(2017) 01 DEL CK 0082

In the Delhi High Court

Case No : LPA No. 74 of 2017 and CM Nos. 3680 of 2017 (stay), 3681 of 2017 (directions)

Amit Kumar Gupta APPELLANT

Vs

Indian Oil Corporation RESPONDENT

Date of Decision : 30-01-2017

Acts Referred:

Citation : (2017) LabLR 331

Hon'ble Judges : C.J. and Ms. Sangita Dhingra Sehgal, J.

Bench : Division Bench

Advocate : Mr. Krishnendu Datta with Mr. Manish Srivastava, Mr. Ara V. Kapoor, Ms. Prachi Johri, Mr. Jaspreet S. Chawla and Mr. Aditya, Advocates, for the Petitioner; Mr. Paramjeet Benipal, Advocate, for the Respondent No. 1

Final Decision : Disposed Off

Judgement

CM No. 3682 of 2017 (exemption)

Allowed, subject to all just exceptions.

LPA No. 74 of 2017 and CM Nos. 3680 of 2017 (stay), 3681 of 2017 (directions)

Ms. Sangita Dhingra Sehgal, J. - The present appeal is being preferred against the judgment dated 30.11.2016 passed by the learned Single Judge in W.P.(C) No. 4233/2000. The unsuccessful petitioner is the appellant before us.

2. It is the case of the appellant that he was employed in the services of the respondent No. 1 in the Internal Audit Department and became a permanent employee vide letter dated 01.12.1998 issued by the respondent No. 1. However, the appellant tendered his resignation letter dated 10.05.1999 to the respondent No. 1. The respondent No. 1 replied to the said resignation letter vide letter dated 21.05.1999 stating that the appellant shall settle certain dues outstanding from him before his resignation could be accepted by the competent authority. Thereafter, the appellant again wrote to the respondent No. 1 vide letter dated

03.06.1999 claiming certain monies from the respondent No. 1 and to forward his resignation letter to the competent authority. However, vide letter dated 12.07.1999, the appellant sought to withdraw his letter of resignation dated 10.05.1999. While so, vide letter dated 24.09.1999, the appellant was informed that his resignation had been accepted by the competent authority.

3. Feeling aggrieved, the appellant filed Writ Petition No. 4233/2000 seeking to quash the action of the respondent No. 1 in accepting the resignation letter dated 10.05.1999. The learned Single Judge dismissed the writ petition vide judgment dated 07.07.2016 and held as under:-

"12. This is a writ petition of the year 2000 and today we are in the year 2016. Obviously, the petitioner as a Chartered Accountant wanted to do independent practice but after giving resignation seems to have acquired cold feet. Obviously the petitioner would have thereafter worked as an independent practitioner or have worked with some other company during the pendency of this writ petition. This writ petition therefore is really in the nature of speculation to somehow or the other to extract some amount of moneys from the respondent no. 1.

13. The present writ petition therefore being an abuse of process of law, wholly misconceived, and based on no valid cause of action, is accordingly dismissed with costs of Rs.50,000/-. Costs shall be paid to the respondent no. 1 within a period of six weeks from today."

4. The learned counsel appearing for the appellant contended that the resignation of the appellant never became effective in actuality. He vehemently argued that the appellant had worked even after tendering the resignation letter dated 10.05.1999 and was in continuous negotiations of the terms of resignation with the respondent No. 1 and the respondent No. 1 vide letter dated 21.05.1999 itself admitted that the resignation was not with immediate effect and cannot be accepted till certain conditions are satisfied.

5. The learned counsel further contended that even according to Rule 25.2.4 of Indian Oil Corporation Personnel Manual (R&P) for Officers, to waive the period of notice, the competent authority ought to have recorded specific reasons for the relaxation of the notice period. The appellant was never communicated any such reasons or the acceptance of his resignation letter, which is a sine qua non for a valid resignation and it was only vide the letter dated 24.09.1999 that the appellant was informed that his resignation had been accepted, before which he had already withdrawn his resignation. Furthermore, he submitted that there was no valid cause for imposing costs of Rs. 50,000/- on the appellant in favour of the respondents.

6. On the converse, the learned counsel for the respondent submitted that the view taken by the learned Single Judge is correct in view of the law laid down in this regard and the Indian Oil Corporation Personnel Manual applicable to the employees of the respondent No. 1. He contended that the appellant stopped attending office w.e.f. 10.05.1999 and the settlement amount due to the

appellant was also paid to him in full vide letter dated 02.08.2000 along with a cheque, which was however returned by the appellant.

7. We have perused the communications dated 10.05.1999, 21.05.1999, 03.06.1999 & 12.07.1999 and the Indian Oil Corporation Personnel Manual (R&P) for Officers setting out the terms of resignation of an employee.

8. As could be seen from the above said communications, the resignation letter of the appellant was not tendered by him from a prospective date. No date was mentioned at all in the resignation letter dated 10.05.1999, with which the said resignation would take place from. There is nothing on record to show anything to the contrary.

9. Since there was no prospective date mentioned with which the resignation would come into effect, we are in consonance with the view taken by the learned Single Judge to treat the said resignation with immediate effect. In such an event, two situations could follow;

(i) either Clause 25.2.4 of the Indian Oil Corporation Personnel Manual (R&P) for Officers would come into play, in which case, the employee could leave the service without requisite notice period subject to the Management being entitled to deduct a salary of notice period of one month from the unpaid salary of the employee. The management, in this case, may accept the resignation with immediate effect or from any time before the expiry of the notice period by recording specific reasons; or

(ii) the second situation would be that the resignation would take effect after a notice period of one month. In the present case, the notice period would end on 09.06.1999. However, the appellant sought to withdraw his resignation vide letter dated 12.07.1999 i.e. even after the expiry of the notice period of one month from the date of the letter of resignation.

10. In either case, the appellant could not have withdrawn his resignation letter dated 10.05.1999 subsequently by abridging the finality attained by the resignation letter at least with effect from 09.06.1999. Furthermore, we cannot lose sight of the fact that the appellant, admittedly, stopped coming to work for the respondent No. 1 from 10.06.1999. This conduct of the appellant proves beyond doubt that he himself treated the resignation with finality at least from 10.06.1999. Any act or communication by the appellant subsequently, would not interfere with the finality attained by the resignation of the appellant.

11. In these circumstances, we do not find any justifiable reason to interfere with the judgment under appeal on merits of the case. However, we are of the view that the imposition of cost of Rs. 50,000/- is not warranted in the facts and circumstances of the case. Hence, in view of the equity and fair play, we deem it fit to waive the costs imposed by the learned Single Judge.

12. Accordingly, the judgment under appeal to that extent is set aside. The appeal is accordingly disposed of.

