(2007) 03 DEL CK 0002

In the Delhi High Court

Case No : Writ Petition (C) No. 1760 of 1999

Baldev Krishan Batra APPELLANT

Vs

Vallabhai Patel Chest Institute and Another RESPONDENT

Date of Decision : 23-03-2007

Acts Referred:

Citation : (2007) 140 DLT 83

Hon'ble Judges : Kailash Gambhir, J

Bench : Single Bench

Advocate : C. Mohan Rao, for the Appellant; M.K. Singh, for the Respondent

Final Decision : Dismissed

Judgement

Kailash Gambhir, J.—The short issue involved in the present writ petition is whether the petitioner, who at the relevant time was working as a Stenographer in the Department of Respiratory Virology with Vallabhbhai Patel Chest Institute, which is an institute under the administrative control of University of Delhi, could be considered for pensionary benefits on seeking voluntary retirement without completing the qualifying service of 20 years. The brief facts relevant for the decision of the present case are that the petitioner was appointed as a Steno-Typist with respondent No. 1 - institute with effect from 24.2.1969 and after completing successful probation period was confirmed vide confirmation letter dated 11.5.1971. The petitioner was appointed to the post of Stenographer with effect from 31.8.1973 after having cleared the shorthand test and interview. Respondent No. 1-Vallabhbhai Patel Chest Institute is stated to be governed by Statute 28-A issued by the University of Delhi for the purposes of grant of retirement benefits to the employees of the institute. In the year 1976, the petitioner got an opportunity to visit Japan. The petitioner had availed extraordinary leave with effect from 24.7.1976 to 14.7.1979 for pursuing his academic qualification and to learn latest office management skills which as per the petitioner were directly connected with his job. The petitioner re-joined his duties after the expiry of the extraordinary leave and started working with respondent No. 1 in the same capacity as a Stenographer. The petitioner, however, sought voluntary retirement vide his letter dated 09.9.1991 and since the entire controversy revolves around three lines letter, Therefore, it would be worthwhile to reproduce the contents of the same as under:

The Director,

V.P. Chest Institute,

University of Delhi

Delhi-110 007.

Sir,

I wish to have voluntary retirement with all benefits according to rules with immediate effect. The three months notice period may please be waived.

Thanking you,

Yours faithfully,

(B.K. Batra)

Dated: 9.9.1991 Stenographer

Dept. of Resp. Virology

2. The aforesaid request of seeking voluntary retirement was accepted by respondent No. 1 - institute by their letter dated 11.9.1991. The contents of the said letter dated 11.9.1991 are reproduced as under:

VALLABHBHAI PATEL CHEST INSTITUTE

UNIVERSITY OF DELHI

DELHI.

Ref. No. E-3/91-92/1993 Dated: 11.9.1991

MEMORANDUM

Reference his application dated 9.9.91 requesting for voluntary retirement from service of the Institute.

Shri B.K. Batra, Stenographer is informed that his request has been accepted and he is relieved from the service of Institute w.e.f. 11.9.91(A.N.)

sd/- Administrative Officer

Shri B.K. Batra,

Stenographer,

B-4-19-A, Lawrance Road,

Delhi.

C.C. To Accounts Section for information C.C. To Prof. A.K. Prasad, Deptt. Of Resp. Virology.

After accepting the said resignation, the petitioner started pursuing the respondent for release of pensionary dues but the petitioner was informed by respondent No. 1 that since he had not completed the qualifying service of 20 years at the time of seeking voluntary retirement, Therefore, he was not entitled for any pensionary benefits. Feeling aggrieved with such response of respondent No. 1, the petitioner wrote letter dated 22.10.1991 to the Director of respondent No. 1 stating that his stay at Japan for a period of about three years was quite productive in improving ability and workability in his job of stenography and no financial burden was placed on the institute and, Therefore, the period of three years stay at Japan should be reckoned to grant retirement benefits and provident fund etc. In response to the said letter dated 22.10.1991, respondent No. 1 replied back to the petitioner vide reply dated 30.6.1992 stating that the period of extraordinary leave from 24.7.1976 to 14.7.1979 cannot be considered for computing qualifying service for purposes of retirement benefits, as per the guidelines relating to voluntary retirement. In view of the same, respondent No. 1 rejected the request of the petitioner for treating the extraordinary leave period to be counted towards qualifying service for the purposes of pension.

4. I have heard Mr. C. Mohan Rao, counsel for the petitioner and Mr. M.K. Singh, counsel for the respondent.

5. The main thrust of argument of counsel for the petitioner is that the voluntary retirement which is sought vide letter dated 09.9.1991 was conditional and not absolute as the petitioner had categorically said that he wished to have voluntary retirement with all benefits according to rules with immediate effect. Counsel for the petitioner stated that once in the said offer he made it very clear that the grant of benefit was a condition precedent, Therefore, acceptance made by respondent No. 1 vide their memorandum dated 11.9.1991 implied in itself that the offer which was accepted by respondent No. 1 was the offer inclusive of grant of benefits and not merely an offer seeking voluntary retirement. Counsel for the petitioner thus impinges the subsequent memorandum dated 30.6.1992 as an after thought exercise on the part of respondent No. 1 whereby the petitioner was informed that the extraordinary leave period from 24.7.1976 to 14.7.1979 could not be counted or considered for computing the said period towards qualifying service for the purposes of retirement benefits. Counsel for the petitioner submitted that had the petitioner been made aware that the said period will not be taken into consideration for computing the qualifying service, then, certainly he would not have taken the voluntary retirement and at least would have waited to complete 20 years of service so as to avail the entire retiral benefits. Counsel for the petitioner in support of his arguments has relied upon judgment of the Supreme Court reported in Devi Krishan Goyal Vs. District Inspector of Schools and Others, , wherein the Hon''ble Supreme Court has held

that the option of seeking voluntary retirement can be withdrawn before it is accepted. Based on the said judgment, learned Counsel for the petitioner stated that the petitioner had withdrawn his request of seeking voluntary retirement vide his letter dated 27.7.1992, and, Therefore, he should have been allowed to join his duties after the said withdrawal. Counsel for the petitioner has also relied upon another judgment reported in The Manager, Bengal Nagpur Cotton Mills Ltd. Vs. J. Bastian, to support his argument that while seeking voluntary retirement, the petitioner could have made it conditional subject to the grant of pensionary dues under the rules. Counsel for the petitioner has placed reliance upon another judgment reported in 1983 L.I.C. 1662 Nihal Singh v. The Director of Education and Ors. in support of his proposition that till the acceptance of the offer seeking voluntary retirement takes place in accordance with the terms and conditions of the offer, contract of employment does not come to an end.

6. Counsel for the respondent on the other hand, has placed reliance on Clause 15(c) of Statute 28(A) of University of Delhi which mandates qualifying service of not less than 20 years in case of employees seeking voluntary retirement for the grant of pensionary benefits. It would be relevant to reproduce Sub-clause (c) of Clause 15 of Statute 28(A) as under:-

(c) Superannuation or retiring pension: A superannuation or retiring pension, as the case may be, shall be granted to an employee who may retire from service on completion of the age of retirement or on completion of thirty years of qualifying service whichever is earlier.

Provided that in the event of retirement after thirty years of qualifying service but before the completion of age of sixty years, the employee concerned shall give in this behalf a notice in writing to the Registrar at least three months before the date on which he wishes to retire. In respect of those retiring voluntarily after 30 years of qualifying service on or after 10.9.1983, the total qualifying service shall be increased by the period not exceeding three years, subject to the condition that the total qualifying rendered by the University employee does not in any case exceed thirty three years and it does not take him beyond the date of Superannuation.

Provided further an employee who has put in not less than 20 years of qualifying service, may, by giving notice of three months in writing to the Registrar, retire from service voluntarily and the benefit of retiring pension will be admissible to University employee under this scheme subject to the following conditions:

(i)...

(ii)...

(iii) Before an employee gives notice of voluntary retirement under this proviso he should satisfy himself by means of reference to the Registrar that he has, in fact, completed 20 years service qualifying for pension.

7. The contention of counsel for the respondent is that the petitioner had put in

less than 20 years of qualifying service, and, Therefore, he did not fulfill the mandate of the said statute for granting him the pensionary benefits. Counsel has also placed reliance on Sub-clause (iii) of the proviso of Clause (c) of Section 15 which clearly states that before an employee gives notice of voluntary retirement, he should satisfy himself by means of reference to the Registrar that he has in fact, completed 20 years service qualifying for pension. The submission of counsel for the respondent is that a person seeking voluntary retirement cannot be said to have taken such a step without having complete prior knowledge of these conditions. While perusing the said statute, Sub-clause (h) of Clause 1 of Statute 28(A) defines ''Qualifying Service. Explanation II of the said statute also defines the period which cannot be counted as qualifying service and Sub-clause(ii) of Explanation II clearly states that extraordinary leave without allowance cannot be counted towards qualifying service.

8. Sub Clause (c) of Clause 15 of Statute 28(A) clearly enjoined upon the petitioner to have completed 20 years of qualifying service before becoming eligible for the pensionary benefits. The petitioner had availed extraordinary leave without pay and allowances, and Therefore, the said extraordinary leave with effect from 24.7.1976 to 14.7.1979 cannot be computed towards qualifying service for making him eligible to the grant of pensionary benefits. There is no substance in the arguments of counsel for the petitioner that the offer vide his letter dated 09.9.1991 was a conditional offer and the acceptance made by respondent No. 1 through their reply dated 11.9.1991 should be taken as qualified acceptance of the offer of the petitioner seeking voluntary retirement with grant of pensionary benefits. The language used by the petitioner in the said letter itself shows that there was no such conditional offer as it simply said that the voluntary retirement be given with all benefits according to rules with immediate effect. Under the rules, the petitioner is ineligible to claim the pensionary benefits and once the petitioner himself has stated in his letter that benefits be given according to rules, then in the same breath he cannot claim benefits against the rules. The decision to take voluntary retirement cannot be taken to be a small or insignificant step but certainly it is a major decision in one''s service career. It cannot be believed that the petitioner would have taken such a decision without going through the relevant rules or without knowing all the consequences arising from such a decision. Even in the letter dated 22.10.1991 sent by the petitioner to the respondent the petitioner was not taken by surprise after he was informed that the period of extraordinary leave could not be considered to reckon for computing the period of 20 years for granting the pensionary benefits. The petitioner simply explained in the said letter that his overseas stay for 3 years was quite productive which helped in improving his workability for the benefit of respondent No. 1 - Institute and, Therefore, he made a request for considering the said period as continuation of service for voluntary retirement. Respondent No. 1 could not have travelled beyond the rules contained in the University statute while considering such request of the petitioner.

9. In service jurisprudence four types of retirement are contemplated i.e. (a) retirement of superannuation (b) compulsory retirement on a validation (c) compulsory retirement and (d) voluntary retirement. In voluntary retirement, it is the unilateral offer of the employee who under the given circumstances takes a decision through his voluntary act to seek retirement. This voluntary act of the employee can come into force only when the same is accepted by the employer and till the same is accepted the employee seeking voluntary retirement can always change his decision and withdraw his said voluntary act of seeking retirement.

10. The judgment in Devi Krishan Goyal''s case (supra) is of no help to the petitioner as in the present case, the withdrawal was offered by the petitioner much after the acceptance of respondent No. 1. The judgment in The Manager, Bengal Nagpur Cotton Mills Ltd. case (supra) also cannot help the petitioner, as in this case, the employee had categorically stated that he was prepared to continue working until he was granted pension according to rules and customs of the employer and the exact issue before the Supreme Court was whether the termination of the employee after handing over the charge under protest could not be characterterised as a case of voluntary retirement. Yet another judgment cited by the petitioner in Nihal Singh''s case (supra) is also of no help to the petitioner as there the question was of withdrawal of the resignation before its acceptance which is not an issue in the present case. Based on the above discussion, I do not find any merit in the case. The writ petition is dismissed accordingly. Rule discharged. Parties are directed to bear their own costs.