

A POWER FINANCE CORPORATION LTD.

v.

PRAMOD KUMAR BHATIA

MARCH 17, 1997

B [K. RAMASWAMY AND G.T. NANAVATI, JJ.]

*Service Law:*

C *Voluntary retirement—Order accepting the offer—When becomes effective—Scheme framed by Corporation to relieve surplus staff—Employee applying for voluntary retirement under the Scheme—Corporation accepted the resignation by proceedings dated December 20, 1994 subject to the clearance of the outstanding dues—Acceptance was to be given effect from 31.12.1994—Meanwhile the Corporation withdrew the Scheme—High Court holding that order dated 20.12.1994 created a vested right in the employee and the same cannot be divested by subsequent orders—Held, Order dated 20.12.1994 is a conditional order in that until the dues are paid the order does not become effective— 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 conditional one and before compliance with the conditions the Corporation withdrew the Scheme, the order did not become effective—Thereby no vested right has been created in favour of the employee.*

F CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2416 of 1997.

From the Judgment and Order dated 1.11.96 of the Delhi High Court in W.P. No. 2086 of 1995.

G P.P. Rao and S. Nandrajog for the Appellant.

A.K. Sikri and Ms. Madhu Sikri for the Respondent.

The following Order of the Court was delivered :

H Leave granted. We have heard learned counsel on both sides.

This appeal by special leave arises from the judgment of the Division Bench of the Delhi Court, made on 1.11.1996 in C.W. No. 2086/95. A

The admitted position is that the respondent, while working in the appellant-Corporation, had applied for voluntary retirement, pursuant to the scheme framed by the Corporation to relieve the surplus staff. Initially, by proceedings dated December 20, 1994, the Corporation accepted his resignation subject to the clearance of the outstanding dues. The acceptance was to be given effect from December 31, 1994. By letter dated January 6, 1995, he requested for deduction of a sum of Rs. 37,521.20 out of the outstanding dues. He also requested thus: B

"I once again request you that the formal relieving order relieving me from PFC w.e.f. 31.12.1994 be handed over to me immediately. My service period for which ex-gratia is payable be informed to me and my dues be paid immediately." C

Based thereon, it is contended by Mr. P.P. Rao, learned senior counsel for the appellant, that acceptance of the voluntary retirement of the respondent was a conditional one. He himself understood that unless he is relieved of the duties after payment of outstanding dues, the voluntary retirement does not become effective. In the meanwhile, realising the mistake committed by the appellant for effecting the voluntary retirement scheme which does not apply to the Corporation since there is no surplus staff, the appellant withdrew the scheme. Therefore, there was neither the scheme nor a concluded order of voluntary retirement of the respondent relieving him from the duties. The High Court, therefore, is not right in holding that the order dated December 20, 1994 created vested right in the respondent and the same cannot be divested by subsequent orders. D E F

Initially, Mr. A.K. Sikri appeared on behalf of the respondent and argued the matter. Before the order could be dictated, the respondent himself appeared and said that his counsel may be relieved and he may be permitted to argue the matter. Accordingly, we permitted him to argue the matter. He stated that he was relieved from the duty on the basis of an endorsement made on the letter dated December 20, 1994 and what he meant by writing the letter dated January 6, 1995 was to seek a certificate for relieving him from the duty. The acceptance of the voluntary retirement having become effective from December 31, 1994, vested right had been created in him. Therefore, the view of the High Court is in accordance with law. G H

A 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.

B

C 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.

D 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.

E The appeal is accordingly allowed. The judgment of the High Court stands reversed. The writ petition stands dismissed. No costs.

R.P.

Appeal allowed.