

(2022) 03 BOM CK 0102
In the Bombay High Court
Case No : Writ Petition No.1770 Of 2021

Sadiq Shafi Qureshi

APPELLANT

Vs

M.D. And C.E.O And Others

RESPONDENT

Date of Decision : 25-03-2022

Acts Referred:

Constitution Of India, 1950 — Article 226
Central Civil Services (Pension) Rules, 1972 — Rule 48(4)
Maharashtra Civil Services (Pension) Rules, 1982 — Section 66(5)
Corporation Bank (Employees?) Pension Regulations, 1995 — Regulation 29(4)

Citation : (2022) 03 BOM CK 0102

Hon'ble Judges : A.S.Chandurkar, J;G.A.Sanap, J

Bench : Division Bench

Advocate : S.S.Qureshi, C.S.Samudra

Final Decision : Dismissed

Judgement

A.S.Chandurkar, J

1. Rule. Rule made returnable forthwith and heard the petitioner in person and the learned counsel for the respondents.

2. The petitioner, who was serving as 'Assistant Manager' with the erstwhile Corporation Bank which has now merged with Union Bank of India (for short, the Bank), has challenged the communication dated 15.05.2020 issued to him by the Bank by virtue of which the petitioner has been informed that his services were relieved on 14.09.2017 under the Voluntary Retirement Scheme and in accordance with the Corporation Bank (Employees') Pension Regulations, 1995 (for short, the Pension Regulations, 1995). Consequently, the petitioner prays that his applications dated 13.09.2017 and 12.03.2020 be accepted and he be permitted to withdraw his notice of resignation/voluntary retirement. The petitioner further prays for his reinstatement in service with continuity and full back wages.

3. The petitioner who appeared in person submitted that while he was in service with the Corporation Bank he had taken various steps to intervene in contempt proceedings before the Hon'ble Supreme Court for recovery of dues against Mr. V.Mallya. While serving as 'Assistant Manager' at Pune Branch of the Corporation Bank he submitted an undated letter of resignation on 06.05.2017. However, he was informed by the Bank that his undated letter of resignation could not be accepted considering the form in which it was sent. The petitioner was informed that if he desired to resign from the service, he was free to submit his letter of resignation through proper channel. Thereafter on 22.05.2017 the petitioner again sought to resign from service. On 06.09.2017 the petitioner was informed by his employer that after considering his letter of resignation dated 22.05.2017 as well as subsequent letter dated 04.08.2017, the notice period of three months would expire on 21.08.2017. Since the petitioner had availed leave for the period of twenty four days from the date of submission of his request for voluntary resignation, his relieving date would be 14.09.2017. The request made by the petitioner for treating such relieving date as 04.11.2017 was not accepted by the Bank. Thereafter on 13.09.2017 the petitioner issued another communication requesting the Bank to consider his request of withdrawing the resignation/voluntary retirement application and not to relieve him from service. This letter was forwarded to the superior Authority of the Bank and on 20.09.2017 the petitioner was informed that an amount of Rs.1,73,516.44 was recoverable from him. In the meanwhile the petitioner was relieved from duties on 14.09.2017. Thereafter on 12.03.2020 the petitioner made yet another request to the Bank to permit him to withdraw the letter of resignation/voluntary retirement and reinstate him in service. The petitioner was informed by the communication dated 15.05.2020 that his request for withdrawing the voluntary retirement application could not be considered. It is in the aforesaid backdrop that the petitioner has filed the present writ petition seeking reinstatement with continuity in service.

4. After merger of the Corporation Bank with the Union Bank of India from 01.04.2020, reply has been filed by the respondents through its Senior Manager at the Regional Office. It has been stated therein that the petitioner sought to voluntarily resign from service and this request was considered in accordance with Clause 29 of the Pension Regulations, 1995. It was brought to notice of the petitioner on 13.08.2017 that though his letter dated 22.05.2017 mentioned that he was submitting his voluntary resignation under Clause 29 of the Pension Regulations, 1995, the said provision related to voluntary retirement and not resignation. The petitioner responded to the same on 04.08.2017 by confirming that he had applied for voluntary retirement under Clause 29 of the Pension Regulations, 1995 and that his application be considered accordingly. A confirmation letter in that regard was forwarded on the same date. The petitioner was then informed on 14.08.2017 by the Chief Manager of the Bank that his application seeking voluntary retirement had been accepted by the competent Authority and that he would be relieved from service on 21.08.2017 after

completion of necessary formalities. The petitioner therefore on 23.08.2017 issued a communication to the Bank stating therein that his relieving date be considered as 04.11.2017 being the notice period of 90 days from 04.08.2017 and not from 22.05.2017 as calculated. The Bank responded by its communication dated 06.09.2017 in which it was stated that since the date of the application for voluntary retirement was 22.05.2017 and as the petitioner had availed leave of 24 days after submission of that application, his relieving date would be 14.09.2017 and not 04.11.2017 as requested. According to the Bank, this request for voluntary retirement was reiterated on 06.08.2017 by the petitioner by stating that he be relieved after three months from that date. The petitioner was again informed that he would be relieved from service as informed earlier. The request for voluntary retirement was again reiterated on 10.08.2017 and it was clarified by the petitioner that he was seeking voluntary retirement and not voluntary resignation. This was clarified by the petitioner on 14.09.2017 while seeking commutation of his pension. Based on the aforesaid documentary material it is the case of the Bank that the petitioner voluntarily retired from service in accordance with Clause 29 of the Pension Regulations, 1995 with effect from 14.09.2017. It is then stated that there was no provision under the relevant Pension Regulations of the Corporation Bank permitting withdrawal of the notice of retirement and therefore such request as made by the petitioner could not be accepted.

5. We have heard the petitioner in person and we have also gone through the documents relied upon by him in the writ petition. We have also heard Shri C.S.Samudra, learned counsel for the respondents-Bank and we have gone through the written submissions filed on their behalf.

6. From the material on record three questions arise for determination, firstly whether the request for voluntary retirement as made by the petitioner on 23.08.2017 which was accepted by the Bank on 06.09.2017 by stating that voluntary retirement would come into effect on 14.09.2017 could have been withdrawn prior to that date despite its acceptance? If the answer to the aforesaid question is in the affirmative, the second question is as regards the effect of non-consideration of the petitioner's request for withdrawing the letter of voluntary retirement and lastly, whether the petitioner is entitled for the relief of reinstatement having accepted monetary benefits flowing from his voluntary retirement ?

7. Regulation 29 (4) of the Pension Regulations, 1995 reads as under :

"29 (4) An employee, who has elected to retire under this regulation and has given 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 such withdrawal shall be made before the intended date of his retirement."

Thus, an employee who has given notice to retire under the Regulation can withdraw such notice subject to approval of the Appointing Authority provided such request for withdrawal is made before the intended date of the retirement. It is an admitted position on record that the petitioner on 23.08.2017 had made a request for being granted permission for voluntary retirement from service by treating the effective date as 04.11.2017 and not 22.05.2017 when he had made his initial application. On 06.09.2017 the Bank accepted the proposal of the petitioner but stated that since the petitioner had availed leave of 24 days after submission of his proposal for voluntary retirement on 22.05.2017, his relieving date was to be 14.09.2017. It is not in dispute that on 13.09.2017 which was a day before the date when the petitioner was to voluntarily retire from service he made a request to withdraw his proposal for voluntary retirement. The intention expressed by the petitioner in this communication is clear that the petitioner wanted to withdraw his letter/notice/proposal of voluntary retirement. It is not in dispute that such communication was received by the Appointing Authority of the Bank.

8. As regards consideration of the request for withdrawing the notice of voluntary retirement given by the petitioner prior to the date on which he was to voluntarily retire from the service, the legal position in that regard is fairly well settled. In *Power Finance Corporation Limited vs. Promodkumar Bhatia* (1997) SCC 280 the Hon'ble Supreme Court has held in clear terms that as long as the employee is not relieved of his duties on acceptance of the offer of voluntary retirement or resignation, the jural relationship of employee and the employer does not come to an end. In *Shambhu Murari Sinha vs. Project and Development India Ltd. and another* (2002) 3 SCC 437 that was relied upon by the petitioner, this position has been reiterated by stating that even after acceptance of the application for voluntary retirement given by an employee, he continues to have locus poenitentiae to withdraw his notice for voluntary retirement. Similarly, in *J.N.Srivastava vs. Union of India and another* AIR 1999 SC 1571 this position has been accepted.

Considering the provisions of the Pension Regulations and especially Clause 29(4) thereof coupled with the legal position referred to hereinabove, it is held that it was open for the petitioner to make a request for withdrawing his notice of voluntary retirement prior to the intended date of retirement, notwithstanding the fact that such request was accepted by the Bank. The first question is answered accordingly.

9. The second question is as regards the effect of non-consideration of the petitioner's request made on 13.09.2017 for withdrawing the notice of voluntary retirement. The Bank has not disputed the fact that on 13.09.2017 the petitioner had made a request for withdrawing his notice of retirement dated 23.08.2017. After receiving such request, on the same day the Senior Manager of the Bank addressed a communication to the General Manager, Personal Administration Division, Head Office, Mangalore bringing to the notice of that Authority the

communication dated 13.09.2017 made by the petitioner. The stand of the Bank as regards the communication dated 13.09.2017 made by the petitioner was not made clear in its reply. Hence, by the order dated 13.01.2022 passed in the present proceedings, the Bank was directed to clarify its stand with regard to the petitioner's communication dated 13.09.2017 as well as the Bank's subsequent communication, which is also of the same date. Pursuant to the order dated 13.01.2022 the Bank has filed an additional affidavit dated 20.01.2022. It has been stated that the Bank did not give any specific reply to the letter of the petitioner dated 13.09.2017 as the Bank had already considered the petitioner's earlier letter dated 06.09.2017 and therefore found that the request for withdrawing the proposal for voluntary retirement was superfluous. The Appointing Authority however has failed to consider that request and has sought to rely upon its earlier reply dated 06.09.2017. By the communication dated 06.09.2017 the Bank merely intimated the intended date of retirement of the petitioner to be 14.09.2017. Thus, it is clear that the Bank has failed to consider the request made by the petitioner for withdrawing his notice of voluntary retirement before the intended date of retirement.

10. In this regard, useful reference can be made to the decision of the Hon'ble Supreme Court in *Balram Gupta vs. Union of India* AIR 1987 SC 2354.

While considering the validity of Rule 48(4) of the Central Civil Services (Pension) Rules, 1972 which is somewhat similar to Regulation 29(4) it was held that the approving authority must act reasonably and rationally while considering the request for withdrawing the notice of voluntary retirement. Approval is not the ipse dixit of the approving authority. This decision has been relied in *Arun Shankarrao Deshpande vs. District and Sessions Judge, Akola* 1993 Mh.L.J. 1642 where the validity of similarly worded Rule 66(5) of the Maharashtra Civil Services (Pension) Rules, 1982 was challenged. It has been held that the appointing authority is required to give good and valid reasons for not granting approval to the withdrawal of notice of retirement. It is thus clear that it is open for the Appointing Authority to refuse to grant approval to the withdrawal of the notice of voluntary retirement for valid and good reasons, the approval cannot be the ipse dixit of the Appointing Authority. In the present case, the Appointing Authority has failed to consider the request of the petitioner for withdrawing the notice of voluntary retirement though it was open for it to refuse such request for good and valid reasons. The petitioner cannot be prejudiced for the failure of the Appointing Authority to consider his request for withdrawing his notice of voluntary retirement. This aspect enures to the benefit of the petitioner and the second question is answered accordingly.

11. Since both the questions have been answered in affirmative, it would be necessary to consider whether the petitioner is entitled to succeed on the basis of undisputed facts on record. On 14.09.2017 the petitioner was relieved from service. On the same day he submitted an application for commutation of pension without medical examination to the General Manager, Corporation Bank.

The date of retirement stated therein was 14.09.2017 and class of pension was stated to be VRS (Voluntary Retirement Scheme). The fraction of pension proposed to be commuted was one third. The petitioner thereafter has been drawing pension of Rs.38,450/- per month. With regard to receiving the amount of gratuity from the Corporation Bank Employees Gratuity Funds, the petitioner was informed on 22.09.2017 that the amount of gratuity payable as per provisions of the Gratuity Act, 1972 (for short, the Act of 1972) was Rs.14,36,620.18. However, the maximum permissible amount payable was Rs.10,00,000/-(Rs.Ten lakhs). A demand draft for amount of Rs.10,00,000/- dated 21.09.2017 drawn in favour of the petitioner was accordingly forwarded for clearing. It appears that the Bank adjusted an amount of Rs.1,73,516.44 from the petitioner's gratuity proceeds on account of recoveries to be made from him. The petitioner being aggrieved approached the Controlling Authority of the Bank under the Act of 1972 making a grievance in that regard. This application was made to the Controlling Authority on 28.04.2018. On 07.01.2019 the Controlling Authority allowed that application and directed the Bank to pay the amount of Rs.1,73,516.44 to the petitioner within a period of 30 days. The Bank accordingly complied with the aforesaid order and credited the aforesaid amount to the petitioner's bank account. This was informed to the petitioner on 28.11.2019. With regard to the provident fund dues of the petitioner, a communication was issued by him on 18.08.2017 to the Bank to settle his provident fund account.

From the aforesaid, it is clear that the petitioner had sought commutation of his pension. The petitioner is presently receiving monthly pension of Rs.38,450/-. He has received gratuity amount of Rs.10,00,000/- and deduction of Rs.1,73,516.44 has been directed to be repaid to the petitioner and his provident fund dues are also sought to be settled. The present writ petition has been filed on 09.03.2021 and in the aforesaid factual backdrop, the entitlement of the petitioner to reliefs as prayed for would have to be considered.

12. In Punjab National Bank vs. Virenderkumar Goel (2004) 2 SCC 193 an employee of the bank had applied for voluntary retirement on 17.11.2000 under the scheme that was in operation from 01.11.2000 to 30.11.2000. On 27.11.2000 the employee submitted an application for withdrawal of his application dated 17.11.2000. The bank accepted the request of the employee after the period of the scheme had expired and on that date relieved the employee. Considering the aforesaid aspects, it was held that the employee was aware that certain amounts were deposited in his account towards part benefit under the Voluntary Retirement Scheme. Despite having knowledge that the request for voluntary retirement had been accepted after the scheme had expired, the employee had withdrawn the amounts deposited and had utilized the same. In that context, it was observed that the employee having accepted the benefit under the scheme by withdrawing the amounts deposited and utilizing the same, he would not be permitted to approbate and reprobate. In P.K.Krishnamurthy vs. The Commissioner of Sericulture and another (2014) 12 SCC 549 disciplinary proceedings were initiated against an employee on

18.01.2004. On 03.02.2004 the employee sought permission to retire from service from 01.05.2004. The employer on 04.03.2004 accepted the request of the employee. Before 01.05.2004 the employee on 15.04.2004 made a request to the employer to permit him to continue in service by revoking the order dated 04.03.2004. That application was rejected by the employer on 28.04.2004. Subsequently an order was passed on 29.07.2004 imposing punishment of 25% cut in the amount of pension on account of gross negligence. The employee filed an appeal challenging that order which was allowed on 03.04.2006. The prayer made by the employee seeking reinstatement was rejected. It was held that the employee having failed to challenge the order dated 28.04.2004 whereby his application seeking revocation of the permission to voluntarily retire from service was rejected. It was clear that the employee had taken a chance of moving an application seeking reinstatement in service after about two years. That request was not accepted.

13. The conduct of the petitioner in the present case is thus material and from the same it is clear that after being relieved from service on 14.09.2017 the petitioner has received various retirement benefits. He is also receiving regular monthly pension. Though the petitioner had engaged in some communications with the Bank thereafter, it is only on 09.03.2021 that the writ petition has been filed. Thus for a period of more than three years the petitioner has received and is receiving his retirement benefits despite which he has sought to challenge the non-consideration of his request to withdraw his application seeking permission to voluntarily retire from service. We find that the petitioner's conduct of receiving various service benefits from 14.09.2017 disentitle him to the relief of reinstatement with continuity of service as prayed by him. The petitioner cannot be permitted to take inconsistent positions at the same time, one by seeking to withdraw his notice of voluntary retirement before the intended date of such voluntary retirement and on the other hand continue to receive the retirement benefits. The third question is answered accordingly.

14. Hence for aforesaid reasons it is held that though the petitioner was entitled to withdraw his offer of voluntary retirement before the intended date of such voluntary retirement, accepting various retirement benefits for a period of more than three years disentitles him to grant of any relief under Article 226 of the Constitution of India. The writ petition is thus dismissed. Rule stands discharged with no order as to costs.