
(1996) 08 RAJ CK 0025
In the Rajasthan High Court
Case No : C.W.P. No. 3469 of 1995

Deen Dayal Pareek

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 07-08-1996

Acts Referred:

Rajasthan Service Rules, 1951 — Rule 244(1)

Citation : (1997) 1 LLJ 1077

Hon'ble Judges : P.K. Tewari, J

Bench : Single Bench

Advocate : Rama Kant Pareek, for the Appellant; M.A. Khan, for the Respondent

Final Decision : Allowed

Judgement

P.K. Tiwari, J.—In short, the facts of the case are that the petitioner was working as Office Assistant in the Office of Commandant, Police Training School, Kishangarh (Ajmer) in the year 1992. The petitioner moved an application dated May 1, 1992 under Rule 244(1) of the Rajasthan Service Rules, 1951 (hereinafter to be referred as the Rules) for voluntary retirement with effect from July 31, 1992. His application was forwarded by the Commandant to the respondent No. 2, the appointing authority. According to the petitioner the above referred application for voluntary retirement was moved by him under mental tension due to the adverse family circumstances but after sometime he realised that it is not in his interest as well as in the interest of his family, therefore, he moved another application dated July 27, 1992 to the Commandant for withdrawing the said application. This application was also forwarded by the commandant to the respondent No. 2 with his letter by a Special Messenger which reached the office of respondent No. 2 on July 28, 1992 but under the orders of the respondent No. 2 the petitioner was given voluntary retirement on July 31, 1992 on the basis of his application dated May 1, 1992.

2. The petitioner's case is that, before the date of voluntary retirement i.e., July 31, 1992 he submitted application for withdrawal of his previous application, but

it was not considered and no order was passed by the Respondent No. 2, it amounts to inaction on the part of the Respondent No. 2. The petitioner was entitled to withdraw his application for voluntary retirement before July 31, 1992. He has placed reliance on the judgment of this Court reported in Brij Mohan v. State of Rajasthan and Ors. 1995 (1) RLR.

"A bare reading of Clause (f) of Sub-rule (1) of Rule 244 of the Rules shows that a Government servant, after giving the notice of voluntary retirement, can make a request for its withdrawal, before the expiry of the period of the notice and the notice would stand withdrawn with the approval of the Appointing Authority. In other words, when a request for withdrawal of notice, is made, the Appointing Authority has to apply its mind and to decide whether or not to grant the approval for such withdrawal".

3. According to learned counsel for the petitioner, no order was passed by respondent No. 2 on the application of the petitioner dated July 27, 1992 which reached the office of Respondent No. 2 on July 28, 1992.

4. The case of the non-petitioner is that the application for voluntary retirement submitted by the petitioner was allowed, and order was passed by non-petitioner No. 2 on June 16, 1992, therefore, no illegality has been committed by the respondents. Once the application for voluntary retirement was submitted by the petitioner, and accepted by the appointing authority, the same can only be withdrawn with the permission of the appointing authority. In this case appointing authority refused to grant permission to withdraw the application for voluntary retirement, therefore this petition is not maintainable.

5. In my opinion, the present case is covered by the judgment of this Court referred to above. It is not disputed that the petitioner had submitted application for withdrawal of his application for voluntary retirement on July 27, 1992, which reached the office of respondent No. 2 on July 8, 1992. There is no basis that appointing authority rejected that application, because no such order was communicated to the petitioner and not even filed in this Court. Therefore, it amounts to inaction on the part of the respondents and has resulted in injustice to the petitioner.

6. Therefore, this writ petition is allowed, the order of the Respondent No.2 dated June 19, 1992 retiring the petitioner with effect from July 31, 1992 and order by which the petitioner was relieved on July 31, 1992 are hereby quashed. Petitioner shall be deemed to have continued in service without any break with the right of fixation, seniority and other consequential benefits. The respondents are also directed to issue posting order immediately. The petitioner will not get any salary from August 1, 1992 till date of judgment, because petitioner filed this petition without giving notice to the respondent. This period will be treated as leave without pay, or any type of leave, applied by the petitioner. There is no order as to costs.