

A YASHWANT SINGH KOTHARI ETC. ETC.

v.

STATE BANK OF INDORE AND ORS.

JANUARY 14, 1993

B [A.M. AHMADI AND M.M. PUNCHHI, JJ.]

State Bank of India (Subsidiary Banks) Act, 1959/State Bank of Indore (Officers) Service Regulations, 1979:

C *Sections 11(1) and 63/Regulation 19—Transfer of services of employees of existing banks—Age of retirement—Fixing retirement of officers after completion of 30 years service—Whether arbitrary—Whether an exercise of excessive delegation—Differentiation between nationalised banks and subsidiary banks—Whether discriminatory—Whether regulation applicable to existing employees.*

D *Constitution of India, 1950:*

Articles 14 and 16—Age of retirement—Differentiation between officers of subsidiary banks and nationalised banks—Whether discriminatory—Regulation 19 of State Bank of Indore Officers Service Regulations, 1979
E *providing for retirement on completion of 30 years service—Whether valid.*

Words and Phrases—"Tenure"—Meaning of.

The appellants, employees of the first respondent-Bank, who were initially in the employment of a Limited Bank, which ceased to exist with effect from 1.1.1960 and became a subsidiary bank in the wake of State Bank of India (Subsidiary Bank) Act, 1959, were made to retire before attaining the age of 58 years on different dates, but upon completing 30 years of actual service, in exercise of powers under Regulation 19(1) of the State Bank of Indore (Officers) Service Regulations, 1979. The Writ Petitions filed by the appellants challenging their retirement on the basis of the Regulations were dismissed by the High Court.
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In the appeals before this Court on behalf of the appellants, it was contended that their retirement age of 58 years was statutorily protected under Section 11(1) of the Act as a 'tenure' and since there existed no provision in the Act for retiring an officer on completion of 30 years of
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service, the Regulation providing so, was an exercise of excessive delegation of legislative powers, and was violative of Article 14 of the Constitution, that the Regulations which were the progeny of Section 63(1) of the Act, could in no event, be inconsistent with the Act and the Rules made thereunder, that since the date of superannuation was fixed at 58 years for employees/officers who could claim protection of Section 11, Regulation 19 providing another alternative for effecting retirement upon the completion of 30 years of service, even though 58 years had not been attained, subject to its occurring first, was an onslaught on that statutory protection, that on the plain language of Section 11 of the Act, the security of 'tenure' protected in the first part of the provision was not liable to change as the word 'tenure' was significantly missing in the later part whereunder change is postulated, and therefore, 'tenure' of service could in no event be altered by any change, revision or alteration by the corresponding new bank, that Regulation 19 could not apply in the case of the appellants as existing officers, and that when retirement age at 58 was the consistent policy for public employment, its curtailment by the alternative of 30 years service, if happening earlier, was discriminatory and violative of Articles 14 and 16 of the Constitution.

Dismissing the appeals, this Court,

HELD : 1.1. What is protected under Section 11(1) of the State Bank of India (Subsidiary Banks) Act, 1959 is the right of the employee of the corresponding new bank to hold office or service therein on the same tenure, at the same remuneration and upon the same terms and conditions and with the same rights and privileges as to bonus, gratuity and other matters, as he would have held the same on the appointed day, if the undertaking of the existing bank had not been transferred to and vested in the corresponding new bank. That state of affairs is to last unless and until the services of the employee in that bank are terminated or until his removal, or other terms and conditions of service are revised or altered by the corresponding new bank under, or in pursuance of any law, or in accordance with any provision which, for the time being, governs his service. [215C-D]

1.2. The legislature in enacting Section 11(1) of the Act cannot be attributed the fault of tautology to have used the word 'tenure' as explanatory of the expression 'terms and conditions of service' or inclusive

A of it. Even if it is assumed that there was total protection of fixed tenure offices or services, unalterable under the second part of the provision, fixation of age of superannuation cannot be said to fix a tenure of office or service. [215G-H, 216A]

B 1.3. In the instant case, the appellants have nowhere ever set up a case that they hold tenure posts or their services were tenurial, or have pleaded that they had any fixity of tenure of a specified duration laid down in their contract of service. Rather, throughout they have claimed to have joined service in the lower rungs of the banking service and to have risen to the posts of officers by the time they were asked to retire. Therefore, C providing for the date of retirement is not to fix a 'tenure' as retirement, as ordinary incidence of service. [215F]

D 1.4. In service jurisprudence the word 'tenure' has acquired a legal sense or connotation which may mean a fixed term during which an office is held. [215E]

E 1.5. The purpose of the Act, as spelt out from the Preamble of the Act, is to provide for formation of subsidiary banks for the State Bank of India and for the Constitution, management and control of subsidiary banks so formed and for matters connected therewith or incidental thereto. Section 63 empowers the State Bank of India to frame Regulations for the purpose of giving effect to the provisions of the Act. One such purpose is to lay down conditions and limitations subject to which the subsidiary banks may appoint officers, advisers and other employees and fix their remuneration and other terms and conditions of service. Co-relating the enabling provisions under Section 63 and Regulation 19 framed thereunder, the terms and conditions so laid thereunder would definitely go to alter or revise the conditions of service of the existing officers as contemplated in the second part of Section 11. The manner in which such power is exercised is nowhere arbitrary because the State Bank of India is hedged on the one side to seek approval of the Reserve Bank of India and the Act and the Rules made thereunder on the other, when making Regulations in respect of the subsidiary banks. The policy of providing a retirement rule such as one in Regulation 19, is reflective of a policy and it is uniform for all employees existing and joining in future, for all subsidiary banks uniformly. Conditions of service under Section 11 were protected G till revised or altered in accordance with law. It cannot, therefore, be held H

that Regulation 19 cannot apply in the case of appellants, as existing officers. [216C-F, B] A

1.6. It is not correct to say that the Regulations are *ultra vires* the Act, being exercise of excessive delegation. The power to frame Regulations is vested not in the executive government but in a nationalised bank, the State Bank of India, which has to work out the policy of retirement uniformly to sub-serve the interests of the subsidiary banks. The so-called protection in Section 11 is not absolute but conditional to change by the same intendment of the legislature. The provision in the Regulation in question for maintaining the age of retirement of 58 years as before but in the same breath permitting retirement on the completion of 30 years of service, whichever occurs earlier, is in keeping with the policy of reckoning a stated number of years of office attaining the crest, whereafter inevitably is the descent, justifying retirement. In this context 30 years period of active service is not a small period for gainful employment, or an arbitrary exercise to withhold the right to hold an office beyond 30 years, having not attained 58 years of age. [216G, 217C] B C D

K. Nagaraj and Ors. etc. etc. v. Chief Secretary of Andhra Pradesh, A.I.R. 1985 S.C. 551, relied on.

2. The bank nationalisation and creation of subsidiary banks of the nationalised banks have a history of their own. The employees of the two are rationally differentiated on the basis of policy. The employees of the subsidiary banks cannot claim equation with the employees of the nationalised banks to be retiring at the age of 58 years, on the basis that the employees of the nationalised banks are not retirable on completion of 30 years of service. [218B] E F

B.S. Yadav & Anr. v. The Chief Manager, Central Bank of India & Ors., A.I.R. 1987 S.C. 1706, distinguished.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 127 of 1993. G

From the Judgment and Order dated 17.1.89 of the Madhya Pradesh High Court in M.P. No. 1187 of 1985.

WITH H

A Civil Appeal No. 128 of 1993.

WITH

Civil Appeal No. 129 of 1993.

B M.C. Bhandare, S.K. Jain and Ms. Pratibha Jain for the Appellants.

A.K. Sanghi, A.V. Rangam and A. Ranganadhan for the Respondents.

The Judgment of the Court was delivered by

C PUNCHHI, J. Special leave granted in these three connected petitions.

D Each appellant in these appeals was an employee of the State bank of Indore (a subsidiary bank of the State Bank of India), the first respondent in these appeals. They were initially in the employment of the Bank of Indore Limited which ceased to exist with effect from 1.1.1960 and became a subsidiary bank known as the State Bank of Indore, in the wake of the State Bank of India (Subsidiary Banks) Act, 1959 (hereafter referred to as the "Act"). The existing employees of the kind of the appellants claimed to have certain service rights protected under section 11 of the aforesaid Act inclusive of the right to continue till the age of 58 years. They were however made to retire before attaining the age of 58 years on different dates, but upon completing 30 years of actual service. The subsidiary bank claims to have exercised powers under Regulation 19(1) of the State Bank of Indore (officers) Service Regulations, 1979 (hereafter referred to as the "Regulations"), in taking such steps.

G The respective appellants moved the High Court of Madhya Pradesh under Article 226 of the Constitution claiming *inter alia* that Regulation 19 could not be invoked in their cases and, if it all it could, then that was *ultra vires* and in exercise of excessive delegation of legislative powers made over to the State Bank of India under section 63 of the Act. The High Court by a common judgment dated 17-1-1989 dismissed the writ petitions of the appellants being Miscellaneous Petition No. 1187 of 1985, Miscellaneous Petition No. 3532 of 1988 and Miscellaneous Petition No. 3197 of 1986, respectively. While these were put to challenge, it was felt by this Court on H 26.2.1992 that the State Bank of India, though originally not a respondent

before the High Court, should be added as a party since the impugned Regulation 19 had been framed by the Central Board of Directors of the State Bank of India under the powers conferred on it by Section 63 of the Act. Notice accordingly was given to the State Bank of India and apparently its stance is supportive of the impugned Regulation.

When the Act came into force on 1.1.1960 and the subsidiary bank, the State Bank of Indore, came into existence, the age of superannuation of its employees was clearly 58 years. The Regulations came into force on October 1, 1979, almost 19 years later. The field pre-existing was governed by office circulars and departmental practices besides section 11(1) of the Act, which provided as follows:

TRANSFER OF SERVICES OF EMPLOYEES OF EXISTING BANKS:

"Save as otherwise provided in this Act, every employee of an existing Bank in the employment of that bank immediately before the appointed day, shall, on and from that day, become an employee of the corresponding new bank and shall hold his office or service therein by the same tenure at the same remuneration and upon the same terms and conditions and with the same rights and privileges as to pension, gratuity and other matters as he would have held the same on the appointed day, if the undertaking of the existing bank had not been transferred to and vested in the corresponding new bank and shall continue to do so *unless and until his employment in that bank is terminated or until his remuneration or other terms and conditions of service are revised or altered by the corresponding new bank under, or in pursuance of any law, or in accordance with any provision which, for the time being governs, his service.*"

(emphasis ours).

And then Regulation 19(1), in so far as is relevant, provides as follows:

"AGE OF RETIREMENT – 19(1):

An officer shall retire from the service of the Bank of attaining the age of fifty-eight years of upon the completion of thirty

A years service, whichever occurs first:

Provided further that the competent authority may, at its discretion, extend the period of service of an officer who has attained the age of fifty-eight years or has completed thirty years service as the case may be, should such extension be deemed desirable in the interest of the Bank."

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The thrust of the claim of the appellants was and is that their retirement age of 58 years was statutorily protected under section 11(1) as a "tenure" and since there existed no provision in the Act for retiring an officer on completion of 30 years of services, the Regulation providing so, is an exercise of excessive delegation of legislative powers. To put it differently, it is suggested that the measure is a violent transgression on the security of tenure statutorily protected and was violative of Article 14 of the Constitution.

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The Regulations are the progeny of Section 63(1) of the Act which empowers the State Bank of India to make Regulations in respect of subsidiary banks with the approval of the Reserve Bank of India. Those Regulations can in no event be inconsistent with the Act and the Rules made thereunder, and may provide for all matters for which provision is necessary and expedient for the purpose of giving effect to the provision of the Act. Clause (m) of sub-section (2) of Section 63 provides that in particular and without prejudice to the generalities of the power under sub-section (1), such Regulations may provide for the conditions and limitations subject to which the subsidiary bank may appoint officers, advisers and other employees and fix their remuneration and other terms and conditions of service. As is plain from the reading of Section 11(1) of the Act, while protection of existing terms and conditions of service is guaranteed under Section 11, that protection lasts so long as those terms and conditions are not revised or altered under, or in pursuance of any law, or in accordance with any provision, which governed the service. Since the age of superannuation was fixed at 58 years for employees/officers who could claim protection of section 11, Regulation 19 providing another alternative for effecting retirement upon the completion of 30 years of service, even though 58 years had not been attained, subject to its occurring first, was said to be an onslaught on that statutory protection, if the Regulation was taken to apply to the service conditions of the existing

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officers. But in case it was meant to apply prospectively and not to the existing officers, the appellants have no grievance. Secondly it was asserted that on the plain language of Section 11 of the Act, the security of "tenure" protected in the first part of the provision was not liable to change as the word "tenure" was significantly missing in the later part whereunder change is postulated. On that basis it was suggested that "tenure" of service could in no event be altered by any change, revision or alteration by the corresponding new bank.

Now let us examine the second argument first. What is protected under section 11(1) on the employee of the corresponding new bank is his right to hold office or service therein on the same tenure at the same remuneration and upon the same terms and conditions and with the same rights and privileges as to bonus, gratuity and other matters, as he would have held the same on the appointed day, if the undertaking of the existing bank had not been transferred to and vested in the corresponding new bank. That state of affairs is to last unless and until the services of the employee in that bank are terminated or until his removal, or other terms and conditions of service are revised or altered by the corresponding new bank under, or in pursuance of any law, or in accordance with any provision which, for the time being, governs his service. If holding of office or service by the same "tenure" is unalterable as excludingly urged on behalf of the appellants by Mr. Murli Bhandare, Sr. Advocate, then on testing we find no basis for the same. No-where have the appellants in their respective special leave petitions or writ petitions annexed thereto ever asserted that they hold "tenure" posts or their services were tenorial. In service jurisprudence the word "tenure" has acquired a legal sense or connotation which may mean a fixed term during which an office is held. The appellants have nowhere ever set up such a case before the High Court or to have pleaded that they had any fixity of tenure of a specified duration, laid down in their contract of service. Rather the appellants throughout have claimed to have joined service in the lower rungs of the banking service and to have risen to the posts of officers by the time they were asked to retire. There is thus no room for the argument that providing for the date of retirement was to fix a "tenure" as retirement as ordinary incidence of service. The legislature in enacting Section 11(1) of the Act cannot be attributed the fault of tautology to have used the word "tenure" as explanatory of the expression "terms and conditions of service" or inclusive of it; this far we may go with the appellants. Even if we go that long to say that there was total protection of fixed tenure offices or services, unalterable

A under the second part of the provision, the appellants gain nothing, for they have not laid the necessary foundation for that claim ever. Therefore we are of the view that there is no substance in the argument that fixation of age of superannuation is to fix a tenure of office or service. The argument thus fails.

B The other argument of the appellants that Regulation 19 cannot apply to the case of the appellants as existing officers is also of no merit because, as is plain, conditions of service under section 11 were protected till revised or altered in accordance with law. The purpose of the Act, as spelled out from the preamble of the Act, is to provide for formation of subsidiary banks for the State Bank of India and for the constitution, management and control of subsidiary banks so formed and for matters connected therewith or incidental thereto. Section 63, as has been noticed earlier, empowers the State Bank of India to frame Regulations for the purpose of giving effect to the provisions of the Act. One such purpose is to lay down conditions and limitations subject to which the subsidiary banks may appoint officers, advisers and other employees and fix their remuneration and other terms and conditions of service. Co-relating the enabling provisions under section 63 and Regulation 19 framed thereunder, the terms and conditions so laid thereunder would definitely go to alter or revise the conditions of service of the existing officers as contemplated in the second part of Section 11. The manner in which such power is exercised is nowhere arbitrary because the State Bank of India is hedged on the one side to seek approval of the Reserve Bank of India and the Act and the Rules made thereunder on the other, when making Regulations in respect of the subsidiary banks. The policy of providing a retirement rule such as one in Regulation 19, is reflective of a policy and it is uniform for all employees existing and joining in future, for all subsidiary banks uniformly.

G The third submission about the Regulations being *ultra vires* the Act, being exercise of excessive delegation too is of no substance when viewed in the scheme of things. As observed earlier, the power to frame Regulations is vested not in the executive government but in a nationalised bank, the State Bank of India, which has to work out the policy of retirement uniformly to sub-serve the interests of the subsidiary banks. The so called protection in Section 11 is not absolute but conditional to change by the same intendment of the legislature.

H In *K. Nagaraj and others etc. etc. v. Chief Secretary of Andhra Pradesh*,

AIR 1985 SC 551 this Court repelled a challenge to the reduction of retirement age from 58 to 55 on the basis of the policy of the Government, which was found not to be irrational or violating recognised norms of employment plan. It was also noticed that not to provide for an age of retirement at all would be contrary to public interest because the State cannot afford the luxury of allowing its employee to continue in service after they have passed the point of peak and that rules of retirement do not take away the right of a member to his livelihood, the only limit is to the right to hold office till the stated number of years. The provision in the Regulation in hand for maintaining the age of retirement at 58 years as before but in the same breath permitting retirement on the completion of 30 years of service, whichever occurs earlier, is in keeping with the policy of reckoning a stated number of years of office attaining the crest, whereafter inevitably is the descent, justifying retirement. In this context 30 years period of active service is not a small period for gainful employment, or an arbitrary exercise to withhold the right to hold an office beyond thirty years, having not attained 58 years of age.

Much reliance was placed by learned counsel for the parties on *B.S. Yadav & another v. The Chief Manager, Central Bank of India & others*, AIR 1987 SC 1706 in support of their respective contentions. It was contended on behalf of the respondent bank that Section 12(2) of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 was *pari materia* the same as section 11(1) of the present Act and Regulation 19 framed under the former Act was akin to Regulation 19 of the present Regulation providing for different ages of retirement of two categories of employees. As is evident from the Report those two classes were those falling under Rules 1 and 2 of "Rules of Age of retirement" for whom the age of retirement was 60 years and those falling under Rule 3 for whom the age of retirement was 58 years, depending on the date of recruitment of promotion being prior to or after the appointed day i.e. 19th July, 1969. This Court ruled that the classification so made was valid as it satisfied the tests laid down under Articles 14 and 16 of the Constitution because this Court could not say, in the circumstances, that the attitude of the nationalised bank was unreasonable, particularly when the age of retirement of 58 years of the post 19th July, 1969 entrants was consistent with the conditions prevailing in almost all the sectors of public employment. But on the other hand it was contended by the appellants that when retirement age at 58 was the consistent policy for public employment, as

A laid down in *B.S. Yadav's* case, its curtailment by the alternative of 30 years service, if happening earlier, is discriminatory and violative of Articles 14 and 16 of the Constitution. We are not impressed by this argument. The bank nationalisation and creation of subsidiary banks of the nationalised banks have a history of their own. The employees of the two are rationally differentiated on the basis of policy. The employees of the subsidiary banks cannot claim equation with the employees of the nationalised banks to be retiring at the age of fifty eight years, on the basis that the employees of the nationalised banks are not retireable on completion of 30 years of service.

C No other point of substance remains to be discussed even though the parties by their written submissions submitted much after the close of the case made an effort to expand the controversy.

For the fore-going reasons, we find no substance in these appeals which are dismissed without any order as to costs.

N.P.V.

Appeals dismissed.