(2003) 12 BOM CK 0045

In the Bombay High Court

Case No : Writ Petition No. 2528 of 2002

Tulsiram Natthuji Salmakhe APPELLANT

Vs

General Manager, Maharashtra State Co-operative Agriculture and Rural Development Bank Ltd. and Another RESPONDENT

Date of Decision : 04-12-2003

Acts Referred:
Central Civil Services (Pension) Rules, 1972 — Rule 48A(4)

Citation : (2004) 1 ALLMR 842 : (2004) 2 LLJ 218 : (2004) 1 MhLj 481

Hon'ble Judges : V.C. Daga, J;B.R. Gavai, J

Bench : Division Bench

Advocate : B. Vora, for the Appellant; S.S. Ghate, for the Respondent

Judgement

B. R. Gavai, J.—Rule returnable forthwith. By consent of parties, heard finally.

2. The short question that arises for consideration, in the present petition, is as to whether an employee can withdraw the notice for voluntary retirement, before it comes into effect, or before the expiry of the period stipulated in the notice for voluntary retirement.

3. The facts in brief in the present petition are as under.

4. That, the petitioner was working as Branch Manager in the respondent No. 2, bank, i.e. The Yavatmal District Co-operative Agriculture and Rural Development Bank Limited, Yavatmal. The petitioner applied on 30-10-2000, under the Voluntary Retirement Scheme, framed by the respondent bank, by its Circular dated 8-7-1999. Clause 1 of the said Circular, provides that such of the employees, who have continuously worked for a period of 20 years and who are not more than 56 years of age, can opt for Voluntary Retirement Scheme, by giving three months'' advance notice.

5. The petitioner, vide representation dated 6-11-2001, addressed to the General Manager, Maharashtra State Co-operative Agriculture and Rural Development Bank, intimated that, since his mental state was not proper on 30-10-2000, he

had applied for voluntary retirement. Vide the said communication, he requested that his application for voluntary retirement may not be accepted.

6. However, vide communication dated 31-1-2001, the District Branch Manager of the respondent bank, informed the petitioner, that in pursuance of the order issued by the Head Office, dated 24/25-1-2001, the application of the petitioner for voluntary retirement, is sanctioned and that the petitioner shall stand retired, with effect from 4.00 p.m. of 31st January, 2001.

7. The petitioner, thereafter addressed various representations, to the respondent, bank, requesting to take into consideration, the fact that, he had already withdrawn his offer of voluntary retirement and as such he should be reinstated in the service.

8. Since the respondent bank did not respond to the representations, made by the petitioner, the petitioner ultimately approached this Court, by way of present writ petition.

9. We have heard Shri Vora, learned Counsel for the petitioner and Shri Ghate, learned Counsel appearing for the respondent bank.

10. Learned Counsel for the petitioner, submits that, in accordance with the scheme, framed by the respondent bank, an employee was required to give three months'' advance notice to the bank, for seeking voluntary retirement. It is submitted that, in view of the said scheme, it is permissible for an employee, to withdraw the offer of voluntary retirement, before the expiry of the period of three months, as stipulated in the scheme. The learned Counsel for the petitioner, therefore, submits that, since the petitioner had immediately withdrawn his offer on 6-11-2000, vide the communication addressed to the respondent bank, which was duly acknowledged, the action of respondent bank, of accepting the offer of the petitioner for voluntary retirement, vide order dated 31-1-2001 was illegal and as such liable to be quashed and set aside. The learned Counsel for the petitioner, has relied upon the judgments of the Supreme Court in Bank of India and Others Vs. O.P. Swaranakar etc., ; Union of India and Anr. v. Wing Commander T. Parthasarathy (reported in AIR 2001 SC 158. J.N. Srivastava Vs. Union of India (UOI) and Another, ; Power Finance Corporation Ltd. Vs. Pramod Kumar Bhatia, ; and Balram Gupta Vs. Union of India (UOI) and Anr, .

11. Shri Ghate, learned Counsel appearing for the respondent bank submitted that, having given a notice for voluntary retirement, it was not permissible for the petitioner to withdraw the same. In any event, the application made by the petitioner, for withdrawal of voluntary retirement, has been rejected by an order dated 4-6-2001. It is further submitted that, not only this, but all the monetary benefits, available to the petitioner, in pursuance of the voluntary retirement, have been given to him and as such, it was not permissible for the petitioner, to retract from his offer.

12. This Court vide order dated 22-1-2003, had directed the petitioner, to deposit the benefits derived by him on account of voluntary retirement. The petitioner had accordingly, deposited an amount of Rs. 1,42,200/-.

13. In view of the rival submissions, the question that arises for consideration, is, whether it was permissible for the petitioner to withdraw the notice of voluntary retirement, before expiry of the notice period.

14. The issue is no more res integra. The Apex Court, in several judgments has held that, the retirement does not become effective, unless the employee was relieved of his duties. It has also been held that, it is permissible for an employee, to withdraw his offer of voluntary retirement, before the expiry of the period mentioned in the notice of voluntary retirement.

15. The law on the subject has been discussed at length by their Lordships, in the case of Bank of India and Ors. v. O. P. Swaranakar etc. (cited supra). The identical issue relating to the voluntary retirement Schemes, framed by various nationalised banks, had come up for consideration before the Apex Court. In the aforesaid case also, some of the employees, who had submitted their applications for voluntary retirement, withdrew their offer and despite withdrawal, the offer was accepted by the Banks. The action on the part of the bank, in accepting the applications of the concerned employees, despite their withdrawal, was under challenge before the Apex Court.

16. Their Lordships of the Apex Court, while discussing the case law on the point have observed thus :

"97. We may at this juncture notice the decision of this Court covering the subject.

98. In Gopal Chandra Misra''s case (supra) this Court was considering a question where a Judge of a High Court in terms of Article 217 of the Constitution of India withdraw the resignation submitted by him. Resignation by a constitutional authority is a unilateral act. In the case of resignation by a constitutional authority, it is governed by the constitutional provisions as resignation of a constitutional authority does not require an express acceptance. The same being unilateral in character, it was observed :

"The substantive body of this letter (which has been extracted in full in a foregoing part of this judgment) is comprised of three sentences only. In the first sentence, it is stated : "I beg to resign my office as Judge, High Court of Judicature at Allahabad." Had this sentence stood alone, or been the only content to his letter, it would operate as a complete resignation in praesenti, involving immediate relinquishment of the office and termination of his tenure as Judge. But this is not so. The first sentence is immediately followed by two more, which read : "I will be on leave till July 31, 1977. My resignation shall be effective on August 1, 1977." The first sentence cannot be divorced from the context of the other two sentences and construed in isolation. It has to be read along with the succeeding two which qualify it. Construed as a whole according to its tenor, the letter dated May 7, 1977, is merely an intimation or notice of the writer''s intention to resign his office as Judge, on a future date, viz., August 1, 1977."

99. In that case, thus, a resignation which was not in praesenti has been held to be capable of being withdrawn. It did not constitute a juristic act.

100. We may notice that in Jai Ram Vs. Union of India (UOI), it was held :

"It may be conceded that it is open to a servant, who has expressed a desire to retire from service and applied to his superior officer, to give him the requisite permission, to change his mind subsequently and ask for cancellation of the permission thus obtained : but, he can be allowed to do so as long as he continues in service and not after it has terminated."

Yet again in Raj Kumar Vs. Union of India (UOI), it was

held:

"When a public servant has invited by his letter of resignation determination of his employment, his services normally stand terminated from the date on which the letter of resignation is accepted by the appropriate authority, and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the public servant to withdraw his resignation after it is accepted by the appropriate authority. Till the resignation is accepted by the appropriate authority in consonance with the rules governing the acceptance, the public servant concerned has locus penitential but not thereafter."

101. In Balram Gupta''s case this Court was dealing with Central Civil Services (Pension) Rules, 1972 which is a statutory rule. Sub-rule (4) of Rule 48-A prevented withdrawal of resignation letter except with the approval of the authority. The validity of the said rule was not in question. In that case the approval of the authority to withdraw was not given. It was in the aforementioned situation observed :

"That has been done. The approval of the authority was, however, not given. Therefore, the normal rule which prevails in certain cases that a person can withdraw his resignation before it is effective would not apply in full force to a case of this nature because here the Government servant cannot withdraw except with the approval of such authority."

102. Having regard to the fact that the issue involved therein stood on a different footing, this Court made a mere observation to the following effect:

"It may be a salutary requirement that a Government servant cannot withdraw a letter of resignation or of voluntary retirement at his sweet will and put the Government into difficulties by writing letters of resignation or retirement and withdrawing the same immediately without rhyme or reason. Therefore, for the purpose of appeal we do not propose to consider the question whether Sub-rule (4) of Rule 48-A of the Pension Rules is valid or not."

103. Validity of such a rule was, therefore, not in question. As indicated hereinbefore, the bar of withdrawing the resignation was contained in the statutory rule and, thus, Section 5 of the Indian Contract Act would not have been applicable in that case. However, it is advantageous to notice the following observations made in the said decision :

"We do not see how this could not be a good and valid reason. It is true that he was resigning and in the notice for resignation he had not given any reason except to state that he sought voluntary retirement. We see nothing wrong in this. In the modern age we should not put embargo upon people''s choice or freedom. If, however, the administration had made arrangements acting on his resignation or letter of retirement to make other employee available for his job, that would be another matter but the appellant''s offer to retire and withdrawal of the same happened in such quick succession that it cannot be said that any administrative set up or arrangement was affected."

104. It was further observed :

"In the modern and uncertain age it is very difficult to arrange one''s future with any amount of certainty : a certain amount of flexibility is required, and if such flexibility does not jeopardize Government or administration, administration should be graceful enough to respond and acknowledge the flexibility of human mind and attitude and allow the appellant to withdraw his letter of retirement in the facts and circumstances of this case."

105. In P. K. Mittal''s case (supra), a question arose as to whether in contravention of Rule 20 of the Punjab National Bank (Officers) Service Rules, 1979, the bank can reduce the notice period. Ranganathan, J. speaking for the Bench held that the same could not have been done and the concerned employee was entitled to withdraw his resignation before it became effective.

106. In Power Finance Corporation Ltd. Vs. Pramod Kumar Bhatia, a scheme of voluntary retirement was floated and pursuant thereto the respondents therein had applied for voluntary retirement but subsequently the Corporation had withdrawn the scheme although the offer had been accepted. Such acceptance was to take effect from 31-12-1994. This Court held that the acceptance of his offer to voluntarily retire being subject to adjustment of the amount payable to him, the same did not attain finality. It was held :

"It is now settled legal position that unless the employee is relieved of the duty, after acceptance of the offer of voluntary retirement or resignation, jural relationship of the employee and the employer does not come to an end. Since the order accepting the voluntary retirement was a conditional one, the conditions ought to have been complied with. Before the conditions could be complied with, the appellant withdrew the scheme. Consequently, the order accepting voluntary retirement did not become effective. Thereby no vested right has been created in favour of the respondent. The High Court, therefore, was not right in holding that the respondent has acquired a vested right and, therefore, the appellant has no right to withdraw the scheme subsequently."

107. This decision is an authority for the proposition that even after acceptance of the offer made by the employee, the scheme can be withdrawn and, if it is so done, the employee does not acquire any vested right.

108. In J. N. Srivastava''s case, it was held:

"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 penitential to withdraw the proposal for voluntary retirement."

17. Rejecting the submissions of the learned Attorney General that as soon as the offer is made by an employee, the same would amount to resignation in praesenti, their Lordships observed thus :--

"113. The submission of 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 of 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 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 hereinbefore, shall apply to the facts of the present case also."

18. In view of the aforesaid settled position of law, it is clear that the action of the respondent bank, in accepting the offer of the petitioner dated 30-10-2000, for voluntary retirement vide its order dated 31-1-2001, ignoring the withdrawal of the offer by the petitioner dated 6-11-2000, is per se illegal and not sustainable in law. It is clear that the offer given by the petitioner dated 30-10-2000, was to come into effect after a period of three months and till then it was permissible for the petitioner to withdraw the same. The petitioner having withdrawn the offer of voluntary retirement, dated 30-10-2000 vide his communication dated 6-11-2000, the action of the respondent bank in retiring the petitioner with effect from 31-1-2001, was wholly unjustified.

18, The petition thus stands allowed, by granting following reliefs.

(i) The order dated 31-1-2001, issued by respondent Bank, thereby retiring the petitioner from the services with effect from 4:00 p.m. of 31-1-2001 is quashed and set aside.

(ii) The respondent, bank is directed to immediately reinstate the petitioner in services and give him continuity in service, with effect from 31-1-2001.

(iii) The petitioner is entitled to arrears of salary from the date of filing of petition i.e. 27-6-2002 till the date of reinstatement,

(iv) The respondent bank will be at liberty to withdraw an amount of Rs. 1,42,200/- deposited by the petitioner in this Court, subtracting an amount of salary to which petitioner shall be entitled w.e.f. 27-6-2002 till reinstatement.

Rule is made absolute in aforesaid terms. In the facts and circumstances of the case, no order as to costs.