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**(2006) 08 MP CK 0067**

**In the Madhya Pradesh High Court**

**Case No : Writ Petition (S) No. 1028 of 2004**

Director General, Employees' State Insurance Corporation  
and Another

APPELLANT

Vs

Puroshottam Malani

RESPONDENT

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**Date of Decision : 29-08-2006**

**Acts Referred:**

**Citation : (2006) 111 FLR 344**

**Hon'ble Judges : S.K. Kulshrestha, J;N.K. Mody, J**

**Bench : Division Bench**

**Final Decision : Dismissed**

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## **Judgement**

N.K. Mody, J.—Being aggrieved by the order dated 13-12-2004 passed by Central Administrative Tribunal, Jabalpur, Circuit Bench, Indore in O.A. No. 1002/2000 whereby the petition filed by the respondent was allowed and the order dated 17-4-2000 passed by the petitioner was quashed with a further direction to the petitioner to treat the respondent to have continuously worked till the date of actual superannuation and grant him arrears of salary and other emoluments including increments and to get his pensionary benefits re-fixed accordingly, the present petition has been filed.

2. Short facts of the case are that the respondent was in service of petitioner and was working as Manager. Respondent vide letter dated 31-12-1999 tendered three month's notice for voluntary retirement with effect from 31-3-2000. The resignation was accepted by the Competent Authority vide order dated 10-2-2000, before 31-3-2000. On 22-3-2000, i.e., 10 days before the last date of expiry of notice period the respondent moved an application whereby it was submitted that the respondent is withdrawing the notice dated 31-12-1999 whereby the respondent intimated that the respondent wants to retire from his service with effect from 31-3-2000. The application submitted by respondent for withdrawal of notice of voluntary retirement was rejected by the petitioner vide order dated 17-4-2000. Being aggrieved by the order dated 17-4-2000, the

petition was filed before the learned Tribunal which was allowed by the impugned order.

3. Learned Counsel for the petitioner submits that while allowing the petition, learned Tribunal has not taken into consideration Sub-rule (2) of Rule 48 of Central Civil Services (Pension) Rules, 1972, which reads as under:

48. Retirement on completion of 30 years" qualifying service.-

(1) \*\*\* \*\* (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.

4. Learned Counsel for the petitioner submits that notice dated 31-12-1999 given by the respondent was accepted on 10-2-2000 and no permission was sought from the Appointing Authority for withdrawing the notice, therefore, learned Tribunal committed error in allowing the petition. It is also submitted that the respondent has not assigned any reason for withdrawal of his intention to retire, which is necessary. Further contention is that on 14-9-2000, the respondent has accepted all the retiral benefits, therefore, the respondent was precluded to pursue the petition against the order dated 17-4-2000 whereby the application dated 22-3-2000 submitted by the respondent was rejected.

5. Shri D.M. Kulkarni, learned Counsel for the respondent supports the order passed by Tribunal. Learned Counsel placed reliance on a decision in the matter of Union of India (UOI) and Others Vs. Gopal Chandra Misra and Others, , wherein the sitting Judge of Allahabad High Court who was appointed as Additional Judge on 7-10-1963 and was to attain the age of 62 years on 1-9-1986 submitted a hand addressed letter to the President of India on 7-5-1997 wherein it was stated that his resignation shall be effective from 1-8-1977. On 15-7-1977 another letter was written to President of India whereby it is submitted that he revoke and cancel the intention expressed by him to resign on 1-8-1977. The concerned Judge cut short his leave and resume his duty as Judge with effect from 16-7-1977 and commenced sitting in the Court and deciding the cases from 18-7-1977. In these circumstances, the Hon"ble Apex Court observed that power to withdraw the resignation is implied. Further reliance was placed on a decision in the matter of Da Irani Gupta v. Union of India, reported in 1987 SCC 228, wherein the Hon"ble Apex Court considered Sub-rule (4) of Rule 48A of Central Civil Services (Pension) Rules, 1972 and observed that the approval of the Authority under Rule 48A(4), is however, not ipse dixit of the Approving Authority. The Approving Authority who is having the Statutory Authority must act reasonably and rationally. What prompted the Government to withhold the withdrawal is important and not what prompted the Government servant to seek the withdrawal. The only reason put forward in this case was that the appellant had not indicated his reasons for withdrawal. Though no reason had been stated in the notice but the reasons

have been sufficiently indicated later that he was prevailed upon by his friends and the appellant had a second look at the matter. This is not an unreasonable reason. It was also observed that in the modern and uncertain age it is very difficult to arrange one's future with any amount of certainty. A certain amount of flexibility is required and if such flexibility does not jeopardize Government or administration, administration should be graceful enough to respond and acknowledge the flexibility of human mind and attitude and allow the employee to withdraw his letter of retirement in the facts and circumstances of this case. If the administration had made arrangements acting on his resignation or letter of retirement to make other employee available for his job, that would be another matter but the employee's offer to retire and withdrawal of the same happened in such quick succession that it cannot be said that any administrative set up of arrangement was affected. Further reliance was place on a decision in the case of Punjab National Dank v. P.K. Mittal, reported in 1989 (2) SCC 175, wherein the Hon'ble Apex Court observed that the resignation could take effect either on the date chosen by employee and mentioned in the notice or on the expiry of three months period but the same could have accepted by employer on any earlier date. It was also observed by the Apex Court that a pre-mature acceptance would amount to termination by the employer. Further reliance was placed on a decision in the matter of Union of India v. Wing Commander T. Parthasarthy, reported in AIR 2000 SCW 4031, wherein the Hon'ble Apex Court observed that in absence of statutory bar, the policy decision or certificate to the effect that employee cannot seek cancellation of his application for pre-mature retirement cannot impede or deny right to withdraw application. It was also observed that policy decision of the department of mere certificate of the employer being aware of particular position which has given no sanctity or basis in law to destroy such rights which otherwise inhered in him and available in law.

6. Shri D.K. Kulkarni also placed reliance on a decision in the matter of Jitendra Dev barma v. State of Tripura, reported in 2006 LIC 1818, wherein Gauhati High Court after considering the law laid down by the Apex Court in the matter of Balram Gupta (supra), has observed that the ratio laid down in the said decision would make it clear that the requirement of prior approval of the Appointing Authority is not sine qua non for withdrawing the notice of voluntary retirement and as such this part of the said clause is not legally sustainable.

7. In the present case, the facts are little different. From the particulars submitted by the petitioner, Date of Birth of the respondent is 28-12-1942 and his Date of Retirement was 31-12-2002, on completion of 60 years of his age. Vide letter dated 31-12-1999, the respondent intended to retire w.e.f. 31-3-2000, i.e., before 2 years and 9 months of his actual date of retirement. His resignation was accepted by Competent Authority on 10-2-2000 and before the effective date, i.e., 31-3-2000, the respondent submitted the letter of withdrawal of resignation on 22-3-2000. After the actual date of retirement dated 31-3-2000 and before filing of the petition on 12-11-2000, retiral benefits were paid to the respondent on 3-8-2000, which is amounting to Rs. 1,72,052/-. This material

fact was not disclosed by the respondent in the petition filed before the Central Administrative Tribunal. Respondent is also getting the pension w.e.f 1-4-2000.

8. So far as not mentioning the reason in the letter of withdrawal is concerned, it cannot be a ground for rejection. Since it is not necessary for an employee to mention the reason in the application for pre-mature resignation, therefore, it also implies that there is no necessity to mention the reason in the letter of request for withdrawal of pre-mature resignation.

9. Apart from this, if the employer intended to know the reason then it could have asked. Not only this, before rejecting the letter of request for withdrawal of pre-mature resignation, no opportunity of hearing was given to the respondent to explain that in what circumstances the respondent intends to withdraw his pre-mature resignation. In view of this it cannot be said that learned Tribunal has committed any error in quashing the order dated 17-4-2000, whereby the letter of request for withdrawal of resignation was rejected.

10. Now coming to the second question that what will be the impact of receiving the retiral benefits after actual date of retirement and before filing the petition before the Tribunal. In the matter of Hindustan Copper Limited v. Bansilal and Ors. reported in AIR 2006 SCW 55, wherein the Hon''ble Apex Court considered this aspect and observed that it is not disputed that the employees have received a huge amount in terms of voluntary retirement scheme. The amount payable to them must be directed to be adjusted with the amount of back wages, current wages or future wages, if any. In this case while admitting the appeal for final hearing and staying the operation of the order passed by the High Court by way of an interim order, the Hon''ble Apex Court observed that if the employer fails in the appeal he will have to give wages to the employees including the back wages for the period for which otherwise they would have been in service. It does not preclude the employees from receiving the benefits under the voluntary retirement scheme, which would be without prejudice to their contentions in the appeal.

11. In the case of J.N. Shrivastava v. Union of India, reported in 1998 SCC 1251, the Hon''ble Apex Court observed that withdrawal is permissible because it was made before the actual date of retirement. It was further observed that even if the voluntary retirement notice is moved by an employee and gets accepted by the Authority within the time fixed, before the date of retirement is reached, the employee has locus poenitentiae to withdraw the proposal for voluntary retirement. So far as payment of back wages are concerned, it was observed by the Hon''ble Court that the employee should be deemed to have continued in service till his superannuation age because his request for withdrawal of notice for voluntary retirement was wrongly rejected. It was also held that the employee shall be entitled to arrears of salary and other emoluments including increments because he was ready and willing to work.

12. In the facts and circumstances of the case and the position of law as laid

down hereinbefore, the position is crystal clear, no illegality has been committed by the learned Tribunal in allowing the petition filed by the respondent.

13. In view of this petition stands dismissed. No order as to costs.