

(2008) 07 KAR CK 0047
In the Karnataka High Court
Case No : Writ Petition No. 29365 of 2002

A.S. Khan

APPELLANT

Vs

Senior Divisional Manager LIC of India "Jeevan Prakash" and
Others

RESPONDENT

Date of Decision : 17-07-2008

Acts Referred:

Life Insurance Corporation Act, 1956 — Section 3 (2) (a), 49

Citation : (2009) ILR (Kar) 698 : (2009) 2 KarLJ 273 : (2009) 3 SLR 273

Hon'ble Judges : Ajit J. Gunjal, J

Bench : Single Bench

Advocate : J.D. Elangowan, for the Appellant; Shantha Chellappa, for the Respondent

Final Decision : Dismissed

Judgement

Ajit J. Gunjal, J.—The petitioner at the relevant point of time was working as Senior Branch Manager in the cadre of Class-I Officer with the first respondent, Life Insurance Corporation of India (for short, "the Corporation"). The case made out by the petitioner is that he voluntarily retired from service on 07.11.1991 due to some domestic and personal reasons. This petition is filed for the relief to declare that the age of the officer to be 55 years at the time of voluntary retirement under Regulation 19(2)(a) to be ultra vires and violative of Articles 14, 16(1), 21, 39(d) and 41 of the Constitution of India and further declare the respondent Corporation to grant commutation amount of the pension and to pay pension from the date of his retirement on 01.11.1993 with all consequential benefits.

2. The facts germane for the disposal of this case can be stated in brief as follows:

The petitioner, as stated earlier, was a Class-I Officer, Due to some domestic problems, he proposes to take voluntary retirement from the service of the

Corporation. The petitioner, pursuant to Annexure-C dated 5th August 1991, tendered a letter for voluntary retirement. The voluntary retirement letter which is very brief would contain that he has submitted the voluntary retirement application and he requests them to permit him to leave the Head Quarters and his absence may be treated EOL till it is accepted. The said communication at Annexure-C was replied by the Corporation, copy of which is produced at Annexure-D, the respondents have informed the petitioner that in terras of the Regulation 19(2)(a) of the Life Insurance Corporation Staff Regulations, 1960 (for abort, "the Staff Regulations") an employee may be permitted to retire at any time after he completes 55 years of age, But however, they would suggest that since the petitioner is only 52 years old, his representation for voluntary retirement cannot be considered. But however, they would communicate that if the petitioner desires to resign from the services of the Corporation under Regulation 18(1)(a) of the Staff Regulations he may send a fresh letter of resignation giving three months" notice. Pursuant to Annexure-D, the petitioner has sent Annexure-E. The communication is issued to the Senior Divisional Manager of the Corporation at Raichur, Karnataka. The subject of the said letter is resignation from the service of the LIC of India. The contents of the said letter are also very brief. The contents are that with reference to the zonal office letter dated 28.10.1991, the precise words used by the petitioner are "I hereby submit my resignation letter from the services of Life Insurance Corporation of India for your kind perusal. All future correspondence may please be made against the aforesaid address." This resignation letter was accepted by the respondent Corporation and the petitioner was relieved of his duties. After his resignation from the Corporation, u/s 49 of the life Insurance Corporation Act, 1956 and with the previous approval of the Central Government certain Staff Regulations to the officers and employees came into force. The sum and substance in that any officer or an employee of the financial institution which are in the nature of Bank and Insurance Company, have retired from service or who have voluntarily taken retirement between the cut of date 01.01.1986 are entitled for pension. Under Rule 55 of the LIC of India Pension Rules, 1995, the petitioner made an application for grant of pension. A copy of the said application letter is at Annexure-F. Pursuant to Annexure-F, the petitioner has lodged his claim. In the column which is referrable to the reasons of retirement/cessation of service, he would indicate that he is voluntarily retiring from service. It is to be noticed that the said application seeking pension was given on 04.09.1995. The petitioner gives a representation on 9th February 1999, a copy of which it produced at Annexure-J requesting the Corporation to consider his case for pension. Annexure-K is another representation which is given on 9th May 2000 once again requesting the Corporation to consider his representation dated 9th February 1999. It is noticed that the said Annexure-K is issued from London where the petitioner is residing. the Camp address in India is at Bangalore. Since the said representations are not considered, this writ petition is filed for the aforesaid reliefs including a mandamus to the Corporation to consider the representations.

3. Mr. Elangovan, learned Counsel appearing for the petitioner would submit that the letter at Annexure-E cannot be termed as a resignation letter but it is required to be termed as voluntary retirement application, He submits that there is not much of distinction between resignation and voluntary retirement, inasmuch as, both would amount to cessation of service. He further submits that the Corporation compelled the petitioner to give the said letter which is termed as a resignation letter, According to him, it should be termed as a voluntary retirement application. He further submits that the Regulations were amended up to 22nd June 2000 and Sub-section (2)(a] was added to Section 3 which would reflect that an employee may be permitted to retire at any time after the age of 55 years after giving 3 months" notice in writing or he may be permitted to retire at any time after he has completed 20 years of qualifying service. Learned Counsel submits that having regard to the fact that the petitioner has put in 20 years of qualifying service, Annexure-E is required to be treated as a voluntary retirement application and he is entitled for pension. He would rely on a ruling of the Delhi High Court in the case of Mr. Ashwani Kumar Sharma Vs. Oriental Bank of Commerce, o buttress his contention that there is no distinction between voluntary retirement and resignation.

4. Smt. Shantha Chellappa, learned Counsel appealing for the Corporation, at the outset, submits that the ruling which is sought to be pressed into service has no application, inasmuch as, the same has been reversed by the Apex Court. She further submits that the Staff Regulations, 1960 would cover the service conditions. She would rely on Regulation 18 as well as Regulation 19 to buttress her contention that the letter issued, by the petitioner at Annexure-E cannot be termed as a voluntary retirement application but is required to be treated as a resignation letter simplicitor without any strings attached. Hence the question of the petitioner claiming pension does not arise.

5. Of course, this petition could have been disposed of on a very short ground directing the Corporation to consider the two representation which are given in the year 1999 and 2000. But however, the question would be whether a writ of mandamus could be issued when the petitioner does not have any legal right. In fact, a mandamus can be issued only if there is an existence of a right and not otherwise. The petitioner, to my mind, has not been able to show that he has an existing right wherein a writ of mandamus could be issued to the Corporation to consider his service. This opinion of mine is for the following reasons:

6. It is not in dispute that the petitioner indeed had worked a little over 20 years with the Corporation. It is also not in dispute, in the first instance, that he sent his letter seeking voluntary retirement. But however, that was not accepted and the petitioner has chosen to exercise his option and resigned from the job. The question whether retirement, voluntary retirement and resignation are required to be treated on par has been set at rest by the Apex Court. It is to be noticed that the words "Resignation and retirement" certainly carry different meaning in common parlance. Indeed an employee can resign at any point of time even on

the day of his appointment But however, in the case of retirement, an employee could retire only on attaining superannuation or in the case of voluntary retirement on completion of qualifying service. Indeed, it is to be noticed that resignation means a complete cessation of master and servant, relationship whereas a voluntary retirement maintains the relationship for the purpose of grant of retirement benefits having regard to the past service. A resignation certainly can be tendered irrespective of the length of service. Whereas in the case of voluntary retirement, the petitioner has to complete 20 years of qualifying service to receive the retiral benefits. Indeed there are certain yardsticks and criteria for submitting resignation vis-a-vis voluntary retirement letter and acceptance thereof. In the case on hand, it is to be noticed that the petitioner has no where led on a garden path and he was compelled to give a letter of resignation. In fact, Annexure-D is absolutely simple and communicates to the petitioner that he is only 52 years old and his representation for voluntary retirement cannot be considered. But however, the letter would contend that if the petitioner chooses or desires to resign from the services he can do so by sending a fresh letter of resignation by giving 3 months" notice. On receipt of the said letter, the Corporation would proceed to consider the same. This is followed by Annexure-B. Indeed, I am of the view that the said letter of the Corporation cannot be termed as inducing the petitioner in tendering his resignation letter. They have in no uncertain terms stated that if the petitioner so desires he can exercise the option of resigning from the Corporation which the petitioner has done. The resignation letter in question can be construed to convey spontaneous intention to give up or relinquish his office accompanied by any act of relinquishment. To constitute a resignation, it must be unconditional and with an intention to operate as such. It may amount to a threatened offer more on account of exasperation, to resign on account of a feeling of frustration born out of an idea that he has been harassed unnecessarily. As stated earlier, nothing sinister could be read into the communication issued by the Corporation at Annexure-D. They have only explained what is the regulation and the procedure to be adopted. Thus, I am of the view that the petitioner was not persuaded to give the said resignation letter and the said resignation letter is not given under any coercion, fraud or misrepresentation. Indeed, it is to be noticed that retirement, voluntary retirement and resignation operate in different fields and in different contexts. The decision of the Apex Court in the case of UCO Bank and Others Vs. Sanwar Mal, and also in the case of Reserve Bank of India and Another Vs. Cecil Dennis Solomon and Another, can be referred to. Therefore, I am of the view that the letter sent by the petitioner expressing his desire to resign from the Corporation cannot be termed as a Voluntary retirement letter or application. It is a letter resigning from the Corporation simpliciter without any strings attached.

7. This takes us to the next question whether the amendment which was brought about to the Regulation 1960 of the Corporation. A perusal of Sub-section 2(a) of Section 3 does not in any way indicate that the resignation is required to be

treated on par with retirement The said provision which was added subsequently, in no uncertain terms reads "an employee is permitted to retire at any time on completion of the age of 55 years after giving 3 months" notice in writing to the appointing authority of his intention to retire". The other option is that an employee is permitted to retire at any time after he has completed 20 years of qualifying service. The stress is laid on the word "retire". No where does it read or anything more could be read into this provisions to treat the word "retire" on par with "resignation". The whole gamut of this provision is that the pensionary benefits is extended only to those persons who have completed 55 years and choose to retire or who have completed 20 years of service who want to exercise the option of voluntary retirement Hence, I am of the view that the fact that the petitioner has put in 20 and more years of service in the Corporation cannot take the benefit of the said amendment and claim that since he has put in 20 yearn and more of service he is entitled for pension.

8. This takes us to the last contention regarding the regulations, Indeed, once it is held that the letter of the petitioner is nothing but a resignation letter simplicitor, Regulation 18 and Section 3 of the Regulations which deals with the determination of service and Regulation 19 which would deal with superannuation and retirement will be of little consequence. Indeed, the determination of service of an employee is governed by Regulation 18. This is not the case of determination of the service of an employee. Indeed, the said regulation would deal only with a notice i.e., three months notice or salary in lieu thereof etc. Regulation 19 would deal wherein an employee is permitted to retire at any time after he has completed the age of 55 years provided he gives three months notice etc. Having regard to the finding recorded by me on the disputed letter at Annexure-E and treating it as resignation without any strings attached, I am of the view that the question of petitioner claiming pension on the ground that he is deemed to have been in service and voluntarily retired in the year 1991 certainty cannot be sustained.

9. Consequently, I am of the view that the relief which is sought for by the petitioner cannot be granted. If the petitioner has any monetary claim, he can agitate the matter before the Corporation.

No merit. Petition rejected.

Rule discharged.