

(1999) 01 PAT CK 0032
In the Patna High Court
Case No : C.W.J.C. No. 9396 of 1995

Amarendra Kumar

APPELLANT

Vs

National Jute Manufacturing Corporation Limited and Others

RESPONDENT

Date of Decision : 18-01-1999

Acts Referred:

Citation : (1999) 2 PLJR 50

Hon'ble Judges : J.N. Dubey, J

Bench : Single Bench

Advocate : Satya Narayan Mishra, for the Appellant; S.K. Mishra, Sandeep Mishra and Sanjay Kumar Mishra, for the Respondent

Final Decision : Allowed

Judgement

J.N. Dubey, J.—This writ petition is directed against the order dated 3.11.95 of the Respondent No. 3, the Director, (Marketing)/ (Personnel), National Jute Manufactures Corporation Limited, retiring the Petitioner from service under Voluntary Retirement Scheme.

2. It appears that on 1.8.95 the Respondent No. 3 issued a notice inviting application from the employees of the Corporation for voluntary retirement under Voluntary Retirement Scheme. On 13.6.95, the Petitioner applied for voluntary retirement. However, on 19.6.95, he wrote to the Respondent No. 3 that his application for voluntary retirement may be treated as cancelled. On 3.11.95, the Respondent No. 3 accepted the application of the Petitioner for voluntary retirement and retired him from the organisation with effect from 15.11.95. Feeling aggrieved he has approached this Court under Article 226 of the Constitution.

3. Heard the learned Counsel for the parties and perused the record.

4. Learned Counsel for the Petitioner contended that once the Petitioner has written to the Respondent No. 3 that his application for voluntary retirement may be treated as cancelled, he was not legally justified in retiring him from service.

According to him, once the offer to opt voluntary retirement was withdrawn by the Petitioner, the same could not be legally accepted by the Respondent No. 3.

5. On the other hand, learned Counsel for the Respondents contended that the notice of the Respondent No. 3 contained the offer of the Corporation to grant voluntary retirement to its employees and, therefore, application of the Petitioner seeking voluntary retirement would amount to his acceptance of the offer for voluntary retirement, which could not be withdrawn by him subsequently. According to him, once the Petitioner accepts the offer of the Corporation for Voluntary retirement he was not entitled to Withdraw his application later on since in his application he requested for voluntary retirement with immediate effect, he stood retired on the date of application.

6. Admittedly, the Petitioner had withdrawn his application for voluntary retirement before it could be accepted by the Respondent No. 3. The withdrawal of the application by the Petitioner would amount to his withdrawal of the offer for voluntary retirement and, therefore, the Respondent No. 3 was not legally entitled to accept the same. I find no substance in the argument of the learned Counsel for the Respondents that the notice of the Respondent No. 3 contained the offer of the Corporation for voluntary retirement to its employees and, therefore, the application of the Petitioner seeking voluntary retirement would amount to his acceptance of the offer for voluntary retirement, which could not be withdrawn by him later on. Relevant portion of the notice reads thus:

The management will have sole discretion in the matter of accepting or rejecting any application under this scheme which does not empower any employee to claim "Voluntary Retirement" as a matter of right.

A plain reading of the notice shows that the Respondent No. 3 had merely invited applications from the employees for voluntary retirement and had made no offer to them for voluntary retirement. The Petitioner could not claim voluntary retirement on his own. His offer to voluntary retirement was dependent on the acceptance of it by the Respondent No. 3. since he withdrew his offer for voluntary retirement before it could be accepted by the Respondent No. 3 question of the same being accepted later on does not arise.

7. I also do not find any substance in the argument of the learned Counsel for the Respondents that in view of the fact that the Petitioner requested for voluntary retirement with immediate effect, he stood retired on the date of his application. Firstly, in para 6 of the notice dated 1.6.95 it was specifically stated that the management will have sole discretion in the matter of accepting or rejecting any application under that scheme which does not empower any employee to claim voluntary retirement as a matter of right under the Voluntary Retirement Scheme; and secondly, even if no such stipulation was made in the notice, the Petitioner could not have voluntarily retired from service on his own. The Petitioner was given only option to apply for voluntary retirement and not to voluntarily retire on his own. In this view of the matter, the question of the

Petitioner's retiring on the date of his application did not arise. Moreover, if the Petitioner stood voluntarily retired on the date of application then it is not clear as to why he was retired from the service by the Respondents with effect from 15.11.95. The Petitioner had applied for voluntary retirement on 13.6.95 and, therefore, there was no occasion to retire him from the prospective date and not even with effect from the date of impugned order. In view of the fact that the Petitioner had withdrawn his offer to retire voluntarily, the Respondent No. 3 was not legally justified in retiring him from service.

8. The impugned order of the Respondent No. 3 suffers from an error apparent on the face of the record and is liable to be quashed.

9. In the result, the writ petition succeeds and is allowed. The impugned order dated 3.11.95 of the Respondent No. 3 is quashed.

No order as to costs.