
HIGH COURT OF GUJARAT

MAHENDRA GAJANAN TRIVEDI

Versus

BANK OF INDIA AND OTHERS

Date of Decision: 21 March 2011

Citation: 2011 LawSuit(Guj) 1555

Hon'ble Judges: [J B Pardiwala](#)

Eq. Citations: 2011 4 SCT 591, 2011 LabIC 3044

Case Type: Special Civil Application

Case No: 665 of 2002

Subject: Constitution

Acts Referred:

[Constitution Of India Art 21](#), [Art 14](#)

Final Decision: Petition allowed

Advocates: [Nanavati Associates](#), [Nandish Chudgar](#), [Shalin N Mehta](#)

[Cases Referred in \(+\):](#) 11

J. B. Pardiwala, J.

[1] Petitioner, an employee of respondent-Bank has filed this petition praying for the following reliefs.

"36 (A) Your Lordships may be pleased to issue a writ of certiorari or any other appropriate writ, order or direction to quash and set aside the impugned communications dated 12.09.2001 issued by the Dy. General Manager (Personnel), Bank of India and the communication dated 29.08.2000 issued by the respondent No. 3 Chief Regional Manager rejecting the petitioner's application for withdrawal of notice of voluntary retirement;

(B) Your Lordships may be pleased to issue a writ of mandamus or any other appropriate writ, order or direction to direct the respondent Bank to accept the petitioner's application dated 10.08.2000 for withdrawal of notice of voluntary

retirement and to treat the petitioner as if he had not retired from the service of the respondent Bank and to further allow the petitioner to resume duties as continued in service from 09.09.2000 and to pay all arrears of salary and other consequential benefits from 09.09.2000 till the date of reinstatement;

(C) Your Lordships may be pleased to declare the action of the respondent Bank of rejecting the petitioner's application dated 10.08.2000 for withdrawal of notice of voluntary retirement and not allowing the petitioner to resume duties on and after 09.09.2000 as arbitrary, discriminatory and violative of Articles 14 and 21 of the Constitution of India;

(D) Pending the admission and final hearing of the present petition, Your Lordships may be pleased to stay the operation and implementation of the impugned communications dated 12.09.2001 and 29.08.2000 issued by the Dy. General Manager (Personnel) and the Chief Regional Manager respectively and to further allow the petitioner to resume duties forthwith on the post that the petitioner was holding before 09.09.2000;

(E) Passing any other appropriate order(s) as deemed fit in the interest of justice; and

(F) Your Lordships may be pleased to award costs quantified at Rs. 15,000/- to the petitioner."

[2] Facts relevant for the purpose of deciding the present petition can be summarized as under :-

2.1 Petitioner joined services of respondent-Bank as a Typist-cum- Clerk on 08.10.1966. The record reveals that while on duty, he met with a motor-cycle accident in the year 1983. In the said accident, he damaged his left leg knee joint very badly. It appears that said injury started taking heavy toll on his health, and ultimately, he decided to opt for voluntary retirement from the services of the Bank. On 11.06.2000, the petitioner addressed a letter to the General Manager, Head Office, Mumbai, Personnel Department in the form of a notice for voluntary retirement. The letter reads as under :-

"The General Manager,

Head Office, Mumbai.

Personnel Department.

Request for voluntary retirement from the services of the Bank due to my health

Date of Joining : 03.10.1966

Date of Promotion 01.12.1976

Grade JMG-I

Personnel No T-167

I am very happy to state that I have completed more than 33 years services in the Bank.

I am suffering from Osteoarthritis of left leg knee joint and getting severe pain while walking. This is the result of trauma incurred due to Bank's motor cycle accident I had while on Bank's duty at Sardhar in 1983. Since then it is progressive in nature and according to Orthopedic Surgeon's opinion has landed up into a Major Surgery-Total knee replacement which is very expensive treatment. I am also suffering from high BP.

In the circumstances, I hereby give notice for voluntary retirement from the services of the Bank and request you to accept the same and relieve me as per rule w.e.f. 01.09.2000."

2.2 After the notice of voluntary retirement, the petitioner get some hopes of recovery as he learnt that a Doctor, by name Dr. Vikram Shah, a consulting Orthopedic Surgeon, is an expert in the entire knee replacement. It appears after consulting the said Doctor and as he got some hopes of recovery, he changed his mind and decided to withdraw the notice of voluntary retirement. On 10.08.2000, he addressed a notice to the General Manager, Head Office, Mumbai, requesting to treat the notice of voluntary retirement as cancelled/withdrawn. The letter in the form of a notice dated 10.08.2000 reads as under :-

"I beg to state that I had given notice to the Bank vide my application dated 11.06.2000 for Voluntary Retirement from the services of Bank as I am suffering from osteoarthritis of left leg knee joint which was the result of trauma incurred due to Bank's motor cycle accident I had while on Bank's duty at Sardhar Branch in 1983.

I have been given hope for early and complete recovery by orthopedic Surgeon at Ahmedabad and therefore I have decided to withdraw my notice given to the Bank and to continue my services.

I therefore, vide this letter withdraw my request notice dated 11.06.2000 for my voluntary retirement from the Bank's services and request you to treat the said

notice as cancelled/withdrawn.

I regret for the inconvenience caused to you in the matter."

2.3 Record further reveals that the petitioner, thereafter on 17.08.2000, addressed a letter to the Chief Regional Manager, Surat Region, requesting sanction of medical expenses which he would incur for the surgery of total knee replacement estimated at the cost of about Rs. 1,32,000/-. The request was acceded, and vide letter dated 24.09.2000, the petitioner was informed by the Zonal Manager that the competent authority has sanctioned an interest free medical allowance of Rs. 1,32,000/- on certain terms and conditions. However, the problem cropped up when all of a sudden, bank informed the petitioner that it was difficult for the bank to accede his request for withdrawal of his notice of retirement. Vide letter dated 29.08.2000, bank informed the petitioner that the matter was referred to the Head Office and the Head Office has taken a decision declining to accede to the request of withdrawal of notice of voluntary retirement. The petitioner was informed that his notice for voluntary retirement w.e.f. 11.09.2000, which was accepted earlier, stands effective. On 09.09.2000, Bank informed the petitioner that apropos to the letter of the bank dated 29.08.2000 and the notice of the petitioner for voluntary retirement w.e.f. 11.09.2000, petitioner stood relieved w.e.f. 09.09.2000 (10.09.2000 being Sunday) from services of the bank. It appears that the petitioner kept on pursuing the matter with the authorities of the bank, and ultimately on 26.02.2001, addressed a letter informing the bank that he was waiting for the decision in the matter of his voluntary retirement. He also informed that the bank has ceased giving him salary from October 2000 and he was facing lot of financial constraints and mental stress. He also informed that he has not touched terminal dues credited in his S.B.Account and once again he forwarded the request to allow him to continue in services of the bank. It appears that the Bank stood by its decision and did not permit the petitioner to withdraw his notice of voluntary retirement. It is this decision of the Bank which is a subject matter of challenge in the present writ petition.

[3] I have heard learned counsel, Mr. Shalin Mehta for the petitioner and Mr. Nandish Chudgar for Nanavati Associates appearing fro the respondent-bank.

[4] Contentions on behalf of the petitioner are as under :-

4.1 It is submitted that the petitioner had tendered his notice of voluntary retirement on account of mental disturbances as his left knee joint was deteriorating badly. In the notice of voluntary retirement itself, it was made clear that the intended date of retirement would be 11.09.2000. He has stated in his

notice that he is suffering from osteoarthritis of left leg knee joint and getting severe pain while walking. It is submitted that before the notice was accepted by the respondent-bank, the petitioner, for valid reason, sought permission to withdraw notice of voluntary retirement. In the notice of withdrawal of voluntary retirement, the petitioner has made it very clear that he has been given hopes by a well-known doctor for early and complete recovery by a surgery of knee replacement. It is submitted that the petitioner had made out good grounds for being granted such permission and when the petitioner has sought withdrawal of his notice without wasting any time and well before the date of his retirement, respondent-bank should have permitted the petitioner to withdraw his request for voluntary retirement.

4.2 It is also submitted that the bank is absolutely silent so far as the reason for not permitting the petitioner to withdraw his notice for voluntary retirement is concerned. He submits that the affidavit-in-reply is also eloquently silent on this issue. It is submitted that to refuse the request of the petitioner, respondent had to have strong reasons and valid grounds. It is submitted that though it was the discretion of the authorities whether to accept such request or not, such discretion cannot be exercised arbitrarily and as has been held by the Supreme Court in catena of decision, the germane question was whether there were any grounds to decline the request of the petitioner to withdraw the notice of voluntary retirement.

4.3 Learned counsel for the petitioner has relied on the following case law to fortify his contentions. (1) [Balram Gupta v. Union of India and anr](#), 1987 AIR(SC) 2354 (2) [Food Corporation of India & Ors. v. Ramesh Kumar](#), 2007 AIR(SC) 2864 (3) [Shambhu Murari Sinha v. Project and Development India Ltd. and anr.](#), 2002 AIR(SC) 1341 (4) [Shambhu Murari Sinha v. Project & Development India Ltd. and anr.](#), 2000 AIR(SC) 2473 (5) [J.N.Shrivastava v. Union of India and anr.](#), 1999 AIR(SC) 1571

[5] Per contra, learned advocate, Mr. Nandish Chudgar, appearing for the respondent-bank, submits that the bank was well within its rights to refuse permission to withdraw the notice of voluntary retirement. He submits that there is no absolute right available to the petitioner to withdraw the notice of voluntary retirement once the same was accepted by the competent authority. He submits that once such notice was accepted by the authorities, it was only with the specific approval that such a notice could have been withdrawn, and in fact, the regulation i.e. Bank of India (Officers') Service Regulation, 1979, Regulation 19 makes it clear that the petitioner was precluded from withdrawing his notice of voluntary retirement without the prior approval of the authorities. He further submits that the authorities have applied their minds to all

aspects and come to a just conclusion and the exercise of the discretionary power, therefore should not be interfered by this Court.

[6] Having heard the learned counsels for the respective parties and having regard to the rival contentions raised by both the sides, I am of the view that the issue in question is no longer res integra which is covered by catena of decisions of the Supreme Court as well as of this High Court. It would be appropriate to quote the regulation which is applicable in the present case. Regulation 19 of Bank of India (Officers') Service Regulations, 1979, reads as under :-

"Rule regarding voluntary retirement for officer employees

An officer employee may be permitted by the Competent Authority to voluntarily retire from bank's service any time after the completion of 55 years of age or 30 years of total service as an officer employee or otherwise, whichever is earlier, after giving the Bank 3 months' notice in writing, unless the requirement is wholly or partly waived.

An officer employee may be allowed to withdraw a notice of voluntary retirement subsequently, only with the approval of the Competent Authority provided the request for such withdrawal is made before the expiry of the notice. An officer employee retiring voluntarily shall be entitled to all benefits under the normal retirement, as per the Service Regulations."

Plain reading of this regulation would suggest that competent authority may permit an employee of the bank to voluntarily retire any time after the completion of 55 years of age or 30 years of total service as an Officer employee or otherwise, after giving the bank 3 months' notice in writing, unless the requirement is wholly or partly waived. In the present case, it is not in dispute that the petitioner had put in 33 years of service at the time when he sent the notice for voluntary retirement. Regulation also specifies that, if the officer wants to withdraw the notice of voluntary retirement, it would be permissible only with the approval of the competent authority.

[7] I am of the view that the stand which has been taken by the respondent-bank is not tenable in law. Petitioner had a right to withdraw his notice of voluntary retirement before the actual effective date comes into force. Petitioner had assigned good reasons for withdrawing his notice of voluntary retirement but what is lacking in the present case is good reasons at the end of the bank in refusing to permit the petitioner to withdraw the notice of voluntary retirement. Though discretion is their with the bank not to allow the employee to withdraw his notice of voluntary retirement after having been accepted but the discretion has to be exercised judiciously. Bank could not

withhold approval to the withdrawal of notice of voluntary retirement without any rhyme or reason. This issue stands squarely covered by Supreme Court decision in the matter of [Balram Gupta v. Union of India and anr.](#), 1987 AIR(SC) 2354. In this case, Supreme Court was considering the same issue on general principles. However, Supreme Court was considering Rule 48-A of the Central Civil Services (Pension) Rules, 1972 which is almost para materia with Regulation 19, which is applicable in the present case. In this case, Supreme Court took the view that there cannot be unilateral termination of the services before the expiry of the notice period and Supreme Court said that the employee would be at liberty and entitled independently without sub-rule (4) of Rule 48-A of the Pension Rules, applicable in that case as a Government servant to withdraw his notice of voluntary retirement which stands at par with letter of resignation.

[8] Following [Balram Gupta v. Union of India and anr.](#), 1987 AIR(SC) 2354, Supreme Court in case of [J.N.Shrivastava v. Union of India and anr.](#), 1998 9 SCC 559 considered the principle of locus poenitentiae. In para 3 of the judgement Supreme Court has held as under :-

"3. The short question is whether the appellant was entitled to withdraw his voluntary retirement notice of three months submitted by him on 03.10.1989 which was to come into effect from 31.01.1990. It is true that this proposal was accepted by the authorities on 02.11.1989. But thereafter before 31.01.1990 was reached, the appellant wrote a letter to withdraw his voluntary retirement proposal. This letter is dated 11.12.1989. The said request permitting him to withdraw the voluntary retirement proposal was not accepted by the respondents by communication dated 26.12.1989. The appellant, therefore, went to the Tribunal but the Tribunal gave him no relief and took the view that the voluntary retirement had come into force on 31.01.1990 and the appellant had given up the charge of the post as per his memo relinquishing the charge and consequently, he was estopped from withdrawing his voluntary retirement notice. In our view the said reasoning of the Tribunal cannot be sustained on the facts of the case. 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. In view of the aforesaid decision of this Court it cannot be said that the appellant had not locus standi to withdraw his proposal for voluntary retirement before 31.01.1990. It is to be noted that once the request for cancellation of voluntary retirement was rejected by the authority concerned on 26.12.1989 and when the retirement came into effect on

31.01.1990 the appellant had no choice but to give up the charge of the post to avoid unnecessary complications. He, however, approached the Tribunal with the main grievance centering round the rejection of his request for withdrawal of the voluntary retirement proposal. The Tribunal, therefore, following the decision of this Court ought to have granted him the relief. We accordingly, allow these appeals and set aside the orders of the Tribunal as well as the order of the authorities dated 26.12.1989 and directed the respondents to treat the appellant to have validly withdrawn his proposal for voluntary retirement with effect from 31.01.1990. The net result of this order is that the appellant will have to be treated to be in service till the date of his superannuation which is said to be somewhere in 1994 when he completed 58 years of age. The respondent-authorities will have to make good to the appellant all monetary benefits by treating him to have continuously worked till the date of his actual superannuation in 1994. This entitles his to get all arrears of salary and other emoluments including increments and to get his pensionary benefits refixed accordingly. However, this will have to be subject to adjustment of any pension amount and other retirement benefits already paid to the appellant in the meantime up to the date of his actual superannuation. It was submitted by learned Senior Counsel for the respondent-authorities that no back salary should be allowed to the appellant as the appellant did not work and therefore, on the principle of "no work, no pay", this amount should not be given to the appellant. This submission of learned Senior Counsel does not bear scrutiny as the appellant was always ready and willing to work but the respondents did not allow him to work after 31.01.1990. The respondents are directed to make available all the requisite monetary benefits to the appellant as per the present order within a period of 8 weeks on the receipt of copy of this order at their end. Office shall send the same to the respondents at the earliest."

It is important to note that in the said judgement of J.N.Shrivastav (supra.), Supreme Court also considered the contention of the counsel for the respondent authorities that no back salary should be allowed to the appellant as the appellant did not work, and therefore, on the principle of "no work no pay", the amount should not be given to the appellant. Negating the contention, Supreme Court proceeded to hold that the submission of the counsel does not bear scrutiny as the appellant was always ready and willing to work but the respondent did not allow him to work after the notice of voluntary retirement. Supreme Court directed the respondents to make available all the requisite monetary benefits to the appellant.

[9] In almost identical fact situation, Supreme Court, in the case of [Shambhu Murari Sinha v. Project and Development India Ltd. and anr.](#), 2002 AIR(SC) 1341, after

considering various judgements including the well-known judgement of Balram (Supra.) in paras 9 to 18 has held as under :-

"9. A Constitution Bench of this Court in [Union of India & Others v. Gopal Chandra Misra & Others](#), 1978 2 SCC 301 in paragraph 50 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.' As stated above in the present case in the VRS, there was no indication regarding effective date of voluntary resignation and there is also no condition that once it was accepted it could not be withdrawn.

10. In [Balram Gupta v. Union of India & Anr.](#), 1987 Supp1 SCC 228 the principle laid down in Gopal Chandra Misra was summarised as follows :-

"A complete and effective act of resigning office is one which severs the link of the resignor with his office and terminates his tenure."

11. In Balram Gupta's case, the appellant-employee offered to voluntary retire from service w.e.f.31st March, 1981 and accordingly sent a letter within the notice period. However, he changed his mind and sent a letter on 31.01.1981 seeking to withdraw his notice of voluntary retirement but the request was disallowed by the concerned authority on the ground that the withdrawal of notice could only be with the specific approval of the authority. This Court held that the dissolution of the contract of employment would be brought about only on the date indicated i.e.31.03.1981 and upto that date the appellant continued as Government employee. He is at liberty to withdraw his notice of voluntary retirement and for this purpose, prior approval is not required.

12. The decision in [J.N. Srivastava v. Union of India](#), 1998 9 SCC 559 is also to the same effect. This Court held as follows :-

"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."

13. In [Nand Keshwar Prasad v. Indian Farmers Fertilizers Cooperative Ltd. & Ors.](#), 1998 5 SCC 461, in paragraph 11, this Court reiterated that it is open to the employee concerned to withdraw letter of resignation before the date indicated in the notice of voluntary retirement. It was also observed therein :-

"it appears to us that the law is well settled by this Court in a number of decisions that unless controlled by condition of service or the statutory provisions, the retirement mentioned in the letter of resignation must take effect from the date mentioned therein and such date cannot be advanced by accepting the resignation from an earlier date when the employee concerned did not intend to retire from such earlier date."

14. In [Raj Kumar v. Union of India](#), 1968 3 SCR 857 the normal rule has been stated as follows:-

"When a public servant invited by a letter of his resignation determination of his employment, his service normally stands terminated from the date on which the letter of resignation is accepted by the appropriate authority and in the absence of any law or rule governing the conditions of his service to the contrary it will not be open to the public servant to withdraw his resignation after it is accepted by the appropriate authority in consonance with the rules governing the acceptance, the public servant concerned has locus poenitentiae but not thereafter."

15. The above cases may not have direct application to the facts of the present case, however, the principles laid down therein deserve notice.

16. In [Power Finance Corporation Ltd. v. Pramod Kumar Bhatia](#), 1997 4 SCC 280 this Court went a step further and observed thus :-

"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."

17. It was pointed out in that case that the acceptance of voluntary retirement was not unconditional and before the conditions could be complied with, the employee could withdraw from the scheme. On those facts, the above observations were made. It is not necessary to consider whether in all cases, actual relief becomes the crucial date. However, the ratio of decision in Balram Gupta's case coupled with the observations of the Constitution Bench in Gopal Chandra Misra's case (underlined above) could usefully applied to the present case.

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."

[10] Considering the well settled position of law, I am of the view that though there is discretion with the bank not to permit the employee to withdraw his notice of voluntary retirement as provided under Regulation 19 but that discretion needs to be exercised only if there are cogent and valid grounds available with the bank. In absence of any valid and cogent grounds available and without assigning any reasons worth the name, the bank, in the present case, could not have refused permission to the petitioner to withdraw his notice of voluntary retirement. It can be seen that it is the consistent view of the Supreme Court that even after giving a notice of voluntary retirement and even after the same is accepted by the employer, it is open for the employee to seek withdrawal of such a notice before the actual date of his retirement. Such a request would have to be governed by the service regulation in this regard and notice for voluntary retirement can be withdrawn with the approval of the employer as provided under the rules. Even if the discretion is vested with the employer it cannot be exercised arbitrarily and the same has to be exercised reasonably.

[11] In this view of the matter, I am left with no other option but to accept the say of the petitioner. Petition deserves to be allowed and the same is hereby allowed. Relying on the decision of the Supreme Court in the matter of J.N.Shrivastava (supra.), respondent-bank is hereby directed to make available all the requisite monetary benefits to the petitioner as for the present order as if the petitioner would have continued in service till the date of his attaining superannuation within a period of three months on the receipt of copy of this order at their end. Rule is made absolute with no order as to costs.