

## **Sudhir Kumar Consul vs Allahabad Bank on 21 February, 2011**

**Equivalent citations: 2011 AIR SCW 1586, 2011 (3) AIR JHAR R 404, 2011 LAB IC 1892, 2011 (3) ALL LJ 262, (2011) 1 CURLR 787, (2011) 129 FACLR 141, (2011) 2 LAB LN 321, (2011) 2 SCT 650, 2011 (3) SCC 486, (2011) 2 SERVL R 312, (2011) 2 SCALE 661, (2011) 2 ESC 243, (2011) 101 ALLINDCAS 210 (SC), (2011) 1 SERVLJ 480, 2011 (3) KCCR SN 186 (SC), 2011 (86) ALR SOC 29 (SC), 2011 (8) ADJ 21 NOC**

**Author: H.L. Dattu**

**Bench: H.L. Dattu, D.K. Jain**

REPORT

IN THE SUPREME COURT OF INDIA

CIVIL APPEALATE JURISDICTION

CIVIL APPEAL NOS. 1982-1983 OF 2011

(Arising out of SLP (C) Nos. 34172-34173 of 2009)

Sudhir Kumar Consul

..... Appellant

versus

Allahabad Bank

..... Respondent

J U D G M E N T

H.L. Dattu, J.

1) Leave granted.

2) These appeals, by special leave, are directed against the

Judgment and Order dated 25.02.2009 of the High Court of Uttarakhand in Writ Petition No. 69 of 2007. By the impugned order, the Court has rejected the Writ Petition filed by the appellant for granting certain reliefs which would include claim for pensionary benefits under the New Pension Scheme, known as Allahabad Bank Employees (Pension) Regulations, 1995 [hereinafter referred to as, "the 1995 Regulations"].

3) The issue involved in the present appeals for our consideration is: Whether the appellant is eligible and entitled for the pensionary benefits under the Allahabad Bank Employees Pension Scheme, 1890 [hereinafter referred to as "Old Pension Scheme"] in terms of the Allahabad Bank Officers Service Regulations, 1979 [hereinafter referred to as "the 1979 Regulations"].

4) The factual matrix in brief is as under :

The appellant was appointed as a Clerk in the Nainital Branch of the Allahabad Bank, the respondent herein, on 21.02.1976. Subsequently, the appellant was promoted to the post of JMG-Scale-I Officer Grade on 02.05.1983. The services of the appellant, after promotion, were governed by the 1979 Regulations. The Regulation 46 of 1979 Regulations provides retirees an option of gratuity or pension in lieu thereof, and further, the pension benefits for the retirees opting for pension are available under the Old Pension Scheme. Pursuant to the Tripartite Memorandum of Settlement [hereinafter referred to as "the Tripartite Settlement"], among the management, workers and officers of the various banks dated 29.10.1993, the respondent formulated a draft/proposed Allahabad Bank Employees (Pension) Regulation 1993 [hereinafter referred to as "the draft/proposed 1993 Regulations"] vide Instruction Circular no. 3904 dated 06.09.1994. The draft/proposed 1993 Regulations provided the option to the employees, who were on the rolls of the Bank as on 31.10.1993, to opt for pension as per the Old Pension Scheme plus Contributory Provident Fund [hereinafter referred to as "the CPF"]. Accordingly, the appellant claimed pension under the Old Pension Scheme in terms of the draft/proposed 1993 Regulations on 30.11.1994. Subsequently, on 29.09.1995, the respondent formally adopted the 1995 Regulations pursuant to the Tripartite Settlement. The 1995 Regulations superseded the draft/proposed 1993 Regulations vide Circular No. 4318 dated 16.11.1995 by further extending the benefit under the draft/proposed 1993 Regulations to the employees who were on the rolls of Bank as on 29.09.1995 to opt for pension as per the Old Pension Scheme plus CPF. Further, the 1995 Regulations, in express terms, have validated the earlier options exercised by the employees in accordance with the draft/proposed 1993 Regulations. The appellant applied for the voluntary retirement pursuant to the Allahabad Bank Employees Voluntary Retirement Scheme, 2000 [hereinafter referred to as "the VRS-

2000"], which was accepted on 12.04.2001 and the appellant stood relieved from the services of the Bank on 30.04.2001.

After retirement, the appellant was offered gratuity under the Payment of Gratuity Act, 1972 by the respondent vide letter dated 01.09.2001, which the appellant declined to accept.

Subsequently, on 09.10.2001, the appellant made a request to the competent authority for sanction of pension in lieu of gratuity, but his request was rejected by the General Manager (Personnel Administration), vide letter dated 13.11.2001 as not maintainable on the ground that an officer employed or appointed after 01.07.1979 is ineligible for pension under the Old Pension Scheme in view of Regulation 46 of the 1979 Regulations. In this backdrop, the appellant alternatively requested the General Manager (Personnel Administration) vide letter dated 05.03.2002 to accept his option for Pension under the 1995 Regulations and further intimated his provisional acceptance of the said gratuity of `2,36,449/- under protest, which was not replied to by the respondent. Eventually, the respondent vide Instruction Circular no. 7331 dated 04.06.2002, lowered down the eligibility criteria from 25 years to 15 years for sanction of proportionate pension under Old Pension Scheme to retirees under the VRS-2000. In view of this, the appellant again requested vide letter dated 06.08.2002 to the competent authority for the grant of pension under the Old Pension Scheme and the same was rejected in terms of Regulation 46 of the 1979 Regulations. The appellant further made representations before the Chairman and Managing Director of the respondent vide letters dated 16.08.2006 and 19.03.2007, which were rejected by the Assistant General Manager vide letter dated 05.04.2007 on the ground that the appellant was not eligible to claim pension under the Old Pension Scheme in terms of the 1979 Regulations. Being aggrieved, the appellant approached the High Court of Uttarakhand by filing a writ petition under Article 226 of the Constitution of India and the same was partly allowed by the judgment and order dated 25.02.2009, wherein the High Court directed the respondent to pay gratuity to the appellant as per Regulation 46(2) of the 1979 Regulations after adjusting the amount of gratuity already paid to the appellant in terms of Payment of Gratuity Act, 1972. The appellant, aggrieved by the Judgment and Order of the High Court in Writ Petition, filed a Review Application, which was rejected vide Order dated 31.03.2009. Aggrieved by these Orders, the appellant is before us in these appeals.

5) We have heard Shri Sudhir Kumar Consul, the appellant, who has appeared in person, and Shri Yashraj Singh Deora, learned counsel for the respondent - Bank.

6) The appellant contends that he is entitled to claim the benefit of pension under the existing Old Pension Scheme in addition to CPF in view of exercise of his option in terms of the draft/proposed 1993 Regulations. The appellant submits that he is an officer governed by the 1979 Regulations and duly eligible for pension under the existing Old Pension Scheme in terms of the Regulation 46(1) of the 1979 Regulations. In other words, the appellant argued that he was the employee of the respondent on the appointed date as per the said Regulation 46 (1). He further submits that the respondent has wrongly deprived him of his pensionary benefits under the Old Pension Scheme by misinterpreting Regulation 46 (1). In arguendo, the appellant challenged the vires of Regulation 46 of 1979 Regulations, as being beyond the Scope of Section 12 (2) of the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970 [hereinafter referred to as "the Banking Act"]

and in violation of the guarantee of equality before law and equal protection of laws enshrined in Article 14 of the Constitution of India. The appellant submits that Section 12 (2) of the Banking Act duly protects the existing pensionary and other rights of the employee and the introduction of Regulation 46 (1) of 1979 Regulations unjustifiably deprives the appellant of his existing pensionary right under the Old Pension Scheme. The appellant further submits that the said Regulation 46 (1) creates an arbitrary and unreasonable distinction between the same class of officers of the respondent, merely on account of their date of appointment as employee with the respondent. In other words, the appellant argued that the said Regulation 46 discriminates the officers appointed on and before 01.07.1979 from those officers who are appointed, recruited or promoted after the said date.

7) Shri Yashraj Singh Deora, learned counsel for respondent, submits that the appellant is not eligible to claim any pension under the Old Pension Scheme in terms of Regulation 46 (1) of the 1979 Regulations as the appellant had admittedly become officer after 01.07.1979 on his promotion on 02.05.1983. It is also submitted that the appellant, prior to his promotion, was a Clerk with the respondent on the appointed date in terms of the said Regulation 46 (1). Hence, the appellant cannot claim any pensionary benefit under the Old Pension Scheme. In response to appellant's alternative submissions, the learned counsel for the respondent submits that Section 12 (2) of the Banking Act was introduced in 1970 after nationalization of the Banks.

Section 12 (2) of the Banking Act cannot be invoked by appellant as Regulation 46 of the 1979 Regulations was introduced on 01.07.1979 only for officers whereas the appellant became officer only in 1983 by way of promotion. In other words, the appellant, being a Clerk at the relevant time when the said Regulation 46 was introduced as applicable to officers, cannot challenge its vires on the touchstone of Section 12 (2) of the Banking Act. The learned counsel further submits that the Regulation 46 (1) of 1979 Regulations is in harmony with Article 14 of the Constitution of India.

8) We have carefully considered the rival submissions of the appellant in person and the learned counsel for the respondent-

Bank. In our opinion, the appellant is not entitled to claim pensionary benefit in view of Regulation 46 (1) of the 1979 Regulations. The said Regulation 46 (1) provides pensionary benefit under existing supplementary pension Scheme in lieu of gratuity only to those officers who were officers on the appointed date i.e. the officers who were appointed on or before 01.07.1979. Moreover, Provision 3 of the Old Pension Scheme stipulates that the officers who are recruited or promoted after 01.07.1979, i.e. the date of implementation of the 1979 Regulations, are not entitled for pension as per the said Regulations. It is an admitted fact that the appellant was working with the respondent as a Clerk on 01.07.1979 and was promoted as an officer only in 1983. Therefore, the appellant is not eligible to claim any benefit under the Old Pension Scheme.

9) It is well settled law that the vires of any subordinate legislation can be challenged on the ground that it is arbitrary, unreasonable and offends Article 14 of the Constitution of India. The 1979 Regulations were introduced with a view to standardize and provide comprehensive and compact set of rules in respect of wages and perquisites of the officers of the Bank. In furtherance of this object,

Regulation 46 (1) of the 1979 Regulations provides pension in lieu of gratuity only to the officers appointed prior to or on 01.07.1979 and not to officers appointed, recruited or promoted thereafter. In this view, we are of the opinion that the said Regulation 46 (1) lays down a reasonable criteria for differentiation between the officers appointed prior to or on 01.07.1979 and after the said date. Hence the said Regulation 46 (1) is in consonance with the Article 14 of the Constitution of India. Moreover, the fixing of the cut-off date for granting retirement benefits such as gratuity or pension under the different schemes incorporated in the subordinate legislation, thereby, creating two distinct and separate classes of employees is well within the ambit of Article 14 of the Constitution. The differential treatment of two sets of officers appointed prior to the notified date would not offend Article 14 of the Constitution. The cut off date may be justified on the ground that additional outlay as involved or the fact that under the terms of appointment, the employee was not entitled to the benefit of pension or retirement.

10) This Court, in *Union of India v. P.N. Menon*, (1994) 4 SCC 68, has held:

"8. Whenever the Government or an authority, which can be held to be a State within the meaning of Article 12 of the Constitution, frames a scheme for persons who have superannuated from service, due to many constraints, it is not always possible to extend the same benefits to one and all, irrespective of the dates of superannuation. As such any revised scheme in respect of post-retirement benefits, if implemented with a cut-off date, which can be held to be reasonable and rational in the light of Article 14 of the Constitution, need not be held to be invalid. It shall not amount to "picking out a date from the hat", as was said by this Court in the case of *D.R. Nim v. Union of India*, (1967) 2 SCR 325, in connection with fixation of seniority. Whenever a revision takes place, a cut-off date becomes imperative because the benefit has to be allowed within the financial resources available with the Government."

The Court further observed:

"14...No scheme can be held to be foolproof, so as to cover and keep in view all persons who were at one time in active service. As such the concern of the court should only be, while examining any such grievance, to see, as to whether a particular date for extending a particular benefit or scheme, has been fixed, on objective and rational considerations."

11) In *State Government Pensioners' Association v. State of A.P.*, (1986) 3 SCC 501, the Order in question provided that retirement gratuity may be one-third of the pay drawn at the time of retirement for every six-monthly service, subject to maximum of 20 months' pay limited to `30,000. This Order was made effective from 01.04.1978. The petitioners, who were government employees and had retired before 01.4.1978, contended that the gratuity, being a part and parcel of the pensionary benefits, they were also entitled to the same retrospectively. On behalf of the State, it was pointed out that the gratuity which had accrued to the petitioners prior to 01.4.1978, was calculated on the then existing rules and pay, and such petitioners formed a distinct class, for the purpose of payment of gratuity, from others who retired after 01.04.1978, the date from which the

revised pension rules were made applicable by the Government. This Court held that the upward revision of gratuity which took effect from a specified date i.e. 1-4-1978 with prospective effect, was legal and not violative of Article 14 of the Constitution.

12) In Action Committee South Eastern Railway Pensioners v.

Union of India, 1991 Supp (2) SCC 544, this Court has examined the concept of 'dearness pay', including the two options for retirement benefits given to the employees which had been framed fixing a cut-off date. This Court held:

"12. ... Learned counsel for the petitioners only submitted that if the formula adopted in the case of employees having retired after March 31, 1985 vide circular dated May 17, 1985 is applied in the case of the petitioners then it would make substantial difference in the calculation of the amount of gratuity and commuted value of pension. As already discussed above no such claim can be allowed nor the same can be permissible on any principle of equality enshrined under Article 14 of the Constitution inasmuch as the petitioners form a different class from those who were continuing in service on or after March 31, 1985. The petitioners of their own accord had opted for the choice given to them and the principle enunciated in D.S. Nakara case (1983) 1 SCC 305 cannot be applied in the case of the petitioners."

13) In All India Reserve Bank Retired Officers' Association v.

Union of India, 1992 Supp (1) SCC 664, the Retired Officers' Association of the Reserve Bank of India questioned the validity of introduction of pension scheme in lieu of Contributory Provident Fund Scheme. The bank employees, who retired prior to 01.01.1986, had not been given benefit of the said Pension Scheme. This Court held that the said cut-off date was neither arbitrary nor artificial or whimsical. It was further observed:

"10. ... The underlying principle is that when the State decides to revise and liberalise an existing pension scheme with a view to augmenting the social security cover granted to pensioners, it cannot ordinarily grant the benefit to a Section of the pensioners and deny the same to others by drawing an artificial cut-off line which cannot be justified on rational grounds and is wholly unconnected with the object intended to be achieved. But when an employer introduces an entirely new scheme which has no connection with the existing scheme, different considerations enter the decision making process. One such consideration may be the financial implications of the scheme and the extent of capacity of the employer to bear the burden. Keeping in view its capacity to absorb the financial burden that the scheme would throw, the employer would have to decide upon the extent of applicability of the scheme."

(Emphasis added)

14) In *University Grants Commission v. Sadhana Chaudhary*, (1996) 10 SCC 536, this Court has observed:

"21. ... It is settled law that the choice of a date as a basis for classification cannot always be dubbed as arbitrary even if no particular reason is forthcoming for the choice unless it is shown to be capricious or whimsical in the circumstances. When it is seen that a line or a point there must be and there is no mathematical or logical way of fixing it precisely, the decision of the legislature or its delegate must be accepted unless it can be said that it is very wide off the reasonable mark."

15) In *T.N. Electricity Board v. R. Veerasamy*, (1999) 3 SCC 414, the pension scheme was applied differently to persons who had retired from service before 01.07.1986, and those who were in employment on the said date. This Court held:

"15. ... We are of the view that the retired employees (respondents), who had retired from service before 1-7-1986 and those who were in employment on the said date, cannot be treated alike as they do not belong to one class. The workmen, who had retired after receiving all the benefits available under the Contributory Provident Fund Scheme, cease to be employees of the appellant-Board w.e.f. the date of their retirement. They form a separate class."

16) In *State of Punjab v. Boota Singh* case, (2000) 3 SCC 733, this Court has held that the benefit conferred by the notification dated 9-7-1985 can be claimed by those who retire after the date stipulated in the notification and those who have retired prior to the stipulated date in the notification are governed by different rules. They are governed by the old rules, i.e., the rules prevalent at the time when they retire. The two categories of persons are governed by different sets of rules. They cannot be equated. The grant of additional benefit has financial implications and the specific date for the conferment of additional benefits cannot be considered arbitrary. This Court held:

"In the case of *Indian Ex-Services League v. Union of India* (1991) 2 SCC 104 this Court distinguished the decision in *Nakara* case (1983) 1 SCC 305 and held that the ambit of that decision cannot be enlarged to cover all claim by retirees or a demand for an identical amount of pension to every retiree, irrespective of the date of retirement even though the emoluments for the purpose of computation of pension be different. We need not cite other subsequent decisions which have also distinguished *Nakara* case (1983) 1 SCC 305. The latest decision is in the case of *K.L. Rathee v. Union of India* (1997) 6 SCC 7 where this Court, after referring to various judgments of this Court, has held that *Nakara* case (1983) 1 SCC 305 cannot be interpreted to mean that emoluments of persons who retired after a notified date holding the same status, must be treated to be the same. The respondents are not entitled to claim benefits which became available at a much later date to retiring employees by reason of changes in the rules relating to pensionary benefits."

17) In *State of Punjab v. J.L. Gupta*, (2000) 3 SCC 736, this Court reiterating the views expressed in *Boota Singh* (supra), held:

"5. The controversy involved in the present appeal and connected appeals is squarely covered by the aforesaid decision. The respondents are thus not entitled to claim benefits under the notification dated 9-7-1985 since the said benefits became available on a much later date to the retiring employees by reason of change in the rules relating to pensionary benefits. In this view, the judgment of the High Court cannot be sustained."

18) In *Ramrao v. All India Backward Class Bank Employees Welfare Assn.*, (2004) 2 SCC 76, this Court has held that, even for the purpose of effecting promotion, fixing of a cut-off date was neither arbitrary, unreasonable nor did it offend Article 14 of the Constitution. This Court further observed:

"32. If a cut-off date can be fixed, indisputably those who fall within the purview thereof would form a separate class. Such a classification has a reasonable nexus with the object which the decision of the Bank to promote its employees seeks to achieve. Such classifications would neither fall within the category of creating a class within a class or an artificial classification so as to offend Article 14 of the Constitution of India.

33. Whenever such a cut-off date is fixed, a question may arise as to why a person would suffer only because he comes within the wrong side of the cut-off date, but, the fact that some persons or a Section of society would face hardship, by itself cannot be a ground for holding that the cut-off date so fixed is ultra vires Article 14 of the Constitution."

19) In *State of Punjab v. Amar Nath Goyal*, (2005) 6 SCC 754, this Court held:

"37. In the instant case before us, the cut-off date has been fixed as 1-4-1995 on a very valid ground, namely, that of financial constraints. Consequently, we reject the contention that fixing of the cut-off date was arbitrary, irrational or had no rational basis or that it offends Article 14."

20) In *State of Bihar v. Bihar Pensioners Samaj*, (2006) 5 SCC 65, this Court held:

"17. We think that the contention is well founded. The only ground on which Article 14 has been put forward by the learned counsel for the respondent is that the fixation of the cut-off date for payment of the revised benefits under the two notifications concerned was arbitrary and it resulted in denying arrears of payments to certain Sections of the employees. This argument is no longer res integra. It has been held in a catena of judgments that fixing of a cut-off date for granting of benefits is well within the powers of the Government as long as the reasons therefor are not arbitrary and are based on some rational consideration."



21) We have sympathies for the appellant but, in a society governed by Rule of law, sympathies cannot override the Rules and Regulations. We may recall the observations made by this Court while considering the issue of compassionate appointment in public service. In Life Insurance Corporation of India v. Asha Ramachandra Ambekar and Anr. (1994) 2 SCC 718, wherein the Court observed: "The High Courts and the Administrative Tribunals cannot confer benediction impelled by sympathetic consideration.... Yielding to instinct will tend to ignore the cold logic of law. It should be remembered that "law is the embodiment of all wisdom".

Justice according to law is a principle as old as the hills. The Courts are to administer law as they find it, however, inconvenient it may be."

22) In view of the above discussion, the appeals fail and are, accordingly, dismissed. However, we grant liberty to the appellant, if he so desires, to exercise his option to join the 1995 Regulations in terms of instruction Circular No. 11143/PA/2010-11/27 dated 15.09.2010 within 30 days from today. If such an option is exercised by the appellant, the respondents are directed to consider the same sympathetically within 60 days from the date of the option. Parties are directed to bear their own costs.

.....J. [ D.K. JAIN ] .....J. [ H.L. DATTU ] New Delhi, February 21, 2011.