

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19745 of 2010

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Md.Mukhtar Ali son of Aslam Askari, resident of Alamganj, Narkat Ghat Lane, P.S. Alamganj, District Patna.

.... Petitioner/s

Versus

- 1.The State of Bihar.
- 2.The General Manager, UCO Bank, Head Office, Retail Banking Department, 10 B.T.M. Sarani, Kolkata-700001.
- 3.The Chief officer, Retail Banking IM, Nodal Officer-Minority Affairs, 10, BTM, Sarani, Kolkata-700001.
- 4.The Zonal Manager, UCO Bank, Zonal Office, Patna.
- 5.The Assistant General Manager, UCO Bank, Zonal Officer, Patna.
- 6.The Senior Manager, Sangrampur Branch, UCO Bank, Sangrampur.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. S.A. Alam, Adv, Mr. Fakhruddin Ali Ahmad, Adv Mrs. Anjum Perveen, Adv
For the Bank	:	Mr. Sanjay Kumar, Adv & Dr. Anshuman, Adv
For the State	:	Mr. Madhuresh Prasad GP-12

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

9 06-07-2015 Heard learned counsel for the parties.

2. The prayer of the petitioner in this writ application reads as follows:-

“To quash the letter vide no.-Misc./02/09-10 dated 23.05.2009 issued by respondent Bank by which the petitioner has been relieved from service.

To quash the letter vide no. 220 dated 16.05.2009 issued under the signature of Zonal Manager, UCO Bank, Patna to Senior Manager, UCO Bank, Sangrampur Branch, by which the request of the petitioner for VRS has been accepted with effect from 25.05.2009.

To direct the respondent to permit the petitioner to resume his duty as a manager in UCO Bank, Branch Office-Sangrampur.

Any other relief/reliefs for which the petitioner is entitled under the facts and circumstances of the case.”



3. Mr. S.A. Alam, learned counsel appearing on behalf of the petitioner in support of the aforementioned prayer has submitted that when the petitioner had already withdrawn his offer of voluntary retirement given earlier by him on 25.02.2009, before its coming into force as communicated by the Bank on 16.05.2009, vide his letter dated 20.05.2009, whereas the offer was accepted w.e.f. 25.02.2009. The action of the Bank either in relieving him or treating him to be voluntary retired, will be wholly arbitrary. In this context, he has placed reliance on a judgment of this Court in the case of **Dr. Shah Azad Siddiqui vs the State of Bihar & Ors**, reported in **2008(4) PLJR 194** and a judgment of the Apex Court in the case of **P. Lal vs Union of India & Ors** reported in **2003(3) SCC 393**.

4. Though, the respondent UCO Bank has filed its counter affidavit and has raised many issues but then the basic fact is not in dispute namely:-

(i) On 25.02.2009, the petitioner had filed an

application seeking voluntary retirement from service of the Bank.

(ii) On 16.05.2009, the Bank had communicated that his voluntary retirement was accepted and it will come into force w.e.f., 25.05.2009.

(iii) The petitioner on 20.05.2009 had withdrawn his offer of voluntary retirement.

5. Once, these three facts are admitted, there would be no aspect from the settled position in law that an employee before coming into force of the resignation/VRS has the right to withdraw the same. The employer has no choice but to allow such withdrawal. It is this aspect of the which has been explained by the Apex Court in the case of **P. Lal (supra)** and this Court in the case of **Dr. Shah Azad Siddiqui (supra)**.

6. This aspect of the matter was also gone into by a Division Bench of this Court in the case of **Chandraditya Nath Das vs State of Bihar**, reported in **2009(1) PLJR 719**, wherein, placing reliance on the

judgment of the Apex Court in the case of **Punjab National Bank vs P.K. Mittal** reported in **AIR 1989 SC 1083**, it was held as follows:-

“A letter of voluntary resignation which was to come into effect from prospective date was capable of being withdrawn before such date.”

7. Mr. Anshuman Singh, learned counsel appearing on behalf of UCO Bank also does not dispute the aforementioned factual proposition and the settled principle in law but what he really wants to contest before this Court is that the petitioner has only informed the subordinate authority and not the authority before whom he ought to have given his claim withdrawing the offer of VRS.

8. Such submission of Mr. Anshuman Singh has to be only noted for its being rejected. As a matter of fact, the acceptance of VRS of the petitioner was communicated to him vide letter dated 16.05.2009, by the controlling authority of the petitioner and the



petitioner had only written to that authority that he has chosen to withdraw his offer of voluntary retirement. The said authority in fact on 20.05.2009, has sent this information to the Head Office/Competent Authority, that the petitioner had withdrawn his offer of VRS, therefore, this Court would not find that there was any delay or any lapse of procedure in absence of it being anywhere prescribed as to before whom offer of VRS could be withdrawn.

9. In any event, the procedure are hand made of justice and no one can be non suited on the ground of mere technicality. The petitioner had given his offer of VRS, but had in fact withdrawn it immediately, before the same can have come into force. In that view of the matter, this writ application has to be allowed and the impugned order allowing the voluntary retirement of the petitioner relieving him from service is hereby quashed.

10. The question would now arise that as the petitioner has reached his normal age of superannuation



and therefore, there would be no question of reinstatement in service. In such event the petitioner, therefore, would be entitled for full payment of salary for the period 24.05.2009, to his date of retirement minus the amount of pension, he could have been allowed. It is a different story altogether that even after the petitioner was allowed voluntary retirement with a promise to pay all his retrial dues and other conditions mentioned in the offer of VRS, the petitioner was never paid single paisa for the interregnum period of one and a half years and this writ application was filed on 03.12.2010.

11. As a matter of fact, this Court has tried to know from Mr. Anshuman Singh, learned counsel for the UCO Bank as to why the petitioner was not paid his VRS dues which he became entitled on account of acceptance of VRS. The bank has taken a defence that since the petitioner did not submit the form in the prescribed proforma, his payments were withheld. A



question would arise that under the scheme, can the employee be kept waiting for receipt of such amount and if officials of the Bank, were so sanguine of the offer, are equally responsible for making payment of VRS benefit without waiting of filing of this writ application, which as noted above has been filed after one and a half year after VRS come into force.

12. Thus while allowing this writ application, this Court would direct the authorities of the Bank to pay the salary to the petitioner for the period from 24.05.2009 to the date of retirement, with cost of Rs. 25000/- to be paid to the petitioner as the petitioner was unnecessarily harassed and in fact was also not paid his VRS dues in time.

13. Such payment of dues of the petitioner including the retirement benefits and the amount of cost must be paid to the petitioner within a period of three months from the date of receipt of this order.

14. It is also made clear that if the petitioner has

to do any formality and/or prescribed procedure, he shall be informed by the Bank to do so and upon completion of such procedure and formality, the payment must be made to the petitioner in the prescribed period of three months.

15. With the aforementioned observation and direction, this application is disposed of.

(Mihir Kumar Jh, J)

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