

REPORTABLE

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

% **Date of Decision : July 16, 2008**

+ **WP(C) No.23590/2005**

SNT SAROJ DHALL
... Petitioner.

! Mr. Ashok Bhalla, Advocate
Versus

\$ STATE BANK OF INDIA & ORS.
... Respondents

^ Mr. Rajiv Kapoor, Advocate.

**CORAM :
HON'BLE MR. JUSTICE S.N. AGGARWAL**

1. Whether reporters of Local paper 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?

S.N. Aggarwal, J. (Oral)

The petitioner Smt. Saroj Dhall while working as an Assistant at Lucknow in the State Bank of India (respondent No. 1) took voluntary retirement (VRS) on 31.03.2001. At the time she took VRS, she had put in more than 25 years of service. She was transferred to the Lucknow circle of State Bank of India in August, 2000 and before that she was working in Delhi at Khyala Branch under the jurisdiction of Delhi region of the

respondent bank. A settlement was arrived at between the State Bank of India and the All India State Bank of India Staff Federation on promotion avenues/career progression for workmen staff vide memorandum of settlement dated 12.04.1999 (Annexure P-1 at page 17 of the paper book). In terms of settlement contained in Annexure P-1, all those employees of the Bank who were working in the clerical cadre were entitled to time bound promotion to the post of Senior Assistants on completion of 17 years of service and to the second promotion from Senior Assistants to Special Assistants on completing 25 years of service. The benefit of time bound promotion/upgradation was made applicable to the employees of the Bank w.e.f. 01.04.1999. The petitioner was admittedly not granted the benefit of the settlement contained in the memorandum of settlement dated 12.04.1999 and aggrieved therefrom, she filed a writ petition being WP(C) No. 6398/2003 in this Court which was disposed of vide order passed on 10.08.2005 directing the respondent bank to consider the representation/claim of the petitioner to the post of Senior Assistant having regard to the settlement/policy and its circular dated 05.03.2001 within a period of six weeks from the date of the order. The respondent bank was directed to pass a speaking order under communication to the petitioner.

2 Pursuant to the order passed by this Court on 10.08.2005 in WP(C) No. 6398/2003, the respondent bank has passed the impugned order denying the benefits of the settlement to the petitioner. The impugned

order is Annexure P-23 at page 94 of the paper book. The reasons for denial of the benefits of the settlement given by the respondent bank in the impugned order are as follow:-

4 RELEVANT FACTS PERTAINING TO SMT. DHALL.

- a) *Vide circular dated 28.06.1999, the career progression scheme/policy was circulated/implemented in the Lucknow circle.*
- b) *In August, 2000 Smt. Dhall was transferred to Lucknow circle, at her request. The said scheme/policy was not circulated/implemented in the Delhi circle until 28.08.2001 and hence the manner and mode of implementation of the said scheme/policy in the Lucknow circle alone shall be relevant, for the present purposes.*
- c) *Smt. Dhall had completed 17 years of service. As per para 25 of the policy, the exercise of redeployment of the employees was to be undertaken "once a year in the month of April", Smt. Dhall thus became eligible for being considered only in the month of April, 2001. However, she applied under SBI Voluntary Retirement Scheme and stood retired from Bank's service on 31.03.2001. Thus, Smt. Dhall could have been granted opportunity only if she had continued her service after 01.04.2001, whereas she retired on 31.03.2001 and hence could not be considered under the policy/scheme, after retirement.*
- d) *Para 25 of the policy itself provides that actual payment of special allowance will be made only after the employee reports at the place of posting. Thus, mere eligibility for promotion does not confer a right on a person to claim special allowances, unless the said employee has been considered and placed a commensurate position to perform the duties.*
- e) *Insofar as the Circular dated 05.03.2001 issued by the*

Delhi circle is concerned, at the outset, it is submitted that the same has no basis and has not been made applicable in Lucknow circle, or for that matter in any other circle of SBI, all over India. The same was issued under a bonafide and inadvertent mistake.

f) Smt. Dhall herself has claimed her right, if at all, under the aforesaid policy. The policy/scheme/settlement nowhere provides that all those who have sought retirement under SBIVRS would also be appointed as senior assistants. The essence and the entire basis of the employee, like Smt. Dhall, had retired before being eligible for being considered for deployment/transfer, he/she would not be entitled for special allowance, as per the policy relied upon by Smt. Dhall, before the Hon'ble High Court.

3 The settlement between the State Bank of India and the All India State Bank of India Staff Federation on promotion avenues/career progression for workmen staff of the bank as contained in Annexure P-1 at page 17 of the paper book is not denied by Mr. Rajiv Kapoor, learned counsel appearing on behalf of the respondents. However, the contention of Mr. Kapoor appearing on behalf of the respondents is that the petitioner is not entitled to the benefits of the settlement because she does not meet the eligibility criteria for the benefits as provided in the settlement itself. According to Mr. Kapoor, a list of all those employees in the bank who have completed 17 years of service as on 01.04.1999 was required to be prepared every year in the month of April and the scheme of settlement also envisages transfer/deployment of the employee to be promoted in terms of settlement at a place other than his original place of

posting. Mr. Kapoor has further contended that the scheme of settlement as contained in the memorandum of settlement dated 12.04.1999 was made applicable to Delhi region w.e.f 28.08.2001, the petitioner cannot take benefits of the settlement since she was not in Delhi region at that time and had already taken VRS on 31.03.2001. Mr. Kapoor has relied upon Annexure P-10 at page 69 in support of his said contention. Mr. Kapoor has also contended that the scheme of settlement was made applicable to Lucknow circle w.e.f. 01.04.2000 and since the petitioner was transferred to Lucknow circle in August, 2000, she became entitled to be considered for the benefits under the scheme of settlement only in April, 2001. According to Mr. Kapoor, the petitioner could not be considered for promotion/upgradation in terms of settlement on 01.04.2001 as she had already taken VRS prior to the said date.

4 This Court has given it anxious thought to the arguments advanced by Mr. Kapoor, but could not persuade itself to agree with him on any of his contentions referred above. It is not disputed that the petitioner was working in the State Bank of India on 01.04.1999 when she became entitled to the benefits under the scheme of settlement. The argument of Mr. Kapoor that the petitioner became entitled for her consideration for grant of benefits under the scheme of settlement by Lucknow circle only on 01.04.2001 is wholly misconceived. When the petitioner was in Delhi region on the date the scheme became effective, it does not stand to reason why the Lucknow circle would consider her case for promotion

where she was transferred only in August, 2000. The arguments of Mr.Kapoor that the petitioner could not be considered for her promotion/upgradation in terms of the scheme of settlement because list of eligible employees as required to be drawn under the said scheme was not drawn is also misconceived. It may be noted that if any such list was required to be prepared, the list was to be prepared by the Bank. The Bank by not preparing the list cannot be allowed to take advantage of its own fault and deny the benefit to its employee who otherwise became eligible for grant of benefits under the scheme of settlement as she had admittedly completed more than 17 years of service as on 01.04.1999 when she was in Delhi region. Even the transfer, posting and deployment of the employees consequent upon grant of benefits under the scheme of settlement also lies within the domain of the bank and the petitioner being the employee of the bank had absolutely no control in such matters. The petitioner cannot be denied promotion/upgradation/benefits admissible to her in terms of the scheme of settlement contained in Annexure P-1 at page 17 of the paper book. The petitioner admittedly became entitled to grant of benefits under the scheme of settlement w.e.f. 01.04.1999 before she took VRS on 31.03.2001. Merely because the petitioner had taken VRS cannot be a ground to deny her benefits under the above referred scheme.

5 At this stage, it shall be relevant to refer to a letter dated 05.03.2001 of the respondent bank which is Annexure P-8 at page 65 of

the paper book, the relevant portion whereof is extracted hereinbelow:-

“All clerical cadre employees, who retired/expired after 31.03.1999 or those who have sought retirement under SBIVRS and had/have completed 17 years of full time service in clerical cadre (excluding part time service and period of extra ordinary leave without pay) on 31.03.1999 and 31.03.2000, be appointed as Senior Assistants w.e.f. 01.04.1999 and 01.04.2000 respectively.”

6 A bare perusal to the above would show beyond doubt that the respondent bank itself had decided to extend the benefits under the scheme of settlement to its employees w.e.f. 01.04.1999 even in cases where they have already taken VRS prior to the date of the above referred letter dated 05.03.2001. This Court fail to understand as to how the respondent bank can discriminate between the employees who are similarly situated. All employees who are similarly situated are to be treated at par. Since the respondent bank has extended the benefits under the scheme of settlement to the clerical cadre employees who have sought retirement under the Voluntary Retirement Scheme of the State Bank of India, the petitioner cannot be denied benefits under the scheme as she had admittedly completed 17 years of service in the clerical cadre. The action of the respondent denying benefits of the scheme to the petitioner is found to be unreasonable and discriminatory in nature and the same cannot stand the test of judicial scrutiny.

7 In view of the above, this writ petition succeeds and is allowed with

costs quantified at Rs.15,000/-. The respondents are directed to pay arrears to the petitioner within a period of six weeks from today treating her as if she was granted the benefits under the scheme of settlement on the due date i.e.,01.04.1999.

July 16, 2008
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S.N.AGGARWAL
[JUDGE]