IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9690 OF 2016

Subhash Neelkanth Parchure & Ors. .. Petitioners.
Vs.
ICICI Bank Ltd. and Ors. .. Respondents.

Mr.M.D. Deshpande for the Petitioner.
Mr.Ratnakar Pai with Mr.Mayur Bhojwani and Mrs.Prangana Barua i/b Manilal Kher Ambalal for the Respondent No.1.

CORAM : A.K. MENON, J.
DATED : 20TH FEBRUARY, 2019

P.C. :

1. This writ petition is filed on behalf of 15 petitioners, who are all retired employees of ICICI Bank Ltd. They were initially employees of one Sangli Bank Ltd., however, by virtue of a Scheme of amalgamation approved by Reserve Bank of India effective from 19th April, 2007, they were absorbed by ICICI bank.

2. Mr.Deshpande, learned counsel for the petitioners submitted that Mr.Mahajan represents all other petitioners. Petitioner Nos.1 to 12 were working as Officers Employees and petitioner nos.13 and 14 were working as Award Staff Employees with erstwhile Sangli Bank Ltd. They have put in 27 to 30 years of service. According to Mr.Deshpande the petitioners have been denied eligible amount of pension, gratuity, leave encashment,

reimbursement of hospitalisation and medical expenses and other benefits available to the employees of ICICI Bank and are therefore aggrieved. According to Mr.Deshpande the terms offered to Officer Employees of Sangli Bank were better than what was paid over to the petitioners. The Petitioner No.3 along with 5 others therefore filed an application under section 7 of the Payment of Gratuity Act, 1972 before the Controlling Authority seeking payment of difference in gratuity payable on retirement. This was on the basis of a Memorandum of Understanding (MoU) between ICICI bank and representatives of Sangli Bank Officers Association. Certain amounts were to be payable towards HRA, medical allowance, conveyance, provident fund etc. and provisions were made for the benefit of transferring and vesting of Sangli Bank with ICICI bank pursuant to a scheme of amalgamation under Section 44A(4) of the Banking Regulation Act.

3. The application was rejected on 26th August, 2011 on the ground that the MoU was binding and the petitioners had been paid amounts due thereunder. Thereafter it appears that petitioner no.3 alone filed yet another application under Section 7 claiming that he retired on 31st August, 2008 and gratuity paid to him was Rs.4,67,864/- but Rs.6,97,891/- was actually payable. He claimed the difference of Rs.2,30,027/-. This claim was on the basis that had he been an employee of Sangli Bank, he would have received a sum of Rs.6,97,891/-. It was contended that clause 8 of the scheme of amalgamation provided that upon scheme coming into effect, the employees

of transferor bank including the petitioners would become the employees of transferee bank and would be paid remuneration, emoluments and perquisites not less favourable than those subsisting with reference to the transferor bank on the said date. Thus, according to him, the claim was valid. While the application was rejected, the authority came to the conclusion that Rs.24/- had to be refunded by petitioner no.3 since that amount was paid in excess.

4. Being aggrieved by the said decision, petitioner no.3 - Mr.Mahajan had filed an appeal under the Payment of Gratuity Act, 1972. On or about 14th October, 2015, this appeal came to be dismissed after hearing the petitioner no.3. Petitioner No.3 was represented by his counsel, who was duly heard. In the appeal it was inter alia contended that the Controlling Authority had not examined whether the MoU was discriminatory and that the MoU can supersede the provisions of Scheme of Amalgamation sanctioned by Reserve Bank of India. Certain factual aspects were also urged seeking consideration of comparative statement of a package offered to two persons post merger. The impugned order dated 14th October, 2015 considers these aspects, However, Mr.Deshpande, learned counsel for the petitioners submitted that the petitioners were all aggrieved and that it was not only the issue of gratuity but various other terms and conditions which were beneficial to the petitioners have not been given by ICICI bank pursuant to the merger. Thus apart from gratuity various other issues are sought to be

agitated today.

5. Mr.Deshpande invited my attention to clause 3 of the MoU which provides for salary structure and benefits. He submitted that benefit of the salary structure was given to the petitioner nos.3 and 4 and not to other petitioners. Furthermore, it is case of petitioner no.3 that the petitioners were not bound by the decision of the employees union since they were not taken into confidence prior to the MoU being signed. In this manner Mr.Deshpande submitted that the petitioners were not bound by the MoU and therefore, the terms and conditions applicable were those while in employment of Sangli Bank.

6. Mr.Deshpande, learned counsel had submitted that there can be no estoppel against a statute and merely because they did not protest higher salary paid and accepted higher amount of salary, the claim is a statutory claim under scheme of amalgamation. In this behalf Mr.Deshpande relied upon the decision of the Supreme Court in *Writ Petition No.5525 of 2012 Bank of Baroda vs. G. Palani and Others dated 13th February, 2018*.

7. The petition is opposed on behalf of the respondent - bank by Mr.Pai, who submitted that the petition is not maintainable being purely afterthought and a vague attempt to seek additional benefits which the petitioners and others were not entitled to. That it is only petitioner no.3 who is aggrieved person and other persons have been simply joined as parties in an effort to create an impression that they have been deprived of their

entitlement. Mr.Pai invited my attention to Exhibit-H to the petition being the Memorandum of Settlement between representatives of Sangli Bank Employees' Union and ICICI Bank under section 18(1) read with 2 (P) of the Industrial Disputes Act, 1947.

8. Mr.Pai, learned counsel submitted that the remaining petitioners are not aggrieved persons. More than 200 persons have been absorbed by ICICI bank pursuant to the Scheme of Amalgamation which is a statutory scheme under the Banking Regulation Act. Mr.Pai relied upon decision of the Division Bench of this Court in *Writ Petition No.8082 of 2012 Mr.Vivek Vishnu Dixit and Ors. vs. The Reserve Bank of India and Ors.* in support of his contentions.

9. I have heard Mr.Deshpande and Mr.Pai at length and with their assistance have perused various provisions highlighted and the decisions cited. The impugned order proceeds to hold that the petitioners have not raised any additional issues over and above what had been considered by the Controlling Authority on 30th July, 2014 and nothing was found that required fresh deliberations. Having gone through the order impugned in the appeal and having heard the petitioners, the Appellate Authority concluded that the petitioners had already accepted the terms and conditions of ICICI bank and after the merger they had received higher salaries and could not now claim that the MoU was discriminatory to avail of greater benefits. The impugned order concludes that the Controlling Authority has examined all

aspects of the merger and recorded that the petitioners had never agitated any aspect of salary restructuring. Thereafter on retirement on 31st October, 2008, the petitioner no.3 has received his gratuity under ICICI Gratuity Fund Rules without any protest and has now set up alternate claim.

10. I have also perused the order of Controlling Authority which found that the applicant had received gratuity in excess. It was only at the stage of the proposed merger that these aspects could have been questioned but the merger has never been questioned. The Controlling Authority has computed the length of service of the applicant's last drawn wages and recorded the fact that the petitioner no.3 did not challenge the last drawn wages. The entire consideration in the impugned order and the order of the Controlling Authority are based on the individual case of petitioner no.3. None of the other petitioners were parties before the Controlling Authority. In the second round, although there are 15 petitioners only 6 were before the Controlling Authority and the application came to be dismissed on 21st August, 2011.

11. In Bank of Baroda (supra) the Indian Banks' Association had negotiated on behalf of the Officers and a joint note had been entered into with regard to periodical pay revision. The Supreme Court had considered the view taken by the Delhi High Court that once the benefit had been taken by revision of salary, estoppel was created against the Officers to claim the pension and dismissed the petition filed by the Officers' Association. The High Court of Madras and the High Court of Karnataka have however taken

a contrary view and observed that the Joint Note of 1999 cannot supplant the existing rules/regulations and that pension was required to be determined by the existing Regulations. The Supreme Court after having considered both views observed that pension regulations have statutory force and the Joint Note could not have taken away the rights which were available to the officers under the Pension Regulations of 1995. The Supreme Court affirmed the views taken by the High Court of Karnataka and the High Court of Madras and upheld the view that there could be no estoppel created. In my view the decision in Bank of Baroda (supra) cannot come to rescue of the petitioners since the factual background was different and the present case involved a scheme of amalgamation which was acted upon by the parties. Benefits of the scheme were also availed of.

12. In Vivek Dixit's case (supra) certain employees of Sangli Bank had sought to challenge the MoU between the ICICI Bank Ltd. and the representatives of Sangli Bank Officers' Association to the extent it concerned, the pension scheme. The Court observed that perusal of clause 10 of the MoU pertaining to pension revealed that the officers who were on the rolls of Sangli Bank and who have duly opted for the Pension Scheme offered by Sangli Bank would be subjected to pension rules applicable and the basic pension will be computed at the time of the respective dates of retirement. This controversy has already been considered by the Supreme Court and therefore the Court found it called for no interference.

13. Considering all of the above, I find nothing perverse about the impugned order and the petitioners do not make out any case for interference. Furthermore, the challenge is only on behalf of petitioner no.3. None of the other petitioners are seen to be aggrieved although their names have been added in cause title, the affidavit in support is also signed only by the petitioner no.3. Although the petition is sought to be filed on behalf of 15 persons only one of them, namely, petitioner no.3 - Mr.Vasant D. Mahajan has signed and verified the petition. Respondent No.10 – Mr.V.N.Mangalvedhi signed the Vakalatnama on behalf of petitioner nos.1 to 14 and on behalf of respondent no.15 – ICICI Bank (ESBL) Retired Employees Welfare Association Vakalatnama is signed by Working President and Secretary of respondent no.15. I also find that several averments in the petition and submissions canvased before me are multifarious and not restricted to alleged short payment of gratuity alone. Disputed questions of fact are also raised which cannot be gone into in the writ jurisdiction of this Court. The facts in respect of of each of the petitioners vary. For all the aforesaid reasons the petition cannot be entertained. Hence I pass the following order :

(i) Writ Petition is dismissed.

(ii) No order as to costs.

(A.K. MENON,J.)