
(2008) 04 GAU CK 0004
In the Gauhati High Court

Abhijit Kumar Barua

APPELLANT

Vs

Hindustan Petroleum Corporation Ltd. and Others

RESPONDENT

Date of Decision : 03-04-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2009) 3 GLR 450

Hon'ble Judges : Iqbal Ahmed Ansari, J

Bench : Single Bench

Judgement

I.A. Ansari, J.—Heard Mr. A. Dasgupta, learned Counsel for the petitioner, and Mr. H. Rahman, learned Counsel, appearing on behalf of the respondents. Also heard Mr. M. Dutta, learned Counsel, who has appeared as amicus curiae.

2. The controversy raised in this writ petition and the backdrop of the facts and pleadings thereof, which are required to be considered for effective disposal of this writ petition, lies, in a narrow compass, and can be described, thus:

(i) While working in the rank of Deputy Manager, Hindustan Petroleum Corporation Ltd., a company registered under the Companies Act, 1956, at Guwahati, a letter was issued, on 4.9.2002, by the Deputy General Manager (i/c), East Zone of the said Corporation, informing the petitioner that he was on lateral basis, re-assigned and posted as Executive Operations Officer, Calcutta Terminals, and that his reassignment shall be effective from the date he assumes charge as the Executive Operations Officer, Calcutta Terminals. Following the order of his posting to Calcutta, as indicated hereinbefore, the petitioner submitted, on 19.10.2002, addressed to the Chief Installation Manager, Kolkata Terminals of the said Corporation, a letter tendering his resignation from service with immediate effect. By letter dated 18.6.2003 the respondent-Corporation informed the petitioner that acceptance of the petitioner's resignation and his release from employment would be allowed by the respondent-Corporation only after the dues, quantified in the said letter, which amounted to a sum of Rs. 4,63,974 along with penal interest @ 12% was paid by the petitioner. On

14.7.2004, the respondent-Corporation floated a Voluntary Retirement Scheme (VRS). Considering himself as a person covered by the said scheme and eligible to opt for VRS, the petitioner submitted, on 30.8.2004, an application withdrawing his resignation and requesting the respondent-Corporation to consider his case under the said scheme. By a letter, dated 21.9.2004, the respondent-Corporation informed the petitioner that his application seeking benefit of VRS was not acceptable to the respondent-Corporation. This order, dated 21.9.2004, whereby the petitioner's request for allowing him to avail the benefit of VRS had been declined, came to be challenged by the petitioner by way of a writ petition, which gave rise to WP(C) 7022/2005. During pendency of the said writ petition, the respondent-Corporation instituted Money Suit No. 87/2007 seeking decree of recovery an amount of Rs. 12,91,856.26 with interest.

(ii) Before, however, the said suit was instituted, the petitioner, on 29.11.2006, submitted a letter to the General Manager (East Zone), Hindustan Petroleum Corporation Ltd., Calcutta, stating to the effect, inter alia, that since his resignation had not been accepted by the management, he was facing great difficulties and, therefore, he was withdrawing his resignation with immediate effect and reporting for duty. Closely following his letter, dated 29.11.2006, the petitioner submitted his joining report, on 18.12.2006, addressed to the General Manager (East Zone), Hindustan Petroleum Corporation Ltd., undertaking to withdraw the Writ Petition No. 7022/2005 aforementioned, but the petitioner was not allowed to join his duty. The said writ petition was, eventually, disposed of, on 10.1.2007, on the same having been withdrawn by the petitioner and, on 10.1.2007 itself, the petitioner submitted an application addressed to the General Manager, Hindustan Petroleum Corporation Ltd., Calcutta, requesting him to allow the petitioner to join duty. As the respondent-Corporation did not allow the petitioner to join duty, the petitioner is, now, before this Court seeking, with the help of the present writ application made under Article 226 of the Constitution of India, issuance of appropriate Writ(s) commanding the respondents to allow the petitioner to join his duty.

3. The respondent-Corporation has resisted the writ petition by filing an affidavit, wherein the respondent-Corporation has contended, inter alia, that the relationship of employer and employee, which once existed between the petitioner and the respondent-Corporation, had been broken by the petitioner by abandoning his service after submitting his resignation and, since the petitioner was no longer on the active roll of the respondent-Corporation, the petitioner is not entitled to rejoin his post or employment under the respondent-Corporation.

4. While considering the present writ petition, what needs to be pointed out is that the fact that the respondent-Corporation is amenable to the writ jurisdiction under Article 226 has not been in dispute in this writ petition. What is, now, pertinent to note is that the terms and conditions of employment are essentially a matter of agreement between the parties concerned. In the case of, however, a government employee, a person, on his appointment, acquires a status and this

status is controlled by such terms and conditions as the government, may decide. In the present case too, the terms and conditions of Employment, which the respondent-Corporation has and follows, would govern the income of this writ petition. The personnel manual of the respondent-Corporation, as regards resignation by their employees, states as under :

11.1 (iii) Resignation:

(a) Under no circumstances will the resignation of an officer whose conduct is under investigation be accepted, if tendered without the sanction of the authority competent to dismiss him.

(b) In all cases, a regular officer resigning from the services of the Corporation is required to give 30 days notice or pay 30 days salary in lieu of notice period under the present terms of appointment or as specified.

(c) Resignations are accepted by the competent authorities as indicated below:

After obtaining clearance from functional GM and GM-HRD. Before processing the resignation of an officer, it must be ensured that all outstanding dues to his account are cleared. It is also necessary to ensure that he vacates corporation accommodation, if any, and hands over possession of Corporation property to the immediate Supervisor/Competent Authority on acceptance of his resignation.

5. From a minute reading of what the personnel manual contains with regard to resignation by the respondent-Corporation's employees, it becomes clear that according to the terms and conditions of employment, which the respondent-Corporation has with its employees, the resignation tendered by an employee needs to be accepted by the competent authority before the employee's resignation from his post becomes effective. It is, otherwise, also a well settled principle that the resignation tendered by an employee is ineffective until and unless the same is accepted by the authority concerned, in the present case, the letter, dated 18.6.2003, aforementioned, which the respondent-Corporation had issued, makes it clear that the respondent-Corporation refused to accept the petitioner's resignation until the time the dues, as had been quantified by the respondent-Corporation, were paid. The respondent-Corporation has not been able to place any material on record to show that the petitioner's resignation was accepted by the respondent-Corporation. Though the petitioner, in his letter, dated 19.10.2002, aforementioned, had stated to the effect that he was resigning with immediate effect, the fact remains that this resignation, in order to become effective, required acceptance by the respondent-Corporation. Such acceptance having not been accorded by the respondent-Corporation, the petitioner's resignation from service never came into effect. In such circumstances, when the petitioner submitted, vide his letter, dated 29.11.2006, that he was withdrawing his resignation with immediate effect, the respondent-Corporation ought to have allowed the petitioner to report for duty. It is not material as to whether the petitioner's name figures in the roll of the respondent-Corporation or not; what is material is as to whether the petitioner's resignation

was accepted, at any point of time, by the respondent-Corporation. Having not accepted the resignation tendered by the petitioner, the respondent-Corporation has carried the burden of the petitioner as its employee and the respondent-Corporation cannot, now, wriggle out of such a situation by contending to the effect that the petitioner had abandoned his service.

6. What emerges from the above discussion is that the petitioner has remained in service of the respondent-Corporation till date. The question, as to whether the respondent-Corporation is or is not liable to pay the petitioner the wages for the period during which the petitioner had not worked for the respondent-Corporation, is a question, which is required to be decided by the respondent-Corporation. If the respondent-Corporation decides not to pay to the petitioner his salary and allowances for the period during which the petitioner had not worked for the respondent-Corporation and if the petitioner feels aggrieved by any such decision, it shall remain open for the petitioner to take recourse to such provisions of law as may be permissible. At the same time, the respondent-Corporation shall also remain at liberty to take such action disciplinary or otherwise, which the respondent-Corporation may be entitled to take, on the ground that the petitioner, after submitting his resignation, remained away from his post even without his resignation having been accepted by the competent authority of the respondent-Corporation.

7. With the above observations and directions, this writ petition shall stand disposed of. In the facts and circumstances of the present case, the parties are left to bear their own cost.