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PUNJAB AND SIND BANK AND ORS.

v.

MOHINDER PAL SINGH AND ORS.

OCTOBER 28, 2005

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[H.K. SEMA, S.B. SINHA AND A.K. MATHUR, JJ.]

Service Law:

Voluntary Retirement Scheme—Punjab and Sind Bank—Employee withdrawing his option to avail benefit of the Scheme before its acceptance by the Bank—Bank depositing in employee's account small amount towards leave encashment—Held, waiver of a right implies the knowledge of the existing right—At no point of time the employee was informed that the amount was deposited in his account as part of benefit under the Scheme—Employee cannot be said to have waived his right to continue in service—Besides leave encashment benefit is one of the additional benefits—The main benefit of the Scheme indisputably was the ex-gratia payment which was not paid to employee—An employee even if contained in service would have been entitled to the additional benefits which are in the nature of terminal benefits—The Bank is a 'State' within the meaning of Article 12 of the Constitution—Fair and better dealings from a 'State' vis-a-vis its own employees is expected—It is not for an employee, who did not accept that his offer had validly been accepted in terms of the Scheme to approach the Bank for payment of his dues—It was for the Bank to make such an offer—Employee is entitled to be reinstated in services with all consequential benefits and continuity in service—Waiver—Constitution of India—Article 12.

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Bank of India and Ors. v. O.P. Swarnakar and Ors., [2003] 2 SCC 721, relied on.

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Punjab and Sind Bank and Anr. v. S. Ranveer Singh Bawa and Anr., [2004] 4 SCC 484, held inapplicable.

CIVIL APPELLATE JURISDICTION : I.A. No. 7 In Civil Appeal No. 8476 of 2002.

A From the Judgment and Order dated 3.4.2002 of the Punjab and Haryana High Court in W.P. No. 1458 of 2001.

Jagat Arora, Rajiv Nanda, Rajat Arora and Ms. Ritu Arora for the Appellants.

B Ms. Meenakshi Arora and Shailendra Bhardwaj for the Respondents.

The following Order of the Court was delivered :

ORDER

C Application of a decision of this Court in *Bank of India and Ors. v. O.P. Swarnakar and Ors.*, [2003] 2 SCC 721 falls for consideration in this application.

Before, however, we advert to the said question, we may notice the admitted facts.

D Shri Amarjit Singh Sahni, the Applicant herein at all material times was working in the Punjab and Sind Bank (for short "the Bank") as a Cashier-cum-Clerk at the Zonal Office Haryana. The Bank adopted a scheme known as "the Punjab and Sind Bank Employee's Voluntary Retirement Scheme, 2000" (for short "the Scheme") which was to remain in operation from 1.12.2000 to 31.12.2000. In terms of the Scheme, those who sought for voluntary retirement were entitled to accept *ex gratia* payments as specified therein as also the other benefits which are as under:

"Amount of *ex gratia*

F An employee seeking voluntary retirement under the Scheme will be entitled to the *ex gratia* amount mentioned below in para (a) or (b), whichever is less:

(a) 60 days' salary (pay plus stagnation increments plus special pay plus dearness relief) for each completed year of service; or

G (b) salary for the number of months of service left; Other benefits

An employee seeking voluntary retirement under the Scheme will be eligible for the following benefits *in addition* to the *ex gratia* amount mentioned in para 6 above of this Scheme:

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(i) Gratuity as per the Payment of Gratuity Act, 1972 or gratuity payable under the Service Rules, as the case may be, as per existing rules. A

(ii)(a) Pension (including commuted value of pension) as per PNB (Employees) Pension Regulations, 1995. B

or

(b) Bank's contribution towards PF as per existing rules.

(iii) Leave encashment as per existing rules.”

The Applicant opted to avail the benefit of the said Scheme wherefor he filed an application on 15.12.2000. He, however, withdrew the said offer on or about 22.12.2000. It is not the case of the Bank that prior thereto the application filed by the application was accepted. C

It is furthermore not in dispute that on 29.01.2001, the Applicant filed a writ petition in the Punjab and Haryana High Court being C.W.P. No. 1458 of 2001. The matter came up before the High Court on 31.01.2001 whereupon notices were issued and an interim order was passed directing that if the applicant had not been relieved from service, he would be allowed to continue therein. However, he was not permitted to join his service by the Bank on the plea that he had been relieved from duties on 28.01.2001. Employees who had, however, not been relieved were permitted to continue. E

It is furthermore not in dispute that the Applicant had a Saving Banks Account with the Bank wherein a sum of Rs. 1422.21 was deposited on 9.03.2001. According to the Applicant, as he apprehended that the Respondent might deposit some other amount in terms of the aforementioned Scheme in his account, he closed the same on or about 24.04.2001. F

The employees of the Bank as also other nationalized banks filed writ applications questioning the legality and validity of the Scheme. Some writ applications were also filed seeking for issuance of writ of or in the nature of mandamus directing the respective Banks to pay unto them their lawful dues strictly in terms of the Scheme. The said writ applications were allowed by the Punjab and Haryana High Court holding the Scheme to be invalid in law. The Bank as also the other banks filed applications for grant of special leave before this Court questioning the correctness of the said judgment. G

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A These appeals upon grant of special leave were disposed of on 17th December, 2002 in *O.P. Swarnakar* (supra) wherein this Court opined:

(i) If the Scheme had been amended as a result whereof the employees entertained an apprehension that they would not even receive the entire benefits, they were entitled to revoke the offer.

B (ii) An offer made by an employee *ipso facto* would not amount to a resignation *in praesenti* as it was to apply on a future date and withdrawal thereof before acceptance thereof by the employer would be valid in law.

C (iii) The offers could not be accepted before expiry of the Scheme.

(iv) The Scheme as such was not invalid in law.

(iii) However, if those employees had accepted the ex gratia payment or any other benefit under the Scheme, they could not have resiled therefrom.

D It is not in dispute that the Bank had not accepted the offer of the Applicant before he withdrew therefrom. It is also not in dispute that no such communication was ever made to the Applicant. It is furthermore not in dispute that the Applicant was entitled to a sum of Rs. 10,50,000/- by way of benefits in terms of the Scheme. The said amount had not been offered to **E** the Applicant till date.

Even out of the total amount of leave encashment of Rs. 14,459.21, a sum of Rs. 13,037 was deducted and only a sum of Rs. 1,422.21 was credited in the account of the Applicant on 9.03.2001. The Bank accepts that the Applicant had never been communicated that the said amount was being

F deposited in terms of the Scheme. When questioned as to why the amount of Rs. 10,50,000/- or any other amount to which the Applicant might have been entitled to by way of the Scheme had not been offered to the Applicant, the learned counsel for the Bank faintly suggested that the same could not be done as the Applicant closed his bank account. We cannot accept such

G contention. It is not a case where after the expiry of the Scheme, an employee requested the Bank to be permitted to withdraw from option. The only question which, therefore, arises for consideration is as to whether the Applicant herein waived his right.

Waiver of a right implies his knowledge of the existing right. A person

H cannot be said to have waived his right unless it is established that his conduct

was such so as to enable the Court to arrive at a conclusion that he did so A with knowledge that he had a right but despite the same acted in such a manner which would imply that he has waived the same.

The Applicant in the instant case not only withdrew his offer before the same was accepted, he even filed a writ petition when he came to know that the Bank had unilaterally accepted offers of certain employees despite the same having been withdrawn and terminated their services with immediate effect. As noticed hereinbefore, the judgment in *O.P. Swarnakar* (supra) was delivered on 17th December, 2002. Immediately thereafter, he issued a notice that he be permitted to report for duty as he had not accepted the retiral benefits. His representation went unheeded. He thereafter sent legal notices on 22nd February, 2003 and 28th March, 2003. The stand of the Bank at all material times was and still is that a sum of Rs. 14,459.21 was paid to him by way of leave encashment of 31 days upon deduction of income tax therefor. But, it is accepted that at no point of time he had been told that the said amount had been deposited in his account as a part of benefit under the Scheme. Even, there had been no communication to the Applicant by the Bank that he is being paid out of the total leave encashment of Rs. 14,459.21, after deducting a huge sum of Rs. 13,037, a sum of Rs. 1,422.21. We fail to understand as to how out of the said amount of Rs. 14,459.21, a sum of more than Rs. 13,000/- could be deducted by way of income tax. Leave encashment benefit is one of the additional benefits. The main benefit of the Scheme indisputably was the ex-gratia payment. An employee even if continued in service would have been entitled to the additional benefits which are in the nature of terminal benefits. D E

It is also beyond anybody's comprehension as to why despite expiry of about five years the main benefit of the Scheme or in any event the total benefit amounting to Rs.10,50,000 to which the Applicant was otherwise entitled to in terms of the Scheme had not been paid to him. F

The Bank is a 'State' within the meaning of Article 12 of the Constitution of India. We expect fair and better dealings from a 'State' *vis-a-vis* its own employees. It is not for an employee who did not accept that his offer had validly been accepted in terms of the Scheme could not have been expected to approach the Bank for payment of his dues. It was for the Bank to make such an offer. The Scheme says so. The law in this behalf is also clear. He had not even been offered his salary or notice pay. G

A In a case of this nature, the court is entitled to take into consideration the entire facts and circumstances of the matter and for that purpose the conduct of the Bank is also relevant.

B We, therefore, in the peculiar facts of this case, are not in a position to accept that by reason of such a deposit of a meager sum of Rs. 1,422.21 in respect whereof the applicant had no knowledge, and in relation whereto he had not been informed, and only because he closed the account so as to prevent the Bank from depositing any further amount in his account cannot be said to have waived his right to continue in service.

C The learned counsel appearing on behalf of the Bank relied upon the decision of this Court in *Punjab & Sind Bank and Anr. v. S. Ranveer Singh Bawa and Anr.*, [2004] 4 SCC 484. Therein, having regard to the facts and circumstances of the case, this Court clearly came to the conclusion:

D "8. From the averments herein, it is clear that Respondent 1 had two savings bank accounts Nos. 4775 and 4777. He had withdrawn his option on 22-12-2000 and yet without any objection he receives three credits in his account on 27-12-2000, 25-1-2001 and 29-1-2001 on account of salary (including notice pay). Thereafter, he repays his car loan; invests Rs 30,000 in PPF and Rs 1,42,406.40 in fixed deposit for three years, which is a long-term investment. Therefore, the principle of estoppel extensively discussed by this Court in the case of *Bank of India v. O.P. Swarnakar* applies to the facts herein. *The conduct of Respondent 1 indicates his knowledge about payments in his accounts; that he never objected to such payments and that he had appropriated the amounts for his benefit. Therefore, he cannot resile from the Scheme.*"

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(Emphasis supplied)

The said decision has no application to the fact of the present case.

G The conduct of the Applicant herein does not indicate any knowledge about the payment in his account or his willful appropriation thereof as to constitute a waiver. The Applicant had contended that even the Bank had acted in a discriminatory manner as in the account of certain employees some deposits had been made but in respect of others, no such deposits had been made. The said allegation also has not been denied.

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For the reasons aforementioned, this application is allowed. The Bank A is hereby directed to permit the Applicant to join his duties. He is entitled to be reinstated in service with all consequential benefits and continuity in service except for the period during which he was on leave. However, in the facts and circumstances of this case, we do not intend to award any interest on the said sum or any costs against the Respondent. The Respondent shall, however, be entitled to deduct the amount actually paid to the Applicant or payable in his account, if any. B

R.P.

Application allowed.