

PETITIONER:
STATE BANK OF BIKANER & JAIPUR & OTHERS

Vs.

RESPONDENT:
JAG MOHAN LAL

DATE OF JUDGMENT 13/09/1988

BENCH:
SHETTY, K.J. (J)
BENCH:
SHETTY, K.J. (J)
OZA, G.L. (J)

CITATION:
1989 AIR 75 1988 SCR Supl. (2)1026
1989 SCC Supl. (1) 221 JT 1988 (3) 739
1988 SCALE (2)1081

ACT:
Labour and Services: State Bank of Bikaner & Jaipur (Officers) Service Regulations, 1979: Regulation No. 19 Extension of Service beyond age of superannuation--Whether discretionary.

HEADNOTE:
Regulation 19(1) of the State Bank of Bikaner & Jaipur (Officers') Service Regulations 1979 requires the officers to retire from the service of the Bank on attaining the age of fifty-eight years or on completion of thirty years of service whichever occurs first. A note added below that regulation states that the existing practice of utilising the service of officers beyond 58 years will continue in respect of those who joined service before 19th July, 1969. The proviso thereto, however, confers discretion on the competent authority to extend the period of service of such retiring officers in the interest of the bank.

The respondent, an officer of the said Bank, who retired from service on September 30, 1982 on attaining the age of superannuation of 58 years was not granted extension of service. The sought relief from the High Court under Article 226 of the Constitution. The Bank resisted the Petition on the ground that his continued utility in the service of the Bank was found restricted By the time the petition came up for consideration the respondent had attained 60 years of age. The single Judge. therefore, dismissed the petition without going into the merits. The Division Bench, however, accepted the appeal and gave relief to the respondent on the view that the extension of the petitioner could have been refused only if he was found unsuitable on the ground of continued utility or good health or integrity and not whether it was desirable in the interest of the Bank. Since the Bank applied a different criteria altogether it held the order arbitrary and based on collateral grounds.

Allowing the appeal of the Bank by Special leave,

HELD: 1.1 The High Court has misconstrued the legal right claimed by the respondent. [1031B]

1.2 In the scheme provided in Regulation 19(1) an

officer of the Bank has a legitimate right to remain in
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service till he attains the age of superannuation. But beyond that age, he has no such right unless his service is extended by the Bank. The further rights of parties are regulated by the proviso thereto. [1031F-G]

1.3 The proviso preserves discretion to the Bank. It is a discretion available with every employer, every management, State or otherwise. If the Bank considers that the service of an officer is desirable in the interest of the Bank, it may allow him to continue in service beyond the age of superannuation. If the Bank considers that the service of an officer is not required beyond superannuation, it is an end of the matter. It is no reflection on the officer. It carries no stigma. [1032C-D]

State of Assam v Basanta Kumar Das, [1973] 3 SCR 158; Kailash Chandra v. Union of India, [1962] 1 SCR 374; B.N. Mishra v. State [1965] 1 SCR 693 and State of Assam v Pramadar, [1971] 1 SCR 503, referred to.

2. The Bank, however, is required to consider the case of individual officers with due regard to (i) continued utility, (ii) good health, and (iii) integrity beyond reproach of the officer. If the officer lacks one or the other, the bank is not bound to give him extension of service. [1032D-E]

In the instant case the Bank had shown to the High Court that the case of the respondent was considered and he did not fit in the said guidelines. The High Court does not sit in an appeal against that decision. The High Court under Article 226 cannot review that decision. [1032E]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3175 of 1986.

From the Judgment and Order dated 17.8.1985 of the Rajasthan High Court in D.B.S.A. No. 161 of 1985.

Satish Chandra and A.V. Rangam for the Appellants.

V.M. Tarkunde and S. K. Jain for the Respondent.

The Judgment of the Court was delivered by

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JAGANNATHA SHETTY, J. By obtaining special leave, the State Bank of Bikaner & Jaipur ("Bank") has appealed to this Court against the judgment dated September 17, 1985 of the Division Bench of Rajasthan High Court in Special Civil Appeal No. 161 of 1985. The question raised in this appeal is as to the nature of right of the respondent to get an extension of service beyond the age of superannuation.

The respondent was an officer of the Bank. His service conditions were regulated by what is termed as State Bank of Bikaner & Jaipur (Officers') Service Regulations, 1979. The regulations came into force with effect from October 1, 1979. Regulation No. 19 provides for the age of retirement. It also preserves discretion to the Bank to extend the period of service of any officer beyond the age of retirement. The relevant portion of Regulation 19 reads:

"Age of Retirement:

19(1) An officer shall retire from the service of the Bank on attaining the age of fifty eight years or up to the completion of thirty years' service, whichever occurs first.

Note: However, the existing practice of utilising the service of officers beyond the age of 58 years by considering individual cases for grant of extension will

continue only in respect of employees who joined the service as workmen or as officers before the 19th July, 1969. Further, such employees may be granted extension in service instead of re-employment as is the case in the State Bank of Mysore and State Bank of Saurashtra. A suitable diary note should be made in this regard and carried over-looked at the time when the case of employees who joined on or after 19th July, 1969 come up for consideration (RER/32/80 dated 20.5.1980).

Provided 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.

The aforesaid 'note' to Regulation 19 refers to the existing practice in the Bank and that 'note' was added by notification dated May 20, 1980.

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By letter dated June 14, 1979, the Bank intimated the respondent that he was granted extension of service up to September 28, 1982 that is, till he completed 58 years of age. By further letter dated July 1, 1982 the respondent was informed that he would be attaining superannuation age of 58 years on September 30, 1982 and would stand retired on that date. Accordingly, he was retired from service with effect from September 30, 1982.

After an unsuccessful attempt for reconsideration of the case, the respondent took up the matter before Managing Director of the Bank. There also he could not succeed. He was informed that his case did not fit in the guidelines of the Bank.

The respondent moved the High Court for relief under Article 226 of the Constitution. The Bank resisted the petition contending inter alia:

"The extension is considered on three parameters--

- (i) continued utility;
- (ii) good health, and
- (iii) integrity beyond reproach.

since, in the case of the officials whose names have been submitted in the list-D, all the three tests have been fulfilled, their services were extended. In the case of the petitioner? his services were not extended because in the view of the competent authority, his continued utility in the service of the Bank was found to be restricted. It is submitted that it is not open to the petitioner to claim that he should be granted extension in the service as a matter of right. In this context, it is submitted that when orders were issued to the petitioner on the 4th February, 1981 posting him as Branch Manager of a local branch at Jaipur. the petitioner instead of acting in a responsible manner and taking over charge of the branch, immediately proceeded on leave and went on extending it from time to time. Ultimately, the respondent Bank had to cancel the posting on the 1st May, 1981. Moreover, the guidelines for granting extension stipulated that continuance of the officer's service in his existing grade/capacity would be

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useful to the Bank in all its field of activities in a manner that the Bank is not restricted in continuing to entrust him with the responsibilities relating to the normal placement commensurate with his seniority and grade and as the petitioner did not satisfy this criteria, the Bank did not grant him extension in service."

But by the time the petition came up for consideration, the Respondent attained 60 years of age. The learned single

Judge without going into the merits of the matter dismissed the petition. He observed that it would be unnecessary to enter into the merits since the respondent has completed 60 years. The matter was taken up in appeal before a Division Bench of the High Court. The Division Bench accepted the appeal and gave relief to the respondent. It was commented:

"The order of refusing to give extension to the petitioner appellant was because the extension was not deemed desirable in the interest of the Bank vide Annex. . letter dated July 29, 1982. Hence it is obvious that while considering the case of the petitioner the Bank took into consideration the criteria whether his extension shall be desirable in the interest of the bank and the Bank did not apply its mind as to whether his services were found unsuitable on the ground of continued utility and health or integrity. It appears that the Bank keeping in mind the note which was added to sec. 19(1) and only relying on the first proviso Resolution 19(1) they have decided the case of petitioner for extension of service This clearly shows that there was no serious application of mind while dealing with the case of extension of the petitioner is based on collateral grounds and it also arbitrary as the Bank has applied different criteria which ought not to have been applied in the case of the petitioner. The Bank has not formed the opinion for not extending the services of the petitioner on any material or relevant consideration, but has applied in the different criteria altogether and, therefore, the order is based on collateral and arbitrary grounds. The extension of the petitioner could have been refused only if he was found unsuitable on the ground of continued utility or good health or integrity and not whether it was desirable in the interest of the Bank. ' And observed:

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"It is true that the right of extension of service is not a legal right, but it is a benefit. However, this benefit is not a concession, but is a privilege to which an officer is entitled after years of hard work in the Bank."

It seems to us that the High Court has misconstrued the legal right claimed by the respondent. The right to get extension of service beyond the age of superannuation has received consideration of this Court in several cases. In *State of Assam v. Basanta Kumar Das*, [1973] 3 SCR 158, after reviewing almost all the earlier decisions *Kailash Chandra v. Union of India*, [1962] 1 SCR 374; *B.N. Misra v. State*, [1965] 1 SCR 693 and *State of Assam v. Pramadhar*, [1971] 1 SCR 503. this Court said (at 165):

"A Government servant has no right to continue in service beyond the age of superannuation and if he is retained beyond that age, it is only in exercise of the discretion of the Government.

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the fact that certain persons were found fit to be continued in service does not mean that others who were not so found fit had been discriminated against. Otherwise, the whole idea of continuing only efficient people in service even after they had completed 55 years becomes only meaningless."

What do we have here in this case to distinguish those principles or not to apply those principles? In our opinion, there is none. In the scheme provided herein the respondent or any other officer of the Bank has a legitimate right to remain in service till he attains the age of superannuation. But beyond that age, he has no such right unless his service is extended by the Bank. The further rights of parties are

regulated by the proviso to Regulation 19(1). It reads:

"Provided 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. "

(Emphasis supplied)

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Look at the language of proviso and the purpose underlying. The Bank may in its discretion extend the service of any officer. On what ground? For what purpose? That has been also made clear in the proviso itself. It states "should such extension be deemed desirable in the interest of the Bank". The sole purpose of giving extension of service is, therefore, to promote the interest of the Bank and not to confer any benefit on the retiring officers. Incidentally the extension may benefit retired officials. But it is incorrect to state that it is a conferment of benefit or privilege on officers. The officers upon attaining the age of superannuation or putting the required number of years of service do not earn that benefit or privilege. The High Court has completely misunderstood the nature of right and purpose of the proviso. The proviso preserves discretion to the Bank. It is a discretion available with every employer, every management, State or otherwise. If the Bank considers that the service of an officer is desirable in the interest of the Bank, it may allow him to continue in service beyond the age of superannuation. If the Bank considers that the service of an officer is not required beyond superannuation, it is an end of the matter. It is no reflection on the officer. It carries no stigma.

The Bank, however, is required to consider the case of individual officers with due regard to (i) continued utility; (ii) good health; and (iii) integrity beyond reproach of the officer. If the officer lacks one or the other, the Bank is not bound to give him extension of service. In this case, the Bank has shown to the High Court that the case of Respondent was considered and he did not fit in the said guidelines. The High Court does not sit in an appeal against the decision. The High Court under Article 226 cannot review that decision.

It was however, argued for the respondent that the Bank falls within the concept of State' for the purpose of enforcement of fundamental rights. The Bank, therefore, cannot extend the service of some and reject the case of others similarly situated. The concept of Article 14 of the Constitution is relied upon. The argument in our opinion, proceeds on a wrong premise. 'The Bank has no obligation to extend the services of all officers even if they are found suitable in every respect. The interest of the Bank is the primary consideration for giving extension of' service. With due regard to exigencies of service, the Bank in one year may give extension to all suitable retiring officers. In another year, it may give extension to some and not to all. In a subsequent year, it may not give extension to any one of the officers. The Bank may have a lot of fresh recruits in one year. The Bank may not need the services of all retired persons in another year. The Bank may have lesser

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work load in a succeeding year. The retiring persons cannot in any year demand that "extension to all or none". If we concede that right to retiring persons, then the very purpose of giving extension in the interest of the Bank would be defeated. We are, therefore, of opinion that there

is no scope for complaining arbitrariness in the matter of giving extension of service to retiring persons.

In the result, we allow the appeal and set aside the judgment of the High Court. In the circumstances of the case, we make no order as to costs.

P.S.S.

Appeal allowed.

JUDIS