

(2011) 02 KAR CK 0019
In the Karnataka High Court
Case No : Writ Petition No. 16022 of 2007

Dr. (Mr.) C. Madhusoodan

APPELLANT

Vs

Steel Authority of India Ltd.

RESPONDENT

Date of Decision : 23-02-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 16, 21

Citation : (2011) ILR (Kar) 1993 : (2012) 3 KarLJ 71 : (2011) 2 KCCR 149 SN

Hon'ble Judges : Mohan Shantanagoudar, J

Bench : Single Bench

Advocate : Subba Rao and Co, for the Appellant; S.N. Murthy Associates, for the Respondent

Final Decision : Dismissed

Judgement

Mohan Shantanagoudar, J.—The Petitioner has sought for (a) quashing the letter/order dated 23.12.2006 sent by the 1st Respondent vide Annexure-"C", by which the Petitioner was informed that his request for voluntary retirement was not accepted, (b) quashing the order dated 9.5.2007 passed by the 1st Respondent vide Annexure-"J" accepting the resignation tendered by the Petitioner and the order at Annexure-"K" dated 15.6.2007 relieving the Petitioner from duties pursuant to the resignation of the Petitioner, (c) a declaration that Clause 10(ii) of Annexure-"I" to Annexure-"A" is arbitrary and ultra virus of Articles 14, 16 and 21 of the Constitution of India, (d) to grant benefits of Voluntary Retirement Scheme Annexure-"A" dated 22.11.2006.

2. The records reveal that the Petitioner joined service as Medical Officer in Visvesvaraya Iron and Steel Plant (VISP) Hospital. He secured three promotions and was a Senior Consultant in Anesthesiology in the year 2007. VISP hospital introduced Voluntary Retirement Scheme (VRS) in the year 2001 and the same was extended from time to time. The Petitioner opted for VRS on 4.12.2006. But, the same was turned down by the order dated 23.12.2006 as per Annexure-"C" by the Respondent. On 15.3.2007, Petitioner submitted the letter of resignation,

which came to be accepted on 9.5.2007 as per Annexure-"J". On 28.4.2007 i.e. prior to the acceptance of the resignation of the Petitioner, a notice came to be issued on behalf of the Petitioner as per Annexure-"L", by inter alias mentioning therein that the resignation was given out of sheer desperation and frustration and the same was not voluntary. It is also mentioned in the said letter that, even though the Petitioner was eligible to have his case considered for VRS, his case was not considered on untenable grounds and that he has been unjustly denied the benefits payable under the VRS. In the said letter, it was prayed that the letter of resignation dated 15.3.2007 submitted by the Petitioner may be treated as application for retirement under VRS and that he be paid all benefits to which he is eligible under the VRS. However, the resignation tendered by the Petitioner was accepted as per Annexure-"J" on 9.5.2007 and he was relieved from duties with effect from 15.6.2007. Thereafter, this petition is filed for the aforementioned relief"s.

The writ petition is opposed by the Respondents by filing statement of objections along with certain documents. Relying upon the documents produced along with statement of objections, it was argued by the learned Counsel for the Respondents that the resignation tendered by the Petitioner is voluntary and that the application filed by the Petitioner for voluntary retirement was not recommended on valid grounds. According to the Respondents, the Petitioner being the lone active Anesthetist in the hospital having special knowledge in the field and as it is difficult to get the replacement, the application for voluntary retirement was not recommended by the concerned and consequently, the same was not accepted. It is further case of the Respondents that the hospital could appoint another doctor only on 1.2.2008 another doctor was appointed as Anesthetist in place of the Petitioner, inasmuch as, it was very difficult to get suitable Anesthetist to the hospital in question.

3. As could be seen from Annexure-"R-1", the application of the Petitioner for voluntary retirement was not recommended by the concerned authority on the ground that he is the lone active Anesthetist in the hospital having nine more years of service left and he being in the Specialist Medical Branch, it is difficult to get the replacement. Annexure-"H" is the copy of the resignation letter. The Petitioner has not indicated anything in the resignation letter that he was resigning out of sheer frustration. The resignation letter is dated 15.3.2007. Prior to that date, the Petitioner had asked for permission to voluntarily retire, which was refused on 23.12.2006. According to the Petitioner, he suffered mental agony because of the rejection of his application for voluntary retirement. The said submission is fortified by the document at Annexure-"N" - Medical Certificate issued by Dr. Harish, the consultant Psychiatrist. It seems the Petitioner consulted the same doctor for his neurobehavioral problems.

4. The copy of the Voluntary Retirement Scheme is produced at Annexure-"A". The same clearly reveals that granting of voluntary retirement shall be at the sole discretion of the management and that the scheme is formed to achieve

optimization of man power for effective utilization of human resources, improved productivity, cost reduction and quality of work life. Clause 10(ii) of Annexure-"T" to the Voluntary Retirement Scheme makes it further clear that the scheme does not confer any right on any employee to have his/her request for voluntary retirement accepted by the competent authority. The competent authority will have full discretion to accept or reject the request of any employee for voluntary retirement. This Court does not find any illegality in such a clause. This Court also does not find any unreasonableness in exercising the discretion by the management. The voluntary retirement cannot be claimed as of right. The object of the Voluntary Retirement Scheme is to achieve man power optimized for effective utilization of human resources, improved productivity, cost reduction and quality of work life. The Voluntary Retirement Scheme is formed to reduce the man power wherever necessary keeping in mind the interest of the Respondent organization. If the man power is more in particular section/department of the steel plant, such man power would have to be reduced in the interest of the Respondent organization. So also, if the expert man power is lacking in any particular department or section, the existing man power/staff/experts cannot be allowed to take voluntary retirement. In case, if such experts who are inevitable are allowed to take voluntary retirement, the organization suffers. The organization will exercise its discretionary power either to accept or to reject the application for voluntary retirement tendered by any employee depending on the exigencies of service, particularly having regard to the hospital requirement. Hence, this Court does not find any ground to accept the contention of the Petitioner that Sub-clause (ii) of Clause 10 of Annexure-"T" attached to the scheme is violative of Articles 14, 15 and 21 of the Constitution of India, as contended.

5. The application filed by the Petitioner seeking voluntary retirement is rejected, as is clear from Annexure-"R-1", on the ground that the Petitioner possesses the qualification of MBBS and Diploma in Anesthesiology; that he is the lone active Anesthetist in the hospital having nine more years of service left; that his is a Specialist Medical Branch for which replacement is very difficult to get. Since, he was the only doctor having expertise in the field of Anesthesia in VISP hospital, it is, but natural for the Respondent organization to reject the prayer of the Petitioner for voluntary retirement. The hospital needs expert Anesthetist's assistance every day. If his services are not available, then the patients and consequently, hospital suffers. Hence, this Court does not find any ground to conclude that the application seeking voluntary retirement is rejected with any mala fide intention.

However, on subsequent dates, the Petitioner remained absent from duty without getting his leave sanctioned and without official permission. In this view of the matter, notice was issued as per Annexure-"R-3" dated 28.2.2007 directing the Petitioner to report for duty immediately. In the very letter, it is observed that in case of non-reporting to duty, the same will be viewed seriously and that the Petitioner would be dealt with as per the Rules of the Company. After receipt of

such a letter dated 28.2.2007 vide Annexure-"R-3", the Petitioner sent a letter of resignation as per Annexure-"R-4" on 15.3.2007 in his own hand writing. In the letter of resignation he has clearly stated that he is resigning from the services of the organization owing to his personal problems and that he may be relieved from duties after working hours of 15th June 2007. In the resignation letter, he has thanked the management for the support he got during his service in the organization since August 1982. From the resignation letter vide Annexure-"R-4", it is clear that the Petitioner has not made out any grievance at the time of submitting the resignation letter. He did not mention in the said resignation letter that he is tendering resignation out of frustration etc., The authority concerned having found that the resignation letter submitted by the Petitioner is voluntary, accepted the said letter and permitted the Petitioner to resign.

6. The application seeking voluntary retirement submitted by the Petitioner was rejected as per the order vide Annexure-"C" dated 23.12.2006. According to the Petitioner, he became depressed and desperate thereafter. He consulted the Psychiatric Specialist who treated him for three months. The doctor had advised him not to attend the duties for three months as the Petitioner had suffered depression. These facts would go to show that the Petitioner might not have been in a position to work as Anesthetist during the said period. Under such circumstances also the Petitioner must have tendered his resignation. Be that as it may, the resignation letter submitted by the Petitioner, that too, in his own hand writing is plain and simple and does not depict anywhere that he has tendered resignation out of frustration.

7. The statement of objections filed by the Respondent-management clearly reveals that the hospital in fact has suffered loss due to the absence of the Petitioner as a Anesthetist. Though the Petitioner's resignation was accepted on 15.6.2007, the hospital could not get a good Anesthetist till 1.2.2008, on which day, one Dr. Shoba was appointed as Senior Medical Officer (Anesthetist) in the place of the Petitioner as per Annexure-"R-5". From the above, it is clear that the rejection of the application seeking voluntary retirement was not intentional or was with a mala fide intention, but, was under the circumstances prevailing then i.e., no expert Anesthetist could have been found in the near future.

8. The document at Annexure-"R-6" produced along with the additional statement of objections filed by Respondent-management clearly reveals that an employee fulfilling certain criteria listed in Clause-4 of guidelines for grant of voluntary retirement, may be discouraged in opting voluntary retirement. One of such criteria is that the employee having professional qualification such as CA/ICWA/CS and Specialist Medical Personnel. Since the Petitioner was a Specialist Medical Personnel, he was discouraged from opting voluntary retirement by rejecting his application. Hence, the rejection of the application seeking voluntary retirement cannot be said to be unreasonable or arbitrary. The document at Annexure-"R-8" discloses that the prayer for voluntary retirement of another

doctor viz., Dr. Y.U. Thippeswamy who was a specialist doctor in Orthopedic Department having Diploma in Anesthesiology was also rejected on 18.12.2006. Hence, it is not open for the Petitioner to contend that the management was biased against him or that he was differently treated.

9. As is clear from Annexures-"R-10", "R-11" and "R-12" that the Petitioner has received all the terminal benefits such as gratuity, encashment of leave and the difference of gratuity and arrears of salary due to retrospective wage revision, to which he was entitled to in the month of June and July 2007 without any protest. The Petitioner has acknowledged for having received such amounts. In view of the same, it is not open for the Petitioner to still rely upon the document at Annexure-"L", by which the Petitioner has stated that he tendered his resignation out of frustration and that letter of resignation be treated as a letter seeking voluntary retirement.

10. The document at Annexure-"L" cannot be treated as a document withdrawing the resignation letter. As could be seen from Annexure-"L", it is clear that Petitioner had requested the management to treat the letter of resignation as the application for retirement under Voluntary Retirement Scheme. Since the request of the Petitioner was only for treating the resignation letter as the application for retirement under Voluntary Retirement Scheme, the same could not be treated as the application for withdrawal of the resignation letter. Moreover, as aforementioned, the Petitioner could not have given voluntary retirement. At the time of arguments, Sri S.N. Murthy, learned Senior Advocate appearing for the Respondents submitted that the VISP is still ready and willing to take the services of the Petitioner, for which the Petitioner is not ready. Hence, it cannot be said that the action of the Respondent in accepting the resignation is wrong. Thus, the resignation of the Petitioner was rightly accepted and he was relieved.

In view of the above and having regard to the totality of the facts and circumstances, this is not a fit case to grant any relief in favor of the Petitioner. Petition fails and accordingly, the same stands dismissed.