

Shyam Lal Vs. India Tourism Development Corporation Ltd. and ors.

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Court : Delhi

Decided On : Dec-14-2005

Reported in : 126(2006)DLT322; [2006(109)FLR106]; (2006)IILLJ706Del

Judge : Markandeya Katju, C.J. and; Madan B. Lokur, J.

Appeal No. : LPA 1078/2004

Appellant : Shyam Lal

Respondent : India Tourism Development Corporation Ltd. and ors.

Advocate for Def. : V.K. Rao and ; Suruchi Agarwal, Advs. for R-2

Advocate for Pet/Ap. : D.S. Chaudhary, Adv

Disposition : Appeal dismissed

Judgement :

Markandeya Katju, C.J.

1. This appeal has been filed against the impugned judgment of the learned Single Judge dated 08.10.2004, by which he has dismissed the Writ Petition.

2. Heard counsel for the parties and perused the record.

3. The petitioner filed the writ petition challenging the Order dated 19.07.2004, (Annexure P1 to the writ petition) by which the representation dated 31.05.2004 was rejected. The petitioner also prayed for a mandamus directing that he be treated to be still an employee of respondent No. 1, ITDC, and to direct it to post the petitioner anywhere in the country. The petitioner also prayed for a direction to respondent No. 1 to withdraw the Voluntary Retirement Scheme (VRS) amount from the Standard Chartered Bank (SCB), Preet Vihar, Delhi.

4. The petitioner joined the service of the respondent on 16.04.1982 as a Junior Stenographer, and he was promoted as Senior Stenographer, and thereafter as Assistant Manager vide order dated 19.04.1993.

5. The respondent No. 1 posted the petitioner at 'Hotel Ashok Yatri' Niwas in 1996. This hotel was renamed as 'Hotel Indraprastha', and it was under the process of disinvestment. The said hotel was to be transferred to respondent No. 2 in the process of disinvestment.

6. It is alleged that the petitioner was not in the good books of the management and hence he was posted to this hotel with a pre-determined mind. The respondent No. 1 floated a Voluntary Retirement Scheme for 14 Hotels, including Hotel Indraprastha, which was under disinvestment process. The petitioner wanted to continue in service and hence he did not apply for VRS. Instead, he submitted an application dated 14.08.2002 requesting the respondent No. 1 to promote him to the post of Manager vide Annexure 4.

7. It is alleged in Para 7 of the petition that respondent No. 3 called the petitioner to his office on 25.10.2002 and influenced the petitioner to submit his antedated application for voluntary retirement, and accordingly the petitioner submitted his VRS vide Annexure P6. Subsequently, the petitioner represented that he has withdrawn his application vide Annexure P10. The respondent No. 1 never communicated to the petitioner that his request for VRS has been accepted. However, respondent No. 1 vide letter dated 11.03.2003 informed the petitioner that he has instructed the Standard Chartered Bank, Preet Vihar, Delhi to release an amount of Rs. 6,56,271.10 towards full and final settlement of the petitioner's VRS dues. True copy of the letter dated 11.03.2003 is Annexure P 11.

8. The petitioner submitted his representations dated 25.05.2003 and 30.05.2003 requesting respondent No. 1 to post him anywhere even out of Delhi like other persons vide Annexure P 12. However, the petitioner was shocked to receive the letter dated 19.07.2004 from the respondent No. 1, whereby he refused even to entertain the petitioner's representations. Hence he filed the Writ petition.

9. The petitioner submitted that he had withdrawn his option for VRS prior to its acceptance.

10. The learned Single Judge in Para 9 of his impugned judgment has stated that from a perusal of the correspondence as filed by the petitioner and shown by the respondent it is clear that it was only after the receipt of communication dated 21.11.2002, from 'Hotel Indraprastha' informing the petitioner that he cannot be taken on its rolls because of acceptance of his option under the VRS, that the petitioner sought to withdraw his application for VRS. In our opinion, the learned Single Judge rightly concluded that the petitioner has voluntarily opted under the VRS and his application has been accepted. Subsequently, he wanted to withdraw his application but his option had already been accepted by ITDC as per communication dated 08.10.2002.

11. The Supreme Court in *State Bank of India v. Romesh Chander Kanoji and Ors.*, : (2004)11LLJ1SC , has observed:-

'If the employees are allowed to withdraw from the scheme at any time, it will not be possible to workout the scheme as all calculations of the management would fail

12. The learned Single Judge has discussed the entire evidence on record and held that the petitioner's VRS application has been accepted prior to his withdrawal. therefore, we see no reason to differ from the learned Single Judge. In our opinion once the application has been accepted, a person has no right to withdraw it. Hence the appeal is dismissed.