

PETITIONER:
THE STATE BANK OF INDIA

Vs.

RESPONDENT:
SHRI C.B. DHALL

DATE OF JUDGMENT: 11/12/1997

BENCH:
SUJATA V. MANOHAR, D.P. WADHWA

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

D.P. Wadhwa, J.

This appeal by the State Bank of India (for short, the 'Bank' or 'State Bank') arises out of the judgment dated August 22, 1983 of learned single Judge of the High Court of Delhi. The reasons for the judgment were given by order dated September 2, 1983. The impugned judgment was delivered on a writ petition filed by the respondent, C.B. Dhall. Dhall had challenged the Order of the Central Board of the State Bank dated June 4, 1980 by which it was resolved that "the sanction to retire you be withheld and the Bank's contribution to your provident fund Account amounting to Rs. 24006-49 be forfeited" which decision was communicated to Dhall by letter dated July 16, 1980 of the Chief General Manager of the Bank. The High Court allowed the writ petition and quashed the Resolution of the Central Board as well as the Communication by which it was conveyed to Dhall. The High Court further ordered that the Bank shall pay within six weeks to Dhall the following amounts:

- "1. The entire arrears of pension in regard to the pension and gratuity fund rules with interest @ 6% per annum.
2. Pension will be paid in future in accordance with the rules. Pension will be computed on the basis of full pay during the period of suspension.
3. The provident Fund (Bank's contribution which has been withheld) with interest according to the Rules after deducting the admitted sum of Rs. 10,000/- P.F. and the interest up-to-date on payment according to the Rules will be calculated first. Thereafter the admitted amount of Rs. 10,000/- will be deducted therefrom. The balance shall be paid to the petitioner.

4. The petitioner shall also be entitled to such other retirement benefits as are admissible to him according to the service rules, have already not been given to him.

5. Petitioner will also be entitled to full pay for the period of suspension and the bank shall pay the sum after deducting such amount as has been paid to him during the period of suspension by way of subsistence allowance or otherwise.

6. The petitioner shall be entitled to his costs.

Counsel's fee for Rs. 50/-.

Dhall was appointed as Cashier in the Imperial Bank of India in July 1939 and was confirmed to this post after completion of his period of probation of one year. The Imperial Bank of India was constituted under the Imperial Bank of India Act, 1920 which was repealed by the State Bank of India Act, 1955 by which the State Bank was constituted. Services of Dhall were taken over by the State Bank and the existing Services Rules, Pension Fund Rules and provident Fund Rules of the Imperial Bank of India were adopted by the State Bank in respect of these employees. This was under Section 7 of the State Bank of India Act which, in relevant part, is as under:

"7. Transfer of service of existing officers and employees of the Imperial Bank to the State Bank-

(1) "Every officer or other employee of the Imperial Bank (excepting the managing director the deputy managing director and other directors) in the employment of the Imperial bank immediately before the appointed day shall on and from the appointed day, become an officer or other employee, as the case may be, of the State Bank, and shall hold his 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 Imperial Bank had not vested in the State Bank, and shall continue to do so unless and until his employment in the State Bank is terminated or until his remuneration, terms or conditions are duly altered by the State Bank.

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In July 1956, Dhall was promoted as Head Cashier by the State Bank of India. The State Bank of India (Sub-Accountant & Head Cashiers) Service Rules came into force on January 1, 1959. Under these Rules, the age of super annuation for head Cashier was 55 years but w.e.f. April 1, 1967, this was increased to 58 years. Dhall was due to retire on May 28, 1970 after completing 30 years of pensionable service. However, the competent authority granted extension to him of his service by seven years up to & including 30th June 1977 on which date Dhall was to completed 58 years of his age. While in he extended period of service, Dhall was suspended on account of certain allegations against him of fraud and defalcation of funds while posted at Agra.

On November 24, 1975 Dhall was served with the Charge Sheet. The charges laid under this Charge sheet were many and some of these were (1) shortage of admitted by Dhall, thus, admitting his negligence and responsibility therefor collaterally; (2) shortage in cash to the tune of Rs. 1, 000/- on September 25, 1972; (3) exchanging mutilated noted for he denomination of Rs. 5, Rs. 20 and Rs. 100 without approval of the joint custodian. The Reserve Bank of India had intimated the Bank that mutilated notes to the extent of Rs. 55,000/- were irregularly exchanged and that this was borne out by the inspection of the currency at the branch at Agra held on August 11, 1976 which pertained to the period when Dhall was the head Cashier. Enquiry proceedings were initiated against Dhall. Dhall completed 58 years of his age on June 30, 1977. However, due to the pendency of enquiry, he was given two years extension.

Report of the enquiry officer was submitted on June 15, 1979 which was placed before the disciplinary Authority who found Dhall guilty of most of the charges levelled against him. Extended period of Service of Dhall expired on June 17, 1979 on his attaining the age of 60 years. On November 22, 1979, he was intimated and given show cause notice as to why Bank's contribution to the provident fund should not be forfeited as he was liable to the Bank to the extent of Rs. 37458/83 and further why sanction to his retirement be not withheld under Rule 11 of the Imperial Bank of India Pension and Guarantee Fund Rules and Regulations. Reply of Dhall was considered and the Central Board of the Bank directed forfeiting of Bank's contribution amounting to Rs.24006/49 from the provident fund. Dhall was also told that sanction to retire him was withheld under Rule 11 of the Rules and Regulations of the pension and Guarantee Fund by the competent authority. The result was that Dhall was deprived of pension and Bank's contribution to his provident fund. The show cause notice and the decision of the Bank are reproduced hereunder as:

"State Bank of India,
Local Head Office,
P.O. Box No. 398,
11, Sansad Marg
New Delhi.
Disciplinary Action Cell
No. DAC/79/RL/1336
Dated 22nd Nov. 1979.

Dear Sir,
With reference to the
correspondence resting with your
letter dated 29th June 1976, in
reply to the statement of the
charges served on you, in terms of
out letter No. R. IV/8990 dated
24th November 1975 and subsequent

departmental enquiry held against you, we have perused the findings of the enquiry authority vis-a-vis the proceedings of the enquiry and "held you guilty of charges Nos. 1, 2, 4, 5, 6, 7, 7a, 9, 10 and partially charge No.3.

2. With reference to your letter dated 1st August, 1979 as charges proved against are grave and you attained the age of 60 years on the 30th June, 1979 and ceased to be in the service of the Bank from that date, you are hereby required to show cause - why recommendation should not be made to Local Board to withhold the sanction of your withhold the sanction of your retirement and pension in the term of Rule 11 of the Imperial Bank of India Pension and Guarantee Fund rules. Please also show cause as to why the bank's contribution towards the provident Fund may not be forfeited as you are liable to the bank to the extend to Rs. 37,458/83.

3. Your reply in this regard should reach the undersigned within 7 days of the receipt of this letter by you. Otherwise it will be presumed that you have nothing to submit in this regard as we shall proceed accordingly.

Yours faithfully."

Sd/-

"State Bank of India,
Local Head Office,
P.O. Box No. 398,
11, Sansad Marg,
New Delhi.

No. DAC

Disciplinary action Cell
Agra Branch

Shri C.B. DHALL OFFICER GDE II
H/Cashier - Under suspension.

With ref. to your written statement dated 11.2.80, be advised considered by the Executive committee of the Central Board at its meeting held on 4.6.80 and it is resolved that the sanction to retire you be withheld and the bank's contribution to your P.Fund a/c amount to Rs. 24,006/49 be forfeited.

2. Therefore our tentative decision conveyed to you vide letter No. DAC/79/R-V/1336 dated 23rd Nov. '79 is confirmed.

Sd/- Chief General Manager"

When the decision was communicated to Dhall, he as noted above, filed the writ petition challenging the decision of the Bank. The High Court allowed the writ petition in terms mentioned above. Special leave petition

filed by the Bank against the impugned judgment was admitted. On October 28, 1983, the Court passed the following order:

"Special leave granted. The appellant however undertakes that even in the event of success nothing will be recovered from the respondent. The judgment in appeal will not be treated as a precedent for any other case. Four weeks' time is granted for payment.

Will be listed for final hearing along with SLP No. 431/81 (CA 9943/83)."

It may be noted that SLP (C) No. 431/81 (CA No. 2141/80) entitled State Bank of India vs. A.N. Gupta etc. has since been decided and judgment is reported in 1997 (6) SCALE 303.

In A.N. Gupta's case, this court considered the scope of Rule 11 of the Rules and Regulations of the Imperial Bank of India Pension and Guarantee Fund and Rule 20 of the Imperial Bank of India Employees provident Fund Rules. These Rules and Rule 18 of the Imperial Bank of India Employees Provident Fund Rules are as under:

(1) The Imperial Bank of India Employees Pension and Guarantee Fund (Rules and Regulations)

"The retirement of all officers of the Bank shall be subject to the sanction of the Executive Committee of the Central Board. The retirement of all other employees of the Bank shall be subject to the sanction of the Executive Committee or the Local Board concerned with their employment. Any officer or other employee who shall leave the service without sanction, as required by this rule shall forfeit all claim upon the fund for pension."

(2) The Imperial Bank of India Employees Provident Fund Rules

"18. If any member shall be dismissed from the service of the Bank for any fault or other cause justifying dismissal, he shall not be entitled to receive, unless permitted to do so by the trustees, the sums contributed. Provided that when any member is so dismissed any amount due under a liability incurred by the member to the Bank (not exceeding in any case the sums so contributed by the Bank and interest thereon) shall be paid by the trustees to the Bank out of the sum standing to the credit of the member's account.

20. When a member resigns or retires from the service of the Bank he shall, if he has served the bank for a period of five years or more (including service in the Presidency Banks), be entitled to

receive the balance at his credit in the fund. Provided that when any member resigning or retiring from the service of the Bank is under a liability incurred by him to the Bank, the trustees shall, irrespective of the duration of his service, pay to the Bank out of the balance at his credit in the fund any amount due by him to the Bank (not exceeding in any case the sums contributed by the Bank to his account in the fund and any interest credited to his account on the sums so contributed)."

This Court held that Rule 11 had no application in the case of the employees governed by the Imperial Bank of India Pension and Guarantee Fund Rules who had retired on attaining the age of superannuation. The Court did not agree with the submission of the Bank that sanctioning of retirement must be understood as sanctioning of service which in term must be understood as approval of service. It was observed that proceedings in the garb of disciplinary proceedings could not be permitted after an employee had ceased to be in the service of the Bank as Service Rules then in force applicable to such employees did not provide for continuation of disciplinary proceedings after the date of superannuation and that sanction of the Bank was required only if the retirement of an employee was by any other method except superannuation. As regards Rule 20 of the Imperial bank of India Employees Provident Fund Rules, this Court took this view that this Rule would become applicable only if an employee retiring from the service of the Bank was under a liability incurred by him to the Bank and in that case, trustees administering the provident Fund could pay to the bank from balance to the credit of the employee in the Fund any amount due by him to the bank. The Court observed that there was nothing on record to show if any liability was incurred by any of the respondents and if so what were the amounts and then said as under:

" In this view of the matter we do not think it is necessary for us to go into the question as to whether the term "liability incurred " means only such liability as is either not disputed or established by due process. Can it be said that this term would also include any liability that may be alleged by the bank? In any case the bank should at least prima facie establish that any liability has been incurred by the employee for which it can lay claim to the provident Fund of the employee. We cannot accept the proposition on behalf of the Bank that the trustees should be allowed to withhold the provident Fund due till they have had an opportunity to have established and determined the amount, if any, due from the respondents to the Bank. We are of the view that the respondents are entitled to the Provident Fund due

to them in accordance with the provident Fund Rules as it cannot be said that they incurred any liability."

This Court did not approve the view expressed by the Andhra Pradesh high Court in T. Narsiah vs. State Bank of India & Ors. [1978 (2) LLJ 173] wherein the High Court was of the view that enquiry could also be made against an employee after his retirement on attaining the age of superannuation. This Court said that by giving such an interpretation to Rule 11, the High Court had, in fact, lent validity to disciplinary proceeding against an employee even after his superannuation for which no provision existed either in the relevant Pension Rules or in the relevant Service Rules and when the High Court had itself observed that an enquiry even if initiated during the service period of the employee could not be continued after his retirement on superannuation. In coming to the conclusion that Rule 11 would not be applicable when an employee superannuates on his attaining the age of retirement, this Court considered various relevant pension Rules and Service Rules of the Imperial Bank.

Later on it would appear Rule 228 was inserted in the Imperial Bank of India Pension and Guarantee fund Rules which postulates continuance of disciplinary proceedings even after an employee ceases to be in Bank's service. This Rule 22B (to be read as Rule 22A as per the additional affidavit filed by the bank) came into force with effect from June 25, 1987 and would, therefore, be not relevant in the present case.

The question then arises what are the Rules of service applicable in the case of Dhall. Mr. Dogra, learned counsel for the Bank, submitted that Rules 20A and 20B which were inserted in the State Bank of India (Supervising Staff) Service Rules, 1975 (for short "Service Rules") would be answer to that. Rules 20A and 20B were introduced with effect from April 1, 1977 and are as under:

"20A. Notwithstanding anything to the contrary in these rules, no employee who has ceased to be in the Bank's service by the operation of, or by virtue of, any rule, shall be deemed to have retired from the Bank's service for the purpose for the Imperial Bank of India Employees' Pension and Guarantee Fund Rules or the State Bank of India Employees' Pension Fund Rules unless such cessation of service has been sanctioned as retirement for the purpose of either of the said pension fund rules as may be applicable to him.

20B. In Case disciplinary proceedings under these rules have been initiated against an employee before he ceases to be in the Bank's service by the operation of, or by virtue of, any of these rules, the disciplinary proceedings may, at the discretion of the Managing Director, be continued and concluded by the authority by which the proceedings were initiated in the manner provided for the in

these rules as if the employee continues to be in service, so however, that he shall be deemed to be in service only for the purpose of the continuance and conclusion of such proceedings."

We asked Mr. Dogra if the services of Dhall, the Head Cashier, were governed by the State Bank of India (Sub-Accountants and Head Cashiers) Service Rules as Rule 2 therein provided that the Rules shall apply to all Sub-Accountants and head Cashiers who are in the service of the Bank as such on January 1, 1959 and to all Sub-Accountants and Head Cashiers appointed thereafter. Mr. Dogra with reference to the additional affidavit filed by the Bank submitted that State Bank of India (sub-Accountants and head Cashiers) Service Rules, 1959, were no longer in force as they were repealed in terms of Rule 2(1) of the State Bank of India Supervising Staff (Service Rules), of the State Bank of India Supervising Staff (Service Rules), 1975. Said Rule 2(1) states that the Service Rules which came into force with effect from July 1, 1975 shall apply to all officers/staff officers and senior staff officers in the Bank other than persons who were in the service of the Bank on June 30, 1955 either as officers or as assistants. It was submitted by Mr. Dogra that Dhall was a Cashier on June 30, 1955 and was not an officer. he was also not an Assistant to be governed by the Rules governing the services of Assistants in the Bank. Dhall was promoted as head Cashier in July 1956 under Rule 3(p) of the Service Rules. head Cashier is a person appointed on the terms and conditions applicable to officers Grade ii and as per the definition of officer under Rule 3(j), officer means an officer Grade II. Dhall would, therefore, be an officer under the Service Rules, State bank of India (Sub-Accountants and Head Cashiers) Service Rules, 1959 would, therefore, be no longer in force as these would deem to have been repealed by Rule 2(1) of the Service Rules which states that these Service Rules shall apply to all officers, staff officers and Senior Staff Officers in the bank other than persons who were in the service of the Bank on the 30th June, 1955 either as officers or as Assistants. Consequently, Dhall would be governed by Rules 20A and 20B of the Service Rules which came into effect from April 1, 1977.

There is no dispute that the employees who are in the service of the Bank as on 30th June, 1955 would continue to be governed by the Imperial Bank of India Rules relating to pension and provident Fund and those joining the Bank after this date by the Rules of the State bank of India framed under Section 50 of the State bank of India Act. In this connection we may also refer to Rule 21 of the Service Rules of 1975 which is as under:

" 21. Unless Otherwise directed by the Appointing Authority, every employee shall as from the commencement of his service as an officer become a member of-

(a) the State bank of India Employees Provident Fund, if he is not already a member of that Fund or the Imperial bank of India Employee's Provident Fund:

(b) the State Bank Of India Employees' pension Fund, if he is not already a member of that Fund or the imperial bank of India

Employees' Pension and Guarantee Fund or the bank of Bombay Officers' pensions and Guarantee Fund or the bank of Madras pension and Gratuity Fund:

and shall subscribed and agree to be bound by the rules of those Funds.

Provided that if his age at the time of commencement of his service as Officer is below 21 years he shall become a member of the State bank of India Employees' Pension Fund on attaining the age of 21 years and on becoming a member shall subscribe and agree to be bound by the rules of that Fund."

Rules 20-A and 20-B of the Service Rules have been framed under Section 43 of the State Bank of India Act. This section is as under:

"43. State bank may appoint officers any other employees- (1) The State bank may appoint such number of officers, advisers and employees as it considers necessary or desirable for the efficient performance of its functions, and determine the terms and conditions of their appointment and service. (2) The officers, advisers and employees of the State Bank shall exercise such powers and perform such duties as may, by general or special order be entrusted or delegated to them by the Central Board."

Section 43 empowered the State bank to determine the terms and conditions of the appointment and service of its officers and employees. These officers and employees exercise such powers and perform such duties as may be entrusted or delegated to them by the Central board of the State Bank. Section 50 of the State Bank of India Act empowers the Central Board to make regulations but Section 43 is independent of Section 50, we hold that Service Rules had been framed by the State bank in exercise of its statutory powers under Section 43 of the State Bank of India Rules.

Rules 20-A and 20-B have now made a material difference to the applicability of Rule 11 of the pension Rules. However, the case of A.N. Gupta (Supra) is distinguishable as these Rules, 20-A and 20-B, came into existence only w.e.f. March 31, 1977. Under Rule 20-A retirement under the Pension Fund Rules has now to be sanctioned by the competent authority. Under this Rule, retirement would mean retirement on superannuation or any other type of retirement.

Under Rule 20-B disciplinary proceedings if initiated against an employee before he retires from service could be continued and concluded even after his retirement and for the purpose of conclusion of the disciplinary proceedings, the employee is deemed to have continued in service but for no other purpose. After the disciplinary proceedings, the employee is deemed to have continued in service but for no other purpose. After the disciplinary proceedings were concluded, the State Bank directed that (1) sanction of Dhall to retire be withheld and (2) Bank's contribution to

his provident fund accounts be forfeited. Under Rule 10 of the Pension Fund Rules, and employee dismissed from the Bank Service for willful neglect or fraud shall forfeit all claims upon the fund for pension. Dhall has not been dismissed from service through he was charged with willful neglect and fraud. The question that arises for consideration is what is the effect of the direction the State bank that sanction to retire of Dhall be withheld. Here cessation of service of Dhall on retirement has not been sanctioned accordingly as per the last portion of Rule 11 of the pension Fund he forfeits all claims upon the Fund for pension.

But then applicability of his Rule 11 has to be contrasted with Rule 10. It is only if an employee has been dismissed from service that he forfeits all claims upon the fund for pension and so would appear to be the effect of Rule 11. Under Rule 7, an employee has right of property in the pension fund to the extent of his contribution made thereof with interest thereon. It would, therefore, appear to us that when the Rules talk of forfeiture of all claims upon the fund for pension that would only mean the Bank's contribution and the interest accruing thereon. These Rules cannot be extended to forfeit even the employee's contribution to the pension fund and the interest accruing thereon. However, after the introduction of Rule 5-A in the pension Fund Rules w.e.f. April 1, 1968, there is not to be any contribution by employee to the pension fund.

Coming to the provident Fund Rules, Rule 18 applies when an employee is dismissed from service which is not the case here. It is under Rule 20 that an amount of Rs. 24,006.49 has been forfeited which is the Bank's contribution to the provident fund account of Dhall. This, the State Bank is entitled to forfeit under Rule 20. The amount has been arrived at after due enquiry and represents the liability incurred by Dhall to the Bank. Accordingly we hold that Dhall was rightly proceeded against in the disciplinary proceedings and the State bank was within its authority to impose the penalty as conveyed to Dhall by letter dated July 16, 1980 of the Chief General Manager of the State Bank.

We, therefore, uphold the impugned judgment of the High Court to the extent that Dhall would be entitled to his contribution, if any, to the pension Fund along with the interest accrued thereon. The impugned judgment in all other respects is set aside. However, in view of the interim orders made on October 28, 1983, no further orders are required in this appeal.