
(2003) 02 AHC CK 0044
In the Allahabad High Court
Case No : C.M.W.P. No. 24129 of 2001

B.K. Sharma

APPELLANT

Vs

General Manager (Personal), Punjab National Bank and
Others

RESPONDENT

Date of Decision : 18-02-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 3 AWC 1870

Hon'ble Judges : Prakash Krishna, J;M. Katju, J

Bench : Division Bench

Advocate : W.H. Khan, for the Appellant; K.L. Grover, Ramesh Singh and Vinay Khare, for the Respondent

Final Decision : Dismissed

Judgement

Prakash Krishna, J.—The Punjab National Bank introduced a voluntary retirement scheme. The petitioner's application for voluntary retirement under the aforesaid scheme was rejected by the impugned order dated 14.3.2001. The departmental appeal has also been rejected by the order dated 29.5.2001. The petitioner by means of the present writ petition has prayed for a writ of certiorari for quashing the aforesaid two impugned orders and commanding the respondents to accept the petitioner's application dated 10.10.2000 seeking voluntary retirement from service.

2. The petitioner having completed 30 years' service and attaining the age of 54 years filed an application for voluntary retirement under the aforesaid scheme which was in operation from November 10, 2000 to November 30, 2000. In the aforesaid scheme, it has been provided that the employees falling in the following categories are not eligible to seek voluntary retirement under the scheme :

(a)

(b)

(c) Employees against whom disciplinary proceedings are contemplated/pending or who are under suspension.

(d)

(e)

(f)

The application of the petitioner was rejected on the plea that a disciplinary proceeding is under contemplation in respect of lapses allegedly committed by the petitioner at the Branch Office, Banda and the same has not been finalised upto 28.2.2001.

3. In the writ petition, it has been stated that on 10.10.2000, when the petitioner applied to seek voluntary retirement, no disciplinary proceeding was either in contemplation or pending against the petitioner and as such, his application has been rejected arbitrarily and with malice.

4. In the counter-affidavit, the respondents have pleaded that the petitioner had on 10.10.2000, applied for voluntary retirement but not on the proper form and he was asked by the Regional Manager of the Bank to resubmit the application on proper form. The petitioner by the letter dated 29.11.2000 submitted that his request for voluntary retirement may not be considered and that he was not going to submit the application for voluntary retirement through proper channel. A true copy of the said letter of the petitioner has been filed as Annexure-C.A. 1 to the counter-affidavit. The Bank has submitted that in view of unequivocal stand taken by the petitioner that his application for voluntary retirement may not be considered, the writ petition is liable to be dismissed on this ground alone. Further, it has been pleaded that the Bank was contemplating disciplinary proceeding against the petitioner for the alleged lapses committed by him at the Branch Office, Banda, for which he was subsequently charge-sheeted by charge-sheet dated 6.10.2001 and as such, the impugned orders do not call for any interference under Article 226 of the Constitution.

5. We have heard Sri W.H. Khan, counsel for the petitioner and Sri K. L. Grover counsel for the respondents.

6. Taking the first objection raised by the Bank as first, the relevant averments made in paragraph 3 of the counter-affidavit that the petitioner by his letter dated 29.11.2000 declined to submit his application for voluntary retirement through proper channel have not been disputed in the rejoinder-affidavit. Voluntary retirement is in the nature of a contract, although the employer cannot act arbitrarily. However, voluntary retirement cannot be forced upon an employee against his will. Indisputably the petitioner declined to submit his application through proper channel and as such, the petitioner cannot now turn round and press that his application for voluntary retirement should be considered. The writ

is equitable relief. Thus, the conduct of the petitioner clearly disentitles him of the equitable relief. However, on merits also the petitioner has got no case.

7. Counsel for the petitioner, during the course of argument, laid much emphasis on the fact that on the date when the petitioner made original application seeking voluntary retirement, no disciplinary proceeding was pending against him in the rejoinder-affidavit, it has been admitted that the petitioner was served with a charge-sheet dated 6.10.2001, which has been replied by the petitioner vide Annexure-R.A. 2. The voluntary retirement scheme provides for the categories of the employees who are not eligible to seek voluntary retirement under the scheme. Employees against whom disciplinary proceedings are contemplated/pending or who are under suspension do not qualify to avail of the benefit of the said scheme. The word "contemplation" will include that although the Department has not actually initiated the disciplinary proceedings, but the Department was likely to initiate the disciplinary proceedings on the material which it already possessed. In the counter-affidavit, it has been stated that one of the officers of the bank working under the petitioner had levelled grave allegations of corruption and this fact was sought to be investigated by the Secretary. Institutional Finance, Lucknow vide letter dated 21.9.2000. This clearly shows that on the date when the petitioner applied under the aforesaid scheme, a disciplinary proceeding was in contemplation against him and as a matter of fact, he was served with the charge-sheet dated 6.10.2001, filed as Annexure-C.A. 2 to the counter-affidavit.

8. Counsel for the petitioner has placed reliance upon a judgment in Manjushree Pathak Vs. The Assam Industrial Development Corporation Ltd. and Others, . The said judgment has no application to the facts of the present case and is clearly distinguishable. In the said judgment, it was admitted between the parties that the employee was eligible to apply for voluntary retirement and the application was made in the prescribed form. The employee waited for two months for the decision. In this background, it was held that there could be no reason for not accepting employee's application. In the case in hand, the very eligibility of the petitioner, to apply for voluntary retirement is being disputed by the respondents.

9. In view of these facts, we do not see any illegality in the impugned orders. The writ petition lacks merit and is accordingly dismissed.