(1995) 03 DEL CK 0050

In the Delhi High Court

Case No : C.W. Petition No. 1342 of 1994 and C.M. No. 2203 of 1994

S.K. Bangia APPELLANT

Vs

State Bank of India RESPONDENT

Date of Decision : 28-03-1995

Acts Referred:

Citation : (1995) 2 AD 82 : (1995) 34 DRJ 24 : (1995) ILR Delhi 554 : (1995) LabIC 1939 : (1996) 1 LLJ 95

Hon'ble Judges : S.D. Pandit, J;P.K. Bahri, J

Bench : Division Bench

Judgement

P.K. Bahir, J.—The petitioner has sought writ of certiorari seeking quashment of the impugned order dated October 9, 1993 by which the offer of the petitioner seeking voluntary retirement has been rejected and he had sought mandamus requiring the respondent to voluntary retire the petitioner in pursuance to his letter dated August 16, 1993.

2. The writ is opposed by the respondents, on the ground that the disciplinary proceedings were in contemplation at the time the letter of voluntary retirement was received and notice indicating the intention to initiate disciplinary proceedings was issued to the petitioner on August 21, 1993 which was served on the petitioner on August 26, 1993 and thus, in view of Rule 20 of the State respondent was justified in declining the request of the petitioner seeking voluntary retirement. It is pleaded that within the three months notice period, the request of the petitioner had been rejected.

3. Learned counsel for the petitioner has contended that under Rule 19, the petition had the legal right to seek voluntary retirement on this completing 20 years of service and he was only required to give three month''s notice in writing and the competent authority of the respondent had no option but to accept the said request of the petitioner seeking voluntary retirement."

4. Rule 19(1) fixed the age of superannuation of the officers working in the State

Bank of India at 58 years or upon the completion of 30 years service, whichever occurs first. There ar certain provisos to this particular rule an done of the provisos entitles the officer who has completed the 20 years service or twenty years pensionable service, as the case may be, to seek voluntary retirement on his giving three months notice. However, Rule 20(1) of the Rules makes it clear that no officer shall leave or discontinue his service in the bank without first giving a notice of three months and Rule 20(2) lays down as follows :-

" (2) (a) Notwithstanding anything to the contrary contained in the sub-rule (1), an officer against whom disciplinary proceedings are pending shall not leave/ discontinue or resign from his service in the Bank without prior approval in writing of the competent authority and any notice of resignation given by such an officer before or during the disciplinary proceeding shall not take effect unless it is accepted by the compete authority.

(b) Disciplinary proceedings shall be deemed to be pending against an officer for the purpose of this rule if he has been placed under suspension or any notice has been issued to him to show cause why disciplinary proceedings should not be instituted against him or where any charge sheet has been issued against him and will be deemed to be pending until final order are passed by the competent authority.

Explanation; A show cause notice or order of suspension or charge sheet shall be deemed to have been issued prior to or during the period of notice, if it has been signed by the authority empowered in this behalf under the rules and put on a course of transmission prior to or during the said period whether or not it was actually received by the officer."

5. So, reading rules 19 and 20 together, it is evident that in case disciplinary proceedings are pending against a particular officer, then such a notice given by the officer shall not take effect unless it is accepted by the competent authority and disciplinary proceedings would be deemed to be pending in case the officer has been suspended or any notice has been issued to him to show cause why disciplinary proceedings should not be instituted against him.

6. The Explanation quoted above makes it clear that a show-cause notice or order of suspension or charge sheet shall be deemed to have been issued prior to or during the period of notice if it has been signed by the authority in this behalf under the Rules and put on a course of transmission prior to or during the said period whether or not it was actually received by the officer.

7. So, within the three months'' notice period seeking voluntary retirement, the competent authority, by virtue of the aforesaid Rule 20, could decline such permission if disciplinary proceedings could be deemed to be considered pending against such an officer.

8. Learned counsel for the petitioner has made reference to Dinesh Chandra Sangma Vs. State of Assam and Others, . This judgment deals with the

fundamental Rule 56(b) & (c) and it has been laid down that in case a Government servant exercises his right seeking voluntary retirement under Fundamental Rule 56(c), then there is no question of acceptance of the request for voluntary retirement by the government. We have gone through Fundamental rule 56 and we find that in the aforesaid Rule, no such similar provision, as it exists in Rule 20 of the State Bank of India Officers Service Rules, exists in the Fundamental Rules. So, this judgment would not help the petitioner in any manner.

9. Counsel for the petitioner has also referred to Punjab Sikh Regular Motor Service, Moudhapara Vs. The Regional Transport Authority, Raipur and Another, wherein, while interpreting the provision of Rule 63 of the Motor Vehicles Rules, it was held that in the context of the various provisions of the said Rules and the statute, the word "may" though permissive in form must be held to be obligatory. This judgment is of no help to the petitioner in interpreting the Rules 19 & 20 in the present case because there a discretion is available with the competent authority to grant the approval or withhold the approval to the officer to leave the job in case disciplinary proceedings are pending.

10. He has then referred to L. Hirday Narain Vs. Income Tax Officer, Bareilly, wherein, while interpreting the provisions of Sections 16 and 35 of the Income Tax Act, it was held that the high Court was wrong in assuming that the exercise of power was discretionary and Income Tax Officer could even, if the conditions for its exercise were shown to exist, decline to exercise the power. This ratio does not, in any manner, supports the case of the petitioner. In case it is proved that the case of the petitioner is covered by Rule 20(2), as quoted above, obviously that discretion rested with the competent authority as to be exercised within the four corners of the said provisions and if the case does not fall within the said provisions, then it is obligatory on the part of the competent authority to accept the request of the petitioner seeking voluntary retirement.

11. Similar proposition of law has been laid down by Supreme Court in case of State (Delhi Admn.) Vs. I.K. Nangia and Another, dealing with provisions of Prevention of Food Adulteration act and in case of Chinnamarkathian alias Muthu Gounder and Others Vs. Ayyavoo alias Periana Gounder and others, where in the provisions of Tamil Nadu Cultivating Tenants Protection Act have been interpreted.

12. The Supreme Court came to consider Punjab Civil Service Rules in case of S. Pratap Singh Vs. The State of Punjab, and it was held that the appellant in that case had no absolute right to opt for retirement on his attaining the age of super annuation as any such option was subject to Rule 3.26(d) which applies to him and that his case came under that Rule as he was under suspension on charges of misconduct.

13. Reference may also be made to Central Inland Water Transport Corporation Ltd. v. Brojo Nath Ganguly 1986 2 C.L.R. 322. It was held that page 382 of the judgment that an employer can refuse to accept the resignation when there is

disciplinary enquiry pending against the employee because in such a case, to permit an employee to resign, would be to allow him to go away from the service and escape the consequences of any adverse finding against him in such an enquiry.

14. In Union of India v. A. N. Saxena 1992 1 CLR 837 the Supreme Court, in para 11, While construing the Fundamental Rule 56(k), held that it was not known whether it was duly considered whether his application for voluntary retirement ought to have been rejected in view of pending enquiry against him in view of the seriousness of the charges leveled against him.

15. The learned counsel for the respondents has made reference to case of Moti Ram Vs. Param Dev and another, , in this judgment it was held in cases where the act of relinquishment is of a bilateral character, the communication of the intention to relinquish, by itself, would not be sufficient to result in relinquishment of the office and some action is required to be taken on such communication on the intention to relinquish. It was held that whether the act of relinquishment of an office is unilateral or bilateral in character would depend upon the nature of the office and the conditions governing it.

16. If we construe Rules 19 and 20 together, it is evident that were the disciplinary proceedings are deemed to be pending against an officer, there is vested a discretion with the competent authority to grant or not to grant approval to the officer, who desired to leave the service of the respondents either by resignation or by voluntary retirement.

17. Learned counsel for the petitioner has then referred to Rule 19(3), which reads as follows :-

"19(3) In case disciplinary proceedings under the relevant rules of service have been initiated against an officer before the cease to be in the Bank''s service by the operation of, or by virtue of any of the said rules or the provisions of these rules, the disciplinary proceedings may, at the discretion of the Managing Director, he continued and concluded by the authority by which the proceedings were initiated in the manner provided for in the said rules as if the officer continues to be in service, so, however, that he shall be deemed to be in service only for the purpose of continuance and conclusion of such proceedings."

18. This rule would come into play where a particular officer of the Bank had already ceased to be an officer of the Bank. In that situation, this Rule vests the power in the Managing Director to continue with the disciplinary proceedings against such an officer and then a deeming provision is made that in such a situation, such officer would be deemed to continue in service only for the purpose of continuation and conclusion of such disciplinary proceedings. This rule would apply where officer ceases to be in bank service. In the present case, the petitioner has not ceased to be in the service of the respondent and his request for voluntary retirement has already been declined.

19. The material question which then arises for consideration in the present case is whether the notice dated August 21, 1993, Annexure PX to the petition, issued to the petitioner by the competent authority can be treated to be a notice to show-cause as to whey disciplinary proceeding be not initiated against the petitioner so that the same could be considered covered by the provisions of Rule 20. This notice comprehensively refers to various lapses and irregularities observed in sanction conduct and follow up of the advances granted to various concerns of Teal Groups of Wazirpur Industrial Estate when the petitioner was working there as Chief Manager (Loans) from February 1991 onward.

20. It is not necessary to reproduce all the lapses and irregularities highlighted in this notice. Suffice to mention that they pertain to irregularities involving a few crores of rupees. How and in what manner these irregularities have been committed by the petitioner have been highlighted in this notice and the petitioner have been asked, in view of the aforesaid serious lapses on his part, by which the bank is likely to suffer substantial loss, to submit his Explanation within 15 days.

21. It is true that no words have been expressly written in this notice asking the petitioner to show-cause as to why disciplinary proceedings be not initiated against him but the whole tenor of the notice indicated that the whole purport and the intent of the notice was to obtain the Explanation of the petitioner for purposes of taking further proceedings against the petitioner, if necessary, which obviously would be in the nature of disciplinary proceedings as well. So, it cannot be said that this notice does not amount to a show-cause notice to the petitioner to explain as to why the disciplinary proceedings be not initiated against the petitioner. So, it has to be held that the competent authority of the respondent was within its power under Rules 19 and 20 to have declined the request of the petitioner for voluntary retirement till the disciplinary proceedings were to be completed.

22. We have not been persuaded to agree with the contention of learned counsel for petitioner that the lapses and irregularities mentioned in this notice are not of any grave nature.

23. Lastly, it was urged by learned counsel for the petitioner that subsequent request of the petitioner to grant him voluntary retirement and continue with the disciplinary proceedings, it necessary, under Rule 19(3) has not been responded to by the respondent. Once the respondent had taken a decision not to accept the request of the petitioner seeking voluntary retirement, in view of the deemed pendency of the disciplinary proceedings, the question of allowing the petitioner to retire and then to continue the disciplinary proceedings under Rule 19(3) would not arise.

24. The learned counsel for the petitioner has also cited Mohammad Umar Vs. Inspector General of Police and Others, , where the question which arose for decision was whether in the preliminary investigation the presence of the

delinquent is required or not or he should be given an opportunity of participating in it ? It was held that there was no requirement of law that in a preliminary investigation the delinquent should be given any opportunity of participation. This judgment is to no help in deciding whether the said notice issued to the petitioner is a show-cause notice for initiating disciplinary proceedings or not.

25. He has then referred to Union of India etc. v. K. V. Jankiraman etc. 1991 2 CLR 635 where keeping in view the provisions of the Constitution and the rules applicable to Government servants, it was held that unless and until memo of charge-sheet is issued the promotion cannot be denied to the Government servant if it is due to him and sealed cover procedure cannot be followed.

This judgment is followed by this Court in the case of Deputy Commandant Mohinder lal v. Union of India, 1994 RLR 151. These judgments were concerned with interpretation of the rules applicable to Government servants and these are not applicable while interpreting Rule 20 mentioned above.

26. He has also cited Champaklal Chimanlal Shah Vs. The Union of India (UOI), . The question which arose for decision in that case was whether service of a temporary Government servant could be terminate under Rule 5 of the Central Civil Services (Temporary Service) Rules, 1949, even if a preliminary inquiry has been held with regard to the conduct of such Government servant. It was observed that preliminary inquiry usually is held to determine whether a prima facie case for a formal departmental inquiry is made out. It appears that the petitioner wants to take support from these observation in his contention that mere issuance of notice asking for clarifications from the petitioner would not amount to issuance of a notice to show cause as to why disciplinary proceedings be not initiated against the petitioner. We do not agree that any thing said in this judgment leads to any such interpretation.

27. We do not, hence, find any merit in this petition which we hereby dismiss but with no order as to costs.

28. The application (C.M. 2203/94) is also dismissed as infructuous.

