(2013) 07 DEL CK 0296

In the Delhi High Court

Case No : Writ Petition (C) No. 2227 of 2012

Gobind Lal Dureja APPELLANT

Vs

United India Insurance Co. Ltd. and Others RESPONDENT

Date of Decision : 25-07-2013

Acts Referred:

Constitution of India, 1950 — Article 226
Evidence Act, 1872 — Section 115

Citation : (2013) 07 DEL CK 0296

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Arvind Kumar Gupta and Mr. Rahul Mangla, for the Appellant; K.L. Nandwani, for the Respondent

Final Decision : Allowed

Judgement

Valmiki J Mehta, J.—This writ petition is filed by the petitioner, an employee of the respondent No. 1, seeking the relief of quashing of the action of the respondent No. 1 accepting voluntary retirement and for reinstating the petitioner in service with all consequential and monetary benefits. In the facts of the present case it is necessary to note a few dates. Petitioner gave a notice of voluntary retirement by his letter dated 4.8.2011. The date on which the voluntary retirement was to take effect was 29.2.2012 and as per the service rules which requires the voluntary retirement to take effect on expiry of six months period. Petitioner withdrew his request for voluntary retirement by his letter dated 13.2.2012. The request for voluntary retirement was however accepted one day later on 14.2.2012 and respondent No. 1 claims that it did not receive the petitioner''s letter dated 13.2.2012 withdrawing request for VRS before the order accepting the VRS was passed on 14.2.2012.

2. The law with respect to entitlement of a person who applies for voluntary retirement to withdraw his application for voluntary retirement, is now well settled and decided by the Supreme Court in the cases of Balram Gupta Vs.

Union of India (UOI) and Anr, Shambhu Murari Sinha Vs. Project and Development India and Another, and J.N. Srivastava Vs. Union of India (UOI) and Another, As per the ratios of these judgments of the Supreme Court the request for voluntary retirement can always be withdrawn before the last date specified on which the voluntary retirement is to come into effect although in the meanwhile the employer has even accepted the voluntary retirement application and communicated the same to the employee who sought voluntary retirement. In the present case, indubitably the petitioner withdrew the request for voluntary retirement vide letter dated 13.2.2012 i.e. before the cut off date which was 29.2.2012 and there is no dispute that the petitioner''s letter dated 13.2.2012 was received before 29.2.2012. Therefore, in accordance with the ratio of the judgments of the Supreme Court in the aforesaid cases, the request for withdrawing voluntary retirement is valid.

3. Two other aspects are to be examined as to whether petitioner gave valid reason for seeking to withdraw his letter of voluntary retirement and secondly whether the petitioner''s account having been credited with VRS benefits on seeking voluntary retirement, can the petitioner still be allowed to withdraw his application for voluntary retirement. This is buttressed by the counsel for the respondent No. 1 by contending that petitioner has withdrawn pension amounts pursuant to the order of the voluntary retirement.

4. In an exactly opposite case i.e. a case where a person withdrew the request for voluntary retirement before cut off date but where the employee utilized the amounts credited in his account, I held that such an employee is estopped from withdrawing his request for voluntary retirement. This I have so held in the case of R. Kothandaraman Vs. The Speaker, Lok Sabha Secretariat and Another, of the said judgment read as under:

11. On behalf of the petitioner reliance is then placed upon the judgment of a learned Single Judge of the Andhra Pradesh High Court in the case of V. Vishnu Vardhan Reddy Vs. Andhra Bank (A Govt. of India Undertaking) Personnal Department and The General Manager, Andhra Bank, Personnal Department, to argue that once there is an entitlement of withdrawal from voluntary retirement, then petitioner has to continue in service and that Court can direct for refund of the dues taken by an employee pursuant to the voluntary retirement.

12. In my opinion, the respondents must succeed on the principle of estoppel inasmuch as it makes no difference whether the retirement is pursuant to a contractual voluntary scheme or pursuant to a statutory Rule inasmuch as if Rule 48A is statutory, the provision of Section 115 of the Evidence Act which deals with the principle of estoppel is also a statutory provision. The principle of estoppel is based on the ground of equity that no one can take advantage of a fact and thereafter turn around to say that the situation should be reversed. Equity does not permit such an action of blowing hot and cold by a person. In the present case, since entitlement pursuant to Rule 48A of seeking voluntary retirement is personal to the petitioner there is no element of public policy

involved and therefore the petitioner was entitled to waive the rights under Rule 48A of seeking the withdrawal of his request of voluntary retirement by accepting and utilizing the terminal lumpsum benefits given pursuant to the retirement. I am unable to agree with the judgment in the case of Vishnu Vardhan Reddy (supra) of Andhra Pradesh High Court inasmuch as the cited judgment does not refer to judgments in the case of Punjab National Bank and Pale Ram Dhania (supra) wherein the issue of estoppel has squarely been dealt with. In para 11 of the Punjab National Bank''s case it has been held that on taking benefits pursuant to a voluntary retirement a person is estopped from withdrawing from the voluntary retirement. Paras 10 and 11 of the judgment in the case of Punjab National Bank (supra) are relevant and they read as under:-

10. In our view this contention would be of no assistance to the respondent. He knew very well that the money deposited in his account was part of the benefits under the Scheme. He also knew it very well that his request for VRS was accepted after the Scheme had expired, yet he had withdrawn the amount deposited and utilized the same. The fact that the respondent had withdrawn a part of the benefit under the Scheme is not disputed and it could not be. To substantiate the contention, the applicant has submitted a photocopy of the respondent''s Bank Account No. 27980 (Annexure R-1). It clearly appears from Annexure R-1 that a part of the retirement benefit was deposited in the respondent''s Bank Account on 12-1-2001 and on 15-1-2001 he had withdrawn rupees three lakhs. Again on 28-2-2001 he had withdrawn rupees fifty thousand.

11. This fact, however, was not brought to the notice of this Court at the time of the hearing. However, the fact remains that the incumbent had accepted the benefits under the Scheme and utilization thereof would squarely be covered by Direction 1 as notice above. Therefore, the judgment dated 17-12-2002 is reviewed to the extent that he appeal arising out of the judgment and order of the Uttaranchal High Court is dismissed and the judgment of the High Court is upheld.

(underlining added)

13. In Pale Ram Dhania''s (supra) case, the Supreme Court has observed as under:-

1. It is not disputed that the appellant Bank introduced a Voluntary Retirement Scheme, 2000 (herein referred to as "the Scheme") for its employees which had the approval of its Board of Directors. The Scheme was operative w.e.f. November 15, 2000 to December 14, 2000 for the employees who sought voluntary retirement. It is not disputed that the respondent herein who was an employee of the appellant Bank sought voluntary retirement under the Scheme on November 30, 2000. It is also not disputed that on December 2, 2000 he wrote to the Bank for withdrawal of his application for voluntary retirement. On January 22, 2001, the appellant Bank accepted the request for voluntary retirement of the respondent. Further, on January 25, 2001, the respondent

withdrew the retiral benefits deposited in the Bank in his name as per voluntary retirement. It appears that the respondent changed his mind after the respondent was relieved from the employment and he filed a petition under Article 226 of the Constitution challenging the acceptance of his request for voluntary retirement. A learned Single Judge of the High Court allowed the petition and set aside the acceptance of the application for voluntary retirement submitted by the respondent. Aggrieved, the appellants preferred a letters patent appeal which was dismissed. It is against the said judgment, the appellants are in appeal before us.

2. A Bench of three Judges of this Court in Punjab National Bank Vs. Virender Kumar Goel and Others, has held that an employee who sought voluntary retirement and subsequently wrote for its withdrawal but has withdrawn the amount of retiral benefits as per the Voluntary Retirement Scheme, is not entitled to the withdrawal of his application for voluntary retirement. It is not disputed that in the present case the respondent herein withdrew the amount of retiral benefits on January 25, 2001.

3. For the aforesaid reason, this appeal deserves to be allowed. We order accordingly. The order and judgment under challenge is set aside. There shall be no order as to costs.

C.A. Nos. 4099, 4100 of 2002 and 8833 of 2003

4. In view of the above order passed in C.A. No. 4098 of 2002, these appeals arc also allowed. The orders and judgments under challenge are set aside. There shall be no order as to costs.

(underlining added)

14. In view of the aforesaid discussion, I hold that though the petitioner had validly revoked his request for voluntary retirement and which withdrawal was valid in view of the judgments of the Supreme Court in the case of Balram Gupta (supra), Shambu Murari Sinha (supra) and J.N. Srivastava (supra) cited on behalf of the petitioner, however the petitioner is estopped in view of the sub para 1 of para 130 of the judgment in Bank of India''s (supra) case and paras 10 and 11 of the judgment in Punjab National Bank''s (supra) case and Pale Ram Dhania''s case to withdraw from his request seeking voluntary retirement. At the cost of repetition it is necessary to be stated that the petitioner does not dispute the fact that the lumpsum amounts credited in his bank account including towards provident fund, gratuity and commutation of pay have been withdrawn and utilized by the petitioner. If the petitioner had only utilized the amounts credited in his account for withdrawing monthly salary which was due to the petitioner from time to time then in such a case possibly it could have been argued that the principle of estoppel cannot apply, however, in the present case the issue is not of withdrawal of amounts every month (whether as pension or as salary) but the issue is of utilizing and taking benefit of lumpsum amounts which were deposited in the account of the petitioner on account of provident fund, gratuity and

commutation of pay.

5. Paragraphs 11 and 14 of the said judgment reproduced above are relevant because in para 14 observations are made that in case the employee had not utilized the lump sum benefit then this Court would have been inclined to allow the request for withdrawing the application for voluntary retirement. This was done by the Andhra Pradesh High Court in the case of V. Vishnu Vardhan Reddy Vs. Andhra Bank (A Govt. of India Undertaking) Personnal Department and The General Manager, Andhra Bank, Personnal Department, referred to in para 11 of the judgment quoted above. In the present case, counsel for the petitioner states that on the amount of the terminal benefits being credited to the account of the petitioner, the petitioner in no manner has utilized the same and soon after crediting of this amount the same was put in a fixed deposit with the same bank i.e. State Bank of India, New Colony, Gurgaon Branch and thus the amount credited to the petitioner''s account alongwith interest earned on the fixed deposits can be paid back to the respondent No. 1.

In my opinion, this is quite a fair action on the part of the petitioner. The further argument urged on behalf of the respondent No. 1 that the petitioner has however withdrawn monthly pension is not an argument which will hold substance because surely petitioner wants to survive and for which he needs some amount of money every month because although he had made a request to withdraw his application for voluntary retirement yet the respondent No. 1 had refused to do so. Therefore, I do not think that taking of monthly pension by the petitioner, in any manner, should estop the petitioner from withdrawing his application for voluntary retirement. This aspect of the petitioner withdrawing pension, I would be considering while moulding the relief which I am granting in the present case.

6. Petitioner has given valid reason for seeking voluntary retirement because he was transferred to Jaipur and he had a son suffering from epilepsy, and who (the son) could not be taken care of by the petitioner''s wife alone, but, since petitioner failed legally to get his transfer stopped he withdrew his request for VRS. If withdrawal of VRS was held valid in Balram Gupta''s case simply because the employee''s wife disagreed with VRS decision of her husband then surely petitioner in the facts of this case is justified in withdrawing his VRS request.

7. Learned counsel for the respondent finally argued that petitioner should not get back wages and for the purpose reliance is placed to the judgment of learned Single Judge of this Court in the case of Raghubir Singh Vs. Agriculture Produce Market Committee, GNCT of Delhi, and para 13 of the said judgment reads as under:

13. On the other hand, Ms. Avnish Ahlawat, learned counsel for respondent submitted that undisputedly, petitioner made a representation for voluntary retirement on 19.11.2008 and same was accepted vide order dated 28.05.2009 with effect from 31.05.2009, after getting the vigilance clearance and other

formalities.

In my opinion, no legal proposition has been laid down in the judgment of Raghubir Singh (supra) because in the facts of the said case a Single Judge of this Court thought it fit not to give any back wages for the intervening period. However, it is not the law that no amount at all can be paid for the intervening period. I may in this behalf draw useful reference to the judgment of the Supreme Court in the case of State of Kerala and Others Vs. E.K. Bhaskaran Pillai, which hold that there is no thumb rule for ''no pay for no work'' and Courts when the services of the employee are found to be wrongly terminated can always grant wages depending upon the facts of the each particular case. Therefore, adopting the ratio of the judgment, since the refusal to accept the withdrawal from voluntary retirement by the petitioner on behalf of the respondent was illegal, the petitioner will be entitled to some amount of back wages for the period he has not worked with the respondent No. 1 and as stated hereinafter.

In view of the above, writ petition is allowed. The petitioner''s request for withdrawal of voluntary retirement made on 13.2.2012 will be held to be valid. Petitioner will be now held theoretically in continuous service of the bank and not having voluntarily retired except the fact that for the period for which he has not worked with the bank, petitioner will only be entitled to 1/4th of his basic salary. Petitioner, however, will not be treated as, in any manner, not continuing with his services except for the aspect that for the intervening period for which he has not worked he will receive only 1/4th of basic salary. All other consequential benefits will also flow to the petitioner as the petitioner has been held to be in continuous service as if his application for voluntary retirement has not been accepted. The amount which the petitioner has received towards his monthly pension, if in excess of the 1/4th of the basic salary which is allowed by today''s order will be refunded by the petitioner to the respondent No. 1 within a period of one month from today. Petitioner will within one week join his duty in the office/branch of the bank of the respondent to which he was supposed to join at the time he made his application for voluntary retirement. Petitioner will also within a period of one month make payment of whatever amounts he received on acceptance of the application of the voluntary retirement alongwith the interest he has earned then by putting that amount in a fixed deposit. Parties are left to bear their own costs.