
(1999) 10 DEL CK 0014
In the Delhi High Court
Case No : CWP. No. 4620 of 1998

J.D. Kashyap

APPELLANT

Vs

National Seeds Corporation Limited

RESPONDENT

Date of Decision : 08-10-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1999) 6 AD 697 : (1999) 82 DLT 726 : (2000) 52 DRJ 253 : (2001) 3 LLJ 383

Hon'ble Judges : A.K. Sikri, J

Bench : Single Bench

Advocate : Mr. Jatan Singh, for the Appellant;

Final Decision : Allowed

Judgement

A.K. Sikri, J.—Petitioner has filed this writ petition against impugned award dated 27th May, 1998 passed by Labour Court VII in I.D. No.292/95.

2. It is the case of the petitioner that he was working with National Seeds Corporation Limited (hereinafter referred to as Corporation, for short). On 7th May, 1992 respondent-Corporation introduced a Voluntary Retirement Scheme and the petitioner applied for voluntary retirement on 17th July, 1992 under the aforesaid scheme. However, the application of the petitioner was kept pending and no action was taken on the same by the respondent-Corporation. The petitioner subsequently submitted application dated 26th April, 1994 withdrawing his application dated 17th July, 1992 for voluntary retirement. This, according to the petitioner, before his application for voluntary retirement could be accepted he withdrew the same. However, after his application dated 26th April, 1994, the respondent-Corporation accepted petitioner's application for voluntary retirement dated 17th July, 1992 vide office order dated 24th May, 1994 and relieved the petitioner from duties. The petitioner raised industrial dispute and the same was referred for adjudication vide reference order dated 15th September, 1995. Terms of reference reads as under:-

"Whether the termination of services of Shri J.D. Kashyap by the management by way of voluntary retirement is legal and justified and if not to what relief is he entitled and what directions are necessary in this respect?"

3. After the receipt of reference, notices were issued by the Labour Court to petitioner as well as the respondent-Corporation. Petitioner filed his statement of claim stating the aforesaid facts. It was also submitted that he had served respondent No.1 for about 26 years and was permanent/confirmed employee in the respondent-Corporation. It was also mentioned that due to his heart problem he had submitted the application for voluntary retirement on 17th July, 1992 but decided to withdraw the same thereafter and before it could be accepted by the respondent-Corporation. The management filed its written statement wherein it was clearly stated that once application for voluntary retirement is given, the employee will withdraw the same on any ground whatsoever. It was further stated that the petitioner was paid ex-gratia to the tune of Rs. 1,51,164/- and gratuity for a sum of Rs. 60,376.15 and Therefore it was not open to him to challenge the acceptance of his application for voluntary retirement at this stage. However, during the proceedings respondent-Corporation was proceeded ex-parte on 4th May, 1998 at the time of cross-examination of petitioner-workman. Petitioner filed his affidavit in support of his statement of claim. Since there is no cross-examination, the testimony of the petitioner remain up-rebutted. Thereafter, the Labour Court heard the argument and passed impugned award dated 27th May, 1998. A perusal of the award shows that the petitioner argued that he has right to withdraw the option of voluntary retirement before its acceptance and in support of his argument he relied upon the following judgments:-

- i. Prem Prakash Vs. Air India Corporation 1996 LLR 1107.
- ii. Shubhangi Sopanrao Ehosie Vs. A.D. Deshpande & Ors.1994 LLR 960.
- iii. Punjab National Bank Vs. Shri P.K. Mittal 1989 SCC 365.

4. The contention of the petitioner was not accepted by the Labour Court on the ground that petitioner letter dated 25th April, 1994 for withdrawing his earlier letter dated 17th July, 1992 for voluntary retirement, was given after more than one year and eleven months, which was belated. The relevant portion of the award reads as under :-

"Under the aforesaid circumstances it was held that the employee has right to withdraw the resignation either immediately or within the notice period. But in that case resignation was accepted immediately without expiration of the notice period. Hence this citation is also not helpful to the workman. The workman has failed to refer to any citation under the Voluntary Retirement Scheme. In view of my aforesaid discussion none of the aforesaid citations referred to by the Ld. AR of the workman are helpful to the workman as the facts and circumstances of those cases are totally different from the facts of the case in hand. Another considerable fact in this case is that the present workman applied for voluntary

retirement on 17.5.92 and he wrote a letter for the withdrawal of his voluntary retirement on 26.4.92 i.e. after more than one year and 11 months and the grounds for withdrawal is stated that he was suffering from heart problem. If a person is suffering from heart problem, this may be ground for voluntary retirement and not for withdrawal of the option of the voluntary retirement which has been already exercised. He did not explain in the letter for withdrawal of the voluntary retirement as to why he did not withdraw his option within a reasonable time i.e. within a month or so. He kept sleeping for about 2 years over the matter. Not only this in the withdrawal letter it has also been mentioned by him that his case was being considered at that time for retirement under VRS. It is again very doubtful as to how he moved for withdrawal for the voluntary retirement. Not only this he accepted ex-gratia in the sum of Rs.1,51,164/- and he also received a sum of Rs. 60,376.15 gratuity in full and final settlement of all the dues on account of voluntary retirement from service and after taking all these benefits he did not join officer. All these circumstances leads to an inference that the workman exercised his option for voluntary retirement after going through the circular dated. 7.5.1992 wherein it was categorically stated that options for voluntary retirement once exercised shall not be withdrawn on any ground whatsoever. He received all the retirement benefits and Therefore he kept mum for about 2 years. From all these circumstances it is held that the workman opted for voluntary retirement voluntarily without any pressure or force of any kind.

5. In this writ petition show cause notice was issued to the respondent. Respondent appeared on 14th October, 1998 and sought time to file reply. However, neither reply was filed nor any one appeared in this case after that date. Therefore, averments stated by the petitioner in this petition are un-rebutted.

6. I have gone through the record of the case including award passed by the Labour Court thereto. In my view, the approach adopted by the Labour Court is not correct. The judgment relied upon by the petitioner clearly lays down the law that before an application for voluntary retirement/resignation is accepted, it is open for the employee to withdraw the same. Admittedly, in this case the application for voluntary retirement had not been accepted when it was withdrawn by the petitioner merely because the application for withdrawal was submitted 1 year 11 months after the date of submission of his application for voluntary retirement is no ground in not allowing the petitioner to withdraw the same. Fact remains that for all these period even the management did not take any action in accepting his application for voluntary retirement. Learned counsel for the petitioner drew my attention to Office Memorandum dated May 29, 1992 where in the decision was taken by the respondents permitting the employee to withdraw the voluntary retirement application before the same is accepted. The relevant portion reads as under:-

"Can an employee who has submitted an application for VR be permitted to

withdraw the same? What happens if the applicant employee dies before a decision is taken by the management on his application for VR.?"

An employee can be permitted to withdraw his application for voluntary retirement before the management notified in writing to him about the decision to accept his application for VR. In the event of death of an employee during the notice period, action has not been completed on his application nor has notice period expire and as such the employee continues to be on the rolls of the 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 VR Scheme notified by BPE vide its OM dated 5.10.98 and 6.1.89.

7. In view of this position, the observation of the Labour Court that once petitioner had submitted application for voluntary retirement he could not withdraw the same because of the provision contained in Voluntary Retirement Scheme, is not correct. It is further pointed out that the payment of ex-gratia and gratuity was taken by the petitioner under protest and specific averment to that effect is made by the petitioner at para 6 of the writ petition and in the absence of any counter affidavit I believe this averment of the petitioner. In view of my foregoing discussion, this writ petition warrants to be allowed. The impugned award dated 27th May, 1998 passed by the Labour Court is set aside. Rule is made absolute. Petitioner is entitled to be taken back in service as if he had not submitted any application for voluntary retirement w.e.f. 24th May, 1994 i.e. the date petitioner was relieved from duties.