(1997) 01 AHC CK 0072

In the Allahabad High Court

Case No : Writ Petition No. 1165(S/S) of 1994

Jagdlsh Chandra Nigam APPELLANT

Vs

Scooters India Ltd.,Lucknow through its Executive Director & Ors. RESPONDENT

Date of Decision : 07-01-1997

Acts Referred:

Citation : (1997) 01 AHC CK 0072

Hon'ble Judges : S.C. Verma, J

Final Decision : Dismissed

Judgement

S.C. Verma, J.—By the present petition under Article 226 of the Constitution the petitioner has prayed for quashing the order dated 30111993 passed by the Manager (Personel and Administration), Scooters India Limited, Lucknow, by which the Management has accepted the voluntary retirement of the petitioner under Voluntary Retirement Scheme with effect from 31121993.

2. The Scooters India Limited is a Public Sector Undertaking entirely owned, controlled and managed by the Government of India. On account of staggering losses the Scooters India Limited was declared a sick unit under the Sick Industrial Companies (Special Provisions) Act, 1985 and proceedings were initiated for its rehabilitation and restructuring. The Board of Industrial and Financial reconstruction advised the Company to reduce its strength of staff and in this connection an office Memorandum dated 5101988 was issued by Public Enterprises, Ministry of Industry, Government of India for formulation of Voluntary Retirement Scheme.

3. In accordance with the aforesaid Voluntary Retirement Scheme formulated by the Scooters India Limited the petitioner also opted for Voluntary retirement through his application dated 29111993 addressed to the Executive Director, Scooters India Limited, Lucknow with the request that voluntary retirement be made effective from 1541994. By the impugned order dated 30111993, the Manager (Personnel and Administration) Scooters India Limited accepted the

request for voluntary retirement but made it effective from 31121993. The petitioner moved a representation dated 151293 before the respondents withdrawing his request for voluntary retirement and prayed that his request for voluntary retirement be treated as cancelled. The petitioner has alleged that the respondents proceeded with the decision in pursuance of the order dated 30111993 but he was allowed to work even after 31121993. The petitioner further alleged that he was not paid his wages and dues as admissible to him under the Voluntary Retirement Scheme adopted by the respondents.

4. The petitioner has claimed that he is to be treated in service of the respondents as the action of voluntary retirement is individual to an employee and once he makes offer for voluntary retirement effective from a future date the employer has no power or jurisdiction to make it effective from any date prior to the date on which the employee makes his offer of voluntaryretirement effective. The petitioner has also placed on record a clarification of the office Memorandum dated 2951992 issued by the department of Public Enterprises, Ministry of Industry, Government of India clarifying that the employees could be permitted to withdraw his application for voluntary retirement before the Management of Public Enterprises notifies its decision to accept his application for retirement.

5. By a supplementary affidavit, the petitioner has brought on record an order dated 1621994 passed by the respondents under which the petitioner was relieved from service with effect from 2221994.

6. In the counteraffidavit filed on behalf of the respondents, the Management of the Scooters India Ltd. it has been alleged that the Company was incurring huge losses and was also facing the problem of huge force of surplus staff. The Company introduced in the year 1988 a Voluntary Retirement Scheme as per guidelines circulated by the Ministry of Heavy Industry, Government of India. It has been stated that about 900 employees submitted their option seeking their voluntary retirement under the Scheme in which the petitioner was also one of them. Under the Voluntary Retirement Scheme the respondents provided the benefits which included the payment towards exgratia, gratuity, unpaid wages, encashment of unavailed earnedleave and notice or pay in lieu of notice besides payment towards travelling of their family members and transportation of their personal effects upto the place of their settlement on retirement and amount equivalent to 75% amount of L.T.C. for 1500 Kms. for 4 members of their family. The employees were also given a Company''s product three wheeler (Vikram) on priority basis to settle in future for their livelihood.

7. The respondents have placed on record the Notification informing acceptance of Voluntary retirement and the release with effect from various dates by factory orders dated 30111993, 29111993 and 26411993 for all the employees who have opted for voluntary" retirement. The petitioner has already received the entire payment fallen due to him consequent upon opting for voluntary retirement and release, through Cheque No. 037072 dated 1131984 amounting to Rs. 86,513.56. The respondents have laid emphasis that the present voluntary

retirement being permitted under the scheme covering large number of employees a collective decision was taken to retire them from a particular date so that there may not be any discrimination and that their dues and retirement benefits are settled in a similar manner.

8. The respondents have indicated that as per the office Memorandum dated 2951992 it has been provided that an employee can be permitted to withdraw his application for voluntary retirement before the management notifies the same in writing accepting their application for voluntary retirement. The respondents have distinguished the case of the petitioner, not being an individual case of voluntary retirement or voluntary retirement sought by a Government servant under Fundamental Rules or Pension Rules.

8A. Lastly the respondents have alleged that the admitted case of the parties is that the respondents Company is an establishment covered by the definition of Industry and the petitioner is a workman in accordance with the definition provided under the Industrial Disputes Act and the provision of the Act being applicable. The respondents have alleged that the petitioner has an alternative remedy for redressal of his grievance under the provisions of Industrial Disputes Act and the present petition is not maintainable.

9. A writ petition No. 5925(S/S) of 1994 was filed by about 80 employees who were identically situated and who have also challenged their voluntary retirement but, the same was dismissed on 22121994 on the ground of availability of alternative remedy. It has been alleged that the present writ petition a Song with other similar writ petitions pending before the Hon''ble Court be also dismissed keeping in mind with the order dated 22 121994. There are about 150 similar cases pending before the Deputy Labour Commissioner, for decision in this regard.

10. In the rejoinder affidavit filed by the petitioners it has been stated that the Company is still running and has retained in its employment large number of the employees. The Voluntary Retirement Scheme under the circumstances, was illegal and without jurisdiction. As regards the receipt of dues amounting to Rs. 86,513.56 the petitioner has not given any reply. The petitioner has reiterated his stand that he has withdrawn his option for voluntary retirement by representation dated 15121993 prior to the voluntary retirement being given effect from 31121993 or 1541994 as indicated in the application dated 22111993.

11. Before I consider the matter on merits it would be proper to look into the plea raised by the respondents with regard to the availability of the alternative remedy and the decision of the Hon''ble High Court dated 22121994 in writ petition No. 5924 (S/S) of 1994. The record of writ petition No. 5924 (S/S) of 1994 was perused and it transpired that about 80 workmen who had opted for Voluntary Retirement Scheme filed a writ petition seeking the prayer for direction to opposite parties to allow the petitioners to continue in service on their respective posts till their age of superannuation, as also for quashing the

circulars issued by the opposite parties contained in Annexures 7 and 8 and their decision regarding acceptance of the petitioners applications for voluntary retirement.

12. In the said writ petition the petitioners were aggrieved by the Voluntary Retirement Scheme and the acceptance of their voluntary retirement as also their option on the ground that on furnishing necessary information as called by the B.I.F.R. for deciding the question of implementation of the Voluntary Retirement Scheme under the revival plan but the respondents have proceeded with the scheme. It has been alleged that the Board of Directors of the Company has not taken any decision to implement the Voluntary Retirement Scheme. The cause of sickness of the unit had no concern with manpower strength and as such the implementation of the scheme was unjustified. It was further alleged that the petitioners exercised their option for voluntary retirement in the back ground and perspective given by the opposite parties that the Company was going to be closed and the petitioners not being highly educated without understanding the implication, opted for voluntary retirement. The mandatory provisions of Industrial Disputes Act of retrenchment were not followed. The respondents have not paid monitory benefits to the employees under the Scheme and the computation of dues have not been correctly done.

13. In the light of the aforesaid allegation and prayer sought by the petitioners of writ petition 5925 (S/S) of 1994, the single Judge was of the opinion that the payment of parks which were to be given under the scheme cannot be decided in summary jurisdiction under Article 226 of the Constitution and the petitioners had an alternative, efficacious remedy of approaching the authorities under the Industrial Disputes Act.

14. In the present case, the only dispute is with regard to individual withdrawal of the voluntary retirement option which has been accepted by the Management. The petitioner has not challenged the voluntary Retirement Scheme or the non payment/incorrect payment of retirement dues.

15. The only question which requires consideration in the present writ petition is as to whether the petitioner is entitled to withdraw his option for voluntary retirement after it has been accepted. Although the remedy under the U.P. Industrial Disputes Act is available to the petitioner but in view of limited controversy involved in the present petition and as the affidavits have already been exchanged between the parties I consider it proper that the petition be considered on merits instead of relegating the petitioner to avail the alternative remedy.

16. The learned counsel for the petitioner vehemently argued that the petitioner has submitted his representation for withdrawal of the voluntary retirement before the voluntary retirement was given effect to i.e. before 1541994 the date from which the petitioner has noted to retire as also before the date under the order of acceptance, the voluntary retirement was given effect to i.e. 31121993.

The learned counsel submitted that the act of voluntary retirement is unilateral and the employee had inherent right to withdraw the same before the voluntary retirement becomes effective/operative.

17. Placing reliance on the memorandum dated 2951992 the learned counsel submitted that an employee is permitted to withdraw his application for voluntary retirement before its decision to accept the same and made effective. In support of his case, the petitioner has placed reliance on the case of Union of India etc. v. Gopal Chandra Mishra and others etc. AIR 1978 SC at page 694.

"The general principle regarding resignation is that in the absence of a legal, contractual or constitutional bar, a ''prospective'' recognation can be withdrawn at any time before it becomes effective and it becomes effective when it operates to terminate the employment or the office tenure of the resignor. This general rule is equally applicable to Government servants and constitutional functionaries. In the case of a Government servant/or functionary who cannot, under the conditions of his service/or office, by his own unilateral act of tendering resignation, give up his service/or office, normally, the tender of resignation becomes effective and his service/or officetenure terminated, when it is accepted by the competent authority. In the case of a Judge of a High Court, who is a constitutional functinoary and under proviso (a) to Article 217 (a) has a unilateral right or privilege to resign his office, his resignation becomes effective and tenure terminated on the date from which he, of his own volition, chooses to quit office. If in terms of the writing under his hand addressed to the President, he resigns in presenting, the resignation terminates his office tenure forthwith and cannot therefore be withdrawn or revoked, thereafter. But if he by such writing chooses to resign from a future date, the act of resigning office is not complete because it does not terminate his tenure before such date and the judge can at any time before the arrival of that prospective date on which it was intended to be effective, withdraw it, because the Constitution does not bar such withdrawal."

18. In Balram Gupta v. Union of India and others, 1987 Supplementary Supreme Court Cases at page 228, it has been held:

"In the facts of the instant case the retirement from the government service was to take effect at a subsequent date prospectively and that withdrawal was long before that date. Therefore, the appellant had locus poenitentiae. The dissolution of the contract of employment would be brought about only on the date indicated i.e. March 31, 1981; up to that the appellant was and is a government employee. There is no unilateral termination of the same prior thereto. He is at liberty and entitled independently without subrule (4) of Rule 48A of the Pension Rules, as a government servant, to withdraw his notice of voluntary retirement. In this respect it stands at par with letter of resignation.

19. In Punjab National Bank v. P.K, Mittal, AIR, 1989 SC at page 1083, the following has been held:

"As we have already mentioned, resignation is a voluntary act of an employee. He may choose to resign with immediate effect or with a notice of less than three months if the bank agrees to the same. He may also resign at a future date on the expiry or beyond the period of three months but for this no further consent of the bank is necessary. The acceptance of the argument of Dr. Anand Prakash would mean that, even though an employee might express a desire to resign from a future date, the resignation can be accepted, even without his wishes, from an earlier date. This would not be the acceptance of a resignation in the terms in which it is offered. It amounts really to forcing a date of termination on the employee other than the one he is entitled to choose under the regulations. As rightly pointed out by the High Court, the termination of service under Clause (2) becomes effective at the instance of the employee and the services of the employee cannot be terminated by the employer under this clause."

"The result of the above interpretation is that the employee continued to be in service till 21st April 1986 or 30th June, 1986, on which date his services would have come normally to an end in terms of his letter dated 21st January, 1986. But, by that time he had exercised his right to withdraw the resignation. Since the withdrawal letter was written before the resignation became effective, the resignation stands withdrawn, with the result that the respondent continues to be in the service of the Bank. It is true that there is no specific provision in the regulations permitting the employee to withdraw the resignation. It is, however, not necessary that there should be any such specified rule. Until the resignation becomes effective on the terms of the letter read with Regulation 20, it is open to the employee, on general principles, to withdraw his letter of resignation. That is why, in some cases of public services, this right of withdrawal is also made subject to the permission of the employer. There is no such clause here. It is not necessary to labour this point further as it is well settled by the earlier decision of this Court in Raj Kumar v. Union of India,(1968)'' 3 SCR 857: AIR 1969 SC 180; Union of India v. Gopal Chandra Misra, (1978) 3 SCR 12: AIR 1978 SC 694 and Balram Gupta v. Union of India 1987 Suppl. SCC 228: AIR 1987 SC 2354.

Relying on the decision of Supreme Court reported in 1992 Volume 1, page 1036, Shri G.S. Rawat and others v. Union of India and others, a Division Bench of Delhi High Court has also taken similar view:

"The last decision to which reference need be made is that of Punjab National Bank v. P.K. Mittal, AIR 1969 SC 1083: (1989 Lab 1C 1248). 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 is 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 withdraw 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 was 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."

"The aforesaid principles laid down by the Supreme Court in the said three cases are clearly 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 affective. 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 clauses 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. 31691". 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 and 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.

20. Placing reliance on the aforesaid decision of the Supreme Court, the learned counsel for the petitioner submitted that the representation of withdrawal of the Voluntary Retirement Scheme dated 15121993 enabled the petitioner to resile from earlier offer of Voluntary Retirement made through letter dated 2211 1993. It has been submitted that any view of the matter since the withdrawal his offer was prior to 31121993 the petitioner cannot be deemed to have voluntary retired on the basis of order dated 30111993 with effect from 31121993.

21. The learned counsel for the respondents on the other hand laid emphasis that the present case is not a case of an individual seeking voluntary retirement. The respondents have formulated Voluntary Retirement Scheme under the directions of the Ministry of Heavy Industry, Government of India to reduce the surplus staff and unnecessary expenditure to save the Company from further losses. The Voluntary Retirement Scheme termed as ''Golden Hand Shake''

provides sufficient benefits to compensate the employees for the tenure that has been cut short and to enable them to rehabilitate and resettle. The decision in the circumstances of the cases was a collective decision to be made applicable uniformly as far as possible. The different dates provided to give effect voluntary retirement to employees was for the reasons that the Management had to arrange finance for immediate payment and to prepare their statement of accounts etc. In those cases where the Management for some reason or the other was not able to pay off the retirement dues they retained the services of the employees and till they were finally paid their all dues under the Scheme. The learned counsel for the respondents placing reliance on the case of Raj Kumarappellant v. Union of India, 1969 Supreme Court page 180, submitted that in view of the clarification given in the office Memorandum dated 2951992, the voluntary retirement having been accepted and the same having been notified a decision has been taken by the Management and the same cannot be withdrawn. In the case of Raj Kumar the Hon''ble Supreme Court (supra) has held:

"Counsel says that under the instructions issued by the Government of India resignation of an officer from service becomes effective after it is accepted and the officer is relieved of his duties and not till then. But the circular letter has no statutory force. It is not a rule made under Article 309 of the Constitution. It contains merely instructions set out by the Ministry of Home Affairs about the procedure to be followed in respect of resignation from service. Our attention has not been invited to any statutory rule or regulation relating to resignation by members of the Indian Administrative Service, especially as to the date on which the resignation becomes effective.

The letters written by the appellant on August 21, 1964 and August 30, 1964, did not indicate that the resignation was not to become effective until acceptance thereof was intimated to the appellant. The appellant informed the authorities of the State of Rajasthan that his resignation may be forwarded for early acceptance. On the plain terms of the letters, the resignation was to become effective as soon as it was accepted by the appointing authority. No rule has been framed under Article 309 of the Constitution which enacts that for an order accepting the resignation to be effective it must be communicated to the person submitting his resignation.

Our attention was invited to a judgment of this Court in State of Punjab v. Amor Singh Harika, AIR 1966 SC 1313 in which it was held that an order of dismissal passed by an authority and kept on its file without communicating it to the officer concerned or otherwise publishing it did not take effect as from the date on which the order was actually written out by the said authority; such an order could only be effective after it was communicated to the officer concerned or was otherwise published. The principle of that case has no application here.

Termination of employment by order passed by the Government does not become effective until the order is intimated to the employee. But where a public servant has invited by his letter of resignation determination of his employment, his services normally stand terminated from the date on which the letter of resignation is accepted by the appropriate authority and in the absence of any law or rule governing the service conditions of his service to the contrary, it will not be open to the public servant to withdraw his resignation after it is accepted by the appropriate authority. Till the resignation is accepted by the appropriate authority in consonance with the rules governing the acceptance, the Public servant concerned has locus poenitentiae but not thereafter."

22. The learned counsel for the respondents placed strong reliance regarding the acceptance of the voluntary retirement by the petitioner and the same being given effect by the petitioner by accepting the retirement benefits under the Scheme without any protest or reservation which according to them makes it very clear that the petitioner has submitted to the decision of the respondents and thus the voluntary retirement has already been given effect. The learned counsel submitted that the order dated 30111993 became operative from 31121993 but the conduct of the petitioner in realising the entire dues under the scheme estopped him from being treated in service after 31121993 and the offer of voluntary retirement cannot be treated as revoked or withdrawn.

23. Before I advert to consider the rival contention of the learned counsel for the parties one of the point which requires consideration is whether in the back ground of the facts and circumstances of the case the offer of voluntary retirement of the petitioner could be treated as an individual option seeking voluntary retirement or it was under the Voluntary Retirement Scheme proposed by the respondents.

24. In those cases where the voluntary retirement is sought by an incumbent under the service Rules, the employees does not have an unfattered right of withdrawing the request nor the employer can refuse, as the same is governed by the Rules laying down service conditions. In the present case there are no specific Rules pointed out by the parties relating to the voluntary retirement. In fact the present action of the voluntary retirement has been initiated in view of scheme framed by the respondents in this regard. It is established from the material on record that the present action of voluntary retirement is not an out come of the petitioner''s own desire to voluntary 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. If the offer of the petitioner to voluntary retire from service is considered in the back ground of the scheme framed by the respondents, it is in fact in the nature of ''Golden Hand Shake'' where the incumbent is amply compensated for the reduction of his service tenure.

25. The petitioner laid his premature retirement offer in order to receive the compensation for the loss of tenure of service offered by the respondents. It may be indicated that under the Scheme large number of employees of the Company to the extent of 800900 in numbers had accepted the terms offered by the respondents to opt for premature retirement. Under the scheme the offer made

by the employees including the petitioner was accepted. However, the cessation of service was to take place after 30 days so that the notice period may also be covered. The benefits provided by the respondents under the Voluntary Retirement Scheme were the payment towards exgratia, gratuity, unpaid wages, encashment of unavailed earned leave, payment towards travelling of their family members and transportation of their personal effects upto the place of their settlement on retirement and amount equivalent to 75% amount of L.TC. for 1500 Kms. for 4 members of their family. The employees were also given a company''s product. As pointed out earlier the petitioner has submitted his offer for voluntary retirement only under the aforesaid scheme, the permission to withdraw the application at best could be considered before it was actually accepted. The case of the petitioner in offering the voluntary retirement on a particular date, does not appear to be proper and the same has been rightly refused by the respondents as it would lead to discrimination and the scheme of Voluntary Retirement could not have been followed uniformly.

26. The respondents had accepted the offers of large number of employees in groups on different dates. This has been explained for the reasons that sufficiently large amount was required to be paid towards compensation benefits under the Scheme and for the preparation of the statement and accounts etc. The acceptance of the offer of voluntary retirement was thus part of the Voluntary Retirement Scheme. Individual offer of withdrawal submitted by the petitioner has been rightly refused. This intention is further established from the fact that although the petitioner''s offer of voluntary retirement has been accepted by order dated 30111993 and it became operative from 31121993 but the petitioner was allowed to continue in service even after that date upto 2221994.

27. The petitioner having opted to retire under the scheme cannot be allowed to approbateand reprobate. The petitioner has accepted all the benefits under the scheme including the amount of Rs. 86,513.56. The petitioner cannot now retract from the obligation and exercise the right integarly connected with the performance of that obligation under the Voluntary Retirement Scheme.

28. The petitioner no doubt had an unqualified right to withdraw the offer of Voluntary Retirement before the same was accepted but merely because the acceptance of offer became operative from 31121993, the request of the petitioner to withdraw the offer in the above facts and circumstances of the case has rightly been refused. The office Memorandum issued by the department of Public Enterprizes, Ministry of Industry, Government of India on which the reliance has been placed by parties also provides that the employee could be permitted to withdraw his application for voluntary retirement before the Public Enterprizes notifies its decision to accept his application for retirement. Even otherwise, if such a precedent is set up and the employees are allowed to revoke their offer after the acceptance, the entire scheme of Voluntary retirement would frustrate.

29. In the case of Raj Kumar (supra) it had been provided that "where a public servant has invited by his letter of resignation determination of his employment, his services normally stand terminated from the date on which the letter of resignation is accepted by the appropriate authority and in the absence of any law or rule governing the service conditions of his service to the contrary, it will not be open to the public servant to withdraw his resignation after it is accepted by the appropriate authority."

30. For the reasons stated above I am satisfied that the action of voluntary retirement proposed by the petitioner was under the Voluntary Retirement Scheme sponsored by the respondents which contained mutual benefits in nature of ''Golden Hand Shake'' and as such after the same was accepted, the petitioner lost the liberty of revoking the same. In the above circumstances, the petitioner is not entitled to any relief. The writ petition fails and is dismissed. There shall be no orders as to the costs.

