

(1991) 10 DEL CK 0041

In the Delhi High Court

Case No : Civil Writ Petition No. 2724 of 1991

G.S. Rawat and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 28-10-1991

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1992) 46 DLT 218 : (1992) RLR 66

Hon'ble Judges : B.N. Kirpal, J;Arun Kumar, J

Bench : Division Bench

Advocate : Kitty Kumaramangalam, Pawan Kumar, S.N. Bhandari, A.K. Sikri and Vikram Dholakia, for the Appellant;

Judgement

B.N. Kirpal, J.

(1) The petitioners are working in the State Trading Corporation of India Limited hereinafter referred to as the Corporation in various capacities in the officers grade. The age of superannuation of the petitioners, we are informed, is 58 years.

(2) The respondent Corporation in 1989 came out with a voluntary retirement scheme which could be availed of by employees who had put in ten years of service or had reached 40 years. Under the said scheme such eligible employees who seek voluntary retirement send an application in writing through proper channel to the Competent Authority. The scheme so formulated gave a right to the Corporation to accept or reject the application. Clause 4.2 of the scheme which is relevant in this regard is as follows :-

"42The Competent authority may accept or reject the application of an employee for voluntary retirement, keeping in view the organisational requirements or any administrative reason and the decision of the Management shall be final. No voluntary retirement shall be deemed to have come into effect unless the decision of the Competent authority has been communicated in writing."

(3) Along with the scheme was a proforma of letter of retirement which could be

sent. Paragraph 2 of this letter (proforma) is as follows :

"2.I request that my application for voluntary retirement may be considered favorably and on acceptance of the same my dues may be settled at the earliest as per the Scheme"

(4) On 26th June 1991 the respondent Corporation suspended the petition of the said voluntary Scheme. Thereafter or on 4th August 1991 the management issued a circular extending the voluntary retirement scheme for a period of fifteen days only. According to the respondents this scheme was opened at the request which the Corporation had received from its various employees.

(5) The aforesaid scheme remained in operation up to 19th August 1991. The petitioners prior to that date issued letters through proper channel to the Appropriate Authority seeking voluntary retirement in terms of the said scheme. These letters were written in the proforma, the relevant paragraph of which has been extracted by us-herein above.

(6) According to the respondents meeting of the Executive Committee, of the Corporation was held on 16th and 20th of August 1991 to consider the request of 445 employees who had sought voluntary retirement in terms of the aforesaid circular dated 5th August 1991. Except in the cases of 19 employees, the Executive Committee approved the request for voluntary retirement of all other applicants. The case of the respondents, however, is that on 21st August 1991 office orders were issued which were circulated in all the departments informing the applicants that their applications for voluntary retirement have been accepted by the Competent Authority. What is important to note is that in the said letter, the proforma of which has been placed before us, it was provided that "accordingly, she/he will retire from the services and cease to be on the rolls of the Corporation w.e.f. 31.8.91."

(7) According to the petitioners they sent letters to the respondents withdrawing their offer of voluntary retirement. It is not in dispute that these letters were received by the respondents prior to 31st August 1991 According to the petitioners the letters withdrawing the offers of voluntary retirement were written prior to the petitioners receiving the Corporation's aforesaid letter dated 22nd August 1991. For the view which we are taking, we need not go into the controversy as to whether the letters withdrawing the offer of voluntary retirement were written by the petitioners prior to Or after the receipt by them of the letter dated 22nd August 1991. We will assume in the present case that the petitioners were aware and had received communications from the respondents that they would all retire w.e.f. 31st August 1991 and that it is only after the receipt of the said communication that the petitioners wrote their letters seeking to withdraw the letters of voluntary retirements. We may here note that the letters seeking to withdraw the request of voluntary retirement are more or less identical in terms and in each such letter it was stated that "please treat the application for seeking the voluntary retirement as withdrawn forthwith".

(8) On the aforesaid facts the short question which arises for consideration is whether the petitioners could seek withdrawal of the application for voluntary retirement or not. At the time when the present petition was filed there were 34 petitioners. During the pendency of this petition 5 of the petitioners had second thoughts and moved an application to the effect that they wanted to seek voluntary retirement. On notice having been issued the respondent Corporation agreed to the request of those five petitioners and vide order dated 16th September 1991 these five petitioners, namely, Shri L.S. Gupta, Shri N.K. Gupta, Miss Bimlesh, Shri C.P. Mehta and Shri K.B. Bakshi were deleted from the array of the petitioners.

(9) On behalf of the remaining petitioners Ms. Kitty Kumaramanglam has contended that prior to the date when the voluntary retirement becomes effective, it is open to an employee to withdraw his request for voluntary retirement. Sh. Bhandari, on the other hand, has submitted that offer of retirement once given becomes binding on the petitioner. According to the learned counsel the petitioners had in fact stated in their letters seeking retirement that their application for voluntary retirement should be accepted at the earliest.

(10) In our opinion, before voluntary retirement becomes effective it is open to an employee to withdraw his request for voluntary retirement. The reason for, this is very simple. It is the unilateral act by which an employee seeks voluntary retirement. Of course, as in the present case, it is dependant on the acceptance of the request of the employee by the employer. Nevertheless there is no compulsion on the employee to seek voluntary retirement. If, Therefore, an employee, for reasons best known to him, wants to seek voluntary retirement then it is his wish which is being honoured when the employer accepts the request. This being so when the employee changes his mind before the date when the voluntary retirement has become effective there is no reason as to why the original unilateral act of the employee cannot be reversed by the employee unilaterally. It is this principle which, in fact, has been accepted and applied by the Supreme Court in a number of decisions which we shall presently note.

(11) One of the first such cases was that of Union of India v. G.C. Misra Air 1978 Sc 494. In that case Shri Satish Chandra, who was then a sitting Judge of the Allahabad High Court had written to the President of India on 9th May 1977 intimating his resignation from the office of the Judge of Allahabad High Court with effect from 1st August 1977, On 15th July 1977 he wrote to the President revoking his earlier decision and commenced deciding the matters in court from 16th July 1977. Shri G.C. Misra, who was an Advocate in the High Court, filed a petition under Article 226 of the Constitution contending that the resignation of Shri Satish Chandra having been communicated the same was final and irrevocable and he could not continue in office. The High Court allowed the writ petition and held that Shri Satish Chandra was not competent to revoke his resignation letter. In appeal, the Supreme Court reversed the decision of the

High Court and came to the conclusion that resigning office necessarily involved relinquishment of the office which implied termination of the office. In the absence of a legal bar he can withdraw his resignation before it becomes effective or before the termination of the employment.

(12) The aforesaid decision was followed by the Supreme Court in the case of Balram Gupta Vs. Union of India (UOI) and Anr, . In this case Balram Gupta wrote a letter dated 24th December 1980 seeking voluntary retirement with effect fr 31st March 1981. His letter was to be regarded as a notice of three months w.e.f. 1st January 1981 and by order dated ..20th January 1981. passed by the Union of India, Balram Gupta was allowed to retire voluntarily w.e.f. 31st March 1981. He, however, wrote a letter dated 31st January 1981 withdrawing his notice of 20th December 1980 seeking Voluntary retirement. Notwithstanding this withdrawal, the Union of India relieved Balram Gupta of his duties on 31st March 1981. The same was challenged and ultimately the Supreme Court came to the conclusion that the dissolution of service would have been brought about only on the indicated date. namely, 31st March 1981. The employee continued to be in the employment of the Government and independently of any rule, he was at liberty to withdraw his notice of voluntary retirement. It was specifically mentioned that the notice of voluntary retirement stands at par with a letter of resignation.

(13) The last decision to which reference need be made Is that of Punjab National Bank Vs. P.K. Mittal, In this case also the officer sent a communication to the bank purporting to resign from a future date. This was agreed to but then the employee received a letter that his resignation was being accepted with immediate effect and before the date nominated by the employee in his resignation letter. Before the date which was indicated by the employee when the resignation was to become effective, the employee withdrew his resignation. The question which arose for consideration was whether the action of the employee was valid or not. It was held by the Supreme Court that the letter of the employee purporting to resign from a future date would become effective only from that date which has indicated in the letter or on the expiry of three months from the date of resignation. The said resignation could not be accepted with immediate effect, i.e. before the date indicated by the officer in his resignation letter. It was further held that even if there is no provision in the statutory rules or regulations, withdrawal of resignation before the date on which the resignation would have become effective was possible.

(14) The aforesaid principles laid down by the Supreme Court in the said three cases are dearly applicable to the present case. Here also the resignation has been accepted with effect from 31st August 1991 but the petitioners wrote before that date seeking to withdraw their request for voluntary retirement. As observed by the Supreme Court in Balram Gupta's case (supra), the voluntary retirement is at par with resignation Both voluntary retirement and resignation are unilateral and voluntary acts It makes no difference as to whether the

petitioner had or had not indicated the date with effect from which the voluntary retirement was to become effective. On a correct interpretation of the letter of resignation it must be deduced that the date with effect from which the voluntary retirement was to become effective was left to the discretion of the management. This had to be so because paragraph 4.2 gave an option to the management either to accept or to reject the request for voluntary retirement. Furthermore the said clause clearly stated that the voluntary retirement will become effective only if a decision to that effect is indicated to the employee concerned. The date had to be nominated by the management. It is the management, in the present case, who has decided that the retirement will be with effect from 31st August 1991. The said letter of 22nd August 1991 clearly states that the employee will "cease to be on the rolls of the Corporation w.e f. 31.8.91". .therefore, the relationship of master and servant did not snap as on 22nd August 1991. The petitioners were to continue to be in employment till 31st August 1991 and before that date the letters seeking voluntary retirement were withdrawn by all the petitioners. In our opinion, they were entitled to do so and the effect of this is that the petitioners must be regarded as continuing in service even after 31st August 1991.

(15) It is contended by the learned counsel for the respondents that ordinarily the resignation would have been accepted with immediate effect but it is at the request of Officers' Association that the Corporation agreed to accept the resignation with effect from 31st August, 1991. There may be a very laudable reason as to why the Corporation fixed 31st August 1991 as a date on which the voluntary retirement will become effective. This, however, will not change the decision in law. The contract of employment, even according to the Corporation, was to continue up to 31st August 1991 for whatever reason. Prior to the date of 31st August 1991 the petitioners could, in our opinion, retract and withdraw their request for voluntary retirement.

(16) For the aforesaid reasons the writ petition is allowed and a writ of mandamus is issued to the respondents directing them to accept the petitioners' withdrawal letters of voluntary retirement and further direct that the petitioners shall be regarded as continuing to be in service. Necessary posting orders will be issued by the respondents.

(17) There will, however, be no orders as to costs.