

(1999) 06 GAU CK 0003
In the Gauhati High Court
Case No : Writ Petition No. 425 of 1995

Oil India Ltd.

APPELLANT

Vs

Dilip Kumar Goswami

RESPONDENT

Date of Decision : 23-06-1999

Acts Referred:

Contract Act, 1872 — Section 27

Citation : (1999) 3 GLT 35 : (2000) 2 LLJ 415

Hon'ble Judges : Brijesh Kumar, C.J;B. Biswas, J

Bench : Division Bench

Advocate : N.M. Lahiri, A.K. Goswami, S.N. Sarma and B. Goyal, for the Appellant;

Final Decision : Dismissed

Judgement

1. This appeal is directed against the judgment and Order dated July 6, 1995 passed in Civil Rule No. 1879 of 1994 whereby the learned single Judge quashed the order dated March 23, 1994 (Annexure-U) and January 8, 1994 (Annexure-S) passed by the appellant company. Being aggrieved thereby, the Oil India Limited has preferred this appeal controverting the validity and propriety of the above decision.

2. The respondent was serving as an Engineer in the appellant-company. He was sent on deputation to the Assam Industrial Development Corporation (Refinery and Petrochemical Division) as Manager in the year 1987. While on deputation, he applied for appointment in IBP Company Limited, a Government of India Enterprise. The IBP Company offered appointment to the respondent as Senior Manager (Project) in Numaligarh Refinery, Assam. On receipt of the aforesaid order, the respondent requested the appellant-Company to allow him to go on voluntary retirement as per Voluntary Retirement Scheme of the company. On April 10, 1993, the request for voluntary retirement was accepted and the petitioner was provisionally released from the service of the appellant company w.e.f March 30, 1993 (after office hours) subject to clarification from the Deptt.

of Public Enterprise. The said letter appended as Annexure "M" to the writ application is reproduced below:

"Ref. PERS/09/DKG-637 April 10, 1993

Shri DK Goswami Refinery & Petrochemical Division Assam Industrial Dev. Corpn.
Dr. B. Baruah Road, Guwahati - 781 007.

Sub: Voluntary Retirement Sir,

We write with reference to your letter dated October 25, 1993 wherein you expressed your desire to be released from the services of the Company after close of working hours on March 30, 1993 under the provisions of the Voluntary Retirement Scheme of the Company and thereafter join the IBP Co. Ltd. for their Numaligarh Refinery Project. We also refer to the letter No. COM/IND/1/92 dated March 11, 1993 from Shri A.P. Singh, Commissioner & Secretary to Government of Assam, Industries Department whereby we were informed that the offer of appointment of you by IBP Co. Ltd. is as per the provision of the Memorandum of Understanding (Clause 14, Para 14.1) signed between the Govt. of Assam and IBP Co. Ltd. The Commissioner also clarified that IBP Co. Ltd. approached Department of Public Enterprises (DPE) through the Ministry of Petroleum and the DPE had confirmed that you could join IBP Co. Ltd. even after taking voluntary retirement from OIL. This implies that it is permissible to take up employment in a Public Sector Organisation immediately on being released from another Public Sector Undertaking under Voluntary Retirement Scheme (VRS). We are seeking a clarification on this matter from the DPE since many more executives from this organisation are likely to seek release under VRS to join other PSUs.

2.0 Notwithstanding the above, we confirm that your request has been accepted and you stand provisionally released from the services of the Company on "Voluntary Retirement" after the close of working hours on March 30, 1993 subject to your clearing all your outstanding loans/dues.

3.0 We have advised our Accounts Department to prepare your final settlement accordingly except the voluntary retirement benefits for the time being which will be released on getting the clarification from DPE. You are requested to contact our Senior Accounts Officer (Staff) in this regard.

4.0 We take this opportunity to record our appreciation for your association with the Company and wish you all success in your future endeavours.

Yours faithfully,

Oil India Limited. (Lt. Col. P. Barua)

Dy. General Manager (Personnel) for Group General Manager".

3. It would appear from the aforesaid letter that the request of the respondent to allow him to go on voluntary retirement was accepted provisionally in view of a

letter written by the Commissioner & Secretary, Government of Assam to the effect that Department of Public Enterprise confirmed that the writ petitioner could join IBP Company after taking voluntary retirement from the appellant Company. Thereafter the appellant company, on receipt of clarification from the Department of Public Enterprises, Government of India, vide letter dated January 8, 1994 (Annexure-S) informed that the release of the writ petitioner was being treated as resignation and not voluntary retirement. The said letter reads as below:

"PERS/09/DKS-75 January 08, 1994

Shri D.K. Goswami Shri D.K. Goswami

Sr. Manager Sr. Manager

(Project) (Project)

Numaligarh . Numaligarh

Refinery Ltd Refinery Ltd.

C/o Sharraa Guest Tarun Nagar

House I.G. Road 4th Road

Golaghat (Assam) Guwahati 781 005

Your request for benefits under Voluntary Retirement Scheme

Sir,

We write further to our letter No. PERS/09/DKG-637 dated April 10, 1993 and the subsequent correspondence on the subject, to inform you that IBP Co. Ltd. as well as the Department of Public Enterprises (DPE) Govt. of India have confirmed that there was no understanding between DPE and IBP Co. Ltd. on the matter of your voluntary retirement from OIL, for consequential employment with IBP Co. Ltd. in the Numaligarh Refinery Project. Under the circumstances we are not in a position to extend the benefits under Voluntary Retirement Scheme to you, as you are not eligible for the same as per BPE guideline on the VRS.

2.0 In view of the above, we are treating your case as release on resignation and regularise your discharge from OIL accordingly.

3.0 By a copy of this letter we are advising our SAO (Staff)/SAO (Superannuation) to prepare your final settlements. You may please contact them for the final settlements.

4.0 We wish you all success in your future endeavours. 1

Yours faithfully, Oil India Limited (Lt. Col. P. Barua) Dy. General Manager (Personnel); For Group General Manager."

4. The Annexure "U", written on March 23, 1994 by the appellant-company also

shows that the request made by the writ petitioner to treat his case as voluntary retirement and not resignation was turned down.

5. The question, therefore, that arises for consideration is whether the release of the petitioner on voluntary retirement, although provisional, could have been treated as resignation.

6. Shri N.M. Lahiri, learned senior Advocate tried to justify the action of the appellant-company on the ground that his release was provisional and subject to clarification from the Department of Public Enterprises. The clarification given by the Department of Public Enterprises does not permit unconditional acceptance of the offer of voluntary retirement of an employee going to join any other Public Sector Undertaking. The clarification reads as follows:

"If they know that an employee has applied for a job in other PSE, in this situation the provisions of BPE's OM dated December 14, 1982, January 25, 1988 and June 23, 1988 should be invoked by the lending organisation and cash equivalent of gratuity, Earned leave, Half pay leave standing to his credit, balance in the contributory Provident Fund should be transferred to the borrowing organisation and the benefits of VR Scheme should not be conceded. Each PSE, therefore, has to distinguish such cases themselves."

7. The voluntary retirement scheme was approved by the Board of Directors in its 263rd Meeting held on November 23, 1990. The provisions relevant for the purpose of the dispute at hand are quoted below:

"Voluntary Retirement Scheme for Executives OIL Board of Directors in their 263rd Board Meeting held on November 23, 1990 approved the introduction of Voluntary Retirement Scheme for Executives. The salient features of the Scheme are as below:

(i) Executives who have completed 10 years service in the Company or 40 years of age may seek Voluntary Retirement by a written request.

(ii) The Management will have the right not to grant voluntary retirement for reasons to be recorded in writing.

(iii) The terminal benefits available to the executive who seeks voluntary retirement would be :

(a) the balance of his provident fund accumulation as per CPF regulations.

(b) cash equivalent of accumulated earned leave as per the existing rules.

(c) gratuity as per the Gratuity Scheme applicable to the executive.

(d) 3 months' notice pay as per the conditions of service applicable to him."

8. The provisions of the Scheme as above shows that Executives who had completed 10 years of service in the Company or 40 years of age may seek voluntary retirement by a written request. It further shows that right has been

reserved by the Management not to grant voluntary retirement for reasons to be recorded in writing. If, for any reason, the Management was not in favour of the release of the writ petitioner on voluntary retirement, they could have easily refused the request. But instead of exercising the powers of refusal, the appellant-Company vide letter No. (ERS/09/DKG-637) dated April 10, 1993 (Annexure-"D") released the petitioner from the services of the company on voluntary retirement.

9. It is clear from the aforesaid order dated April 10, 1993 that acceptance of the request of the writ petitioner and his release with effect from March 30, 1993 was made on consideration of a letter written by the Commissioner and Secretary to the Government of Assam, Industries Department, informing that the writ petitioner was appointed by IBP Company Limited as per memorandum of understanding between Government of Assam and IBP Company and that the DPE had confirmed that the petitioner could join IBP Company Ltd. even after taking voluntary retirement from it. The petitioner was released subject to further clarification on this matter from the Department of Public Enterprises, Letter No. COM/IND/1/92 dated March 11, 1993 (Annexure "C") written by the Commissioner and Secretary also confirm that the aforesaid information was given by him to the appellant-Company. But later on, on receipt of information from IBP Company and the Department of Public Enterprises that there was no understanding between them, the appellant-Company decided to treat the case of the respondent as release on resignation.

10. It would appear that the respondent under no circumstances appears to be instrumental in getting the letter written by the Commissioner and Secretary to the Government of Assam. Rather the documents on record show that he had initially requested the authority to keep his request in abeyance till clarification is received from the Government of India. Therefore, the respondent cannot be penalised for the lapses, if any, committed by others.

11. Shri Lahiri, learned senior Advocate referring to the clarification dated May 29, 1992 given by the Department of Public Enterprises insisted that the instruction in Serial No. 5 shows that an executive cannot go on voluntary retirement as a matter of right when he seeks such retirement to join another company. The impugned letter dated March 23, 1994 makes it clear that the petitioner was not eligible for the benefits under the Voluntary Retirement Scheme as he had taken up employment in another public sector undertaking. Shri Lahiri, learned Senior Counsel also pointed out that the Ministry of Finance vide Circular dated November 26, 1992 (Annexure-"V") clarified that the Voluntary Retirement Scheme should be in accordance with the guidelines given therein and one of such guidelines provide that the vacancy caused by voluntary retirement is not to be filled up and the retiring employee is not to be employed in any other company or concern belonging to the same Management. According to Shri Lahiri, the provisions of the scheme have to be implemented along with the instructions and guidelines given by the Government of India from time to

time.

12. After a careful consideration of the submission as above, we are of the view that the instructions given by the Department of Public Enterprises in the year 1992 was already within the knowledge of the appellant-company even when the writ petitioner was released on voluntary retirement. They had the option as per provisions of the Voluntary Retirement Scheme either to accept or to reject the offer made by the respondent. But instead of refusal, they had released the respondent subject to clarification from the Government of India. The Scheme does not provide for provisional release of an employee on voluntary retirement. That apart, the aforesaid instructions on which the appellant-Company is now relying upon were not incorporated in the Voluntary Retirement Scheme by way of amendment. These instructions which were well within their knowledge were not taken note of by the appellant-Company at the time of release. Therefore, the respondent whose case was considered in isolation and release ordered cannot be made to suffer for no fault of his own. The conditions on which the appellant-Company are now relying ought to have been indicated in the scheme itself as it would be of general application to all concerned. The appellant-company cannot at this belated stage relying upon certain communication from the DPE and the Finance Ministry convert the release of the respondent on voluntary retirement to release on resignation.

13. The clarification given by the Department of Public Enterprises in Column-5 shows that the Management of Public Enterprises have been asked to exercise its own managerial discretion and prudence while disposing of the cases of voluntary retirement. The clarification further requires the Management to invoke the powers of office memorandum dated December 14, 1982, January 25, 1998 and June 23, 1998 (sic) issued by Department of Public Enterprises if they find that an employee seeking voluntary retirement has opted for a job in any other Public Sector Undertaking. This condition also appears to be contrary to the provisions of Section 27 of the Indian Contract Act. An employee going on voluntary retirement and not taking any job in any Public Sector Undertaking will be entitled to full benefits under the Voluntary Retirement Scheme, but the said benefits will be restricted to certain amounts only if such employee takes fresh employment after retirement. The clarification given to this effect cannot be said to be in keeping with the spirit of the provisions of Section 27 of the Indian Contract Act. The Company while disposing of a request for voluntary retirement cannot discriminate in respect of benefits to which an employee is entitled to on such retirement on consideration that the employee concerned was going to take over a job in some other company. A bare reading of the guideline/circular shows that this was issued without any authority of law and against the basic principles behind "voluntary retirement".

14. The law relating to voluntary retirement is settled. The option lies with the employee, and once this option is exercised by an employee, the employer is duty bound to accept it if such option is as per the scheme of Voluntary

Retirement. The respondent was entitled to go on voluntary retirement as per criteria laid down in the Scheme. The employer had the powers to refuse the request in exercise of the provisions incorporated in the Scheme itself. Since the option exercised by the respondent in the instant case was accepted by the appellant authority, such acceptance cannot be subjected to any condition as to the future employment which the employee concerned may take up. The employer cannot prescribe any term and condition in order to restrict future avocation of an employee after retirement. The bar for appointment after retirement may suit the employment policy of the Public Sector Undertakings and they may by way of policy decide not to appoint any retired employee of any other Public Sector Undertakings. However, such a condition cannot allow to operate as a clog on the right of the employees to seek voluntary retirement under any scheme.

15. The ratio laid down in *Dinesh Chandra Sangma Vs. State of Assam and Others*, , although relatable to a Government servant is indicative of the principles behind the concept of voluntary retirement. According to Supreme Court, once the option is exercised by a Government servant as per provision of FR 56(c), the question of acceptance of the request for voluntary retirement by the Government servant does not arise. The acceptance is automatic on expiry of the period of notice. In *Adhishesha Reddy P. v. Bharat Gold Mines Limited*, reported in 1993 Lab IC 67 (Kant), it has been held that the request for voluntary retirement can be refused only when the rules or the service conditions give such option to the employer. There cannot be any difference in the principles for the Public Sector Undertakings also. In the instant case, the option was there with the authority under the Scheme to reject the prayer of the respondent. That option not having been resorted to, the appellant-Company cannot now on the basis of certain clarifications from the Government of India treat the case of the respondent as release on resignation.

16. After a careful consideration of the judgment under appeal, we are of the view that this appeal has no merit and deserves dismissal.

17. Consequently, the appeal is dismissed.

18. No order as to costs.