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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2007 OF 2017

Sanjay Madhukar Bugade & Ors. ...Petitioners

vs

Punjab and Maharashtra Co-op. Bank Ltd. & Ors. ...Respondents

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Mr. Meelan Topkar, for the Petitioners.

Mr. Sandesh Shukla, a/w. Mr. Amit Singh and Mr. Hafeez Patanwala,
i/b. Santosh Sawant, for the Respondents.

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CORAM : S.C. GUPTE, J.

DATED: JUNE 27, 2018

ORAL JUDGMENT :

. This petition challenges a judgment and order dated 5 August 2016 passed by the Industrial Court at Kolhapur dismissing a complaint of unfair labour practices, being Complaint (ULP) No.26 of 2010, filed by the Petitioner herein and 10 others, all of whom claim to be the employees of the Respondent Bank. The complaint was filed under Items 5, 9 and 10 of the Schedule IV of the MRTU & PULP Act, 1971 ("Act"). The complainants are hereinafter referred to as the Petitioners.

2. The Petitioners were originally employed by Kolhapur Janata Sahakari Bank Ltd. There was a representative union of employees of this bank. Service conditions of the employees, including the Petitioners, were governed by settlements signed by and between the

bank and the union. By a settlement dated 20 August 2001, pay scales, dearness allowance and other allowances together with other service conditions of the employees of the bank were settled. The bank, thereafter, declared a voluntary retirement scheme vide circular dated 18 June 2007, offering an option of retirement to employees with more than 10 years of service against payment of compensation. Only two employees opted for this voluntary retirement scheme. On 6 June 2008, a second voluntary retirement scheme ("second VRS") was declared by the bank. After about 52 employees of the bank opted for this second VRS, 26 employees, including the Petitioners herein, were left working with the bank. On 22 June 2008, the settlement of 2001 was modified by the bank and the union. The modification provided for freezing of dearness allowance on the basis of CPI for the quarter ending March 2004 as also annual increments of employees with effect from 1 April 2007. It was also agreed that sick leave could not be encashed. After this modification, on 29 June 2008, Respondent No.1 herein - Punjab and Maharashtra Co-Op. Bank Ltd. agreed to take over Kolhapur Janata Sahakari Bank Ltd. subject to terms and conditions mentioned in the memorandum of understanding drawn between them ("MOU"). The remaining 26 employees (including the Petitioners) working in the latter bank (referred to in the MOU as "Target Bank") were taken up by Respondent No.1 on the same remuneration and service conditions. The MOU provided that these 26 employees could not be given any pay revision for three years, though it was agreed that they would be entitled to annual increments in their present basic salary. On 5 December 2008, the Commissioner of Co-Op. Societies, Maharashtra approved the merger between the two banks under Section 110-A of

Maharashtra Co-Op. Societies Act. Pursuant to the merger, the Petitioners worked as the employees of the Respondent bank. In May and June, the Petitioners, however, opted for the second VRS (Petitioner No.9 opting for it on 20 May 2009, Petitioner Nos. 8 and 10 on 21 May 2009, Petitioner No.4 on 26 June 2009 and Petitioner Nos. 1, 2, 5, 6, 7 and 11 on 27 June 2009), whereupon the benefits of the VRS were paid to the Petitioners. After about a year of their acceptance of the benefits, the Petitioners filed the present complaint of unfair labour practices before the Industrial Court at Kolhapur. By its impugned order dated 5 August 2016, the Industrial Court, as noted above, dismissed the complaint.

3. The complaint was dismissed on the ground that after receiving benefits of VRS by signing settlement, the Petitioners had ceased to be employees of Respondent No.1; the jural relationship between the two having ceased, they were not entitled to claim past service benefits as employees within the meaning of the Act. The Court secondly held that before they opted for the particular VRS, namely, the second VRS, there was a memorandum of settlement between their union and their employer, by which specific provisions in variance of original terms of settlement were agreed to such as freezing of annual increments, dearness allowance, etc. and that this memorandum of settlement had a binding force and would prevail over service conditions originally obtaining under prior settlements.

4. Mr. Topkar, learned Counsel for the Petitioners, does not dispute that the Petitioners had ceased to be employees of the

Respondent bank after accepting the VRS. Learned Counsel, however, submits that the Petitioners' case is that they were not paid their dues as per that very VRS. Learned Counsel, in other words, questions the manner of computation of benefits under the VRS.

5. It is not open to debate that a voluntary retirement scheme is contractual in nature. The contractual rights originally derived by the employees under their contract of service or any settlement or award applicable to such contract of service could always be waived or varied by a voluntary retirement scheme. Once any employee accepts the benefits of a voluntary retirement scheme, he or she can neither be permitted to approbate and reprobate nor resile from it and claim service conditions or benefits applicable before such acceptance. (See the case of **Bank of India vs. O.P. Swarnakar**¹.) As held by Supreme Court in **HEC Voluntary Retd. Employees Welfare Society vs. Heavy Engineering Corpn. Ltd.**², a 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 its future implications as well. The benefits claimed by the Petitioners in the present complaint are essentially on the basis of service conditions or benefits applicable to them under the settlement of 20 August 2001. It is not open to them to claim these benefits once they opt for a VRS and accept benefits thereunder and snap the master-servant relationship between them and their employer upon such acceptance.

6. Let us now see if the Petitioners are entitled to the benefits

1 (2003) 2 Supreme Court Cases 721

2 (2006) 3 Supreme Court Cases 708

claimed by them in the complaint on the basis that these benefits were due to them under the voluntary retirement scheme opted for by them. It is important to note in this context, and that is what was rightly considered by the Industrial Court, that the settlement of 2001 was modified by the union and the bank on 25 June 2008. By this modification, the settlement of 20 August 2001, which was to remain in force for four years with retrospective effect from 1 April 2000 to 31 March 2009, was agreed to be continued to remain in force for five years with retrospective effect, that is to say, from 1 April 2004 to 31 March 2009 with amendments and modifications set out in the supplementary settlement. These modifications indicate that dearness allowance was to be frozen at All India Average Working Class Consumer Price Index (General) based: 1960=100 for the quarter ended March 2004. (The calculations in tabular form were shown in the supplementary settlement.) So also, no employee could claim arrears of dearness allowance or annual increments which were frozen and withheld permanently on account of heavy financial losses incurred by the bank. It is also important to note that this stipulation was not only applicable *qua* the erstwhile Janata Sahakari Bank (i.e. the Target Bank) but also the acquiring Bank (i.e. the Respondent herein). So as to clear all doubts, it was lastly provided that nothing contained in any previous agreement or understanding between the parties to the memorandum of settlement would have any effect after this settlement. This really puts paid to the entire controversy on applicability of the benefits under the settlement of 2001. The original settlement stood superseded by the supplementary settlement of 2008. In other words, the only benefits that could be claimed by the Petitioners were under the supplementary settlement of

2008 and in case they opt for a voluntary retirement scheme, the benefits provided under such scheme.

7. Learned Counsel for the Petitioner points out that the supplementary settlement was to have effect only till 31 March 2009 and not thereafter. This argument is of no avail to the Petitioners. The dues claimed by them are for this very period, that is to say, between the period from 1 April 2000 to 31 March 2009. In any event, there is no suggestion either in the record of the case or in the pleadings or submissions of the parties before the Court below that the original settlement of 2001 revived after 31 March 2009.

8. The impugned order of the Industrial Court, thus, merits no interference. Both submissions on which the impugned order is based are beyond reproach. There is no merit in the petition and is accordingly dismissed.

(S.C. GUPTE, J.)