

(2007) 05 AHC CK 0112
In the Allahabad High Court

Ghanshyam Das

APPELLANT

Vs

State Public Service Tribunal, Managing Director, U.P. State Food and Essential Commodities Corporation Ltd. and Regional Manager, U.P. State Food and Essential Commodities Corporation Ltd.

RESPONDENT

Date of Decision : 18-05-2007

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2008) 5 AWC 4766 : (2007) 114 FLR 860

Hon'ble Judges : Sudhir Agarwal, J; Anjani Kumar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Aggrieved by the order dated 16.11.1995 passed by the U.P. Public Services Tribunal (hereinafter referred to as the "Tribunal") in Claim Petition No. 524 of 1991 the petitioner has filed this writ petition under Article 226 of the Constitution of India seeking a writ of certiorari quashing the said order to the extent it has dismissed the claim petition filed by the petitioner. He has also assailed the order dated 5.1.1996 whereby the Tribunal has rejected his review application.

2. The facts in brief as stated in the writ petition are that the petitioner was appointed as Salesman in U.P. State Food and Essential Commodities Corporation Ltd., Lucknow (hereinafter referred to as the "Corporation") vide appointment letter dated 29.12.1977 issued by the Regional Manager of the Corporation. The petitioner joined his service on 2.1.1978 at Allahabad wherefrom he was transferred to Varanasi. He fell ill on 27.11.1980 and sent leave application on medical ground. The respondent No. 3 issued an" orders dated 17/18.12.1980 informing the petitioner that leave applications dated 28.11.1980, 8.12.1980 and 15.12.1980 have been rejected. The petitioner was directed to appear before the Chief Medical Officer, Varanasi for his opinion and also to submit joining report.

The petitioner claim to have visited Chief Medical Officer, Varanasi on 24.12.1980 but he was refused examination by Chief Medical Officer on the ground that no official communication has been received by Chief Medical officer and in the absence thereof he would not submit any opinion. The petitioner continued ill and could not join at all. Due to harassing attitude of respondent No. 3, the petitioner submitted letter dated 22.1.1981 giving details on account whereof he was not in position to attend his duty. He also submitted resignation letter dated 22.1.1981 (Annexure-14 to the writ petition). He withdrew his resignation vide his letter dated 7.3.1981 (Annexure-15 to the writ petition) but neither any order was passed by the respondent No. 3 nor he was allowed to join service though several reminders and representations sent by the petitioner. Thereafter in 1991, he filed a claim petition before the Tribunal which the Tribunal has allowed vide order dated 16.11.1995 so far as it pertains to salary for, the period 27.11.1980 to 31.3.1981 after considering his request for grant of leave in accordance with Rules but in respect to other matters, the claim petition has been rejected.

3. The respondents have filed counter affidavit stating that the petitioner's resignation was accepted by the competent authority on 31.3.1981 and no application was received till then withdrawing or revoking the same. Hence his claim has rightly been rejected by the Tribunal.

4. Learned Counsel for the petitioner vehemently contended that the alleged resignation is not voluntary and conditional therefore it could not have been accepted by the respondents. He further contended that at no point of time any letter accepting resignation was ever communicated to the petitioner and therefore the story set up by the respondents regarding acceptance of resignation was false and incorrect. The order of the Tribunal has been obtained by the respondents by misrepresentation and fraud. Reliance is also placed on the supplementary affidavit stating that under Right to Information Act he sought information from the respondents of various orders passed on his applications including the date of his termination, in reply where to, the petitioner has been made available a letter dated 21.5.1988 sent by the District In-charge, Varanasi to Assistant Administrative Officer of the Corporation wherein it was stated that no document is available on record showing acceptance of petitioner's resignation. Relying thereof, he contended that this shows that the entire story set up by respondents regarding acceptance of his resignation was false.

5. Learned Counsel for the respondents opposing the writ petition supported the judgment of the Tribunal based on the stand taken in the counter affidavit.

6. We have heard learned Counsel for the parties and pursued the record.

7. Coming to the first question, in our view the resignation letter dated 22.1.1981 of the petitioner cannot be said a conditional letter. A perusal thereof shows that though it mentions the reasons for tendering the same i.e. physical and mental weakness of petitioner and non sanction of leave without pay to him but this shows only reasons on account whereof the petitioner thought to tender

resignation. The same by itself would not make resignation conditional inasmuch as in, order to make resignation conditional there ought to have been some condition mentioned in the order. However no such condition is mentioned in the letter. Therefore, it cannot be said to be a conditional"" letter of resignation.

8. The petitioner further contended that he revoked the aforesaid letter of resignation vide his letter dated 7.3.1981 but in our view it is; also not correct. Annexure-16 to the writ petition which is petitioner's own letter dated 29.7.1981 shows that he sent "a letter to the respondent No. 3 on 7.3.1981 requesting him to accept charge from the, petitioner and the said request was reiterated on 29.7.1981. Had the letter of resignation been withdrawn by him on 7.3.1981, there was no occasion for him to request the respondent No. 3 to take charge from him as late as on 29.7.1981. Besides, the petitioner did not take any action if he was not allowed to join duty despite the fact that as alleged by him, he has withdrawn his resignation letter as early as on 7.3.1981 and yet kept silence for almost 10 years. This is evident to show that the petitioner was aware of the action taken by the respondents on his resignation and felt satisfied, therefore, did not take any action. Subsequently, he might have changed his mind and filed the said claim petition after more than 10 years. Moreover, after considering material on record, the Tribunal has also recorded a finding of fact that his resignation was accepted on 31.3.1981. The petitioner could not prove that he withdrew his resignation earlier. The aforesaid finding has not been shown to be perverse. Therefore, we do not find any reason to interfere with the aforesaid finding of fact.

9. Coming to the last submission that Annexure-6 to the supplementary affidavit is a document showing that no action was taken on the petitioner's resignation and the order of the Tribunal has been obtained by the respondents by fraud and misrepresentation, we find that the District In-Charge, Varanasi has said that there was nothing on record in his office showing that any action was taken on petitioner's resignation. The resignation was submitted to the respondent No. 3. It is also mentioned in the said letter that the petitioner's case was dealt with at head office level. Thus non-availability of document in the record of District In-charge was obvious. Further after such a long time, non-availability of sonic documents cannot be said to be abnormal. The petitioner has also not explained his conduct as to why he did not taken any action for more than 10 years and kept silence from 1981 to 1991. Considering the petitioner's conduct and the entirety of the circumstances, in our view the order impugned in the writ petition passed by the Tribunal does warrant any interference. The writ petition, therefore, lacks merit and it is accordingly dismissed. No order as to costs.