

(2004) 04 SC CK 0036

In the Supreme Court Of India

Case No : Civil Appeal No. 4097 of 2002

Punjab and Sind Bank and Another

APPELLANT

Vs

S. Ranveer Singh Bawa and Another

RESPONDENT

Date of Decision : 21-04-2004

Acts Referred:

Citation : AIR 2004 SC 2334 : (2004) AIRSCW 2730 : (2004) 5 ALLMR 750 : (2004) 3 AWC 2223 Supp : (2004) 111 DLT 226 : (2004) 77 DRJ 337 : (2004) 101 FLR 989 : (2004) 1 JT 594 Supp : (2004) 2 LLJ 573 : (2005) 1 LW 778 : (2004) 4 SCALE 816 : (2004) 4 SCC 484 : (2004)

Hon'ble Judges : V. N. Khare, C.J.; S. H. Kapadia, J.; S. B. Sinha, J

Bench : Full Bench

Advocate : Jagat Arora, Rajat Arora, Ritu Arora and Rajiv Nanda, for the Appellant; Jayant Bhushan Mandeep Singh Vinaik and Hardeep Singh Anand, for the Respondent

Final Decision : Allowed

Judgement

S.H. Kapadia, J.—The question that arises for consideration in this case is -- whether respondent who earlier opted for voluntary retirement scheme could be permitted to withdraw therefrom after having received the payments under the scheme?

2. The facts giving rise to the dispute lie within narrow compass. Appellant is a nationalised bank. On 28.10.2000, in order to down size the strength of its staff, the appellant floated the voluntary retirement, scheme (hereinafter referred to for the sake of brevity as "VRS"). The scheme was to commence with effect from 1.12.2000 and it was to remain in operation up to 31.12.2000. On. 6.12.2000, respondent No. 1, Ranveer Singh Bawa, opted for VRS. On 22.12.2000, respondent No. 1 requested that he be allowed to withdraw his option. On 23.12.2000, the scheme stood modified. On 30.12.2000 and 17.1.2001, the said respondent wrote reminders and requested that he be permitted to withdraw his option. However, in view of Clause 10.4 of the scheme, the appellant did not

permit him to opt out from the VRS. Consequently, w.e.f. 29.1.2001, respondent No. 1 was relieved from service. Aggrieved, he filed the writ petition in the High Court on 26.3.2001 inter alia seeking resumption of duties without any break in service. On 24.7.2001, the learned Single Judge allowed the writ petition on the ground that the optee is entitled to withdraw his option before its acceptance by the bank. Against the decision of the learned Single Judge, the appellant carried the matter in appeal to the Division Bench. By impugned judgment dated 5.9.2001, the Division Bench dismissed the Letters Patent Appeal. Hence, this civil appeal by special leave petition.

3. In the case of Bank of India and Others Vs. O.P. Swarnakar etc., , two questions arose for determination, namely, whether the scheme is an offer, as contended on behalf of the bank or an invitation inviting offers from employees; and secondly, whether the optees having accepted the payments/benefits under the scheme could be permitted to resile therefrom. On the first question, it was held that the said scheme was contractual in nature; that it constituted invitation and not an offer; and that no consideration passed in terms of the scheme so as to constitute an agreement. Under the circumstances, it was held that revocation was possible and effective at any time before acceptance as up to such acceptance no legal obligation existed. On the second question, it was held that those employees who have accepted the payments/benefits under the scheme cannot approbate and reprobate nor can they be permitted to withdraw.

4. When the appeal came up for hearing, it was submitted on behalf of the appellant on facts that the respondent No. 1 herein had received and accepted payments/benefits under the scheme and consequently, he was not entitled to withdraw therefrom. In this connection, reliance was placed on the averments in the counter-affidavit filed by the appellant on 28.2.2004 in I.A. No. 1 of 2003 filed in the present civil appeal. It was urged that the said respondent had two savings bank accounts No. 4775 and 4777, in which the bank credited salaries, notice period salary as well as leave encashment benefits under the scheme, which was never objected to by the respondent. Further, the credits in the savings bank accounts were used by the respondent to repay his car loan to the bank amounting to Rs. 65220/-, which was one of the conditions prescribed in the scheme. Further, the said respondent had utilized the credits in the said accounts for investment in fixed deposits. Accordingly, it was submitted that the respondent had received the payments under the scheme, he had utilized those payments to discharge his obligations under the scheme by repayment of car loan and he had invested the amounts in fixed deposits. Therefore, he was not entitled to withdraw from the scheme. Mr. Jayant Bhushan, learned senior counsel appearing on behalf of the respondent, on the other hand, contended that on 6.12.2000, respondent herein opted for VRS. He urged that the scheme was open up to 31.12.2000. On 22.12.2000, the said respondent withdrew his offer. He repeatedly reminded the management thereafter to accept his request for withdrawal. Despite reminders, on 29.01.2001, the management relieved the respondent from service, which was challenged by him by filing writ petition in

Delhi High Court on 26.3.2001. It was urged that although the respondent succeeded in the writ petition, till date the appellant has failed to reinstate the respondent. It was submitted that the appellant had unilaterally credited the salaries, the notice pay and the leave encashment benefits in the account of the respondent with the appellant -bank and consequently, the receipts of payments cannot constitute waiver or acquiescence on the part of the respondent. At the highest, it was receipt of payment under protest. In this connection, reliance was placed on the fact of pendency of the writ petition in the High Court.

5. In the case of Bank of India v. O.P. Swarnakar (supra), This Court observed that estoppel is based upon the acceptance and retention of benefits, by one having knowledge or notice of the benefits from a contract or a transaction. The doctrine of estoppel is a branch of the rule against assumption of inconsistent positions. One who knowingly accepts the benefit of a contract is estopped from denying the binding effect on him of such contract. This rule has to be applied to do equity It was accordingly held that those optees who knowingly received the payments and utilized them were not entitled to withdraw from the VRS. In the case of Punjab National Bank Vs. Virender Kumar Goel and Others, , the applicant bank submitted that some of the optees having accepted the benefits under VRS cannot be permitted to withdraw therefrom. In that matter, several review petitions were filed and in some of those review petitions, it was found that the optees were aware of the credits in their accounts and they have even withdrawn the amounts deposited and had utilized the same and consequently in such cases, this Court did not permit the optees to withdraw from VRS. To the same effect is the order passed by this Court in the case of Bank of India and Ors. v. Pale Ram Dhanania, in Civil Appeal No. 4098 of 2002 decided on 12.2.2004. In the light of the above judgments, we have to consider the facts of the present case.

6. At the outset, it may be mentioned that before the High Court the only question which arose for determination in this case was -- whether the respondent herein was entitled to withdraw his option before the cut-off date. The question - as to whether the said respondent had received the payments/benefits and had utilized the same was not there before the High Court. The last question has been raised by the bank in I.A. No. 1 of 2003 in the present civil appeal.

7. We quote hereinbelow paragraphs 3, 4 and 5 of the counter affidavit dated 28.2.2004:

"3. That the account statement submitted along with the additional affidavit at pages 23-24 relates to Savings Bank Account No. 4775 maintained by the respondent. A perusal of the same would show that on 27.12.2000 salary to the tune of Rs. 15,154.00 was credited to his account. Subsequently, on 25.1.2001 another credit entry amounting to Rs. 14,600.42p was made on account of salary. On 29.1.2001, a credit entry amounting to Rs. 23,548.59 on account of notice period salary as applicable under Voluntary Retirement Scheme was made.

4. That thereafter on 1.2.2001 the respondent himself transferred a sum of Rs. 60,000/- in the said account and on that very day he adjusted his car loan amount to Rs. 65,220.00 payable to the bank. It is stated that under Voluntary Retirement Scheme every employee who took the voluntary retirement scheme and the benefits thereunder had to adjust the loans payable by him to the bank and it was in pursuance to the provision of the scheme that the respondent cleared the loan amount and also closed the said account on 1.2.2001. It is noteworthy that in between, he had transferred a sum of Rs. 13,406.74p on 30.1.2001 and another sum of Rs. 13,859 to his other account. The deponent states that this clearly shows that the operation of the said account by the respondent.

5. That the respondent was maintaining another account being Account No. 4777 at Maharajpur Branch of the appellant bank. A copy of which has been annexed by the respondent at page 22 wherein the transfers had been made in this account. The respondent had used and transacted the accounts as is evident from the account statement annexed herewith for the period from 6.12.2000 to 16.10.2001. The respondent has only annexed a part of the statement for the period from 4.1.2001 to 31.3.2001. The statement from 6.12.2000 to 16.10.2001 as annexed by the appellant bank would show that the respondent operated this account on regular basis. He had made a payment of Rs. 30000/- on 13.1.2001 to State Bank of India towards Public Provident Fund and another deposit of Rs. 60,000/- was made to SBI on 5.1.2001 as PPF deposit. The leave encashment benefit of Rs. 1,42,406.40 p. was credited in this account on 26.3.2001. The respondent made a FDR to the tune of Rs. 1,42,406.40 p. on 31.3.2001 for a period of three years which is still lying with him and is due only on 31.3.2004."

8. From the averments herein, it is clear that respondent No. 1 had two savings bank accounts no.4775 and 4777. He had withdrawn his option on 22.12.2000 and yet without any objection he receives three credits in his account on 27.12.2000, 25.01.2001 and 29.01.2001 on account of salary (including notice pay). Thereafter, he repays his car loan; invests Rs. 30,000/- in PPF and Rs. 1,42,406.40 in fixed deposit for three years, which is a long term investment. Therefore the principles of estoppel extensively discussed by this Court in the case of Bank of India v. O.P. Swarnakar (supra) applies to the facts herein. The conduct of respondent No. 1 indicates his knowledge about payments in his accounts; that he never objected to such payments and that he had appropriated the amounts for his benefit. Therefore, he cannot resile from the scheme.

9. For the aforesaid reasons, this appeal deserves to be allowed. We order accordingly. The judgment and order under challenge is set aside, with no order as to costs.