(2013) 09 KL CK 0025

In the High Court Of Kerala

Case No : W.A. No. 1336 of 2013

Ravikumar APPELLANT

Vs

United India Insurance Co. Ltd. RESPONDENT

Date of Decision : 05-09-2013

Acts Referred:

General Insurance (Rationalisation of Pay Scales and Other Conditions of Service of Development Staff) Scheme, 1976 — Paragraph 15C

Citation : (2013) 4 KHC 214 : (2013) 4 KLT 292

Hon'ble Judges : Manjula Chellur, C.J;K. Vinod Chandran, J

Bench : Division Bench

Advocate : K. Gopalakrishna Kurup and R. Bindu Sasthamangalam, for the Appellant; S. Arunraj and P. Parameswaran Nair, Asst. Solicitor General of India, for the Respondent

Final Decision : Dismissed

Judgement

Dr. Manjula Chellur, C.J.—Heard learned Senior Counsel Sri. K. Gopalakrishna Kurup as well as the Standing Counsel for the respondents. It is not in dispute that the appellant writ petitioner was working as Administrative Officer (Marketing) in United India Insurance Company Limited, Kollam branch. In the year 2003 a new scheme was brought, vide Ext.P1, by way of amendment General Insurance (Rationalisation of Pay Scales and Other Conditions of Service of Development Staff) Scheme, 1976. As per this Scheme there were options that could be exercised. Two options which are at paragraph 15C reads as under: -

15C. Special Option:--(1) A Development Officer may, within sixty days of the commencement of the General Insurance (Rationalisation of Pay Scales and Other Conditions of Service of Development Staff) Amendment Scheme, 2003, opt-

(a) for Special Voluntary Retirement Package as per Annexure-I appended hereto; or

(b) to render his services as Development Officer (Administration) under Paragraph 21 A, as per Annexure II.

(2) A Development Officer, who does not exercise any of the options under subparagraph (1) within the stipulated period of sixty days, shall continue to render services as such under the General Insurance (Rationalisation of Pay Scales and Other Conditions of Service of Development Staff) Amendment Scheme, 2003.

2. Reading of the above conditions would indicate, if a Development Officer who did not desire to exercise any of the options under sub-section (1) within the stipulated period of 60 days, he/she shall continue to render services as such under the General Insurance (Rationalisation of Pay Scales and Other Conditions of Service of Development Staff) Amendment Scheme, 2003.

3. It is not in dispute that initially on 27.2.2003 appellant exercised option for the post of Development Officer (Administration) in the company and again by letter dated 12.3.2003, he withdrew the said option. However, before 20.3.2003, extended last date for exercising option, no orders came to be passed accepting his option; but his withdrawal of option dated 12.03.2003 was rejected on 16.4.2003 followed by another letter dated 22.5.2003.

4. According to the appellant, number of Writ Petitions were filed in different States questioning the very implementation of the Scheme as amended in 2003 and ultimately Supreme Court withdrew all such Writ Petitions and posted them before the Apex Court, but were decided only in the year 2008, dismissing the Writ Petitions opining that such a Scheme was valid. He approached the Court only after finalisation of the litigation in the Apex Court in 2008. Therefore, the rejection of the withdrawal of exercising option under Ext.P6 deserves to be quashed.

5. The learned Single Judge, after referring to various documents viz., Ext.P 1 Scheme, Ext. R1 (a), form of option for voluntary retirement, Ext.R1 (b) form of option for rendering services as Development Officer (Administration) etc., proceeded to opine that there was no impediment for the employer to take a policy decision in the matter. According to the learned Single Judge, unless Scheme provides for an opportunity to give a re-option or to withdraw from the option, one cannot read into the Scheme, such right being reserved to the employee. Therefore, the learned Single Judge proceeded to dismiss the Writ Petition.

6. Aggrieved by the same, the present appeal is filed challenging the judgment of the learned Single Judge that when the scheme itself was under challenge before various courts and ultimately posted before Supreme Court, till a decision was taken one way or the other, there was no occasion for the appellant to approach the Court, therefore, there was no justification in the rejection of the Writ Petition on the ground of inordinate delay.

7. Placing reliance on the decision New India Assurance Co. Ltd. Vs. Raghuvir Singh Narang and Another, learned Senior Counsel draws our attention to Paragraphs 23 and 24 to contend that as indicated in the above judgment where voluntary retirement was the subject matter, the principle laid down by the Apex Court aptly applies to the facts of the present case, therefore, the withdrawal ought to have been accepted because till a communication was sent to the appellant that his option was accepted, he had a right to withdraw. In other words, according to the learned Senior Counsel appearing for the appellant, in the absence of any provision prohibiting withdrawal of the option already exercised, till last date provided forgiving option, the employee had a right to withdraw the option exercised and therefore, the facts of the present case are on the lines of the case referred to in the above judgment.

8. The glaring difference between the facts of the two cases is, the case before the Apex Court was a case pertaining to voluntary retirement submitted by the employee to be accepted by the employer. But in the present case, no question of employee taking voluntary retirement from the post exists. It was only a change from marketing to administration and then again asking from administration to Marketing as a Development Officer. In the case of the voluntary retirement, as held by the Apex Court, option for voluntary retirement offered by the employee by a specific clause in the Scheme, is not entitled to be withdrawn, Paragraphs 10 and 11 of the judgment are relevant which read as under:--

10. It is true that the principles of contract law relating to offer and acceptance enable the person making the offer to withdraw the offer any time before its acceptance; and that any subsequent acceptance of the offer by the offeree, after such withdrawal, will not result in a binding contract. Where the voluntary retirement is governed by a contractual scheme, as contrasted from a statutory scheme, the said principle of contract will apply and consequently the letter of voluntary retirement will be considered as an offer by the employee and therefore any time before its acceptance, the employee could withdraw the offer. But the said general principle of contract will be inapplicable where the voluntary retirement is under a statutory scheme which categorically bars the employee from withdrawing the option once exercised. The terms of the statutory scheme will prevail over the general principles of contract. This distinction has been recognised by a series of decisions of this Court. We may refer to a few of them.

11. In Union of India (UOI) and Others Vs. Gopal Chandra Misra and Others, a Constitution Bench of this Court held:

50. It will bear repetition that the general principle is that in the absence of a legal, contractual or constitutional bar, a ''prospective'' resignation can be withdrawn at any time before it becomes effective, and it becomes effective when it operates to terminate the employment or the office tenure of the resign or.... In the case of a government servant/or functionary who cannot, under the conditions of his service/or office, by his own unilateral act of tendering

resignation, give up his service/or office, normally, the tender of resignation becomes effective and his service/or office tenure terminated, when it is accepted by the competent authority.

(emphasis supplied)

9. Reading of Paragraphs 10 and 11 convinces us that facts before the Apex Court were entirely different from the facts of the present case.

10. It is pertinent to mention that in New India Assurance Co. Ltd. Vs. Raghuvir Singh Narang and Another, the very same Scheme was under consideration of the Supreme Court. However, the issue was only whether the employees therein who had exercised an option under Voluntary Retirement Scheme can withdraw it before acceptance. The employees before the Supreme Court relied on the principles of contract law relating to offer and acceptance and contended that before acceptance they were entitled to withdraw the option. The Supreme Court however negatived the contention on the finding that the Scheme was statutory and in the teeth of a specific prohibition from withdrawal provided in the Scheme, the principles of contract law would not be applicable.

11. The learned Senior Counsel draws a corollary in so far as there is no prohibition from withdrawal with respect to the option exercised by the appellant herein. However, we specifically notice Clause (2) of Paragraph 15C of the Scheme which provides for continuance of a Development Officer in the Marketing Wing if no option has been exercised. Hence it is to be presumed that under the Scheme the minute an option is exercised the option becomes effective and if not the retention of the officer in the Marketing Wing is the automatic consequence. Even the extension of the date for exercising option does not come to the aid of the petitioner since the extension was only for exercise of option; which the appellant had already done, and not to withdraw an option already exercised. Therefore, the principle enunciated in the above case cannot be applied to the present case.

12. Even otherwise, the other ground that only after conclusion of the litigation finally before the Apex Court in 2008, he has right to approach the court, is also rejected for the reason that appellant never intended to challenge the Scheme itself. He exercised option in pursuance of the amended Scheme brought in 2003; but he wanted to withdraw the same, having exercised option to be shifted to Administration from Marketing he again wanted to come back to Marketing from Administration. Apparently no such concession was provided under the Scheme and after rejection in April and May 2003 he intended only to challenge the said rejection on these grounds. Disposal of the litigation in 2008 pertaining to validity of the Scheme will not extend the time for him to approach the court and it cannot be an explanation for the delay in approaching this court. In that view of the matter, we are of the opinion, none of the grounds raised by the appellant are sustainable so as to persuade us to differ from the opinion of the learned Single Judge.

Accordingly, appeal is dismissed.

