

(2010) 11 AP CK 0058
In the Andhra Pradesh High Court
Case No : Writ Petition No. 5340 of 2009

Shaik Moula Ali

APPELLANT

Vs

The Director SDSC (Satish Dhavan Space Centre) SHAR, Sri
Hari Kota Range and Others

RESPONDENT

Date of Decision : 08-11-2010

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 10(1), 48, 48(1), 48(2), 48A(4)

Citation : (2011) 1 ALD 813

Hon'ble Judges : Nooty Ramamohana Rao, J

Bench : Single Bench

Advocate : S.A.K. Mynuddin, for the Appellant; K. Rajitha, for the Respondent

Final Decision : Allowed

Judgement

Nooty Ramamohana Rao, J.—This writ petition has been instituted for declaring the action of the Respondents in not allowing the Petitioner to continue in service till he attains the normal age of superannuation, as illegal and arbitrary.

2. The writ Petitioner joined service as Technician-A in the Indian Space Research Organization (ISRO), at their SHAR Center, Nellore, on 11-03-1974 and subsequently, came to be promoted to various posts including the latest one, being Junior Engineer. While he was serving as a Junior Engineer, he tendered a notice on 29-10-2008, seeking to retire voluntarily from service in accordance with Rule 48(1) of the Central Civil Service (Pension) Rules, 1972 (henceforth referred to as "the CCS (Pension) Rules"). He proposed to retire after three months, i.e., on February 2nd 2009. In response thereto, an office Memorandum dated 14-11-2008, has been issued to him that the notice delivered by the writ Petitioner for voluntary retirement is under consideration of the competent authority and that the acceptance would be communicated in due course. It is further pointed out therein that his notice, intimating to retire voluntarily, will not be allowed to be withdrawn subsequently, unless it is specifically approved by the appointing authority. Ultimately on 27-01-2009, the request of the writ Petitioner

to retire voluntarily from service has been accepted by the competent authority and accordingly, it was proposed to relieve him on the forenoon of February 2nd 2009. The writ Petitioner was advised to submit the pension papers duly filled in. On 29-01-2009, the writ Petitioner submitted a representation seeking to withdraw the notice delivered by him for retiring on voluntary basis. Since, this representation of the writ Petitioner dated 29-01-2009 has been recommended and forwarded to the competent authority, the writ Petitioner has not been relieved on February 2nd 2009, but however, through relieving order dated February 10th 2009, he has been relieved of his duties. By a separate office order bearing the same date, the writ Petitioner was informed that in case he wishes to accept any commercial employment before the expiry of one-year period from the date of his retirement, he shall obtain the previous sanction of the Government, in accordance with Rule 10(1) of the CCS (Pension) Rules. On 19-02-2009, intimation has been sent to the Petitioner that a get-together is arranged at 15-30 hours on 27-02-2009 and he was requested to make it convenient to attend the function along with his spouse. On 27-02-2009 the writ Petitioner has submitted a representation stating that he had continued to attend to duties till 17-02-2009 and, therefore, he requested that he may be continued in service till he attained the age of superannuation in view of his representation dated 29-01-2009. Since, no action has been taken on his representation and he is not being continued in service, he instituted this writ petition.

3. On behalf of the Respondents, the Head, Personnel & General Administration, Satish Dhawan Space Center, SHAR (herein after called as "SDSC SHAR") filed a detailed counter affidavit. There is no dispute on the basic facts set out by the writ Petitioner, but however, it is brought out in Paragraph No. 6 that the competent authority has considered his request for withdrawing the notice of voluntary retirement and the same has not been approved to enable him to withdraw the notice of voluntary retirement and this decision of the competent authority has been communicated to the writ Petitioner through Memorandum No. SCF:PGA:Estt-IV:10618/8216, dated 10-02-2009. By an office order bearing the same file number, but however, bearing Proceedings No. 8217, the writ Petitioner is relieved of his duties. In view of the decision of the competent authority not permitting the writ Petitioner to withdraw his notice of voluntary retirement, the writ Petitioner is not entitled to be continued in service beyond 1.0-02-2009, is the stand of the Respondents.

4. Though the writ Petitioner has filed a reply affidavit, he had preferred to maintain stoic silence about the office Memorandum bearing No. 8216, dated 10-02-2009 communicating the decision of the competent authority not to approve his request for resiling from the notice of voluntary retirement. However, the writ Petitioner once again asserted that he continued in service of the Respondents till 17-02-2009.

5. The question that requires to be determined is whether the writ Petitioner is entitled to continue in service till he attains the age of superannuation in the

normal course in view of his representation dated 29-01-2009.

6. Every Government employee is entitled to be continued in service till such time he attains the age of superannuation, subject, of course, to his maintaining good and decent conduct and performing the duties with the necessary degree of diligence required of the post held by him. However, the Government has retained certain powers with it to retire any Government employee prematurely on his completing 30 years of qualifying service. Rule 48 of the CCS Rules provided for an option to the Government servant also to seek retirement from service any time after completing 30 years of qualifying service and in case of such a retirement, the Government servant shall be entitled to a retiring pension. Proviso (a) to Rule 48(1) of the CCS Rules required the Government servant to tender a notice in writing to the appointing authority, at least, three months before the date on which he/she wishes to retire. Hence, the writ Petitioner has elected to retire prematurely from service by tendering the three months notice on 29-10-2008. Sub-rule (2) of Rule 48 precludes the Government servant from withdrawing his election subsequently, except with the specific approval of such authority. The Proviso thereto, however, makes it clear that the request for withdrawal shall be submitted within the intended date of retirement. It is not in dispute that the writ Petitioner has proposed to retire from service on the forenoon of 02-02-2009 and that he has also submitted a representation seeking approval of the competent authority for withdrawing his election to retire voluntarily on 29-01-2009, but however, according to the Respondents, this request to withdraw his option has not been approved by the competent authority and hence, the writ Petitioner has been relieved from service on the forenoon of 10-02-009.

7. The question as to whether the Government servant, who opted to resign from service, can subsequently resile therefrom, has fallen for consideration before the Supreme Court in *Balram Gupta Vs. Union of India (UOI)* and *Anr.* In Paragraph No. 8, the Supreme Court has dealt with the question in the following manner:

The facts, therefore, are that the Appellant offered to "resign from his service by the letter dated 24th December, 1980 with effect from 31st March, 1981 and according to the Appellant his resignation would have been effective, if accepted, only from 31st March, 1981. Before the resignation could have become effective the Appellant withdrew the application by the letter dated 31st of January, 1981, long before, according to the Appellant, the date the resignation could have been effective. In the meantime, however, prior thereto on the 20th of January, 1981 the Respondent has purported to accept the resignation with effect from 31st March, 1981. The appropriate rule Sub-rule (4) of Rule 48-A of the Pension Rules as set out hereinbefore enjoins that a government servant shall be precluded from withdrawing his notice except with the specific approval of such authority. The proviso stipulates that the request for withdrawal shall be made before the intended date of his retirement. That had been done. The approval of the

authority was, however, not given. Therefore, the normal rule which prevails in certain cases that a person can withdraw his resignation before it is effective would not apply in full force to a case of this nature because here the Government servant cannot withdraw except with the approval of such authority.

(emphasis is mine)

8. Having said so, the Supreme Court proceeded to observe as under in Paragraph No. 9:

What is important in this connection to be borne in mind is not what prompted the desire for withdrawal but what is important is what prompted the government from withholding the withdrawal. In this respect the government affidavit certainly lacks candour. In appropriate cases where the Government desires that public servant who seeks voluntarily to resign should not be allowed to continue, it is open to the Government to state those reasons.

(emphasis is supplied)

9. In Paragraph Nos. 11 and 12, their Lordships went on to explain the rationale behind the rule requiring prior approval of the competent authority for withdrawing the request of cessation of employment in the following words:

It may be a salutary requirement that a Government servant cannot withdraw a letter of resignation or of voluntary retirement at his sweet will and put the Government into difficulties by writing letters of resignation or retirement and withdrawing the same immediately without rhyme or reasons. Therefore, for the purpose of appeal we do not propose to consider the question whether Sub-rule (4) of Rule 48-A of the Pension Rules is valid or not. If properly exercised the power of the government may be a salutary rule. Approval, however, is not ipse dixit of the approving authority. The approving authority who has the statutory authority must act reasonably and rationally. The only reason put forward here is that the Appellant had not indicated his reasons for withdrawal. This, in our opinion, was sufficiently indicated that he was prevailed upon by his friends and the Appellant had a second look at the matter....

In this case the guidelines are that ordinarily permission should not be granted unless the Officer concerned is in a position to show that there has been a material change in the circumstances in consideration of which the notice was originally given. In the facts of the instant case such indication has been given. The Appellant has stated that on the persistent and personal requests of the staff members he had dropped the idea of seeking voluntary retirement. We do not see how this could not be a good and valid reason. It is true that he was resigning and in the notice for resignation he had not given any reason except to state that he sought voluntary retirement. We see nothing wrong in this. In the modern age we should not put embargo upon people's choice or freedom. If, however, the administration had made arrangements acting on his resignation or letter of retirement to make other employee available for his job, that would be

another matter but the Appellant's offer to retire and withdrawal of the same happened in so quick succession that it cannot be said that any administrative set up or arrangement was affected.

(emphasis is added)

10. Their Lordships in Paragraph No. 13 of the said judgment have set out as to how graceful and flexible the administration should be in dealing with the sensitive issues like according approval for withdrawal of the request for cessation of employment in the following words:

We hold, therefore, that there was no valid reason for withholding the permission by the Respondent. We hold further that there has been compliance with the guidelines because the Appellant has indicated that there was a change in the circumstances, namely, the persistent and personal requests from the staff members and relations which changed his attitude towards continuing in Government service and induced the Appellant to withdraw the notice. In the modern and uncertain age it is very difficult to arrange one's future with any amount of certainty, a certain amount of flexibility is required, and if such flexibility does not jeopardize Government or administration, administration should be graceful enough to respond and acknowledge the flexibility of human mind and attitude and allow the Appellant to withdraw his letter of retirement in the facts and circumstances of this case. Much complications which had arisen could have been thus avoided by such graceful attitude. The court cannot but condemn circuitous ways "to ease out" uncomfortable employees. As a model employer the government must conduct itself with high probity and candour with its employees.

(emphasis is brought out)

11. The ratio in Balaram Gupta's case is consistently followed by the Supreme Court in Punjab National Bank Vs. P.K. Mittal, , Power Finance Corporation Ltd. Vs. Pramod Kumar Bhatia, , Shambhu Murari Sinha Vs. Project and Development India and Another, and in Srikantha S.M. Vs. Bharath Earth Movers Ltd.,

12. It, therefore, emerges that though seeking voluntary retirement from service is an option exercised by the employee on his own, but nonetheless, the competent authority was required to show adequate consideration while dealing with requests for withdrawing such a request late on, proved the request is made before the retirement becomes effective. Further, in case the competent authority prefers not to accord approval for such a withdrawal of the election to retire voluntarily, the decision in that regard must be based upon valid and tenable reasons which should have a bearing of larger public interest or the interests of the organization. The rejection of approval must, for its validity, be rested upon valid factors, such as impossibility to reverse the process of finding out a suitable substitute or the likely loss of esteem of the organization arising out of last minute cancellation of the process of direct recruitment or the like, but it should not be based upon mere annoyance or inconvenience faced in the

interregnum.

13. In view of the settled principle, the writ Petitioner is justified in seeking approval for withdrawing his option to retire voluntarily. The Respondents ought to have considered the same appropriately.

14. Then the next question that requires to be addressed is what relief apart from reinstatement into service is to be granted in the instant case.

15. As was noticed supra, the rational principle behind not allowing the Government servant to resile from the notice to retire has been, undoubtedly, a salutary principle. The option to retire voluntarily is one, which is exercised by the Government servant entirely by his own volition. In fact, in the instant case, there are no other reasons than the personal compulsions of the writ Petitioner, for him to offer to retire voluntarily. He has tendered the notice on 29-10-2008. Immediately thereafter, by a communication dated 14-11-2008, the writ Petitioner has been cautioned that when once the competent authority accepts his option to retire voluntarily, subsequent thereto, the competent authority may not allow him to withdraw such a request. It is, therefore, appropriate to notice what has been set out in the said letter:

Sri Shaikh Moula Ali, who has elected to retire under the rule and has given the necessary intimation to that effect to the Appointing Authority, shall not be allowed to withdraw subsequently his notice electing to retire voluntarily unless it is specifically approved by such authority. Therefore, it is presumed that he has taken a well considered decision weighing properly the pros and cons before serving the notice. He may also please note that in the absence of real / valid / cogent reasons, the appointing authority may decline to accept the notice and having accepted the notice, may preclude him from withdrawing the notice, subsequently.

16. From the record it was borne out that the writ Petitioner has proceeded on Earned Leave from 10-11-2008 to 21-11-2008 and again from 10-12-2008 to 23-01-2009. Thus, he was away from service for nearly two months period after he tendered his notice to retire voluntarily on 29-10-2008. It is reasonable to infer that the leave sought for by the writ Petitioner may have, therefore, been sanctioned as he has opted for voluntary retirement. The Respondents, therefore, have acted fairly and reasonably in the matter. In spite of being cautioned promptly, it is the writ Petitioner, who has delayed his decision to recall his option unlike the fact situation prevailing in BALARAM GUPTA's case and the other cases, referred to supra. As soon as he has reported to duty returning from Earned Leave, the Respondents have delivered the letter of acceptance of his offer to retire voluntarily from service on 27-01-2009. It is thereafter on 29-01-2009, barely, three days before the date set by him for his relief, the writ Petitioner asked for approval to withdraw his option to retire voluntarily. The record discloses that the request was also processed at once and hence, the Respondents have not relieved the writ Petitioner on 02-02-2009, but continued

him in service pending consideration of his representation dated 29-01-2009. Ultimately, when the competent authority has rejected his request and did not approve the withdrawal, which decision was communicated to the writ Petitioner through their Memorandum No. 8216, dated 10-02-2009, did the Respondents relieve the writ Petitioner from service. Therefore, it will be hard to describe the action of the Respondents either as harsh or unjust in the entire matter.

17. It is rather unfortunate that the writ Petitioner has not chosen to advert in his pleadings to the office Memorandum No. 8216, dated 10-02-2009, through which he was informed that the competent authority has not approved his request dated 29-01-2009 for withdrawing his option to retire voluntarily from service. He left an inaccurate impression that without, in any manner, dealing with his request letter dated 29-01-2009, the Respondents have abruptly relieved him from service. However inconvenient it might be, a crucial fact should not be held back. He has, therefore, approached this Court with unclean hands. The Respondents have exhibited the office Memorandum No. 8216, dated 10-02-2009, as Ex.R-5 at page 12 of the annexures to the counter affidavit filed by them. The writ Petitioner had dealt with the office order bearing No. 8217, dated 10-02-2009 in his pleadings. Even in the reply affidavit filed by him, he had deliberately avoided to meet the case of the Respondents relating to the office Memorandum No. 8216, dated 10-02-2009. Since, the writ Petitioner has not called in question the validity of the office Memorandum No. 8216, dated 10-02-2009 and since he did not squarely raise the issue relating to not granting approval by the competent authority for his request to withdraw his option to retire from service in normal circumstances, I could not have pronounced any opinion on the validity or otherwise of such an order. The Petitioner ought to have raised the issue squarely so that the Respondents could have met the case by explaining the reasons or circumstances why the approval has not been accorded for withdrawing his option to retire voluntarily. It is the writ Petitioner, who has to blame for this situation.

18. But, however, the Court can exercise discretion and examine the relevant and attendant circumstances for purposes of moulding the relief to be granted to a party. When one examines the office order No. 8216, dated 10-02-2009, no reasons could be deciphered therefrom. It is quite possible that the competent authority may have recorded the reasons for declining the permission sought for, whereas the communicating authority may have omitted to mention them in the office order No. 8216, dated 10-02-2009.

19. But at the same time, the action of the writ Petitioner in causing inconvenience, if not dislocation of the functioning of a scientific and sensitive establishment like the SHAR Center, coupled with blameworthy conduct of approaching this Court with unclean hands, disentitles him to secure complete relief and hence, the writ Petitioner is only entitled to be paid 50% of salary and allowances for the period beyond 10-02-2009 till he is reinstated back into service. Otherwise, purity and sanctity of the judicial process, in given cases, can

be denied with impunity.

20. In Balram Gupta's case, the Supreme Court has rightly cautioned that the action of employees exercising election / option to bring about cessation of employment, in certain circumstances, can lead to certain situations, where it might become difficult for the employer to accord approval for the employee to withdraw his option later on. Illustratively put, in technical and scientific establishments like ISRO, employees occupying sensitive posts, if opt to retire or resign, a quick planning has got to be undertaken by the employer to find a suitable substitute. It is required of them to scout for a substitute urgently and ensure that he gets trained or be in readiness to take over for ensuring the process of the establishment goes on unhampered. Substitution, in certain critical areas of operations is so imminent, lest, tight time frame operations / limits will get hampered. For that purpose, notice period of three months can be very effectively utilized. Some times, a substitute may be recruited from the open market and some other times, a substitute may have been accorded promotion. If the employee, who elected to retire or resign, were to resile from his stated position at the very last minute, the employer might find it very difficult to reverse the process undertaken by him either for securing or identifying substitute or replacement for such an employee. It is bound to visit some other employee with adverse consequences, if not disappointment.

21. However, the blameworthy conduct of the writ Petitioner should not result in total denial of relief to him. When once the principle on the subject has already been held as established by the Supreme Court, the writ Petitioner should not be denied the benefit of such a principle of law. Hence, he should be ordered to be reinstated duly quashing the office Memorandum No. 8217, dated 10-02-2009 relieving him from service. The writ Petitioner is entitled to continue in service till he attains the normal age of superannuation, or till such time the relationship of "master and servant" is brought to an end in accordance with law, otherwise.

22. It is, therefore, in my considered opinion appropriate to regulate and mould relief that is liable to be accorded in such cases, where the conduct of the employer all through the incident was free from doubt or caprice.

23. Hence, the writ petition is allowed, setting aside the office Memorandum No. 8217, dated 10-02-2009. The writ Petitioner should be reinstated back to service and for the post 10-02-2009 period up to the date of reinstatement, the writ Petitioner shall be paid 50% of the salary and allowances. If the Petitioner is paid pension, the amount of the monthly pension can be adjusted against the 50% wages, now ordered, inasmuch as, no employee can have the benefit of receiving pension and also salary and allowances for the same period, simultaneously. The same may be calculated and paid to him within a maximum period of three months from the date of receipt of a copy of this order. If the writ Petitioner has already been paid his terminal benefits, the same are liable to be refunded by him within a period of 15 days from the date of his reinstatement in one lump sum.

24. The writ petition is allowed to the extent indicated supra. No costs.