

(2015) 01 OHC CK 0059
In the Orissa High Court
Case No : O.J.C. No. 6375 of 1996

Himanshu Sekhar Mishra

APPELLANT

Vs

Orissa Bridge Construction Corporation Ltd. and Others

RESPONDENT

Date of Decision : 29-01-2015

Acts Referred:

Citation : (2015) 146 FLR 783

Hon'ble Judges : B.R. Sarangi, J

Bench : Single Bench

Advocate : Ganeswar Rath, S. Mishra, A.K. Panda and S. Mohanty, for the Appellant; L. Pangari, B. Jena, P. Pattnaik, S.N. Sukla and R.P. Dalai, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Dr. B.R. Sarangi, J—The petitioner, who was working as an Assistant Manager (Finance) under the Orissa Bridge Construction Corporation Ltd. (hereinafter called "the OBCC) has filed this application seeking for a direction to accept his joining report dated 6.5.1996 vide Annexure-12 and allow him to perform duty from the date of joining and extend all consequential service benefits as due admissible in accordance with law. The factual matrix of the case in hand is that the petitioner was appointed as Junior Accountant under the OBCC and was posted in the office of the Senior Project Manager, Electrical, Bhubaneswar on 17.1.1986. Thereafter he was promoted to the post of Asst. Manager, Finance and was posted in the office of the Senior Manager, Mechanical, Bhubaneswar on 19.1.1989. The petitioner was transferred to Cuttack on 31.7.1993 and thereafter he was further transferred to Bhubaneswar on 31.12.1993. Again the petitioner was transferred from Bhubaneswar to Jeypore on 15.3.1994 and he joined in Jeypore division on 4.4.1994. Due to non-transmission of his Last Pay Certificate, the petitioner made representations, but those are pending for consideration. It is stated that the petitioner has submitted bills for treatment of his mother and that was sanctioned on 20.6.1994, but he was asked to provide

medical certificate. On production of the same, though the authority is required to disburse the amount of medical advance, but the same was not done till 31.10.1994. Further on 15.11.1994, once again the petitioner was transferred from Jeypore division to Bhawanipatna with headquarter at Jeypore and the Board approved his medical advance as claimed by him. Thereafter, on 7.4.1995, the petitioner was transferred to Bhawanipatna with headquarters at Bhawanipatna. Even though the petitioner submitted medical bills on 19.4.1995, the same was not paid by the authority and he has not been provided any minimum infrastructure, so that he can hold the office. Though the said fact was brought to the notice of the Managing Director, the same has not been sorted out. Therefore, finding (sic)ay out, the petitioner tendered his resignation on 18.8.1995. While considering the resignation letter submitted by the petitioner, vide letter dated 21.10.1995 under Annexure-7, he has been directed to comply with certain conditions mentioned therein. In compliance to the said letter, the petitioner has already given reply on 5.11.1995 vide Annexure-8. On consideration of the same, the Chairman-cum-Managing Director vide letter dated 26.12.1995, Annexure-10 intimated the petitioner to clear up the loan and interest for the advance taken from Andhra Bank and Union Bank, in two instalments in respect of Andhra Bank and three instalments in respect of Union Bank. After clearance of the dues of both the banks and on furnishing of clearance certificate, his resignation would be accepted. To that, the petitioner made correspondence to the Chairman-cum-Managing Director, vide Annexure-10/1 with a request to accept his resignation. The Sr. Project Manager intimated the Managing Director vide Annexure-11 dated 4.3.1996 that the petitioner has not attended the office for settlement of outstanding dues as well as handing over of the charge since his date of resignation i.e. 18.8.1995. When the matter stood thus, on 6.5.1996, the petitioner filed an application for revocation of his resignation submitted on 18.8.1995 through office of the Sr. Project Manager, Bhawanipatna vide Annexure-12 and reported for duty from that date. The said joining report of the petitioner has not been accepted by the authority, hence this writ application.

2. Mr. Ganeswar Rath, learned Senior Counsel appearing for the petitioner strenuously urged that there is no justifiable and valid reasons available on the part of the opposite parties not to accept the joining report of the petitioner and debar him to discharge his duty without assigning reasons thereof. Therefore, this Court may issue direction to the opposite parties to accept the joining report submitted by the petitioner on 6.5.1996 and allow him to discharge his duty as before by granting all consequential service benefits admissible in accordance with law.

3. None appears for the opposite parties. Perused the records. It appears that counter affidavit has been filed by the opposite parties, wherein it is admitted that the petitioner submitted his resignation on 18.8.1995, but his resignation could not be accepted as an amount of Rs. 7977.50 was outstanding against him. Therefore, vide letter dated 21.10.1995, Annexure-7 the petitioner was

asked to obtain the "No Due Certificate" from the concerned division and to submit the same for consideration of his resignation. It is further stated that in reply to the letter dated 21.10.1995, the petitioner has sent a letter dated 5.11.1995, wherein it is stated that he is doing his own business and is earning Rs. 10,000/- approximately per month and demanded the said amount for serving under the Corporation. This indicates that the petitioner was gainfully employed elsewhere, therefore it cannot be stated that his resignation has not been accepted by the authority and as such there is no reason to revoke the resignation letter after ten months i.e. on 6.5.1996. Accordingly, the opposite parties refused to grant benefit claimed by the petitioner.

4. Considering above mentioned facts pleaded and after hearing Mr. Ganeswar Rath, learned Senior Counsel appearing for the petitioner, it is to be considered whether the petitioner is entitled to revoke his resignation prior to acceptance of the same or not.

5. Admittedly, the petitioner was discharging duty of Asst. Manager (Finance) under the opposite parties. Due to frequent order of transfer, for his personal reasons, he tendered resignation on 18.8.1995. The opposite parties without accepting his resignation letter, put conditions for acceptance of resignation, which is required to be complied with by the petitioner. As it appears from the records, till 4.3.1996 vide Annexure-11, his resignation had not been accepted from some plea or other. Therefore, the petitioner filed application vide Annexure-12 on 6.5.1996 with a prayer to revoke his resignation submitted on 18.8.1995 and submitted his joining report on the very same day i.e. 6.5.1996 before the competent authority to discharge his duty. Since the petitioner's resignation dated 18.8.1995 has not been accepted and all the times the employer put condition before acceptance of such resignation, the petitioner sought revocation of the same. Consequence thereof, he is entitled to all service benefits in accordance with law.

6. In *Moti Ram Vs. Param Dev and another*, AIR 1993 SC 1662 : (1993) 2 JT 251 : (1993) 2 LLJ 629 : (1993) 1 SCALE 803 : (1993) 2 SCC 725 : (1993) 2 SCR 250 the Apex Court considering the meaning of "resignation" held as follows:

"Resignation means the spontaneous relinquishment of one's own right and in relation to an office, it connotes the act of giving up or relinquishing the office. In the general juristic sense, in order to constitute a complete and operative resignation there must be the intention to give up or relinquish the office and the concomitant act of its relinquishment."

7. Similar question came up for consideration in *Srikantha S.M. Vs. Bharath Earth Movers Ltd.*, (2005) 107 FLR 1062 : (2005) 12 JT 465 : (2005) 8 SCC 314 : (2005) SCC(L&S) 1119 : (2006) 1 SLJ 423 wherein the Apex Court defined the term "resignation" as follows:---

"The term "resignation" has not been defined in the Service Rules. According to the dictionary meaning, however, "resignation" means spontaneous

relinquishment of one's own right. It is conveyed by the Latin maxim *Resignation est juris propii spontanea refutation*. (Resignation is a spontaneous relinquishment of one's own right. In relation to an office, resignation connotes the act of giving up or relinquishing the office. "To relinquish an office" means "to cease to hold the office" or "to leave the job" or "to leave the position". "To cease to hold office" or "to lose hold of the office" implies to "detach", "unfasten", "undo" or "untie" "the binding knot or link" which holds one to the office and the obligations and privileges that go with it.

8. In view of the meaning attached to the word "resignation" as discussed by the Apex Court mentioned (*supra*) and applying the same to the present context, it appears that though the petitioner submitted resignation on 18.8.1995, the said resignation had not been accepted by the employer till 6.5.1996. The petitioner having joined in the post on 6.5.1996 has to be allowed to continue from that date and the period of absence of the petitioner from the date of resignation i.e. 18.8.1995 to 6.5.1996 should be considered in accordance with law and from the date of joining i.e. 6.5.1996, he should be allowed to discharge his duties as before the date of resignation.

9. In view of the aforesaid facts and circumstances, this Court directs the opposite parties to accept the joining report of the petitioner and allow him to discharge duty and extend the consequential service benefits admissible to him in accordance with law. It is made clear that the period for which the petitioner has not rendered service for his own reasons, he cannot be entitled to get any back wages for such period. With the above observation and direction, the writ petition is disposed of. No order to costs.