

CASE NO.:
Appeal (civil) 1611 of 2006

PETITIONER:
Food Corporation of India & Ors

RESPONDENT:
Ramesh Kumar

DATE OF JUDGMENT: 08/08/2007

BENCH:
A.K. MATHUR & MARKANDEY KATJU

JUDGMENT:
JUDGMENT

ORDER

CIVIL APPEAL NO.1611/2006
WITH C.A.Nos.1612/2006 & CA.No.3458/2006

Heard learned counsel for the parties in all these appeals. All the three cases involve similar question of law therefore, we dispose them of by the common order. The facts given in the case of C.A.No.1611/2006 are taken into consideration.

The respondent an employee of the Food Corporation of India applied on 13.9.2006 for voluntary retirement in pursuance of the scheme of Voluntary Retirement floated by them on 29.6.2002. He revoked his offer and has withdrawn the same on 27.9.2004 but despite withdrawal, his offer for voluntary retirement was accepted on 9.11.2004. This order of retirement dated 9.11.2004 was challenged by the respondent by filing a writ petition before the Division Bench of the Punjab and Haryana High Court. The Division Bench relying upon the earlier judgment given under Gurcharan Singh vs. FCI allowed the respondent's request and quashed the order dated 9.11.2004.

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Hence the present appeal by the Food Corporation of India.

We have heard learned counsel for the parties and perused the record. The short question before us is when the applicant has made the application for withdrawal before it could be accepted, can the Food Corporation of India still enforce the offer of voluntary retirement upon the incumbent. The learned counsel for the appellant has submitted that as per Clause VIII(d) of the terms of the scheme which clearly stipulates that the incumbent once makes a request for voluntary retirement, he will be prevented from withdrawing the same that means that once he has given offer for voluntary retirement and when the withdrawal is totally prevented he has no right to withdraw his offer. For better appreciation of the Clause VIII (d), it reads as under:

"Once an employee submits his application for voluntary retirement under this scheme to the competent authority, it shall be treated as final and it is not open to the employee to withdraw the same. The competent authority within notice period (3 months) shall take a decision to accept or reject the request and shall communicate the same to the official concerned."

Learned counsel submitted that in view of this once the respondent has given an offer for voluntary retirement on

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13.9.2004, he cannot revoke the same on 27.9.2004 and in that support learned counsel invited our attention to the decision of this Court in 2003(2) SCC 721 Bank of India & Ors. vs. O.P. Swarnakar & Anr. As against this learned counsel for respondent invited our attention to the decision in State Bank of Patiala vs. Romesh Chandra Kanoji & Ors.

reported in 2004 (2) SCC 651. Both these decisions are of three Judges Bench and in the earlier decision given in the case of O.P. Swarnakar (supra) Hon'ble Justice Sinha was a party and he was also a party in the subsequent decision in the case of State Bank of Patiala vs. Romesh Chandra Kanoji (Supra). We have gone through both the decisions cited by the learned counsel for the parties. In the case of O.P. Swarnakar (supra), two schemes were taken into consideration; namely, one of the State Bank of India Scheme (for short SBIVRS) and the other of Nationalised Banks. There was a stipulation in SBIVRS that the person who offers for voluntary retirement can only revoke the same within 15 days, whereas in other Banking Scheme the provision was different, and is identical to the one in the case before us. In O.P. Swarnakar (supra) a distinction was made between the two schemes. So far as the scheme of State Bank of India i.e SBIVRS is concerned there the condition of 15 days was mentioned i.e. that incumbent can revoke the offer within 15 days. If the person fails to do so the offer is

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complete. But so far as other cases of other banks it is stipulated only that once the incumbent gives an offer of voluntary retirement he will not be permitted to revoke it. Therefore, there was a distinction between the Schemes which has been properly explained by the subsequent decision in para 6 in State Bank of Patiala vs. Romesh Chander Kanoji (Supra) as follows:-

"It is evident from above that in the case of SBIVRS, where there is a specific provision for withdrawal, the employee must exercise his option within the time specified; and in case of Nationalised Banks where there was no provision to withdraw (and in fact the scheme forbade withdrawal), the withdrawal must be effected prior to acceptance by the Bank. Therefore, in terms of the ratio laid down by this Court, the employee is ensured under SBIVRS the right of withdrawal within the specified period."

Therefore, now the position stands settled that in case of a V.R.S. Scheme of State Bank of India where 15 days' time limit for revocation has been laid down in case the incumbent withdraws his offer within 15 days then the offer given by the incumbent cannot be treated against him and it will be deemed that he has revoked his offer. In case of other banks there is a condition that once the offer has been given it shall not be permitted to be revoked but in view of the above decision the incumbent can still withdraw the offer if it has not been accepted by the Management. Now advertng to the

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present scheme of the Food Corporation, para 8 clearly stipulates that the incumbent has no right to revoke the same and the Management will decide the same within three months. That means the Management still has three months' time to consider and decide whether to act upon the offer given by the incumbent or not. But if the incumbent revokes his offer before the Corporation accepts it then in that case, the revocation of the offer is complete and the Corporation cannot act upon that offer. In the present Clause there is one more additional factor which is that the Management has to take a decision within three months. Therefore, once the revocation is made by the incumbent before three months then in that case the Corporation cannot act upon the offer of voluntary retirement unless it is accepted prior to its withdrawal. In the present case, it is clear that the incumbent had given an offer for voluntary retirement on the 13.9.2004 and he revoked his offer on 27.9.2007 but the same was accepted on 9.11.2004 i.e. after the revocation of his offer. In view of the law laid down by this Court in the case of State Bank of Patiala (Supra) the incumbent has already revoked his offer before it could be accepted. Therefore, in this view of

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the matter, the approach of the High Court appears to be correct and does not require any interference. The revocation made by the incumbent on 27.9.2004 of his offer of retirement cannot be acted upon as he has revoked it before the Corporation could act upon it. Hence, we are of the opinion, that the view taken by the High Court is correct. Consequently, all the three appeals are dismissed but without any order as to costs.

JUDIS