

SHAMBHU MURARI SINHA

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v.

PROJECT AND DEVELOPMENT INDIA AND ANR

APRIL 13, 2000

[S. SAGHIR AHMAD AND R.C. LAHOTI, JJ.]

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Service Law—Voluntary Retirement—Effective date—Option exercised by an employee accepted by management—However he was not relieved—Whether it is open to a person having exercised option of voluntary retirement to withdraw the offer after its acceptance but before it is made effective—Held, Yes—Resignation, inspite of its acceptance, can be withdrawn before the effective date—Effective date is the date when the employee is relieved from service.

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The appellant submitted an application seeking voluntary retirement under a Voluntary Retirement Scheme. The offer was accepted by the respondent-management but the appellant was not relieved from service and he was allowed to continue in service till 26.9.1997 when he was relieved from the post. However, the appellant submitted a letter on 7.8.1997 withdrawing the offer of voluntary retirement which was not given effect to by the respondent-management. The appellant filed a writ petition which was dismissed. The Writ appeal filed against that judgment was also dismissed by the Division Bench of the High Court. In this appeal, filed against the judgment of the High Court, the question raised is whether it is open to a person having exercised option of voluntary retirement to withdraw the offer after its acceptance but before it is made effective.

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Allowing the appeal, the Court

HELD : The resignation, inspite of its acceptance, can be withdrawn before the 'effective date'. In the instant case though the option of voluntary retirement exercised by the appellant was accepted by the respondent-management on 30.7.1997, the appellant was not relieved from service and he was allowed to continue service till 26.9.1997, which, for all practical purpose, would be the 'effective date' as it was on this date that he was relieved from service. In the meantime, the appellant had already withdrawn the offer of voluntary retirement vide his letter dated 7.8.1997. The

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A appellant shall be allowed to continue in service with all consequential benefits. [11D-G]

Balram Gupta v. Union of India & Anr, [1987] Supp. SCC 228; *J.N. Srivastava v. Union of India & Anr*, [1998] 9 SCC 559 and *Power Finance Corporation Ltd. v. Pramod Kumar Bhatia*, [1997] 4 SCC 280, relied on.

B CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2639 of 2000.

From the Judgment and Order dated 21.6.99 of the Patna High Court in L.P.A. No. 57 of 1999 (R).

C S.B. Upadhyay for the Appellant.

S.K. Sinha for the Respondents.

The Judgment of the Court was delivered by

D S. SAGHIR AHMAD, J. Leave granted.

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 30.7.1997. In the letter, it was, *inter alia*, mentioned as under :

E "In response to Circular No. PD/PERS/IR/60 (11)/374 dated 5.9.1995 and No. PD/PERS/IR/60 (111)/400 dated 12.10.1995 and your option for vol. retirement. Under the scheme mentioned in the above circulars, Management has accepted your option for Vol. Retirement. *The release memo alongwith detailed particulars will follow.*

F Under the above V.R. Scheme there is a provision for retention of quarter for a period of 5 (five) years for which you are required to enter into an agreement, as such please obtain the format duly typed on non-judicial stamp paper from the office of S.P.O. For completing the agreement paper, the name of your father and quarter/bungalow No. is required, as such please give the above information in writing to us for the above purpose. The agreement paper may be returned duly signed by you and your witness to the Sr. Pers. Officer. It may be noted that you have to pay the charges of non-judicial paper and demi paper."

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Since it was specifically stated in that letter that release memo along with detailed particulars will follow, the appellant continued in service till 26.9.1997 when he was relieved from the post in question. In the meantime, the appellant had already submitted a letter to the respondent on 7.8.1997 (followed by another letter dated 24.9.1997) 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 appellant then filed a writ petition in the High Court which was dismissed by the Single Judge. The Writ Appeal filed against that judgment was dismissed by the Division Bench of the High Court by the impugned judgment. The High Court did not accept the contention of the appellant that he having withdrawn the letter of voluntary retirement should be allowed to continue in service.

From the facts stated above, it would be seen that though the option of voluntary retirement exercised by the appellant by his letter dated 18.10.1995 was accepted by the respondent-management by their letter dated 30.7.1997, the appellant was not relieved from service and he was allowed to continue in service till 26.9.1997, which, for all practical purposes, would be the "effective date" as it was on this date that he was relieved from service. In the meantime, as pointed out above, the appellant had already withdrawn the offer of voluntary retirement vide his letter dated 7.8.1997. The question which, therefore, arises in this 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. The question is squarely answered by the three decisions, namely, *Balram Gupta v. Union of India & Anr.*, [1987] Supp. SCC 228; *J.N. Srivastava v. Union of India & Anr.*, [1998] 9 SCC 559 and *Power Finance Corporation Ltd. v. Pramod Kumar Bhatia* [1997] 4 SCC 280, in which it was held that the resignation, in spite of its acceptance, can be withdrawn before the "effective date". That being so, the appeal is allowed. The impugned judgment of the High Court is set aside with the direction that the appellant shall be allowed to continue in service with all consequential benefits. There will, however, be no order as to costs.

R.A.

Appeal allowed.