
(2002) 10 PAT CK 0002
In the Patna High Court
Case No : C.W.J.C. No. 8305 of 2002

Vijay Das

APPELLANT

Vs

State Bank of India and Others

RESPONDENT

Date of Decision : 01-10-2002

Acts Referred:

Citation : (2002) 10 PAT CK 0002

Judgement

S.N. Jha, J.—The dispute in this writ petition relates to voluntary retirement of the Petitioner.

2. The Respondent State Bank of India came with a Voluntary Retirement Scheme on 29.12.2000. The Petitioner, a Clerk-cum-Cashier in the Bank, submitted offer for voluntary retirement, on 30.1.2001. On 12.3.2001 he withdrew the offer. On 29.3.2001 the Bank issued necessary communication purporting to accept his offer of voluntary retirement with effect from the close of business on 31.3.2001.

3. The case of the Petitioner is that as he had withdrawn the offer before its acceptance the Bank committed error in voluntarily retiring him. The case of the Bank on the other hand is that on 17.1.2001 a circular was issued fixing 15.2.2001 as the outer limit for withdrawal of the offer/application. As the Petitioner did not submit application withdrawing the offer by that date, the application filed by him on 12.3.2001 was not taken into consideration and his offer of voluntary retirement was accepted. In this regard, the case of the Petitioner is that the said circular dated 17.1.2001 was not circulated in the branch where the Petitioner was posted and hence was not within his knowledge and therefore on that basis his withdrawal of offer could not be ignored from consideration.

4. On behalf of the parties a number of decisions were cited at the bar from perusal of which it appears that the issue is squarely covered. In Union of India (UOI) and Others Vs. Gopal Chandra Misra and Others, a Constitution Bench of the Apex Court held 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contractual or constitutional bar, a "prospective" resignation can be withdrawn at any time before it becomes effective, and it becomes effective when it operates or terminates the employment or the office tenure of the resignor. In *Balram Gupta Vs. Union of India (UOI) and Anr*, the Apex Court observed:

A complete and effective act of resigning office is one which severs the link of the resignor with his office and terminates his tenure.

J.N. Srivastava Vs. Union of India (UOI) and Another, the Court took similar view and set aside the decision of the authority even after decision accepting voluntary retirement had been taken observing:

It is now well settled that even if the voluntary retirement notice is moved by an employee and gets accepted by the authorities within the time fixed, before the date of retirement is reached, the employee has *locus poenitentiae* to withdraw the proposal for voluntary retirement.

In *Power Finance Corporation Ltd. Vs. Pramod Kumar Bhatia*, the Apex Court further clarified 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".

5. The legal position, it would thus appear, is well settled that the offer of voluntary retirement or resignation, as the case may be, can be withdrawn at any time before the relationship of employer and employee comes to an end even where it has already been accepted, as in the case of *J.N. Srivastava v. Union of India (supra)*. The question as to whether in the instant case the Petitioner could withdraw his offer of voluntary retirement on 12.3.2001 has to be considered in the light of the aforesaid decisions, and other decisions on the point which is not necessary to notice except the case of *Union of India and Another Vs. Wing Commander T. Parthasarathy*, in which the Court observed that right of an employee to withdraw the offer of voluntary retirement or resignation, is substantive legal right which cannot be denied to a person on the basis of some policy decision of the Government in the absence of any contrary statutory provision or rule.

6. In the instant case, as noticed above, the only ground on which the Petitioner's withdrawal of offer was ignored is the circular dated 17.1.2001 fixing an outer limit for submitting the withdrawal offer. Such a circular does not have any statutory force. If as per the decision in the case of *Wing Commander T. Parthasarathy*, such withdrawal of resignation or retirement could be frustrated only on the basis of some statutory provisions, and not any "policy decision" the circular dated 17.1.2001 cannot stand on a higher footing. The effective date of retirement of the Petitioner in the instant case undisputedly is 31.3.2001 and, admittedly, the Petitioner had submitted his withdrawal application on 12.3.2001. If the relationship of employer and employee continued up to 31.3.2001, and before that he submitted his withdrawal application, the same could not be kept out of consideration on the basis of an executive decision, such as circular dated

17.1.2001. I am therefore of the view that the case of the Petitioner is covered by the aforementioned decisions of the Apex Court and the decision of the Bank to accept the offer of voluntary retirement with effect from 31.3.2001 is not correct.

7. It was submitted on behalf of the Bank that the Petitioner had accepted his retirement as a fait accompli by accepting the retiral dues paid to him on 31.3.2001 itself. The fact that the retiral dues (according to the Petitioner it was part payment) was paid to him on 31.3.2001 is not in dispute. According to the counsel for the Petitioner however acceptance of the retiral dues would not stand in the way of the Petitioner and in this regard reliance is placed on a decision of this Court in Surendra Nath Agrawal Vs. Toontoon Seth and Another, wherein the Court observed vide para 11 of the judgment that accepting the amount of voluntary retirement offered to the Petitioner after filing of the writ petition would not result in Petitioner's giving up his right to challenge the impugned order. In fairness to the Petitioner it may be mentioned that according to him, he found it hard not to accept the retiral dues as the question of livelihood was involved and therefore if the Petitioner accepted the payment on or about 31.3.2001, it should not be ground to non-suit him. I find substance in the contention of the counsel for the Petitioner. In the above premises the impugned decision of the Bank accepting the Petitioner's offer of voluntary retirement with effect from 31.3.2001 is set aside.

8. As a result of setting aside decision of the Bank the Petitioner will be deemed to be in its employment. The amount already paid to him as retiral dues will be liable to be adjusted from his salary but as the Petitioner has approached this Court after long gap of 15 months he would not be entitled to salary for the period between April 2001 and June 2002. The period however will not be treated as break in service and the Petitioner will thus be entitled to other benefits as if he was in employment of the Bank all along.

9. The petition stands disposed of.