

(2011) 03 MP CK 0031

In the Madhya Pradesh High Court

Case No : Writ Petition No. 4012 of 2009 (S)

Union of India (UOI) and Others

APPELLANT

Vs

Shishir Kumar Shukla

RESPONDENT

Date of Decision : 03-03-2011

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 48(2), 48A, 48A(1), 48A(2), 48A(4)

Citation : (2011) 2 JLJ 287 : (2011) 2 MPLJ 612

Hon'ble Judges : S.S. Kemkar, J; Abhay M. Naik, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Abhay M. Naik, J.

This writ petition has been preferred by the Petitioners against an order dated 3-3-2009, passed by the Central Administrative Tribunal, Jabalpur Bench Camp at Indore in O.A. No. 349/2008.

Facts relevant for the purpose of this petition are that the Applicant/Respondent was initially appointed as Lower Division Clerk in the year 1976, in the office of Regional Provident Fund Commissioner. He was promoted to the post of Upper Division Clerk and, thereafter, to the post of Section Incharge vide order dated 25-2-2005. While working on the post, he submitted an application on 21-11-2007 (Annexure A-1) seeking voluntary retirement due to his family circumstances. As per Rule 48-A of the Central Civil Services (Pension) Rules, 1972, at least three months prior notice was required to proceed on voluntary retirement. Before expiry of such period, the Applicant/Respondent submitted another application, on 17-2-2008 (Annexure A-2) with a request for withdrawal of Annexure A-1.

Non-Applicant/Petitioner No. 4 despite receipt of Annexure A-2, passed an order dated 20-2-2008 (Annexure A-3), accepting thereby the application contained in

Annexure A-1 for proceeding on voluntary retirement under Rule 48-A of Central Civil Services (Pension) Rules, 1972. Applicant/Respondent on the same day, submitted an application (Annexure A-4) that he had already submitted an application, revealed in Annexure A-2, to withdraw the application seeking voluntary retirement. In view of this, a prayer was made to cancel the impugned order of acceptance of voluntary retirement, made vide Annexure A-3. However, the Petitioner was relieved on 21-2-2008, vide office order marked as Annexure A-5.

Applicant/Respondent submitted O.A. No. 349/2008 before the Central Administrative Tribunal with a main grievance that he had already withdrawn the notice of voluntary retirement before its acceptance and further before it was given effect to. This being so, the acceptance of voluntary retirement is bad in law and consequently Annexure A-3 and A-5 may be quashed.

Non-Applicant/Petitioner submitted joint reply refuting thereby the claim of the Applicant. It was admitted that the application for withdrawal of voluntary retirement was received in the office of the appointing authority (Petitioner No. 3.) on 18-8-2008. It has been stated in the application specifically that the appointing authority had not accepted and approved the application for withdrawal which was essential according to Sub-rule (4) of Rule 48-A of General Civil Services (Pension) Rules, 1972. Accordingly, application for retirement has been rightly accepted which needs no interference.

Central Administrative Tribunal, Jabalpur vide its order dated 3-3-2009 allowed the application of the Applicant/Respondent and quashed the orders dated 20/21-2-2008, Annexure A-3 and A-5 respectively with all consequential benefits. Applicant/Respondent has also been directed for being reinstated forthwith by the said order. Hence, the present writ petition.

Shri Vivek Sharan, learned Assistant Solicitor General for the Petitioners and Ms. Vandana Kasrekar, learned Counsel for Respondent made their respective submissions which have been considered in the light of the material on record as well as the provisions governing the situation.

It is almost the settled law that resignation or letter of voluntary retirement of a Government Servant cannot be withdrawn after having been accepted in due manner. We may successfully refer to the Apex Court decision in the case of Raj Kumar Vs. Union of India (UOI), wherein it has been observed that:

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 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 paenitentiae but not thereafter.

It has been further analyzed and declared in following words by the majority of the Constitution Bench of the Apex Court in the case of Union of India (UOI) and Others Vs. Gopal Chandra Misra and Others, .

50. 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 it becomes effective, and it becomes effective when it operates to terminate the employment or the office-tenure of the resignor. This general rule is equally applicable to government servants and constitutional functionaries. In the case of a government servant/or functionary/ who cannot, under the conditions of his service/or office, by his own unilateral act of tendering resignation, give up his service/or office, normally, the tender of resignation becomes effective and his service/or office-tenure terminated, when it is accepted by the competent authority. In the case of a Judge of a High Court, who is a constitutional functionary and under proviso (a) to Article 217(1) has a unilateral right or privilege to resign his office, his resignation becomes effective and tenure terminated on the date from which he, of his own volition, chooses to quit office. If in terms of the writing under his hand addressed to the President, he resigns in praesenti, the resignation terminates his office-tenure forthwith, and cannot therefore, be withdrawn or revoked thereafter. But, if he by such writing, chooses to resign from a future date the act of resigning office is not complete because it does not terminate his tenure before such date and the Judge can at any time before the arrival of that prospective date on which it was intended to be effective, withdraw it, because the Constitution does not bar such withdrawal.

Admitted facts emerging from the record are that the Applicant/Respondent submitted application Annexure A-1 on 21-11-2007 for seeking voluntary retirement due to family circumstances. On 7-2-2008, he submitted another application marked as Annexure A-2 for withdrawal of his earlier application for voluntary retirement. Petitioner No. 4 vide Annexure A-3, dated 20-2-2008 accepted the earlier application for voluntary retirement under Rule 48-A of Central Civil Services (Pension) Rules, 1972. Applicant, vide Annexure A-4, dated 20-2-2008 brought into notice his application dated 7-2-2008 withdrawing thereby the earlier application for voluntary retirement. Despite it, the Applicant was relieved on 21-2-2008, vide Annexure A-5, on the same day.

Case in hand does not relate to resignation, but relates to voluntary retirement, which is governed by Rule 48-A of the Central Civil Services (Pension) Rules, 1972. Relevant portion of this Rule is reproduced below for convenience:

Rule 48-A (1)- At any time after a Government servant has completed twenty years" qualifying service, he may, by giving notice of not less than three months in writing to the appointing authority, retire from service.

(2) The notice of voluntary retirement given under Sub-rule (1) shall require acceptance by the appointing authority.

(4) A Government servant, who has elected to retire under this rule and has given the necessary notice to that effect to the appointing authority, shall be precluded from withdrawing his notice with the specific approval of such authority.

Shri Vivek Sharan, learned Assistant Solicitor General for the Petitioners relying heavily on Sub-rule (4) of Rule 48-A (supra) submitted that the letter of withdrawal contained in Annexure A-2 was not approved by the appointing authority as required under the said sub-rule. In the absence of specific approval by the appointing authority to the letter of withdrawal, the Applicant stood precluded from withdrawing his notice of voluntary retirement contained in Annexure A-1.

Ms. Vandana Kasrekar, learned Counsel appearing for the Respondent countered it by submitting firstly that the letter of withdrawal Annexure A-2 was not considered at all, secondly the Applicant had a right to withdraw his earlier letter for voluntary retirement before its acceptance.

A like contention came up for consideration before Hon"ble the Apex Court in the case of Balram Gupta Vs. Union of India (UOI) and Anr, . In the case of Balram Gupta (supra) the authority concerned disallowed the request under Rule 48-A(4) of Central Civil Services (Pension) Rules, 1972, which precluded the government servant from withdrawing his notice except with a specific approval of such authority. The Apex Court without entering into the question whether Sub-rule (4) of Rule 48-A of Central Civil Services (Pension) Rules 1972 is valid or not allowed the appeal of the employee. Consequently, the employee was held entitled to reinstatement with all the consequential benefits. It has been observed:

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. If properly exercised the power of the government may be a salutary rule. Approval, however, is not ipse dixit of the approving authority. The approving authority who has the statutory authority must act reasonably and rationally.

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. The administration has now taken a long time by its own attitude to communicate the matter. For this the Respondent is to blame and not the Appellant.

In the instant case, though the Applicant submitted the application on 21-11-2007 vide Annexure A-I for voluntary retirement, the same, in the absence of acceptance, could have been given effect to only after three months from the date when he expressed his wish to retire. Before acceptance of his letter of retirement, the Applicant vide Annexure A-2, dated 7-2-2008 requested

for withdrawal of earlier request for retirement vide letter dated 21-11-2007. This letter was not even placed before the authority concerned.

Sub-rule (2) of Rule 48-A makes it clear that a government servant is not absolutely precluded from withdrawing his request for voluntary retirement. Such a letter of withdrawal may be and could have been considered for specific approval by such authority. Since the letter of withdrawal was submitted within the statutory requisite period of three months, the concerning authority was under an obligation, either to ask the Applicant to seek approval for such withdrawal or to straightway consider the letter of withdrawal. However, in no case, the concerning authority could have ignored the letter of withdrawal while accepting the voluntary retirement on 20/21-2-2008 vide Annexure A-3 and A-5, after receipt of letter of withdrawal. Sub-rule (2) of Rule 48-A clearly enables the government servant to seek withdrawal of request for voluntary retirement, provided that such request for withdrawal is within the intended date of his retirement. According to this sub-rule, a Central Government employee is not debarred from submitting an application for withdrawal of his request for voluntary retirement. Since the Applicant had made a request for such withdrawal, the same ought to have been considered before passing the impugned order of acceptance of letter for voluntary retirement. It is not a case where the Govt. servant was precluded expressly by the authority concerned or his request for withdrawal of letter of voluntary retirement was disapproved. This being so, it would not be legal to accept the letter of voluntary retirement, without considering the prayer for withdrawal of such request, which was made prior to acceptance of letter of voluntary retirement.

Shri Vivek Sharan, learned Assistant Solicitor General placed reliance on the decision of the Apex Court in the case of Director General ESIC and Anr. v. Puroshottam Malani passed in Civil Appeal No. 4611/2008 (arising out of SLP (C) No. 1551 of 2007).

On perusal, it is found that Puroshottam Malani's case (supra) is quite distinguishable because Puroshottam Malani after seeking voluntary retirement received all the benefits of voluntary retirement. The Supreme Court has observed:

However, in the present case, we find that the incumbent who has given the notice of voluntary retirement on 31-12-1999 and wanted to revoke the same on 22-3-2000, i.e., before the last date 31-3-2000, has not given any explanation whatsoever for revoking the notice of voluntary retirement and has got all the benefits which he was entitled to get on the basis of voluntary retirement. After having received all the benefits of voluntary retirement, the Respondent approached the Tribunal for setting aside the order dated 17-4-2000 accepting the notice of voluntary retirement. This conduct of the Respondent also disentitles him any benefit.

The government service is not contractual. It is a service which confers status

and a person who opts for voluntary retirement and later on wants to revoke the same before the expiry of the period of notice has to satisfy the authorities why he is seeking to revoke the notice of voluntary retirement. Rule 48(2) of the Central Civil Services (Pension) Rules, 1972 clearly states that the incumbent can seek withdrawal of the notice of voluntary retirement but with the specific approval of the authorities. Therefore, as per Sub-rule (2) of Rule 48 of the CCS (Pension) Rules, 1972 specific approval of the authority is required for withdrawal of the notice of voluntary retirement. If the incumbent does not provide any reason or material for revoking his notice of voluntary retirement then it is always open for the authority to decline the request for withdrawal of notice of voluntary retirement. If such discipline is not read into the Rule then perhaps every employee can send a notice for voluntary retirement and revokes the same at his sweet will. This cannot be permitted. The Rule mandates that there should be a specific approval of the appointing authority. Clearly the Rule provides that the appointing authority can certainly approve or disapprove a request for withdrawal of notice of voluntary retirement.

In the present case, the Applicant has not received the benefits of voluntary retirement. Thus, the case of Puroshottam Malani (*supra*) is quite distinguishable on facts. Moreover, there is no iota on record to establish that the concerned authority had made up its mind not to grant approval to the Respondent for withdrawal of his earlier letter of voluntary retirement. There is further no material on record to establish that he had made arrangements acting on letter for voluntary retirement contained in Annexure A-1 to make other employee available for Respondent's job. This being so, it cannot be said that any administrative set up or arrangements were affected due to the Respondent's request vide Annexure A-2 for withdrawal of his earlier letter of voluntary retirement contained in Annexure A-1.

In the result, we hold that the acceptance of letter for voluntary retirement vide Annexure A-3 and further his relieving vide Annexure A-5 despite receipt of and non-consideration of application for withdrawal of letter of voluntary retirement is bad in law. The Central Administrative Tribunal is not found to have committed any error in allowing the application submitted by the Respondent.

Accordingly, the appeal being devoid of any force is hereby dismissed. No order as to costs.

C.C. as per Rules.