

**REPORTABLE**

**\* IN THE HIGH COURT OF DELHI AT NEW DELHI**

**+ LPA NO. 410 of 2002**

**% Date of Decision : 28<sup>th</sup> February, 2007.**

VIPIN KALIA & ORS. .... Appellants.  
Through Mr. Chetan Sharma, Sr. Adv. with Mr.  
Ashok Bhalla, Adv.

**VERSUS**

STATE BANK OF INDIA & ORS. .... Respondents.  
Through Mr. Rajiv Shakdhar, Sr. Adv. with Mr. Rajiv  
Kapur & Mr. Ashish Garg, Advocates

**CORAM:**

**HON'BLE DR. JUSTICE MUKUNDAKAM SHARMA, CHIEF JUSTICE  
HON'BLE MR. JUSTICE SANJIV KHANNA**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in the Digest ?

**SANJIV KHANNA, J:**

1. The appellants are erstwhile employees' of State Bank of India.

They opted for voluntary retirement under the State Bank of India Voluntary Retirement Scheme, which was valid during the period 15<sup>th</sup> January, 2001 to 31<sup>st</sup> January, 2001. The option exercised by them was accepted by the respondent on 31<sup>st</sup> March, 2001.

2. All the appellants have either completed 15 years of service or were of 40 years of age as on 31<sup>st</sup> December, 2000. Accordingly, as per the provisions of the State Bank of India Employees' Pension and Provident Fund Rules, they are not eligible for pension. Rule 22(1) of the aforesaid Rule reads as under:-

“A member shall be entitled to a pension under these rules on retiring from the Bank's service-  
a)after having completed twenty years' pensionable service provided that he has attained the age of fifty years, or if he is in the service of the Bank on or after 1.11.1993, after having completed ten years pensionable service provided that he has attained the age of fifty eight years; of if he is in the service of the Bank on or after 22<sup>nd</sup> May, 1998, after having completed 10 years pensionable service period that he has attained the age of

sixty years.

b)after having completed twenty years' pensionable service irrespective of the age he shall have attained, if he shall satisfy the authority competent to sanction his retirement by approved medical certificate or otherwise that he is incapacitated for further active service;

c)after having completed twenty years' pensionable service, irrespective of the age he shall have attained at his request in writing;

d)after twenty-five years' pensionable service.”

3. The appellants, however, contend that Indian Bank's

Association in their letter dated 11<sup>th</sup> December, 2000 had recommended and given approval for amendment of pension regulations enabling payment of pension to employees who seek voluntary retirement after 15 years of service on pro rata basis. The appellants claim that in terms of the said letter they should be paid pension, as they have completed 15 years of service, though they were yet to complete 20 years of service.

The relevant letter is reproduced below:-

“INDIAN BANK'S ASSOCIATION STADIUM

HOUSE 6<sup>th</sup> FLOOR, BLOCK 2 VEER  
NARIMAN ROAD MUMBAI-400020

PD/CIR/76/G2/G4/  
December 11,2000

Designated officers of all Public Sector  
Banks.

Dear Sirs,

VOLUNTARY RETIREMENT  
SCHEME IN PUBLIC SECTOR BANKS-  
AMENDMENTS TO BANK, (EMPLOYEES')  
PENSION REGULATIONS, 1995.

Please refer to our circular letter  
No.PD/CIR/76/G4/933 dated 31<sup>st</sup> August 2000  
convening the 'No Objection' of the  
Government in banks adopting and  
implementing a voluntary retirement scheme  
for employees on the lines of what was  
contained in the Annexure to the circular.

As per the scheme, an employee  
who is eligible and applies for voluntary  
retirement is entitled for the benefit of CPF,  
Pension, Gratuity and encashment of  
accumulated privilege leave, as per rules.

Bank (Employees') Pension  
Regulations, 1955 do not have provisions  
enabling payment of pension to an employee  
who retires before attaining the age of super  
annuation except under circumstances as in  
Regulations 29, 30, 32 and 33. We had,

therefore, taken up with the Government the need to incorporate necessary provisions in the Pension Regulations by way of amendments to Regulation 28 so that employees who retire as above under special/ad hoc schemes formulated by the banks, after serving for a prescribed minimum period would be eligible for pro rata pension.

Government of India has after examining the proposal conveyed its approval and desired that IBA advise banks to make necessary amendments to their Pension Regulations as in the Annexure. We request banks to take note accordingly.

Please note that with the above amendments, employees who apply for voluntary retirement after having rendered a minimum of 15 years of service under a special/ad hoc scheme formulated with the specific approval of the Government and the Board of Directors will be eligible for pro rata pension for the period of service rendered as they are to retire on attaining the age of superannuation on that date.”

Yours faithfully,

sd/-

(Allen C A Pereira)

PERSONNEL ADVISER”

4. The similar contention was raised before the learned single

Judge also but was rejected on the ground that the aforesaid

letter is not a binding circular under Section 18 of the State Bank of India Act, 1955 and, therefore, is not applicable. It was further held that Voluntary Retirement Scheme was a package by itself and it was not open to the appellants to ask for modification of the scheme. Learned Single Judge held that if the appellants wanted to avail benefit of pension, they need not have opted under the scheme and after completing requisite years of service, would have been entitled to pension.

5. Learned counsel for the appellants did not dispute the above facts but submitted that the aforesaid letter/circular dated 11<sup>th</sup> December, 2000 was binding on the respondent-Bank and it will be inequitable and unjust to deny benefit of pension to the appellants. It was further submitted that pension is not a bounty but an obligation of an employer and a right of an employee. It being a socio-economic measure, the appeal should be allowed.

6. We have examined the State Bank of India Voluntary

Retirement Scheme dated 30<sup>th</sup> December, 2000. The said scheme was an invitation to the employees to make their offer and opt for voluntary retirement. The scheme specifically stipulated that the employees who were eligible and the period during which an offer for voluntary retirement could be made. Clause 5 and 6 of the scheme provides for ex-gratia payment to the officers who had opted for voluntary retirement. Clause 6 clearly specifically endows the other benefits, which an employee was entitled to. Employees were entitled to gratuity, provident fund contribution as per the State Bank of India Employees Provident Fund Rules and pension in terms of the State Bank of India Employees Pension Fund Rules on the relevant date. Some other benefits were also payable. Pension was payable only in terms of the State Bank of India Employees Pension Fund Rules and not otherwise or contrary to the said Rules.

7. On 11<sup>th</sup> January, 2001, the respondent-bank also issued a

clarification on the question whether employees who had completed 15 years of service but had less than twenty years of service would be entitled to pension on voluntary retirement under the scheme. The respondent-bank clarified that payment of pension to an employee retiring under the Voluntary Retirement Scheme would be governed by the relevant pension regulations and as per the existing rules and an employee who had not completed 20 years of pensionable service would not be eligible for pension.

8. Thus, the appellants had opted under the Voluntary Retirement Scheme and were fully conscious and aware of the fact that they would not be entitled to pension under the scheme as they had not completed 20 years of pensionable service. Pension was payable only to those employees who were eligible for pension under the State Bank of India Employees' Pension Fund Rules as applicable on the relevant date.

9. It is now well settled that a voluntary retirement scheme can be



a contractual or a statutory scheme. A contractual scheme is purely voluntary. An employee has option to accept or not apply under the scheme. An employee who opts under the scheme makes an offer, which upon acceptance, constitutes a binding contract. The provisions of Contract Act, 1872 are applicable. (See in this regard observations of the Supreme Court in State Bank of India versus O.P. Swarankar, (2003) 2 SCC 721). The appellants, therefore, cannot be allowed to wriggle out of the terms and conditions accepted and agreed upon by the two parties viz. the appellants and the respondent-bank. The appellants had entered into the said contract with open eyes and fully conscious and aware of what benefits they would be entitled to by opting under the Voluntary Retirement Scheme. They were conscious and aware and in fact specifically informed by way of clarification by the respondent that the employees who had not completed 20 years of service, would not be eligible for pension under the relevant rules. The

appellants by way of appeal are seeking modification of the terms of the concluded contract which in equity is not just and fair. Recently the Supreme Court in HEC Voluntary Retired Employees Welfare Society versus Heavy Engineering Corpn. Ltd., (2006) 3 SCC 708 has held as under:-

“11. An offer for voluntary retirement in terms of a scheme, when accepted, leads to a concluded contract between the employer and the employee. In terms of such a scheme, an employee has an option either to accept or not to opt therefor. The scheme is purely voluntary, in terms whereof the tenure of service is curtailed, which is permissible in law. Such a scheme is ordinarily floated with a purpose of downsizing the employees. It is beneficial both to the employees as well as to the employer. Such a scheme is issued for effective functioning of the industrial undertakings. Although the Company is “State” within the meaning of Article 12 of the Constitution, the terms and conditions of service would be governed by the contract of employment. Thus, unless the terms and conditions of such a contract are governed by a statute or statutory rules, the provisions of the Contract Act would be applicable both at the formulation of the contract as also the determination thereof. By reason of such a scheme only is an invitation of offer floated.

When pursuant to or in furtherance of such a Voluntary Retirement Scheme an employee opts therefor, he makes an offer which upon acceptance by the employer gives rise to a contract. Thus, as the matter relating to voluntary retirement is not governed by any statute, the provisions of the Contract Act, 1872, therefore, would be applicable too. (See Bank of India v. O.P. Swarnakar (2003) 2 SCC 721 .

22. Financial considerations are, thus, a relevant factor both for floating a scheme of voluntary retirement as well as for revision of pay. Those employees who opted for voluntary retirement, make a planning for the future. At the time of giving option, they know where they stand. At that point of time they did not anticipate that they would get the benefit of revision in the scales of pay. They prepared themselves to contract out of the jural relationship by resorting to “golden handshake”. They are bound by their own act. The parties are bound by the terms of contract of voluntary retirement. We have noticed hereinbefore that unless a statute or statutory provision interdicts, the relationship between the parties to act pursuant to or in furtherance of the Voluntary Retirement Scheme is governed by contract. By such contract, they can opt out of such other terms and conditions as may be agreed upon. In this case the terms and conditions of the contract are not governed by a statute or statutory rules.

18. The Voluntary Retirement Scheme speaks of a package. One either takes it or rejects it. While offering to opt for the same, presumably the employee takes into consideration the future implication also.

19. It is not in dispute that the effect of such Voluntary Retirement Scheme is cessation of jural relationship between the employer and the employee. Once an employee opts to retire voluntarily, in terms of the contract he cannot raise a claim for a higher salary unless by reason of a statute he becomes entitled thereto. He may also become entitled thereto even if a policy in that behalf is formulated by the Company.”

10. In view of the above, we agree with the findings of the learned single Judge that Voluntary Retirement Scheme was a package by itself and it is not open to the appellants to ask for modification of the said package and this Court cannot direct amendments to the terms and conditions of the concluded contract.

11. We also agree with the findings of the learned Single Judge that the letter/circular dated 11<sup>th</sup> December, 2000 cannot be regarded as a guideline or direction issued by the Central

Government under Section 18 of the State Bank of India Act,

1955. The said Section reads as under:-

“Central Board to be guided by directions of Central Government.-(1) In the discharge of its functions (including those relating to a subsidiary bank), the State Bank shall be guided by such directions in matters of policy involving public interest as the Central Government may, in consultations with the Governor of the Reserve Bank and the Chairman of the State Bank, give to it.”

12. Section 18 stipulates that the respondent-bank shall be guided by directions, in the matter of policy involving public interest, as the Central Government in consultation with the Governor of the Reserve Bank of India and the Chairman of the Bank may give to it. The letter/circular dated 11<sup>th</sup> December, 2000 is not a direction in respect of policy involving public interest issued by the Central Government. The said letter in fact has not been issued by the Central Government nor can it be regarded as a matter of policy involving public interest, which had been issued in consultation with the

Governor of the Reserve Bank of India and the Chairman of the State Bank.

13. The State Bank of India, as already stated, has its own pension regulations. The employees of the State Bank of India are bound by the same. Letter/circular dated 11<sup>th</sup> December, 2000 refers to amendment to Bank (Employees') Pension Regulations, 1995. The said regulations are not applicable to the employees of State Bank of India. The Pension regulations applicable to the State Bank of India employees are different. As far as employees of State Bank of India are concerned, the Bank Employees' Pension Regulations, 1995 are not applicable. The amendment suggested by letter/circular dated 11<sup>th</sup> December, 2000 by Indian Bank's Association was not applicable to the appellants and the employees of the State Bank of India. We may also point out here that State Bank of India in the counter affidavit has explained that its Voluntary Retirement Scheme was a special and a distinct scheme offering a handsome package for the employees who were ready and willing to opt for retirement. It is

also pointed out that the State Bank of India's employees unlike employees belonging to other public sector banks were entitled to both contributory provident fund and membership of a pension fund. It is stated that employees of other public sector bank are eligible either for contributory provident fund or membership of pension fund.

14. Learned counsel for the appellants, however, also relied on the judgment of a single Judge of this Court in the case of Punjab and Sind Bank Officers Association and Others versus Union of India and Another on 11<sup>th</sup> May, 2006. In the said case, learned single Judge was examining regulations 28 and 29 of the Bank (Employees') Pension Regulations, 1995. The issue was which of the two regulations would apply. It was held that Regulation 29 would apply to employees who had taken voluntary retirement whether under normal circumstances or under a special scheme. It was further held that the scheme or package cannot be altered unilaterally. The said decision does not support the contention of the appellants. The terms and conditions of the

Voluntary Retirement Scheme were clear and specific. The terms were not ambiguous. The employees including the appellants were fully conscious of the decision taken by them and the benefits they would be entitled to. The appellants voluntarily, with open eyes entered into an agreement and after having retired and enjoyed the benefits, they cannot go behind the concluded contract and claim further benefits. It must be remembered that a Voluntary Retirement Scheme is formulated and conceived in public interest. Interest of the respondent bank is also to be taken into consideration.

15. In these circumstances, we do not find any merit in the present appeal and the same is dismissed. However, there will be no order as to costs.

**(SANJIV KHANNA)**  
**JUDGE**

**(DR. MUKUNDAKAM SHARMA)**  
**CHIEF JUSTICE**

**FEBRUARY 28, 2007**  
**VKR/P**