IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 641 OF 2008

Sheikh Imtiyaz Babur,
through his Power of Attorney,
Smt. Nazma Suntana Sheikh,
r/o. Vasco da Gama, Goa. … Petitioner

Versus

1. The Board of Trustees of Mormugao
Port Trust, through its Chairman,
having Office at Headland,
Sada, Mormugao, Goa.

2. The Traffic Manager,
Mormugao Port Trust, through its Chairman,
having office at Headland,
Sada, Mormugao, Goa. … Respondents

Mr. Vishnuprasad A. Lawande, Advocate for the Petitioner.

Mr. Y. V. Nadkarni, Advocate for the Respondents.

Coram :- **F. M. REIS,**
K. L. WADANE, JJ.

Date : **7th January, 2016**

ORAL JUDGMENT *(Per F. M. Reis, J.)*

Heard Mr. V. A. Lawande, learned Counsel appearing for the Petitioner and Mr. Y. V. Nadkarni, learned Counsel appearing for the Respondents.

2. The above Writ Petition, inter alia, seeks for a writ or direction to permit the Petitioner to withdraw his offer of voluntarily retirement dated 21.02.2008 in terms of the communication dated 09.05.2008. A further relief sought by the Petitioner is to set aside the Communications dated 14.05.2008 and 31.05.2008

issued by the Respondent no. 2.

3. Briefly, the facts of the case as contended by the Petitioner are that the Petitioner was working as a Senior Clerk with the Respondent no. 1 and submitted an application for voluntarily retirement on 21.02.2008. In terms of the Regulations, according to the Petitioner, the notice period for voluntary retirement is three months and the offer can be withdrawn within the said period of three months. The Respondents accepted the Petitioner's offer for voluntary retirement and the effective date of the retirement was fixed as 01.06.2008. It is further the contention of the Petitioner that in the meanwhile, M/s. Sahakar Urban Credit Co-operative Society called upon the Petitioner to pay an amount of Rs. 6,18,098/- on the ground that the Petitioner had stood surety to one Rauf Sheikh. The Petitioner accordingly had no other alternative but to withdraw the offer of voluntary retirement and, consequently, on 09.05.2008, the Petitioner withdrew the offer of voluntary retirement well before the expiry period of three months but, however, according to the Petitioner, the Respondent had refused to allow the Petitioner to withdraw the application for voluntary retirement. An Appeal was preferred before the Deputy Chairman of the Respondent no. 1 on 18.05.2008, which came to be rejected on 31.05.2008. As such, the Petitioner filed the above Writ Petition directing the Respondents to permit the Petitioner to withdraw the offer of voluntary retirement and also for reinstatement and back wages.

4. Upon hearing the learned Counsel appearing for the parties at length, the challenge in the above Writ Petition are two folds. The first challenge is on the refusal of the Respondent no. 1 to allow the withdrawal of the offer of voluntary

retirement being unjustified and, as such, deserves to be quashed and set aside. The next grievance of the Petitioner is to direct the reinstatement and payment of his back wages. With regard to the first contention raised by Shri V. A. Lawande, learned Counsel appearing for the Petitioner, it would be appropriate to note the observations of the Apex Court in the Judgment reported in ***1989 (Supp) 2 SCC 175*** in the case of ***Punjab National Bank v. P.K. Mittal,*** at para 5 thus :

> "We have given careful thought to this contention of the learned counsel and we are of the opinion that the High Court was right in the conclusion it reached. Clause (2) of Regulation 20 makes it incumbent on an officer of the bank, before resigning, to serve a notice in writing of such proposed resignation and the clause also makes it clear that the resignation will not be effective otherwise than on the expiry of three months from the service of such notice. There are two ways of interpreting this clause. One is that the resignation of an employee from service being a voluntary act on the part of an employee, he is entitled to choose the date with effect from which his resignation would be effective and give a notice to the employer accordingly. The only restriction is that the proposed date should not be less than three months from the date on which the notice is given of the proposed resignation. On this interpretation, the letter dated 21-1-1986 sent by the employee fully complied with the terms of this clause. Though the letter was written in January 1986 the employee gave more than three clear months' notice and stated that he wished to resign with effect from 30-6-1986 and so

> the resignation would have become effective only on that date. The other interpretation is that, when an employee gives a notice of resignation, it becomes effective on the expiry of three months from the date thereof. On this interpretation, the respondent's resignation would have taken effect on or about 21-4-1986 even though he had mentioned a later date. In either view of the matter, the respondent's resignation did not become effective till 21-4-1986 or 30-6-1986. It would have normally automatically taken effect on either of those dates as there is no provision for any acceptance or rejection of the resignation by the employer, as is to be found in other rules, such as the Government Services Conduct Rules."

5. In ***1987 Supp SCC 228*** in the case of ***Balram Gupta vs. Union of India***, the Apex Court held that independent of any statutory rules, an employee who gives notice of voluntary retirement to take effect prospectively from a subsequent date, is at liberty to withdraw his notice of voluntary retirement, any time before it comes into effect. But this normal rule would not apply, where having regard to the statutory rules governing the matter, the employee cannot withdraw except with the approval of an authority. But such approval cannot be the ipse dixit of the approving authority. He should act reasonably and rationally. He cannot keep the matter pending for unduly long time, nor can he discriminate in dealing with applications of employees similarly situated.

6. In ***Union of India vs. Wing Commander T. Parthasarathy*** reported in ***(2001) 1 SCC 158***, the Apex Court held at Para 8 thus :

> "8. So far as the case in hand is concerned, nothing in

> the form of any statutory rules or any provision of any Act has been brought to our notice which could be said to impede or deny this right of the appellants. On the other hand, not only the acceptance of the request by the headquarters, the appropriate authority, was said to have been made only on 20-02-1986, a day after the respondent withdrew his request for premature retirement but even such acceptance in this case was to be effective from a future date namely 31-8-1986. Consequently, it could not be legitimately contended by the Appellants that there was any cessation of the relationship of master and servant between the department and the respondent at any rate before 31-8-1986. While that be the position inevitably the respondent had a right and was entitled to withdraw or revoke his request earlier made before it ever really and effectively became effective."

7. Taking note of the said observations, we find that in the present case, by an application dated 21.02.2008, the Petitioner sought for voluntary retirement w.e.f. 01.06.2008 in terms of Clause 10(i) (iii) and (vi), which is in the scheme of voluntary retirement after twenty years which read thus :

> "***<u>10. SCEHEME OF VOLUNTARY RETIREMENT AFTER 20 YEARS SERVICE :</u>***
>
> Any employee of the Board may, after giving notice of not less than three months in writing to the appropriate authority, retire from service after 20 years of qualifying service on proportionate pension and gratuity in the case of those governed by the Port's Pension Rules and after 20 years of service on proportionate special contribution to Provident Fund in the case of those

governed by Contributory Provident Funds with a weightage of up to 5 years towards qualifying service where applicable subject to certain conditions. The following instructions will regulate the Voluntary retirement of the port where applicable subject to certain conditions. The following instructions will regulate the Voluntary retirement of the port employees :-

(I) Employees who have put in not less than 20 years qualifying service or service in the case of those governed by CPF as the case may be, may by giving notice of three months in writing to the appropriate authority retire from service voluntarily. The scheme is purely voluntary the initiative resting with the employee himself. The appropriate authority does not have the reciprocal right to retire employees on under this scheme.

(ii) …

(iii) A notice of less than three months may also be accepted by the appropriate authority in deserving cases, with the concurrence of the Finance Department.

(iv) ...

(v) ...

(vi) A notice of voluntary retirement may be withdrawn subsequently only with the approval of the appropriate authority provided request for such withdrawal is made before the expiry of the notice.”

8. Thereafter, the said requst was accepted w.e.f. 01.06.2008 vide letter dated 13.03.2008. Thus, the date when such Order would be effective was 01.06.2008. But, however, before the said date, by letter dated 09.05.2008, the

Petitioner withdrew his offer to proceed on voluntary retirement. By letter dated 14.05.2008, the request for withdrawal was not accepted by the Respondents. In such circumstances, the records clearly reveal that much before the Order of acceptance of voluntary retirement was effective, the Petitioner had withdrawn his offer to retire. As such, in view of the observations of the Apex Court referred to herein above, which clearly states that such offer can be withdrawn before it becomes effective, the Respondents were not justified to pass the impugned Order refusing liberty to the Petitioner to withdraw his offer for retirement. As such, the said Memorandum dated 14.05.2008 refusing liberty to the Petitioners to withdraw the offer of retirement cannot be sustained and deserves to be quashed and set aside and the subsequent Memorandum dated 31.05.2008 passed by the Traffic Manager as well as the Order dated 31.05.2008 stating that the Petitioner has relinquished charge of post w.e.f. 01.06.2008 cannot be valid.

9. Considering the above, we find that Shri Nadkarni, learned Counsel appearing for the Respondents was unable to point out any provision in the Rules which could in any way prevent the Petitioner from withdrawing his offer for voluntary retirement before the actual date, it would take effect. The permission to withdraw the said offer cannot as such be refused on unreasonable and arbitrary grounds considering the reasons disclosed by the Petitioner.

10. With regard to the contention of Mr. Nadkarni, learned Counsel appearing for the Respondents, that a disciplinary inquiry was being initiated against the Petitioner which came to be dropped in view of his desire to go on voluntarily retirement, we find that the effect of the withdrawal of his offer to go on

voluntary retirement would have to be examined in the context of the relief which the Petitioner would be entitled and the payment of back wages if any. But, this cannot be a ground to refuse permission to the Petitioner to withdraw his offer of going on voluntary retirement. The first contention of Mr. Lawande, learned Counsel appearing for the Petitioner is answered accordingly.

11. With regard to the other aspect which remains to be examined with regard to the claim of the Petitioner for back wages as the Petitioner was prevented from working for the Respondents on untenable grounds. Considering the view taken by us above, the Petitioner would be entitled either for full back wages or atleast part thereof considering the facts and circumstances of the case.

12. By the impugned Order, the Petitioner was allowed to retire on the understanding that no disciplinary proceedings would be initiated against him. Considering that the offer on voluntary retirement is being withdrawn by the Petitioner, there would be no bar if the Respondents so desired to proceed to initiate such disciplinary proceedings against the Petitioner in accordance with law. But, however, Mr. Nadkarni, learned Counsel appearing for the Respondents, upon instructions, states that the Respondents shall not initiate any such disciplinary proceedings in case the Petitioner does not press for any back wages.

13. Mr. Lawande, learned Counsel appearing for the Petitioner, upon instructions of the Petitioner, who is present in Court, has submitted that the Petitioner would not press for any back wages in case no disciplinary proceedings are initiated against the Petitioner and the Petition is restored to his original position

with all consequential benefits which he would otherwise be entitled to apart from back wages.

14. Considering the said two statements, upon instruction, which are accepted, the claim for back wages by the Petitioner stands disposed of in the light of the respective statements of the learned Counsel appearing for the Petitioner and the Respondents.

15. In view of the above, Rule is made absolute in terms of prayer clauses (a) and (b) and the Petitioner shall be restored to his original position within fifteen days from the date of the receipt of this Order with all consequential benefits which he would otherwise be entitled in accordance with law apart from back wages. Needless to say, the Petitioner shall not be entitled to any back wages in view of the statements made herein above.

16. Petition stands accordingly disposed of with no orders as to costs.

K. L. WADANE, J. **F. M. REIS, J.**

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