

Supreme Court of India

State Bank Of India vs D. Hanumantha Rao And Anr. on 27 March, 1998

Equivalent citations: AIR 1999 SC 1472, 1998 (80) FLR 950, JT 1998 (7) SC 193, (1999) IILLJ 332 SC, (1998) 6 SCC 183

Bench: S Agrawal, S Ahmed, M Srinivasan

ORDER

1. Special leave granted.

2. The only question that falls for consideration in this appeal is whether Respondent 1, D. Hanumantha Rao (hereinafter referred to as "the respondent"), is entitled for extension of service after his attaining the age of 58 years under Rule 19(1) of the State Bank of India Officers' Service Rules (hereinafter referred to as "the Service Rules") which provides as under:

"19. (1) An officer shall retire from the service of the Bank on attaining the age of fifty-eight years or upon the completion of thirty years' service or thirty years' pensionable service if he is a member of the Pension Fund, whichever occurs first:

Provided that the competent authority may, at its discretion, extend the period of service of an officer who has attained the age of fifty-eight years or has completed thirty years' service or thirty years' pensionable service as the case may be, should such extension be deemed desirable in the interest of the Bank, so however, that the service rendered by the officer concerned beyond 58 years of age except to the extent of the period of leave due at that time will not count for purpose of pension:

Provided further that an officer who had joined the service of the Bank either as an officer or otherwise on or after 19-7-1969 and attained the age of 58 years shall not be granted any further extension in service."

3. The respondent was a Short Service Commissioned Officer (for short "SSCO") in the army. After his release from the army, he was appointed as a Probationary Officer with the State Bank of India on 1-7-1972 against the reserved quota. Under Rule 19(1) of the Service Rules, an officer retires on attaining the age of 58 years or on completion of thirty years' service, whichever occurs first. Under the first proviso, the competent authority can extend the period of service of an officer, should such extension be deemed desirable in the interest of the Bank. Under the second proviso, such extension cannot be granted to an officer who joined the service of the Bank on or after 19-7-1969. The case of the respondent is that in view of Rule 6 of the Emergency Commissioned Officers & Short Service Commissioned Officers (Reservation of Vacancies) Rules, 1971 (hereinafter referred to as "the 1971 Rules") which is applicable to the State Bank of India and in view of the memorandum dated 21-9-1993, after taking into account his army service, the respondent was given the benefit of seniority, pay and pension with effect from 26-10-1965 and since the said benefits have been extended to the respondent with effect from 26-10-1965, his date of entry in the service of the State Bank of India has to be treated as 26-10-1965 and that the second proviso to Rule 19(1) would not be applicable in his case and he would be entitled to be considered for grant of extension of service

under the first proviso to Rule 19(1). The said contention of the respondent was accepted by the learned Single Judge of the Andhra Pradesh High Court and the writ petition filed by the respondent was allowed and the appellant was directed to consider the case of the respondent for extension of service in accordance with the first proviso to Rule 19(1) of the Service Rules. The letters patent appeal filed by the State Bank of India against the said judgment of the learned Single Judge has been dismissed by the Division Bench of the High Court by the impugned judgment.

4. Shri Gopal Subramaniam, the learned Senior Counsel appearing for the Bank, has submitted that the High Court was in error in proceeding on the basis that the date of entry of the respondent in service should be treated as 26-10-1965 and not 1-7-1972. The submission is that by legal fiction, the respondent was given the benefit of the earlier army service and for the purpose of seniority, pay and pension he was treated as if appointed in the service of the Bank with effect from 26-10-1965. The submission is that the said fiction could not be extended for any other purpose including extension of service for the purpose of retirement. Shri Subramaniam has placed reliance on the communication from the Government of India, Ministry of Finance, dated 9-9-1996 wherein it is stated:

"The undersigned is directed to refer to your Letter No. CDO/ABM/6915 dated 25-1-1996 on the above subject and to enclose a copy of this Division Letter No. 202/3/3/89-SCT(B) dated 8-6-1993 wherein it has been made clear that the date of retirement will be reckoned with reference to the terms and conditions of service as applicable at the time of actual entry in the service. Thus, in the case of ex-ECOs/SSCOs reappointed in the public sector banks after nationalisation of banks, i.e., 19-7-1969, the age of retirement would be 58 years even though they have received back-dated seniority which is only notional for the limited purpose of next promotion and pay fixation in terms of relevant government instructions. The fact that ex-ECOs/SSCOs are allowed to refund the amount of gratuity/pensioners benefits so as to count their service in the military service for the purpose of pension in the Bank will not affect the retirement age which will be decided only on the basis of their actual date of joining in the Bank."

Shri Subramaniam has also placed before us the decision of the Kerala High Court dated 1-4-1997 in Dy. G.M., State Bank of India v. P. Ramadas, WP No. 568 of 1997 wherein a view contrary to that taken by the Andhra Pradesh High Court in the impugned judgment has been taken and it has been held that the benefit granted under Rule 6 of the 1971 Rules cannot be extended for the purpose of extension of service under Rule 19(1) of the Service Rules.

5. We find considerable force in the said submissions of the learned counsel. Having regard to the fact that the benefit of earlier army service was extended for the limited purpose of seniority, pay and pension in view of Rule 6 of the 1971 Rules and memorandum dated 21-9-1993, we are of the view that the said benefit of earlier army service cannot be extended in respect of other service conditions including extension of service. It is settled law that a legal fiction has to be confined to the purpose for which it is created. Since the legal fiction under Rule 6 of the 1971 Rules has been created for the limited purpose of seniority, pay and pension, the said fiction could not be extended for other purposes. The intention of the Government of India in this regard has been made clear in the letter dated 9-9-1996 wherein it is stated that in the case of ex-ECOs/SSCOs reappointed in the

public sector banks after nationalisation of banks, i.e., 19-7-1969, the age of retirement would be 58 years even though they have received back-dated seniority which is only notional for the purpose of next promotion and pay fixation in terms of relevant government instructions. We are, therefore, unable to uphold the judgment of the learned Single Judge as well as the impugned judgment of the Division Bench of the High Court. We are in agreement with the judgment of the Kerala High Court in Writ Appeal No. 568 of 1997 dated 1-4-1997, WP No. 568 of 1997 wherein the said High Court has taken a view contrary to that taken by the Andhra Pradesh High Court.

6. The appeal is, therefore, allowed, the judgment of the learned Single Judge and that of the Division Bench of the High Court are set aside and the writ petition filed by the respondent is dismissed. No order as to costs.