

(2006) 06 KL CK 0053

In the High Court Of Kerala

Case No : O.P. No's. 5085, 5093 and 9656 of 2002

Kurup

APPELLANT

Vs

Union Bank of India

RESPONDENT

Date of Decision : 22-06-2006

Acts Referred:

Union Bank of India (Employees) Pension Regulations, 1995 — Regulation 29(5)

Citation : (2006) 3 ILR (Ker) 212 : (2006) 3 KLT 265 : (2007) 1 LLJ 989

Hon'ble Judges : V. Ramkumar, J;K.S. Radhakrishnan, J

Bench : Division Bench

Advocate : V. Rajendran Perumbavoor and George Varghese Kizhakkambalam, for the Appellant; A.S.P. Kurup, for the Respondent

Final Decision : Dismissed

Judgement

V. Ramkumar, J.—These Original Petitions have come up before us upon a reference by a learned Single Judge (Mr. Justice K.M. Joseph) who was of the view that the Division Bench of this Court which decided the case in Mohandas v. Bank of India ILR 2005 (3) Kerala 476 had not considered the rulings of the Apex Court in Bank of India and Others Vs. O.P. Swaranakar etc., and Punjab and Sind Bank and Another Vs. S. Ranveer Singh Bawa and Another,

2. We heard Adv. Sri. V. Rajendran, the learned Counsel appearing for the petitioners and Adv. Sri. A.S.P. Kurup, the learned Counsel appearing for the Union Bank of India.

3. The case of the petitioners can be summarised as follows:

All the 34 petitioners in these Original Petitions were employees of the Union Bank of India. On 31.10.2000 the Director Board of the Union Bank of India approved a scheme titled as "Union Bank of India Voluntary Retirement Scheme 2000-01". The above Scheme was circulated among the employees of the Bank as per Ext. P1 Circular No. 4669 dated 7.11.2000. Permanent employees of the Bank with 15 years of service or who had attained 40 years of age were entitled

to apply for voluntary retirement as per the above Scheme. The time limit fixed for submitting applications for the Voluntary Retirement Scheme ("VRS for short") was between 1.12.2000 and 31.12.2000. One of the components for calculation of the ex gratia amounts promised thereunder was 5 years qualifying service payable under the Regulation 29(5) of Union Bank of India (Employees) Pension Regulation, 1995. As per Ext.P1 it was promised that the optees of such Scheme would be entitled to reckon 5 years" qualifying service payable under Regulation 29(5) of the Pension Regulation, 1995 for computing the ex gratia benefits. However, on the eve of the last date for submitting the applications for Voluntary Retirement Scheme, that is, on 29.12.2000, the Union Bank of India issued Ext.P2 Circular No. CO.DP.290 clarifying that the optees of Voluntary Retirement Scheme will not be entitled to reckon the qualifying service as provided under Regulation 29(5) of the Pension Regulations. As per Clause(a) of Para 1 of Voluntary Retirement Scheme an employee submitting an application for voluntary retirement under the Scheme shall not have the option to withdraw the same. Even though on 5.1.2001, the 19th petitioner in O.P. 5093/02 filed Ext.P3 application for withdrawal of his V.R.S application the same was declined by the Union Bank. After holding out a promise to the employees including the petitioners that if they applied for V.R.S. under the above Scheme they would be entitled to the ex gratia benefits promised thereunder and which included reckoning of five years qualifying service payable under the Pension Regulations, the Bank was unilaterally taking away the benefit of the said qualifying service to the detriment of the optees. A Division Bench of this Court in the decision reported in Mohandas v. Bank of India ILR 2005 (3) Ker 476 had in the case of similar optees for VRS under a similar Scheme evolved by Bank of India has taken the view that a subsequent exclusion of the benefit of qualifying service under Clause 29(5) of the Pension Regulations, 1995 was bad in law and that after holding out a promise to the optees it was not open to the Bank to visit them with adverse consequences of reduction of their pension benefits especially when the optees were precluded from withdrawing their application for VRS once made. Hence Ext.P2 Circular taking away the qualifying service promised under Ext.P1 Scheme is liable to be quashed.

4. The Original Petition is resisted by the Union Bank of India contending inter alia as follows:

The Scheme covered by Ext.P1 Circular was a non statutory and ad hoc Scheme and is entirely different from the provisions pertaining to voluntary retirement under the Pension Regulations of 1995. The petitioners were paid all their benefits including the ex-gratia, leave encashment, Provident Fund, computation of pension and pension calculated in accordance with the Scheme referred to in Ext.P1 Circular as modified by Ext.P2 Circular. The amounts were received by the petitioners without any demur and with full knowledge that they would not be entitled to the qualifying service under the pension regulations in view of Ext.P2 Circular. The petitioners are, therefore, estopped from questioning the validity of Ext.P2 Circular. The decision of the Division Bench in Mohandas's case (supra)

rendered without noticing the two Supreme Court decisions cannot be held to be laying down the correct law. The writ petitions are, therefore, liable to be dismissed.

5. After hearing both sides, we are of the view that the petitioners' contentions are liable to be rejected. It is true that in the V.R.S given in Ext. P1 Circular, employees of the Union Bank who had put in 15 years of service or who had attained 40 years of age were entitled to apply for voluntary retirement upon which they were also entitled to the ex gratia amounts as indicated in the Scheme. It is also true that one of the components for computation of ex gratia was pension in terms of Clause 29(5) of the Union Bank of India (Employees) Pension Regulations, 1995 as per which five years of qualifying service could be reckoned. Ext.P1 also contains a clause under Para 1(a) that employees submitting applications for voluntary retirement under the Scheme shall not have the option to withdraw the same. Yet another admitted fact is that, subsequently on 29.12.2000, Ext.P2 clarification was issued by the Bank to the effect that employees who had opted for pension and applied for VRS under the Scheme referred to in Ext. P1 shall not be entitled to the benefit of qualifying service as provided in Regulation 29(5) of the Union Bank of India (Employees) Pension Regulations, 1995. If the provisions of the Scheme were to be treated as an offer from the Union Bank, then probably the petitioners could have pinned the Bank down to such offer made in the form of holding out a promise and could have contended that the subsequent unilateral decision taken by the Bank under Ext.P2 and having the effect of reducing a part of the benefit promised under Ext. P1 was to the detriment of the optees entitling them to the reliefs prayed for in the Writ Petitions. But after the authoritative decision of the Hon'ble Supreme Court in Bank of India and Others Vs. O.P. Swarnakar etc., and Punjab and Sind Bank and Another Vs. S. Ranveer Singh Bawa and Another, , it is no more open to the optees to raise the above contention. The provisions in the VRS Scheme were interpreted to constitute only an invitation for offer which would become a binding contract only upon acceptance of the offer. There is no dispute that the applications for VRS submitted by all the optees including the petitioners were subjected to the clarification contained in Ext.P2 Circular and all of them received full payment of the VRS benefits in accordance with the Scheme as modified by Ext.P2 Circular. If so, going by the ratio decided in the two rulings of the apex court adverted to above the petitioners are estopped from challenging Ext.P2 Circular. With regard to the embargo contained in the Scheme against withdrawal of their VRS applications, the Apex Court held that such a condition in a contract would be one without consideration and unenforceable. This means that all of them could have withdrawn their applications if they were of the view that Ext.P2 Circular issued subsequently worked detrimental to their interests. That was not done. All of them, without any exception, received full payment without any demur. In Swarnakar's case the Supreme Court has observed as follows:

However, it is accepted that a group of employees accepted the ex gratia payment. Those who accepted the ex gratia payment or any other benefit under

the Scheme, in our considered opinion could not have resiled therefrom.

115. The Scheme is contractual in nature. The contractual right derived by the employees concerned, therefore, could be waived. The employees concerned having accepted a part of the benefit could not be permitted to approbate and reprobate nor can they be permitted to resile from their earlier stand.

6. This position was reiterated by the Apex Court in Punjab National Bank Vs. Virender Kumar Goel and Others, and Punjab and Sind Bank and Another Vs. S. Ranveer Singh Bawa and Another, .

7. In Mohandas's case decided by the Division Bench the petitioners therein also had received the benefit under the Scheme as amended. The decision of the Apex Court in Swarnakar's case, before it was reported in the Law Journals, seems to have been cited before the Division Bench whose attention appears to have been invited only to that part of the ruling which held that notwithstanding the embargo against withdrawal of the VRS applications, the optees had the freedom to do so. In the light of the decisions of the Apex Court in the aforesaid rulings with due respect, we are of the view that the decision of the Division Bench in Mohandas's case cannot be taken as laying down the legal position correctly. In this view of the matter the challenge against Ext.P2 is misconceived.

These Original Petitions are devoid of any merit and are accordingly dismissed. No costs.