
(1995) 04 P&H CK 0071

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 103 of 1995

Babu Ram

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 20-04-1995

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 48(4)A, 48A

Citation : (1995) 111 PLR 59

Hon'ble Judges : G.S. Singhvi, J

Bench : Single Bench

Advocate : S.K. Sharma, for the Appellant; Charu Tuli, Assistant A.G., for the Respondent

Final Decision : Allowed

Judgement

G.S. Singhvi, J.—This Second Appeal arises out of the judgment and decree dated 4.1.1995 passed by the Additional District Judge, Patiala, in Civil Appeal No. 79 of 1992, State of Punjab v. Babu Ram. The appellant is aggrieved by the judgment and decree of the Court of Additional District Judge, Patiala, because by the impugned judgment, the said court has reversed the judgment and decree, dated 22.9.1992 passed by the Sub Judge First Class, Patiala, in favour of the appellant.

2. Facts of the case are that while working as Senior Clerk at Government Press, Patiala, the appellant submitted an application dated 1.2.1990 for voluntary retirement. He withdrew that application on 18.4.1990. On 25.4.1990, the Controller Printing and Stationary Department, Chandigarh issued an order retiring the appellant from service on 30.4.1990. The plaintiff-appellant challenged the legality of this order on the ground that after withdrawal of the application for voluntary retirement, nothing was left with the competent authority on the basis of which it could make an order retiring the plaintiff-appellant.

3. The defendant-respondents contested the suit by alleging that the plaintiff-appellant had received the order of retirement without any objection and his pension case had also been settled by the Accountant General. The defendant-respondents also pleaded that the plaintiff-appellant had submitted the application for voluntary retirement and the same became operative after expiry of three months.

4. The learned trial court framed four issues. Parties led their evidence and after hearing the arguments, the learned Sub Judge First Class declared that after the plaintiff had withdrawn his application for voluntary retirement, it was not open to the respondents to retire the petitioner from service w.e.f. 30.4.1990. The learned Sub Judge decreed the suit and declared that retirement of the plaintiff-appellant w.e.f. 30.4.1990 was illegal and void. The learned Sub Judge also directed that the amount received by the plaintiff between 25.8.1990 and 1.9.1992 be deposited by him with the department within fifteen days.

5. In the appeal filed by the respondents, the learned lower Appellate Court held that mere withdrawal by the appellant of his letter of retirement was not sufficient to preclude the competent authority from passing the order of retirement. The learned lower Appellate court held that unless the competent authority approved the withdrawal, the letter of retirement could be acted upon for the purpose of retiring the plaintiff-appellant. It also held that the application dated 18.4.1990 had not reached the competent authority upto 25.4.1990 and, therefore, the competent authority was fully justified in passing the order of retirement on 25.4.1990.

6. Shri Sharma, learned counsel for the appellant, argued that the lower Appellate Court has committed a patent illegality in upholding the retirement of the appellant w.e.f. 30.4.1990 because the appellant has withdrawn the letter of voluntary retirement seven days before its acceptance. Shri Sharma argued that once the appellant withdrew the letter of retirement, nothing was left with the competent authority to act upon and to pass the order of retirement of the appellant. Shri Sharma submitted that the learned lower Appellate Court has misunderstood the true import of the decision of the Supreme Court in Balram Gupta Vs. Union of India (UOI) and Anr, . Mrs. Tuli supported the judgment of the learned lower appellate Court.

7. In view of the undisputed facts, the only point which needs adjudication in this appeal is whether the competent authority was entitled to retire the appellant on the basis of his application dated 1.2.1990 even after the appellant had withdrawn the letter of retirement vide his application dated 18.4.1990. In Bal Ram Gupta's case (supra) the letter of retirement was submitted by the appellant on 24.12.1980. The retirement was to become effective on 1.1.1981. The order of retirement was issued on 20.1.1981 and the appellant was allowed to retire voluntarily w.e.f. 31.3.1981. In the meanwhile, the appellant had changed his mind and, therefore, he submitted the letter dated 31.1.1981 to withdraw the notice of voluntary retirement. Having failed to persuade the Delhi

High Court to accept his petition, Bal Ram Gupta appealed before the Supreme Court. Their lordships of the Supreme Court made reference to the provisions contained in Rule 48-A of the Central Civil Services (Pension) Rules, 1972, and observed that the normal rule which prevails in service cases that a person can withdraw his resignation before its effective would not apply in full force to a case of this nature because here the Government servant cannot withdraw except with the approval of such authority. At the same time, the apex Court held :-

"There is no unilateral termination of the same prior thereto. He is at liberty and entitled independently without Sub-rule (4) of Rule 48-A of the Pension Rules, as a Government Servant to withdraw his notice of voluntary retirement."

8. Thereafter, the Supreme Court also looked into reasons advanced by the respondents for refusing to accept the application for withdrawal of the letter of retirement and held that the decision taken by the competent authority was wholly arbitrary.

9. The learned lower Appellate Court has referred to the judgment of the Supreme Court and then held that in the absence of an express approval by the competent authority, the appellant is not entitled to claim that he had withdrawn his letter of voluntary retirement. To my mind, the Appellate Court has totally misdirected itself in appreciating the real controversy. Indeed, there is no dispute that the appellant had submitted his letter for voluntary retirement through proper channel and he had also submitted the letter dated 18.4.1990 through proper channel. It was the duty of the concerned authority to have forwarded his letter dated 18.4.1990 to the competent authority and it was for the competent authority to take a decision as to whether the appellant's request for withdrawal of letter of voluntary retirement could be declined on any valid ground. No such action was taken by the competent authority. The application filed by the appellant on 18.4.1990 was never rejected. In the absence of any order of rejection of the application, the appellant's letter of withdrawal remained effective and it was not permissible for the competent authority to have retired the appellant from service w.e.f. 30.4.1990.

10. I am also of the opinion that the learned lower Appellate Court totally misunderstood the true rationale of the decision of this Court in *Anand Parkash v. State of Haryana* 1982 (2) S.L.R. 368, as well as another decision of this Court in *Rajbir Singh v. State of Haryana*, Civil Writ Petition No. 13868 of 1990, decided on 24.4.1992.

11. In any considered opinion, the learned lower appellate Court has committed a serious illegality in reversing the judgment and decree passed by the learned trial Court.

12. In the result, the appeal is allowed. The judgment and decree passed by the learned lower Appellate Court are set aside and that of the learned Sub Judge are restored. Parties are left to bear their own costs in this appeal.