H.P.M.C.

v.

SHRI SUMAN BEHARI SHARMA

APRIL 2, 1996

[S.C. AGRAWAL AND G.T. NANAVATI, JJ.]

Service Law—Employee seeking voluntary retirement requesting waiver of mandatory notice period—Unauthorised absence thereafter—Held, right conferred on the employee is not the right to retire but a right to ask for retirement—Request by the employee and corresponding acceptance by the employer is necessary—There can not be automatic retirement on expiry of period of notice time—Charge-sheeted for misconduct and unauthorised absence—Open to the employer to proceed with the proposed enquiry—Himachal Pradesh Horticultural Produce Marketing and Processing Corporation Ltd. Employees Service Bye-Laws—Clause 3.8.

The respondent, an employee of the appellant Corporation applied for a long leave on 1.5.1990, and the same was granted till 30.11.1990. On 26.11.1990 he applied for voluntary retirement from 30.11.1990 waiving three months notice period. And he remained absent thereafter.

Against his unauthorised absence from 1.12.1990 a chargesheet was issued to him on 27.8.1992 and on 18.9.1992 another chargesheet for his acts of misconduct was issued.

Aggrieved by the memos, the respondent approached the Himachal Pradesh Administrative Tribunal. He also challenged the order dated 28.6.1991 whereby an amount of Rs. 28,214 was sought to be recovered from him.

The Tribunal quashed the memos and also the recovery order holding that the appellant Corporation had failed to exercise its option of accepting or rejecting the request of the employee within three months from the date of the notice for premature retirement as provided under clause 3.8 of Himachal Pradesh Horticulture Produce Marketing and Processing Corporation Ltd. Employees Service Bye-Laws.

In this appeal, the appellant corporation contended that the appel-

lant has to exercise its option of accepting or rejecting the request of the employee within three months from the date of the notice for premature retirement.

Allowing the appeal, this Court

HELD : 1.1. Himachal Pradesh Horticulture Produce Marketing and Processing Corporation Ltd. Employees Service Bye-Law No. 3.8 has to be read as a whole. Para 2 thereof confers a right on the employee to request for voluntary retirement on completion of 25 years of service or on attaining the age of 50 years, but his desire would materialise only if he is permitted to retire and not otherwise. Ordinarily, in a matter like this an employee who has put in less number of years of service would not be on a better footing than the employee who has put in longer Service. It could not have been the intention of the rule-making authority while framing para 5 of the Bye-Law to confer on such an employee a better and larger right to retire after giving three months notice in writing. The words "seek retirement" in para 5 indicate that the right which is conferred by it is not the right to retire but a right to ask for retirement. The word "seek" implies a request by the employee and corresponding acceptance or permission by the employer. Therefore, there cannot be automatic retirement or snapping of service relationship on expiry of three months period.

[1071-G-H, 1074-G-H, 1075-A-B]

1.2. When a right is conferred on the employee to retire by giving three months notice, the question of acceptance of such a request would not arise provided all the conditions prescribed by the rule are satisfied. [1073-B-C]

Dinesh Chandra Sangma v. *State of Assam and Others,* (1977) SLJ 622; *Union of India* v. *Harendralal Bhattacharya,* (1983) SLJ 418 and *Ramachandra* v. *The State of A.P.,* (1984) SLJ 52, relied on.

2.1. The Tribunal was wrong in holding that under para 5 of the Bye-laws the employee has a right to retire after giving three months notice and the respondent stood retired with effect from February 26, 1991 on expiry of three months notice period as the respondent's request for retirement was not rejected within that period. [1075-H, 1076-A]

2.2. It will be open to the appellant corporation to proceed further with the proposed enquiry if it is otherwise expedient and permissible to do so. [1076-A-B]

CIVIL APPEAL LATE JURISDICTION : Civil Appeal No. 4972 of 1994.

From the Judgment and Order dated 29.12.93 of the Himachal Pradesh High Court in O.A. No. 74 of 1993.

J.S. Attri and L.R. Rath for the Appellant.

S.K. Bagga, Seeraj Bagga, Tanuj Bagga and Ms. Monika Bhanot for the Respondent.

The Judgment of the Court was delivered by

NANAVATI, J. Himachal Pradesh Horticultural Produce Marketing & Processing Corporation Ltd. (for short HPMC) has filed this appeal against the order passed by the Himachal Pradesh Administrative Tribunal in O.A. No. 74 of 1993.

The respondent was an employee of HPMC. On 1.5.1990 he applied for long leave but was allowed to remain on leave till 30.11.1990 only. On 26.11.1990 he applied for voluntary retirement effective from 30.11.1990 and also requested for waiver of notice period of three months. Without ascertaining what happened to his request he did not report for duty on 1.12.1990 and continued to remain absent thereafter. Earlier on 12.12.1989 a chargesheet was issued against him for certain acts of misconduct. On 26.12.1989 he filed a reply to the said chargesheet. Again on 27.8.1992 and 18.9.1992 he was served with two more chargesheets. While the chargesheet dated 27.8.1992 was in respect to his unauthorised absence from 1.12.1990 the other was in respect of his acts of misconduct. Thereupon, on 30.9.1992 he approached the Tribunal challenging the two memos dated 27.8.1992 and 18.9.1992 whereby departmental enquiries were proposed to be conducted against him and also the order dated 28.6.1991 whereby Rs. 28,214 were sought to be recovered from him.

The contention of the Respondent before the Tribunal was that as no action was taken by the HPMC on his request for retirement he stood retired with effect from 26.2.1991, on expiry of three months from the date of the notice and, therefore, no enquiry could be held against him thereafter. The Tribunal, while interpreting clause 3.8 of the Himachal Pradesh Horticultural Produce Marketing and Processing Corporation Ltd. - Employees Service Bye-Laws, which provides for superannuation and

retirement, held that the decisions in *Dinesh Chandra Sangma* v. *State of Assam and Others,* (1977) SLJ 622 and *Union of India* v. *Harendralal Bhattacharya,* (1983) SLJ 418 and *Ramchandra* v. *The State of A.P.,* (1984) SLJ 52 wherein it has been held that the Government servant has a right to voluntarily retire from service by giving three months' notice in writing and that there is no question of acceptance of such request by the Government and that the Government has no power to withhold permission to retire were applicable. It further held that under the rule the HPMC has a privilege to exercise its option to accept or not the request of the employee for pre-mature retirement but that option has to be exercised within the prescribed limit of three months. It also held that as the HPMC did not take any decision on the application of the respondent within three months he stood retired with effect from 26.2.1991. The Tribunal, therefore, quashed the two memos dated 27.8.1992 and 18.9.1992 and directed HPMC that it cannot hold any enquiry against the respondent. The order dated 28.6.1991 passed for recovery of Rs. 28,214 was also quashed. It also directed HPMC to give all the retiral benefits due and admissible to the respondent within a period of three months. Aggrieved by this order of the Tribunal HPMC has approached this Court.

What is contended by the learned counsel for the appellant is that the Tribunal has not correctly interpreted para (5) of Bye- law 3.8 and committed an error in holding that HPMC has to exercise its option of accepting or rejecting the request of the employee within there months from the date of the notice for premature retirement.

On reading the judgment of the Tribunal we find that it first referred to the said three decisions and then observed : "The ratio of the aforementioned judgments is applicable to the present case." That would mean that the Tribunal has, though not in specific terms, held that the employee of HPMC has a right to retire from service by giving three months notice in writing and there is no question of acceptance of such request by HPMC. In our opinion, the view taken by the Tribunal is not correct.

In *Dinesh Chandra Sangma's* case (supra) this Court, interpreting FR 56(c), held that "there is no question of acceptance of the request for voluntary retirement by the Government when the Government servant *exercises his right* under FR 56(c)." (emphasis supplied) Thus, this Court interpreted FR 56(c) as conferring a right on the Government servant to

retire from service by giving three months notice in writing and it was in that context further held that consent of the Government is not necessary to give legal effect to the voluntary retirement of the Government servant under that rule.

The Delhi High Court in *Harendralal's* case (supra) and the Andhra Pradesh High Court in *Ramchandra's* case (supra) also proceeded on the basis that the relevant rules conferred a right on the Government servant to retire by giving a notice of three months. Therefore, the ratio of those decisions is that when a right is conferred on the employee to retire by giving three months notice the question of acceptance of such a request would not arise provided all the conditions prescribed by the rule are satisfied. The Tribunal should have first considered whether Bye-law 3.8 confers such a right on the employee of HPMC. Bye-law 3.8 reads as follows :

> "(1) Every employee appointed to the service of the Corporation shall normally retire when he attains the age of 58 years but in special cases their services may be retained upto 60 years.
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> (2) Notwithstanding anything contained in Clause-I any employee may be required by the competent authority, or permitted at his request, to retire from the service of the Corporation on completion of 25 years service or at the age of 50 years whichever is earlier.
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> (3) Nothing contained in clause (1) and clause (2) shall affect the right of the competent authority to retire an employee without notice or pay in lieu thereof on his being certified by a medical examiner to be nominated for the purpose by such authority as being incapacitated for a further period of continuous service due to his continued illness and accident.
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> (4) An employee may be permitted to retire at his own request if the competent authority is satisfied that such an employee is incapacitated for a further period of continuous service due to his continued illness and accident.
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> Provided that before acting under this clause it shall be open to such authority to require the employees to undergo a medical examination by such medical examiner it may nominate for this

purpose.

(5) Notwithstanding the provision under para 2 above, the Corporation employees who have a satisfactory service record of 20 years may also seek retirement from the service of the Corporation after giving three months notice in writing to the appropriate authority. Persons under suspension would not be retired under this clause unless proceedings of the case against them are finalised....."

Clause (2) of the Bye-law inter-alia provides for voluntary retirement from service of HPMC on completion of 25 years service or on attaining the age of 50 years whichever is earlier. The employee, however, has a right to make a request in that behalf and his request would become effective only if he is 'permitted' to retire. The words "may be...permitted at his request" clearly indicate that the said clause does not confer on the employee a *right to retire* on completion of either 25 years service or on attaining the age of 50 years. It confers on the employee *a right to make a request to permit him to retire*. Obviously, if request is not accepted and permission is not granted the employee will not be able to retire as desired by him. Para (5) of the Bye-law is in the nature of an exception to para (2) and permits the employee who has not completed 25 years service or has attained 50 years of age to seek retirement if he has completed 20 years satisfactory service. He can do so by giving three months' notice in writing. The contention of the learned counsel for HPMC was that though Para 5 of the Bye-law relaxes the conditions prescribed by para 2, the relaxation is only with respect to the period of service and attainment of age of 50 years and it cannot be read to mean that the requirement of permission is dispensed with. On the other hand, the learned counsel for the respondent submitted that as para 5 opens with the words "Notwithstanding the provision under para 2" and the words" may be.....permitted at his request" are absent that would mean that the employee has a right to retire after giving three months' notice and no acceptance of such a request is necessary. We cannot agree with the interpretation canvassed by learned counsel for the respondent. The Bye-law has to be read as a whole. Para 2 thereof confers a right on the employee to request for voluntary retirement on completion of 25 years service or on attaining the age of 50 years, but his desire would materialise only if he is permitted to retire and not otherwise. Ordinarily, in a matter like this an employee who has put in less number

of years of service would not be on a better footing than the employee who has put in longer service. It could not have been the intention of the rule-making authority while framing para 5 of the Bye-law to confer on such an employee a better and a larger right to retire after giving three months' notice in writing. The words "seek retirement" in para 5 indicate that the right which is conferred by it is not the right to retire but a right to ask for retirement. The word "seek" implies a request by the employee and corresponding acceptance or permission by HPMC. Therefore, there cannot be automatic retirement or snaping of service relationship on expiry of three months' period.

The Tribunal also failed to appreciate that the following observations made by the Andhra High Court in *Gummadi Sri Krishna Murthy* v. The District Educational Officer, Guntur and others, (1990) SLJ 91 :

> "On the facts of this case, we are of the view that the rules above-mentioned intended that the employee has to give advance notice to the employer so that the latter could make necessary arrangements for employing some other person. It was also the intention of the rules that this privilege given to the employer could not be exercised beyond a reasonable period here fixed as three months for the employee should equally know where he stands. For example, the employee might have opted to retire because of offers of employment elsewhere or he might wish to make some other arrangement in regard to his own affairs. In such a situation, the employer could not be given a unilateral right to communicate his acceptance or otherwise at his own sweet will and without any limitation as to time....."

were by way of justification of rule which provided that "Provided that the competent authority shall issue an order before the expiry of the notice period accepting or rejecting the notice." The High Court has not laid down a general proposition of law that when an employee seeks voluntary retirement the employer has to exercise his privilege of accepting or rejecting the request within a reasonable time and if a period is fixed for giving a notice in that behalf then the decision has to be taken within the period so fixed.

We are, therefore, of the opinion that the Tribunal was wrong in holding that under para 5 of the Bye-law the employee has a right to retire

after giving three months' notice and that the respondent stood retired with effect from February 26, 1991 on expiry of three months' notice period as the respondent's request for retirement was not rejected within that period. We, therefore, allow this appeal and set aside the order passed by the Tribunal. It will be open to the appellant to proceed further with the proposed enquiry if it is otherwise expedient and permissible to do so. However, in view of the facts and circumstances of the case there shall be no order as to costs.

Appeal allowed.