(2008) 11 MAD CK 0057

In the Madras High Court

Case No : Writ Petition No. 4826 of 2004

R. Uma APPELLANT

Vs

Bank of India RESPONDENT

Date of Decision : 20-11-2008

Acts Referred:

Citation : (2008) 11 MAD CK 0057

Hon'ble Judges : R. Banumathi, J

Bench : Single Bench

Advocate : V. Ayyadurai, for T. Tirounavoccarassou, for the Appellant; N. Balasubramanian, for R1 to R4, for the Respondent

Final Decision : Allowed

Judgement

R. Banumathi, J.—Petitioner seeks writ of certiorarified mandamus to quash the order dated 13.01.2001, issued by the 4th Respondent.

2. Facts are not in dispute. The writ petitioner joined services in the Respondent Bank on 20.03.1985, as clerk and she has completed 15 years

and 8 months of service as on 01.11.2000. During 2000 Respondent Bank introduced Voluntary Retirement Scheme (VRS). The Petitioner opted

for Voulntary Retirement Scheme by her letter dated 30.11.2000. While Petitioner''s application for VRS was under consideration, Petitioner sent

another letter dated 14.12.2000, to the Zonal Manager, Southern Zone seeking permission for withdrawal of her letter opting for VRS. Instead of

considering the Petitioner request for withdrawal, respondent Bank has accepted Petitioner''s letter of application for VRS and Petitioner was

relieved from Bank service at the close of the day 13.01.2001.

3. Referring to Hon''ble Supreme Court judgment in Bank of India and Others Vs.

O.P. Swaranakar etc., the Petitioner has filed the writ petition

stating that VRS scheme is only an invitation to offer and the application filed by the employee was only an offer which could be withdrawn before

it was accepted and the Petitioner seeks to quash the order of Respondent Bank relieving her from duty on 13.01.2001.

4. Opposing the writ petition, Respondents have filed counter stating that Competent Authority has accepted the VRS application submitted by the

Petitioner and the Petitioner was relieved from service at the close of working hours on 13.01.2001. Petitioner''s terminal benefits along with the

ex-gratia amount under VRS scheme was also credited to her account and the same was adjusted against her outstanding loan accounts and after

so receiving the benefits the Petitioner cannot withdraw her VRS application.

5. Challenging the impugned order, the learned Counsel for Petitioner Mr. v. Ayyadurai, contended that the Bank has informed the Petitioner that

her request for withdrawal of Voluntary Retirement was under consideration and while so it was not open to the Bank to contend that the

Petitioner''s request for withdrawal was beyond time. It was further submitted that it is not as if the Petitioner has re-agitated the matter only in the

year 2003 but the Petitioner has been requesting the Respondent Bank to rejoin duty right even from 2001.

6. Drawing court''s attention to typed set of papers, learned Counsel would further submit that the amount credited to the Petitioner account was

not paid to her and was only adjusted towards the loan availed by the Petitioner and the balance amount was not withdrawn by the Petitioner.

7. Placing reliance upon Bank of India and Others Vs. O.P. Swaranakar etc., , learned Counsel for the Bank, Mr. N. Balasubramanian,

contended that when Petitioner has accepted exgratia payment and appropriated benefits she estopped from seeking withdrawal. It was further

submitted that if Petitioner is allowed to rejoin it would frustrate the whole purpose of introducing Voluntary Retirement Scheme. It was further

argued that Petitioner was quite aware of what she was doing and that she received the claims and having received the benefits, the Petitioner

could have no pre-emptive right for re appointment.

8. Having regard to submissions the following two points arise for consideration.

(i) Having given application exercising option under Voluntary Retirement

Scheme can Petitioner withdraw her offer to go on Voluntary

Retirement.

(ii) Not with standing letter of withdrawal and the application whether Respondent Bank was right in relieving the Petitioner are the points falling for

consideration.

9. It is not in dispute that Competent Authority had accepted the Voluntary Retirement Scheme application submitted by the Petitioner and she

was relieved from Bank service on 13.01.2001. It is stated that Petitioner''s terminal benefits along with ex-gratia amount under VRS scheme was

credited to her account and the same was adjusted towards her outstanding loan amounts. On 31.01.2003, the Petitioner is said to have

addressed the Chairman and Managing Director of the Bank requesting for permission to rejoin the services of the Bank.

10. Drawing Court''s attention to the statement of bank account of the Petitioner, learned Counsel for the Respondent Bank contended that ex-

gratia payment was accepted and having received the amount and appropriated the amount without any protest, the Petitioner is estopped from

seeking to withdraw her VRS application. It was further argued when amount was paid there was complete cessation of the jural relationship

between the employer and the employee. In support of his contention the learned Counsel for the Respondent Bank placed reliance upon A.K.

Bindal and Another Vs. Union of India (UOI) and Others, Observing that when employee option for VRS is accepted and amount also paid, the

employee ceases to be under the employment of the company, in the said decision the Hon''ble Supreme Court has held as under:

A considerable amount is to be paid to an employee ex gratia besides the terminal benefits in case he opts for voluntary retirement under the

Scheme and his option is accepted. The amount is paid not for doing any work or rendering any service. It is paid in lieu of the employee himself

leaving the services of the company or the industrial establishment and foregoing all his claims or rights in the same. It is a package deal of give and

take. That is why in the business world it is known as ""golden handshake"". The main purpose of paying this amount is to bring about a complete

cessation of the jural relationship between the employer and the employee. After the amount is paid and the employee ceases to be under the employment of the company or the undertaking, he leaves with all his rights and there is no question of his again agitating for any kind of his past

rights with his erstwhile employer including making any claim with regard to enhancement of pay scale for an earlier period. If the employee is still

permitted to raise a grievance regarding enhancement of pay scale from a retrospective date, even after he has opted for Voluntary Retirement

Scheme and has accepted the amount paid to him, the whole purpose of introducing the Scheme would be totally frustrated.

11. Laying emphasis upon the above decision and pointing out that all the amount was credited to Petitioner''s account and that she was benefited

by the scheme it was contended the Petitioner cannot resile from earlier option to go on VRS. Learned Counsel had also drawn court''s attention

to Petitioner''s letter to the Bank requesting to make payment of her gratuity and provident fund to her account.

12. There is no denying that Petitioner had opted for VRS by letter dated 30.11.2000. The scheme was in force from 15.11.2000 to 14.12.2000

the Petitioner had given application on 14.12.2000, requesting to withdraw her Voluntary Retirement. As rightly submitted by the learned Counsel

for the Petitioner, the Petitioner had not withdrawn any amount, but the entire amount was adjusted towards various loans availed by the Petitioner.

Therefore it cannot be said that crediting of the amount and adjusting of the same towards Petitioner''s loan accounts would affect Petitioner''s right

to withdraw her earlier application of VRS.

13. As held in Bank of India and Others Vs. O.P. Swaranakar etc., , the option for VRS was only an offer by the employee and the offer could be

withdrawn and such an action by the employee is permissible.

14. In J.N. Srivastava Vs. Union of India (UOI) and Another, , it was held that it is now well settled that even if the voluntary retirement notice is

moved by an employee and gets accepted by the Authority within the time fixed, before the date of retirement is reached, the employee has locus

poenitentiae to withdraw the proposal for voluntary retirement.

15. So long the Petitioner''s application for VRS was not accepted withdrawal of offer would be justified. Referring to Power Finance Corporation

Ltd. Vs. Pramod Kumar Bhatia, and other decisions in Swarnakar''s case in paragraph 113 of the case the Hon''ble Supreme Court has held as under:

The Scheme was in force for a fixed period. A decision by the authority was required to be taken and till a decision was taken, the jural

relationship of employer and employee continued and the employees concerned would have been entitled to payment of all salaries and allowances

etc. Thus it cannot be said to be a case where the offer was given in but the same would be prospective in nature keeping in view of the fact that it

was come into force at a later date and that too subject to acceptance thereof by the employer.

16. Food Corporation of India and Others Vs. Ramesh Kumar, , observing that if the incumbent revokes his offer before the Corporation accepts

it then it that case the revocation of the offer is complete and the Corporation cannot act upon that offer. On such VRS and referring to

Swarnakar''s case Hon''ble Supreme Court has held as follows:

Now adverting to the present Scheme of Food Corporation, Para 8 clearly stipulates that the incumbent has no right to revoke the same and the

Management will decide the same within three months. That means the Management still has three months'' time to consider and decide whether to

act upon the offer given by the incumbent or not. But if the incumbent revokes his offer before the Corporation accepts it then in that case, the

revocation of the offer is complete and the Corporation cannot act upon that offer. In the present case there is one more additional factor which is

that the Management has to take a decision within three months. Therefore, once the revocation is made by the incumbent before three months

then in that case the Corporation cannot act upon the offer of voluntary retirement unless it is accepted prior to its withdrawal. In the present case,

it is clear that the incumbent had given an offer for voluntary retirement on 13-9-2004 and he revoked his offer on 27-9-2004 but the same was

accepted on 9-11-2004 i.e. after the revocation of his offer. In view of the law laid down by this Court in State Bank of Patiala (supra) the

incumbent has already revoked his offer before it could be accepted.

17. In the present case Petitioner had given application exercising her option for VRS on 30.11.2000. On 14.12.2000 (on the last day of scheme)

Petitioner had given the application revoking her offer. By the letter dated 30.12.2000, Respondent Bank informed the Petitioner that her request for withdrawing the application seeking VRS has been referred to Head Office and the decision is awaited. On 13.01.2001, Petitioner was

relieved from duty. Before her application seeking VRS was accepted, the Petitioner has given her application on 14.12.2000 revoking the offer.

As rightly contended by the learned Counsel for the Petitioner, the Bank ought to have considered the request of the Petitioner seeking for

withdrawal of her earlier application of seeking VRS.

18. As pointed out earlier, the scheme was Bank VRS Scheme 2000 effective from 15.11.2000 to 14.12.2000. Learned Counsel for the

Respondent contended that scheme was in operation for one month from 15.11.2000 to 14.12.2000 and to avail the benefit valid application in

proper form should be submitted for VRS before the last date i.e., 13.12.2000. It was further submitted that the Petitioner had sent her withdrawal

application only on 14.12.2000 and the Petitioner should have filed the application for withdrawal on or before 13.12.2000 and on that score the

application for withdrawal was rightly rejected.

19. The above contention does not merit acceptance. As per Clause 2(1) the scheme will be effective from 15.11.2000 and will be in operation

for a period of one month i.e upto 14.12.2000. The expression employed ""Upto 14.12.2000"". The scheme was effective even on 14.12.2000 and

the Respondent Bank is not right in contending that any application for withdrawal of VRS should have been submitted on or before 13.12.2000.

20. When the Petitioner had revoked her offer by her application dated 14.12.2000 seeking to with draw her earlier application exercising her

option for VRS the Bank was not justified in relieving the Petitioner on 13.01.2001.

21. Applying the ratio of the decisions of the Supreme Court in Swarnakar''s case and Food Corporation of India case the impugned orders are

liable to be set aside. Next point falling for consideration what is the consequential order to be passed. Terminal amount payable on VRS has been

credited to the account of the Petitioner and the same has been adjusted towards various loans such as Housing loan, Asiana loan, Share

certificate, Consumer loan, Personal loan and MIC. When the Petitioner is to be reinstated, she has to pay back all the amount credited to her

account and adjusted towards her loan accounts. The Petitioner has to pay back the amount to the Respondent Bank with interest at the rate of

6% p.a.

23. The Petitioner was relieved from 13.01.2001. But she has requested the Bank to reinstate her only in 2003 and writ petition was filed in 2004.

Since there is delay in filing the writ petition and having regard to the facts and circumstance of the case the Petitioner is not entitled to back wages.

24. The impugned order is set aside and this writ petition is allowed. Respondent Bank is directed to reinstate the Petitioner within a period of eight

weeks from the date of receipt of a copy of this order.

ï¿½ Petitioner is directed to pay back the amount credited to her account and adjusted towards the loan accounts with interest at the rate of 6%

p.a.

ï¿½ Petitioner shall pay back the amount to the bank within a period of two weeks. On such payment, bank shall reinstate the Petitioner within the

time indicated above.

ï¿½ Balance amount payable to the bank shall be payable by the Petitioner in instalments at Rs. 1,00,000/- every month on or before 7th of every

succeeding month.

ï¿½ In case if the Petitioner does not comply with the above direction in repaying the amount within the stipulated time the amount shall be payable

at the rate of 12% p.a.

