

Neutral Citation No. - 2024:AHC-LKO:21150

Reserved on 07.11.2023

Delivered on 11.03.2024

Case :- WRIT - A No. - 2001822 of 2002

Petitioner :- Ratan Mehra

Respondent :- Uptron India Ltd. And 2 Ors.

Counsel for Petitioner :- N.K.Seth,Ashish Chaturvedi,Hari Prasad Gupta

Counsel for Respondent :- C.S.C.,Pradeep Tiwari,Sanjay Bhasin

Hon'ble Saral Srivastava,J.

1. Heard Sri N.K. Seth, learned Senior Counsel assisted by Sri H.P. Gupta, learned counsel for the petitioner, Sri Mohit Singh Rajput Advocate bearing Registration No.U.P.-0402/19 holding brief of Sri Pradeep Tiwari, learned counsel for respondent no.2 and Sri R.S. Tomar, learned Standing Counsel for respondent no.3.

2. The petitioner by means of the present writ petition has assailed the order/notice dated 25.03.2000 passed by the Managing Director, Uptron India Limited (hereinafter referred to as 'Company') accepting the resignation of the petitioner w.e.f. the close of office hours on 01.04.1999.

3. The facts in brief are that the petitioner was appointed as Application Programmer Trainee for one year in Uptron Digital Systems Limited, a subsidiary of U.P. Electronics Corporation Limited (hereinafter referred to as 'Corporation') vide appointment letter dated 15.10.1981. The petitioner was confirmed in the service of the Corporation w.e.f. 01.10.1982. It is stated that Uptron Digital Systems Limited, a subsidiary of U.P. Electronics Corporation Ltd. alongwith other subsidiaries of U.P. Electronics Corporation Ltd. were merged under the company known as 'Uptron India Ltd. (respondent no.1). The petitioner was given several promotions and was lastly promoted on the post of Regional Sales Manager by order dated 25.10.1993. The petitioner was confirmed as Regional Sales Manager by order dated 09.08.1994.

4. It appears that a Voluntary Retirement Scheme was floated by the Officiating Managing Director of respondent no.1 by letter dated 14.09.1998, and the employees were given option to opt for Voluntary Retirement Scheme so that an assessment in respect to expenditure likely to be incurred may be made. The petitioner in view of the aforesaid scheme submitted an application on 03.10.1998 giving consent for voluntary retirement.

5. It further transpires from the record that subsequently, a fresh voluntary retirement scheme was floated by the Officiating Managing Director of the company on 30.10.1998 by which applications were sought for from the employees who wanted to opt for Voluntary Retirement Scheme. Under the said scheme, the application was to be submitted between the period from 01.11.1998 to 30.11.1998. It was further stipulated in the scheme that disbursement of payment shall be made to the employees after obtaining financial aid from the State Government. The said scheme also provided that those employees who had already submitted application in pursuance to letter dated 14.09.1998 would also have to submit fresh applications if they desire to take the benefit of the said scheme.

6. In pursuance to the scheme dated 30.10.1998, the petitioner again submitted an application on 27.11.1998 giving consent for voluntary and unconditional retirement from the service of the Corporation/Company in accordance with the terms and conditions laid down in the Voluntary Retirement Scheme.

7. It appears that when Voluntary Retirement Scheme floated by the Officiating Managing Director by letter dated 30.10.1998 was not implemented, the petitioner submitted his resignation on 31.03.1999. The petitioner in the said resignation letter stated that rights of the petitioner under Voluntary Retirement Scheme will not be prejudiced by the submission of the said letter. The resignation letter of the petitioner dated 31.03.1999 is reproduced herein below:-

“This is to bring to your kind notice that I have already applied for VRS under the office order, UPLC/UIL:PER:VRS:97 dated 30.10.98, which has already been received in your office on 30.11.98, but no communication has been made to me in this regard till date. I have waited for sufficiently long time about the fate of my VRS application and now it is not possible for me to continue any further in the organization. So kindly treat this letter as my resignation without any prejudice to my right under VRS and relieve me from my duties with effect from 1.4.99. I have more than 100 days of earned leave in my credit so the period of notice may please be adjusted against my Earned Leave, due.

Further, I would humbly request you to expedite the payment of my gratuity, my CPF balance and other dues at the earliest, as I would be immediately in need of finance to meet my financial liabilities.

I enjoyed the support from management and colleagues during my stay in Uptron and I wish them a bright future.”

8. Thereafter, the petitioner submitted an application on 01.05.1999 that since Corporation/Company has not accepted his resignation, therefore, his salary for the month of April, 1999 be released. However, it appears that Managing Director of the company again circulated the Voluntary Retirement Scheme dated 21.12.1999 stating therein that said scheme has been approved by the State Government by Government Order No.1768/78-इले०-99-59 इले०/97 dated 08.12.1999, and accordingly, by the said letter, fresh applications were invited from the employees who were desirous of opting for taking the benefit of Voluntary Retirement Scheme. The application was to be submitted even by those employees in compliance with the letter dated 21.12.1999 who had already submitted application. The petitioner again on 06.01.2000 submitted application for seeking the benefit of Voluntary Retirement Scheme.

9. It appears that before any decision could be taken on the application of petitioner dated 06.01.2000 seeking benefit of Voluntary Retirement Scheme, the Managing Director by order dated 25.03.2000 accepted the resignation of the petitioner w.e.f. the close of office hours on 01.04.1999. The letter dated 25.03.2000 of the Managing Director is reproduced herein below:-

“REF:UIL:PER:2696

DATED 25 MARCH 2000

Mr. Ratan Mehta,

RSM, CCD, UIL, Lucknow

Though : GM (CCD)

This refers to your letter of resignation dated 31.3.1999. Your resignation from the services of the Company is deemed to have been accepted with effect from the close of office hours on 1.4.99 (AN).

Please contact Accounts Department for your full and final settlement of the account. A formal letter of release will be issued to you on full and final clearance of your dues by the Accounts Department.”

10. Since, the petitioner had submitted his application for seeking the benefit of Voluntary Retirement Scheme on 06.01.2000, therefore, petitioner submitted representation on 11.12.2000 to the Managing Director stating therein that he had applied twice i.e. on 30.11.1998 i.e. before giving his resignation and on 07.01.2000 after submitting resignation letter, but since his resignation was not accepted till the submission of application dated 07.01.2000 seeking benefit of Voluntary Retirement Scheme, therefore, petitioner is entitled to the benefit of Voluntary Retirement Scheme and his resignation has wrongly been accepted after about one year from the date of submission of letter of resignation. In the said letter, petitioner also stated that he continued to come to the Company to discharge his duties after submission of resignation letter and his name has wrongly been struck off from the employees register.

11. Thus, in the aforesaid backdrop, petitioner claims that his resignation letter has wrongly been accepted by the respondent, accordingly, the petitioner claims the benefit of Voluntary Retirement Scheme.

12. The petitioner also filed supplementary affidavit annexing therewith Form-16 issued by the Company to establish that after submission of his resignation letter, he continued to discharge his duties and he was paid salary for the month of April, 1999.

13. A counter affidavit has been filed by the respondent denying the averments contained in the writ petition. It is stated in the counter affidavit that petitioner was employee of U.P. Electronics Corporation Ltd. and terms and conditions of the U.P. Electronics Corporation Ltd.

would apply in respect to service of petitioner.

14. It is further stated that M/s Uptron India Limited is in Liquidation, and Official Liquidator appointed by the High Court Allahabad had taken over the assets of the Company. It is also specifically stated that petitioner after submitting resignation, stopped coming to the Company and did not discharge his duties and since, petitioner was not in employment in the Company on the date of implementation of Voluntary Retirement Scheme, therefore, he is not entitled to the benefit of Voluntary Retirement Scheme.

15. In the Supplementary Counter Affidavit, respondent has stated that the petitioner submitted an application on 30.10.2000 to UPLC-CPF-Trust, Gomtinagar, Lucknow for withdrawal of his Provident Fund stating therein that he had resigned from the services of Uptron India Ltd. on 31.03.1999 and had been relieved by the Managing Director vide Letter No.Ref:UIL:PER:2696 dated 25.03.2000 and requested the Trust to release his entire amount of CPF standing in his Account No.01165. The UPLC-CPF in view of the request of the petitioner by letter dated 25.03.2000 settled his full and final payment of his CPF accumulations vide letter dated 28.11.2000.

16. Challenging the aforesaid order, learned counsel for the petitioner has contended that perusal of the resignation letter of the petitioner discloses that it was a conditional resignation letter, and a resignation to be valid must be unconditional. It is submitted that the authority has committed manifest illegality in considering the resignation letter to be voluntary whereas perusal of resignation letter discloses that it was a conditional resignation letter and since, the resignation letter was not unconditional and did not disclose the intention of the petitioner to voluntarily resign, therefore, the authority has erred in law in accepting the same.

17. He further submits that it is evident from the record that petitioner before submitting resignation letter, submitted an application seeking the benefit of Voluntary Retirement Scheme floated by the letter of

Managing Director dated 14.09.1998 and again after submission of resignation letter and before acceptance of resignation, he opted for the benefit of Voluntary Retirement Scheme on 06.01.2000, therefore, aforesaid conduct of the petitioner discloses that he had withdrawn his resignation letter in view of the submission of fresh application dated 06.01.2000. Lastly, it is urged that acceptance of resignation by letter dated 25.03.2000 with retrospective effect i.e. 01.04.1999 is contrary to the service rules of Uptron India Ltd. and thus, is illegal and bad in law. Accordingly, it is submitted that impugned order may be quashed and petitioner be extended the benefit of voluntary retirement scheme.

18. In support of his aforesaid submission, learned counsel for the petitioner has placed reliance upon following judgements of Apex Court:-

i. Dr. Prabha Atri Vs. State of U.P. and Others (2003) 1 SCC 701;

ii. X Vs. Registrar General, High Court of Madhya Pradesh and Another 2022 SCC Online 171;

iii. Union of India and Others Vs. Gopal Chandra Misra and Others (1978) 2 SCC 301.

19. Per contra, learned counsel for the respondent would contend that there is a procedure provided which is to be followed in taking a decision on the resignation letter submitted by an employee of the Company. It is submitted that application of the petitioner for resignation has been accepted from the date he has requested in his letter of resignation, and therefore, it cannot be termed to be an acceptance of resignation with retrospective effect.

20. He further submits that the petitioner has not approached this Court with clean hands and has concealed material fact in filing the writ petition inasmuch as petitioner has concealed vital fact in filing the writ petition that he had already submitted an application on 30.10.2000 to the Chairman/Secretary, UPLC-CPF-Trust, Gomti Nagar, Lucknow stating therein that he had resigned and his resignation has been accepted by the Company by letter dated 25.03.2000 w.e.f. 31.03.1999

and in such view of the fact, the entire amount standing in the CPF Account No.01165 be released in favour of the petitioner, and pursuant to the letter of petitioner dated 30.10.2000, entire amount was released to the petitioner by letter dated 28.11.2000 which was received by the petitioner on 05.12.2000.

21. It is further contended that once petitioner has acknowledged and accepted in his letter dated 30.10.2000 acceptance of his resignation and based upon the said acceptance, he had requested the UPLC-CPF-Trust to release entire amount standing in his CPF Account No.01165 which was released on the request of the petitioner, the petitioner has acquiesced to the letter dated 25.03.2000 accepting his resignation and thus, petitioner is estopped in law from challenging the order accepting his resignation letter.

22. It is further submitted that letter requesting to release money was submitted by the petitioner on 30.10.2000, and petitioner before that never requested the authorities to withdraw his resignation letter and after submitting this letter, and accepting all the amount standing in the CPF Account No.01165 on 05.12.2000 submitted a letter dated 11.12.2000 seeking benefit of voluntary retirement scheme, he is estopped in law from challenging the acceptance of resignation.

23. It is submitted that non-disclosure of letter of petitioner dated 30.10.2000 and amount received by the petitioner on 05.12.2000 which was standing in his CPF Account No.01165 on 05.12.2000 amounts to concealment of material fact, and therefore, writ petition is liable to be dismissed on this short ground.

24. I have considered the rival submissions of the parties and perused the record.

25. In the present case, respondent floated the scheme of voluntary retirement scheme on 14.09.1998. Under the said scheme, applications were sought for from the willing employees in order to make assessment about the expenditure likely to be incurred in implementing the said scheme. The petitioner applied pursuant to the aforesaid scheme on

03.10.1998. The scheme floated on 14.09.1998 was not implemented and respondent again came up with a circular dated 30.10.1998 floating the scheme of voluntary retirement scheme. The petitioner again in pursuant to the said scheme applied on 27.11.1998 seeking benefit of voluntary and unconditional retirement from service of the Company in accordance with terms and conditions laid down in the Voluntary Retirement Scheme. Again the said scheme was not implemented and petitioner submitted resignation by letter dated 31.03.1999, which is reproduced above.

26. The petitioner in his resignation letter has specifically requested to treat the said letter as his resignation without any prejudice to his rights under the Voluntary Retirement Scheme, and relieve him from the service w.e.f. 01.04.1999. Though, the petitioner states that after submitting his resignation, he continued to discharge his duties and his name was illegally struck off from register of the company, but respondent alleges that after submitting resignation, petitioner used to be absent from duty and did not discharge his duties.

27. In the meantime, again a final Voluntary Retirement Scheme was floated on 21.12.1999 after approval of the same was granted by the State Government by Government Order No.1768/78-इले०-99-59 इले०/97 dated 08.12.1999.

28. The petitioner again pursuant to the said scheme applied for voluntary retirement on 06.01.2000. However, before the application of petitioner dated 06.01.2000 for voluntary retirement was considered, his resignation letter dated 31.03.1999 was accepted by the Managing Director vide letter dated 25.03.2000 w.e.f. the close of office hours on 01.04.1999.

29. Various submissions advanced by the learned Senior Counsel for the petitioner which have been noted above may have substance, but this Court for the reason below does not deem it fit to consider all those submissions to unnecessarily burden the present judgement since the writ petition can be decided on a short point.

30. It is not in dispute that resignation of the petitioner was accepted by the Managing Director vide letter dated 25.03.2000. The record reflects that petitioner has accepted the resignation letter dated 25.03.2000 and treated himself to be an Ex-employee on account of the acceptance of his resignation letter and he gave an application on 30.10.2000 requesting the authority to release the entire amount standing in his CPF account no.01165. The letter dated 30.10.2000 written by the petitioner addressed to the Chairman/Secretary, UPLC-CPF-Trust, Gomti Nagar, Lucknow is reproduced herein below:-

“To,

*The Chairman/Secretary
UPLC CPF Trust
Gomti Nagar, Lucknow.*

Subject:- Release of my CPF Balance (Ac.No.01165) subsequent to my relieving from the services of UIL.

Dear Sir,

It is to bring to your kind notice that I have resigned from the services of UPTRON INDIA LTD. on 31.3.99 (copy of resignation enclosed). Recently I came to know that I have been relieved by MD vide his letter REF:UIL:PER:2696 Dated 25.3.2000.

I am not employed anywhere and wish to do my livelihood through self-employment activities (Certificate from Gazetted Officer to the effect of self-employment enclosed). In the light of MD's order Ref:UIL:PER:CPF:99 Dated 21.1.2000. I am lodging this formal request for the release of the entire amount, standing in my CPF Ac.No.01165 as on date, to me immediately without considering unpaid contributions (if any). I shall accept the unpaid contributions in the future whenever they are paid by the division/any authority without penal interest.

You are also requested to consider this application on high priority and sympathetically as almost 18 months have elapsed since my resignation and since I am trying to survive on my own, through self-employment. I am in absolute and severe money crunch which is now affecting normal life of my family & children.”

31. The contents of the aforesaid letter reveals that petitioner unconditionally acknowledged and accepted the acceptance of his resignation communicated by the Managing Director vide letter dated 25.03.2000 and he submitted the aforesaid application dated 30.10.2000 seeking release of his entire amount in his CPF Account No.01165.

32. The said letter does not disclose that there is any protest by the petitioner against the acceptance of his resignation letter dated 31.03.1999 by the Managing Director vide letter dated 25.03.2000. In

compliance with the aforesaid request of the petitioner, the Executive Officer (Accounts) U.P. Electronics Corporation Limited by letter dated 28.11.2000 released the payment of C.P.F. accumulated in the account of the petitioner which has been duly accepted and received by the petitioner on 05.12.2000. The contents of letter dated 28.11.2000 is reproduced herein below:-

“To,

*Mr. Ratan Mehra,
569/153-B Bargawan, Bara Birwa,
Kanpur Road, Lucknow-12*

Sub. Payment of PF accumulations.

Dear Sir,

1. Please find enclosed herewith cheque No.2163399 dated 28.11.2000 for Rs.7,08,042.50 (Rupees Seven lacs eight thousand forty two & paise fifty) drawn on Lucknow, on account of full and final payment of your CPF accumulations as per details given below:-

1. Employee's Contribution with interest

upto Oct. 2000

Rs.4,67,286.75

2.% of Employer's Contribution with

interest upto Oct. 2000

Rs.2,40,755.75/-

Total: Rs. 7,08,042.50/-

2.% of Employer's Contribution has been forfeited as membership in the fund was less than.....years.

3. Regarding refund of Family Pension Fund (A/C No.U.P./5384/FP/1106) you are advised to contact the Office of Regional Provident Fund Commissioner, Nidhi Bhawan, Sarvodaya Nagar, Kanpur (U.P.) 208005. You are advised to fill up the prescribed forms and forward us for further necessary action. You are advised to collect the prescribed forms from any RPFC Office.

4. Please send stamped receipt for our record.”

33. So, after the acceptance of his resignation by the Managing Director vide letter dated 25.03.2000, petitioner did not raise any protest that acceptance of his resignation by the respondent is contrary to the law as petitioner has already opted for Voluntary Retirement Scheme, and in view of the option exercised by the petitioner for Voluntary Retirement Scheme, the letter of resignation dated 31.03.1999 shall be deemed to have been withdrawn by the petitioner rather petitioner submitted application dated 30.10.2000 and accepted all the amounts accumulated in his C.P.F. account no.01165 on 05.12.2000 without any protest.

34. The record reflects that after receiving the amount standing in C.P.F account no.01165 on 05.12.2000, the petitioner for the first time submitted a representation to the Managing Director on 11.12.2000 i.e. after six days from the date he accepted the amount of C.P.F. requested for the benefit of Voluntary Retirement Scheme, and thereafter, a reminder was also sent on 12.06.2001 and 30.03.2002.

35. The vital documents namely application of petitioner dated 30.10.2000 and acceptance of C.P.F. amount on 05.12.2000 was concealed by the petitioner in filing the writ petition.

36. These documents are relevant for the reason that this reflects the conduct of the petitioner that he without any whisper or protest acknowledged and acquiesced to the letter dated 25.03.2000 of Managing Director accepting the resignation of petitioner.

37. At this stage, it would be apt to reproduce paragraph nos. 39 and 40 of the judgement of the Apex Court in the case of ***Chairman, State Bank of India and Another Vs. M.J. James (2022) 2 SCC 301:-***

“39. Before proceeding further, it is important to clarify distinction between “acquiescence” and “delay and laches”. Doctrine of acquiescence is an equitable doctrine which applies when a party having a right stands by and sees another dealing in a manner inconsistent with that right, while the act is in progress and after violation is completed, which conduct reflects his assent or accord. He cannot afterwards complain. In literal sense, the term acquiescence means silent assent, tacit consent, concurrence, or acceptance, which denotes conduct that is evidence of an intention of a party to abandon an equitable right and also to denote conduct from which another party will be justified in inferring such an intention. Acquiescence can be either direct with full knowledge and express approbation, or indirect where a person having the right to set aside the action stands by and sees another dealing in a manner inconsistent with that right and in spite of the infringement takes no action mirroring acceptance. However, acquiescence will not apply if lapse of time is of no importance or consequence.

40. Laches unlike limitation is flexible. However, both limitation and laches destroy the remedy but not the right. Laches like acquiescence is based upon equitable considerations, but laches unlike acquiescence imports even simple passivity. On the other hand, acquiescence implies active assent and is based upon the rule of estoppel in pais. As a form of estoppel, it bars a party afterwards from complaining of the violation of the right. Even indirect acquiescence implies almost active consent, which is not to be inferred by mere silence or inaction which is involved in laches. Acquiescence in this manner is quite distinct from delay. Acquiescence virtually destroys the right of the person. Given the aforesaid legal position, inactive acquiescence on the part of the respondent can be inferred till the filing of the appeal, and not for the

period post filing of the appeal. Nevertheless, this acquiescence being in the nature of estoppel bars the respondent from claiming violation of the right of fair representation.”

38. The Apex Court in the case of ***Bichitrananda Behera Vs. State of Orissa and Others 2023 SCC Online SC 1307*** has held that acquiescence implies active assent and is based upon the rule of estoppel in pais. As a form of estoppel, it bars a party afterwards from complaining of the violation of the right even in direct acquiescence implies almost active assent.

39. Since reading of aforesaid letter dated 30.10.2000 reflects without any doubt that petitioner never protested against the acceptance of his resignation vide letter dated 25.03.2000. Even it is not disclosed in the writ petition that when and by which mode, the letters dated 11.12.2000 (Annexure-15 to the writ petition), 12.06.2001 (Annexure-16 to the writ petition), and 30.03.2002 (Annexure-17 to the writ petition) were sent to the Company by the petitioner raising his grievance of non-acceptance of his voluntary retirement. The record also does not disclose that even these letters have been received by the Company.

40. This Court under Article 226 of the Constitution of India will not entertain a writ petition where petitioner has approached the Court by concealing material facts and has not approached the Court with clean hands. In this respect, it would be useful to reproduce paragraphs 39 and 41 of the judgement of Apex Court in the case of ***K.D. Sharma Vs. Steel Authority of India Limited and Others (2008)12 SCC 481:-***

“39. If the primary object as highlighted in Kensington Income Tax Commrs., 116 LT 136 (CA) is kept in mind, an applicant who does not come with candid facts and "clean breast" cannot hold a writ of the court with "soiled hands". Suppression or concealment of material facts is not an advocacy. It is a jugglery, manipulation, manoeuvring or misrepresentation, which has no place in equitable and prerogative jurisdiction. If the applicant does not disclose all the material facts fairly and truly but states them in a distorted manner and misleads the court, the court has inherent power in order to protect itself and to prevent an abuse of its process to discharge the rule nisi and refuse to proceed further with the examination of the case on merits. If the court does not reject the petition on that ground, the court would be failing in its duty. In fact, such an applicant requires to be dealt with for contempt of court for abusing the process of the court.

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41. In State of Haryana v. Karnal Distillery (1977) 2 SCC 431 almost an agreed order was passed by the Court that on expiry of the licence for manufacturing of liquor on 6.9.1976, the distillery would cease to manufacture liquor under the licence issued in its favour. Then, the Company filed a petition in the High Court for renewal of licence for manufacture of liquor for 1976-77, and the Court granted stay of dispossession. In appeal, the Supreme Court set aside the order granting stay of dispossession on the ground that the petitioner-Company in filing the petition in the High Court had misled it and started the proceedings for oblique and ulterior motive.”

41. Further, the conduct of the petitioner, detailed above, reflects that he has acquiesced to the letter of Managing Director dated 25.03.2000 accepting the resignation of petitioner, and therefore, he is estopped in law from challenging the order dated 25.03.2000 accepting his resignation letter.

42. Thus, for the reasons given above, this Court does not find any merit in the writ petition, and accordingly, ***dismisses*** the same with no order as to costs.

Order Date :-11.3.2024
Sattyarth