

(2004) 01 GAU CK 0026
In the Gauhati High Court
Case No : Writ Appeal No. 195 of 2001

Assam Industrial Development Corporation Ltd. and Others	APPELLANT
Vs	
Rabindra Kumar Sarma	RESPONDENT

Date of Decision : 07-01-2004

Acts Referred:

Citation : (2004) 2 GLR 117 : (2004) 1 GLT 248

Hon'ble Judges : P.P. Naolekar, C.J.;Aftab H. Saikia, J

Bench : Division Bench

Advocate : P.C. Deka, S.K. Medhi, M. Sarma and N. Saikia, for the Appellant;
G.R. Bhattacharyya and B. Chakraborty, for the Respondent

Final Decision : Dismissed

Judgement

P.P. Naolekar, C.J.—Heard Mr. P.C. Deka, learned counsel for the appellant and Mr. G. K. Bhattacharyya, learned counsel for the respondent.

2. The writ petition respondent Shri Rabindra Kumar Sarma was in employment of the Assam Industrial Development Corporation Ltd. and at the relevant time was holding the post of Deputy Manager (Development) in the Corporation. The petitioner respondent had tendered his resignation to the Corporation on 4.9.1992. The letter of resignation contends that he be retired from service on 31.10.1992. The Management, acting on the letter of resignation tendered by the petitioner respondent accepted the resignation from 31.10.1992 by its letter dated 28.9.1992. Later on the Corporation formulated a voluntary retirement scheme of the employees of the Corporation on 28.12.1992, which was brought into force from 25.10.1993. Seeing that the voluntary retirement scheme has come into effect, the petitioner respondent on 10.2.1993 had made a representation to the Corporation requesting the Corporation that his resignation be treated as voluntary retirement under the scheme which has been brought into force subsequent to the retirement of the petitioner respondent. The Corporation vide its letter dated 25.3.1993 communicated to the petitioner that the petitioner does not come within the purview of the voluntary retirement

scheme of the Corporation and hence he is not entitled to be dealt with under the said scheme treating his retirement as retirement under the voluntary retirement scheme.

3. Aggrieved by the said order dated 25.3.1993 issued by the Corporation the writ petitioner has approached this Court by filing writ petition (C.R. no. 3933/93). The learned Single Judge has allowed the writ petition by its order dated 26.4.2001. The reasoning adopted by the learned Single Judge in allowing the writ petition as contained in paragraph 8 of the judgment, which we may refer, reads.

".... The facts of the instant case would show that the respondent-Corporation which is a fully owned Government company was on the verge of enforcing a scheme of voluntary retirement for the benefit of its employees. Fairness and considerations of the welfare of its employees demanded that all employees for whose benefit the voluntary retirement scheme was being finalized, be informed of the impending scheme and the terms thereof so that the employees who may have been contemplating to put an end to their services under the Corporation through other modes have the benefit of the information regarding the availability, in the near future, of another mode of parting ways with the employer. The controversy as to whether the petitioner was the only person who had tendered resignation at that time or there were many others is not relevant. What the Court is concerned with is the correctness of the actions of the Corporation in withholding the information that a scheme of voluntary retirement for employees under the Corporation in withholding the information that a scheme of voluntary retirement of employees under the Corporation was in the offing."

Thus, according to the learned Single Judge, as the Corporation has not informed the petitioner respondent of its intention of implementation of the voluntary retirement scheme, it amounts to unfair practice played by the Corporation which goes contrary and adverse to the interest of the petitioner and thus the petitioner respondent is entitled to avail the benefit of the voluntary retirement scheme.

4. With great respect to the learned Single Judge, we are unable to concur with the reasoning adopted by the learned Single Judge. It is the admitted fact that the scheme of voluntary retirement is identical to the voluntary retirement scheme of the employees of the public sector undertakings framed and introduced by the Government of India, Ministry of Industries, Bureau of Public Enterprises dated 5.10.1988. It is this scheme, which has been adopted by the Corporation. Thus, it was not necessary for the Corporation to undertake a long exercise for formation of the scheme. The corporation was required to take decision as to whether the scheme framed by the Ministry of Industries, Government of India had to be adopted and applied to the Corporation employees. Thus, it cannot be said that when the petitioner respondent might have made the enquiry regarding the scheme of voluntary retirement, the

scheme might not have been in contemplation. Apart from this, there is no duty cast on the employer to inform as to what scheme is to be or will be brought into force at a latter date when a decision to that regard has not been taken. No management can be held bound to disclose its policy decision to employees beforehand, even before those decisions are implemented. Policy of good governance cannot be extended to the limit of disclosing all decisions, which might or might not be taken by the management. The right to have the benefit of the scheme can only be available to an employee who has been working in the Corporation when the scheme was brought into force and not to an employee who has retired from service. We are not concerned as to how and why the petitioner respondent has taken retirement by tendering resignation from his post so long it is clear to us that his retirement was voluntary retirement. Scheme was not in force on the day he took retirement by resigning from the post. The mere expectation of employer or employee of adoption of any scheme would not be a ground for giving benefit of the scheme, which has been brought into force on a later date. The petitioner respondent having retired from service prior to the voluntary retirement scheme came into force in the Corporation, he has no right to claim the benefit under the Scheme.

5. For the foregoing reasons, we set aside the order passed by the learned Single Judge and dismiss the writ petition filed by the petitioner respondent by allowing the appeal.