IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.3499 OF 2007

1. Reserve Bank of India Optional Early
Retirement Scheme Pensioners Forum,
Nagpur, a society registered under the
provisions of Societies Registration Act,
1860 having Registration No.MAH-42/07
Nagpur, having its office at 20, 'Radhey',
Ujwal Layout, Jaitala Road,
Nagpur-440 002. through its President-
Advocate Ramesh Annasaheb Aherrao.

2. Deepak s/o Vyankatesh Haldule,
Aged about 56 years, Occupation – Retired,
R/o Ankur Flats, Jayprakash Nagar,
Khamla, Nagpur – 400 025
through its Vice-President.

.... **PETITIONERS**

...V E R S U S...

1. Reserve Bank of India, a Bank
constituted under the Reserve Bank of India Act,
1935, through the Department of Administration
and Personal Management,
Post Box No.15, Dr.Raghavendra Rao Road,
Civil Lines, Nagpur 440 001.
through its Regional Director.

2. The All India Reserve Bank Employees Association,
a Trade Union registered under the provisions
of Trade Unions Act, 1926, having its office at
Reserve Bank Premises, Post Box No.15.
Dr.Raghvendra Rao Road, Civil Lines,
Nagpur-440 001, through its President-
Shri Tarunkumar Ghosh.

.... **RESPONDENTS**

Shri S.A.Marathe, Advocate for petitioners.
Shri R.M.Bhangde, Advocate for respondents.

CORAM : A.S.CHANDURKAR and SMT. M.S.JAWALKAR, JJ.
DATE : 12th APRIL, 2022

<u>JUDGMENT</u> (Per A.S.CHANDURKAR, J.)

The petitioner no.1 is a Society registered under the Societies Registration Act, 1860. It represents about 137 members who have taken benefit of the Optional Early Retirement Scheme (OER Scheme) floated by the Reserve Bank of India and the Forum seeks to espouse the cause of its members. It is the case of the petitioners that on 11.08.2003 the Reserve Bank of India issued a Circular and introduced the OER Scheme. As per Clause 5 thereof upon acceptance of an application for early retirement the concerned employee was entitled to receive ex-gratia amount equal to pay plus dearness allowance for the period of actual service rendered at sixty days for each completed year of service or part thereof exceeding six months or pay plus dearness allowance for the remaining period of service reckoned up to the date on which the employee would retire on superannuation whichever was less. A Memorandum of Settlement (MOS) was accordingly entered into between the respondent no.2 which is the All India Reserve Bank Employees Association with the Reserve Bank of India. As per that Memorandum of Settlement the employees in employment of the Bank as on 01.11.2002 were entitled to such benefit. Clause 3 of Part XVIII of that Memorandum of Settlement which is the subject matter of challenge reads as under:

> *"(3) Notwithstanding anything contained hereinabove, no arrears on the basis of revised pay and allowances, agreed upon in this Settlement, will be payable for the amount of Ex-gratia paid by the Bank to the employees who retired under the Optional Early Retirement Scheme."*

2. As per this Clause no arrears on the basis of revised pay and allowances agreed upon in the Settlement were to be payable for the amount of Ex-gratia paid by the Bank to employees who had retired under the OER Scheme. The members of the petitioner no.1 having retired under the OER Scheme, Clause 3 of Part XVIII has been challenged since they are not entitled to arrears on the basis of revised pay and allowances.

3. Shri S.A.Marathe, learned counsel for the petitioners submitted that members of the petitioner no.1-Forum had exercised their option prior to 05.10.2005 when the Memorandum of Settlement was signed. The said members therefore were not in a position to object to Clause 3 of Part XVIII which was to their detriment. That Clause was violative of Article 14 of the Constitution of India for the reason that if an employee retired on

superannuation on 31.12.2003 he was entitled to benefit of Memorandum of Settlement but the employees who retired on the same date under the OER Scheme were not entitled to such benefit. The petitioners thus have been deprived of the benefit of revisions as made causing prejudice to their rights. The said Clause being arbitrary in nature, it was liable to be set aside and the petitioners ought to be granted benefits of revised pay and allowances even by revising their pensionary benefits. The learned counsel placed reliance on the decision in ***Bank of Baroda and another vs. G.Palani and others 2018 SCC Online SC 3691***. It was prayed that the writ petition be allowed.

4. Shri R.M.Bhangde, learned counsel for the respondents opposed the aforesaid submissions. According to him, there was nothing arbitrary in Clause 3 of Part XVIII of the Memorandum of Settlement and there was justification in not granting benefit of revised pay and allowances to employees who had retired under the OER Scheme. The object behind the OER Scheme was to grant monetary benefits in accordance with that Scheme. Any future revision or changes could not be made part of that Scheme since it would defeat the very purpose of introducing such scheme. The members of the petitioner no.1-Forum having accepted the terms of the OER Scheme, they were not entitled to subsequent wage revision after their retirement. The learned counsel placed reliance on the decisions in ***A.K.Bindal and another vs. Unionof India and***

others (2003) 5 SCC 163, HEC Voluntary Retd.Employees Welfare Society and another vs. Heavy Engineering Corporation Limited and others (2006) 3 SCC 708 and ***IFCI Limited vs. Sanjay Behari and others 2019 SCC Online SC 1211***. It was thus submitted that there was no merit in the writ petition.

5. We have heard the learned counsel for the parties and we have perused the documentary material on record. The factual aspects involved are not in dispute. The members of the petitioner no.1-Forum being covered by the OER Scheme dated 11.08.2003 opted for the same and retired from service accordingly. They were thus bound by the terms of that Scheme and there is no provision in that Scheme to enable the employees who have taken benefit of that Scheme to revision in the amount of pension consequent upon revision of pay and other allowances. Reference was made on behalf of the petitioners to Clause 3 (p) of the said Scheme to justify their demand. However, Clause 3 of Part XVIII of the Memorandum of Settlement dis-entitles the members who have retired under the OER Scheme to any benefit on account of revision of pay and allowances.

6. In *A.K.Bindal* (supra), the Honourable Supreme Court has observed that Schemes of voluntary retirement are introduced to enable benefit being made available to an employee who leaves services and foregoes all his claims and rights in the same. The object behind paying such amount is to bring

about complete cessation of the jural relationship between the employer and the employee. If after such cessation an employee is permitted to raise a grievance regarding enhancement of pay-scale from retrospective date even after opting for benefits under the retirement Scheme, the purpose of introducing that Scheme would be frustrated. Similar view has been expressed in *HEC Voluntary Retired Employees Welfare Society and another* (supra). It was held that the terms of such Schemes are matters of contract and the same are not governed by statute or statutory rules. The parties were bound by the terms of contract of voluntary retirement. In a recent decision in *IFCI Ltd.* (supra) it was observed after referring to the decision in *A.K.Bindal* (supra) that having availed of benefits under the retirement scheme if there are any future revisions which may give monetary benefit, the same cannot be read into such scheme as it would defeat the very purpose of having such scheme which is to bring in financial efficiency.

7. In the light of aforesaid legal position, we find that the members of the petitioner no.1 Forum voluntarily accepted benefits under the OER Scheme. Relationship of the employer and the employee having ceased there would be no legal basis to hold that Clause 3 of Part XVIII of the Memorandum of Settlement disentitling them to any benefit of revised pay and allowances from 01.11.2002 is arbitrary. The said members would have got benefit of

revised pay and allowances had they continued in service and had not opted for retirement under the OER Scheme. Clause 3 merely states the legal position as laid down by the Honourable Supreme Court in the aforesaid decisions and hence same is not violative of Article 14 of the Constitution of India.

8. For these reasons, we do not find any merit in the challenge as raised by the petitioners. The writ petition is accordingly dismissed. Rule stands discharged with no order as to costs.

(SMT. M.S.JAWALKAR, J.) **(A.S.CHANDURKAR, J.)**

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