

(1984) 11 AHC CK 0081
In the Allahabad High Court
Case No : Writ Petition No. 3967 of 1983

Harish Chandra Srivastava

APPELLANT

Vs

Deputy Commissioner

RESPONDENT

Date of Decision : 12-11-1984

Acts Referred:

Citation : (1985) AWC 174

Hon'ble Judges : K.N. Goyal, J;Brijesh Kumar, J

Bench : Division Bench

Advocate : S.K. Mehrotra, for the Appellant;

Final Decision : Allowed

Judgement

K.N. Goyal, J.—The Petitioner was a clerk in the collectorate. He was suspended pending prosecution. Ultimately he was convicted under the Prevention of Corruption Act and the conviction was maintained by this Court on appeal on 1-10-81. Before any order of dismissal or removal on the basis of that conviction could be passed, the Petitioner made an application for voluntary retirement on 3-4-82. In this application, which is annexure 1 to the petition, he also prayed that his request for voluntary retirement be accepted with immediate effect without his being required to pay the penalty in lieu of three months notice as provided under U.P. Fundamental Rule 56, The Petitioner did not receive any reply to this application; receipt of which is admitted In paragraph 11 of the counter-affidavit. The application was addressed to the Deputy Commissioner who is the appointing authority. Ultimately on 22-6-83 a charge-sheet was issued. The Petitioner's contention is that no charge-sheet could be issued in the circumstances as he should be deemed to have retired voluntarily on the expiry of the usual notice of three months from the date of his application annexure 1.

2. In the counter-affidavit the only plea taken is that after the Petitioner's conviction the question of his voluntary retirement "did not arise" and that his application for that purpose was "not effective"--whatever that may mean. We

have not been shown any provision under which there may be any bar on a convicted government servant giving notice of voluntary retirement. Of course, it is always open in such a case to the appointing authority to inform the government servant before the expiry of the notice that his request cannot be accepted because disciplinary proceedings are to be taken against him. This is clear from the language of the proviso (2) to Sub-clause (d) of Fundamental Rule 56.

3. The counter-affidavit, we find, is self-contradictory inasmuch as it says in one breath that the proceedings were "under contemplation" and in another that proceedings "had been started" or that they were "already under action". Admittedly no charge-sheet was issued before 22-6-83 and it has not been suggested that a decision had been taken prior to that date or within the notice period about disciplinary proceedings to be taken against the Petitioner or of such decision being communicated to the Petitioner. Thus we must uphold the contention of the Petitioner that his notice for voluntary retirement given through annexure I was effective and the Petitioner voluntarily" retired on the expiry of the period of three months from 3-4-1992 i.e. on 3-7-1982. No disciplinary proceedings can be taken against the government servant after he has already retired.

4. In the result, the writ petition is allowed and the charge-sheet annexure 3 is quashed and a writ of prohibition is issued against the continuance of disciplinary proceedings against the Petitioner and a writ in the nature of mandamus is issued to the opposite party directing him to treat the Petitioner as having retired on 3-7-1982.