(2012) 07 MP CK 0051

In the Madhya Pradesh High Court

Case No : Writ Petition (S) No. 1482 of 2011

Balak Ram Singh — APPELLANT

Vs

State Bank of India and Another — RESPONDENT

Date of Decision : 13-07-2012

Acts Referred:

Constitution of India, 1950 — Article 226
State Bank of India Act, 1955 — Section 50

Citation : (2012) 5 MPHT 424

Hon'ble Judges : Keshav Kumar Trivedi, J

Bench : Single Bench

Advocate : Akash Choudhary, for the Appellant; Ashish Shroti, for the Respondent

Final Decision : Dismissed

Judgement

Keshav Kumar Trivedi, J.—This writ petition under Article 226 of the Constitution of India has been filed calling in question the communication dated 28-12-2010 (Annexure P-1) by which the petitioner is informed that his application for voluntary retirement from Bank services cannot be considered as a disciplinary action is contemplated against the petitioner, on the ground that no such refusal to accept the application for voluntary retirement could have been communicated to the petitioner nor such a decision could be taken by the respondents as the date for voluntary retirement was specifically mentioned by the petitioner in his application and the said communication was received by the petitioner after the expiry of the said date. It is contended that the petitioner was working on the post of Special Assistant in the employment of the Bank. On account of his personal reasons, since he has completed the requisite years of service, he gave a notice of voluntary retirement with effect from 31-12-2010, on 22-11-2010. The communication was received by the petitioner only after expiry of the period of notice and, therefore, he was not to be refused to voluntary retire from the service. It is contended that no action whatsoever was initiated against the petitioner at the relevant time, for taking any disciplinary action against him and, therefore, for such reasons the petitioner could not have been refused to retire from service. It is contended that an award has been made by the Competent Authority under the settlement between the Bank and the employees, commonly known as ''Shastri Award'' and it has the statutory force. Section 522 of the award prescribes that a permanent employee desirous of leaving the services of the Bank shall give one month''s notice in writing to the Manager and if such a notice is given, the employee can relinquish the service and retire from service. It is contended that in terms of such statutory provisions, since the notice was given, the respondents were not entitled to refuse to accept such notice or to retire the petitioner voluntarily. Thus, it is contended that the communication of such a decision to the petitioner sent by respondents is bad in law and is liable to be quashed. The relief on the basis of such submissions have been claimed in the following manner:-

(i) Summon the entire relevant record from the respondents for its kind perusal;

(ii) Set aside the order dated 28-12-2010 (Annexure P-1);

(iii) Upon holding that the action of respondent-authority in denying the voluntary retirement of the petitioner from the service of the Bank is bad in law; Command the respondent to treat the petitioner as voluntary retired from the service of the bank on 22-12-2010 with all consequential benefits arising thereto;

(iv) Command the respondents to release the pension and retiral dues of the petitioner along with interest on delayed payment on the rate as deemed fit and proper by this Hon''ble Court;

(v) Allow this petition with costs;

(vi) Any other order/orders as may be deem fit.

On receipt of the notice of this writ petition, the respondents have filed a detailed return. It is categorically contended by the respondents that the petitioner was not working properly, there was definite information that huge amount was credited in the Bank account of the petitioner and was subsequently withdrawn. Finding that such financial irregularities were being committed and the volume/ turn over of the amount in the Bank account of the petitioner was disproportionate to the known sources of his income, the action was to be taken against him. When the explanation was called, the petitioner started making demand of supply of documents and did not submit his explanation voluntarily. This being so. the decision was taken to initiate a departmental enquiry against the petitioner. As soon as this fact came to the notice of the petitioner, he gave a notice of voluntary retirement, which was considered and immediately he was informed that such a request of the petitioner cannot be accepted and he is to continue in the services of the Bank. The said fact was intimated well within the time on 28-12-2010, much before the period of notice indicated in the application for voluntary retirement as such the petitioner was not permitted to retire voluntarily. It is contended that there are statutory provisions made in the

Rules/Regulations governing the services of the Bank employees and since there was a reason to withhold the voluntary retirement of the petitioner, as per the Pension Rules, the action was rightly taken. Thus, it is contended that the entire claim made by the petitioner is misconceived and the petition is liable to be dismissed.

2. The rejoinder has been filed by the petitioner controverting the allegations made against him and the additional return has been submitted by the respondents. However, the similar facts have been reiterated, which are not required to be referred in detail.

3. Heard learned Counsel for the parties at length and perused the record.

4. Undisputedly, the services of the petitioner are governed by the Rules known as the State Bank of India Employees'' Pension Funds Rules (hereinafter referred to as ''the Rules'' for short). The said Rules have been made in exercise of powers conferred by Section 50 of the State Bank of India Act (Act No. 23/1955). The Rules have been made after consultation of the Reserve Bank of India and with the previous sanction of the Central Government. Rule 15 of the Rules, specifically prescribes that retirement of all officers of the Bank shall be subject to the sanction by the Competent Authority designated by the Executive Committee of the Central Board of the Bank from time to time. The consequence of action taken for retirement without the sanction is also prescribed under the Rules which reads thus:-

15. The retirement of all officers of the Bank shall be subject to the sanction by the Competent Authority designated by the Executive Committee of the Central Board of the Bank from time to time, provided, however, that a decision to deny sanction under these rules to an officer shall need the previous approval of the Executive Committee of the Central Board. The retirement of all other employees of the Bank shall be subject to the sanction of the Competent Authority designated by the Executive Committee of the Central Board of the Bank from time to time, provided, however, that a decision to deny sanction under these rules to an employee shall need the previous sanction of the Executive Committee of the Local Board concerned with his/her employment. Any officer or other employee, who shall leave the service without sanction as required by this rule shall forfeit all claim upon the fund for pension.

This being the reasons, it is to be seen whether the respondent-Bank was authorised to withhold sanction to grant permission to retire petitioner voluntarily or not. It is to be seen that entitlement to the pension to a member government by the Rules is depending on certain factors, as have been mentioned in Rule 22 of the Rules, which reads thus:-

22. (i) A member shall be entitled to a pension under these rules on retiring from the Bank''s service-

(a) After having completed twenty years'' pensionable service provided that he has attained the age of fifty years or if he is in the service of the Bank on or after 1-11-93, after having completed ten years pensionable service provided that he has attained the age of fifty eight years or if he is in the service of the Bank on or after 22-5-1998, after having completed ten years pensionable service provided that he has attained the age of sixty years;

(b) After having completed twenty years'' pensionable service, irrespective of the age he shall have attained, if he shall satisfy the authority competent to sanction his retirement by approved medical certificates or otherwise that he is incapacitated for further active service;

(c) After having completed twenty years'' pensionable service, irrespective of the age he shall have attained at his request in writing;

(d) After twenty five years'' pensionable service.

5. Both the Rules are to be read harmoniously and it is to be seen that unless the sanction is granted, an employee cannot claim to retire voluntarily even after completing 20 years of pensionable service. There is no bar prescribed under Rule 22 that sanction would not be necessary as is prescribed under Rule 15 of the Rules if an employee opts to retire under Rule 22 of the Rules. Thus, to say that there was no competence to withhold the sanction to retire voluntarily as canvassed by the petitioner, cannot be accepted.

6. Now only fact, which is required to be considered whether there was a justified reason and whether within the time prescribed, such a decision was communicated to the petitioner that he is not to be permitted to voluntary retire, or not. The respondents in their return have categorically said that much before even making of the application for voluntarily retirement by the petitioner, action was initiated against him calling his explanation. Such a memo has been put on record as Annexure R-1 with the return of respondents. The said show-cause notice was issued on 18-8-2010. If the petitioner was having a reason to explain as to how such huge amount was credited in his Bank account and how the said amount was being withdrawn by him, from which sources he has obtained such huge amount, he could have given an explanation to that effect. From the record, it is clear that the petitioner tried to avoid making any submission in that respect and started asking for the document or information. If he was having any reason to indicate that such amount was received by him from different sources on account of his activities differently, he could have explained the said fact and could have satisfied the authorities that such amount was not received by him illegally. The amount so credited in the Bank account of the petitioner was liable to be justified by him, but this was not done by him. This being so, it is apparently clear that the petitioner was avoiding to submit the explanation and for that reason only, since he was having no justified reasons to explain, he tendered a notice of voluntarily retirement. If the employer Bank was intending to conduct an enquiry in that respect and an action was initialed against him, it cannot be said that any illegality was done by the respondent-Bank in

withholding the sanction to grant permission to voluntary retire from service to the petitioner.

7. Now the submission, which is made that such a decision was taken, but was not communicated to the petitioner within time, is required to be examined. It is contended by the learned Counsel for the petitioner that though the decision was taken as back as on 28-12-2010, but the same was never sent to the petitioner within time nor it has reached to the petitioner within time. It is contended that since the communication itself was received by the petitioner after the expiry of the period of notice of voluntary retirement, the sanction was not to be withheld to voluntary retire the petitioner. It is submitted that in fact, the notice of voluntary retirement became operative after the expiry of notice period on 31-12-2010, and, therefore, nothing could be done against the petitioner, thereafter. Placing reliance in the case of State of Haryana and Others Vs. S.K. Singhal, , it is contended that, as per the law laid down by the Apex Court once the period of notice has expired, nothing could be done against the petitioner. Thus, it is submitted that the communication, which was received by the petitioner after 31-12-2010 was in fact nothing nor could it be operative. Further, placing reliance in the case of State of M.P. Vs. Onkar Chand Sharma, (2001) 9 SCC 171, and in the case of HEC Voluntary Retd. Emps. Welfare Soc. and Another Vs. Heavy Engineering Corporation Ltd. and Others, it is contended that after coming into force of voluntary retirement the initiation of disciplinary proceedings after the voluntary retirement is illegal. With respect to the communication, certain other decisions have been relied by the learned Counsel for the petitioner and a distinction is tried to be brought between the voluntary retirement and resignation.

8. The aforesaid cases are, somewhat distinguishable in the facts and circumstances in the present case. Firstly, there were no Rules restricting the voluntary retirement and this aspect was taken not of by the Apex Court while rendering the decision. Here, in the case in hand, there are statutory provisions made restricting retirement. The retirement includes the voluntary retirement also. In such circumstances, if in the opinion of the employer continuance of the employee in the services was necessary for the purposes of taking a disciplinary action, if the information was sent, the decision was communicated, it is to be held that voluntary retirement has not become operative automatically from the date of expiry of the period of notice. The restriction is put as there is specific provision made in the Rules for grant of sanction and there is a consequence also prescribed under the Rules, if the sanction is not granted and a retirement is opted. Thus, in the considered opinion of this Court, the submissions made by learned Counsel for the petitioner are not to be accepted.

9. Secondly, as has been heavily relied by learned Counsel for respondents, the Apex Court has already dealt with the effect of such a decision though in a different context. In the case of State of Punjab Vs. Khemi Ram, , the Apex Court has considered the effect of coming into force of the order of suspension. While

interpreting the word "communicate", the Apex Court has categorically held that if a decision is taken to suspend an employee and the said decision is put in transit, it is to be held that the decision is communicated. There are distinctions between the two, issue and communication, and these aspects are also considered by the Apex Court. In the case of Himachal Pradesh Horticultural Produce Marketing and Processing Corporation Ltd. Vs. Suman Behari Sharma, , the Apex Court has considered the effect of the provisions of grant of sanction/ permission. The sanction means the permission and this has been categorically held by the Apex Court that in case such a sanction is not granted, it is not to be held that the voluntary retirement has become operative. Considering the observations made by the Andhra Pradesh High Court, the Apex Court has categorically held that when an employee seeks voluntary retirement, the employer has to exercise his privilege of accepting or rejecting the request within a reasonable time and if a period is fixed for giving a notice in that behalf then the decision has to be taken within the period so fixed.

10. Admittedly, the decision was taken by the employer within the period of notice and, as such, it cannot be said that there was a folly committed by the respondents in taking such a decision. In a case, where such allegations were made and a person was facing the criminal prosecution, refusal to accept the voluntary retirement even after the period of notice of voluntary retirement was said to be correct by the Apex Court as is held in the case of Dr. Baljit Singh Vs. State of Haryana, . Somewhat similar circumstances were available in the case in hand. There were reasons to believe that the petitioner was involved in some sort of illegalities and, therefore, the decision was taken by the Bank to refuse to accept the request for voluntary retirement. In the case of Tek Chand Vs. Dile Ram, , the aspect was considered by the Apex Court, where the authority competent to refuse the permission to retire has not taken a decision before the expiry of the period of notice. In absence of such a decision within time it is held by the Apex Court that the voluntary retirement, will come into effect from the date specified in the notice. It is pointed out that if a decision is already taken, the voluntary retirement would not become effective automatically from the date of notice. In the case in hand, such a decision was taken before the date of retirement indicated in the notice. Therefore, as per law laid down by the Apex Court, the voluntary retirement would not become effective automatically. In the case of Padubidri Damodar Shenoy Vs. Indian Airlines Limited and Another, , the Apex Court has considered the effect of communicating a decision of rejecting the request for voluntary retirement. In the circumstances, where the voluntary retirement was dependent on a sanction granted by the employer to retire voluntarily, it is held by the Apex Court that if such a decision is communicated even after the period of notice of voluntary retirement that such a sanction is refused, the voluntary retirement would never become effective.

11. In view of the law laid down by the Apex Court as also in view of the facts available in the case in hand, it is clear that there was a justified reason to refuse to accept the notice of voluntary retirement of the petitioner. The departmental

authorities of the Bank were intending to initiate the process of disciplinary action against the petitioner on account of serious charges and, therefore, if the sanction to voluntary retirement was refused to the petitioner, it cannot be said that the act on the part of respondents was bad in law. Consequently, the petition fails and is hereby dismissed. This Court has granted an interim protection to the petitioner, vide order dated 31-1-2011 to the effect that no coercive steps be taken against the petitioner pursuance to the communication dated 28-12-2010 (Annexure P-1). In case, the departmental action is to be taken against the petitioner, if it is permissible under the Rules. The respondents would be free to proceed against him as per law. In the circumstances of the case, there shall be no order as to costs.

