bank. Admittedly, the respondent was not in service as on that date. Even no suit for proceedings was pending against the Traders Bank as on the date. Under those circumstances, the question arises: whether the suit is maintainable? This Court in *Chairman, Canara Bank, Bangalore v. M. S. Jasra* AIR 1992 SC 1100 : (1992 AIR SCW 982) in paragraph 9, has considered the effect of sub-sections (4) & (5) of Section 45 of the Act and of the scheme framed thereunder which reads and held as under:

"9. Sub-section (5) then specifies the provisions which may be made in such scheme. It is Cl. (i) and the proviso 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-section (4) may contain provisions for all or any of the matters specified in sub-sec. (5) so that it enables all or any of the specified matters to be provided in the scheme prepared under sub-sec. (4) and the matters specified in the several clause 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 provisions 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 service 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 provision in Cl. (i). This is clear from the use of the word 'may' 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 services 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."

7. In *U. P. Electricity Board, Lucknow through its Chairman v. Radhey Mohan Verma* 1994 Sup (2) SCC 356 : (1994 AIR SCW 2870), similar question had arisen under the Electricity Act. It was held that the Board and amalgamated Company are entitled under that Act to enter into an agreement. Employees existing as on that date and against whom disciplinary proceeding were pending on that date could not be deemed to be employees of the Board. In the absence of any such agreement, it was held that by operation of Section 6(1) (ii) of the Electricity Act, the Board was not bound to take such an employee into the service.

8. In *Rashtriya Mill Mazdoor Sangh v. National Textiles Corporation, South Maharashtra Ltd.*, (1996) 1 SCC 313 similar question had arisen for consideration. This Court held that the liability to pay gratuity which became payable to a former employee prior to the taking over of the textile Company was of the textile company and not of the Custodian.

9. It is contended by the learned counsel for the respondent that under the Scheme, the assets and liabilities are to be taken over by the appellant-Bank and, therefore, the employment of the appellant is one of the liabilities. Judicial review being one of the basic features of the Constitution, he cannot be prevented to avail of be judicial review against the appellant-Bank. We find no force in the contention. As far as service conditions are concerned, in view of the specific provision in the Scheme contained in paras 3 and 10 of the notification arrears of salary is a liability to be discharged by the transferor-Bank and not of the appellant-Bank. Under these circumstances, the suits are clearly not maintainable.

10. The appeal is accordingly allowed, the suit stand dismissed. No costs. Appeal allowed.