
(2019) 05 PAT CK 0010

In the Patna High Court

Case No : Letters Patent Appeal No. 2168 Of 2015 In Civil Writ Jurisdiction Case
No. 19745 Of 2010

General Manager, Uco Bank And Ors

APPELLANT

Vs

Md. Mukhatar Ali And Anr

RESPONDENT

Date of Decision : 14-05-2019

Acts Referred:

Employees' Pension Regulations, 1995 — Regulation 29(4)
Central Civil Services (Pension) Rules, 1972 — Rule 48A

Citation : (2019) 05 PAT CK 0010

Hon'ble Judges : Jyoti Saran, J;Anjani Kumar Sharan, J

Bench : Division Bench

Advocate : Ranjeet Kumar Pandey, Santosh Kumar, Syed Arshad Alam

Final Decision : Allowed

Judgement

This intra court appeal arises from a judgment and order dated 06.07.2015 passed by a learned Single Judge of this Court in CWJC No.19745 of 2010 whereby the writ petition was allowed with costs quantified at Rs.25,000/- and the writ petitioner was held entitled to all consequential benefits as arising from withdrawal of his letter of voluntary retirement from service. It is feeling aggrieved by the judgment and order of the learned Single Judge that the employer-Bank is before this Court.

The facts of the case as it transpires from the record of the proceeding briefly stated is that the writ petitioner at the relevant time was posted as a Manager, Branch Office Sangrampur in the district of Munger in the State of Bihar. According to the writ petition, it is owing to medical ailments in the family and after seeking a posting in any branch nearby Patna for attending the ailing family members and getting no response that the writ petitioner filed an application for voluntary retirement under the Voluntary Retirement Scheme on 25.02.2009 vide Annexure 1 to the writ petition.

It is the case of the writ petitioner that since the medical condition of the family

members improved and since he came to realise that he could serve the Bank till his scheduled date of retirement i.e. 14.11.2013 with full ability and sincerity that he made a request letter to the Respondent no.2 i.e. the Zonal Manager, UCO Bank on 20.05.2009 for cancellation of his application for voluntary retirement vide his application dated 25.02.2009 as well as for withdrawal of the order, if any, so passed thereon. According to the writ petitioner, as until 20.05.2009 he had not been served with any letter confirming to his request. A copy of the withdrawal application dated 20.05.2009 is enclosed at Annexure 2 to the writ petition.

It is the case of the writ petitioner that despite the situation he received a relieving letter dated 23.05.2009 issued under the signature of the Senior Manager whereunder he was relieved from service vide Annexure 4 to the writ petition. It is on making enquiry that the writ petitioner was informed that his request for voluntary retirement vide application dated 25.02.2009 has already been accepted by the Competent Authority with effect from 25.05.2009 by the Assistant General Manager through letter dated 15.05.2009 at Annexure 5 series to the supplementary affidavit filed in appeal by the appellant-Bank.

The writ petitioner thereafter made representations to know about the outcome of his application filed for withdrawal of his application for voluntary retirement and when he was informed vide letter dated 23.07.2009 at Annexure 7 to the writ petition that his request for withdrawal of the application for voluntary retirement had been rejected by the Competent Authority. It is feeling aggrieved by such action of the appellant-Bank that the writ petitioner came before this Court. The grievance was upheld and the writ petition was allowed with costs and consequential benefits.

Feeling aggrieved the Bank together with its official filed Letters Patent Appeal which was heard by a coordinate Bench on 17.05.2017 and the Letters Patent Appeal was allowed with a modification to the order of the writ Court to the extent the writ Court allowed arrears of salary from the date of voluntary retirement. Modifying the relief, the arrears of salary was allowed with effect from the date the writ petition was filed until the actual date of superannuation, however, the entire period was to be treated as duty period for calculation of pensionary benefits.

The Bank yet not being satisfied filed a Civil Review Application bearing Civil Review No.377 of 2017. An issue was raised that regulation 29(4) of the UCO Bank (Employees) Pension Regulations 1995 (hereinafter referred to as 'the Regulation') which allows an employee to withdraw his voluntary retirement application only with specific approval of the Competent Authority has neither been addressed on its import by the learned Single Judge and even the appellate court while partly allowed the Letters Patent Appeal, has not taken note thereof.

The Division Bench bearing note of the issue raised in the civil review application recalled its order dated 17.05.2017 and restored the Letters Patent Appeal to its

original file. The matter has thereafter been placed before this Bench when the parties have been heard at length.

While Mr. Ranjeet Kumar Pandey, learned counsel appears on behalf of the appellant-Bank, Mr. Santosh Kumar learned Advocate appears with Mr. Syed Arshad Alam on behalf of the respondent-writ petitioner.

The facts already narrated above requires no further discussion and the issue which primarily falls for discussion in this appeal is whether, 'regulation 29(4) of 'the Regulation' relied upon by the appellant-Bank, would make any alteration to the opinion expressed by the learned Single Judge'.

Mr. Ranjeet Kumar Pandey, learned counsel appearing for the appellant-Bank has heavily relied upon the provisions of regulation 29(4) of 'the Regulation' to submit that a withdrawal is permitted only with specific approval of the Competent Authority and since the withdrawal application itself was under cloud, it was neither worthy of consideration nor the rejection of the same requires interference.

Learned counsel has referred to the supplementary affidavit filed in appeal to submit that the withdrawal application at Annexure 1 is in fact a forged document because it bears no memo number nor any reference number is given and even the format is different in comparison to the letter at Annexure 2 where the Senior Manager has accepted that no letter of withdrawal of the request of voluntary retirement has been received by him. He thus submits that the claim of the writ petitioner that his application for cancellation of request for voluntary retirement dated 22.05.2009 was forwarded by the Senior Manager is doubtful in view of the position clarified by the said Manager at Annexure 2. According to Mr. Pandey, this conduct of the writ petitioner does not entitle him to any further indulgence.

In so far as the merit in contest is concerned, Mr. Pandey placing reliance on the provisions of regulation 29(4) of 'the Regulation' submits that, a request for withdrawal of the application for voluntary retirement is not unilateral rather it has to have the sanction and approval of the Competent Authority who in the present case has chosen to reject such request. He submits that the learned Single Judge while expressing his opinion has committed an error in not appreciating the import of regulation 29(4) of 'the Regulation' and which sufficiently empowers the Competent Authority to reject the application for withdrawal of a request for voluntary retirement. According to Mr. Pandey, where the statute itself empowers the Competent Authority to exercise discretion, such discretion exercised did not suffer any infirmity to call for interference.

It is the argument of Mr. Pandey that even otherwise the writ petition suffered laches and delay because while the dispute relates to the month of May, 2009, the writ petitioner has chosen to approach this Court leisurely in the later part of the year 2010.

In support of his submission Mr. Pandey has relied upon an unreported judgment of the Supreme Court rendered in the case of Director General, ESIC Vs. Puroshottam Malani passed in Civil Appeal No.4611 of 2008 and in particular reference to the opinion expressed at paragraph 10 he submits that in case no satisfactory material has been provided by the incumbent to support his prayer for withdrawal of his application seeking voluntary retirement as in the present case, the Competent Authority would be within his jurisdiction to reject such application.

Mr. Pandey has also relied upon a judgment of the Supreme Court reported in (2006) 10 SCC 258 (Chand Mal Chayal vs. State of Rajasthan) to submit that where an application for voluntary retirement has been accepted, as in the present case where it was accepted on 15.05.2009 and even if it was to take its effect from 25.05.2009, it did not vest any right in the writ petitioner to seek withdrawal without the approval of the Competent Authority.

Mr. Pandey has next relied upon a judgment of the Supreme Court reported in (2010) 5 SCC 335 (New India Assurance Company Limited vs. Raghuvir Singh Narang) and in reference to paragraphs 9, 10, 17 and 24 he submits that every matter needs to be tested against the statutory prescriptions and in so far as the case in hand is concerned, regulation 29(4) makes a withdrawal application for voluntary retirement application conditional subject to approval by the Competent Authority which was not forthcoming in the case of the writ petitioner.

The argument of Mr. Pandey has been seriously contested by Mr. Santosh Kumar, learned counsel appearing for the respondent-writ petitioner.

Mr. Santosh Kumar, learned counsel appearing for the writ petitioner has placed reliance on a number of judgments of the Supreme Court to submit that not only the acceptance of the application for voluntary retirement needs an application of mind, even the rejection of withdrawal application requires the same application and has to be founded on reasons. It is argued that the legal position on voluntary retirement as settled under the judgment of the Courts permits the employee concerned to withdraw voluntary retirement application prior to its acceptance and in the present case even though the application was filed after a decision was taken by the Competent Authority to accept the voluntary retirement application but it was much prior to the date on which such acceptance was to take its effect.

According to Mr. Santosh Kumar, vide order dated 15.05.2009 at Annexure 5 series to the supplementary affidavit filed on behalf of the Bank in the appeal, the acceptance of the offer of the writ petitioner to retire voluntarily, was communicated to the Zonal Office which, was to take its effect from 25.05.2009 and it is much prior thereto on 20.05.2009, that the writ petitioner filed his application to withdraw his earlier application to voluntarily retire, which has been rejected by the Competent Authority as reflected from the letter dated 23.05.2009 at Annexure 6 to the supplementary affidavit which directs the

authorities to relieve the petitioner.

According to Mr. Santosh Kumar, learned counsel appearing for the petitioner, since the withdrawal application had been filed much prior to the date on which the acceptance of voluntary retirement would take effect, the Competent Authority in absence of any valid reasons cannot be permitted to mechanically reject the withdrawal application.

Mr. Santosh Kumar in support of his argument has relied upon the following judgments of the Supreme Court:

(1) 1987 (Supp) SCC 228 (Balram Gupta vs. Union of India). In reference to the opinion at paragraphs 8, 9, 11 and 12 it is submitted that identical issue came up for consideration before the Supreme Court in a matter arising under the Central Civil Services (Pension) Rules, 1972 which under rule 48A has *pari materia* provision of voluntary retirement as under consideration in the present case. It is submitted that the Supreme Court has held that it is not important as to what prompted the employee to a withdrawal rather what is important is that what prompted the government to reject such withdrawal.

(2) Civil Appeal No.4611 of 2008 (Director General ESIC vs. Puroshottam Malani). It is submitted that on similar issue falling for consideration, the Supreme Court has reiterated the earlier opinion expressed in the case of Balram Gupta (*supra*).

(3) (1998) 9 SCC 559 (J.N. Srivastava vs. Union of India). It is submitted that the right of an employee to withdraw his application for voluntary retirement has been recognized.

On the same proposition that an employee can withdraw his application for voluntary retirement before it takes its effect, learned counsel has made reference to the following judgments:

(1) (2000) 5 SCC 621 (Shambhu Murari Sinha vs. Project & Development India Limited).

(2) (2002) 3 SCC 437 (Shambhu Murari Sinha vs. Project & Development India Limited).

(3) (1998) 5 SCC 461 (Nand Keshwar Prasad vs. Indian Farmers Fertilizers Cooperative Ltd.).

(4) (2001) 1 SCC 158 (Union of India vs. Wing Commander T. Parthasarathy)

(5) (2007) 8 SCC 141 (Food Corporation of India vs. Ramesh Kumar).

(6) (2003) 2 SCC 721 (Bank of India vs. O.P. Swarnakar).

We have heard learned counsel for the parties and we have perused the records.

In between the exhaustive arguments advanced by learned counsel appearing for

the contesting parties each of whom have relied upon a number of judgments of the Supreme Court in support of their respective stand, the only issue which, in our opinion, falls for consideration is the import of the provision underlying regulation 29(4) of the 'Regulation' which permits an employee to withdraw his application for voluntary retirement but with a specific approval of the Competent Authority.

We have taken note of the judgments relied upon by the contesting parties but for the opinion that we intend to express, it is the judgment rendered by the Supreme Court in the case of Balram Gupta (supra) and Puroshottam Malani (supra) which answers the issue posed in this contest.

There is no dispute on the broad principles laid in the judgments relied upon by the parties that, an application for voluntary retirement can be withdrawn by the employee concerned before it takes its effect. Regulation 29(4) of 'the Regulation' also does not prohibit such withdrawal but makes it subject to the approval by the Competent Authority and reads under:

"29. Pension on Voluntary Retirement.-

... ..

... ..

(4) An employee, who has elected to retire under this regulation and has given necessary notice to that effect to the appointing authority, shall be precluded from withdrawing his notice except with specific approval of such authority "

The relevant dates in so far as the present case is concerned are as follows:

25.02.2009: Application for voluntary retirement was filed by the writ petitioner vide Annexure 1 to the writ petition.

15.05.2009: The decision of the Competent Authority accepting the offer of the writ petitioner to retire voluntarily from Bank's service with effect from 25.05.2009 vide Annexure 5 to the supplementary affidavit filed in appeal).

20.05.2009: Application of the writ-petitioner for cancellation of his request for voluntary retirement filed before the Competent Authority vide Annexure 2 to the writ petition.

23.05.2009: A letter of the Chief Officer (Personnel) to the Zonal Office communicating the decision of the Competent Authority to decline the request of the writ petitioner for cancellation of his application for voluntary retirement vide Annexure 6 to the supplementary affidavit filed in appeal.

The relevant dates given above leaves no confusion that the withdrawal application was filed much prior to the date, the acceptance order, of the application for voluntary retirement, could take its effect.

Before we would advert to the main issue in contest, the other issue which needs

to be addressed is the conduct of the writ- petitioner complained by the appellant-Bank in reference to the documents at Annexures 1 and 2 to the supplementary affidavit filed in appeal and to submit that the letter of the Senior Manager forwarding the request application of the writ petitioner for cancellation of his application for voluntary retirement, was doubtful and is a fabricated document and if the writ petitioner has approached this Court with unclean hands, no indulgence can be given.

We have examined the contention advanced by Mr. Pandey to espouse this issue but having gone through the records, we find that the objection raised becomes meaningless because undisputedly the withdrawal application filed by the writ petitioner was acted upon and has been declined by the Competent Authority as communicated vide Annexure 6 dated 23.05.2009. Now once the withdrawal application in question, alleged to be fabricated, has been acted upon by the Competent Authority and has led to rejection, then it is not open for the bank to raise doubts on its veracity. We thus do not see any reason nor merit, to enter into the issue of fabrication of documents and would revert back to express ourselves on the import of regulation 29(4) and whether it effects the claim advanced by the writ petitioner adversely.

The Supreme Court in the case of Balram Gupta (supra) at paragraph 9 while considering a similar issue in backdrop of similar provisions in C.C.S. (Pension) Rules, 1972, has held as follows:

9. What is important in this connection to be borne in mind is not what prompted the desire for withdrawal but what is important is what prompted the government from withholding the withdrawal. In this respect the government affidavit certainly lacks candour. In appropriate cases where the government desires that public servant who seeks voluntarily to resign should not be allowed to continue, it is open to the Government to state those reasons"

The other judgment of the Supreme Court which was relied upon by each of the two parties is rendered in the case of Puroshottam Malani (supra). The Supreme Court while taking note of the judgment in Balram Gupta (supra) and other judgments, has held as such:

"10. If the incumbent does not provide any reason or material for revoking his notice of voluntary retirement then it is always open for the authority to decline the request for withdrawal of notice of voluntary retirement. If such discipline is not read into the Rule then perhaps every employee can send a notice for voluntary retirement and revokes the same at his sweet will. This cannot be permitted."

The two judgments make it eloquent that both, i.e. the employer as well as the employee have an obligation to satisfy on the reason for the change in course i.e. having filed an application for voluntary retirement, seeking a cancellation of such request. Alongside, the employer also has to express reason for rejection of

such request. While the judgment in the case of Balram Gupta (supra) casts an obligation on the employer to assign reason for rejection of such request of withdrawal of application for voluntary retirement, the judgment in the case of Puroshottam Malani (supra) obliges the employee concerned to assign reasons for seeking a withdrawal of his request of voluntary retirement.

Bearing note of the opinion so expressed in the judgments referred to above as well as the other judgments taken note of by us, we proceed to examine the reasons which prompted the writ petitioner to seek a voluntary retirement present at Annexure 1 to the writ petition and the reasons assigned for cancellation of such request. Annexure 1 is the application by the writ petitioner seeking voluntary retirement and attributes it to the medical condition of his wife, his daughter as well as his own health. On the other hand, Annexure 2 is the withdrawal of such request dated 20.05.2009 and through which, the writ petitioner has informed the Competent Authority that since the condition of his wife as well as daughter had improved and he now finds himself in better condition to render service that he was seeking a cancellation of his earlier request for voluntary retirement. In our opinion, the reasons present at Annexure 2, seeking cancellation of request for voluntary retirement are explanatory and in full discharge of the obligation cast in the judgment of Puroshottam Malani (supra).

The change in circumstances that has been expressed in the application of the writ petitioner at Annexure 2 are sufficient explanation of his request for cancellation of his application for voluntary retirement and which required a consideration but the order at Annexure 6 which communicates the decision of the Competent Authority to decline this request is a non-speaking order and does not reflect any application of mind as to the reasons which lay at the foundation for such rejection.

In our opinion, while the withdrawal application of the writ petitioner succinctly expresses the change in circumstances there is complete absence of reasons in the decision of the Competent Authority to decline such request and thus in our considered opinion the obligation cast on the employee by the Supreme Court as expressed in the case of Balram Gupta (supra), does not stand satisfied.

We find that the learned Single Judge has given anxious consideration to each of these aspects to opine in favour of the writ petitioner save and except that we certainly do not consider the action complained appropriate for imposition of cost or for allowing salary for the period prior to the filing of the writ petition considering that the writ petition was filed after considerable delay and thus even if espoused by Mr. Santosh Kumar that the respondents never took steps for payment of retirement benefits, this would not entitle the petitioner to the arrears of salary prior thereto.

While thus modifying the order of the learned Single Judge in so far as it imposes costs as well as allows salary from the date of the impugned order dated

23.05.2009 we hold the writ petitioner entitled to salary from the date the writ petition was filed i.e. December, 2010 until his date of superannuation on 31.10.2013 but the entire period would be counted for the purpose of calculation of pensionary benefits.

Since the writ petitioner has already superannuated he shall be entitled to his in service benefits as stated above, as well as to the superannuation benefits, which should be paid to the writ petitioner within a period of three months from the date of receipt/production of a copy of this judgment.

The appeal is allowed to the extent above and with the modification in the judgment and order of the learned Single Judge as explained above.