(1983) 07 DEL CK 0033

In the Delhi High Court

Case No : Letter Patent Appeal No. 112 of 1981

Union of India and Others APPELLANT

Vs

Harendralal Bhattacharyya RESPONDENT

Date of Decision : 08-07-1983

Acts Referred:

Citation : (1983) 5 DRJ 310 : (1984) 1 ILR Delhi 163

Hon'ble Judges : T.P.S Chawla, J;J.D. Jain, J

Bench : Division Bench

Advocate : U.L. Watwani, Kailash Vasdev and Shyam Moorjani, for the Appellant;

Judgement

T.P.S. Chawla, J.

(1) This case is the tale of a man who lost his balance of mind due to financial difficulties, and has thereby posed a nice legal problem. Harendralal Bhattacharyya was born on 1st September, 1921. He is a displaced from what was formerly East Pakistan, and is now BangiaDesh. On 10th August, 1949 he was appointed a stenographer in the office of the Comptroller and Auditor General of India. In 1958, he qualified for the Subordinate Accounts Service. Shortly afterwards, in 1959, he was promoted to the post of Accountant. In the course of time, he rose to be a Senior Personal Assistant in 1974.

(2) On account of being a displaced person, Bhattacharyya was able to obtain the allotment of a plot of land from the Rehabilitation Department of the Government of India in 1971. This became the cause of all his woes. The plot was situated in Chittaranjan Park, New Delhi, and measured 160 sq, yds By the terms of allotment he was required to construct a house thereon within 2 years. He had very little money of his own. So for raising the necessary funds ne sought loans from the Government. He was advanced Rs. 3,840.00 for the purchase of the land, and Rs. 36,560.00 for constructing the house. Latter, on his urgent requests, he was advanced another sum of Rs. 10,400.00 to complete the

building.

(3) Naturally, for recovering the amounts advanced, the Government began to make monthly deductions from Bhattacharayya''s salary. There

(4) In order to cope with the situation, he seems to have thought that if he retired from service and commuted his entire pension, he would be able to pay off the loans he had taken from Government. He also seems to have had the expectation that he would be able to obtain a job in some Public sector organisation. Nothing seems to have been fully and carefully worked out, but these were the lines on which his mind was functioning.

(5) In this frame of mind, he wrote a letter dated 4th May, 1976 to the Comptroller and Auditor General of India. After describing his state of misery (''Yesterday we were without food..........''), he said:

"IT is Therefore desirable that I should retire from Government service so that all my problems may be solved. He, then, proceeded as follows: "I, Therefore, propose to retire from Government service on 19th August 1976 a little over 3 months still to run. This may kindly be taken as notice from my side. I request that my pension papers may kindly be processed on a very to? priority basis."

The rest of the letter is not material, except that he asks for l/3rd of his pension to be commuted ''with effect from 19th August 1976 itself, and adds that he is applying separately for full commutation of his pension, which he requests may be done expeditiously.

(6) On 30th June 1976, the Deputy Director (Personnel), in the office of the Comptroller and Auditor General of India, issued an office order saying that ''In pursuance of the notice dated 4-51976 given by him under F.R. 56(k '', Bhattacharyya had been ''permitted by the appropriate Authority to retire from Government Service with e;Tect from 19-8-1976 (Forenoon)''. Thus. the notice of voluntary retirement stood accepted.

(7) On 17th July 1976, the allotment of the Government quarter, in which Bhattacharyya was residing, was cancelled. At or about the same time, the Rehabilitation Department threatened to cancel the allotment of the plot at Chittaranjan Park as the house was still incomplete. Bhattacharyya''s attempts to find a job with a public sector organisation also failed. Further, on making inquiries, he learnt that his request for full commutation of pension was not likely to be granted. It then dawned on him that he had made a terrible mistake and would be worse off after voluntary retirement than he was before.

(8) In these circumstances, Bhattacharyya wrote a long letter dated 10th August 1976 to the Comptroller and Auditor General narrating his ''pathetic'' story. Towards the end, he said.

"ON reconsideration I feel that I should not have taken a hasty decision to apply for premature retirement..... ....I would, Therefore, like to withdraw my request dated 4th May 1976 which was accepted by the Comptroller & Auditor General in his office Order No. 91 circulated in No. 3033-OE & A 85 76 dated 30th June 1976".

Consequently, he requested that the said office order be cancelled.

(9) However, by a memorandum dated 17th August 1976 the Deputy Director (Personnel) informed Bhattacharyya that ''his request after careful consideration has not been accepted by the Competent Authority''. Thereafter, by an office order dated 19th August 1976, it was notified that Bhattacharyya ''has retired from Government service with effect from 19-8-1976 F.N.''

(10) For more than a year afterwards, Bhattacharyya kept on making representations against his retirement. He sent an appeal addressed to the President but it was withheld by the Comptroller and Auditor General. He then sent the appeal directly to the President. He, also, met the then Prime Minister. But it was all to no avail.

(11) Ultimately, on 2nd December 1977, the filed a petition in this court under Article 226 of the Constitution. He prayed that the office order dated 30th June 1976, the memorandum dated 17th August 1976 and the office order dated 19th August 1976 be quashed, and it be declared that he continued to be in service throughout and was entitled to all arrears of pay and allowances and other benefits admissible to him.

(12) On 29th May 1981, the petition was allowed with costs by S.B. Wad, J. He held that Bhattacharyya was entitled to withdraw the notice of voluntary retirement, given by him on- the May 1976, at any lime ''before the effective date of termination of employment'', that is, 19th August 1976. For reaching this conclusion he relied on some judgments of the Supreme Court and his own earlier judgment delivered on 27th March 1981 in Civil Writ Petition No. 1776 of 1980 entitled Dr. Bhim Singh Jain v. Union of India and others. Since, by his letter dated 10th August 1976, Bhattacharyya had withdrawn his notice before 19th August 1976, the judge held that he had ''not retired and was entitled to his full salary and increments etc.'' till his normal age of retirement. The Union of India has now appealed under Clause 10 of the Letters Patent.

(13) Under Fundamental Rule 56(a) the normal age of retirement of a Government servant is 58 years. Bhattacharyya would have reached that age on 31st August 1979. When he gave notice for voluntary retirement or) 4th May 1976, he was a little under 55 years, and had more than 3 years to go. It is common ground that he gave notice under Fundamental Rule 56k). committing the irrelevant portions, that sub-rule reads as follows : ''(K) any Government servant may by giving notice of not less than three months in writing to the appropriate authority retire from service after he has attained the age of fifty years if he. is in Class I or Class service or post, and had entered Government service before attaining the age of thirty-five years, and in all other cases after he has attained the age of fifty-five years : Provided that :- (a) x x x x (b) it shall

be open to the appropriate authority to withhold permission to a Government servant under suspension who seeks to retire under this clause.''

(14) Now Bhattacharyya was in a Class Ii service. On 4th May 1976 he was more than 50 years of age. He had entered Government service before attaining the age of thirty-five years. Hence, all the pre-requisites for his invoking this sub-rule were fulfilled .The notice given by Bhattacharyya was thus perfectly valid. The sole question is whether a notice given under this sub-rule can be withdrawn unilaterally by the Government servant; and, if so. till what stage.

(15) Let me start from first principles. A contract of employment is like any other contract in that it requires the consent of both parties. Likewise after the formation of the contract, neither party can alter any of its terms without the consent of the other. This holds equally true in respect of the term fixing the period of the employment. Neither the employer nor the employee can extend or abridge the period of employment fixed by the contract without the consent of the other party .

(16) That brings me to the next step. It is apparent from what I have said that the period of employment can be altered by mutual consent. This process is tent amount to formation of a new contract, at least, as regards That term. Therefore, the theory of ''offer'' and ''acceptance'' comes into play. In accordance with the general principles of the law of contract, an offer ''may be revoked at any time before the communication of its acceptance is complete as against'' the offeror : see Section 5 of the Contract Act 1872. Apply this to the case of an employee who offers to resign before his period of employment expires. He can revoke or withdraw his offer at any time before it is accepted, but not afterwards.

(17) An excellent authority for this proposition is RaJ Kumar v. Union of India Air 196) S.C. 180. There, an officer of the Indian Administrative Service tendered his resignation, and then sought to withdraw it after it had been accepted It was held that he could not do so. The Supreme Court said:

''......WHERE 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 condition 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.''

Although this was a case of a Government servant, in P. Kasilingam Vs. P.S.G. College of Technology, the Supreme Court made it clear that : There is no reason why the same principle should not apply to the case of any other employee''. It is, Therefore, a proposition of general application.

(18) It will be observed, however, that in Raj Kumar''s case there was an ''absence of any law or rule governing the Conditions of his service to the contrary''. If there had been any such law or rule, it would have prevailed over the general principles of the law of contract. The reason is that the position of a Government servant differs from that of any other employee, in that, although the relationship originates in contract it passes into the realm of status. This was explained in Roshan Lal Tandon Vs. Union of India (UOI), , as follows : It is true that the origin of Government service is contractual. There is an offer and acceptance in every case. But once appointed to his post or office the Government servant acquires a stains and his rights and obligations are no longer determined by consent of both parties, but by statute or statutory rules which may be framed and altered unilaterally by , Government. In other words, the legal position of a Government servant is more one of status than of contract. The hall-mark of status is the attachment to a legal relationship of rights and duties imposed by the public law and not by mere agreement of the parties. (Emphasis mine''. So, if there is a rule applicable to a Government servant, it will govern the case.

(19) Here, as I have shown, Fundamental Rule 56.k) was fully applicable. The solution of the question posed, Therefore, turns on its proper interpretation. From the very words of the sub-rule it is clear that it gives to a Government servant the right to retire ''by giving notice of not less than three months in writing'' provided, of course, he satisfied the conditions stated. The sub-rule lays down no requirement that the notice must be accepted. On the contrary, it is implied by proviso (b) that except when a Government servant is under suspension, the appropriate authority has no power to ''withhold permission'' to retire. The irresistible conclusion is that the notice given under the sub-rule is effective proprio vigore and needs no acceptance.

(20) That this view is right is borne out by Dinesh Chandra Sangma Vs. State of Assam and Others, . In the Fundamental Rule 56 under consideration in that case, the equivalent of sub-rule (k) was sub-rule (c). It was worded in exactly the same manner. This is what the Supreme Court said: ''While the Government reserves its right to compulsorily retire a Government servant, even against his wish, there is a corresponding right of the- Government servant under F.R. 56(c) to voluntarily retire from service by giving the Government three months'' notice in writing. There is no question nf acceptance of the request for voluntary retirement by the Government when the Government servant exercises his right under F.R. 56(c).'' (Emphasis mine) And, it was held that : ''The High Court committed an error of law in holding that consent of the Government was necessary to give legal effect to the voluntary retirement of the appellant under F.R. 56 c).

(21) NEXT. the question is whether the notice given under Fundamental Rule 56(k) can be withdrawn. The sub-rule is silent on the point. Counsel for the Union contended that unless such a right was expressly given, it did not exist.

But. the correct legal proposition is precisely the reverse. This is shown by the following passage from the majority judgment in Union of India (UOI) and Others Vs. Gopal Chandra Misra and Others, :- ''It will bear repetition that the general principle is that in the absence of a legal, contractual or constitutional bar, a "Prospective" resignation can be withdrawn at any time before if becomes effective, and it becomes effective when and it becomes effective when it operates to terminate the employment or the office-tenure of the resign or .This general rule is equally applicable to Government servants and constitutional functionaries." (Emphasis mine). And, lest it be doubted whether the same principle applies in the case of retirement, I might add that just a little before that passage, it was said that ''a proposal to retire from service/office and a tender to resign office from a future date, for the purpose of the point under discussion stand on the same footing.''

(22) In the course of the argument, reference was made to Rule 48 of the Central Civil Services (Pension) Rules, 1972. That rule allows voluntary retirement after 30 years'' qualifying service. It is rather differently worded, and does not afford much assistance in construing Fundamental Rule 56(k). However, it is worth noticing sub-rule (2) of Rule 48 which reads as follows : ''(2) A Government servant who has elected to retire under this rule and has given the necessary intimation to that effect to the appointing authority, shall be precluded from withdrawing his election subsequently except with the specific approval of such authority : Provided that the request for withdrawal shall be within the intended date of his retirement. Since there is no similar prohibition in Fundamental Rule 56(k) against withdrawing the notice of voluntary retirement, it will follow that it can be withdrawn without the approval of the appointing authority. To that extent it fortifies the conclusion I have already reached.

(23) It only remains to consider, till what stage the notice under Fundamental Rule 56(k can be withdrawn. In fact the answer has already been provided in Gopal Chandra Misra''s case : it ''can be withdrawn at any time before it becomes effective, and it becomes effective when. it operates to terminate the employment or the office-tenure of the resignor''. The reason appears more clearly from Jai Ram Vs. Union of India (UOI), , where it was said : ''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 so long as he continues, in service and not after it has terminated '' Obviously, after the employment has ceased to exist it cannot be revived by withdrawing the notice of termination. That also accounts for the proviso to sub-rule (2) of Rule 43 of the Central Civil Services (Pension) Rules.

(24) The single judge was, Therefore, right in holding that Bhattacharyya could withdraw his notice of voluntary retirement at any time before 19th August 1976, the date on which, according to that notice, the employment was to cease. Since

he withdrew that notice by his letter dated 10th August 1976, when the employment was still subsisting, the notice was rendered nugatory, and he continued in service till his normal age of retirement.

(25) As a last resort, counsel for the Union submitted that Bhattacharyya was estopped from pleading that his retirement was invalid because he had afterwards accepted Rs. 15,759.60 in January 1977. being the commuted amount of I 3rd of his pension, and had thus approbated the retirement. No such point was raised by the Union in its counter-affidavit or at the hearing before the single judge. In its counter-affidavit the Union merely mentioned ''incidentally'' that Bhattacharyya had received the commuted amount of l/3rd of his pension, but never went on to plead estoppel. Indeed, the word ''estoppel'' does not occur anywhere in the counter-affidavit or even in the grounds of appeal. The plea would necessarily involve an inquiry into the circumstances in which Bhattacharyya accepted the commuted amount of I 3rd of his pension. Therefore, it cannot be allowed to be raised for the first time in appeal : see Fakir Khan and others v. Ismail Khan and others Air 1933 Lah 179.

(26) For all these reasons, I would dismiss the appeal with costs Counsel''s fee Rs. 500-00.

