

JUDGMENT SHEET
ISLAMABAD HIGH COURT, ISLAMABAD,
(JUDICIAL DEPARTMENT)

C.R. No.105/2013

Syed Azmat Hussain

versus

Habib Bank Limited through its President

Petitioner by: Syed Kazim Hussain Kazmi, Advocate.

Respondent by: Mr. Tariq Mahmood, Advocate.

Date of Decision: 16.03.2020

MOHSIN AKHTAR KAYANI, J: Through the captioned civil revision petition, the petitioner has called in question concurrent findings of learned Civil Judge 1st Class, Islamabad as well as of the learned Additional District Judge, Islamabad, passed vide impugned judgments and decrees dated 21.04.2011 and 30.01.2013, respectively, whereby suit filed by the petitioner has been dismissed.

2. Brief facts referred in the instant civil revision petition are that the petitioner while serving in the Habib Bank Limited had opted Voluntary Separation Scheme (VSS), 2001, but challenged the same on the ground that same was imposed under duress; the petitioner claims to be a civil servant at the time of acceptance of the said Scheme in the year 2001 within the meaning of Section 2-A of the Service Tribunals Act, 1973 and filed an appeal on account of being paid less terminal benefits and during pendency of the said appeal, the apex Court in its judgment passed in Mubeen-us-Salam's case declared said Section 2-A as partly *ultra vires* to the Constitution of the Islamic Republic of Pakistan, 1973, which constrained the petitioner to file a suit for redressal of his grievance. Accordingly, the petitioner filed a suit for recovery of Rs.2,247,126/- at Civil Court, Islamabad, which was contested by the respondent Bank by filing their written statement and the learned trial Court after recording of pro and contra evidence dismissed the suit vide impugned judgment and decree dated 21.04.2011. Feeling aggrieved thereof, the petitioner preferred an appeal before

learned Additional District Judge, which was also dismissed vide impugned judgment and decree dated 30.01.2013. Hence, the instant civil revision petition.

3. Learned counsel for petitioner contends that both the Courts below while adjudicating upon the suit have erroneously appreciated the oral and documentary evidence put forward by the petitioner; that the petitioner has brought on record ample evidence to prove that the VSS was got signed from the petitioner under duress and even he was deprived of his hard earned rights and service benefits which were less calculated, but both the Courts below have brushed aside the same and dismissed the suit in hasty manner and as such, the question of limitation has also wrongly been interpreted in the instant case as the suit was filed within the timeframe allowed by the apex Court, therefore, the impugned judgments and decrees being illegal maybe set-aside and the suit of the petitioner may be decreed.

4. Conversely, learned counsel for respondent HBL while opposing the instant civil revision petition contends that the petitioner himself voluntarily separated and received all the benefits under the VSS, therefore, he is estopped by his conduct to agitate the grievance by filing of suit; that the petitioner has not come to this Court with clean hands as he has not presented the facts in its true perspective and as such, both the Courts below have rightly appreciated the facts and law on subject while passing the impugned judgments and decrees.

5. Arguments heard, record perused.

6. Perusal of record reveals that the petitioner is aggrieved with the Voluntary Separation Scheme, 2001 introduced by the HBL/Respondent, referred as Mark-E, through which the petitioner being the employee of the respondent Bank agreed to separate from the services of the respondent bank on receiving certain benefits incorporated in the said VSS document. However, despite availing the said VSS package, he had challenged the same in the Federal Services Tribunal mainly on the ground that he is a civil servant and he could not

be deprived of his hard earned benefits by way of VSS, 2001, which was settled by way of duress, even otherwise, complete VSS benefits were not extended.

7. During pendency of service appeal before the FST, the Supreme Court of Pakistan had announced judgment in the case of Mubeen-us-Salam reported as PLD 2006 SC 602, as a result whereof Section 2-A of the Service Tribunal Act, 1973 has been amended and petitioner has been excluded from the definition of civil servant. Consequently, the petitioner within the prescribed time of 90 days filed instant civil suit before the learned Civil Court on 25.09.2006 and claims the following benefits.

5) *That the Voluntary Separation Scheme 2001 on the face of it was paradoxical. Although by nomenclature it was voluntary yet the same was discriminatory and mandatory in practice. Particularly for the persons in the category of the plaintiff there was no criteria/formula and the same was in fact based upon personal liking, disliking and a policy of pick and choose and this fact is evident from the recital of the policy and paragraph 1 of the same.*

6) *That the plaintiff was pressurized to opt for the Voluntary Separation Scheme 2001, which fact is evident from his immediate transfer orders from Islamabad to Karachi, however, he did not want to get premature retirement from service as he is quite healthy and could work till the age of superannuation. Particularly in the circumstances that his record of service remained meritorious and above board.*

7) *That while calculating the emoluments of VSS, the Defendant and other officers at the helm of affairs transgressed from all norms of justice, principle of equity, fair-play and they with ulterior motives fancifully calculated the emoluments of plaintiff on the lower side. The brief description of which is herein-below given:-*

	Amount Due (Rs.)	Paid (Rs.)	Payable (Rs.)
1. <u>Gratuity</u>	1043000/-	521500/-	521500/-
2. <u>S.P.F.</u>	1504437/-	1254789/-	249648/-*

* 1.1.99 to 31.12.2000

Rs.231768.00

1.1.01 to 30.6.2001

Rs.17880.00

Rs.249648.00

3. Sale of Car

(app. Original cost=

Rs.330000/-)

Recovered

Rs.153000/-

10% of O.C.

Rs.33000/-

Book Value: NIL

Refundable

Rs.120000/-

120000/-

4. Leave Encashment

Balance (730 days) due

Rs.1058104/-

P.L. 691 (180 days) paid

Rs.264526/-

Sick Leave: 54

C. Leave: 16

761

793578/-

5. Bonus

2001 (29800x3)=

Rs.89400/-

89400/-

6. Damages

On account of mental torture

500000/-

Total: 2274126/-

8. On the other hand, the respondent Bank contested the suit and denied the contentions of the petitioner by taking the stance that the petitioner had willfully opted the VSS, 2001 and he was not forced to accept the same and as such, the calculation of all benefits was mentioned along with the Scheme, which were carefully considered by the petitioner and after due understanding the same was accepted, therefore, the instant suit is not maintainable, even otherwise, the suit is time barred.

9. On the basis of pleadings of the parties, the learned Trial Court has framed the following eight issues vide order dated 20.06.2007.

1. *Whether the suit is incompetent and not maintainable? OPD*
2. *Whether the suit is barred by law? OPD*
3. *Whether the plaintiff has no cause of action, to invoke the jurisdiction of this Court and suit is liable to be dismissed on this score as well? OPD*
4. *Whether the suit is bad for mis-joinder and non-joinder of necessary parties? OPD*
5. *Whether the plaintiff has approached this Court with un-clean hands? OPD*

6. *Whether the suit of the plaintiff is false, frivolous and vexatious, hence the defendant is entitled for compensatory costs U/S 35-A of CPC? OPD*
7. *Whether the plaintiff has intentionally undervalued the suit for purpose of Court fee and jurisdiction and plaint is liable to be rejected? OPD*
8. *Whether the plaintiff is entitled to the decree for recovery of Rs.22,47,661/- on account of less paid emoluments/terminal benefits and also damages on account of voluntary separation scheme 2001, on the basis of reasons mend in the plaint? OPP*
9. *Relief.*

10. In order to discharge the onus, the petitioner appeared as PW-1 in his own favour and recorded his evidence in the following manner:

"میری ریٹائرمنٹ superannuation کی بنیاد پر نہ ہوئی۔ بلکہ بینک نے بذریعہ لیٹر نمبر مورخہ 2.6.2001 PD/VSS/180 یہ لیٹر VSS سکیم تھی اور منتخب ملازمین کو ہی دی گئی۔ یہ جزل یا عام ملازمین کے لیے سکیم نہ تھی۔ یہ سکیم مجھے جبراً منظور کرنا پڑی کیونکہ انتظامیہ نے مجھ پر دباؤ ڈالا اور میرا ٹرانسفر فوراً اسلام آباد سے کراچی کر دیا۔ ٹرانسفر آرڈر Mark-C، چھٹی ہابت VSS سکیم Mark-D اور تفصیلات VSS سکیم Mark-E پیش کرتا ہوں۔ VSS سکیم کے لیٹر کے ہمراہ purposed emoluments کی لسٹ دی تھی جو کہ Mark-F، ادائیگی emoluments کی تفصیل Mark-G ہے میں واجبات کی ادائیگی سے مطمئن نہ تھا کیونکہ وہ صحیح طور پر calculate نہ ہوئے۔"

11. The petitioner has calculated the total benefits and claimed to have been paid less to the tune of Rs.1,774,126/-, whereas the petitioner also claims additional amount of Rs.500,000/- as compensation. During the course of cross-examination, the petitioner acknowledged the following facts:

مجھے 2001 VSS سکیم کے تحت بینک سرکولر 2.6.2001 کو ملا۔ میں نے سرکولر نمبر PD/VSS/181 مورخہ 2.6.01 اچھی طرح پڑھا تھا جو کہ Exh.D1 ہے۔ یہ درست ہے کہ بینک نے VSS PD/181 سرکلر جاری کیا تھا۔ اس کے ساتھ قانون کے مطابق emolument کی تفصیلات درج تھیں از خود کہا کہ قانون تھی یہ میں نہ بتا سکتا ہوں۔ یہ درست ہے کہ VSS اسکیم کے تحت جو ادائیگی بینک نے مجھے کی وہ میں نے کر لی۔ VSS کا مطلب رضاکارانہ ہوتا ہے۔

12. The respondent Bank has produced Muhammad Feroz, Manager, HBL as DW-1, who stated before the Court that the plaintiff/petitioner had voluntarily accepted the VSS, while the brochure of Scheme was also appended with list of dues, which was also voluntarily accepted by the plaintiff/petitioner without any objection. All the benefits were calculated on the basis of respondent Bank's

policy prevailing at that time and the dues claimed by the petitioner in body of plaint could only be given to those employees who are in service and as such, the petitioner is not entitled to claim those benefits being a retired personnel, nor he is entitled for any compensation. However, during the course of cross examination, DW-1 Muhammad Feroz, Manager, HBL acknowledged that:

VSS سکیم کو اردو میں رضاکارانہ سکیم کہتے ہیں۔ رضاکارانہ میں option دیا جاتا ہے جبکہ جبری میں اس کی ضرورت نہ ہے یہ بات درست ہے کہ جس پالیسی کے تحت مدعی کو ریٹائرڈ کیا گیا وہ منتخب شدہ لوگ تھے۔ یہ selected لوگوں کے لئے رضاکارانہ تھی مجھے لیٹر کی تاریخ یاد نہ ہے جس کے تحت مدعی نے VSS سکیم کو قبول کیا تھا مجھے یاد نہ ہے کہ اس سکیم کا دورانیہ کتنا تھا۔

DW-1 Muhammad Feroz, Manager, HBL also acknowledged that when VSS was announced, the Bank was already taken over by the Government rendering it to be a non-private institution and as such, the entire Scheme was completed under the Rules of the respondent Bank.

13. Keeping in view the above position, the onus in terms of Article 117 of the Qanun-e-Shahadat Order, 1984 is upon the petitioner to prove the factum of duress and coercion as to whether the VSS, 2001 was forcibly imposed upon the petitioner, but surprisingly, the petitioner has not discharged his onus through any independent evidence to assume that he was not willing to accept the offer, and even though, the petitioner himself acknowledged that the VSS, 2001 means "رضاکارانہ" basis. Similarly, the document of VSS, 2001 (Mark-E) contains the wordings that, *"We Announce Voluntary Separation Scheme for Selected Employees of the Bank"*. Even otherwise, another document on letterhead of the respondent Bank, dated 05.07.2001, referred as Mark-D/1, has been placed on record, whereby the petitioner's request for exercising his option in favour of Voluntary Separation Scheme, 2001 was accepted and the entire liabilities calculated in his favour have also been brought on record by the petitioner himself through Mark-G.

14. Keeping in view the above background and facts of the case, the following facts have been surfaced on record:

- a) VSS, 2001 was a voluntary separation scheme, which was opted by petitioner himself.
- b) There is no element of duress and coercion imposed upon the petitioner, nor the same has been proved by the petitioner on record.
- c) No evidence has been brought on record to justify the plea raised by the petitioner in Paras 5, 6 & 7 of the plaint.
- d) The petitioner has failed to submit any bank policy or rules through which he can justify the difference of payments in any manner.

15. I have also gone through the concurrent findings of both the Courts below with able assistance of the learned counsel for the parties and observed that both the Courts below have rightly appreciated the evidence in its true perspective and no illegality has been observed, nor demonstrated by the petitioner on record.

16. In the light of above discussion, it is settled that once VSS has been accepted by the petitioner in furtherance of an offer made by the respondent Bank, it becomes a promise and at the same time when financial benefits have been received, the VSS is converted into a legally binding contract, whereas all rights and benefits have to be governed under the said contract, even otherwise, the petitioner has failed to discharge his onus to prove that Voluntary Separation Scheme, 2001 was executed by him under duress and coercion by the respondent Bank. The petitioner he has not substantiated his claim in terms of Qanun-e-Shahadat Order, 1984 and the relief claimed by him is not even justified through any bank policy, manual, rules or regulation, therefore, both the Courts below have rightly dismissed the suit, hence, the instant civil revision petition is hereby **DISMISSED** for being meritless.

(MOHSIN AKHTAR KAYANI)
JUDGE

Khalid Z.