

(2010) 02 BOM CK 0099

In the Bombay High Court

Case No : Writ Petition No. 1261 of 2001

Madhusudan Govindrao Trivedi

APPELLANT

Vs

UCO Bank and Others

RESPONDENT

Date of Decision : 15-02-2010

Acts Referred:

Citation : (2010) 126 FLR 597 : (2010) 4 LLJ 143

Hon'ble Judges : Vasanti A. Naik, J;S.A. Bobde, J

Bench : Division Bench

Advocate : S.D. Thakur, for the Appellant; R.E. Moharir, for the Respondent

Final Decision : Allowed

Judgement

S.A. Bobde, J.—The petitioner who is serving in the respondent Bank as an Assistant Cashier applied under the Voluntary Retirement Scheme dated November 16, 2000 for voluntary retirement. The petitioner made this application on January 1, 2001 apparently without knowing the full implications of the Scheme. Thereafter on receiving complete information about the features of the Scheme, he decided to withdraw from the Voluntary Retirement Scheme. He then wrote a letter expressing his inability to accept the Voluntary Retirement Scheme and sought permission to withdraw the option submitted by him on January 1, 2001. The Bank apparently declined to consider his withdrawal and was about to accept the petitioner's application for voluntary retirement when the petitioner approached this Court.

2. It is an admitted fact that the respondent Bank had not communicated the acceptance of petitioner's application for voluntary retirement. Thus the petitioner prays for a direction to the respondents to treat the option dated January 1, 2001 for Voluntary Retirement Scheme as cancelled by allowing the petitioner to withdraw it.

3. Shri Thakur, the learned advocate for the petitioner submits that it is settled law in the Union of India and Anr. v. Wing Commander T. Parthasarathy AIR 2001

SC 158 : (2001) 1 SCC 158 : (2000) Supp MLJ 9, that "recommendation or an application for voluntary retirement can be withdrawn any time before its acceptance."

4. Shri Moharir, the learned advocate for the respondents, however, relies on Clauses 10.4 and 10.5 of the Scheme which read as follows:

10.4 A mere request of an employee seeking voluntary retirement under the Scheme will not take effect until and unless it is accepted in writing by the Competent Authority.

10.5 It will not be open for an employee to withdraw the request made for voluntary retirement under the scheme after having exercised such option.

According to the learned advocate for the respondents, the employee is not entitled to withdraw the request made for Voluntary Retirement Scheme after exercising such an option.

5. We have heard the learned advocates for both the sides and it seems to us that though Clause 10.5 suggests that a request for voluntary retirement once made cannot be withdrawn after the employee has exercised such option, the actual voluntary retirement takes effect only upon its acceptance in writing by the competent authority and not the mere exercise of such option. Therefore, an option which is exercised for voluntary retirement can be withdrawn before its acceptance since it has not taken effect till then.

6. In the case relied upon by the learned advocate for the petitioner, the employee was obliged to furnish a certificate to the extent that he was fully aware of the fact that he cannot later seek for cancellation of the application for premature retirement once made. Even in such a case the Hon'ble Supreme Court held that such a certificate cannot be destructive of the right of the respondent, in law, to withdraw his request for premature retirement before it ever became operative and effective. The Hon'ble Supreme Court further held that a substantive right of a person cannot be denied except on the basis of a statutory provision or rule or regulation. In these circumstances, the petitioner is entitled to succeed. We accordingly allow the petition in terms of prayer Clause (i) which reads as follows:

Direct the respondents to treat the option dated January 1, 2001 (Annexure "C") given by the petitioner for Voluntary Retirement Scheme as cancelled by allowing the petitioner to withdraw the same.

7. Rule made absolute in above terms.

8. No order as to the costs.