(2013) 01 DEL CK 0180

In the Delhi High Court

Case No : Writ Petition (C) No. 7132 of 2009

R. Kothandaraman APPELLANT

Vs

The Speaker, Lok Sabha Secretariat and Another RESPONDENT

Date of Decision : 10-01-2013

Acts Referred:

Citation : (2013) 1 AD 679 : (2013) 198 DLT 668 : (2013) LabIC 3820 : (2013) 2 SCT 712 : (2013) 2 SLJ 417

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : R.K. Saini, with Mr. R. Kothandaraman, in person, for the Appellant; Maninder Acharya with Mr. Varun Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—By this writ petition under Article 226 of the Constitution of India, the petitioner seeks the relief of quashing the action of the respondents in voluntarily retiring the petitioner. The case of the petitioner is that the petitioner cannot be voluntarily retired inasmuch as before the cut-off date given for bringing the voluntary retirement into effect, the petitioner had withdrawn the request. Respondents counter this argument by stating that the petitioner having accepted and utilized the terminal benefits including the lumpsum benefits towards the gratuity, provident fund, commutation of pay etc, is estopped from filing the present petition. Though this argument of the respondents is not in so many words found in the counter-affidavit, since the argument arises out of an admitted fact and is a legal issue I have permitted the same to be urged. The facts of the case are that the petitioner joined the services of the Lok Sabha Secretariat on 25.2.1982. The petitioner went on deputation to the Goa Legislative Assembly from years 2000 to 2002 and thereafter was promoted as a Director in Lok Sabha Secretariat in February, 2004. The petitioner went on deputation as Joint Secretary of the Nagaland Legislative Assembly with effect from 13.12.2002 till 31.3.2004. There took place certain disputes between the petitioner and his employer during the year 2008 and the petitioner was denied promotion. The petitioner alleges that he had sought for some information under the RTI Act on 7.5.2008 which was not liked by the Lok Sabha Secretariat administration and the administration issued a memorandum dated 27.5.2008 seeking the petitioner''s explanation. Further aspects need not be mentioned as they are not the subject matter of the present petition.

2. For the purposes of the present petition the relevant date is 6.6.2008 when the petitioner made a request for voluntary retirement by giving a notice of three months i.e. seeking retirement with effect from 7.9.2008 in terms of Rule 48A of the CCS(Pension) Rules. This request for voluntary retirement was accepted by the respondent vide its notification dated 27.6.2008 and which was duly received by the petitioner. The petitioner was to retire from the forenoon of 7.9.2008. Petitioner vide his letter dated 11.7.2008 sought withdrawal of his request of voluntary retirement on the ground that his wife was not agreeable to the petitioner taking voluntary retirement. The respondents however refused vide its memorandum dated 5.9.2008 to accede to the request of the petitioner dated 11.7.2008 for withdrawing of the request made for voluntary retirement. The petitioner represented by his letter dated 6.9.2008 to the Speaker of the Lok Sabha to reconsider the memorandum dated 5.9.2008 rejecting the request of the petitioner to withdraw his letter dated 6.6.2008 seeking voluntary retirement. This was thereafter followed by another letter dated 9.9.2008. The representations of the petitioner were again rejected by the respondents vide their memorandum dated 20.11.2008 and the petitioner was retired from the service w.e.f. 7.9.2008.

3. On behalf of the petitioner it has been argued that it is settled law that a person can always withdraw his request for voluntary retirement before the specific cut-off date given whereby the voluntary retirement would become effective. Reliance is placed upon the judgments of the Supreme Court in the cases of 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, . On the basis of the judgment in the case of Balram Gupta (supra) it is argued that the petitioner was always entitled to withdraw his request for voluntary retirement on or before 6.9.2008 and which was done vide letter dated 11.7.2008. It is argued on the basis of Balram Gupta (supra) that the reason given of the wife not wanting the voluntary retirement of the petitioner is a justifiable reason seeking withdrawal of the request of voluntary retirement. The judgment in the case of Shambu Murari Sinha (supra) is cited for the proposition that even after the acceptance of the voluntary retirement request is communicated to the petitioner, yet, the request for voluntary retirement can always be withdrawn before the final cut-off date. J.N. Srivastava (supra) case also holds the same as the judgments in the cases of Balram Gupta (supra) and Shambu Murari Sinha (supra).

4. In view of the judgments cited on behalf of the petitioner it cannot be disputed

that the petitioner was always entitled to withdraw his request for voluntary retirement prior to the date of the voluntary retirement i.e. 6.9.2008. The petitioner had in fact sought withdrawal of his request for voluntary retirement vide his letter dated 11.7.2008, i.e. well before 6.9.2008. Therefore, the petitioner was justified in his request for withdrawal of the request for voluntary retirement and the respondents were bound to accept the request inasmuch as refusal of the wife to agree to the voluntary retirement is a good ground in view of the observations of the Supreme Court in Balram Gupta''s (supra) case which holds that pressure of friends and relatives to withdraw a request is a legitimate ground for withdrawing of a request for voluntary retirement.

5. However, the respondents argue that on one hand the petitioner kept on challenging the refusal of the respondents to prevent the petitioner from withdrawing his request of voluntary retirement, however, the petitioner in fact received all the terminal benefits on retiring on 7.9.2008, and which terminal benefits were credited in his bank account. The respondents relied upon the letter dated 15.10.2008 written by the petitioner to the respondents accepting the terminal benefits and therefore it is argued that the petitioner is estopped. The letter dated 15.10.2008 reads as under:-

No. GLA/SECY/2008

15th October 2008

To

The Additional Secretary (Admn)

[Shri R.C. Ahuja]

Lok Sabha Secretariat

Parliament House Annexe

New delhi 110001

Sir,

Thank you very much for expediting the payment of my long pending terminal benefits into my bank account. I am grateful to you for your fine gestures.

I take occasion to offer my apologies to all concerned for being harsh in requesting for the above payments, but until that time, you may appreciate that things were not moving.

Yours faithfully,

(R. KOTHANDARAMAN)

6. The respondents relied upon the judgments of the Supreme Court in the case of Bank of India and Others Vs. O.P. Swaranakar etc., as also the judgments of the Supreme Court in the cases of Punjab National Bank Vs. Virender Kumar Goel

and Others, and Bank of India and Others Vs. Pale Ram Dhania, . On the basis of para 130 point 1 of the judgment in the Bank of India vs. O.P. Swarnakar (supra) it is argued that once an employee such as the petitioner takes benefit 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. The other two judgments cited on behalf of the respondents hold similarly.

7. In my opinion, the contention which is raised on behalf of the respondents has to succeed inasmuch as the petitioner cannot blow hot and cold in the same breath. Petitioner 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.

8. On the query raised upon the petitioner as also his counsel who had argued the case on 2.1.2013 it could not be disputed that the petitioner has utilized the amounts which were credited in his account towards terminal benefits which are lumpsum benefits such as provident fund, gratuity and commutation of pay. The Supreme Court clearly in the judgments in the cases of Bank of India (Supra) and Punjab National Bank (supra) has held that once a person takes benefit of voluntary retirement, such person is estopped thereafter from challenging his voluntary retirement.

9. On behalf of the petitioner it was sought to be argued that the judgments in the cases of Bank of India (supra) and Punjab National Bank (supra) cited on behalf of the respondents cannot apply because those decisions pertain to a contractual voluntary retirement scheme whereas in the present case, the voluntary retirement is pursuant to a statutory provision being Rule 48A. Paragraphs 102 to 104 and 119 in Bank of India (supra) case are relied upon by the petitioner to argue that the Supreme Court in Bank of India (supra) case was not concerned with the statutory provision entitling voluntary retirement. In response, counsel for the respondents have relied upon paras 116 to 118 of the judgment in Bank of India (supra) case to argue that if a statutory Rule is made for personal benefit of a person, and there is no element of public interest involved, a right created under a statutory Rule can be waived on account of estoppel.

10. On behalf of the petitioner reliance is then placed upon the judgment of a learned Single Judge of the Andhra Pradesh High Court in the case of V. Vishnu Vardhan Reddy Vs. Andhra Bank (A Govt. of India Undertaking) Personnal Department and The General Manager, Andhra Bank, Personnal Department, , to argue that once there is an entitlement of withdrawal from voluntary retirement, then petitioner has to continue in service and that Court can direct for refund of the dues taken by an employee pursuant to the voluntary retirement.

11. In my opinion, the respondents must succeed on the principle of estoppel

inasmuch as it makes no difference whether the retirement is pursuant to a contractual voluntary scheme or pursuant to a statutory Rule inasmuch as if Rule 48A is statutory, the provision of Section 115 of the Evidence Act which deals with the principle of estoppel is also a statutory provision. The principle of estoppel is based on the ground of equity that no one can take advantage of a fact and thereafter turn around to say that the situation should be reversed. Equity does not permit such an action of blowing hot and cold by a person. In the present case, since entitlement pursuant to Rule 48A of seeking voluntary retirement is personal to the petitioner there is no element of public policy involved and therefore the petitioner was entitled to waive the rights under Rule 48A of seeking the withdrawal of his request of voluntary retirement by accepting and utilizing the terminal lumpsum benefits given pursuant to the retirement. I am unable to agree with the judgment in the case of Vishnu Vardhan Reddy (supra) of Andhra Pradesh High Court inasmuch as the cited judgment does not refer to judgments in the case of Punjab National Bank and Pale Ram Dhania (supra) wherein the issue of estoppel has squarely been dealt with. In para 11 of the Punjab National Bank''s case it has been held that on taking benefits pursuant to a voluntary retirement a person is estopped from withdrawing from the voluntary retirement. Paras 10 and 11 of the judgment in the case of Punjab National Bank (supra) are relevant and they read as under:-

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 he appeal arising out of the judgment and order of the Uttaranchal High Court is dismissed and the judgment of the High Court is upheld.

(underlining added)

12. In Pale Ram Dhania''s (supra) case, the Supreme Court has observed as under:-

1. It is not disputed that the appellant Bank introduced a Voluntary Retirement

Scheme, 2000 (herein referred to as "the Scheme") for its employees which had the approval of its Board of Directors. The Scheme was operative w.e.f. November 15, 2000 to December 14, 2000 for the employees who sought voluntary retirement. It is not disputed that the respondent herein who was an employee of the appellant Bank sought voluntary retirement under the Scheme on November 30, 2000. It is also not disputed that on December 2, 2000 he wrote to the Bank for withdrawal of his application for voluntary retirement. On January 22, 2001, the appellant Bank accepted the request for voluntary retirement of the respondent. Further, on January 25, 2001, the respondent withdrew the retiral benefits deposited in the Bank in his name as per voluntary retirement. It appears that the respondent changed his mind after the respondent was relieved from the employment and he filed a petition under Article 226 of the Constitution challenging the acceptance of his request for voluntary retirement. A learned Single Judge of the High Court allowed the petition and set aside the acceptance of the application for voluntary retirement submitted by the respondent. Aggrieved, the appellants preferred a letters patent appeal which was dismissed. It is against the said judgment, the appellants are in appeal before us.

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 retiral 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 retiral 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.

C.A. Nos. 4099, 4100 of 2002 and 8833 of 2003

4. In view of the above order passed in C.A. No. 4098 of 2002, these appeals are also allowed. The orders and judgments under challenge are set aside. There shall be no order as to costs.

(underlining added)

13. In view of the aforesaid discussion, I hold that though the petitioner had validly revoked his request for voluntary retirement and which withdrawal was valid in view of the judgments of the Supreme Court in the case of Balram Gupta (supra), Shambu Murari Sinha (supra) and J.N. Srivastava (supra) cited on behalf of the petitioner, however the petitioner is estopped in view of the sub para 1 of para 130 of the judgment in Bank of India''s (supra) case and paras 10 and 11 of the judgment in Punjab National Bank''s (supra) case and Pale Ram Dhania''s case to withdraw from his request seeking voluntary retirement. At the cost of repetition it is necessary to be stated that the petitioner does not dispute the fact

that the lumpsum amounts credited in his bank account including towards provident fund, gratuity and commutation of pay have been withdrawn and utilized by the petitioner. If the petitioner had only utilized the amounts credited in his account for withdrawing monthly salary which was due to the petitioner from time to time then in such a case possibly it could have been argued that the principle of estoppel cannot apply, however, in the present case the issue is not of withdrawal of amounts every month (whether as pension or as salary) but the issue is of utilizing and taking benefit of lumpsum amounts which were deposited in the account of the petitioner on account of provident fund, gratuity and commutation of pay. In view of the above, I do not find any merit in the petition which is accordingly dismissed leaving the parties to bear their own costs.