

Supreme Court of India

Surjeet Singh Bhamra vs Bank Of India & Ors on 8 February, 2016

Author: A M Sapre

Bench: J. Chelameswar, Abhay Manohar Sapre

Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No.5038 OF 2009

Surjeet Singh Bhamra

.....Appellant(s)

VERSUS

Bank of India & Ors.

.....Respondent(s)

J U D G M E N T

Abhay Manohar Sapre, J.

1) This appeal is filed against the final judgment and order dated 09.05.2007 passed by the High Court of Madhya Pradesh at Jabalpur in Writ Appeal No. 171 of 2006 whereby the Division Bench of the High Court dismissed the appeal filed by the appellant preferred against the judgment and order dated 20.04.2006 of the Single Judge of the High Court in Writ Petition No. 3842 of 2002 by which the Single Judge dismissed the writ petition of the appellant wherein the challenge was to the order dated 20.03.2001 passed by the Chief Manager, Bank of India (respondent No.3 herein) imposing the punishment of reduction of his basic pay by five stages on the appellant.

2) In order to appreciate the issue involved in this appeal, it is necessary to set out the relevant facts in brief infra.

3) The appellant was an employee of the Bank of India. He was posted as Branch Manager, Panagar Branch, Jabalpur Region from 04.07.1996 to 26.05.1999. According to the appellant, during his tenure, the profits of the said Branch were increased from 2 lakhs to 30 lakhs, deposits were increased from 6 crores to 11 crores and advances were increased from 2 crores to 4 crores. The appellant also claimed that the NPA of the Branch fell down from 57 lakhs to 20 lakhs. The appellant claimed that due to his good performance, his Branch won the award of Best Branch of the Year.

- 4) On 08.09.2000, a memo was issued by the Chief Regional Manager, Bank of India, Jabalpur to the appellant mentioning therein that during his tenure as Manager of Panagar Branch, certain irregularities/lapses were reported in disbursement of loans. The details of several irregularities alleged to have been committed by the appellant were mentioned in the memo. The appellant was asked to submit his reply. On 18.10.2000, the appellant submitted his reply to the Chief Regional Manager, Jabalpur.
- 5) On 01.11.2000, the respondent-Bank announced Voluntary Retirement Scheme, 2000 (in short 'Scheme') with a view to lay off approx. 6000 extra employees. Accordingly, offers were made to the staff in general for opting voluntary retirement pursuant to the Scheme on or before 31.12.2000.
- 6) In response to the said Scheme, the Bank received 7600 applications as against 6000. The appellant also applied for voluntary retirement on 16.11.2000. The appellant on 05.01.2001 was informed that his application is in the process.
- 7) On 02.03.2001, the appellant was served with the charge-sheet. The charges were in relation to the irregularities which were mentioned in the memo dated 08.09.2000.
- 8) The appellant filed his reply on 13.03.2001 to the charge-sheet and accepted all the charges contained therein unconditionally.
- 9) By order dated 20.03.2001, the Chief Manager, Dewas Branch and Disciplinary Authority, passed an order awarding the consolidated penalty of reduction in the pay of the appellant by five stages in the time scale for a period of 3 years and on the expiry of such period, the reduction was to have the effect of postponing the future increments of his pay to the extent in terms of Regulation No.4(1) of Bank of India Officer Employees' (Discipline & Appeal) Regulations, 1976 (in short "the Regulations").
- 10) After passing of the order of punishment, the Chief Regional Manager accepted the appellant's application for voluntary retirement by letter dated 19.06.2001. In this way, the appellant stood retired from the services of Bank w.e.f. 19.06.2001.
- 11) Being aggrieved by the said order of punishment, the appellant preferred a departmental appeal before the Zonal Manager, Bank of India, Ujjain Zone. By order dated 21.06.2002, the Appellate Authority dismissed the appeal.
- 12) Challenging the said order, the appellant preferred writ petition being W.P. No.3842 of 2002 before the High Court. The Single Judge of the High Court by order dated 20.04.2006, dismissed the writ petition.
- 13) Against the order of the Single Judge, the appellant filed an intra court appeal being W.A. No. 171 of 2006 before the High Court. The Division Bench of the High Court by impugned order dated 09.05.2007 dismissed the appeal and upheld the findings of the Single Judge.

14) Aggrieved by the said order, the appellant-employee has preferred this appeal by way of special leave before this Court.

15) Heard Mr. Mehul M. Gupta, learned counsel for the appellant and Mr. S. Gopakumaran Nair, learned senior counsel for the respondents.

16) Mr. Mehul M. Gupta, learned Counsel for the appellant-employee while assailing the legality and correctness of the impugned order urged many-fold submissions. In the first instance, learned counsel contended that the High Court erred in dismissing the appellant's writ petition and his intra court appeal thereby erred in upholding the punishment order dated 20.03.2001 passed by the Bank.

17) It was his submission that once the appellant applied for voluntary retirement by ensuring compliance of the requirements of the Scheme then it was obligatory on the part of the Bank to have passed an order either by accepting or rejecting the appellant's application on or before 31.12.2000 as prescribed in the Scheme.

18) Learned counsel pointed out that since the Bank failed to pass any order on the appellant's application on or before 31.12.2000, its effect was that the appellant's application was deemed accepted by "deeming fiction" and as a consequence thereof, the appellant stood retired from the services of the Bank on 31.12.2000.

19) Learned counsel contended that in these circumstances, the relationship of employer and employee between the appellant and the Bank came to an end on 31.12.2000 and, therefore, the Bank had no right to take any action against the appellant much less to serve any charge-sheet and hold an inquiry into those charges and impose a punishment by passing order dated 20.03.2001.

20) Learned counsel further urged that though the order of voluntary retirement was issued by the Bank on 19.06.2001 yet according to him such order was deemed to have been passed on 31.12.2000 because in terms of the Scheme, an order of acceptance or relieving or rejection of voluntary retirement was required to be passed by the Bank on or before 31.12.2000. In other words, the submission was that since the compliance of several clauses of the Scheme was mandatory for the Bank and, therefore, if the Bank failed to pass any order on the application by 31.12.2000, it only meant that either the application stood automatically allowed on 31.12.2000 or the order passed on 19.06.2001 by which the appellant's application had been accepted was deemed to have been passed on 31.12.2000. In either way, therefore, the appellant's retirement, according to learned counsel, came into force w.e.f. 31.12.2000 and not from 19.06.2001.

21) Learned counsel then submitted that the punishment imposed on the appellant is not legally sustainable because the disciplinary proceedings which culminated in passing the punishment order were initiated by the Bank after 31.12.2000, i.e. on 02.03.2001, when the relationship of employee and employer between the parties had already ceased due to acceptance of appellant's application for voluntary retirement on 31.12.2000 and hence the Bank had no right to initiate any disciplinary proceedings on and after 31.12.2000 against the appellant.

22) Learned counsel lastly submitted that since on assurance of the Bank, the appellant admitted the charges and, therefore, the Bank ought not to have imposed any punishment on acceptance of appellant's application for voluntary retirement. It was also urged that in any case, looking to the past performance and unblemished career of the appellant and having regard to the gravity of the charges, the punishment inflicted on the appellant is excessive and, therefore, liable to be quashed.

23) In reply, learned counsel for the respondent (Bank) while supporting the impugned order urged that no interference in the impugned order is called for and the grounds on which punishment was upheld by the High Court deserve to be upheld by this Court and lastly, the grounds urged by the learned counsel for the appellant in support of this appeal also have no merit.

24) Learned counsel elaborated his submission by contending that the reading of the Scheme as a whole would go to show that firstly, the appellant was not eligible for consideration because disciplinary proceedings were in contemplation against him and later initiated also and even if, he was held eligible to apply pursuant to the Scheme yet according to learned counsel, the Bank was within their rights to pass orders on his application made for voluntary retirement only on conclusion of disciplinary proceedings and which the Bank also rightly passed by accepting the application on 19.06.2001.

25) Learned Counsel further pointed out that the Scheme did not provide any consequence in case if the applications submitted by employees remain pending on 31.12.2000. It was urged that in the absence of any specific consequences not being provided in the Scheme in relation to pending applications on 31.12.2000, there could be no deemed acceptance of such applications on 31.12.2000 as was urged by the learned counsel for the appellant. It was more so as the learned counsel pointed out that the Scheme had provided that no voluntary retirement of any employee would come into force unless an order is passed by the Bank on his application. In other words, the submission was that every application made by the employee was required to be disposed of by passing an order by the Bank and, therefore, so long as the order had not been passed, the applications would remain pending.

26) Learned counsel urged that the Scheme was directory in its compliance insofar as the Bank was concerned and, therefore, the Bank was within its rights to decide the pending applications even after 31.12.2000 regardless of any time constraint on the Bank in deciding such applications. Learned counsel urged that the principle of "deeming fiction" in these circumstances had no application to the Scheme for want of any specific clause in the Scheme providing such fiction.

27) Learned counsel further pointed out that since the appellant was in services of the Bank till 19.06.2001, the Bank was within their rights to issue charge-sheet and conclude the disciplinary proceedings before 19.06.2001 and which the Bank did when it served the charge-sheet on the appellant on 02.03.2001 and passed the punishment order on 20.03.2001 on the basis of admission made by the appellant admitting the charges leveled against him.

28) Lastly, learned counsel submitted that in the light of his above-mentioned submissions coupled with the fact that there was no challenge to the order dated 19.06.2001 by which the appellant's

application for voluntary retirement was accepted, no case is made out by the appellant for quashing the punishment order dated 20.03.2001 which was rightly confirmed by the Appellate Authority, Writ Court and lastly by the Division Bench.

29) Having heard the learned counsel for the parties and on perusal of the record of the case, we find no substance in the submissions of learned counsel for the appellant.

30) In our considered opinion, the fate of the appeal largely depends upon answering three questions, viz., firstly, whether the Scheme in question and, in particular, its relevant clauses are mandatory or directory for ensuring their compliance by the appellant and the Bank; Secondly, what is the effect of the Scheme on the rights of the appellant and the Bank for deciding the legality of the punishment order impugned in these proceedings; and lastly, whether any case is made out to set aside the punishment order.

31) At the outset, we may state that the appellant did not challenge the order dated 19.06.2001 passed by the Bank, by which his application for voluntary retirement was accepted but confined his challenge in these proceedings only to the order dated 20.03.2001 by which he was awarded punishment of reduction of his basic salary in five stages in time scale for a period of 3 years and its consequential effect in pay fixation as detailed in the order.

32) Since the learned counsel for the parties have extensively referred to the various clauses of the Scheme to show its object and effect for deciding the legality of the punishment order, we consider it apposite to refer to these clauses infra:

“BANK OF INDIA VOLUNTARY RETIREMENT SCHEME-2000 A. ELIGIBILITY:

All permanent employees of the Bank with 15 years of service or 40 years of age, as on 01.11.2000.

The following employees are not eligible for Voluntary Retirement under the Scheme:-

a) Specialists Officers/Employees who have executed service bonds and have not completed it, Employees/Officers serving abroad under Special Arrangements/Bonds, will not be eligible for VRS (the Board of Directors may however waive this, subject to fulfillment of this bond/other requirements).

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

c) Employees appointed on contract basis.

d) Any other category of employees as may be specified by the Board.

F) The Competent Authority may accept or reject the

application of an employee for voluntary retirement keeping in view the organizational requirements or any administrative reason and the decision of the Competent Authority shall be final. No voluntary retirement shall come into effect unless the Competent Authority has passed orders accepting the application of the employees to retire voluntarily under the Scheme.

G) Acceptance and Relieving/Rejection:

On acceptance of the application for voluntary Retirement of an employee by the Competent Authority, the acceptance as well as the date of relieving shall be communicated to the employee through for controlling office/s. the employee shall stand relieved on the date stipulated in the above communication. The entire process of acceptance and relieving shall be concluded not later than 31.12.2000.

In case, the application for voluntary Retirement of an employee is rejected by the Competent Authority, an order giving reasons for the same shall be passed by the Competent Authority and communicated to the employee through the controlling office, on or before 31.12.2000.

I. EFFECTIVE DATE:

The Scheme will be effective from 15.11.2000 and will be in operation for a period of 1 month i.e. up to 14.12.2000 and can be withdrawn at the discretion of the Bank at any time without assigning any reason.

J. RIGHT TO AMEND/ALTER :

The Bank reserves the right to alter and/or amend the above conditions of the Scheme. The applications made under the Scheme will be irrevocable and the employees will not have the right to withdraw the application once submitted.”

33) Mere perusal of the afore-quoted clauses would go to show that the application for voluntary retirement was to be filed by the employee on or before 14.12.2000 and on such application being filed, the employee had no right to withdraw the application. The Scheme provided that any employee against whom some disciplinary proceedings are contemplated or pending or if he is under suspension then he is not eligible to apply for voluntary retirement under the Scheme. The Scheme further provided that the Bank is required to pass orders on the application (accepting or rejecting) and complete all proceedings arising therefrom on or before 31.12.2000. The Scheme also provided that no voluntary retirement of an employee would come into effect unless the Bank passes an order on the application.

34) Before we examine the questions arising in the case, it is necessary to see the law, which applies to the case in hand.

35) A three-Judge Bench of this Court in *Balwant Singh & Ors. vs. Anand Kumar Sharma & Ors.*, (2003) 3 SCC 433 while examining the provisions of Bihar Buildings (Lease, Rent and Eviction) Control Act explained as to under what circumstances, the duty cast upon a private party is said to be mandatory and why it is said to be directory for any public functionary. This is what was held in paragraph 7 of this decision:

“7. Yet there is another aspect of the matter which cannot be lost sight of. It is a well-settled principle that if a thing is required to be done by a private person within a specified time, the same would ordinarily be mandatory but when a public functionary is required to perform a public function within a time-frame, the same will be held to be directory unless the consequences therefor are specified. In Sutherland’s Statutory Construction, 3rd Edn., Vol. 3, at p. 107, it is pointed out that a statutory direction to private individuals should generally be considered as mandatory and that the rule is just the opposite to that which obtains with respect to public officers. Again, at p. 109, it is pointed out that often the question as to whether a mandatory or directory construction should be given to a statutory provision may be determined by an expression in the statute itself of the result that shall follow non-compliance with the provision. At p. 111 it is stated as follows:

“As a corollary of the rule outlined above, the fact that no consequences of non-compliance are stated in the statute, has been considered as a factor tending towards a directory construction. But this is only an element to be considered, and is by no means conclusive.”

36) Later, a question arose in the case of *Visitor, AMU & Ors. vs. K.S. Misra*, (2007) 8 SCC 593 as to whether a clause in a Statute of the Benaras Hindu University which inter alia provided for doing certain act within a specified time by the party concerned, if it is not done within the time specified in a particular clause of the Statute then whether such clause would be construed as being directory or mandatory in nature and secondly, what would be the effect if the Statute did not provide for any consequence to accrue in the event of non compliance of such clause or when the Statute provided for some consequence in the event of non-compliance.

37) Justice GP Mathur speaking for the Bench examined the issue in the light of the aforementioned principle laid down in the case of *Balwant Singh* (supra) and after quoting the principle in paragraph 12 applied the same to examine the relevant clause of the case and held as under:

“12. A three-Judge Bench in *Balwant Singh v. Anand Kumar Sharma* has explained in what circumstances the duty cast upon a private party can be said to be mandatory and para 7 of the Report reads as under: (SCC p. 436, para 7)“Principle

quoted” Therefore, in accordance with the law laid down in the above authority, the provisions of Statutes 61(6)(iv)(b) and (c) should be treated as mandatory as it is a private party who has to do a particular act within a specified time.”

38) When we apply the aforesaid principle of law for interpreting the clauses of the Scheme in question then we find that the Scheme is partly mandatory and partly directory. In other words, it is mandatory in compliance of some clauses so far as the employee is concerned, whereas it is directory in compliance of some clauses so far as the Bank is concerned.

39) This is clear when we see the clause, which provides for filing an application by the employee by a particular date. This clause is mandatory in its compliance for the employee because if an employee does not file the application before the due date then he has no right to file the application thereafter, whereas the clause which requires a Bank to pass the orders on the application by a specified date and complete all the formalities, it is directory in its compliance.

40) In other words, it is not mandatory for the Bank to necessarily complete all the formalities before the due date specified in the clause and if the Bank fails to do it within the time but completes the formalities after the specified date, it would be permissible for the Bank to do so and the act so done would be regarded as being in conformity with the requirement of the Scheme.

41) This we say for several reasons. Firstly, the Scheme does not provide any consequence as to what would follow, if the Bank does not ensure compliance within the time fixed in the clause. Secondly, the appellant being a private individual, if he is required to do some act within a specified time prescribed in the Scheme then it is mandatory for him to do so within the time specified. Thirdly, the Bank being a public functionary is required to perform public functions and hence while discharging such functions, if the Scheme has not provided any consequence for non-compliance of the act within time, then the Scheme would not be construed as mandatory but it would be construed as directory insofar as the Bank is concerned. Fourthly, since the Scheme has not provided for accrual of any benefit in employee's favour by "deeming fiction" in the event of non-compliance on the part of the Bank then no such benefit can accrue in favour of an employee automatically by fiction as a result of any non-compliance. In other words, in order to enable an employee to claim any benefit by "deeming fiction" on account of non-compliance of any act by the Bank under the Scheme, it is necessary for the employee to show that the Scheme contains a clause for conferral of such benefit on the employee by "deeming fiction". There is no such clause in the Scheme and lastly, when the Scheme has provided that the voluntary retirement of any employee would come into effect only when the order is passed on the application of an employee then there is no question of any application being accepted by "deeming fiction". In other words, when the Scheme has provided passing of a specific order by the Bank for accepting the application for voluntary retirement then the application cannot be held as accepted by "deeming fiction".

42) In view of foregoing reasons, we are of the considered opinion that the Scheme in question is partly mandatory for its compliance so far as the employee (appellant) is concerned whereas it is directory for its compliance so far as the Bank (respondent) is concerned. There can be no dispute for the legal proposition that the Scheme can be partially mandatory and partially directory.

43) In the light of what we have held above, we find from the facts of this case that on 08.09.2000, the Bank issued a memo to the appellant wherein the Bank set out the irregularities alleged to be committed by the appellant. They were replied by the appellant on 18.10.2000. The Scheme, however, came into force on 01.11.2000 which, inter alia, provided that the application for voluntary retirement can be made before 14.12.2000. The cut-off date for the Bank for completing all the formalities was 30.12.2000.

44) The appellant applied for voluntary retirement on 16.11.2000 whereas he was served with the charge-sheet on 02.03.2001. He, however, admitted the charges on 13.03.2001. This resulted in imposition of punishment on the appellant on 20.03.2001. It was followed by acceptance of his application for voluntary retirement by the Bank on 19.06.2001.

45) In our considered opinion, the Bank was within its rights to issue a charge-sheet to the appellant on 02.03.2001 because firstly, on 02.03.2001, the appellant was in the employment of the Bank and, therefore, he could be subjected to face disciplinary proceedings as per the Rules. Secondly, since the memo was served on the appellant prior to introduction of the Scheme, the disciplinary proceedings were rightly initiated by serving a charge-sheet on the appellant after coming into force of the Scheme on 01.11.2000. Thirdly, in terms of the Scheme, the appellant's application could be considered only after conclusion of disciplinary proceedings and, therefore, the Bank was right in considering the application and eventually accepting it on 19.06.2001. Fourthly, the relationship of employee and employer between the appellant and the Bank continued till 19.06.2001 and, therefore, the Bank was within its rights to take any action under the service rules against the appellant up to 19.06.2001. It is not in dispute that the Bank took all the disciplinary actions prior to 19.06.2001 and then accepted the application for voluntary retirement on 19.06.2001. Such action, in our view, was just, legal and proper.

46) In the light of foregoing reasons, we cannot accept the submission of learned counsel for the appellant when he contended that the appellant stood deemed retired on 31.12.2000 because no order was passed or/and communicated to him by the Bank on or before 31.12.2000 on his application for voluntary retirement and, therefore, the Bank had no right to initiate any disciplinary proceeding and pass the punishment order against the appellant after 31.12.2000. This submission is devoid of any merit and is accordingly rejected.

47) Coming to the next question as to whether the punishment imposed on the appellant was legal or not. Learned counsel for the appellant was not able to point out any illegality or perversity in the disciplinary proceedings or in the punishment order dated 20.03.2001.

48) As a matter of fact, since the appellant admitted the charges leveled against him in the charge-sheet, there was no need for the Bank to have held any inquiry into the charges. When the

charges stood proved on admission of the appellant, the Bank was justified in imposing punishment on the appellant as prescribed in the Rules. We, therefore, find no ground to interfere in the punishment order as we also find that having regard to the nature and gravity of the charge, the punishment imposed on the appellant appears to be just and proper, calling no interference therein.

49) The next submission of the learned counsel for the appellant that since the appellant had unblemished career throughout in his service period, the disciplinary proceedings initiated against the appellant were not called for and deserve to be quashed also have no substance.

50) Suffice it to say, once the appellant admitted the charges, appropriate punishment as prescribed in the Rules could be inflicted on him. It was for the Appointing Authority to have taken into account the seriousness of the charge and overall performance of the appellant while imposing punishment. It was done by the authorities concerned in this case as would be clear from mere perusal of the punishment order. The relevant para of the punishment order reads as under:

“The acts of misconduct committed by you are serious in nature but keeping in view facts and circumstances of the case, I have decided to take a lenient view in the matter and to impose upon you Consolidated Major Penalty of reduction in pay by five stages in a time scale for a period of three years with the further direction that you will not earn your normal increments of pay during the period of such reduction and reduction will have the effect of postponing your future increments to that extent in terms of clause 4(f) of Bank Of India Officer Employees’ [Discipline and Appeal] Regulations, 1976.

I have considered your past record and all other extenuating/mitigating circumstances of the case. After a careful consideration, I find that the ends of justice would meet by imposition of the aforesaid consolidated penalty on you.

I order accordingly.”

51) In the light of foregoing, the submission of the learned counsel for the appellant on the question of imposition of punishment and on the issue of quantum has no substance and is accordingly rejected.

52) In view of the foregoing discussion, all the three questions framed above are answered against the appellant and in favour of the Bank.

53) The appeal thus fails and is accordingly dismissed. As a consequence, the impugned order is upheld though on reasons other than the one given by the High Court. No costs.

.....J.

[J. CHELAMESWAR]J.

[ABHAY MANOHAR SAPRE] New Delhi, February 08, 2016.