

A STATE BANK OF PATIALA

v.

KANWAL NAIN SINGH

(Civil Appeal No. 2469 of 2010)

B APRIL 03, 2018

**[KURIAN JOSEPH, MOHAN M. SHANTANAGOUDAR AND  
NAVIN SINHA, JJ.]**

C *Service Law – Voluntary retirement scheme – Employee sought withdrawal of application for voluntary retirement – Denial of request and employee retired from service – Writ petition challenging voluntary retirement – High Court allowed the employee to continue in service – Said order set aside by this Court – Application for clarification as to whether the appellant-Bank, being a subsidiary, the benefit of the judgment would be available to the appellant-Bank*  
D *– Clarification application allowed – Review thereagainst also dismissed – Subsequently, employee retired from service and ex-gratia payment credited to his account – Application by employee seeking enhanced ex-gratia payment – Withdrawal of the said application with liberty to pursue alternative remedy – Thereafter,*  
E *employee filing writ petition seeking resurrecting of the judgment whereby employee was retired from service – Dismissal by the Single Judge, however, set aside by the Division Bench – On appeal, held: High Court was not correct in its approach in reopening the case of the employee – It is a Judgment in personam – For all intents and purposes, employee is bound by that judgment for ever – Respondent*  
F *prayed to seek enhanced ex-gratia, which was withdrawn with liberty – It appears that under the cover of the liberty granted to pursue any alternative remedy, a fresh writ petition was filed, which ultimately led to the impugned judgment – Thus, order passed by the Division Bench set aside – Bank directed to pay an amount of*  
G *Rs. 1,00,000/- by way of compensation in full and final settlement of all the claims.*

**Allowing the appeal, the Court**

**HELD: 1.1 The respondent suffered a Judgment when this Court allowed the appeal filed by the Bank and dismissed the**

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application filed by the respondent, as per the Judgment reported in (2003) 2 SCC 721 and in (2004) 2 SCC 193. It is a Judgment in personam. The High Court, with great respect, was not correct in its approach in reopening the case of the respondent on the basis of subsequent judgment of this Court in *Food Corporation of India's case*, in the matter of withdrawal of application for voluntary retirement before the same is accepted. The respondent's fate was sealed when this Court declared that he was bound by the provision in the Scheme that the application once made was irrevocable. For all intents and purposes, the respondent is bound by that judgment for ever. That apart, all that the respondent prayed for in the application, which was withdrawn with liberty, was to seek enhanced ex-gratia. It appears that under the cover of the liberty granted at the time of withdrawal to pursue any remedy, if available and in accordance with law, a fresh writ petition was filed, which ultimately led to the impugned Judgment which is set aside. [Paras 10, 11][861-H; 862-A-D]

1.2 The ex-gratia payment due to the respondent was credited to his account only in 2004 whereas the whole calculation is as on 30.03.2001. The Bank submitted that the amounts could not have been credited prior to 2004 in view of the interim orders granted by the High Court, permitting the respondent to continue in service. The parties should not venture for another round of litigation on this count. In the peculiar facts and circumstances of the case and that the respondent has derived the entire service benefits for the period he has worked based on the interim orders, the appellant-Bank is directed to pay an amount of Rupees One Lakh by way of compensation in full and final settlement of all the claims towards belated payment. There shall be no recovery of the benefits already paid to the respondent during the period he was in service. [Para 12, 13][862-E-G]

*Food Corporation of India & Ors. v. Ramesh Kumar*  
(2007) 8 SCC 141 – referred to.

Case Law Reference

(2007) 8 SCC 141            referred to            Para 10

A CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2469 of 2010.

From the Judgment and Order dated 04.10.2008 of the High Court of Punjab and Haryana at Chandigarh in L. P. A. No. 114 of 2007 in Writ Petition (C) No. 17426 of 2004.

B Sanjay Kapur, Ms. Megha Karnwal, Ms. Mansi Kapur, Ms. Shubhra Kapur, Advs. for the Appellants.

Gagan Gupta, Adv. for the Respondent.

The Judgment of the Court was delivered by

C **KURIAN, J.** 1. The appellants are before this Court, aggrieved by the Judgment dated 04.10.2008 passed by the High Court of Punjab and Haryana at Chandigarh in LPA No. 114 of 2007 in Civil Writ Petition No. 17426 of 2004. The case has a chequered history. The respondent joined service in the appellant-Bank on 29.02.1977. The Bank published a Voluntary Retirement Scheme for its employees on 20.01.2001. The Scheme was open for its employees from 15.02.2001 to 01.03.2001. Clause 9 of the Scheme contained a specific provision that the application once made cannot be withdrawn and the same will be treated as irrevocable.

D 2. On the last date of the operation of the Scheme i.e. on 01.03.2001, the respondent submitted his application seeking voluntary retirement. On the next day, i.e. on 02.03.2001, he sought to withdraw his application for voluntary retirement. His request was denied as per the provisions of Clause 9 of the Scheme and he was retired.

E 3. The respondent filed a writ petition before the High Court challenging the voluntary retirement. As per an interim order dated 30.03.2001, the respondent was allowed to continue in service and by a common Judgment dated 03.04.2002, the writ petition was allowed. The appellant-Bank challenged the same before this Court. By a Judgment dated 17.12.2002 passed in Civil Appeal Nos. 854-855 of 2002 and other connected matters, reported in (2003) 2 SCC 721, the Judgment of the High Court was set aside by distinguishing the Scheme that operated in State Bank of India.

F 4. The appellant-Bank is a subsidiary of the State Bank of India. On 30.01.2003, the Bank filed an application for clarification as to whether the appellant-Bank, being a subsidiary, the benefit of the Judgment would be available to the appellant-Bank as well. That application was allowed on 21.01.2004.

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5. In the meanwhile, the respondent was continuing in service on the basis of an interim order passed by the High Court. He was promoted to the Junior Management Grade Scale-I with effect from 01.05.2003. Since the clarification was allowed on 21.01.2004, as per the order reported in (2004) 2 SCC 193, allowing the appeal filed by the appellant also, the respondent was voluntarily retired with effect from 29.02.2004.

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6. After the retirement of the respondent on 29.02.2004, an ex-gratia payment of Rs. 14,05,382/- payable under the Scheme was credited in the account of the respondent on various dates from 31.03.2004 upto 14.05.2004. According to the respondent, neither the same was requested by him/acceptable to him nor was it accepted.

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7. The respondent attempted a review of the Judgment dated 21.01.2004 before this Court. The Review Petition was dismissed on 27.04.2004.

8. Thereafter, the respondent filed an application for direction/clarification praying for enhanced ex-gratia, on the basis of length of service actually rendered and scale of pay in the promoted post. According to the learned counsel appearing for the appellant-Bank, the ex-gratia was, in fact, calculated on the basis of the total length of service, till the date of actual retirement under the Scheme i.e. 29.03.2001. That application was withdrawn without prejudice to the liberty to pursue any alternative remedy, if any, available in accordance with law.

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9. The respondent quite ingeniously, it appears, thereafter filed a fresh writ petition before the High Court, virtually seeking to resurrect the Judgment which he suffered at the hands of this Court, against which even the review at the instance of the respondent was dismissed. That writ petition was dismissed by the learned Single Judge. However, the Division Bench, in LPA No. 114 of 2007 in Civil Writ Petition No. 17426 of 2004, leading to the impugned Judgment, allowed the same and thus, the instant appeal.

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10. Having extensively heard Mr. Sanjay Kapur, learned counsel appearing for the appellant-Bank and Mr. Gagan Gupta, learned counsel appearing for the respondent, we find it difficult to appreciate the stand taken by the High Court. The respondent has suffered a Judgment when this Court allowed the appeal filed by the Bank and dismissed the application filed by the respondent, as per the Judgment reported in (2003) 2 SCC 721 and in (2004) 2 SCC 193. It is a Judgment in personam. The

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A High Court, with great respect, was not correct in its approach in reopening the case of the respondent on the basis of subsequent Judgment of this Court in Food Corporation of India & Ors. Vs. Ramesh Kumar, reported in (2007) 8 SCC 141 in the matter of withdrawal of application for voluntary retirement before the same is accepted. As far as the respondent is concerned, his fate was sealed when this Court declared that he was bound by the provision in the Scheme that the application once made was irrevocable. For all intents and purposes, the respondent is bound by that Judgment for ever.

11. That apart, all that the respondent prayed for in the interlocutory application, which was withdrawn with liberty, was to seek enhanced ex-gratia. It appears that under the cover of the liberty granted at the time of withdrawal to pursue any remedy, if available and in accordance with law, a fresh writ petition was filed, which ultimately led to the impugned Judgment. In that view of the matter, we allow this appeal. The impugned Judgment dated 04.10.2008 in LPA No. 114 of 2008 passed by the High Court is set aside.

12. We find that the ex-gratia payment due to the respondent was credited to his account only in 2004 whereas the whole calculation is as on 30.03.2001. The learned counsel for the Bank submits that the amounts could not have been credited prior to 2004 in view of the interim orders granted by the High Court, permitting the respondent to continue in service. We do not want the parties to venture for another round of litigation on this count.

13. In the peculiar facts and circumstances of this case and also taking note of the fact that the respondent has derived the entire service benefits for the period he has worked based on the interim orders, we direct the appellant – Bank to pay an amount of Rs. 1,00,000/- (Rupee One Lakh) by way of compensation in full and final settlement of all the claims towards belated payment. We make it clear that there shall be no recovery of the benefits already paid to the respondent during the period he was in service.