Indian Bank

Vs

K. Usha and Another

Civil Appeals No. 3619 of 1993 with Nos. 3620 to 3625 of 1993

(S. B. Majmudar, M. Jagannadhar Rao JJ)

28.01.1998

JUDGMENT

S. B. MAJMUDAR, J. –

1. Leave granted in special leave petitions.

2. By consent of learned advocates appearing for the contesting parties this group of nine appeals was heard finally and is being disposed of by this common judgment.

3. The common appellant, Indian Bank, in this group of appeals has brought in challenge the judgment and orders of the Division Benches of the Madras High Court allowing writ petitions of the respondents concerned who are the heirs and legal representatives of deceased employees of the Bank of Thanjavur Limited which was amalgamated with the appellant-Bank with effect from 20-2-1990 in accordance with the Scheme of Amalgamation framed under Section 45 of the Banking Regulation Act, 1949 (hereinafter referred to as "the Act"). The respondents concerned had sought compassionate appointments from the appellant-Bank on the ground that they were the heirs and legal representatives of the deceased employees of Thanjavur Bank (hereinafter referred to as "the transferor-Bank") whose assets and liabilities were taken over by the appellant-Bank, hereinafter referred to as "the transferee-Bank" for the sake of convenience. The claim of the respondents for such appointments was based on an agreement entered into between the recognised Union of the employees of the transferor-Bank in the year 1982 with the management of the transferor-Bank under Section 2(p) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the ID Act"). The said settlement was not arrived at during conciliation proceedings, hence it remained binding only on the parties to the said settlement, namely, the Union of employees of transferor-Bank on the one hand and the management of the transferor-Bank on the other. As per the said settlement a scheme of compassionate appointment to be given to the eligible heirs of deceased employees of transferor-Bank who died in harness was evolved. The respondents' contention was that the said settlement remained binding on the transferee-Bank as the successor bank which had taken over the assets and liabilities of the transferor-Bank pursuant to the order of amalgamation. The appellant-transferee Bank refused to entertain the said claims. That resulted in diverse writ petitions by the respondents before the High Court. The High Court took the view that the respondents were entitled to get the benefit of the said settlement which was binding not only on the transferor-Bank which was a party to the settlement but also on its successor-in-interest, namely, the appellant-Bank and as the appellant-Bank had rejected the request of the respondents by the impugned judgments, writs of mandamus were issued to the appellant-Bank to grant appointments on compassionate ground to the respondent-writ petitioners concerned. Having obtained special leave to appeal under Article 136 of the Constitution of India these appeals have been moved by the appellant-Bank challenging the

aforesaid decisions rendered by the High Court.

4. It may be stated that earlier seven special leave petitions arising out of a common judgment of the Division Bench of the High Court in writ appeals confirming decisions of the learned Single Judge were taken up for consideration by this Court and while granting leave the prayer for stay was refused. We are informed that as there was no stay of the impugned orders of the High Court pending these appeals the respondents concerned have already been appointed to the respective posts which they are holding and are working as employees of the appellant-Bank. However it was brought to our notice by learned Senior Counsel for the appellant that the said appointments were given by the appellant subject to the result of these appeals and they will, therefore, have to abide by the present decision of ours.

5. In support of these appeals learned Senior Counsel, Shri N. B. Shetye, who appeared in Civil Appeal No. 3619 of 1993 which was taken up as a lead case and Shri Ambrish Kumar, learned counsel for the appellant-Bank in the rest of the appeals, raised for our consideration the following contentions :

> 1. The Scheme of Amalgamation limits the liability of the transferor-Bank only to the extent provided in clause 10 of the Scheme of Amalgamation which pertains to the then existing employees of the transferor-Bank who were taken over by the transferee-Bank and the said scheme did not cover the transferor-Bank's liability under the settlement to provide compassionate appointments to the heirs of its deceased employees who might have died in harness and consequently a the High Court was in error in issuing mandamus to the appellant to absorb all these respondents in service of the Bank.
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> 2. In any case the settlement of 1982 arrived at between the management of the transferor-Bank and the Union of its employees could only bind the parties to the settlement as per Section 18(1) of the ID Act and could not be enforced against the successor-Bank, namely the appellant-Bank.
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> 3. In any view of the matter the High Court could not have issued mandamus to the appellant-Bank to appoint the respondents concerned even if they were found to be eligible to get such employment under the Scheme, and on the basis of settlement of 1982, without first ascertaining whether there were vacancies on which such persons could be accommodated and it should have been left to the appellant-Bank in any case to consider this aspect of the matter and even on that ground the final orders passed by the High Court in favour of the respondents cannot be sustained.

6. Learned Senior Counsel for the respondents, Ms. Indira Jaising, on the other hand, while refuting these submissions contended that on a correct interpretation of Section 45 of the Act and the Scheme found thereunder it has to be held that none of the provisions thereof gave any contrary indication in connection with the employment to be offered on compassionate grounds to the heirs of the deceased employees of the transferor-Bank and consequently the relevant clauses of the Scheme on which the appellant-Bank relies would not cut across the scope and ambit of the settlement entered into by the predecessor-Bank, namely, the transferor-Bank with its own employees through their Union. She further submitted that on a conjoint reading of Section 2 of the Act and Section 19(d) of the Specific Relief Act such settlement would be binding on the successor-bank, namely, the appellant-Bank even apart from the non-applicability of Section 18(3) of the ID

Act in this connection. It was also vehemently contended by the learned Senior Counsel for the respondents that even if two views are possible on the construction of relevant provisions of the Scheme and Section 45 of the Act, a construction which fructifies the benevolent scheme underlying the settlement being a welfare measure deserves to be accepted and the contrary construction which stultifies such a benevolent and a labour welfare provision should not be accepted. She lastly submitted that so far as the third contention of the learned Senior Counsel for the appellant-Bank is concerned it was the appellant-Bank itself which requested the High Court to decide the question on merits by placing appropriate material before it and as it had already rejected the claims of the respondents there was no question of the High Court calling upon the appellant to reconsider the matter on the peculiar facts of this case and especially when it was not the contention of the appellant-Bank before the High Court at any time either before the learned Single Judge or in writ appeals or even in other writ petitions that there were no vacancies available with the Bank to absorb the respondents if they were otherwise eligible to be so absorbed and hence even the third contention does not deserve to be accepted.

7. We shall deal with the aforesaid three contentions seriatim.

Contention No. 1

8. At the outset we must look at the relevant provisions of the Act under which the Scheme of Amalgamation saw the light of day. The aforesaid Scheme was promulgated under the provisions of the Act which was enacted in 1949 as Act 10 of 1949 by the Central Legislature with a view to consolidate and amend the law relating to banking. The Act sought to regulate the business of banking companies and gave wide powers to the Reserve Bank of India to control and monitor the same. Various regulatory provisions were made in connection with the working of commercial banks covered by the sweep of the Act. During the working of the Act, after its enactment in 1949, it was found that the working of some of the banking companies was not up to the mark and a situation might arise during its commercial existence where it would be found to have reached the point of bankruptcy. In order to deal with such sick commercial banks covered by the Act the legislature by Act 37 of 1960 inserted Section 45 with its relevant sub-sections empowering the Reserve Bank to apply to the Central Government for an order of moratorium in respect of such banking companies. During the period of moratorium of such a banking company the Reserve Bank was authorised, on being satisfied about the existence of various conditions contemplated by clauses (a) to (d) of sub-section (4) of Section 45, to prepare a scheme for the reconstruction of the banking company, or for the amalgamation of the banking company with any other banking institution. As the transferor-Bank in the present case had reached the nadir of its financial commitments and functioning, a moratorium for it was ordered by the Central Government at the behest of the Reserve Bank as per Section 45 sub-section (1) of the Act and it was during the period of moratorium of the transferor-Bank that a Scheme of Amalgamation of the transferor-Bank with the appellant transferee-Bank was promulgated by the Reserve Bank. The said scheme was sanctioned by the Central Government as per sub-section (7) of Section 45 with effect from 20-2-1990. Naturally the question arose as to what was to happen to the erstwhile employees of the transferor-Bank, whose assets and liabilities were being taken over as provided in the Scheme, by the transferee-Bank. The provision regarding the same was incorporated in clause 10 of the Scheme while clause 2 of the Scheme dealt with transfer of assets and liabilities of the transferor-Bank to the transferee-Bank as indicated therein.

9. It is in the light of the aforesaid statutory set-up and the resultant Amalgamation Scheme and its provisions regarding the matters in issue that the first contention of the learned Senior Counsel for

the appellant will have to be examined. When we turn to the relevant clauses of the Scheme of Amalgamation we find three clauses of the Scheme which have an impact on the decision of the present controversy. The said clauses read as under :

> "Clause 2. - As from the date which the Central Government may specify for this purpose under sub-section (7) of Section 45 of the said Act, (hereinafter referred to as the prescribed date) all rights, powers, claims, demands, interests, authorities, privileges, benefits, assets and immovables including premises subject to all incidents of tenure and to the rents and other sums of money and covenant reserved by or contained in the leases or agreement under which they are held, all office furniture, loose equipment, plant apparatus and appliances, books, papers, stocks of stationery, other stocks and stores, all investments in stocks, shares and securities, all bills receivable in hand and in transit, all cash in hand and on current or deposit account (including money at all or short notice) with banks, bullion, all book debts, mortgage debts and other debts with the benefit of securities, or any guarantee therefor, all other if any property rights and assets, benefit of all guarantees in connection with the business of the transferor-Bank shall, subject to the other provisions of this Scheme, stand transferred to, and become the properties and assets of the transferee-Bank, and as from the prescribed date all the liabilities, duties and obligations of the transferor-Bank shall be and shall become the liabilities, duties and obligations of the transferee-Bank to the extent and in the matter provided hereinafter.
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> Clause 10. - 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 19-8-1989. 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 authorisation of the transferor-Bank immediately before the close of business on 19-8-1989. 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 taken over the liability for them of retrenchment compensation in the event of their being retrenched while in the service of the transferee-Bank on the basis that their service has been continued and has not been interrupted by their transfer to the transferee-Bank.
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> Clause 16. - If any doubt arises in interpreting any of the provisions of this Scheme, the matter shall be referred to the Reserve Bank of India and its opinion shall be conclusive and binding on both the transferee and transferor-Banks, and also on all the members, depositors and other creditors and employees of each of these Banks and on any other person having any rights or liability in relation to any of these Banks."

10. We shall first see the scope and ambit of clause 2. The first part of the said clause provides for

the transfer of all assets and properties of the transferor-Bank to the transferee-Bank as it provides transfer of all rights, powers, claims, demands, interests, authorities, privileges, benefits, assets and immovables including premises and also including all furniture and other stock investments etc. This part of the clause refers to the asset side of the picture. Along with the transfer of these assets and the rights of the transferor-Bank in favour of the transferee-Bank the latter part of the clause lays down, after observing that these properties and assets will become the properties and assets of the transferee-Bank as and from the prescribed date that all the liabilities, duties and obligations of the transferor-Bank shall be and shall become the liabilities, duties and obligations of the transferee-Bank to the extent and in the manner provided thereinafter meaning thereby in the subsequent clauses of the Scheme. Relying on the second part of clause 2 learned Senior Counsel for the appellant submitted that second part of clause 2 is independent of the first part and, therefore, when it deals with the transmission of liabilities, duties and obligations of the transferor-Bank to the transferee-Bank the said transmission shall be limited only to the extent to which the subsequent clauses of the Scheme would provide for such transmission and nothing more. It was, therefore, submitted that whatever may be the liability or contractual obligation of the transferor-Bank, under the 2(p) Settlement of 1982 with the Union of its employees, such liability or obligation did not get transmitted to the transferee-Bank as the latter part of the Scheme did not provide for any such obligation or liability being incurred by the transferee-Bank. It can, therefore, be said that to that extent no such liability or obligation was undertaken by the transferee-Bank. In this connection strong reliance was placed on clause 10 of the Scheme which only concerned the then existing employees of the transferor-Bank on the appointed date whose services were taken over by the transferee-Bank. Therefore, in connection with the ex-employees of the transferor-Bank only limited provision was made in clause 10 and no provision was made regarding deceased employees and their heirs and how the heirs of such deceased employees of the transferor-Bank were to be dealt with. In this connection it was also submitted, placing reliance on Sections 45(9) and 45(14) of the Act, that the Scheme by incorporating clause 10 of the Scheme of Amalgamation had made a contrary provision on this topic of granting compassionate appointments to the heirs of the deceased employees of the transferor-Bank who might have died in harness and hence this contrary provision in the Scheme superseded the liability flowing from the said settlement entered into by the transferor-Bank in 1982 with the Union of its erstwhile employees.

11. It must at once be stated that at the first blush the contention of learned Senior Counsel for the appellant appears attractive but on a closer scrutiny it falls through as we will presently show. Clause 2 of the Scheme has to be read in the light of Section 45(9) which reads as under :

> "45. (9) On and from the date of the coming into operation of, or as the case may be, the date specified in this behalf in, the Scheme shall be substituted; the properties and assets of the banking company shall, by virtue of and to the extent provided in the Scheme, stand transferred to, and vest in, and the liabilities of the banking company shall, by virtue of and to the extent provided in the Scheme, stand transferred to, and become the liabilities of, the transferee-Bank."

The said sub-section obviously deals with a provision to be incorporated in the Scheme regarding properties and assets of the banking company which are to be transferred under the Scheme to the transferee-Bank. The said clause enables the Scheme to provide the extent to which such properties and assets of the transferor company will get transferred to the transferee-Bank and would vest in it. And then follows the second part of sub-section (9) of Section 45 which deals with liabilities of the banking company and makes an identical provision that such liabilities of the transferor-Bank also by virtue of and to the extent provided in the Scheme would stand transferred to and become the

liabilities of the transferee-Bank. Thus the said sub-section (9) of Section 45 of the Act enables the Scheme-making authority to provide in that Scheme the extent to which the properties and assets of the banking company can be transferred and corresponding liabilities attached to such properties and assets of transferor company also can get vested in the transferee company. It is obvious that when assets of the transferor company are being transferred and are to vest in the transferee company under the Scheme, it could not be a one-way traffic. Hence the corresponding liabilities of the banking company attaching to such assets would also have to travel as a result of the said transmission of the properties and assets of the transferor company to the transferee company to the extent provided in the Scheme. In the context in which the word "liabilities" is employed by the legislature in Section 45 sub-section (9) of the Act it has to be held that the "liabilities" as contemplated therein are the monetary liabilities of the transferee company in connection with the properties of the transferor company which stand transferred and have vested in the transferee company as a result of the Scheme of Amalgamation. For deciding the scope and ambit of such financial liabilities what is expressly provided in the Scheme in that connection has to be kept in view and only such liabilities would get attached to the transferee company. Now it is obvious that the claim of the respondents flows from 2(p) Settlement under the ID Act entered into by the transferor company with its erstwhile employees through their Union and the liability arising under the settlement which is sought to be enforced against the appellant-Bank, obviously is not a monetary liability or a crystallised liability, but it is purely a contractual liability having a binding legal force under Section 18(1) of the ID Act. Such liability is not within the sweep of sub-section (9) of Section 45, which as we have seen earlier, will have limited connotation of being financial liability of the transferor-Bank which would travel and get transmitted to the transferee-Bank along with the properties and assets of the transferor-Bank which, as indicated in the Scheme, would vest in the transferee-Bank. Section 45(9), therefore, cannot render any assistance to the appellant-Bank. On a parity of reasoning, therefore, the terms "liabilities, duties and obligations" as employed in the second part of clause 2 of the Scheme will get colour from the scheme of Section 45(9) and have to be read down as referring to financial liabilities, obligations and duties pertaining to assets and properties a transmitted to and vested in the transferee-Bank to the extent provided in the Scheme. They will not take in their sweep any contractual obligations dehors such transmitted assets and properties of the transferor-Bank. This is made clear when we turn to the first part of clause 2 which has provided for the transmission of assets and rights of the transferor company to the transferee company under the Scheme. Therein a detailed provision is made even about transfer of office furniture, loose equipment, plant apparatus and appliances, books, papers, stocks of stationery, other stocks and stores etc. After cataloguing these assets for transmission to the transferee company the second part which is complementary to the first part also deals with the transmission of liabilities, duties and obligations of the transferor-Bank. Therefore, the words "liabilities, duties and obligations of transferor-Bank" would also necessarily have a nexus or connection with the assets and rights which are contemplated to be transferred to the transferee-Bank. The second part of clause 2 cannot be read independently of the first part and in isolation. If learned counsel for the appellant were right in their contention then second part of clause 2 would have been enacted separately as an independent clause. The second part of clause 2, therefore, cannot be held to be representing a contrary intention or provision of not undertaking the obligation of the transferor-Bank in connection with its contractual liability under 2(p) Settlement with the Union of its employees in connection with the topic of providing compassionate appointments to the heirs of its deceased employees.

12. That takes us to the consideration of sub-section (14) of Section 45 on which strong reliance was placed by learned Senior Counsel for the appellant. The said sub-section (14) reads as under :

> "45. (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."

A mere look at the said provision shows that before it can apply there must be a provision on a given topic either in any of the other clauses of Section 45 or any scheme framed thereunder and such a provision must be contrary to any other provision on the same topic as found in any other part of the Act or in any other law or award or instrument for the time being in force. Thus on the same topic there must be two contradictory provisions, one, on the one hand in the Scheme or any part of Section 45 and second, on the other hand on the same topic expressing an entirely different and contrary intention in any other part of the Act or in any law or any other award or instrument for the time being in force. The topic for consideration around which the controversy revolves in the present cases is the question of providing compassionate appointments to the eligible heirs of the deceased employees of transferor-Bank who died in harness and who claimed such appointments under the Settlement of 1982 from the transferee-Bank. On this topic or question there must be an express provision in the Scheme or a Section 45 of the Act and such express provision should be contrary to and different from the provision made on the same question and topic by any other part of the Act or in any other law, agreement, award or instrument for the time being in force. So far as this aspect is concerned learned counsel for the appellant pitched their faith only on the second part of clause 2 and clause 10 for submitting that there is such a contrary provision in the Scheme which would govern the present controversy. We have already seen that the second part of clause 2 does not reflect such a contrary provision.

13. So far as clause 10 is concerned it was submitted that it is a complete code in itself which deals with the topic of the service conditions of the erstwhile employees of the transferor-Bank and as clause 10 has not provided anything regarding the deceased employees of the transferor-Bank and about the rights and claims of their eligible heirs who could claim appointments on compassionate ground as their breadwinners had died in harness it can be said that by necessary implication clause 10 had excluded such a liability on the part of the transferee-Bank in discharging the obligations flowing from the 2(p) Settlement entered into by the transferor-Bank with its erstwhile Employees' Union and consequently Section 45 sub-section (14) of the Act can get attracted on the facts of the present case. It is not possible to agree with this contention. The reason is obvious. Clause 10 on its own wordings deals only with the existing ex-employees of the transferor-Bank who might be available for being continued in service of the transferee-Bank on the date of amalgamation. This clause has nothing to do with the deceased ex-employees of the transferor-Bank. Learned counsel for the appellant also agreed to this factual position as emerging from the express terms of clause 10. But it was submitted that by necessary implication it would mean that the deceased ex-employees of the transferor-Bank were not under contemplation nor were their heirs to be considered by the transferee-Bank for enabling such heirs of the deceased ex-employees of the transferor-Bank to have any claim against the transferee-Bank. We fail to appreciate how this contention can support the appellant's case under Section 45 sub-section (14) of the Act. Once it is held and must be held, on the express language of clause 10 which never even whispered about the deceased ex-employees of the transferor-Bank, that the topic regarding giving compassionate appointments to the heirs and legal representatives of the ex-employees of the transferor-Bank who might have died in harness during the time the transferor-Bank was operating is not covered by clause 10. In other words on this topic no provision is made in clause 10 of the Scheme either expressly or by necessary implication. Once that conclusion is reached sub-section (14) of Section 45 of the Act gets out of the picture. As observed earlier before sub-section (14) of Section 45 can

be pressed into service it must be shown that there is an express provision on a given topic of liability in the Scheme or in the section and such express provision should be irreconcilable with and be in express conflict or be repugnant to any contrary express provision found in any other instrument having the force of the law or in any part of the Act or any other law or award. In the present case we are concerned with the agreement under Section 2(p) of the ID Act a entered into in 1982 by the transferor-Bank with the Union of its employees and it is that agreement which provided for giving compassionate appointments to the heirs of the employees dying in harness. The aforesaid provision contained in the 2(p) Settlement is not in conflict with any other contrary express provision in the Scheme especially clause 10 thereof. In fact the entire Scheme is silent on this topic. It is obvious that a provision which is silent on a topic cannot be said to have laid down any intention contrary to the one as reflected by any other express provision contained in any other instrument or agreement. Repugnancy or conflict as contemplated by sub-section (14) of Section 45 can arise only when on the same topic there are two contradictory express provisions, one in the Scheme and another in the agreement. Then only the provision in the Scheme would override such contrary express provision in the agreement. As none of the clauses in the Scheme of Amalgamation could be pointed out by the learned counsel for the appellant for culling out such express conflict on the topic of compassionate appointments to be granted to the heirs of the deceased ex-employees of the transferor-Bank reliance placed by the learned counsel for the appellant on Section 45 sub-section (14) of the Act also cannot be of any assistance to them.

14. In this connection we must also have to keep in view the settled legal position that while construing any scheme in connection with the question of providing compassionate appointments to the heirs of deceased employee who was the breadwinner and whose exit had left his heirs in the lurch and in precarious and vulnerable economic position a construction which fructifies such a welfare measure has to be preferred as compared to another construction which stultifies such a benevolent welfare measure. In this connection learned Senior Counsel for the respondents was right when she relied upon a decision of this Court in the case of Workmen v. Binny Ltd. ((1985) 4 SCC 325 : 1986 SCC (L&S) 41). In that case a Bench of three learned Judges of this Court speaking through Khalid, J., had to consider the provisions of a Scheme of Amalgamation of companies concerned under the orders of the High Court. While interpreting the Scheme of Amalgamation which had an impact on the question of welfare of employees, the following observations were made in para 9 at p. 330 of the Report :

> "... it is a trite law that in matters of welfare legislation, especially involving labour, the terms of contracts and the provisions of law should be liberally construed in favour of the weak."

Keeping in view the aforesaid settled rule of construction when we consider the scope and ambit of clauses 2 and 10 of the Scheme we do not find anything provided therein which would of necessity contraindicate the foisting of liability and obligation on the transferee-Bank in connection with the contractual obligation undertaken by its predecessor-in-interest, namely, the transferor-Bank under the 2(p) Settlement of 1982 in connection with the question of providing compassionate appointment to the heirs of deceased breadwinner who might have died in harness.

15. Learned Senior Counsel for the appellant in support of his first contention invited our attention to a three-judge Bench decision of this Court in the case of Canara Bank v. M. S. Jasra ((1992) 2 SCC 484 : 1992 SCC (L&S) 590 : (1992) 20 ATC 266) for submitting that the schemes framed under the Act as per Section 45 of the Act must be given their full effect and they are comprehensive in nature. It must be kept in view that in the said decision this Court was not

concerned with the examination of the question whether the successor Bank, namely, the transferee-Bank under the Scheme of Amalgamation had undertaken the liabilities of the transferor-Bank or not. The question in that case was that when the liabilities of the transferor-Bank in connection with the service conditions of its existing employees were taken over by the transferee-Bank, would such taking over entitle the erstwhile employees of the transferor-Bank to claim better rights from the transferee-Bank than what they had already got by way of existing service conditions at the time of amalgamation. In that case Lakshmi Commercial Bank was amalgamated with Canara Bank. The erstwhile employees of the transferor-Bank claimed age of superannuation to be 60 years instead of 58 years which was the age of superannuation in the transferee-Bank, namely, the Canara Bank. Rejecting such a claim it was held by this Court that as laid down by subsection (5) of Section 45 the Scheme was to contain provisions in connection with the service conditions of the employees of the transferor-Bank as laid down therein and such a scheme so framed under sub-section (4), therefore, may contain provisions for all or any of the matters specified in sub-section (5) so that it enables all or any of the specified matters to be provided in the Scheme prepared under sub-section (4) and the matters specified in the several clauses in sub-section (5) do not automatically get incorporated in such Scheme unless the Scheme specifically includes any such matter. We fail to appreciate how the said decision can be of any assistance to the learned Senior Counsel for the appellant on the facts of the present case. If the Scheme deals with a topic and if it is comprehensive enough then it would rule out any contrary provision found elsewhere and express provision of the Scheme only has to be given effect to. In the facts of the present case, as seen earlier, neither clause 2 nor clause 10 of the Scheme represents any provision regarding compassionate appointments to be given to the heirs of the erstwhile deceased employees of the transferor-Bank. Hence there is no occasion for the said clauses of the Scheme to project any contrary express provision to override or to supersede the provisions contained in 2(p) Settlement which was binding on the transferor-Bank and which if binding on the transferee-Bank would remain operative to the extent benefit thereunder is available to the claimants concerned like the respondents herein. In the light of the relevant clauses of the Amalgamation Scheme, therefore, it is not possible to agree with the contention of the learned Senior Counsel for the appellant that no liability could be imposed on the appellant-Bank so far as the claim of the respondents for compassionate appointments was concerned. The first contention, therefore, stands rejected.

Contention No. 2

16. That takes us to the consideration of the second contention. It is true that the settlement under Section 2(p) of the ID Act was entered into not by the appellant-Bank but by the transferor-Bank with the Union of its erstwhile employees. They were outsiders so far as the transferee-Bank is concerned. Such 2(p) Settlement which was not arrived at during conciliation could not be binding on the successor or transferee management as Section 18 subsection (3) of the ID Act would not get attracted to such a settlement. There cannot be any dispute on this aspect. Further it cannot also be gainsaid that under Section 18 sub-section (1) of the ID Act such settlement was binding at least on the parties to the settlement, namely, ex-workmen of the transferor-Bank on the one hand and the management of the transferor-Bank on the other. That consequence squarely flows from Section 18 sub-section (1) of the ID Act which reads as under :

> "18. Persons on whom settlements and awards are binding. - (1) A settlement arrived at by agreement between the employer and workman otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement."

Till the time of amalgamation, therefore, the said settlement remained operative and binding on the

transferor-Bank being a party thereto. That was the situation on 19-6-1990, a day prior to the date on which the Scheme of Amalgamation saw the light of day, that is, w.e.f. 20-6-1990. Thus it was an operative contractual obligation of the transferor-Bank flowing from the settlement which had legal binding force qua it. The question is whether the binding effect of such a settlement could be visited on the transferee or successor bank, namely, the appellant. Section 18 sub-section (3) of the ID Act being out of the picture by itself the said settlement under Section 2(p) of the ID Act which was binding under Section 18(1) on the transferor-Bank could not have been pressed into service against the transferee-Bank which is the successor Bank and which was obviously not a party to the said settlement. However, it is Section 2 of the Act which becomes operative in such a situation. Section 2 reads as under :

> "2. Application of other laws not barred. - The provisions of this Act shall be in addition to, and not, save as hereinafter expressly provided, in derogation of the Companies Act, 1956, and any other law for the time being in force."

As clearly laid down therein the provisions of the Act will not be in derogation of the Companies Act, 1956 or any other law for the time being in force save and except as expressly provided to the contrary in the latter part of the Act. The latter part of the Act obviously brings in its sweep Section 45 and its various sub-sections. Therefore, if any of the provisions of Section 45 or its sub-sections had said anything expressly contrary in a connection with the binding effect, on the transferee-Bank, of erstwhile settlements entered into between the transferor-Bank on the one hand and its then existing employees through their Union on the other hand, the provisions of any other law for the time being in force which foisted such an obligation on the transferee-Bank would not remain operative and clicking. However, as seen earlier, no provision in the Act and especially in any of the clauses of Section 45 or even in any of the clauses of the Scheme of Amalgamation in the present case could be effectively pressed into service by the learned Senior Counsel for the appellant to cull out any express provision contraindicating the foisting of liability under the settlement arrived at under Section 2(p) of the ID Act by the transferor-Bank with its erstwhile employees on the topic of compassionate appointment. Hence Section 2 of the Act had its full operation. Once Section 2 applied it brought in its wake Section 19 of the Specific Relief Act, 1963 which obviously is a law in force. Section 19 provides for the relief against parties and persons claiming under them by subsequent title and lays down, "Except as otherwise provided by this Chapter, specific performance of a contract may be enforced against - (a) ...; (b) ...; (c) ...; (d) when a company has entered into a contract and subsequently becomes amalgamated with another company, the new company which arises out of the amalgamation". It, therefore, becomes clear that apart from Section 18 sub-section (3) of the ID Act the liability of the transferee-Bank to meet the contractual obligation of the transferor-Bank under the settlement binding under Section 18(1) of the ID Act would remain squarely attracted by virtue of Section 19(d) of the Specific Relief Act read with Section 2 of the Act. This is the view taken by the High Court in the impugned judgments which remains well sustained on the conjoint operation of the 2(p) Settlement of 1982, Section 2 of the Act and Section 19(d) of the Specific Relief Act. The said legal effect flowing from the aforesaid statutory provisions is not contraindicated by any express provisions in any part of the Act or in any part of Section 45 or for that matter in any of the clauses of the Scheme of Amalgamation. Consequently the appellant transferee-company which has emerged as an amalgamated company as a result of the amalgamation with the earlier company would be liable to meet the contractual obligations flowing from the settlement binding on the transferor-company and these contractual obligations which could have been specifically enforced against the transferor-company during the currency of the settlement under Section 2(p) read with Section 18(1) of the ID Act would get transmitted and foisted on the shoulders of the appellant transferee-company on the combined operation of Section

19(d) of the Specific Relief Act and Section 2 of the Act. The second contention, therefore, has to be answered in the negative, in favour of the respondents and against the appellant.

Contention No. 3

17. Now remains the consideration of the third contention. Learned counsel for the appellant were right when they contended that if the scheme for granting compassionate appointments as per the rules and regulations of the employer concerned expressly provides that such appointments can be granted to the heirs of its deceased employees dying in harness only if vacancies exist for absorbing them, then the compassionate appointments could be granted only against such vacancies and the Court cannot direct, by mandamus, to create vacancies for that purpose if there are none. In this connection they rightly invited our attention to a decision of this Court in the case of Hindustan Aeronautics Ltd. v. A. Radhika Thirumalai ((1996) 6 SCC 394 : 1996 SCC (L&S) 1427). However the said decision cannot be of any avail to the appellant on the facts of the present cases. The first reason is that it was not the contention of the appellant before the High Court, either before the learned Single Judge or in appeal or in the writ petitions, the decisions wherein are challenged by direct special leave petitions before us, that there are no vacancies with the appellant-Bank wherein the respondents could be fitted in. In fact the respondents are already employed in these vacancies. Consequently the ratio of the aforesaid decision cannot be applicable to the peculiar facts of these cases. The appellant had already rejected the claim of the respondents only on the plea that they had no legal right to claim compassionate appointments being outsiders and heirs of ex-employees of the transferor-Bank who could not claim any such appointments from the transferee-Bank. It was not the case of the appellant while rejecting their claims that there were no vacancies where they could be fitted even though they were eligible for such appointments. On these facts, therefore, the High Court was perfectly justified in issuing mandamus to the appellant-Bank once the main defence of the appellant was found to be unsustainable and which view of the High Court is approved by us as discussed while considering the aforesaid first two contentions. The second reason why the aforesaid decision cannot be of any avail to the appellant is that the appellant itself requested the High Court to decide the question of eligibility of the respondents on merits and it joined issue on this aspect before the High Court. In this connection our attention was invited by learned counsel for the appellant to para 17 of the impugned judgment of the Division Bench which reads as under :

> "17. In these matters, the applications of the writ petitioners have not been considered by the Bank and excepting in one case the learned Single Judge has directed such consideration of the applications by the Bank. We discussed the matter with the learned counsel on both sides and suggested that the eligibility of the writ petitioners can be decided here itself if all the relevant facts are placed before us, as otherwise there may be a fresh crop of writ petitions, if ultimately the appellant-Bank rejects the applications or some of them on other grounds of non-eligibility. Counsel agreed to this course and placed all the facts before Court. We will consider the same in each case."

Thus the Division Bench of the High Court was invited by the learned counsel for the appellant themselves to go into the question of merits of the eligibility of the respondents and once the High Court found that their claim was wrongly rejected by the appellant-Bank and especially when the appellant-Bank had not put forward the defence of non-availability of vacancies no fault could be found with the High Court when it issued mandamus to the appellant to grant appointments to the respondents concerned. Hence on the peculiar facts of this case the ratio of Hindustan Aeronautics ((1996) 6 SCC 394 : 1996 SCC (L&S) 1427) cannot be of any assistance to the appellant. The third

contention also, therefore, stands rejected.

18. As a result of the aforesaid discussion it must be held that the impugned decisions of the High Court are well sustained. The High Court was perfectly justified in granting reliefs to the respondents. No case is made out for our interference in these appeals. They therefore, fail and are dismissed. There will be no order as to costs in the facts and circumstances of the case.