

State Bank Of India & Ors vs Yogendra Kumar Srivastava & Ors on 1 May, 1987

Equivalent citations: 1987 AIR 1399, 1987 SCR (3) 115, AIR 1987 SUPREME COURT 1399, 1987 LAB. I. C. 995, 1987 3 JT 477, (1987) 2 JT 477 (SC), (1987) IJR 346 (SC), 1987 UPLBEC 484, (1987) 55 FACLR 154, (1987) 2 LAB LN 412, (1987) 3 SCJ 84, 1987 (3) SCC 10, (1987) 2 SERVLR 732, (1987) UPLBEC 484, (1987) 2 SCWR 124, (1987) 1 SUPREME 688, (1987) 2 SERVLJ 81, (1987) 3 ATC 733, (1987) BANKJ 459, 1987 SCC (L&S) 141

Author: M.M. Dutt

Bench: M.M. Dutt, O. Chinnappa Reddy

PETITIONER:

STATE BANK OF INDIA & ORS.

Vs.

RESPONDENT:

YOGENDRA KUMAR SRIVASTAVA & ORS.

DATE OF JUDGMENT 01/05/1987

BENCH:

DUTT, M.M. (J)

BENCH:

DUTT, M.M. (J)

REDDY, O. CHINNAPPA (J)

CITATION:

1987 AIR 1399 1987 SCR (3) 115

1987 SCC (3) 10 JT 1987 (2) 477

1987 SCALE (1) 937

CITATOR INFO :

RF 1991 SC1289 (14)

ACT:

Service Law

State Bank of India Officers (Determination of Terms and Conditions of Service) Order, 1979: Paragraphs 2(1), 3(h), 7, 8 & 18(5)-Merger of Grade-I and Grade-II Officers existing on October 1, 1979 into Junior Management Grade--Probationary Trainee Officers appointed in Grade-I on October 30/31, 1979--Fixation of inter se seniority.

Statutory Construction

Repugnancy--'Definition' Clause--When repugnant to other

provisions.

HEADNOTE:

Consequent to an agreement between the Executive Committee of the Central Board of the appellant Bank and its Officers' Federation, in pursuance of the Pillai Committee Report, the Grade-I and Grade-II Officers discharging managerial and supervisory functions, were merged into the new Junior Management Grade. It was agreed that Officers, of Grade-II would be junior to the existing officers of Grade-I and the seniority list would be prepared accordingly. Thereafter, in exercise of powers conferred by sub-s. (1) of s. 43 of the State Bank of India Act, 1955 the State Bank of India Officers' (Determination of Terms and Conditions of Service) Order, 1979 was made and brought into force with effect from October 1, 1979. Paragraph 2(1) of that Order provided that it shall apply to the existing officers of the Bank and to such employees of the Bank to whom it may be made applicable. Under paragraph 3(h) the expression "existing officers" was defined to mean officers in the service of the Bank immediately prior to the appointed date, i.e., October 1, 1979. Paragraph 7 provided for the placement of existing officers on the appointed date in the corresponding new grades and scales. Paragraph 8(1) provided for fitment of existing officers in the new grades, and scales of pay in accordance with paragraph 7, at a stage corresponding to the existing grade and scale. Under paragraph 18(5) the seniority among the existing officers was to

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remain the same, i.e., the Officers Grade-I were to rank senior to Officers Grade-II.

Certain Probationary/Trainee Officers, who were appointed by the Bank in Grade-I on October 30/31, 1979 before the Order was made on December 19, 1979 filed writ petitions before the Allahabad High Court and some others before the Delhi High Court claiming seniority over the erstwhile Grade-II Officers, in which it was contended for the Bank that since the petitioners were not the employees of the Bank on October 1, 1979, i.e., the appointed date, they could not be given seniority over the erstwhile Grade-II Officers, who were the 'existing officers' within the meaning of the expression under paragraph 3(h) of the Order.

The Allahabad High Court took the view that the expression 'existing officers' has to be read as including the Probationary Officers and Trainee Officers, otherwise a repugnancy between the definition of 'existing officers' and the provisions of paragraph 7 and 8 of the Order will arise, that the notional date of the coming into force of the Order, viz., October 1, 1979 is only to protect the emoluments of the officers and nothing else, and directed the Bank to prepare the seniority list of its officers accord-

ingly. The Delhi High Court, however, took a contrary view and dismissed the writ petitions.

In these appeals by the Bank against the decision of the Allahabad High Court and Special Leave Petition by the Probationary/Trainee Officers against the decision of the Delhi High Court, it was submitted for the Probationary/Trainee Officers in support of their contention that they should be considered as 'existing officers' within the meaning of paragraph 3(h) of the Order, that the Bank itself had treated them as 'existing officers' by fitting them to the Junior Management Grade and giving them a higher start of Rs.960 p.m., that such fitment had been made by the Bank following the principles laid down in paragraphs 7 and 8 of the Order, that unless the expression 'existing officers' is read as including 'Probationary/Trainee Officers', there will be a repugnancy between the definition of 'existing officers', as contained in paragraph 3(h) and the provisions of the paragraphs 7 and 8 of the Order, that the definition of 'existing officers' is only illustrative and not exhaustive, that the merger of officers of Grade-II and Grade-I into the Junior Management Grade was only for the purpose of fitment in the higher scale of pay and not for the purpose of seniority, that they have to undergo tests which were more stringent than the tests to be undergone by Grade-II Officers and as such Probationary/Trainee

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Officers, could not be placed under Officers Grade-II in the seniority list, and that the Bank had no authority to give retrospective operation to the Order with effect from October 1, 1979 inasmuch as s. 43 of the Act under which the Order has been passed, did not authorise the Bank to pass any such Order with retrospective effect.

For the Bank it was contended that the order had not been made retrospective, that all that has been done was that the Officers Grade-I and Grade-II, who were in the employment of the Bank immediately before October 1, 1979 have been merged into one category, namely, Junior Management Grade, in terms of the recommendations of the Pillai Committee, that these Officers were already employees of the Bank before October 1, 1979 and as such they were 'existing officers' within the meaning of paragraph 3(h) of the Order, that the Probationary/Trainee Officers, who were appointed on 30th/31st October, 1979 had no locus standi to challenge the Order or the merger of Officers Grade-I and Grade-II and that as no order has been passed under paragraph 2(1) of the Order applying the same to the Probationary/Trainee Officers, they were outside the purview of the Junior Management Grade and, as such, were precluded from challenging the seniority of the erstwhile Officers of Grade-II.

Allowing the appeals and dismissing the special leave petition, this Court.

HELD: 1. The expression 'existing officers' as defined in paragraph 3(h) of the State Bank of India Officers'

(Determination of Terms and Conditions of Service) Order, 1979 means officers in the service of the Bank immediately prior to the appointed date, i.e., October 1, 1979. The Probationary/Trainee Officers who were appointed by the Bank on 30/31st October, 1979 after the appointed date could not, therefore, be held to be 'existing officers' within the meaning of paragraph 3(h) of the Order. [128B; F]

2. It is incorrect to say that when an employee is fitted to a particular scale of pay of another cadre, he does not become a member of that cadre. In the instant case, the Probationary/Trainee Officers were placed in the corresponding scales of pay in the Junior Management Grade for the purpose of fitment in the new scales of pay. It may be that such fitment has been made by the Bank following the principles as laid down in paragraphs 7 and 8 of the Order presumably with a view to removing any disparity between Officers Grade-I and Officers Grade-II in the Junior Management Grade, but it cannot be said that they were treated as existing officers and such fitment was made under

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paragraphs 7 and 8 of the Order. The Probationary/Trainee Officers were not in the service of the Bank immediately prior to the appointed date. As such the Bank could not treat them as existing officers for the purpose of fitment or giving a higher scale of pay. [128D-F; B]

3.1 Repugnancy of the definition of any term may arise only if such definition does not agree with the subject or context of a particular provision. But any action not in conformity with the provision of the definition clause will not render the definition of a term repugnant to the subject or context of any provision of the statute containing that term. [129BC]

3.2 In the instant case, there is no ambiguity in the definition of 'existing officers', as given in paragraph 3(h) of the Order, nor is it in any way repugnant to the subject or context of paragraphs 7 and 8. If the Probationary/Trainee Officers are treated as 'existing officers' it would be doing violence to the provision of paragraph 3(h). [129B; A]

4. The definition of 'existing officers' in paragraph 3(h) does not give any illustration whatsoever. On the contrary, it is quite specific and points to only one class of officers who were in the service of the Bank immediately prior to the appointed date and to whom any of the rules, as mentioned in that paragraph were applicable. [129D]

5. All the officers of the Bank at the lower level before the Probationary or Trainee Officers were appointed on 30/31 October, 1979 had agreed that they would merge into a new grade, and Officers Grade-I would be senior to the Officers Grade-ii. When two grades of officers are merged into a new grade, the question of inter se seniority automatically arises and casts a duty on the employer to fix the seniority. Paragraph 18(5) of the Order lays down that the seniority

ty among the existing officers will remain the same, that b, the Officers Grade-I will remain senior to Officers Grade-II. Therefore, it cannot be said that the merger was only for the purpose of fitment in the higher scale and not for purposes of seniority. [130B-D; 129F]

6. The question is not whether the Probationary/Trainee Officers have to undergo more stringent tests than the tests to be undergone by Grade-II Officers, but whether the Probationary/Trainee Officers were existing officers or not, that is to say, whether they were in the employment of the Bank immediately prior to October 1, 1979. As they were not existing officers, they could not claim seniority over the Officers of Grade-II. [130FG]

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7.1 Unless the statute, under which the rules are framed by the rule making authority, does not specifically authorise the making of rules with retrospective effect, such authority cannot frame any rule with retrospective effect. [130H- 131A]

Cannanore Spinning and Weaving Mills Ltd. v. Collector of Customs and Central Excise, Cochin, & Ors., [1970] 2 SCR 830; Income-Tax Officer, Alleppey v. M.C. Ponnose & Ors., [1970] 1 SCR 678; Hukam Chand etc. v. Union of India & Ors., [1973] 1 SCR 896 and Regional Transport Officer, Chittoor, & Ors. v. Associated Transport Madras (P) Ltd. & Ors., [1980] 4 SCC 597, referred to.

7.2 In the instant case, it cannot be said that the Order was retrospective in operation. All that has been done by it is that the Officers Grade-I and Grade-II in the employment of the Bank immediately prior to October 1, 1979 have been merged into one category, namely, Junior Management Grade. Although the Order was actually published on December 19, 1979, the Officers of the Bank who were there on or before October 1, 1979 were aware of the fact that the Order would be given effect to from October 1, 1979 as agreed to between the Bank and the Officers' Federation. The appointed date is relevant for the purpose of applicability of the Order to the Officers who have been there in the service of the Bank immediately prior to the appointed date. [131E; C; 132G-133A]

V.T. Khanzode & Ors. v. Reserve Bank of India & Anr., [1982] 4 SCR 411 and Reserve Bank of India v. C.N. Sahasranaman, [1986] Suppl. SCC 143, referred to.

8. The distinction in the status of Officers Grade-I and Grade-II having been abolished in the instant case, it is apparent that the Probationary/Trainee Officers being Officers of Grade-I were of the same status and position as the Officers of Grade-II. Admittedly, the erstwhile Officers of Grade-II were appointed much earlier than the Probationary/Trainee Officers. They cannot, therefore, be considered senior to the erstwhile Officers Grade-II. [134G-135AB]

9. The Probationary/Trainee Officers have not been

brought within the purview of the new cadre, viz., the Junior Management Grade since no order has been passed under paragraph 2(1) of the Order applying the same to them. As they are not in the Junior Management Grade, which is a completely different cadre, they have no locus standi to challenge any benefit conferred on the Officers of the

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Junior Management Grade comprising erstwhile Officers Grade-I and Officers Grade-II as were in the employment of the Bank prior to October 1, 1979. [134F; CD; 135C]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 4 125-28 of 1986.

From the Judgment and Order dated 3.1. 1986 of the Allahabad High Court in Writ Petition No. 422 of 1981, 5900, 4207 and 5899 of 1985.

With Special Leave Petition (Civil) No. 3371 of 1982. From the Judgment and Order dated 22.4.1981 of the High Court of Delhi in Civil Writ Petition No. 823 of 1981. S.S. Sharma for the Appellants in C.A. Nos. 4 125-28 of 1986.

Soli J. Sorabjee and Mrs. Madhu Sikri for the Petition- ers in S.L.P- No. 3371 of 1982.

S.N. Kacker and R.B. Mehrotra for Respondent No. 1 in C.A. No. 4 125 of 1986.

S.P. Gupta and R.B. Mehrotra for Respondent Nos. 2 to 26 in C.A. No. 4 125 of 1986.

Shanti Bhushan and R.P. Kapur for the Respondents in S.L.P. No. 337 1 of 1982.

The Judgment of the Court was delivered by DUTT, J. In these appeals by special leave and in the Special Leave Petition the dispute relates to the seniority of erstwhile Officers Grade-II and the Probationary/Trainee Officers in the Grade-I of the State Bank of India. In the lower level, the State Bank of India had two categories of officers, namely, Officers Grade-I and Offi- cers Grade-II; the function of the former was managerial and that of the latter supervisory. The conditions of service of these two categories of officers were, admit-

tedly, governed by the State Bank of India (Supervising Staff) Service Rules, hereinafter referred to as 'the 1975 Rules'.

The 1975 Rules were not framed under the rule making power of the Government, as conferred by section 49 of the State Bank of India Act, but under section 43 of the Act, sub-section(1) of which provides that the State Bank may appoint such number of officers, advisers and employees as it considers necessary or desirable for the efficient per- formance of its functions, and determine the terms and conditions of their appointment and service. Sub--section (2) of section 43 provides that

the officers, advisers and employees of the State Bank shall exercise such powers and perform such duties as may, by general special order, be entrusted or delegated to them by the Central Board. Although the Officers Grade-I were superior in rank to the Officers Grade-II, there was little difference in the pay scales of these two categories of officers. The duties, which were to be performed by Officers Grade-I and Officers Grade-II, were also similar in nature. Indeed, with the expansion of the banking activities, a large number of Officers Grade-II were required, to perform managerial duties which normally were performed by Officers Grade-I. The Officers' Federation of the State Bank of India comprising both Officers Grade-I and Grade-II had been demanding the abolition of the distinction between these two Grades. The Bank, however, had been successfully resisting the demand made by the Officers' Federation from time to time. The Federation had, at one time started taking resort to agitational method in order to force the Bank to abolish the theoretical distinction between Officers Grade-I and Officers Grade-II.

In the mean time, another external factor had crept into the situation. The Government had appointed a Committee, known as Pillai Committee, for considering a question of standardisation of pay and allowances of the officers staff in the nationalised Banks. After the Pillai Committee had submitted its report, the Government declared its intention to apply the recommendations of the Pillai Committee to the State Bank of India as well. According to the recommendations of the Pillai Committee, there should not be any distinction between Officers Grade-I and Grade-II. The Committee recommended four Grades for officers and had provided for only one scale at the junior management level. Four Grades of officers are as follows:-

1. Top Executive Grade.
2. Senior Management Grade.
3. Middle Management Grade.
4. Junior Management Grade.

After proposals and counter-proposals between the Executive Committee of the Central Board of the State Bank of India and the Officers' Federation, the Committee agreed to do away with the distinction between Officers Grade-I and Grade-II, who would be placed in a new cadre, called Junior Management Grade, having a scale of pay being Scale-I--Rs. 700-40-900-50-1100-EB-1200-60-1800. It was further agreed that the Officers Grade-II would be junior to the existing Officers Grade-I and the seniority list would be prepared accordingly.

After the said agreement was reached between the Executive Committee of the Central Board of the State Bank of India and the Officers' Federation, the Central Board, in exercise of the powers conferred by sub-section (1) of section 43 of the State Bank of India Act, passed an order, called State Bank of India Officers (Determination of Terms and Conditions of Service) Order, 1979, for short 'the Order', determining certain terms and conditions of service of officers in the Bank. Some of the provisions of the Order which are relevant for our purpose are extracted below:-

"1.(1)This order may be called State Bank of India Officers (Determination of Terms and Conditions of Service) Order, 1979. (2) This order shall come into force on the 1st day of October 1979.

2. (1) This order shall apply to the existing officers of the Bank and 'to the officers of the Bank who are appointed or promoted to any of the grades mentioned in paragraph 4 and to such other employees of the Bank to whom it may be made applicable by the Central Board or the Executive Committee or the competent authority to the extent and subject to such conditions as it may decide. (2) It shall not apply, except to the extent specified by the Central Board or the Executive Committee or the competent authority, to an officer during his tenure of service outside India or to employ-

ees engaged in any country outside India and serving there.

3. In this order, unless there is anything repugnant to the subject or context--

(a) "Appointed Date" means the 1st October 1979;

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(h) "Existing Officers" means all officers in the service of the Bank immediately prior to the appointed date and to whom any of the following sets of Rules as amended or as deemed to have been amended by appropriate resolutions of the Central Board or the Executive Committee are applicable, namely:-

(i) Rules governing the service of Officers in the Imperial Bank of India;

(ii) Rules governing the service of Assistants in the Imperial Bank of India; and

(iii) State Bank of India (Supervising Staff) Service Rules;

4. (1) There shall be the following four grades for officers with the scales of pay specified against each of the grades:-

(A) Top Executive Grade:

Special Scale -- Rs.3500 (fixed) Scale VII -- Rs. 3250-125-3500 Scale VI -- Rs.3000-125-3250 (B) Senior Management Grade:

Scale V -- Rs .2500-100-3000 Scale IV-A -- Rs.2300-100-2600 Scale IV -- Rs. 2000-100-2400 (C) Middle Management Grade:

Scale III -- Rs. 1800-75-2250 Scale II -- Rs. 1200-70-1550-75-2000 (D) Junior Management Grade:

Scale -- Rs.700-40-900-50-1100- EB- 1200-60-1800 (2) Notwithstanding anything contained in subparagraph (1), a Probationary Officer and a Trainee Officer shall, on ap-

pointment, be placed at the stage of Rs.860 in Scale I in the Junior Management Grade.

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7. Subject to the provisions of paragraph 6, existing officers serving in the grades and scales of pay mentioned in column 1 of the table given in Schedule I to this order shall be placed as on the appointed date in the grade and scale specified there against in column 2 of the said schedule.

Provided that any difficulties or anomalies arising out of the above placement shall be referred to a committee of such persons as the Chairman of the Bank may ap-

point and the decision of that committee in this regard shall be final.

8. (1) Every existing officer placed in any of the new grades and scales of pay in accordance with paragraph 7, shall be fitted at such stage in the new scale of pay corre-

sponding to the existing grade and scale as specified in Schedule II to this order.

(2) Subject to sub-paragraph (3), on being so fitted in the new scale of pay, such officer shall be eligible to draw the next increment-, if any, in such new scale on the first day of the month in which he would have been eligible to draw increment in terms of the provisions in this behalf prior to the appointed date.

(3) Where two or more officers having different seniority in the scales of pay immediately before the appointed date are fitted at the same stage in the new scale of pay, different months may be fixed for the eligibility of such officers for the next increment in the new scale of pay.

(4) The mere fact that on the ap-

pointed date an officer happens to be posted in a post categorised as that of a grade or scale higher than the one in which he is placed in accordance with the provision of paragraph 7 will not by itself entitle that officer to any higher placement or fitment." The Order was actually made and published on 19th Decem- ber, 1979. but in view of paragraph 1(2) it came into force on the first day of

October, 1979. Under paragraph 2(1), it is inter alia provided that the Order shall apply to the existing officers of the Bank and to such employees of the Bank to whom it may be made applicable. Under paragraph 3(h), the expression "existing officers" has been defined as meaning all officers in the service of the Bank, immediately prior to the appointed date, that is to say, October 1, 1979. Thus, it follows prima facie that the Order will apply only to the existing officers, that is, the officers who were in the service of the Bank immediately prior to the appointed date, which is October 1, 1979. It is not disputed that no Order has been passed by the Central Board or the Executive Committee or the competent authority directing the application of the Order to employees of the Bank other than the existing officers, as provided in paragraph 2(1). Before the Order was made and published on December 19, 1979, certain Probationary Officers and Trainee Officers were appointed by the Bank in Grade-I on October 30 and October 31, 1979. These Probationary/Trainee Officers, being Officers in Grade-I were, on the dates they were appointed, superior in rank to the Officers Grade-II. These Probationary/Trainee Officers were fitted to the Junior Management Grade: Scale-I, after the Order was passed.

ing such a Grade at Rs.960 p.m. with effect from 30/31-10- 1979. These Probationary/Trainee Officers, however, claimed that they were seniors to the erstwhile Officers Grade-II and that they should be placed above such Officers Grade-II in the seniority list. As the Bank had refused the claim of these Probationary/Trainee Officers, to seniority over the erstwhile Officers Grade-II in the Junior Management Grade, some of them filed writ petitions before the Allahabad High Court and some before the Delhi High Court. The Bank, however, opposed the writ petitions and contended that as they were not the existing officers, that is to say, employees of the Bank on October 1, 1979, which is the appointed date, they could not be given the seniority over the erstwhile Grade-II Officers, who were the existing officers within the meaning of the expression under paragraph 3(h) of the Order. The Allahabad High Court has taken the view that the expression "existing officers" has to be read as including the Probationary Officers and Trainee Officers, otherwise a repugnancy between the definition of "existing officers" and the provisions of paragraphs 7 and 8 of the Order will arise. Further, it has been held that the notional date of the coming into force of the Order, namely, 1-10-1979, is only to protect the emoluments of the officers and nothing else. In that view of the matter, the Allahabad High Court directed the Bank to prepare the seniority list of its officers in the light of the observations made in the judgment. Although it was not specifically directed that the Probationary/Trainee Officers should be placed above the officers in the erstwhile Grade-II in the seniority list, yet that would follow from the findings made by the High Court.

On the other hand, the Delhi High Court took a contrary view and dismissed the writ petitions. Though according to the Allahabad High Court, the Probationary/Trainee Officers should be placed above the erstwhile officers in the Grade- II, according to the Delhi High Court they would be placed below the Officers in the Grade-II. Hence, these Appeals by the State Bank of India and the Special Leave Petition by the Probationary/Trainee Officers.

Mr. Kacker, learned counsel appearing on behalf of the Probationary/Trainee Officers, has urged that the Allahabad High Court was justified in holding that the writ petitioners appointed as Probationary/Trainee Officers on 30/31-10- 1979, should be considered as the existing officers within the meaning of paragraph 3(h) of the Order. It is submitted by him that the Bank itself had

treated them as existing officers. In support of that contention, the learned counsel has drawn our attention to the fact that the Bank had fitted the Probationary/Trainee Officers appointed on 30/31-10-1979 to the Junior Management Grade: Scale-I at Rs.960 p.m. Such fitment, according to the learned counsel, was made under paragraphs 7 and 8 of the Order. Paragraph 7 provides for the placement of existing officers on the appointed date in the corresponding grades and scales. It lays down, inter alia, that the existing officers shall be placed as on the appointed date in the grade and scale specified in column 2 of Schedule I. Item No. 9 of column 2 specifies the Junior Management Grade:

Scale-I. Paragraph 8(1) provides that every existing officer placed in any of the new grades and scales of pay in accordance with paragraph 7, shall be fitted at such stage in the new scale of pay corresponding to the existing grade and scale as specified in Schedule II to the Order. It appears that by a circular dated June 24, 1980, the following directions were given by the Chief General Manager, State Bank of India:-

"Officers who were promoted on or after the 1st October 1979 but upto 31st December 1979, should be first fitted in the old scale in terms of the then existing formula and thereafter their basic pay should be refixed in the new scale for Junior Management Grade Scale I in accordance with the table given below: Basic pay in the Basic pay in the old clerical scale old officer's scale junior management

nt G.S.I on the date of promotion

Upto	350	500	950
	370	540	1000
	390	540	1000
	420	580	1200
	450	620	1200
	480	665	1260
	515	710	1320
	550	755	1380

The basic pay of Probationary Officers and Trainee Officers who were appointed during the period 1st October 1979 to 31st December 1979, will also be fixed on the same basis. "

It is submitted on behalf of the Probationary/Trainee Officers that it is clear from the said circular that they were also treated as existing officers, otherwise they could not be given the same benefit as the other existing officers of the Bank.

The existing officers, as defined in paragraph 3(h), means all officers in the service of the Bank immediately prior to the appointed date. Admittedly, the Probationary/Trainee Officers were not in the service of the Bank immediately prior to the appointed date, that is, October 1, 1979. They cannot, therefore, be held to be the existing officers in the face of the definition of the expression in

paragraph 3(h) of the Order.

It is difficult to accept the contention of the Probationary/ Trainee Officers that they were treated by the Bank as existing officers merely because they were fitted to the Junior Management Grade: Scale-I and given a higher start at Rs.960 p.m. It is incorrect to say that when an employee is fitted to a particular scale of pay of another cadre, he does not become a member of that cadre. In the instant case, the Probationary/Trainee Officers were placed in the corresponding scales of pay in the Junior Management Grade for the purpose of fitment in the new scales of pay. Indeed, as stated already, they were fitted to the Junior Management Grade: Scale-I at Rs.960 p.m. It may be that such fitment has been made by the Bank following the principles as laid down in paragraphs 7 and 8 of the Order, presumably with a view to removing any disparity between Officers Grade-I and Officers Grade II in the Junior Management Grade, but it will be difficult to accept the contention made on behalf of the Probationary/Trainee Officers that they were treated as existing officers and such fitment was made under paragraphs 7 and 8 of the Order. The Probationary/Trainee Officers appointed on 30/31-10-1979, that is, after 1-10-1979, the appointed date, are not existing officers within the meaning of paragraph 3(h) of the Order and the Bank could not treat them as such for the purpose of fitment or giving a higher scale of pay.

We are unable to subscribe to the view of the Allahabad High Court that unless the expression "existing officers" is read as including the Probationary/Trainee Officers, there will be a repugnancy between the definition of existing officers, as contained in paragraph 3(h), and the provisions of paragraphs 7 and 8 of the Order. This view of the Allahabad High Court proceeds on the assumption that the Probationary/Trainee Officers having been given the benefit of extra emoluments by fitting them in the Junior Management Grade: Scale-I, they were treated as existing officers. In our opinion, if the Probationary/Trainee Officers are treated as existing officers, it will be doing violence to the provisions of paragraph 3(h). We do not think that the definition of the expression "existing officers", as given in paragraph 3(h) is, in any way, repugnant to the provisions of paragraphs 7 and 8 of the Order. On the contrary, it is quite in harmony with the said provisions and also the other provisions of the Order. There is no ambiguity in the definition of "existing officers" and in regard to paragraphs 7 and 8 of the Order there is no repugnancy of the definition to the subject or context. Repugnancy of the definition of any term may arise only if such definition does not agree with the subject or context of a particular provision. But, surely, any action not in conformity with the provision of the definition clause will not render the definition of a term repugnant to the subject or context of any provision of the statute containing the term. We are also unable to accept the contention of Mr. Kacker that the definition of "existing officers" is only illustrative and not exhaustive and that such narrow definition does not fit in everywhere. The definition does not give any illustration whatsoever, and it is wrong to submit that the definition is illustrative. On the contrary, the definition under paragraph 3(h) is quite specific and points to only one class of officers, that is, the officers who were in the service of the Bank immediately prior to the appointed date and to whom any of the rules, as mentioned in that paragraph, are applicable. In our view, therefore, the Probationary/ Trainee Officers appointed on 30/31-10-1979, that is, after the appointed date, are not existing officers.

In this connection, we may notice the argument of Mr. Gupta, learned counsel appearing on behalf of some of the Probationary/ Trainee Officers, that the merger of Officers Grade-II and Grade-I into the Junior Management Grade was only for the purpose of fitment in the higher scale of pay and not for the purpose of seniority. It has been already stated that it was the demand of the Officers' Federation, representing both Officers Grade-I and Officers Grade-II, that the distinction between these two Grades should be abolished in every respect and, ultimately, it was agreed that they would be placed in one grade, that is, the Junior Management Grade, having a higher scale of pay, subject to this that the Officers Grade-I will be above the Officers Grade-II in the seniority list. It appears from the Circular No. 9 issued by the Officers' Federation, that the Pillai Committee's recommendations would be implemented in the State Bank Group from October 1, 1979. Thus, it was agreed by the Officers' Federation that a scheme, namely, the merger of Officers Grade-I and Officers Grade-II into Junior Management Grade would take place with effect from October 1, 1979 and that has been exactly given effect to by the Order under which the existing Officers, that is, the officers who were in the employment of the Bank immediately prior to October 1, 1979, would be placed in the new Junior Management Grade and to Scale-I, as contained in Schedule I to the Order. In paragraph 2(1) of the Order, provision has been made for the application of the Order to other officers. Thus, it is clear that all the officers of the Bank in the lower level before the Probationary or Trainee Officers were appointed on 30/31-10-1979 agreed that they would merge into a new Grade and Officers Grade-I would be senior to the Officers Grade-II. This was the result of the recommendations of the Pillai Committee suggesting that there should be one grade for the Officers Grade-I and II in the lower level. It may be that Pillai Committee did not make any recommendation with regard to seniority, but when two grades of officers are merged into a new grade, the question of inter se seniority will automatically arise and it will be the duty of the employer to fix the seniority. Indeed, paragraph 18 of the Order lays down the principles for computing the seniority of the officers of the Bank. But, under paragraph 18(5) of the Order, the seniority among the existing officers will remain the same. In other words, the Officers Grade-I will remain seniors to Officers Grade-II. Another contention that has been made by Mr. Gupta for the Probationary/Trainee Officers is that these officers have to undergo tests which are more stringent than the tests to be undergone by the Grade-II Officers and, as such, the Probationary/Trainee Officers, though they were appointed on 30/31-10-1979, should not be placed under the Officers Grade-II in the seniority list. This, in our opinion, is an argument in despair. The question is not whether the Probationary/ Trainee Officers have to undergo more stringent tests than the tests to be undergone by the Grade-II Officers, but the question is whether the Probationary/Trainee Officers are existing officers or not, that is to say, whether they were in the employment of the Bank immediately prior to October 1, 1979. As the Probationary/Trainee Officers are not existing officers, they cannot claim seniority over the Officers Grade II, who are existing officers. It is next contended that the Bank had no authority to give retrospective operation to the Order with effect from October 1, 1979, inasmuch as section 43 of the State Bank of India Act under which the Order has been passed, does not authorise the Bank to pass any such Order with retrospective effect. It is now well settled that unless the statute, under which the rules are framed by the rule making authority, does not specifically authorise the making of rules with retrospective effect, such authority cannot frame any rule with retrospective effect. (See *Cannanore Spinning and Weaving Mills Ltd. v. Collector of Customs and Central Excise, Cochin & Ors.*, [1970] 2 SCR 830; *Income-Tax Officer, Alleppey v. M.C. Ponnose & Ors.*, [1970] 1 SCR 678; *Hukam Chand etc. v. Union of India &*

Ors., [1973] 1 SCR 896 and Regional Transport Officer, Chittoor, & Ors. v. Associated Transport Madras (P) Ltd. & Ors., [1980] 4 SCC 597). Mr. Shanti Bhushan, learned counsel appearing on behalf of the State Bank of India, however, submits that the impugned Order has not been made retrospective, as contended on behalf of the Probationary/Trainee Officers. All that has been done by the Order is that the Officers Grade-I and Grade-II have been merged into one category, namely, Junior Management Grade with effect from October 1, 1979. These Officers were already employees of the Bank before October 1, 1979 and, as such, they are existing officers within the meaning of paragraph 3(h) of the Order. Further, it is submitted by him that the Bank after considering the injustice done to the Officers Grade-II numbering about 15,000, sought to remove the same by abolishing the distinction between Officers Grade-I and Officers Grade-II in terms of the recommendations of the Pillai Committee by the impugned Order with effect from October 1, 1979. It may be that there was some delay in publishing the decision of the Bank, that is, the Order, but it cannot be said that the Order is retrospective in operation.

Mr. Shanti Bhushan points out that in V.T. Khanzode & Ors. v. Reserve Bank of India & Anr., [1982] 4 SCR 411 this Court upheld the decision of the Reserve Bank of India as regards the introduction of common seniority, inter-group and mobility amongst different grades of officers belonging to Group-I, Group-II and Group-III with retrospective effect from May 22, 1974. In that case, officers belonging to Group-I urged that the scheme should be brought into effect from January 1, 1976, while those belonging to Groups-II and III wanted the scheme to be brought into effect from January 1, 1970. The Central Board of the Reserve Bank struck a balance by choosing the date May 22, 1974. Chandrachud, C.J. delivering the judgment of the Court held that it was the best solution in the peculiar circumstances of the case and that in order to rectify the imbalances and anomalies caused by the compartmental-wise and group-wise seniority, it was necessary to give retrospective effect to the combined seniority list. Further, it has been observed by the learned Chief Justice that no scheme governing service matter can be fool-proof and some section or the other of employees is bound to feel aggrieved on the score of its expectations being falsified or remaining to be fulfilled. Mr. Shanti Bhushan has also placed reliance upon the observation of Sabyasachi Mukharji, J., in Reserve Bank of India v. C.N. Sahasranaman, [1986] Suppl. SCC 143. It has been observed by Mukharji, J that whether there has been denial of equality or any constitutional right infringed or not cannot be published where interests of large number of people are concerned, in judged the abstract. Further, it has been observed that in service jurisprudence there cannot be any service rule which would satisfy each and every employee and its constitutionality has to be judged by considering whether it is fair, reasonable and does justice to the majority of the employees.

Relying upon the above two decisions of this Court, it is submitted on behalf of the State Bank of India that in the instant case also a large number of employees, particularly the Officers Grade-II numbering about 15,000, have been benefitted. Indeed, justice has been done to these 15,000 employees as agreed to by the Officers' Federation of the Bank comprising both Officers Grade-I and Officers Grade II. Counsel submits that existing officers have been given the benefit of the Junior Management Grade: Scale-I with effect from 1.10.1979. So, the Order was also given effect to from that date, which is the appointed date. It is submitted that the Order has been given effect to from 1-10-1979 in the interest of a large number of employees of the Bank. The Probationary/Trainee Officers, who are only 900 in number and appointed on 30/31-10-1979, have no locus standi to

challenge the Order or the merger of Officers Grade-I and Officers Grade-II in one cadre, namely, Junior Management Grade, as per the recommendations of the Pillai Committee. It is not disputed that negotiations had been going on between the Bank and the Officers' Federation as to how and in what manner the recommendations of the Pillai Committee accepted by the Government would be given effect to. Ultimately, it was decided that the recommendations would be given effect to from 1-10-1979 by merging the two categories of officers who were in the employment of the Bank, immediately prior to 1-10-1979 into one category, namely, the Junior Management Grade. Although the Order was actually published on December 19, 1979, the officers of the Bank, who were there on or before October 1, 1979, were aware of the fact that the Order would be given effect to from October 1, 1979, as agreed to between the Bank and the Officer's Federation. The appointed date is relevant for the purpose of applicability of the Order to the officers, who had been there in the service of the Bank immediately prior to the appointed date.

Mr. Soli Sorabjee, learned counsel appearing on behalf of the petitioners in the Special Leave Petition No. 3371 of 1982, has drawn our attention to a telex message which has been communicated to all the petitioners instructing them to complete their formalities and to join the duty well before October 31, 1979 in their own interest. Telegrams were also sent to the petitioners to the following effect:-

"Reference to your selection as Probationary Officer and our communications to you for immediate completion of necessary formalities. We reiterate that the Pillai Committee's recommendations are likely to be implemented shortly. If you join after implementation thereof, you shall be governed by the revised terms of service and salary scales. You are advised in your own interest to complete the remaining formalities viz., (1) acceptance of our offer by 20th October, 1979 and be ready to join duty around 25th idem at the place to be intimated to you after completion of formalities, failing which the risk of change in the salary structure and other conditions will be yours."

From the telex and telegraph messages, it is contended that they show that the Bank had decided to give effect to the Order with effect from 30/31-10-1979. We are unable to accept this contention. There is no indication in the telex or telegram that the Order will be given effect to from October 30/31, 1979. The telegram really mentions that if the petitioners join after implementation of the recommendations of the Pillai Committee, they will be governed by the revised terms of service and salary scales. Indeed, it has been already noticed that after the appointment of the Probationary/Trainee Officers on 30/31-10-1979, they were fitted to the Junior Management Grade: Scale-I and given a higher start at Rs.960 p.m. The telex and the telegram to which our attention has been drawn, do not seem to be of any consequence to the Probationary/Trainee Officers and does not at all support their contention that the Order was intended to be given effect to from 30/31-10-1979. It is next contended by the learned counsel, appearing on behalf of the Probationary/Trainee Officers, that the impugned Order takes away the vested right of seniority of the Probationary/Trainee Officers with retrospective effect. In elaboration of the contention, it is pointed out that on the day these Probationary/Trainee Officers were appointed, namely, on October 30/31-10-1979, they were admittedly seniors to the Officers Grade-II. This seniority of the

Probationary/Trainee Officers has been taken away by giving retrospective operation to the Order. It is submitted that the Bank has no authority to take away the vested right of seniority of the Probationary/Trainee Officers with retro- spective effect. On the other hand, it is contended by Mr. Shanti Bhushan, learned counsel appearing on behalf of the State Bank of India, that there is no question of vested right to seniority. Seniority is relevant only for the purpose of promotion. A right to be considered for promotion is a vested right, but a mere chance of promotion is not such a right. It is submitted that the right of the Proba- tionary/Trainee Officers to be considered for promotion has not been affected in the least by the Order, nor have their chances of promotion been affected. Moreover, no order has been passed under paragraph 2(1) of the Order applying the same to the Probationary/Trainee Officers. These Officers are outside the purview of the Junior Management Grade and, as such, they are precluded from challenging the seniority of the erstwhile Officers Grade-II, now placed in a com- pletely different category. In other words, it is the con- tention of the State Bank of India that the Probationary/Trainee Officers, who have been appointed on 30/31-10-1979 as Officers Grade-I, cannot challenge any benefit that is conferred on the officers of a different cadre, namely, the Junior Management Grade. It is not necessary for us to decide whether there is any vested right to seniority or not. The Probationary/Trainee Officers have not been brought within the purview of the new cadre, that is, the Junior Management Grade. Indeed, it is the complaint of the learned counsel, appearing on behalf of these Officers, that they have been totally ignored by the Order inasmuch as no provision has been made about them in the Order. We have already noticed that it was the contention of the Officers' Federation that there should not be any distinction in the status of Offi- cers Grade-I and Officers Grade-II. It was urged that such distinction should be abolished and both these categories of officers should be placed in one category so that they have the same status and position. The State Bank of India ac- cepted the demand of the Officers' Federation and the dis- tinction has been removed. In these circumstances, it is apparent that the Probationary/ Trainee Officers being Officers Grade-I, are of the same status and position as the Officers Grade-II. Admittedly, the erstwhile Officers Grade-II were appointed much earlier than the Probationary/Trainee Officers, who were the writ petitioners in the High Courts. Although they had to perform almost the same duty and there was no difference between their posi- tions, they had to suffer an artificial distinction and placed below the Officers Grade-I, who were considered to be superior in rank to the Officers Grade-II. After the Bank had decided that both these two categories of officers were same in status and position and such decision having been implemented, we are afraid, it is difficult to accept the contention made on behalf of the Probationary/Trainee Offi- cers that they should be considered senior to the erstwhile Officers Grade-II.

Moreover, there is some force in the contention made on behalf of the Bank that as the Probationary/Trainee Officers are not in the Junior Management Grade which is a different cadre, they have no locus standi to challenge any benefit conferred on the officers of the Junior Management Grade comprising erstwhile Officers Grade-I and Officers Grade-II, as were in the employment of the Bank prior to October 1, 1979.

It is submitted by Mr. Shanti Bhushan that the Proba- tionary/ Trainee Officers, with whom we are concerned, have not been prejudiced in the least by the Order having come into force on and from October 1, 1979. The learned counsel has categorically stated before us that all these officers will be

included in the Junior Management Grade and an order in that regard will be passed under paragraph 2(1) of the Order. It is pointed out by him that everybody will be considered for promotion from the Junior Management Grade to the Middle Management Grade. Thus, even though the Probationary/Trainee Officers are placed below the erstwhile Officers Grade-II, they will be allowed to appear at the written test, one of the modes prescribed for promotion, along with others including the erstwhile Officers Grade II, provided they complete six years of service in Grade-I. Apart from this, the Probationary/Trainee Officers have been fitted to the higher scale of pay in the Scale-I of the Junior Management Grade, although they have not been formally included in that Grade. In these circumstances, it cannot be said that the Probationary/Trainee Officers have been prejudiced by the Order. We are sure that the Bank will take immediate steps for applying the order to the Probationary/Trainee Officers. No other point has been urged on behalf of the parties.

For the reasons aforesaid, the judgment of the Allahabad High Court is set aside and the Civil Appeals are allowed. The judgment of the Delhi High Court is affirmed and the Special Leave Petition is dismissed. All the Writ Petitions filed by the Probationary/Trainee Officers are also dismissed. There will, however, be no order as to costs in any of these Appeals or in the Special Leave Petition.

P.S.S.
dismissed.

Appeals allowed & Petition