

C.D. Sampath and ors. Vs. State Bank of India, Rep. by Its Chief General Manager and ors.

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Court : Chennai

Decided On : Apr-26-2005

Reported in : (2005)3MLJ562; 2006(2)SLJ257(NULL)

Judge : Markandey Katju, C.J. and ;F.M. Ibrahim Kalifulla, J.

Acts : Contract Act; [Constitution of India](#) - Articles 14 and 226

Appeal No. : W.P. Nos. 18272 and 752 of 2002 and 24202, 24203, 24204, 24205, 24206, 24207, 18273, 18274, 18278,

Appellant : C.D. Sampath and ors.

Respondent : State Bank of India, Rep. by Its Chief General Manager and ors.

Advocate for Def. : R. Muthukumaraswamy, Sr. Counsel for ;B. Rajendran, Adv.

Advocate for Pet/Ap. : K. Chandru, Sr. Counsel for ;S. Jayakumar, Adv.

Disposition : Petition dismissed

Judgement :

Markandey Katju, C.J.

1. This writ petition and the connected writ petitions are disposed of by this common order, since common questions of law and facts are involved. We are treating W.P. No. 18272 of 2001 as the leading case. We have heard the learned counsel for the parties in all these petitions and have perused the record.

2. The prayer in W.P. No. 18272 of 2001 is for a writ of certiorari to quash the impugned order dated 29.03.2001 passed by the 2nd respondent - State Bank of India represented by its General Manager (D& PB), Chennai, and to permit the petitioner therein to retire under the SBI-VRS Scheme as MMGS-II, and to restore all the terminal and other benefits as envisaged in the scheme by directing the 2nd respondent to pay the retirement benefits to the petitioner as per the said scheme.

3. The State Bank of India came out with a Voluntary Retirement Scheme for its staff known as the SBI VRS Scheme. Through its circular dated 02.01.2001 the bank enumerated the conditions for applying for voluntary retirement. The Scheme was opened on 15.01.2001 and the last date for opting for VRS was fixed as 31.01.2001. The petitioner alleged that he applied for voluntary retirement under the said Scheme through proper channel well before the last date.

4. In paragraph - 5 of the petitioner's affidavit, the petitioner alleged that the respondent - bank earlier issued a circular dated 25.06.1999 according to which the officers promoted to Scale II with effect from 01.08.1988 had to complete 2/3 years of rural/semi-urban service as a necessary condition for promotion. It is further alleged that the said condition was diluted later and it was decided by the bank that if an officer was unable to complete the mandatory rural/semiurban service, he would be considered for promotion subject to the condition that he would complete the required rural assignment immediately after his promotion or forego his promotion in the event of his failing to complete the required rural service. Petitioner was promoted to Scale II post, and he alleged that at the time of his promotion there was no condition that he should complete rural service for his promotion, nor did he give any undertaking that he will complete the rural posting at any point of time. Hence, in his order of promotion, there was no mention that he should complete rural posting for the purpose of remaining in the promoted post. At any event he was never offered rural posting till his date of relieving even

though the management has got discretion to post him in any rural area. The management posted the petitioner in various branches, which are not rural and the petitioner accepted all these postings and he worked in those branches as per the order of the management.

5. In paragraph - 7 of his affidavit, the petitioner alleged that even though he was willing to undertake rural posting, the management offered no such rural post to him. The management also did not stipulate rural posting as a pre-condition for the petitioner's promotion in the year 1989. Since, the petitioner had not given any undertaking, he alleged that the bank has no jurisdiction to withdraw his promotion made in 1989.

6. In paragraph - 8 of his affidavit the petitioner alleged that the 4th respondent - Branch Manager intimated the petitioner that his application for voluntary retirement under the SBI VRS Scheme had been accepted, and that he would be relieved of his duties at the close of business on 31.03.2001. It is further alleged that surprisingly, within 10 days from the date of the abovesaid order, the 2nd respondent vide his letter dated 29.03.2001, informed the petitioner that he had not completed the mandatory rural/semi-urban assignment essential for promotion to Middle Management Grade/Scale II, and hence the bank decided to revert him to the Junior Management Grade/Scale I. On receipt of the aforesaid letters, the petitioner was relieved of his duties on 31.03.2001 after reverting him to Junior Management Grade Scale - I. Hence, he has alleged that he had no time to make a representation to the bank while he was in service.

7. The petitioner further alleged that the order dated 29.03.2001 reverting him to Junior Management Grade/Scale - I and retiring him as such was illegal and violative of the rules. He further alleged that if the impugned order dated 29.03.2001 would be given effect to, he would be put to irreparable loss since his total emoluments would get reduced drastically, as also his terminal benefits. He also alleged that the impugned order 29.03.2001 is discriminatory, because those officers who have been promoted along with him and who have to retire during March 2001 on superannuation were allowed to retire/resign without any reversion as Junior Management Grade/Scale - I.

8. The petitioner also alleged that his promotion from Scale I to Scale II was not subject to any condition, and therefore, withdrawal of his promotion on the ground that he had not completed the mandatory rural service was arbitrary and illegal. The petitioner further alleged that he couldn't be punished for not undergoing rural service when he was not asked to do so at any point of time during his service. The Scheme does not discriminate between officers who have completed rural assignment and those who have not. It is also alleged that no opportunity of hearing was given before passing the impugned order.

9. A counter affidavit was filed on behalf of the respondent-bank in W.P. No. 18272 of 2001, and we have perused the same.

10. In paragraph - 3 of the counter affidavit it is alleged that the Government of India, Ministry of Finance, Department of Economic Affairs (Banking Division) issued guidelines in terms of which the Boards of the respective banks were required to formulate the eligibility criteria and the details of the processes to be employed for promotion of officers from one scale/grade to another, subject to the provisions provided in the said guidelines. It is further alleged that the said guidelines provided for a minimum of two years service in rural branch for promotion from Junior Management Grade/Scale I to Middle Management Grade/Scale II. It is alleged that on the basis of the said Government of India guidelines, the bank issued circular dated 22.05.1987, wherein it was stipulated that rural/semi-urban service would be one of the conditions for promotion to Middle Management Grade Scale - II and Middle Management Grade Scale III with effect from 01.08.1 988. Subsequently, the bank issued another circular dated 16.09.1989 in respect of the implementation of the Government Policy for Rural and Semi-Urban service by an officer for becoming eligible for promotion to MMG Scale II and MMG Scale III. The said circular contemplates a letter of undertaking from the officers indicating their willingness to complete the required period of rural/semi-urban assignment and in the event of their failing to do so to forego promotion. Subsequently, the respondent-bank constituted a joint promotion committee consisting of the representatives from the bank and the All India State Bank Officers' Federation, which examined the promotion policy and on the basis of the recommendation of the said committee, the executive committee of the

Central Board at its meeting held on 09.02.1991 approved the promotion policy for MMG Scale II and III. The said policy reiterated the mandatory requirement of completion of required period of service in rural/semi-urban branches for promotion to MMG II/MMG III.

11. It is further alleged in the counter affidavit that in *State Bank of India and Ors. v. Kashinath Kher and Anr.*, the Supreme Court while granting leave had held that rural/semiurban assignment is mandatory for promotion and that too only for ad hoc promotion. Subsequently, on 11.06.1999 the bank issued another circular with respect to the rural/semi-urban assignment and withdrawal of promotion, which has been communicated by the Local Head Office, vide Circular CIR/DO/PER/20 dated 25.06.1999. In paragraph - 3 of the said circular it was specifically provided that till the officers complete the rural/semi-urban assignment, their promotion would be treated as ad hoc promotion.

12. It is alleged in paragraph - 19 of the counter that the competent authority in terms of the Central Board Memorandum gave certain clarification and the same was communicated by Circular No. HRD/CDO/VRS/2 dated 04.01.2001. As per the said circular if an officer, has not completed the mandatory rural or semi-urban assignment (either wholly or partly), his request would be subject to the provisions contained in Circular dated 25.06.1999. Thus, in case of an officer from this category applying for retirement under Voluntary Retirement Scheme before approving his case, his promotion would stand withdrawn in terms of the circular dated 25.06.1999.

13. In paragraph - 20 of the counter it is alleged that the petitioner after going through the various clauses of the above circular dated 25.06.1999 opted for SBI Voluntary Retirement Scheme and submitted his application. It is further alleged that the petitioner was well aware that if his voluntary retirement was accepted under SBI VRS, his promotion to MMGS II would be withdrawn, as he had not put in the requisite rural or semi-urban assignment.

14. Since, the petitioner applied for SBI VRS, he was well aware of the terms and conditions of the various circulars/guidelines issued by the bank, and the bank was justified in withdrawing the ad hoc promotion of the petitioner for non completion of

rural/semi-urban assignment in terms of the provisions of the circulars dated 25.06.1999 and 04.01.2001.

15. It is further alleged that opting for the VRS by the petitioner is a contractual matter between the petitioner and the bank. The bank made an invitation of offer with certain terms and conditions. The petitioner submitted an offer, which was duly accepted by the bank, and the petitioner was allowed to retire in terms of SBI VRS. Hence, it is alleged that no writ petition under Article 226 of the Constitution will lie in such contractual matters. It is also alleged that the petitioner is estopped from raising any type of controversy with regard to his non-completion of rural assignment and his reversal to JMGS I. 28. In *State Bank of Patiala v. Romesh Chander Kanoji and Ors.*, the Supreme Court observed that the VRS is an invitation to offer and not an offer under the Contract Act.

16. It is alleged in paragraph -25 of the counter affidavit that the petitioner had withdrawn the ex-gratia amount and other retiral benefits from his accounts settled in his favour, which clearly shows his consent, and completion of the contract. It is further submitted that the action of the respondent-bank was legal and justified, in view of the staff circular dated 04.01.2001 which clearly stated that if an officer who had not completed the mandatory rural or semi urban assignment (either wholly or partly) submits an application for retirement under SBI VRS, his request would be subject to the provisions contained in the staff circular dated 25.06.1999. It is alleged that there was no need to give any opportunity of hearing to the petitioner in the matter. The petitioner had applied for SBI VRS after accepting the terms and conditions laid down in the Scheme and the circular dated 04.01.2001 which clarify the position. It is further alleged that the SBI Voluntary Retirement Scheme cannot be treated as terms and conditions of service. It is a special dispensation and completion of rural/semi urban assignment was mandatory. Even in case of normal voluntary retirement scheme the promotion would be withdrawn if the official retiring voluntarily did not complete the mandatory rural/semiurban assignment. There was no compulsion on the petitioner to opt for retirement under SBI VRS. The petitioner was not the only individual whose ad hoc promotion was withdrawn for non-completion of mandatory rural assignment and there are several others who had also opted for voluntary retirement under SBI VRS and whose

promotion were withdrawn.

17. For deciding the controversy in this case, it is necessary to advert to the relevant circulars dated 04.01.2001 and 25.06.1999. Clause - ii of the Circular dated 04.01.2001 states:-

'If an officer, who has not completed the mandatory rural or semiurban assignment (either wholly or partly), submits an application for retirement under SBI VRS, his request would be subject to the provisions contained in Circular No. CIR.D.O.PER:20 dated 25.06.1999. Thus, in case of an officer from this category applying for retirement under SBI VRS, before approving his case, his promotions would stand withdrawn.'

18. The Circular dated 25.06.1999 states:-

'III - a) If an officer is unable to complete the mandatory R/SU assignment for any reason attributable to him/her, his/her promotion will have to be withdrawn and he/she will not be permitted to officiate in higher grade(s). This withdrawal can go back to two/three grades also i.e., to the grade in which the officer was when he/she gave the undertaking for completing the mandatory assignment.

b) An officer, not willing to go for R/SU assignment due to changed circumstances, will make a request in writing giving the reasons for withdrawal of promotion. In case no request is made in writing by the officer and he/she doesn't go for R/SU assignment, his/her promotion will be withdrawn as it was subject to the completion of the R/SU assignment, in terms of his/her undertaking.

c) The officer can be considered for promotion subsequently with effect from a prospective date, if otherwise eligible, as per the Promotion Policy/placement norms in vogue at the material time, if he/she completes all the mandatory assignments beforehand. Minimum period for eligibility for considering him/her for next promotion will be two years as has been laid down in the Debarment Policy.

d) Although the bank has got a right to do so, as a special case, incremental salary, allowances and perquisites may not be recovered from the officers whose promotions have been withdrawn.

e) Though the bank may accede to officers' requests and not immediately transfer them to R/SU branches, subject to withdrawal of their promotion, it may post them at centers other than R or SU and, after a period not exceeding 5 years, they can be posted at any office/ branch including a rural or semi-urban branch.

f) Deferment in posting at R/SU center without withdrawal of promotion can be granted only on medical grounds pertaining to self, subject to examination by a competent medical board constituted by the Bank. This deferment would be for a period not exceeding 6 months. However, in such a case, if the transfer order was issued earlier, and the officer had refused to complete the assignment at that particular point of time, his/her case would be treated just like other cases.

g) If an officer opts for voluntary retirement/resignation, the Bank would not permit such retirement/resignation, unless he/she either completes the mandatory R/SU assignment or makes a request in writing to withdraw his/her promotion(s) as he /she cannot complete R/SU assignment and be retired. In case the officer applies for retirement/ resigns, without making a request in writing for withdrawal of promotion(s), the bank may withdraw his/her promotion(s) based on the undertaking already given and thereafter permit the officer to retire/resign.

h) In case of officers who are likely to reach the age of superannuation in the next two or two and a half years period, it should be ensured that, preferably within a period of 30 days from the approval of this policy, these officers are posted for completion of R/SU assignment. If thereafter the officer actually reports there and continues to work at that branch/center, till the date of retirement/actual completion of assignment, he/she would be permitted to retire in the present grade otherwise his/her promotion will be withdrawn as in case of other officers.'

19. Thus, the circular dated 04.01.2001 has clearly stated that the application for VRS can be allowed only on the basis of the conditions mentioned in the circular dated 25.06.1999. Clause (g) of the circular dated 25.06.1999, quoted above, clearly states that if an officer opts for voluntary retirement scheme, the bank would not permit such retirement unless he/she either completes the mandatory R/SU assignment or makes a request in writing to withdraw his/her promotion. In case the officer applies for retirement without making a request in writing for

withdrawal of promotion, the bank may withdraw his/her promotion based on the undertaking already given, and thereafter permit the officer to retire.

20. Thus, under clause (g) an officer of the bank can opt for voluntary retirement only after he completes the mandatory Rural/SemiUrban assignment or makes a request to withdraw his/her promotion.

21. The submission of the learned counsel for the petitioner that the petitioner was not given rural/semi-urban posting by the bank and that he never refused such a posting, is hence irrelevant since under clause (g) of the circular dated 25.06.1999, a necessary condition for voluntary retirement was completion of rural/semi-urban service or withdrawal of the promotion. Hence, the contention of the learned counsel for the petitioner that it was no fault of the petitioner that he was not given rural/semi-urban posting is of no help to the petitioner.

22. It may be true that the petitioner never refused rural/semiurban assignment and that such assignment was never offered to the petitioner, but in any case, clause (g) of the circular dated 25.06.1999 makes rural service a mandatory requirement for voluntary retirement. The voluntary retirement scheme is a contractual scheme and the petitioner was under no compulsion to opt for it. Having opted for it, he is bound by the circulars dated 25.06.1999 and 04.01.2001.

23. It may be that the petitioner may suffer hardship, but on that account we cannot interfere. The petitioner was well aware of the circulars dated 04.01.2001 and 25.06.1999, and the voluntary retirement was allowed to him subject to the condition of the provisions contained in these circulars.

24. The petitioner was promoted to the post of MMGS II after 1988 and he had to undergo or complete two years of rural posting, as provided in the binding circulars. The petitioner was well aware that his promotion was only ad hoc as clarified by the Supreme Court in *State Bank of India v. Kashinath Kher*, . Petitioner was thus well aware that he had to undergo mandatory rural service if he desires to opt for voluntary retirement scheme, otherwise, he would be reverted to the lower post.

25. As regards the petitioner's contention that at the time of his promotion to MMGS II there was no pre-condition attached to the effect that he had to undergo rural posting, the learned counsel for the respondents submitted that the guidelines of the Government of India issued in the year 1987 and the circular issued by the State Bank of India on 22.05.1987 followed by various other circulars clearly indicate that the officers like the petitioner had to undergo rural posting. At any event this will not help the petitioner in view of Clause (g) of the circular dated 25.06.1999.

26. As regards the petitioner's contention that persons similarly placed like him were allowed to retire with full benefits and hence there was discrimination against him, the learned counsel for the respondents submitted that seven of those officers had retired on reaching the age of superannuation and they cannot be compared with the persons who opted for voluntary retirement under the Scheme. At any event, even if the benefit was given to some other similarly situated persons that was wrongly done and the petitioner cannot claim that he should also be given the illegal benefit vide Chandigarh Administration v. Jagjit Singh, . Article 14 of the [Constitution of India](#) does not apply to illegalities. We are in agreement with the submission of the learned counsel for the respondents. The petitioner is bound by the circulars dated 04.01.2001 and 25.06.1999. The SBI VRS involves considerable amounts to be paid as ex gratia, besides normal terminal benefits, in case the option is accepted. The amount is not paid for any work done, but paid in lieu of leaving the service, which is a package deal. Once, the amount is paid, the employee ceases to be under employment, and he cannot agitate for any of his past rights. The present writ petition was filed six months, after receiving the voluntary retirement amounts, without any objection, and was thus liable to be dismissed on the ground of laches vide A.K. Bindal v. Union of India, . Also the petitioner accepted the settlement under the scheme without objection, and hence he cannot approbate and reprobate vide, Bank of India v. O.P. Swaranakar, .

27. In Punjab National Bank v. Virender Kumar Goel and Ors., the Supreme Court observed that having accepted the benefits under VRS by withdrawal of the money the applicants cannot approbate and reprobate.

28. In view of the above, we find no force in these writ petitions, and they are all dismissed. However, there will be no order as to costs.

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