

MUNDRIKA DUBEY AND ORS.

A

v.

STATE OF BIHAR AND ORS.
(Civil Appeal No. 1468 of 2008)

FEBRUARY 21, 2008

B

[TARUN CHATTERJEE AND HARJIT SINGH BEDI, JJ.]

Service Law:

Retirement – Compulsory retirement – Of Appellants-Class IV employees – By Respondent-Bank – Justification of – Held: Justified under r.235 which provided for compulsory retirement in the Bank's interest – Respondent-Bank was not only heavily over-staffed but also running into huge losses – Substantial pruning of employees was required for its survival – In any event, it is not for this Court to opine as to who should be retained in service and who should be retired and at what stage and situation as this is a matter to be left to the exclusive discretion of the employer – Bihar Rajya Shakari Bhumi Vikas Bank Samiti (Rules) – rr.232 and 235.

C

D

Appellants-Class IV employees were compulsorily retired by Respondent-Bank vide order purportedly passed under Rules 232 and 235 of the Bihar Rajya Shakari Bhumi Vikas Bank Samiti (Rules). They filed writ petitions before the High Court which were dismissed.

E

F

In appeal to this Court the contention of the Appellants is that Rule 235 on which the respondents had placed reliance for dispensing with the services of the appellants by way of compulsory retirement was not in fact a source of power as it only dealt with the payment of gratuity and provident fund to a certain category of employees and that it was only under Rule 232 that an employee could be compulsorily retired and that too on the ground of inefficiency and as it was not the case of

G

H

A the respondent-Bank that the appellants were inefficient, the impugned action of the Bank was unjustified. The Appellants further contended that they had put in more than 30 years of service with the Bank and if any restructuring was to be made so as to make Bank's working more efficient, it would have been appropriate to dispense with the staff at the top i.e. senior officers of the Bank rather than the low paid Class IV employees such as the appellants.

C Per contra, Respondents contended that Rule 235 was itself the source of power and operated in a field different from Rule 232 and that it was not for this Court to interfere so as to determine as to which employee should be retrenched first, and who later, as this was a matter for the internal administration of the Bank.

D Dismissing the appeal, the Court

HELD: 1. Concededly the action against the appellants has not been taken under Rule 232 which deals with the compulsory retirement of an employee who has put in 21 years of duty and 25 years of total service if it is considered that the efficiency or the conduct of the employee does not justify his retention in service. Rule 235 however talks about compulsory retirement in the Bank's interest of those who have reached the age of 50 years and have completed 30 years of service and also talks about the benefit of contributory provident fund and gratuity, as admissible to such employees. Undoubtedly, action under Rule 232 can only be taken if the employee concerned is inefficient or is guilty of misconduct whereas the scope of Rule 235 is much wider and compulsory retirement can be ordered in the Bank's interest. The fact that the two Rules operate in different fields is also clear from the varying qualifying service and that those who retire under Rule 235 are given some additional financial benefits as a solatium for having to

go despite the fact that their efficiency has in no manner
been impaired and merely because Rule 235 also talks
about the payment of contributory provident fund and
gratuity it does not take away the right to retire
compulsorily those who have reached the age of 50 years
and have completed 30 years of service and whose
retirement is in the Bank's interest. Therefore the
action taken was justified under Rule 235. [Para 8]
[165-C, D, E, F, G]

2. It is not for this Court to opine as to who should be
retained in service and who should be retired and at what
stage and situation as this is a matter to be left to the
exclusive discretion of the employer. The facts of the case
show that the Bank was not only heavily over staffed but
was also running into huge losses and substantial
pruning which would undoubtedly be hurtful, was
required for its survival. [Para 9] [169-A, B]

CIVILAPPELLATE JURISDICTION : Civil Appeal No 1468
of 2008.

From the final Order dated 7.12.2005 of the High Court of
Judicature at Patna in L.P.A. No. 1184/2004.

Priya Hingorani (for M/s. Hingorani & Associates) for the
Appellants.

Shravan Kumar, B.P. Yadav, Sanjeev Malhotra, Gopal
Singh and Manish Kumar for the Respondents.

The Judgment of the Court was delivered by

HARJIT SINGH BEDI, J. 1. Leave granted.

2. This appeal is directed against the order dated
December 7, 2005 of the Division Bench of the Patna High Court
whereby the judgment of the learned Single Judge dated
October 12, 2004 dismissing the Writ Petition has been
confirmed. The facts of the case are as under:

A 3. The appellants were appointed as Class IV employees
i.e. Peons in the respondent-Bank in the year 1971. They have
been compulsorily retired by the Bank vide order dated June 5,
2004 made purportedly under Rules 232 and 235 of the Bihar
Rajya Shakari Bhumi Vikas Bank Samiti (hereinafter referred
B to as the "Rules"). Aggrieved against the order dated June 5,
2004, the appellants filed several writ petitions in the Patna High
Court raising pleas, inter-alia, that the action taken by the Bank
was not justified under Rule 232 as they had not been retired
compulsorily on the ground of inefficiency and that Rule 235
C was not a source of power so as to justify an order of compulsory
retirement as it only dealt with the grant of contributory provident
fund and gratuity to those employees who had reached the age
of 50 years and had completed 30 years of service at the time
of retirement. In response to the notice issued by the High Court,
D the respondent-Bank filed its reply. It was, inter-alia, pointed out
that the Bank was grossly over-staffed and being inefficiently
run with the result that it had sustained huge losses that had
brought it to a precarious financial position, and that before the
action had actually been taken against the appellants, a
committee had been set-up which had examined the entire
E structure of the Bank and as a follow-up a large number of offices
and Branch Offices had been closed and a consequent re-
structuring made of those which still continued to operate. It was
further highlighted that the over-staffing of the Bank was evident
as against the total requirement of 166 Peons, 507 had in fact
F been appointed and that the decision to compulsorily retire the
appellants had been taken with hesitation and as one of the
measures necessary to ensure the survival of the Bank. It was
also pointed out that the Board of Directors in its meeting held
on December 24, 2003 had examined the relevant facts and
G concluded that in the first phase, compulsory retirement should
be ordered of lower grade employees who had completed 30
years of service and 50 years of age. A copy of these
proceedings have been appended as Annexure P-1 to the Paper
Book.

4. The learned Single Judge in his judgment dated October 12, 2004 accepted the explanation tendered by the respondent insofar as the factual aspect was concerned and also observed that Rule 232 was not applicable in such a case whereas Rule 235 was in fact applicable and accordingly dismissed the Writ Petition, as already mentioned above. The appeal filed before the Division Bench of the High Court was also dismissed.

5. Ms. Priya Hingorani, the learned counsel for the appellants has forcefully argued that Rule 235 on which the respondents had placed reliance for dispensing with the services of the appellants by way of compulsory retirement was not in fact a source of power as it only dealt with the payment of gratuity and provident fund to a certain category of employees and that it was only under Rule 232 that an employee could be compulsorily retired and that too on the ground of inefficiency and as it was not the case of the respondent-Bank that the appellants were inefficient, the impugned action was unjustified. It has also been urged that the appellants had put in more than 30 years of service with the Bank and if any re-structuring was to be made so as to make Bank's working more efficient, it would have been appropriate to dispense with the staff at the top i.e. senior officers of the Bank rather than the low paid Class IV employees such as the appellants.

6. These arguments have been controverted by Shri Shraavan Kumar, the learned senior counsel for the respondents who has pointed out that Rule 235 was itself the source of power and operated in a field different from Rule 232 and that it was not for this Court to interfere so as to determine as to which employee should be retrenched first, and who later, as this was a matter for the internal administration of the Bank.

7. We have heard the learned counsel for the parties and gone through the record. Rules 232 and 235 are reproduced hereinbelow:

"Rule 232: The Bank may, any bank employee who has committed 21 years of duty and 25 years of total service

A calculated from the date of his first appointment to retire
from the Bank's services if it is considered that the
efficiency or conduct of the employee is not such as to
justify his retention in service. Where any bank employee
is so required to retire, no claim to any special
B compensation shall be entertained.

Rule 235: A person who retires voluntarily or is required to
be retired compulsorily in bank's interest on reaching the
age of 50 years completing 30 years of service shall be
entitled to contributory provident fund and gratuity as
C admissible."

8. Concededly the action against the appellants has not
been taken under Rule 232 which deals with the compulsory
retirement of an employee who has put in 21 years of duty and
D 25 years of total service if it is considered that the efficiency or
the conduct of the employee does not justify his retention in
service. Rule 235 however talks about compulsory retirement
in the *Bank's interest* of those who have reached the age of 50
years and have completed 30 years of service and also talks
about the benefit of contributory provident fund and gratuity, as
E admissible to such employees. Undoubtedly, action under Rule
232 can only be taken if the employee concerned is inefficient
or is guilty of misconduct whereas the scope of Rule 235 is
much wider and compulsory retirement can be ordered in the
Bank's interest. The fact that the two Rules operate in different
F fields is also clear from the varying qualifying service and that
those who retire under Rule 235 are given some additional
financial benefits as a solatium for having to go despite the fact
that their efficiency has in no manner been impaired and merely
because Rule 235 also talks about the payment of contributory
G provident fund and gratuity it does not take away the right to
retire compulsorily those who have reached the age of 50 years
and have completed 30 years of service and whose retirement
is in the Bank's interest. We therefore endorse the observations
of the High Court that the action taken was justified under Rule
H 235, as correct.

9. We are equally of the opinion that it is not for this Court to opine as to who should be retained in service and who should be retired and at what stage and situation as this is a matter to be left to the exclusive discretion of the employer. The facts of the case show that the Bank was not only heavily over staffed but was also running into huge losses and substantial pruning which would undoubtedly be hurtful, was required for its survival.

10. We accordingly find no merit in the appeal. Dismissed with no order as to costs.

B.B.B.

Appeal dismissed.