

JALGAON DISTRICT CENTRAL CO-OPERATIVE BANK LTD.

v.

PUNDALIKRAO LAXMANRAO SURYAWANSHI & ORS.

September 3, 1969

[J. M. SHELAT, C. A. VAIDIALINGAM AND I. D. DUA, JJ.]

Maharashtra Cooperative Societies Act, 1960 (24 of 1961)—Cooperative Bank—Bank framing Gratuity Fund Rules, 1957 under its bye-laws—Rule 6 providing for payment of gratuity and rule 10 providing for contribution by Bank to Gratuity Fund—Rules 6 and 10 not approved by Registrar—Whether gratuity payable by virtue of Rules 7 and 9—New Rules framed replacing 1957 Rules—Rule 16 of old rules whether protects vested interests of employees under old rules.

Respondent No. 1 retired from the service of the appellant bank on July 19, 1962 after 32 years of service. Under the Bank's bye-laws Gratuity Fund Rules were sanctioned by the Board of Directors on August 17, 1957. These rules were forwarded to the Registrar of Cooperative Societies for approval and they were approved with some modifications except Rules 6, 10 and 15. On his retirement Respondent No. 1 was paid a sum of Rs. 5,070/- as gratuity. He instituted arbitration proceedings in the Court of the Registrar's Nominee for a further sum of Rs. 7,605/- as balance of gratuity payable to him with interest at 6 per cent. The claim was disallowed and an appeal before the Maharashtra State Cooperative Tribunal also failed. The High Court however in a petition under Art. 227 of the Constitution allowed the respondent's claim. The Bank appealed to this Court. It was urged on behalf of the appellant (i) that Rule 6, the last sentence of which provides for the grant of gratuity and Rule 10 which provides for contributions by the Bank to the Gratuity Fund not having been approved by the Registrar, there remained no basis for the claim of gratuity by respondent no. 1; (ii) that the old rules had neither been repealed nor altered and the effect of retrospective operation of the new rules was that the Registrar had withdrawn his approval to the old rules and enforced the new ones.

HELD : (i) The argument that r. 6 not having been approved there was no rule under which the obligation to pay gratuity arose ignored the express language of r. 7 which, in unequivocal terms, requires gratuity to be granted in case of retirement, resignation or termination of services according to the rate specified therein. Clause (a) of this rule contains a provision similar in effect to what the last sentence of r. 6 directs. Rule 9 also imposes an imperative obligation for the payment of gratuity under these rules within one month from the retirement, resignation, death or termination of service of the employee concerned. [195 D—F]

(ii) The non-approval of r. 10 by the Registrar also could not make the other rules ineffective and could not absolve the Bank of the obligation imposed on it by rr. 7, 8 and 9. Once the Gratuity Fund Rules imposing an obligation on the Bank to pay gratuity to its employees are approved by the Registrar, then this obligation cannot be rendered nugatory merely because there is no separate Gratuity Fund. [195 F—H]

A (iii) It was conceded that the new rules could not detract from or prejudicially affect the vested rights created under the old rules. Old Rule 16 expressly prohibits the retrospective operation of the new rules with the object of protecting the interests of the employees. The effect of old r. 16 cannot be negated by describing the process as mere withdrawal of the approval of the old rules and enforcement of the new ones. [196 B--D]

B CIVIL APPELLATE JURISDICTION : Civil Appeal No. 944 of 1966.

Appeal by special leave from the judgment and order, dated March 30, 1965 of the Bombay High Court in Special Civil Application No. 5 of 1964.

C *M. C. Chagla* and *I. N. Shroff*, for the appellant.

Ganpat Rai and *R. Mahalingier*, for respondent No. 1.

The Judgment of the Court was delivered by

D **Dua, J.** Pundalikrao Laxmanrao Suryawanshi plaintiff (respondent No. 1 in this Court) instituted arbitration proceedings in the Court of the Registrar's Nominee against the Jalgaon District Central Co-operative Bank Ltd., Jalgaon (appellant in this Court) for the recovery of a sum of Rs. 7,605/- as the balance of gratuity with interest at 6 per cent due from 18-8-1962. The claim having been resisted, the same was disallowed on May 16, 1963. An appeal presented to the Maharashtra State Co-operative Tribunal under section 97 of the Maharashtra Co-operative Societies Act against the award of the Registrar's Nominee was dismissed and the said award was confirmed.

F The Bombay High Court was thereupon approached by respondent No. 1 under Article 227 of the Constitution and the High Court allowing the application on July 17, 1965 set aside the orders made by the Co-operative Tribunal and by the Registrar's Nominee and directed the appellant-Bank to pay to respondent No. 1 Rs. 7,605/- together with interest at 4 per cent per annum from June 19, 1963 up-to-date.

G The present appeal by special leave is directed against the order of the Bombay High Court.

H Shri M. C. Chagla, the learned counsel for the appellant, concentrated his challenge to the impugned order on the ground that on July 19, 1962, when respondent No. 1 retired from service of the appellant-Bank, there were no valid rules in force entitling him to the amount of gratuity claimed by him. It was not disputed before us that respondent No. 1 had retired on July 19, 1962 after 32 years of service. On retirement, he was paid a sum of Rs. 5,070/- by way of gratuity, but his claim in the present proceedings is for a further sum of Rs. 7,605/-.

Gratuity Fund Rules were sanctioned by the Board of Directors of the appellant-Bank on August 17, 1957. They were framed under the Bank's bye-laws. These rules (hereafter called old rules) were forwarded to the Registrar of Co-operative Societies for approval and they were approved with some modifications except Rules 6, 10 and 15 which were kept under consideration. The principal argument pressed before us by Shri Chagla was that Rules 6 and 10 having not been approved by the Registrar, all the old rules must be deemed to have remained inoperative because these two rules form the real substratum of the scheme embodied in those rules. Without these two rules, the remaining rules, according to the argument, cannot effectively operate. We are unable to accept this submission.

It would be useful at this stage to reproduce old Rules 6, 7, 9, 10, 15 and 16 which alone are suggested on behalf of the appellant to be relevant.

"6. These Rules shall be deemed to have come into force (*i.e.* in respect of an employee retiring, resigning and/or having terminated his services) from the 1st July, 1953. Every employee who has completed at least five years service shall be granted gratuity at the rate specified herein.

7. In case of retirement, resignation or termination of services gratuity shall be granted :

(a) After five years but before completion of 10 years services :—half month's salary for each completed year of service.

(b) After 10 years but before completion of 16 years service :—three fourth of a month's salary for each completed year of service.

(c) After 15 years service three fourth of a month's salary for each completed year of service, subject to the minimum of fifteen salaries.

8.

9. Payment of the claims on account of the Gratuity payable under these Rules, shall be made within one month from the retirement, resignation, death or the termination of service.

10. The Bank shall contribute on 30th June, every year, or as soon as possible thereafter, but not later

A than 30th September of the year, an amount not less than the amount contributed by the Bank as contribution to the Provident Fund.

11 to 14.

B 15. The provisions under sec. 41 of the Bombay Co-operative Societies Act (Bombay Act VII of 1925) as amended upto date shall be applicable to the administration of the 'Gratuity Fund' created under these Rules.

C 16. The Board of Directors shall have powers, subject to the approval of the Registrar Co-operative Societies Bombay State, Poona, to alter, add to, or repeal these rules from time to time, provided however that no such alteration, addition or repeal shall have any retrospective effect against the interest of the employee, in the employment of the Bank on that date."

D According to the appellant's learned counsel, the Registrar having withheld approval of Rule 6, the last sentence of which provides that every employee who has completed at least 5 years' service, shall be granted gratuity at the rate specified in the rules, there is no rule which imposes an obligation on the appellant-Bank to pay gratuity. This argument, in our opinion, ignores the
 E express language of Rule 7 which, in unequivocal terms, requires gratuity to be granted in case of retirement, resignation or termination of service according to the rate specified therein. Clause
 F (a) of this rule contains a provision similar in effect to what the last sentence of Rule 6 directs. Rule 9 also imposes an imperative obligation for the payment of gratuity under these rules within one month from the retirement, resignation, death or termination of service of the employee concerned. Rule 10, which
 G provides for contribution of the Bank towards the Gratuity Fund, was no doubt also kept under consideration and not approved by the Joint Registrar, but this too, in our view, does not render the remaining rules ineffective; nor does this fact by itself absolve the Bank of the obligation imposed on it by Rules 7, 8 and 9. The
 H contention that without there being a Gratuity Fund, the Bank cannot lawfully pay gratuity assumes that the Bank has no other resources out of which its liabilities under the Rules in question can be discharged—an assumption which is not easy to uphold. Once the Gratuity Fund Rules imposing an obligation on the Bank to pay gratuity to its employees are approved by the Registrar, then this obligation, in our opinion, cannot be rendered nugatory merely because there is no separate Gratuity Fund. Rule 15 which provides for the applicability of section 41 of the Bombay Co-operative Societies Act VII of 1925 to the "administration of

the Gratuity Fund" created under the rules in question, does not touch the question of the enforcement of these rules, and indeed even on behalf of the appellant, no attempt has been made to rely on Rule 15 for this purpose.

The appellant's counsel next relied on the new rules which were approved by the Joint Registrar of Co-operative Societies and were made retrospective in their operation so as to be enforceable with effect from July 1, 1953. It was, however, conceded by Shri Chagla and, in our opinion, rightly, that the new rules could not detract from or prejudicially affect the vested rights created under the old rules. Indeed old Rule 16, it may be recalled, prohibits the retrospective operation of the new rules with the object of protecting the interests of the employees. The submission that the old rules have neither been repealed, nor altered, as contemplated by Rule 16, and that the Registrar has merely withdrawn his approval to the old rules and enforced the new ones, does not advance the appellant's case. The effect of old rule 16, in our opinion, cannot be negated by describing the process as mere withdrawal of the approval of the old rules and enforcement of the new ones, for in real substance the process seems to us to be covered by Rule 16.

The appeal accordingly fails with no order as to costs.

G.C.

Appeal dismissed.