(2006) 11 J&K CK 0030

In the Jammu And Kashmir High Court

Rattan Singh — APPELLANT

Vs

Indian Overseas Bank and Others — RESPONDENT

Date of Decision : 01-11-2006

Acts Referred:

Citation : (2007) 2 JKJ 107

Hon'ble Judges : Nirmal Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Nirmal Singh, J.—The facts are not in dispute.

2. Petitioner was working as Special Assistant in the respondent Bank and was posted at Srinagar. The respondent-Bank issued a circular Memo

No. 7 (f)86 of 2000-2001 dated 2nd of Dec2000 called IOB Officers/Employees Voluntary Retirement Scheme-2000(here-in-after referred to

as VRS). This Scheme was valid for a period of five weeks w.e.f. 15th of Dec2000 to 19th of Jan01. The petitioner applied under the VRS on

11th of Jan01, seeking voluntary retirement. The application of the petitioner for voluntary retirement was considered and the same was accepted

vide its decision dt. 19th of Jau01, which decision was communicated to the Regional Office, Chandigarh on 22nd of Jan01. The petitioner moved

an application on 29th of Jan 01 to respondent No. 4 whereby he withdrew his offer seeking voluntary retirement under the VRS. The said

application of the petitioner was rejected and he was directed to be relieved w.e.f. 31st of Jan 01. Through the medium of present writ petition, the

petitioner is seeking quashment of orders dt. 22nd of Jan 01 and 31st of Jan 01.

3. Mr. A.V. Gupta, learned Senior Advocate, appearing on behalf of the petitioner

submitted that the petitioner was to relinquish the charge on

31st of Jan01 and it was well before the aforesaid date, the petitioner had made a request to withdraw his offer of voluntary retirement, and

therefore, the same could not be rejected by the respondents.

4. Before considering the contention of the learned Counsel for the petitioner it will be appropriate to notice the relevant provisions of the scheme:

IOB Officers/Employees Voluntary Retirement Scheme-2000

1. OBJECT;

A scheme to adopt measures to have optimum human resources at various levels in keeping with the business strategies, skill profile to achieve

balanced age and requirement of the Bank.

2. NAME OF THE SCHEME:

The Scheme shall be called as IOB Officers/Employees Voluntary Retirement Scheme-2000.

3. OPERATION OF THE SCHEME:

The Scheme shall remain in operation for five weeks from 15.12.2000 to 19.01.2001.

Eligibility:

4.1 All permanent employees with 15 years of service or 40 years of age.

4.2 However, the employees falling in the following categories are not eligible to seek voluntary retirement under the scheme.

(a) Specialists officers/employees who have executed service bonds and have not completed it.

(b) Officers/employees serving abroad under special arrangements/bonds.

(c) Employees against whom disciplinary proceedings are contemplated/pending or are under suspension.

(d) Employees appointed on contract basis.

(e) Highly skilled and qualified employees who have been given the specialized training in the area of Credit, Foreign, Exchange, Investment and

Information Technology, etc.

(f) Any other category of employees as may be specified by the Board

5. AMOUNT OF EX-GRATIA:

...

6. OTHER BENEFITS:

...

7. MODE OF PAYMENT:

...

8. COMPETENT AUTHORITY:

...

General conditions:

(1) to (12).

(13) It will not be open for an officer/employee to withdraw the request made for voluntary retirement under the scheme after having exercised

such option. The option once exercised is irrevocable.

5. The sole point which is to be determined in this petition is as to whether an employee who opted for voluntary retirement in pursuance to or in

furtherance of a Scheme floated by the respondent-Bank would be permitted to withdraw the said offer.

6. The Board of Directors of the Bank in its meeting held on 25th of Nov 2000 approved the VRS which as indicated above was valid for a

period of five weeks i.e. w.e.f 15th Dec 2000 to 19th of Jan01. Under Rule 13 of the VRS, it was not open for an officer or employee of the

Bank to withdraw from his offer seeking voluntary retirement once the said option was exercised. As per the said provision, the option once

exercised is irrevocable.

7. The petitioner applied under the VRS on 11-01-2001 seeking voluntary retirement and the request of the petitioner was accepted on 22-01-

2001. As per the order of acceptance he was to relinquish the charge on 31-01-2001. Copy of the acceptance of his request has been placed on

record as Annexure-C. The contention raised by the learned Counsel for the petitioner that the petitioner had to relinquish the charge on 31-01-

2001, therefore, he could withdraw his request before the said date is not sustainable. Under the scheme there is no provision for withdrawal of

offer once it is exercised. Even otherwise the petitioner could have exercised his right to withdraw his offer seeking voluntary retirement before the

close of the scheme or before the acceptance of his offer.

8. Similar proposition came up before the Apex Court in the case reported in Bank of India and Others Vs. O.P. Swaranakar etc., wherein it was

held that The nationalized Banks with a view to downsize their staff floated the Voluntary retirement to submit duly completed application in

duplicate in the prescribed form marked offer to seek voluntary retirement. The application so received was to be considered by the competent

authority on first come first serve basis. The decision-making process involved application of mind on the part of several authorities. The request of

employees seeking voluntary retirement was not to take effect until and unless it was accepted in writing by the competent authority. The

competent authority had the absolute discretion whether to accept or reject the request of the employee seeking voluntary retirement under the

Scheme. The Bank also reserved to itself the right to alter/ rescind the conditions of the Scheme. The Scheme also contained a clause that an

employee who has opted for Voluntary Retirement cannot withdraw his application. A large number of employees submitted their applications out

of whom a small number of employees withdrew their offer. Despite withdrawal the offer was accepted. The action on the part of the Banks, in

accepting the applications of the concerned employees despite their withdrawal was challenged.

9. Held, the employees opting for Voluntary Retirement could withdraw their offer before it was accepted by the Bank despite the contractual bar

to withdrawal contained in the Scheme.

10. Again in State Bank of Patiala Vs. Romesh Chander Kanoji and Others, the Apex Court held as under:

...Under such schemes, time is given to every employee to opt for voluntary retirement and similarly time is given to the management to work out

the scheme. Clause (5) of the SBPVRS gave 15 days time to the employees to opt for the scheme and under Clause (8) a period of two months is

given to the management to work out the scheme. Since the said schemes are funded schemes, the management is required to create a fund. The

creation of the fund would depend upon number of application; the cost of the scheme; liability which the scheme would impose on the Bank and

such other variable factors. If the employees are allowed to withdraw from the scheme at any time after their closure, it would not be possible to work out the scheme as all calculations of the management would fail.... It was further held as under:

...In Chitty on Contracts (28th Ed. Page 125), the learned author states that an offer may be withdrawn at any time before it is accepted. That this

rule applies even when the offeror has promised to kept the offer open for a specified time, for such a promise is unsupported by consideration.

Therefore, Clause (5) of SBPVRS gives locus poenitentiae to the employee to withdraw by 1.3.01 after which the mode of acceptance

contemplated by Clause (8) of the SBPVRS would apply and the Bank will proceed to vet the applications. As stated above, the Bank needs time

to ascertain its liability; it is required to find out the cost of creation of a separate fund which in turn depends on the number of applications and if

the employees are permitted to withdraw after the date of closure it would be impossible for the Bank to implement the Scheme. Therefore, Clause

(5) gives time to the employee to withdraw by 1st March,2001, and the Bank is given time of two months thereafter to complete the designated

mode of acceptance (See Halasburys Laws of England, 4th Edition page 133). Reading Clauses (5), (8) and (9)(i), it is clear that employees are

precluded from with drawing from the SBPVRS after the closure of the scheme on 1.3.2001.

11. In the case in hand, the scheme was closed on 19th Jan01. The petitioner did not withdraw his offer before the close of the scheme. He

applied for withdrawal of his offer on 29th of Jan0l whereas his application seeking voluntary retirement stood already accepted on 22nd of Jan01.

Therefore, the petitioner was not within his rights to seek withdrawal of his offer after the closure of the scheme.

12. For the reasons mentioned above, this petition is found to be without merit and is dismissed.