SUPREME COURT OF INDIA

K.L. E Society

Vs.

Dr. R.R. Patil

C.A.No.4509 of 2000

(S. Rajendra Babu, Ruma Pal and Bisheshwar Prasad Singh JJ.)

26.04.2002

JUDGMENT

Ruma Pal, J.

1. The respondent No.1 was the Principal of the appellant society's college at Bangalore. He sent a letter on 2.12.1994 to the appellant stating that he was unable to continue as Principal of the College due to his ill-health. He therefore requested the appellant to accord necessary permission to take voluntary retirement at the earliest and oblige. No period of notice was mentioned by the respondent No.1 in this letter. The appellant did not reply nor did it take any action on the letter. On the other hand on 1.7.1995 the respondent No.1 was requested by the appellant to visit six institutions of the appellant at least once in three months and to submit reports regarding ways and means to improve the academic standard of the institutions. On 5.7.1995 the respondent No.1 submitted a second letter of voluntary retirement to the appellant. It was said in the letter: I am severely hit by ill-health and misfortune. As a result, I have been undergoing both physical and mental agony, since long time. I do not wish to cause any problem to the Society or any individual. For these reasons the respondent no.1 stated that he wished to resign from various posts held by him in the appellant-society and to take voluntary retirement as Principal of the appellant's college at Bangalore and that he may kindly be permitted to take voluntary retirement at the earliest. A few days later, on 14.7.1995 the Board of Life Members of the appellant with reference to the letters dated 2.12.1984 and 5.7.1995 sent by the respondent No.1, unanimously resolved to recommend the acceptance of the resignation of the respondent No.1 from the various posts and also to permit the respondent No.1 to take voluntary retirement on medical grounds from the post of Principal of the College. On 19.7.1995 the respondent No.1 resumed his duties as Principal.

2. He says that he found that there was a law and order problem in the college campus with outsiders seeking to interfere with the Admissions Committee. According to the respondent No.1, in order to take the situation under control and also to respect the appeals from students, their parents, colleagues, and public at large, he had resumed his duties. He sent a letter on 19.7.1995 by facsimile to the Board of Management of the appellant requesting that

his letter dated 5.7.1995 be kept in abeyance. That the letter was received by the Board of Management is not in dispute. But it was not considered when the Board of Management met on the same day to consider the recommendation of the Board of Life Members relating to the respondent No.1's letter dated 2.12.1994 and 5.7.1995. The reason given for not considering the respondent No.1's request dated 19.7.1995 was that it did not establish that there has been a material change in circumstances. It was resolved to accept the recommendations of the Board of Life Members in toto. On 20.7.1995 the Chairman, Board of Management issued a memorandum to the respondent No.1 with reference to his letters dated 2.12.1994 and 5.7.1995, stating that both the Board of Life Members and the Board of Management had resolved to accept the respondent No.1's resignation/voluntary retirement and to relieve the respondent No.1 from his services forthwith. The memorandum went on to state:

3. In view of the resolutions passed by the Board of Life Members and Board of Management, your further request dated 19th July, 1995 for keeping the voluntary retirement in abeyance has not been considered. By another order passed on the same day the Chairman transferred a senior grade lecturer from the appellant's college at Belgaon to take over immediately the post of Principal of the Bangalore College in place of the respondent No.1. The lecturer from Belgaon assumed charge as Principal in Bangalore on 22.7. 1995. The respondent No.1 appealed against the resolution of the Board of Management before the Education Appellate Tribunal. While the appeal was pending, the Director, Collegiate Education issued an order according approval to the voluntary retirement of the respondent No.1 as requested by the appellant's society. The appeal preferred by the respondent No.1 was allowed on 19.2.1999 by the Education Appellate Tribunal and the resolution dated 19.7.1995 was quashed and the appellant was directed to continue the service of the respondent No.1 and to release to him all the benefits as if he were continuing in service. The appellant challenged the decision of the Tribunal before the High Court in its revisional jurisdiction under Section 115 of the Code of Civil Procedure. By its judgment dated 26.5.2000, the High Court rejected the revision application of the appellant and confirmed the finding of the Tribunal. Aggrieved by the decision of the High Court, the appellant has now approached this Court.

4. Two issues arise for determination in this case. The first: whether the appellant's acceptance of the voluntary retirement of the respondent No.1. from service was validly done. The second (which is dependent on the outcome of the first) : whether the Educational Appellate Tribunal was competent under the provisions of the *Karnataka Education Act, 1983* (hereinafter referred to as the Act) to entertain the appeal from the order accepting the resignation. The answer to the first question will turn on a construction of Rule 50 (5) of the Triple Benefit Scheme Rules (hereinafter referred to as the Scheme). The Rule in question pertains to voluntary retirement of employees of aided educational Institutions on completion of 20 years of qualifying service on or after 16.1.1985. The benefit of voluntary retirement under Rule 50 (5) is subject to several conditions. Set out below are those conditions which are relevant: a) The employees shall give a notice of at least 3 months in writing to the appointing authority. b) The scheme is voluntary the initiative resting with the employee himself/herself. c) Govt. does not have the reciprocal right to retire employees under the

TBS. d) Xxx xxx xxx xxx e) Xxx xxx xxx xxx f) Xxx xxx xxx xxx g) Xxx xxx xxx xxx h) A notice of less than three months may be accepted by the appointing authority in deserving cases with the prior approval of the authority competent to approve the said appointment. i) A notice of voluntary retirement may be withdrawn subsequently only with the approval of the appointing authority and the approval of the authority competent to approval of appointment provided that the request for such withdrawal is made within the intended date of retirement and the employee is in a position to establish that there has been a material change in the circumstances in consideration of which the notice was originally given. j) The voluntary retirement shall not become effective merely on the ground that a notice to that effect has been given by the employee unless it is duly accepted by the appointing authority. Such acceptance may be generally given in all cases except those:- (i) In which disciplinary proceedings are pending or contemplated against the employees for the imposition of any of the major penalties under the GIA Code or other rules prescribed as the case be; (ii) In which prosecution is contemplated or may have been launched in a Court of Law against the employee. k) Xxx xxx xxx xxx l) Orders permitting the employees to retire under Rule 50(5) shall not be issued until after the fact that he/she has put in a qualifying service of not less than 20 years, has been verified in consultation with the Accountant General. m) The voluntary retirement under this scheme may be ordered by the Management only after specific prior approval of the authority competent to approve the appointment for which selection is made by the Management. The Rule speaks of two authorities, namely, the appointing authority of the employee and the authority competent to approve the appointment of the concerned employee. No particular form of giving the notice is specified in the Rule except that it must be in writing and should be addressed to the appointing authority.

5. As far as the period of notice is concerned, a minimum three months' period is specified subject to both the appointing authority and the approving authority being satisfied that the employee's case merited a lesser notice period. In other words, as far as the authorities themselves are concerned they cannot on their own curtail the notice period. Once the right is exercised by the employee, he can withdraw the notice to retire provided he; i) makes a request to withdraw within the 'intended date of retirement' and; ii) is in a position to establish that there is a material change in the circumstances by reason of which the notice to retire voluntarily had been given in the first place. If there is no such withdrawal of notice, the request for voluntary retirement can be accepted under clause (j) subject to two exceptions neither of which are relevant to this case. Finally: an order of voluntary retirement can be passed by the appointing authority subject again to the fulfillment of two pre-conditions under clauses (l) and (m) of the sub-rule: viz. the specific prior approval of the approving authority and the verification in consultation with the Accountant General that the employee has put in a qualifying service of 20 years. In answer to the first question, the learned counsel for the appellant contended that under clause (j) of sub rule (5) of Rule 50 of the Scheme, a notice of voluntary retirement is to be generally accepted in the absence of a valid notice of withdrawal. It is contended that the withdrawal of the respondents' request of voluntary retirement was not in terms of clause (i) in that it did not even claim any change in the circumstances for which voluntary retirement had been sought by him. To our mind irrespective of the validity of the notice of withdrawal the appellants order accepting the

respondents request for voluntary retirement cannot be sustained primarily because the first notice given by the respondent on 2.12.1994 for voluntary retirement could not be acted upon. As noted above, Rule 50(5) provides for a minimum period of notice unless explicitly curtailed under clause (h) of Rule 50(5). The respondent had not specified an intended date of retirement in the first notice.

6. He had asked for 'permission to take voluntary retirement at the earliest' but there was no plea for curtailing the notice period. Therefore in the context of Rule 50 (h), the earliest would have been after three months viz., 2nd March. The importance of the notice period lies in the fact that the retirement if accepted would be effective on the expiry of that period. However, no action was taken by the appellant to retire the respondent No. 1 then. On the other hand, after the notice period expired, the respondent No. 1 was not only continued in service but vested with additional obligations. The respondent No.1 did not refuse nor did he protest this. He continued in service well after the expiry of the first notice period. Both the appellant and the respondent No. 1 by their conduct clearly treated the first notice as infructuous and inoperative. Had the appellant treated the first notice of retirement as the operative one, when the impugned order of acceptance was issued, the respondent No.1 would have been treated as retired with effect from the expiry of the first notice period. When the respondent No.1 submitted the second notice on 5.7.1995 no reference was made to the earlier notice dated 2.12.84. Besides there could not have been two applications for voluntary retirement. By accepting the second application on 5.7.95 the first application must in any event be treated as having been superseded. The respondent No. 1's letter dated 5.7.1995 was in fact a fresh application for voluntary retirement. Here too the respondent No. 1 did not specify the intended date of retirement. He only requested that he may be permitted to take retirement 'at the earliest'. The non specification of a date coupled with the fact that no request was made for curtailment of the notice period, meant that the date of his voluntary retirement could only be on or after 5.10.95.

7. During this period, the respondent No. 1 sent the letter dated 19.7.95 requesting that the notice of voluntary retirement dated 5.7.95 be kept in abeyance. This was not a letter for withdrawing the notice. It was a request that the notice may be kept in abeyance in the sense not considered immediately thus postponing the intended date of retirement. Assuming that the letter dated 19.7.95 was a notice of withdrawal and that the appellant was right in discarding it, nevertheless the appellant was bound to allow the notice period of three months calculated from 5.7.95 to expire before issuing an order accepting the notice. Admittedly the appellant did not do that. They issued the impugned order within 15 days. The appellant purported to treat the notice dated 5.7.95 as a continuation of the first notice dated 2.12.94 for the purpose of calculating the notice period. They could not have done that for the reasons stated earlier. The appellant not having waited for three months from 5.7.95, the order accepting the respondent No. 1's request for voluntary retirement was premature and amounted to unilateral curtailment of the notice period by the appellant contrary to the Scheme and more particularly Rule 50 (5) (c) thereof. The impugned order cannot but be held to be bad. There is a further reason for setting aside the impugned order. Under Rule 50 (5), as far as the respondent No. 1 was concerned, the appointing authority was the appellant and the approving authority was the State Government. The order of acceptance could have

been issued by the appellant on 20.7.95 only after obtaining the specific prior approval of the State Government under clause (m) and after verification of the respondent No. 1's eligibility in consultation with the Accountant General under clause (m). Neither of these pre-conditions had been fulfilled. The purported approval of the State Government was much after the impugned order of acceptance was passed. The verification with the Accountant General has not been done at all. This brings us to the second question namely whether the appeal by the respondent No.1 was maintainable before the Tribunal, the Tribunal was set up by the State Government under Section 96 of the Act for the purposes of adjudicating appeals preferred under the Act. Section 94 which is the provision relating to appeals allows any teacher or other employee of a private educational institution who has been dismissed, removed or reduced in rank to prefer an appeal to the Tribunal within three months from the date of the communication of such order. There is no argument that the appeal of the appellant was barred by limitation. The question then is - did the impugned order of the appellant amount to a dismissal or removal within the meaning of Section 94? The impugned order was, as held earlier, not one under or in accordance with the Scheme. The appellant lost sight of the fact that Rule 50 (5) was part of a scheme the express object of which was to benefit the employee and not the employer. The element of voluntariness attaching to the cesser of the respondent No.1's services when the impugned order was passed was entirely lacking. The result of the impugned order was an immediate cessation of the respondent No.1's services as Principal of the appellants' college dehors the Scheme.

8. We have therefore no hesitation in holding that the impugned order amounted to a removal within the meaning of Section 94 of the Act and the Respondent No.1's appeal was, therefore, maintainable. Ordinarily having reached this conclusion, we would have merely dismissed the appeal, but having regard to the submissions made by counsel on either sides, we feel that it would be more appropriate to mould the relief granted by the High Court to the respondent. The respondent himself had decided to retire for compelling personal reasons. In fact, he had been on long leave prior to the second notice asking for permission to voluntarily retire. He had agreed to continue for the time being at the instance of others in the interest of the institution.

9. The appellant has in the meantime replaced the respondent with another Principal who has been serving for the last 7 years apparently to the satisfaction of the appellant and without any complaint. It is also not the respondent's case that the present incumbent is incompetent or has not discharged his duties during this period with dedication and commitment. On the other hand the replacement of the present incumbent by the respondent may, given the history of this litigation, create an atmosphere of discord and confrontation, which would not benefit the institution at all. It would, in the circumstances, be in the interest of all the protagonists to allow the present incumbent to continue while compensating the respondent for the incorrect action taken by the appellant against him. We accordingly dismiss the appeal with the direction that the respondent will not be reinstated in service but be treated to have retired from service as indicated in the order impugned before the Tribunal and the appellant shall pay to the respondent a sum equivalent to three years' salary as last drawn by the respondent as Principal of the College by way of compensation. Such payment shall be made within eight weeks from today.

10. The appellant will also pay the respondent the costs of this appeal assessed at Rs.5,000/- (Rs. Five thousand only).