

S.K.Seth Vs. Rites Ltd and ors.

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Court : Delhi

Decided On : Dec-18-2012

Judge : Siddharth Mridul

Appellant : S.K.Seth

Respondent : Rites Ltd and ors.

Judgement :

IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment pronounced on:

18. 12.2012 W.P.(C) 147/2012 S.K.SETH .. Petitioner versus RITES LTD & ORS.
.. Respondents Advocates who appeared in these cases: For the Petitioners : Mr R. Vasudevan For the Respondent : Mr G.S. Chaturvedi for R-1 & R-2 Mr R.N. Singh with Ms Sangeeta Rai for R-3 CORAM: HONBLE MR JUSTICE BADAR DURREZ AHMED HONBLE MR JUSTICE SIDDHARTH MRIDUL JUDGMENT SIDDHARTH MRIDUL, J.

1. By invoking the jurisdiction under Articles 226 and 227 of the Constitution of India, the petitioner has assailed orders dated 6th September, 2011 and 22nd November, 2011 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (Tribunal) in OA No. 4191/2010 and RA No. 381/2011 in OA No. 4191/2010 respectively. The Tribunal by virtue of the impugned order dated 06.09.2011 had dismissed the Original Application filed by the petitioner thereby upholding the order withdrawing the acceptance of resignation (tendered by petitioner) issued by the respondent No. 1, RITES Ltd.

2. The brief facts giving rise to the instant petition are as under: (i) The petitioner was permanently absorbed by respondent No.1, with effect from 04.08.1987. (ii) The petitioner tendered his resignation to respondent No.1 on 02.03.2010. By way of the said resignation letter, the petitioner requested respondent No.1 to relieve him of his duties w.e.f 01.06.2010. (iii) As no response was received from respondent No.1 pursuant to submission of the resignation, the petitioner sent a reminder dated 09.09.2010 to the concerned authorities stating therein that in view of the circumstances prevailing upon him he would be unable to continue his services with the respondent No.1 beyond 30.09.2010. (iv) The said resignation was accepted by the respondent No.1 vide an Office Order No. RR/14/2010 dated 05.10.2010. The contents of the said Office Order are relevant and are, therefore being extracted below:- not ESTT/PF/SKS/1481 Dated 05.10.2010 OFFICE ORDER NO.RR/14/2010 The resignation tendered by Mr. S. K Seth, ED (P&C)/ Emp. No.0479 has been accepted by the Competent Authority w.e.f 25.10.2010 (A.N). He may be relieved of his duties by the controlling officer from the aforesaid date after ensuring that nothing is due from him. Sd/AGM (P) (v) It is the case of the petitioner that subsequent to the acceptance of his resignation by respondent No.1, another person namely Sh. Pankaj Aggarwal was appointed to the position held by the petitioner before his retirement w.e.f 25.10.2010 and this is apparent from the Office Order No. PT:

186. 2010 dated 08.10.2010. (vi) However in the meanwhile, on the receipt of a complaint on the 12.10.2010, the Manager (Vigilance) of the respondent No.1, sought some details and clarification from the petitioner in respect of a flat purchased by the latter in Gurgaon, Haryana. (vii) Thereafter, a note was put up for the consideration of the Managing Director of respondent No.1 on 22.10.2010 which reads as follows: CVO has now conveyed to ED/CS that since a reference has been made to CVC, vigilance clearance is withdrawn for all purpose. Hence resignation by Sh. Seth cannot be accepted. In view of the present status the office order dated 05.10.2010 conveying acceptance of resignation by the Competent Authority hence have to be withdrawn and fresh order issued on nonacceptance of his resignation. (viii) On 22.10.2010 itself, the said note was put up before the concerned authorities for action and the following office notings dated 22.10.2010 were written on the file: Since the revised vigilance clearance

which is under process, as advised by the CVO, the Officer may be conveyed that his resignation has been put up on hold till further orders. xxxxx xxxxx xxxxx It is clarified that the withdrawal of OO No. RR/17/2010 is only on a/c of withdrawal of Vig. Clearance till advice from CVC is received. Therefore, since the resignation has already been accepted after all other factors/clearances have been obtained, it can be withheld only for Vig. Clearance. (ix) On the same day after making due enquiry, since it was considered not feasible to receive vigilance clearance qua the petitioner before the effective date of acceptance of resignation, i.e., 25.10.2010, the Vigilance Cell of Respondent No.1 by virtue of a corrigendum dated 22.10.2010, withdrew its acceptance of the resignation accepted prospectively on the 05.10.2010. The said corrigendum dated 22.10.2010 is reproduced herein below:- Reg: Vigilance Clearance with respect to Sh. S.K Seth, ED/P& C The undersigned is hereby directed to communicate that the vigilance clearance for all purposes with regard of to acceptance of resignation of Sh. S.K Seth, ED(P&C) is hereby withdrawn till CVC 1st stage Advice is received. CVO desires that strict compliance should be adhered to before taking any further decision in the matter. (x) It is relevant to note here that the petitioner had handled a project in Mozambique for respondent No.1, which was in its conclusive steps, and it was felt that it was essential in order to maintain continuity, that the petitioner continued with the organization. (xi) It is also pertinent to note that the abovesaid corrigendum dated 22.10.2010 as also a copy of the advice tendered by the Central Vigilance Commission (CVC) was communicated to the petitioner. (xii) It is also not disputed that on 01.11.2010 the respondent No.1 had decided to initiate disciplinary action against the petitioner, in respect of alleged irregularities committed by him in projects at Tanzania and the same was conveyed to the petitioner by virtue of a letter dated 01.11.2010. (xiii) As a result thereof the respondent proceeded departmentally against the petitioner for imposition of major penalty.

3. In a nut shell, the case of the petitioner is that the respondent No.1 had accepted his resignation on 05.10.2010 though with effect from 25.10.2010 and hence, the respondent would be bound by the acceptance and could not withdraw it at a subsequent date. The learned counsel for the petitioner further contended that when the authorities concerned accepted the resignation of the petitioner, at

that very moment the relationship of employer and employee was severed and the action of the respondent No. 1 in issuing a corrigendum dated 22.10.2010 for withdrawing its acceptance would be no consequence and was wholly vitiated. The counsel submits that the petitioner was relieved from his duties by the respondent No. 1 w.e.f. 25.10.2010 and thereafter he demitted office.

4. The counsel for the petitioner further urges that once an acceptance has been given to the proposal of resignation, it cannot be taken back, and at best such an acceptance could only be postponed till the receipt of 1st stage advice from CVC. It is the case of the petitioner that the advice of the CVC was received on 02.11.2010 which provided requisite vigilance clearance to the petitioner and, therefore, the resignation would be effective from 25.10.2010 as mandated by the Officer Order dated 05.10.2010 issued by the respondent No1.

5. In order to make good his submissions the learned counsel for the petitioner has relied upon a decision of a Division Bench of the Bombay High Court in N. Dinakaran Shetty vs. Union of India & Ors. :

2005. 6) Bom. C.R.

470. The relevant portion of said decision is extracted below:21. The case of Raj Kumar vs. Union of India : A.I.R 196.S.C 180.would be inapplicable to the facts of the case because it was a case where the petitioner had withdrawn his offer of resignation before the communication of his order/letter of acceptance had reached him. In other words, it could be said that in that case the petitioner had withdrawn his offer of resignation before the same was accepted by his employer. The case of Balram Gupta vs. Union of India& Ors, :

1987. Supp) SCC 22.was again a case where retirement from Government service was to take effect at a subsequent date prospectively and the withdrawal was done long before that date and, therefore, it was held that the petitioner had no locus paenitentiae and could withdraw before the prospective date. We have already referred to the case of Shambu Murari Sinha vs. Project and Development India & Anr., :

2005. (5) SCC 621. where the option to withdraw was again exercised though after acceptance, but before it was made effective. As said before, in the case at hand, the petitioner's offer was accepted and it brought about a valid and binding contract between the petitioner and the Bank. It is only at the option of the Bank that the Bank chose to relieve him at a future date, but that in itself would not give a right to the petitioner to withdraw the offer after a concluded contract of termination of service came about between the petitioner and the Bank.

6. Per contra, the respondent No.1 has submitted that the order accepting the resignation tendered by the petitioner clearly stipulated that the resignation would take effect from a future date i.e., 25.10.2010 and therefore, the respondent no.1 was well within its rights to withdraw its acceptance before the said date of 25.10.2010. The learned counsel for the respondent No.1 has further urged that the petitioner was well aware about the fact that he had not been relieved from his duties by acceptance order dated 05.10.2010 and the plea taken by the petitioner that he had demitted office from 25.10.2010 was entirely wrong, in as much as, the petitioner himself attended office till 29.10.2010, and subsequently also sent his application for sick leave for the period 31.10.2010 to 06. 11.2010. It is further submitted on behalf of respondent No.1 that the petitioner had received the entire salary for the month of November, 2010 and the same has not been refunded by the petitioner to the concerned department. Therefore, had petitioner been relieved of his duties w.e.f. from 25.10.2010, where was the occasion for him to send a leave application to the respondents office for the first week of November, 2010 and enjoy the salary for that month. This conduct of petitioner clearly substantiates the point that the petitioner had acknowledged the fact that the respondent No.1 had withdrawn its acceptance to the petitioners proposal of voluntary resignation and thus, was not relieved of his duties.

7. The learned counsel for the petitioner has strenuously argued that the decision of the Tribunal cannot be faulted and it requires no interference from this Court. He further places reliance on the decision in Power Finance Corporation Ltd. vs. Pramod Kumar Bhatia :

1997. (4) SCC 280. which has also been relied upon by the Tribunal in the impugned order dated 06.09.2011. In Power Finance Corporation (supra) a workman applied for voluntary retirement pursuant to a scheme framed by the corporation to relieve surplus staff. The resignation tendered by the applicant therein was accepted by the Corporation on 20.12.1994. However, the same was subject to clearance of outstanding dues. The acceptance was to be given effect to from a subsequent date i.e., 31.12.1994. Subsequently, the Corporation withdrew the voluntary retirement scheme. The Supreme Court held that order dated 20.12.1994 was conditional in nature and unless the employee was relieved from duty on fulfilment of those conditions, order granting voluntary retirement does not become effective. The relevant portion reads as under: 6. Having regard to the respective contentions, the question that arises for consideration is: whether the respondent acquired a vested right after acceptance of the voluntary retirement by proceedings dated December 20, 1994? It is seen that the order is a conditional order in that until the dues are paid, the order does not become effective. The respondent himself admitted that the outstanding dues could be adjusted from the amount payable to him. Admittedly, no such adjustment has been made. He, therefore, rightly understood that unless he is relieved of the duties of the post, after the payment of the outstanding dues, the order accepting his voluntary retirement does not become effective.

7. 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. Since the order accepting the voluntary retirement was a conditional one, the conditions ought to have been complied with. Before the conditions could be complied with, the appellant withdrew the scheme. Consequently, the order accepting voluntary retirement did not become effective. Thereby no vested right has been created in favour of the respondent. The High Court, therefore, was not right in holding that the respondent has acquired a vested right and, therefore, the appellant has no right to withdraw the scheme subsequently. (underlining added) 8. The issue before us is no longer res integra. We say so on the basis of the following decisions: (i) In Balram Gupta vs. Union of India & Ors., :

1987. Supp) SCC 228. the factual situation was that the employee vide letter dated 24.12.1980 sought voluntary retirement on 31.03.1981. The employee mentioned in the said letter that notice period of three months be calculated from 01.01.1981. Subsequently, the department by an order dated 20.01.1981 allowed him to retire prospectively w.e.f. the afternoon of 31.03.1981. In the meantime, on 31.01.1981 the employee withdrew his application for voluntary retirement. However, the department relieved the employee of his duties by passing an order on 31.03.1981 stating that his withdrawal application has been duly considered and the same was not found unacceptable. The Apex Court relying upon the decision of Union of India vs. Gopal Chandra Misra : (1978) 3 SCR 1. held that:- 9. 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., 31st of March, 1981, upto 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. (Underlining added) (ii) In J.N Srivastava vs. Union of India : (1998) 9 SCC 559. the short question before the Supreme Court was whether the appellant therein was entitled to withdraw his voluntary retirement notice of three months which was submitted by him on 03.10.1989 and was to come into effect from 31.01.1990 before the expiry of the notice period. This proposal was accepted by the authorities on 01.11.1989. But thereafter before 31.01.1990 was reached, the appellant wrote a letter dated 11.12.1989 to withdraw his voluntary retirement proposal. The said request permitting him to withdraw the voluntary retirement proposal was not accepted by the respondents by communication dated 26.12.1989. The Honble Supreme Court held as under: 3.. It is now well settled that even if the voluntary retirement notice is moved by an employee and gets

accepted by the authority within the time fixed, before the date of retirement is reached, the employee has locus poenitentiae to withdraw the proposal for voluntary retirement. The said view has been taken by a Bench of this Court in the case of Balram Gupta v. Union of India (supra) 1987 (Supp) SCC 228.AIR 198.SC 2354.In view of the aforesaid decision of this Court it cannot be said that the appellant had no locus standi to withdraw his proposal for voluntary retirement before 31.01.1990. (iii) In Shambhu Murari Sinha vs. Project & Development India and Anr. : (2000) 5 SCC 621.an application for voluntary retirement of an employee dated 18.10.1995 was accepted by the employer by a letter dated 30.07.1997 with further intimation that release memo along with detailed particulars will follow. The employee was actually relieved on 26.09.1997. In the meanwhile, however, by a letter dated 07.08.1997, he withdrew the application dated 18.10.1995, by which he had sought voluntary retirement. The Supreme Court held that the effective date of voluntary retirement was 26.09.1997 and before that date it was permissible for the workman to withdraw his retirement. The appellant was, therefore, held entitled to remain in service. The relevant portion is extracted below:- From the facts stated above, it would be seen that though the option of voluntary retirement exercised by the appellant by his letter dated 18.10.1995 was accepted by the respondent-management by their letter dated 30.7.1997, the appellant was not relieved from service and he was allowed to continue in service till 26.9.1997, which, for all practical purposes, would be the "effective date" as it was on this date that he was relieved from service. In the meantime, as pointed out above, the appellant had already withdrawn the offer of voluntary retirement vide his letter dated 7.8.1997. The question which, therefore, arises in this appeal is whether it is open to a person having exercised option of voluntary retirement to withdraw the said offer after its acceptance but before it is made effective. The question is squarely answered by the three decisions, namely, Balram Gupta v. Union of India(supra) ; J.

N. Srivastava v. Union of India(supra) and Power Finance Corporation Ltd. v. Pramod Kumar Bhatia (supra), in which it was held that the resignation, in spite of its acceptance, can be withdrawn before the "effective date". That being so, the appeal is allowed. (iv) Thereafter, in Shambhu Murari Sinha vs. Project & Development India and Anr. (2002) 3 SCC 437.the Supreme Court while

considering its earlier decision in Shambhu Murari Sinha (supra) reiterated its stand arrived in that decision. It held as under:18. Coming to the case in hand the letter of acceptance was a conditional one inasmuch as though option of the appellant for the voluntary retirement under the scheme was accepted but it was stated that the 'release memo along with detailed particulars would follow'. Before the appellant was actually released from the service, he withdrew his option for voluntary retirement by sending two letters dated August 07, 1997 and September 24, 1997, but there was no response from the respondent. By office memorandum dated 25th September, 1997, the appellant was released from the service and that too from the next day. It is not disputed that the appellant was paid his salaries etc. till his date of actual release i.e. 26 September, 1997, and, therefore, the jural relationship of employee and employer between the appellant and the respondents did not come to an end on the date of acceptance of the voluntary retirement and said relationship continued till 26th of September, 1997. The appellant admittedly sent two letters withdrawing his voluntary retirement before his actual date of release from service. Therefore, in view of the settled position of the law and the terms of the letter of acceptance, the appellant had locus poenitentiae to withdraw his proposal for voluntary retirement before the relationship of employer and employee came to an end.

19. We, therefore, hold that the respondent could not have refused to accept the resignation of the appellant as it was sent before the jural relationship of employee and employer came to an end. Consequently, the impugned judgment is liable to be set aside, which we hereby do (Underlining added) (v) In Srikantha S.M vs. M/s Bharath Earth Movers Ltd. : (2005) 8 SCC 314. the appellant applied for voluntary resignation on 04.01.1993. The respondent while accepting the resignation on 04.01.1993 itself relieved the appellant with immediate effect. By a subsequent letter the respondent department informed the appellant that he would be relieved from a future date of 15.01.1993. In the meanwhile on 08.01.1993, the appellant withdrew his application for voluntary retirement. However, the respondent relived him from his duties on 15.01.1993 and as the appellant was not allowed to continue with his duties he approached the High Court and thereafter the Supreme Court. The Honble Supreme Court held as under:24. In Shambhu Murari Sinha vs. Project & Development India and Anr., (Shambhu Murari Sinha

1) : (2000) 5 SCC 621. an application for voluntary retirement of an employee dated October 18, 1995 was accepted by the employer vide letter dated July 30, 1997 with further intimation that "release memo along with detailed particulars will follow". The workman was actually relieved on September 26, 1997. In the meanwhile, however, by a letter, dated August 7, 1997, he withdrew the application dated October 18, 1995, by which he sought voluntary retirement. It was held that the effective date of voluntary retirement was September 26, 1997 and before that date it was permissible for the workman to withdraw his retirement. The appellant was, therefore, held entitled to remain in service.

25. In Shambhu Murari Sinha vs. Project & Development India Ltd. and Anr., (Shambhu Murari Sinha II), (2002) 3 SCC 43. the view taken in Shambhu Murari Sinha I was reiterated. It was held that when voluntary retirement was withdrawn by an employee, he continued to remain in service. The relationship of employer and employee did not come to an end and the employee had locus penitentiae to withdraw his proposal for voluntary retirement. He was, therefore, entitled to rejoin duty and the Corporation was bound to allow him to work.

26. On the basis of the above decisions, in our opinion, the learned counsel for the appellant is right in contending that though the respondent Company had accepted the resignation of the appellant on January 04, 1993 and was ordered to be relieved on that day, by a subsequent letter, he was granted casual leave from January 04, 1993 to January 13, 1993. Moreover, he was informed that he would be relieved after office hours on January 15, 1993. The *vinculum juris*, therefore, in our considered opinion, continued and the relationship of employer and employee did not come to an end on January 04, 1993. The relieving order and payment of salary also make it abundantly clear that he was continued in service of the Company upto January 15, 1993. (Underlining added) 9. In view of decisions of the Supreme Court discussed herein above, a clear picture emerges that an employee has a right to withdraw his application for voluntary retirement before the expiry of the notice period as stipulated in the acceptance order issued by the authorities before the employee is relieved from his duties. Therefore, a similar and reciprocal right enures to the employer to withdraw the acceptance issued before the period mentioned in the acceptance notice comes to an end or before

the employee is actually relieved from his duties. In the instant case, the acceptance order dated 05.10.2010 clearly postulated that the petitioner would be relieved from his duties with effect from 25.10.2010 and, therefore, withdrawal of acceptance by the respondent No.1 on 22.10.2010 was well within the time mentioned in the acceptance letter. The order granting acceptance to voluntary resignation application was conditional as it was subject to the petitioner getting necessary vigilance clearance and clearing other outstanding dues. It is not a case where the acceptance of voluntary resignation had been withdrawn by the respondent No.1 after the period mentioned in the acceptance order had expired. The petitioner had himself continued in duty and the same is evident from the fact that he tendered his leave application for the period after 25.10.2010. Where was the need for the petitioner to submit a leave application if he had been relieved from duties w.e.f. 25.10.2010. In fact the petitioner has even accepted the salary for the month of November which has yet not been refunded by him to respondent No.1. Had the petitioner demitted office from 25.10.2010, the salary for the month of November, 2010 would not have been utilised by him.

10. The last contention of the petitioner was that the acceptance was withdrawn only till such time as the vigilance clearance was received and that the same was received on 02.11.2010, therefore, the order of acceptance would be operative from 02.11.2010. This submission cannot be sustained as the respondent No. 1 had already communicated to the petitioner by a letter dated 01.11.2010 the decision of the Competent Authority to initiate disciplinary proceedings against him.

11. In view of discussion above, the present petition is without any force and the same is dismissed.

12. No costs. SIDDHARTH MRIDUL, J.

BADAR DURREZ AHMED, J.

DECEMBER 18 2012 dn

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