

A. Harihara Ayyar Vs. State Bank of India, Central Office, Bombay and Others

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Court : Karnataka

Decided On : Jan-02-2001

Reported in : ILR2001KAR1896; 2001(1)KarLJ325; (2001)IILLJ627Kant

Judge : H.L. Dattu, J.

Acts : [Constitution of India](#) - Articles 12, 14, 16, 30, 226 and 311; Service Rules of the Bank - Rule 19(1); State Bank of India Employees' Pension Fund Rules; Imperial Bank of India Employees' Pension and Guarantee Fund Rules

Appeal No. : Writ Petition No. 29945 of 1996

Appellant : A. Harihara Ayyar

Respondent : State Bank of India, Central Office, Bombay and Others

Advocate for Def. : Sri N.B. Bhat, Adv.

Advocate for Pet/Ap. : Sri Basava Prabhu S. Patil, Adv.

Judgement :

ORDER

A retired employee/officer of State Bank of India, is before this Court inter alia seeking the following reliefs:

(a) To issue a writ of certiorari or any other writ or order to quash the impugned communication dated 4-10-1996 issued by the third respondent in No. Br/Gen/262 (Annexure-B).

(b) To issue a writ of certiorari quashing Rule 3(1)(a) of the State Bank of India Retired Employees' Medical Benefit Scheme to the extent it imposes condition of 30 years of pensionable service to be entitled for the benefit of the scheme and consequently, declare and direct respondents to treat those, who are eligible for payment of pension under the State Bank of India Employees' Pensionary Fund Rules as eligible to the membership of the State Bank of India Retired Employees' Medical Benefit Scheme.

(c) To issue a writ of mandamus or any other writ, order or direction, directing the respondents to amend the Rules governing the Membership to the State Bank of India Retired Employees' Medical Benefit Scheme to the effect that those employees, who have retired/will retire, who are eligible for the payment of pension under the State Bank of India Employees' Pension Fund Rules, will be eligible to the membership of the State Bank of India Retired Employees' Medical Benefits Scheme.

(d) To issue a writ of mandamus or any other writ or direction, directing the respondents to admit the petitioners to the membership of the State Bank of India Retired Employees' Medical Benefit Scheme and to confer all the benefits available under the Scheme on the petitioner.

2. The facts in nutshell are:

Petitioner had joined the services of the respondent-State Bank of India (hereinafter for the sake of brevity referred to as 'Bank'), as Probationary Officer on 14-11-1963. After successful completion of probation, he was confirmed in the post by respondent-Bank. After completing 29 years and 5 months of service, when he was working as General Manager (Inspection), he sought for voluntary retirement from service. The Competent Authority of the Bank, permitted the petitioner to retire from service voluntarily and he was relieved from service at the close of business hours on 30-4-1993. After his retirement from service, the Bank

has sanctioned and paid his terminal benefits which he was entitled to under Service Rules and the Employees Pension Fund Rules of the Bank.

3. The Bank has introduced a scheme called 'State Bank of India Retired Employees' Medical Benefit Scheme' (for short 'Medical Scheme'), which has come into force with effect from 1-7-1996. The object of the scheme is to provide financial assistance in meeting, partly or fully, within the specified limits, hospitalisation expenses for treatment of specified diseases/ailments to retired employees and their spouses, where expenditure involved is large and the treatment is taken at hospitals/nursing homes, which have been approved by the Bank for that purpose. Clause 3 of the Scheme provides for Membership. The same is relevant for the purpose of this case and therefore, it is extracted and it reads as under:

'3. Membership.-(i) Only those existing and future pensioners of IBI/SBI who satisfy any of the following conditions will be eligible to be members of the scheme:

(a) Those who retire or have already retired from the Bank on completion of 30 years of pensionable service.

(b) Those who have been/will be allowed to retire from the Bank's service on medical grounds in terms of Rule 19(iii.)/22(ii) of IBI/SBI Employees' Pension Fund Rules.

(c) Those who have retired/will retire on attaining the superannuation age of 58 years or 60 years provided they have put in at least 10 years of pensionable service.

(ii) Employees who have been discharged/dismissed/removed from service/compulsorily retired or their services have been terminated on grounds of misconduct, will not be eligible.

(iii) The retired employees who have taken up commercial employment for their spouses, are also eligible for medical benefits, but they will have to first exhaust the benefits, if any, available from the present employer.

(iv) For acquiring the membership, an employee retiring from the Bank's service will have to make/pay a one-time lumpsum contribution/membership fee of a sum equivalent to his/her one month's gross pension within three months of the receipt of his first monthly pension.

(v) Those who have already retired from the Bank's service and wish to join this scheme will have to make/pay a contribution/membership fee equal to one month's gross pension currently drawn by them within three months of the implementation of the scheme. This period can be extended in deserving cases by the Managing Committee.

(vi) Persons desirous of joining the scheme will have to apply for membership on a prescribed membership-cum-declaration form. The form will be available with the designated officer viz., Chief Manager (PER & HRD) at the Zonal Office of the Bank within whose area of operation they normally reside.

(vii) The membership will take effect only on receipt of the contribution/membership fee. This membership will be subject to ratification by the Managing Committee in due course.

(viii) Spouse means first legal spouse'.

4. The Medical Scheme, apart from others, provides for various benefits under the scheme, the procedure for membership, raising claims and for winding up of the scheme. These clauses may not be relevant for the purpose of deciding the issue canvassed in this petition and therefore, they are not noticed in the course of this order.

5. Petitioner, after his voluntary retirement from service, applied for membership of the scheme, in the prescribed form, along with the demand draft for the value of Rs. 5,830/-, which is equal to one month's gross pension drawn by him by his application dated 17-9-1996. The respondent-Bank, by its communication dated 4-10-1996, has returned the application and the draft to the petitioner, by stating that since he has not completed 30 years of pensionable service, he is not eligible for membership of the scheme, obviously relying on Clause 3(l)(a) of the Medical

Scheme. Aggrieved by this action/inaction of the respondent-Bank, petitioner is before this Court for the reliefs indicated by me earlier.

6. To complete the narration of facts, reference to provisions of SBI Officers Service Rules, which has come into force with effect from 1-1-1992 and the provisions of State Bank of India Employees' Pension Fund Rules ('Pension Rules' for short) requires to be noticed. The Service Rules of the Bank provides for age of retirement under the heading 'Retirement' under Clause 19 of the Rules. The said clause is as under:

'19. Age of retirement.-(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 concerned officer 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 may, at the discretion of the Executive Committee, be retired from the Bank's service after he has attained 50 years of age or has completed 25 years' service or 25 years' pensionable service as the case may be, by giving him three months' notice in writing or pay in lieu thereof:

Provided further that an officer who has completed 25 years' service or 25 years' pensionable service, as the case may be, may be permitted by the Executive Committee to retire from the Bank's service, subject to his giving three months' notice in writing or pay in lieu thereof unless this requirement is wholly or partly waived.

(2) Notwithstanding anything to the contrary in this order, officer who has ceased to be in the Bank's service by the operation of, or by virtue of, any provision shall be deemed to have retired from the Bank's service for the purpose of the Imperial Bank of India Employees' Pension and Guarantee Fund Rules or the State Bank of India Employees' Pension Fund Rules unless such cessation of service has been sanctioned as retirement for the purpose of either of the said Pension Fund Rules as may be applicable to him.

(3) In case disciplinary proceedings under the relevant rules of service have been initiated against an officer before he ceased to be in the Bank's service by the operation of, or by virtue of, any of the said rules or the provisions of this order, the disciplinary proceedings may, at the discretion of the Managing Director, be continued and concluded by the authority by which the proceedings were initiated in the manner provided for in the said rules as if the officer continues to be in service, so however, that he shall be deemed to be in service only for the purpose of the continuance and conclusion of such proceedings.

Explanation.-An officer will retire on the last day of the month in which he completes the stipulated service or age of retirement'.

7. The Pension Rules of the Bank provides for eligibility criteria for all officers/employees of the Bank to be eligible for pension under the Pension Rules. Clause 22 therein is the relevant clause and the same is as under:

'22(a) A member shall be entitled to a pension under these Rules on retiring from the Bank's service.-

(a) after having completed twenty years' pensionable services provided that he has attained the age of fifty years;

(b) after having completed twenty years of pensionable service, irrespective of age, he shall have attained, if he shall satisfy the authority competent to sanction his retirement by approved Medical Certificate or otherwise that he is incapacitated for further active service;

(c) after twenty-five years' pensionable service'.

8. Before I advert to the legal issues canvassed by learned Counsel for the parties, let me notice the impugned communication of the respondent-Bank dated 4-10-1996. The same is extracted and it reads as under:

'No. Br/Gen/262 Dated 4-10-1996.

Dear Sir,

SBI RETIRED EMPLOYEES' MEDICAL BENEFIT SCHEME

With reference to your application for the membership of the above scheme, we are advised by the Zonal Office that inasmuch as you have not completed 30 years of pensionable service, which is a prerequisite to become a member as per the present guidelines of the scheme, you are not eligible for membership.

2. We return the application and the draft for Rs. 5,830/-, receipt of which please acknowledge.

Yours faithfully,

Sd/-

Assistant General Manager.

Encl: a/a'.

9. The learned Counsel Sri Basava Prabhu S. Patil, appearing for petitioner contends that the respondent-Bank is 'other authority' within the meaning of the expression in Article 12 of the Constitution and therefore, its action should be consistent with the constitutional provisions. It is further stated that the provision of Clause 3(1)(a), which discriminates pensioners, who have retired from the Bank's service on completion of 30 years of pensionable service and other pensioners for grant of relief under the medical scheme is wholly arbitrary and discriminatory and the same has no rational nexus to the object sought to be achieved nor is there intelligible differentia, which distinguishes persons, who are grouped together from those who are left out under the medical scheme and therefore, Clause 3(1)(a) violates Article 14 of the [Constitution of India](#). In support of this contention, the

learned Counsel relies on certain observations made by Apex Court in the case of *Ramana Dayaram Shetty v International Airport Authority of India and Others*.

10. Per contra, Sri N.B. Bhat, learned Counsel for the respondent-Bank, firstly contends that the petitioner has no fundamental right or statutory right to be a member of the medical scheme, since the scheme has no statutory force. It is further stated that the scheme is purely a welfare measure introduced by the Bank on its own without any compulsion and the scheme could be wound up under Clause 7 of the Scheme. Secondly, the learned Counsel contends, that classification of pensioners for the purpose of extension of benefit under the medical benefit scheme is quite reasonable and there is intelligible differentia, which distinguishes those, who are kept out of membership of the scheme and those who are covered by the scheme and further, there is also rational nexus between the differentia and the object sought to be achieved by the scheme and lastly, it is stated that the scheme is only a welfare measure meant to give some financial assistance to retired employees in their old age, when medical benefit is needed most and their ability to bear medical expenditure is the least and therefore, exclusion from the scheme of those pensioners, who have taken voluntary retirement on completing only 20 years of service, but less than 30 years of service is neither discriminatory nor arbitrary and the scheme does not violate any of the constitutional provisions, so much so Article 14 of the [Constitution of India](#). In aid of his submission, the learned Counsel invites my attention to the observations made by Apex Court in the case of *State of Punjab and Others v Ram Lubhaya Bagga and Others*, wherein it is held that the wisdom of the State's policy with regard to reimbursement of medical expenses to its employees cannot be judicially scrutinised though the Court can consider whether the policy is arbitrary or violative of law and further, the observation of this Court in the case of *Rajashekhar and Another v State of Karnataka and Others*.

11. The only question that requires to be considered and decided is whether Clause 3(l)(a) of the Medical Scheme of the Bank is arbitrary, discriminatory or violative of Article 14 of the [Constitution of India](#) and whether the classification of pensioners, who have retired after completing 30 years of pensionable service for grant of benefit under the medical benefit scheme, has any rational nexus to the

object sought to be achieved? To answer this precise question, the report of the Committee formed for formulating the scheme for medical benefits to the retired employees of the Bank requires to be seen.

12. The management of the respondent-Bank had constituted Committee consisting of Chief General Manager of the Bank as its Chairman and three other high ranking officials in the Bank as its members, to examine the issues of creation and administration of the fund, extension of medical facilities to retired employees and to make suitable recommendations. The Committee after examining the issue in detail and after considering the medical facilities extended to retired staff in parallel organisations and after discussion with the representatives of SBI Pensioners, the Federation, has recommended the creation of a fund with a substantial corpus for formulating a scheme for medical benefits to the retired employees in the Bank for meeting the cost of treatment in hospital/nursing homes recognised by the Bank.

13. After receipt of the report and the recommendation of the committee constituted for formulating the medical benefit scheme for its retired employees, the Central Management Committee of the Bank, after examining the scheme and recommendation made by the Committee, and after making suitable alterations and modifications, had placed the scheme for approval before the Executive Committee of the Central Board of the Bank. It is only after the approval by the Central Board, the Bank has introduced the scheme called 'State Bank of India Retired Employees' Medical Benefit Scheme', which has come into force with effect from 1-7-1996, with the sole object of providing financial assistance either partly or fully for treatment of specified diseases within the specified limits in hospitals/nursing homes approved by the Bank. Clause 3 of the scheme provides for membership under the scheme. It categories three types of pensioners, who would be eligible to be members of the scheme. First category is those employees/officers, who have retired or would retire from the Bank on completion of 30 years of pensionable service. Second category is those employees/officers, who have been or will be allowed to retire on medical grounds and last category is those employees/officers, who have retired or will retire on attaining superannuation age of 58 or 60 years, provided they have put in minimum of 10

years of pensionable service.

14. Petitioner in this petition has no grievance insofar as the last two category of pensioners, but has grievance insofar as Clause 3(1)(a) of the Scheme, which imposes condition of 30 years of pensionable service to be entitled for the benefit of the scheme. Petitioner is of the view that the said clause is arbitrary and discriminatory and therefore, seeks a direction to the management of the Bank to treat the employee/officers, who are eligible for pension under Pension Fund Rules as eligible for membership under the medical benefit scheme.

15. The Executive Committee of the Central Board of the Bank has taken a decision, apart from others, to extend the benefit under the medical benefit scheme for those employees/officers, who have retired or would retire from the Bank on completion of 30 years of pensionable service. It is now well-settled principle that this Court in its exercise of judicial review will not set aside the decision and will not go behind the wisdom of the decision and substitute its opinion for that of the Bank on the point whether it should be extended to all the category of pensioners, as long as the decision is taken by the employer in good faith and is reasonable. But at the same time, the instruction or decision of 'other authority' coming under Article 12 of the [Constitution of India](#), can be successfully assailed, if it can be established that it is inconsistent with the constitutional provisions viz., Article 14, 16, 30 or Article 311 of the Constitution and it is also vulnerable on the ground that it was not issued by the competent authority. Keeping this in view, let me test the arguments canvassed by the learned Counsel for petitioner, insofar as the constitutional validity or otherwise of Clause 3(1)(a) of the Medical Benefit Scheme.

16. The Medical Benefit Scheme is one of the welfare measures introduced by the Bank to its retired employees, or who would be retiring from service on attaining the age of superannuation. The scheme has no statutory force and it is in the nature of administrative circular. The scheme has been introduced by the Bank, after receiving the report of the Committee, which had been constituted by the Board of the Bank for framing a scheme for medical benefits to the retired employees in the Bank. The Committee taking into consideration the funds

available in the medical benefit fund and number of retired employees, have thought it fit to recommend to the Executive Committee of the Central Board of the Bank to restrict the benefit of the scheme only to the retired employees, who have retired from service on attaining the age of superannuation. Restricting the benefit under the scheme, depending on the available resources has been approved by the Apex Court in R.L. Bagga's case, *supra*, wherein the Court has observed, that 'No State of any country can have unlimited resources to spend on any of its projects. That is why it only approves its project to the extent it is feasible. The same holds good for providing medical facilities to its citizens including its employees. Provision of facilities cannot be unlimited. It has to be to the extent finances permit'. In the present case, since the resources available was limited, the Board has thought it fit to extend the Medical Benefit Scheme initially on selective basis. Accordingly, they extended the benefit of the Scheme only to those employees of the Bank, who have retired from the Bank's service after attaining the age of superannuation. It is at this stage may be relevant to notice the age of retirement under the Service Rules of the Bank. Rule 19.1 of the Service Rules of the Bank envisages that an officer shall retire from the service of the Bank on attaining the age of 58 years or upon completion of thirty years of service or thirty years of pensionable service, if he is a member of the pension fund, whichever occurs first. The Executive Committee at its discretion may retire an officer from Bank's service, after he has attained 50 years of age or has completed 25 years of service or 25 years of pensionable service. The Bank may also permit an officer to retire from Bank's service after he has completed 20 years of service or 20 years of pensionable service, on a request made in writing by an officer/employee. The Board, while introducing the medical benefit scheme has thought it fit to exclude the later two categories of retired officers from the purview of the medical benefit scheme and has extended the benefit only to the first category, may be in keeping in view, the length of service that an officer has put in the Bank. Merely because the benefit is not extended to the other categories of retired employees, in my view, it cannot be said that the provisions are either discriminatory or arbitrary or has no nexus with the object of the scheme in question. At this stage, it is useful to refer to the observations made by Apex Court in R.L. Bagga's case, *supra*, wherein the Court has stated:

'So far as questioning the validity of governmental policy is concerned, in our view, it is not normally within the domain of any Court to weigh pros and cons of the policy or to scrutinise it and test the degree of its beneficial or equitable disposition for the purpose of varying, modifying or annulling it, based on however sound and good reasoning, except where it is arbitrary, or violative of any constitutional, statutory or any other provision of law. When Government forms its policy, it is based on a number of circumstances on facts, law, including constraints based on its resources. It is also based on expert opinion. It would be dangerous, if Court is asked to test the utility, beneficial effect of the policy or its appraisal based on facts set out on affidavits. The Court would dissuade itself from entering into this realm, which belongs to the executive'.

17. Secondly, the Medical Benefit Scheme is a contributory scheme unlike payment of pension, which is a statutory liability undertaken by the Government and whatever became due and payable was budgeted for. If more members are admitted to the scheme, it would pro rata affect the share and by that process the purpose for which is created may not be useful to its members unlike the pension fund, where the liability is incurred and has to be provided for in the budget. Therefore, it cannot be said that Clause 3(1)(a) of the Scheme is either arbitrary and unprincipled and in any way violative of constitutional provisions.

18. Thirdly, this is not one of those cases, where discrimination is made among pensioners, who are similarly situated. Accepting the petitioner's contention will have very serious consequences. Even a person who has retired on any other grounds can claim membership. This cannot be so, in view of the purpose and object of the scheme. In my opinion, so long the clause in the scheme is made applicable in a reasonable manner, i.e., without bringing about discrimination between similarly situated persons, no interference is called for. Since prescription of the 30 years of service is neither arbitrary nor unreasonable, the complaint of discrimination must fail.

19. Lastly, the impugned communication is totally based on Clause 3(1)(a) of the Scheme. Therefore, I cannot take any exception to the impugned communication.

20. In the result, petition fails. Accordingly, it is dismissed. Rule discharged. In the facts and circumstances of the case, parties are directed to bear their own costs. Ordered accordingly.

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