Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 19/09/2026

(2011) 07 JH CK 0022

In the Jharkhand High Court

Case No : Writ Petition (S) No. 4979 of 2008

Dharmendra Prasad Sah APPELLANT

Vs

Life Insurance Corpn. of India and Others RESPONDENT

Date of Decision : 22-07-2011

Acts Referred:

Life Insurance Corporation Regulations — Regulation 18

Citation : (2011) 07 JH CK 0022

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Narendra Nath Tiwari

1. In this writ petition, the petitioner has prayed for quashing the letter dated 19.4.2007, issued by the Manager (P & IR), Life Insurance of India (LIC for short), Hazaribagh, whereby the petitioner was informed that his resignation was not accepted by the competent authority and directed the petitioner to join the office immediately. The petitioner has also sought direction on the respondents to accept the petitioner''s resignation tendered by letter dated 29.7.2006 and to settle and pay all retiral dues, such as P.F., gratuity, group insurance and arrears of salary with interest.

2. The short fact of the case is that the petitioner had joined the services of LIC as Assistant Administrative Officer at Kolkata on. 18.9.1989. After completion of training, he was posted at Machillipatanam, Vijayawada, Visakhapatnam and was transferred to various other places. In July, 2006, the petitioner was transferred to Hazaribagh. He assumed charge as Manager(OS), LIC, Hazaribagh on 27.7.2006. After assuming the charge, the petitioner chose to resign from service. There was provision for determination of service in Regulation 18 of the Life Insurance Corporation of India(Staff)Regulations, 1960 (hereinafter referred to as ''LIC Regulation''). It has been inter alia, provided that an employee can

leave or discontinue his service of the Corporation by giving notice of his intention to leave or discontinue to the competent authority. The notice required shall be of three months in the case of employee belonging to the class of the petitioner. There is also provision, for waiving of period of notice by the competent authority. Accordingly, the petitioner tendered. his resignation by giving notice dated 29.7.2006 through proper channel. He also requested for waiving the notice by the employer. The said notice was addressed to the Managing Director of the Corporation. The three months period expired, but there was no communication from the side of the respondents. Ultimately, he was informed by letter dated 19.4.2007, issued by the Manager (P & IR) that the petitioner''s resignation was not accepted. The petitioner was directed to join the office immediately. There was exit interview and the petitioner attended on 12.6.2007 for the sole purpose of settling all the dues, but the respondents have not issued any letter regarding acceptance of resignation nor they have paid retiral dues to the petitioner. The petitioner requested the competent authority to accept his resignation time and again, but no order has been passed till date.

3. The respondents have contested this writ petition. In their counter affidavit, it has been stated, inter alia, that the resignation of the petitioner was not acceptable for the reason that he had shown complete disregard to his job and to his employer. The petitioner after giving notice of resignation did not attend his duty in spite of repeated instruction of the respondents to join his duty. The petitioner remained absent unauthorizedly. Until and unless his resignation is accepted, the petitioner was an employee of the Corporation and he is bound to follow the rules and regulation of the Corporation and the instruction of his superiors. Since the petitioner was absent unauthorizedly, the departmental proceeding has been initiated against him for his unauthorized absence from duty. In view of pendency of the departmental proceeding, there is no question of acceptance of the petitioner''s resignation.

4. I have heard learned counsel for the parties and considered the facts and submissions.

5. Regulation-18 of the said LIC Regulation makes a provision for determination of service, which reads as follows:

Determination of Service

18. (1) An employee, other than an employee on probation or an employee appointed on a temporary basis shall not leave or discontinue his service in the Corporation without first giving notice in writing to the competent authority of his intention to leave or discontinue the service. The period of notice required shall be-

(a)three months in the case of an employee belong to Class I

(b)one month in the case of other employees Provided that such notice may be waived in part or in full by the competent authority at its discretion.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/dharmendra-prasad-sah-appellant-…

In case of breach by an employee of the provisions of the sub-regulation, he shall be liable to pay the Corporation as compensation a sum equal to his salary for the period of notice required of him which sum may be deducted from any moneys due to him.

(2) The Chairman the [Executive Committee] or the Corporation may determine the service of any [permanent] employee at any time on giving him-

(a)three month''s notice or salary in lieu thereof if he is an employee in Class I and

(b)one month''s notice or salary in lieu thereof if he is an employee in any other class Provided, however, that the period of notice will be deducted in the case of employees who have served for 10 years or more.

Provided further that no order under this regulation shall be made by an authority subordinate to the appointing authority.

(3)Nothing contained in this regulation shall affect the right of the appointing authority to retire, discharge, remove or dismiss an employee without notice or salary in lieu thereof in accordance with the provisions of Regulation 39 or to terminate the services of any employee belonging to Class II in accordance with the provisions contained in Schedule III liable to pay as compensation a sum equal to his salary for the period of notice required of him, which sum may be deducted from any moneys due to him. At any rate, the respondent-Corporation, even on such allegation of breach of the regulation has only right to deduct a sum equal to three months salary of the petitioner for the period of notice from the money payable to the petitioner. The respondents, contrary to the said legal provision, have arbitrarily withheld the entire retiral dues without any justification. The respondents have no authority to refuse the petitioner''s resignation and withhold his entire retiral dues.

6. Learned counsel, appearing on behalf of the respondent-Corporation, on the other hand, submitted that notice of resignation is only an offer and the petitioner''s offer has not been accepted by the employer till the notice of resignation is accepted. The petitioner shall be deemed to be the employee of the Corporation and he is bound by the terms of the LIC (Staff) Regulation as well as instruction of the higher officers. The petitioner having not done so and remained absence unauthorizedly, is guilty of misconduct and the respondents have full authority to initiate a departmental proceeding against him. Accordingly, charges have been framed and the proceeding has been initiated against the petitioner. Since the departmental proceeding is pending against him, there is no question of accepting his resignation and payment of retiral dues until conclusion of the same.

7. Learned counsel for the respondents referred to and relied on the decision of the Division Bench of the Patna High Court in ''Assistant Branch Manager, now Branch Manager, LIC of India, Giridih & Ors. Vrs. Shanti Swarup Sharma'' [1981

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/dharmendra-prasad-sah-appellant-…

BLJR 65] to fortify his contention that the notice of resignation given by the employee is only an offer and that offer has to be accepted or rejected. If the acceptance has not been made, it will be deemed that it has not been accepted. Learned counsel further referred to and relied on the decision of the Supreme Court in Punjab National Bank Vs. P.K. Mittal, in support of his contention that the resignation would become effective only after acceptance thereof.

8. On close scrutiny of the decisions referred to by learned counsel for the respondents, I find that there is no similarity of facts between this case and those involved in the said decisions nor the decisions deal with the situation similar to the instant case.

9. In the instant case, the petitioner had expressed his intention to leave service by his letter dated 29.7.2006 with a request to accept his resignation with immediate effect by waiving the period of notice.. There was no reply rejecting his said offer till the expiry of the period of notice.

10. The petitioner had thus bonafide reason to believe that his resignation is accepted. Rejection of the petitioner''s resignation after expiry of about nine months is meaningless and is of no consequence. Even if the contention of the respondents is accepted that the petitioner has breached the terms of Regulation-18 of LIC Regulation, they have only power to invoke the penalty provision as per the proviso to Regulation-18 of LIC Regulation. According to the said provision, the petitioner can be held liable to pay as compensation a sum equal to the salary for the period of notice and the said amount can be deducted from any money due to him.

11. In view of the said discussion, I find substance in the claim of the petitioner.

12. Since the notice period has already expired and the petitioner''s resignation is deemed to become effective after expiry of three months from the date of tendering his resignation, he is entitled to get his retiral dues in accordance with the terms of service.

13. This writ petition is allowed. The respondents are directed to calculate and pay the entire retiral dues with statutory interest to the petitioner, within three months from the date of receipt/production of a copy of this order.

14. Since it has been informed that the Managing Director is the competent authority to decide as to whether the petitioner is liable to pay as compensation a sum equal to his salary for the notice period, it will be open for the Managing Director to decide the same. If the petitioner is held liable to pay such compensation, the respondents shall be at liberty to deduct the said sum from the amounts of retiral dues, payable to the petitioner.

15. There is no order as to costs.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/dharmendra-prasad-sah-appellant-…