

(2009) 05 JH CK 0077
In the Jharkhand High Court

Smt. Sushila Kumari and Another

APPELLANT

Vs

The Bharat Cooking Coal Ltd. and Others

RESPONDENT

Date of Decision : 15-05-2009

Acts Referred:

Citation : (2009) 05 JH CK 0077

Hon'ble Judges : Ajit Kumar Sinha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ajit Kumar Sinha, J.—This writ petition has been preferred for issuance of an appropriate writ, order or direction for the following reliefs:

- a) For quashing the letter No. GOKO/KA/VI/04/303 dated 2/6.2.2004(annexure-5) issued under the signature of respondent No. 5 whereby and whereunder an non-est intimation has been made to the effect that application made by petitioner No. 1 under VRS(F) Scheme-1999 stood already rejected way back In the year 1999 itself on the ground of shortage of statutory requirement of 5 (five) years left out service, which is patently false, wrong, malafide and sheer example of colourable exercise of power.
- b) Further for commanding the respondents to produce the letter/order of rejection of claim/application of petitioner No. 1(if any) and accordingly to quash the same.
- c) For commanding the respondents to allow the benefit of said scheme and in turn grant suitable appointment to petitioner No. 2, the son of petitioner No. 1, who is a lady worker and in any case had duly applied in terms with the said scheme well within the time i.e. five years left out service.

In the instant case the following facts are undisputed i.e.

- i) Petitioner was due to retire on 7.3.2005.

ii) VRS(F) Scheme, 1999 was invoked by the petitioner and the same was rejected on 6.2.2004 pursuant to the order dated 26.8.03 passed by this Court in WP(S) No. 4230/03 and the present writ petition has been filed challenging the impugned order of rejection on the ground of delay.

2. The facts, in brief, as set out as under:

The son of petitioner No. 1, initially preferred a writ petition W.P.(S) No. 4230 of 2003. However, the same was dismissed as not maintainable with a direction to respondent authority to dispose of the application of. Voluntary retirement given by the mother of the petitioner therein. In compliance to the aforesaid, an order was passed on 6.2.2004 rejecting the application on the ground that less than five years were left before superannuation and thus, as per the Scheme offer of V.R.S. could not be accepted. The aforesaid impugned order dated 6.2.2004 has been challenged in the present writ petition by the petitioner No. 1 seeking acceptance of voluntary retirement as well as appointment of petitioner No. 2 in her place as per scheme, who is the son of petitioner No. 1.

3. The main contention raised by the learned Counsel for the petitioner is that the reason assigned is on the face of It erroneous and misconceived since the petitioner's application was within the time schedule and instead the authority/ Management caused the delay in processing it and thus, they cannot take the benefit of their own default.

4. The learned Counsel for the respondent namely Mr. Anoop Kumar Mehta in reply submits that VRS(F) Scheme, as per the settled law is subject to acceptance and communication of the acceptance to make it binding and enforceable under the Contract Act. He further submits that the net result remains that the offer was rejected.

5. I have considered the rival submission and pleadings. In the instant case there is no dispute about the fact that the petitioner No. 1 superannuated after completing her tenure of service on 7.3.2005 and during that period she worked continuously and collected all her wages and benefits accrued to the service. The petitioner approached the court for the first time in 2003 and thereafter in 2004 claiming suitable appointment for the petitioner No. 2. under the VRS (F) scheme whereas she was to retire on 7.3.05. It Is further an admitted position that offer for voluntary retirement under VRS (F) Scheme, 1999 was made in June, 1999 but the same was neither accepted nor rejected nor any, communication to that effect was made to the petitioner No. 1 but the petitioner No. 1 continued in service without any objection. As per the scheme, on the date of acceptance of voluntary retirement of a female workman, she should not have crossed the age of 55 years and it was in this background that Impugned order was passed rejecting the application of petitioner No. 1 for voluntary retirement.

6. Be that as it may, there is no dispute about the fact that unless the offer is accepted and communication of the acceptance Is made to the person who has made an offer there is no binding or enforceable contract to be enforced by way

of a writ of mandamus. There is no legal vested or accrued right unless the offer is accepted and the same is communicated to the person who made the offer.

7. In any case, the claim for appointment of the son i.e. petitioner No. 2 cannot be sustained in the eyes of law for the sole reason that the petitioner completed her service and superannuated on 7.3.2005 and collected all her wages, allowances and benefits accrued to the service without any objection and thus, estoppel by conduct will also apply to claim appointment for the son i.e. petitioner No. 2. In any case there was no loss of employment.

8. The Hon'ble Supreme Court in Ashok Kumar Sahu Vs. Union of India (UOI) and Others, while considering a similar issue with regard to voluntary retirement at paragraph 18 held as under:

18. The expression "approval" presupposes an existing order. "Acceptance" means communicated acceptance. A distinction exists between the expressions "approval" and "acceptance". Whereas in the latter, an application of mind on the part of the competent authority is sine qua non, approval of an order only envisages statutory entitlement. Approval of an order is required as directed by the statute. It can be given a retrospective effect. Even valid contract comes into being only after the offer is accepted and communicated. Where services of an employee are dispensed with, the order takes effect from the date when it is communicated and not from the date of passing of the order.

9. The expression, "approval" would mean to accept as good or sufficient for the purpose of intent. Ratification is noun of the verb "ratify". It means the act of ratifying, confirmation and sanction. The expression "ratify" means to approve and accept formally. It means to conform, by expressing consent, approval or formal sanction. "Approve" means to have or express a favourable opinion of/to accept as satisfactory. In the instant case there was neither any ratification nor confirmation nor approval nor any communication thereto to accord a right in favour of the petitioner.

10. Considering the aforesaid facts and circumstances of the case, this writ petition is devoid of any merit and is accordingly dismissed.