(2000) 12 AHC CK 0111

In the Allahabad High Court

Case No : S.A. No. 48 (S/B) 1997

Jagdish Chandra Nigam APPELLANT

Vs

Scooters India Ltd. and Others RESPONDENT

Date of Decision : 18-12-2000

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2001) 89 FLR 798 : (2001) 2 LLJ 1628 : (2001) 2 UPLBEC 1863

Hon'ble Judges : S.H.A. Raza, J;R.P. Nigam, J

Bench : Division Bench

Advocate : Amit Bose, for the Appellant; C.S.C., for the Respondent

Final Decision : Disposed Of

Judgement

1. On the request of the parties that in several other writ petitions, which were filed by the employees of Scooters India Ltd., more or less same question of law is involved as in the Special Appeal No. 48 (S/B) of 1997, although the writ petitions are cognizable by Hon''ble the single Judge but a Division Bench of this Court can hear and decide the writ petitions as well. So the appeal bearing No. 48 of 1997 was clubbed together with all those writ petitions and arguments in the special appeal as well as the writ petitions were heard together. Hence first of all we will deal with the question of fact and law which has arisen in this Special Appeal No. 48 of 1997 an4 thereafter, will consider the case of the petitioners of the writ petitions.

2. The Scooters India Limited, Lucknow which is a State undertaking on account of certain financial difficulties which at the relevant time was facing, promulgated a Golden Handshake Scheme known as Voluntary Retirement Scheme by means of which they issued a circular that those employees who opted for Voluntary Retirement Scheme, may be retired, The employees who feared retrenchment from service have opted for Voluntary Retirement Scheme. The appellants opted for Voluntary Retirement Scheme from a prospective date but the appellants before the date mentioned in the order, they withdrew their option, which was

not accepted by the authorities of the Scooters India Limited and thereafter they relieved the appellant from duty.

3. Feeling aggrieved against the action of the Scooters India Limited, Lucknow, the appellant knocked the door of this Court by filing a writ petition under Article 226 of the Constitution of India. The authorities of the Scooters India Limited during the pendency of the writ petition paid the dues to the appellants with the cheque. It was contended before the Hon''ble the single Judge on behalf of the Scooters India Limited that after the appellant accepted Golden Handshake Scheme with the Scooters India Limited, the appellant cannot resile from the same, therefore the appellant is estopped from challenging his compulsory retirement. This contention was accepted by Hon''ble the single Judge who dismissed the writ petition. Thereafter, the appellants filed the Special Appeal.

4. The Hon''ble single Judge was of the view that the only dispute between the parties in the writ petition was with regard to the individual withdrawal of the voluntary retirement option, which was accepted by the management. The appellants never challenged the Voluntary Retirement Scheme or the non-payment/incorrect payment of retirement dues. The only question which remains to be decided in the writ petition was as to whether the appellant was entitled to withdraw his option for voluntary retirement after it has been accepted, although the remedy under U.P. Industrial Disputes Act was available to the appellant. The Hon''ble the single Judge further was of the opinion that under the service rule an employee does not have an unfettered right of withdrawing the request nor the employer can refuse, as the same is governed by the rules laying down service conditions. There was no specific rule pointed out by the parties relating to voluntary retirement. In fact the present action of the voluntary retirement has been initiated in view of the scheme framed by the respondents in that regard. It is established from the material on record that the present action of voluntary retirement is not an outcome of the petitioner''s own desire to voluntarily retire from service. The respondents had framed the scheme for voluntary retirement to reduce the staff strength and to reduce the losses of the Company which was ultimately leading to its bankruptcy.

5. According to the Hon''ble the single Judge, Voluntary Retirement Scheme was in the nature of ''Golden Handshake Scheme'' where the incumbent is amply compensated for the reduction of his service tenure. The appellant submitted premature retirement offer in order to receive the compensation for the loss of tenure of service offered by the respondents, so his application could be considered before it was actually accepted.

6. Before delving into the question of law involved in the present special appeal, it is necessary to look into the factual matrix of the case.

7. Paragraph 10 of the Voluntary Retirement Scheme for the employees of the Scooters India Limited is produced below:

"An employee can be permitted to withdraw his application for voluntary retirement: before the management notifies in writing to him about the decision to accept his application for Voluntary Retirement. In the event of death of an employee during the notice period, action has not been completed on his application nor has notice period expired and as such the employee continues to be on the rolls of the Public Sector Enterprises (PSE) at the time of death. He would be, therefore, entitled to the benefits which are admissible in the event of death while in service and not under the Voluntary Retirement Scheme notified by the Bureau of Public Enterprises (BPE) vide its Office Memorandum dated October 5, 1982 and January 6, 1986."

8. The crux of the matter is that as far as the management notifies in writing to an employee about the decision to accept his application for voluntary retirement, according to the Scooters India, the employee cannot withdraw his letter for voluntary retirement. In the light of the aforesaid Rule, we have to examine facts of this case. The appellant in his application dated November 29, 1993 for voluntary retirement asked the management to voluntarily retire him from service with effect from April 15, 1994. On November 30, 1993, the Scooters India Limited accepted the voluntary retirement of the appellant with effect from December 31, 1993. On December 15, 1993 before the expiry of December 31, 1993, the appellant withdrew his voluntary retirement under the said scheme but on February 16, 1994, the appellant was relieved from services with effect from February 22, 1994. On February 17, 1994, the appellant filed a writ before this Court. During the pendency of the writ petition, a cheque dated March 12, 1994 was issued to the appellant which he has accepted.

9. The main contention of Shri S.C. Mishra, senior advocate, learned counsel for the respondents had three folds, namely-

A. The appellant has an alternative remedy to agitate his matter before the Industrial Tribunal and he cannot be permitted to short circuit the process of law by filing a writ petition.

B. That Rule 10 of the said Scheme provides that an employee can be permitted to withdraw his application for voluntary retirement before the management notifies in writing to him about the decision to accept his application for Voluntary Retirement. As the management notified to the appellant about the acceptance of voluntary retirement of the appellant on December 31, 1993, the appellant cannot seek any remedy before this Court.

C. That after appellant accepted the amount which was paid to him by cheque, the appellant is stopped from assailing his voluntary retirement specially after filing the writ petition.

10. As far as second contention of Shri S.C. Mishra, learned counsel for the respondents is concerned, it has to be noted that the Scooters India is a State undertaking registered under the Companies Act. It formulated a scheme for voluntary retirement as the Scooters India at that time was facing certain financial difficulties. This objection was also raised before the Hon''ble single

Judge. The Hon''ble single Judge was of the view that in the present case, the only dispute was with regard to the individual withdrawal of the voluntary retirement which has been accepted by the management. The appellant has not challenged the V.R.S./Non-payment/incorrect payment. The only question which required consideration in the present Special Appeal was as to whether the appellant was entitled to withdraw his option for voluntary retirement after it has been accepted. Although the remedy under the U.P. Industrial Disputes Act was available to the appellant but in view of the order of the Hon''ble single Judge it was appropriate for the appellant to consider the matter on merit instead of relegating to available alternative remedy.

11. In view of the fact that the writ petition was entertained by Hon''ble single Judge and he did not prefer to relegate the appellant to the Industrial Labour Court, we are of the view that at this belated stage particularly in appeal, the writ petition cannot be dismissed for that reason.

12. As far as the second contention is concerned, it is admitted case of the parties that for the first time by means of the order dated November 30, 1993, the voluntary retirement of the appellant was accepted with effect from December 31, 1993 but before that date on December 15, 1993 the appellant intimated to the authorities concerned regarding the withdrawal of his voluntary retirement. If we minutely read the language of paragraph 10 of the said scheme, then it transpires that an employee can be permitted to withdraw his application for voluntary retirement before the management notifies in writing to him about the decision to accept his application for Voluntary Retirement. The appellant in his application for voluntary retirement proposed a prospective date i.e. April 15, 1994 for his voluntary retirement. The question, which calls for consideration before this Court, is as to whether before April 15, 1994, the management can accept the voluntary retirement of the appellant. The second aspect is that the appellant informed the authorities to withdraw his voluntary retirement with effect from December 15, 1993 and the voluntary retirement was accepted with effect from December 31, 1993. Hence, it cannot be said that the appellant''s voluntary retirement was accepted by the management in accordance with Rule 10 of the scheme itself.

13. The law relating to resignation as well as voluntary retirement has been set at rest by Hon''ble Supreme Court in its various pronouncements. Since the Hon''ble Supreme Court decision in Union of India (UOI) and Others Vs. Gopal Chandra Misra and Others, , the law is consistent on that question that if a person offers to resign from a prospective date and before the end of that date he intimated the authorities who under law was to accept the resignation then the resignation cannot be accepted before the prospective date. In that regard there are various other pronouncements of this Court which we need not delve into as it covers more or less the same point. As far as the last contention of Shri S.C. Mishra is concerned, it has some substance. The appellant by means of the order dated February 16, 1994 was relieved with effect from February 22, 1994.

Thereafter, he filed the writ petition before this Court on February 17, 1994, When the matter was sub-judice before this Court, a cheque dated March 12, 1994 was issued by the management in the name of the appellant which he had accepted later on in cash.

14. It was further contended by Shri S. C. Mishra, learned counsel for the respondents that the petitioner after accepting cheque willingly under the said scheme, be stopped from challenging the voluntary retirement and he cannot be permitted to resile after he has availed a golden handshake with the Scooters India Limited.

15. On the other hand, Shri Amit Bose, learned counsel for the appellant submitted that the appellant has challenged his relieving order dated February 16, 1994 with effect from February 22, 1994 and the action of the respondent in relieving the appellant before the prospective date particularly when the appellant withdrew his voluntary retirement on December 15, 1993, before the date mentioned by him in his application dated November 30, 1993, the action of the Scooters India was non-est. The Scooters India could not have relieved the appellant before the prospective date mentioned by the appellant, particularly when the writ petition filed against the relieving order was pending, hence the acceptance of the cheque by the appellant would not in any manner be detrimental for the appellant to raise his grievance before this Court.

16. Our attention in that regard was drawn, towards the observations which were made by the Hon''ble single Judge of this Court in case of Avinash Kumar Yadav Vs. Executive Director, I.T.I. Ltd., Naini and another, where a similar question cropped up. After dealing with legal propositions which are more or less similar to the facts of the present case, Hon''ble single Judge was of the opinion that "the question raised herein is squarely covered by the decision aforestated and the mere fact that the petitioner had accepted the terminal benefits in the shape of retirement compensation and leave encashment would not foreclose him from asserting his right. The order refusing to accede to the request of the petitioner withdrawing his option for voluntary retirement contains no reasons and is, therefore, unsustainable." The Hon''ble single Judge in his magnanimity and generosity directed the respondents to reinstate the petitioner in his job attended with all consequential benefits subject, of course, to the condition that the amount already received by the petitioner as terminal benefits i.e. retirement compensation and leave encashment will be credited to the arrears which may be admissible to the petitioner and if it still falls short, the same shall be liable to be deducted from the future salary of the petitioner.

17. Although when the Voluntary Retirement Scheme was promulgated by the Scooters India Limited, the Scooters India Limited was more or less a sick industry but in the recent years, the Scooters India Limited has been put on rails and the manufacturing process geared up in the said Company, we are of the view that at the time when the appellant was relieved, he was only 37 years of age meaning thereby that he had only completed one inning of his life. He has to

play several other innings. Although we may allow him to play other innings but we will not be as generous as our Hon''ble single Judge was, in deciding the case of Avinash Kumar Yadav v. Executive Director, I.T.I. Ltd. Allahabad. Hence we are of the view that in case, appellant deposits the entire amount which he had received under the Voluntary Retirement Scheme alongwith interest at the rate of 12% per annum and also return the same to the Scooters India Limited along with other benefits which might have accrued to him within one month from the date of production of the certified copy of this order, he should be reinstated and allowed to continue in his services.

18. The appeal is allowed. The judgment and order passed by the Hon''ble the single Judge is set aside to the extent, the observations made in the foregoing paragraph of this judgment. But we provide that in case the appellant deposits the entire amount which he has received through cheque dated March 12, 1994 alongwith interest at the rate of 12% with Scooters India Limited, as well as other benefits which might have been given to the appellant within four weeks from the date of production of the certified copy of this order, the appellant will be reinstated in service. But considering the facts and circumstances of the case, we further provide that the appellant will not be entitled for payment of back wages.

19. As far as the case of the petitioners of other writ petitions are concerned, the fact of those writ petitioners are not exactly identical to the facts which have been indicated in the present Special Appeal. But as this Court has decided the present Special Appeal more or less on same propositions of law although the fact might be different, we heard the arguments of the learned counsel for the parties in all the writ petitions alongwith special appeal, which are connected with this special appeal as well.

20. As we have already indicated that those employees who withdrew their application for voluntary retirement before the prospective date mentioned in the original application for voluntary retirement, shall he entitled for the relief. But those persons, who have not withdrawn their voluntary retirement before the prospective date, would not be entitled for any relief.

21. We further provide that those petitioners, who opted for the Voluntary Retirement Scheme from a prospective date and withdrew their resignations before the said prospective date, but were, relieved by the management of the Scooters India Ltd. would be entitled to the relief as Jagdish Chandra Nigam has been provided, provided they filed the writ petitions within one month from the date of the relieving orders. If they had filed the writ petition after one month from the date of relieving orders, they would not be entitled for any relief.

22. With the aforesaid observations, the Special Appeal as well as all the writ petitions are disposed of.

