

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.04.2018
PRONOUNCED ON : 13.04.2018

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.725 of 2004

Management of Oriental Hotels Ltd.,
Taj Coromondal,
Rep. By its General Manager,
37, Mahatma Gandhi Road,
Chennai - 600 034. Appellant/Appellant/Defendant

Vs.

R.NagarajanRespondent/Respondent/Plaintiff

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 16.10.2003 passed in A.S.No.66/2003 on the file of the 7th Additional Judge, City Civil Court, Chennai, confirming the judgment and decree dated 28.08.2002 passed in O.S. No.6607/2000, on the file of the 7th Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr.T.Arulraj
For Respondent : Ms.M.Meenatchi
for M/s. P.Anbarasan

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 16.10.2003, passed in A.S.No.66/2003, on the file of the 7th Additional Judge, City Civil Court, Chennai, confirming the judgment and decree dated 28.08.2002, passed in O.S. No.6607/2000, on the file of the 7th Assistant Judge, City Civil Court, Chennai.

2. The second appeal has been admitted on the following substantial questions of law.

1. Whether voluntary retirement scheme is only an invitation and application for retirement is only an offer and unless it is accepted, the employee is not entitled to voluntary retirement and therefore, both the court have erred in concluding that the appellant is bound to accept the application of the

plaintiff and permit him to retire from service.

2. Whether the plaintiff in any event is estopped from claiming retirement, in view of the relationship of Master and servant not severed in view of his continuity of service.

3. Considering the short point that arises for consideration in this second appeal, it is unnecessary to deal with the case of the parties at length. Suffice to state that the plaintiff, who had been under the employment of the defendant, opted to go on voluntary retirement as per the scheme floated by the defendant. He having satisfied the conditions with reference to the same and as according to the plaintiff, he had satisfied all the criteria for the voluntary retirement as per the scheme and as no disciplinary proceedings as such was pending against the plaintiff, the defendant should have permitted the plaintiff to go on voluntary retirement and instead, inasmuch as the defendant had, without assigning any reasons, rejected the application submitted by the plaintiff seeking for voluntary retirement and inasmuch as the defendant has failed to accept the entitlement of the plaintiff to go on voluntary retirement as pointed out in the legal notice sent and on the other hand, repudiated the claim of the plaintiff by sending a reply, it is the case of the plaintiff that he has been necessitated to lay the suit for appropriate reliefs.

4. The defendant has taken the defence that though the plaintiff had opted for voluntary retirement as per the scheme floated by the defendant, the plaintiff, as a matter of right, is not entitled to seek the voluntary retirement, merely on the footing that he had satisfied the criteria of the scheme and the defendant is entitled either to accept or reject the application for the voluntary retirement at its discretion and the same cannot be questioned by the plaintiff and inasmuch as there has been no valid concluded contract between the parties nor any agreement entered into, particularly, the defendant agreeing to give its nod for the voluntary retirement opted by the plaintiff and when the discretion is vested with the defendant, either for accepting or rejecting such application, it is stated that the plaintiff is not entitled to seek the benefits sought for and hence, it is the case of the defendant that the plaintiff has no cause of action for instituting the suit and the suit is liable to be dismissed.

5. In support of the plaintiff's case, PW1 was examined, Exs.A1 to A11 were marked. On the side of the defendant, DW1 was examined, Ex.B1 was marked.

6. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the Courts below were pleased to accept the plaintiff's case and accordingly, granted the reliefs sought for. Impugning the same, the present second appeal has been laid.

7. It is not in dispute that the plaintiff who has been under the employment of the defendant opted for the voluntary retirement as per the scheme floated by the defendant. The plaintiff's option to go on voluntary retirement is found to have been rejected by the defendant. Impugning the same, the present lis has been laid by the plaintiff.

8. Considering the nature of the scheme floated by the defendant for enabling its employees to go on voluntary retirement, which has come to be marked as Ex.A7, on a perusal of the same, it is found that the abovesaid scheme has been floated only as a short term measure by the defendant and it is seen that the scheme is intended to be in operation only from 28.08.2000 to 10.09.2000. No doubt, during the relevant period, the plaintiff has opted to go on voluntary retirement under the scheme. It is also found that the plaintiff has also satisfied the criteria for availing the benefits under the scheme. However, the request of the plaintiff has been negated by the defendant.

9. The defendant is a private institution. As per the scheme floated by the defendant marked as Ex.A7, it is seen that the application of an employee to go on voluntary retirement under the scheme by itself will not be in any way deemed as acceptance of his or her request to retire under the scheme. This could be seen from the clause 7.5 of the scheme. Further, it is also found as per clause 2.2, the acceptance of the application of the scheme shall be at the discretion of the management and the terms of the scheme shall not be negotiable. Further, as per clause 4.2 of the scheme, it is seen that it will be entirely at the discretion of the management to accept or reject an application for retiring under the scheme without assigning any reason whatsoever. In the light of the abovesaid clauses outlined in the scheme, it is found that the plaintiff cannot as a matter of right claim that the option exercised by him should be accepted by the management straightaway and the management is not entitled to reject the same. On the other hand, when it is found that the mere option to come under the scheme by itself would not amount to acceptance of the request made thereunder and on the other hand, when it is found that the complete discretion has been left to the management, either to accept or reject the same and when it is also further noted that the management is entitled to accept or reject the request for retirement under the scheme without assigning any reasons whatsoever, in the light of the abovesaid conditions envisaged

under the scheme and the plaintiff, with the full knowledge of the abovesaid conditions having opted to come under the scheme, on the rejection of his application, cannot be allowed to contend that his application to go on voluntary retirement is not entitled to be rejected by the defendant without assigning a valid reason. When it is found that when the defendant is all competent to reject the application without assigning any reasons under the scheme and accordingly, when it is seen that the application submitted by the plaintiff dated 29.08.2000 has come to be rejected by the defendant by way of a letter dated 9.9.2000, expressing their regret that the application of the plaintiff is not accepted by the management and wishing him a long and successful career with the management, it is found that the application of the plaintiff is dealt with by the management within the shortest possible time, however, rejecting the same. However, the main grievance of the plaintiff is that the defendant has not given any reason for rejecting the application. Still, when the defendant is not expected to adduce any reason for rejecting the plaintiff's request as per the scheme and when it is further seen that the mere option exercised by the plaintiff to come under the scheme cannot be deemed to be acceptance of his request by the management as such and the discretion is left to the management either to accept or reject the request, in my considered opinion, the plaintiff cannot insist that his option to go on voluntary retirement under the scheme should be accepted by the defendant as such.

10. The plaintiff would also complain that on account of the unfavourable conditions in the place of employment, he had opted to go for voluntary retirement. However, considering the exchange of notices between the parties, it is found that the plaintiff has expressed his willingness to continue under the employment under the defendant, provided, he is assured of the additional benefits in the case of leaving the service of the defendant at a later point of time, including the benefits which would be offered under the voluntary scheme. However, the said request of the plaintiff has been rightly discountenanced by the defendant. Accordingly, it is found that the reasons given by the plaintiff as to the unfavourable environment in the place of employment for continuing the service under the defendant, as such, cannot be accepted readily.

11. The Courts below seem to have relied upon the decision of the Apex Court reported in (2000) 7 SCC 390 (Manjushree Pathak Vs. Assam industrial Development Corpn. Ltd and others) for accepting the plaintiff's case. No doubt, in the said decision, it has been held that an authority, covered by Article 12 of the Constitution of India, has to exercise the discretion under the voluntary retirement scheme reasonably, fairly and judiciously and the discretion is not unfettered or absolute. As rightly put forth by the defendant, the defendant is not an

authority covered by Article 12 of the Constitution of India. Further, in the said case covered by the decision of the Supreme Court, it is found that an employee is not permitted to withdraw the application once having opted to come under the scheme. However, in so far as the present case is concerned, it is found that as per the clause 7.9 of the scheme, it is found that before communication of the acceptance, the employee is eligible to withdraw in writing, his or her application under the scheme and in such view of the matter, when it is found that the clauses contained in the voluntary retirement scheme offered by the defendant grants absolute discretion to the defendant either to accept or reject the application and when further the option is also given to the employee to withdraw the same at any point of time before the same is accepted and when the plaintiff has opted to go for under the scheme with the full knowledge of the abovesaid conditions and when it is further seen that the defendant's institution is not an authority falling under the purview of Article 12 of the Constitution of India and when as above discussed, the reasons given by the plaintiff as to the unfavourable working conditions for continuing his employment under the defendant's concern, are found to be not convincing and when it is further seen that no malafide intention has been offered on the part of the defendant in rejecting the application of the plaintiff and when even according to the plaintiff's case, the defendant has denied the benefits of the scheme not only to the plaintiff and accordingly, it is seen that merely because the defendant had accepted the applications of a few other employees, that by itself would not entitle the plaintiff as a matter of right to insist that his application should also be accepted by the defendant.

12. The plaintiff, however, would contend that the rejection of his application by the defendant amounts to offending Article 14 of the Constitution of India. However, the abovesaid argument does not merit acceptance. When there is no material to hold that the defendant has excluded only the plaintiff from the purview of the scheme and extended the benefits to all others, who had availed the scheme and in addition to that, the question of enforcing Article 14 of the Constitution of India by way of a civil suit is found to be not in accordance with law and accordingly, it is seen that when the plaintiff has no inherent right as per the law to insist that his application to go on voluntary retirement scheme has to be accepted on the mere submission of the same, and when the facts projected are found otherwise and when it is further seen that the defendant not being an authority as contemplated under Article 12 of the Constitution of India and further, when the conditions envisaged in the voluntary scheme covered under the present case and the conditions envisaged in the voluntary scheme covered in the case dealt with by the Supreme Court are not found to be alike as above discussed, it is found that the above said decision would

not come to rescue the plaintiff.

13. In the light of the above said reasons, when the offer of the plaintiff to go on voluntary retirement has not been accepted by the defendant and as there has been no concluded contract between the parties concerned with reference to the same and when the plaintiff is not entitled to the benefits of the scheme as a matter of right as such and when there is no malafide attitude established against the defendant for rejecting the application of the plaintiff to come under the scheme, in my considered opinion, the Courts below have erred in holding that the defendant is bound to accept the application of the plaintiff and permit him to avail the benefits of the scheme. The first substantial question of law formulated in the second appeal is accordingly answered in favour of the defendant and against the plaintiff. The second substantial question of law formulated does not call for any consideration, considering the facts and circumstances of the case and hence, left unanswered.

14. For the reasons aforesaid, the judgment and decree dated 16.10.2003, passed in A.S.No.66/2003, on the file of the 7th Additional Judge, City Civil Court, Chennai, confirming the judgment and decree dated 28.08.2002, passed in O.S. No.6607/2000, on the file of the 7th Assistant Judge, City Civil Court, Chennai are set-aside and resultantly, the suit laid by the plaintiff is dismissed without costs. Accordingly, the second appeal is allowed. No costs. Consequently, connected miscellaneous petition, if any, is closed.

s/d-

Assistant Registrar (CS-III)

True Copy

Sub-Assistant Registrar

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To

1. The 7th Additional Judge, City Civil Court, Chennai.

2. The 7th Assistant Judge, City Civil Court, Chennai.

+1 CC to Mr.R. Anbarasan, Advocate sr 28296.

+1 CC to Mr.T. Arulraj, advocate sr 27411

S. A.No.725 of 2004

SP(11/05/2018)