

Manju Saxena vs Union Of India Rep. By Its Secretary ... on 3 December, 2018

Equivalent citations: AIR 2019 SUPREME COURT 257, AIRONLINE 2018 SC 874, 2019 LAB IC 1034, (2018) 15 SCALE 408, (2018) 4 ESC 765, (2019) 161 FACLR 126, (2019) 1 CLR 390 (SC), (2019) 1 JLJR 322, (2019) 1 PAT LJR 355, (2019) 1 SCT 147, (2019) 2 CURLR 743, (2019) 2 JCR 25 (SC), 2019 (2) KCCR SN 76 (SC), 2019 (2) SCC 628, (2019) 3 MPLJ 559, (2019) 5 MAH LJ 155

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Bench: Indu Malhotra, Abhay Manohar Sapre

“REPORTABLE”

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 11766–11767 OF 2018

(Arising out of SLP (Civil) Nos. 30205–30206 of 2017)

Manju Saxena

...Appellant

Versus

Union of India & Anr.

...Respondent(s)

J U D G M E N T

INDU MALHOTRA, J.

Leave granted.

1. The present S.L.P.s arise out of the impugned Judgment dated 14.07.2017 passed in L.P.A. No. 467/2017, and Order dated 13.09.2017 passed in R.P. No. 380/2017 of the Delhi

High Court, wherein the High Court dismissed the L.P.A filed by the Appellant against the 2nd Respondent ☐HSBC Bank.

2. Briefly stated, the factual matrix in which the present S.L.P. has been filed are summarized as under:

2.1 The Appellant was appointed on 01.04.1986 as a “Lady Confidential Secretary” by the 2nd Respondent ☐HSBC Bank, (hereinafter referred to as “the R2 ☐Bank”).

Subsequently, on 23.04.1992 the Appellant came to be promoted as a “Senior Confidential Secretary” to the Senior Manager (North India) of HSBC.

2.2 In May 2005, the post of “Senior Confidential Secretary” became redundant, as the Officer with whom the Appellant was attached, left the services of the R2 ☐Bank. Her services were utilized by giving her some other duties for the time being, till alternate jobs could be offered to her.

The Management admittedly offered her four alternate jobs of (i) Business Development Officer, (ii) Customer Service Officer, (iii) Clearing Officer, and (iv) Banking Services Officer. Each of these jobs were in the same pay scale.

The Appellant has admitted in her Statement of Claim dated 20.03.2006, that she declined to accept any of these jobs on the ground that such jobs were either temporary in nature, or the claimant did not possess the experience or work ☐knowledge to take up such jobs. 2.3 On 01.10.2005, the Bank issued a Letter terminating the services of the Appellant on the ground that her current job had become redundant. The Appellant was offered several job opportunities, however, she did not choose any of these offers. The Bank had offered a generous severance package, which she was not prepared to accept. The Bank terminated her service, and paid 6 months’ compensation in lieu of Notice as per the contract of employment. In addition, as a special case, the Bank paid Compensation, which was equivalent to 15 days’ salary for every completed year of service. The total amount paid to the Appellant was Rs. 8,17,071/☐ 2.4 The Appellant raised an Industrial Dispute before the Regional Labour Commissioner under the Industrial Disputes Act, 1947 (hereinafter referred to as the I.D. Act) on 03.10.2005, and sought enhancement of the severance package paid to her. It is relevant to note that the Appellant did not raise any claim for re ☐instatement to the R2 ☐Bank. Conciliation proceedings were commenced between the Appellant and R2 ☐Bank, wherein the Appellant made the following claims:

HEADS	AMOUNT (INR)
Severance	69,99,600.00
Provident Fund	8,90,111.60
Gratuity	3,81,209.00
Leave Encashment	86,541.40
Compensation + Notice Pay	8,17,071.00
TOTAL	91,74,533.00

The Bank, in response, offered the following package:

HEADS	AMOUNT (INR)
Severance	32,79,600.00
Provident Fund	8,90,111.60
Gratuity	3,81,209.00
Leave Encashment	86,541.40
Compensation + Notice Pay	8,17,071.00
TOTAL	57,29,533.00

The only difference between the two parties was with respect to the amount of Severance payable to the Appellant. Since the parties were unable to arrive at a settlement, the conciliation proceedings failed. 2.5 The Appellant filed her Statement of Claim dated 20.03.2006, before the Central Government Industrial Tribunal (referred to as “the CGIT”) claiming inter alia an enhanced severance package, waiver of outstanding Housing Loan, and full pension. The Claim was opposed by the R2□Bank. The R2□Bank filed its Written Statement and contested the claim of the Appellant, stating that the Appellant was not a “workman” under the I.D. Act, 1947. The Bank further stated that they had followed the procedure outlined under the I.D. Act, while terminating the services of the Appellant. The Ld. CGIT passed an Award dated 01.06.2009, and directed the R2□Bank to re□instate the Appellant, with full terminal benefits.

2.6 The R2□Bank filed Writ Petition bearing No.W.P. (C) 11344/2009 before the Delhi High Court, to challenge the Award passed by the CGIT. The High Court vide Interim Order dated 22.03.2013 remanded the matter to the CGIT for fresh consideration on the point whether the Appellant could be considered to be a “Workman” as per the Industrial Disputes Act, 1947. The Writ Petition was kept pending during the pendency of the remand. The CGIT passed a fresh Award dated 15.07.2015 holding the Appellant to be a “workman” under the I.D. Act, 1947.

The Ld. CGIT directed the R2□Bank to re□instate the Appellant with continuity of service, full back wages, and all consequential benefits. 2.7 During the pendency of the Writ Petition, the Appellant had filed an Application under S. 17B of the I.D. Act, 1947 before the Delhi High Court seeking interim maintenance. The High Court vide Interim Order dated 27.07.2012 directed payment of a monthly sum of Rs. 75,000/□ to the Appellant, towards Interim Maintenance u/S. 17B of the I.D. Act, 1947. 2.8 Aggrieved by the Order dated 27.07.2012, the R2 Bank filed an L.P.A. before the Delhi High Court to challenge the amount awarded to the

Appellant u/S. 17B. The Division Bench vide Order dated 24.08.2012, reduced the monthly sum payable to Rs. 58,330/- per month which was as per her last drawn salary. The S.L.P. filed by the Appellant being S.L.P. (C) No. 36513/2012 to challenge the Order dated 24.08.2012, came to be dismissed vide Order dated 07.01.2013.

The Appellant accordingly has been paid back wages u/S. 17B at Rs. 58,330/- per month. 2.9 The Appellant also raised a claim for waiver of the outstanding amount of a Housing Loan availed by her during the course of her service, which was outstanding on the date of her termination. The total amount of outstanding loan was approximately Rs. 22,16,702/- The Appellant challenged proceedings for recovery initiated by the R2 Bank before the Delhi High Court in W.P. (C) No. 19451/2006. A Consent Order dated 18.03.2010 came to be passed whereby the outstanding amount of Rs. 22,16,702/- towards the Housing Loan, was to be adjusted from her back wages, subject to the final outcome of the W.P. (C) No. 13344/2009. 2.10 The Writ Petition filed by the R2 Bank was allowed by the learned Single Judge vide Judgment and Order dated 12.04.2017, and the Award passed by the CGIT came to be set aside.

The High Court accepted the R2 Bank's submissions, and held that the Appellant's refusal to accept any of the four alternate positions offered to her, amounted to "abandonment" of her job. Hence there was no question of her services having been illegally terminated. The Appellant had received monetary compensation under several heads, to the tune of Rs. 1,07,73,736/- during the pendency of the Writ Petition, which was almost 13 times her legal entitlement. This included payments made under the various heads such as Compensation paid during termination, Gratuity, Payment towards Interim Award, Payments under S. 17B, Payment towards legal expenses. The Appellant was directed to refund the entire amount except the sum of Rs. 8,17,071/- which was the compensation paid at the time of termination. 2.11 Aggrieved by the Judgment & Order dated 12.04.2017 in W.P. (C) 11334/2018, the Appellant filed L.P.A. No. 467/2017 before the Division Bench. The Division Bench vide Judgment & Order dated 14.07.2017 dismissed the L.P.A., and upheld the Judgment of the learned Single Judge holding that the Appellant had abandoned her job.

The Division Bench however modified the operative direction passed by the Ld. Single Judge for restitution of the amounts paid. The Division Bench ordered that the Appellant shall not be required to reconstitute the amount of Rs. 8,17,071/- paid at the time of termination, the litigation expenses, and the amounts paid under S. 17B of the I.D. Act, 1947. 2.12 The Appellant filed Review Petition No. 380/2017 which was dismissed vide Order dated 13.09.2017.

2.13 The Appellant has assailed the Judgment dated 14.07.2017 and Order dated 13.09.2017 passed by the Division Bench in the L.P.A. and the Review Petition, by the present S.L.P.s.

3. The Appellant was appearing in Person. Even though the Court had made a suggestion that a Counsel be appointed to represent her, she declined the

same. The submissions made by the Appellants are:

3.1 The Appellant submitted that she is entitled to a Severance Package of Rs. 69.99 lakhs, which is equivalent to her last drawn salary of Rs.

58,330/□ per month for a period of 10 years, i.e. 120 months.

The calculations put forth by the Appellant is as follows:

[Severance Package = Last drawn monthly Salary x 120 months];

[Rs. (58,330 x 120) = Rs. 69,99,600 / □] 3.2
The Appellant submitted that she had been in “continuous service” for over 20 years with the R2□ bank. Consequently, she was eligible for all benefits payable to a ‘workman’ under the I.D. Act.

3.3 The Appellant further submitted that the terms of the Housing Loan taken by her during the course of service, provided for 782 certain relaxations and benefits to the employees. The Appellant submitted that her outstanding loan amount should be waived by the R2□ Bank.

3.4 The Appellant submitted that the R2□ bank had been deducting T.D.S. on all the payments made to her during the pendency of the legal proceedings. The Appellant submits that this deduction is illegal, and she is entitled to a refund of a sum of Rs. 13,69,083/□ deducted towards T.D.S.

4. The R2□ Bank was represented by Mr. Dhruv Mehta, Sr. Adv, alongwith Mr. Gagan Gupta, Adv, the Counsel for the R2□ bank inter alia submitted:

4.1 It is the admitted position that the Appellant’s post had become redundant when her boss left the Bank. The Appellant was offered four alternate positions of (i) Business Development Officer, (ii) Customer Service Officer, (iii) Clearing Officer, and (iv) Banking Services Officer in the same pay scale. The Appellant however declined each of these offers. In these circumstances, her services came to be terminated. As a special case, a severance amount of Rs. 8,17,071/□ was paid apart from the other benefits.

4.2 It was further submitted that the Bank complied with all the mandatory requirements specified in S. 25F (a) and (b) of the I.D. Act. The compensation of Rs. 8,17,071/□ granted to the Appellant, was computed in accordance with S. 25F (b) i.e. compensation equivalent to 15

days' salary multiplied by the number of years of employment.

The High Court had recorded that the Appellant had already received monetary benefits in excess of the compensation she was entitled to under the law. Therefore, the Appellant was not entitled to any additional amount.

4.3 The R2□Bank submitted that during Conciliation proceedings, they had offered a Severance Package of Rs. 32.79 lacs which was worked out on the basis of the last drawn Basic Salary + Monthly Allowances, for past 10 years (equal to 120 months). The Basic Salary was Rs. 19,280/□and Monthly Allowances [H.R.A. + Medical + L.T.A. of Rs. 8,050/□]. The total basic component was Rs. 27,330/□(19,280 + 8,050). The severance package by the Bank was computed as follows:

$$\text{S e v e r a n c e P a c k a g e} = (\text{M o n t h l y b a s i c component} \times 120 \text{ months}) = \text{Rs. } 27,330 \times 120 = \text{Rs. } 32,79,600/\square$$

5. We have perused the pleadings and Written Submissions made by the parties. 5.1 It is the admitted position that the Bank had offered four alternative positions such as “Business Development Officer”, “Customs Service Officer”, which were at par with her existing pay scale and emoluments. The Appellant was however not willing to accept any of the alternate positions offered to her. Nor was she willing to accept the redundancy package offered to her. In the circumstances the R2□Bank was justified in terminating the services of the Appellant, vide termination letter dated 01.10.2005.

5.2 The Bank has complied with the statutory requirements under S. 25F of the I.D. Act which lays down the conditions that an employer must comply, on the retrenchment of a workman.

In the present case, the High Court has held that the Appellant had “abandoned” her job, on her refusal to accept any of the alternative positions with the bank, on the same pay scale. 5.3 The concept of “abandonment” has been discussed at length in a Judgment delivered by a 3□ Judge Bench of the Supreme Court in *The Buckingham & Carnatic Co. Ltd. v Venkatiah & Ors.*¹ wherein it was held that abandonment of service can be inferred from the existing facts and circumstances which prove that the employee intended to abandon service. This case was followed by a two judge bench in *Vijay S Sathaye v Indian Airlines Ltd. & Ors.*² . In the case before us, the intentions of the Appellant can be inferred from her refusal to accept any of the 4 alternative positions offered by the R2□Bank. It is an admitted position that the alternative positions were on the same pay scale, and did not involve any special training or technical knowhow.

In any event, the claims raised by the Appellant before various forums were with (1964) 4 SCR 265 (2013) 10 SCC 253 respect to enhancement of compensation, which are monetary in nature. The Appellant's conduct would constitute a voluntary abandonment of service, since the Appellant herself had declined to accept the various offers of

service in the Bank. Furthermore, even during conciliation proceedings she has only asked for an enhanced severance package, and not reinstatement.

Once it is established that the Appellant had voluntarily abandoned her service, she could not have been in “continuous service” as defined under S. 2(oo) the I.D. Act, 1947. S. 25F of the I.D. Act, 1947 lays down the conditions that are required to be fulfilled by an employer, while terminating the services of an employee, who has been in “continuous service” of the employer. Hence, S. 25F of the I.D. Act, would cease to apply on her.

The condition precedent for Retrenchment of an employee, as provided in S. 25F of the I.D. Act, 1947 was discussed by a Constitution Bench of this Court in *Hathisingh Manufacturing Ltd. v Union of India*³, while deciding the constitutional validity of S. 25FFF. The Constitution Bench held, “9. ...Under Section 25□F, no workman employed in an industrial undertaking can be retrenched by the employer until (a) the workman has been given one month’s notice in writing indicating the reasons for retrenchment and the period has expired or the workman has been paid salary in lieu of such notice, (b) the workman has been paid retrenchment compensation equivalent to 15 days’ average salary for every completed year of service and (c) notice in the prescribed manner is served on the appropriate Government....By S. 25F a prohibition against retrenchment, until the conditions prescribed by that Section are fulfilled in imposed.” S. 25F of the I.D. Act, 1947 is extracted herein below:

“25F. Conditions precedent to retrenchment of workmen.□ No AIR 1960 SC 923 workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

(a) The workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].” In the present case, the R2□ Bank has paid the Appellant a sum of Rs. 8,17,071/□ which included 6 months’ pay in lieu of Notice under S. 25F(a) and an additional amount calculated on the basis of 15 days’ salary multiplied by the number of years of service, in compliance with S. 25F(b).

However, no Notice was sent to the Appropriate Government or authority notified, in compliance with S. 25F(c) of the I.D. Act. A three Judge Bench of this Court in Gurmail Singh & Ors. v State of Punjab & Ors.⁴ Held that the requirement of clause (c) of S. 25F can be treated only as directory and not mandatory. This was followed in Pramod Jha & ors. v State of Bihar & Ors.⁵ wherein it was held that compliance with S. 25F(c) is not mandatory. 5.4 The Appellant has admittedly received an amount of Rs. 1,07,73,736/□ under various heads:

HEADS	AMOUNT (IN RS.)
Towards Notice Period	1,77,684/-
Severance Pay	6,39,387/-
Gratuity	3,81,209/-

Back Wages pursuant to 8,00,000/□Execution (1991) 1 SCC 189 (2003) 4 SCC 619 Towards Interim Award 33,19,096/□Payments made under S. 54,56,360/□17B.

TOTAL 1,07,73,736/□The Appellant has claimed an amount of Rs. 69.99 lakhs. The Appellant has already received almost double the amount claimed by her.

6. In light of the discussions above, the afore□said amounts received by her may be treated as a final settlement of all her claims. The impugned Judgment of the Division Bench dated 14.07.2017, is modified to this extent.

The Civil Appeals stand dismissed, with no order as to costs. All applications stand disposed of accordingly.

.....J. (ABHAY MANOHAR SAPRE)J. (INDU MALHOTRA)
New Delhi, December 3rd 2018