
(1981) 03 DEL CK 0003

In the Delhi High Court

Case No : Civil Writ Appeal No. 1776 of 1980

Bhim Singh Jain

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 27-03-1981

Acts Referred:

Citation : (1981) 19 DLT 446

Hon'ble Judges : S.B. Wad, J

Bench : Single Bench

Advocate : P.P. Rao, R.D. Sandalaya, B. Venkatarmani and S.N. Sapra, for the Appellant;

Judgement

S.B. Wad, J.

(1) The petitioner is a Specialist Doctor in Grade I of the Central Health Services. At the relevant time he was holding the post of Professor of Ophthalmology, Maulana Azad Medical College under Delhi Administration. He was born on 1st May, 1923. He joined the service of the Central Government on 26.8.1957. It appears that he was involved in litigation with the Central Government since 1967 for various claims. He. filed a Write Petition, being No. 896 of 1971, which was decided by this Court on 17.3.1980. The petitioner claims that under the said judgment he is entitled to the arrears of ever Rs. 30,000. A few months prior to the said decision the petitioner was ordered to be transferred to Pondicherry. The petitioner filled Civil Writ Petition No.

(2) On 1.3.1980 the petitioner, by arequestedwritcommunication, requested for voluntary retirement with effect from 30 September, 1980. His due date of retirement, however, was 30.4.1981. In his letter seeking premature retirement the petitioner stated : "Personal and family reasons compel me to seek premature retirement on 30th of September, 1980." On 5.5.1980, that is, during the pendency of the statutory notice period of three months the Central Government acceded to his request for voluntary retirement with effect from

30th September, 1980 under F.R. 56(k). On 10.7.1980 the petitioner wrote a letter to the Secretary, Government of India, Department of Health informing that he had decided to withdraw the notice of premature retirement. In the said letter the petitioner complained that in spite of the High Court's order the arrears of over Rs. 30,000.00 were not paid to him. He also noted in the letter that the Government has filed an appeal in the Supreme Court against the judgment of the High Court. He has also stated the reasons for withdrawing the notice for voluntary retirement. He writes: "I had sought pre-mature retirement to avoid the agony of prolonged litigation which has been forced on me since 1967. No useful purpose shall, however, be served by my premature retirement under the circumstances. I have Therefore decided to withdraw the notice of pre-mature retirement. Kindly treat my request for premature retirement as cancelled and I will retire normally as on 31.4.81." No reply was sent to this letter by the respondents to the petitioner. It is however, claimed in the counter-affidavit of the Union of India that they had refused permission to the petitioner to withdraw his notice and the same was communicated to the Delhi Administration.

(3) The petitioner has challenged the action of the respondents to retire him on 30th September, 1980. Shri P. P. Rao, counsel for the petitioner submits that Fundamental Rule 56 (k) does not impose any prohibition on the petitioner to withdraw his notice for premature retirement. He also contends that the Government has no power, under any provisions of law, to refuse withdrawal of the notice of retirement by Government servant. He has also challenged the action of retirement on the grounds of mala fides of the respondents. Counsel for the respondents opposes these submissions. He argues that the petitioner sought the withdrawal of the notice after the notice was accepted by the Government. He further contends that the Government has a right to withhold the permission to withdraw the notice.

(4) The principles of law on these questions are now well settled by various decisions of the Supreme Court. These judgments have upheld the right of a Government servant withdraw the notice of retirement before the date on which the termination of the service becomes effective. In *Jai Ram Vs. Union of India (UOI)*, the Supreme Court observed : "It may be conceded that it is open to a servant, who has expressed a desire to retire from service and applied to his superior officer to give him the requisite permission, to change his mind subsequently and ask for cancellation of the permission thus obtained; but he can be allowed to do so so long as he continue in service and not after it has terminated. The said principle was reiterated by the Supreme Court in *Raj Kumar Vs. Union of India (UOI)*, , in the context of a letter, of resignation. In *Union of India (UOI) and Others Vs. Gopal Chandra Misra and Others*, the Constitution Bench of the Supreme Court quoted with approval of its earlier decision *Jai-Ram's* case. The Bench hold : "It will bear repetition that the general principle is that in the absence of legal, contractual or constitutional bar, a "prospective" resignation can be withdrawn at any time before it becomes effective, and it becomes effective when it operates to terminate the employment or the office

tenure of the resignor.....In the case of a Government servant or functionary who cannot, under the conditions of his service/or office, by his/own unilateral act of tendering resignation, give up his service/or office, normally, the tender of resignation becomes effective and his service/or office-tenure terminated, when it is accepted by the competent authority." Gopal Chandra's case arose out of the resignation of Shri Satish Chandra, the present Chief Justice of Allahabad High Court.

(5) The provisions of law, on which the respondents have relied, may now be noted. They are Fundamental Rule 56(k) and Rule 42(2) of the Central Civil Services Pension Rules, 1972. The said Rules read as follows :

F.R.56(k) "Any Government servant may be giving notice of not less than three months in writing to the appropriate authority retire from service after he has attained the age of fifty years if he is in Class I or Class II service or post, (and had entered Government service before attaining the age of thirty-five year), and in all other cases after he has attained the age of fifty-five years ;

Provided that:

(A) nothing in this clause shall apply to a Government servant referred to in clause (a) who entered Government service on or before 23rd July, 1966 and

(B) it shall be open to the appropriate authority to withhold permission to a Government servant under suspension who seeks to retire under this clause."

Pension Rules: 48. Retirement on completion of 30 years" qualifying service.

48(2): "A Government servant, who has elected to retire under this rule and has given the necessary intimation to that effect to the appointing authority, shall be precluded from withdrawing his election subsequently except with the specific approval of such authority : Provided that the request for withdrawal shall be within the intended date of his retirement."

(6) A bare reading of F.R. 56(k) would show that the only case where the Government can withhold permission to seek voluntary retirement is where the Government servant is under suspension. Admittedly, the petitioner was not under suspension at the relevant time. Rule 56(k) thus recognises the right of Government servant to seek voluntary retirement provided the other conditions mentioned in the said Rule are satisfied. Admittedly, the other conditions mentioned in the said Rule are satisfied by the petitioner in the present case. Rule 48(2) of the Pension Rules does not confer an absolute power on the Government to refuse permission to withdraw the notice of retirement. The proviso makes it clear. If the request for withdrawal is made within "the intended date of his retirement" the Government has no power to preclude the withdrawal of notice. In other words, if the request for withdrawal of the notice is made beyond the date of the intended retirement, the Government can preclude a Government servant from withdrawing his original request. This Rule formally recognises the principle of law laid down by the Supreme Court, namely, that till

the termination of the employment a Government servant is free to withdraw his notice of retirement.

(7) In the present case the petitioner's request for voluntary retirement was made on 1.3.1980 was accepted by the Government on 5.5.1980. The letter of acceptance / permission makes it clear that the petitioner would retire on 30th September, 1980. This was the intended date mentioned in the letter of the petitioner and was accepted by the Government. To put it differently although the Government granted the permission on 5.5.1980, It was to be effective from 30th September, 1980. In the language of the Supreme Court the termination of employment was to take effect from 30th September, 1980. The letter of withdrawal (of the notice of retirement) was sent by the petitioner on 10.7.1980, that is, 2" months prior to intended date and just ten days after the statutory period began running. The respondents had, Therefore, no authority or power to retire the petitioner on 30th September, 1980. He ought to have been permitted to retire on his normal and due date of retirement, namely, 30.4.1981.

(8) As the petitioner succeeds on this legal submission, it is not necessary to deal with his submission regarding Mala fides.

(9) The alleged order of Union of India refusing the petitioner to withdraw his notice of retirement is illegal and is set aside. The action of the respondents retiring the petitioner on 30th September, 1980 is illegal and is not operative in law. The petitioner would be entitled to continue in the service of the respondents till his normal date of retirement, namely, 30.4. 1981. He would also be entitled to all the consequential reliefs, including the pay and allowances, for the period between 30th September, 1980 and 30th April, 1981 according to Rules. The Writ Petition is allowed with costs. The Rule is made absolute.