Supreme Court of India
Associate Bank'S ... vs State Bank Of India & Ors on 15 October, 1997
Author: M S Manohar
Bench: Sujata V. Manohar, D.P. Wadhwa

PETITIONER:
ASSOCIATE BANK'S OFFICERS'ASSOCIATION

Vs.

RESPONDENT:
STATE BANK OF INDIA & ORS.

DATE OF JUDGMENT: 15/10/1997

BENCH:
SUJATA V. MANOHAR, D.P. WADHWA

ACT:

HEADNOTE:

JUDGMENT:

[With Writ Petitions {Civil} Nos. 763/89 and 819/90} J U D G M E N T Mrs. Sujata V. Manohar, J.

"Equal pay for equal work for both men and women is one of Directive Principles of State Police laid down in Article 39(d) of the Constitution. Article 37 makes it non- justiciable. Yet it must be borne in mind by the legislature while making laws. In Randhir Singh vs. Union of India and Ors. (1982 1 SCC 618), this Court construed Articles 14 and 16 in the light of the preamble to the Constitution to read into their scheme the principle of equal pay for equal work. The principle has since been applied in cases of irrational discrimination in the pay-scales of workers doing the same or similar work in an organisation. It has not been applied when there is a basis an explanation for the difference.

Historical, equal pay for work of equal value has been a slogan of the women's movement. Equal pay laws, therefore, usually deal with sex-based discrimination in the pay-scales of men and women doing the same or equal work in the same organisation. For example, the Equal Remuneration Act 1976 provides for payment of equal remuneration to men and women workers and is meant to prevent discrimination on the ground of sex against women in the matter of employment. The Equal Pay Act 1970 and the Equal Pay (Amendment) Regulations 1983 in Great Britain are for a similar purpose. The same doctrine has also sought to protect disadvantaged groups against similar

discrimination. We have interpreted and applied the doctrine even more widely to prevent discriminatory pay-scales within an organisation which is owned by or is an instrumentality of the State, provided that the different pay-scales exist in one organisation, are applied to employees doing work of equal value, and there is no rational explanation for the difference.

When the same principle is sought to be extended to compare pay-scales in one organisation with pay-scales in another organisation, although between employees doing comparable work, the stretching of the doctrine, if at all it is done, must be done with caution lest the doctrine snaps. Many ingredients go into the shaping of wage structure in any organisation. Historically it may have been shaped by negotiated settlements with employees' unions, or through industrial adjudication. It may have been revised or reshaped with the help of expert committees. The economic capability of the employer also plays a crucial part in it; as also its capacity to expand business or earn more profits. If the employing organisation functions in a competitive area, it may, if it is economically strong, offer higher wages than its competitors doing similar work to attract better talent. Or it may offer higher wages to the better qualified. A simplistic approach, granting higher remuneration to other workers in other organisations because another organisation has granted them, may lead to undesirable results. Even within the same organisation, when the differential wage structure is based on similar considerations, the application of the doctrine would be fraught with danger, and may seriously affect the efficiency, and at times, even the functioning of the organisation. The doctrine is designed to correct irrational and inexplicable pay differentiation which can be looked upon as discrimination against an employee or a given set of employees. It is easier to identify such discriminated groups when the discriminated group is sex-based (women) or colour-based (Blacks in the USA) or caste-based (scheduled castes etc.): and more difficult to identify in other cases. But unless there is such identifiable discrimination, the doctrine should not be applied. Mere difference is not discrimination.

In the case before us the Unions of employees of various banks which are subsidiaries of the State Bank of India have claimed higher terminal benefits, better medical benefits and extra increments in their pay-scale on the ground that such benefits are available to the employees holding equivalent or similar ranks in the State Bank of India.

The State Bank of India was constituted under the State Bank of India Act, 1955. Under the Act the undertaking of the Imperial Bank was transferred to the State Bank of India which was the new bank constituted under the said Act to carry on banking business. The Preamble to the Act states that for the extension of banking facilities on a large scale, more particularly in the rural and semi-urban areas, and for diverse other public purposes it is expedient to constitute a State Bank of India and to transfer to it the undertaking of the Imperial Bank of India.

Four years later, the State Bank of India (Subsidiary Banks) Act, 1959 was passed. The Statement of Objects and Reasons states, inter alia, that the future of certain major State-associated banks which are owned in part by the State Governments or with which such Governments have been closely associated, has been under consideration for some time. The question has recently been comprehensively re-examined, with particular reference to the necessity for making adequate and proper provision for the management of treasuries and sub-treasuries in the area served by these

banks and the need for the expansion of these banks in these areas; and the view of the banks themselves have been ascertained. The management and the shareholders of the Bank of Bikaner, the Bank of Indore, the bank of Jaipur, the Bank of Mysore and the Travancore Bank have agreed to the proposal to reconstitute these banks as subsidiaries of the State Bank. The reconstitution on similar lines of the State Bank of Saurashtra, the Bank of Patiala and the State Bank of Hyderabad has also been agreed to.

The scheme for reconstitution provides for the transfer to and vesting in the State Bank of India of the share capital of each of the eight banks which have accepted the proposals.

Under Section 3 of the State Bank of India (Subsidiary Banks) Act, 1959, the new banks are constituted. Section 4 provides that every new bank shall be body corporate with perpetual succession and a common seal and shall sue and be sued in its name. Under Section 7 all shares in the issued capital of a new bank shall, on the appointed day, stand allotted to the State Bank of India. Under Section 9, on the constitution of a new bank, all shares in the capital of the corresponding bank, where such corresponding bank has a share capital, shall stand transferred to, and shall vest in, the State Bank, free of all trusts, liabilities and encumbrances. Section 11 deals with the transfer of services of employees of existing banks. Under Section 24, the State Bank may, from time to time, give directions and instructions to a subsidiary bank in regard to any of its affairs and business, and that bank shall be bound to comply with the directions and instructions so given. Subject o any such directions and instructions, the general superintendence and conduct of the affairs and business of a subsidiary bank shall, as from the appointed day, vest in a Board of Directors who may, with the assistance of the managing director, exercise all powers and do all such acts and things as may be exercised or done by that bank. Under sub-section (3) of Section 3, the Board of Directors of a subsidiary bank shall, in discharging its functions under this Act, act on business principles, regard being had to public interest.

Section 25 deals with the composition of the Board of Directors. The Chairman of the State Bank of India is the ex officio Chairman. The managing director is to be appointed under Section 25 by the State Bank of India after consulting the Board of Directors of the subsidiary bank and with the approval of the Reserve Bank. The Board of Directors will have an officer of the Reserve Bank nominated by that bank; not more than five directors to be nominated by the State Bank, of whom not more than three shall be officers of that bank; one Director from among the employees (Workers) of the subsidiary bank to be appointed as set out therein; one Director from amongst such employees of the subsidiary bank as are not workmen, to be appointed as set out therein and two directors to be elected in the prescribed manner by the shareholders other than the State Bank. The section also provides for a director to be nominated by the Central Government in consultation with the State Bank.

Under Section 36, a subsidiary bank shall, if so required by the State Bank, act as agent of the State Bank at any place in India for the purpose of certain businesses specified therein. There is a similar provision for a subsidiary bank acting as an agent of the Reserve Bank if so required by the Reserve Bank.

Based on these provisions, it is submitted before us that the business of each of the subsidiary banks is under the control and management of the State Bank of India and, therefore, the employees of the subsidiary banks should be considered as, in effect, employees of the State Bank of India. Sub section (2) of Section 50, however, of the State Bank of India (Subsidiaries Banks) Act, 1959 provides as follows:

> "50(2): For the removal of doubts, it is hereby declared that the officers, advisers and employees of a subsidiary bank, in whatever capacity engaged, shall not be deemed to be officers, advisers or employees of the State Bank for any purpose, unless otherwise provided in the contract or agreement of service of any such officer, adviser or employee."

Despite this section, it is contended by the petitioner-associations that since the subsidiary bank shares a common chairman of its Board of Directors with the State Bank of India, and since the State Bank of India has the power to nominate five directors on the Board of the subsidiary bank and has power to give directions to the subsidiary bank, the subsidiary bank in fact, is a [art of the State Bank of India. In the alternative it is under the control of the State Bank of India. Hence the employees of the subsidiary banks are entitled to claim the same benefits as the employees of the State Bank of India.

In its counter affidavit the State Bank of India has, however, pointed out that the subsidiary bank is an independent bank. Undoubtedly it is a subsidiary of the State Bank of India and the State Bank of India owns almost the entire shareholding of the subsidiary banks. It also exercised certain control over the subsidiary banks as provided in the said Act. But the State Bank of India was constituted much earlier under a different Act. The other banks have not amalgamated with the State Bank of India. These other banks or each of them remain a distinct entity with their own Board of Directors. They have their own capital structure, their own business, their own employees and their own individual identity. The associated banks were constituted as subsidiaries instead of being amalgamated because it was considered desirable to maintain the separate character of the State-associated banks as also their existing contacts and traditions. It was considered desirable to prevent sudden changes in their working methods and policies and at the same time to offer them adequate incentives on the development of their respective areas of operation. It is the stand of the State Bank of India that they play the rule of an enlightened stock-holder. In the administration of their affairs the subsidiary banks are autonomous and the State Bank of India in any event cannot be considered as an employer of the staff of the subsidiary banks. Section 50 quite clearly provides that the officers and employees of a subsidiary bank cannot be considered as the officers and employees of the State Bank of India for any purpose. The officers and employees of subsidiary bank are governed by the terms and conditions of employment of the subsidiary bank by which they are employed and they are borne on the cadre of employees of the subsidiary bank. These submissions have considerable merit.

Even with regard to the Board of Directors of a subsidiary bank, the State Bank of India has contended that they have power to nominate five Directors. Out of them, the three non-official Directors who are nominated by the State Bank of India represent various areas of specialisation

such as agriculture, accountancy, small scale industry etc, with a view to ensure that the Board of Directors of the subsidiary banks is broad-based and is in a position to be really useful to the bank. A nominee Director does not cease to be independent and must act in the best interests of the subsidiary bank. The policies are laid down in consultation with the Reserve Bank of India and the Government of India. The State Bank of India, in turn, is also subject to similar control by the Reserve Bank of India and the Central Government.

The narrow question which we have to consider is whether looking to the nature of the relationship between the State Bank of India and each of the subsidiary banks, can the employees of the subsidiary banks be considered as employees of the State Bank of India? In view of the clear provisions of Section 50, it is not possible to come to a conclusion that the employees of the subsidiary banks are, for all practical purposes, employees of the State Bank of India. Even dehors Section 50, looking to the scheme of the State Bank of India (Subsidiary Banks) Act, 1959, it is quite clear that each of the subsidiary banks is set up as a separate bank. Each subsidiary bank has its own capital structure, its own operations. Each of the banks has its own staff with its own terms and conditions of service. Therefore, the employees of the subsidiary bank cannot be treated as the employees of the State Bank of India. The employees of the subsidiary banks are not entitled to claim the same benefits as the employees of the State Bank on the ground that they are, in effect, the employees of the State bank of India.

It is submitted before us by the petitioner- associations in the alternative, that in any event, they are employees of an organisation which does work which is similar to the State Bank of India. The duties and responsibilities of their officers and employees are similar to the duties and responsibilities of the officers and employees of the State Bank of India. Hence they should be given the same terminal benefits, the same medical benefits and the same increments as the officers and employees of the State Bank of India. IN the case of Union Territory Chandigarh v. Krishan Bhandari (1996 11 SCC 348), this Court held that the doctrine of equal pay for equal work is inapplicable when the alleged discrimination is between employees of two different authorities functioning as a State Under Article 12. In the present case the petitioners are faced with a further difficulty. They claim parity also regarding other benefits. There is no disparity in pay- scales.

Looking briefly at the nature of the grievance in respect of terminal or retiral benefits, the employees of the subsidiary banks are entitled to provident fund or pension, and they are also entitled to service gratuity. The employees of the State Bank of India are entitled to provident fund and pension. They are also entitled to gratuity under the payment of Gratuity Act. According to the petitioners. the employees of the subsidiary bank should also be given pension in addition to the terminal benefits which they already have. It is, however, pointed out by the State Bank of India that the terminal benefits in a subsidiary bank are comparable to the terminal benefits in nationalised banks, where also there is an option between pension or contributory provident fund. Regarding gratuity, the employees of a nationalised bank are entitled to service gratuity or gratuity as per the Payment of Gratuity Act, whichever is higher, which is the position in the subsidiary banks also. Looking to this comparative position, we do not see any reason to infer discrimination.

In respect of medical benefits, the hospitalisation scheme in the State Bank of India provides for 100% payment for self and 75% payment for the family which is similar to the hospitalisation scheme for subsidiary banks. However, in respect of certain operations the ceiling on admissible amounts is different. For home treatment, the subsidiary banks have prescribed ceiling on the amount payable. It is not as if no medical benefits are provided to subsidiary banks' employees. The employees are provided substantial medical benefits, though they are not identical with the medical benefits given by the State Bank of India.

With regard to pay-scales, the grievance which is made before us as of now, is only with regard to four increments which are given to the officers of the State Bank of India at the time of joining though the pay-scales are the same. This is not done in the subsidiary banks. The State Bank of India has submitted that in order to attract suitable persons, looking to the scale of their operations and responsibilities involved, this has been done. The subsidiary banks are not in a comparable position. Nor are their scales of operation comparable to the State Bank of India. The responsibilities of their officers are not comparable in view of the extent of operations of the subsidiary banks. In these circumstances, if the State Bank of India has offered increments to persons joining the State Bank of India, the same cannot be given to the officers joining the subsidiary banks.

All the grievances centre around these benefits. We do not think that the State Bank of India and the subsidiary banks are in a comparable position in this regard. It is also submitted by learned counsel for the State Bank of India that the benefits which are extended to the employees of the subsidiary banks are negotiated settlements with the unions of their employees. The benefits which are conferred are in accordance with the agreements which have been reached between the unions of the employees and the management of each bank. In these circumstances, we fail to see how the principle of "equal pay for equal work" can be applied in the present set of facts.

The writ petitions are, therefore, dismissed. There will be no order as to costs.