
(2009) 05 JH CK 0134
In the Jharkhand High Court

C.V. Francis

APPELLANT

Vs

The Union of India (UOI) and Others

RESPONDENT

Date of Decision : 22-05-2009

Acts Referred:

Contract Act, 1872 — Section 3, 4, 5, 7

Citation : (2009) 122 FLR 833

Hon'ble Judges : Ajit Kumar Sinha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ajit Kumar Sinha, J.—In the instant writ petition the petitioner prays for an appropriate writ or a writ in the nature of certiorari for quashing the Order No. SAIL.III.12 (36)/98-BSL dated 11.10.1999 passed by the respondent No. 2 pursuant to the order dated 23.4.1999 passed by the Hon'ble Kerala High Court in O.P. No. 10649 of 1999-P, inter alia, directing the respondent No. 2 to dispose of the representation, filed by the petitioner in connection with his voluntary retirement under VRS 98. The petitioner further prays for a declaration that he is entitled to get voluntary retirement on the basis of Voluntary Retirement Scheme with effect from the date of his application and relieve the petitioner with effect from the date of application of the petitioner with all consequential benefits.

2. The facts, in brief, are set out as under:

In the instant case it appears that the petitioner was working as a Manager in BSL and had joined the services in the year 1973 and thereafter it became a unit of SAIL on 20.2.1998. A VRS scheme was introduced as per order No. PER/RR/165 dated 20.2.1998 and according to the petitioner he applied on 7.4.1998. The petitioner at the relevant time was working as Manager, Electrical Data Processing in Bokaro Steel Ltd. On 6.4.98 the petitioner applied for T.A. allowance to his controlling officer which was refused. On hearing nothing he made a representation before the Managing Director, Bokaro Steel Plant who was

the competent authority to accept the Voluntary retirement application under the said scheme and further requested to be relieved from 30.4.98. The petitioner applied for leave and was sanctioned earned leave from 30.4.98 to 31.5.98 and in the mean time he was also offered an employment in U.S.A. which required him to immediately report for duty. The petitioner again applied for earned leave from 01.6.98 to 30.6.98. On 26.6.98 the petitioner received a letter asking him to join duty from 01.7.98 and the petitioner instead of joining, again applied for earned leave from 01.7.98 to 31.7.98. However, the respondents informed him vide letter dated 03.8.98 that his application for extension of leave was not sanctioned and thus he was absent from duty without any sanctioned leave for which disciplinary proceedings were sought to be initiated for unauthorized absence from duty. Again the respondents sent a letter dated 14.8.98 to report for duty within 10 days failing which disciplinary action was to be initiated. Respondent No. 5 finally issued a memorandum on 21.10.98 stating that a disciplinary enquiry for unauthorized absence from duty was sought to be initiated. The petitioner filed its reply to the charges on 2.11.98 followed by another representation on 26.11.98 requesting the respondent No. 5 to accept his V.R.S. application with effect from 15.4.98.

3. On 16.1.99 the Deputy Chief, Personnel Manager informed the petitioner that his V.R.S. application submitted on 7.4.98 was sent to respondent No. 5 for recommendation but the request was not considered and this was verbally explained. It was specifically pointed out in the letter that validity of V.R.S. scheme has already expired and thus the presumption that it was still pending even after expiry of the scheme was on the face of it erroneous. It was also pointed out that the sanctioned leave came to an end on 30.6.98 and the petitioner was duty bound to report on 01.7.98 but he did not report for duty and instead went on applying for extension of leave which was not sanctioned. Thus the petitioner was unauthorisedly absent from 01.7.1998 and two registered letters on 03.8.98 followed by 14.8.98 were sent to report for duty but the petitioner miserably failed and remained unauthorisedly absent from duty and did not even choose to respond to the above letters and it was in this background that the written statement of defence was sought and on receipt, it was found to be unsatisfactory and accordingly disciplinary proceeding was initiated.

4. The petitioner being constrained filed a writ petition O.P. No. 10649 of 1999 P before Kerala High Court and vide an order dated 23rd April, 1999 the writ petition was disposed of directing the respondent to dispose of the pending representation with regard to disciplinary action and the V.R.S. application. In compliance to the order passed by the Kerala High Court the Secretary, Government of India, Steel and Mines disposed of the representation vide a detail speaking order on 11th October, 1999 after affording full opportunity to both the sides i.e. Bokaro Steel Ltd. as well as the petitioner herein and considered each and every documents which has been specified in the impugned order and finally held that it was the prerogative of the management to accept or

reject the V.R.S. scheme of 1998 and no one can claim acceptance under V.R.S. as a matter of right. It also held that vide letter dated 6.4.98 it was specifically recorded that his T.A. application in lieu of V.R.S. application was rejected and he had knowledge of it and accordingly the decision of the Management was upheld.

5. The petitioner filed another writ petition before the Kerala High Court being O.P. No. 26659 of 1999 (W) challenging the order dated 11.10.1999 to which a counter affidavit was filed and finally vide its order dated 5.6.04 the Kerala High Court dismissed the writ petition filed by the petitioner holding that the same was not maintainable on the ground of territorial jurisdiction without going into the merits of the matter. It was in this background that the present writ petition has been filed before this Court.

6. The learned Senior counsel, Sri Binod Poddar appearing for the petitioner has submitted that the contention about the V.R.S. Application being rejected on 6.4.98 was on the face of it erroneous since the petitioner had applied for V.R.S. only on 7.4.98. The second contention raised by the learned senior counsel for the petitioner is that there was no communication of the rejection of V.R.S. and the contention that it was verbally explained by respondent No. 5 was also incorrect. He has also challenged the competency and stated that the petitioner was in E-4 grade and as per the scheme the competent authority was the Managing Director to consider his application. He has further submitted that the action of the respondent was discriminatory since in similar circumstances two persons of the same department namely Shri Chakraborty and Sri N.K. Sinha were granted V.R.S. scheme and the case of the petitioner was not considered by the authority and thus the entire action was arbitrary and illegal. It has further been submitted that the departmental proceedings was on the face of it illegal and arbitrary and has been initiated on a complete non-application of mind and was thus liable to be set aside. He has also referred to and relied upon *Ashok Kumar Sahu Vs. Union of India (UOI) and Others*, and *Manjushree Pathak Vs. The Assam Industrial Development Corporation Ltd. and Others*, to support his contention.

7. The respondents in their reply have submitted that V.R.S. application of employee is considered by the employer on various parameters such as importance of job assigned, exigency of work deployment of employee to a particular nature of job and it is not that it has to be accepted as a matter of right. It has further been submitted that unless the V.R.S. scheme is accepted and communicated, it does not confer any legal right. They have also referred to Clause 11 of the V.R.S. which reads as follows:

The scheme does not confer any right on any employee to have his/her request for voluntary retirement accepted by the competent authority. Competent authority will have full discretion to accept or reject the request from any employee for his voluntary retirement.

8. It has further been submitted that the petitioner unilaterally assumed and

presumed without any communication and without acceptance of V.R.S. and proceeded on leave without even waiting to know whether his application for V.R.S. has been accepted and proceeded to join a lucrative alternative employment which amounted to unauthorized absence from duty and it was in this background that the disciplinary proceedings were initiated against the petitioner. Repeated reminders were sent which are admitted by the petitioner to join for duty and time was repeatedly given still then he did not join.

9. I have considered the rival submissions, pleadings and the case law on the subject. In the instant case there is no dispute about the fact that the application of the voluntary retirement was not accepted nor any communication of the acceptance was made. This fact is further proved by the conduct of the petitioner himself when he repeatedly applied for Earned Leave followed by extension of leave and thus, there was admittedly no cessation of employer and employee relationship. Even as per Clause 11 of the Voluntary Retirement Scheme merely on applying for voluntary retirement, it does not confer any right that the competent authority has to accept the voluntary retirement in stead this scheme clearly provided that the competent authority has full discretion to accept or reject the application of any employee for voluntary retirement. The contention about the rejection of application for voluntary retirement a day before the date of application of voluntary retirement is a disputed question of fact. However, the petitioner is the author of the letter dated 6.4.1998 wherein he had applied for T.A. allowance to his controlling Officer in lieu of his voluntary retirement application and it was specifically recorded and signed by the respondent authority that his application for T.A. allowance is refused.

10. As regards Ashok Kumar Sahu Vs. Union of India (UOI) and Others, and Manjushree Pathak Vs. The Assam Industrial Development Corporation Ltd. and Others, referred to and relied upon by the learned Senior counsel appearing for petitioner, it is relevant to clarify that in the first judgment the issue related to approval and the interpretation of the approval as to whether it could be termed as acceptance and or ratification. The second issue in the question was with regard to the delegation of legislative function/power and adopting a wrong procedure in not communicating the order of acceptance and thus the same does not apply to the facts of the present case. Even in the second case the issue mainly related to the manner of exercise during the pendency of departmental enquiry and show cause notice for alleged mis-conduct. In the second case the scheme itself conferred certain powers and discretion coupled with the duty as to how the application for voluntary retirement was to be accepted or rejected. In that case the offer was from the Management side which was accepted by the petitioner therein for voluntary retirement and thus the same does not apply to the facts of the present case.

11. The Hon"ble Supreme Court in (2002) 9 SCALE 519 (Bank Of India v. O.P. Swarnakar) at para 50, 60, 65 and 66 while considering an identical issue held as under:

50. It is difficult to accept the contention raised in the Bar that a contract of employment would not be governed by the Indian Contract Act. A contract of employment is also a subject-matter of contract. Unless governed by a statute or statutory rules the provisions of the Indian Contract Act would be only applicable at the formulation of the contract as also the determination thereof. Subject to certain just exceptions even specific performance of contract by way of a direction for reinstatement of a dismissed employee is also permissible in law.

60. The request of employees seeking voluntary retirement was not to take effect until and unless it was accepted in writing by the competent authority. The competent authority had the absolute discretion whether to accept or reject the request of the employee seeking voluntary retirement under the Scheme. A procedure has been laid down for considering the provisions of the said Scheme to the effect that an employee who intends to seek voluntary retirement would submit duly completed application in duplicate in the prescribed form marked "offer to seek voluntary retirement" and the application so received would be considered by the competent authority on first-come-first-serve basis. The procedure laid down therefore suggests that the applications of the employee would be an offer which could be considered by the bank in terms of the procedure laid down therefore. There is no assurance that such an application would be accepted without any consideration.

65. Once it is held that the provisions of the Indian Contract Act, 1872 would be applicable, the Scheme admittedly being contractual in nature, the provisions of the Act shall apply. The Scheme having regard to its provisions as noticed hereinbefore would merely constitute invitation to treat and not an offer.

66. A proposal is made when one person signifies to another his willingness to do or abstain from doing anything with a view to obtaining the assent of the other to such act or abstinence [see Section 2(a)]. Herein the banks by reason of the Scheme or otherwise have not expressed their willingness to do or abstain from doing anything with a view to obtaining assent of the employees to such act. It will bear repetition to state that not only the power of the bank to accept or reject such application is absolutely discretionary, it, as noticed hereinbefore, could also amend or rescind the Scheme. The Scheme, therefore, cannot be said to be an offer which, on the acceptance by the employee, would fructify in a concluded contract.

12. This view was reiterated in Punjab National Bank Vs. Virender Kumar Goel and Others, wherein it was specifically held that the request of an employee seeking voluntary retirement would not take effect until and unless it was accepted in writing by the competent authority and communicated.

13. u/s 3 & 4 of the Indian Contract Act a proposal has to be communicated and the communication is complete when it comes to the knowledge of the person to whom it is made. Likewise, Section 5 provides that proposal may be revoked before acceptance and Section 7 of the said Act provides that in order to convert

any proposal into a promise, the acceptance must be absolute and unqualified and has to be communicated to the proposer and only thereafter, it become enforceable and binding under the Contract Act.

14. Considering the aforesaid facts and circumstances of the case, the prayer for declaration that the petitioner is entitled to get voluntary retirement based on Voluntary Retirement Scheme from the date on which he made the application is on the face of it unsustainable in the eyes of law, in absence of any legal accrued or vested right and in view of the fact that neither the offer was accepted nor was it communicated.

15. Considering the aforesaid facts and circumstances of the case, this writ petition being devoid of any merit is accordingly dismissed.