

# SUPREME COURT OF INDIA

State Bank of India

Vs.

L. Kannaiah

C.A.Nos.3431 with 3432 of 2000

(S. Rajendra Babu and P. Venkatarama Reddi, JJ.)

19.08.2003

## JUDGEMENT

### **P. VENKATARAMA REDDI, J.:-**

1. The respondents in Civil Appeal No. 3431/2000 served in the Army as Sepoys and joined the service of State Bank of India (hereinafter referred to as the 'Bank') as Security Guards. The 2nd respondent (Abbas), who is no more and whose L.Rs. are on record, was appointed by the Bank on 22-8-1962. The 4th respondent (Marimuthu) was appointed on 8-9-1957 and the 5th respondent (Raju) was appointed on 1-9-1955. By that time, they were aged 37, 35 and 38 years respectively. The 2nd respondent rendered 22 years of service, the 4th respondent 24 years of service and the 5th respondent 22 years of service in the Bank, by the time they retired at the age of 60. There is no need to refer to the other two respondents (Respondent Nos. 1 and 3) as the first respondent has already got the relief during the pendency of the writ petition and the third respondent was denied relief by the High Court. They are unnecessarily shown as respondents. Though the S.L.P. was filed against 14 respondents who were writ petitioners, all excepting five, were deleted from the array of respondents subsequently. Hence this appeal is effective against three respondents only.

2. A writ petition under Article 226 of the Constitution was filed in the Madras High Court in the year 1986 seeking a direction to the Bank to admit them to the benefit of pension fund and to pay pension. The pension was denied to them on the ground that they exceeded the age limit of 35 years as on 1-1-1965. It may be stated here that the age limit was increased to 38 years later on and that is how some of the original writ petitioners got the relief. The prescription of the age limit of 35 years as well as the cut-off date of 1-1-1965 was questioned before the High Court. The learned single Judge of the High Court dismissed the writ petition. This led to the filing of writ appeal by the aggrieved employees. The Division Bench, by the impugned judgment dated 4-2-1998, set aside the order of the learned single Judge and allowed the appeal in part. The Division Bench of the High Court directed the Bank to admit appellant Nos. 3, 10, 11 and 13 to the pension fund with effect from April, 1983. That means, the respondents 2, 4 and 5 in this appeal, apart from one more person (whose name has been deleted from S.L.P. in view of non-compliance with Office Report) have got the relief from the High Court. Hence, this appeal by the Bank.

3. Civil Appeal No. 3432 of 2000 is in the nature of a cross-appeal filed by four persons who were appellant Nos. 4, 6, 12 and 14 in the writ appeal, to whom relief was denied by the High Court.

4. The State Bank of India Employees' Pension Fund came into existence on the 1st July, 1955. In exercise of the powers conferred by Section 50 of the State Bank of India Act (Act 23 of 1955) certain rules were framed governing the establishment and maintenance of the pension fund under the caption 'State Bank of India Employees' Pension Fund Rules'. Rules 7 and 8 are relevant for this case. They read as follows :

"7. Save as provided in Rule 8, every whole time permanent employee in the service of the Bank who is entitled to pension benefits under the terms and conditions of his service shall become a member of the fund from-

(a) the date from which he is confirmed in the service of the Bank or

(b) the date from which he may be required to become a member of the fund under the terms and conditions of his service.

8. Save as provided in Rule 25, no employee shall be eligible to become a member of the fund-

(a) if he is a member of the Imperial Bank of India Employees' Pension and Guarantee Fund or if he is engaged in any country outside India and appointed for service in such country;

(b) if he is below 21 years of age;

(c) if he is over 35 years of age or

(d) whose service is specially declared by the Bank to be non-pensionable."

5. It should be noted that the age limit under Clause (b) of Rule 8 was reduced to 18 years and the age limit under Clause (c) was increased to 38 years by means of amendments made during the pendency of the writ petition. The Bank issued circular, No. 68, dated 28th March, 1959 and another staff circular No. 69 (date not known) extending the pension fund benefits to certain excluded categories of employees. The ex-serviceman, except those drawing a nominal pension of Rs. 25 and below belonged to the excluded category. However, by means of staff circular No. 18 dated 8-4-1974, the Bank Management decided to admit all whole-time permanent employees to the benefits of the provident and pension funds subject to their respective service rules and the rules of the funds. Para 3 of the circular reads as follows :

"Consequently, all ex-servicemen hitherto classified under 'excluded category' may now be admitted to the benefits of the State Bank of India Employees' Provident and Pension Fund with effect from 1-1-1965 or from the date of their confirmation, whichever is later, irrespective of the nature and the quantum of military pension drawn by them.".....

6. Para 5 of the circular stipulated that the age limit (viz. not being over 35 years) for admission to pension fund shall continue. Thus the pensioned ex-service personnel were admitted to pensionary benefits with effect from 1-1-1965 subject to the restriction of the age limit of 35 years (which was later on enhanced to 38 years) on that date. As the date of confirmation of the respondents was much earlier to 1-1-1986, the crucial date for admission to the pension fund would be 1-1-1965. On that date, the confirmed employee of the Bank should not have exceeded 35 years of age. That is the combined effect of the staff circular No. 18 dated 8-4-1974 read with the Pension Fund Rules referred to supra. The reason for prescribing the maximum age limit of 35 or 38, as the case may be, for the purpose of induction into pension fund appears to be that the employee would be able to render minimum service of 20 years as contemplated by Rule 22 of the Pension Fund Rules. However, there does not appear to be any rationale or discernible basis for fixing the cut-off date as 1-1-1965, notwithstanding their earlier confirmation in Bank service. True, a new benefit has been conferred on the ex-servicemen and therefore a cut-off date could be fixed for extending this new benefit, without offending the ratio of the decision in D.S. Nakara and Ors. v. Union of India, AIR 1983 SC 130; but, there could be no arbitrariness or irrationality in fixing such date. Minimum qualifying service being the essential consideration, even according to the Bank, there is no reason why the ex-servicemen like the respondents, who from the date of their confirmation had put in

more than twenty years of service, even taking the retirement age as 58, should be excluded. No reason is forthcoming in the counter-affidavit filed by the Bank for choosing the said date. When it is decided to extend the pensionary benefits to ex servicemen drawing pension, the denial of the benefit to some of the serving employees should be based on rational and intelligible criterion. In substance, that is the view taken by the High Court and we see no reason to differ with that view.

7. Civil Appeal No. 3431/2000 is therefore dismissed. No costs.

8. Coming to the appeal filed by four writ petitioners who were unsuccessful in the High Court, as far as appellants 1 and 2 (petitioners/appellants 4 and 6 in the High Court) are concerned, relief was denied to them on the ground of their total service in the State Bank of India being less than 20 years when they retired at the age of 60. A contention has been raised for the first time in the S.L.P. that the service rendered by them in the Army should be clubbed with their service in the Bank for the purpose of pension. The circular issued by the Government of India, Ministry of Finance (Banking Division) on 28-1-1983 has been relied upon. However, there is nothing in the circular which obligates the Managements of the Banks to add the military service to the service rendered in the Bank for the purpose of pension. Such benefit was directed to be given only in regard to sanction of loans and for the purpose of promotion in a limited way. Therefore, the contention of the said two appellants has no merit.

9. As regards the appellants 3 and 4 (who are no more and whose L.Rs. are brought on record), they joined the service of Imperial Bank of India on 8-3-1950 and 1-1-1955 respectively. On formation of the State Bank of India, they were absorbed in the service of State Bank of India along with the other staff of the erstwhile Imperial Bank of India with effect from 1-7-1955. Reckoning from that date, they rendered service of 24 years by the time they retired in the year 1980 at the age of 60. The 4th appellant would have been confirmed as Security Guard only after he joined the State Bank of India on transfer because he had hardly put in six months of service in Imperial Bank. In the counter-affidavit filed in the High Court, the deponent (Personnel Manager of the Bank) specifically stated that pensioned Sepoys were excluded from the Imperial Bank of India Pension and Guarantee Fund Rules. Therefore, the bar under Rule 8 (a) of the Rules quoted above does not apply to these two appellants. If so, when the ex-servicemen were taken out of excluded category by virtue of the Circular dated 8-4-1974 and they became eligible to be admitted to the benefits of the SBI Employees' Provident and Pension Fund, it would be travesty of justice if the pension is denied to appellants 3 and 4 merely because they were originally employed by Imperial Bank of India. They should not be driven to a situation in which they would be disabled from availing of the benefits either under the Imperial Bank Pension Fund or the SBI Pension Fund. In fact, nothing is stated in the counter-affidavit filed by the Bank in the High Court as to why they should be denied the benefit of pension in the State Bank of India. The observation of the High Court that they are not entitled for pension "as they were not the employees of the State Bank of India originally as they had joined the service of the Imperial Bank of India prior to 1-7-1955" cannot therefore be sustained. The High Court ought not to have rejected their plea without reference to the relevant facts. We therefore direct that the pension and the other pensionary benefits shall be paid over to the legal representatives of appellants 3 and 4 expeditiously by treating them as members of Pension Fund

from the date on which other employees of Bank are normally admitted.

10. Civil Appeal No. 3432 of 2000 is thus allowed in part. No costs.

Order accordingly.