

Chairman, Canara Bank, Bangalore vs M. S. Jasra And Ors on 6 March, 1992

Equivalent citations: 1992 AIR 1100, 1992 SCR (2) 68, AIR 1992 SUPREME COURT 1341, 1992 (2) SCC 484, 1992 AIR SCW 982, 1992 LAB. I. C. 1001, (1992) 2 SCR 68 (SC), 1992 (2) UJ (SC) 173, 1992 UJ(SC) 2 173, (1992) 2 JT 203 (SC), 1992 SCC 1100, 1992 (2) JT 203, 1992 SCC (L&S) 590, (1992) 2 CIVLJ 98, (1992) 1 CURLR 604, (1992) 80 FJR 450, (1992) 64 FACLR 908, (1992) 1 LABLJ 777, (1992) 1 LAB LN 914, (1992) 2 SCJ 51, (1992) 2 SERVLR 233, (1992) 1 BANKLJ 153, (1992) 1 BANKCAS 627, (1992) 1 CURLJ(CCR) 603, (1992) 1 BANKCLR 555, AIR 1992 SUPREME COURT 1100, AIRONLINE 1992 SC 302

Author: Jagdish Saran Verma

Bench: Jagdish Saran Verma, L.M. Sharma, Yogeshwar Dayal

PETITIONER:

CHAIRMAN, CANARA BANK, BANGALORE

Vs.

RESPONDENT:

M. S. JASRA AND ORS.

DATE OF JUDGMENT 06/03/1992

BENCH:

VERMA, JAGDISH SARAN (J)

BENCH:

VERMA, JAGDISH SARAN (J)

SHARMA, L.M. (J)

YOGESHWAR DAYAL (J)

CITATION:

1992 AIR 1100

1992 SCR (2) 68

1992 SCC (2) 484

JT 1992 (2) 203

1992 SCALE (1) 616

ACT:

Banking Regulation Act, 1949:

Section 45-Amalgamation of banks-Scheme of amalgamation-Conditions of service in respect of employees continued after amalgamation-Age of superannuation-Whether to be the same as was available in transferor Bank or whether to be at par with the employees of same rank or status in the transferee Bank.

HEADNOTE:

Respondent No. 1 who was a Banking Officer in the Reserve Bank of India applied for the post of Assistant General Manager in Lakshmi Commercial Bank. he was selected for the said post and he joined in March 1983. In 1985 on an application made by the Reserve Bank under Section 45(1) of the Banking Regulation Act, 1949, the Central Government passed an order of moratorium under Section 45(2) of the said Act, in respect of Lakshmi Commercial Bank and it came to be amalgamated with Canara bank. The services of the employees of Lakshmi Commercial Bank were continued with Canara Bank, and respondent No. 1 was fitted in the post of Divisional Manager in Canara Bank, and respondent No. 1 was fitted in the post of Divisional Manager in Canara Bank. He claimed that he should be fitted against a higher post by virtue of his position as Assistant General Manager in Lakshmi Commercial Bank. He also claimed that he was entitled to continue in service till he attained the age of 60 years which was the age of superannuation in Lakshmi Commercial Bank. His representations were rejected by the petitioner Bank and the Reserve Bank Thereafter respondent No. 1 filed a writ petition before the High Court claiming the relief that he should be allowed to continue in service till he attains the age of 60 years.

The High Court allowed the Writ Petition. Aggrieved against the High Court's order, the petitioner-bank has preferred this appeal by special leave.

The appellant-bank contended that on the basis of Section 45 of the

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Banking Regulation Act, 1949 and the consequent amalgamation of Lakshmi Commercial Bank with Canara bank, the service conditions under Lakshmi Commercial Bank would not be available to the respondent No. 1; and that the terms and conditions of service applicable to employees of corresponding rank and status in Canara Bank would only apply.

Allowing the appeal, this Court,

HELD: 1. Respondent No. 1 could not claim to be governed by the age of superannuation of 60 years applicable to him in Lakshmi Commercial Bank. When his services were continued on amalgamation of Lakshmi Commercial Bank with Canara Bank, he became an employee of Canara Bank and was, therefore, entitled only to the right given by proviso (ii) to clause (i) of sub-section (5) of Section 45 of the Banking Regulation Act, 1949 which entitled him to the same terms and conditions of service as employees of the corresponding rank or status in Canara Bank. Age of superannuation of the employees in Canara Bank being 58 years only, Respondent No. 1 could not claim to retire at 60

years. The High Court misconstrued clause (i) and proviso (ii) thereunder of Sub-section (5) of section 45 of the Act and clauses 10 and 12 of the amalgamation scheme, to take the contrary view. [80D,E]

2. It is not necessary that every scheme of amalgamation framed under sub-section (4) of Section 45 must provide for continuance of service of all the employees of the banking company in the transferee bank; but where such a provision is made it must contain a provision as required by proviso in clause (i). This is clear from the use of the word 'may' in the opening words of sub-section (5) and the word 'shall' in the proviso. If the scheme for amalgamation provides for continuance of the service of the employees in the transferee bank, then beyond a period of three years from the date on which the scheme is sanctioned by the Central Government, the transferee bank cannot discriminate between such employees and its other employees of corresponding rank or status. The only right of such an employee whose service is so continued is, therefore, to claim parity with the employees of the transferee bank itself of corresponding rank or status subject equivalent qualification and experience and no more. The right of such an employee is provided in the proviso to clause (i) and not in the earlier enacting part of clause (i) of sub-section

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(5) of Section 45 of the Act as claimed by respondent No. 1 and upheld by the High Court. [78F,G]

State Bank of Travancore v. Elias Elias & Ors., [1971] 2 SCR 28, referred to.

3. Clauses 10 and 12 of the Amalgamation Scheme merely incorporate the matter specified in clause (i) and the proviso thereunder. There is no ambiguity or conflict in those clauses of the scheme either inter se or with clause (i) and the proviso thereunder in sub-section (5) of Section 45 of the Banking Regulation Act, 1949. [79-H; 80-A]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil appeal No. 1054 of From the Judgement and Order dated 20.9.1991 of the Delhi High Court in C.W.P. No 2199 of 1991.

K.N. Bhat, S.R. Bhat, Mrs. L.M. Bhat and Alok Agarwal for the Appellants.

S.C. Gupta H.N. Salve, Inder Jeet Sharma, S.P. Sharma and H.S. Parihar for the Respondents.

The Judgment of the Court was delivered by VERMA, J. Respondent No. 1, M.S. Jasra, joined the service of the Reserve Bank of India in 1957, was promoted as a Staff Officer in 1970 and then as a Banking Officer in 1977. M.S. Jasra applied in response to an advertisement issued by the Lakshmi

Commercial Bank and was selected in 1983 for the post of Assistant General Manager which he joined in March, 1983.

The Central Government, after considering the application made by the Reserve Bank under sub-section (1) of Section 45 of the Banking Regulation Act, 1949 made an order of moratorium under sub-section (2) thereof in respect of Lakshmi commercial Bank of April 27, 1985. Thereafter, the Reserve Bank prepared a scheme for amalgamation of the Lakshmi Commercial bank with the Canara Bank on August 23, 1985 under sub-section (4) of Section 45 which was approved by the Central Government on August 24, 1985. As a consequence thereof, the services of the employees of Lakshmi Commercial Bank were continued on amalgamation in the Canara Bank and respondent No. 1, M.S. Jasra was fitted in the post of Divisional Manager in the Canara Bank.

M.S. Jasra, respondent No. 1 was aggrieved by his continuance in the Canara Bank as Divisional Manager since he claimed to be fitted against a higher post by virtue of the office of Assistant General Manager held by him in the Lakshmi commercial Bank; and he also asserted that he was entitled to continue in the service of Canara Bank till he attained the age of 60 years which was the age of superannuation for him in the Lakshmi Commercial Bank instead of 58 years, the age of superannuation in the Canara Bank. These representations made by M. S. Jasra were rejected by the Canara Bank as well as by the Reserve Bank. Respondent No. 1, M. S. Jasra then filed Writ Petition No. 2199 of 1991 in the Delhi High Court for grant of the relief that he was entitled to continue in service in the Canara Bank till he attained the age of 60 years instead of 58 years. By the impugned Judgment dated 20th September, 1991 the High Court has allowed the Writ Petition Quashing the Reserve Bank's letter dated 18th May, 1991 wherein it was stated that the age of superannuation of respondent No. 1, M.S. Jasra was 58 years and not 60 years as claimed by him, and declared that the respondent No. 1 is entitled to continue in service of Canara Bank till he attains the age of 60 years. Hence, this petition for grant of special leave to appeal against the High Court's Judgment has been filed. The only question for decision herein is that of the age of superannuation.

Leave is granted.

The contention of Shri K.N. Bhat, learned counsel for the appellant, Canara Bank, is that the relevant provisions contained in Section 45 of the Banking Regulation Act, 1949 read with the materials portions of the scheme for amalgamation framed by the Reserve Bank show that the employees of the Lakshmi commercial Bank who are continued in the service of the Canara Bank, on amalgamation of the Lakshmi Commercial Bank with the Canara Bank are entitled, on their integration in the service of the Canara Bank, to the same remuneration and the same terms and conditions of service which are applicable to the other employees of corresponding rank or status in the Canara Bank and not to any higher or larger benefits irrespective of the fact whether the remuneration and terms and conditions of service of the concerned employee were better or worse prior to amalgamation in the Lakshmi commercial Bank. Shri Harish N. Salve, learned counsel for the respondent Reserve Bank of India has supported the contention of Shri Bhat. On the other hand, Shri S.C. Gupta, learned counsel for respondent No. 1, M.S. Jasra has attempted to support the High Court's conclusion including the reasons therefor.

It would be appropriate at this stage to quote the portion of Section 45 of the Banking regulation Act, 1949 and Scheme for Amalgamation framed by the Reserve Bank under Section 45(4) of the Act:-

"45. Power of Reserve Bank of apply to Central Government for suspension of business by a banking company and to prepare scheme of reconstitution or amalgamation:- (1) Notwithstanding anything contained in the foregoing provisions of this Part or in any other law or any agreement or other instrument, for the time being in force, where it appears to the Reserve Bank that there is good reason so to do, the Reserve Bank may apply to the Central Government for an order or moratorium in respect of a banking company.

(2) The Central Government, after considering the application made by th Reserve Bank under sub-

section (1), may make an order of moratorium staying the commencement or continuance of all actions and proceedings against the company for a fixed period of time on such terms and conditions as it thinks fit and proper and may from time to time extend the period so however that the total period of moratorium shall not exceed six months. (3).....

(4) During the period of moratorium, if the Reserve Bank is satisfied that -

(a) in the public interest; or

(b) in the interest of the depositors; or

(c) in order to secure the proper management of the banking company; or

(d) in the interests of the banking system of the country as a whole, - it is necessary so to do, the Reserve Bank may prepare a scheme -

(i) for the reconstruction of the banking company, or

(ii) for the amalgamation of the banking company with any other banking institution (in this section referred to as "the transferee bank"

(5) The scheme aforesaid may contain provisions for all or any of the following matters, namely:-

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(i) the continuance of the services of all the employees of the banking company (excepting such of them as not being workmen within the meaning of the Industrial Disputes Act, 1947 are specifically mentioned in the Scheme) in the banking company

itself on its reconstruction or, as the case may be, in the transferee bank at the same remuneration and on the same terms and conditions of service, which they were getting or as the case may be, by which they were being governed, immediately before the date of the order of moratorium:

Provided that the scheme shall contain a provision that-

(i) the banking company shall pay or grant not later than the expiry of the period of three years from the date on which the scheme is sanctioned by the Central Government, to the said employees the same remuneration and the same terms and condition of service as are, at the time of such payment or grant, applicable to employees of corresponding rank or status of a comparable banking company to be determined for this purpose by the Reserve Bank (whose determination in this respect shall be final);

(ii) the transferee bank shall pay or grant not later than the expiry of the aforesaid period of three years, to the said employees the same remuneration and the same terms and conditions of service as are, at the time of such payment or grant, applicable to the other employees of corresponding rank or status of the transferee bank subject to the qualifications and experience of the said employees being the same as or equivalent to those of such other employees of the transferee bank:

Provided further that if in any case under clause

(ii) of the first proviso any doubt or difference arises as to whether the qualification and experience of any of the said employees are the same as or equivalent to the qualifications and experience of the other employees of corresponding rank or status of the transferee bank the doubt or difference shall be referred, before the expiry of a period of three years from the date of payment or grant mentioned in that clause to the Reserve Bank whose decision thereon shall be final;

XXX XXX XXX (8) On and from the date of the coming into operation of the scheme or any provision thereof, the scheme, or such proviso shall be binding on the banking company or, as the case may be, on the transferee bank and any other banking company concerned in the amalgamation and also on all the member, depositors and other creditors and employees of each of those companies or the transferee bank and on any other person having any right or liability in relation to any of those companies or the transferee bank including the trustee or other persons managing, or connected in any other manner with, any provident fund or other fund maintained by any companies or the transferee bank.

XXX XXX XXX (14) The provisions of this section and of any scheme made under it shall have effect notwithstanding anything to the contrary contained in any other provisions of this Act or in any other law or any agreement, award or other

instrument for the time being in force.

(15) In this section , "banking institution"

means any banking company and includes the State Bank of India or a subsidiary bank or a corresponding new bank.

Explanation - References in this section to the terms and conditions of service as applicable to an employee shall not be construed as extending to the rank and status of such employee.

The relevant clauses of the Amalgamation Scheme are : -

"(10) All the employees of the transferor bank other than those specified in the schedule referred to in the succeeding paragraph shall continue in service and be deemed to have been appointed by the transferee bank at the same remuneration and on the same terms and conditions of service as were applicable to such employees immediately before the close of business on 27th April, 1985.

Provided that the employees of the transferor bank who have, by notice in writing given to the transferor or the transferee bank at any time before the expiry of one month next following the date on which this scheme has been sanctioned by the Central Government, intimated their intention of not becoming employees of the transferee bank, shall be entitled to the payment of such compensation, if any, under the provisions of the Industrial Disputes Act, 1947 and such pension, gratuity provident fund and other retirement benefits as may be ordinarily admissible under the rules of authorisation of the transferor bank immediately before the close of the business on 27th April, 1985.

Provided further that the transferee bank shall in respect of the employees of the transferor bank who are deemed to have been appointed as employees of the transferee bank be deemed also to have been taken over the liability for the payment of retrenchment compensation in the event of their being retrenched while in the service of the transferee bank on the basis that their service continues and has not been interrupted by their transfer to the transferee bank.

XXX XXX XXX (12) The transferee bank shall on the expiry of period not longer than three years from the date on which this scheme is sanctioned, pay or grant to the employees of the transferor bank the same remuneration and the same terms and conditions of service as are applicable to the employees of corresponding rank or status of the transferee bank subject to the qualifications and experience on the said employees of the transferor bank being the same as or equivalent to those of such other employees of the transferee bank.

Provided that if any doubt or difference arises as to whether the qualifications or experience of any of the said employees are the same as or equivalent to the qualification and experience of the other employees of corresponding rank or status of the transferee bank or as to the procedure of principles to be adopted for the fixation of the pay of the employees in the scales of pay of the employees in the

scales of pay of the transferee bank, the doubt or difference shall be referred to the Reserve Bank of India whose decision thereon shall be final".

The High Court has taken the view that clause (i) of sub-section (5) of Section 45 read with clause 10 of the amalgamation scheme confers a vested right on the transferred employees of the Lakshmi Commercial Bank in respect of their terms and conditions of service which could not be adversely affected as a result of the amalgamation with the Canara Bank and Proviso (ii) in Section 45(5)(i) and clause 12 of the Scheme could not take away or dilute the vested right so conferred by Section 45(5)(i). The material portion of the High Court's Judgment is as under :-

"The mandate of Section 45(5)(i) is that the scheme which is formulated may contain provisions with regard to employees of the banking companies and such a scheme should protect the remuneration and other terms and conditions of an employee, The second proviso to Section 45(5)(i) of the Act as well as clause 12 of the scheme have to be read harmoniously with Section 45(5)(i) and clause 10 of the scheme. The second proviso was not meant to take away or dilute the rights which are conferred by clause (i). Keeping this in view clause 10 of the scheme was formulated which specifically provides that the terms and conditions of the employees like the petitioner shall be those as were applicable to them immediately before the close of business on 27th April, 1985.

Clause 12 of the scheme or the second proviso to Section 45(5)(i) cannot be so read as to take away the vested rights of the transferred employees which rights were that their remuneration as well as the terms and conditions of service were not to be adversely affected.

..... in the present case, on the other hand, there is a statutory assurance contained in Section 45(5)(i). The assurance contained in this provision coupled with clause 10 of the scheme gives a right to an employee like the petitioner to continue to remain in service till the age of 60 years."

The question is whether the construction so made by the High Court of the relevant provisions in Section 45 of the Act and clauses 10 and 12 of the amalgamation scheme is correct.

The further question is whether on that basis, the claim of respondent No. 1 as former employee of the Lakshmi Commercial Bank to retire at the age of 60 years instead of 58 years is a vested right, as held by the High Court, which cannot be taken away on amalgamation of the Lakshmi Commercial Bank with the Canara bank in this manner.

The Banking Regulation Act, 1949 is an Act to consolidate and amend the law relating to banking. Part III of the Act contains Sections 36B to Section 45 under the heading 'suspension of business and winding up of banking companies'. Section 45 in Part III provides for the power of Reserve Bank to apply to the Central Government for suspension of business of a banking company and to prepare scheme of reconstitution or amalgamation. Sub-section (1) enables the Reserve Bank to

apply to the Central Government for an order of moratorium in respect of a banking company if there is good reason so to do. Sub-section (2) empowers the Central Government, on such an application of the Reserve Bank to make an order of moratorium staying the commencement or continuance of all actions and proceedings against the banking company for a fixed period of time on such terms and conditions as it thinks fit and proper and permits extension of the period of moratorium so as not to exceed six months.

Sub-section (4) then provides for preparation of a scheme by the Reserve Bank for the reconstruction of the banking company for its amalgamation with any other banking institution if the Reserve Bank is satisfied that it is necessary so to do in the public interest; or the interest of the depositors; or to secure the proper management of the banking company; or in the interests of the banking system of the country as a whole.

Sub-section (5) then specifies the provisions which may be made in such a scheme. It is clause (i) and the provisos thereunder of sub-section (5) with which we are concerned. The opening words in sub-section (5) are: "The scheme aforesaid may contain provisions for all or any of the following matters..." It is clear that the scheme so framed under sub-section (4) may contain provisions for all or any of the matter specified in sub-section (5) so that it enables all or any of the specified matter to be provided in the scheme prepared under sub-section (4) and the matters specified in the several clauses in sub-section (5) do not automatically get incorporated in such scheme unless the scheme specifically includes any such matter. It means that the matter specified in clause (i) of sub-section (5) is not an invariable term to be read in such a scheme framed under sub-section (4) for amalgamation of the banking company unless it is incorporated specifically in the scheme so prepared. Thus, such a scheme may or may not contain provision for the continuance of the services of all the employees of the banking company in the transferee bank as is specified in clause (i). However, if the scheme does provide for this matter, then the continuance of the services of the employees of the banking company in the transferee bank as provided in clause (i) is subject to the requirements of the proviso thereunder. In other words, it is not necessary that every scheme of amalgamation framed under sub-section (4) must provide for continuance of services of all the employees of the banking company in the transferee bank; but where such a provision is made, it must contain a provision as required by the provisos in clause

(i). This is clear from the use of the word 'may' in the opening word of sub-section (5) and the word 'shall' in the proviso. In effect it means that where the scheme provides for continuance of the services of all the employees of the banking company in the transferee bank at the same remuneration and on the same terms and conditions of service which they were getting or, as the case may be, by which they were being governed immediately before the date of the order of moratorium, then the scheme must contain a provision that the transferee bank shall pay or grant not later than the expiry of the period of three years from the date on which the scheme is sanctioned by the Central Government to the said employees the same remuneration and the same terms and conditions of service as are applicable to the other employees of corresponding rank or status of the transferee bank subject to the qualifications and experience of the said employees being the same as or equivalent to those of such other employees of the transferee bank.

Clause (i) read with the proviso in sub-section (5) results in enabling the making of a provision in the scheme of amalgamation for the continuance of services of the employees of the banking company in the transferee bank on the same terms and conditions by which they were governed before the date of the order of moratorium but when such a provision is made, the scheme has also to provide that the transferee bank shall grant not later than the period of three years the same terms and conditions of service of the employees who are continued, the terms and conditions of service in the transferee bank in the corresponding rank or status, subject to the requisite qualifications and experience. The right of the employees of the banking company in the transferee bank on continuance of the service by virtue of such a provision in the scheme as provided in clause (i) of sub-section (5) is merely that which is contained in the proviso thereunder, that is, that the transferee bank would treat them at par with its own employees of corresponding rank or status subject to the qualifications and experience irrespective of the earlier terms and conditions of service. In other words, if the scheme provides for continuance of the services of the employees in the transferee bank, then beyond a period of three years from the date on which the scheme is sanctioned by the Central Government, the transferee bank cannot discriminate between such employees and its other employees of corresponding rank or status. The only right of such an employee whose services are so continued is, therefore, to claim parity with the employees of the transferee bank itself of corresponding rank or status subject to equivalent qualifications and experience and no more. The right of such an employee is provided in the proviso to clause (i) and not in the earlier enacting part of clause (i) of sub-section (5) as claimed by respondent No. 1 and upheld by the High Court.

Clauses 10 and 12 of the scheme as quoted above merely incorporate the matter specified in clause (i) and the proviso thereunder with which we are concerned and so read and understood, there is no ambiguity or conflict in those clauses of the scheme either inter se or with clause (i) and the proviso thereunder in sub-section (5) of Section 45.

Shri S. C. Gupta, learned counsel for respondent No. 1 placing strong reliance on *State Bank of Travancore v. Elias & Ors.*, [1971] 2 S.C.R. 28, attempted to support the view taken by the High Court. In our opinion, the decision which led to the addition of the Explanation in Section 45 by Act No.1 of 1984 to the effect that in this Section the 'terms and conditions of service' shall not be construed as extending to the rank and status of such employees, is of no assistance in the present case. With respect, if that decision is read to construe clause (i) with its proviso in sub-section (5) of Section 45 as suggested on behalf of respondent No. 1, then we are unable to subscribe to that view since the proper construction of these provisions according to us, is as indicated above.

It follows, that respondent No. 1 could not, therefore, claim to be governed by the age of superannuation of 60 years in the Lakshmi commercial Bank. When his services were continued on amalgamation of the Lakshmi commercial Bank with the Canara Bank he became an employee of the Canara Bank and was, therefore, entitled only to the right given by proviso (ii) to clause (i) of sub-section (5) of section 45 which entitled him to the same terms and conditions of service as employees of the corresponding rank or status of the Canara Bank. Age of superannuation of the employees in Canara Bank being 58 years only, respondent No.1 could not claim to retire at 60 years. The High Court misconstrued clause (i) and proviso (ii) thereunder of sub-section (5) of

section 45 of the Act and clauses 10 and 12 of the amalgamation scheme to take the contrary view. The impugned Judgment of the High Court has, therefore to be set aside resulting in dismissal of the Writ Petition of respondent No. 1 filed in the High Court. Consequently the Appeal is allowed. No costs.

G.N

Appeal allowed.