IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.2442 OF 2019

Gajanan s/o Siddappa Maitri ..PETITIONER

Versus

The Union of India and Others ..RESPONDENTS

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Mr. S. V. Warad, Advocates for the Petitioner.
Mr. S. B. Deshpande, A.S.G. for Respondent Nos.1 to 4.

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CORAM : S. V. GANGAPURWALA &
A. M. DHAVALE, JJ.

Closed for Orders on : 26.02.2019.

Order Pronounced on : 26.04.2019.

FINAL ORDER (Per S. V. Gangapurwala, J.) :-

1. The issue involved in the present petition is "whether the employee is entitled to withdraw his notice of voluntary retirement after the intended period of retirement specified in the notice."

2. The petitioner at the relevant time was working as a Class-II (Group-B) Income Tax Officer, Ward-Osmanabad Camp at Latur. The petitioner had rendered 35 years of service. On or about 20.11.2017, the petitioner gave a notice/application for voluntary retirement from the post of Income Tax Officer. As per the notice of voluntary retirement dated 20.11.2017, the petitioner intended to retire with effect from 28.02.2018. The petitioner on or about 17.03.2018 gave an application for withdrawal of notice of

voluntary retirement. The petitioner was informed that the application for voluntary retirement submitted by the petitioner is accepted and the petitioner was directed to hand over SIM Card and RSA Token No.239190082.

3. The application of the petitioner for voluntary retirement came to be rejected on 07.09.2018. The petitioner approached the Central Administrative Tribunal, Mumbai Bench, Mumbai challenging the said communication dated 07.09.2018 rejecting his application for withdrawal of notice of voluntary retirement by filing Original Application No.632/2018. The Tribunal under it judgment and order dated 20th December 2018 dismissed the Original Application. Aggrieved thereby, the present Writ Petition.

4. Mr. Varad, learned counsel for the petitioner put forth following propositions:

(a) After the petitioner tendered his notice for voluntary retirement on 20.11.2017 intending to retire with effect from 28.02.2018, the petitioner on or about 28.02.2018 submitted an application for Commuted Leave on medical ground for a period 06.03.2018 to 28.03.2018. The leave application was duly sanctioned by Additional Commissioner of Income Tax, Latur Range, Latur under its order dated 01.03.2018. The petitioner handed over the charge on 05.03.2018.

(b) The petitioner while on leave submitted an application for withdrawal of notice of voluntary retirement on 17.03.2018 addressed to the Appointing Authority.

(c) In the application for withdrawal of notice of voluntary retirement the petitioner averred that it has come to his notice that Chief Commissioner of Income Tax, Nasik under his order dated 09.03.2018 has accepted his notice of voluntary retirement with effect from 28.02.2018, however, the petitioner was never given any copy of the said order nor he was relieved from his duties. The acceptance of notice of voluntary retirement was not effective. The learned counsel relies on the judgment of the Apex Court in the case of **State of Punjab Vs. Amar Singh Harika** reported in **AIR 1966 SUPREME COURT 1313.**

(d) According to the learned counsel, application withdrawing the notice of voluntary retirement was given before the acceptance of the notice of voluntary retirement, as such the notice of voluntary retirement would stand withdrawn. The petitioner has every right to withdraw the notice of voluntary retirement before its acceptance. The learned counsel relies on the judgment of the Apex Court in the case of **Balram Gupta Vs. Union of India and Another** reported in **AIR 1987 SUPREME COURT 2354.**

(e) The petitioner had actually worked upto 05.03.2018 that is even after intended date of retirement. The leave was also sanctioned and during that period the petitioner had tendered his application for withdrawing the notice of voluntary retirement. The petitioner had every right to withdraw the notice of voluntary retirement before its acceptance and the petitioner had withdrawn the notice of voluntary retirement before it was accepted. The Tribunal failed to consider the said aspect in its correct perspective.

(f) Only 35 months of service period of the petitioner had remained.

(g) The petition filed by the petitioner be allowed.

5. The learned counsel further submits that under the relevant circulars dated 21.09.2015 and 02.05.2016 the procedure is prescribed for acceptance of notice of voluntary retirement. The notice of voluntary retirement has to be examined first by the Chief Commissioner. The reasons will have to be considered by the authority and then forwarded it to the higher authority. The cadre authority has to verify the said notice on merits and only if there is sufficient and reasonable ground, such cases only has to be recommended to the Board and the person giving the notice of voluntary retirement has to be informed that he continues to be on duty till decision of the

Competent Authority is communicated by the Board. No such procedure is followed. The learned counsel also relies on the judgment of the Apex Court in the case of **Shambhu Murari Sinha Vs. Project & Development India Ltd. and Another** reported in **(2002) 3 Supreme Court Cases 437.**

6. Mr. Deshpande, learned A.S.G. submits that the petitioner tendered his notice of voluntary retirement under letter dated 20.11.2017. His intended date of retirement in the said notice is given as 28.02.2018. The notice of voluntary retirement was accepted under letter dated 09.03.2018 and subsequently on 17.03.2018 the petitioner gave a letter of withdrawing the notice of voluntary retirement. The same was after intended date of retirement and after acceptance of notice of voluntary retirement.

7. The learned A.S.G. further contends that Rule 48(1) of Central Civil Services (Pension) Rules, 1972 does not permit the petitioner to withdraw the notice after acceptance of the notice of voluntary retirement and after the intended period of retirement mentioned in the notice. The learned counsel relies on the judgment of the Apex Court in the case of **Tek Chand Vs. Dile Ram** reported in **2001 (3) SCC 290.** The learned A.S.G. refers to Rule 48 of the Central Civil Services (Pension) Rules, 1972 and submits that the notice of voluntary retirement had become absolute and after the intended date of retirement, so also

after acceptance of the notice of voluntary retirement the petitioner does not get a right to withdraw the notice of voluntary retirement.

8. Before we advert to the contentions canvassed by the learned counsel for the respective parties, it would be appropriate to refer to the relevant Rule 48 of Central Civil Services (Pension) Rules, 1972.

“48. Retirement on completion of 30 years' qualifying service

(1) At any time after a Government servant has completed thirty years' qualifying service -

(a) he may retire from service, or

(b) he may be required by the appointing authority to retire in the public interest, and in the case of such retirement the Government servant shall be entitled to a retiring pension :

Provided that -

(a) a Government servant shall give a notice in writing to the appointing authority at least three months before the date on which he wishes to retire; and

(b) the appointing authority may also give a notice in writing to a Government servant at least three months before the date on which he is required to retire in the public interest or three months' pay and allowances in lieu of such notice :

Provided further that where the Government servant giving notice under clause (a) of the preceding proviso is under suspension, it shall be open to the appointing authority to withhold permission to such Government servant to retire under this rule :

Provided further that the provisions of clause (a) of this sub-rule shall not apply to a Government servant, including scientist or technical expert who is -

(i) on assignments under the Indian Technical and Economic Cooperation (ITEC) Programme of the Ministry of External Affairs and other aid programmes,

(ii) posted abroad in foreign based offices of the Ministries/Departments,

(iii) on a specific contract assignment to a foreign Government,

unless, after having been transferred to India, he has resumed the charge of the post in India and served for a period of not less than one year.

1(1-A) (a) A Government servant referred to in clause (a) of the first proviso to sub-rule (1) may make a request in writing to the appointing authority to accept notice of less than three months giving reasons therefor.

(b) On receipt of a request under clause (a) the appointing authority may consider such request for the curtailment of the period of notice of three months on merits and if it is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, appointing authority may relax the requirement of notice of three months on the condition that the Government servant shall not apply for commutation of a part of his pension before the expiry of the period of notice of three months.

(2) A Government servant, who has elected to retire under this rule and has given the necessary intimation to that effect to the appointing authority, shall be precluded from withdrawing his election subsequently except with the specific approval of such authority :

Provided that the request for withdrawal shall be within the intended date of his retirement. "

9. The petitioner had completed 35 years of service and 57 years of age at the time he submitted application for voluntary retirement on 20.11.2017. The notice of voluntary retirement issued by the petitioner reads thus:-

> "(a) I have attained the age of 57 years,
> (b) I have completed 35 years of qualifying service.
> Due to my personal reasons I intend to retire from Service on **28/02/2018**.
> I therefore, request, the Hon'ble Pr. Commissionr of Income-tax-2, Aurangabad, to allow me to retire voluntarily from Service on 28/02/2018 with pensionary benefits. Inconvenience caused if any is highly regretted."

10. It appears that on or about 01.03.2018 the petitioner was granted commuted leave of 23 days with effect from 06.03.2018 to 28.03.2018 by Additional Commissioner of Income-tax on 05.03.2018. The charge was taken from the petitioner as the petitioner had proceeded on leave. The competent authority on 09.03.2018 accepted the notice of voluntary retirement and on the same day the office order was issued relieving the petitioner from Government service. The office order dated 09.03.2018 reads thus:

> "Vide CCIT Nashik Order No.06/103 (ITO) of 2017 dated 09/03/2018 and the Pr. CCIT Pune, vide letter no. PN/Pr.CCIT/Vig.cl/SA Gr-B/2017-18/8402 and /8403 dated 07/03/2018 the VRS application of Shri. G.S.Maitri, Income Tax Officer, Osmanabad has been accepted by the competent authority.

> Accordingly Shri. G.S.Maitri, Income Tax Officer, Osmanabad is allowed to relieve from government service."

11. The petitioner on or about 17.03.2018 issued letter withdrawing notice of voluntary retirement giving the reasons for his notice of voluntary retirement. The same is not accepted. As such the petitioner approached the Central Administrative Tribunal by filing Original Application. The Original Application is dismissed.

12. The notice of voluntarily retirement specifically mentions the intended date of retirement as 28.02.2018. Admittedly the petitioner did not withdraw the notice of voluntary retirement till 28.02.2018. On 01.03.2018, the Additional Commissioner of Income Tax, Latur Range granted petitioner commuted leave of 23 days on medical ground from 06.03.2018 to 28.03.2018. In the interregnum, on 09.03.2018 the competent authority passed an order accepting notice of voluntary retirement issued by the petitioner and pursuant thereto the Principal Commissioner of Income Tax-2, Aurangabad issued an office order allowing the petitioner to be relieved from government service. Admittedly till 09.03.2018 the petitioner did not withdraw his notice of voluntary retirement. For the first time on or about 17.03.2018 the petitioner issued a letter seeking withdrawal of notice of voluntary retirement. In

the letter dated 17.03.2018 seeking withdrawal of notice of voluntary retirement the petitioner accepted that it is brought to his notice that the notice of voluntary retirement has been accepted vide office order dated 09.03.2018 by the competent authority namely viz. Chief CIT, Nashik. Though he further states that he did not receive the said office order, however he was aware that his notice of voluntary retirement has been accepted.

13. In the present case the relevant rule for consideration is Rule 48 of the Central Civil Services (Pension) Rules, 1972. Under Rule 48 a right is given to the government servant to retire upon completion of 30 years of qualifying service by giving notice in writing to the appointing authority at least three months before the date on which he wishes to retire. Rule 48(2) dis-entitles a public servant who was elected to retire under Rule 48 and has given the necessary intimation to that effect to the appointing authority from withdrawing his election subsequently except with the specific approval of such authority and the same is circumscribed by proviso to Rule 48(2) and it provided that the request for withdrawal shall be within the intended date of his retirement. Reading Rule 48(1)(A) and 2 conjointly it is manifest that after a government servant completes 30 years of qualifying service he is given the right to retire from service by giving a notice in

writing at least three months before the date on which he wishes to retire. Once the public servant has given three months notice in writing to the appointing authority of he retiring, the government servant is subsequently precluded from withdrawing his notice of voluntary retirement except with the specific approval of the appointing authority and that to such a request has to be made within the intended date of his retirement. Rule 48 read in its entirety it is clear that once three months notice is given of voluntary retirement the appointing authority is not left with any discretion to reject/refuse the notice of voluntary retirement except in a case the employee is under suspension. Rule 48 does not require any further act on the part of the appointing authority to accept the notice of voluntary retirement.

14. There is a marked distinction under Rule 48 and 48(A). If a government servant intends to retire after 20 years of qualifying service Rule 48(A) empowers such government servant to give a notice of voluntary retirement of not less than three months and said notice of voluntary retirement requires acceptance by the appointing authority under Rule 48(A)(2). However, if a person issues a notice of voluntary retirement after completion of 30 years of qualifying service Rule 48 applies and under Rule 48 provision similar to Rule 48(A)(2) requiring acceptance of notice of voluntary retirement by the appointing authority is

absent. In absence of a provision similar to Rule 48(A)(2) under Rule 48 the notice of voluntary retirement upon completion of three months or the intended date of retirement would become self operative and on the lapse of the intended date of retirement mentioned in the notice of voluntary retirement, the retirement shall become effective. On the contrary Rule 48(2) debars a government employee who has elected to retire to withdraw his notice of voluntary retirement. Only exception is, if the approval is granted by the authority allowing the government servant to withdraw his notice of voluntary retirement.

15. The government employee will have locus poenitentiae to withdraw his request for voluntary retirement before the intended date of retirement and not thereafter. On the lapse of intended date of retirement the relationship of the employer and employee would come to an end.

16. In the present case, the employer has accepted the notice of voluntary retirement on 09.03.2018 and had also issued an office order relieving the petitioner from service and for the first time the petitioner issued a letter withdrawing his notice of voluntary retirement on 17.03.2018. On the said date, the petitioner did not have locus to withdraw his notice of voluntary retirement as the relationship of an employer and employee came to an end. The Apex Court in case of

Tek Chand Vs. Dile Ram (supra) observed thus:-

> "Thus, from the aforesaid three decisions, it is clear that if the right to voluntarily retire is conferred in absolute terms as in Dinesh Chandra Sangma case by the relevant Rules and there is not provision in the Rules to withhold permission in certain contingencies, the voluntary retirement comes into effect automatically on the expiry of the period specified in the notice. If, however, as in B.J. Shelats case and as in Sayed Muzaffar Mirs case the authority concerned is empowered to withhold permission to retire if certain conditions exist, viz, in case the employee is under suspension or in case a departmental enquiry is pending or is contemplated, the mere pendency of the suspension or departmental enquiry or its contemplation does not result in the notice for voluntary retirement not coming into effect on the expiry of the period specified. What is further needed is that the authority concerned must pass a positive order withholding permission to retire and must also communicate the same to the employee as stated in B.J. Shelats case and in Sayed Muzaffar Mirs case before the expiry of the notice period. Consequently, there is no requirement of an order of acceptance of the notice to be communicated to the employees nor can it be said that non-communication of acceptance should be treated as amounting to withholding of permissions"

17. The petitioner making an application for leave on 01.03.2018 and the Additional Commissioner of Income Tax, Latur Range granting commuted leave of 23 days would not affect the effect of notice of voluntary retirement. The judgment in the case of **Balram Gupta Vs. Union of India and Another** (supra)

relied by the petitioner would not be of any avail to the petitioner as in the said case the employee had withdrawn the notice of voluntary retirement prior to the expiry of notice period. In the said judgment Rule 48(A) was subject matter of consideration and the said Rule 48(A)(2) mandates the appointing authority to communicate his acceptance of notice of voluntary retirement. The same is not the requirement under Rule 48. Another judgment relied by the learned counsel for the petitioner in the case of **Shambhu Murari Sinha Vs. Project & Development India Ltd. and Another** (supra) the Apex Court was considering the voluntary retirement scheme of a company. Considering the said scheme the Apex Court observed that even after the acceptance but before date of actual release from service the employee had the locus to withdraw his proposal for voluntary retirement.

18. In the present matter the relationship of employer and the employees is governed by the statutory rules. The statutory rules bind the parties. The parties are not permitted to deviate from the rule.

19. The circulars dated 21.09.2015 and 02.05.2016 relied by the petitioner are the circulars issued by the Department of Revenue, Central Board of Excise and Customs. In the present case the petitioner was in the employment

of Income Tax Department. Moreover, as observed the relationship is governed by the Rules, more particularly, Rule 48 of the Central Civil Services (Pension) Rules, 1972 and the matter is to be decided on the touchstone of the principles laid down in the concerned Rules.

20. In light of the above, the Tribunal has not committed any error in rejecting the Original Application filed by the petitioner.

21. Writ Petition as such is dismissed. No costs.

(A. M. DHAVALE)
JUDGE

(S. V. GANGAPURWALA)
JUDGE

Devendra/April-19