
(2006) 03 DEL CK 0230

In the Delhi High Court

Case No : LPA 646 of 2003

Northern Coalfields Ltd. and Another

APPELLANT

Vs

Satya Pal Arora

RESPONDENT

Date of Decision : 06-03-2006

Acts Referred:

Citation : (2006) 87 DRJ 788

Hon'ble Judges : Markandeya Katju, C.J.; Madan B. Lokur, J

Bench : Division Bench

Advocate : Anip Sachthey and Mohit Paul, for the Appellant; M.C. Dhingra and P.R. Rajhans, for the Respondent

Final Decision : Dismissed

Judgement

Markandeya Katju, C.J.—This writ appeal has been filed against the impugned judgment of the learned Single Judge dated 08.04.2003.

2. Heard learned counsels for the parties and perused the record.

3. The facts of the case have been set out in detail in the impugned judgment of the learned Single Judge and hence we are not repeating the same except where necessary.

4. The writ petitioner (respondent in this appeal) was an employee of Coal India Limited, appellant No. 2 from 18.10.1976 and he remained in service till 12.7.2000. His service was terminated when he was working with Northern Coalfields Ltd., Singrauli, which is a subsidiary of Coal India Ltd.

5. The Coal India Ltd. had introduced Voluntary Retirement Scheme of 1982 (VRS-82). VRS-82 was inoperative during the period 5.11.1998 to 4.11.1999, when a new Voluntary Retirement Scheme called Executive Voluntary Retirement Scheme, 1998 (EVR-98) was introduced. The EVRS-98 was operative during the period 5.11.1998 to 4.11.1999 and after 4.11.1999 once again the VRS-82 was operative.

6. The petitioner applied for VRS-82 on 17.11.1999 by giving three months notice. True copy of the letter dated 17.11.1999 is Annexure-A to the writ petition. Clause 2 of the said letter states:

This is the required three months-notice under Clause 2 (c) of the above mentioned OM of 25.1.1982. This notice commences today the November 17, 1999 and would expire on February 16, 2000. On and from February 17, 2000, I no longer intend to be on the rolls of Northern Coalfields Ltd. / Coal India Ltd.

7. It is alleged by the writ petitioner that before the expiry of the period of the notice, the petitioner vide letter dated 15.2.2000 made a request for extending the notice period and requested that he may be released after 1.4.2000. True copy of the said letter dated 15.2.2000 is Annexure-B to the writ petition.

8. In paragraph 2 (g) of the writ petition, it is stated that the petitioner came to know that two ex-employees of Coal India Ltd. who had retired under the VRS-82 were extended the benefits of EVRS-98. It is alleged that there is no ex-gratia payment in VRS-82, while there is a provision of ex-gratia payment equivalent to 45 days for each year of service rendered in the EVRS-98. Hence, it is alleged that the petitioner amended his earlier request of voluntary retirement by writing a letter dated 21.3.2000 asking for review of his VRS application and instead he gave two following alternatives:-

(A) he may be posted at Delhi for a period of about one and a half year on compassionate ground and the request for voluntary retirement under the VRS-82 stands withdrawn;

(B) alternatively, he may be given VRS-98.

True copy of the said letter dated 21.3.2000 is Annexure-C to the writ petition.

9. Thereafter the petitioner received a fax letter dated 28.7.2000 from the Appellant No. 1 stating that the petitioner had been relieved from service with effect from 12.7.2000 on voluntary retirement under the VRS-82 on the basis of his earlier letter dated 15.2.2000.

10. Aggrieved, the petitioner sent a detailed representation to the Chairman, Coal India Ltd. on 2.8.2000 asking for reconsideration of his voluntary retirement in the light of his letter dated 21.3.2000. True copies of the Letter dated 28.7.2000 and representation dated 2.8.2000 are Annexure-E to the writ petition. The petitioner also sent a letter to the Chairman, Coal India Ltd. vide letter dated 22.11.2000 Annexure F to the writ petition. However, all this was to no avail, and hence the petitioner filed the writ petition.

11. A counter affidavit was filed by the Appellant Nos. 1 & 2 (respondents in the writ petition) and we have perused the same. It is stated in paragraph 2 therein that the EVRS-98 was introduced for a limited period from 5.11.1998 to 14.11.1999, after which period VRS-82 again became operative. A true copy of the Office Memorandum dated 5.11.1998 in this connection is Annexure-A to the

counter affidavit.

12. In paragraph 3 of the counter affidavit it is stated that the petitioner applied for voluntary retirement under the VRS-82 on 17.11.1999. EVRS-98 was inoperative on 17.11.1999, since it had already been discontinued on 4.11.1999. The application of the petitioner for voluntary retirement under VRS-82 was approved by the competent authority on 16.3.2000, i.e., prior to the petitioner's letter dated 21.3.2000.

13. According to Rule 2 (7) of the Voluntary Retirement Scheme under the Common Coal Cadre a notice of Voluntary Retirement may be withdrawn only with the approval of the Competent Authority provided the request for such withdrawal is made before expiry of the notice period, i.e., before 16.2.2000 Rule 2 (7) is reproduced below:-

A notice of voluntary retirement may be withdrawn subsequently only with the approval of the Competent Authority, provided the request for such withdrawal is made before the expiry of the notice period.

14. It is stated in paragraph 4 of the counter affidavit that the petitioner had submitted his application for voluntary retirement on 17.11.1999 and had served upon the Management a notice of 3 months to release him from service under the Voluntary Retirement Scheme which expired on 16.2.2000. However, vide his letter dated 15.2.2000, the petitioner requested the Management of CIL to release him after the 4th of April, 2000.

15. Thus from the facts it is evident that the petitioner submitted his application for review of his Voluntary Retirement Scheme application only on 21.3.2000, i.e., after expiry of the above mentioned notice period; when also by this time the request of the petitioner for acceptance of Voluntary Retirement under VRS-82 had been accepted by the Competent Authority on 16.3.2000. Consequently the Management of CIL vide letter dated 23.3.2000 communicated to NCL the decision of the approval of the Competent Authority to allow the Petitioner to retire under the Voluntary Retirement Scheme 82 and on 12.7.2000 the petitioner was released from the service of NCL.

16. It is stated in the counter affidavit that the Management of CIL accepted the request of Shri Satya Pal Arora for Voluntary Retirement under the VRS-82 Scheme as it was not possible for the Management to accept the request of the petitioner for posting at New Delhi nor was it possible for the Management to make the EVRS-98 Scheme available to the petitioner as upon examination it was found that the petitioner did not fulfill the eligibility criteria of satisfying the age requirement of 50 years required for EVRS-98 nor did the petitioner make his application for voluntary retirement during the period when EVRS-98 was in operation. Therefore, there was no other option available to the management but to accept the request of the petitioner for his Voluntary Retirement under the VRS-82 Scheme of the Common Coal Cadre, and since it had been accepted on 16.3.2000, i.e., prior to the petitioner's letter dated 21.3.2000 it could not be

withdrawn.

17. In view of the above facts, we are clearly of the opinion that the petitioner was not entitled to the benefit of EVRS-98 nor was he entitled to withdraw his application under the VRS-82, since it had already been approved by the competent authority on 16.3.2000.

18. Had the writ petitioner withdrawn his application made on 17.11.1999 before the expiry of three months notice period, i.e., before 15.2.2000, then he could possibly have had a case justifying his withdrawal. However, the application was approved on 16.3.2000 by the competent authority while the petitioner moved his application on 21.3.2000, i.e., much after the acceptance. Hence, the relationship between the petitioner and the appellants had ceased on 16.3.2000 and consequently he could not withdraw his application for VRS-82, vide Union of India (UOI) and Others Vs. Gopal Chandra Misra and Others, , Srikantha S.M. Vs. Bharath Earth Movers Ltd., , etc.

19. Moreover, in our opinion, the letter dated 21.3.2000 was not an unconditional withdrawal. That letter places the conditions that either the petitioner should be posted in Delhi or he should be given the benefit under the EVRS-98. In our opinion, no employee can insist that he should be posted at a particular place of his choosing. As regards the EVRS-98, the petitioner was not even eligible for the same as he applied after that scheme had come to an end.

20. As regards the other employees who were given the benefit under the EVRS-98, their case were distinguishable as they fulfilled the condition for being eligible under EVRS-98 as stated in paragraph 6 of the counter affidavit.

21. In Dr. Prabha Atri Vs. The State of U.P. and Others, , the Supreme Court held that a letter of resignation must be unconditional. A conditional resignation is no resignation in the eyes of law. In our opinion, the same principle will also apply to a withdrawal of a resignation.

22. For the reasons given above, this appeal is allowed, the impugned judgment of the learned Single Judge is set aside and the writ petition is dismissed.