SBI VRS Optee Officers'' Action Group and Others Vs State Bank of India and Others

Writ Petition No. 4964 (W) of 2001

Court: Calcutta High Court

Date of Decision: June 28, 2002

Citation: (2003) 1 LLJ 690

Hon'ble Judges: Aloke Chakrabarti, J

Bench: Single Bench

Advocate: Saktinath Mukherji, Pradip Kumar Roy, Moupriya De and Rita Bhattacharjee, for the Appellant;Hirak Mitra, Ajay Kumar Gupta and S.N. Patra Bhattacharjee, for the Respondent

Final Decision: Dismissed

Judgement

Aloke Chakrabarti, J.

The petitioner No. 1 society and some of its members including office-bearers, who are all officers of various levels

of State Bank of India, filed this writ petition complaining that although, they applied for voluntary retirement under the scheme floated in respect of

employees of the bank and were otherwise eligible were refused the benefits of the said scheme unreasonably.

2. Facts stated in the petition which are relevant for its disposal are that Indian Banks'' Association with the approval of the Government of India

made a policy-decision introducing Voluntary Retirement Scheme in all public sector banks and advised them the salient features of the scheme by

their letter dated August 31, 2000. Accepting the recommendation made by the Indian Banks'' Association, the Central Board of Directors of the

bank by its resolution dated December 27, 2000, approved a scheme called the SBI Voluntary Retirement Scheme (hereinafter referred to as the

said Scheme).

3. In the said scheme it was provided that all permanent employees being officers and other employees with 15 years of service or 40 years of age

were eligible to opt for voluntary retirement under the said scheme except those who have executed bonds and have not completed it or those who

are serving abroad under special arrangements/bonds or those against whom disciplinary proceedings are contemplated/pending or are under

suspension or those who were appointed on contract basis or those who are highly skilled and qualified staff or are specialist officers or watch and

ward staff. Accordingly, the members of the petitioner No. 1 having eligibility under the said scheme applied for voluntary retirement under the said

scheme.

4. After the period for opting for retirement under the scheme was over, the respondent No. 4 the Deputy Managing Director and CDO of the

said bank issued an order by letter, dated February 2, 2001, introducing among other things a fresh condition that the application of the officers

who were eligible and who had made applications for the benefit under the said scheme and have completed 55 years of age on or about

December 31, 2000, may be accepted. Applying the altered condition, applications of some members of the petitioner No. 1 were rejected. Such

action of the respondent-bank in altering the condition of eligibility for applying under the scheme after the scheme was floated and the officers

opted for the same, is under challenge in the present writ petition.

5. Affidavit-in-opposition has been filed by the respondent-bank authorities and affidavit-in-reply was filed by the petitioners. Heard Sri Saktinath

Mukherji learned counsel for the petitioners and Sri Hirak Mitra, learned counsel for the respondents.

6. The first contention of the petitioner is that the voluntary retirement under the scheme is an offer made by the employer on certain terms and

conditions fulfilling which officers were entitled to the benefits under the scheme and when any officer opts for the same having all due qualifications

prescribed under the scheme, the benefit cannot be refused by the bank except on the ground that the officer concerned is not having all requisite

qualifications under the scheme. As an employer the bank had right to impose reasonable conditions as regards eligibility for making an offer and

once the scheme is floated and the officers apply thereunder disclosing their eligibility, condition of the scheme could not be altered nor such option

could be refused on any such altered condition.

7. It is contended by the learned counsel for the petitioners that the scheme was floated for declared purpose and object and the ground on which

alteration was effected raising the cut-off age from 40 years to 55 years have no nexus with such objects and purposes of the said scheme and in

fact those go to defeat the very said purposes and objects of the scheme.

8. On behalf of the respondents it is contended that taking into consideration the objects and purposes of the scheme and total budget involved

therein, when it was found that the number of applications opting for the benefit under the scheme were much more than the expected number, considering the entire aspect the policy was altered by the same appropriate authority who introduced the policy by altering the cut-off age for

application under the scheme and neither such policy introducing an alteration can be challenged in a writ petition nor the grounds on which the

alteration was effected can be said to be having no nexus with the objects and purposes of the scheme.

9. The first question which crops up for consideration is the contention of the respondents that the petitioners are not entitled to challenge the policy

of the bank in respect of granting voluntary retirement to its officers with attractive financial benefits. On behalf of the petitioner it is admitted that

the policy cannot be challenged in a writ jurisdiction but challenge herein is alteration purported to have been effected after the scheme is floated

and officers applied thereunder. Therefore, the first question can be answered as the challenge of the petitioners to the extent it is directed against

the policy itself, cannot be entertained in the writ jurisdiction in the present facts.

10. Therefore, in view of contention of the petitioner that the scheme did not provide for any power for alteration in the scheme itself, it falls for

consideration whether alteration purported to have been effected, can stand. On behalf of the respondents reference was made to the Clauses 4

and 9 of the proforma of the application for voluntary retirement (Annexure P1 to the writ petition). Clause (ix) of Para. 8 of the scheme itself

(Annexure P1 to the affidavit-in-opposition) and the relevant clause in memorandum for the general board (Annexure R1 to the affidavit-in-

opposition) relevant portion whereof is as follows:

Modification of the scheme:

Bank reserves the right to modify, amend or cancel any or all the clauses, of the scheme and to give effect thereto from any date it may deem fit.

The Deputy Managing Director and CDO would be the competent authority to the purpose.

11. Respondents also relied on the extracts from the minutes of the Central Board meeting held on December 27, 2000 at Mumbai approving the

above scheme.

12. Therefore, I find that it is apparent that the scheme itself provided for power to modify its clauses and authority was prescribed for the same. It

also appears that the prescribed authority altered the scheme and the same was also approved by the Central Board of Directors which framed the

scheme itself. Therefore, there is no irregularity in respect of either the power to modify or the authority empowered in respect of such

modifications. In such circumstances, I hold that the modification altering the cut-off age has not been done without power or jurisdiction.

13. The next contention of the petitioner is that the alteration so made in respect of the cut-off age has affected the right accrued to the applicants,

once the scheme was floated and applications were made thereunder. With regard to the exercise of power of the concerned authority to modify the terms of the scheme, no time-limit has been prescribed. Therefore, such power of modification cannot be held to be non-existing upon making

of the application by the officers under the scheme.

14. Further, consideration in this respect is as regards accrual of a right. Undoubtedly when power of modification is there without prescribing a

time-limit, such modification cannot be held to be affecting any accrued right of applicants under the scheme. Moreover, on records as annexures

to the affidavit-in-opposition materials have been disclosed showing that the concerned authorities assessed the actual situation with respect to

number of applications for benefit under the scheme only after the applications were made. The respondents have stated that when it was found

that the number of applications were much above the expected number of applications under the scheme, keeping in mind the man power position

and the financial involvement, alteration had been effected. Therefore, considering the same, I cannot hold that the respondents acted in any way

irregularly in making the alteration after the applications were filed under the scheme. Complaint of the petitioners is that no proper assessment was

made before floating the scheme. This contention cannot be accepted as on expected number of applications the scheme was floated and if number

of applications in actual fact is found to be much higher than the expected number, alteration, if felt required, cannot be held to be bad in any

respect.

15. The next contention of the petitioner is that under the rules, prevailing at the relevant point of time, the retirement age of the officers was 55

years and therefore, granting the benefits of voluntary retirement to the officers above 55 years, cannot benefit the functioning of the bank and

undoubtedly the same deprives the younger officers having possibility of improving their career and therefore, cannot be held to be beneficial. The

respondents have stated that scheme was for better functioning of the bank and therefore, undoubtedly in the interest of the employer and not a

beneficial scheme for benefits of the employees and therefore, above interpretation of the petitioners in respect of the benefit under scheme, cannot

be accepted.

16. Considering the aforesaid, I find that the scheme itself speaks clearly that the same was for the better functioning of the bank keeping in mind

the man power strength and the financial involvement. Therefore, it cannot be a beneficial scheme introduced for the benefit of the officers. I also

do not find the argument of the petitioners is acceptable to the extent it asks consideration of career progress of younger officers if given voluntary

retirement with financial benefits. Undoubtedly any officer can avail of voluntary retirement at any point of time but the attractive financial benefit

under the present scheme was in the interest of the employer only. Any officer who feels that in his career he can do much good if he goes out of the bank service, he is entitled to get that relief. But extra financial benefits under the scheme cannot be asked for as a matter of right. The

contentions of the petitioners regarding benefit of the bank if younger officers are granted retirement under the scheme also cannot be assessed by

the Writ Court firstly, as the same relates to assessment of an employer in respect of its own working and secondly the same being a matter of

policy, cannot be decided in a writ petition as regards its merit and demerits.

17. The next contention of the petitioner is that the policy of floating scheme was on certain basic facts on the basis of initial assessment and even

though the bank had the discretion to alter it, such discretion cannot be unguided or uncanalised. In support of such contention reliance was placed

on the judgments in the case of Manjushree Pathak v. Assam Industrial Development Corporation reported in 2000 (4) L.L.N. 580, for

contending that exercise of discretion cannot be on extraneous considerations but has to be judicious. The respondents have stated that in the

present case discretion has been exercised on assessment of facts and judiciously but consideration of the merit of such decision as regards its

beneficial effect is not within the scope of determination by a Writ Court.

18. This contention of the respondents appears to be acceptable to me as there is no sufficient material before this Court to decide as to whether

the existing strength of officers in the bank justifies keeping the cut-off age at 40 or justifies its alteration to 55 years by altering the scheme itself.

19. Contention of the petitioners is that while altering the cut- off age the bank has failed to take into consideration the scope of promotion of

employees in Class III to the post of officers and keeping in mind the staff strength in Class III, suitable promotion would have solved the problem

of departure of officers availing of the benefits under the scheme and therefore, a finding as regards vacuum in the officers level if cut-off age is kept

at 40 years cannot be held justifiable. In my opinion, this again is within the scope of assessment of merit of the policy which can be neither urged

before the Writ Court nor it can be assessed by the Writ Court in absence of sufficient materials.

20. Some other contentions made on behalf of the petitioners being on assessment of the policy itself and for consideration as to better result for

bank, cannot be considered in exercise of writ jurisdiction.

21. Law has been cited by the learned counsel for the respondents as decided in the case of M/s. Shri Sitaram Sugar Co. Ltd. and another Vs.

Union of India and others, , India Cement Ltd. etc. Vs. Union of India and others, and Liberty Oil Mills and Others Vs. Union of India (UOI) and

Others, . But in view of my findings recorded hereinabove, further consideration in details of the said cases are not required.

22. In view of the aforesaid findings, no relief can be granted in the present writ petition and the same is hereby dismissed.

23. Xerox certified copy of this order, if applied for, be supplied on priority basis.