SUPREME COURT OF INDIA

Central Bank of India

Vs.

Madan Chandra Brahma

(K.G. Balakrishnan and P.K. Balasubramanyan JJ.)

C.A.No.5786 of 2000

22.08.2007

JUDGMENT

P.K. BALASUBRAMANYAN, J.

1. On 9.6.1969, Respondent No. 1 was appointed temporarily as an Assistant in Gauhati Bank. On 19.7.1969, the Central Bank (hereinafter referred to as "the appellant Bank") along with other banks was nationalized.

As per the relevant Regulation, the age of superannuation was fixed as 58 years in all Nationalized Banks including the appellant Bank. On 1.8.1975, the Gauhati Bank was merged with the Purbanchal Bank. The Scheme of Amalgamation between the Gauhati Bank and the Purbanchal Bank was not brought on record. Suffice it to say, that the age of superannuation in the Purbanchal Bank was also 58 years. Respondent No. 1, who had meanwhile been confirmed in the Gauhati Bank, had been promoted on 1.7.1975 as an officer in that Bank. On amalgamation, respondent No. 1 thus became an officer of the Purbanchal Bank with effect from 1.8.1975, the age of superannuation being 58 years.

2. On 29.8.1990, the Purbanchal Bank merged with the appellant Bank under a Scheme of Amalgamation under the Banking Regulation Act, 1949. The Appellant Bank was to frame Regulations with a view to bring the employees of Purbanchal Bank on a par with those of the Appellant Bank. On 6.5.1991, the appellant Bank, in terms of clause 11 of the Scheme of Amalgamation, fixed the pay and other service conditions of officers and employees of the erstwhile Purbanchal Bank and made the Central Bank of India Service Regulations 1991 applicable to them with effect from 1.4.1991. Respondent No. 1, whose date of birth had been recorded as 1.8.1934, was to attain the age of 58 years by 31.7.1992. On 17.7.1992, the appellant Bank informed respondent No. 1 that he would be reaching the age of superannuation on 1.8.1992.

Respondent No. 1 by his reply dated 23.7.1992, sought to dispute his date of birth. That apart, he also claimed that he would retire not on attaining the age of 58 years but only on the attaining the age of 60 years, as per Regulation 19 of the Service Regulations 1979 on the basis that his original appointment in the Gauhati Bank was on 9.6.1969 and hence he was entitled to continue in service of the appellant Bank, till he attained the age of 60 years. The appellant Bank did not accept this stand of respondent No.

1 and retired him on his attaining the age of 58 years.

3. Respondent No. 1 approached the High Court challenging his being retired on attaining the age of 58 years and, of course, also raising an issue about his date of birth. The learned single judge held that there was no merit in the challenge to the date of birth recorded in the records of the Bank. He further held that respondent No. 1 was entitled to continue in service only till he attained the age of 58 years in the face of the Regulations. The learned single judge, hence, dismissed the Writ Petition.

Respondent No. 1 filed an appeal. The Division Bench of the High Court held that even though the age of superannuation in the entry Bank, the Gauhati Bank, was 58 years and continued to be so until its amalgamation with the Purbanchal Bank and the age of retirement in the Purbanchal Bank was also 58 years, since Respondent No.

1 must be deemed to be an employee of the Central Bank right from the inception, he was entitled to continue in service until he attained the age of 60 years. It was reasoned that respondent No. 1 must be taken to be an officer recruited in the appellant Bank prior to 19.7.1969 but promoted as an officer on or after 19.7.1969 in terms of the Regulations of the appellant Bank and entitled to continue till he attained the age of 60 years. Thus, setting aside the decision of the learned Single Judge, the Division Bench of the High Court allowed the Writ Petition and taking note of the fact that respondent No. 1 had attained the age of 60 years as on the date of the judgment, directed the appellant Bank to pay within the time fixed by that court, all the arrears of salary and other allowances as admissible to respondent No. 1, if he were allowed to continue in service up to the age of 60 years.

4. Feeling aggrieved by this decision, the appellant Bank along with its officers has filed this appeal. The Union of India has been impleaded as Respondent No. 2.

5. Regulation 19 of the Central Bank of India (Officers) Service Regulations, 1979 to the extent it is relevant reads:

"(1) Rules for age of retirement The age of retirement of an officer in the Bank on or after the appointed date be determined as under-

1.1 An officer employee of the Bank recruited/promoted prior to 19th July, 1969 shall retire on completion of 60 years of age.

1.2 An Officer employee of the Bank recruited prior to 19th July, 1969 but promoted as an officer on or after 19th July, 1969 shall retire on completion of 60 years of age.

1.3 An officer employee of the Bank recruited whether as an Award Staff or as an officer employee on or after 19th July, 1969 shall retire on completion of 58 years of age"

Whereas the case of the appellant Bank is that clause

1.3 of Regulation 19 is attracted since respondent No. 1 became an employee of the Bank only after 19.7.1969 and must be taken to be an employee recruited after 19.7.1969, the claim of respondent No.1 is that, since he was recruited to the Gauhati Bank prior to 19.7.1969 and promoted as an officer after 19.7.1969 in the Gauhati Bank, he must be taken to have been recruited to the appellant Bank prior to 19.7.1969 and was entitled to continue in service till he attained the age of 60 years in terms of clause 1.2 of the Regulation. While the learned single judge held that clause

1.3 would apply, the Division Bench has taken the view that clause 1.2 of the Regulation 19 would

apply.

6. On a plain understanding of the factual situation, it appears to us that respondent No. 1 could be taken to have become an officer of the appellant Bank only on the amalgamation of the Purbanchal Bank with the appellant Bank. Admittedly, that was on 29.8.1990, well after 19.7.1969. Strictly speaking, respondent No. 1 was not recruited in the appellant Bank, if we literally construe the expression 'recruited' occurring in the Regulation. But obviously the expression includes those who have become officers of the appellant Bank by way of amalgamation or merger. Here, the merger took place only on 29.8.1990, long after 19.7.1969. In this situation, it is clear that respondent No. 1 could be deemed to have been recruited to the service of the appellant Bank only after 19.7.1969. If so, it would be clause 1.3 of Regulation 19 that would apply and not clause 1.2 of that Regulation. We may also notice that there is nothing inequitable or unjust in the result thus reached, since the age of superannuation insofar as respondent No. 1 and those similarly situated were concerned, was 58 years both in Gauhati Bank, the entry Bank and the Purbanchal Bank with which the Gauhati Bank merged on 1.8.1975.

Jasra & Ors., 1992 (2) SCR 68) relied on was a case where an employee of Lakshmi Commercial Bank, which came to be amalgamated with Canara Bank, claimed that he was entitled to continue in service of the Canara Bank until he attained the age of 60 years, since that was the age of superannuation in the Lakshmi Commercial Bank of which he was the employee, prior to its amalgamation. His claim was rejected by the Canara Bank and he challenged that decision in a writ petition in the High Court. The High Court allowed the Writ Petition and held that the employee was entitled to continue until he attained the age of 60 years. It was contended on behalf of the Canara Bank that on the basis of Section 45 of the Banking Regulation Act, 1949 and the consequent amalgamation of Lakshmi Commercial Bank with Canara Bank, the service conditions under Lakshmi Commercial Bank would not be available to the employee; and that the terms and conditions of service applicable to employees of corresponding rank and status in Canara Bank would only apply. This Court upheld the contention of the Canara Bank and held that the employee became an employee of Canara Bank and was, therefore, entitled only to the right given by proviso (ii) to clause (i) of sub-section (5) of Section 45 of the Banking Regulation Act, 1949 which entitled him to the same terms and conditions of service as employees of the corresponding rank or status in Canara Bank. Age of superannuation of the employees in Canara Bank being 58 years only, the employee could not claim to retire at the age of 60 years. In the case on hand, the age of superannuation both in the Gauhati Bank and the Purbanchal Bank, which subsequently got amalgamated with the appellant Bank, was only 58 years.

The notification sanctioning the amalgamation under Section 45(7) of the Banking Regulation Act is dated 29.8.1990. Clause 10 provides that employees like the respondent are deemed to have been appointed by the appellant Bank on the same terms and conditions of service as were applicable to them before the close of business on 14.7.1990. They were to be granted the same pay as employees of the appellant Bank, were to hold office on the same terms and conditions of service that are applicable to the employees of the appellant Bank. The communication from the central office dated 6.5.1991 relating to pay and other conditions of service of such officers, by paragraph 6, has elaborately provided for the reckoning of their prior services in the Purbanchal Bank on matters specified herein. It does not contemplate the treating of the employee as having joined the appellant Bank on the day the employee joined the Purbanchal Bank.

Thus, the scheme adopted, worked and accepted by all, does not provide for treating such an employee as having entered the service of the appellant Bank even prior to the amalgamation,

except for the purposes specified. If at all, the Pay and other service conditions of officers of the erstwhile Purbanchal Bank Limited dated 6.5.91 gives an indication, it is that the original date of appointment has relevance only for purposes such as provident fund, gratuity, for sanction of loans, etc. It has to be noticed that in the matter of placement in the appellant bank, the service of one and a half years in the Purbanchal Bank has to be treated as service for one year only in the appellant bank. That resolution heavily relied on by the Division Bench of the High Court only provides that officers like Respondent No.1 would be governed by the Central Bank of India (Officers) Service Regulations, 1979 with effect from 1.4.1999. The fact that the regulation had been made applicable, would not mean that such officers must be taken to have been recruited from the date of their entry in the Purbanchal Bank. The applicability of the Regulations with effect from 1.4.1991 is subject to exceptions provided thereunder. It is in that context that the non-reckoning of service for one year in Purbanchal Bank as equivalent to service of one year in the appellant bank assumes significance. In this situation, while applying Regulation 19, it is not possible to uphold the plea that the respondent should be taken to have been recruited to the appellant bank prior to 19.7.1969 so as to attract paragraph 1.2 thereof. The right to be treated on a par with the employees of the appellant Bank is one thing, but the right to insist that the employee must be deemed to have become an employee of the appellant Bank even before the amalgamation is another. It may be noted that clause (i) of sub-section (5) of Section 45 of the Banking Regulation Act, 1949 has only provided that an employee, such as the respondent, had the right to get the same remuneration and to have the same terms and conditions of service which they were getting or by which they were being governed immediately before the date of the order of moratorium.

The right to be treated on a par with the employees of the appellant Bank cannot extend to a right to be treated as having entered the service of the appellant Bank even before the very amalgamation. The decision referred to above also shows that it is the age of superannuation in the transferee Bank that would govern and the age of superannuation in the transferee Bank subsequent to 19.7.1969, is only 58 years.

8. As we have noticed earlier, the age of superannuation, when respondent No. 1 joined service in the Gauhati Bank was 58 years and when that Bank merged with the Purbanchal Bank, it continued to be 58 years. As far as we can see, there is nothing in the Regulations or the Resolution which would enable respondent No. 1 to claim that he was entitled to continue until the age of 60 years when the age of superannuation of even an officer originally recruited to the appellant Bank after 19.7.1969 was only 58 years. Even though, respondent No. 1 may carry his date of appointment in Gauhati Bank for the purpose of service benefits to the extent specified, the same does not extend to supporting a claim that he must be deemed to have been recruited in the Central Bank prior to 19.7.1969. We are, therefore, of the view that the High Court was in error in holding that respondent No. 1 was entitled to continue in service in the appellant Bank till he attained the age of 60 years and was entitled to monetary benefits on that basis. On a plain reading of Regulation 19 in the context of the materials available, we are satisfied that respondent No. 1 was bound to retire on attaining the age of 58 years. The learned single judge was, therefore, justified in dismissing the Writ Petition. The Division Bench was not justified in allowing it.

9. We may notice here that in B.S. Yadav and another vs. Chief Manager, Central Bank of India and others (1987 (3) SCC 120) this Court upheld the rule providing for different retirement ages for the employees recruited by the Central Bank before its nationalization and for those recruited to the Bank after its nationalization.

The age of superannuation of the former was 60 years and of the latter only 58 years. When this is

the position and the date of retirement is 58 years after nationalization of the bank we find no reason to hold that those who came to the bank after nationalization by way of amalgamation should stand on a better footing than the employees recruited to the Central Bank itself after nationalization.

10. Having held on law that the respondent is not entitled to the relief claimed by him, we feel that some compensation should be directed to be paid to him, in the circumstances, in exercise of our jurisdiction under Article 142 of the Constitution of India. The respondent, we notice, was fighting on a question of interpretation of the Regulation of the appellant bank and has remained in court for a considerable time. Taking note of the divergence in the views of the High Court, our conclusion and the circumstances of the case, we feel that it would be appropriate to direct the appellant to pay a sum of Rs.1 lakh to the respondent ex gratia. We clarify that the direction is not intended to be a precedent in any manner.

11. We, therefore, allow this appeal and setting aside the decision of the High Court dismiss the Writ Petition filed by respondent No. 1 in the High Court. We direct the appellant to pay a sum of Rs.1 lakh to Respondent No.1 ex gratia within three months from today. In the circumstances, we direct the parties to suffer their costs here and in the High Court.