

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

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Date of decision: 5th September, 2013

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RFA No.669/2005

J.N. NIGAM

..... Appellant

Through: Mr. D.P. Mohanty & Ms. Nandita
Bajpai, Advs.

Versus

CITIBANK N.A.

..... Respondent

Through: Mr. Dinesh Agnani, Sr. Adv. with
Ms. Leena Tuteja & Ms. S.
Chaudhari, Advs.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

1. The appeal impugns the judgment and decree dated 29.04.2005 of the Court of Additional District Judge, Delhi of dismissal of suit No.21/2005/1995 filed by the appellant against the respondent. I may notice that vide the same judgment and decree, the counter claim filed by the respondent / defendant against the appellant / plaintiff for recovery of monies was also dismissed but the senior counsel for the respondent / defendant states that the respondent / defendant has not challenged the dismissal of its counter claim.

2. Notice of the appeal was issued and the Trial Court record requisitioned. The counsels have been heard.

3. The counsel for the appellant / plaintiff has argued:

- (i) that the appellant / plaintiff was in employment of the respondent / defendant bank since 01.05.1969 and though had joined as a Sub-staff but was on 15.04.1982 promoted to clerical staff;
- (ii) that the respondent / defendant bank on 31.05.1993 introduced a Voluntary Early Retirement Plan (VERP) for its employees with effect from 01.06.1993 and the last date for exercising option whereunder was 31.08.1993;
- (iii) that the said Plan was open to a limited number of management staff and the Clerical and Sub-staff;
- (iv) that not many employees exercised the option thereunder and the respondent / defendant bank on 25.08.1993 modified the VERP to attract more employees and the last date for

exercising option thereunder was also extended to 30.09.1993;

- (v) that the management of the respondent / defendant bank also started calling the employees individually and made every effort to persuade them to accept VERP and assured them that the said Plan / Programme was an 'Equitable Programme' as mentioned in the Plan;
- (vi) that the appellant / plaintiff was initially not interested in availing the said Plan, however on persuasion of the management opted for the same on the penultimate day of closing thereof i.e. on 29.09.1993;
- (vii) that Mr. S.K. Maini and Mr. A.N. Tiwari also employed with the respondent had also so exercised option under the VERP on 28.09.1993 i.e. a day before the appellant / plaintiff and another Mr. K.L. Malhotra had also exercised option under the said Plan on 30.09.1993 i.e. a day after the appellant / plaintiff had exercised the option;

- (viii) that the options exercised by the appellant / plaintiff as well as the said Sh. S.K. Maini, Sh. A.N. Tiwari and Sh. K.L. Malhotra were accepted and the compensation given to them;
- (ix) that however the appellant / plaintiff subsequently learnt that the respondent / defendant, prior to accepting the options exercised by the said Sh. S.K. Maini, Sh. A.N. Tiwari and Sh. K.L. Malhotra had also given them promotion and the compensation payable being in accordance with the last drawn pay, compensation paid to the said Sh. S.K. Maini, Sh. A.N. Tiwari and Sh. K.L. Malhotra was computed on the basis of promoted pay which is 110% of the appellant / plaintiff's last drawn pay;
- (x) that however the appellant / plaintiff was not given any such promotion and accordingly the compensation payable to the appellant / plaintiff remained on the basis of his last drawn pay and was much lower than that paid to Sh. S.K. Maini, Sh. A.N. Tiwari and Sh. K.L. Malhotra; and

(xi) that since the VERP as per its terms was an 'Equitable Programme', the respondent / defendant could not have discriminated between the appellant on the one hand and the said Sh. S.K. Maini, Sh. A.N. Tiwari and Sh. K.L. Malhotra on the other hand and the appellant / plaintiff is thus also entitled to the same compensation package under the VERP as paid by the respondent / defendant to the said Sh. S.K. Maini, Sh. A.N. Tiwari and Sh. K.L. Malhotra.

4. The senior counsel for the respondent / defendant has interjected to state that there was no modification in the VERP and only the date for availing the same was extended from 31.08.1993 to 30.09.1993.

5. Be that as it may, I have enquired from the counsel for the appellant / plaintiff whether it was the case of the appellant / plaintiff that the appellant / plaintiff also was due to be promoted before 30.09.1993 and that while Sh. S.K. Maini, Sh. A.N. Tiwari and Sh. K.L. Malhotra were promoted before computing their compensation, the appellant / plaintiff was not.

6. The counsel for the appellant / plaintiff has fairly stated that it is not so pleaded in the plaint.

7. Once that was so, I fail to see as to how the appellant / plaintiff can invoke the principle of discrimination, even if available against the respondent / defendant.

8. The question of discrimination arises only between equals and can have no application amongst unequals. Without the appellant / plaintiff pleading and proving that like Sh. S.K. Maini, Sh. A.N. Tiwari and Sh. K.L. Malhotra, he was also due for promotion and ought to have been promoted before computing his VERP compensation package, he cannot claim parity with Sh. S.K. Maini, Sh. A.N. Tiwari and Sh. K.L. Malhotra.

9. I may record that the senior counsel for the respondent / defendant controverts Articles 12 and 14 of the Constitution of India being invoked against the respondent / defendant.

10. The only response forthcoming from the counsel for the appellant / plaintiff is that since the VERP proved before the Trial Court as Ex.PW1/2 purports to be an ‘equitable programme’, the appellant / plaintiff ought to have been treated equally as the said three persons.

11. I am unable to accept. A perusal of the terms of VERP shows that the payment of compensation thereunder was on the basis of emoluments being drawn by the employees opting therefor and it was not as if there was a fixed compensation package for all who availed of the same, irrespective of the terms of their employment. If Sh. S.K. Maini, Sh. A.N. Tiwari and Sh. K.L. Malhotra were due for promotion when VERP was introduced and were given such due promotion before computing their VERP package, I fail to see as to how the appellant who does not claim that promotion was due to him, can claim to be aggrieved. In fact a reading of the plaint does not even show the plaintiff to have made the averment that the promotions given to Sh. S.K. Maini, Sh. A.N. Tiwari and Sh. K.L. Malhotra were not due to them.

12. There is thus no merit in this appeal.

13. I may record that the counsel for the appellant / plaintiff having not made any other contention, need is not felt to give the details of the pleadings or the issues framed or the reasoning of the learned Additional District Judge in the impugned judgment.

14. The appeal is accordingly dismissed. However in the facts, no costs.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J

SEPTEMBER 05, 2013
'gsr'..