(2002) 07 GAU CK 0008

In the Gauhati High Court

Case No : Civil Rule No. 3276 of 1997

Girindra Nath Gogoi APPELLANT

Vs

Oil India Ltd. and Others RESPONDENT

Date of Decision : 17-07-2002

Acts Referred:

Constitution of India, 1950 — Article 12
Oil India Pension Fund Trust Deed and Rules — Rule 11, 12, 13, 30B

Citation : (2002) 3 GLT 597

Hon'ble Judges : J.N. Sharma, J

Bench : Single Bench

Advocate : A.K. Bhattacharyya, P.C. Barpujari and N.T. Nath, for the Appellant; S.N. Sarma, for the Respondent

Final Decision : Allowed

Judgement

J.N. Sarma, J.—On 28.8.1961, Petitioner was appointed as Production Practice Trainee in the Assam Oil Company and joined the service in such capacity. On 1.1.1962, petitioner was transferred to Oil India Limited in the same capacity. In the year 1981, he was promoted to the post of Assistant Production Engineer under Executive Grade-A. Thereafter, in the year 1983 he was again promoted to the post of Production Engineer under Executive Grade-B. In the year 1987, again he was promoted to the post of Senior Engineer Production under Executive Grade-C. In the year 1991, he was promoted to the post of Deputy Superintending Engineer (Production) under Executive Grade-C. On 22.6.1996, petitioner was promoted to the post of Superintending En (Production) under Executive Grade-D. On July, 1996 he sought privilege leave from 5.8.96 to 3.10.96. Leave was granted by the competent authority. Before the aforesaid leave expired, he sought for extension of leave by 30 days and the same was also granted till 2.11.96. On 26.10.96, petitioner submitted an application to respondent No. 5 through respondent No. 4 intimating his intention to voluntary retire from the service of respondent No. I with immediate effect. That is available at Annexure-A and that is quoted below:

To

The General Manager (MSG) Through : The CEP(F)/G.M. Prod.

Dt. 26.10.96

Sir,

I have the honour to state that I have completed 35 years of service in Oil India Ltd. and attained the age of 54 years as on 1.8.96. I joined in erstwhile A.O.C. Ltd. on 28.8.61 and subsequently transferred to OIL''s pay role. I have joined my service life in OIL throughout this long innings and rather hesitate to depart from OIL''s family.

Since I fulfill all the requisite eligibilities to go for early retirement, it would be beneficial for me take early retirement from the company due to some of my personal problems.

I hope you would be kind enough to approve my prayer at your earliest.

Thanking you,

Yours faithfully, Sd/- Illegible (Girindra Nath Gogoi) Superintending Engineer Production (OIL).

On 10.11.1996 the Petitioner submitted an application seeking privilege leave with or without pay till he receives information in respect of his voluntary retirement. On 4.12.96, he received letter dated 27.11.96 from the Manager (Personnel) whereby he was requested to state the reasons in detail for seeking early retirement in order to process his request. On 23.12.96 Petitioner vide letter dated 23.12.96 stated the reasons for seeking early retirement from the service of the company. On 3.1.97, Respondent No. 2 sent a telegram to Petitioner asking him to report to duty on or before 10.1.97 and also informed that his request for early retirement has not been agreed as yet. The Petitioner agreed to resume duty on 20.1.97. The Respondent No. 2 again sent another telegram dated 10.1.97 asking the Petitioner to resume duty forthwith. The Petitioner resumed duty on 20.1.97 and intimated the fact of resuming duty to Respondent No. 4. On 20.1.97 the Petitioner applied for special leave without pay with effect from 21.1.97 till the time of his request for early retirement is sanctioned. On 14.2.97 Petitioner vide letter 14.2.97 tendered his resignation and requested that he should be released from service with immediate effect from 14.2.97. On 17.2.97, Respondent came to know on receipt of letter dtd 17.2.97 from the Deputy Manager (Vig.), ONGC, Nazira whereby it was stated that the Petitioner has already been working on hiring O and M Services for WSS on contract. On 20.3.97, Respondent No. 4 vide his letter dated 20.3.97 requested the Petitioner to meet him on 26.3.97 in connection with certain organisational and personal matters. On 26.3.97 Petitioner was served with the memorandum dated 14.3.97 by which Respondent No. 3 proposes to hold an enquiry against Petitioner. The Petitioner was also served along with the aforesaid memorandum, statement of article of charges, statement of imputation of misconduct, list of documents and list of witnesses. On 17.3.97 Petitioner was served with another letter dated 17.3.97 issued by Respondent No. 5 informing that the Petitioner''s resignation dated 14.2.97 could not be processed pending finalisation of disciplinary proceedings already initiated by the authority. On 27.3.97 Petitioner vide his letter dated 27.3.97 denied the charges levelled against him being totally baseless, unfounded and fabricated. On 1.5.97 Petitioner received letter dated 30.4.97 from Respondent No. 2 asking him to file written statements of defence by 12.5.97. Petitioner sent letter dated 12.5.97 in terms of his earlier letter dated 27.3.97. Respondent No. 2 vide letter dated 24.6.97 appointed one Lajpat Rai, DGM (T and I) as Enquiring Authority to enquire into the charges levelled against the Petitioner. On 26.6.97 Petitioner received memo dated 25.6.97 from the Enquiry Officer whereby it was informed to the Petitioner to attend the preliminary hearing on 1.7.97 along with defence assistant. It was at this stage that on 14.7.97, this writ application was filed to quash the entire disciplinary proceeding, including the Memorandum dated 14.3.97 (Annexure-9), letter dated 17.3.97 (Annexure-10) and all consequential orders passed and actions taken thereon and declaring that the Petitioner has voluntarily retired from service of Respondent No. 1 either on 14.2.97 or any date anterior to that in pursuance of his request vide letter dated 26.10.96 and for issue a mandamus to the authority to accept request of the Petitioner for voluntary retirement with effect from 14.2.97 or any date anterior to that and to pay him all the consequential retirement benefits, including gratuity, provident fund and pension etc.

2. An affidavit-in-opposition has been filed on behalf of Respondent wherein it has been stated that an enquiry report against the Petitioner has been submitted by the enquiring authority holding that the charges of misconduct against the Petitioner proved. An affidavit-in-reply also has been filed.

3. I have heard Mr. A.K. Bhattacharyya, learned Counsel for Petitioner and Mr. S.N. Sarma, learned Counsel for Respondent.

4. Before we go to the other things, let us clear certain factual matrix. A voluntary retirement scheme for executive was introduced by the OIL on February 12, 1991 and it provides as follows:

(a) Executive who have completed 10 years in the Company or 40 years of age may seek voluntary retirement by a written request.

(b) The management will have the right not to grant voluntary retirement for reasons to be recorded in writing.

(c) Those executive who have joined the company on or before 13.10.1981 and are entitled to get pensionary benefits on the date of premature retirement under the existing Early Retirement Scheme of the Company (under the Oil India Pension Fund Rules) will not be covered under this Voluntary Retirement Scheme.

5. In this case, the Petitioner joined the company on or before 13.10.1981 and is entitled to get pensionary benefit on the date of premature retirement under the existing Early Retirement Scheme of the company (under the Oil India Pension Fund Rules) and as such, he is not covered by the voluntary retirement scheme and the prayer made for voluntary retirement is misconceived.

6. The next question is that whether the Petitioner is entitled to early retirement scheme under Oil India Pension Fund Trust Deed and Rules. This was introduced on 30th August, 1982. Rule 13 is quoted below:

The Trustees may also grant an early pension to a former employee provided as on the date of retirement-

i) he had attained an age not more than 10 years less than the pension age;

ii) he had completed not less than 20 years of service;

iii) he was otherwise qualified for a normal pension under the provisions of Rule 11 hereof.

such pension may be granted on any of the following grounds:

i) Ill health

ii) Redundancy

iii) Unsuitability for his particular employment by reason of his age or near attainment of pension age.

iv) In special cases on application by the concerned former employee with recommendation of the company.

Yearly pension under this rule shall be a sum calculated according to the table set out below.

7. In the affidavit-in-opposition filed, in paragraph 13, it has been stated as follows:

Further the deponent states that the Petitioner has requested for early retirement not voluntary retirement. It is pertinent to mention herein that at least 6 month''s notice is required to be given by the employee in addition to other conditions stipulated in the scheme for early retirement. Under the Oil India Pension Fund Rules, early retirement is admissible and pension benefits on early retirement is granted on any of the following grounds:

i) 111 health, ii) Redundancy, iii) Unsuitability for his particular employment by reason of his age or near attainment of pension age, iv) In special cases on application by the concerned former employee with recommendation of the company.

8. It is further stated that the Petitioner''s case does not exclusively fall within the purview of any of the clauses mentioned above. It is the further stand of the

authority that the Petitioner cannot take early retirement as a matter of right, it has to be granted by the management after considering of all relevant factors. The Petitioner further relies on an agreement entered into between the Petitioner and the employer on 12th day of March, 1981 when he was promoted to the rank of executive and Clause 15 provides as follows:

The employee shall have the right to determine this agreement at any time upon giving previous notice of three months in writing to the company, or paying to the company three months salary in lieu of notice.

9. The Petitioner states that he is also entitled to the benefit of this clause. On the other hand, learned Counsel for the company relies on Rule 30B(i) and 30B(ii) of OIL Executives'' Conduct, Discipline and Appeal Rules, in support of the contention that they have a right to proceed with the enquiry. It may be mentioned herein that this rule came into force from 24.9.1999 and it was to be effected from 5.11.99. An enquiry as against the Petitioner was initiated in the year 1997 and in the year 1997, this rule was not available to the authority. Learned Counsel for Petitioner relies on a decision of this Court in C.R. No. 2962/1998 (Syed Md. Saifullab v. Oil India Ltd. and Ors.). That case is of no help to the Petitioner as that was a case with regard to Rule 12(d) of the Oil India Gratuity Fund Trust Deed and Rules and that rule only gives a right to the authority to withhold the payment of gratuity. This is not an answer for the question whether a disciplinary proceeding can be initiated as against a person, if by operation of law, he is deemed to have retired.

10. There is Executive Personnel Policy Manual and the scheme for early retirement provides as follows:

Early retirement: Executive, who is covered under the Oil India Pension Scheme will be entitled to retire with proportionate pension with the concurrence of the company before reaching the age of 60 years provided he/she has completed 20 years of service and is not below the age of 45 years. Such an executive will write to RCE through proper channel, at least 6 months prior to the proposed date of early retirement.

11. Rule 30B(i) and 30B(ii) quoted above will not help the company as they came into force from 5.11.99, but the enquiry as against the Petitioner was initiated earlier to it. I have already pointed out that the Petitioner is not covered by the scheme of voluntary retirement. The question to be decided in this case is that whether the Petitioner will come under the scheme of Early Retirement and/or the benefit given to him under the clause of the agreement as quoted above. The clause of the agreement has already been quoted above and that clause will show that an employee has a right to leave the employment by giving a notice of 3 months'' in writing to the company or on paying to the company three months salary in lieu of notice. In this case there is nothing that such a request is to be accepted by the authority. We will come to the question of early retirement at a later point of time.

12. In Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, the Supreme Court pointed out as follows:

By entering into a contract of employment a person does not sign a bond of slavery and a permanent employee cannot be deprived of his right to resign. A resignation by an employee would, however, normally require to be accepted by the .employer in order to be effective. It can be that in certain circumstances an employer would be justified in refusing to accept the employee''s resignation as, for instance, when an employee wants to leave in the middle of a work which is urgent or important and for the completion of which his presence and participation are necessary. An employer can also refuse to accept the resignation when there is a disciplinary inquiry pending against the employee. In such a case, to permit an employee to resign would be to allow him to go away from the service and escape the consequences of an adverse finding against him in such an inquiry. There can also be other grounds on which an employer would be justified in not accepting the resignation of an employee. The Corporation ought to make suitable provisions in that behalf in the said rules.

13. Though the question of voluntary retirement does not come in the present case, yet the principle will be same and this aspect to the matter came up recently for consideration in : Manjushree Pathak Vs. The Assam Industrial Development Corporation Ltd. and Others, That was a case from this Court. There also was a clause for voluntary retirement and the clause of voluntary retirement has been quoted in para 9 of the judgment as follows:

9. Clause 8.1 reads thus:

Notwithstanding any of the aforesaid provisions, the scheme does not confer any right on an employee to have the request for voluntary retirement accepted by the management. The management shall have full discretion to accept or reject the request from any employee for voluntary retirement viewing the organisational requirement and any other relevant factors in this regard.

This Clause 8.1 was considered and in para 16 it has been held as follows:

16. The Division Bench of the High Court has failed to see that the scheme conferred discretion on the Corporation under Clause 8.1 coupled with the duty to act judiciously when application for voluntary retirement was made by an employee. The said clause did not confer any unfettered discretion upon the Corporation to refuse the benefit of the scheme to any employee, being an authority coming within the meaning of Article 12 of the Constitution. It was not open to the Managing Director of the Respondent Corporation to act on extraneous consideration by issuing a show cause notice dated 15.2.1996/16.2.1996 so as to deprive the Appellant of the benefit flowing from acceptance of her voluntary retirement. It is true that under Clause 8.1 of the scheme discretion was available to the Respondent Corporation but that discretion was not absolute. It was circumscribed by the terms mentioned in the said clause and it was to be exercised judiciously. In the case on hand the

Managing Director of the Corporation has failed to act reasonably and fairly. He abdicated his duty by not exercising discretion at all in the light of the facts and circumstances of the case stated above in sufficient detail.

There also a show cause notice was issued and that show cause notice was quashed by the Supreme Court.

14. Himachal Pradesh Horticultural Produce Marketing and Processing Corporation Ltd. Vs. Suman Behari Sharma, That also was a case of voluntary retirement and there the Supreme Court pointed out that there cannot be automatic retirement or snapping of service relationship of employee and employer on expiry of 3 months'' period.

15. On the other hand, learned Counsel for Respondent relies on the following two decisions:

i) Union of India (UOI) and Others Vs. Gopal Chandra Misra and Others, That is a case with regard to acceptance of resignation.

ii) Moti Ram Vs. Param Dev and another, That was an election case and the question which arose in that case was whether at the time of consideration of the nomination, his resignation becomes effective.

iii) 1983 SLJ 418 (Union of India v. Harendralal Bhattacharya). That was a case from Delhi High Court and that also is a case of voluntary retirement and there the Division Bench of Delhi High Court pointed out that while the Government reserves its right to compulsorily retire a Government servant, even against his wish there is a corresponding right of the Government servant under F.R. 56(e) to voluntarily retire from service by giving the Government three months'' notice in writing. There is no question of acceptance of the request for voluntary retirement by the Government when the Government servant exercises his right under F.R. 56(c). In this case reliance was placed on Dinesh Chandra Sangma Vs. State of Assam and Others,

16. The other case is 1984 SLJ 52 (Mamchandra Chouthe v. The State of M.P. and Ors.) wherein the Single Judge of Madhya Pradesh High Court pointed out that when an employee issued a notice of voluntary retirement and is received by the Government and if no order on the same is passed by the Government, voluntary retirement becomes effective on expiry of the period of 3 months and once a person is deemed to have retired from service or there is snapping of relationship of employee and employer there can be no question of initiation of enquiry or passing order of removal. It is on this background now we must decide this case on the factual matrix as given above.

17. Let us first take up the right of the Petitioner on the basis of the clause of the agreement as quoted above. That clause gives an absolute right to the Petitioner and there is no question of its acceptance by the authority. The letter dated 26.10.96 has already been quoted and that letter is dated 26.10.96 and he was asked to give reasons, he has given the reasons and the reasons given by the

Petitioner may not be found to be acceptable by the company, but that itself is not material; what is material whether the reasons are plausible which can be accepted by a reasonable man and on perusal of the materials on record, it is seen that the reasons are plausible and he complied with all the requirements for early retirement and there was no valid" ground for the authority to refuse/reject this prayer for early retirement after expiry of the notice period as relationship of employee and employer shall stand snapped. Further in terms of agreement also this relationship of employee and employer shall stand snapped. Accordingly, this writ application is allowed. It is held as follows:

i) The authority shall hold that the Petitioner has completed all the requirements for early retirement and accepting his case of early retirement, he shall be given all the benefits as provided under the rules applicable to the Petitioner.

ii) The so-called enquiry against the Petitioner shall stand quashed as it appears that this enquiry was initiated against the Petitioner without any authority and/or procedure of law. A person is seeking early retirement, but instead of grant that, an enquiry was initiated. This enquiry cannot be initiated. This is nothing, but witchhunting.

This writ application stands disposed of as indicated above.

