

SUPREME COURT OF INDIA

Vijay S. Sathaye

Vs.

Indian Airlines Ltd.

S.L.P.(C) Nos.24220-24221 of 2007

(Dr. B.S. Chauhan and S.A. Bobde JJ.)

06.09.2013

ORDER

1. These petitions have been filed challenging the judgments and orders of the High Court of Madras dated 12.3.2002 in Writ Petition No. 21384 of 1994 and dated 20.7.2007 in Writ Appeal No. 2415 of 2002, rejecting the claim of the petitioner for directing the respondents to grant voluntary retirement to him from 12.11.1994.

2. Facts and circumstances giving rise to these petitions are that:

A. Petitioner joined the service of the erstwhile Indian Airlines Limited on 19.3.1972 as First Officer, and he has acquired the necessary license for becoming a Pilot. Petitioner was promoted as a Captain on 19.12.1975 and was further promoted as Commander on 1.1.1986.

B. The respondents came out with a Voluntary Retirement Scheme (in short 'VRS') for its employees in 1989 in order to reduce the surplus manpower. The said scheme was for the employees who had completed 25 years of service or had attained 55 years of age. Subsequently, the condition prescribed in the aforementioned scheme was reduced to 20 years of service in 1992.

C. Regulation 12 of the Service Regulations provided that if an employee fulfils the aforesaid criteria of eligibility he can give three months' notice for voluntary retirement. However, the acceptance of the said resignation would be subject to the approval of the competent authority.

D. The petitioner completed 20 years of service on 19.3.1992. He was promoted as Deputy General Manager (Operations) on 30.8.1994. On 7.11.1994, the petitioner submitted an application seeking VRS w.e.f. 12.11.1994. Petitioner was informed vide letter dated 11.11.1994 that he should continue in service till the time decision is taken. However, the petitioner did not attend the duty after 12.11.1994. Petitioner joined the services of Blue Dart Ltd., and as he did not go to the respondents to work from 12.11.1994 and there had been no response from the respondents, he filed Writ Petition No. 19143 of 1994 for issuance of a writ of mandamus directing the respondents to accept the petitioner's application for voluntary retirement. E. During the pendency of the said petition, the petitioner was informed by respondent no.4 vide letter dated 13/15.12.1994 that his application had been rejected. Thus, the writ petition filed by the petitioner had become infructuous and the petitioner preferred another Writ Petition No. 21384 of 1994 challenging the order dated 13/15.12.1994.

F. The respondents contested the said writ petition and during the pendency of the said writ petition the petitioner attained the age of superannuation i.e. 58 years of age on 7.3.2001. The learned Single Judge dismissed the said writ petition vide order dated 12.3.2002. G. Aggrieved, the petitioner preferred Writ Appeal No. 2415 of 2002 which has been dismissed vide impugned judgment and order. Hence, these petitions.

3. We have heard Shri Manish Pitale, learned counsel for the petitioner and Shri Lalit Bhasin, learned counsel appearing for the respondents and perused the record.

4. The High Court has examined all the aspects of the matter. Admittedly, the petitioner did not ensure compliance of Regulation 12(b) of the Service Regulations which required a three months' notice as a condition for applying for VRS. The stand taken by the petitioner that he had sufficient number of earned leaves in his leave account which could be adjusted in lieu of three months' notice, had been rightly rejected by the High Court.

5. Regulation 12 reads as under:

“An employee shall retire from the service of the corporation (now Company) on attaining the age of 58 years provided that the Competent Authority may ask an employee to retire after he attains the age of 55 years, on giving 3 months notice, without giving any reason. An employee

a) on attaining the age of 55 years; or

b) on the completion of 20 years of continuous service, may by giving 3 months, voluntarily retire from service, provided that the voluntary retirement under Clause (b) shall be subject to approval of the Competent Authority.”

6. It is evident from the above that three months’ notice is mandatory and as the petitioner had not given that notice, his application was liable to be rejected. The fact that the respondents had adjusted the earned leave in case of others that cannot be a ground for acceptance of VRS of the petitioner as it is a settled legal proposition that Article 14 of the Constitution does not envisage a negative equality. More so, the application is subject to approval of the Competent Authority.

7. Approval means confirming, ratifying, assenting, sanctioning or consenting to some act or thing done by another. The very act of approval means, the act of passing judgment, the use of discretion, and determining as an adjudication therefrom unless limited by the context of the Statute.

There can be no quarrel with the settled legal proposition that if a statute provides for the approval of the higher Authority, the order cannot be given effect to unless it is approved and the same remains inconsequential and unenforceable. (Vide: Sant Lal Gupta & Ors. v. Modern Co-operative Group Housing Society Ltd. & Ors. (2010) 13 SCC 336).

8. Even otherwise, the petitioner was asked to continue in service till the decision is taken on his application. However, he did not attend the office of the respondents after 12.11.1994. In view of the above, as the petitioner had voluntarily abandoned the services of the respondents, there was no requirement on the part of the respondents to pass any order whatsoever on his application and it is a clear cut case of voluntary abandonment of service and the petitions are liable to be dismissed.

9. It is a settled law that an employee cannot be termed as a slave, he has a right to abandon the service any time voluntarily by submitting his resignation and alternatively, not joining the duty and remaining absent for long. Absence from duty in the beginning may be a misconduct but when absence is for a very long period, it may amount to voluntarily abandonment of service and in that

eventuality, the bonds of service come to an end automatically without requiring any order to be passed by the employer.

10. In *M/s. Jeewanlal (1929) Ltd., Calcutta v. Its Workmen*, AIR 1961 SC 1567, this Court held as under:

“.....there would be the class of cases where long unauthorised absence may reasonably give rise to an inference that such service is intended to be abandoned by the employee.”

(See also: *Shahoodul Haque v. The Registrar, Co-operative Societies, Bihar & Anr.*, AIR 1974 SC 1896).

11. For the purpose of termination, there has to be positive action on the part of the employer while abandonment of service is a consequence of unilateral action on behalf of the employee and the employer has no role in it. Such an act cannot be termed as ‘retrenchment’ from service.

(See: *State of Haryana v. Om Prakash & Anr.*, (1998) 8 SCC 733).

12. In *Buckingham and Carnatic Co. Ltd. v. Venkatiah & Anr.*, AIR 1964 SC 1272 while dealing with a similar case, this Court observed:

“Abandonment or relinquishment of service is always a question of intention, and normally, such an intention cannot be attributed to an employee without adequate evidence in that behalf.”

A similar view has been reiterated in *G.T. Lad & Ors. v. Chemicals and Fibres India Ltd.*, AIR 1979 SC 582.

13. In *Syndicate Bank v. General Secretary, Syndicate Bank Staff Association & Anr.*, AIR 2000 SC 2198; and *Aligarh Muslim University & Ors. v. Mansoor Ali Khan*, AIR 2000 SC 2783, this Court ruled that if a person is absent beyond the prescribed period for which leave of any kind can be granted, he should be treated to have resigned and ceases to be in service. In such a case, there is no need to hold an enquiry or to give any notice as it would amount to useless formalities. A similar view has been reiterated in *V.C. Banaras Hindu University & Ors. v. Shrikant*, AIR 2006 SC 2304; *Chief Engineer (Construction) v. Keshava Rao (dead) by Lrs.*, (2005) 11 SCC 229; and *Regional Manager, Bank of Baroda v. Anita Nandrajog*, (2009) 9 SCC 462.

14. Thus, in view thereof, the petitions are devoid of merits. An offer had been made by the respondents to the petitioner vide letter dated 9.4.2008 for accepting the payment of Rs.1,42,042.45 and Rs.6,24,104.58. However, he did not accept the said amount. The same amount has been paid today to Shri Manish Pitale, learned counsel for the petitioner through (i) D.D. No.795783 dated 5.9.2013 drawn on State Bank of India amounting to Rs.6,24,104.58 (Rupees Six Lakh Twenty Four Thousand One Hundred Four and Fifty Eight paise only), and (ii) D.D. No. 753199 dated 5.9.2013 drawn on State Bank of India amounting to Rs.1,42,042.45 (Rupees One Lakh Forty Two Thousand Forty Two and Forty Five paise only) and the same have been accepted herein.

15. In view thereof, we do not see any justification to other dues. By this payment claim stands fully and finally settled. With these observations, the special leave petitions are disposed of.