
(1999) 09 GAU CK 0029
In the Gauhati High Court
Case No : Civil Rule No. 305 of 1998

Jawaharalal Bhattacharjee

APPELLANT

Vs

State of Tripura

RESPONDENT

Date of Decision : 07-09-1999

Acts Referred:

Citation : (1999) 3 GLJ 365 : (1999) 3 GLT 473

Hon'ble Judges : A.K.Patnaik, J

Bench : Single Bench

Advocate : A.Ghosh, S.Chakraborty, C.S.Sinha , Advocates appearing for Parties

Judgement

1. The petitioner joined as an Assistant Teacher on 7.7.70 under the Govt. of Tripura. By a notification dated 28.3.95, his services were placed under the Tripura Tribal Area Autonomous District Council (for short, TTAADC) and on 11.8.95 he joined as Assistant Inspector of Schools at Chailengtha, TTAADC. a On 24.8.95, he was requested by the office of the Inspector of Schools, Chailengtha to take the complete charge of Manughat Circle, TTAADC in Dhalai District by 31.8.95. Since August, 1995, the petitioner served as Assistant Inspector of Schools at Manughat Circle, TTAADC. While serving at the said place as Assistant Inspector of Schools, the petitioner addressed a letter dated 9.9.96 to the Director of School Education, Govt of Tripura, stating therein that he would like to go on voluntary retirement and that he be relieved from service on and from the afternoon of 10.12.96. The said letter dated 9.9.96 of the petitioner was forwarded by the Inspector of Schools, Education Directorate, Chailengtha, TTAADC, to the Principal Officer (Education), Autonomous District Council, who in turn forwarded the same to the Director of School Education, Govt of Tripura by his letter dated 1.11.96. The petitioner's case is that he waited for the Director of School Education, Govt of Tripura to accept his request for voluntary retirement, but when no acceptance was communicated to him by the Director of School Education, Govt of Tripura, by his letter dated 21.5.98 to the said Director the petitioner withdrew his request for voluntary retirement. After the withdrawal

of his request for voluntary retirement dated 21.5.98, the petitioner was informed by letter dated 29.5.98 of the Director of School Education, Govt of Tripura that his notice for voluntary retirement had been accepted by letter dated 2.7.97 and that he had been allowed to retire voluntarily from service with effect from 10.12.96 as per his notice for voluntary retirement. On these facts as stated in the writ petition, the petitioner has prayed for quashing the order dated 2.7.97 of the Director of School Education and for directions on the respondents to treat the petitioner's request for voluntary retirement as withdrawn and to allow him to resume his duties as Assistant Inspector of Schools under the Education Directorate, Chailengtha, TTAADC and to treat the period of absence from duty as on duty as per Rules and to make payment of his salary.

2. Mr. CS Sinha, learned counsel appearing for the petitioner, submitted relying on the decision of the Supreme Court in *Baljit Singh vs. State of Haryana*, 1997 AIR SCW 2004 : AIR 1997 SC 2150, that mere expiry of the period of notice for voluntary retirement does not automatically put an end to the relationship of employer and employee between Govt and the Govt servant and it is only on acceptance by the employer of the request for voluntary retirement that the relationship ceases. Hence, according to Mr. Sinha, unless the request of the petitioner for voluntary retirement with effect from 10.12.96 was accepted before 10.12.96 by the Director of School Education, the petitioner's voluntary retirement could not take effect from 10.12.96. He further contended that before acceptance of the request of the petitioner for voluntary retirement was communicated to the petitioner by letter dated 29.5.98 of the Director of School Education, the petitioner withdrew the request for voluntary retirement by his letter dated 21.5.98 to the Education, Inspectorate Chailengtha, TTAADC. Hence, after 21.5.98, the Director of School Education, could not have accepted the request of the petitioner for voluntary retirement. Alternatively, Mr. Sinha submitted that since the petitioner received the aforesaid letter dated 29.5.98 of the Director of School Education accepting his request for voluntary retirement on 16.6.98, the voluntary retirement of the petitioner would also take effect from 16.6.98, and not from 10.12.96 (AN). Therefore, the petitioner would be entitled to all his salaries and allowances upto 16.6.98 in case it is held by the Court that the petitioner is no longer in service.

3. Mr. S. Chakraborty, learned counsel appearing for the respondents 2, 4 and 5 on the other hand, relying on the averments in the counter affidavits filed on behalf of the said respondents, submitted that the delay in acceptance of the request of the petitioner for voluntary retirement with effect from 10.12.96 (AN) was on account of the petitioner himself as he had not cleared his liability to the Govt to the extent of Rs. 10,685. He explained that by letter dated 24.5.96, the Director of School Education directed the petitioner to refund the said amount of Rs. 10,685 which he had misappropriated after dismantling the old construction of Samrucherra JE School under the Inspector of Schools, Kailasahar. In fact, a show cause notice dated 18.7.95 had earlier been issued to him and the petitioner had agreed to refund the compensation value of the lost articles for

which he was liable. On 7.9.96, the petitioner addressed a letter to the Director of School Education stating therein that he was ready to deposit not more than Rs.2,000 and the Director of School Education took a lenient view and allowed the petitioner to deposit the said amount of Rs.2,000. The petitioner then deposited the said amount through Treasury Challan on 26.2.97 and the Director of School Education thereafter accepted the request of the petitioner for voluntary retirement by his letter dated 2.7.97. Mr. Chakraborty further submitted that the said letter dated 2.7.97 of the Director of School Education accepting the request of the petitioner for voluntary retirement with effect from 10.12.96 (AN) was sent by Registered post to the Inspector of Schools, Chailengtha, TTAADC, and the UDC in the office of the Inspector of Schools, Chailengtha handed over the said letter/order dated 2.7.97 of the Director of School Education to the petitioner and when the said UDC asked the petitioner for a receipt, the petitioner stated that there was no necessity for such a receipt. Mr. Chakraborty referred to the statement of the said UDC, Smti Asha Lata Sangma, English version of which is annexed to the counteraffidavit of respondents 1 and 3 as Annexure R/6. According to Mr. Chakraborty, therefore, the acceptance of the request of the petitioner for voluntary retirement was duly communicated to him in August, 1997 and that the delay in acceptance of the said request of the petitioner for voluntary retirement with effect from 10.12.96 (AN) was due to the fact that the petitioner did not deposit the said sum of Rs.2,000 till 26.2.97. He also relied on the note to clause (vii) of the Scheme for Voluntary Retirement of the State Govt employees contained in office memo dated 6.3.80 of the Govt of Tripura, Finance Department which stated that even where the notice of voluntary retirement given by a Govt servant requires acceptance by the appointing authority, the Govt servant giving notice may presume acceptance and the retirement shall be effective in terms of the notice unless the competent authority issues an order to the contrary before expiry of the period of notice. The said note in the Scheme for Voluntary Retirement, according to Mr. Chakraborty, thus made it clear that notwithstanding the delay in acceptance of the request of the petitioner for voluntary retirement, the petitioner stood retired voluntarily with effect from 10.12.96 (AN) in terms of his notice of voluntary retirement.

4. The note appended to clause (vii) of the Scheme for Voluntary Retirement of the State Govt employees contained in office memorandum dated 6.3.80 of the Govt of Tripura, Finance Department, is extracted herein below :

"Note: Even where the notice of voluntary retirement given by the Govt servant requires acceptance by the appointing authority the Govt servant giving notice may presume acceptance and the retirement shall be effective in terms of the notice unless the competent authority issues an order to the contrary before the expiry of the period of the notice."

The aforesaid note would show that only a presumption of acceptance of notice for voluntary retirement effective in terms of the notice could be drawn where no

order to the contrary was issued by the appointing authority before expiry of the period of notice. The aforesaid note is therefore only a rule of evidence by which acceptance of the notice for voluntary retirement by the appointing authority is to be presumed and the retirement is to be effective in terms of the notice. This presumption as per the aforesaid rule of evidence will have no application to a case where the materials filed before the Court indicated that the appointing authority had not actually accepted the request for voluntary retirement by a Govt servant before the expiry of the period of notice. In the present case, admittedly the Director of School Education, Tripura, passed the order accepting the request of the petitioner for voluntary retirement only on 2.7.97 and the said order appears to have been communicated to the office of the Inspector of Schools, Chailengtha, TTAADC, by registered post. The Receipt Register of the Education Inspectorate, Chailengtha, TTAADC for the period from 8.1.97 has been produced before the Court and it appears that on 6.8.97, the said order dated 2.7.97 of the Director of School Education, Tripura, permitting the petitioner to voluntarily retire from Govt service was received by the said Inspectorate. It further appears from Annexure R/6 to the counteraffidavit filed by respondents 1 and 3 that Smti Asha Lata Sangma, UDC, has given a statement on 21.10.98 that the said order of the Director of School Education accepting the prayer of the petitioner for voluntary retirement was handed over to the petitioner before 20.8.97. The petitioner therefore appears to have received the order of acceptance of his request for voluntary retirement in August, 1997.

5. It further appears from Annexure 7/B to the writ petition and Annexure R/2, R/3 and R/4 to the counteraffidavit of respondents 1 and 3 that a proceedings for recovery of a sum of Rs. 10,685 towards compensation value of certain articles alleged to have been misappropriated/lost by the petitioner was pending against him and it was for this reason that the Director of School Education, Tripura, was not in a position to accept the request of the petitioner for voluntary retirement and that the said proceeding ultimately terminated with the petitioner's agreeing to deposit a sum of Rs.2,000 towards the value of lost articles and the Director of School Education, Tripura's agreeing to accept the said amount of Rs.2,000 towards the value of lost articles. The Director of School Education therefore did not accept the request of the petitioner voluntary retirement until he deposited the said sum of Rs.2,000 towards the value of the lost articles on 27.2.97 and only thereafter the Director of School Education passed the order on 2.7.97 accepting the request of the petitioner for voluntary retirement. In *Baljit Singh vs. State of Haryana* (supra), the Supreme Court has observed that it may be open to the Govt to postpone the superannuation for continuance of pending disciplinary proceedings for completing enquiry or to initiate action against a delinquent employee and in such a situation, it will always be open to the Govt to decide whether or not to permit an incumbent to retire from service. The Supreme Court has further observed that each case should be considered in its own backdrop of facts and until the jural relation of employer and employee

comes to a close according to law, the employer always has the power to decide and pass appropriate order. The Supreme Court has also held in the said case that mere expiry of three months' period of notice of voluntary retirement given, does not automatically put an end to jural relationship of employer and employee between Govt and the delinquent official and it is only on acceptance by the employer of the request for voluntary retirement that their jural relationship ceases. Applying the aforesaid law as laid down by the Supreme Court in *Baljit Singh vs. State of Haryana* (AIR 1997 SC 2150) (*supra*) to the present case, it is clear that the Director of School Education, Tripura had not permitted the petitioner to retire voluntarily from service as per his request until 2.7.97 and that the petitioner had no knowledge of the said acceptance or permission of the Director of School Education, Tripura until about 20.8.97. On these peculiar facts of the case, I am of the opinion that the jural relationship between the employer and the employee in this case came to the end only in August, 1997 and the petitioner stood voluntarily retired from service in terms of his notice for voluntary retirement with effect from 31.8.97.

6. Since the petitioner stood retired from service as per his notice for voluntary retirement with effect from 31.8.97 by which time he had knowledge of the order dated 2.7.97 of the Director of School Education, Tripura, accepting the request of the petitioner for voluntary retirement, it was no longer open to the petitioner to withdraw the said notice of voluntary retirement after August, 1997. The contention of Mr. Sinha therefore that by a subsequent notice dated 21.5.98 to the Director of School Education, Tripura, the petitioner had withdrawn his notice of voluntary retirement, cannot be accepted.

7. Coming now to the question of payment of salary, etc to the petitioner, since I have held that the voluntary retirement of the petitioner would take effect from 31.8.97, the petitioner would normally be entitled to his salary and allowances upto 31.8.97. But Mr. Chakraborty, learned counsel for the respondents submitted that the petitioner has remained absent from 11.12.96 and has drawn his salary and allowances upto 10.12.96. Mr. Sinha, learned counsel for the petitioner, on the other hand, submitted that the petitioner was not allowed to attend to his duties from 11.12.96. The Director of School Education, Tripura will cause an enquiry into this factual question as to whether the petitioner voluntarily remained

absent or he was not allowed to attend to his duties with effect from 11.12.96. In case it is found on such enquiry that the petitioner was prevented from attending his duties from 11.12.96, he will pass orders for payment of his salary and allowances upto 31.8.97. But in case it is found on such enquiry that the petitioner has voluntarily remained absent from duty from 11.12.96, the period of his absence will be regularised by granting admissible or extraordinary leave as per rules for the purpose of pension, leave encashment and other financial benefits, if any, under the Rules.

8. With the aforesaid observations and directions, the writ petition is partly

allowed. However, considering the entire facts and circumstances of the case, the parties shall bear their own costs.