Imperial Bank Of India Pensioners' ... vs State Bank Of India By Its Chairman And ... on 23 February, 1989

Equivalent citations: AIR1989SC1049, [1989(58)FLR573], JT1989(1)SC383, (1989)IILLJ567SC, 1989(1)SCALE450, 1989SUPP(1)SCC236, 1989(2)SLJ64(SC), 1989(1)UJ628(SC), AIR 1989 SUPREME COURT 1049, 1989 LAB. I. C. 1242, 1989 UPLBEC 539, (1989) 1 JT 383 (SC), (1990) BANKJ 247, 1989 (1) JT 383, 1989 SCC (SUPP) 1 236, (1989) 1 LAB LN 527, (1989) 1 SERVLR 788, 1989 SCC (L&S) 355, (1989) 58 FACLR 573, (1989) 2 SERVLJ 64, (1989) 1 CURLR 455, (1989) UPLBEC 539

Bench: A.M. Ahmadi, K. Jagannatha Shetty, Kuldip Singh

JUDGMENT

Ahmadi, J.

1. This petition under Article 32 of the Constitution of India is preferred by and on behalf of the retired employees of the Imperial Bank of India (IBI) which has since been taken over by the State Bank of India (SBI) constituted under the provisions of the State Bank of India Act, 1955 (Act 23 of 1955). Petitioners Nos. 2, 3 and 4 are the pensioners' of IBI. Petitioner No. 1, the IBI Pensioners, Association, is impleaded as a party to give the petition a representative character. The grievance of the petitioners is that the instant Pension-Plan governing the employees of the erstwhile IBI is out-dated and does not provide reasonable pension required for survival. Several contentions have been raised in the petition but it is not necessary to traverse them because the pension-plan has undergone a change during the pendency of the petition. The question of suitably revising the IBI Employees Pension and Gratuity Fund Rules and Regulations (hereinafter called 'the Rules') was taken up by the bank in consultation with the Central Government. The proposal submitted by the Bank has now received the approval of the Central Government as well as the Reserve Bank of India. Copies of the approved proposal are placed on record. To give effect to the said proposal, Rules 18 and 20 of the Rules are proposed to be amended. It was also decided to introduce a Family Pension Scheme for the benefit of the family members of the pensioners. These changes are intended to be given effect from January 1, 1987.

2. In order to appreciate the changes sought to be brought about in the pension-plan of IBI employees, it would be advantageous to read the extant rules and the proposed rules in juxtaposition. Old Rules 18 and 20 and the proposed Rules 18 and 20 read as under :

> "Existing Rules Proposed Rules 18 Subject to the other provisions Subject to the other provisions of of these rules and regulations the rules and regulations pensions

pensions shall, in the shall, in the case of members on case of members on the the staff in India, be payable, be staff in India, be payable at at the rate of one-sixtieth part for the rate of one-sixtieth part every year's service of the average for every year's service of the monthly substantive salary drawn average monthly substantive during last twelve months' salary drawn during last five pensionable service and in the case years service and in the of members on the staff in one-sixtieth part for every year's London; one-sixtieth part for service of the salary at date every year's service of the salary of retirement. Subject to the at date of retirement. Subject to provision of Rule 20, the the provision of Rule 20, the amount of pension payable amount of pension payable under under this Rule or any other this rule or any other rule if it rule, if it contains element of contains element of paise, shall be paise, will be rounded off to rounded off to the next higher the next higher rupee. rupee. 20 (1) The maximum pension The maximum pension shall not (except in cases which the exceed : trustees in their discretion may unanimously consider-special) (a) in the case of employees on shall not exceed the staff in India, one-half of the Rs. 750/per mensem and in average monthly substantive no case shall it exceed salary drawn during last twelve Rs. 1000/-. per mensem in months' pensionable service or India and £600 per annum in Rs. 1300/- p.m. whichever is less; the case of employees on the provided that the limit of staff in London who have Rs. 1300/- p.m. may be relaxed not done previous service in upto Rs. 2400/- p.m. in the case India. of officer employees; (b) in the case of employees on the staff in London who have not done previous service in India £600 per annum. Provided that the pension payable to the staff in India under the revised rules from 1.1.87 shall not be less than that payable under the previous Rules. 20 (2) The maximum The minimum pension shall not pension shall not be less than be less than Rs. 300 p.m. to the Rs. 200 p.m. to the employees employees on staff in India." on staff in India."

3. In addition to the above changes a new Rule 20A(1) is proposed to be added which reads as under :

In the event of death of a member (i) while in service of the Bank after completion of pensionable service of one year or (ii) after retirement, the trustees may sanction family pension to the dependent (s) of the employee on the terms and conditions approved by the Central Board.

The terms and conditions of the newly proposed Family Pension Scheme are as under :

"Substantive Salary p.m. Rate of Family Pension p.m. (a) Rs. 1500/- and below 30 per cent of substantive salary subject to a minimum of Rs. 300/- p.m. (b) Above Rs. 1500/- 15 per cent of substantive salary subject to a minimum of Rs. 450/- p.m. and a maximum of Rs. 1000/- p.m."

4. There are two provisos; the first providing that when a member dies while in service on completion of 20 years pensionable service, the family shall be eligible for the first 5 years after the date of death, for a family pension at the full rate of normal pension to which the employee would have been entitled had he actually survived and retired on that date and thereafter at the rate prescribed for family pension and the second providing that when a member dies after retirement but before the expiry of 5 years of retirement, the family shall be eligible for a family pension at the full rate of normal pension for the balance period upto 5 years after date of retirement and thereafter at the rate prescribed for family pension. The family pension is payable :

> (a) to the widow of a male employee upto the date of her death or re-marriage;
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> (b) failing the widow, to the eldest surviving son of an employee until he attains the age of 25 years or gainfully employed, whichever is earlier; and
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> (c) failing both, to the eldest surviving unmarried daughter until she attains the age of 25 years or is married, whichever occurs first.

5. After the above changes were indicated, C.L. Kapoor, a retired employee of the Bank, filed an additional affidavit on behalf of the petitioners suggesting the following changes :

> (i) Rule 18 should be so amended as to do away with the discrimination meted out to India-based pensioners vis-a-vis the London-based pensioners.
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> (ii) The new provision restricting the pension to one-half of the average substantive salary should be done away with as it has the effect of nullifying the upward revision of maximum limits from Rs. 750/- to Rs. 1300/- and Rs. 1000/- to Rs. 2400/-. The ceiling of Rs. 1300/- should also go and only the outer ceiling of Rs. 2400/should remain.
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> (iii) The upward revision of the minimum pension from Rs. 200/- to Rs. 300/- per month is not sufficient and should therefore be made effective from January 1, 1983 and not January 1, 1987.
>
> (iv) Parity should be established between old pensioners and the new pensioners by merging the dearness allowance in the basic salary of old pensioners upto 332 points of Consumer Price Index (CPI) (1960 = 100) for the purposes of calculation of pension.
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> (v) The family pension should be admissible to all employees at the uniform rate of 30% of salary regardless of the salary drawn and the same should be given effect from January 1, 1986 as was originally agreed.

6. When the petition was filed employees of the Bank were governed by two sets of pension rules, namely, one applicable to IBI employees and another applicable to SBI employees. In the case of IBI

employees pension was calculated on average monthly substantive salary drawn during the last five years whereas in the case of SBI employees the pension was worked out on the basis of three years average substantive salary. The monthly ceiling was fixed at Rs. 750/- relaxable upto Rs. 1000/- at the discretion of the trustees. Rs. 200/- was fixed as the minimum pension. There was no provision for family pension Now, under the proposed pension-plan evolved after consultation with SBI employees' federations, the distinction regarding the mode of calculation of pension is removed by providing for calculation of pension on the uniform basis of last 12 months' average salary The existing ceiling of Rs. 750/- relaxable upto Rs. 1000/- per month is sought to be replaced by Rs. 1300/- relaxable upto Rs. 2400/- per month. The revised ceiling of Rs. 2400/- is no made applicable to all officers instead of restricting it to senior staff officers only. The further ceiling of pension as one-half of the average substantive salary is introduced to achieve uniformity with the pension-plan applicable to SBI employees The minimum pension of Rs. 200/- per month is raised to Rs. 300/- per month. In addition a wholly new scheme for Family Pension is introduced. These proposed modifications are intended to come into effect from January 1, 1987. It, therefore, appears that the Bank authorities have realised the need to upgrade the existing pension-plan because of the fall in the rupee value on account of inflation.

7. The present salary structure of the bank employees is related to 332 points of CPI (1960 = 100) which means that the dearness allowance upto 332 points is merged in the existing pay-scales The employees are paid dearness allowance at the cycle of every 8 points rise in the CPI as in the case of Central Government employees before the implementation of the recommendations of the Fourth Central Pay Commission, (for short 'the Commission'). In the same way, pensioners are also entitled to dearness allowance at the prescribed' rate. On the implementation of the proposed formula, corresponding adjustments in the dearness allowance will have to be made in certain cases which are matters of detail not required to be stated here In this backdrop, we may now consider the contentions raised in the additional affidavit of C.L. Kapoor filed on behalf of the IBI pensioners.

8. The first grievance is in regard to the so-called discrimination between India-based pensioners and London-based pensioners. According to Rule 18 of the Rules, India-based pensioners are entitled to pension at the rate of one-sixtieth part for every year's service of the average monthly substantive salary drawn during the 'last five years' whereas London-based pensioners are entitled to pension equal to one sixtieth part for 'every year's' service at the date of retirement. Now, under the proposed change India-based pensioners will also be entitled to pension at the rate of one-sixtieth part for every year's service as in the case of London-based pensioners. However, insofar as the fixation of maximum pension is concerned, the ceiling for India-based pensioners is Rs. 750/- relaxable upto Rs. 1000/- per month at the discretion of the trustees whereas for London-based pensioners it is fixed at £600 per annum. Now, under the proposed change the ceiling of Rs. 700/- is sought to be raised to Rs. 1300/- relaxable upto Rs. 2400/- per month in the case of officer employees whereas in the case of London-based employees the figure of £600 remains constant. London-based employees constitute a class by themselves and, therefore, we do not see any substance in the contention that there is discrimination in the same class. That apart, under the proposed change the situation is substantially altered to the advantage of the India-based IBI pensioners and hence their grievance should not survive.

9 The second limb of the grievance relates to the "fixation of the ceiling at Rs. 1300/- per month In this connection the submission was two fold : Firstly the ceiling of Rs. 1300/- is unrealistic and secondly the calculation of pension at 50% of the basic salary is uncalled for as it introduces a second ceiling. It must be realised that the bank authorities have worked out the revised scheme keeping in mind the recommendations made by the Commission. Insofar as the pension scheme for Government employees is concerned, the provision is more or less identical, viz., 50% of the average substantive salary not exceeding Rs. 4500/- per mensem, (vide Chapter V, Part II, of the Commission's Report). We, therefore, fail to appreciate the objection to a similar provision in the proposed pension plan However, the contention that the ceiling of Rs. 1300/- is unrealistic is correct. Once it is realised that pension is a right and not a bounty, it would not be proper to leave the quantum of pension at the discretion of the Trustees in each case. To do so would be to leave the employees at the mercy of the Trustees who would naturally exercise the discretion in any manner they like in the absence of guidelines. Even in the case of Central Government employees only the outer ceiling is prescribed. We, therefore, think that outer ceiling of Rs. 2400/- should suffice. We are, therefore, of the opinion that the figure of Rs 1300/- in the proposed Rule 20(1)(a) should be replaced by the figure of Rs. 2400/- and the proviso should be deleted. Consequential charges, wherever necessary, should be made.

10. The next grievance concerns the fixation of minimum pension. Under the extant rules the minimum pension is fixed at Rs. 200/- per month and the same is now proposed to be raised to Rs. 300/- per month by amending Rule 20(2) of the Rules In this connection the grievance is that since the changes have been proposed in the light of the recommendations of the Commission the minimum pension should be fixed at Rs. 350/- (raised to Rs. 375/- by the Government of India) instead of the proposed Rs. 300/- per month. This submission overlooks the fact that the minimum pension fixed under the proposed plan is related to the CPI 332 points (1960-100) whereas the minimum fixed under the Commission's Report is readable to 608 points. If the minimum is calculated after adding dearness relief as admissible upto the index point 608 (See paragraph 3 (iii) af Bank's letter No. PA; CIR : 163 dated October 25, 1988) minimum pension amount exceeds the minimum admissible to Central Government employees. We, therefore, do not see any substance in this grievance.

11. A grievance was made at the bar in regard to the fixation of minima under the proposed Family Pension Scheme. The proposed scheme prescribes the rate of 30% for those drawing Rs 1500/- and below subject to a minimum of Rs 300/- per month whereas the rate prescribed for employees drawing above Rs. 1500/- is 15% subject to a minimum of Rs. 450/- per month. The submission was that the rate should be uniform, namely, 30% of average substantive salary for all employees. Now, the inspiration for the introduction of this Family Pension Scheme as a welfare measure for Bank employees comes from an identical family pension scheme recommended by the Commission. This becomes evident on a perusal of the recommendations contained in paragraph 6.8 of Chapter VI, Part II, of the Report, We do not, therefore, see any reason to depart from the said scheme.

12. It was then submitted that since the proposed change in the pension-plan are based on the recommendations of the Commission, they should be given effect from January 1, 1983 to which the bank's wage structure relates and if that is not possible in any case from January 1, 1986. We see

force in this contention. The proposal sent by the bank to the Central Government for approval was that the revision should be made effective from January 1, 1986. But, the Government of India changed the date of effect to January 1, 1987 for reasons which it is difficult to discern. We are, therefore, of the opinion that the proposed changes should be made effective from January 1, 1986 and consequential adjustments should be made, wherever necessary, in the revised pension-plan.

13. The last submission made by the learned counsel for the petitioners relates to parity between the old pensioners and new pensioners by merging the dearness allowance upto 332 points in the basic salary of old pensioners. Under the existing rules the bank is paying dearness relief on pension to its pensioners in accordance with the formula applicable to Central Government pensioners prior to the Commission's Report. The question of payment of dearness relief on revised pension from January 1, 1987 was considered by the bank in consultation with the employees' federations and it was decided that the existing formula of dearness relief on pension should continue for the time being till a general review is made after the next salary revision for officers and workmen is finalised. In view of this agreement between the employees' federations and the bank authorities, we do not think that a change should be effected at this stage when the larger question of revision of the entire salary structure of officers and workmen of the bank is under consideration.

14. These were the only contentions urged during the hearing of this petition. The rule is made absolute in that (i) the figure of Rs. 1300/- in the proposed Rule 20(1)(a) will be replaced by the figure of Rs. 2400/- and the proviso appearing thereafter will be deleted and (ii) the new pension scheme will be made effective from January 1, 1986 and consequential benefits will be given within a period of three months from today. The petition is party allowed to the above extent with costs which we quantify at Rs. 5000/-. The Respondent-Bank will pay the same.