

PETITIONER:
MANJUSHREE PATHAK

Vs.

RESPONDENT:
THE ASSAM INDUSTRIAL DEVELOPMENT CORPORATION LTD. & ORS.

DATE OF JUDGMENT: 31/08/2000

BENCH:
S. Rajendra Babu J. & Shivaraj V. Patil J.

JUDGMENT:

Shivaraj V. Patil J.

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Leave granted.

In this appeal, the appellant has assailed the judgment and order dated 5.12.1997 passed by the Division Bench of the High Court of Assam, Nagaland, Meghalaya, Manipur, Mizoram, Tripura and Arunachal Pradesh at Gauhati made in Writ Appeal No. 124/96. In brief, the facts leading to the filing of this appeal are the following.

The appellant joined the services of the respondent-Corporation in 1973 as Receptionist-cum-Telephone Operator. After passing LL.B degree examination, she was promoted to the post of legal Assistant in 1981. Subsequently she was promoted as Assistant Law Officer, Law Officer and finally as Senior Law Officer in 1995 [re-designated as Deputy Manager (Law)].

In 1992 the respondent-Corporation issued a special scheme "AIDC Voluntary Retirement Scheme, 1992" (for short the 'Scheme') as a special measure in the form of a golden handshake providing an option to its employees for voluntary retirement who had completed 10 years of service in the Corporation or 40 years of age.

The appellant having served the respondent-Corporation for nearly 23 years and attaining the age of 42 years with a view to avail the benefit of the Scheme, made an application on 7.12.1995 seeking voluntary retirement in the form prescribed, requesting to accept her option for voluntary retirement with immediate effect. The recommending authority on the same day recommended for accepting her voluntary retirement. Voluntary retirement ought to have come into effect with immediate effect. Since the appellant was not allowed to hand over the charge and there was none to take over charge from her and certain other official formalities were also left to be carried out, she was compelled to continue to attend to her duties. When there was no response from the respondent-Corporation till third week of January, 1996, she wrote a letter dated 23.1.1996 to the Managing Director of the respondent-Corporation stating that she had come to know that her application for voluntary retirement would be placed before the Board of Directors and

that there was no need for the same as under the Scheme Managing Director himself was the competent authority to accept application of her voluntary retirement. No reply was given to the said letter. The appellant addressed a letter dated 14.2.1996 to the Chairman of the respondent-Corporation stating that the failure of the respondent-Corporation to accept her voluntary retirement has caused great inconvenience and that she was entitled to get her voluntary retirement accepted forthwith. In the said letter also she made it clear that in the absence of any specific order she would consider herself to be free person without any obligations to the respondent-Corporation and her contract of service would stand determined with effect from the date of submission of her application for voluntary retirement. Further in the said letter she stated that in case there was any delay, she would presume that her voluntary retirement was deemed to have been accepted with effect from 15.2.1996 and that she would not attend her duties any more. The appellant wrote a third letter to the Managing Director of the respondent-Corporation on 15.2.1996 requesting for payment of retirement benefits under the Scheme. Strangely the Managing Director of the respondent-Corporation issued a show cause notice dated 15/16.2.1996, which was received by the appellant on 17.2.1996. In the said show cause notice it was stated that the appellant had been participating in the political activities of the BJP and that she intended to contest the election on a BJP ticket which amounted to misconduct and as such a reply was sought for the same. Under the circumstances, the appellant approached the High Court by filing Writ Petition Civil Rule No. 816/96 seeking reliefs that the appellant was no longer employee of the respondent-Corporation having gone on voluntary retirement with effect from 7.12.1995 and to direct the respondent-Corporation to give all retirement benefits by setting aside the show cause notice dated 15/16.2.1996. The learned Single Judge accepted the case of the appellant and granted relief. The respondent-Corporation aggrieved by the order of the learned Single Judge took up the matter in appeal and the Division Bench of the High Court allowed the appeal and set aside the order of the learned Single Judge.

The learned counsel for the appellant urged that there was no requirement of three months' prior notice in the Scheme; the option of voluntary retirement ought to have been accepted with immediate effect; the respondent-Corporation, having offered that the Scheme was a golden and unique opportunity to eligible employees, was bound to accept the application of the appellant seeking voluntary retirement when all the conditions of the Scheme were satisfied. It was further contended that Dinesh Chander Sangma's case referred to in the judgment under appeal fully supports the case of the appellant.

The learned counsel for the respondent-Corporation while supporting the judgment and order impugned in this appeal submitted that the filing of the writ petition was pre-mature as three months' period from the date of the application seeking voluntary retirement was not yet over. Under Clause 8.1 of the Scheme, the respondent-Corporation had discretion either to accept or to reject the request of any employee for voluntary retirement viewing the organizational requirement and any other relevant factors in this regard and that the appellant had no vested right to claim for acceptance of the voluntary retirement.

We have carefully considered the submissions made on behalf of the parties in the light of the material placed on record. As per Clause 3 of the Scheme, an employee who completed 10 years of service in the respondent-Corporation or completed 40 years of age could seek voluntary retirement by making an application in the prescribed form. The General Managers/Heads of the Departments are the recommending authorities in respect of the employees working under their control and the Managing Director is the accepting authority of voluntary retirement applications as per Clause 4. Clause 5 speaks of the conditions which apply to those requesting for voluntary retirement - (1) once an employee has applied for voluntary retirement under the Scheme, the option cannot be withdrawn; (2) There should not be any vigilance case pending/contemplated against the concerned employee or/and his/her evidence in some important case would be of material value to the respondent-Corporation; (3) (a) Employees under suspension or against whom disciplinary proceedings are pending or/and contemplated will not be eligible for voluntary retirement; (b) The Scheme will not apply to those employees who have already submitted their resignation as on date; (c) Employees who are under bond/agreement will also not be eligible for voluntary retirement unless they fulfill the bond/agreement obligations.

As per Clause 7, the eligible employee may submit application in the prescribed form for voluntary retirement under the Scheme to the Managing Director through proper channel.

Clause 8.1 reads thus:

"Notwithstanding any of the aforesaid provisions, the Scheme does not confer any right on an employee to have the request for voluntary retirement accepted by the management. The management shall have full discretion to accept or reject the request from any employee for voluntary retirement viewing the organizational requirement and any other relevant factors in this regard."

Para 2 of the prescribed application form is to the following effect:

"I, of my own accord and without any external pressure and coercion, am opting to voluntary retirement under the said Scheme. I shall be obliged if you kindly accept my option for voluntary retirement with immediate effect."

(Emphasis supplied)

There is no dispute that the appellant was eligible to apply for voluntary retirement having completed nearly 23 years' service and 42 years of age; there was no impediment coming in the way of the appellant for seeking voluntary retirement as per clause 5 of the Scheme. The application made in the prescribed form as per the Scheme contemplates acceptance of option for voluntary retirement with immediate effect.

The appellant made the application in the prescribed form on 7.12.1995 requesting for its acceptance with immediate effect. The respondent-Corporation did not respond or react to the said application till 17.2.1996, on

which date the appellant received notice asking her to show cause why action should not be taken for alleged misconduct of indulging in political activities. In spite of reminders and letters by the appellant as stated above while narrating the facts, it is only after the appellant handed over charge on 15.2.1996 and requested for release of retirement benefits on 15.2.1996, the show cause notice aforementioned was issued to the appellant. In our view, the said show cause notice was of no consequence. It appears to us that it was issued only to defeat the claim of the appellant. On the date when the appellant submitted her application for voluntary retirement, neither vigilance enquiry nor any disciplinary proceedings were pending or contemplated. In other words, as per Clause 5 she was not prevented from making an application to opt for voluntary retirement. The recommending authority as per Clause 4 of the Scheme recommended for acceptance of the application on 7.12.1995 itself. We are unable to understand why the Managing Director of the respondent-Corporation did not accept the same although it was required to be accepted with immediate effect as per para 2 of the prescribed application form. No doubt, as per Clause 8.1 of the Scheme extracted above, the Management had discretion to accept or reject the request from any employee for voluntary retirement viewing the organizational requirement and any other relevant facts but that does not mean that the respondent-Corporation being an authority coming within the purview of Article 12 of the Constitution can abdicate its duty to act reasonably and fairly in exercise of discretion. It is strange as to why the Managing Director of the respondent-Corporation, the competent authority to accept the application made for the voluntary retirement, did not act on it at all till 17.2.1996. He ought to have exercised his discretion as per Clause 8.1 if not immediately at least within a reasonable time. The last paragraph of the Memorandum No. AIDC/Estt/1485/93/746-51 dated 20/21.5.1993 issued by the respondent-Corporation reads thus:

"The Corporation has thus offered a unique opportunity. It is now for all eligible and interested employees of the Corporation to avail of this golden opportunity in a big way."

As per sub-clause (i) of Clause 5 of the Scheme, once an employee applied for voluntarily retirement it could not be withdrawn. The appellant wanted to avail this golden opportunity. With this background it is not known as to why her application was not accepted. From the letter of the appellant dated 23.1.1996, it is clear that she informed the Managing Director of the respondent-Corporation that there was no need to place her application before the Board and he himself was competent to accept it. The non-response of the respondent-Corporation to the letters of the appellant dated 23.1.1996, 14.2.96 and 15.2.1996 and issuing of show-cause notice by the respondent-Corporation subsequently, clearly indicate that all was not well with the respondent-Corporation in dealing with her application seeking voluntary retirement. A subsequent complaint alleging indulgence of the appellant in political activities was not germane to consideration of the application of the appellant having regard to the relevant factors mentioned in Clause 8.1 of the Scheme particularly when there was no infirmity or impediment in terms of the Scheme in considering and accepting the application of the appellant for voluntary retirement having regard to the fact that the

appellant on her part did what all was required to be done.

Clause 6 of the Scheme deals with the benefits available under the Scheme. Sub-clause (v) of the said Clause contemplates one month's/three months' notice pay (as per conditions of service applicable to him/her). Rule 18 of AIDC Limited (Employees) Service Rules, 1992 and AIDC Limited Recruitment and Promotion Rules, 1992 to the extent it is relevant reads: -

"18. An employee shall not leave or discontinue his service in the Corporation without first giving notice to the Managing Director in writing of his intention to leave or discontinue the service. The period of notice required shall be -

- a)
- b) after completion of probationary period -
 - (i) Three months in case of Class I and Class II officers.
 - (ii) One month in case of employees in Class III & IV service.

In lieu of notice, an employee shall be liable to pay to the Corporation a sum equal to his substantive pay for the period of notice required of him.

Provided that any shortfall of the notice period may be adjusted towards the earned leave due to the employee concerned."

There is some controversy as to applicability of this Rule in respect of employees offering for voluntary retirement under the Scheme.

Assuming that three months' prior notice was required to be given by the appellant in the case on hand in terms of Rule 18 itself any shortfall in the notice period could be adjusted towards the earned leave due to the appellant. It is on record that the appellant in her letter dated 14.2.1996 (Annexure-2) has clearly requested to allow her to go on voluntary retirement latest by 5.2.1996 and that the Managing Director to adjust balance notice period by deducting earned leave calculated up to 5.2.1996. In spite of the same the Managing Director of the Corporation kept mum.

The Division Bench of the High Court has failed to see that the Scheme conferred discretion on the Corporation under Clause 8.1 coupled with the duty to act judiciously when application for voluntary retirement was made by an employee. The said clause did not confer any unfettered discretion upon the Corporation to refuse the benefit of the Scheme to any employee being an authority coming within the meaning of Article 12 of the Constitution. It was not open to the Managing Director of the respondent-Corporation to act on extraneous consideration by issuing a show-cause notice dated 15/16.2.1996 so as to deprive the appellant of the benefit flowing from acceptance of her voluntary retirement. It is true that under Clause 8.1 of the Scheme discretion was available to the respondent-Corporation but that discretion was not absolute. It was circumscribed by

the terms mentioned in the said Clause and it was to be exercised judiciously. In the case on hand the Managing Director of the Corporation has failed to act reasonably and fairly. He abdicated his duty by not exercising discretion at all in the light of facts and circumstances of the case stated above in sufficient details.

We are of the view that the Division Bench of the High Court was also not right in saying that the appellant filed the writ petition even before any action was taken by the Managing Director of the respondent-Corporation either to accept or reject the application. It is clear from the undisputed facts that the appellant submitted the application in the prescribed form to accept her voluntary retirement from service with immediate effect; waited for sufficiently long time and wrote letters in January and February, 1996 pursuing the authority to accept the application seeking voluntary retirement. Further after receiving show-cause notice on 17.2.1996 from the respondent-Corporation, the appellant had no good reason to wait any longer. In this view it could not be said that the writ petition filed was pre-mature.

In the result, for the reasons stated above, this appeal is entitled to succeed. Hence the judgment and order of the Division Bench of the High Court are set aside and the order passed by the learned Single Judge of the High Court is restored. The appeal is allowed accordingly. Parties to bear their own costs.