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

WRIT PETITION NO.6011 OF 2006

1. Kishore Kewalchand Shah,
aged About 61 years, resident of
Narkesari Layout, Jayprakash Nagar,
Khamla, Nagput 400 025

2. Balwant Baburao Wankhede,
aged about 61 years, occupation Retired,
resident of 407, New Subhedar Layout,
Nagpur 400 024.

.... **PETITIONERS**

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

Reserve Bank of India, a Bank
Constituted under the Reserve Bank of India Act,
1934, 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. .... **RESPONDENT**

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

JUDGMENT (Per A.S.CHANDURKAR, J.)

The petitioner no.1 was appointed with the Reserve Bank of India on 03.01.1966 on the post of Clerk Grade-II which is a Class-III post. The petitioner no.2 was appointed with the Reserve Bank of India on 05.12.1969 as Coint Note Examiner Grade-II which is also a Class-III post. The Reserve Bank of India on 11.08.2003 introduced the Optional Early Retirement Scheme (OER Scheme). As per Clause 5 of the said Scheme on acceptance of an application for early retirement, the concerned employee was entitled to receive *ex-gratia* amount equal to Pay + Dearness Allowance for the period of actual service rendered at sixty days for each completed year of service or part thereof in excess of six months or Pay + Dearness Allowance for the remaining period of service reckoned upto the date on which the employee would retire on superannuation whichever was less. The petitioners submitted themselves and sought retirement under the OER Scheme. Their applications were accepted and the petitioners retired from employment on 31/03/2004. Subsequent thereto on 21.11.2005 a Circular was issued by the Reserve Bank of India dealing with revision of pay-scales and allowances of the Officers of the Reserve Bank of India. The Circular was made applicable to the Officers of the Bank who were in employment as on 01.11.2002. Clause 12 sub-clause (III) of the Circular dated 21.11.2005 stipulates that no arrears on the basis of revised pay and allowances would be payable on the amount of *ex-gratia* paid by the Bank to the Officers who retired under the OER Scheme. It is this clause which is the subject matter of challenge in the writ petition for the reason that the petitioners have been denied the benefit of revised pay and allowances as they have not been paid arrears on that basis.

2. Sub Clause (III) of Clause 12 of the Circular dated 21.11.2005 which is the subject matter of challenge reads as under:

> *"(III) 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."*

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 petitioners having retired under the OER Scheme, Sub Clause (III) of Clause 12 has been challenged since they have been held not entitled to arrears after pay and allowances were revised.

3. Shri S. A. Marathe, learned counsel for the petitioners submitted that Sub-clause (III) of Clause 12 of the Circular dated 21.11.2005 was violative of Article 14 of the Constitution of India on the ground that it discriminated amongst similarly placed employees by denying the benefit of revised pay and allowances. Under that Scheme it had not been stated that on future revision of pay and allowances no arrears would be paid to those

employees who had opted for the OER Scheme. The petitioners were under bonafide belief that they would also receive revised pay and allowances after their retirement as payable to other employees under the said Scheme. There was no reason for the respondents to deny the benefit of revision in pay and allowances to those employees who had opted for retirement under the OER Scheme. The learned counsel placed reliance decision in ***Bank of Baroda and another vs. G.Palani and others 2018 SCC Online SC 3691*** and submitted that the writ petition be allowed.

4. Shri R.M.Bhangde, learned counsel for the respondent opposed the aforesaid submissions. He submitted that Sub-clause (III) of Clause 12 of the Circular dated 21.11.2005 was not arbitrary in any manner whatsoever. There was no legal basis for the petitioners to claim benefit of revision in the amount of pay and allowances. 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 petitioners 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. Union of 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 petitioners 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.

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 petitioners 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 Sub Clause (III) of Clause 12 of the Circular dated 21.11.2005 disentitling them to any benefit of revised pay and allowances from 01.11.2002 is arbitrary. The petitioners would have got benefit of revised pay and allowances had they continued in service and had not opted for retirement under the OER Scheme. Sub Clause (III) of Clause 12 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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