

(2016) 01 JH CK 0195
In the Jharkhand High Court
Case No : L.P.A. No. 330 of 2008

Assistant Registrar (Establishment), Indian School of Mines, Dhanbad APPELLANT

Vs

Dr. Amrendra Nath Sinha RESPONDENT

Date of Decision : 18-01-2016

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 26

Citation : (2016) 3 JBCJ 449 : (2016) 2 JLJR 165

Hon'ble Judges : D.N. Patel and Amitav K. Gupta, JJ.

Bench : Division Bench

Advocate : Mr. Anoop Kr. Mehta, Advocate, for the Appellant; Mr. Ashok Kr. Jha, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

D.N. Patel, J.—This Letters Patent Appeal has been preferred by the original respondents in W.P.(S) No. 4973 of 2003 which was allowed by the learned Single Judge on 09.04.2008 whereby the prayer of the petitioner (respondent herein) for payment of gratuity was allowed. Being aggrieved and feeling dissatisfied by the judgment and order delivered by the learned Single Judge the original respondents have preferred the present Letters Patent Appeal.

2. Factual Matrix

Respondent was appointed as a Lecturer in the department of Engineering and Mining in Indian School of Mines, Dhanbad. Thereafter, he was promoted on the post of Assistant Professor on 12.09.1995.

Thereafter, the respondent (original petitioner) preferred an application in the prescribed format, which was forwarded for appointment to the post of Professor, B.I.T, Mesra, Ranchi on 18.10.2002 and thereafter, he also preferred an application on 21.10.2002 for getting "No Objection Certificate".

These appellants rejected the application of the respondent and informed him on 07.11.2002, which is at Annexure-A to the counter affidavit filed by the respondent in this Letters Patent Appeal. The rejection of the application was made under Rule 26(2) of the Central Civil Services (Pension) Rules, 1972.

It further appears from the facts that again an application was preferred by the respondent (original petitioner) for getting no objection certificate or application on the post of Professor (Mechanical), B.I.T. Mesra, Ranchi on 12.01.2003 which was again declined by these appellants because the total strength of the permanent employees of these appellants were 175 whereas the actual filled up posts were only 105.

Respondent (original petitioner) thereafter, tendered his resignation dated 19.02.2003 to be made effective from 16.04.2003 as the respondent (original petitioner) was selected on the post of Professor (Mechanical) at B.I.T. Mesra, Ranchi.

The order of relieving the respondent was passed on 23.04.2003 after acceptance of the resignation.

Respondent preferred an application for release of his gratuity amount for the period running from 12.07.1984 to 23.04.2003.

These appellants informed the respondent that the respondent will not be entitled to any gratuity vide Rule 26 of the Central Civil Services (Pension) Rules, 1972. This order was passed on 28.08.2003.

Being aggrieved and feeling dissatisfied by the aforesaid order dated 28.08.2003, the respondent preferred W.P(S) no. 4973 of 2003 which was allowed by the learned Single Judge vide order dated 09.04.2008 and hence the original respondent has preferred this Letters Patent Appeal.

3. Arguments canvassed by the learned counsel for appellants:

Learned counsel for the appellants (original respondent) has submitted that respondent was appointed as a Lecturer and was promoted to the post of Assistant Professor in the Indian School of Mines, Dhanbad which is a registered Co-Operative Society, under the Society Registration Act, 1860, which is owned, managed and controlled by the Central Government, under the Ministry of Human Resources Development, Department which has adopted the Central Civil Services (Pension) Rules, 1972. As per Rule 26(1) and Rule 26(2), resignation of an employee from the service or post, unless it is allowed to be withdrawn in the public interest, by the appointing authority, entails forfeiture of the past service. It is submitted by the learned counsel for the appellants that exceptions have been mentioned under Rule 26(2) and the respondent is not falling within the said exceptions under Rule 26(2) of the Rules, 1972, mainly for the reasons that no permission was given by these appellants and secondly for the reasons that the respondent was not going to join the duties under the Government rather the respondent wanted to join B.I.T., Mesra, institute. B.I.T, Mesra which is not a

governmental institution at all and, hence, the case of the respondent is not covered under exceptions carved out under Rule 26(2).

Learned counsel for the appellants has submitted that initially the respondent applied for getting "No Objection Certificate" on 18.10.2002, which was regretted by these appellants vide order dated 07.11.2002. Again a request was made by the respondent in the month of January, 2003 which was immediately declined by these appellants on 15.01.2003. Thus, never any permission was granted by these appellants to the respondent for joining the post of Professor at B.I.T., Mesra, Ranchi.

Learned counsel appearing for the appellants has submitted that as per Section 2(o) of the Central Civil Services (Pension) Rules, 1972 "pension includes gratuity" and, therefore, the respondent is not entitled to any gratuity. The respondent once tenders his resignation, especially when the permission to join the new post is not given by the appellants, and when another job which the respondent was seeking, is not under the Government, he is not entitled to any gratuity. These aspects of the matter have not been properly appreciated by the learned Single Judge while allowing the writ petition service preferred by the respondent.

Learned counsel appearing for the appellants has also relied upon a decision in the case of Union of India and Others v. Braj Nandan Singh reported in (2005) 8 SCC 325 especially para-5 thereof, and has submitted on the basis of the aforesaid decision that the language of Rule 26(1) is mandatory in nature. Once the employee is tendering resignation, forfeiture of the past service is inevitable, unless it is allowed to be withdrawn in the public interest by the appointing authority. Learned counsel appearing for the appellants submitted that the aforesaid decision has also not been properly appreciated by the learned Single Judge and, hence, the judgment delivered by the learned Single Judge while allowing W.P(S) no. 4973 of 2003 dated 09.04.2008 deserves to be quashed and set aside.

4. Arguments canvassed by the learned counsel for respondent (original petitioner).

Learned counsel appearing for the respondent has submitted that no error has been committed by the learned Single Judge, while allowing the writ petition preferred by the present respondent.

Learned counsel appearing for the respondent has submitted that the decision cited by the learned counsel for the appellants in the case of Union of India and Others v. Braj Nandan Singh (Supra) is not applicable to the facts of the present case.

Learned counsel appearing for the respondent has relied upon the decision rendered by the Division Bench of this Court in the case of Birla Institute of Technology v. State of Jharkhand & Ors. reported in [2008 (2) J.C.R. 530 (Jhr.)]

and on the basis of the aforesaid decision it is submitted by the counsel for the respondent that the payment of Gratuity Act, 1972 is applicable to the respondent. Under Section 4(6) thereof. There are specific grounds for forfeiture of the gratuity and unless these grounds are present, the gratuity cannot be forfeited by these appellants and has also submitted that in the instant case payment of Gratuity Act, 1972 is applicable and not the Central Civil Services (Pension) Rules, 1972. This aspect of the matter is properly appreciated by the learned Single Judge and hence this Letters Patent Appeal may not be entertained by this Court.

Learned counsel appearing for the respondent has also relied upon the Amendment Act for payment of gratuity which is brought in the year 2009 and has submitted that now the teachers are included under the definition of word "employee" w.e.f. 03.04.1997.

Reasons:

5. Having heard counsel for both the sides and looking to the facts and circumstances of the case and the decisions cited above, we hereby quash and set aside the order delivered by the learned Single Judge in W.P. (S) no. 4973 of 2003 dated 09.04.2008 mainly for the following facts, reasons and judicial pronouncements:-

(i) Respondent joined the services of these appellants as a Lecturer w.e.f. 12.07.1984. These appellants are the registered Society under Society Registration Act, 1860. The said society is owned, managed and controlled by the Central Government under the Ministry of Human Resources Development Department and has adopted Central Civil Services (Pension) Rules, 1972.

(ii) The relevant part of Rule 26 of the Rules, 1972 reads as under:-

"26. Forfeiture of Service on resignation. - (1) Resignation from a service or a post, unless it is allowed to be withdrawn in the public interest by the Appointing Authority, entails forfeiture of past service.

(2) A resignation shall not entail forfeiture of past service if it has been submitted to take up, with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies.

(3) Interruption in service in a case under Sub-rule (2)..... covered by leave due to him.

(4) The Appointing Authority may permit a person

(i) that the resignationtender the resignation;

(ii) that during the period..... no way improper;

(iii) that the period of absence more than ninety days;

(iv) that the post..... comparable post, is available.

(5) Request for withdrawal finance by the Government.

(6) When an order is passed..... as qualifying service.

(7) A resignation submitted..... under the Government.

(emphasis supplied)

(iii) Looking to the further facts of this case, it appears that the respondent had preferred application, which was forwarded by the appellants, for appointment on the post of Professor, B.I.T, Mesra, Ranchi on 18.10.2002, mainly for the reasons that the respondent had already been promoted on the post of Assistant Professor in the year 1995 and now he wanted to go as a Professor in B.I.T. Mesra, Ranchi. This application was regretted by the appellant vide order dated 07.11.2002 (Annexure-A) to the counter affidavit filed by the respondent in this Letters Patent Appeal. Thus, these appellants had never allowed the application of the respondent.

(iv) It further appears from the facts of the case that again the respondent had preferred the application for getting "No Objection Certificate" for consideration of his candidature, for the post of Professor (Mechanical) at B.I.T., Mesra, Ranchi, on 12.01.2003, which was again declined by the appellants.

(v) Thereafter, resignation was tendered by this respondent on 19.02.2003 which was made effective from 16.04.2003. The respondent was relieved by the appellants on 23.04.2003 and when respondent demanded the gratuity, it was declined by these appellants vide order dated 28.08.2003 as per Rule 26 of the Central Civil Services (Pension) Rules, 1972.

(vi) Looking to the Rule 26(1) it appears that the resignation from the services or posts being tendered by an employee, unless it is allowed to be withdrawn in the public interest by the appointing authority, entails forfeiture of the past service and under Rule 26(2) there is an exception. Looking to the Rule 26(2), it appears that the case of the respondent is not falling within Sub-Rule 2 of Rule 26 mainly for the reason that the respondent has not given resignation to join the services under the Government and secondly for the reason that the resignation was never accepted by the appellants vide order dated 07.11.2002 (Annexure-A) to the counter affidavit.

(vii) It has been held by Hon"ble the Supreme Court in the case of Union of India and Others v. Braj Nandan Singh reported in 2005 (8) SCC 325, especially in para-5 thereof, which reads as under:-

"5. In order to appreciate rival submissions Rule 26 which is the pivotal provision needs to be quoted. The same reads as under:

"26. Forfeiture of service on resignation. - (1) Resignation from a service or a post, unless it is allowed to be withdrawn in the public interest by the appointing authority, entails forfeiture of past service.

(2) A resignation shall not entail forfeiture of past service if it has been submitted to take up, with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies."

Rule 26 as the heading itself shows relates to forfeiture of service on resignation. In clear terms it provides that resignation from a service or a post, unless it is allowed to be withdrawn in the public interest by the appointing authority, entails forfeiture of past service. The language is couched in mandatory terms. However, sub-rule (2) is in the nature of an exception. It provides that resignation shall not entail forfeiture of past service if it has been submitted to take up, with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies. Admittedly this is not the case in the present appeal. Rule 5 on which great emphasis was laid down by the learned counsel for the respondent deals with regulation of claims to pension or family pension. Qualifying service is dealt with in Chapter III. The conditions subject to which service qualifies are provided in Rule 14. Chapter V deals with classes of pensions and conditions governing their grant. The effect of Rule 26 sub-rules (1) and (2) cannot be lost sight of while deciding the question of entitlement to pension. The High Court was not justified in its conclusion that the rule was being torn out of context. After the past service is forfeited the same has to be excluded from the period of qualifying service. The language of Rule 26 sub-rules (1) and (2) is very clear and unambiguous. It is trite law that all the provisions of a statute have to be read together and no particular provision should be treated as superfluous. That being the position after the acceptance of resignation, in terms of Rule 26 sub-rule (1) the past service stands forfeited. That being so, it has to be held that for the purpose of deciding question of entitlement to pension the respondent did not have the qualifying period of service. There is no substance in the plea of the learned counsel for the respondent that Rule 26 sub-rules (1) and (2) has limited operation and does not wipe out entitlement to pension as quantified in Rule 49. The said rule deals with amount of pension and not with entitlement."

(emphasis supplied)

In view of the aforesaid decisions, once the employee is tendering resignation, unless it is allowed to be withdrawn in the public interest by the appointing authority, it entails forfeiture of the past services as stated herein-above, the language of Rule 26(1) is couched in mandatory terms and hence no error was committed by these appellants in refusing the grant of gratuity to the respondent vide order dated 28.08.2003. This aspect of the matter has not been properly appreciated by the learned Single Judge while allowing W.P.(S) no. 4973 of 2003 dated 09.04.2008.

6. Learned counsel appearing for the respondent has relied upon the decision rendered by the Division Bench of this Court reported in 2008(2) J.C.R. 530 (Jhr.) (supra). This judgment is not helpful to the respondent (original petitioner) because the same is pertaining to the applicability of the Gratuity Act, 1972 and

the amendment made therein in the year 2009. In fact, here we are concerned with applicability of Rule 26(1) and Rule 26(2) of the Central Civil Services (Pension) Rules, 1972. As per Rule 26(1), once the resignation is tendered by the employee and if his case is not falling within the exceptions carved out under Rule 26(2) of the Central Civil Services (Pension) Rules, 1972, that entails forfeiture of past services. The respondent is not joining the duties under the Government rather an institute, viz.-B.I.T., Mesra, Ranchi, which is not a Governmental institution at all.

7. Learned Single Judge has mentioned in paragraph no.7 of the judgment dated 09.04.2008 while allowing the writ petition being W.P(S) no. 4973 of 2003, under Rule 9 of the Central Civil Services (Pension) Rules, 1972. The prerogative power of His Excellency, the President of India, to withhold or withdraw pension is a plenary in nature, which may have direct nexus with any sabotage of the property of the Government whether the delinquent employee is found guilty for any grave misconduct or negligence during the period of his service. We are not concerned with the said Plenary Power of His Excellency, the President of India. Moreover here we are concerned with Rule 26(1) and Rule 26(2) as stated herein above. The case of the respondent is not falling within Rule 26(2), and looking to Rule 26(1) of the Central Civil Services (Pension) Rules, 1972, once the respondent is tendering resignation, it entails the forfeiture of the past services. These aspects of the matter have not been properly appreciated by the learned Single Judge. The learned Single Judge in paragraph no. 10 of the decision rendered in the writ petition has stated that without giving any notice and without giving any opportunity of being heard, the gratuity had been forfeited. This is also running counter to Rule 26(1) of the Central Civil Services (Pension) Rules, 1972, mainly for the reasons that once the resignation is tendered, looking to the mandatory language of Rule 26(1), the result is inevitable i.e., "forfeiture of the gratuity" and therefore, for operation of Rule 26(1), there is no need to give any notice to the employees. The Rule operates automatically and therefore, there is no need to give any notice to the employees. The applicability of this sub-rule is not at the desire of the respondent nor at the volition of the respondent. This aspect of the matter has also not been properly appreciated by the learned Single Judge and, hence, the reasons given in paragraph no. 11 of the decisions is also running counter to the Rule 26(1) of the Central Civil Services (Pension) Rules, 1972. So far as the payment of Leave Encashment is concerned, the same has already been paid to the respondent in terms of the Central Civil Services (Leave) Rules.

8. As a cumulative effect of the aforesaid facts and reasons and judicial pronouncements, we hereby quash and set aside the judgment and order passed by learned Single Judge in W.P(S) No. 4973 of 2003 vide judgment and order dated 09.04.2008.

9. Accordingly, this Letters Patent Appeal is allowed and disposed of.