B. Varadarajan Vs. the Deputy Managing Director, State Bank of India and Others

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Court : Chennai

Decided On : Oct-05-2012

Judge : Elipe Dharma Rao & M. Venugopal

Appeal No. : W.A.No.1441 of 2010 and M.P.No.1 of 2010

Appellant : B. Varadarajan

Respondent : The Deputy Managing Director, State Bank of India and Others

Advocate for Pet/Ap. : For the Appellant: N. Umapathy For M/s.Profexs Associates, Advocate. For the Respondents: K. Sankaran, Advocate.

Judgement :

(PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent Act, against the order passed by the Learned Single Judge in W.P.No.17258 of 2008 dated 08.03.2010.)

M. VENUGOPAL, J.

The Appellant/Petitioner has preferred the present Writ Appeal as against the order dated 08.03.2010 in W.P.No.17258 of 2008 passed by the Learned Single Judge.

2. The Learned Single Judge, while passing orders in W.P.No.17258 of 2008 on 08.03.2010, has, among other things, observed that '... Therefore, the Petitioner should have known his position, when he moved a writ petition No.8968/2008 before this Court with a prayer to issue a direction to the respondents to accept his application for voluntary retirement dated 28.08.2003. The respondents/bank has not accepted his voluntary retirement and, therefore, the argument of the learned counsel appearing for the petitioner that the respondents/bank cannot take any disciplinary action, since his application seeking voluntary retirement is deemed to have been accepted is not sustainable. Further, after the rejection of his application for voluntary retirement, the petitioner must have understood that when his request for voluntary retirement was not legally accepted by the respondents, he should have reported for duty and failure to which report for duty has been viewed by respondents-Bank and therefore, the same, cannot be said to be malafide action on the part of the Bank. Therefore, the argument advanced by the learned counsel appearing for the petitioner is not sustainable in law and the ultimate contention of the petitioner that no fresh application is required for seeking voluntary retirement is also not acceptable in law and the blame casted by him on the respondents bank for not releasing the service benefits does not merit acceptance' and resultantly, dismissed the writ petition without costs.

3. The Learned Counsel for the Appellant/Petitioner submits that the Learned Single Judge has proceeded erroneously in disposing of the Writ Petition on verifying whether the Appellant/Petitioner has placed his application for voluntary retirement scheme in a proper and prescribed manner, when the law is that once an employee submits his application for voluntary retirement, it shall be treated as final.

4. It is the further contention of the Learned Counsel for the Appellant/Petitioner that the Petitioner has reiterated that the withdrawal letter dated 20.02.2004 has been obtained by the Respondents/Bank officials, more particularly, the 3rd Respondent by coercion.

5. Yet another submission of the Learned Counsel for the Appellant/Petitioner is that the proviso 4 to Rule 19(1) of the State Bank of India Officers' Service Rules,

1992 has been recently modified and clarified by the State Bank of India in staff Circular No.17 dated 25.04.1994 wherein it is mentioned that the officials dealing with the VRS applications of the incumbents shall endeavour to dispose of the said applications within a period of three months.

6. The Learned Counsel for the Appellant/Petitioner submits that the Learned Single Judge has failed to appreciate that the Circular No.17 of 1994 is an amendment or a modification made to the service condition of the incumbent in the Respondents/Bank. Further, it is the plea of the Appellant/Petitioner that as per the ingredients of the aforesaid circular, the VRS application is to be disposed of within a period of two weeks and the same has not been followed by the Respondents/Bank.

7. According to the Learned Counsel for the Appellant/Petitioner, the Appellant/Petitioner has been persistent of making his application for disposal of the application for the voluntary retirement through applications dated 28.08.2003, followed by the representations dated 06.10.2003, 28.02.2004 (fax message), 15.03.2004, 03.04.2004, 08.08.2007, 26.09.2007. However, the Learned Single Judge has not taken into account the fact that the Appellant/Petitioner has exercised his option of voluntary retirement and that the Respondents/ Bank owe a corresponding obligation to dispose of it.

8. In any event, it is the contention of the Learned Counsel for the Appellant/Petitioner that the issue of placing his application for voluntary retirement in abeyance is legally unsustainable, inasmuch as the rule contemplates that the VRS application shall be disposed of within the prescribed time.

9. Per contra, the Learned Counsel for the Respondents submits that the Appellant/Petitioner's request for voluntary retirement has been rejected by the 4th Respondent on 27.05.2008 because of the reason that the Appellant/Petitioner has withdrawn his VRS application through his letter dated 20.02.2004. But, the Appellant has been further informed that he is entitled to seek voluntary retirement by giving fresh application and if he gives any fresh application seeking voluntary retirement, then, the same will be considered on merits.

10. The main contention of the Learned Counsel for the Respondents/Bank is that when the Appellant/Petitioner's request for voluntary retirement has been rejected by the Bank, then, he is duty bound to report for duty at once, failing which, it will entail the Bank to initiate departmental proceedings against him.

11. The Learned Counsel for the Respondents/Bank submits that the Appellant/Petitioner, in the Exit Interview, has withdrawn his request for voluntary retirement and expressed his desire to report duty on 28.02.2004 because of the changed family circumstances and further made a request through letter dated 20.02.2004 that his absence from 01.09.2003 to 27.02.2004 be treated as extraordinary leave.

12. The Learned Counsel for the Respondents/Bank contends that the Appellant/Petitioner has not reported for duty on 28.02.2004. Although he expressed earlier his desire to report for duty on 28.02.2004 as stated in his letter dated 20.02.2004, but, again he insisted for his retirement (notwithstanding the fact that the Bank transferred him to the place of his choice at Udhagamandalam as per his letter dated 15.03.2004).

13. The Learned Counsel for the Respondents/Bank strenuously submits that the Bank, through its letter dated 29.03.2004, has informed the Appellant/Petitioner (for his letter dated 20.02.2004) that he is required to furnish a fresh application seeking voluntary retirement with prospective effect, but he has kept quite for over three years and again made a request for his voluntary retirement from 01.09.2003 through his letter dated 08.08.2007.

14. It is not in dispute that the Appellant/Petitioner earlier filed W.P.No.8968 of 2008 praying for issuance of a direction by this Court to the Respondents/Bank to accept his application dated 28.08.2003 for voluntary retirement and to settle all the retirement benefits. This Court, in the said Writ Petition, has directed the Respondents 2 to 4 therein to pass appropriate order on the Appellant/Petitioner's application dated 28.08.2003 within a period of four weeks. But the 2nd Respondent rejected the Appellant/Petitioner's request for voluntary retirement through the impugned order dated 27.05.2008, granting liberty to him to project fresh application seeking voluntary retirement.

15. The Appellant/Petitioner has not chosen to submit another application/fresh application seeking voluntary retirement from the service of the Respondents. But, he filed the Writ Petition in W.P.No.17258 of 2008 challenging the impugned order dated 27.05.2008 passed by the 2nd Respondent.

16.At this stage, we deem it appropriate to cite the Rule 19(1) of the State Bank of India Officers' Service Rules which speaks of 'Retirement' and the same is as follows:

"Retirement.-

19. (1) An officer shall retire from the service of the Bank on attaining the age of fifty-eight years or upon the completion of thirty years' service or thirty years' pensionable service if he is a member of the Pension Fund, whichever occurs first.

Provided that the competent authority may, at its discretion, extend the period of service of an officer who has attained the age of fifty-eight years or has completed thirty years' service or thirty years' pensionable service as the case may be, should such extension be deemed desirable in the interest of the Bank, so however, that the service rendered by the concerned officer beyond 58 years of age except to the extent of the period of leave due at that time will not count for purpose of pension.

Provided further that an officer who had joined the service of the Bank either as an officer or otherwise on or after July 19, 1969 and attained the age of 58 years shall be granted any further extension in service.

Provided further that an officer may, at the discretion of the Executive Committee, be retired from the Bank's service after he has attained 50 years of age or has completed 25 years' service or 25 years' pensionable service at the case may be, by giving him three months' notice in writing or pay in lieu thereof.

Provided further that an officer who has completed 20 years' service or 20 years' pensionable service, as the case may be, may be permitted by the competent authority to retire from the Bank's service, subject to his giving three months' notice in writing or pay in lieu thereof unless this requirement is wholly or partly waived by it."

17. Moreover, the Guidelines 5.2 under the caption 'Voluntary Retirement' enjoins as follows:

"In terms of proviso 4 to Rule 19 (1) of State Bank of India Officers Service Rules 1992, an officer who has completed 20 years of service or 20 years' pensionable service as the case may be, may be permitted by the Competent Authority to retire from Bank's service subjective to his giving three months' notice in writing or pay in lieu thereof unless this requirement is wholly or partly waived by the Competent Authority."

18. Added further, the Guideline 5.2.1 speaks of 'Procedure' to be adopted as regards the voluntary retirement and the same is quoted hereunder:

"The following procedures have been laid down for meticulous compliance.

i. Requestfor the voluntary retirement must be addressed to the Competent Authority and submitted on prescribed format.

ii. Assoon as a request for voluntary retirement is received, it must be examined whether due notice of 3 months has been given or not. In case due notice has been given, the request should be handled as per the procedure set out in subsequent paragraphs. However, if pay in lieu of due notice has been offered or full 3 months' notice has not been given, the official has to be immediately advised that his application for voluntary retirement is being processed and forwarded to the Competent Authority for a decision. Meanwhile, he cannot be deemed to have retired from Bank's service in the absence of communication of the Competent Authority's express approval which is necessary in terms of 4th proviso to Rule 19(1) of the SBI officers Service Rules. This advice should be communicated by the authority under whom the official is working viz. Branch Manager in case of an officer posted at a branch. Dy. General Manager in case of Zonal Office, concerned Departmental Head in case of any other Administrative Office. The cheque/payment in lieu of the notice period, if any, tendered should not be encashed..."

19. Also, the Guideline 5.2.1 (iv) under the head 'Procedure' inter alia, specifies the following:

"..... While forwarding the application (Annexure 5.6) to Competent Authority, clearance must be taken from Vigilance Department/Disciplinary Proceedings Department as regards pendency/ contemplation of any disciplinary case /criminal case/investigation. Further, in case the official has worked in other Circles/offices, confirmation to this effect must be obtained from them also. The details of the same must be mentioned in the column provided in Annexure 5.5. Other points to be noted while submitting the recommendations besides necessary action to be initiated immediately on receipt of the request for resignation/ retirement from the officer, are as under:

i)Therequest from the officers should be addressed to the appointing competent authority.

ii) The request for resignation should be unconditional/unqualified.

iii) In case request for complete partial waiver of required notice period of 3 months' has been made by the officer, valid reasons/grounds therefore should be given by him and specific comments and recommendations for the waiver or otherwise are given.

iv) In case of retirement/voluntary retirement whether the officer has completed 20 years' service or 20 years' pensionable service, should be clearly stated therein.

v) If letter/notice from the officer is without date, Bank's intention as to from which date notice period will be counted, should be advised to the officer immediately."

20. That apart, the Guideline 5.2.1 sub-clause (vi) refers to interviewing of any official who opts for voluntary retirement, he/she should be interviewed so that the real reason for his/her option could be found and proper counselling could be given, wherever necessary.

21. The Guideline 5.2.3 (i) and (iv) under the head 'Waiver of Notice Period' is as follows:

"The guideliness to be followed in this regard are as follows:

(i) Normally, the notice period should not be waived for the reason that it takes about 2 to 3 months to identify a replacement and arrange for his posting, etc. Clearance from the departments/ controlling offices under whom the official had earlier worked has also to be taken in the area of disciplinary/vigilance cases and examined. There may also be various dues from the official owing to the Bank which have to be ascertained and arrangments made for their adjustment. All this takes time. Hence, the Competent Authorities should normally not waive the requirement of notice. Whether it is a case of resignation or voluntary retirement.'

(ii) However, where the official is proceeding to join a government service or Public Sector Company, the Competent Authority may waive fully or partially the notice period after receiving clearance from vigilance angle in the usual manner and after recovery of all dues.

(iii) If the officer is leaving the service either by way of resignation or retirement for personal reasons for joining any other service, except those at item (ii) above, notice period need not be waived.

(iv) In extreme cases of compassion, say on the grounds of failing health or joining spouse posted elsewhere, adverse family circumstances, etc., the Competent Authority may consider to partially or fully waive the notice period subject to satisfaction about the genuineness of the reasons adduced for leaving the Bank's service and clearance from vigilance angle as well as recovered of all dues.

22. The Appellant/Petitioner, by his letter dated 28.02.2003, has requested the Bank to relieve him from the Bank's service as at the close of business on 31.08.2003 on voluntary service.

23. The 4th Respondent, by his communication dated 08.09.2003, has informed the Appellant/Petitioner that his application is being forwarded to the competent authority through proper channel for consideration and in the meanwhile, unless and until approval of the competent authority is communicated to him, he is informed that he will continue to be in Bank's service and report for duty as usual

and also stated that he shall not be deemed to have retired from the services of the Bank.

24. The Appellant/Petitioner, in his reply dated 09.10.2003 to the 4th Respondent's letter dated 08.09.2003, has stated that he has sought for voluntary retirement because there is threat to his life and that he has escaped two attempts earlier. Further, he has mentioned that the Bank has not come to his rescue on both the occasions and he has been forced to take protection on his own with the help of individuals. Under the circumstances, he does not want to take any chance further and as such, he is not in a position to attend the office. Also, he has stated in his case, the very survival is in question and hence, he is not in a position to give notice and only thing is that he has to give three months leave in lieu of notice for which he has prepared.

25. The Appellant/Petitioner, in his reply dated 11.11.2003, addressed to the Deputy General Manager [for the letter of the 4th Respondent dated 01.11.2003 wherein the Bank has asked for specific reasons from the Appellant/Petitioner seeking voluntary retirement etc.] has, inter alia, stated that there is no interior or ulterior motive in seeking voluntary retirement with effect from 01.09.2003 and that his wife had tried to kill him with the help of her associates on 27.07.2003 and it has taken one month to take a decision to seek voluntary retirement so that he can escape from his wife who is leading an immoral life and trying to kill him in order to get all properties and the terminal benefits from the Bank.

26. It transpires that the 4th Respondent has advised the Appellant/Petitioner through his communication dated 10.02.2004 to appear for an Exit Interview with the Deputy General Manager, Zonal Office, Coimbatore on 16.02.2004 at 10 a.m.

27. On 20.02.2004 the Appellant/Petitioner addressed a reply to the Deputy General Manager, State Bank of India, Zonal Office, Coimbatore stating that under the changed family circumstances he has decided to withdraw his application dated 28.08.2003 seeking voluntary retirement and further requested to treat his application for voluntary retirement as withdrawn and that he would be reporting for duty from 28.02.2004. Further, he requested that his absence from 01.09.2003 to 27.02.2004 may kindly be treated as extraordinary leave on loss of pay.

28. Continuing further, the Appellant/Petitioner has addressed a letter dated 15.03.2004 to the Deputy General Manager, State Bank of India, Zonal Office, Coimbatore (through the 4th Respondent) wherein he has stated that after the Exit Interview and under the expected changes on account of the judgment which went in his favour in the divorce original petition filed on adultery grounds, he decided to report duty from 28.02.2004, but he could not do so because his ex-wife enraged over the judgment is vigourously trying to eliminate him. Further, she had even smelt his residence at Salem and he shifted the same over night and now staying with his cousin at Ambattur. Further, he has stated that the Bank has tried to help him by transferring to the place of his choice and that Udhagamandalam is not far away place for his wife and he required some hide out and it further requires more time to put an end to the nuisance and that he has left with no other option except to press for his voluntary retirement applied earlier and hence, requested that his letter dated 20.02.2004 (seeking withdrawal of voluntary retirement application) may kindly be ignored.

29. The Appellant/Petitioner, in his reply dated 03.04.2004 addressed to the 4th Respondent's communication dated 29.03.2004, has, among other things, stated that he is not attending office from 01.09.2003 anticipating that his voluntary retirement will be considered with effect from the date as he has submitted his application without notice and further, if he gives an application afresh, the Bank may accuse him as if he is absent unauthorisedly and may even initiate disciplinary proceedings against him which is unwarranted. Therefore, he has requested that his application for voluntary retirement dated 28.8.2003 may be considered favourably and relieve him from the Bank's services with effect from 01.09.2003.

30. It is to be noted that right to continue in service upon non- acceptance of request for voluntary retirement and earn salary for livlihood is undoubtedly a fundamental right enshrined under Article 21 of the Constitution of India.

31. We aptly point out the decision of the Hon'ble Supreme Court in Shambhu Murari Sinha V. Project and Development India Limited and another [2002-Vol.2-LLJ-430] wherein it is observed that 'the appellant's letters withdrawing his

voluntary retirement were valid as they were sent before the jural relationship of employer and employee had come to an end, and as the acceptance of his application for such retirement was a conditional one.'

32. The Hon'ble Supreme Court, in Power Finance Corporation Limited V. Pramod Kumar Bhatia [JT 1997 (4) SC 300 : (1997) 4 SCC 280], has observed as follows:

"It is now settled legal position that unless the employee is relieved of the duty, after acceptance of the offer of voluntary retirement or resignation, jural relationship of the employee and the employer does not come to an end."

33. This Court worth recalls the decision of the Constitution Bench of this Court in Union of India and others V. Gopal Chandra Misra and others [(1978) 2 SCC 301] in paragraph 50, whereby and whereunder, it is held that 'the general principle is that in the absence of a legal, contractual or constitutional bar, a 'prospective' resignation can be withdrawn at any time before it becomes effective, and 'it becomes effective when it operates to terminate the employment or the office-tenure of the resignor'.

34. It is to be remembered that 'Leave' is a condition of service. The concept of 'Leave' in service law appears to be that it is in the manner of grant and certainly, it is not the right of an employee. In fact, leave cannot be claimed by an employee is a matter of right/ routine. Equally, an employer has no power to send an employee on 'forced leave without pay'.

35. It is to be stated that granting extraordinary leave for an unauthorised absence of an employee, in place of leave salary in a normal course of leave without permission, is the simplest form of deterrent which is commonly used for an unauthorised absence.

36. The performance of duty is the basis of Earning Leave and an employee earns it by virtue of the time spent by him on actual service.

37. It is to be pointed out that it is the discretion of an employer to grant post facto conversion of an unauthorised absence of an employee into leave of any admissible nature.

38. In the present case, for the unauthorised absence period of the Appellant/Petitioner, the Respondents/Bank till date has not taken any action against the Appellant.39. It is to be borne in mind that where there is a power to extend leave, such power has to be exercised reasonably by an employer. Further, nothing will preclude a Court of Law on reasonable grounds to scrutinise the action of an employer even in a case where the voluntary retirement scheme authorises him not to grant the request of VRS of an employee.

40. It is well settled that 'Voluntary Retirement Scheme' partakes the character of an invitation to treat and not an offer as known in the law relating to contract.

41. Ordinarily, if an employee even before the voluntary retirement coming into effect abandons the service at his volition, then, he is not entitled to the salary and allowances for the interregnum period. The normal immediate consequence of overstayal is that the employee will not be entitled to leave salary.

42. As per the Guideline 5.2.3 under the head 'Waiver of Notice Period', sub-clause (iv) In extreme cases of compassion, say on the grounds of failing health or joining spouse posted elsewhere, adverse family circumstances etc., the Competent Authority may consider to partially or fully waive the notice period subject to satisfaction about the genuineness of the reasons adduced for leaving the Bank's service and clearance from vigilance angle as well as recovery of all dues.

43. In the instant case, the Appellant/Petitioner, in his communication dated 15.03.2004 addressed to the Deputy General Manager of the Bank, has stated that his wife is vigourously trying to eliminate him and further that he has got a judgment in his favour in the original petition filed by him for divorce, on the grounds of adultery.

44. At this stage, it is not out of place for this Court to cite the following decisions to advance the cause of justice:

(a) In the decision Union of India V. Pratap Rai [1968 SLR 555], it is observed that 'Rules confer power on the competent authority to commute retrospectively the periods of absence without leave into extraordinary leave [Vol-II 2216 dealing with Railway Establishment Code]'.

(b) In the decision Ali Moinuddin V. Andhra Pradesh State Electricity Board, Hyderabad and another, [1996 (5) SLR 761 (A.P.)], it is held that 'if an employee produces satisfactory materials to show that he was on leave on account of illness and for reasons beyond his control, the authority should take into account the period of extraordinary leave for the purpose of sanctioning periodical increments and in the event of its failure to do so, the Court can direct the authorities to sanction the same.'

45. A perusal of the impugned order dated 27.05.2008 passed by the 2nd Respondent shows that the pleas of the Appellant/Petitioner, that his wife is trying to eliminate him and further that he has sought voluntary retirement because there is threat to his life (as stated in his letter dated 09.10.2003 addressed to the 4th Respondent) and that he escaped two attempts earlier, have not been dealt with by the Bank. On the other hand, the 2nd Respondent has simply stated that the Appellant/Petitioner has withdrawn his application for voluntary retirement dated 28.08.2003 and therefore, his request for voluntary retirement on the basis of the said letter cannot be considered at this stage, but informed him that he is entitled to seek voluntary retirement by giving fresh application and if he projects the same, then, it will be considered.

46. The Appellant/Petitioner, in his reply dated 03.04.2004, has stated that if he gives a fresh application for voluntary retirement with a prospective date, he is to forgo pension for atleast one year and also he will be accused by the Bank that he is an unauthorised absentee and the Bank may even initiate disciplinary proceedings against him.

47. In view of the pitiable plight and the predicament of Appellant /Petitioner that he is in because of his adverse family circumstance, we allow the Writ Appeal and direct the Respondents/Bank to consider the case of the Appellant/Petitioner afresh, sympathetically in a dispassionate, fair and impartial manner, for his request to proceed on voluntary retirement with effect from 01.09.2003 (by virtue of the power of the Bank to take note of the adverse family circumstance of an

employee as per the Guideline 5.2.3. (iv) relating to Voluntary Retirement) and to pass orders in accordance with law and in the manner known to law within a period of four weeks from the date of receipt of copy of this Judgment. Per contra, we are not in agreement with the views taken by the Learned Single Judge in dismissing the Writ Petition.

48. In the result, the Writ Appeal is allowed, leaving the parties to bear their own costs. Consequently, the order passed by the Learned Single Judge in W.P.No.17258 of 2008 dated 08.03.2010 is set aside. Further, the Respondents/Banks are directed to consider the application for Voluntary Retirement of the Appellant/Petitioner dated 28.08.2003 afresh sympathetically, as per Guideline 5.2.3 (iv) referred to supra, in a dispassionate, fair and impartial manner (uninfluenced with any of the observations made by this Court in this Writ Appeal) and taking note of the totality of his family circumstance [unfavourable development/unfortunate situation] and his apprehension to threat of his life and to pass orders in accordance with law and in the manner known to law within a period of four weeks from the date of receipt of copy of this Judgment. Consequently, connected Miscellaneous Petition is closed.