
(2013) 10 DEL CK 0389

In the Delhi High Court

Case No : Writ Petition (C) No. 6410 of 1998

Shri Ashok Kumar Bhilwaria

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 30-10-2013

Acts Referred:

Constitution of India, 1950 — Article 226
Evidence Act, 1872 — Section 115

Citation : (2014) 1 LLJ 82

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : G.D. Gupta and Mr. Piyush Sharma, for the Appellant; Jagat Singh, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—This writ petition is filed by the petitioner questioning the action of the respondent no. 1/erstwhile employer in not accepting his withdrawal of resignation but instead bringing about the termination of services of the petitioner w.e.f. 15.5.1995 in the respondent-corporation pursuant to acceptance of the request made for resignation by means of the order dated 23.3.1995 of the respondent no. 2/erstwhile employer. Before me, it is argued essentially that though the petitioner applied for resignation by his communication dated 1.3.1995, and which was accepted by the order dated 23.3.1995 of the respondent no. 2 making the date of relieving as 15.5.1995, however, petitioner before the relieving date of 15.5.1995 withdrew his request for resignation in terms of his communications dated 12.5.1995 and 15.5.1995 and that such withdrawal is argued to be permitted in terms of paragraph 3 of the office memorandum of the respondent no. 2 dated 11.2.1988. This para 3 reads as under:-

3. A resignation becomes effective when it is accepted and the Government servant is relieved of his duties. If a Government servant who had submitted a

resignation, sends an intimation in writing to the appointing authority withdrawing his earlier letter of resignation before its acceptance by the appointing authority, the resignation will be deemed to have been automatically withdrawn and there is no question of accepting the resignation. In case, however, the resignation had been accepted by the appointing authority and the Government servant is to be relieved from a future date, if any request for withdrawing the resignation is made by the Government servant before he is actually relieved of his duties, the normal principle should be to allow the request of the Government servant to withdraw the resignation. If, however, the request for withdrawal is to be refused, the grounds for the rejection of the request should be duly recorded by the appointing authority and suitably intimated to the Government servant concerned.

2. Counsel for the respondent nos. 1 to 3 argues in response that even though as per the aforesaid para 3 the request for resignation can be withdrawn prior to the date fixed for relieving of an employee, however in this case petitioner is barred by the principle of estoppel in seeking to enforce his withdrawal of resignation and challenging the acceptance of his resignation because the petitioner not only did not join the services of the respondent no. 2-organization after 15.5.1995 and instead joined the subsequent employer-IREDA. It is argued that not only the petitioner left the services of respondent no. 2, but the petitioner in terms of his subsequent letters after 15.5.1995 in fact received various monetary benefits only payable pursuant to his services with the respondent no. 2 coming to an end. These monetary benefits received were gratuity, leave encashment etc. Reliance for the application of principle of estoppel is placed upon the judgment delivered by this Court in the case of R. Kothandaraman Vs. The Speaker, Lok Sabha Secretariat and Anr. W.P. (C) 7132/2009 decided on 10.1.2013.

3. That petitioner was entitled to withdraw his request for resignation before 15.5.1995, in my opinion, cannot be disputed in view of para 3 of the memorandum dated 11.2.1988 which has been reproduced above. As per the last line of this aforesaid para 3 of the memorandum dated 11.2.1988, unless and until the request for withdrawal of resignation is rejected by a specific order the rejection of withdrawal of resignation by the employer is not valid. However, in this case, the issue really turns on the aspect of estoppel against the petitioner because though petitioner by his communications on or before 15.5.1995 did seek withdrawal of his resignation, and such withdrawal of resignation would be legally valid, however, as a fait accompli the petitioner brought about an end to his services with the respondent no. 2 by not joining the respondent no. 2 on or after 16.5.1995 but in fact joined the subsequent employer IREDA. Not only the petitioner did not join the respondent no. 2/erstwhile employer but the petitioner thereafter, and as stated above, received various monetary benefits which he could only have received on his services with the respondent no. 2 coming to an end. These benefits which the petitioner received are stated in the following words alongwith other aspects of estoppel in the counter-affidavit of respondent nos. 1 to 3 as under:-

In this behalf, it is stated as under:

- a) Instead of lodging any protest against any of the above mentioned issues or pressing for any action under the Government of India instructions regarding withdrawal of resignation at any point of time, the Petitioner proceeded to join his new assignment with IREDA on 16.5.95.
- b) After joining his duties in IREDA, the Petitioner even returned the office calculator on 2.6.95 and informed the Respondent Corporation to settle his outstanding dues towards Festival Advance and Brief Case Advance in the Respondent Corporation. Copy of the Office note in this behalf is annexed hereto and marked as Annexure R-17.
- c) On 2.6.95 the Petitioner requested that an outstanding advance of Rs. 240/- and cost of a Brief Case of Rs. 219/- be adjusted from his earlier salary. Copy of the letter dated 2.6.95 is annexed hereto and marked as Annexure R-18. Copy of the office action is annexed hereto and marked as Annexure R-19.
- d) Even at this stage, the Petitioner did not make any objection or lodge any protest whatsoever, regarding his relieving or non-acceptance of his request for withdrawal of resignation.
- e) On 19.6.95 the Petitioner requested the management of the Respondent Corporation for payment of his gratuity. Copy of the letter dated 19.6.95 of the Petitioner in this regard is annexed hereto and marked as Annexure R-20.
- f) On 1.7.95, request of the Petitioner was received through IREDA in the Respondent's Corporation regarding transfer of cash equivalent to the Earned Leave and Medical Leave balance available at his credit with the Respondent Corporation to the IREDA. Copy of IREDA's letter dated 1.7.95 is annexed hereto and marked as Annexure R-21.
- g) On 3.7.95, the Petitioner requested the Respondent Corporation to issue him an "Experience Certificate". A copy of the said letter is annexed hereto and marked as Annexure R-22.
- h) All the above requests of the Petitioner regarding release of gratuity, transfer of cash equivalent to his Earned Leave and Medical Leave, issuance of "Experience Certificate" etc. were duly considered by the management of the Respondent Corporation and the same were released to him.
- i) On 7.8.1995 the Respondent Corporation forwarded to the Petitioner a cheque for Rs. 12,819/- towards his gratuity dues. A copy of the letter dated 7.8.95 is annexed hereto and marked as Annexure R-23.
- j) On 25.8.95, at the Petitioner's request and as a favour to him, a certificate was issued in his favour, a copy of which is annexed hereto and marked as Annexure R-24.

4. In addition to the above facts, in my opinion, in fact the letter of the petitioner

himself dated 19.6.1995 (filed as Annexure R-20 to the counter-affidavit) shows the complete giving up of the claim of the petitioner to withdraw his resignation. This letter dated 19.6.1995 without in any manner reiterating the fact that resignation stood withdrawn on the contrary pursuant to the resignation and termination of services requested for payment of gratuity. This letter dated 19.6.1995 reads as under:-

Dated, the June 19, 1995

The General Manager (P&A)

National SCs & STs Finance &

Development Corporation,

8-Balaji Estate,

Guru Ravi Das Marg,

Kalkaji,

New Delhi-110 019

Dear Sir,

Sub: Release of Gratuity

As you are aware, after completion of five years & five months continuous service in your esteemed Organization, the undersigned has tendered the resignation from the services of NSFDC and joined the new assignment in IREDA. As per the FRSR/DPE guidelines, "an employee, who tendered the resignation after completion of five years continuous service in an Organization, is eligible for gratuity". Sir, as I falls under this purview, I am entitled for the same.

I shall be grateful if you could kindly look into the matter and arrange to release me gratuity at the earliest.

Thanking you,

Yours faithfully,

(Ashok Kumar Bhilwaria)

5. Therefore, the aforesaid facts make it clear that though petitioner was interested in withdrawing his resignation, that he did ask for withdrawal of his resignation, however, petitioner actually and ultimately did not join the services with the respondent no. 2 on and after 16.5.1995, but in fact joined the subsequent employer-IREDA. Petitioner also took various monetary benefits and which he could only have taken if his services with the respondent no. 2 stood terminated. Petitioner has not returned but utilized these monetary emoluments. Petitioner only after about six months of performing services with the new employer-IREDA, on 17.11.1995 wrote to the Managing Director of the

respondent no. 2 seeking to rake up the issues of his services not coming to an end by virtue of his having withdrawn from resignation. In my opinion, lot of water had flown under the bridge by 17.11.1995 for the petitioner to claim his services as an employee of respondent no. 2, and it is for that six months the new employer was served by the petitioner and that too after receiving monetary emoluments as stated above from the respondent no. 2, his erstwhile employer. In the case of R. Kothandaraman (supra) on the aspect of estoppel I have held that even if a request for voluntary retirement is validly withdrawn before the last date, however, if an employee receives monetary benefits and enjoys those benefits thereafter such an employee after a period of time cannot turn around and claim that he had withdrawn his request for voluntary retirement and therefore he should be allowed to rejoin his erstwhile employer. These observations are made in paras 12 to 14 of the judgment in the case of R. Kothandaraman (supra) and which read as under:-

12. In my opinion, the respondents must succeed on the principle of estoppel inasmuch as it makes no difference whether the retirement is pursuant to a contractual voluntary scheme or pursuant to a statutory Rule inasmuch as if Rule 48A is statutory, the provision of Section 115 of the Evidence Act which deals with the principle of estoppel is also a statutory provision. The principle of estoppel is based on the ground of equity that no one can take advantage of a fact and thereafter turn around to say that the situation should be reversed. Equity does not permit such an action of blowing hot and cold by a person. In the present case, since entitlement pursuant to Rule 48A of seeking voluntary retirement is personal to the petitioner there is no element of public policy involved and therefore the petitioner was entitled to waive the rights under Rule 48A of seeking the withdrawal of his request of voluntary retirement by accepting and utilizing the terminal lumpsum benefits given pursuant to the retirement. I am unable to agree with the judgment in the case of Vishnu Vardhan Reddy (supra) of Andhra Pradesh High Court inasmuch as the cited judgment does not refer to judgments in the case of Punjab National Bank and Pale Ram Dhaniala (supra) wherein the issue of estoppel has squarely been dealt with. In para 11 of the Punjab National Bank's case it has been held that on taking benefits pursuant to a voluntary retirement a person is estopped from withdrawing from the voluntary retirement. Paras 10 and 11 of the judgment in the case of Punjab National Bank (supra) are relevant and they read as under:-

10. In our view this contention would be of no assistance to the respondent. He knew very well that the money deposited in his account was part of the benefits under the Scheme. He also knew it very well that his request for VRS was accepted after the Scheme had expired, yet he had withdrawn the amount deposited and utilized the same. The fact that the respondent had withdrawn a part of the benefit under the Scheme is not disputed and it could not be. To substantiate the contention, the applicant has submitted a photocopy of the respondent's Bank Account No. 27980 (Annexure R-1). It clearly appears from Annexure R-1 that a part of the retirement benefit was deposited in the

respondent's Bank Account on 12-1-2001 and on 15-1-2001 he had withdrawn rupees three lakhs. Again on 28-2-2001 he had withdrawn rupees fifty thousand.

11. This fact, however, was not brought to the notice of this Court at the time of the hearing. However, the fact remains that the incumbent had accepted the benefits under the Scheme and utilization thereof would squarely be covered by Direction 1 as notice above. Therefore, the judgment dated 17-12-2002 is reviewed to the extent that the appeal arising out of the judgment and order of the Uttaranchal High Court is dismissed and the judgment of the High Court is upheld.

(underlining added)

13. In Pale Ram Dhanias (supra) case, the Supreme Court has observed as under:-

1. It is not disputed that the appellant Bank introduced a Voluntary Retirement Scheme, 2000 (herein referred to as "the Scheme") for its employees which had the approval of its Board of Directors. The Scheme was operative w.e.f. November 15, 2000 to December 14, 2000 for the employees who sought voluntary retirement. It is not disputed that the respondent herein who was an employee of the appellant Bank sought voluntary retirement under the Scheme on November 30, 2000. It is also not disputed that on December 2, 2000 he wrote to the Bank for withdrawal of his application for voluntary retirement. On January 22, 2001, the appellant Bank accepted the request for voluntary retirement of the respondent. Further, on January 25, 2001, the respondent withdrew the retiral benefits deposited in the Bank in his name as per voluntary retirement. It appears that the respondent changed his mind after the respondent was relieved from the employment and he filed a petition under Article 226 of the Constitution challenging the acceptance of his request for voluntary retirement. A learned Single Judge of the High Court allowed the petition and set aside the acceptance of the application for voluntary retirement submitted by the respondent. Aggrieved, the appellants preferred a letters patent appeal which was dismissed. It is against the said judgment, the appellants are in appeal before us.

2. A Bench of three Judges of this Court in Punjab National Bank Vs. Virender Kumar Goel and Others, , has held that an employee who sought voluntary retirement and subsequently wrote for its withdrawal but has withdrawn the amount of retiral benefits as per the Voluntary Retirement Scheme, is not entitled to the withdrawal of his application for voluntary retirement. It is not disputed that in the present case the respondent herein withdrew the amount of retiral benefits on January 25, 2001.

3. For the aforesaid reason, this appeal deserves to be allowed. We order accordingly. The order and judgment under challenge is set aside. There shall be no order as to costs.

C.A. Nos. 4099, 4100 of 2002 and 8833 of 2003

4. In view of the above order passed in C.A. No. 4098 of 2002, these appeals are also allowed. The orders and judgments under challenge are set aside. There shall be no order as to costs.

(underlining added)

14. In view of the aforesaid discussion, I hold that though the petitioner had validly revoked his request for voluntary retirement and which withdrawal was valid in view of the judgments of the Supreme Court in the case of Balram Gupta (supra), Shambu Murari Sinha (supra) and J.N. Srivastava (supra) cited on behalf of the petitioner, however the petitioner is estopped in view of the sub para 1 of para 130 of the judgment in Bank of India's (supra) case and paras 10 and 11 of the judgment in Punjab National Bank's (supra) case and Pale Ram Dhanias case to withdraw from his request seeking voluntary retirement. At the cost of repetition it is necessary to be stated that the petitioner does not dispute the fact that the lumpsum amounts credited in his bank account including towards provident fund, gratuity and commutation of pay have been withdrawn and utilized by the petitioner. If the petitioner had only utilized the amounts credited in his account for withdrawing monthly salary which was due to the petitioner from time to time then in such a case possibly it could have been argued that the principle of estoppel cannot apply, however, in the present case the issue is not of withdrawal of amounts every month (whether as pension or as salary) but the issue is of utilizing and taking benefit of lumpsum amounts which were deposited in the account of the petitioner on account of provident fund, gratuity and commutation of pay.

6. I may note that the specific averments made in the counter affidavit of the respondent nos. 1 to 3 have not been denied by the petitioner by filing a rejoinder affidavit. I may note that though it was sought to be contended on behalf of the petitioner by placing reliance upon the petitioner's letter dated 17.5.1996 that petitioner has sent letters by UPC dated 14.6.1995, 8.8.1995 and 9.10.1995 to the erstwhile employer/respondent no. 2 however in my opinion, this aspect lacks any credibility whatsoever because why should such important correspondence be statelily sent only by UPC. I may note that the Supreme Court in the judgment in the case of Shiv Kumar and Others Vs. State of Haryana and Others, has held that UPC is not necessarily to be taken as conclusive with respect to the service by post, and its credibility has been held to be not too strong as per the observations made in this aforesaid Supreme Court judgment because it is not difficult to get UPCs. My view is further buttressed by the fact that no rejoinder affidavit has been filed by the petitioner to the counter affidavit filed by the respondent nos. 1 to 3 as already stated above. I therefore do not accept that any communication was sent by the petitioner as stated in the aforesaid letter dated 17.5.1996.

7. The writ petition is also barred by delay and laches because if the petitioner as

per his case was illegally terminated from services by respondent no. 2 w.e.f. 15.5.1995, then within 3 years i.e. before 15.5.1998 he should have filed a case in Court but he filed this petition only in November 1998. Giving of representations do not increase the limitation period. No doubt Limitation Act, 1963 does not apply to writ petitions but the limitation period is a very good guide to decide the aspect of delay and laches. If a suit was barred by limitation there is no reason to entertain a writ petition. In view of the above, I am of the opinion that petitioner cannot succeed on the principle of estoppel, factual details given with respect to application of which have already been given above. Petition is also barred by delay and laches. Writ petition is therefore dismissed, leaving the parties to bear their own costs.