(2004) 06 MP CK 0011

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1049 of 2002

Rameshchandra Malviya APPELLANT

Vs

Allahabad Bank and Others RESPONDENT

Date of Decision : 29-06-2004

Acts Referred:

Citation : (2005) 104 FLR 1052 : (2004) 4 MPHT 231

Hon'ble Judges : S.K. Seth, J

Bench : Single Bench

Advocate : D.M. Kulkarni, for the Appellant; A.K. Sethi, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Seth, J.—This writ petition is directed against the order/communication dated 31-5-2001 issued by the respondents bidding aideu to the petitioner by accepting the golden hand shake under the Voluntary Retirement Scheme floated by the respondents on 28-10-2000.

2. Petitioner was working on the post of Assistant Manager with the respondents. On 23-12-2000, he applied for voluntary retirement under the Scheme. Petitioner, however, changed his mind and sought withdrawal of the application for voluntary retirement on 31-1-2001. By the order dated 16-4-2001, petitioner was granted voluntary retirement as it was accepted by the Competent Authority. It was further mentioned in the order that the petitioner shall stand relieved from the Bank''s services at the close of office-hours on 31-5-2001. Consequently, by the impugned communication, petitioner stood relieved w.e.f. 31-5-2001.

3. Learned Counsel for petitioner placing heavy reliance on the decision of Supreme Court in Bank of India v. O.P. Swarnakar, reported in AIR 2003 SCW 313, submitted that the petitioner had not opted for pension and as a result, he is not getting any pension. Petitioner is surviving on the interest generated by the amount received under the V.R.S. which have been kept in various F.D.Rs. Learned Counsel for petitioner submitted that amounts payable under the

Voluntary Retirement Scheme were not paid forthwith, but are spread over to longer span of time. He further submitted that one payment was received by the petitioner under protest during the pendency of the writ petition. Thus, according to the learned Counsel for petitioner, petitioner has not utilised any amount received by him under the Voluntary Retirement Scheme. So far as the deduction of loan amount and the Income Tax is concerned, according to the learned Counsel for petitioner, is an unilateral act on the part of the respondents which can not prevent the petitioner to press his application for withdrawal of V.R.S. now.

4. On the other hand, Shri A.K. Sethi, learned Counsel for respondents resisted the relief claimed by the petitioner. The stand taken by the respondents in the return is that the petitioner got the voluntary retirement on 16-4-2001 and it was clearly mentioned in the order that the petitioner would stand relieved at the close of office-hours on 31 -5-2001, Thus, according to the learned Counsel for respondents, the writ petition which was filed in the month of June, 2002 suffers from unexplained delay and latches and deserves to be dismissed on this ground alone. The next submission of the learned Counsel for the respondents is that after having accepted the amount under the V.R.S., petitioner has withdrawn the amount and has kept the amount in the F.D.Rs. This goes to show that the petitioner has already utilised the amount. Learned Counsel for respondents further submitted that all the amounts have been received by the petitioner without any protest except the payment which was made to the petitioner on 3-12-2002 which was received by the petitioner under protest. Learned Counsel for respondents further submitted that once the petitioner has withdrawn the amount and has kept the same in the F.D.Rs., petitioner is estopped from claiming that he be permitted to withdraw the application for voluntary retirement. Learned Counsel for respondents drew attention to the observation contained in Paragraph 115 of decision in O.P. Swarnakar''s case (supra), wherein it has been said :-

"115. The scheme is contractual in nature. The contractual right derived by the concerned employees, therefore, could be waived. The employees concerned having accepted a part of the benefit could not be permitted to approbate and reprobate nor can they be permitted to resile from their earlier stand."

Learned Counsel for respondents further submitted that under the scheme as applicable to Allahabad Bank, no provision was made for withdrawal of the application for voluntary retirement. Discretion was given to the Management whether to accept or to reject applications for voluntary retirement. Rejection required only recording of reasons by the competent authority.

5. After having heard learned Counsel for the parties at length, I find no merit and substance in the writ petition. It is undisputed that the petitioner has received various amounts as payable under the Voluntary Retirement Scheme and utilised them by putting the same in F.D.Rs. Petitioner can not be permitted to withdraw application for V.R. on the ground that he is not getting any pension

in as much as petitioner has to thank himself as he opted for voluntary retirement without pension. Nobody forced the petitioner to take this option. Once having taken the benefit of V.R.S., petitioner can not be permitted to resile from his contractual part. Recently, in the matter of Punjab & Sind Bank and Anr. v. S. Ranveer Singh Bawa and Anr. (AIR 2004 SCW 2730), after noticing the earlier decision in the case of O.P. Swarnakar (supra), Supreme Court has held that making long term investments and paying off loans from the amount payable under the Voluntary Retirement Scheme, clearly indicates that the employee has appropriated the amounts for his own benefit. Thus, he can not be permitted to resile from the Scheme. The ratio of the decision in the Punjab & Sind Bank is squarely applicable to the facts of the case in hand. In the present case also, petitioner allowed the Management Bank to transfer the amount payable under the V.R.S. without any protest. Soon after the transfer, petitioner had withdrawn the amount and made long-term investments. Thus, the petitioner can not be permitted to resile from the Scheme. Moreover, there is another reason in as much as Scheme did not allow the petitioner to withdraw the application for voluntary retirement.

6. In view of the foregoing discussion, I find no merit and substance in the writ petition. The same is accordingly dismissed, however, without any order as to costs.

