

(2007) 04 MP CK 0038
In the Madhya Pradesh High Court

M.P. Police Housing Corporation and Another	APPELLANT
Vs	
Anil Pradhan and Another	RESPONDENT

Date of Decision : 10-04-2007

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2007) 2 MPHT 327 : (2007) 2 MPLJ 546

Hon'ble Judges : Shubhada R. Waghmare, J; Dipak Misra, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Dipak Misra, J.

Invoking the jurisdiction of intra Court appeal envisaged u/s 2 (1) of the Madhya Pradesh Uchcha Nyayalay (Khand Nyayapeeth to Appeal) Adhiniyam, 2005 (for brevity "the Act") the appellants, M.P. Police Housing Corporation and its functionaries have called in question the defensibility of the order dated 19-1-2006 passed by the learned Single Judge in W.P. No. 3341/2002.

The facts which are necessitous to be adumbrated are that the respondent No. 1 invoked the jurisdiction under Article 226 of the Constitution of India by filing a writ petition seeking issue of a writ of certiorari for quashment of the Voluntarily Retirement Scheme, the order of retirement and further to issue a mandamus commanding the respondents to reinstated him on the post of Sub-Engineer. Additionally it was prayed to continue him in service with all consequential benefits and to pay him arrears and salary along with interest at the rate of 20% p.a. It was contended before the learned Single Judge that there was a cabinet decision to close down the Madhya Pradesh Police Housing Corporation (for short "the Corporation") a cabinet decision and on the basis of the same Corporation gave notice to the respondent seeking his consent for voluntary retirement, failing which law would take its own course. The respondent No. 1 submitted an application for voluntary retirement in accordance with the Voluntary Retirement

Scheme, 1998 (for brevity "the Scheme") on 29-1-2001, which was forwarded to by the Gwalior Office of the Corporation on 31-1-2002 and eventually the Corporation accepted the prayer for voluntary retirement and passed an order on 28-11-2001. In pursuance of the aforesaid acceptance a sum of Rs. 3,06,556/- was paid to the respondent No. 1 which was accepted by him.

Thereafter petitioner filed a Writ Petition No. 101/2001 at the Gwalior Bench of this Court challenging the Scheme of Voluntary Retirement as well as order of voluntary retirement. The said petition was dismissed as withdrawn. He preferred an application for recall of the said order dated 6-12-2001, which formed the subject-matter of MCC No. 363/2001. The same also met with unsucccess. Being dissatisfied with the aforesaid order he preferred an L.P.A. No. 34/2002 which also faced dismissal on the ground that there was no adjudication on merits.

As pleaded, the appellant thereafter preferred W.P. No. 3341/2002 before the Principal Seat at Jabalpur whereby he prayed for quashment of the Scheme of the Voluntary Retirement and the order of voluntary retirement passed on 28-11-2001. The said petition was resisted by the Corporation contending, inter alia, that the petitioner had not locus standi to file the writ

petition inasmuch as earlier he had challenged the order of voluntary retirement which had faced dismissal.

The learned Single Judge following the decision rendered in the case of D.K Burman v. M.P. Police Housing Corporation Ltd. and Anr. (W.P. No. 6189/2001), allowed the petition on the condition that the amount received by the respondent No. 1 should be deposited and he should be taken back in service and on that basis he quashed the order of voluntary retirement and similar relief which was granted to D.K Burman (supra), was extended to him. Being aggrieved by the aforesaid order the Corporation preferred an SLP (Civil) No. 7616/2006 but the Apex Court taking note of the revival of the writ appeal granted permission to the Corporation to withdraw the petition and approach this Court.

Questioning of correctness of the order it is submitted by Mr. K.S. Wadhva, learned Counsel for the appellant that voluntary retirement was granted to the respondent No. 1 of his request and the same was in terms of the Scheme and hence, the learned Single Judge should not have interfered in the same. It is urged by him that the learned Single Judge has erred in law on the base that a decision has been taken at the highest level not to close down the Corporation but the Scheme was promulgated on three grounds, namely, possibility of closure of the Corporation, amalgamation with some other corporation and restructuring on the Corporation and hence, the finding recorded by the learned Single Judge is vulnerable. It is further submitted that once the Voluntary Retirement Scheme becomes effective and an employee accepts the same, he cannot resile from it and take a somersault. It is also contended by him that an employee after availing the benefit under a Scheme cannot question the validity of the same.

Mr. D.K. Dixit, learned Counsel for the respondent No. 1 submitted that the order

passed by the learned Single Judge is absolutely impeccable inasmuch as the learned Single Judge has placed reliance on the decision rendered by this Court in D.K Burman (supra), and the order passed in D.K Burman (supra), has already attained finality being not assailed by Corporation. It is propounded by him when in D.K Burman (supra), the learned Single Judge had quashed the order of voluntary retirement and directed the incumbents therein to be reinstated in service and the same precedent has been followed by the learned Single Judge with a qualifier that the amount received by him should be deposited no fault can be found with the order. The learned Counsel further canvassed that the learned Single Judge in D.K. Burman (supra), has held that the Scheme was evolved for a particular purpose and the employees were given an impression that they had to seek voluntary retirement because of the decision taken by the Corporation and they had no other option, the change in the decision not to go for closure of the Corporation would entitle the employee to withdraw his acceptance of option seeking retirement.

To appreciate the rivalised submissions raised at the Bar, we have carefully perused the order passed by the learned Single Judge. He has extensively quoted the order passed in D.K Burman (supra). It is worthnoting that apart from D.K Burman (supra), similar orders were passed in respect of some other employees. The question that really emerges for consideration is whether the case of the present respondent No. 1 would stand on the similar footing or not. It is worthnoting, that the order passed in D.K. Burman (supra), was not assailed but it was latter on assailed in W.A. No. 261/2007 (M.P. Police Housing Corporation v. D.K Burman and Anr., which has faced dismissal by this Court as it was not thought apposite to entertain the same as it was barred by enormous delay. Be that it may, the question that still survives to be adverted to is whether case of the respondent No. 1 would be governed by the ratio of the decision rendered in D.K Burman (supra). Before we revert to the same, it is apposite to see the history of litigation that the respondent No. 1 had undertaken. He had filed W.P. No. 101/2001 at Gwalior Bench of this Court challenging the order of voluntary retirement. The learned Single Judge had passed followed order:

Petitioner by Shri MPS Raghuvanshi, Advocate.

Counsel for the petitioner after arguing at length, prays for withdrawal of the petition....

As prayed the petition is dismissed as withdrawn.

On an LPA being preferred the Division Bench declined to interfere as no order was passed by the learned Single Judge on merits and the writ petition was dismissed as withdrawn.

It is submitted by Mr. D.K. Dixit, learned Counsel for the respondent No. 1 that the said exercise was undertaken before the decision was taken by the State Government not to close the Corporation and once a decision has been taken not to close the Corporation a different cause of action arose and hence, the writ

petition was filed at the Principal seat. Mr. K.S. Wadhva, learned Counsel for the Corporation would contend that the petition before this Court is not maintainable having been dismissed as withdrawn by him earlier. As advised at present, without entering into the said spectrum the matter can be adverted from another angle. We have noted the same only to show that how the case of the appellant would stand in a different footing than that of W.K Burman (supra), as has been contended by Mr. Wadhva. The learned Single Judge while disposing the case of D.K Burman (supra), and other connected matters has narrated the factual scenario in Paragraph 6 as under:

6. The Corporation accepted the application of petitioner and directed that he shall be voluntarily retired with effect from 7-12-2001. Earlier to this date, the interim order was passed by this Court directing parties to maintain status quo. It has been contended by learned Counsel for the petitioner that the petitioner of W.P. No. 6189/2001, petitioner of W.P. No. 3360/2002 and petitioner of W.P. No. 3445/2002 were continuing in service on account of the interim order passed by this Court and this position is not disputed by the respondents. However, no interim order was passed in W.P. No. 91/2002.

While issuing the direction in respect of Sayeed Khan, the petitioner in W.P. No. 91/2002 in Paragraph 10 of the order following direction was issued:

10. For the reasons stated hereinabove, all these petitions are allowed, the order of voluntary retirement passed by the Corporation is hereby quashed and the Corporation is directed to take back the petitioner in service and to issue necessary order in that regard. The respondents are hereby directed to pay the wages to petitioner - Sayeed Khan of W.P. No. 91/2002. Let the payment be made on or before 31-3-2006, failing which he shall be entitled to the interest @ 5% per annum, with the effect from 1-4-2006.

The learned Single Judge in the present case after placing reliance on the same in Paragraph 7 has directed as under:

7. The petitioner in the present petition has already received lump sum payment under the voluntary retirement scheme. If the petitioner re-deposits the amount which he has received by the respondents, within a period of four weeks the impugned order of voluntary retirement shall stand quashed and he would also be entitled to similar relief regarding payment of salary by the respondents as has been granted by this Court in the above mentioned petition in respect of Sayeed Khan within a reasonable period of time as far as possible within a period of three months thereafter.

The crux of the matter is whether such relief could have been granted. In the earlier cases the employees had approached this Court and they were allowed to continue in service by virtue of interim orders. Sayeed Khan had not accepted the benefit under the Scheme, but he was not protected by interim order. In this context we may refer with profit to the decision rendered in the case of Bank of India and Others Vs. O.P. Swarnakar etc., , wherein in Paragraphs 114 and 115,

it has been held as under:

114. However, it is accepted that a group of employees accepted the ex gratia payment. Those who accepted the ex gratia payment or any other benefit under the Scheme, in our considered opinion, could not have resiled therefrom.

The Scheme is contractual in nature. The contractual right derived by the employees concerned, therefore, could be waived. The employees concerned having accepted a part of the benefit could not be permitted to approbate and reprobate nor can they be permitted to resile from their earlier stand.

In *State Bank of Patiala Vs. Romesh Chander Kanoji and Others*, , the Apex Court has expressed the opinion thus:

...8 If the employees are allowed to withdraw from the scheme at any time after their closure, it would not be possible to work out the scheme as all calculations of the management would fail.

In *Punjab and Sind Bank and Another Vs. S. Ranveer Singh Bawa and Another*, , a three Judge Bench of the Apex Court relying on various earlier decisions had expressed the view that when an employee had accepted payment/benefits under the Scheme and had utilised those payments to discharge his obligations under the Scheme and had invested the amounts in fixed deposits, he is not entitled to withdraw his option before cut-off date. Their Lordships have opined that under these circumstances an employee cannot resile from the scheme.

In view of the aforesaid pronouncement of law the question that emanates for consideration is whether the respondent after having accepted the benefit of the VRS cannot take a somersault and contest the same. In *D.K. Burman (supra)*, and other connected matters the employee had not accepted the benefit and in fact, approached the Court and obtained interim orders. The learned Single Judge therein had expressed that opinion that they had no option and a cabinet decision has been taken not to close the Corporation, therefore, relief could be granted. In view of the aforesaid factual scenario there is distinction in the sets of facts. The learned Single Judge, as has been indicated earlier, had directed deposit of the amount taken by the respondent No. 1 before the Corporation, as we are disposed to think, to maintain parity with the earlier order. In our considered opinion the concept of parity is not attracted and the same also does not get established by deposit of the amount already accepted under the Scheme. A relegation to the earlier position is impermissible by such deposit. The distinction between the earlier case and the present cannot be marginalised and cannot be treated at par or brought at par by imposition of a condition.

In view of the aforesaid premises, we allow the appeal and set aside the order passed by the learned Single Judge. There shall be no order as to costs.