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HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 1620 of 2012**

S.K. Shrivastava, Aged about 48 years, S/o. Shri P.K. Shrivastava, Ex-Manager, UCO Bank, Bilaspur, R/o. 414, Shwethansa Apartment, D.D. Nagar, Raipur, District Raipur Chhattisgarh

---- Petitioner**Versus**

1. UCO Bank, Through the Chairman, H.Q. 10, BTM Sarani, Kolkata, West Bengal, 700001
2. The General Manager, UCO Bank, Personal Services Department H.O. 3-4, D.D. Block, Salt Lac, Sector-1, Kolkata, West Bengal
3. The Zonal Manager, UCO Bank, Zonal Office, Chhattisgarh Eye Hospital Campus, Telibandha, Raipur, District Raipur Chhattisgarh
4. The Chief Manager, UCO Bank, MV Market, Telipara Road, Bilaspur, District Bilaspur Chhattisgarh

----Respondents

For Petitioner	:	Petitioner in person
For Respondents	:	Mr. Sushobhit Singh, Advocate

Hon'ble Shri Justice P. Sam Koshy**C.A.V ORDER****Delivered on 28/09/2018**

1. The petitioner has filed the present writ petition claiming for primarily the following relief:

“10.1. This Hon'ble Court may kindly be pleased to issue a writ in the nature of mandamus or suitable direction(s) to the respondents authorities for settlement and granted the service terminal benefits of the petitioner on account of V.R.S.”

2. The contention of the petitioner is that the petitioner was appointed as a Clerk-cum-Godown Keeper with the respondents on 10.09.1983. In due course of time he stood promoted on the post of Assistant Manager on 01.01.2000 and was further promoted as the Manager w.e.f. 26.04.2007. On 04.10.2010 vide Annexure P/1, the petitioner is

said to have tendered his application seeking voluntarily retirement from service. As such the notice of retirement was a three months notice starting from 04.10.2010 and ending on 04.01.2011. The said resignation was put forth by the petitioner to the General Manager, Personnel Services at the Head Office of the respondents at Kolkata. However. The respondents did not act on the said resignation letter and the petitioner also continued in employment. Thereafter the petitioner again gave a reminder on 11.04.2011 (Annexure P/8) asking the respondents to take a decision on his voluntary retirement at the earliest permitting the petitioner to be relieved and finally the petitioner vide letter dated 14.05.2011 tendered another notice requesting the respondents to consider the petitioner to have discontinued his services w.e.f. 16.05.2011. Thereafter the petitioner has not attended his duties and the petitioner for all practical purposes appears to have worked from 10.09.1983 to 16.05.2011 and thereafter he has stopped reporting for duties.

3. The petitioner referred to the Bank (Employees) Pension Regulations, 1995 and relied upon clause 29(2), which for ready reference is reproduced herein under:

“The notice of voluntary retirement given under sub-regulation (1) shall require acceptance by the appointing authority.

Provided that where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period.”

4. Referring to the aforesaid clause, the petitioner contended that since his notice of retirement specifically prescribed the three months notice period which came to an end on 04.01.2011, the respondents in all fairness should have accepted the resignation of the petitioner and should have granted him whatever benefits that he would be entitled for.
5. It was also the contention of the petitioner that till the three months notice period, the petitioner was not served with any charge sheet nor was any departmental enquiry pending against him. It was also contended that even till the date, the petitioner worked with the respondents i.e. till 16.05.2011, he was not served with any charge sheet, nor was he subjected to any departmental enquiry and therefore there was no reason why the application for voluntary retirement moved by the petitioner would not deemed to have been allowed.
6. It was also the contention of the petitioner that the correspondences that have made by the respondents immediately after his tendering the application for voluntary retirement would reveal that they had kept the application pending only on account of non-finalization of the pension regulations, 1995, which was in the process of amendment as is evident from the correspondences (Annexure R/2) dated 11.02.2012 and Annexure R/3 dated 20.12.2010. This according to the petitioner would reveal that even as late as on 20.12.2010, the application of the petitioner was under active consideration for acceptance and the notice period was coming to an end on 04.01.2011.
7. According to the petitioner since no decision was taken on his application dated 04.10.2010 and that the notice period of three

months also having being lapsed. The petitioner has to be considered as deemed to have retired from service and considering the length of service the respondents should have released his dues which were otherwise payable to him on his retirement.

8. The counsel for the respondents on the contrary opposing the petition submits that though the petitioner had submitted his application on 04.10.2010, his application was processed by the higher authorities in the department and the Assistant General Manager, Personnel Services from the Head Office, at Kolkata had sent the letter to the Zonal Manager requiring to the petitioner to fulfill certain formalities on the basis of which only could his retirement be accepted.
9. The Assistant General Manager, Personal Services has also sought for certain instructions from the concerned department, so far as, whether any vigilance, inquiry or Court case is pending against the petitioner. It was also observed that the authority should obtain an undertaking from the petitioner that he will not take any commercial employment for a period of 2 years from the date of acceptance of his voluntarily retirement along with the recommendation of the Zonal Head Office for acceptance of his voluntarily retirement. Thereafter, further communications were made by the Bank which specific instructions to the petitioner that till a concrete decision is taken by the Headquarter on his application, he shall continue in service with the respondents. Some of the correspondents made in this regard were Annexure R/1 to R/4. Annexure R/4 is a document dated 06.04.2011, wherein the official order was passed by the respondents stating that since there is a show cause notice against a fraud of Rs.3.36 lakhs is pending consideration with the respondent/Bank against the petitioner his application for

voluntarily retirement, cannot be exceeded to. According to the counsel for the Bank, once when the respondents had intimated the petitioner as regards the facts that his application has not been accepted, the question of the petitioner considering him to have retired from service is hard to accept and the petitioner therefore cannot claim for his terminal/retiral benefits if any.

10. The counsel for the respondents further submitted that the fact that the resignation has not been accepted also stands established from the fact that the petitioner was in fact issued with a show cause notice immediately after he had tendered his resignation for the first time on 04.10.2010 and there were correspondences made on either sides i.e. from the side of the petitioner as well as from the side of the Bank being made for a considerable period of time and in between, the period of 3 months has also been lapsed yet the petitioner continued to remain in employment, which by itself would establish that the respondents had not accepted his application for voluntary retirement and it also establishes that even the petitioner was of the view that unless the same is accepted he cannot relinquish his office.
11. The contention of the counsel for the respondent/bank is that in continuation to the correspondents being made on either side on the show cause notice issued to the petitioner on 11.11.2010, he was finally served with a charge sheet dated 05.03.2012 vide covering memo dated 12.03.2012 and therefore the decision of the respondents dated 06.04.2011 (Annexure R/4) in refusing to accept the voluntary retirement of the petitioner cannot be said to be in any manner bad in law, arbitrary or malafide, neither can it be said to be contrary to the

regulations or service conditions governing the field and prayed for rejection of the petition.

12. The counsel for the petitioner relied upon the judgments of the Hon'ble Supreme Court in the cases of ***"Union of India & Ors. v. Sayed Muzaffar Mir"*** 1995 (Suppl. 1) SCC 76, ***"State of Haryana & Ors. v. S.K. Singhal"*** 1999 (4) SCC 293, ***"Ashok Kumar Sahu v. Union of India & Ors."*** 2006 (6) SCC 704, ***"UCO Bank & Anr. v. Rajinder Lal Capoor"*** 2007 (6) SCC 694, ***"UCO Bank & Anr. v. Rajinder Lal Capoor"*** 2008 (5) SCC 257, ***"United Bank of India v. Ashok Kumar Dasgupta"*** 2000 (3) LLJ=1598 (Cal.).
13. Per contra, the counsel for the respondents Bank relied upon the judgments of the Hon'ble Supreme Court in the case of ***"Padubidri Damodar Shenoy v. Indian Airlines Limited & Anr."*** 2009 (10) SCC 514 and ***"C.V. Francis v. Union of India & Ors."*** 2013 (14) SCC 486 in support of the Bank.
14. Having heard the contentions of the counsel appearing on either side what primarily requires to be considered is, whether the resignation submitted by the petitioner would deemed to stand accepted or not? Annexure P/1 dated 04.10.2010 was the first resignation letter submitted by the petitioner. There are two portions of the said resignation letter, which would be relevant for the proper adjudication of the dispute:

"In this compelling situation, I have no option but to pray before you for Voluntary Retirement to me from the services of the bank for your kind consideration and approval."

This letter may please be considered a kind notice of three months for my VRS request from the Bank services.”

15. Now a plain reading of the afore-reflected portions of the application would mean that the petitioner had tendered for voluntary retirement on 04.10.2010 giving three months notice and placing the same for consideration and approval. The three months notice period was to come to an end on 04.01.2011. Now what would be more relevant is how did the petitioner react beyond the three months notice period. A plain perusal of the other documents enclosed by the petitioner himself with the writ petition would show that beyond the three months notice period i.e. even after 04.01.2011 onwards, the petitioner continued to discharge his duties uninterruptedly till he finally left the services from 16.05.2011 onwards.
16. What is also relevant at this juncture to take note of is the fact that immediately on his tendering the three months notice of resignation and before the same was accepted and before the three months notice period had expired, the petitioner was issued with a show cause notice on 11.11.2010. Thereafter, there has been a series of correspondences on the said show cause notice. At the same time, it is also relevant to refer to Annexure R/4 which is a letter issued by the bank on 06.04.2011, whereby it was intimated that the resignation letter of the petitioner can not be accepted on account of a show cause proceedings pending against the petitioner in connection with an irregularity of Rs.3.36 lakhs that occurred at the Raipur branch of the respondents, where the petitioner was posted, which according to the

petitioner has never been served upon him as long as he was with the respondents.

17. The Hon'ble Supreme Court in the case of B.J.Shelat v. State of Gujarat & Ors. [1978 2 SCC 202] dealing with similar issue in paragraph 7 held as under:-

“7. Rule. 161 of the Bombay Civil Services Rules provides for the retirement of Government servants before attaining the age of superannuation. Rule 161(1) (aa) provides-

Notwithstanding anything contained in clause (a) :

(1) An appointing authority shall, if he is of the opinion that it is in the public interest so to do, have the absolute right to retire any Government servant to which clause (a) applies by giving him notice of not less than three months in writing or three months pay and allowances in lieu of such notice :

x x x Sub-rule (2) (ii) is, as follows :-

Any Government servant to whom clause (a) applies may, by giving notice of not less than three months in writing to the Appointing Authority, retire from service x x x x and in any other case, after he has attained the age of 55 years.

There is no dispute that the Rule applicable is Rule 161(2) (ii) and the appellant is entitled to retire by giving a notice of not less than 3 months after he has attained the age of 55 years. Under Rule 161 (1) (aa) (1) the appointing authority has an absolute right to retire any Government servant to whom clause (a) applies in public interest by giving him notice of not less than three months in writing or three months pay and allowances in lieu of such notice. But the Government servant has no such absolute right. A right is conferred

on the Government servant under Rule 161(2) (ii) to retire, by giving not less than three months notice on his attaining the prescribed age. Such a right is subject to the proviso which is incorporated to the sub- section which reads as follows :-

"Provided that it shall be open to the appointing authority to withhold permission to retire to a Government servant who is under suspension, or against whom departmental proceedings are pending or contemplated, and who seeks to retire under this sub-clause.

But for the proviso a Government servant would be ,it liberty to retire by giving not less than three months notice in writing to the appointing authority on attaining the prescribed age. This position has been made clear by this Court in Dinesh Chandra Sangma v. State of Assam and Others [(1977) 4 SCC 441 : 1978 SCC (L&S) 7 : AIR 1978 SC 17] where the Court was considering the effect of the (Assam) Fundamental Rule 56(c) which confers right on the Government servant to voluntary retire. Rule 56(c) of the (Assam) Fundamental Rules runs as follows:

(c) Any Government servant may, by giving notice of not less than three months in writing to the appropriate authority, retire from service after he has attained the age of fifty years or has completed 25 years of service, whichever is earlier.

On a construction of the Rule this Court held that the condition of service which is envisaged in Rule 56(c) giving an option in absolute terms to a Government servant to voluntary retire with three months' previous notice, after he reaches 50 years of age or has completed 25 years of service, cannot be equated with a contract of employment as envisaged in Explanation 2 to Rule 119 of the Defence of India Rules and that Rule 56 is

a statutory condition which operated in law without reference to a contract of employment and when once the conditions of Fundamental Rule 56(c) are fulfilled the Government servant must be held to have lawfully retired. But for the proviso to Rule 161(2)(ii) the decision of this Court in the case cited above would be applicable and the right would have been absolute. But the proviso has restricted the right conferred on the Government servant. Under the proviso it is open to the appointing authority to withhold permission to retire to a Government servant when (1) he is under suspension, or (2) against whom departmental proceedings are pending or contemplated. Thus the permission to retire can be withheld by the appointing authority either when the Government servant is under suspension or against whom departmental proceedings are pending or contemplated. It was submitted on behalf of the appellant that admittedly he was not under suspension on the date when he attained the age of 55 years and that no departmental proceedings were pending or contemplated against him as required under the proviso. No departmental proceeding was pending but on the facts one cannot say that a proceeding was not under contemplation.”

18. It is also relevant at this juncture to refer to the judgment of State of Haryana & Ors. v. S.K.Singhal [1999 4 SCC 293] wherein in paragraph 18, it has been held as under:-

“18. In the case before us sub-clause (1) of Rule 5.32(B) contemplates a ‘notice to retire’ and not a request seeking permission to retire. The further “request” contemplated by the sub-section is only for seeking exemption from the 3 months period. The proviso to sub-clause (2) makes a positive provision that “where the appointing authority does not refuse to grant the

permission for retirement before the expiry of the period specified in sub-rule (1), the retirement shall become effective from the date of expiry of the period specified in sub-rule (1), the retirement shall become effective from the date of expiry of the said period. The case before us stands on a stronger footing than Dinesh Chandra Sangma's case so far as the employee is concerned. As already stated Rule 2.2 of Punjab Civil Service Rules Vol.II only deals with a situation of withholding or withdrawing pension to a person who has already retired."

19. In the case of Himachal Pradesh Horticultural Produce Marketing & Processing Corporation Ltd. v. Suman Behari Sharma [1996 4 SCC 584], the court considered the situation whether a person/employee would deemed to stand retired beyond the notice period even if the employer does not accept his resignation. It was the opinion of the Hon'ble Supreme Court that, it is the language of the Rule provision which would be relevant and that if the rules provide for a provision or a clause envisaging that the employee would stand retired only if his application for resignation has been accepted. Under such circumstances, if permission for voluntary retirement is not granted, the employee would not be deem to have retired on the completion of the notice period.
20. Likewise again reiterating the same principles, the Supreme Court dealing with similar circumstances as in the present Writ Petition though in the said case the rules were slightly different in the case of Padubidri Damodar Shenoy v. Indian Airlines Limited & Anr. [2009 10 SCC 514] in paragraph 33 it has been held as under:-

“33. There is nothing to indicate in Regulation 12 that if the employer decides to withhold approval of voluntary retirement, such refusal of approval must be communicated to the petitioner during the period of notice. True it is that notice of three months for voluntary retirement given by an employee covered by clause (b) remains valid even if no communication is received within the notice period but it becomes effective only on its approval by the competent authority. As a matter of fact, this seems to have been understood by both the parties.”

21. Recently in the case of C.V.Francis v. Union of India & Ors.[2013 14 SCC 486], the three judge Bench of the Supreme Court was of the view that it would depend upon the language used in the Rules/regulation whether notice for voluntary retirement would come into effect automatically. It was the observation of the Supreme Court that there has to be a stipulation in the scheme itself providing that even without acceptance of his application, it would be deemed that application for voluntary retirement would stand accepted. For ready reference, paragraph 13 and 14 of the said judgment is quoted:-

“13. It is well-established that a Voluntary Retirement Scheme introduced by a company, does not entitle an employee as a matter of right to the benefits of the Scheme. Whether an employee should be allowed to retire in terms of the Scheme is a decision which can only be taken by the employer company, except in cases where the Scheme itself provides for retirement to take effect when the notice period comes to an end. A Voluntary Retirement Scheme introduced by a company is essentially a part of the company's desire to weed out the deadwood.

14. The Petitioner's contention that his application for voluntary retirement came into effect on the expiry of the period of notice given by him must fail, since there was no such stipulation in the scheme that even without acceptance of his application it would be deemed that the Petitioner's voluntary retirement application had been accepted. Once that is not accepted, the entire case of the Petitioner falls to the ground. The decision in Tek Chand's case (supra) will not, therefore, have any application to the facts of this case, particularly when the Petitioner's application for voluntary retirement had not been accepted and he had been asked to rejoin his services. The Petitioner was fully aware of this position as he continued to apply for leave after the notice period was over."

22. Very recently the Hon'ble Supreme Court had an occasion of dealing with a similar issue in the case of "State of Uttar Pradesh & Ors. v. Achal Singh" decided on 21.08.2018, and the Hon'ble Supreme Court has extensively dealt with all the earlier decisions on the subject matter. After referring to various judgments, the Hon'ble Supreme Court in paragraphs No.17, 19 & 20 held as under:

"17. Reliance was also placed on the decision rendered by this Court in State of Bombay vs. United Motors, AIR 1953 SC 252 and Bengal Immunity vs. State of Bihar, AIR 1955 SC 661, in which it has been observed that Explanation can be read as proviso and it explain the scope of the main provision and the Explanation becomes part of the main section. There is no dispute with the aforesaid proposition. The Explanation in rules in question has to be applied to both the situations as contemplated in Rule 56(c) and is applicable to both the exigencies not only when Government decides to retire an employee, but also applicable where voluntary

retirement is sought by an employee. It cannot be said that no further restriction by explanation has been added in a case where an employee has decided to obtain voluntary retirement.

19. Rule 5.32(b)(2) of Punjab Rules clearly provide that where the appointing authority does not refuse to grant the permission to retire before the expiry of the period in sub-rule (1), the retirement shall become effective from the date of the expiry of the said date. There is no such provision of notice becoming effective from the date of the expiry of the period in the Fundamental Rules as applicable to the State of Uttar Pradesh. In the context of the proviso, the notice becomes effective from the date of expiry of the period, in that context this Court has made observations in the aforesaid dictum that Rule 2.2 does not obstruct the voluntary retirement to come into force automatically on the expiry of three months.

20. In the State of Haryana (supra), this Court also observed that some rules are couched in language, which results in an automatic retirement of the employee upon the expiry of the period specified in the employee's notice. On the other hand, certain rules in some other departments are couched in the language which makes it clear that even upon expiry of the period specified in the notice, the retirement is not automatic and an express order granting permission is required and has to be communicated. The relationship of master and servant in the latter type of rules continues after the period specified in the notice till such acceptance is communicated and the refusal of permission could also be communicated after three months and the employee continues to be in service."

23. Hon'ble Supreme Court after discussing the various judgments has been of the view that if the statute provides that the voluntary

resignation would be deemed to come into force, unless the application has been rejected before the notice period. The Hon'ble Supreme Court was also of the view that it is the language of the rules and regulations, which would be more relevant for deciding whether the resignation would stand deemed to have been accepted automatically after the lapse of the notice period.

24. In the instant case, the Bank Employees Pension Regulations, 1955, which governs the service conditions of the petitioner and the relevant portion of which is reproduced in paragraph No.3 of this judgment, would reveal that there is in fact a proviso clause attached to Rule 29(2) and that the proviso clause specifically envisages that where the appointing authority does not refuse permission for retirement, before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period.
25. What is also relevant at this juncture is that the petitioner submitted his resignation later on 04.10.2010 giving three months notice of voluntary retirement. The notice period was to come to an end on 04.01.2011 till that period the said application was neither accepted nor rejected by the respondents. The petitioner thereafter again continued in service awaiting a response from the respondents and thereafter giving intimation to the respondents stopped going to service w.e.f. 16.05.2011.
26. So far as the judgment relied upon by the counsel for the Management is concerned i.e. **2009(10) SCC 514 (Padubidri Damodar Shenoy v. Indian Airlines Limited and Another)**, the said judgment is distinguishable to the facts of the present case for the reason that in

the said case the regulations governing the field had a specific clause, which envisage that application for voluntary retirement shall be subjected to approval of the competent authority, which in other words means unless the application is approved, the application for voluntary retirement would not come into force, unlike in the present case.

27. It is the same analogy which has again been reiterated in the judgment of “**C.V. Francis**” (*supra*), which has also been relied upon by the petitioner. The said judgment also is distinguishable for the same reasons, as in the earlier case, because in the said case also the regulations governing the service conditions had a clause that the notice of retirement would have to be accepted by the appointing authority, hence the two judgments would not come to the aid of the respondents.
28. Undoubtedly, till the notice period had been concluded i.e. on 04.01.2011 and again till the petitioner had performed his service till 16.05.2011, the petitioner was not subjected to any departmental enquiry, nor was his application till that date rejected.
29. Under the aforesaid circumstances, this Court has no hesitation in reaching to the conclusion that the proviso to clause 29(2) would come into force and it shall be deemed to have stood accepted from the date the petitioner stopped coming to work i.e. from 16.05.2011.
30. For the aforesaid reasons, this Court is of the opinion that the action on the part of the respondents in not considering the petitioner deemed to have retired from service on the completion of the notice period or from the date he stopped attending the services to be bad in law.

31. It is ordered that the petitioner shall be treated as deemed to have retired from service from 16.05.2011 and he would be entitled for all consequential benefits, which he would have been entitled for on his voluntary retirement as would be applicable under the Rules governing the field.
32. The writ petition accordingly stands allowed and disposed off.

Sd/-
(P. Sam Koshy)
Judge

Ved