(2015) 07 AHC CK 0235

In the Allahabad High Court

Case No : Special Appeal Defective No. 493 of 2015

Assistant General Manager, Oriental Ins. Co. and Others — APPELLANT

Vs

B.P. Rajpoot — RESPONDENT

Date of Decision : 20-07-2015

Acts Referred:

General Insurance Business (Nationalisation) Act, 1972 — Section 17 A, 17A

Citation : (2015) 6 ALJ 227 : (2015) LabIC 4339

Hon'ble Judges : D.Y. Chandrachud, C.J. and Yashwant Varma, J.

Bench : Division Bench

Advocate : Manish Goyal, for the Appellant; M.R. Gupta, for the Respondent

Final Decision : Allowed

Judgement

1. The special appeal has arisen from a judgment and order of the learned single Judge dated 29 May, 2015. The respondent was borne on the establishment of the appellants as a Development Officer. The services of the respondent were governed by the General Insurance (Rationalisation of Pay Scales and other Conditions of Service of Development Staff) Scheme, 19761. On 7 July, 1999, a communication was issued to the respondent by the Senior Divisional Manager of the appellants recording that under the Scheme, every member of the development staff was required to work with such cost as to maintain his cost ratio within the limits stipulated in sub-clause (b) of Clause (17) of Para 3 of the Scheme. The respondent was informed that his performance during the six years from 1993-94 to 1998-99 failed to meet the prescribed parameters. As a result the basic pay of the respondent had been fixed with effect from 1 April, 1999 at the minimum of the pay-scale of a Development Officer Grade-U due to a reduction in terms of Para 11 of the Scheme. The attention of the respondent was drawn to Para 11 (5) of the Scheme which provided as follows:

"The Development Officer whose basic pay has been fixed at the minimum of the scale of Development Officer Grade II after reduction under sub-paragraph (4), shall be provided an opportunity of one year to conform to the stipulated cost limits and will be issued a warning that his services shall be liable for termination if he still continues to exceed the stipulated cost limits."

2. Accordingly, the respondent was informed that he was being provided an opportunity to conform to the stipulated cost limits during his performance for 1999-2000 so as to avoid the consequence mentioned in Para 11 (5). On 12 January, 2000, the respondent issued a notice seeking voluntary retirement with effect from 1 March, 2000 and requested that he should be relieved from the afternoon of 29 February, 2000 with all consequential benefits. The appellants responded to that request through their Regional Manager on 5 May, 2000 and turned down the request of the respondent for voluntary retirement on the ground that having due regard to his past business performance and other parameters, it was not possible to accede to the request of voluntary retirement. On 19 May, 2000, the services of the respondent were terminated under Para 11 of the Scheme by issuing a notice of 30 days. The respondent replied on 5 July, 2000 stating that in terms of his notice dated 12 January, 2000, his services had come to an end automatically on the expiry of 90 days and that with effect from 11 April, 2000, he should be treated as having voluntarily retired from service. According to the respondent, there was no provision for the acceptance of the notice of voluntary retirement and hence, the rejection of his request on 5 May, 2000 was without any legal effect.

3. Eventually, the respondent filed a writ petition seeking to challenge the orders of the appellants dated 5 May, 2000 rejecting his request for voluntary retirement and of 19 May, 2000 terminating him from service. The respondent sought a release of his retiral dues.

4. The learned Single Judge allowed the writ petition by the impugned judgment and order dated 29 May, 2015. In the view of the learned single Judge once a notice was issued by the respondent and a period of 90 days lapsed upon receipt of the notice, the request of the employee for voluntary retirement would be automatically deemed to have been accepted and he should be treated as having retired from service. In other words, it was the finding of the learned single Judge that upon the expiry of 90 days from the receipt of the notice, the services of the respondent had automatically come to an end and consequently, the rejection of the request on 5 May, 2000 which was beyond the period of 90 days was invalid and that the termination on 19 May, 2000 was of no consequence in law. The learned single Judge has also held that once the respondent had been penalized for his poor performance previously by fixing his pay at the minimum of his scale, mere was no justification to terminate his services on the basis of his previous work in regard to the cost limits. Against the judgment of the learned Single Judge, an appeal has been filed by the original respondents.

5. Basically two submissions have been urged in support of the appeal. The first submission is that the notice which was submitted by me respondent was not a valid notice in terms of Clause 30 of the Pension Regulations which mandates that a notice of not less than 90 days has to be furnished to the appointing

authority. Under sub-clause (3), an employee is permitted to make a request in writing to me appointing authority to accept a notice of voluntary retirement of less than ninety days giving reasons therefor upon which the appointing authority may consider whether the curtailment of the period of notice will not cause any administrative inconvenience to the employer. In the present case, it was sought to be urged that the notice which was submitted by the respondent was invalid since the period of notice fell short of 90 days and no reasons were indicated for the issuance of a notice of less man me prescribed period. Secondly, it has been urged that in the present case, the respondent was already under a warning in terms of the provisions contained in the Scheme pertaining to the rationalisation of the scales and other conditions of service of me development staff. In this view of the matter, it was urged that the Insurance Company was justified in refusing to allow the respondent to retire and in proceeding ahead with me order of termination. It was urged that once me notice of voluntary retirement did not fulfill the requirements of Clause 30 of the Pension Regulations which have been notified under Section 17 A of the General Insurance Business (Nationalisation) Act, 1972, no consequences would flow out of an invalid notice.

6. On me other hand, it was urged on behalf of the respondent that upon a period of 90 days expiring from the date of issuance of me notice on 12 January, 2000, me respondent automatically ceased to be in service with effect from 12 April, 2000. The refusal of the request on 5 May, 2000 as well as the notice of termination dated 19 May, 2000 both were received by me respondent on 4 July, 2000. Hence, it is urged that the consequences envisaged in Para 30 (2) of the Pension Regulations would ensue, namely, that the retirement would become effective from the expiry of a period of 90 days and would take effect where the appointing authority had not refused to grant its permission for retirement before the expiry of the specified period.

7. Para 30 of the Pension Regulations under Chapter-V provides as follows:

"(30) Pension on voluntary retirement.

(1) At any time after an employee has completed twenty years of qualifying service, he may, by giving notice of not less than ninety days, in writing to the appointing authority, retire from service:

Provided that this sub-paragraph shall not apply to an employee who is on deputation unless after having been transferred or having returned in India he has resumed charge of the post in India and has served for a period of not less than one year:

Provided further that this sub-paragraph shall not apply to an employee who seeks retirement from service for being absorbed permanently in an autonomous body or a public sector undertaking to which he is on deputation at the time of seeking voluntary retirement.

(2) The notice of voluntary retirement given under sub-paragraph (1) shall require acceptance by the appointing authority:

Provided that where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period.

(3) (a) An employee referred to in sub-paragraph (1) may make a request in writing to the appointing authority to accept notice of voluntary retirement of less than ninety days giving reasons therefor;

(b) On receipt of request under clause (a), the appointing authority may, subject to the provisions of sub-paragraph (2), consider such request for the curtailment of the period of notice of ninety days on merits and if it is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, the appointing authority may relax the requirement of notice of ninety days on the condition that the employee shall not apply for commutation of a part of his pension before the expiry of the notice of ninety days."

8. The Scheme was notified on 28 June, 1995 by the Department of Economic Affairs (Insurance Division) of the Ministry of Finance in the Government of India in exercise of powers conferred by Section 17 A of the General Insurance Business (Nationalisation) Act, 1972. Section 17A empowers the Central Government to frame one or more schemes for regulating the pay scales and other terms and conditions of service of officers and other employees of the Corporation or of any acquiring company. Clause (1) of para 30 envisages that a notice of voluntary retirement can be furnished after an employee has completed twenty years of qualifying service. Clause (1) of Para 30 envisages that upon the completion of the qualifying service, an employee may retire from service by giving a notice of not less than ninety days in writing to the appointing authority. Under sub-clause (2), a notice of voluntary retirement requires acceptance by the appointing authority. Hence, it is clear that a notice does not ipso facto bring the relationship of employer and employee to an end. Acceptance of the notice by the employer is a sine qua non. But there is a further safeguard in the interest of the employee which is to the effect that where the appointing authority does not refuse to grant its permission before the expiry of the period specified in the notice, retirement shall take effect from the date of expiry of the period. Hence, what emerges from a reading of the scheme is that a notice of 90 days is required. Upon the issuance of a notice, the cessation of service takes place only upon the acceptance of the notice by the appointing authority. However, where the authority does not refuse permission within the specified period, the retirement takes effect upon a expiry of a period of 90 days. The Pension Regulations also make a provision for a curtailment of the period of notice. Where an employee desires that the retirement should take effect before the expiry of 90 days, a request to that effect has to be made to the appointing authority with reasons why the employee desires to curtail the period. On receipt

of a request, it lies within the discretion of the appointing authority to determine whether a curtailment of the period should be granted on merits. The authority will apply its mind as to whether the curtailment of the period would cause any administrative inconvenience, in the event that it refuses to curtail the period. The appointing authority may relax the requirement of a notice of 90 days on the condition that the employee shall not apply for commutation of a part of his pension before the expiry of a period of 90 days. There may be instances where an employee who had been subjected to an inquiry seeks to obviate the logical pursuit of the inquiry to its conclusion by serving a notice of voluntary retirement. The appointing authority can consider and determine whether acceptance of the request would be contrary to the discipline of the service and should be declined. Where a request for curtailment is sought, the authority would be within its rights to consider as to whether the curtailment of the period may be granted and, for that matter, whether the request for voluntary retirement should be acceded to or not. The requirement of acceptance of a notice, and of the authority being required to apply its mind to a request for curtailment are safeguards in the interest of the employer. The time limit for the employer to decide is to ensure that the interest of the employee is not prejudiced.

9. In the present case, admittedly, the notice was less than of 90 days. In his notice dated 12 January, 2000, the respondent sought to retire from service with effect from 29 February, 2000. No reasons were indicated in the notice why the respondent sought a curtailment of the period of notice. The basic contention of the appellants is that the notice in question was not a valid notice because it was not accompanied by the expression of reasons why the employee sought a curtailment of the prescribed period of 90 days. Hence, the contention before the learned single Judge was that such a notice would have no existence in the eye of law. If the appellants were correct in that submission, men in such an event, the acceptance or non-acceptance of the notice would pale into insignificance because the issue of acceptance arises only if the notice in the first place is a valid notice in the eye of law. The learned single Judge has not, as the impugned judgment and order would indicate, inquired into the legality of me notice though a submission to that effect was specifically urged on behalf of the appellants. The learned single Judge has recorded the submission in paragraph 12 of me judgment but the submission has not been answered. The learned single Judge has proceeded on the basis that upon the expiry of a period of 90 days from the date of the notice, the retirement of the employee would take effect ipso facto. The validity of the notice of retirement has however, not been dealt with. The submission of the respondent that even if the request for curtailment of the period is ignored, the notice would take effect on the lapse of 90 days is also required to be considered.

10. The next aspect of the matter which would warrant consideration is as to whether in such an event, the employer was acting within his right in declining to accede to the notice pending the enquiry proceedings. Undoubtedly, if the notice

is held to be a valid notice in the eye of law, me refusal on the part of the employer was beyond the period of 90 days, on which mere is no dispute. Thus, the basic question which ought to have been addressed by the learned single Judge is as to whether the notice met the requirement of a valid notice in terms of the provisions of sub-clause (3) of Clause 30 of the Pension Regulations. Since the learned single Judge has not considered this aspect, we are of the view that it would be desirable to remit the matter back to me learned Single Judge so that the appellate court would have the benefit of a considered view of the learned single Judge.

11. We, accordingly, allow the appeal and set aside the impugned judgment and order of the learned single Judge dated 29 May, 2015. The writ petition shall, accordingly, stand restored to the file of the learned single Judge for disposal afresh after hearing the parties. We clarify that all the rights and contentions of the parties are kept open and to be considered on remand.

12. Having due regard to the long pendency of the writ petition, we would request the learned single Judge to expedite the hearing of the writ petition which may be disposed of with all reasonable dispatch.

13. The special appeal is, accordingly, disposed of. There shall be no order as to costs.

11. Scheme.

