
(1987) 11 P&H CK 0035
In the Punjab And Haryana At Chandigarh

Anil Kumar

APPELLANT

Vs

Food Corporation. of India

RESPONDENT

Date of Decision : 03-11-1987

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1989) 1 LLJ 290

Hon'ble Judges : V. Ramaswami, C.J;D.V. Sehgal, J

Bench : Division Bench

Judgement

1. The petitioner was employed with the respondent-Corporation since 1969. He submitted his resignation on 12th, February, 1982. However, he withdrew the resignation on 26th, April, 1983, and wanted to rejoin duty on the ground that his resignation had not been accepted until 26th, April, 1983. The respondent-Corporation did not permit the petitioner to rejoin contending that he had already resigned. The question of the validity of the resignation and his entitlement to work in the respondent-Corporation was the subject-matter of Civil Writ Petition No. 1408 of 1985. In that writ petition a Division Bench of this Court held that since the resignation had not been accepted, the petitioner was entitled to withdraw the same and the withdrawal was effective and, therefore, the refusal of the Corporation to permit him to rejoin duty was not valid. With these observations, the writ petition was allowed and the respondent-Corporation was directed to allow the petitioner to resume his duties. The order of the Division Bench is dated 13 September 1985. and it is not in dispute that the petitioner joined service again on 15th October 1985. Thereafter, he claimed salary for the period from 26th April 1983, to 15th October 1985, the date on which he was allowed to rejoin his duty. Since the respondent-Corporation was not willing to pay the back-wages, the petitioner filed C.O.C.P. No. 266 of 1986 and that petition was dismissed on 21 November 1986, with an observation that the prayer did not fall within the domain of contempt petition, and that he could seek appropriate remedy. Thereafter, the petitioner filed Civil Miscellaneous No. 634 of 1987, praying for release of the arrears of salary for the said period from 26th

April 1983 to 15th October 1985. Relying on certain observations of the Supreme Court in *State of Uttar Pradesh Vs. Brahm Datt Sharma and Another*, , another Bench of this Court dismissed that application holding that after the disposal of the writ petition civil miscellaneous applications are not maintainable and that the petitioner was permitted to pursue any other remedy that may be open to him in consequence of the decision rendered in Civil Writ Petition No. 1408 of 1985. Thereafter, the petitioner has filed this writ petition praying for a suitable direction to the respondent-Corporation to release the arrears of back-wages. The learned Counsel for the respondent- Corporation contended that though there was a specific prayer in Civil Writ Petition No. 1408 of 1985, requesting for consequential relief flowing from the writ petition such as arrears of pay increments, seniority, etc... the judgment did not give any direction in this regard and, therefore, that prayer should be deemed to have been rejected. We are unable to agree with this contention of the learned Counsel for the respondent-Corporation. Once it is held that the resignation was no longer valid after it was withdrawn on 26th April 1983, the result is that the resignation shall be deemed to have been not in force at any time and the petitioner shall be deemed to have been in service from 26th April 1983 to 15th October 1985, for which period the salary is claimed. The consequential order that he is entitled to arrears of salary need not be specifically mentioned. It is a claim which flows from the relief of a deemed declaration that he had been in service and. therefore, he shall be deemed to have worked and is entitled to salary for that period.

2. The next submission of the learned Counsel for the respondent-Corporation was that in view of the dismissal of Civil Miscellaneous No. 634 of 1987, the petitioner is not entitled to invoke the jurisdiction of this Court under Article 226 of the Constitution. We are unable to agree with this submission of the learned Counsel also. The order in that application cannot be treated as *res Judicata* as having not been decided on merits. The learned Judges only stated that the petitioner should pursue any other remedy that may be open to him, and he has filed this writ petition under Article 226 of the Constitution. It may also be seen that the decision in *Brahm Datt Sharma* case (*supra*) is of no assistance to the learned Counsel for the respondent as the prayer in the case in hand is to direct the respondent to comply with the directions given in the writ petition itself. That was a case where originally the dismissal of the Government servant was questioned under Article 226 of the Constitution. That writ petition was allowed on the ground that the principles of natural justice had been violated. Though on merits nothing could be stated, the said violation invalidated the order of dismissal. Accordingly, the order of dismissal was quashed though without any further direction. The dismissed Government servant retired from service and the Government initiated fresh disciplinary proceedings under Article 470(b) of the Civil Service Regulations. When the show-cause notice was issued to show cause as to why the pensionary benefits could not be rejected or reduced, the petitioner filed an application in the High Court purporting to one arising out of an earlier writ petition. That application was allowed by the High Court. When the

State Government went to the Supreme Court, the learned Judges held that the civil miscellaneous application was not maintainable. This was done on the ground that writ petition earlier filed challenging the order of dismissal had been finally disposed of and nothing remained pending before the High Court. The earlier writ petition was not dismissed on merits but on the ground that there was some violation of the principles of natural justice in that the report of the inquiry officer had not been communicated to the petitioner therein. In those circumstances, the Supreme Court held that the petitioner could not question the same in a miscellaneous application as arising out of the earlier petition. But that is not the case here. The only other remedy which he could have availed was to file a regular suit claiming the arrears of salary, but though he had that remedy we are not satisfied why on the facts and circumstances of this case we should direct him to file a separate suit for arrears of salary. Even the earlier order shall be deemed to have given the relief. We must enforce that order whether by way of writ petition or in the nature of a contempt petition. We, accordingly, allow this writ petition and direct the respondent-Corporation to release the arrears of salary for the period from 26th April 1983 to 15th October 1985. It goes without saying that if he is entitled to the relief prayed for, the deemed increments and promotions, etc., shall also be given to the petitioner.

3. The relief above granted shall be given to the petitioner within a period of two months from today. If the relief is not given within this period, interest at the rate of 12 per cent per annum will accrue on the amount due for the period subsequent to two months.