(2007) 11 DEL CK 0011

In the Delhi High Court

Case No : LPA No. 1151 of 2007

Tek Ram Dahiya APPELLANT

Vs

Punjab National Bank and Others RESPONDENT

Date of Decision : 30-11-2007

Acts Referred:

Citation : (2007) 11 DEL CK 0011

Hon'ble Judges : Dr. M.K. Sharma, C.J;Sanjiv Khanna, J

Bench : Division Bench

Advocate : Surinder Anand and T. Chandhiok, for the Appellant; R.S. Mathur, for the Respondent

Final Decision : Dismissed

Judgement

Mukundakam Sharma, C.J.—This appeal is directed against the judgment and order dated 1.5.2007 passed by the learned Single Judge dismissing the writ petition of the appellant.

2. The appellant was an employee of the Punjab National Bank(in short the ''bank''). The respondent bank announced "Voluntary Retirement Scheme-2000" dated 29.9.2000 for its employees and it remained in operation from 1.11.2000 to 30.11.2000. The appellant vide his letter dated 29.11.2000 had proposed to seek voluntary retirement under the VRS-2000. It is contended that he had kept his application in his drawer as the appellant could not make up his mind, but that on second thought he decided not to seek voluntary retirement and that still someone took out the said application from the appellant''s drawer and dispatched the same on 2.12.2000 after the closure of the scheme on 30.12.2000. The appellant vide his letter dated 18.12.2000 withdrew his offer of voluntary retirement. The respondent bank proceeded to relieve the appellant from service on 30.12.2000 on the ground that in view of Clause 10.5 of the "VRS-2000" the option of VRS once exercised could not have been withdrawn. The appellant had also accepted the payment of retirement benefits and utilized the same. As the said Clause 10.5 have relevance, material portion of the same

is extracted below:

It will not be open for an employee to withdraw the request made for voluntary retirement under the scheme after having exercised such an option.

3. The appellant filed a writ petition being WP(C) No. 5548/2001 challenging the acceptance of his application for VRS and relieving him of his duties by the respondent bank. The contention raised by the counsel for the appellant before the learned Single Judge was that in fact he had never applied for voluntary retirement but his application seeking voluntary retirement was dispatched by mistake on 2.12.2000. It was submitted that the said VRS scheme was in operation w.e.f. 1.11.2000 to 30.11.2000 and that since his application seeking voluntary retirement was dispatched on 1.12.2000 after expiry of the scheme, Therefore, the respondent ought not to have entertained the request of the petitioner. On the other hand the counsel for the respondent bank contended that on the application of appellant-petitioner dated 29.11.2000 his request was considered and all the payments payable under the Scheme were paid to him. It was also contended on behalf of the respondent bank that the appellant-petitioner accepted the said payments and duly utilized the same and, Therefore, the appellant-petitioner is stopped under the law to take any contrary stand. Counsel for the respondent also relied upon the decision in Bank of India and Others Vs. O.P. Swaranakar etc., .

4. The learned Single Judge found force in the arguments of the counsel for the respondent and held that once the appellant-petitioner accepted the payments under the VRS Scheme, Therefore, now he cannot take any position in contradiction to the said scheme. It also could not be disputed that not only the payment was received by the appellant-petitioner but the said payment was also appropriated and withdrawn. It was held that the appellant-petitioner has knowingly accepted the benefit of a contract and also utilized the same, and, Therefore, the appellant-petitioner is estopped under law to take any contrary position. Consequently, the learned Single Judge dismissed the writ petition filed by the appellant.

5. Being aggrieved by the aforesaid judgment and order, the appellant approached this Court by filing this appeal. We have heard the learned Counsel appearing for the parties and have also perused the records.

6. Having gone through the records and upon hearing the counsel appearing for the parties, we are of the considered opinion that the ratio of the decision of the Supreme Court in Bank of India v. O.P. Swarnakar (supra) would be squarely applicable to the facts of the present case. In paragraph 112 and 113 of the said decision it was held thus:

112. 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 resoled there from.

113. 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.

7. After observing in the aforesaid manner, reference was made by the Supreme Court to the decisions in Shri Lachoo Mal Vs. Shri Radhey Shyam, and in Brijendra Nath Bhargava and Another Vs. Harsh Wardhan and Others, and also to the legal position as enunciated in Halsbury''s Laws of England, 4th Edition Volume 16 (Re-issue) para 957 and American Jurisprudence, 2nd Edition, Volume 28, 1966, page 677-680. It was held by the Supreme Court that as a general principle one who knowingly accepts the benefits of a contract or conveyance is estopped to deny the validity or binding effect on him of such contract or conveyance. In the present case also the appellant accepted the payment of retirement benefits and utilised the same and, Therefore, he cannot wriggle out of the said position to state that the offer of voluntary retirement could not have been accepted by the respondent.

8. Bonds valued at Rs. 1,97,000/-, allotted to the appellant in lieu of 50% amount of ex gratia, had been redeemed at the request of the appellant and its proceeds had been paid to him. The appellant has also been paid from time to time Interest accrued on the amount lying in bonds. The application seeking to go on voluntary retirement is dated 29th November, 2000 and, Therefore, the said request was made when the Voluntary Retirement Scheme 2000 was in operation. 30th November, 2000 was the last date fixed by the bank for making application and, Therefore, it cannot be said that the said Scheme was valid only up to 30th November, 2000. The contention that the respondent could not have accepted the appellant''s offer of voluntary retirement after expiry of the Scheme is misplaced and such submission is not reasonably supported but belied by the facts of the present case.

9. Particulars and details of the benefits released and accepted by the appellant under the aforesaid VRS Scheme-2000 are as under:

Date Amount Ex gratia (Cash component) 03.01.2001 197427.00 Ex gratia (Bond component) 30.12.2000 197000.00 Provident Fund (Own 17.05.2001 114357.04 contribution) Gratuity 09.05.2001 134877.00 Interest on gratuity 20.10.2001 4729.00 Leave encashment 02.01.2001 12249.50 Pension (including commuted May 2001 122337.00 value of pension) Pension per month 1.1.2001 2132.00

10. It is also to be mentioned herein that the appellant is a pensioner under the provisions of the PNB (Employees) Pension Regulations, 1995 and, Therefore, he is being paid pension on monthly basis under the aforesaid Regulations.

11. In view of the aforesaid position, the finding arrived at by the learned Single Judge does not call for any interference. We find no merit in this appeal particularly in the light of the settled position of law. The appeal is dismissed but

without any costs.

