

Balram Gupta

Vs

Union of India and Another

Civil Appeal No. 2057 of 1987

(Sabyasachi Kukharji, G. L. Oza JJ)

01.09.1987

JUDGMENT

SABYASACHI MUKHARJI, J. –

1. Special leave granted.

2. In 1980 the appellant was working as an Accountant in the Photo Division of the Ministry of Information and Broadcasting, New Delhi. By that time the appellant had rendered more than 20 years' service. By the letter dated December 24, 1980 the appellant sought voluntary retirement from the service after having completed more than 20 years' service. The said letter dated of December 24, 1980 which was addressed to the Director, Photo Division, Ministry of Information and Broadcasting, stated, inter alia, as follows :

I beg to seek voluntary retirement on March 31, 1981. I had joined government service on August 4, 1958, thus I have completed more than 20 years service. My notice period may please be treated w.e.f. January 1, 1981.

3. The appellant states that three months notice was required by the rules of service to which the appellant belonged. The said voluntary retirement was sought under Rule 48-A of the Central Civil Services (Pension) Rules, 1972 (hereinafter referred to as 'the Pension Rules'). The Rule 48-A provides as follows :

48-A. Retirement on completion of 20 years' qualifying service. - (1) At any time after a 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.

(2) The notice of voluntary retirement given under sub-rule (1) shall require acceptance by the appointing authority :

Provided that where the appointing authority does not refuse to grant the permission for retirement before the the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period.

4. Sub-rule (4) of Rule 48-A prevents withdrawal of resignation letter except with the approval of the authority. The said sub-rule (4) provides as follows :

(4) A government servant, who has elected to retire under this rule and has given the

necessary notice to that effect to the appointing authority, shall be precluded from withdrawing his notice except with the specific approval of such authority.

5. Acting on the basis of the letter of retirement, by an order dated January 20, 1981 the appellant was allowed to retire voluntarily from service prospectively with effect from the afternoon of March 31, 1981. The said order dated January 20, 1981 read as follows :

Shri Bal Ram Gupta, permanent Upper Division Clerk and officiating Accountant in the Photo Division is allowed to retire voluntarily with effect from the afternoon of March 31, 1981, in accordance with the provisions contained in the Ministry of Home Affairs, Department of Personnel and Administrative Reforms O.M. No. 25013/7/77 Estt.(A) dated August 26, 1977.

6. In the meantime, however, the appellant states that on account of persistent and personal requests from the staff members, the appellant had changed his mind and consequently had by his letter dated January 31, 1981 withdrawn his notice of voluntary retirement. He stated in his letter that he had dropped the idea of seeking voluntary retirement and he, therefore, requested the authorities that his request for resignation might be treated as cancelled and the notice given by him treated as withdrawn. The appellant, however, was not allowed to do so. The appellant was relieved by an order dated March 31, 1981. It was stated in the said order that his request contained in the letter dated January 31, 1981 for withdrawal of his application for voluntary retirement "has also been considered and found not acceptable."

7. The appellant contended before the authorities and the High Court that in view of his letter dated January 31, 1981 seeking withdrawal of his letter of resignation, the impugned order dated March 31, 1981 retiring the appellant was illegal and invalid. The appellant, however, was asked to leave the office immediately. The appellant was thereafter sent the gratuity form for claiming his retiring benefits. The appellant met respondent 2 and requested him that his case may be considered on merits and the department should not "hush up" the matters like this but the same was to no avail. Respondent 2, the Director, Photo Division, Ministry of Information and Broadcasting, clearly informed the appellant that in view of the activities of the appellant in his capacity as the Secretary of the Photo Division Employees Association (Registered), it has been found appropriate to "ease him out" from the service. In spite of the several representations nothing happened; the appellant moved the High Court by a writ petition. The Delhi High Court dismissed the appellant's writ petition on the ground that the rules enabled the government servant to withdraw his application for voluntary retirement only with the approval of the government. The approval had not been given by the government. According to the High Court the rule had been complied with. The government had considered afresh the application of the appellant and government found no reasons to interfere with the refusal to permit the appellant to withdraw his resignation. The appellant thereafter has come up in appeal to this Court.

8. The facts, therefore, are that the appellant offered to resign from his service by the letter dated December 24, 1980 with effect from March 31, 1981 and according to the appellant his resignation would have been effective, if accepted, only from March 31, 1981. Before the resignation could have become effective the appellant withdrew the application by the letter dated of January 31, 1981, long before, according to the appellant, the date the resignation could have been effective. In the meantime, however, prior thereto on the January 20, 1981 the respondent has purported to accept the resignation with effect from March 31, 1981. The appropriate rule sub-rule (4) of Rule 48-A of the Pension Rules as set out hereinbefore enjoins that a government servant shall be

precluded from withdrawing his notice except with the specific approval of such authority. The proviso stipulates that the request for withdrawal shall be made before the intended date of his retirement. That had been done. The approval of the authority was, however, not given. Therefore, the normal rule which prevails in certain cases that a person can withdraw his resignation before it is effective would not apply in full force to a case of this nature because here the government servant cannot withdraw except with the approval of such authority.

9. Learned counsel appearing for the appellant contended before us that this rule was bad as violative of the Fundamental Rights of citizens. Challenge to the rule was however not made before the High Court on this ground. He, however, contended that if the rule be read as consistent with the constitutional requirements of reasonableness which is well accepted rule of construction, then the government could not withhold approval of the withdrawal of resignation without any rhyme or reason. The counter-affidavit filed in this proceeding by Shri Majgaonkar, who is respondent 2 in this appeal reveals very little as to why the sanction was withheld. It is stated in paragraph 5 of the said affidavit that it was not in the knowledge of the respondent as to what prompted the appellant to request the withdrawal. What is important in this connection to be borne in mind is not what prompted the desire for withdrawal but what is important is what prompted the government from withholding the withdrawal. In this request the government affidavit certainly lacks candour. In appropriate cases where the government desires that public servant who seeks voluntarily to resign should not be allowed to continue, it is open to the government to state those reasons. There may be hundred and one situations where a situation or opportunity like this may be used by the government to ease out a disgruntled or reluctant or troublesome employee. It was further stated that there were guidelines which were laid down by the O.M. No. 24(57)-E-V-32 dated December 24, 1952 for considering and deciding in the matter of accepting or refusing the withdrawals of notices of voluntary retirement. What part of the guidelines was violated by the appellant was not indicated or spelled out in the said affidavit. We would advert to certain guidelines and examine if these were violated later. It is only stated that the application for withdrawal was considered in the light of the said guidelines and the request was turned down appropriately. It was further stated that the notice of termination of service or of retirement is a unilateral act whereby the officer communicates his intention to dissolve the contract of service and unlike resignation it operates without the consent of the other party. It is, therefore, submitted that once notice was given it became operative immediately, if it was received by the government and automatically brought about the dissolution of contract after the expiry of the notice period. We are unable to accept this submission and this position. The dissolution would be brought about only on the date indicated, i.e., March 31, 1981; up to that the appellant was and is a government employee. There is no unilateral termination of the same prior thereto. He is at liberty, and entitled independently without sub-rule (4) of Rule 48-A of the Pension Rules, as a government servant, to withdraw his notice of voluntary retirement. In this respect it stands at par with letter of resignation.

10. This question arose in the case of one Shri Satish Chandra, then a judge in the High Court of Allahabad in *Union of India v. Gopal Chandra Misra* ((1978) 3 SCR 12 : (1978) 2 SCC 301 : 1978 SCC (L&S) 303 : AIR 1978 SC 694). There the second respondent Shri Satish Chandra wrote to the President of India, on May 7, 1977, intimating his resignation from the office of judge of the Allahabad High Court, with effect from August 1, 1977. On July 15, 1977, he again wrote to the President, revoking his earlier communication, and commenced deciding matters in court from July 16, 1977. On August 1, 1977 the first respondent Shri Misra, an advocate of the said High Court filed a writ petition under Article 226 of the Constitution contending that the resignation of Shri Satish Chandra having been duly communicated to the President of India in accordance with Article 217(1) proviso (a) of the Constitution was final and irrevocable, and that the continuance of said

Shri Satish Chandra as a Judge of the High Court thereafter, was an usurpation of public office. The High Court allowed the petition holding that Shri Satish Chandra was not competent to revoke his resignation letter. On appeal this Court held that the resignation office necessarily involved relinquishment of the office which implied cessation or termination of, or cutting asunder from the office. A complete and effective act of resigning office is one which severs the link of the resignor with his office and terminates its tenure. In the context of Article 217(1) this assumes the character of a decisive test, because the expression "resign his officer" occurs in a proviso which excepts or qualifies the substantive clause fixing the officer tenure of a judge up to the age of 62 years. It was further reiterated that in the absence of a legal, contractual or constitutional bar, an intimation in writing sent to the appropriate authority by an incumbent, of his intention or proposal to resign his office/post from a future specified date, can be withdrawn by him at any time before it becomes effective i.e., before it effects termination of the tenure of the office/post, or employment. This general rule equally applies to government servants and constitutional functionaries, this Court reiterated. The other peculiar essence of Article 217 which was discussed need not detain us in the facts of this case. On the principle of general law the offer to relinquishment could have been withdrawn by the appellant before the date it became effective it sub-rule (4) Rule 48-A was not there.

11. In *Air India v. Nergesh Meerza* ((1982) 1 SCR 438 : (1981) 4 SCC 335 : 1981 SCC (L&S) 599 : AIR 1981 SC 1829), the Court struck down certain provisions of Air India Employees' Service Regulations. We are not concerned with the actual controversy. But the court reiterated that there should not be arbitrariness and hostile discrimination in government's approach to its employees. On behalf of the respondent it was submitted that a government servant was not entitled to demand as of right, permission to withdraw the letter of voluntary retirement, it could only be given as a matter of grace. Our attention was also drawn to the observations of this Court in *Raj Kumar v. Union of India* ((1968) 3 SCR 857 : AIR 1969 SC 180 : 1969 Lab IC 310). There the court reiterated that till the resignation was accepted by the appropriate authority in consonance with the rules governing the acceptance, the public servant concerned has locus poenitentiae but not thereafter. Undue delay in intimating to the public servant concerned the action taken on the letter of resignation may justify an inference that resignation had not been accepted. But in the facts of the instant case the resignation from the government servant was to take effect at a subsequent date prospectively and the withdrawal was long before that date. Therefore, the appellant, in our opinion, had locus. As mentioned hereinbefore the main question was whether the sub-rule (4) of Rule 48-A was valid and if so whether the power exercised under the sub-rule (4) of Rule 48-A was proper. In the view we have taken it is not necessary, in our opinion, to decide whether sub-rule (4) of Rule 48-A was valid or not. It may be a salutary requirement that a government servant cannot withdraw a letter of resignation or of voluntary retirement at his sweet will and put the government into difficulties by writing letters of resignation or retirement and withdrawing the same immediately, without rhyme or reason. Therefore, for the purpose of appeal we do not propose to consider the question whether sub-rule (4) of Rule 48-A of the Pension Rules is valid or not. If properly exercised the power of the government may be a salutary rule. Approval, however, is not ipse dixit of the approving authority. The approving authority who has the statutory authority must act reasonably and rationally. The only reason put forward here is that the appellant had not indicated his reasons for withdrawal. This, in our opinion, was sufficiently indicated that he was prevailed upon by his friends and the appellant has a second look at the matter. This is not an unreasonable reason. The guidelines indicated are as follows :

(2) A question has been raised whether a government servant who has given to the appropriate authority notice of retirement under the para 2(2) above has any right

subsequently (but during the currency of the notice) to withdraw the same and return to duty. The question has been considered carefully and the conclusion reached is that the government servant has no such right. There would, however, be no objection to permission being given to such a government servant, on consideration of the circumstances of his case to withdraw the notice given by him, but ordinarily such permission should not be granted unless he is in a position to show that there has been a material change in the circumstances in consideration of which the notice was originally given.

Where the notice of retirement has been served by government on the government servant, it may be withdrawn if so desired for adequate reasons, provided the government servant concerned is agreeable.

12. In this case the guidelines are that ordinarily permission should not be granted unless the officer concerned is in a position to show that there has been a material change in the circumstances in consideration of which the notice was originally given. In the facts of the instance case such indication has been given. The appellant has stated that on the persistent and personal requests of the staff members he had dropped the idea of seeking voluntary retirement. We do not see how this could not be a good and valid reason. It is true that he was resigning and in the notice for resignation he had not given any reason except to state that he sought voluntary retirement. We see nothing wrong in this. In the modern age we should not put embargo upon people's choice or freedom. If, however, the administration had made arrangements acting on his resignation or letter of retirement to make other employee available for his job, that would be another matter but the appellant's offer to retire and withdrawal of the same happened in such quick succession that it cannot be said that any administrative set up or arrangement was affected. The administration has now taken a long time by its own attitude to communicate the matter. For this the respondent is to blame and not the appellant.

13. We hold, therefore, that there was no valid reason for withholding the permission by the respondent. We hold further that there has been compliance with the guidelines because the appellant has indicated that there was a change in the circumstances, namely, the persistent and personal requests from the staff members and relations which changed his attitude towards continuing in government service and induced the appellant to withdraw the notice. In the modern and uncertain age it is very difficult to arrange one's future with any amount of certainty; a certain amount of flexibility is required, and if such flexibility does not jeopardize government or administration, administration should be graceful enough to respond and acknowledge the flexibility of human mind and attitude and allow the appellant to withdraw his letter of retirement in the facts and circumstances of this case. Much complications which had arisen could have been thus avoided by such graceful attitude. The court cannot but condemn circuitous ways "to ease out" uncomfortable employees. As a model employer the government must conduct itself with high probity and candour with its employees.

14. In the aforesaid view of the matter, we are unable to sustain the judgment and order of the High Court of Delhi dated July 13, 1981 and the same are, therefore, set aside. The appeal is accordingly allowed with costs and the appellant is entitled to be put back to his job with all the consequential benefits being treated as in the job from of March 31, 1981.

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