

PETITIONER:
THE STATE BANK OF INDIA

Vs.

RESPONDENT:
SHRI A.N. GUPTA ETC.

DATE OF JUDGMENT: 30/09/1997

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

ACT:

HEADNOTE:

JUDGMENT:

WITH
CIVIL APPEAL No. 9943 OF 1983
J U D G M E N T

D. P. WADHWA

These are two appeals and are directed against the common judgment dated February 25, 1980 of the Delhi High Court by which the High Court not only directed that pension and provident fund be paid to the respondents, who were working as Assistants, but also awarded damages to them and against the appellant-Bank for wrongfully withholding these payments. The operative part of the impugned judgment reads thus:

"In the result, we direct that the Bank shall pay within four weeks to Sarvshri Gupta (respondent in CA No. 2141/80) and Gulati (respondent in CA No. 9943/83):

1. the entire pension fund due as calculated under the Pension and Guarantee Fund Rules;
2. a sum equivalent to 9% pre annum by way of damages for wrongfully withholding the aforesaid amount from the date of retirement to the date of actual payment; and
3. the provident fund due along with interest plus an amount equivalent 9% per annum by way of damages from the date of retirement to the date of payment.

Amounts already paid under our order of 19th December, 1979, shall be deducted from the above payments."

Both Gupta and Gulati had retired from the service of the Bank after putting varying years of service and claimed pension and provident fund. These were denied to them by the Bank on the ground that there were certain lapses on their part while in service and that under the provisions of the relevant rules, as applicable, these amounts could be with-

held. There claims were resisted by the Bank relying on Rule 11 of Rules and Regulations of the Imperial Bank of India Pension and Guarantee Fund (for short 'Pension Rules') and Rule 20 of the Imperial Bank of India Employee's Provident Fund Rules. These Rules read as under:

"Rule 11. 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.

Rule 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)."

There are separate rules governing the service of Assistants in the Imperial Bank of India (Service Rules, for short). Of these Rules, 25 and 26 would be relevant and are set down as under:

"25. An Assistant may at the discretion of the Executive Committee be called upon to retire from the Bank's service upon completion of twenty-five years' service.

26. All Assistants shall retire at fifty-five years of age or upon the completion of thirty years' service whichever occurs first:

Provided that the Executive Committee may extend the period of service of an Assistant who has attained the age of fifty-five years (fifty-eight years w.e.f. 1.4.1967) or has completed thirty years' service should such extension be deemed desirable in the interests of the Bank.

Note - For the purposes of rules 25

and 26 service shall count:-

(i) in the case of an Assistant first engaged by the Bank as a Probationary Assistant, from the commencement of his Probationary service or from the date he attained the age of twenty-one years if his probationary service commenced before such date; and

(ii) in the case of any such Assistant, from the date of his confirmation in his first post in the Bank in whatever capacity it may have been or from the date he attained the age of twenty-one years if he was confirmed in the Bank's service before attaining that age."

When special leave was granted by this Court, it was directed that cost in any event shall be paid by the Bank to the respondents. There was also ex-parte stay relating to damages awarded under paras (2) and (3) of the operative part of the impugned judgment quoted above. It was stated before us that all the amounts due to respondents towards their pension and provident fund have since been paid except the damages as awarded by the impugned judgment which had been stayed by this Court.

Imperial Bank or India was constituted under the Imperial Bank of India Act, 1920. Both Gupta and Gulati were working as Assistants in the Imperial Bank when the undertaking of the Imperial Bank was transferred to the State Bank of India, the appellant herein, under the State of India Act, 1955. All the service regulations which were applicable to the employees of the Imperial Bank remained operative when these employees became the employees of the State Bank of India. Central Board of Directors of the State Bank were empowered to make regulations after consulting with the Reserve Bank of India with the previous sanction of the Central Government. As far as the present two appeals are concerned, there has not been any change in the Rules and Regulations relating to the Pension and Guarantee Fund and the Employees Provident Fund Rules.

To understand the rival contentions, we may note some of the relevant facts in each of the two appeals.

Respondent Gupta (in CA No. 2141/80) attained the age of 58 years on August 14, 1972 and retired from the service of the Bank under Rule 26 of the Service Rules. The Bank issued him a memorandum to the effect that as he had attained the age of 58 years, "it was no longer necessary for him to attend the office from August 14, 1972". There were certain allegations against Gupta in respect of his work between February 1968 to July 1970 while he was posted as Superintendent in the Stationery Department of the Bank. He was placed under suspension on July 19, 1972. Since there was no rule to continue with an enquiry after the employee reached the age of superannuation, Gupta was directed not to attend the office and, as noted above, he had retired within a period of less than one month from the date of his suspension.

The appellant Gulati (in CA 9943/83) attained the age of 58 years on April 3, 1970. However, the Bank had extended his service by letter dated September 15, 1969 for two years, i.e., upto April 3, 1972. This the Bank did relying on its power under proviso to Rule 26 of the Rules governing the service of Assistants. Gulati was, however, suspended

w.e.f. July 27, 1971 and on October 26, 1971 he was served with a charge-sheet. Though there were no further proceedings in the matter, Gulati was asked by letter dated March 22, 1972 that it had been decided by the Bank to require him to resign and that if he failed to do so, he would be dismissed from service. Gulati did not resign. He reiterated the denial of the charges levelled against him and sought an enquiry. The Bank did not pass any order of dismissal and rather by letter dated March 13, 1972 gave opportunity to Gulati to ask for documents, if any, that may be required by him by April 6, 1972. By April 3, 1972, Gulati retired from the service of the Bank on completing the period of two years after the age of 58 years by which the Bank had chosen to extend his services.

Now, the appellant Gupta after August 14, 1972 and appellant Gulati after April 3, 1972 requested the Bank to pay them their pension and provident fund as may be due to them under the relevant service regulations. Gupta was told that he had retired from the service of the Bank and the matter of payment of his retirement benefits was engaging the attention of the Bank. Though the Bank never turned down the demand of Gupta to get the benefits as due to him after his retirement, yet these were not paid to him. He, therefore, filed a writ petition in the High court which was allowed by a learned single Judge and the Bank went in Letters Patent Appeal to the Division Bench of the High Court. Similarly, in the case of Gulati, various reminders were sent by him demanding payment of his pensionary benefits and since there was no response from the Bank, Gulati also filed a writ petition for a direction to the Bank to pay him his retirement benefits.

Both the LPA filed by the Bank against the judgment of the learned single Judge in the case of Gupta and the writ petition filed by Gulati were heard together by a Division Bench of the High Court. By the impugned judgment while the appeal filed by the Bank was dismissed, the writ petition filed by Gulati was allowed. The Division Bench issued directions both in the case of Gupta and Gulati which have been set out above.

It was contended before us by Mr. Sunil Dogra, learned counsel for the Bank, that the respondents did not have an automatic right to get full pension on retirement from the Bank service and as per Rule 11, unless and until the Bank sanctioned the same, the respondents would not be entitled to the benefit of pension as a matter of right. It was also submitted that "sanction to retirement" must be read and understood as sanction to the service preceding retirement and under Rule 11, pension could be held to be payable only when the entire service of the retiring employee was certified by the sanction of the Executive Committee of the Central Board of the Bank. The argument was that sanction of service must be understood in the context of approval of service and unless, therefore, the employee had conducted himself properly in the course of his employment in the Bank and if so held by the Bank, the employee would only then be entitled to the pension. Similar was the argument by the Bank regarding payment of provident fund to the retiring employee. We may note that though the trustees who manage pension and guarantee fund are common, the pension fund and guarantee fund are administered separately in two sections. Under Rule 5-A of the Pension Rules, every employee has to contribute monthly to the pension section of the fund certain amount of percentage of his salary. The contribution so made carry interest at the prescribed rate. Under Rule 6, the Bank is also to subscribe monthly to the pension section

of the fund an amount equal to that contributed by the employee. Under Rule 7, no employee shall have any right of property in the fund beyond the amount of his contributions to the pension section of the fund with the interest accrued thereon. Under Rule 15 of the Employees Provident Fund Rules, similar contributions are to be made to the fund by the employee and the Bank which again is to carry interest.

Mr. Chatterjee, learned counsel appearing for the respondents, submitted that the respondents would be entitled to full pension as well as provident fund standing to their credit on their superannuation from the Bank. He submitted, with reference to various Rules, that it could not be said that when an employee superannuated, his retirement benefits could be paid only to him when these were sanctioned by the Bank after looking into his past record of service. Reference was made particularly to Rules 10, 14, and 19 of the Pension Rules. Stress was more laid on Rule 19. We may set out these Rules as under:

"10. An employee dismissed from the Bank's service for wilful neglect or fraud shall forfeit all claims upon the fund for pension.

11. 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.

14. If an officer or assistant of the Bank who is entitled to pension under these rules wishes to accept employment in any other bank at any time or any other commercial employment within two years from the date of retirement, he should obtain the previous sanction of the Executive Committee of the Central Board. Should he undertake such employment without the sanction required under this rule it shall be competent for the trustees to withdraw the pension payable to him either in whole or in part at their discretion.

19. (i) An employee retiring from the Bank's service after having completed twenty years' service with the Bank shall be entitled to pension provided the employee has attained the age of fifty years if employed on the staff in India or the female staff in London or sixty years if employed on the male staff in London.

(ii) An employee retiring from the Bank's service after having completed twenty years' service on

the staff in India and/or on the staff in London shall be entitled to pension irrespective of the age he shall have attained if he shall satisfy the authority competent to sanction his retirement by approved medical certificate or otherwise that he is incapacitated for further active service. (Notwithstanding anything to the contrary in these rules and regulations the total of such employee's service whether in India or London shall count for pension under this rule.)

(iii) An employee who has attained the age of fifty-five or who shall be proved to the satisfaction of the authority competent to sanction his retirement to be permanently incapacitated by bodily or mental infirmity from further active service (such infirmity not being the result of irregular or intemperate habits) may, at the discretion of the trustees, be granted a proportionate pension.

Mr. Dogra referred to a decision of the Andhra Pradesh High Court in T. Narsiah vs. State of Bank of India & Ors. [(1978) II LL) 173] which according to him has taken the view what was being advanced by the Bank. In this judgment of the Andhra Pradesh High Court as well as of the impugned judgment of the Delhi High Court there is also reference to an unreported decision of the Bombay High Court in M/s. J.K. Kulkarni vs. State Bank of India (Misc. Petition No. 964 of 1977 decided on November 29, 1977) where the learned single Judge held that Rule 11 applied to all retirements but the Bank would be entitled to with-hold sanction only in circumstances similar to Rule 10 and for this bank would be required to hold a fair and honest enquiry which could be held even after the employee had retired. It was stated by the learned Judge that Rule 11 contemplated two different types of termination of service. He expressed his opinion thus: "One would be retirement in terms of any of the Rule either the Service Rules or Pension Rules and the other would be leaving the service without bothering to obtain anybody's permission or sanction. It stands to reason that a person who leaves service without caring to obtain any sanction under Rule 11, can safely be denied any claim to pension in terms of the last clause of Rule 11. However, that clause also covers all cases of retirement where the retirement is accompanied by the sanction of the Executive Committee. Here the Executive committee may have discretion in issuing certificate by looking to the service career of an employee". Then after discussing Pension Rules and the Service Rules, the learned Judge concluded as under:

"From that point of view, I am satisfied that the Bank's proposal to hold a formal inquiry even after retirement of the petitioner is proper. They would of course give him all reasonable opportunity that is required in the inquiry of any domestic Tribunal and observe the rules of natural justice. They have

a right to satisfy themselves regarding the conduct of the Petitioner while he was in service. If they are able to reach a firm decision within the findings which might fall under Rule 10, the Committee does seem, in my view, to have a right to withhold the sanction. This is all that the Committee is seeking to do."

While the Delhi High Court expressed its dissent to the view expressed by Bombay High Court, it was accepted by the Andhra Pradesh High Court. Andhra Pradesh High Court decision was rendered by a learned single Judge and we have been shown an unreported decision of the appellate Bench against that order wherein view of the learned single Judge has been upheld.

In the case before the Andhra Pradesh High Court (1978) Vol. 2 LLJ 173) the petitioner was an officer in the State Bank. Disciplinary proceedings were initiated against him but before these could be completed the officer was informed by the Bank through its letter dated May 5, 1976 that it was not possible for the Bank to complete the enquiry well in time before the officer attaining the age of 60 years which was the date of his superannuation. He was told he would therefore cease to be in the Bank's service on the date of his superannuation and he would not be paid any subsistence allowance with effect from that date. The officer was treated as having retired and ceasing to be in employment of the Bank with effect from May 10, 1976. The officer claimed his Provident Fund and Pension and on Bank's refusal to pay the same, a writ petition was filed. During the course of the hearing of the writ petition it was submitted by the Bank that it had since decided to pay the Provident Fund in full to the officer and Bank had also no objection to pay his contribution to the pension and that as far as the payment of Bank's share in the Pension Fund was concerned, the officer was not entitled thereto unless and until the Bank granted the same in accordance with Rule 11 of the Pension Rules. It was contended before the Andhra Pradesh High Court by the officer that Rules 11 had no application in his case and on attaining the age of superannuation he automatically went out of the service of the Bank. The Bank, however, relied on Rule 11 to withhold Bank's contribution to the Pension Fund. The court was of the view that Rule 11 had to be read in its context and consistent with the object behind the said Rule. It held that Rule applied not only in the case of the retirement contemplated by Rule 19 but also to cases of retirement of employees on attaining the age of superannuation. The court observed that it might happen that the irregularities of misfeasance of an employee could not be detected well before his retirement so as to initiate and complete disciplinary enquiry in the matter and again there might be a case where disciplinary enquiry was initiated but could not be completed before the delinquent employee attained the age of superannuation. The court noted that there was no provision in the Service Rules of the Bank providing for extension of service of an employee to enable the authorities to complete the disciplinary enquiry against him which power was available under the Government Service Rules. The court said even if an enquiry was pending against an employee there was nothing to stop him from retiring on his attaining the age of superannuation. The enquiry could not continue after his retirement. The court was, therefore, of the opinion that it was for that reason that the Bank had

reserved to itself the power to sanction the pensionary benefits under Rule 11 and if there was nothing wrong with the service of an employee throughout, the Bank would naturally sanction the pension, but if there was sufficient material disclosing grave irregularities on the part of the employee, the Bank might be well within its power in refusing to sanction the pensionary benefits, or in sanctioning them only partly. The learned single Judge of the Andhra Pradesh High Court then went on to hold as under:

"Of course, such a decision has to be arrived at fairly, which necessarily means after holding an enquiry, giving a fair opportunity to the concerned officer to defend himself against the accusation. Such an enquiry would not be a 'disciplinary enquiry' within the ordinary meaning of the term, but an enquiry confined to the purposes of the rules, viz., whether the employee should be granted any pensionary benefits; and if so, to what extent? Such an enquiry can also be made after the retirement (of an employee; and particularly in cases of retirement) on attaining the age of superannuation, probably such enquiries will have to be conducted only after retirement."

The court, therefore, gave direction as to how the enquiry was to be conducted the officer so as to entitle him the pensionary benefits if he was exonerated. We are afraid that this view of the Andhra High Court does not commend to us. By giving such an interpretation to Rule 11 the Andhra Pradesh High Court has, in effect, lent validity to disciplinary proceeding against an employee even after his superannuation for which no provision existed either in Pension Rules or in the 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.

Rule 10 of the Pension Rules provides for forfeiture of all claims for pension if an employee is dismissed from service of the Bank for wilful neglect or fraud. This rule specifically provides for forfeiture of the pension. It could not therefore be said that under Rule 11 again the pension of an employee could be withheld on these or similar grounds. In our view last sentence of Rule 11 which says that an employee who shall leave the service without sanction of the Executive Committee of the Central Board of the Bank shall forfeit all claims for pension would not include the holding of the employee guilty of wilful neglect or fraud which is envisaged in Rule 10. Rule 11 particularly the latter portion of this Rule would be applicable where an employee leaves the service of the Bank before reaching the age of superannuation or the Bank requires him to retire before that date on his becoming incapacitated or otherwise. It cannot be said that an employee retires only on superannuation and there is no other circumstance under which an employee can retire. Retirement on superannuation is not the only mode of retirement known to service jurisprudence. There can be other types of retirements like premature retirement, either compulsory or voluntary. It would be in the case of a premature retirement or any other

contingency when an employee leaves the service of the Bank before he superannuates that Rule 11 would become applicable. Retirement on superannuation is automatic as per Rule 26 of the Service Rules. No further action on the part of the Executive Committee of the Central Board of the Bank would be required in such a case and Rule 11 will not be applicable.

Right to receive pension is a right to property under Rule 7 of the Pension Rules when it says that no employee shall have any right of property in the pension fund beyond the amount of his contribution to the pension section of the fund with interest accrued thereon. That being so Rule 11 cannot be interpreted to mean that claim to pension of an employee on superannuation can be defeated by the Bank by merely withholding sanction of retirement. For about 8 years when these two matters were pending in the Delhi High Court the Bank did not take any decision in terms of Rule 11 to sanction retirement of the respondents. The Bank never communicated to the respondents that it had withheld sanction to their retirement or did not approve their service. It is only during the course of proceedings in the High Court that the Bank came up with the plea that it wanted to have the allegations against the respondents enquired into. To us the language of the Rule 11 appears quite explicit. No sanction is required from the Bank to leave the service on reaching the age of superannuation as provided in Rule 26 of the Service Rules applicable to Assistants. Rule 26 of the Service Rules clearly mandates the retirement of an employee on his attaining the age of superannuation and there cannot be two opinions on that. We, therefore, hold that Rule 11 has no application in the case of the respondents who retired on attaining the age of superannuation. We cannot agree with the plea of the Bank that sanctioning of retirement must be understood as sanctioning of service which in term must be understood as approval of service. Proceeding in the garb of disciplinary proceedings cannot be permitted after an employee has ceased to be in the service of the Bank as Service Rules do not provide for continuation of disciplinary proceedings after the date of superannuation. Sanction of the Bank is required only if the retirement of an employee is by any other method except superannuation. We do not think that the decision of the Andhra Pradesh High Court in T. Narsiah vs. State Bank of India & Ors. and that of the Bombay High Court in M/s. J.K. Kulkarni vs. State Bank of India have laid down good law.

Coming to Rule 20 of the Employees' Provident Fund Rule which we have quoted above, this Rule will become applicable only if an employee retiring from the service of the Bank is under a liability incurred by him to the Bank. In that case trustees administering the Provident Fund can pay to the Bank out of the balance to the credit of the employee in the Fund any amount due by him to the Bank. We have not been told if any liability was incurred by any of the two respondents and if so what were the amounts. 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 established 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.

By way of interim orders passed by the High Court as well as by this Court the amounts due towards pension and provident fund have since been paid to the respondents. There is no dispute on that. It has, however, urged by Mr. Dogra, learned counsel for the Bank that the High Court went wrong in directing payment of a sum equivalent to 9% per annum by way of damages for wrongly withholding the pension amount and also the Provident Fund amount. We think it was not a case where it could be said that the amounts were wrongly withheld by the Bank and rather decisions of the Andhra Pradesh High Court and Bombay High Court supported the view which was advanced by the Bank. Moreover the Pension Fund and the Provident Fund carry interest and these amounts with interest have been paid to the respondents. We would, therefore, delete the award of damages to the respondents as mentioned in paras 2 and 3 of the operative portion of the impugned judgment which we have reproduced in the beginning of this judgment.

To this extend only the appeals are partly allowed which are otherwise dismissed. As pointed out earlier costs are nevertheless payable by the Bank to the respondents.