
(2012) 08 AP CK 0090

In the Andhra Pradesh High Court

Case No : Writ Petition No. 12453 of 2001

V. Sivaramakrishna

APPELLANT

Vs

Hindustan Aeronautics Limited and Another

RESPONDENT

Date of Decision : 28-08-2012

Acts Referred:

Constitution of India, 1950 — Article 12, 14

Citation : (2013) 1 ALT 333 : (2013) LabIC 612 : (2013) 1 LLN 437

Hon'ble Judges : R. Subhash Reddy, J

Bench : Single Bench

Advocate : G. Ramachandra Rao, for the Appellant; V. Uma, for the Respondent

Final Decision : Allowed

Judgement

R. Subhash Reddy

1. This writ petition is filed by a former senior officer of the Hindustan Aeronautics Ltd., a Government of India undertaking, seeking directions by way of Mandamus, declaring the action of respondents in not accepting his request for voluntary retirement under the scheme, as illegal, unjust, arbitrary and consequently direct the respondents to treat his resignation as retirement from service under voluntary retirement scheme, 2000 for all purposes and to settle the terminal benefits under the said scheme. Facts in brief, which are necessary for the purpose of disposal of the writ petition, are as under:

The petitioner herein was initially appointed on 6th August 1979 as a Management Trainee (Technical) in Hindustan Aeronautics Ltd., at Hyderabad. The said Company is a wholly Government of India undertaking. The petitioner was promoted as a Senior Manager in the month of July 1996. The Board of the 1st respondent-Company, in its meeting held on 21st of December 1999, had approved the re-introduction of "Hindustan Aeronautics Limited Employees Voluntary Retirement Scheme, 1990", which was earlier discontinued on 01.04.1996, for a period of three months with effect from 01.02.2000 and

further extended upto 31.07.2001. As per the aforesaid scheme notified by the respondents, it is applicable to all permanent employees who have completed 10 years of service in the Company and attained 40 years of age on the date of making the application. Clause 4 of the scheme provides for benefits to an employee whose request for voluntary retirement is accepted. Clause 6 of the scheme provides for the procedure for seeking voluntary retirement under the scheme.

2. It is the case of the petitioner that as he was eligible for voluntary retirement as per the aforesaid scheme as he completed 20 years and 3 months of service and was more than 40 years of age, he submitted an application on 06.04.2000 in the prescribed format through departmental head, seeking for voluntary retirement from service, requesting the respondents to relieve him by 31.05.2000. As the scheme was extended for a further period, he also sent another application on 27th August 2000, reiterating his request and requested the respondents to relieve him by 30th September 2000. It is the case of the petitioner that the respondents have neither accepted nor rejected his request, as such, he had no option except resigning from the post of Senior Manager (Computer Services), on 16.11.2000 and requested to relieve him by 05.01.2001. It is stated that as the respondents have not relieved him, he went on leave from 06.01.2001 to 15.01.2001 and reported to duty on 16.01.2001, and subsequently, his resignation was accepted from 20th January 2001, subject to payment for shortfall of notice period of 26 days.

3. In this writ petition, it is the case of the petitioner that having introduced the voluntary retirement scheme in 1990, and though he was entitled for voluntary retirement under the said scheme, respondents have not considered his application. It is the specific allegation of the petitioner that he was not intimated about either acceptance or refusal of his request and the respondents had considered the applications arbitrarily and illegally, without following any norms and adopted pick and choose method. It is stated in the affidavit that though he was fulfilling the criteria notified to seek voluntary retirement, respondents have failed to consider his request as per the scheme notified by them, but immediately thereafter, on application submitted by the petitioner, his application for resignation was accepted. It is stated that the very fact of accepting the resignation shows that the respondents have denied him the benefits of the scheme without any valid reason and in arbitrary exercise of power. In the affidavit, the petitioner has also given certain instances, where the requests made by the similarly placed officers in the very same department for voluntary retirement, were accepted, and alleged that he was discriminated in extending the benefits of the scheme.

4. The Deputy General Manager (HR) of the 1st respondent-Company has filed counter affidavit. In the counter affidavit, while accepting that the petitioner has submitted application for voluntary retirement on 06.04.2000 and requested to relieve him from service by 31st of May 2000, it is stated that the General

Manager, who is the recommending authority and Chief Executive of the Division, did not recommend his case for voluntary retirement due to exigencies of work. It is stated in the counter that the scheme does not confer any right on the employee for taking voluntary retirement under the scheme and it is not automatic. It is stated that as per the said scheme, discretion vests with the management whether to accept or reject the request of an employee for voluntary retirement. Counter further states that the petitioner, on his own volition, tendered resignation on 16.11.2000 and the same was accepted on 20.01.2011. It is further pleaded that the resignation tendered by the petitioner cannot be compared with his application filed under the voluntary retirement scheme. On the allegation of discrimination pleaded by the petitioner, it is stated that as regards the 10 officers, whose applications were accepted under the voluntary retirement scheme are concerned, all the said officers were declared surplus and out of 10 officers, 9 were above 58 years of age and one was 54 years, whereas the petitioner was only 42 years of age, hence his case cannot be compared with the said officers.

5. Heard Sri G. Ramachandra Rao, learned counsel for petitioner and the learned counsel appearing for respondents.

6. In this writ petition, it is strenuously contended by the learned counsel for petitioner Sri G. Ramachandra Rao that having notified the voluntary retirement scheme, respondents have deprived the petitioner, of the benefits of the scheme without considering the application filed by him in accordance with the scheme. It is submitted that though the petitioner has fulfilled the requirements for accepting his resignation under the voluntary retirement scheme, respondents have not considered his application in accordance with the scheme and have illegally and arbitrarily deprived the benefits of the scheme, which ultimately resulted in resignation of petitioner. It is further submitted that even the resignation is a retirement and as much as the application of petitioner was not considered as per the scheme, the petitioner is entitled for the relief of treating the resignation as voluntary retirement under the scheme notified by the respondents. In support of his argument, the learned counsel has placed reliance on the judgments of Supreme Court in the case of Manjushree Pathak Vs. The Assam Industrial Development Corporation Ltd. and Others, and in M/s. J.K.Cotton Spg. & Wvg. Mills Company Ltd. Vs. State of U.P. 1990 (5) SLR 642.

7. On the other hand, Ms. V. Uma, learned counsel appearing for respondents submits that as per the scheme notified by the respondents, unless the Head of the Department, who is the Chief Executive of the Division recommends, one is not entitled for acceptance of application under voluntary retirement scheme. It is submitted that as it was found that the petitioner was not a surplus employee in the Division, his application for voluntary retirement stands on a different footing, as such, his case was not recommended. It is further submitted that as the petitioner has no right to seek acceptance of his application for voluntary retirement, he is not entitled for the relief as prayed for in this writ petition. It is

also submitted that there was no discrimination as pleaded by the petitioner and all the 10 officers whose cases were referred to by the petitioner, were found to be surplus, as such, their applications for voluntary retirement were accepted.

8. Having heard the learned counsel for the parties, I have also perused the record produced by the learned counsel for respondents, during the course of hearing.

9. Before I proceed further, I deem it appropriate to refer to certain clauses in the scheme notified by the respondents, which is titled as "Hindusthan Aeronautics Limited Employees Voluntary Retirement Scheme". After re-introduction of the scheme, same was notified on 27th January 2000 in proceedings No.HAL/P&A/18(1)/91. As per the modified scheme, it is applicable to permanent employees who have completed 10 years of service in the Company and attained the age of 40 years on the date of making application. The scheme provides for payment of ex-gratia equal to one month's basic pay plus D.A. for each completed year of service or the monthly basic pay plus D.A. at the time of voluntary retirement, multiplied by the balance of complete months of service left before the normal date of superannuation, whichever is less. The ex-gratia payment will be subject to over-all ceiling of Rs.3,00,000/-. Clauses 6 and 6.1, which deal with the procedure, read as under :

6. PROCEDURE: Application seeking Voluntary Retirement under the scheme should be submitted to the respective General Manager through the Departmental Head. The application should be in the prescribed form at Appendix-A.

6.1 : In cases where the Departmental/Divisional Head recommends retirement, he should certify that the retirement would not adversely affect production/work in the Department/Division. Where the Departmental/ Divisional Head does not recommend retirement, he should record the reasons for not recommending the case.

From a perusal of the above clauses, it is clear that the applications are to be made to the respective General Managers through Departmental Heads in the prescribed form in Appendix-A. In cases where the Departmental or Divisional Heads recommend for retirement, he should certify that the retirement would not adversely affect the production, and in case the Departmental Head does not recommend for retirement, he should record reasons for not recommending the case for voluntary retirement.

10. During the course of hearing, I have perused the application filed by the petitioner, which includes the portion to be filled by the Section Head/HOD. The columns to be filled by the Section Head/HOD are under Part-II of the application, which read as under :

a)

Nature of the job performed by the Employee at present

(i) Whether the employee is Direct Labour or Indirect Labour.

(ii) If Indirect, whether Technical Or Non-Technical

Sr.Manager (EDP)

b)

Whether the employee is surplus to your requirement.

No

c)

No. of days of Leave without Pay taken and/or unauthorized absence, if any, during the last 3 years, year-wise

d)

Average monthly efficiency in case of Direct Workmen during the last 3 years, year-wise.

e)

If his request for voluntary retirement is not recommended the reasons for the same may be given in detail.

Date:

Signature of Sectional/ Departmental Head with Name & Designation.

From a perusal of the aforesaid columns filled by the Section Head/HOD, it is clear that except saying "No" against column (b), no reasons have been recorded in Column (e). If the scheme is examined with regard to the procedure notified by the respondents in Clause 6 with reference to Clause (e) in Part-II, it is amply clear that when the request of an applicant who fulfills the eligibility criteria is not recommended, the reasons for the same are to be recorded. Stating "No" in Column (b), is not a substitute for reason to be recorded under Column (e) of Part-II of Appendix-B. In the instant case, it is the specific case of the petitioner that though he fulfills the criteria notified by the respondents to seek voluntary retirement, his application and further request after extension of the scheme, did not evoke any response. In the judgment relied on by the learned counsel for petitioner in the case of Manjushree Pathak Vs. The Assam Industrial Development Corporation Ltd. and Others,), the Hon"ble Supreme Court has held that though the management has discretion to accept or reject the request from any employee for voluntary retirement viewing the organizational requirement and any other relevant facts, that does not mean that the respondent-Corporation being an authority coming within the purview of Article 12 of the Constitution, can abdicate its duty to act reasonably and fairly in exercise of its discretion. It is further held that the scheme which confers discretion does not confer any unfettered discretion on the part of Corporation to

refuse the benefit of the scheme illegally and arbitrarily.

11. Coming to the case on hand, when the scheme requires for recording reasons by the Departmental/Divisional Head for not recommending the case, no reasons have been assigned, as evident from the columns which are extracted above. While it is true that the resignation and application for voluntary retirement may not stand on same footing, but the fact remains that inspite of repeated applications of the petitioner, when the respondents have not allowed him to retire under Voluntary Retirement Scheme, he tendered resignation and the same was accepted subject to payment of shortfall of notice period. In the absence of recording any reasons for not recommending the case of petitioner, coupled with the factum of accepting the resignation on payment for shortfall period of notice, will substantiate the case of the petitioner that the respondents were not acting fairly and bonafidely on the application of the petitioner under Voluntary Retirement Scheme. The stand taken by the respondents on the allegation of discrimination, stating that out of 10 members whose names were referred to by the petitioner, 9 were more than 58 years old and one was of 54 years old, also cannot be the relevant ground for not accepting the case of the petitioner for voluntary retirement. When the minimum age and minimum qualifying service were notified to make one eligible to avail the benefits of the scheme, those who fulfill the criteria, stand on the same footing. Though I am conscious of the fact that there is no right for an employee to seek for acceptance of application for voluntary retirement as per the scheme notified by the respondents, as held by the Hon''ble Supreme Court in the aforesaid judgment, once the scheme is notified giving discretion to consider the applications under the said scheme, the 1st respondent, which is a State within the meaning of Article 12 of the Constitution of India, is bound to act fairly, bonafidely and in non-discriminative manner. The very fact that no reasons have been recorded as contemplated under the scheme for not recommending the case itself is sufficient to show that the application of the petitioner was not considered fairly and in accordance with the scheme notified by the respondents. Such an action on the part of respondents is illegal and offending the rights of the petitioner guaranteed under Article 14 of the Constitution of India. The judgment relied on by the learned counsel for petitioner in the case of Manjushree Pathak Vs. The Assam Industrial Development Corporation Ltd. and Others,) fully supports his case.

12. Further, in the case of M/s. J.K. Cotton Spg. & Wvg. Mills Company Ltd. (1990 (5) SLR 642 supra), the Hon''ble Supreme Court, while considering the scope of the word "Resign" in contrast to retrenchment/termination, has held that when an employee voluntarily tenders resignation, it is an act, by which, he voluntarily gives up his job, therefore, it amounts to voluntary retirement. In this case also, but for not considering the case of the petitioner inspite of his applications in accordance with the scheme, he was compelled to make an application for resignation, which is accepted. Such resignation is also voluntary act which is nothing but retirement voluntarily by virtue of resignation. As the

averments in the counter affidavit also do not constitute any valid reasons for not accepting the case of the petitioner, this Court is of the view that the respondents have illegally and arbitrarily denied the ex-gratia and other benefits notified under the voluntary retirement scheme, as such, the petitioner is entitled for the relief as sought for in the writ petition.

13. Though the learned counsel appearing for respondents has placed reliance on the judgment of Supreme Court in the case of National Textile Corporation (M.P.) Ltd. Vs. M.R. Jhadav, , in the aforesaid judgment, having regard to the fact situation in that case, the Hon"ble Supreme Court held that the voluntary retirement scheme is an invitation and the offer of voluntary retirement made by an employee needs to be accepted by employer in order to constitute a binding contract of Voluntary Retirement Scheme. In the aforesaid judgment, it is held that in the absence of any communication of acceptance, an employee who continued to work upto retirement on superannuation, is not entitled for the benefit under the Voluntary Retirement Scheme. Having regard to the fact situation in the present case, such a question does not fall for consideration, and hence, the aforesaid judgment is of no help to the respondents.

14. As referred above, as this Court is of the view that the application of the petitioner was not considered as per the scheme notified, in the absence of recording reasons as contemplated under the scheme itself and the averments in the counter do not constitute any valid reasons for rejecting the claim of petitioner for voluntary retirement, and further, as this Court is of the view that the petitioner is illegally and arbitrarily deprived of the benefits notified under the scheme, he is entitled for the relief of extending the benefits of the scheme, treating his resignation as retirement under the voluntary retirement scheme notified by the respondents. For the aforesaid reasons, the writ petition is allowed as prayed for. No costs.