(2013) 08 MP CK 0023

In the Madhya Pradesh High Court

Case No : Writ Appeal No. 1020 of 2012

Balak Ram Singh APPELLANT

Vs

State Bank of India and Another RESPONDENT

Date of Decision : 06-08-2013

Acts Referred:

Citation : (2013) 139 FLR 901

Hon'ble Judges : K.K. Lahoti, Acting C.J.;Subhash Kakade, J

Bench : Division Bench

Advocate : Sanjay K. Agarwal and Akash Choudhary, for the Appellant; Rohit Arya and Ashish Shroti, for the Respondent

Judgement

Krishn Kumar Lahoti, Actg. C.J.

1. This appeal is directed against an order dated 13.7.2012 passed by the Single Bench in W.P. No. 1482/2011(S), by which the writ petition preferred by the appellant against the order dated 28.12.2010 Annexure P-1 was dismissed. Vide Annexure P-1 appellant was informed that his application for voluntary retirement from bank services was not considered, as disciplinary action was contemplated against the appellant. The order Annexure P-1 was assailed mainly on the ground that there was no jurisdiction to the respondents to refuse the application for voluntary retirement, as the period assigned in the notice for voluntary retirement had already expired and beyond that period the appellant ought to have been treated as retired compulsorily and was entitled for all monetary benefits. The matter was contested by both the parties. The learned Single Judge considered the matter at length and has found that the services of the appellant were governed by the Rules namely the State Bank of India Employees Pension Funds Rules (hereinafter referred to as ''Rules'' for short). Rules 15 & 22 of the Rules if read together and construed harmoniously then an employee could not claim as of right to retire voluntarily even after 20 years of pensionable service and the aforesaid order requires sanction of the authority. The learned Single Judge also considered sub-para (2) of para 522 of the Shastri

Award in respect of the contentions raised by the appellant herein. The learned Single Judge also considered the merits of the order Annexure P-1 and has found that if the employer was intending to conduct an enquiry in respect of alleged mis-conduct, then it was having jurisdiction to withhold sanction to grant permission to voluntary retirement from service. Various decisions were also considered by the writ Court and consequently the writ petition was dismissed. This order is under challenge in this appeal.

2. Learned Counsel for appellant has submitted:--

(a) that under sub-para (2) of para 522 of the Shastri Award no sanction was required and on filing of such an application, the appellant could haw claimed voluntary retirement as of right.

(b) that even under Rule 15 of the Rules no permission was required when the appellant had already completed period of 20 years of qualifying service.

(c) that refusal order was not passed by the competent authority, but was passed by the Assistant General Manager, who was not competent to pass such an order.

Only the Executive Committee of the Bank was competent to pass such an order. It is further submitted by the appellant that delegation of power to the Assistant General Manager were only in respect of the acceptance of the application for voluntary retirement, but for refusal it ought to have been sent to the Executive Committee of the local Board. He has placed reliance to two judgments of the Apex Court in support of his contention, which are State of Haryana and others v. S.K. Singhal, (1994) 4 SCC 293 and Tek Chand Vs. Dile Ram,

3. Shri Rohit Arya, learned Senior Advocate appearing on behalf of respondents has supported the order. It was submitted by him that by application Annexure R-5 dated 22.11.2010, voluntary retirement was sought w.e.f. 31,12.2010. Vide order Annexure R-6 dated 20.12.2010, the application was not accepted by the Assistant General Manager and the order was communicated to the appellant vide order Annexure R-7 dated 28.12.2010 and the appellant was directed to resume the duties immediately. It is submitted that the acceptance of application was required a specific order under Rule 15 and also under para 522(2) of the Shastri Award. It is prayed that this appeal may be dismissed, as having no merit.

4. The learned Counsel for appellant reiterated the same contentions, which were raised before the Writ Court. It was submitted that under para 522(2) of the Shastri Award the appellant was entitled for relief and there was no question of rejection of the application, filed for voluntary retirement.

5. Before considering the rival contentions of the parties, it would be appropriate to refer following provisions: Para 522(2) of the Shastri Award, reads thus:--

A permanent employee desirous of leaving the service of the bank shall give one month''s notice in writing to the manager. A probationer desirous of leaving service shall give 14 days'' notice in writing to the manager. A permanent employee or a probationer shall when he leaves service, be given an order of relief signed by the manager.

Rules 15 and 22(i) of the Rules, reads as under:--

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.

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 1.11.1993, 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 been 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.

6. From the perusal of Para 522(2) of Shastri Award it is apparent that an employee was entitled to submit his application for voluntary retirement by serving one month''s notice in writing to the manager. The last line of sub-para (2) specifically provides that a permanent employee or a probationer when he leaves service shall be given an order of relief signed by the manager. Meaning thereby that for acceptance of such application, it was necessary to issue an order in writing by the manager and until and unless such an order is issued, the application filed for voluntary retirement or a notice given in this regard shall not be treated as accepted. The Bank was having discretion to accept or refuse it and after accepting the voluntary retirement notice, it would become operative after one month as desired by the outgoing employee, but the services could come to

an end only when the competent authority has accepted the resignation. Such resignation was bilateral and not unilateral. The aforesaid provision provides an opportunity to a permanent employee to leave the services of the bank by one month''s notice in writing to the manager, but once the consequence is of financial implication, it requires an order by the competent authority because after leaving the service by an employee the bank is required to make payment of monetary emoluments and other consequential benefits to the employee,

7. In the present case, as per the allegations made by the respondents a departmental enquiry was contemplated because of alleged misconduct, the bank was within its right to withheld such permission. An employee until and unless having unfettered right under the service rules to leave the job unilaterally, such notice of voluntary retirement was subject to approval by the authority. Rule 22(i)(c) provides a provision of pension to an employee after having completed 20 years permissible service irrespective of the age he shall have attained at the time of his request in writing. The aforesaid provision gives an opportunity to an employee to avail benefit of retirement after 20 years and to avail pension thereafter. Rule 15 has been framed by the Bank which provides that the retirement of all officers of the Bank shall be subject to sanction by the competent authority designated by the Executive Committee of Central Board of the Bank from time to time. The aforesaid provision also provides that the decision to deny sanction under these Rules to the officer shall require the previous approval of the Executive Committee of the Bank. The aforesaid provision also provides that the retirement of employee of the Bank shall be subject to sanction of competent authority designated by the Executive Committee of the Central Board of the Bank from time to time. The provision further provides and which is very important that an officer who shall leave the service without sanction as required by this rule shall forfeit all claims for pensionary benefits. A composite reading of these Rules specifically provide sanction of an authority for retirement and also previous approval if the sanction is denied under the rules. Meaning thereby in both the eventuality sanction was necessary of the competent authority in this regard. Even if for a moment it is found that the order by the Assistant General Manager for non-consideration of the application, because the enquiry was contemplated against the appellant was without jurisdiction, even then the fact remains that the aforesaid application was required to be sanctioned by the competent authority. As per the appellant it was the Assistant General Manager who could have allowed the application and for refusal it ought to have been placed before the Executive Committee of the local board of the bank. In both the eventuality an order on the application ought to have been passed by the competent authority. As per the return filed by the respondents, the Assistant General Manager was competent to refuse such an application. But while reading the letter Annexure R-6 we find that the aforesaid application was not considered. For ready reference we quote the entire letter Annexure R-6, which reads thus:--

Assistant General Manager (Admin)

Sir,

STAFF AWARD: SHRI B.R. SINGH, SPECIAL ASSISTANT, MALVIYA CHOWK BRANCH, APPLICATION FOR VOLUNTARY RETIREMENT.

Placed alongside is letter dated 8.12.2010 received from Malviya Chowk branch, Jabalpur in which Branch Manager has forwarded application dated 22.11.2010 submitted by Shri B.R. Singh, Special Assistant.

We have scrutinized the application and enclosed papers. In terms of service rules, we sought clearance from Disciplinary Proceedings Section. They have advised vide memo dated 20.12.2010 that the disciplinary action against Shri Singh is contemplated and IRF in the case has been sent to Vigilance department, LHO, Bhopal on 10.12.2010.

In terms of sub-para vi of Para 33 of Chapter III of hand book on staff matters a member of Award staff who has completed 20 years of pensionable service or 20 years service (if he is not a member of pension fund) may be permitted to retire from Bank''s service subject to his giving one month''s notice in writing or pay one month''s pay in lieu thereof. Before allowing the employee to retire prematurely voluntarily, it should be ensured that no disciplinary action is pending contemplated against him. The competent authority to approve voluntary retirement is General Manager (Assistant General Manager (Admin)) at present.

The disciplinary action is contemplated against Shri B.R. Singh. Therefore, his request for Voluntary Retirement from service cannot be considered. We recommend for rejection of the request on this basis, if it meets your approval, we will advise the branch accordingly.

Please approve. Chief Manager (Admin) SBI, RBO-1, Jabalpur Dated 20.12.2010

It appears that the proposal of Chief Manager (Admin) dated 20.12.2010 was approved by the Assistant General Manager (Admin) on 21.12.2010, but the fact remains that the application of appellant was decided as not to be considered because the Departmental Enquiry was contemplated against the appellant. It is not the case where the application was rejected by the Assistant General Manager of respondents, but it was decided not to consider the application. Though by implication it can be treated as rejected. However, it is not the case of the appellant for issuance of direction to the respondent that such an application should be placed before the Executive Committee of the local Board for consideration.

8. In S.K. Singhal (supra) (he Apex Court has held that there are three categories of rules regarding notice. In first category voluntary retirement automatically comes into force on expiry of notice period, in second category, retirement comes into force unless an order is passed during notice period withholding permission to retire and in third category, voluntary retirement does not come into force unless permission to this effect is granted by the competent

authority. The Apex Court in S.K. Singhal considering the legal position held in paras 9 & 13 thus:--

9. The employment of Government servants is governed by rules. These rules provide a particular age as the age of superannuation. Nonetheless, the rules confer a right on the Government to compulsorily retire an employee before the age of superannuation provided the employee has reached a particular age or has completed a particular number of years of qualifying service in case it. is found that his service has not been found to be satisfactory. The rules also provide that an employee who has completed the said number of years in his age or who has completed the prescribed number of years of qualifying service could give notice of, say, three months that he would voluntarily retire on the expiry of the said period of three months. Some rules are couched in language which results in an automatic retirement of the employee upon the expiry of the period specified in the employee''s notice. On the other hand, certain rules in some other departments are couched in language which makes it clear that even upon expiry of the period specified in the notice, the retirement is not automatic and an express order granting permission is required and has to be communicated. The relationship of master and servant in the latter type of rules continues after the period specified in the notice till such acceptance is communicated; refusal of permission could also be communicated after 3 months and the employee continues to be in service., Cases like Dinesh Chandra Sangma Vs. State of Assam and Others, ; B.J. Shelat Vs. State of Gujarat and Others, and Union of India and others Vs. Sayed Muzaffar Mir, belong to the former category where it is held that upon the expiry of the period, the voluntary retirement takes effect automatically as no order of refusal is passed within the notice period. On the, other hand Himachal Pradesh Horticultural Produce Marketing and Processing Corporation Ltd. Vs. Suman Behari Sharma, belongs to the second category where the bye-laws were interpreted as not giving an option "to retire" but only provided a limited right to "seek" retirement thereby implying the need for a consent of the employer even if the period of the notice has elapsed. We shall refer to these two categories in some detail.

13. Thus, from the aforesaid three decisions it is dear that if the right to voluntarily retire is conferred in absolute terms as in Dinesh Chandra Sangma case by the relevant rules and there is no provision in the rules to withhold permission in certain contingencies the voluntary retirement comes into effect automatically on the expiry of the period specified in the notice. If, however, as in B.J. Shelat case and as in Sayed Muzaffar Mir case the authority concerned is empowered to withhold permission to retire if certain conditions exist viz., in case the employee is under suspension or in case a departmental enquiry is pending or is contemplated, the mere pendency of the suspension or departmental enquiry or its contemplation does not result in the notice for voluntary retirement not coming into effect on the expiry of the period specified. What is further needed is mat the authority concerned must pass a positive order withholding permission to retire and must also communicate the same to the

employee as stated in B.J. Shelat case and in Sayed Muzaffar Mir case before the expiry of the notice period. Consequently, there is no requirement of an order of acceptance of the notice to be communicated to the employee nor can it be said that non communication of acceptance should be treated as amounting to withholding of permission.

9. In Tek Chand (supra) the Apex Court again reiterated the earlier decisions that there are three categories of rules regarding notice, which are first that voluntary retirement automatically comes into force on expiry of notice period, in second retirement comes into force unless an order is passed during notice period withholding permission to retire and in third category, voluntary retirement does not come into force unless permission to this effect is granted by the competent authority. The Apex Court considering the aforesaid has held that in case of refusal of permission, the order can be communicated even after the expiry of notice period. The Apex Court has held that what type of voluntary retirement is provided is looked into in the relevant rules.

10. In Bank of India and Others Vs. O.P. Swaranakar etc., the Apex Court considering the voluntary retirement scheme of Punjab National Bank namely Punjab National Bank Employees Voluntary Retirement Scheme, 2000 held that it constituted an invitation to treat and not a proposal or an offer, the acceptance of which by an employee could fructify in a concluded contract More so, when no consideration was passed from either side. It was rather the Bank''s acceptance of the employee''s proposal that would constitute a promise and culminate in an enforceable contract It has been held that in absence of any other binding contract or statutory provision to the contrary, such proposal attracted section 5 of the Contract Act The Apex Court further held that it is an offer for voluntary retirement by the employee and unless it is accepted it is not a concluded offer.

11. In Padubidri Damodar Shenoy Vs. Indian Airlines Limited and Another, the Apex Court held that the offer of an employee for voluntary retirement is not automatic on expiry of period of notice, but it is subject to approval by the competent authority. However, if the offer is not considered within the period of notice, it would remain valid even after the expiry of period of notice, but it becomes effective only on its approval by the competent authority.

12. In the present case, the competent authority while considering the peculiar facts of the case that an enquiry was contemplated against the appellant and it was not advisable to accept the offer of voluntary retirement, then the competent authority thought it proper not to consider the offer of appellant for voluntary retirement Until and unless such an offer is accepted specifically, appellant cannot claim that he was retired voluntarily after expiry of period of notice. In the present case, from the perusal of relevant provisions also, it is specifically provided under para 522(2) of the Shastri Award, that an order was necessary by the competent authority. Rule 15 of the Rules also provides that the retirement of all officers of the Bank shall be subject to sanction by the competent authority designated by the Executive Committee of the Central Board

of the Bank. Though a decision to deny sanction could have been taken by the Executive Committee of the Central Board and as per the appellant such decision was not taken by the Executive Committee, even then the offer of retirement was neither accepted, nor denied by the competent authority. In that circumstances, it could be treated as not considered by the competent authority and the appellant could not treat himself as retired after completion of period of notice.

13. In the aforesaid circumstances, the learned Single Judge has rightly considered the matter in proper perspective, in which we do not find any error warranting our interference in this writ appeal. This appeal is found without any merit and is dismissed, with no order as to costs.