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SHAMBHU MURARI SINHA

v.

PROJECT AND DEVELOPMENT INDIA LTD. AND ANR.

MARCH 13, 2002

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[S.N. PHUKAN AND P. VENKATARAMA REDDI, JJ.]

Service Law:

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Voluntary retirement scheme—Withdrawal—Permissibility of—Retirement application by employee—Acceptance by management with condition—Withdrawal of option of V.R.S. before effective date which is the date of actual release from service—However, management issued release order—Held, relationship of employer and employee continuous till the date of actual release of employee from service and not from the date of acceptance of the voluntary retirement—Thus, since employee had locus poenitentiae to withdraw his proposal for voluntary retirement before relationship of employer and employee comes to an end, management could not have refused to accept the withdrawal letter of the employee.

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Appellant-employee applied for voluntary retirement under the Voluntary Retirement Scheme (VRS). Respondent-management accepted it with the condition that the release memo along with details particulars will follow. Thereafter, appellant sent two letters withdrawing his option for VRS before he was actually released from service but there was no response from the respondents. Later the respondents issued a memo releasing appellant from service. Aggrieved, appellant filed petition challenging the release order. Both the Single Judge and Division Bench of the High Court upheld the release order.

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In appeal before this Court appellant contended that in view of *Gopal Chandra Mishra's case, the appellant was within his right to withdraw his option for voluntary retirement even after its acceptance but before the actual date of release from the employment.**

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Respondents contended that from the date of acceptance of the letter of voluntary retirement by the respondent, the relationship of employer and employee came to an end and, therefore, the appellant ceased to be an

employee of the respondent from that date.

Allowing the appeal, the Court

HELD: 1.1. There is no condition in the whole scheme that once an option to voluntary retire is exercised by an employee and the same is accepted by the employer, the employee is not entitled to withdraw from voluntary retirement. [399-F]

1.2. Appellant was paid his salaries etc. till his date of actual release and, therefore, the jural relationship of employee and employer between the appellant and the respondents did not come to an end on the date of acceptance of the voluntary retirement and the said relationship continued till the date of actual release of the employee. The appellant admittedly sent two letters withdrawing his voluntary retirement before his actual date of release from service. Therefore, in view of the settled position of the law and the terms of the letter of acceptance, the appellant had locus poenitentiae to withdraw his proposal for voluntary retirement before the relationship of employer and employee came to an end. Therefore, the respondent could not have refused to accept the withdrawal letter of the appellant as it was sent before the jural relationship of employee and employer came to an end.

[402-E-G]

**Union of India and Ors. v. Gopal Chandra Mishra and Ors., [1978] 2 SCC 301, followed.*

Balram Gupta v. Union of India and Anr., [1987] Supp. SCC 228 and J.N. Srivastava v. Union of India, [1998] 9 SCC 559, relied on.

Nand Keshwar Prasad v. Indian Farmers Fertilizers Cooperative Ltd. and Ors., [1998] 5 SCC 461; Raj Kumar v. Union of India, [1968] 3 SCR 857; Power Finance Corporation Ltd. v. Pramod Kumar Bhatia, [1997] 4 SCC 280 and Shambhu Murari Sinha v. Project and Development India and Anr., [2000] 5 SCC 621, referred to.

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).

S.B. Upadhyay, Pawan Upadhyay, Sujit Kr. Singh and Santosh Mishra for the Appellant.

A Deba Prasad Mukherjee and Ms. Nandini Gore for the Respondents.

The Judgment of the Court was delivered by

B PHUKAN, J. In this appeal by special leave the appellant has assailed the judgment dated 21-06-1999 passed by the Patna High Court in LPA No. 57 of 1999 (R). By the impugned judgment the Division Bench affirmed the judgment of the learned Single Judge dated 03-02-1999 passed in CWJC No. 2970 of 1997 (R).

C The appellant joined the respondent-company as a Draftsman Trainee in the year 1964 and was promoted to the post of General Foreman (Electrical). On October 12, 1995, the respondent-company issued an improved Voluntary Retirement Scheme (for short 'VRS') giving more benefits to the employees, which was effective from 12th October, 1995 to 18th October, 1995. The appellant applied for voluntary retirement on 18th October, 1995 under the scheme, which was accepted by the Management on 30th July, 1997 with the condition that 'the release memo along with details particulars will follow'. D On August 07, 1997, the appellant sent a letter withdrawing his option from the VRS by registered post but no response was received by him from the respondents. Again on September 27, 1997 another letter was sent by the appellant withdrawing his option from the scheme. This letter was received on 25th September, 1997 but there was no reply from the respondent. The respondent-company issued a memorandum on 25th September, 1997 releasing the appellant from the service of the company w.e.f. 26th September, 1997 (afternoon). The appellant filed a petition under Article 226 of the Constitution before the High Court challenging the said release order, which was dismissed by the learned Single Judge and it was upheld by the impugned judgment. E That is how the matter is before us. F

This appeal came up for final hearing before a Division Bench of this Court and by order dated April 13, 2000, the appeal was allowed on the reasoning that the appellant was not relieved from service and was allowed to continue in service till 26-09-1997, which, for all practical purposes would be the "effective date" as it was on this date that he was relieved from service. As the appellant had already withdrawn the offer from VRS on 07-08-1997, the resignation in spite of its acceptance could be withdrawn before the said "effective date" and, therefore, such withdrawal was valid in law [See *Shambhu Murari Sinha v. Project & Development India and Anr.* [2000] 5 SCC 621. The Division Bench relied on the following decisions of this G H Court namely, *Balram Gupta v. Union of India*. [1987] Supp. SCC 228, *J.N.*

Srivastava v. Union of India, [1998] 9 SCC 559 and *Power Finance Corpn. Ltd., v. Pramod Kumar Bhatia*, [1997] 4 SCC 280. A

A Review Petition was filed by the respondents which was allowed by another Division Bench of this Court and the order is extracted below:-

“Delay condoned. B

Heard counsel for the parties.

We find that the scheme providing for voluntary retirement of employees, prima facie, discloses that once an option to voluntary retire is exercised by an employee and the same is accepted by the employer, the employee is not entitled to withdraw the voluntary retirement. The said scheme which has bearing on the case was not adverted to while deciding this appeal. Further, the decision of this Court in *Balram Gupta v. Union of India and Anr.*, [1987] (Supp.) SCC 228, *Raj Kumar v. Union of India*, [1968] 3 SCR 857 and *Union of India v. Gopal Chandra Mishra*, [1978] 2 SCC 301 which are applicable to this case were not considered while deciding the appeal. Moreover, the decision under review is likely to affect a large number of employees. We are, therefore, of the opinion that the judgment under review deserves to be reviewed. We, therefore, set aside the judgment dated 13.4.2000 and restore the appeal to its original number. The Review Petition is thus allowed. Let this appeal be posted for hearing. C D E

In view of the decision on Review Petition, the Contempt Petition is rejected.” F

We have perused the whole scheme and we do not find any condition that once an option to voluntary retire is exercised by an employee and the same is accepted by the employer, the employee is not entitled to withdraw from voluntary retirement. This position is accepted at the Bar. While allowing the appeal, the Division Bench of High Court in fact considered the ratio laid down in *Balram Gupta's* case (supra). G

The short question to be decided is what was the effective date in the case in hand, before which the appellant could have withdrawn his offer of the voluntary retirement under the scheme.

The only contention raised before us by the learned counsel for the H

A appellant is that in view of the law laid down by this Court since 1978, the appellant was within his right to withdraw his option for voluntary retirement even after its acceptance but before the actual date of release from the employment. In support of this contention learned counsel has placed before us various decisions of this Court.

B Per contra, the learned counsel for the respondent has contended that from the date of acceptance of the letter of voluntary retirement by the respondent, the relationship of employer and employee came to an end and, therefore, the appellant ceased to be an employee of the respondent w.e.f. 30th July, 1997. Learned counsel also sought to raise the question of financial burden on the respondent-company, which we need not consider while deciding the legal issue involved in the present appeal.

C A Constitution Bench of this Court in *Union of India and Ors. v. Gopal Chandra Misra and Ors.*, [1978] 2 SCC 301 in paragraph 50 held 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.' (emphasis ours) As stated above in the present case in the VRS, there was no indication regarding effective date of voluntary resignation and there is also no condition that once it was accepted it could not be withdrawn.

D In *Balram Gupta v. Union of India and Anr.*, [1987] Supp. SCC 228] the principle laid down in *Gopal Chandra Misra* (supra) was summarised as follows:-

E "A complete and effective act of resigning office is one which severs the link of the resignor with his office and terminates his tenure."

F In *Balram Gupta's* case, the appellant-employee offered to voluntary retire from service w.e.f. 31st March, 1981 and accordingly sent a letter within the notice period. However, he changed his mind and sent a letter on 31.01.1981 seeking to withdraw his notice of voluntary retirement but the request was disallowed by the concerned authority on the ground that the withdrawal of notice could only be with the specific approval of the authority.

G This Court held that the dissolution of the contract of employment would be brought about only on the date indicated i.e. 31.03.1981 and upto that date the appellant continued as Government employee. He is at liberty to withdraw his notice of voluntary retirement and for this purpose, prior approval is not required.

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The decision in *J.N. Srivastava v. Union of India*, [1998] 9 SCC 559 is also to the same effect. This Court held as follows: A

“It is now well settled that even if the voluntary retirement notice is moved by an employee and gets accepted by the authority within the time fixed, before the date of retirement is reached, the employee has locus poenitentiae to withdraw the proposal for voluntary retirement. The said view has been taken by a Bench of this Court in the case of *Balram Gupta versus Union of India*.” B

In *Nand Keshwar Prasad v. Indian Farmers Fertilizers Cooperative Ltd. and Ors.*, [1998] 5 SCC 461, in paragraph 11, this Court reiterated that it is open to the employee concerned to withdraw letter of resignation before the date indicated in the notice of voluntary retirement. It was also observed therein: C

“.....it appears to us that the law is well settled by this Court in a number of decisions that unless controlled by condition of service or the statutory provisions, the retirement mentioned in the letter of resignation must take effect from the date mentioned therein and such date cannot be advanced by accepting the resignation from an earlier date when the employee concerned did not intend to retire from such earlier date.” D

In *Raj Kumar v. Union of India*, [1968] 3 SCR 857 the normal rule has been stated as follows:- E

“When a public servant invited by a letter of his resignation determination of his employment, his service normally 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 conditions of his 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 in consonance with the rules governing the acceptance, the public servant concerned has locus poenitentiae but not thereafter.” F G

The above cases may not have direct application to the facts of the present case, however, the principles laid down therein deserve notice.

In *Power Finance Corporation Ltd. v. Pramod Kumar Bhatia*, [1997] 4 SCC 280 this Court went a step further and observed thus:- H

A “It is now settled legal position that unless the employee is relieved of the duty, after acceptance of the offer of voluntary retirement or resignation, jural relationship of the employee and the employer does not come to an end.”

B It was pointed out in that case that the acceptance of voluntary retirement was not unconditional and before the conditions could be complied with, the employee could withdraw from the scheme. On those facts, the above observations were made. It is not necessary to consider whether in all cases, actual relief becomes the crucial date. However, the ratio of decision in Balram Gupta’s case coupled with the observations of the Constitution Bench in Gopal Chandra Misra’s case (underlined above) could usefully applied to the present case.

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Coming to the case in hand the letter of acceptance was a conditional one inasmuch as though option of the appellant for the voluntary retirement under the scheme was accepted but it was stated that the ‘release memo along with detailed particulars would follow’. Before the appellant was actually released from the service, he withdrew his option for voluntary retirement by sending two letters dated August 07, 1997 and September 24, 1997, but there was no response from the respondent. By office memorandum dated 25th September, 1997, the appellant was released from the service and that too from the next day. It is not disputed that the appellant was paid his salaries etc. till his date of actual release i.e. 26 September, 1997, and, therefore, the jural relationship of employee and employer between the appellant and the respondents did not come to an end on the date of acceptance of the voluntary retirement and said relationship continued till 26th of September, 1997. The appellant admittedly sent two letters withdrawing his voluntary retirement before his actual date of release from service. Therefore, in view of the settled position of the law and the terms of the letter of acceptance, the appellant had locus poenitentiae to withdraw his proposal for voluntary retirement before the relationship of employer and employee came to an end.

G We, therefore, hold that the respondent could not have refused to accept the withdrawal letter of the appellant as it was sent before the jural relationship of employee and employer came to an end. Consequently, the impugned judgment is liable to be set aside, which we hereby do. The appellant shall be entitled to rejoin his duty and he shall be paid all his salaries and other benefits during the period he was out from the service. The learned H
H counsel for the respondent has stated that by this time the appellant might

have retired from service on attaining the age of superannuation, if that be so, he shall be paid full salary and allowances for the entire period he was out of service till the date of his retirement and thereafter, he shall be entitled to get all retiral benefits counting the above period as if he was in service. A

We, therefore, allow the appeal by setting aside the impugned judgment. We leave the parties to bear their own cost. B

N.J.

Appeal allowed.