

(2011) 09 UK CK 0037

In the Uttarakhand High Court

Case No : Writ Petition (S/S) No. 365 of 2009

Gunanand Nautiyal

APPELLANT

Vs

Director Horticulture and Food Processing, Uttarakhand and
Others

RESPONDENT

Date of Decision : 13-09-2011

Acts Referred:

Citation : (2012) 133 FLR 1093 : (2013) 1 UC 712 : (2012) 1 UC 712

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Advocate : B.S. Negi, for the Appellant; Anil Kumar Bisht, Brief Holder for the State of Uttarakhand, for the Respondent

Final Decision : Allowed

Judgement

Hon'ble Sudhanshu Dhulia, J.—Heard Mr. B.S. Negi. Advocate for the petitioner and Mr. Anil Kumar Bisht, Brief Hoder for the State of Uttarakhand. The petitioner is a Government employee in the Department of Horticulture, Government of Uttarakhand. After putting service of more than 30 years, he sought voluntary retirement under Rule 56 of U.P. Fundamental Rules of the Financial Hand Book Part 2, which reads as under :-

56. (a) Except as otherwise provided in this Rule, every Government servant other than a Government servant in inferior service shall retire from service on the afternoon of the last day of the month in which he attains the age of sixty years. He may be retained in service after the date of compulsory retirement with the sanction of the Government on public grounds which must be recorded in writing, but he must not retained after the age of 60 years except in very special circumstances.

(b) A Government servant in inferior service shall retire from service on the afternoon of the last day of the month in which he attains the age of sixty years. He must not be retained in service after that date, except in very special

circumstances and with sanction of the Government.

(c) Notwithstanding anything contained in clause (a) or clause (b), the appointing authority may, at any time by notice to any Government servant (whether permanent or temporary), without assigning any reason, require him to retire after he attains the age of fifty years or such Government servant may by notice to the appointing authority voluntarily retire at any time after attaining the age of forty-five years or after he has completed qualifying service of twenty years.

(d) The period of such notice shall be three months:

Provided that -

(i) any such government servant may by order of the appointing authority, without such notice or by a shorter notice, be retired forthwith at any time after attaining the age of fifty years, and on such retirement the Government servant shall be entitled to claim a sum equivalent to the amount of his pay plus allowances, if any, for the period of the notice, or as the case may be, for the period by which such notice falls short of three months, at the same rates at which he was drawing immediately before his retirement.

(ii) it shall be open to the appointing authority to allow a Government servant to retire without any notice. or by a shorter notice without requiring the Government servant to pay any penalty in lieu of notice :

Provided further that such notice given by the Government servant against whom a disciplinary proceeding is pending or contemplated, shall be effective only if it is accepted by the appointing authority, provided that in the case of contemplated disciplinary proceeding the Government servant shall be informed before the expiry of his notice that it has not been accepted:

Provided also that the notice once given by a Government servant under clause (c) seeking voluntary retirement shall not be withdrawn by him except with the permission of the appointing authority.

e)....

2. The petitioner sought voluntary retirement on 4.12.2008 stating that he should be treated to have voluntarily retired from service with effect from 1.1.2009. All the same, before his voluntary retirement could be made effective i.e. prior to 1.1.2009, the petitioner changed his mind and vide letter dated 27.12.2008, he recalled his earlier letter dated 4.12.2008 for voluntary retirement. It is also necessary to state that the petitioner was holding a district level post and though the appointing authority of the petitioner was District Horticulture Officer, his letter for voluntary retirement dated 4.12.2008 as well as the next letter dated 27.12.2008 by which earlier letter was recalled were not addressed to the appointing authority i.e. District Horticulture Officer but to the Director, though through proper channel. All the same, between these two dates

the appointing authority i.e. District Horticulture Officer on 8.12.2008 had accepted the letter of voluntary retirement of the petitioner. Therefore, his second letter dated 27.12.2008 by which he recalled his earlier letter dated 4.12.2008 was not given any attention and it was deemed that since the letter of voluntary retirement has been accepted, the same could not have been withdrawn or recalled particularly in view of second proviso to Rule 56 (d) of Fundamental Rules, which has already been quoted above.

3. Heard the rival contentions of the counsel for the petitioner Mr. B.S. Negi and learned counsel representing the State Mr. Anil Kumar Bisht. After hearing the argument, this Court is of considered view that when the petitioner had withdrawn letter dated 4.12.2008 on 27.12.2008, his right or "locus poenitentiae", still existed. In other words, he still had power of drawing back from a bargain before any act has been done to confirm it in law. Such a confirmation could have only been given effect to on 1.1.2009, and not before that. In the present case before it could be made effective it stood withdrawn!

4. The seminal law on said resignation is Union of India Vs. Gopal Chandra Mishra reported in 1978 AIR 694, which has been followed by latest judgments of Hon''ble Supreme Court in J.N. Srivastava Vs. Union of India (UOI) and Another, and Balram Gupta Vs. Union of India (UOI) and Anr, . In Balram Gupta case (supra), the Hon''ble Apex Court has held as under :-

12...In the modern age we should not put embargo upon people's choice or freedom. If, however, 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 appellant's offer to retire and withdrawal of the same happened in such quick succession that it cannot be said that any administrative set up or arrangement was affected.

5. The Hon''ble Apex Court had upheld the right of a Government servant to withdraw the resignation before it becomes effective. In the present case, the resignation could not have become effective prior to 1.1.2009. But before it could become effective the offer of voluntary retirement stood withdrawn. This power of withdrawal was with the petitioner at least till 1.1.2009. He exercised this power prior to 1.1.2009. Merely because his resignation was accepted prior to it i.e. on 8.12.2008 will have no relevance as such an acceptance is no acceptance in the eyes of law.

6. A learned Single Judge of Allahabad High Court as well in the case of Ram Bahal Nishad Vs. Director, Fisheries Department, Lucknow and others reported in Ram Bahal Nishad Vs. Director, Fisheries Department and Others, has held that such withdrawal is perfectly justifiable under the law.

7. For the reasons stated above, writ petition succeeds. Order dated 8.12.2008 (annexure no. 3 to the writ petition) and order dated 31.12.2008 (annexure no. 4 to the writ petition) are hereby quashed. It is made clear that the petitioner shall be treated to be in service. No order as to costs.