
(2014) 10 DEL CK 0022
In the Delhi High Court
Case No : LPA No. 110/2013

R. Kothandaraman

APPELLANT

Vs

Lok Sabha Secretariat

RESPONDENT

Date of Decision : 01-10-2014

Acts Referred:

Evidence Act, 1872 — Section 115

Citation : (2015) 215 DLT 616 : (2014) 145 DRJ 680

Hon'ble Judges : Gita Mittal, J;Deepa Sharma, J

Bench : Division Bench

Advocate : R.K. Saini, Vivja Nigpal and Ayush Arora, Advocate for the Appellant;
Pramod Gupta, Umakant Kataria and Yogita Verma, Advocate for the Respondent

Judgement

Gita Mittal, J.—By way of the present appeal, the appellant assails the judgment dated 10th of January, 2013 passed by the learned Single Judge.

An application dated 6th of June, 2008 by the petitioner seeking to voluntarily retire from the Lok Sabha Secretariat under Rule 48 of the CCS (Pension) Rules, 1972 has generated the present litigation. After it stood accepted, the appellant sought to withdraw the voluntary retirement request which was not accepted. The appellant's appeal was also rejected by the order dated 20th of November, 2008. These rejections were challenged by the appellant by way of W.P. (C) No. 7132/2009. This writ petition was rejected by the learned Single Judge by the order dated 10th of January, 2013 inter alia on the ground that the appellant was estopped by his conduct from challenging the rejection.

2. Inasmuch as the petitioner's claim rests on Rule 48 A of the CCS (Pension) Rules, 1972, for the purposes of convenience the same deserves to be extracted and reads thus:

"48-A Retirement on completion of 20 years" qualifying service

(1) At any time after a Government servant has completed twenty years qualifying service, he may, by giving notice of not less than three months in

writing to the Appointing Authority, retire from service.

Provided that this sub-rule shall not apply to a Government servant, including scientist or technical expert who is--

(i) On assignments under the Indian Technical and Economic Co-operation (ITEC) Programme of the Ministry of External Affairs and other aid programmes.

(ii) Posted abroad in foreign based offices of the Ministries/Departments,

(iii) On a specific contract assignment to a foreign Government, unless, after having been transferred to India, he has resumed the charge of the post in India and served for a period of not less than one year.

(2) The notice of voluntary retirement given under sub-rule (1) shall require acceptance by the Appointing Authority:

Provided that where the Appointing Authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period.

(3-A) (a) A Government servant referred to in sub-rule (1) may make a request in writing to the Appointing Authority to accept notice of voluntary retirement of less than three months giving reasons therefor;

(b) On receipt of a request under Clause (a), the Appointing Authority subject to the provisions of sub-rule (2), may consider such request for the curtailment of the period of notice of three months on merits and if it is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, the Appointing Authority may relax the requirement of notice of three months on the condition that the Government servant shall not apply for commutation of a part of his pension before the expiry of the period of notice of three months.

(4) A Government servant, who has elected to retire under this rule and has given the necessary notice to that effect to the Appointing Authority, shall be precluded from withdrawing his notice except with the specific approval of such authority:

Provided that the request for withdrawal shall be made before the intended date of his retirement.

*(5) The pension and (retirement gratuity) of the Government servant retiring under this rule shall be based on the emoluments as defined under Rules 33 and 34 and the increase not exceeding five years in his qualifying service shall not entitle him to any national fixation of pay for purposes of calculating pension and gratuity.

(6) This rule shall not apply to a Government servant who--

(a) retires under rule 29, or

(b) retires from Government service for being absorbed permanently in an Autonomous Body or a Public Sector Undertaking to which he is on deputation at the time of seeking voluntary retirement."

(Emphasis supplied)

3. The facts giving rise to the writ petition as well as the present appeal are not disputed and lie within the narrow compass. To the extent necessary, the same are briefly noted hereafter.

4. An employee of the Lok Sabha Secretariat, the petitioner had proceeded on deputation as the Joint Secretary of the Nagaland Legislative Assembly between 13th of December, 2002 till 31st of March, 2004. He thereafter was on deputation as the Secretary, Department of Parliamentary Affairs, Government of Nagaland between 1st of July, 2004 to 15th of July, 2008.

After a brief stint in Delhi, the appellant proceeded on deputation to the Goa Legislative Assembly as its Secretary with effect from 1st of March, 2008 for a period of two years. While in Delhi, the petitioner was posted as a Director in the Lok Sabha Secretariat.

5. The petitioner claims that he was considered by a Departmental Promotion Committee of the Lok Sabha Secretariat for promotion to the post of Joint Secretary in March, 2008. However, on account of a complaint received from the Government of Nagaland, his borrowing department, by an order passed on 6th of April, 2008, one Shri Brahm Dutt only was appointed to the post of Joint Secretary.

6. The respondent issued an office memorandum dated 27th of May, 2008 whereby the appellant was informed that it was proposed to take action against him under Rule 16 of the Central Civil Services (Classification, Control and Appeal), Rules, 1965 on inter alia questionable conduct of the appellant in connection with the proceedings of the Guwahati High Court on the 19th of February 2008 while he was posted as a Secretary with the Government of Nagaland. The imputation of charges also contain allegations with regard to the conduct of the appellant with the Secretary General of the Parliament; threats advanced by him and such conduct, which, it was alleged, was unbecoming of an officer.

7. The petitioner submitted a reply disputing these allegations. At the same time, the appellant who was posted as Director with the Lok Sabha Secretariat made an application under Rule 48A of the CCS(Pension) Rules dated 6th of June, 2008 seeking voluntary retirement on completion of 27 years, 7 months and 12 days qualifying service with effect from 6th of September, 2008, that is, after expiry of the three months notice as required under Rule 48A(1), with service benefits as admissible thereunder. This request of the petitioner was processed and a notification dated 27th of June, 2008 was issued permitting the appellant to

voluntarily retire from service with effect from the forenoon of 7th of September, 2008.

8. It is urged that it was to avoid the proposed disciplinary proceedings that the appellant submitted the said request dated 6th of June, 2008 seeking to voluntarily retire from service. Promptly thereafter, on the 1st of July, 2008, the petitioner wrote a letter to the Secretary General of the Lok Sabha expressing gratitude to him for acceptance of the notice for voluntary retirement from service. Inasmuch as this letter manifests the real intention of the appellant, the same deserves to be considered in extenso and reads thus:

"To

The Secretary-General

Lok Sabha

Parliament House

New Delhi-110001

1 July, 2008

Sir,

I am grateful to your for the Notification accepting my notice of voluntary retirement from service from 7.09.2008 (FN)

I shall be further grateful to you if you consider granting me the promotion to the post of Joint Secretary, as it would add little monetary weight to my terminal benefits including pension (You would kindly appreciate that pension is a life long recurring financial assistance).

I will not withdraw my notice of voluntary resignation, if the promotion as requested above is granted or on any other ground. As I will voluntarily retire from service from Goa Legislative Assembly, my pro forma promotion will not affect any one in the Lok Sabha Secretariat.

Yours faithfully

Sd/-

(R. Kothandaraman)"

(Emphasis supplied)

9. The appellant thus unequivocally accepted the order of acceptance of his resignation. This communication manifests the malafide intention of the appellant who was really seeking to avoid the disciplinary proceedings contemplated by the respondent against him.

10. On the 11th of July, 2008, at 02:28 p.m., the appellant, as the Secretary of the Goa Legislative Assembly, faxed a letter to the Secretary General of the Lok

Sabha stating that in view of the opposition from his wife to his voluntary retirement from service with effect from 7th of September, 2008, and her "refusal to consent for a joint photograph" for the pension papers the appellant requested that he may be allowed to withdraw his request for the voluntary retirement dated 6th of June, 2008 for the time being. The appellant further stated that "as soon as my wife who has to be photographed jointly is prepared for the eventually gradually, I will again submit my request for voluntary retire at a later date"

11. It appears that the record of the respondents were not placed before the learned Single Judge. We may note that on the 29th of August, 2014, before examining the records ourselves, we had accepted the request of Mr. R.K. Saini, Id. counsel for the appellant that he had not had opportunity to inspect the original record which has been placed before us and had made a request for inspection thereof. This request was granted to Mr. Saini who, we were informed, duly inspected the same. The records were scrutinized by us only thereafter and both sides were heard thereon who made submissions thereon.

12. The appellant has concealed in the writ petition that on that very date, i.e., the 11th of July, 2008 itself he has completed all formalities by the appellant, filled up all forms required for processing of the retirement and terminal benefits of the petitioner and sent them to the respondent.

13. The record of the petitioner reveals that he has filled up in duplicate Form-5 (in compliance with Rule 58(1), 63(1), 66 and 82(1) of the CCS (Pension) Rules) which was the application for pension completing all formalities for processing of the pension. The appellant enclosed therewith also the Form-3 purporting to be under Rule 54(12) enclosing not only his own multiple passport size photographs but also a duly attested joint photograph of his wife and himself.

In addition, the appellant also enclosed duly filled-in enclosed Form-1-A, that is, the form for application for commutation of fraction of the superannuation pension. Each of these forms were filled in hand writing and have been sent for processing the pension, on the very date that the appellant had faxed the conditional letter wanting his retirement notification to be rescinded. It is therefore, obvious that the very reason, i.e., the alleged opposition of his wife for withdrawal of the retirement request, as communicated by the appellant in a letter of 11th of July, 2008 had ceased to exist, as the joint photograph of the appellant and his wife was affixed on these forms, completion of all formalities for processing his pension having made a specific request for commutation of a part of the pension.

14. This is corroborated from the conduct of the appellant who made no request at all to the respondent withdrawing the request made by him in the aforesaid Forms-1A, 3 & 5 seeking processing of his pension. In fact, it can be very well be held that there is deemed withdrawal of the fax dated 11th of July, 2008 seeing rescinding of the voluntary retirement notification.

15. The respondent formally communicated the rejection of the petitioner's request by the communication dated 5th of September, 2008. The petitioner followed up with an appeal dated 6th of September, 2008, albeit without even remotely suggesting the reasons propounded by him in his faxed letter dated 11th of July, 2008. Instead, after referring to the proposed disciplinary proceedings and the memorandum received by him for explanation, in para 12 of the appeal, the appellant has given the following reasons for his voluntary retirement:

"12. On 6th July, 2008, without informing me anything, my junior officer, who gave in writing some information against me, was promoted to the post of joint Secretary on ad hoc basis. Humiliated by that, I sent a notice to voluntary retirement from service. This was accepted by the Lok Sabha Secretariat on 27th June, 2008 that is within 21 days of the notice. Subsequently, I exercised my right to withdraw the notice of voluntary retirement on the 11th July, 2008. After 56 days, on the last working day (5.9.2008), I was e-mailed that the Speaker had not allowed my request for withdrawal of voluntary retirement."

(Underlining by us)

16. In fact the letter dated 1st of July, 2008 sent by the appellant exhibits very devious drafting. If carefully scrutinized, it exhibits the fact that in the same breath the appellant was thanking the respondents for accepting his request and in the same breath seeking pre-retirement promotion for higher fixation of his retirement benefits. It carries a prospective threat, if not promoted, to seek withdrawal of the retirement. In fact, if holistically read, the letter in its entirety does not display any intent of the appellant in withdrawing his voluntary retirement thereby. His appeal reiterated this position.

17. The respondents have emphasized the fact that the appellant not only accepted his voluntary retirement from service but, based thereon, took several steps. Upon his having retired from service with the respondent, the first step taken by the appellant was to submit an application under Rule 3 of the Recruitment Rules of the Guwahati Legislature Secretariat for appointment as the Secretary of the Guwahati Legislative Assembly by direct recruitment. On the 11th of September, 2008, the appellant addressed this request to the Speaker of the Guwahati Legislative Assembly unequivocally declaring that "I, the Secretary of the Goa Legislative Assembly, on deputation from the post of Director of Lok Sabha Secretariat, w.e.f. the 1st May, 2008 voluntarily retired from service w.e.f. the forenoon of the 7th September, 2008 (Notification is placed below). If I had not voluntarily retired, I would have superannuated on the 31st May, 2018, that is, 10 years from now."

This application to the Guwahati Legislature Assembly for appointment was made unreservedly by the appellant and does not make any reference to any appeal. It manifests the unequivocal acceptance of his retirement by the appellant.

18. Before us the appellant admits that this application could be made only

because he had retired. The same was favourably considered. As a result, his prior appointment in this post on deputation (from the Lok Sabha Secretariat) was substituted by appointment on contract for a period of two years with effect from 19th of September, 2008 and he was permitted to draw his last drawn salary minus his pension from the Guwahati Legislative Assembly on this basis. The appellant could thus serve in such capacity only because of his retirement from service with the respondents.

19. So far as Lok Sabha Secretariat is also concerned, on the 9th of September, 2008, the appellant made a request referring to the rejection of his request for withdrawal of voluntary retirement, the appellant stated that "I have voluntarily retired from the Lok Sabha Secretariat with effect from the said date" and requested that his complete service book be sent to the Director of the Lok Sabha Secretariat through him to get the "terminal benefits finalized". In a back handed manner the appellant did state that this would not prejudice the outcome of his appeal to the Lok Sabha against the decision of the Lok Sabha Secretariat. This reservation has of course to be tested against the simultaneous conduct of the appellant seeking finalization of his terminal benefits and his subsequent request for appointment as a Secretary with the Guwahati Legislative Assembly; acceptance of the appointment as well as the emoluments which rested on his pension drawings.

20. We also find that the appellant was also engaging with the respondent seeking a promotion and seeking consequential higher last drawn benefits so that he could get better emoluments at his new posting as the Secretary in the Guwahati Legislative Assembly. In this regard, as a deputationist with the Guwahati Legislative Assembly, the appellant had addressed the letter dated 7th of October, 2008 requesting the respondent to grant him the scale of the Joint Secretary in the Lok Sabha Secretariat till he "voluntarily retired on the 7th of September, 2008 so that I am monetarily benefited while drawing my terminal benefits as well as in the current assignment in Goa"

This letter was sent unreservedly, therefore with prejudice to his appeal for withdrawal of the voluntary retirement.

21. Again based on the retirement from the respondent, the appellant submitted a request for appointment with the Goa Legislature Secretariat as well. We find that on the 7th of October, 2008, the Goa Legislature Secretariat issued a letter appointing the appellant "who voluntary retired from service of the Lok Sabha Secretariat as Director with effect from the forenoon of the 7th of September, 2008 as Secretary of the Goa Legislative Assembly and its Secretariat on contract basis with effect from the forenoon of the 9th of September, 2008 initially for a period of two years, he will withdraw the last pay drawn at the Lok Sabha Secretariat-Pension" (i.e., minus pension).

22. The appellant also actively corresponded with the respondents for finalisation of his terminal benefits. On the 15th of October, 2008 the appellant addressed a

letter to Shri R.C. Ahuja, Additional Secretary in the Lok Sabha Secretariat thanking him "very much for expediting the payment of my long pending terminal benefit into my bank account". The appellant expressed his gratitude to him for his "fine gesture" and offered "apology for all concerns being harsh in requesting for the above payments".

23. As if, this was not enough, the original record produced by the respondent shows that on the 4th of November, 2008, the appellant wrote to the Secretary General of the Lok Sabha Secretariat that when "every employee retires, leave encashment is paid suo moto". He expressed a grievance that he was yet to be paid 18 days half pay leave which payment may be expedited! He made no reference to any wrong in the acceptance of his retirement request or rejection of his withdrawal request.

24. The appellant's appeal seeking withdrawal of this voluntary retirement was rejected by the Speaker of the House by the order dated 19th of November, 2008 which was communicated to the appellant by a letter of 20th of November, 2008.

25. It is noteworthy that the appellant took several further steps which he was able to pursue only because of his retirement from the services with the respondent. The appellant applied for appointment as the Principal Secretary of the Meghalaya Legislative Assembly and was appointed to this position on the 11th of June, 2009 for a period of two years. To enable the appellant to join this position in Meghalaya, the appellant was relieved as a Secretary of the Goa Legislative Assembly vide order dated 9th of June, 2009 with effect from 10th of July, 2009.

26. The writ petition being WP(C) No. 7138/2008 was filed by the appellant on the 12th of July, 2009 almost two years after rejection of his appeal. It was filed long after the appellant's applications to the Guwahati; Goa and Meghalaya Legislature Secretariats. It was filed after he had served with two of them. In the meantime, the appellant had also engaged in getting his terminal benefits fixed and released. Secure in his financial position, and service in a choice appointment, he dishonestly involved the extraordinary writ jurisdiction of this court.

27. So far as conduct of the appellant is concerned, the record placed before us show that the appellant has unconditionally and with prejudice accepted the retiral benefits which were paid in lump-sum. The details of the benefits, the amount thereof, the cheque number and the date thereof as available in the records of the respondent are detailed hereunder:

"As per the office records, Shri Kothandaraman, former Director who retired voluntarily w.e.f. 07.09.2008 (FN) has been paid in lump sum the following benefits:

2. He is entitled to draw w.e.f. 07.09.2008 a Basic Pension @ Rs. 28,465/- p.m. plus dearness relief thereon as applicable from time to time minus commuted

portion of pension @ Rs. 11,386/- p.m. (Statement enclosed).

3. Statement showing details of retirement benefits paid in lump sum plus interest @ 18% thereon is also enclosed herewith."

28. Even after filing the writ petition, at no point of time the appellant objected to the payments of this benefits or made any representation to the respondent that the terminal benefits ought not to be finalized because he had not retired from service. He also mentions his designation as "Ex Director" in the correspondence. Instead on the 4th of June, 2010, the appellant wrote the following:

"To

The Pay & Accounts Officer

Lok Sabha Secretariat

Parliament House Annexe

New Delhi 110 001

Chennai

4.6.2010

Sir,

7.9.2008 was the date of my voluntary retirement.

2. I found recently that the SBI, Parliament House Annexe, New Delhi, has been crediting into my savings bank account my full pension though I had received communication value of my pension.

3. I have paid my income tax for two years on receipt of my full pension.

4. To regularize thing, I request that I may be allowed to return the commuted value of my pension I received, so that I continue to receive my full pension from the Bank. A revised pension payment order may thereafter be issued.

Yours faithfully

(R. Kothandaraman)

Ex-Director"

(Emphasis by us)

The above shows that the appellant unconditionally accepted the retirement benefits with prejudice. He has even regularly paid income tax on the pension amount!

29. Our attention has also been drawn to the order dated 24th of November, 2010 issued by the Secretariat of the Meghalaya Legislative Assembly whereby

while working as a Principal Secretary, Meghalaya Legislative Assembly, the appellant was appointed as the Parliamentary Advisor to the Speaker of the said Assembly for a period of one year. He has accepted and worked in this position.

30. In the impugned judgment dated 10th January, 2013, placing reliance on the judicial pronouncements reported at Punjab National Bank Vs. Virender Kumar Goel and Others, ; Bank of India and Others Vs. O.P. Swarnakar etc., , and Bank of India and Others Vs. Pale Ram Dhanial, , the learned Single Judge has held that once an employee takes the benefits of the voluntary retirement by utilizing the amounts which have been credited to his account, such an employee is estopped from seeking withdrawal of his request of voluntary retirement. It has been held by the learned Single Judge that in the facts and circumstances as noted hereinabove, the petitioner cannot blow hot and cold in the same breath. The appellant cannot on one hand seek withdrawal of his request for voluntary retirement, yet on the other hand withdraw/utilize and enjoy the lumpsum benefits such as provident fund, gratuity and commutation of pay which has been credited to his account. Additionally the appellant has contested commutation of the pension as well as sought its refixation which has also been effected and duly paid to the appellant. The appellant has regularly received and utilized the monthly pension, without any protest and demur.

31. In paras 116 to 118 of the judgment reported at Bank of India & Ors. v. O.P. Swarnakar in Bank of India (supra) it has been held that if a statutory rule is made for personal benefit of a person, and there is no element of public interest involved, such right created under a statutory rule can be waived.

In the instant case the provisions of Section 115 of the Indian Evidence Act would certainly apply to exercise of the right to withdraw the request for voluntary retirement under Rule 48-A (4) of the CCS (Pension) Rules which has been enacted only for the personal benefits of the person who changes his mind after seeking to voluntarily retire.

32. Learned counsel for the respondent has orally challenged the findings of the learned Single Judge to the effect that the petitioner had validly revoked his request for voluntary retirement in view of the judgment of the Supreme Court reported at Balram Gupta Vs. Union of India (UOI) and Anr, ; Shambhu Murari Sinha Vs. Project and Development India and Another, and J.N. Srivastava Vs. Union of India (UOI) and Another,

33. The communication dated 11th of July, 2008 sent by the petitioner also reflects the insincerity of the appellant so far as withdrawal of the resignation is concerned. This letter makes no reference to his letter dated 1st of July, 2008 expressing gratitude for acceptance of the retirement. It also manifests that the same was submitted to compel the respondent to give him promotion for the purpose of pay fixation, which he was not otherwise entitled to in view of the proposed disciplinary proceedings, of which fact he stood duly notified.

34. It is amply clear that the appellant unreservedly and wilfully accepted all

benefits from his retirement with effect from 7th of September, 2008. The same include not only all terminal monetary benefits, his appointment in other positions which was not possible but for his resignation. Even if the appellant had a right to withdraw his voluntary retirement, in the instant case he has admitted and accepted all benefits given as a consequences thereof. He has fully acted thereupon.

35. All acts of the appellant were with prejudice to his withdrawal. Certainly, the appellant cannot be permitted to reprobate and aprobate at the same time.

36. On a consideration of the entirety of the records placed before us, the inevitable conclusion is that even if it could be held that the petitioner had voluntarily and rightly tendered the application for withdrawal of the resignation on the 11th of July, 2008, the same stood superseded as is evident from his intent to proceed with the retirement request by sending the duly filled forms on the same date for processing the pension. The findings of the Id. Single Judge thus are unassailable on any legally tenable ground.

37. Mr. Pramod Gupta, learned counsel for the respondent has placed reliance on the pronouncement of the Supreme Court reported at Bank of India and Others Vs. O.P. Swaranakar etc., and New India Assurance Co. Ltd. Vs. Raghuvir Singh Narang and Another, , to submit that the voluntary retirement scheme is different from retirement under Rule 48A (4) of the CCS (Pension) Rules. For the view we have taken, it is not necessary to dwell more closely on this submission.

38. We may note that Rule 48A(4) of the CCS Rules precludes any person from withdrawing any approval for voluntarily retire without specific approval of the concerned authorities. No approval has been granted to the proposed action of the appellant.

39. We also find substance in the submission of Mr. Pramod Gupta, Id. Counsel for the respondent that the time of the request, and its withdrawal after acceptance coupled with the appellants' applications for appointment with the Legislative Assemblies establishes a devious plan.

40. The appellant has placed reliance on the pronouncements reported at J.N. Srivastava Vs. Union of India (UOI) and Another, and Shambhu Murari Sinha Vs. Project and Development India and Another, in support of the contention that if the voluntary retirement notice is moved by an employee and get accepted by the authority within the time fixed, before the date of retirement is reached, the employee has locus locus poenitentiae to withdraw the proposal for voluntary retirement. There can be no dispute at all with this well settled proposition. However, in the instant case, the appellant not only sent a half hearted request for withdrawal of his request for voluntary retirement but also undertook several actions detailed above including thanking the respondent for accepting his retirement request, processing his terminal benefits, as well as making and processing of his applications to other departments for his consequential appointments.

41. In support of his submission that there can be no waiver of his right to withdraw the request for voluntary retirement, Mr. R.K. Saini, Id. counsel for the appellant has placed reliance on the Division Bench pronouncement of the Madras High Court reported at M.S. Munivenkatappa Vs. State Bank of India, . Perusal of the decision would show that no absolute proposition has been laid down. The judgment was rendered in the facts of the case. It also states every case has to withstand a case by case.

In the case before the Madras High Court, the petitioner was in dire need of finance as he had lost his wife, one of his children discontinued education and he was in dire need of money for payment of fees of his two children, who were studying final year degree course and school final year. In these facts, it was held that acceptance of the terminal benefits could not amount to waiver of his right. No such need is disclosed in the present case. Not only did the appellant accepted the payment of large sums of money towards his terminal benefits on different heads over a period of time but negotiated and engaged with the authorities for correct fixation of his pension. He accepted all payments with prejudice clearly exhibiting his abandonment of the request of withdrawal of his retirement application.

As noted above, the appellant even sought employment in other positions, which was possible only after he had severed his employment with the respondent. All these acts were with prejudice.

The learned Single Judge has therefore, rightly held that in the present case, the entitlement pursuant to Rule 48A of seeking voluntary retirement is personal to the petitioner without there being any involvement of any element of public policy and that the petitioner was entitled to waive his rights thereunder of seeking withdrawal of his request for voluntary retirement.

42. The learned Single Judge has relied on the following observations reported at Punjab National Bank Vs. Virender Kumar Goel and Others, which reads as follow:

"10. In our view this contention would be of no assistance to the respondent. He knew very well that the money deposited in his account was part of the benefits under the Scheme. He also knew it very well that his request for VRS was accepted after the Scheme had expired, yet he had withdrawn the amount deposited and utilized the same. The fact that the respondent had withdrawn a part of the benefit under the Scheme is not disputed and it could not be. To substantiate the contention, the applicant has submitted a photocopy of the respondent's Bank Account No. 27980 (Annexure R-1). It clearly appears from Annexure R-1 that a part of the retirement benefit was deposited in the respondent's Bank Account on 12-1-2001 and on 15-1-2001 he had withdrawn rupees three lakhs. Again on 28-2-2001 he had withdrawn rupees fifty thousand.

11. This fact, however, was not brought to the notice of this Court at the time of the hearing. However, the fact remains that the incumbent had accepted the benefits under the Scheme and utilization thereof would squarely be covered by

Direction 1 as notice above. Therefore, the judgment dated 17-12-2002 is reviewed to the extent that the appeal arising out of the judgment and order of the Uttarakhand High Court is dismissed and the judgment of the High Court is upheld."

(underlining added)

43. The above pronouncement was relied upon by the Supreme Court in its pronouncement in *Bank of India and Others Vs. Pale Ram Dhanra*, . In this case, the respondent has submitted the application for voluntary retirement on 30th of November, 2000 under the voluntary retirement scheme and made an application on 2nd of December, 2000 for withdrawal thereof. On 22nd of January, 2001, the bank accepted the said request for voluntary retirement. On 25th of January, 2001, the respondent had withdrawn retirement benefits which were deposited in the bank account in his name as per the said scheme. The learned Single Judge had accepted the respondent's writ petition and set aside the request for acceptance of voluntary retirement. The Division Bench dismissed the Letter Patent Appeal filed by the bank. In these facts, the Supreme Court held as follows:

"2. A Bench of three Judges of this Court in *Punjab National Bank Vs. Virender Kumar Goel and Others*, , has held that an employee who sought voluntary retirement and subsequently wrote for its withdrawal but has withdrawn the amount of retirement benefits as per the Voluntary Retirement Scheme, is not entitled to the withdrawal of his application for voluntary retirement. It is not disputed that in the present case the respondent herein withdrew the amount of retirement benefits on January 25, 2001.

3. For the aforesaid reason, this appeal deserves to be allowed. We order accordingly. The order and judgment under challenge is set aside. There shall be no order as to costs."

44. The aforementioned narration would show that not only has the appellant accepted and utilized the terminal benefits but had also participated in getting them fixed.

45. In view of the above, the findings of the learned Single Judge to the effect that the appellant in the instant case had waived his right to withdraw the voluntary retirement and stands estopped from challenging the refusal by the respondent have to be upheld.

46. We may also observe that the appellant, as a Senior officer with the respondent, was fully aware of the requirements of law. He has filed the writ petition concealing the material fact that on the 11th of July, 2008 he had also completed all formalities for processing his pension/terminal benefits and separately submitted the same for their processing. He also conceals the material fact that the reason for which he had sought withdrawal of his retirement, had ceased to exist as he had sent a joint photograph with his wife to the respondents. This tantamounts to deliberate concealment of material facts

and renders the appellant liable for appropriate proceedings under the Contempt of Court Act as well as dismissal of the writ petition and the present appeal on this short ground alone. However inasmuch as we have heard the parties at length and perused the available record, we have decided the present appeal on merits. We are deeply distressed that a person in such senior position in the legislative department, one who is engaged in law making, should display such scant regard towards established legal principles and create such litigation for already over burdened courts.

47. Given this conduct of the appellant in concealing material facts and generating this unwarranted and dishonest litigation as part a well thought plan, two years after the events, the appellant is burdened with heavy costs.

48. For all these reasons, the present appeal is completely devoid of any merits and is hereby dismissed with costs throughout.

49. The costs of this appeal are quantified at Rs. 50,000/- to be deposited with the respondent within four weeks from today. In case the costs are not so deposited, the respondent shall recover the same from the pension being paid to the petitioner in monthly equated instalments of Rs. 5,000/- per month commencing from 1st of November, 2014.