

IN THE HIGH COURT OF DELHI AT NEW DELHI

WRIT PETITION(C) NO.12843/2009

Reserved on: 12.01.2011

Date of Decision : March 28, 2011

MRS. ANIL NANDWANI Petitioner
Through Mr. R.K.Saini, Advocate

versus

FOOD CORPORATION OF INDIA & ORS. ..Respondents
Through Ms. Neelam Singh & Ms. Avni Singh,
Advocates.

AND

WRIT PETITION(C) NO.12826/2009

NEELAM MADAN Petitioner
Through Mr. R.K.Saini, Advocate

versus

FOOD CORPORATION OF INDIA & ORS. ..Respondents
Through Ms. Neelam Singh & Ms. Avni Singh,
Advocates.

CORAM:

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

SUDERSHAN KUMAR MISRA, J.

1. The common question that arises in these two petitions is whether it was open to the petitioners to withdraw their offer of voluntary retirement in terms of which, their retirement would come into effect only after three months, and not before; because, instead of accepting the offer on the terms proposed by them, the respondent had purported to accept it with effect from an earlier date. Alternatively, it is contended that in any case, a later circular of the respondent enabled them to seek its withdrawal and the respondent was bound to accede to their request in terms thereof.

2. Mr. Saini, who appears for the petitioners in both the writ petitions, submits that the relevant facts of both are substantially the same. He therefore, addressed arguments with reference to the relevant facts of Mrs. Anil Nandwani's matter. The only difference is that while Mrs. Anil Nandwani applied for voluntary retirement on 19th July, 2004 praying that she be relieved from the service after three months on 19th October, 2004 and her request for voluntary retirement was accepted by the respondent on 12th August, 2004, Mrs. Neelam Madan applied for voluntary retirement on 13th July, 2004 praying that she be relieved from service after three months on 13th October, 2004 and her request for voluntary retirement was accepted by the respondent on 13th August, 2004. Since nothing turns on the difference between the two set of dates, for convenience, the relevant dates and other facts

of Mrs. Anil Nandwani's matter, to which counsel has also referred during his course of argument, have been examined in this judgment.

3. The brief facts of the case are that the petitioner, Mrs. Anil Nandwani, (the petitioner for short), was working as an Assistant Manager (Gen.) with the respondent. On 29th June, 2004, the respondent issued a circular introducing a Voluntary Retirement Scheme for its employees. That scheme was to remain open for a period of three months from the date it was floated, and interested employees could seek voluntary retirement within this period. Under the Scheme, applicants were required to give a three month notice to the respondent for considering their application, and the respondent was obliged to take a decision on that application, within that period. The petitioner applied for voluntary retirement on 19th July, 2004 praying that she be relieved from service only after three months of applying i.e. with effect from 19th October, 2004. According to the petitioner, notwithstanding the fact that the Scheme itself permitted the respondent to accept the offer with immediate effect; the offer actually made by her precluded the respondent from accepting her offer with effect from any earlier date.

4. Pursuant to her aforesaid request for voluntary retirement, the respondent issued an order, dated 12th August, 2004 relieving the petitioner, with effect from 31st August, 2004.

Thereafter on 24th August, 2004, the petitioner requested the respondent to release her final payment in terms of the Scheme. This was duly received by her without protest.

5. After this, the petitioner sent a letter, dated 26th August 2004 to the respondent withdrawing her request for voluntary retirement. Nevertheless, the petitioner was relieved, with effect from 31st August 2004, on the ground that, in terms of paragraph VIII (d), it is not open to any employee to withdraw such a request. The said paragraph reads as follows:

“VIII. PROCEDURE

(d) Once an employee submits his application for voluntary retirement under this scheme to the competent authority, it shall be treated as final and it is not open to the employees to withdraw the same. The competent authority shall take decision to accept or reject the request for VRS within the notice period (3 months) and communicate the same to the official concerned.”

6. After the petitioner was relieved, another circular was issued by the respondent, on 22nd September, 2004 stating that, though the scheme does not permit withdrawal of the application, but the discretion would always rest with the competent authority to accept or reject such an application and therefore, all authorities were advised to decide the applications for withdrawal of voluntary retirement requests on a case to case basis.

7. Counsel for the petitioner submits that, in effect, the

aforesaid order of 12th August, 2004 of the respondent does not amount to an acceptance of the petitioner's application for the reason that under the petitioner's offer, the respondent could retire her only on 19th October, 2004 and not before. Consequently, the decision of 12.8.2004 of the respondent to relieve her from 31st August, 2004 could only amount to a 'counter offer' and nothing more. If the petitioner had allowed that day of 31st August, 2004 to pass without any protest, it would amount to the petitioner accepting that counter offer by her conduct. However, in this case, the petitioner rejected that offer and decided to withdraw her application through her letter dated 26th August, 2004.

8. Counsel for the petitioner also relies on the judgment of the Punjab and Haryana High Court in **Gurcharan Singh v. FCI & Anr.**, WP (C) No. 1598/2005, in which, according to him, the Court has examined the same factual situation and also the same scheme floated by the respondent. In the aforesaid case, the Court held that in withdrawing his application for voluntary retirement within three months, the petitioner was merely exercising a right conferred under the scheme itself. The writ petition was allowed and the petitioner was reinstated.

9. Counsel for the respondent has drawn my attention to paragraph (IV) (2) of the relevant Scheme with the sub-heading Eligibility. The said paragraph reads as follows:

"IV. ELIGIBILITY:

2. A regular/permanent employee may seek Voluntary Retirement Scheme by giving three months notice in writing to the competent authority within the prescribed time limit. However, the competent authority may make the payment of notice period of three months or for the remaining period of notice period and may accept the request for voluntary retirement from any date before the date of expiry of notice period."

Counsel submits that, admittedly, under the Scheme, the respondent was empowered to bring the voluntary retirement into effect from any date after the submission of an application for voluntary retirement by an employee, provided that the pay for the remaining notice period is tendered to the employee concerned. In this case, whilst the petitioner applied on 19th July, 2004 seeking voluntary retirement after three months on 19th October 2004, in terms of the aforesaid paragraph, the authority had accepted the same on 12th August, 2004 and relieved her with effect from 31st August, 2004. This acceptance was duly communicated to the petitioner and she was tendered the remaining pay for the notice period.

10. Counsel for the respondent further states that, in fact, after receiving the communication of 12th August, 2004, the petitioner sent a letter to the respondent, dated 24th August, 2004,

stating that since voluntary retirement has been granted with effect from 31st August, 2004 under the Scheme, the final payment, in terms of the said Scheme, be made to her. Pursuant to this, the entire payment which was due was, in fact, made to the petitioner. Significantly, in her aforesaid letter of 24.8.2004, the petitioner does not raise any protest with regard to the decision of the respondent to accept her request for voluntary retirement.

11. Counsel for the petitioner states that the petitioner had been constantly sending letters, dated 10th January, 2005, 7th February, 2006, 6th June, 2006, 31st January, 2007, 3rd February, 2007, 9th April, 2007, 4th July, 2007, 18th September, 2007 etc. to the respondent requesting the withdrawal of her voluntary retirement application. However, on 3rd April, 2007, the petitioner received a communication from the respondent that her representations have been examined; and since the option of VRS was given by the employee at her own will, which has already been accepted, and all the consequential retirement dues and benefits stands paid, her application for reinstatement in service has been rejected.

12. Counsel for the respondent relies on a decision of the Supreme Court in **Vice Chairman and Managing Director A.P.S.I.D.C. Ltd. and Anr. vs. R. Varaprasad and Ors.** AIR 2003 SC 4050, paragraph 18 which reads as under:

"18. It is fairly settled now that the voluntary retirement once accepted in terms of the Scheme or rules, as the case may be, cannot be withdrawn. In these appeals from the facts it is clear that the applications of the respondents opting for voluntary retirement under the Scheme were accepted and even the acceptance was communicated to them. Thereafter, they filed the writ petitions. Hence the High Court was no right in allowing the writ petitions holding that they applied for withdrawal before the effective date considering the date of relieving the employees as the effective date."

13. He also relies on a decision of the Supreme Court in **Food Corporation of India and Ors. vs. Ramesh Kumar** (2007) 8 SCC 141 where the same scheme has been examined and it has been held in paragraph 6 which reads as under:

"6. Now advertent to the present scheme of the Food Corporation, para 8 clearly stipulates that the incumbent has no right to revoke the same and the Management will decide the same within three months. That means the Management still has three months' time to consider and decide whether to act upon the offer given by the incumbent or not. But if the incumbent revokes his offer before the Corporation accepts it then in that case, the revocation of the offer is complete and the Corporation cannot act upon that offer. In the present Clause there is one more additional factor which is that the Management has to take a decision within three months. Therefore, once the revocation is made by the incumbent before three months then in that case the Corporation cannot act upon the offer of voluntary retirement unless it is accepted prior to its withdrawal. "

14. In this case, the application for voluntary retirement

was accepted by the respondent on 12th August, 2004 with effect from 31st August, 2004. The petitioner sought the withdrawal of her application for voluntary retirement only thereafter on 26th August, 2004. She was also relieved from duty on 31st August, 2004. Not only that, after she received the communication from the respondent dated 12th August, 2004, accepting her offer of voluntary retirement, she wrote another letter to the respondent on 24th August, 2004 stating that since her offer of voluntary retirement has been granted with effect from 31st August, 2004 under the Scheme, the final payment in terms of the Scheme be made to her.

15. To my mind, the subsequent circular of 22nd September, 2004 of the respondent merely states that the respondent may apply its mind to the question of accepting or rejecting any request for withdrawal of the application for voluntary retirement made by an employee on a case to case basis, and nothing more. This did not oblige the respondent to carry out this exercise after the petitioner's application seeking voluntary retirement had already been accepted. Also, by applying for voluntary retirement, an applicant is approbating the Scheme as framed, and on its acceptance, the transaction is complete. The matter is over and nothing remains on that aspect of the matter between the applicant and his employer. If we were to interpret the circular of 22nd September, 2004, to mean that the respondent was obliged to

apply its mind to the question of acceptance or rejection of the offer of voluntary retirement made by employees in terms of the Scheme, even after their offer had already been accepted merely because, after its acceptance, somebody makes an application to withdraw it, as is being canvassed by the petitioner, it would bring into question every acceptance of voluntary retirement under the Scheme by the respondent before 22nd September, 2004. Inter alia, for that reason also, I am not inclined to accept that proposition.

16. In **Gurcharan Singh's case (supra)** cited by the petitioner which related to the same respondent and the same Scheme and circulars, what is significant is that Mr. Gurcharan Singh applied for voluntary retirement on 28th September, 2004 i.e. after the circular of the respondent dated 22nd September, 2004, permitting the competent authority to also examine the requests for withdrawal of the application for voluntary retirement on a case by case basis, was issued. Furthermore, in that case, the court proceeded on the basis that Mr. Gurcharan Singh's offer of voluntary retirement had not been accepted before he applied for withdrawing the same. Hence, the same has no application to the facts of the instant case where the offer was not only accepted, the same was duly communicated to the petitioner and accepted by her; and the petitioner in turn also requested the respondents on 28th August, 2004 to disburse all her dues in terms thereof. This

was also done. Admittedly, till this stage, the petitioner had no grievance.

17. To set all doubts at rest, even in paragraph 6 of the decision of the Supreme Court in **Food Corporation of India and Ors. vs. Ramesh Kumar** (supra) it has been held that the Corporation cannot act upon the offer of voluntary retirement in case the employee revokes his offer within the notice period, provided the corporation had not already accepted it prior to its withdrawal. In this case, indisputably, the acceptance by the respondent took place prior to the withdrawal by the petitioner.

18. What emerges is this; the Scheme envisaged an application for voluntary retirement giving three month notice; under it, the respondent had the option of accepting the offer with effect from the date the three month period expired, or even at an earlier date, provided the appropriate payment was tendered to the petitioner for the remaining notice period. It did not vest any right with the petitioner to vary the terms of the Scheme by setting down new or different terms. The petitioner's action in specifying that she should be relieved from service only after the three months' notice period was complete, meaning thereby, that the respondent was precluded from accepting the same at any time before this, amounted to an attempt to vary the terms of the Scheme. Obviously, the respondents did not agree to this variation and

accepted her offer from an earlier date as permitted in the original Scheme. Even if it is assumed for a moment that the acceptance by the respondent was not in terms of the offer made by the petitioner, even then, her conduct thereafter precludes the petitioner from claiming that it does not bind her or that no binding contract came into being. This is because after she received that communication from the respondent, purporting to accept her offer of voluntary retirement from a date which was different from the one specified by her, she applied for, and received, all her dues in terms of the same communication of the respondent. By accepting all her dues without protest, the petitioner has clearly approbated the actions of the respondent and is now estopped from contending otherwise. To put it differently, if the offer by the petitioner that her voluntary resignation be accepted only from the date on which the three months' notice period expires, and not before, amounted to a fresh offer different from the terms of the Scheme, the response by the respondents retiring her from an earlier date and tendering payment for the remaining period was again a counter offer reiterating the original terms of the voluntary requirement scheme. The petitioner's response to this counter offer by the respondent by asking for, and accepting the payment being tendered for the remaining notice period from the respondents, without protest, amounted to an acceptance of that counter offer by the petitioner and she was bound by the same. For that reason also, she cannot

be permitted to reside from this position.

19. In the light of the above, both the writ petitions are dismissed.

SUDERSHAN KUMAR MISRA, J.

MARCH 28, 2011