

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.12686 of 2006

ORDER:

This writ petition is filed, under Article 226 of the Constitution of India, by the petitioner, who was formerly U.D.C., in the Electricity Revenue Office, Vizianagaram, Operation Circle of the Superintending Engineer, APEPDCL, Vizianagaram District, to declare the action of the said Superintending Engineer in issuing the letter No.SE/ OPVZM/ ADM/ PO/ JAO/ A/ 1/ F.8/ D.No.249/ 04, dated 17.05.2004, by not accepting the petitioner's request for withdrawal of the request for voluntary retirement and confirming the orders issued in Memo No.SE/ O/ VZM/ ADM/ PO/ JAO/ A1/ D.No.1113/ 04, dated 05.05.2004, as illegal and bad and accordingly set aside the said memo and direct the respondent to pay full salary and grant all other monetary benefits such as allowances with effect from 31.5.2004 AN and grant such other orders as this Court deems fit.

2. I have heard the submissions of *Sri M.Dilip Rao*, learned counsel appearing for the petitioner, and of *Sri M.Ravindra*, learned Standing Counsel appearing for the respondent/ APEPDCL.

3. The facts, which are necessary for consideration, in a nutshell, are as follows:

The petitioner who was working as UDC in E.R.O., Vizianagaram Town, has put in a service of 35 years in the Department. His Date of Birth is 20.07.1949. And, after attaining the age of 54 years and 5 months, owing to his domestic affairs and personal problems, he opted

for voluntary retirement; and, by his letter, dated 26.03.2004, submitted three months' notice requesting to retire him under Voluntary Retirement Provision and Scheme. Further, in view of his personal problems, he even stated in his request that the authorities concerned may retire him even prior to 31.05.2004 and arrange for relief. By letter, dated 05.05.2004, of the Superintending Engineer (Operations), Vizianagaram, the petitioner was permitted to retire from service voluntarily with effect from 31.05.2004 AN and the petitioner was informed that if there are any dues outstanding from him to the Department, the same with interest thereon shall be recovered in one lump sum from his terminal benefits. After such acceptance of his request for Voluntary Retirement with effect from 31.05.2004, but before 31.05.2004, the petitioner submitted a letter, dated 12.05.2004, to the Superintending Engineer (Operations) stating that he had applied for Voluntary Retirement in view of lurking fear about his terminal benefits and that his position has improved and hence, he is withdrawing his request for Voluntary Retirement and that therefore, his request may be approved. However, by letter dated 17.5.2004, he was informed that his request for cancellation of Voluntary Retirement orders with effect from 31.05.2004 issued by the Superintending Engineer (Operation), Vizianagaram, is negatived. Eventually, the petitioner was made to retire from service with effect from 31.05.2004 AN, and was relieved.

4. In this backdrop of admitted facts, the case of the petitioner is that though his request for Voluntary Retirement made on 26.03.2004 to permit him to retire either earlier or at least on 31.05.2004 was accepted by the respondent, *vide* Memo, dated 05.05.2004, and he was

permitted to retire from service voluntarily with effect from 31.5.2004, he has withdrawn his request for Voluntary Retirement and sought cancellation of the orders permitting him to retire with effect from 31.05.2004, by letter dated 12.05.2004, i.e., even before 31.05.2004, but, his request for cancellation of the order of retirement was negatived contrary to the settled legal position. His main submission is that his request for withdrawal was made before 31.05.2004, the date on which he was permitted to retire from service and before he is relieved from service on 31.05.2004 and that therefore, his request ought to have been considered.

5. Learned counsel for the petitioner would submit that mere acceptance of the request for Voluntary Retirement will not put an end to the relationship of employer and employee and that such relationship, being a jural relationship, continues till the employee is relieved from his duties and that in the case on hand, the petitioner submitted, on 12.05.2004, his letter of withdrawal of request for Voluntary Retirement before 31.05.2004, the date on which he is supposed to be relieved; and, therefore, he is entitled to withdraw his request for Voluntary Retirement even after its acceptance but before the juridical relationship of employee and employer ceased and before he is relieved from his duties. In support of his contentions, he placed reliance on a decision in *J.N.Srivastava v. Union of India*¹. In this decision, the short question that was considered by the Supreme Court was whether the appellant was entitled to withdraw his Voluntary Retirement notice of three months submitted on 03.10.1989, which was to come into effect

¹ (1998) 9 Supreme Court Cases 559

from 31.01.1990. The crucial fact in the cited decision is that his proposal was accepted by the authority on 02.11.1989 and thereafter, before 31.01.1990 was reached, he, that is, the appellant therein wrote a letter, dated 11.12.1989, withdrawing his earlier proposal seeking Voluntary Retirement. But, the said request to permit him to withdraw his proposal of Voluntary Retirement was not accepted by the respondents by communication dated 26.12.1989. The Tribunal gave him no relief and took the view that the Voluntary Retirement had come into force with effect from 31.01.1990 and the appellant having given charge of the post as per the memo had relinquished his charge and consequently, he was estopped from withdrawing Voluntary Retirement notice. The Supreme Court noted that the reasoning of the Tribunal cannot be sustained on facts of that case and held that it is well settled that even if the Voluntary Retirement notice moved by an employee gets accepted by the authority within the time fixed, the employee has locus *poenitentiae* to withdraw the proposal for Voluntary Retirement before the date of retirement is reached. The Supreme Court also held that the said view has been taken by a Bench of the Supreme Court in the case of Balram Gupta v. Union of India² and that therefore it cannot be said that the appellant had no *locus standi* to withdraw his proposal for voluntary retirement before 31.01.1990. It was also held that when once the request for cancellation of voluntary retirement was rejected by the authority concerned on 26.12.1989 and when the retirement came into effect on 31.01.1990, the appellant had no choice but to give up the charge of the post to avoid unnecessary complications. Accordingly, the Supreme Court allowed the appeal and set aside the order of the

² 1987 Supp SCC 228

Tribunal as well as the order of the authorities, dated 26.12.1989, and directed the respondent therein to treat the appellant to have validly withdrawn his proposal for voluntary retirement with effect from 31.01.1990. In *Shambhu Murari Sinha v. Project & Development India*³, the facts and the ratio are as follows: “In pursuance of the scheme for voluntary retirement, the appellant submitted an application, dated 18.10.1995, seeking voluntary retirement. The offer was accepted by the respondent Management by their letter dated 30.07.1997. Since it was specifically stated in that letter that the release memo along with detailed particulars will follow, the appellant continued in service till 26.09.1997 and was relieved from the post on that day. In the meantime, the appellant had already submitted a letter to the respondent on 07.08.1997 (followed by another letter dated 24.09.1997) withdrawing the letter dated 18.10.1995 by which he had sought voluntary retirement. But, this letter was not given effect to by the respondent management. The writ petition was dismissed by the learned Single Judge of the High Court. The Writ Appeal was dismissed by a Division Bench. Thus, the High Court did not accept the contention of the appellant that he having withdrawn the letter of voluntary retirement should be allowed to be continued in service. The Supreme Court, having taken note of various dates, noted that the appellant was not relieved from service and he was allowed to continue in service till 26.09.1997, which, for all practical purposes, would be the “effective date” as it was on this date that he was relieved from service and that in the mean time, the appellant had already withdrawn the offer of voluntary retirement, vide his letter, dated 07.08.1997. The question,

³ (2000) 5 Supreme Court Cases 621

which, therefore, arose in the said appeal, is whether it is open to a person having exercised option of voluntary retirement to withdraw the said offer after its acceptance but before it is made effective. It was held that the question is squarely answered in the decisions in Balaram Gupta (2nd supra), J.N.Srivastava (1st supra) and Power Finance Corporation Ltd v. Pramod Kumar Bhatia⁴ in which it was held that the resignation, in spite of its acceptance, can be withdrawn before the “effective date”. Accordingly, the Supreme Court allowed the appeal. In Srikantha S.M. v. Bharath Earth Movers Ltd.⁵, the facts and the ratio are as follows: ‘The respondent company accepted the resignation of the appellant, on 04.01.1993, and he was ordered to be relieved on that day. However, by a subsequent letter, he was granted casual leave from 05.1.1993 to 13.01.1993 and he was informed that he would be relieved after office hours on 15.01.1993. Thus, the relationship of employer and employee did not come to an end on 04.01.1993. The relieving order and payment of salary also made it abundantly clear that he was continued in service of the Company upto 15.01.1993. Thus, the appellant remained in service till 15.01.1993. Admittedly, a letter of withdrawal of resignation was submitted by the appellant on 08.01.1993. But, the company did not give effect to the said letter. Hence, the Supreme Court held that by not giving effect to the said letter, the Company has acted contrary to the law and against the decisions of the Supreme Court and hence, the action of the Company deserves to be quashed and set aside. In this decision, the Supreme Court referred to the decisions in J.N. Srivatsava (1st supra), Shambhu Murari Sinha (3rd supra) and Balaram Gupta (2nd supra).

⁴ (1997) 4 SCC 280

⁵ (2005) 8 Supreme Court Cases 314

6. No doubt, in the case on hand, the petitioner submitted his request for cancellation of Voluntary Retirement after the request was accepted but before 31.05.2004, i.e., the date on which the retirement comes into effect. As per settled law, even if the Voluntary Retirement notice is moved by an employee and gets accepted by the authority within the time fixed, yet, before the date of retirement is reached, the employee has *locus poenitentiae* to withdraw the proposal for voluntary retirement. Thus, for all practical purposes, the date 31.05.2004 is the effective date as it was on this day the petitioner was relieved from service. Admittedly, in the mean time, the petitioner had already withdrawn the offer of voluntary retirement by his letter dated 12.5.2004. Therefore, it can safely be held that it is open to him to withdraw the option/offer of voluntary retirement even after its acceptance, but before it is made effective.

7. Before proceeding further and examining the petitioner's entitlement to the relief claimed in the writ petition, there is one more aspect which remains to be examined. As rightly contended by the respondent, after the petitioner was made to retire on 31.05.2004, all his terminal benefits, viz., gratuity of Rs.2.5 lakhs and commutation sum of Rs.4,48,532/- were released to him and were paid by way of cheque dated 02.08.2004, i.e., after two months after his date of retirement. He has also drawn pension thereafter for some months is admitted and undisputed. Having kept quiet for quite a long time, the petitioner approached this Court in June, 2006, i.e., two years after his effective or actual date of retirement. Admittedly, he did not receive the terminal benefits/retrial benefits under protest. Therefore, the question is

whether the petitioner is now estopped from claiming the relief that is being sought for in this writ petition.

8. In the decision in *Gyanendra Sahay v. Tata Iron & Steel Co. Ltd.*⁶, relied upon by the respondent, the facts are as follows: 'A letter of request was submitted to the Company for his premature/ voluntary retirement and the same was accepted by the management on 01.04.1995 with immediate effect. In the acceptance letter, it is clearly stated that the appellant will be entitled to all the retrial benefits of the company, which would have been otherwise available to him at his superannuation. It is also stated that the appellant's request for ex gratia is being considered separately and the appellant was directed to get in touch with the General Manager (Finance and Accounts) for his full and final settlement. By letter, dated 12.04.1995, addressed to the appellant, the management has decided to extend certain facilities on his premature retirement, viz., Retiring gratuity as per rules for the actual service rendered by him, Provident fund including Company's contribution in full, Superannuation fund, as per rules, payment of cash equivalent to the privilege and furlough leaves including proportionate leave due to him, free medical facilities as applicable to the retiring officers in the respective divisions and also an ex gratia payment. However, the appellant made a vague allegation that he was forced to take retirement and could not establish the said allegation. The Supreme Court held that the appellant after having written a letter of voluntary retirement and after having accepted the retiral benefits without any protest cannot now turn round and say that he was

⁶ (2006) 5 Supreme Court Cases 759

compelled to submit the letter for his premature/ voluntary retirement and dismissed the appeal of the appellant.

9. In Bank of India v. O.P.Swarnakar⁷, in a batch of civil appeals, the Supreme Court, while considering the scheme of voluntary retirement insofar as the State Bank of India and its employees is concerned, noted that the State Bank of India has not amended its scheme and that it even permitted withdrawal applications by 15.02.2001 and that a group of employees accepted ex gratia payment. Having regard to those facts, it was held that those who accepted ex gratia or any other benefit under the scheme could not have resiled there from and that the scheme is contractual in nature and that the contractual right derived by the employees concerned, therefore, could be waived and that the employees concerned having accepted part of the benefit could not be permitted to approbate and reprobate and cannot be permitted to resile from their earlier stand. In Punjab & Sind Bank v. S.Ranveer Singh Bawa⁸, the facts of the case are as follows: 'On 28.10.2000, in order to downsize the strength of its staff, the appellant floated the Voluntary Retirement Scheme. The Scheme was to commence with effect from 01.12.2000 and it was to remain in operation up to 31.12.2000. The 1st respondent opted for Voluntary Retirement on 06.12.2000. On, 22.12.2000, he requested that he be allowed to withdraw his option. On, 23.12.2000, the scheme stood modified. On, 30.12.2000, and, 17.01.2001, the said respondent wrote reminders and requested that he be permitted to withdraw his option. However, in view of clause 10.4 of the Scheme, the appellant did not permit him to opt out from VRS.

⁷ (2003) 2 Supreme Court Cases 721

⁸ (2004) 4 Supreme Court Cases 484

Consequently, with effect from 29.01.2001, the 1st respondent was relieved from service. A learned Single Judge allowed the writ petition on the ground that he is entitled to withdraw his option before its acceptance by the Bank. A Division Bench dismissed the appeal. Therefore, the Bank approached the Supreme Court. One of the questions was whether the optees having accepted the payments/benefits under the Scheme could be permitted to resile there from. While answering the said question, the Supreme Court held that the said scheme was contractual in nature and that those employees who have accepted the payments/benefits under the Scheme cannot approbate and reprobate nor can they be permitted to withdraw. In the decision in Punjab National Bank v. Virender Kumar Goel⁹ rendered by a Bench of the Hon'ble the Chief Justice and two Hon'ble Judges of the Supreme Court, the facts and the ratio are as follows: 'Under VRS scheme, certain of the employees of the Bank opted for Voluntary Retirement. Under the scheme, some of them have withdrawn their offers. However, the Bank contended that the applicants have accepted part of the benefit under Voluntary Retirement Scheme. While referring to a judgment earlier rendered in a case between the same parties, the Supreme Court directed that the appeals arising out from the High Court are dismissed except the cases, where the employees have accepted part of the benefit under the scheme. However, while seeking modification/ review or clarification of the said judgment, one of the applicants who applied for the benefit under the scheme, on 01.12.2000, and who had submitted application for withdrawal on 25.01.2000 for withdrawal of his offer for VRS contended that on 26.03.2001, the Bank deposited leave encashment

⁹ (2004) 2 Supreme Court Cases 193

in his account and that he did not operate the account thereafter and has neither withdrawn the amount nor utilized the amount deposited by the Bank in the account. He substantiated his said contention. Therefore, the Supreme Court made it clear that the sentence “accepted a part of the benefit under the scheme”, would include the withdrawal of the benefit and utilization thereof and by no stretch of imagination, unilateral deposit of a part of benefit under the Scheme into the bank account, that too after withdrawal of the application, could be construed as an acceptance of a part of the benefit under the Scheme, when the same was neither withdrawn nor utilized by the employee concerned. The Supreme Court also held as follows: “Thus, the rule of estoppel would operate when the terminal benefits are paid and are accepted and utilized. Therefore, the said fact of payment and acceptance of terminal benefits is a bilateral act and is not a unilateral act to attract the principle enshrined in the doctrine of estoppel or waiver.”

10. The case of the petitioner herein is to be now examined in the light of the above enunciated legal position.

10.1 In the case on hand, the petitioner admittedly utilized the terminal benefits and has drawn pension for some months; the petitioner who was made to voluntarily retire from service on 31.05.2004 came to this Court leisurely in June 2006 by way of this writ petition, that too, after receiving and accepting all the terminal benefits without protest and having utilized part of the said benefits and having also drawn pension voluntarily for some months. Therefore, the present case is a clear case where the principle enshrined in the doctrine of ‘estoppel’ would get attracted and operate. Therefore, applying the legal position obtaining

and following the guidance in the decisions of the Supreme Court, this Court holds that the petitioner who has accepted the terminal benefits and has withdrawn the pension and utilized the same and who had kept quiet for two years from the date of the relief from service is estopped from seeking the present relief.

11. Resultantly, the Writ Petition is dismissed. No costs.

Pending miscellaneous petitions, if any, shall stand closed.

M. SEETHARAMA MURTI, J

07th April, 2017

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