Reserved
A.F.R.

HIGH COURT OF JUDICATURE AT ALLAHABAD

SPECIAL APPEAL No. - 1639 of 2008

Sachindra Kumar Pandey

.....Appellant

Versus

Gorakhpur Kshetriya Gramin Bank and others

.....Respondents

Counsel for the Appellant	:	K. Shahi
Counsel for the Respondents	:	Aditya Kumar Singh, Ashok Khare

Court No. - 2

HON'BLE J.J. MUNIR, J.
HON'BLE INDRAJEET SHUKLA, J.

(Delivered by Hon'ble J.J. Munir, J.)

1. This is a petitioner's special appeal questioning the judgment and order of the Hon'ble Mr. Justice R.B. Misra dated 19.05.2004, dismissing the writ petition.

2. The writ petitioner-appellant, Sachindra Kumar Pandey, who shall be called 'the appellant', was a Clerk in the employ of the Gorakhpur Kshetriya Gramin Bank, Gorakhpur. The aforesaid bank, pending this appeal, was re-organized and re-named as the Purvanchal Bank. After merger of the Purvanchal Bank with the Uttar Pradesh Gramin Bank, it is the Uttar Pradesh Gramin Bank, Lucknow, which is the successor of the Gorakhpur Kshetriya Gramin Bank. Whether the reference is to the Gorakhpur Kshetriya Gramin Bank, the succeeding Purvanchal Bank or the present Uttar Pradesh Gramin Bank, Lucknow, it is the same body corporate for the purposes of this special appeal and shall be called 'the Bank'.

3. The appellant was appointed as a Clerk in the service of the Bank on 04.06.1981. He was placed on one year's probation. He joined service on 22.07.1981. The appellant's probation was extended for a period of six months *vide* order dated 20.07.1982. It is the Bank's case that the appellant's service was not found satisfactory, and, accordingly, his services were terminated with immediate effect *vide* order dated 11.03.1983 under Regulation 10 of the Gorakhpur Kshetriya Gramin Bank (Staff) Service Regulations, 1980 (for short, 'the Regulations').

4. It would be apposite to give a thumbnail sketch of the steps taken by the appellant to win back his employment and the course of proceedings that ensued. The appellant instituted Original Suit No.640 of 1983, seeking a decree of declaration that the order dated 11.03.1983, terminating his services was illegal, that he continued to remain in service of the Bank and entitled to receive his emoluments. The suit came up for trial before the learned Munsif-XII, Gorakhpur and decreed *vide* judgment and decree dated 28.10.1985. The Bank appealed the decree passed by the learned Munsif to the District Judge of Gorakhpur being Civil Appeal No. 387 of 1985. The appeal came up for hearing before the learned 10th Additional District Judge, Gorakhpur on 25.01.1989. The learned Additional District Judge allowed the appeal, reversed the Trial Court and dismissed the suit. The appellant preferred a second appeal to this Court from the appellate decree, being Second Appeal No. 1103 of 1989. This second appeal was heard along with Second Appeal No. 1604 of 1990, instituted by one Swatantra Kumar Singh, whose case was similar to that of the appellant. Second Appeal No. 1103 filed by the appellant was decided in terms of the judgment and decree dated 10.05.2000 passed in Second Appeal No. 1604 of 1990, which was dismissed. Though the suit was not found fit to be decreed by this Court, as the termination was not against the Regulations and the vires of the Regulations could not be gone into by the Civil Court, but the appellant was left free by this Court in the second appeal to pursue his remedies either under the Industrial Disputes Act or by invoking the writ jurisdiction of this Court under Article 226 of the Constitution.

5. The appellant then instituted the writ petition, giving rise to this appeal, which has been dismissed by the learned Single Judge by the order impugned dated 19.05.2004.

6. The appellant in his writ petition has prayed for a writ of *certiorari* quashing the order dated 11.03.1983 passed by the Chairman of the Bank, and further a direction seeking reinstatement with all consequential benefits, including arrears of salary. By a writ, order or direction in the nature of *mandamus*, he has sought that the provisions of Regulation 10(2) of the Regulations be declared unconstitutional and all actions taken under the said Regulations inoperative.

7. Heard Mr. Tanuj Shahi, learned Counsel for the appellant and Mr. Aditya Kumar Singh, learned Counsel appearing on behalf of the respondents (the Bank).

8. A perusal of the impugned judgment passed by the learned Single Judge compels us to say, with utmost respect, that though very elaborate arguments were addressed before his Lordship on behalf of parties for and against the order impugned in the writ petition, the learned Judge made a short shrift of the matter and dismissed it with the remark that since the appellant was on probation, when the Bank terminated his services by an order simpliciter saying that they did not need his services, paying him one month's salary in lieu of notice, there was no illegality or impropriety in the order impugned. We would think that ideally this would have been a case for remand to the learned Single Judge, but after all these years, we think that, that course is neither wise nor open to us. We should now determine the writ petition on merits. This is all the more so because after all what we exercise in an appeal under Chapter VIII Rule 5 of the Rules of the Court, is the same jurisdiction as that exercised by the Single Judge under Article 226 of the Constitution while deciding the writ petition.

9. Regulations 8, 9 and 10 of the Regulations, which are central to the issues, that arise for consideration in this appeal, read:

> "**8. Probation.**– (1) Every officer on his appointment in a post in the Bank shall be on probation for a period of two years which shall be extendable upto a period not exceeding one year.
>
> (2) Every employee on his appointment in a post in the Bank shall be on probation for a period of one year which shall be extendable upto a period not exceeding six months.
>
> (3) Where during the period of probation, including the period of extension of probation, if any, the appointing authority is of the opinion that the officer or employee is not fit for confirmation in the said post:-
>
> (a) in the case of direct appointee, the service may be terminated by one month's notice or payment of one month's emoluments in lieu thereof, and
>
> (b) in the case of a pramotee from the Bank's service, he my be reverted to the grade or cadre from which he was pramoted.
>
> **9. Confirmation.**– An officer or employee shall be confirmed in the service of the Bank, if in the opinion of the appointing authority, the officer or employee has satisfactorily complied his probation.
>
> **10. Termination of Service at notice.**– (1) (a) An officer or employee shall not leave or discontinue his service in the Bank without first giving notice in writing to the Chairman of the Bank of his intent on to leave or discontinue the service.
>
> (b) The period of notice rendered shall be
>
> (i) Three months in case of officers, and
>
> (ii) One month in the ease of other employees.
>
> (c) In case of breach by an employee of the provisions of this sub-regulation, he shall be liable to pay to the Bank as compensation a sum equal to his pay for the period of notice required of him.
>
> (d) He shall also be liable to refund the pay or allowances or both, if any, drawn by him while on training and make good the training expresses, incurred by the Bank or sponsor Bank for deputing him for training.
>
> (e) In exceptional circumscribes the payment of such compensation and refund can be waived by the Chairman, at his discretion.

(2) (a) The Bank may terminate the service of an

(i) officer after giving him three months' notice or pay in lieu thereof;

(ii) employee after giving him one month's notice or pay in lieu thereof.

(b) The power to terminate the service of an officer or employee shall be exercised by the Chairman.

(3) Nothing in sub-regulation (2) shall affect the right of the Bank.

(a) to retire or dismiss an officer or employee without notice or pay in lieu thereof in accordance with the provisions of regulations 11 and 30; and

(b) to terminate the service of an officer or employee without notice or pay in lieu thereof on his being certified by a Medical Practitioner recognised by the Bank, to be permanently incapacitated for further continuous service in the Bank."

10. The foremost issue to consider is, if after expiry of the period of probation or the extended period of probation, Regulation 9 of the Regulations postulates an automatic confirmation in service or an express order has to be made by the Appointing Authority that the officer or the employee has satisfactorily completed his probation. It is true that there is preponderant authority, which tends to hold that in case of a rule, where the Appointing Authority is required to form an opinion if the officer or the employee has satisfactorily completed his probation, there cannot be an automatic confirmation in service. The submission is that given the principle a mere continuance, as in the present case, beyond the extended period of six months of probation, which came to an end in this case on 19.01.1983, would not lead to an automatic confirmation in service for the appellant. The continuation up to 11.03.1983, when the order of termination was passed under Regulation 10(2) of the Regulations, would not be illegal because the petitioner would continue to be a probationer in the absence of an express order, confirming him in service.

11. The general principles and even specific ones, that have been laid down, governing automatic confirmation in service, essentially depend on the terms of the rule applicable to a case. Here, the controversy, in our opinion, would stand concluded in the petitioner's favour because considering the validity of a termination order passed under Regulation 10(2)(a) of the Gurgaon Gramin Bank (Staff) Services Regulations, 1980 ('Gurgaon Gramin Bank Regulations' for short) against a trainee Branch Manager on 17.08.1982, the following questions arose for consideration before the Supreme Court in **M.K. Agarwal v. Gurgaon Gramin Bank, 1987 Supp SCC 643** (quoted in the words of their Lordships from the report):

> "**6.** On the contentions urged at the hearing, the questions that fall for consideration are, first, whether petitioner became a full member of the service upon the expiry of the period of probation; secondly, whether the impugned Regulation 10(2)(*a*) is unconstitutional as granting an arbitrary and unregulated power and therefore violative of Article 14 of the Constitution and that, consequently, the purported termination of the services of the petitioner must be held to be void and nonest; and thirdly, if the first two questions are held in his favour, whether petitioner is entitled to be reinstated in service with full back salary."

12. Apparently, the provisions of Regulation 10(2)(a) of the Gurgaon Gramin Bank Regulations considered in **M.K. Agarwal** and Regulation 10(2)(a) here are *pari materia*. Regulation 8(2) of the Regulations provides that every employee on his appointment to a post in the Bank shall be appointed on probation for a period of one year, extendable up to a period not exceeding six months. Interpreting an identically worded clause under the Regulations involved in **M.K. Agarwal**, it was held by the Supreme Court:

> "**8.** The first point need not detain us. The period of the probation was one year, in the first instance. The employer could extend it only for a further period of six more months. The limitation on the power of the employer to extend the probation beyond 18 months coupled with the further requirement that at the end of it the services of the probationer should either be confirmed or discharged render the inference inescapable that if the probationer was not discharged at or before the expiry of the maximum period of probation, then there would be an implied confirmation as there was no statutory indication as to what should follow in the absence of express confirmation at the end of even the maximum permissible period of probation. In cases where, as here, these conditions coalesce, it has been held, there would be confirmation by implication. (See: *State of Punjab* v. *Dharam Singh* [AIR 1968 SC 1210 : 1968 Lab IC 1409] ; *Om Prakash Maurya* v. *U.P. Cooperative Sugar Factories Federation, Lucknow* [1986 Supp SCC 95 : 1986 SCC (L & S) 421 : AIR 1986 SC 1844] .)"

13. Mr. Aditya Kumar Singh, learned Counsel appearing for the Bank has placed emphatic reliance on **Kazia Mohammed Muzzammil v. State of Karnataka and another, (2010) 8 SCC 155** to submit that unless an express order was passed granting confirmation, there could be no deemed confirmation or automatic confirmation in service. We are afraid that **Kazia Mohammed Muzzammil** (*supra*) was a case related to the Higher Judicial Service of Karnataka where the terms of the Rules, as noticed by the Supreme Court, excluded every possibility to infer a deemed confirmation if at the end of the prescribed period of probation, an express order granting confirmation was not made. This is certainly not the case here.

14. Likewise, the authority of the Supreme Court in **Mohd. Salman v. Committee of Management and others, (2011) 11 SCC 308** is inapplicable here because Regulation 26, considered there, had a very different phraseology, which the Court found similar to that considered by the Constitution Bench in **State of U.P. v. Akbar Ali Khan, AIR 1966 SC 1842**.

15. Emphatic reliance has been placed by the learned Counsel for the Bank upon **Kedar Nath Bahl v. State of Punjab, (1974) 3 SCC 21**, where the principle of law, no doubt, is stated in the widest terms to hold:

> "**9.** It was next contended that even if it is assumed that he was not confirmed by the Government in the post, it must be held that he was automatically confirmed in the post after the first six months of probation. He was a government servant before he accepted this post and under the terms of appointment already referred to, he was on probation for six months. The period of probation was over on May 5, 1955. It is the contention of the appellant that on the expiry of this period of probation he was automatically confirmed. The record, however, shows that the probationary period was extended by the Government from time to time though the orders were made with retrospective effect. The appellant contends that these orders extending the period of probation were irregular and illegal. Either he should have been discharged within the first six months of probation, or, if he was not so discharged he was entitled to automatic confirmation. We do not think that this contention is correct. The law on the point is now well settled. Where a person is appointed as a probationer in any post and a period of probation is specified, it does not follow that at the end of the said specified period of probation he obtains confirmation automatically even if no order is passed in that behalf. Unless the terms of appointment clearly indicate that confirmation would automatically follow at the end of the specified period, or there is a specific service rule to that effect, the expiration of the probationary period does not necessarily lead to confirmation. At the end of the period of probation an order confirming the officer is required to be passed and if no such order is passed and he is not reverted to his substantive post, the result merely is that he continues in his post as a probationer. See: *Narain Singh Ahluwalia* v. *State of Punjab* [Civil Appeal No. 492 of 1963, decided on 29-1-1964 (SC)] ; *Accountant General Madhya Pradesh, Gwalior* v. *Beni Prasad Bhatnagar*, [Civil Appeal No. 548 of 1962, decided on 23-1-1964 (SC)] *G.S. Ramaswamy* v. *Inspector-General of Police, Mysore State* [Civil

> Appeals Nos. 972 to 977 of 1963, decided on 21-1-64, reported in AIR 1966 SC 175] . The terms of appointment do not show that the appellant would be automatically confirmed on the expiry of the first six months of probation nor is any rule brought to our notice which has the effect of confirming him in the post after six months of probation. The position of the appellant, therefore, till the abolition of the post on November 4, 1958, was that he continued to be a probationer and has no right to the post. It, therefore, follows that when the tenure of the post came to an end, he was automatically reverted to his original post as an Inspector on which he had the lien."

16. **Kedar Nath Bahal** (*supra*) might have served as a complete answer to the appellant's claim and reduced his status to a probationer in perpetuity till his termination from service under Regulation 10(2), but the holding of the Supreme Court in **M.K. Agarwal** interpreting an identically worded clause in the Gurgaon Gramin Bank Regulations places the matter beyond cavil of doubt. On the terms of the two Regulations, that are *pari materia*, it is difficult to go-by the general principle of law laid down in **Kedar Nath Bahal**. The result is that it must be held that after the extended period of probation came to end for the appellant on 19.01.1983, he would be deemed to have been confirmed in service, and, *a fortiori*, a permanent employee when the impugned order of termination dated 11.03.1983 was passed.

17. The other question, that is involved in this writ petition, is also the same, which **M.K. Agarwal** answers. The second question, that was considered by the Supreme Court in **M.K. Agarwal** is if Regulation 10(2)(a) of the Gurgaon Gramin Bank Regulations was unconstitutional as one granting arbitrary and unregulated power to the employers, and, therefore, violative of Article 14 of the Constitution. In **M.K. Agarwal**, of course the Court also answered the question, if the Regulation last mentioned was unconstitutional, the termination of services of the employee in that case, would also be void and *non est*. The Supreme Court held in **M.K. Agarwal** regarding the validity of Regulation 10(2) of the Gurgaon Gramin Bank Regulations as follows:

> "**9.** Now to the second point. The Bank is constituted under the Regional Rural Banks Act, 1976. Having regard to its constitution and nature of its legal entity and the measure of state control, it is an instrumentality of the State and is made of

latter's own "flesh and bones" and is, accordingly, "State" within the meaning, and for purposes of Article 12 of the Constitution.

10. The said Regulation 10(2)(*a*) provides:

"10. *Termination of service by notice.*—(*2*)(*a*) The Bank may terminate the service of an—

(*i*) officer after giving him three months' notice or pay in lieu thereof;

(*ii*) employee after giving him one months' notice or pay in lieu thereof:

(*b*) The power to terminate the service of an officer or employee shall be exercised by the Chairman."

11. This Court dealing with the constitutionality of similar provisions which enabled governmental authorities such terminations simpliciter has held that the constitutional pledge of equality and the constitutional guarantee against arbitrary action contained in Article 14, frown upon conferment on the State or its instrumentalities such arbitrary power. (See *W.B. State Electricity Board* v. *D.B. Ghosh* [(1985) 3 SCC 116 : 1985 SCC (L & S) 607 : (1985) 2 SCR 1014] ; *Central Inland Water Transport Corpn. Ltd.* v. *Brojo Nath* [(1986) 3 SCC 156 : 1986 SCC (L & S) 429 : AIR 1986 SC 1571 : 1986 ATC 103] ; *O.P. Bhandari* v. *Indian Tourism Development Corpn. Ltd.* [(1986) 4 SCC 337 : AIR 1987 SC 111])

12. It requires, therefore, to be held that impugned Regulation 10(2)(*a*) conferring as it does, on the Bank an arbitrary and unguided power is unconstitutional. Consequently, the order dated, August 17, 1982 of purported termination (Annexure 10) of petitioner's services, which has for its foundation a provision which is unconstitutional would require to be and is hereby quashed."

18. A comparison of Regulation 10(2)(a) of the Regulations with Regulation 10(2)(a) of the Gurgaon Gramin Bank Regulations leads to the inescapable conclusion that the two clauses are identically worded. Since both Regulations cater to regulation of service conditions of employees, employed in Gramin Banks, the objective, purpose and scope of the various clauses of the Regulations must also be held to similar purport and scope. Again, there is, for the same reason, little cavil that if Regulation 10(2)(a) of the Gurgaon Gramin Bank Regulations has been held by the Supreme Court to be a clause conferring on the Bank arbitrary and unguided power, and, therefore, unconstitutional, a similar consequence would follow here. At this juncture, we must pause and say that we need not declare Regulation 10(2)(a) of the Regulations unconstitutional. This has already been done by this Court in **Rudra Kumar Pal v. Chairman, Gorakhpur Kshetria Gramin Bank and others**, Civil Misc. Writ Petition No. 957 of 1987, decided on 01.12.1994, that is to say, in a case to which the Bank were party, or so to speak, their predecessors and one of their employees. In **Rudra Kumar Pal** (*supra*), it was held:

> "On behalf of the petitioner it was contended that the termination of the petitioner was bad as Rule under which termination was affected was providing unguided power resulting in arbitrariness and similar rule and termination there under have been held to be bad in law. In support of his contention the petitioner has relied upon the case of M.K. Agarwal Vs. Gurgaon Gramin Bank reported in A.I.R. 1988 Supreme Court page 286 which in terms has been relied upon in the case of West Bengal State Electricity Board Vs. D.B. Ghosh reported in A.I.R.1985 S.C.722, Central Inland Water Transport Cropn. Ltd Vs. Brojo Nath reported in A.I.R. 1986 (SC) page 1571 and O.P. Bahandari Vs. Indian Tourism Development Corpn. Ltd. reported in A.I.R. 1987 (SC) page 111.
>
> It appears that the Rule under which present impugned order of termination was passed was identical in nature as Rules which were under consideration in the said other cases. In the circumstances, the said Regulation 10 of the Gorakhpur Kshetriya Gramin BANK (Staff) Service Regulation, 1980 conferring on the Bank an arbitrary and unguided power is unconstitutional. Consequently the impugned orders dated 20.9.1986 (Annexure No.11 to the writ petition) and 15.10.1986 (Annexure No.13 to the writ petition) purporting to terminate the service of the petitioner are hereby quashed."

19. At this stage, learned Counsel for the Bank, Mr. Aditya Kumar Singh, has come up with an argument, which might have required meticulous examination in the day when **Rudra Kumar Pal** was decided. But, as the judgment in **Rudra Kumar Pal** shows, the point which Mr. Singh argues, though pre-eminently present, was not at all raised and the point seems to have passed *sub silentio*. But again, the fact that a point has passed *sub silentio* in an earlier judgment of the Court, might deprive it of its value as a binding precedent, it would not affect a declaration made by the judgment *inter partes* or *in rem*. A declaration, that a particular statutory regulation is unconstitutional, made by this Court, operates *in rem* somuch so that as far as this Court is concerned, we cannot bring it back to life, even if we were to hold a different opinion on any ground, including that the point involved, that would have bearing on the case, passed *sub silentio* in that judgment. Still, we wish to test the point that the learned Counsel for the Bank makes. He says that the Supreme Court declared Regulation 10(2) of the Gurgaon Gramin Bank Regulations as unconstitutional on 20.11.1987, and, therefore, the Regulations would be invalid prospectively. This point was not raised before the Court in **Rudra Kumar Pal**, though involved, and it is this point, which passed *sub silentio*.

20. Here, learned Counsel for the Bank submits that the termination order in this case was passed much earlier, that is to say, on 11.03.1983, and on the declaration of unconstitutionality of a similar provision in the Gurgaon Gramin Bank Regulations, Regulation 10(2) of the Regulations could not be declared invalid on similar reasoning. The argument, to our mind, is utterly misconceived. As already remarked, **M.K. Agarwal** does not *proprio vigore*, or in any manner of its own force, invalidate Regulation 10(2) of the Regulations, on the foot of which the impugned order is founded. Regulation 10(2) was declared unconstitutional in **Rudra Kumar Pal** by this Court on 01.12.1994. Therefore, Mr. Singh's argument is to be tested, if at all on the touchstone of the principle if the judgment of this Court passed in **Rudra Kumar Pal** may be on the basis of **M.K. Agarwal**, would have prospective operation alone, so as to save the impugned order from the declared unconstitutionality of Regulation 10(2) of the Regulations that came through the judgment in **Rudra Kumar Pal** on 01.12.1994. We regret that we cannot agree with the submission of Mr. Singh, who would say that so far as Regulation 10(2) of the Regulations is concerned, even if we were to ignore Regulation 10(2) of the Gurgaon Gramin Bank Regulations, becoming unconstitutional in consequence of the judgment in **M.K. Agarwal**, Regulation 10(2) of the Regulations became unconstitutional on 01.12.1994 with the judgment of this Court in **Rudra Kumar Pal**; not earlier.

21. Learned Counsel for the respondent-Bank would say as a corollary that when the order impugned in the present writ petition was passed on 11.03.1983, Regulation 10(2) of the Regulations was unscathed. We cannot read the pronounced unconstitutionality of Regulation 10(2) back in the day when the impugned order dated 11.03.1983 was passed to hold that order bad. We would again say that the corollary of the submission is as illogical as the mainstay, and, the reason is not far to seek. If a statute, or for that matter a statutory regulation, is declared unconstitutional by a Court of law on ground that it offends Part III of the Constitution as in the present case, the pronouncement is declaratory, and, therefore, always retrospective. As soon as a law or statutory rule is declared unconstitutional and it happens to be a post-constitutional law, it is destroyed at birth and can never be imbued with life again, even if in the meantime some part of Part-III is amended or differently interpreted authoritatively. The case is different with pre-constitution laws, where conflict with Part-III would only eclipse the law, and, therefore, if there is an amendment to a given fundamental right, which the pre-constitution law offended or a different interpretation comes authoritatively, which does not hold the pre-constitution law in conflict, the pre-constitution law would revive of its own. This is what we know as the doctrine of eclipse. In the present case, Regulation 10(2) before us is a regulation made in the year 1980. It is definitely a post-constitutional law within the meaning of Article 13 of the Constitution. Therefore, if this Court has declared it unconstitutional, apparently violative of Part-III, it is the end of the matter and the Regulations cannot be infused with life again. It is also not that it would be invalid *inter partes* and alive elsewhere between a different set of parties. These principles are well settled, but we have the authoritative pronouncement of very recent times in **Central Bureau of Investigation v. R.R. Kishore, (2023) 15 SCC 339**, where a Constitution Bench of the Supreme Court went into the question and held:

> "**58.** The question for determination is whether declaration of any law as unconstitutional by a constitutional court would have retrospective effect or would apply prospectively.
>
> **59.** Much emphasis has been laid on the interpretation of the word "void" used in Article 13(2) of the Constitution. The same word "*void*" is used in Article 13(1) of the Constitution also. The judgments relied upon by the parties which will be

shortly discussed hereinafter relate to the interpretation of the said word "*void*" by various Constitution Benches and a seven-Judge Bench [*Keshavan Madhava Menon* v. *State of Bombay*, 1951 SCC 16 : 1951 SCR 228] and other regular Benches. In *Oxford Dictionary*, the word "*void*" is defined to mean something is not legally valid or binding, when used as an adjective and further when used as a verb, it means to declare that something is not valid or legally binding.

61. Under Article 13(1) all existing laws prior to the commencement of the Constitution, insofar as they are inconsistent with the provisions of Part III, would be *void* to the extent of inconsistency. Further, according to Article 13(2), the State is prohibited from making any law which takes away or abridges the rights conferred by Part III and further that any law made in contravention of this clause would be *void* to the extent of contravention. Article 13(2) prohibits making of any law so it would be relating to laws made post commencement of the Constitution, like the case at hand. In the present case, as it has been held that Section 6-A of the DSPE Act is violative of Article 14 of Part III of the Constitution, as such, the same would be *void*. The word "*void*" has been interpreted in a number of judgments of this Court beginning 1951 till recently and it has been given different nomenclature such as "*non est*", "*void ab initio*" "*stillborn*" and "*unenforceable*".

62. A brief reference to the case law on the point would be necessary at this stage. It may be worthwhile to mention that the earlier seven-Judge Bench [*Keshavan Madhava Menon* v. *State of Bombay*, 1951 SCC 16 : 1951 SCR 228] and Constitution Bench judgments relate to Article 13(1) of the Constitution, dealing with pre-existing laws at the time of commencement of the Constitution. There are later judgments relating to Article 13(2) of the Constitution. However, reliance is placed upon the judgments on Article 13(1) while interpreting the word "*void*" used in Article 13(2).

66. In *Behram Khurshid Pesikaka (III)* [*Behram Khurshid Pesikaka (III)* v. *State of Bombay*, (1954) 2 SCC 278] , a seven-Judge Bench of this Court was considering the legal effect of the declaration made in *State of Bombay* v. *F.N. Balsara* [*State of Bombay* v. *F.N. Balsara*, 1951 SCC 860 : 1951 SCR 682] , whereby part of Section 13 clause (*b*) of the Bombay Prohibition Act (Act 25 of 1949) was declared unconstitutional. It was held [*Behram Khurshid Pesikaka (III)* v. *State of Bombay*, (1954) 2 SCC 278] by the majority opinion that declaration of such provision as invalid and unconstitutional will only mean that it is inoperative and ineffective and thus unenforceable.

68. The challenge in *Deep Chand* [*Deep Chand* v. *State of U.P.*, 1959 SCC OnLine SC 12 : 1959 Supp (2) SCR 8 : AIR 1959 SC 648] was with respect to the validity of the Uttar Pradesh Transport Service (Development) Act, 1955. The Constitution Bench, after discussing merit of Article 13(2) of the Constitution, was of the firm view that a plain reading of the clause indicates, without any reasonable doubt, that the prohibition goes to the root of the matter and limits the State's power to make law; the law made in spite of the prohibition is a stillborn law. The relevant extract which is part of para 13 (from the AIR reference), is reproduced hereunder : (SCC OnLine SC para 12)

> "*12.* … A legislature, therefore, has no power to make any law in derogation of the injunction contained in Article 13. Article 13(1) deals with laws in force in the territory of India before the commencement of the Constitution and such laws insofar as they are inconsistent with the provisions of Part III shall, to the extent of such inconsistency be void. The clause, therefore, recognises the validity of the pre-Constitution laws and only declares that the said laws would be void thereafter to the extent of their inconsistency with Part III; whereas clause (2) of that Article imposes a prohibition on the State making laws taking away or abridging the rights conferred by Part III and declares that laws made in contravention of this clause shall, to the extent of the contravention, be void. There is a clear distinction between the two clauses. Under clause (1), a pre-Constitution law subsists except to the extent of its inconsistency with the provisions of Part III; *whereas, no post-Constitution law can be made contravening the provisions of Part III, and therefore the law, to that extent, though made, is a nullity from its inception*. If this clear distinction is borne in

mind, much of the cloud raised is dispelled. When clause (2) of Article 13 says in clear and unambiguous terms that no State shall make any law which takes away or abridges the rights conferred by Part III, it will not avail the State to contend either that the clause does not embody a curtailment of the power to legislate or that it imposes only a check but not a prohibition. *A constitutional prohibition against a State making certain laws cannot be whittled down by analogy or by drawing inspiration from decisions on the provisions of other Constitutions*; nor can we appreciate the argument that the words "any law" in the second line of Article 13(2) posits the survival of the law made in the teeth of such prohibition. It is said that a law can come into existence only when it is made and therefore any law made in contravention of that clause presupposes that the law made is not a nullity. This argument may be subtle but is not sound. The words "any law" in that clause can only mean an Act passed or made factually, notwithstanding the prohibition. The result of such contravention is stated in that clause. *A plain reading of the clause indicates, without any reasonable doubt, that the prohibition goes to the root of the matter and limits the State's power to make law; the law made in spite of the prohibition is a stillborn law.*"

(emphasis supplied)

70. In *Surjakumar Okram case* [*State of Manipur* v. *Surjakumar Okram*, (2022) 19 SCC 723] , recently a three-Judge Bench of this Court, was dealing with an appeal against the judgment [*Surjakumar Okram* v. *State of Manipur*, 2020 SCC OnLine Mani 227] of the Manipur High Court which had declared the Manipur Parliamentary Secretary (Appointment, Salary and Allowances and Miscellaneous Provisions) Act, 2012 (Manipur Act 10 of 2012) as also the Repealing Act, 2018, as unconstitutional. L. Nageswara Rao, J. speaking for the Bench, observed that where a statute is adjudged to be unconstitutional, it is as if it had never been and any law held to be unconstitutional for whatever reason, whether due to lack of legislative competence or in violation of fundamental rights, would be *void ab initio*. SCC paras 27 to 29 of the said judgment [*State of Manipur* v. *Surjakumar Okram*, (2022) 19 SCC 723] are reproduced hereunder:

"*27. Where a statute is adjudged to be unconstitutional, it is as if it had never been.* Rights cannot be built up under it; contracts which depend upon it for their consideration are void; it constitutes a protection to no one who has acted under it and no one can be punished for having refused obedience to it before the decision was made [*Cooley on Constitutional Limitations*, Vol. I, p. 382.] . *Field, J. inNorton* v. *Shelby County, State of Tennessee* [*Norton* v. *Shelby County, State of Tennessee*, 1886 SCC OnLine US SC 194 : 30 L Ed 178 : 118 US 425 (1886)] , *observed that* : (*Norton case* [*Norton* v. *Shelby County, State of Tennessee*, 1886 SCC OnLine US SC 194 : 30 L Ed 178 : 118 US 425 (1886)] , SCC OnLine US SC para 13)

'*13. … An unconstitutional act is not a law; it confers no rights, it imposes no duties; it affords no protection; it creates no office; it is, in legal contemplation, as inoperative as though it had never been passed.*'

28. An unconstitutional law, be it either due to lack of legislative competence or in violation of fundamental rights guaranteed under Part III of the Constitution of India, is void ab initio. In *Behram Khurshid Pesikaka* v. *State of Bombay* [*Behram Khurshid Pesikaka* v. *State of Bombay*, (1954) 1 SCC 240 : (1955) 1 SCR 613] , it was held by a Constitution Bench of this Court that the law-making power of the State is restricted by a written fundamental law and any law enacted and opposed to the fundamental law is in excess of the legislative authority and is thus, a nullity. *A declaration of unconstitutionality brought about by lack of legislative power as well as a declaration of unconstitutionality brought about by reason of abridgment of fundamental rights goes to the root of the power itself, making the law void in its inception.*

29. This Court in *Deep Chand* v. *State of U.P.* [*Deep Chand* v. *State of U.P.*, 1959 SCC OnLine SC 12 : 1959 Supp (2) SCR 8 : AIR 1959 SC 648] summarised the following propositions : (SCC OnLine SC para 25)

'*25.* … (*i*) whether the Constitution affirmatively confers power on the legislature to make laws subject-wise or negatively prohibits it from infringing any fundamental right, they represent only two aspects of want of legislative power;

(*ii*) the Constitution in express terms makes the power of a legislature to make laws in regard to the entries in the Lists of the Seventh Schedule subject to the other provisions of the Constitutionand thereby circumscribes or reduces the said power by the limitations laid down in Part III of the Constitution;

(*iii*) *it follows from the premises that a law made in derogation or in excess of that power would be ab initio void* …' "

(emphasis supplied)

71. Further in *Surjakumar Okram case* [*State of Manipur* v. *Surjakumar Okram*, (2022) 19 SCC 723] after discussing the law laid down by the previous pronouncements, the principles were deduced in para 39 to state that a statute declared unconstitutional by a court of law would be stillborn and *non est* for all purposes. SCC para 39 of the Report is reproduced hereunder : (*Surjakumar Okram case* [*State of Manipur* v. *Surjakumar Okram*, (2022) 19 SCC 723])

"*39.* The principles that can be deduced from the law laid down by this Court, as referred to above, are:

39.1. A statute which is made by a competent legislature is valid till it is declared unconstitutional by a court of law.

39.2.After declaration of a statute as unconstitutional by a court of law, it is non est for all purposes.

39.3. In declaration of the law, the doctrine of prospective overruling can be applied by this Court to save past transactions under earlier decisions superseded or statutes held unconstitutional.

39.4. Relief can be moulded by this Court in exercise of its power under Article 142 of the Constitution, notwithstanding the declaration of a statute as unconstitutional."

(emphasis supplied)

72. From the above discussion, it is crystal clear that once a law is declared to be unconstitutional, being violative of Part III of the Constitution, then it would be held to be *void ab initio*, *stillborn*, *unenforceable* and *non est* in view of Article 13(2) of the Constitution and its interpretation by authoritative pronouncements. *Thus, the declaration made by the Constitution Bench* in *Subramanian Swamy* [*Subramanian Swamy* v. *CBI*, (2014) 8 SCC 682 : (2014) 6 SCC (Cri) 42 : (2014) 3 SCC (L&S) 36] *will have retrospective operation. Section 6-A of the DSPE Act is held to be not in force from the date of its insertion i.e. 11-9-2003.*"

22. There is nothing to show in this case that the provisions of Regulation 10(2) of the Regulations, that are law on which the respondent-Bank rely, were declared unconstitutional with prospective effect, or the declaration of unconstitutionality was hedged in with any kind of temporal limitation. The result would be that Regulation 10(2) of the Regulations albeit declared null and void by this Court in **Rudra Kumar Pal** on 01.12.1994, the declaration would operate retrospectively, the law being definitely a post-constitutional and found void for violating Part-III of the Constitution.

23. The rule, under which the Bank have acted to terminate the appellant's services, as a perusal of the impugned order would show, having been held unconstitutional by this Court, there is nothing that can save the order impugned from perishing.

24. This takes us to the last limb of the matter, and that is, what relief ought be granted to the appellant. What we notice is that there are many things relevant to the conduct of parties that would have bearing on the relief to be considered. Apart from the conduct, there are circumstances too, and the chief amongst them, is the march of time, which has led the appellant into the age of superannuation. As the records would show, he would now be aged about 70 years. He is, therefore, at a stage of life, where he cannot be reinstated in service. But, that certainly does not mean that he is beyond redemption of any kind, or so to speak, not entitled to an appropriate relief. What is most remarkable about this matter here is that the appellant's services were terminated *vide* an order 11.03.1983. He instituted a suit to have the termination declared void promptly and in the same year i.e. O.S. No. 640 of 1983. The suit was decreed on 28.10.1985 and the respondent-Bank's appeal to the District Judge was allowed on 19.01.1989.

25. The appellant promptly instituted Second Appeal No. 1103 of 1989 before this Court, which came to be dismissed on 10.05.2000. After the second appeal was dismissed, the appellant, taking a cue from the remarks there, availed his remedy by moving a writ petition, giving rise to the impugned judgment in the year 2000 itself. The learned Single Judge heard and dismissed the writ petition *vide* order order dated 19.05.2004. The appellant committed some laches here and instituted the present appeal on 07.02.2005 with a delay of 221 days.

26. In the totality of circumstances that the appellant was placed jobless as he was, it is apparent that he prosecuted his remedies with promptitude and diligence, faltering only on the last steps, and, that too marginally. Regarding the claim to back-wages in a case of removal or dismissal from service, there are various factors to be taken into consideration, and, there is good authority to guide on the point. The recent authority of the Supreme Court in **Constable Uma Shankaran v. Union of India, 2026 SCC OnLine SC 1115** is illuminating. It has been held in **Constable Uma Shankaran** (*supra*):

> "**8.** We are conscious of the law that ordering back wages to be paid to a dismissed employee - upon his dismissal being set aside by a court of law - is not an automatic relief and, ordinarily, is dependent on the employee being not employed in the interregnum. However, the general rule is that if the employer by reason of its illegal act deprives any of its employees from discharging his work and the termination is ultimately held to be bad in law, such employee has a legitimate and valid claim to be restored with all that he would have received but for being illegally kept away from work. This is based on the principle that although the employee was willing to perform work, it was the employer who did not accept work from him and, therefore, if the employer's action is held to be illegal and bad, such employer cannot escape from suffering the consequences [*Maharashtra SRTC* v. *Mahadeo Krishna Naik*, (2025) 4 SCC 321].
>
> **9.** In the light of the afore-stated legal position, the High Court ought to have undertaken an exercise to ascertain whether the writ petitioner was gainfully employed in the interregnum before denying arrears of salary/back wages. However, this exercise was not done. In our view, as already sufficient time has elapsed since the date of High Court's order and the order of reinstatement with benefit of continuity in service has attained finality, we do not consider it appropriate to remand the matter for such an exercise. Consequently, we have examined the counter affidavit of the respondent to ascertain whether any plea has been taken that the appellant was gainfully employed elsewhere in the interregnum. On perusal of the counter affidavit, we find that the counter affidavit emphasizes more on the plea that there should not have been a direction for reinstatement than on providing any material to show that the appellant was gainfully employed elsewhere. As the plea to deny reinstatement has already been rejected by the High Court, and its direction for reinstatement has attained finality, in absence of any plea that the appellant was gainfully employed elsewhere in the interregnum, in our view, there appears no good reason to deny back wages/arrears of pay.
>
> **10.** Besides that, the charge of dispatch of Bank Drafts of an amount which, *prima facie*, is within the known sources of income ought not to have been a basis for removal from service, particularly, when the source of money was duly proved. In consequence, the action of the respondent(s) is nothing short of being arbitrary. Thus, when the High Court held charge(s) were not proved, there had to be a cogent reason for denial of arrears/back wages. We do not find any such cogent reason to deny those benefits.

> **11.** As far as the previous conduct of the appellant is concerned, the appellant has already been punished and therefore, denial of back wages on that ground would amount to double punishment."

27. In this case, there is nothing of a charge to consider or a finding entered by this Court about the charges not being proved. Nevertheless, the order of termination, being one sipliciter, has been found to be passed under a Regulation, that has been adjudged unconstitutional, rendering the order utterly illegal. To add to it, is the fact that the appellant has been vigorously pursuing his remedies to re-gain his employment, a fact of which we take due note. Normally, in a case like this, reinstatement should have been with full back-wages. In **Subhash Chandra v. State of U.P. and others, 2018 (11) ADJ 433 (DB)**, a Bench decision of this Court, the misconduct not having been proved against the employee, the order of the Public Service Tribunal, granting 25% back-wages, was not approved and full back-wages for the period of time that the employee remained out of service were ordered together with the reinstatement directed by the Tribunal. Still, there is one factor, that weighs with us, not to grant full back-wages. The appellant had worked for a negligible period of time, though for no fault of his. He remained out of the Bank's employ for the most part of his life, again not on account of his own fault. But, as matters stand, we are of opinion that quashing the order of termination, while we cannot grant reinstatement to the appellant, we think that ends of justice would be met by granting him 50% back-wages and all consequential benefits, which would include all superannuation benefits to be duly worked out by the Bank in accordance with law and the Rules applicable within a period of one month of receipt of a copy of this judgment.

28. In the result, this appeal succeeds and is **allowed with costs of Rs.10,000/-**. The impugned judgment and order passed by the learned Single Judge is **set aside** and the writ petition **allowed**. There shall be an order quashing the impugned order dated 11.03.1983 passed by the Chairman of the Bank (now represented by the Uttar Pradesh Gramin Bank, Lucknow through its Chairman). A *mandamus* shall issue to the Chairman, Uttar Pradesh Gramin Bank, Lucknow, the General Manager, Uttar Pradesh Gramin Bank, Lucknow and the Branch Manager, Uttar Pradesh Gramin Bank, Branch Paniyara, Gorakhpur to ensure amongst themselves payment of 50% back-wages to the appellant from the date of his termination from service, to wit, 11.03.1983 until the date of his superannuation and post-retiral benefits due, in accordance with law, all to be paid within a period of one month from the date of receipt of a copy of this judgment by the respondent-Bank.

29. Let a copy of this judgment be communicated to the Chairman, Uttar Pradesh Gramin Bank, 2nd and 3rd Floor, NBCC Commercial Complex, Vardan Khand, Gomti Nagar Extension, Lucknow, the General Manager, Uttar Pradesh Gramin Bank, 2nd and 3rd Floor, NBCC Commercial Complex, Vardan Khand, Gomti Nagar Extension, Lucknow and the Branch Manager, Uttar Pradesh Gramin Bank, Branch Paniyara, Gorakhpur by the Registrar (Compliance).

(Indrajeet Shukla,J.) (J.J. Munir,J.)

August 10, 2026
Anoop