

(2004) 01 SC CK 0061

In the Supreme Court Of India

Case No : Review Petition (C) No. 53 of 2003 in Civil Appeal No. 896 of 2002 with I.A. No's. 1-2 and 3 of 2003 in Civil Appeal No's. 8467-8499 of 2002, I.A. No's. 1-22 of 2003 in Civil Appeal No's. 7314-7335 of 2002, I.A. No. 15 of 2003 in Civil Appeal No. 3553

Punjab National Bank

APPELLANT

Vs

Virender Kumar Goel and Others

RESPONDENT

Date of Decision : 21-01-2004

Acts Referred:

Citation : AIR 2004 SC 3988 : (2004) AIRSCW 2437 : (2004) AIRSCW 4378 : (2004) AIRSCW 5909 : (2004) 3 ALT 15 : (2004) 1 AWC 793 Supp : (2004) 3 CALLT 43 : (2003) 1 JT 566 : (2004) 1 LLJ 1057 : (2004) 2 PLJR 116 : (2004) 1 RLW 104 : (2004) 1 SCALE 621 : (2004) 2 SCC

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

Bench : Full Bench

Advocate : Soli J. Sorabjee, Attorney General, Dhruv Mehta, Mohit Choudhary and Shalini Gupta, for K.L. Mehta and Co, for the Appellant; Rakesh Dwivedi Meenakshi Arora and Anshul Singh, for the Respondent

Final Decision : Allowed

Judgement

H.K. Sema, J.—Parties are heard.

2. In all these applications, the applicants sought to review/clarify/modify the judgment and order of this Court rendered on 17.12.2002 in batches of Civil Appeals.

3. At the outset we make it clear, that this Bench is not sitting on appeal over the judgment rendered by this Court on 17.12.2002. Factual Matrix leading to the filing of the present petitions is therefore, obviated.

4. Before we advert further, we may at this stage, notice the operative directions rendered in the judgment sought to be reviewed/clarified, strictly relevant for the purpose of disposal of the present applications. This Court inter alia held that the request of an employee seeking voluntarily retirement would not take effect until

and unless it was accepted in writing by the competent authority and, therefore, this Court upheld the right of the employee to withdraw his option from voluntary retirement before the same was accepted.

5. This Court further held in paragraphs 114 and 115 of the judgment as under:-

"114. 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.

(Emphasis supplied)

Finally, in paragraph 130 of the judgment this Court issued the following directions:-

1. The appeals preferred by the nationalised banks arising from the High Courts are dismissed except the cases where the employees concerned have accepted a part of the benefit under the Scheme; However, in respect of such of the employees who despite acceptance of a part of the retirement benefit under the Scheme had continued under the orders of the High Court and has retired on attaining the age of superannuation, this order shall not apply.

(Emphasis supplied)

2. The appeals tiled by the State Bank of India are allowed

3. The appeals arising from the judgments of the Uttaranchal High Court are allowed and the judgments of the said High Court are set aside.

4. The appeals arising from the judgments of the Punjab and Haryana High Court in relation to ten writ petitions which were filed by the employees for a direction upon the Bank that the benefits under the Scheme be paid to them are set aside and the matters are remitted to the High Court for consideration thereof afresh on merits and in accordance with law.

6. In these applications, we are concerned with direction Nos. 1, 2 and 3.

7. In the backdrop of the directions aforesaid, we now proceed to examine the present applications.

8. Review Petition No. 53 of 2003 arising out of Civil Appeal No. 896 of 2002 has been filed by the Punjab National Bank. The ground taken therein is that respondent No. 1. Virender Kumar Goel has accepted the benefits under the VRS and, therefore, the appeal filed by him against the judgment and order of Uttaranchal High Court ought to have been dismissed, instead of allowed as contained in direction No. 3.

9. The respondent herein had filed counter to the application. It is argued that the Review Petition is not maintainable as the applicant had failed to show that there was an error apparent on record or that there was discovery of some new or important matter which, after the exercise of due diligence, was not within the knowledge or could not be produced by him at the time of the hearing of the special leave petition. It is further argued that the respondent had applied for VRS on 17.11.2000, which was operative w.e.f. 1.11.2000 to 30.11.2000. Thereafter, on 27.11.2000 the respondent had submitted an application for withdrawal of his application dated 17.11.2000 during the warranty of the Scheme. However, the bank accepted the request of the respondent on 6.1.2001 after the period of the Scheme was expired and on the same date the respondent had been relieved of his post.

10. In our view this contention would be of no assistance to the respondent. He knew very well that the money deposited in his account was part of the benefits under the Scheme. He also knew it very well that his request for VRS was accepted after the Scheme had expired, yet he had withdrawn the amount deposited and utilised the same. The fact that the respondent had withdrawn a part of the benefit under the scheme is not disputed and it could not be. To substantiate the contention, the applicant has submitted a photocopy of respondent's bank account No. 27980 (Annexure R-1). It clearly appears from Annexure R-1 that a part of the retirement benefit was deposited in the respondent's bank account on 12.1.2001 and on 15.1.2001 he had withdrawn Rs. three lakhs. Again on 28.2.2001 he had withdrawn Rs. fifty thousand.

11. This fact, however, was not brought to the notice of this Court at the time of the hearing. However, the fact remains that the incumbent had accepted the benefits under the scheme and utilisation thereof would squarely be covered by direction No. 1 as noticed above. Therefore, the judgment dated 17.12.2002 is reviewed to the extent that the appeal arising out of the judgment and order of the Uttaranchal High Court is dismissed and the judgment of the High Court is upheld.

I.A.NOS. 1-2 AND 3

12. The question involved in I.A.Nos. 1-2 and 3 is as to whether the applicants have accepted a part of the benefit under the VRS in terms of direction No. 1 or not.

I.A.No. 1

13. This I.A. is filed by respondent Balbir Singh Chadha for clarification and modification of the judgment dated 17.12.2002. The ground taken in the application is that the benefits under the scheme had been deposited in the applicant's defunct Bank account No. 30 which has never been accepted nor withdrawn by the applicant cannot be construed as acceptance of part of the benefits in terms of direction No. 1. In this case, the applicant applied for VRS on 28.11.2000. The applicant withdrew his application on 20.12.2000, before the

same was accepted by the bank. Annexure-R5 is the photocopy of Bank account No. 30 in the name of the applicant. It appears that on 13.3.2001 leave encashment of Rs. 134650.82/- was deposited in his account. Thereafter, the applicant had not operated the bank account. He had not withdrawn the amount.

I.A. NO. 2

14. The employee Narinder Singh is the applicant. The applicant applied for benefit under the scheme on 1.12.2000. He submitted an application on 25.1.2001 for withdrawal of his offer for VRS. The ground taken in the application inter alia is that on 26.3.2001 the respondent-bank herein deposited leave encashment of Rs. 119048/- in account No. 5654 of the applicant. It is further contended that the applicant did not operate the account thereafter. He has neither withdrawn the amount nor utilised the amount, unilaterally deposited in his account. To substantiate his contention the applicant has annexed photocopy of the account No. 5654 (Annexure R-3). A perusal of the account would reveal that after 26.3.2001 the applicant has not operated his bank account. This fact is not denied by the bank.

I.A. No. 3

15. The applicant is Mohinder Pal Singh, an employee of the bank. He applied for the benefit of the scheme on 1.12.2000. On 27.12.2000 he made an application for withdrawal of his offer for VRS. The withdrawal application was filed before the acceptance of the offer for VRS by the bank authority. The ground taken in this application is that the applicant did not operate bank account No. 17611 after 21.4.2001. To buttress his contention the applicant has filed photocopy of bank account No. 17611 (Annexure R-6). It appears from there that the benefit under the scheme was deposited in the bank account of the applicant on and from 30.4.2001 and the applicant had not operated his bank account thereafter. In view thereof it cannot be construed that the applicant had accepted a part of benefit under the scheme in terms of direction No. 1.

16. We make it clear that the sentence, "accepted a part of benefit under the scheme", appeared in our direction as noticed above, would include the withdrawal of the benefit and utilisation thereof. By no stretch of imagination, unilateral deposit of a part of benefit under the scheme into the bank account that too after withdrawal of the application, would construe as to have accepted the part of the benefit under the scheme, when the same was neither withdrawn nor utilised by the employee concerned.

17. In view of the discussion aforesaid, IA Nos. 1, 2 and 3 are allowed. The applicants shall be reinstated into their posts with continuity in service. back wages and all consequential benefits as are entitled to them under the Law. They shall, however, refund the entire amount deposited into their bank accounts with interest accrued if any, to the bank. Full refund of the amount by the applicants would be the condition precedent for reinstatement. Mr. Mukul Rohtagi learned ASG submits that applying the principle of 'No Work No Pay', back wages should

not be allowed to them on their reinstatement. We are unable to accept this contention. The applicants were out of their jobs for no fault of theirs. Even otherwise, party in breach of contract can hardly seek for any equitable relief.

I.A. NOS. 1-22

18. These applications have been filed by the State Bank of Patiala for clarification/directions. The ground taken in these applications is that the State Bank of Patiala is not a nationalised bank. It is hundred per cent a subsidiary of the State Bank of India. The VRS scheme floated by the State Bank of Patiala is in para-material with the scheme floated by the State Bank of India. This Court in the judgment dated 17.12.2002 allowed the appeals filed by the State Bank of India but nothing has been said about the appeals filed by the State Bank of Patiala. In the interregnum, a two-Judge Bench of this Court, in which one of us (Sema, J) was a member, considered the same question in Civil Appeal No. 2341 of 2003 arising out of SLP No. 23530 of 2002 entitled State Bank of Patiala v. Jagga Singh, disposed of on 13.3.2003, where this Court after considering Clause 8 of the scheme floated by the State Bank of Patiala and Clause 7 of the scheme floated by the State Bank of India, had held that the scheme floated by the State Bank of Patiala is almost identical of the scheme floated by the State Bank of India. Accordingly, the appeal filed by the State Bank of Patiala was allowed. Review Petition was also dismissed on 3.12.2003. In view thereof, we clarify that our direction No. 2, allowing the appeals filed by the State Bank of India, would also include the appeals filed by the State Bank of Patiala. In other words, the appeals filed by the State Bank of Patiala are allowed in terms of our judgment dated 17.12.2002.

I.A.NOS. 14-15

19. I.A. No. 14 has been filed by an employee of the bank sought to clarify/modify our order dated 17.12.2002. In this case, admittedly, the benefit of the scheme had been withdrawn by the applicant on 27.2.2001. The applicant had clearly admitted, in ground E of the application, withdrawal of the amount so credited in his account albeit compelling financial constraints.

20. I.A. No. 15 has been filed by an employee of the bank for clarification/modification of our order dated 17.12.2002. In para 6 of the application, the applicant admitted that he had withdrawn and utilised the benefit of the scheme credited in his account.

21. As noticed in our judgment, having accepted the benefit under the scheme by withdrawing and utilisation thereof they are not permitted to approbate and reprobate.

22. The net result is:

(a) Review Petition No. 53 of 2003 is allowed but the costs of the respondent shall be borne by the applicant.

(b) I.A. Nos. 1, 2 and 3 of 2003 are allowed.

(c) I.A. Nos. 1-22 of 2003 are allowed.

(d) I.A. Nos. 14 and 15 of 2003 are dismissed.

23. Petitions are disposed of in the above terms.