
(2003) 12 JH CK 0062

In the Jharkhand High Court

Case No : WP (S) No"s. 2582 and 2583 of 2003

Subhash Chandra Singh and Hari Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 05-12-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 1 JCR 186

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : Vandana Singh and Shailesh, for the Appellant; P.K. Prasad, R.S. Mazumdar and D.K. Karmakar, for the Respondent

Final Decision : Allowed

Judgement

S.J. Mukhopadhaya, J.—In both the cases, as common question of law involved, common prayer has been made by the petitioners and the respondents being also common, they were heard together and are being disposed of by this common judgment.

2. The petitioners of both the cases were in the services of the respondent Hindustan Steel Works Construction Ltd. (hereinafter referred to as the HSCL) posted at Bokaro Steel City, Bokaro.

In pursuance of a revised Voluntary Retirement Scheme dated 21st March, 2003 (hereinafter referred to as the V.R. Scheme), they applied for voluntary retirement. Their applications for voluntary retirement were accepted by the HSCL on 25th April, 2003 w.e.f 31st May, 2003. After the order dated 25th April, 2003, but before the date of retirement, the petitioner changed their mind and applied for withdrawal of their applications for voluntary retirement, but they having not received any reply and having allowed to retire w.e.f 31st May, 2003, have preferred these writ petitions.

Prayer has been made for issuance of a writ(s)/order(s)/direction(s), especially

in the nature of mandamus commanding upon the respondents to allow them to withdraw their applications for voluntary retirement, preferred by them prior to the cut off date i.e., 31st May, 2003 and thereby to allow them to continue in the services of the HSCL.

In WP(s) No. 2582 of 2003 the petitioner-Subhash Chandra Singh has further prayed to cancel his order of transfer made vide letter dated 17th April, 2003 and the releasing order dated 18th May, 2003 which compelled him to opt for voluntary retirement.

3. To determine the issue, it is necessary to discuss some relevant facts of each case, as mentioned hereunder.

The respondents, HSCL launched its V.R. Scheme on 24th March, 2003 allowing its employees to opt for voluntary retirement.

WP (S) 2582 of 2003-Case of Subhash Chandra Singh :

By an order dated 17th April, 2003, the petitioner was transferred to Ramagundan, Andhra Pradesh. He was released from duty by order dated 18th April, 2003 w.e.f 22nd April, 2003. In view of transfer order, the petitioner applied for voluntary retirement on 21st April 2003, as per V.R. Scheme. It was accepted by the respondents, vide letter No. PER/ESTT/RR/531(1)/2002, dated 25th April, 2003 w.e.f. 31st May, 2003 (A.N.).

Thereafter, on 26th April, 2003 the petitioner applied for withdrawal of his application for voluntary retirement, but it was not accepted and he stood retired w.e.f. 31st May, 2003.

WP (S) No. 2583 of 2003-Case of Hari Singh :

This petitioner applied for voluntary retirement on 5th April, 2002 in pursuance of V.R. Scheme. It was accepted by the respondents HSCL from its Kolkata Office, vide letter No. PER/ESTT/RR/531(1)/2002, dated 25th April, 2003 w.e.f. 31st May, 2003(A.N.).

According to the petitioner, the respondents came out with a Circular on 29th April, 2003 that it will only make ad hoc payment and not the entire back wages as per V.R. Scheme, dated 24th March, 2003. In this background, he filed an application on 10th May, 2003 for withdrawal of his application for voluntary retirement with reminder given on 24th May, 2003.

Thereafter, no reply having received, he was made to retire w.e.f. 31st May, 2003.

4. According to the respondents, the applications of petitioners for voluntary retirement having accepted vide letter both dated 25th April, 2003, there was no occasion, for the petitioners to apply, thereafter for withdrawal of applications for voluntary retirement.

5. On the other hand, according to the petitioners, they having applied for withdrawal of their applications for voluntary retirement prior to their retirement

i.e. prior to 31st May, 2003, the respondents cannot force the petitioners to retire under V.R. Scheme.

Counsel for the petitioners further submitted that the letters of acceptance of voluntary retirement both dated 25th April, 2003 having issued from the Kolkata Office, having not served on them at Bokaro, it was open to the petitioners to withdraw their applications for voluntary retirement prior to service of such letters.

6. Similar question fell for consideration from time to time before the Supreme Court.

In the case of Bank of India v. O.P. Swarankar, reported in AIR 2003 SCW 313 the Supreme Court held, as follows:--

"64. Once it is held that the provisions of the Indian Contract Act, 1872 would be applicable, the Scheme admittedly being contractual in nature, the provisions of the Act shall apply. The scheme having regard to its provisions as noticed hereinbefore would merely constitute invitation to treat and not an offer."

"75. Once the application filed by the employee's is held to be an "offer"; Section 5, in absence of any other independent binding contract or statute or statutory rules to the contrary would come into play."

"113. The submission of the learned Attorney General that as soon as an offer is made by an employee, the same would amount to resignation in praesenti cannot be accepted. The scheme was in force for a fixed period. A decision by the authority was required to be taken and till a decision was taken, the jural relationship or employer and employee continued and the concerned employees would have been entitled to payment of all salaries and allowances etc. Thus it cannot be said to be a case where the offer was given on in praesenti but the same would be prospective in nature keeping in view of the fact that it was come into force at a later date and that too subject to a acceptance thereof by the employer. We, therefore, are of the opinion that the decisions of this Court, as referred to herein before, shall apply to the facts of the present case also."

7. In the case of Vice Chairman and M.D., APSIDC Ltd. v. Vara Prasad Singh, reported in AIR 2003 SCW 2989 the Supreme Court held, as follows :--

"In other words, question of withdrawal of their applications made for seeking voluntary retirement after their acceptance did not arise and they could not be permitted to do so in law. It is fairly settled now that the voluntary retirement once accepted in terms of the Scheme or rules, as the case may be, cannot be withdrawn."

8. Following was the observations made by the Supreme Court in the case of J.N. Srivastava Vs. Union of India (UOI) and Another, .

"It is now well settled that even if the voluntary retirement notice is moved by an employee and gets accepted by the authority within the time fixed, before the

date of retirement is reached, the employee has locus poenitentiae to withdraw the proposal for voluntary retirement."

9. Similar case like that of the petitioners was the case of Shambhu Murari Sinha Vs. Project and Development India and Another, .

In the said case, the question fell for consideration before the Supreme Court as to what is the stage upto which withdrawal of application of voluntary retirement is permissible. The appellant of the said case applied for voluntary retirement on 18th October, 1995 which was accepted by the respondent-Management by their letter dated 30th July, 1997. The release memo followed and the appellant continued in service till 29th September, 1997. In the meantime, the appellant submitted a letter to respondent-Management on 7th August, 1997 withdrawing the letter dated 18th October, 1995 by which he had sought voluntary retirement. The said letter was not given effect by the respondents-Management. The Supreme Court held the date of release from the service" as the "effective date", as quoted hereunder :--

"From the facts stated above, it would be seen that though the option of voluntary retirement exercised by the appellant by his letter dated 18.10.1995 was accepted by the respondent-Management by their letter dated 30.7.1997, the appellant was not relieved from service and he was allowed to continue in service till 26.9.1997, which, for all practical purposes, would be the "effective date" as it was on this date that he was relived from service. In the meantime, as pointed out above, the appellant had already withdrawn the offer of voluntary retirement vide his letter dated 7.8.1997. The question which, therefore, arises in this appeal is whether it is open to a person having exercised option of voluntary retirement to withdraw the said offer after its acceptance but before it is made effective. The question is squarely answered by three decisions, namely Balram Gupta v. Union of India; J.N. Srivastava v. Union of India and Power Finance Corporation Ltd. v. Pramod Kumar Bhatia in which it was held that the resignation, in spite of its acceptance, can be withdrawn before the "effective date". That being so, the appeal is allowed. The impugned judgment of the High Court is set aside with the direction that the appellant shall be allowed to continue in service with all consequential benefits. There shall, however, be no order as to costs."

10. In these two cases admittedly, the letters of acceptance were issued from the Kolkata Office (on 25th of April, 2003), prior to applications for withdrawal of letters of voluntary retirement submitted by petitioners. But such applications for withdrawal were filed by them much prior to the date they were allowed to retire (w.e.f. 31st May, 2003). The relevant portion of the common letter dated 25th April, 2003 reads, as follows :--

"Please refer to your application dated above, opting to retire voluntarily from the services of the company under the Revised Voluntary Retirement scheme in force.

Your request for Voluntary Retirement has been accepted by the Management. Accordingly, you will stand retired from the services of the company under the Revised Voluntary Retirement Scheme w.e.f 31/05/2003 (S/N). Your release will however be subject to vigilance clearance."

11. From the facts aforesaid, it will be evident that the "effective date" of retirement in both the cases is 31st May, 2003 prior to which they had a right to withdraw their offer of voluntary retirement as per the decision of the Supreme Court, as referred above. Admittedly, both of them having withdrawn their offer for voluntary retirement prior to effective date of retirement, i.e., prior to 31st May, 2003, the respondents should have accepted it and should not have compelled the petitioners to retire w.e.f. 31st May, 2003.

12. For the reasons aforesaid, both the common letters in respect to petitioners No. PER/ESTT/RR/531(1)/2002 dated 25th April, 2003, are made ineffective. In the result both of them stand reinstated to their respective posts and are allowed to continue in the services till they attain their age of superannuation. They will also be entitled for the consequential benefits, including salary of the intervening period.

13. So far as transfer of petitioner-Subhash Chandra Singh of WP(S) No. 2582 of 2003 is concerned, no case having made out, this Court is not inclined to interfere with the order dated 17th April, 2003. If he was not happy with the order of transfer and on that ground he had submitted that application for voluntary retirement, in such case, he (Subhuash Chandra Singh) should not have recalled the offer of voluntary retirement. The petitioner Subhash Chandra Singh having been released from duty to joint at Ramagundan, Andhra Pradesh, should join the transferred post within four weeks, failing which he will not get the consequential monetary benefit, as ordered above.

14. The writ petitions are allowed, except, WP (S) No. 2582 of 2003, which is allowed in part. There shall, however, be no order, as to costs.