

(2012) 07 KL CK 0110
In the High Court Of Kerala
Case No : O.P. (CAT) No. 872 of 2012

Senior Head, Personnel and General Administration, V.S.S.C. and Others APPELLANT

Vs

Radhakrishnan, K. R. RESPONDENT

Date of Decision : 02-07-2012

Acts Referred:

Citation : (2012) 3 ILR (Ker) 309 : (2012) 3 KLJ 261

Hon'ble Judges : Thottathil B. Radhakrishnan, J;C.T. Ravikumar, J

Bench : Division Bench

Advocate : P. Parameswaran Nair ASG of India, for the Appellant; Vishnu S. Chempazhanthiyil, for the Respondent

Final Decision : Allowed

Judgement

Thottathil B. Radhakrishnan, J.—Union of India and others challenge the decision and resultant directions issued by the Central Administrative Tribunal on the respondent's plea that his request for withdrawal of notice given by him for retirement on completion of 20 years" of qualifying service ought to have been accepted by the establishment. Working as a Scientist/Engineer SG and holding the designation - Deputy General Manager, Inertial Systems Electronics Production, ISRO--Inertial System Unit, Vikram Sarabhai Space Centre, Thiruvananthapuram, the respondent submitted on 22-7-2010, a notice of his voluntary retirement with effect from 15-11-2010. The Department of Space in the Government of India conveyed to the ISRO & VSSC, on 9-9-2010, its approval for acceptance of that notice of voluntary retirement submitted by the respondent. That was received by the Senior Head, Personnel and General Administration, VSSC, Thiruvananthapuram, on 11-11-2010. On that day, i.e. 11-11-2010, the respondent submitted a letter to the Director, VSSC, stating that he proposes to withdraw his application opting for voluntary retirement. Annexure A-8 to Exhibit P-3 shows that on 11-11-2010 itself, the Director, VSSC, endorsed on that notice that since relieving order is already issued by the

Department the Space, it is not possible to consider the withdrawal notice now. It is evident from Annexure R-2 to Exhibit P-2 that respondent's withdrawal notice dated 11-11-2010 was sent up to the Department of Space, which, in turn, examined that request and informed the Director, VSSC, on 15-11-2010 that the withdrawal of respondent's notice of voluntary retirement has not been accepted by the Department. VSSC was thereby directed to take further necessary action to relieve the respondent of his duties with effect from 15-11-2010 FN. Consequentially, nonacceptance of the respondent's request for withdrawal of his voluntary retirement notice was intimated to him as per communication dated 3-12-2010. That was challenged by the respondent before the Tribunal. As per the impugned Exhibit P-5 order, the Tribunal allowed the respondent's original application and directed the establishment to pass suitable orders for his reinstatement and to treat the period of his absence as on duty with allowances. It is also ordered that the period shall also count for working out increment admissible to him.

2. Voluntary retirement on completion of twenty years" qualifying service, is governed by Rule 48A of the Central Civil Services (Pension) Rules, 1972, hereinafter, the "Rules", for short. Rule 48A, to the extent relevant, reads as follows:

48 A. Retirement on completion of 20 years" qualifying service.--(1) At any time after a Government servant has completed twenty years" qualifying service, he may, by giving notice of not less than three months in writing to the appointing authority, retire from service.

Provided that this sub-rule shall not apply to.....

(2) The notice of voluntary retirement given under sub-rule (1) shall require acceptance by the appointing authority:

Provided that where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period.

(3) * * * * *

(3A) * * * * *

(4) Government servant, who has elected to retire under this rule and has given the 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 withdrawal shall be made before the intended date of his retirement.

3. Impeaching the impugned order, it is argued on behalf of the establishment that the Tribunal acted contrary to law in passing it without appreciating the spirit of the rule that applies and without noting that no reason whatsoever was

shown by the respondent for the withdrawal of the notice of voluntary retirement, for the satisfaction/consideration of the competent authority. It is argued that the Tribunal erred in law in assuming that the reason for refusal of withdrawal is that contained in the endorsement made by the Director, VSSC, on the respondent's request for withdrawal of the notice of voluntary retirement. It is pointed out that the said endorsement contains only the Director's observations or recommendations while forwarding the respondent's representation to the competent authority, and that, the final decision on the request of the respondent seeking withdrawal of his notice of voluntary retirement was taken by the competent authority. It is also pointed out that the Tribunal erred in failing to appreciate the fact that the vacancy which arose consequent on the respondent's voluntary retirement has been filled up by the establishment, following due procedure. It is argued that the Tribunal exceeded its jurisdiction in issuing the impugned directions; much after the respondent's voluntary retirement took effect.

4. Per contra, the learned counsel for the respondent, also relying on a counter-affidavit filed to this original petition, argued that the request for withdrawal of notice of voluntary retirement cannot be mixed up with the establishment's communication for relieving the respondent on voluntary retirement and that it is trite law that in spite of the establishment accepting the notice of voluntary retirement, that notice could be withdrawn before the date notified by the Government Servant for his voluntary retirement. It is further argued that the endorsement made by the Director, VSSC, on the respondent's request for withdrawal is only to the effect that the request for withdrawal cannot be considered since the notice of voluntary retirement has been accepted by the competent authority. On such premise, it is argued that the said endorsement is of no consequence since the respondent's voluntary retirement would not taken effect before the date notified by him for voluntary retirement, in spite of the earlier acceptance of its notice by the competent authority and notwithstanding such acceptance, it would be open to the Government Servant to seek approval for his withdrawal of such notice, provided such request is made before the date opted by him for voluntary retirement. So much so, nothing in law prevented the acceptance of the respondent's request for approval to withdraw his notice for voluntary retirement, it is argued. Respondent's learned counsel further argued that on the facts and in the circumstances the case, no room for interference is made out since the only direction of the Tribunal is to reinstate the respondent to service and to let him serve the establishment after settling the accounts relatable to the amounts which have been disbursed to him on voluntary retirement, which amounts have been received by him without prejudice to the proceedings from which this original petition arises.

5. While it was pointedly argued on behalf of the establishment that there was no rhyme or reason stated by the respondent in his application for withdrawing the notice of voluntary retirement; making specific reference to the decision of the Apex Court in *Balram Gupta Vs. Union of India (UOI) and Anr*, it was argued on

behalf of the respondent that the Government Servant is at liberty to withdraw the notice of voluntary retirement at any time before the date on which the voluntary retirement was to take effect on the basis of the Government Servant's notice in that regard and that what is fundamental for consideration is as to the reason, if any, that the establishment has, to have refused the request of the Government Servant to withdraw his notice of voluntary retirement. It is of the substance of Rule 48A (4) that a Government Servant, who has elected to retire under that rule and has given the 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 withdrawal shall be made before the intended date of his retirement. Therefore, when a Government Servant who has given notice of voluntary retirement makes a request for withdrawal of that notice, before the intended date of his retirement, the appointing authority has to consider that request for withdrawal for specific approval. Since the request for withdrawal could be made before the intended date of retirement, the Government Servant concerned would be within his rights, if he were to do so within such time-limit, even if it were a case where the competent authority had accepted the notice of voluntary retirement in terms of sub-rule (2) of Rule 48A, well ahead of the date proposed in the Government Servant's notice of voluntary retirement. At the same time, the scope and ambit of the exercise to be carried out by the appointing authority on the request of the Government Servant concerned, for specific approval for withdrawal of the notice of voluntary retirement, enjoins on the authority to decide on the issue as to grant of such specific approval. That power is coupled with the duty to consider the request to withdraw the notice of voluntary retirement. What needs to be decided upon by the appointing authority on a request for withdrawal of a notice of voluntary-retirement is as to whether that authority has to approve that request of the Government Servant concerned. This, essentially, cannot be on the basis of any strait-jacket formula; but has to necessarily depend upon the facts of each case. The administrative exercise and decision making process in that realm require the application of mind on administrative exigencies and contingencies, institutional conveniences and priorities, as well as, the reason shown by the Government Servant in support of his request to withdraw the notice of voluntary retirement. While the preponderance of judicial opinion as well as the administrative instructions of the Union of India to its subordinate offices would advise that the establishment would normally grant approval unless there are reasons which dissuade it from doing so; that exercise cannot be carried out in the vacuum. Nor can it be assumed to be a matter of course. Even adopting the approach taken in Balram Gupta's case (*supra*), there has to be some reason which the Government Servant has stated in support of the request for approval of the authority, thereby paving way for the Government Servant to withdraw his notice of voluntary retirement. In our view, since the decision in that regard has to come from the competent authority, the Government Servant concerned has to explain the reason for the withdrawal of notice, to that authority. Various factors and priorities which may be relevant yardsticks in a

particular establishment or administration would lead the competent authority to come to the necessary conclusion and decision on any request by a Government Servant to withdraw the notice for voluntary retirement. There cannot be any hard and fast rule in this regard. If there were one, that would be destructive of the administrative authority of the establishment. That may tie down the appropriate authority and deter it from taking the legitimate decision, which it has to, in the best interest of the establishment concerned. The pointers indicated in Balram Gupta's case (supra) as to what may be the reasons on which the administration may refuse to grant approval to withdraw a notice of voluntary retirement, in our view, were not intended by their Lordships to be exhaustive, but are only illustrative; may be, facts-centric in re the instance of Shri Balram Gupta who, at the relevant time, was a Permanent Upper Division Clerk and Officiating Accountant in the Photo Division of the Ministry of Information Broadcasting. Are we to compel ISRO and an establishment under it, namely, VSSC, to apply the aforesaid yardstick in the case of the respondent, a Scientist/Engineer SG, at the relevant time, holding the designation - Deputy General Manager, Inertial Systems Electronics Production in the Inertial System Unit of the Vikram Sarabhai Space Centre? Following our query in that regard during the course of hearing, it is brought to our notice by the establishment, orally, that at the time of preferring the notice for voluntary retirement, the respondent, functioning in the aforesaid post, was involved in the Production and Quality Control of Inertial Systems and as the Deputy General Manager of the Unit, he was responsible to lead the Technical team in developing, assembling, quality assessment, testing and delivery of Flight Inertial Systems Hardware for ongoing Satellite Launch Vehicles and Spacecraft Projects. He was also a member in various Committees, namely, Review Committee, Quality Assessment Committee etc. In judicial review, we do not see any room for the Tribunal or for this Court to be persuaded to compel the establishment to reinstate the respondent as has been directed by the Tribunal. While we say so, we are reminded of the fact that the establishment had not stated any particular reason for not accepting the request of the respondent to withdraw the notice of voluntary retirement. At the same time, we find no reason for the Tribunal to have directed reinstatement of the respondent in spite of noticing that he had not given even a syllable of reason to the establishment in support of his request for approval to withdraw the notice of voluntary retirement. He stated nothing by way of reason for his decision to withdraw the notice of voluntary retirement. The single line that he wrote on 11-11-2010 (see Annexure A-8 in Exhibit P-3) is "I propose to withdraw my application opting for VRS submitted earlier dated 22nd of July 2010. Kindly approve". On this premise, we cannot compel the establishment, that too, ISRO, a sensitive establishment of critical and national importance, to speak out its reason for not accepting the aforesaid request or otherwise to readmit the respondent to duty. It would be too irrational to do so in judicial review. We also need to emphasize that it would not be in the interest of an establishment like ISRO to permit a person who has availed voluntary retirement and gone out of service, to come back to its establishment, a

sensitive zone in National interest, after being out of the establishment for quite some time. The priorities in the management of an establishment like ISRO have to be visualized. Doing so, we cannot but dissuade ourselves from coming to the rescue of the applicant. The different precedents referred to by the learned Tribunal in the impugned order do not lay down yardsticks to be treated as the only available and exclusive principles, as of law, to applied by all establishments to which the aforesaid Rules apply. On the facts and in the circumstances of the case in hand, the Tribunal erred in law in as much as it exceeded its jurisdiction in passing the impugned order. On such premise, it is also against the interest of the ISRO and an establishment under it - VSSC. The impugned order of the Tribunal is therefore liable to be set aside.

In the result, this original petition is allowed quashing the impugned Exhibit P-5 Order. No costs.