(2004) 05 KAR CK 0006

In the Karnataka High Court

Case No : Writ Appeal No. 4013 of 2001

State Bank of Mysore APPELLANT

Vs

Dakshayani Premesh RESPONDENT

Date of Decision : 25-05-2004

Acts Referred:

State Bank of Mysore Employees (Pension) Regulations, 1995 — Regulation 29, 29 (4)

Citation : (2004) 4 KarLJ 230 : (2004) 3 KCCR 292 SN : (2004) 3 LLJ 707

Hon'ble Judges : S.R. Nayak, J;Ram Mohan Reddy, J

Bench : Division Bench

Advocate : S.V. Narasimhan, for the Appellant; S.P. Rajagopal, for the Respondent

Judgement

Ram Mohan Reddy, J.—This appeal is by the Management of the State Bank of Mysore, being aggrieved by the order dated 7-6-2001 passed in Writ Petition No. 4839 of 2001 wherein, the learned Single Judge set aside the order dated 2-9-2000 of the management of the Bank relieving the writ petitioner from services of the Bank under the Voluntary Retirement Scheme with effect from 4-9-2000 and further directed the Bank to consider the application dated 23-2-2001 filed by the writ petitioner under special policy of Voluntary Retirement Scheme of the year 2001.

2. The writ petitioner, for the sake of brevity henceforth referred to as an ''employee'', was working as an Assistant Manager at Mahalakshmi Layout Branch of the appellant-Bank. The Bank accepted her option to be governed by the State Bank of Mysore Employees'' (Pension) Regulations, 1995 which came into force with effect from 29-9-1995 (hereinafter referred to as the ''Regulations''). The employee having completed 25 years of qualifying service, in accordance with Regulation 29 of the Regulations, filed an application dated 6-6-2000, as at Annexure-A seeking voluntary retirement from service, on medical grounds, enclosing the medical certificate. In the said application, the employee requested the Bank to relieve her after the expiry of 90 days

therefrom, in other words, effective after 4-9-2000. However, on 2-9-2000 by a letter of even date, as at Ex. Annexure-B, she sought to withdraw her request for retirement under sub-regulation (4) of Regulation 29 of the Regulations. The said request was forwarded to the Assistant General Manager-Operations, the Competent Authority, along with a note seeking appropriate orders. The Competent Authority, on the very same day, i.e., on 2-9-2000, endorsed on the note declining permission for withdrawal and directed that the employee be relieved from service. The Branch Manager, by his letter dated 2-9-2000 as at Annexure-D relieved the writ petitioner from the services of the Bank. The employee having utilised the benefits of the retirement scheme, questioned the relieving order dated 2-9-2000 in the writ petition. During the pendency of the writ petition, the appellant-Bank introduced a special policy with regard to Voluntary Retirement Scheme of 2001, which request was rejected by an endorsement dated 3-3-2001 on the ground that she was no more an employee of the Bank entitled to any benefits under the said special policy.

3. Before the learned Single Judge, the learned Counsel for the employee contended that since the employee by her letter dated 2-9-2000 as at Annexure-B withdrew her request for voluntary retirement before the due date i.e., 4-9-2000, the Bank could not have acted illegally by relieving her of duties as on 2-9-2000 itself. The said contention was supported by the following judgments or the Apex Court in the cases of Balram Gupta Vs. Union of India (UOI) and Anr, ; J.N. Srivastava Vs. Union of India (UOI) and Another, Union of India and Anr. v. Wing Commander T. Parthasarathy AIR 2001 SC 158 : 2001 Lab. I.C. 53 (SC) : (2001)1 SCC 158 and the decision of this Court in H.L. Nagaraju and Another Vs. The Deputy General Manager, Personnel Department (HRD), Vijaya Bank, Head Office, M.G. Road, Bangalore and Another, .

4. The further contention of the learned Counsel for the employee was that the order dated 2-9-2000 being illegal, as a consequence, the order dated 3-3-2001 rejecting the request for voluntary retirement under the special policy, was also illegal, in support of which reliance was placed upon the observations of this Court in the case of Srikanth v. Chairman, Indian Institute of Management, Bangalore, AIR 2001 Kant. 273 (sic).

5. The learned Single Judge having found merit in the aforesaid contentions, allowed the writ petition quashed the order dated 2-9-2000 relieving the employee from the services of the Bank, declared her to be continuing in the service and issued a direction to the appellant to consider the request of the employee for voluntary retirement under the special policy of the year 2001.

6. Sri S.V. Narasimhan, learned Counsel for the appellant would contend that there was no justification for granting the order dated 2-9-2000 relieving the employee from the services of the Bank, particularly when the Bank had not permitted the employee to resile from her earlier request for voluntary retirement from service under the Regulations and as required under sub-regulation (4) of Regulation 29. He would point out to the employee''s categorical

statement made in her request for voluntary retirement that she was not in a position to discharge the normal functions of the Bank and there being no change in circumstances that could justify her request for withdrawal on 2-9-2000, the Bank was entitled to refuse approval. In addition, he would contend that the employee, admittedly, having withdrawn and utilised her retirement benefits questioned the relieving order dated 2-9-2000 only on 5-1-2001 by filing the writ petition, in that view of the matter, the employee must not be permitted to approbate and reprobate or resile from her earlier stand. In support of the said contention, he would place reliance upon the statement of law laid down by the Supreme Court in the case of Bank of India and Others Vs. O.P. Swaranakar etc., and the judgment in Punjab National Bank Vs. Virender Kumar Goel and Others, . Lastly, he would contend that the Voluntary Retirement Scheme under the special policy was available to employees of the Bank during the period from 27-1-2001 to 28-2-2001 and since the writ petitioner was not an employee of the Bank during the said period, the appellant was well-within its rights to reject the claim of the writ petitioner. The fact that the Voluntary Retirement Scheme under the special policy of 2001 had come to an end on 28-2-2001 itself, it is the submission of the learned Counsel that the learned Single Judge was not justified in issuing a direction to the Bank to consider the application dated 28-2-2001 of the writ petitioner under the said scheme.

7. Sri R. Rajagopal, learned Counsel for the employee, on the other hand would support the impugned order of the learned Single Judge and contend that the Bank was not justified in declining the approval to the withdrawal sought for by the employee although no such orders were communicated to the employee. Elaborating on the said contention, he would draw out attention to the recommendation of the Branch Manager dated 2-9-2000 as at Annexure-C, as also the note of the Chief Manager-personnel, placed before the General Manager-Operations, the Competent Authority as at Annexure-R2, he would further contend that the Bank having accepted the voluntary retirement with effect from 4-9-2000, illegally relieved the employee from the service of the Bank with effect from 2-9-2000. In addition, he would contend that the appellant-Bank though took up the contention of estoppel in the statement of objections filed by it to the writ petition however, abandoned the same and therefore, the appellant should not be permitted to press the said contention in this appeal. He would contend that the judgment of the Apex Court in O.P. Swaranakar''s case, supra and Punjab National Bank''s case, supra, have no application to the facts of this case on the following grounds:

1. Though Rs. 7,66,000/- was credited to the employee''s Bank account, unilaterally by the appellant-Bank, she withdrew only Rs. 35,000/- from out of the said account.

2. She was misled into believing that her request to continue in her service was rejected by the General Manager and she had no other source of income for her livelihood and therefore, she withdrew Rs. 35,000/- and also the monthly

pension.

3. As on 2-9-2000, there was no application under Regulation 29 of the Regulations seeking voluntary retirement as the same had been withdrawn as contemplated by sub-regulation (4) of Regulation 29 on 2-9-2000.

4. The Voluntary Retirement Scheme, subject-matter of consideration by the Supreme Court in the case of O.P. Swaranakar, supra, was in the realm of contract and not one under the Regulations which have statutory force.

8. The employee claimed that she was misled into believing that the General Manager-Operations had rejected her request for withdrawing the request of voluntary retirement while the appellant-Bank in its statement of objections to the writ petition though took up the plea that the General Manager-Operations, the Competent Authority had endorsed on Annexure-R2 his refusal to permit the withdrawal. On a perusal of Annexure-2, the said endorsement was not forthcoming. We, therefore, on 2-4-2004 permitted the learned Counsel for the appellant to produce the original records where the aforesaid refusal of permission of the Competent Authority was endorsed. The learned Counsel for the appellant having produced the same, we perused the original of Ex. R. 2 and noticed the following endorsement made by the Competent Authority:

"Her withdrawal is not acceptable. She has admitted her incapability to perform normal Banking duties".

9. Having heard the learned Counsels for the parties, perused the impugned judgment of the learned Single Judge and the pleadings of the parties, the only question for determination in this appeal is whether the order dated 7-6-2001 of the learned Single Judge calls for interference in this appeal?

10. The facts are simple. The employee''s request dated 6-6-2000 for voluntary retirement under Regulation 29 of the Regulations was sought to be made effective after a period of 90 days therefrom i.e., 4-9-2000, which request was withdrawn by the employee, in writing on 2-y-2000, in accordance with the proviso to sub-regulation (4) of Regulation 29. The Competent Authority refused permission to withdraw by endorsing on Ex. R. 2 on 2-9-2000 and the employee was relieved from service on 3-9-2000. The employee secured the benefits of the voluntary retirement and monthly pension and thereafter, challenged the relieving order by filing the writ petition on 5-2-2001. During the pendency of the writ petition, on 23-2-2001, the employee made an application to the appellant to consider her case for voluntary retirement under the special policy of the Voluntary Retirement Scheme of 2001 which was effective from 27-1-2001 to 28-2-2001, which request stood rejected by the Bank by its communication dated 3-3-2001.

11. The question is whether the Competent Authority was justified in declining approval for the withdrawal sought by the employee? This question of declining approval has been dealt with by the Apex Court and this Court in catena of

decisions. The law recognises the right of the employee to withdraw the request for retirement or resignation from service before the date of such retirement or resignation takes effect. The request of the employee for voluntary retirement made on 6-6-2000 was withdrawn on 2-9-2000, is not in dispute, but according to sub-regulation (4) of Regulation 29, an employee who has opted to retire from the service of the Bank is precluded from withdrawing the request except with the approval of the Competent Authority i.e., the General Manager-Operations. The request dated 2-9-2000 of the employee though forwarded to the Competent Authority to be favourably considered, the said authority refused permission on the premise that the employee had admitted her incapacity to perform normal Banking duties. In other words, there was no material change in the circumstances in which the request was made for voluntary retirement and which was sought to be withdrawn.

12. In an almost identical situation, in respect of an employee of Syndicate Bank governed by similar regulations, a Co-ordinate Division Bench of this Court in an unreported judgment in the case of Syndicate Bank v. S.G. Hiremath, W.A. No. 2175 of 2001, DD: 13-8-2001 set aside the order of the Bank refusing to permit the employee from withdrawing his earlier request for voluntary retirement under the Syndicate Bank Employees'' (Pension) Regulations, 1995.

13. The Supreme Court in the case of Swaranakar, supra, wherein his Lordship S.B. Sinha, J., speaking for the Bench have noticed the earlier judicial pronouncements in Union of India (UOI) and Others Vs. Gopal Chandra Misra and Others, ; Jai Ram v. Union of India, AIR 1964 SC 584; Raj Kumar Vs. Union of India (UOI), ; Balram Gupta''s case, supra; Punjab National Bank Vs. P.K. Mittal, ; J.N. Srivastava, supra; Wing Commander T. Parthasarathy''s case, supra and Shambhu Murari Sinha Vs. Project and Development India Ltd. and Another, observed that the employee who had opted for voluntary retirement under the Voluntary Retirement Scheme had locus poenitentiae to withdraw his proposal for voluntary retirement before the relationship of employer and employee came to an end. Although one of the terms of the Voluntary Retirement Scheme, subject-matter of consideration in the said judgment contained a clause which did not permit an employee to withdraw the request for voluntary retirement under the scheme, after having exercised such option, the Supreme Court held that the law laid down in the earlier judicial pronouncements would apply to the facts of that case also.

14. It is by now well-settled law that what is important is not the desire to withdraw, but what prompted the Competent Authority from withholding the withdrawal. Applying the said principle to the facts of this case, it is pertinent to note that the Competent Authority did not assign any good reasons to refuse withdrawal of the letter dated 2-9-2000 of the employee for voluntary retirement. The favourable note at Annexure-R2 processed by the Chief Manager-Personnel, who accepted the request of the employee discloses that there was an original plan to transfer the employee to serve in the Andheri (East) Branch,

Mumbai. It is also pertinent to note that there are no guidelines regulating the exercise of power of granting or refusing approval to the withdrawal of the request for voluntary retirement. However, it is settled law that such exercise of power should satisfy the requirement of fairness and reasonableness. In our considered opinion, the reasons assigned for the refusal by the Competent Authority, to permit the employee to withdraw her request for voluntary retirement are neither fair nor reasonable and cannot be sustained. In any event, no exception can be taken to the finding of the learned Single Judge setting at naught the relieving order dated 2-9-2000.

15. The next question is whether the employee having accepted the benefit under the scheme can be permitted to approbate or reprobate or resile from her earlier stand?

16. It is not in dispute that on retirement, the Bank unilaterally deposited a sum of Rs. 7,66,000/- into the Bank account of the employee, from out of which, a sum approximately Rs. 7,31,000/- was adjusted by the Bank against the dues payable by the Bank and the employee in turn, had withdrawn Rs. 35,000/- in addition to the monthly pension, ever since 2-9-2000. The learned Counsel for the employee did try to persuade us to accept hard facts of life that, his client being a Bank employee, on retirement had no other source of income to eke out livelihood and such withdrawal and utilisation by the employee should not be construed as if she has approbated or reprobated. He would further try to convince us that despite acceptance of the part of the benefit by the employee she had an unfettered right to resile from her earlier request for voluntary retirement. The learned Counsel took us through the entire judgments of the Apex Court in Swaranakar''s case, supra and Virendra Kumar God''s case, supra and sought to contend that the subject-matter of consideration therein was Voluntary-Retirement Scheme which was in the realm of contract. He would contend that in the present case, the voluntary retirement sought for by the employee was under the Regulations which have statutory force and not a contract and therefore, the said judgments have no application.

17. In Swaranakar''s case, supra, the Supreme Court while considering the case of an employee accepting part of the benefits under the Voluntary Retirement Scheme, held thus:

"114. However, it is accepted that a group of employees accepted the ex gratia payment. Those who accepted the ex gratia payment or any other benefit under the Scheme, in our considered opinion, could not have resiled therefrom.

115. The Scheme is contractual in nature. The contractual right derived by the concerned employees, therefore, could be waived. The employees concerned having accepted a part of the benefit could not be permitted to approbate and reprobate nor can they be permitted to resile from their earlier stand".

18. Further, the Supreme Court while disagreeing with the findings of the Punjab and Haryana High Courts holding that the entire employees'' Voluntary

Retirement Scheme was ultra vires being violative of Clause (4) of Section 19 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, observed thus:

"124. Firstly, the Scheme is not a part of the statutory regulation. It was in the realm of contract. That being so it was not necessary for the Central Government to place the same before the Parliament.

125. Secondly, even if the same was a regulation, the laying down rule is merely a directory one and not mandatory".

19. The review petitions filed by the very same parties to the judgment in O.P. Swaranakar''s case, supra, to review the law laid down in paras 114 and 115 of the judgment, the Apex Court at para 16 of its judgment in Virendra Kumar Goel''s case, supra, clarified the sentence "accepted a part of the benefit under the scheme" to read thus:

"16. We make it clear that the sentence, "accepted a part of the benefit under the Scheme", which appeared in our direction as noticed above, would include the withdrawal of the benefit and utilisation thereof. By no stretch of imagination, unilateral deposit of a part of benefit under the Scheme into the Bank account, that too after withdrawal of the application, would construe as to have accepted the part of the benefit under the Scheme, when the same was neither withdrawn nor utilised by the employee concerned".

20. The observations of the Reviewing Court, while rejecting interlocutory applications, having considered the facts of the application in I.A. No. XIV, as having admittedly withdrawn the amount credited to his account, albeit compelling financial constraint and similar admission by the applicant in I.A. No. XV, in the circumstances, is apposite:

"21. As noticed in our judgment, having accepted the benefit under the Scheme by withdrawal and utilisation thereof, they are not permitted to approbate and reprobate".

21. Thus if an employee electing to seek retirement under the Voluntary Retirement Scheme, does so, but not in presenti and after having retired from service and utilised the benefits of the scheme, cannot approbate and reprobate nor resile from the earlier stand. In such circumstances compelling financial constraints cannot constitute a ground to resile from the decision to voluntarily retire. However, only exception is when the Bank unilaterally deposits the amount under the Voluntary Retirement Scheme into Bank account of the employee, which is not withdrawn or utilised by the employee concerned. Applying the law laid down by the Apex Court to the facts of this case, the employee on 2-9-2000 sought to withdraw her request for voluntary retirement and thereafter admittedly, withdrew and utilised the benefits and monthly pension, post-retirement, and having done so, on 5-2-2001 chose to challenge the relieving order dated 2-9-2000, hence she cannot be permitted to approbate

and reprobate and also cannot be heard to say that she is entitled as a matter of right to resile from her earlier stand. As a consequence the declaration that the writ petitioner is continuing in the service of the Bank and the direction to the Bank to consider her application for voluntary retirement under the special policy of the Voluntary Retirement Scheme of 2001 of the learned Single Judge are set aside.

22. In the result and for the foregoing reasons, the appeal is allowed in part, the impugned order of the learned Single Judge to the extent of the declaration that the writ petitioner continues to be an Officer of the Bank and the direction issued to the Bank to consider the application dated 23-2-2001 of the employee, are set aside, and, the writ petition is accordingly disposed of.

However, in the peculiar facts and circumstances of the case, parties are directed to bear their respective costs.

