

UNION OF INDIA AND ANR.
v.
WING COMMANDER T. PARTHASARATHY

NOVEMBER 10, 2000

[DORAISWAMY RAJU AND SHIVARAJ V. PATIL, JJ.]

Service Law:

Pre-mature retirement—Application for premature retirement by employee intending to take effect from a year thereafter—Also submitted a certificate stating that he was aware of the policy of non-acceptance of application seeking withdrawal of his application for pre-mature retirement—Four months thereafter, he moved an application seeking withdrawal of his application for pre-mature retirement—The very next day he was served with a communication retiring him prematurely and rejecting his withdrawal application—Challenged in a writ petition which was allowed by Single Judge—Appeal before Division Bench dismissed—On appeal, Held: No statutory rules or provisions of any Act existed denying the right of seeking withdrawal of application for premature retirement—As the premature retirement was to take effect long after moving of application seeking withdrawal of premature retirement, there was no cessation of master and servant relationship—Employee's furnishing a certificate declaring that he was aware of the policy of non-acceptance of cancellation/withdrawal of application seeking premature retirement cannot stand in the way.

The respondent, a Wing Commander in the Indian Air Force submitted an application dated 21-07-1985 praying for pre-mature retirement from service with effect from 31-08-1986 with 6 months leave preparatory to retirement said to be due to him with the admissible full non-effective benefits. The reasons for the pre-mature retirement were the continued illness of his wife and other family commitments and responsibilities. Four months later when the matter was under process before the concerned authorities, the respondent moved an amendment to his earlier application stating that the actual date of his release could be decided taking into account the pensionary recommendations of the IVth Pay Commission Report which was expected to come in November, 1985. On 19-02-1986, the respondent on being able to surmount the health problems of his wife and having sorted out the family

- A** problems, submitted an application for withdrawal of his earlier application seeking pre-mature retirement. Later the respondent received a communication dated 06-03-1986 that AIR HQ, vide their letter dated 20-02-1986 had intimated that the respondent was to prematurely retire with effect from 03-08-1986. Respondent's application for withdrawal of pre-mature retirement application was rejected on the ground that the HQ did
- B** not accede requests for such cancellation on the ground that the pre-mature retirement application had already been approved by RRM and also the respondent had given a certificate stating that he was aware that his application for such cancellation would not be accepted. Further the respondent's application even for the change in date of retirement was also rejected. The
- C** order of pre-mature retirement with effect from 31-08-1986 was challenged by the respondent in a writ petition which was allowed. Appeal preferred before Division Bench of the High Court was dismissed. Hence this appeal.

- The appellant Union of India contended that under the policy regarding premature retirement there was no scope for withdrawing the application
- D** seeking pre-mature retirement. It was also contended that the respondent was well aware of the non-acceptance of his subsequent application seeking withdrawal and had filed a requisite certificate to that effect.

Dismissing the appeal, the Court

- E** **HELD. 1.** In the present case, nothing in the form of any statutory rules or any provision of any Act has been brought to notice which could be said to impede or deny the right of withdrawal. On the other hand, not only the acceptance of request by the Headquarters was said to have been made only on 20-02-1986, a day after the respondent withdrew his request for pre-mature retirement but even such acceptance in this case was to be effective from a
- F** future date namely 31-08-1986. Consequently, it could not be legitimately contended by the appellants that there was any cessation of the relationship of master and servant between the Department and the respondent at any rate before 31-08-1986. While that be the position inevitably the respondent had a right and was entitled to withdraw or revoke his request before it really and
- G** effectively became effective. [537-C-D]

- 2.** Reliance placed upon the so called policy decision which obligated the respondent to furnish a certificate to the extent that he was fully aware of the fact that he cannot later seek for cancellation of the application once made for pre-mature retirement cannot be destructive of the right of the respondent,
- H** in law, to withdraw his request for pre-mature retirement before it ever became

operative and effective and effected termination of his status and relation with the Department. When the legal position is that much clear it would be futile for the appellants to base their rights on some policy decision of the Department or a mere certificate of the respondent being aware of a particular position which has no sanctity or basis in law to destroy such rights which otherwise inhered in him and available in law. No such deprivation of a substantive right of a person can be denied except on the basis of any statutory provision or rule or regulation. There being none brought to notice of this Court the claim of the appellants cannot be countenanced. [537-E-G]

Raj Kumar v. Union of India, [1968] 3 SCR 857, distinguished.

Balram Gupta v. Union of India and Anr., [1987] 3 SCR 1173 and *Union of India v. Sri Gopal Chandra Mishra & Ors.*, [1978] 3 SCR 12, referred to.

Punjab National Bank v. P.K. Mittal, AIR (1989) SC 1083, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4537 of 1998.

From the Judgment and Order dated 18.12.96 of the Karnataka High Court in W.A. No. 1146 of 1996.

Ms. Indra Sawhney, S.A. Matto, Ajay Sharma, C. Radha Krishna, Shankar Divate and Ms. Anil Katiyar for the Appellants.

K.T. Anantha Raman, for M/s. Lawyers Inn. for the Respondent.

The Judgment of the Court was delivered by

RAJU, J. The respondent was commissioned in the Indian Air Force on 21.1.1963 as an officer in the Accounts Branch and in due course he successively rose to the rank of Wing Commander by virtue of promotions earned by him, on 17.1.1989. Having regard to certain problems in the family due continued illness of his wife and need to face other commitments and responsibilities he was constrained to seek for pre-mature retirement. He submitted an application dated 21.7.1985 praying for pre-mature retirement from service with effect from 31.8.1986 with 6 months leave preparatory to retirement said to be due to him with the admissible full non-effective benefits. It is a fact that as expected of him he also furnished a certificate stating that he was aware that any request made by him later for the cancellation of his application for pre-mature retirement would not be accepted.

When the matter was under process before the concerned Authorities,

- A on 6.11.85 the respondent seem to have moved an Amendment to his earlier application stating that the actual date of his release could be decided taking into account the pensionary recommendations/requirements of the IVth Pay Commission's Report which was expected to come in November 1985. In view of this the date of retirement sought with effect from 31.8.86 itself, according to the respondent stood altered before any decision was taken or communicated. On 19.2.86, the respondent on being able to, as claimed by him surmount the health problems of his wife and also sort out the other difficulties, submitted an application seeking to withdraw the application earlier submitted for pre-mature retirement from service, with a favourable recommendation thereon by the group captain -Command Accounts Officer. While matters stood thus, the respondent was served on 7.3.86 with a communication dated 6.3.86 that information has been received from AIR Headquarter in their letter dated 20.2.86 that the respondent will pre-maturely retire from service at his own request with effect from 31.8.86, with certain other consequential directions. The request made for withdrawal of the application for pre-mature retirement was also not accepted on the ground that the Headquarters does not accede to requests for such cancellation after initial approval of the same by RRM and having regard to the certificate given by the respondent himself. The request further made on 8.7.86 to change at least the date of retirement, did not meet with success and the same was also turned down under a communication dated 10.7.86 mailed on 28.7.86 and served on the respondent on 5.8.86.

- Aggrieved, the respondent filed Writ Petition No. 16105 of 1986 before the Karnataka High Court seeking to quash the order of pre- mature retirement with effect from 31.8.86 and for consequential direction to continue the respondent in service with all consequential and attendant benefits. The Department's stand before the High Court as is now before us was that under the existing policy there was no scope for withdrawing the application for pre-mature retirement, once submitted, that in the light of such policy the respondent also gave a certificate that he was aware of the fact that his subsequent request for withdrawal will not be accepted and that such a policy came to be adopted in public interest in the light of the experience gained from the move of the officers often to seek pre-mature retirement when there is a difficult duty to be performed and attempting to seek for cancellation after tiding over/avoiding the same and consequently, no exception could be taken to the action of the Department.

- H The learned Single Judge overruled the objection of the Department

both on the ground that in the case on hand it has not been averred or substantiated that the petitioner offered for pre-mature retirement as a camouflage to get over any difficult assignment of duties and the subsequent change of mind was to gain any undue advantage as well as for the reason that when the offer of the respondent stood withdrawn on 19.2.86, the subsequent action taken by the competent Authority on 20.2.86 and onwards will be of no effect, having been taken on a letter or offer which by then had no existence in the eye of law. The impugned proceedings were quashed and consequential directions also came to be issued by an order dated 2.11.95. An appeal filed before the Division Bench of the High Court in W.A. No.1146 of 1996 also did not meet with success, necessitating the appellants to come before this Court, on further appeal.

The learned counsel for the appellant reiterated the stand that having regard to the policy decision of which the respondent was said to be also aware and having given a certificate at the time of submission of the application for pre-mature retirement that he was aware of the fact that his request for withdrawal/cancellation made subsequently will not be accepted, the High Court ought not to have countenanced the claim of the respondent. Strong reliance has also been placed on the decision reported in *Raj Kumar v. Union of India*, [1968] 3 SCR 857 to contend that the application for pre-mature retirement having been approved on 14.1.86 by the RRM even prior to the withdrawal letter dated 19.2.86, the respondent could not be given any relief, as claimed by him in his Writ Petition. Per contra, the learned counsel tried to justify the orders of the High Court by placing strong reliance also on the decisions reported in *Balram Gupta v. Union of India and Anr.*, [1987] 3 SCR 1173 and *Union of India v. Sri Gopal Chandra Misra & Ors.*, [1978] 3 SCR 12.

We have carefully considered the submissions of the learned counsel appearing on either side. The reliance placed for the appellants on the decision reported in *Raj Kumar's* case (Supra) is inappropriate to the facts of this case. In that case this Court merely emphasised the position that when a public servant has invited by his letter of resignation determination of his employment his service clearly stands terminated from the date on which the letter of resignation is accepted by the appropriate Authority and in the absence of any law or rule governing the condition of the service to the contrary, it will not be open to the public servant to withdraw his resignation after it is accepted by the appropriate Authority and that till the resignation is accepted by the appropriate Authority in consonance with the rules governing the

A acceptance, the public servant concerned had "*Locus Penitentiae*" but not thereafter. This judgment was the subject matter of consideration alongside the other relevant case law on the subject by a Constitution Bench of this Court in the decision reported in *Union of India Etc. v. Gopal Chandra Misra and Others*, AIR (1978) SC 694. A request for pre-mature retirement which required the acceptance of the competent or appropriate Authority will not be complete till accepted by such competent Authority and the request could definitely be withdrawn before it became so complete. It is all the more so in a case where the request for pre-mature retirement was made to take effect from a future date as in this case. The majority of the Constitution Bench analysed and declared the position of law to be as hereunder:

C "51. It will bear repetition that the general principle is that *in the absence of a legal, contractual or constitutional bar, a "prospective" resignation can be withdrawn at any time before it becomes effective, and it becomes effective when it operates to terminate the employment or the office-tenure of the resignor.* This general rule is equally applicable to Government servants and constitutional functionaries. In the case of a Government servant or functionary who cannot, under the conditions of his service/or office, by his own unilateral act of tendering resignation, give up his service/or office, normally, the tender of resignation becomes effective and his service/or office-tenure terminated, when it is accepted by the competent authority. In the case of a Judge of a High Court, who is a constitutional functionary and under Proviso (a) to Article 217 (1) has a unilateral right or privilege to resign his office, his resignation becomes effective and tenure terminated on the date from which he, of his own volition, chooses to quit office. If in terms of the writing under his hand addressed to the President, he resigns in praesenti the resignation terminates his office-tenure forthwith, and cannot therefore, be withdrawn or revoked thereafter. *But, if he by such writing, chooses to resign from a future date, the act of resigning office is not complete because it does not terminate his tenure before such date and the Judge can at any time before the arrival of that prospective date on which it was intended to be effective withdraw it, because the Constitution does not bar such withdrawal.*"

[Emphasis supplied]

H This Court had again an occasion to consider the question as to the principle of law to be applied to a case of resignation made to become

effective on the expiry of a particular period or from a future date as desired by the employee in *Punjab National Bank v. P.K. Mittal*, AIR (1989) SC 1083. It was held therein that resignation being a voluntary act of employee, he may choose to resign with immediate effect or with a notice of less than 3 months if the employer agrees to the same or he may also resign at a future date on the expiry or beyond the period of 3 months as envisaged under the governing regulation in that case, even though there is no such consent from the employer, and that, it was always open to the employee to withdraw the same before the date on which the resignation could have become effective.

So far as the case in hand is concerned, nothing in the form of any statutory rules or any provision of any Act has been brought to our notice which could be said to impede or deny this right of the appellants. On the other hand, not only the acceptance of the request by the Headquarters, the appropriate Authority was said to have been made only on 20.2.86, a day after the respondent withdrew his request for pre-mature retirement but even such acceptance in this case was to be effective from a future date namely 31.8.86. Consequently, it could not be legitimately contended by the appellants that there was any cessation of the relationship of master and servant between the Department and the respondent at any rate before 31.8.86. While that be the position inevitably the respondent had a right and was entitled to withdraw or revoke his request earlier made before it ever really and effectively became effective.

The reliance placed upon the so-called policy decision which obligated the respondent to furnish a certificate to the extent that he was fully aware of the fact that he cannot later seek for cancellation of the application once made for pre-mature retirement cannot, in our view, be destructive of the right of the respondent, in law, to withdraw his request for pre-mature retirement before it ever became operative and effective and effected termination of his status and relation with the Department. When the legal position is that much clear it would be futile for the appellants to base their rights on some policy decision of the Department or a mere certificate of the respondent being aware of a particular position which has no sanctity or basis in law to destroy such rights which otherwise inhered in him and available in law. No such deprivation of a substantive right of a person can be denied except on the basis of any statutory provision or rule or regulation. There being none brought to our notice in this case, the claim of the appellants cannot be countenanced in our hands. Even that apart, the reasoning of the High Court that the case of the respondent will not be covered by the type or nature of the mischief sought

A to be curbed by the so-called policy decision also cannot be said to suffer any conformity in law, to warrant our interference.

For all the reasons stated above, the appeal fails and shall stand dismissed. The time limit stipulated by the learned Single Judge to settle the claims and consequential benefits due to respondent shall commence and be

B computed from this date, for compliance.

R.C.K.

Appeal dismissed.