
(2008) 07 PAT CK 0078
In the Patna High Court
Case No : CWJC No. 4441 of 2005

Dr. Shah Azad Siddiqui

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 31-07-2008

Acts Referred:

All India Services (Death-Cum-Retirement Benefits) Rules, 1958 — Rule 16
Bihar Service Code, 1952 — Rule 74(b)(i)

Citation : (2008) 4 PLJR 194

Hon'ble Judges : Navin Sinha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Navin Sinha, J.—Heard Learned Counsel for the petitioner and Learned Counsel for the State. The question for consideration presently is, if the petitioner shall be deemed to have retired from Government service in pursuance of his application for voluntary retirement dated 16.3.1998 under Rule 74(b)(i) of the Bihar Service Code upon expiry of three months" notice period i.e. 30.6.1998. If that be so, can the authorities by not communicating express acceptance of the same contend that the petitioner continued in service and, therefore, a decision to initiate departmental proceedings could be initiated against him on 13.4.2000 and memo of charges be issued on that basis to him on 8.7.2004 on the premise that he continued in Government service.

Rule 74(b)(i) reads as follows:-

Notwithstanding anything contained in the preceding sub-rule a Government servant may, after giving at least three months" previous notice, in writing, to the appointing authority concerned retire from service on the date on which such a Government servant completes thirty years of qualifying service or attains fifty years of age or on any date thereafter to be specified in the notice:

Provided that no Government servant under suspension shall retire from service

except with the specific approval of the Government.

2. On the date that the petitioner submitted this request for voluntary retirement he was neither under suspension and no departmental proceedings were pending against him and neither was that the position in the three months period contemplated under the Rules.

3. Learned Counsel for the petitioner has relied upon a decision of the Supreme Court reported in Union of India and others Vs. Sayed Muzaffar Mir, to submit that the denial of automatic termination of the relationship of master and servant on expiry of the notice period of three months for voluntary retirement under the Rules could be denied only in case when Government servant was under suspension or was suspended during the notice period. That the Government was always at liberty to deny this request for voluntary retirement in between this period of three months, but if the Government did not do so, the effect would be automatic cessation of master and servant relationship after the expiry of the notice period. Under consideration was Rule 1802(B) of the Indian Railways Establishment Code which permitted an employee to seek retirement by three months" prior notice unless the concerned employee be under suspension and which was also interpreted to include a denial of such right during the notice period.

4. To the same effect is the judgment of the Hon"ble Supreme Court reported in P. Lal Vs. Union of India (UOI) and Others, . In that case an argument was made on behalf of the said employees that acceptance of voluntary retirement was necessary and mere expiry of three months" period would not suffice. The provisions of Rule 16 of the All India Services (Death-cum-Retirement) Rules, 1958 at sub-clause 2 and 2(A) fell for consideration and which are similar to Rule 74(b)(i) of the Bihar Service Code presently under consideration. The Rule reads as follows:-

16. Superannuation gratuity or pension.-(1) A member of the service shall be required compulsorily to retire Mm the service with effect from the afternoon of the last day of the month in which he attains the age of 58 years:-

Provided that he may be retained in service after the last day of the month in which he attains the age of 58 years on public grounds which, shall be recorded in writing-

(a) for an aggregate period not exceeding six months by the State Government; and

(b) for any period beyond six months, with the sanction of the Central Government:

Provided further that a member of the service shall not be retained in service beyond the age of 60 years except in very special circumstances.

* * *

(2) A member of the service may, after giving at least three months' previous notice in writing, to the State Government concerned, retire from service on the date on which such member completes thirty years of qualifying service or attains fifty years of age or on any date thereafter to be specified in the notice:

Provided that no member of the service under suspension shall retire from service except with the specific approval of the Central Government.

(2-A) A member of the service may, after giving three months' previous notice in writing to the State Government concerned, retire from service on the date on which he completes 20 years of qualifying service or any date thereafter to be specified in the notice:

Provided that a notice of retirement given by a member of the service shall require acceptance by the Central Government if the date of retirement on the expiry of the period of notice would be earlier than the date on which the member of the service could have retired from service under sub-rule (2):

Provided further that a member of the service, who is on deputation to a corporation or company wholly or substantially owned or controlled by the Government or to a body controlled or financed by the Government, shall not be eligible to retire from service under this Rule for getting himself permanently absorbed in such corporation, company or body.

Law for consideration-In the relevant extract at para-27 of the judgment the Hon'ble Apex Court notices as follows:-

...Once such a notice is given it merely has to be accepted by the Government of India. The moment it is accepted the retirement would become effective. If any other view is taken it would lead to absurd results. Such a view would mean that even though a member who had given a notice for voluntary retirement stopped attending office and/or gone away abroad and/or taken up some other employment after a number of years of absence the member could claim to come back into service because the Government, for some unforeseen reasons, had not communicated its acceptance. Taken to its absurd length such a member could after superannuation claim that, as the services were not terminated, he was entitled to pension and gratuity on the basis that he had continued in service. The requirement of communication of acceptance would only arise in cases where, even after giving of a notice of voluntary retirement the member continues to work/perform his duties. In such cases the member would need to know from what date he can stop attending office. In cases where the member has by his own conduct abandoned service, the severance of the relationship of master and servant takes place immediately on acceptance of notice. We are unable to accept the submission that the severance of relationship of master and servant cannot take effect until there is an order by the President of India and the same is duly notified in the Gazette. Rules 16(2) and 16(2-A) have been set out hereinabove....

5. It is the further case of the petitioner that he discharged no duties after 16.3.1998 and till expiry of the notice period on 30.6.1998.

6. On the contrary, Learned Counsel for the State has relied upon a judgment of the Hon"ble Supreme Court reported in Himachal Pradesh Horticultural Produce Marketing and Processing Corporation Ltd. Vs. Suman Behari Sharma, to submit that acceptance of a request for voluntary retirement was necessary without which there can be no cessation of the relationship of master and servant. Bye-law 3.8 of H.P. Horticultural Produce Marketing and Processing Corporation Ltd. Employees Service Bye-laws, which fell for consideration is couched in a language not similar to Rule 74(b)(i). The language of Rule 74(b)(i) is on the contrary similar to the provisions noticed in the aforesaid judgments of the Hon"ble Supreme Court. In the case relied upon by the respondents, the statutory provisions were different. Reading Clauses-2 and 5 of the same in conjunction it was held that there could be no automatic cessation of relationship after expiry of the notice period; but that an express acceptance of the same was required. This was in view of the express words in sub-clause 2 "may be...permitted at his request". In that context it was held that communication of acceptance was necessary. The case relied upon by the respondents is fundamentally different inasmuch as a different statutory provision was falling for consideration couched in a language unlike the present one.

7. The first counter affidavit filed on behalf of the respondents does not deny or dispute that the petitioner had, in fact, submitted his request for voluntary retirement on 6.3.1998. In fact, Annexure-9 is a Xerox-copy of the original application, submitted by the petitioner before the respondent authorities containing the diary number of acknowledgement recorded in the Section records in the office of the respondents with regard to any communication received and it also bears the endorsement of the Government functionary accepting the same. Even after having perused the same, the respondents never urged that no such document was submitted. What was sought to be urged was that his request for voluntary retirement cannot be accepted in view of the fact that there is a departmental proceeding against him. This, per se, mentions that there was a request, but that it was unacceptable.

8. this Court has already noticed that the request for voluntary retirement was in the year, 1998 when the departmental proceedings are alleged to have been initiated in the year, 2000 long after the expiry of the three months" notice period. The attempt in the supplementary counter affidavit by the Secretary of the Department to raise a bogey that the petitioner, In fact, never submitted any application for voluntary retirement is nothing but a subterfuge to save their own lapses. It is a matter of common knowledge that when an official representation or communication is received in the Government office it is entered in a diary, given a serial number with the date of receipt. Not having denied the same in the original counter affidavit, it is now urged that the diary itself is not traceable for which also the petitioner cannot be faulted.

9. A bare reading of Section 74(b)(i) of the Bihar Service Code makes it apparent that the option lies with the employee to initiate the process. The only right given to the Government is if the officer is under suspension to deny such option for voluntary retirement and it could also do so by express refusal during the notice period. That this was distinct from the powers of the employer under Rule 74(b) (ii) to terminate the services after three months' previous notice or pay in lieu thereof. That the Government itself has not understood it in any other manner is apparent from the F.D. Memo. No. P.C.-2-9-9/78/6190F dated 27.4.1979 when it provides that the scheme was purely voluntary and for which the Government employee had to come forward. That such an offer could be withdrawn by the employee within the period of three months.

10. Having considered the facts and circumstances of the case, this Court holds that the petitioner is deemed to have voluntarily retired from service on 30.6.1998. Once the relationship of master and servant ceases, the question of initiating any departmental proceedings against him, therefore, simply does not arise and is a nullity.

11. The writ application stands allowed. The petitioner shall be entitled to his service benefits as deemed to have voluntarily retired on 30.6.1998. Let the same be done within a period of four months from the date of receipt and/or production of a copy of this order. In so far as the claims of the petitioner with regard to arrears of salary for certain periods that he claims to have been waiting for posting are disputed questions of fact which cannot be decided in the writ application. The petitioner shall be at liberty to file a representation for the same including his claim for promotion due to him before he took voluntary retirement which shall be decided by the authorities in accordance with law.