

C.V. FRANCIS

v.

UNION OF INDIA & ORS.

(Special Leave Petition (Civil) No. 31250 of 2011)

JULY 3, 2013

[ALTAMAS KABIR, CJI, ANIL R. DAVE AND RANJANA  
PRAKASH DESAI, JJ.]

*Service Law:*

*Voluntary Retirement Scheme - Employee seeking benefit under- Without waiting for the acceptance thereof, went on leave and took employment elsewhere - His leave not extended - On his failure to join duty, disciplinary proceedings initiated for unauthorized absence from duty and his services terminated - High Court upheld the termination - Held: Decision as regards grant of benefit under Voluntary Retirement Scheme is at the discretion of the employer, unless where the Scheme itself provides for the retirement to take effect at the end of notice period - In the instant case, there was no such stipulation under the Scheme - The employee was rightly terminated.*

**The petitioner applied to avail benefits under voluntary Retirement Scheme introduced by the respondent-Company. Without waiting for acceptance of his application seeking voluntary retirement, he proceeded to the United States after availing leave for one month and obtained employment there. From there, he applied for further leave, which was rejected and was asked to join. Since he did not join his duties, Disciplinary proceedings were initiated against him for unauthorized absence from duty. At the instance of the petitioner, High Court directed to consider his representation seeking to accept his request of voluntary retirement and to drop**

A disciplinary proceedings. His representation was rejected by respondent-State, and finding him guilty in the Departmental Proceedings, his services were terminated. His writ petition, challenging the termination order, was dismissed by Single Judge of High Court and the order was further confirmed by Division Bench of High Court in the writ appeal.

In the instant special leave petition, the petitioner inter alia contended that his application for voluntary retirement must be deemed to have been accepted on the expiry of notice period and thus disciplinary proceedings and termination order were invalid.

Dismissing the petition, the Court

HELD: 1. A voluntary Retirement Scheme introduced by a company, does not entitle an employee as a matter of right to the benefits of the Scheme. Whether an employee should be allowed to retire in terms of the Scheme is a decision which can only be taken by the employer company, except in cases where the Scheme itself provides for retirement to take effect when the notice period comes to an end. A Voluntary Retirement Scheme introduced by a company is essentially a part of the company's desire to weed out the deadwood. [Para 13] [60-C-E]

2. In the instant case, there was no such stipulation in the scheme that even without acceptance of his application it would be deemed that the Petitioner's voluntary retirement application had been accepted. Once that is not accepted, the entire case of the Petitioner falls to the ground. The Petitioner having obtained employment in the United States of America, had no intention of rejoining his duties with the Respondent company. Instead of waiting for the notice period, the Petitioner moved to the United States, having

A application seeking voluntary retirement, the Petitioner proceeded to the United States and applied for further leave from 1.6.1998 to 30.6.1998. Such prayer was rejected and the Petitioner was asked by letter dated 26.6.1998 to join his duties from 1.7.1998. The Petitioner did not join his duties, as  
B directed, but again applied for leave from 1.7.1998 to 31.8.1998. By its letter dated 3.8.1998, the Respondent Company informed the Petitioner that leave had not been granted and that he was being treated as absent from duty without leave, for which disciplinary proceedings were being  
C contemplated against him for unauthorised absence. In the absence of any response from him, the Respondent Company once again wrote to the Petitioner on 14.8.1998, asking him to report for duty within ten days, failing which disciplinary action would be initiated against him, but the Petitioner failed to respond even to the said letter. On 11.10.1998, a disciplinary  
D enquiry was initiated against the Petitioner for his unauthorised absence from duty.

3. Without replying to the charges against him, the Petitioner sent yet another representation dated 20.11.1998 to  
E the Respondent Company to accept his request for voluntary retirement. As such prayer was rejected, the Petitioner moved the Kerala High Court in its writ jurisdiction for a direction upon the authorities to accept his prayer for voluntary retirement and to drop the disciplinary action initiated against him. The Kerala  
F High Court disposed of the Writ Petition on the same day and by its Order dated 23.4.1999 directed the Union of India to dispose of the Petitioner's representation within a reasonable time. It was made clear that whatever action was taken would be subject to the order to be passed on the Petitioner's  
G representation. The Petitioner was given ample opportunity to represent his case by the Respondent Union of India, which vide Order dated 11.10.1999, rejected the Petitioner's representation. Since, thereafter, on 29.12.1999, the Petitioner was found guilty in the departmental proceedings, his services  
H were terminated.

obtained employment there and his letters praying for leave were of no consequence. [Paras 12 and 14] [60-A-B, F-G] A

*Tek Chand vs. Dile Ram* (2001) 3 SCC 290: 2001 (1) SCR 527 - distinguished. B

*Padubidri Damodar Shenoy vs. Indian Airlines Limited and Anr.* (2009) 10 SCC 514: 2009 (14) SCR 356 - referred to.

Case Law Reference:

2001 (1) SCR 527 distinguished Para 14 C

2009 (14) SCR 356 referred to Para 10

CIVIL APPELLATE JURISDICTION : Special Leave Petition (Civil) No. 31250 of 2011. D

From the Judgment and order dated 13.06.2011 of the High Court of Jharkhand at Ranchi in LPA No. 283 of 2009.

C.V. Francis, Petitioner-in-Peson. E

Dhruv Mehta, Anurag Sharma (for AP & J Chambers) for the Respondents.

The Judgment of the Court was delivered by

**ALTAMAS KABIR, CJI.** 1. The Petitioner, who has appeared in person, was employed as a Manager by the Respondent, Bokaro Steel Limited, which subsequently became a unit of Steel Authority of India (SAIL) from 20.2.1998. On the same date a Voluntary Retirement Scheme was introduced and the Petitioner also applied on 7.4.1998 to avail the benefits of the Scheme. The Petitioner claims to have applied for leave from 30.4.1998 to 31.5.1998 which was purported to have been sanctioned. F  
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2. However, without waiting for acceptance of his H

4. The said Order was challenged by the Petitioner in the Kerala High Court by way of Writ Petition No. 26659 of 2009, which was, however, rejected on the ground that the Kerala High Court had no territorial jurisdiction to entertain the same. Thereafter, the Petitioner approached the Jharkhand High Court by way of Writ Petition (S) No. 4057 of 2004.

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5. The Writ Petition having been dismissed by the learned Single Judge, the Petitioner preferred an appeal before the Division Bench in which Petitioner's counsel strongly urged that his application for voluntary retirement be accepted. He also added a new dimension to his submissions that since there was no response from the side of the Respondent, his application for voluntary retirement must be deemed to have been accepted. Accordingly, the subsequent proceedings taken by way of disciplinary proceedings and the order of termination of services passed therein, must be held to be entirely invalid.

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6. In support of his submissions, the Petitioner relied heavily on the decision of this Court in *Tek Chand Vs. Dile Ram* [(2001) 3 SCC 290]. Although, the said decision was rendered in the context of an election, incidentally the question of voluntary retirement also came up for consideration. The learned Judges held that there were three categories of rules relating to seeking of voluntary retirement after notice. In the first category, voluntary retirement automatically comes into force on expiry of notice period. In the second category also, retirement comes into force unless an order is passed during notice period withholding permission to retire and in the third category voluntary retirement does not come into force unless permission to this effect is granted by the competent authority. In such a case, refusal of permission can be communicated even after the expiry of the notice period.

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7. The Petitioner then referred to Rule 48-A of the Central Civil Services Pension Rules, dealing with retirement on completion of 20 years' qualifying service. The Petitioner

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A pointed that under Sub-rule (1) at any time after the Government servant has completed twenty years' qualifying service, he may, by giving notice of not less than three months in writing to the Appointing Authority, retire from service. He also pointed that under Sub-rule (2), the notice of voluntary retirement given under sub-rule (1) would have to be accepted by the Appointing Authority. However, under the proviso thereto, it is further provided that where the Appointing Authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period.

8. Drawing an analogy with the facts of his own case, the Petitioner contended that even in his case, upon expiry of the period of notice given by him to retire voluntarily in terms of the Voluntary Retirement Scheme, the retirement became ineffective on expiry of the said period of the notice. Accordingly, the subsequent letter addressed to him by the Respondent company to rejoin his duty was of little consequence and any action taken thereupon would be void. According to Petitioner, the termination of his services was in violation of the well-settled principles relating to acceptance of voluntary retirement laid down in *Tek Chand's* case (*supra*).

9. Appearing for the Respondent Company, Mr. Dhruv Mehta, learned Senior Advocate, strongly opposed the Petitioner's case on behalf of the Respondent Company primarily on the ground that in a scheme for voluntary retirement floated by a company, it is entirely the company's discretion to accept and allow an employee's application for voluntary retirement. The concept of deemed acceptance also was not available in the instant case, since the scheme did not contain such a provision.

10. Mr. Mehta highlighted the conduct of the Petitioner after applying for voluntary retirement. Mr. Mehta pointed out that without waiting for his prayer for voluntary retirement to be accepted, the Petitioner joined an American Company even

before the expiry of the notice period. In fact, it was quite evident from the tenor of his letters seeking leave, that the Petitioner never intended to rejoin his duty in the Respondent company. On the question of deemed acceptance of an employee's application for voluntary retirement, Mr. Mehta referred to the decision of this Court in *Padubidri Damodar Shenoy Vs. Indian Airlines Limited and Another* [(2009) 10 SCC 514], wherein, although, the Petitioner upon completing of 20 years' of qualifying service had applied for voluntary retirement, he was informed that such retirement would not be automatic on expiry of period of notice, but it would become effective only after the approval of the competent authority. In the said case, this Court also observed that the employee had never acted as if his services had been discontinued on the expiry of the three months' notice period, inasmuch as, he continued to attend his duties. Thus, the application for voluntary retirement made by the Petitioner therein, never really came into effect.

11. Mr. Mehta submitted that the facts of the present case were somewhat similar to the facts of the above case, where, although an application had been made for voluntary retirement, the same was not accepted and the services of the Petitioner therein did not stand terminated even after the expiry of the period of notice. Mr. Mehta urged that on the same reasoning, the decision in *Tek Chand's* case (supra) would have no application to the facts of this case.

12. Having considered the submissions made on behalf of the parties, we see no reason to interfere with the judgment and Order of learned Single Judge, as upheld by the Division Bench of the High Court, rejecting the Petitioner's prayer challenging the termination of his services. It may be noted that notice was issued on the Special Leave Petition on 11.11.2011 only to consider whether the order of dismissal passed against the Petitioner could be converted into an order of compulsory retirement. We have considered the matter from that angle and

A do not find any justification to modify the Order of either the  
learned Single Judge or the Division Bench. As has been  
emphasised by the Division Bench of the High Court, it is  
obvious that the Petitioner having obtained employment in the  
United States of America, had no intention of rejoining his  
B duties with the Respondent company. Instead of waiting for the  
notice period, the Petitioner moved to the United States, having  
obtained employment there and his letters praying for leave  
were of no consequence. Furthermore, instead of attending the  
disciplinary enquiry commenced against him, the Petitioner  
C repeatedly requested the Respondent company to accept his  
application for voluntary retirement.

13. It is well-established that a Voluntary Retirement  
Scheme introduced by a company, does not entitle an  
employee as a matter of right to the benefits of the Scheme.  
D Whether an employee should be allowed to retire in terms of  
the Scheme is a decision which can only be taken by the  
employer company, except in cases where the Scheme itself  
provides for retirement to take effect when the notice period  
comes to an end. A Voluntary Retirement Scheme introduced  
E by a company is essentially a part of the company's desire to  
weed out the deadwood.

14. The Petitioner's contention that his application for  
voluntary retirement came into effect on the expiry of the period  
of notice given by him must fail, since there was no such  
F stipulation in the scheme that even without acceptance of his  
application it would be deemed that the Petitioner's voluntary  
retirement application had been accepted. Once that is not  
accepted, the entire case of the Petitioner falls to the ground.  
G The decision in *Tek Chand's* case (supra) will not, therefore,  
have any application to the facts of this case, particularly when  
the Petitioner's application for voluntary retirement had not been  
accepted and he had been asked to rejoin his services. The  
Petitioner was fully aware of this position as he continued to  
H apply for leave after the notice period was over.

15. We are not, therefore, inclined to interfere with the orders impugned in the Special Leave Petition which is, accordingly, dismissed. A

16. Having regard to the facts of the case, there will be no order as to costs. B

K.K.T.

SLP dismissed.